SUNSET ADVISORY COMMISSION

Recommendations

to the

Governor of Texas

and

Members of the Seventy-first Legislature

February 1989

SUNSET ADVISORY COMMISSION

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The Honorable William P. Clements
Governor of Texas

Honorable Members of the Seventy-first Legislature
Assembled in Regular Session

Ladies and Gentlemen:

The Sunset Advisory Commission, established in 1977 by the Sixty-fifth Legislature, is directed by statute to: 1) review and evaluate the performance of specified agencies; 2) recommend the abolition or continuation of these agencies; 3) propose needed statutory changes or management improvements to the operations of the agency; and 4) develop legislation necessary to implement any proposed changes.

Between September of 1987 and January of 1989, the members of the commission have worked to develop recommendations for the 30 agencies currently scheduled to terminate, unless continued by the Seventy-first Legislature. During the period of 17 months, the commission scheduled 18 days of public hearings for the purpose of finalizing its decisions. The amount of time and effort expended by the Commission was well justified. The nature of the agencies under review is substantially different from those reviewed in the past, both in terms of size and in the complexity of their regulation or service delivery. The manner in which these agencies are finally dealt with by the legislature will be the true test of the sunset process.

The members of the Sunset Advisory Commission are pleased to forward to you their findings and recommendations in this report. As with any undertaking, the commission has not been unanimous in its decisions concerning all the agencies covered in the report, but it does represent the affirmative approval of a majority of the members of the commission. We are hopeful you will find this report informative and useful to the final decisions concerning the agencies subject to termination.

Respectfully submitted,

Jack E. Vowell
Chairman
Sunset Advisory Commission

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INTRODUCTION

Over the past decade, there has been a sustained interest among the states in a new concept in legislative review popularly described as a 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 unless legislative bodies are given a structured approach, no systematic review will be directed toward the efficiency and effectiveness with which governmental programs are operated. The sunset process is, then, an attempted to institutionalize change and to provide a process by which this can be accomplished on a regular systematic basis.

A variety of approaches to the basic sunset concept have been enacted into law by different states, including one shot reviews of all agencies, staggered review of designated agencies over a defined time period, reviews that allow the reviewing body to determine the time periods and agencies, and reviews that are directed not to agencies but to selected functional groupings of state services.

The sunset process and approach finally adopted by Texas in 1977 was developed around concepts proposed by the Constitutional Convention in 1974 and the Joint Advisory Committee on Government Operations in 1976. Under the Texas Sunset Act, 200 state agencies and advisory committees are scheduled for review or automatic termination at specified intervals.

To assist the legislature in its decision to continue or abolish an agency, the Act provides for a Sunset Advisory Commission. Membership of the commission consists of four members of the House of Representatives and one public member, who are appointed by the Speaker of the House, and of four members of the senate and one public member, who are appointed by the Lieutenant Governor. Legislative members serve staggered four-year terms and public members serve two-year terms. The chairmanship and vice-chairmanship alternate every two years between the two membership groups appointed by the Speaker of the House and the Lieutenant Governor, each of whom designates the presiding officer from his respective appointees. The commission is authorized to appoint a director and to employ sufficient staff to discharge its responsibilities in regard to agency reviews. The Sunset Advisory Commission is responsible for recommending to the legislature whether the agencies under review and their functions should be abolished or continued in some form.

The process of arriving at commission recommendations moves through four distinct phases beginning with an agency self-evaluation report to the commission. The second phase involved the preparation of an evaluation report by the staff of the commission. The third phase involved a public hearing at which the information contained in the reports and testimony by the public is considered. The final phase is the determination by the commission of its recommendations to this legislature and incorporation of those recommendations into proposed legislation. Traditionally, the legislation has been sponsored by the legislative members of the commission.

To date the commission has reviewed 169 agencies. Actions taken by the Sixty-sixth through the Seventieth Legislatures, under the sunset process, have been positive in terms of incorporating the concept into the existing legislative process.

SUNSET COMMISSION

ACROSS-THE-BOARD RECOMMENDATIONS BY CATEGORY

Recommendation/Justification

I. GENERAL (applicable to all agencies)

1. **Require public membership on boards and commissions.**

The purpose of government is to protect the health, welfare and safety of the public. However some agencies do not have public members on their boards. Boards consisting only of members from a regulated profession or group affected by the activities of an agency may not respond adequately to broad public interests. This potential problem can be addressed by giving the general public a direct voice in the activities of the agency through representation on the board.

2. **Require specific provisions relating to conflicts of interest.**

An agency may develop close ties with professional trade organizations and other interested groups which may not be in the public interest. Conflict of interest provisions are necessary to prevent these kinds of relationships from developing.

3. **Prohibit persons registered as a lobbyist under Article 6252-9c, V.A.C.S., from acting as general counsel to the board or serving as a member of the board.**

Apparent conflicts of interest resulting from the dual performance of agency and lobby related activities by board members and board counsel are prohibited by this guideline.

4. **Specify that appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.**

It is essential that state agencies be fair and impartial in their operations. The achievement of this goal is aided by the existence of policy-making boards whose appointees have been chosen on the basis of impartial and unbiased standards.

5. **Specify grounds for removal of a board member.**

Several of the preceding across-the-board provisions set out appointment requirements for board members (e.g., conflict-of-interest requirements).

This provision specifies directly that it is grounds for removal of a board member if these requirements are not met. In addition, the provision clarifies that if grounds for removal exist, the board's actions taken during the existence of these grounds are still valid.

6. **Require the board to submit annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.**

Increased legislative overview of agency fiscal activities is provided for through the requirement of annual reports of all agency receipts and disbursements.

7. **Require the board to establish skill-oriented career ladders.**

This recommendation would help enhance career mobility within the agency.

8. **Require a system of merit pay based on documented employee performance.**

This recommendation would create a framework for rewarding outstanding performance by agency employees.

9. **Provide for notification and information to the public concerning board activities.**

The sunset review has shown that the public is often unaware of the regulatory activities of licensing agencies. Consequently, the effectiveness of licensing agencies in serving the general public may be limited. To help insure public access to the services of licensing agencies, steps should be taken to provide information on their services to the general public.

10. **Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditure through the appropriation process.**

Various licensing agencies are not subject to legislative control through the appropriation process of the state. This lack of fiscal control by the legislature severely weakens the accountability of those agencies to the legislature and, ultimately, the public at large. By bringing these "independent" agencies within the appropriations process, the legislature and the public could be assured of: 1) full accountability for all state funds on a uniform basis for all agencies; 2) periodic review by the Governor's Budget Office, the Legislative Budget Board, and the legislature; and 3) increased efficiency of state operations through implementation of uniform budgeting, accounting, reporting, and personnel policies.

11. **Require files to be maintained on complaints.**

The sunset review process has shown that complete and adequate complaint files are not maintained by some agencies. This situation has increased the time involved in resolving complaints and limited the agencies' ability to protect the consuming public. The suggested approach would serve to lessen the

problem by insuring that, at a minimum, files be developed and maintained on all complaints.

12. **Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.**

This provision ensures that all parties to a complaint are made aware of the status of the complaint and are provided with current information regarding the substance of the complaint as well as agency policies and procedures pertaining to complaint investigation and resolution.

13. (a) **Authorize agencies to set fees.**

In the case of many agencies, various fees are fixed in the agency's statute. With the passage of time, these fixed fees often do not continue to generate sufficient revenues to make the agency "self-supporting" or to provide a realistic contribution to the overall financing of agency operations. This provision would permit agencies to set reasonable fees, thereby providing agencies with the flexibility to keep revenues in line with the changing cost of operations.

(b) **Authorize agencies to set fees up to a certain limit.**

This recommendation would allow the agency the flexibility to adjust fees when necessary within their statutory limit without having to come back to the legislature. Setting a limit on fees in the statute ensures against the agency charging an exorbitant rate.

14. **Require development of an Equal Employment Opportunity policy.**

This recommendation would require an agency to develop a written, comprehensive Equal Employment Opportunity plan which would be filed with the governor's office and updated annually. In addition, agency efforts in this area would be enhanced by requiring the agency to file semi-annual progress reports with the governor's office.

15. **Require the agency to provide information on standards of conduct to board members and employees.**

This recommendation requires the board to inform its members and employees as to the provisions in state law setting standards of conduct for state officers or employees.

16. **Provide for public testimony at agency meetings.**

This requirement promotes public input and participation in activities of the agency.

17. **Require the policy body of an agency to develop and implement policies which clearly separate board and staff functions.**

This recommendation establishes the executive director/administrator as the individual in charge of managing the agencys' day to day activities. It removes the possibility of the board administering the agency in addition to setting agency policy.

18. Require development of a program accessibility plan.

Insuring that programs an agency operates are accessible to persons with language, physical, or mental difficulties is problematic if careful attention is not paid to the special needs of these persons. This recommendation requires each agency to develop a written plan on how such persons can be provided reasonable access to the agency's programs.

II. LICENSING (Applicable to agencies with licensing functions)

1. Require standard time frames for licensees who are delinquent in renewal of licensees.

Variations occur among licensing agencies in requirements concerning the number of days a license renewal may be delinquent before penalties are brought into effect. This provision is aimed at insuring comparable treatment for all licensees, regardless of their regulated profession.

2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.

This provision insures the timely reporting of examination results. The timely notification is important to those persons whose future plans are contingent on their examination scores.

3. Provide an analysis, on request, to individuals failing the examination.

This provision insures that examinees are informed of the reasons for examination failure. Such knowledge serves to protect the examinee from arbitrary restrictions, as well as protecting the public by insuring that deficiencies are adequately addressed and corrected before reexamination.

4. Require licensing disqualifications to be: 1) easily determined; and 2) currently existing conditions.

The statutes of many licensing agencies contain licensing disqualifiers which are vague and hard to define (such as the requirement that licensees be of "good moral character"). In addition, many provisions can permanently disqualify a person for licensure even though the disqualifying condition (such as drug addiction) is corrected. This across-the-board approach has been applied on a case-by-case basis in an effort to eliminate such vague and inequitable disqualifying provisions.

5. (a) Provide for licensing by endorsement rather than reciprocity.

A policy of licensure by endorsement provides for the licensing of any out-of-state applicant by Texas without examination if the applicant is licensed by a state which possesses licensing requirements substantially equivalent to, or more stringent than, Texas' requirements. The endorsement policy protects the public interest, imposes uniform requirements on all applicants, and spares the already-licensed practitioner the cost and time required in "retaking" an examination previously passed in another state.

(b) Provide for licensing by reciprocity rather than endorsement.

In a reciprocal licensing agreement, Texas and other states agree to allow a licensee to change states and receive a new license without the need to retake a licensing examination. This insures equal treatment for all out of state licensees and spares the already licensed practitioner the cost and time required in retaking an examination previously passed in another state.

6. Authorize the staggered renewal of licenses.

This type of provision encourages the periodic renewal of licenses rather than requiring the renewal of all licenses at one particular time each year. The staggering procedure improves the efficient utilization of agency personnel by establishing a uniform workload throughout the year and eliminating backlogs in licensing efforts and the need for seasonal employees.

7. Authorize agencies to use a full range of penalties.

As a general principle, an agency's range of penalties should be able to conform to the seriousness of the offenses presented to it. However, in many cases, licensing agencies are not given a sufficient range of penalties. This provision is intended to ensure that appropriate sanctions for offenses are available to an agency.

8. Specify board hearing requirements.

The statutes of varying licensing agencies contain board hearing provisions which parallel or were suspended by the provisions enacted in the Administrative Procedure and Texas Register Act. This across-the-board approach is a "clean-up" provision which directly specifies that a person refused licensure or sanctioned by a board is entitled to a hearing before the board, and that such proceedings are governed by the Administrative Procedure Act.

9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.

The rules of licensing agencies can be used to restrict competition by limiting advertising and competitive bidding by licensees. Such a restriction limits public access to information regarding professional services and hampers the consumer's efforts to shop for "a best buy". Elimination of these rules or statutes restores a degree of free competition to the regulated area to the benefit of the consumer.

10. Authorize the board to adopt a system of voluntary continuing education on an annual basis. (optional)

This provision is applied on a case-by-case basis. It was determined that, with respect to certain professions, proper protection of the public was dependent on practitioners having a working knowledge of recent developments and techniques used in their trades. The continuing education requirement provides one proven means of ensuring such upgrading.

AGENCY RECOMMENDATIONS

Recommendations for

AGRICULTURAL AGENCIES

Texas Department of Agriculture

Texas Animal Health Commission

Poultry Improvement Board

TEXAS DEPARTMENT OF AGRICULTURE

Texas Department of Agriculture

Background and Focus of Review

Creation and Powers

The Office of the Commissioner of Agriculture was created as an elected office in 1907. The commissioner is elected state-wide by popular vote for a four year term. The office was established to provide a separate elected official to deal with the agricultural needs of the state. The original purposes of the office were to:

- encourage the proper development of Texas agriculture;
- encourage improvements in agricultural methods and practices;
- investigate plant diseases and insects for remedies;
- investigate ways of increasing demand and broadening markets for Texas agricultural products;
- compile statistics and other information; and
- work with state and federal agencies and other countries for the benefit of agriculture in Texas.

Texas is one of 12 states that elects a commissioner of agriculture to head its agriculture department. The commissioner oversees the department which is responsible for administering most of the state's laws relating to agriculture. The original duties and responsibilities of the department have been expanded many times through the years but remain in the general categories of regulatory and marketing efforts. The department's regulatory responsibilities were originally aimed at protecting or assisting producers and enforcing standards that benefited agricultural commerce. These responsibilities included cotton grading and classification (1909), nursery and orchard inspections (1910), grain warehouse bonding and recordkeeping (1913 and 1917), cotton planting and plowing deadlines (1916), container standardization (1917) and seed inspection and labeling (1919). Beginning in 1919, the responsibilities of the department were expanded to include protection of consumers and the general public through the establishment of standards for scales, pumps and measuring devices. Additional consumer protection duties have continued to be added to the department's responsibilities. For example, in 1957, the department was given the task of enforcing laws relating to egg quality. More recently, the department's duties have been expanded to include protection of the state's natural resources was added. In 1972, legislation was passed requiring the registration of agricultural and urban chemicals (pesticides) and the regulation of their use. In 1987, the department was given the responsibility to enforce the Agricultural Hazard Communications Act (Right-to-Know) for the protection of the state's agricultural work force. The department now has the responsibility to administer 49 separate laws in state statute.

In the marketing area, the department's activities have also expanded over time. Early reports on department activities discuss efforts to organize growers' marketing associations and farmers' markets. Efforts were also made to organize promotional events to increase sales of agricultural products. In 1930, TDA, along

with the USDA, established a radio market news service to provide needed information to farmers. This service was expanded in 1950 to provide a wide range of information for the agricultural community. In 1965, the Texas Agricultural Product Program (TAP) was established to improve the marketing of Texas products worldwide. In 1967, the department was authorized to help oversee the creation of commodity boards for research, education, promotion and market development for the benefit of the state's producers of various agricultural commodities. Livestock facilities were established in 1972 to help increase the sale of Texas livestock. Recent efforts include the establishment of a Farmer's Market Program, a "Texas Grown" program, a "Taste of Texas" program and other programs to assist with agricultural diversification. All these newer programs expand the department's effort to assist agricultural producers to increase the demand for their products. The marketing program currently operates as a catalyst to help the Texas agricultural economy by assisting farmers and ranchers with marketing of existing products as well as diversification into alternative crops and increasing the processing of agricultural products within the state.

Policy-making Structure

The department has no governing board or commission. Instead, policy and administrative direction is set by the commissioner of agriculture who is elected every four years as are other state-wide elected officials. The commissioner is required, by statute, to have knowledge of agriculture and manufacturing and is responsible for performing the duties assigned to the office of the commissioner of agriculture. These powers and duties include developing agriculture in Texas in general, developing domestic and foreign markets in particular, and administering federal and state laws regarding pesticides and pest management. In addition, the commissioner is responsible for ensuring that the department meets the agricultural needs of the state and oversees the provision of services to the agricultural community and the general public.

A deputy commissioner is created by statute and is appointed by the commissioner to be responsible for performing the statutory duties of the commissioner during his absence. The deputy commissioner is specifically responsible for conducting and directing outreach, advocacy and crisis intervention efforts for farmers, ranchers, farmworkers and consumers. The deputy commissioner also serves as primary liaison with federal, state, and local government agencies. Finally, the deputy commissioner is responsible for oversight of state commodity boards and for working directly with commodity and community organizations to:

- solicit input for improvement of the department's programs;
- identify and respond to problems agricultural producers and organizations are experiencing;
- address agricultural crises; and
- conduct a program of public education and outreach to inform these parties and the public of services available to them.

The department uses advisory boards, committees, and task forces in two ways to assist with development and implementation of its various programs. First, advisory bodies provide evaluation, guidance or technical assistance to the

commissioner. For example, the Egg Marketing Advisory Board advises the commissioner on the administration of the laws regulating the sale and handling of chicken eggs in Texas. Other advisory bodies are directly involved in administering some of the department's programs. For example, advisory boards are directly involved in administering the state's seed certification program and the Family Farm and Ranch Security Loan program, and in resolving claims made under the Agricultural Protective Act. Altogether, the department has 17 active advisory committees. Also used by the commissioner are district agricultural boards located in each of the department's 13 field districts. These boards are local advisory boards that act to inform and advise the commissioner and the department on matters of concern to the local agricultural community.

Funding and Organization

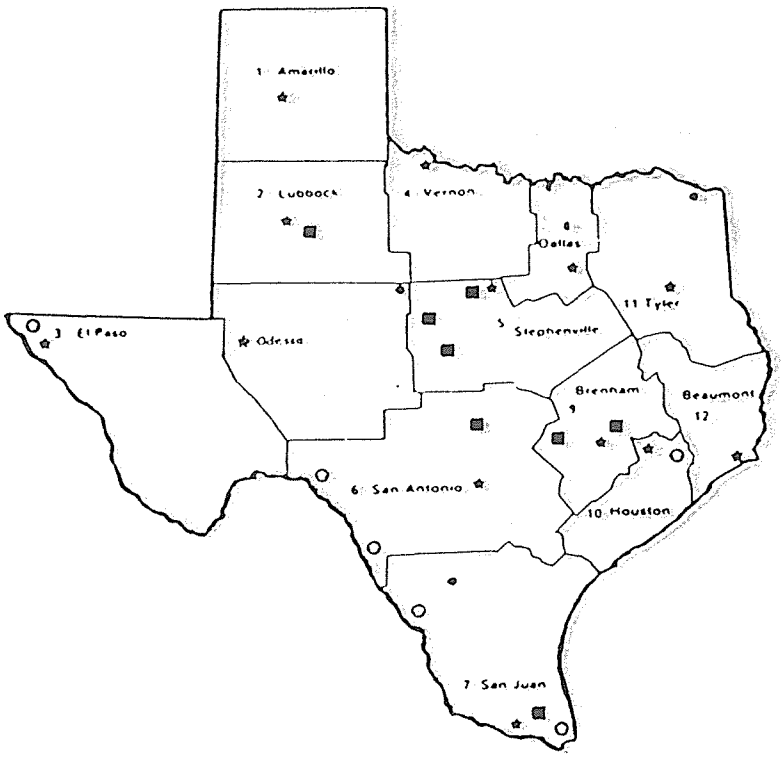
The department operates from headquarters in Austin and 13 district and three satellite offices throughout the state. In addition, the department operates nine laboratories and six export facilities statewide. Exhibit 1 shows the location of these field operations throughout the state.

The department has approximately 600 employees with a budget of $19.3 million for fiscal year 1988. Exhibit 2 shows the department's funding for 1988. Most of the department's funding, over $16 million, comes from general revenue. The second largest source of funding is from the portion of fees assessed by the department which are reappropriated to TDA by the legislature. The department collects over 65 different fees, most of which are charged in its regulatory programs. In 1988, the department received approximately $2.5 million or 13.2 percent of its funding in fee revenue reappropriated by the legislature which amounted to over one-third of the total fees collected by the department.

Federal funds make up the third largest source of revenue, comprising about 2.4 percent of the department's budget. Most of these federal funds come from a contract between the department and the Environmental Protection Agency for state enforcement of pesticide regulations. The department also receives a small amount of funding through interagency contracts for agricultural development and product promotion.

Exhibit 2 also shows the department's fiscal year 1988 budgeted expenditures. The department's regulatory programs account for most (66.8 percent) of the department's expenditures. Within the regulatory area, the largest expenditures are for consumer services and the various pest management programs. Marketing programs account for 22.2 percent of total expenditures, with most of this amount going for agricultural development and product promotion. Administrative costs require 11.0 percent of the department's total expenditures.

Exhibit 1
District Offices, Laboratories and Export Facilities



District Offices

District 1 - Amarillo
District 2 - Lubbock
District 3 - El Paso
District 4 - Vernon
District 5 - Stephenville
District 6 - San Antonio
District 7 - San Juan
District 8 - Dallas
District 9 - Brenham
District 10 - Houston
District 11 - Tyler
District 12 - Beaumont
District 13 - Odessa

Satellite Offices

Cotulla
New Boston
Abilene

Export Facilities

Brownsville
Laredo
El Paso
Houston
Del Rio
Eagle Pass

Laboratories

DeLeon - Aflatoxin & Nematology
Gorman - Aflatoxin
Austin - Metrology
Lubbock - Metrology
Brenham - Pesticides
San Juan - Pesticides
Giddings - Seed
Lubbock - Seed
Stephenville - Seed

Exhibit 2

TDA Sources of Revenues
FY 1988

Source	Amount	Percent
General Revenue	$ 16,070,899	83.3
Fees	2,540,010	13.2
Federal Funds	469,518	2.4
Interagency Contracts	215,000	1.1
TOTAL	$ 19,295,427	100.0%

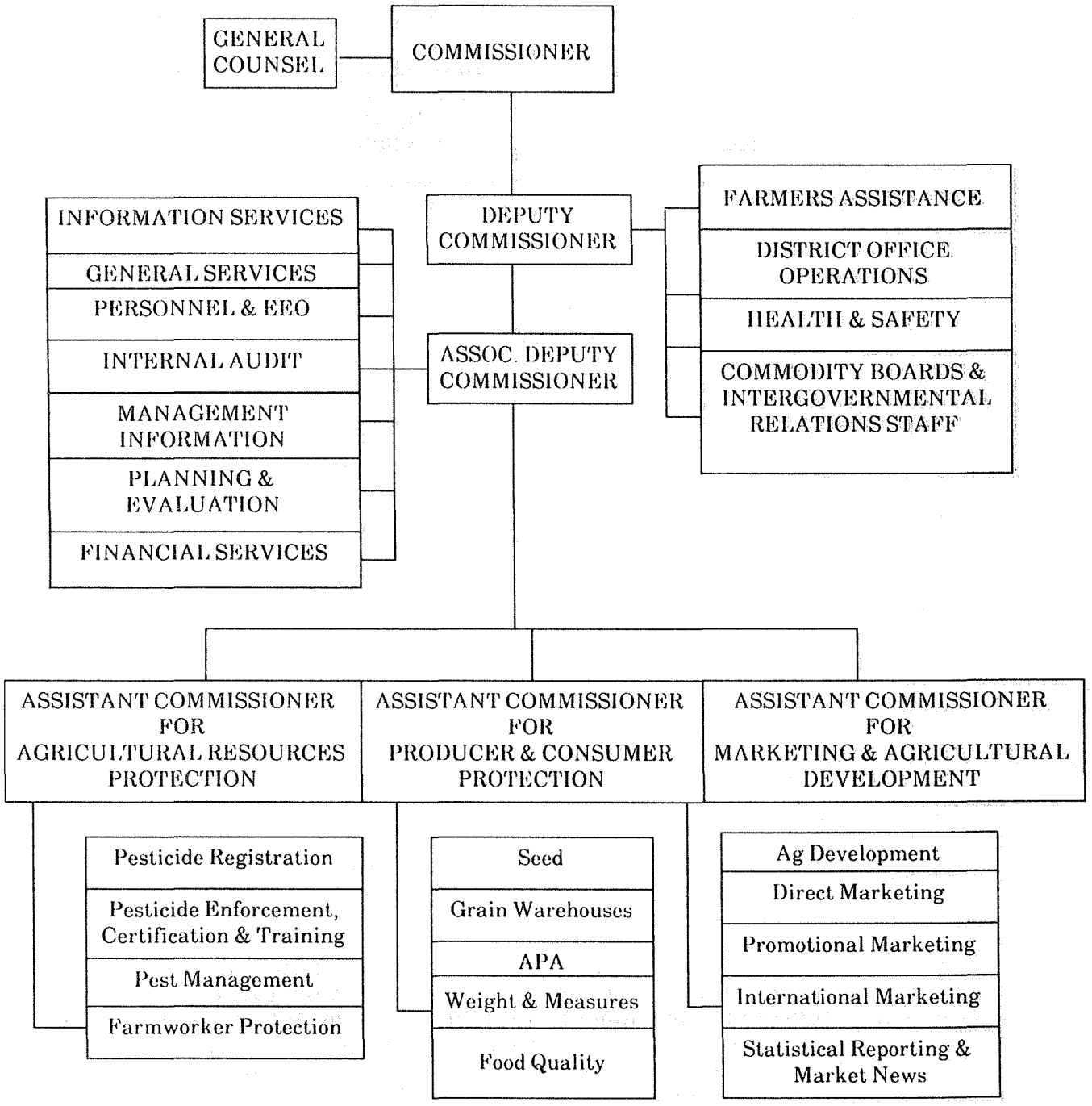
TDA Expenditures
FY 1988

Expenditure	Amount	Percent
Administration	$ 2,127,151	11.0
Regulatory Programs:		
Seed and Grain Warehouse	1,678,651	8.7
Consumer Services	4,589,278	23.8
Pest Management	3,742,521	19.4
Pesticides	2,173,971	11.3
Laboratory Services	703,860	3.6
Marketing Programs:		
Agriculture Development and Product Promotion	3,022,241	15.7
International Marketing	473,200	2.5
Cooperative USDA Programs	784,554	4.1
TOTAL	$ 19,295,427	100.0%

The department has recently undergone a reorganization which divides the department into three major programs: Marketing, Agricultural Resources Protection and Producer and Consumer Protection. Program staff in the field report directly to program directors in Austin. Administrative coordination of field staff is handled through an office reporting to the deputy commissioner. The new organizational structure of the department became effective September 1, 1988 and is shown in Exhibit 3.

Exhibit 3

TDA Organization Chart



Programs and Functions

The department's operations are divided into three main divisions. These divisions and the major programs within them are outlined below.

- Producer and Consumer Protection
  - Weights and Measures
  - Food Quality
  - Agricultural Protective Act
  - Seed and Grain Warehouses

- Agricultural Resources Protection
  - Pesticide Regulation
  - Pest Management
  - Farmworker Protection
  - Natural Resources

- Marketing and Agricultural Development
  - Promotional Marketing
  - Agricultural Development
  - Direct Marketing
  - International Marketing
  - Cooperative Programs
  - Commodity Boards

These programs along with central administration are briefly described in the following material:

Producer and Consumer Protection

The department administers a number of laws aimed at protection of agricultural producers and consumers. The department enforces these laws through the Producer and Consumer Protection division which contains four main programs: Weights and Measures, Food Quality, Agricultural Protective Act and Seed and Grain Warehouses. The department has 200 full time equivalent employees assigned to this division with 70 specified for the Seed and Grain Warehouse program. The other 130 employees perform work in all three of the programs. Most of these are field employees who perform inspections for all three programs.

Weights and Measures. The weights and measures program is responsible for ensuring fair commerce by imposing national standards of accuracy on commercial weighing and measuring devices used in Texas and on goods sold by weight or volume. The main effort of the weights and measures program is the annual registration and inspection of over 179,000 commercial weighing and measuring devices. Devices covered include gasoline pumps (119,500), scales (56,500), liquid petroleum gas mixers (2,600) and bulk fuel meters (900). Device owners must pay a annual inspection fee($5 to $80) for each device operated. The weights and measures law also provides for the regulation of public weighers by the department. Public weighers are persons authorized to certify an official weight of a commodity. They must be bonded and approved by the department before they can issue an official certificate of weight and measure. Approximately 1,300 public weighers were licensed in fiscal year 1987. In addition to inspecting devices, the department also inspects the accuracy of the net weight of packaged goods offered for sale. This is usually done in grocery stores. Approximately 1,000,000 packages were checked for

weight accuracy in 1988. Finally, the weights and measures law authorizes cities and counties to establish their own device inspection programs. Currently only Dallas and Fort Worth have their own programs.

The department's weights and measures activity is supported by its metrology laboratories. The laboratories calibrate the test weight and measuring devices used by the department for inspections. The laboratories also calibrate standards, on a fee basis, for scale manufacturers, service companies and corporations using precision equipment. Over 25,000 calibrations are performed per year.

Food Quality. The department's food quality program involves the inspection of eggs, citrus and other agricultural commodities to ensure that the products meet established standards of quality. Efforts related to egg quality are designed to ensure that eggs produced and offered for sale comply with standards established by the USDA. Wholesalers and retailers of eggs are licensed by the department with approximately 450 wholesalers and 350 retailer licenses issued in fiscal year 1987. Eggs are inspected by department personnel at packing plants, distribution centers and retail outlets with approximately 8.2 million dozen eggs inspected in 1987.

Citrus efforts are designed to ensure that grapefruit and oranges sold in the state comply with minimum standards of ripeness. The major effort involved is the testing of fruit imported from out of state for compliance with Texas citrus maturity standards.

Agricultural Protective Act. This program involves administration of the Agricultural Protective Act (APA). The purpose of the APA is to protect Texas fruit and vegetable producers from non-payment by dealers, shippers and retailers to whom they sell their produce. The protection is provided through the licensing and regulation of persons who handle, sell or deal with Texas grown fruits and vegetables and the administration of a fund which is used to pay producers if a dealer fails to do so. The fund, the Produce Recovery Fund, consists of fees paid each year by licensees who transact business on credit. In fiscal year 1988, this was 463 of the 1,700 of licensees. Producers may make a claim against the fund if a dealer fails to pay for produce bought on credit. To be eligible for payment, the transaction must involve an action of a licensee and Texas-grown fruits or vegetables. The department investigates the claim and determines the amount, if any, that should be paid out of the fund. Disputes involving the department's findings are reviewed by the Produce Recovery Board, a six member independent board appointed by the governor.

The board conducts a hearing and makes the final decision on disputed claims. Payments are made as follows:

- full amount up to $1,000;
- 60 percent of claims over $1,000;
- $20,000 maximum for all claims from the same transaction; or
- $50,000 total claims against one licensee in any one year.

In 1988, $113,000 was paid into the fund, 69 claims were made against the fund and approximately $160,000 in payments were made from the fund. Once a claim is paid,

the department attempts to recover the claim amount from the licensee as well as any outstanding amount owed to the producer.

Seed and Grain Warehouses. The objective of the Seed and Grain Warehouse program is to help ensure successful production of food and fiber by protecting seed buyers and grain producers. Efforts are directed at three specific areas: administering and enforcing seed label laws, administering the state's seed certification laws and regulating the activities of state licensed grain warehouses.

Under the seed label law, the department administers and enforces the truth in labeling section of the Texas Seed Law to ensure that farmers get the seed they purchase, that the seed will germinate and will produce the variety as stated, and that the seed is not contaminated with large amounts of noxious weeds. The department's activities are supported by its laboratories located in Giddings, Lubbock and Stephenville. Testing of seed is conducted by the department to determine if seed dealers, sellers and certified seed growers are complying with the statute. In fiscal year 1987, approximately 7,000 official seed samples were taken by the department. Seed is also tested for farmers on a fee basis to determine the purity and germination of the seed. This helps the farmer determine if their seed should be used for feed or for planting. In fiscal year 1987, approximately 37,500 samples were tested for farmers.

The department also administers the state's certified seed program. The purpose of this program is to provide verification of certified varieties of seed and plants as established in the Federal Seed Act and the Texas Seed Act. The State Seed and Plant Board, a statutory board established within the department, assists in administering the seed certification program. The State Seed and Plant Board licenses certified seed and plant growers, determines if new varieties of seed and plant meet criteria for production as certified seed, plant or plant material, and promulgates seed and field certification standards. The State Seed and Plant Board licensed 575 certified growers in fiscal year 1987. In addition, the board approved 150 new varieties of certified seed. The department conducts inspections to ensure that crop varieties comply with seed and plant certification standards. In fiscal year 1987, TDA inspected 4,200 fields and 237,392 acres of certified seed.

Regulation of the activities of grain warehouses is the final function of the program. The department licenses and inspects all grain warehouses in the state that are not regulated by the federal government (720 out of the total number of approximately 940 warehouses operating in the state in fiscal year 1988.). All grain warehouses regulated by the department are required to be inspected at least once a year to ensure that a warehouse does not purposely or accidently end up with a shortage of grain and is unable to pay farmers for the grain they have stored. In fiscal year 1987, 752 grain warehouses were licensed and 954 inspections were conducted by the department.

Agricultural Resources Protection

The department administers several laws aimed at protecting the state's resources as they relate to agriculture and protecting workers involved in agriculture. The department enforces these laws through the Agricultural Resources Protection division which contains four main programs; pesticide regulation, pest management, farmworker protection and natural resources.

Pesticide Regulation. The Texas Department of Agriculture regulates pesticides under the authority of the Texas Pesticide Control Act, which was passed in 1975. The act was passed in part to ensure that the state would be delegated authority over pesticides from the Environmental Protection Agency (EPA) under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under these provisions, each state is responsible for regulating the sale and use of pesticides in accordance with federal laws, certifying pesticide applicators, and enforcing state law regarding pesticide use violations. The EPA approves state plans to regulate pesticides based on the guidelines contained in FIFRA and the regulations adopted under FIFRA. The federal guidelines serve only as minimum standards. State regulatory programs must be at least as stringent as the federal guidelines, but may be more stringent if the state desires. For example, the state requirement that commercial applicators must have liability insurance is more stringent than federal requirements on commercial applicators. The EPA has given states considerable flexibility in developing state pesticide plans in order to establish a nationwide pesticide program as quickly as possible. As a result, all but two states - Colorado and Nebraska - regulate pesticides under their own state laws (EPA regulates pesticides in those two states). However, another result has been a wide variation among the states regarding pesticide regulations. Once the pesticide plan is approved by EPA, the state enters into a cooperative agreement with EPA, under which EPA provides federal funding for state enforcement and training and certifying of applicators. In 1987, TDA received $419,200 in federal funds for these purposes. The EPA periodically evaluates the state plan and may order corrective action or withdraw its support for the state plan. The most recent evaluation, conducted in 1988, indicated that TDA's pesticide program was in overall compliance with federal requirements.

The department's pesticide activities fall into three specific areas. First, the department is responsible for registering and setting use restrictions for all pesticides in Texas. Second, the department certifies applicators for the agricultural use of pesticides in the state. Third, TDA has enforcement responsibility for pesticide use violations under the state Pesticide Control Act. The department has 51 full time equivalent employees assigned to this program.

All pesticides marketed in the U.S. must be registered by EPA under FIFRA. The EPA is authorized to register pesticide products, specify the terms and conditions of their use before they may be marketed, and remove unreasonably hazardous pesticides from the marketplace. The registration generally sets the terms and conditions for the use of each pesticide product. The EPA requires this information to be contained on the product's label as a primary means of regulating use. Through labeling requirements, EPA may, for example, restrict the use of pesticides to certified applicators; it may impose reentry time frames for individuals to reenter an area treated with pesticides; or, it may require other precautionary statements regarding pesticide use. To help guide the use of pesticides, federal and state governments recognize three general categories:

- General-use -- pesticides that EPA determines will not cause unreasonable adverse effects on the environment, when used as directed. Generally, anyone may use these pesticides in accordance with the directions on the label.

- Restricted-use -- pesticides that EPA determines require additional regulatory restrictions than can be included on a label to prevent unreasonable adverse effects on the environment and injury to the

applicator. Restricted-use pesticides may only be used by certified applicators or persons under the supervision of a certified applicator.

- State-limited-use -- pesticides that TDA determines require additional restrictions than can be included on a label to prevent unreasonable risk to human health or the environment. A state-limited-use pesticide may be a general-use pesticide that requires more regulation at the state level because of special conditions or localized problems. For example, TDA made chlordane a state-limited-use pesticide because of problems resulting from its misuse. Like restricted-use pesticides designated by EPA, state-limited-use pesticides may only be used by certified applicators or persons under their supervision.

The department also has the authority to regulate the time, place, manner, method, amount or concentration of pesticide applications. Under this authority, the department has adopted rules regarding notification requirements before aerial spraying of pesticides and reentry guidelines (in addition to label requirements) for workers returning to fields after pesticides have been applied. Both of the rules are the result of state initiatives. Neither federal law nor EPA regulations address these issues.

Effectively anyone who applies pesticides (including farmers and homeowners) is regulated in the sense that they must comply with a product's use instructions found on the label. The department is responsible for enforcing this compliance. However, persons who want to use more dangerous restricted - or limited-use pesticides must meet additional requirements. The following is a description of pesticide applicators regulated by the department:

- Commercial Applicator -- a person, licensed by the department, to operate a business to apply pesticides to another person's land for hire or compensation. Commercial applicators must pass an examination before they may be licensed and must provide proof of financial responsibility and have liability insurance before they may be licensed. Applicants must pay a $150 licensing fee and must renew the license each year. In 1988, the department licensed 1,433 commercial applicators.

- Non-commercial Applicator -- a person, also licensed by TDA, who does not qualify as either a commercial or private applicator. Non-commercial applicators are generally employees who apply pesticides for a government agency or a business that is not a commercial pest control company. These applicators must pass an examination before they may be licensed, but they do not have to carry liability insurance. Applicants must pay a $100 licensing fee and must renew the license each year. In 1988, the department licensed 4,211 non-commercial applicators.

- Private Applicator -- a person who is not licensed by TDA who may use pesticides for the purpose of producing an agricultural commodity either on his or her own land or on another person's land if applied without compensation. These applicators do not have to pass an examination or have liability insurance before becoming a private applicator. The department has established a voluntary certification program for them but no registration or training of these applicators is

required in statute. The department has certified approximately 150,000 private applicators. Because this is a one-time certification, however, the department does not know how many of these private applicators are currently involved in applying pesticides.

In addition to these applicators, the state act allows an individual under the supervision of a commercial, non-commercial or private applicator to apply restricted- or state-limited-use pesticides without testing or licensing. The state act also authorizes TDA to license dealers of restricted and state-limited-use pesticides. Dealers must pay a $100 licensing fee, which must be renewed each year. In 1988, the department licensed 1,685 pesticide dealers.

In addition to registration of pesticides and applicators the department has primary enforcement responsibility for pesticide use violations in the state. The department's primary enforcement efforts are aimed at applicators who misuse pesticides. Enforcement actions are generally triggered by complaints of pesticide misuse from the public, though the department may also initiate complaints on its own or it may receive complaints from the EPA. Generally, the department investigates all complaints, or "incidents", of alleged pesticide misuse that it receives. On the average, TDA receives 500 to 600 complaints each year, most of which are received in the district offices. In processing these complaints, TDA gives highest priority to incidents involving human exposure.

To assist in the investigation of pesticide complaints TDA has established pesticide laboratories in Brenham and San Juan. These laboratories analyze pesticide residue from samples collected in the course of a complaint investigation. Results from this testing become part of the file in complaint investigations and are used in making enforcement decisions.

Pest Management. The purpose of the department's pest management program is to develop and implement both short and long term strategies to help farmers, ranchers and urban residents control pests, animal predators and plant diseases. The department has 95 full time equivalent employees assigned to this program.

The regulation of the nursery/floral industry is a major part of the department's pest management program. In this particular area, the department is concerned with enforcing pest management laws and quarantines pertaining to the nursery/floral industry and with monitoring fire ant infestation. All nursery and floral establishments are required by statute to be licensed and inspected by TDA. In fiscal year 1987, the department issued 20,000 certificates and inspected approximately 16,000 nursery and floral operations. A large component of the nursery/floral program is the department's fire ant control activity which is designed to develop and implement an integrated program involving education, enforcement, demonstration and outreach activities. The department inspects nurseries, sod growers, and other agricultural commodities to enforce state and federal fire ant quarantines. If plant materials or a particular commodity are found to be free of fire ants, the department issues a permit which makes the material eligible for shipment.

Another part of the department's pest management effort relate to establishing, maintaining and enforcing quarantines. The department is involved in administering both federal and state quarantines of agricultural pests and diseases that would be either imported from other states and countries or exported from

Texas. There are 12 statewide or regional quarantines, including fire ants mentioned above.

The department is also involved in joint federal-state efforts to control pests such as the boll weevil, Mexican fruit fly and the Mediterranean fruit fly. These efforts specifically involve inspections, development and enforcement of quarantines and other pest management methods including annual surveys of cotton acreage for the presence of boll weevils. Another effort involves inspection by the department and the USDA of med and mex fruit fly traps to determine the presence of these pests. In fiscal year 1987, approximately 50,000 med fly traps and 66,000 mex fly traps were inspected.

The department is also involved in demonstrating and providing to the producer and consumer cost-effective, integrated pest management strategies. These strategies combine current agricultural practices (eg. field preparation and post harvesting practices) and alternatives to pesticides to reduce both the costs and the environmental risk associated with traditional pest management efforts. Alternatives to pesticides include encouraging crop rotation, deep plowing and the use of disease resistant crop varieties, the use of beneficial insects and parasites that attack pests and releasing sterilized pests.

The department's predatory management efforts are designed to assist farmers and ranchers to control sheep, goat and cattle predators. The department's focus in this area is educating producers on predator management methods including alternative methods to lethal devices. The other major effort is regulating the use of the M44 device and the Compound 1080 Livestock Protection Collar. The M44 device is a mechanical device that propels cyanide powder into the mouth of an animal that pulls on the baited device with its teeth. The Compound 1080 Livestock Protection Collar is a rubber container holding a liquid toxicant that is attached with straps around the throat of sheep or goat. Ideally, predators that attack animals wearing the collar puncture the container and receive a lethal dose of the toxicant. Users of the M44 device must be trained and certified.

In fiscal year 1987, approximately 4,500 individuals were certified as M44 applicators and 180 individuals obtained training in the use of the device. The department requires users of the 1080 collar to take an examination on the use of the collar. In 1988, 137 individuals were tested and 70 passed and were licensed.

Farmworker Protection. The department administers two laws through this program that provide specific protection to farmworkers involved in harvesting of agricultural products: The Agricultural Hazard Communications Act (Right-to-Know) and a section of the Texas Minimum Wage Act which relates to wages paid for harvesting agricultural products. The department has 13 full time equivalent employees in this program.

In 1987, Texas became the first state in the nation to enact an agricultural "right-to-know" law when the legislature passed the Agricultural Hazard Communications Act. This law directs the department to establish formal procedures for informing farm workers about exposure to hazardous chemicals.

The law applies to larger agricultural employers who use or store more than 55 gallons or 500 pounds of chemicals each year and have a gross annual payroll over $15,000 for seasonal labor or more than $50,000 for labor that is not seasonal. The

law places much of the responsibility for agricultural hazard communications on these employers. Under the law, these agricultural employers must:

- maintain lists of chemicals kept in the work place and keep information regarding the hazards and safe handling of each chemical;
- make this information available, upon request, to farm employees or their designated representative, treating medical personnel, or any member of the community;
- provide workers with crop sheets containing basic information about pesticides used on each crop;
- provide emergency information about work place chemicals to local fire chiefs; and
- provide workers with protective clothing or devices as required for the safe handling of agricultural pesticides.

The law also requires the department, in conjunction with the Texas Agricultural Extension Service, to develop and provide training to agricultural employers and workers regarding the effects and safe use of agricultural chemicals.

The other effort carried out by the farmworker protection program is the establishment of piece rates for use in payment of wages for harvesting agricultural products. The Texas Minimum Wage Act establishes a mechanism to provide a separate minimum wage for agricultural workers. To ensure that agricultural workers receive at least a minimum hourly wage, TDA is given the responsibility to establish piece rates to be paid for harvesting work performed. The department conducts field surveys and establishes an appropriate piece rate for most crops. Currently 70 separate piece rates are in use.

Natural Resources. The department's natural resources program conducts research for the commissioner on issues affecting agriculture and the environment. These efforts have resulted in the publication of various studies including the following:

- *Agriculture and the Unregulated Natural Gas Utilities;*
- *Back to the Land: On Site Treatment of Domestic Wastewater;*
- *Protecting Texas Groundwater;*
- *Challenge of the Colonias, Small Community Wastewater Management in the Lower Rio Grande;*
- *Renewable Energy for Texas: Needs Assessment and Policy Recommendations for the Texas Renewable Energy Industries;*
- *Agricultural Land and Water Contamination;* and
- *Hazardous Waste in Texas.*

The activities of the office are used by the department to improve its operations, call attention to certain problems, coordinate its efforts with other state and federal agencies and to identify areas that require legislative action.

Marketing and Agricultural Development

In recent years, the department has placed a strong emphasis on the marketing and promotion of Texas agricultural products. Agriculture has suffered in Texas as it has nationwide. The Texas Department of Agriculture, as well as its counterpart in other agricultural states, has responded by increasing its efforts to support especially the small producer and agribusiness (businesses involved not only in the production, but in the processing and retailing stages of agricultural food products) in getting their commodities and products to the marketplace through a variety of marketing and promotional programs.

Through its marketing and promotion efforts, TDA attempts to raise revenues for producers in three ways. First, it attempts to increase sales of existing products by helping introduce those products to new markets. For example, the department has helped introduce Texas products to new markets throughout the United States and foreign countries. Another strategy concentrates on new ways to diversify the production and processing base of agriculture in the state. Diversification in production involves introducing new commodities into Texas, such as blueberries for the retail market, or kenaf as a new alternative to paper milling or to introduce new products based on alternative production methods, such as organic products. The third effort is to find new ways to penetrate the retail market, either by creating new avenues for consumers to purchase agricultural products, such as farmers markets and "pick-your-own" farms or by establishing new means for the producer to reach established markets, such as direct wholesaling by producer cooperatives.

The goal of the department's marketing division is to act as a catalyst in each of the above areas by using economies of scale and department expertise to encourage the diversification of Texas' agricultural production; promote greater awareness and use of Texas products in and out of the state; and develop opportunities for the smaller farmer and agribusiness to reach new, previously unavailable or untapped markets. To that end, the agency has divided its efforts into five program areas: promotional marketing, agricultural development, direct marketing, international marketing and cooperating marketing information programs with the USDA. In addition, the department is involved with oversight of agricultural commodity boards which promote specific agricultural products.

Promotional Marketing. The goal of the promotional marketing program is to increase awareness of and demand for native Texas agricultural products, by helping producers with promotional programs, including advice on packaging, media, and retail strategies. The staff is also involved in specific promotional marketing activities which include food shows in major cities around the country and media campaigns in cities around the state. The department has 52 full-time equivalent employees assigned to this program.

The Taste of Texas (TOT) program is one of the department's key efforts to raise consumer awareness of Texas products. Taste of Texas is a product advertising and identification campaign centering on the Taste of Texas slogan and identification logo which is used by qualified companies on packaging and for advertising purposes. By identifying Texas products in this way, consumers can

know when they are buying native Texas goods and Texas producers can capitalize on the unique, inherent characteristics of Texas as the theme in promotions.

All harvested commodities are automatically eligible to be TOT participants as well as any packaged products which use Texas grown ingredients for at least 80 percent of the product. Agency staff verify the use of the ingredients with the companies' suppliers. To date, 525 food companies and 48 retail food chains are registered as Taste of Texas participants. Taste of Texas companies participate in national food shows organized by the department which provide Texas companies with a cost effective opportunity to introduce their products to buyers in previously untapped markets. To date, 113 companies have participated in at least one show.

Texas Grown is a similar, although newer, program designed to increase sales of Texas nursery plants. An identification logo is also used for Texas Grown products. To be eligible, plants must either be germinated and reach the stage of maturity in Texas or must have spent 50 percent of their growing life in Texas by the time they are sold. Over 595 member firms have signed up for the program since its inception in 1987. Primary activities of the Texas Grown program include the initiation of promotions in major retail chains and development of markets for water conserving native Texas plants.

Agricultural Development. The goal of the agricultural development program is to assist farmers and ranchers with diversification into new and alternative crops and increase the processing of agricultural products within the state. Diversification is an effort to provide the producer with options and alternatives to the traditional crops produced in Texas. The agricultural development program has eight full-time equivalent staff. The two primary activities performed by the staff are market research and oversight of several low-interest bond programs for agricultural development. Program staff conduct research to support the marketing initiatives of the department's other marketing programs aimed at diversifying the state's agricultural production. This research tries to determine the market potential of new crops or alternative processing as well as the viability for new businesses to succeed in local settings. This gives the producer a concrete basis for deciding whether to enter into the new venture. While most of the projects are undertaken at the request of producers who are interested in exploring a new crop or processing option, others are initiated by the department to assess the potential to promote various new crops in Texas. The department reports 85 agricultural development projects have been completed to date with 43 others underway. These reports include expansion of existing products and markets and possible development of new ones.

The second major activity of the program is to help producers find funding for agricultural diversification. Lending institutions have become wary of making agricultural loans in recent years and the legislature has responded by creating various financing programs which are administered by the department. These programs are the Family Farm and Ranch Security Program, the Agriculture Development Bond Program, the Texas Agricultural Diversification Program and the Texas Agricultural Finance Authority.

The Family Farm and Ranch Security Program was created in 1979 and provided authority for $10 million in bonds to be used to help farmers and ranchers purchase land for agriculture. The Agricultural Development Bond program was established in 1983 to allow counties to form agricultural development corporations with tax-exempt bonding authority. Because of problems with the structure of the

programs and changes in federal tax law, the department has had difficulty implementing both of these programs. In response to these problems, the 70th Legislature created two additional programs to promote agricultural development. The Texas Agricultural Diversification Program was established to provide grants totaling $450,000 for diversification projects. The program also provides for $5 million of state funds to be deposited by the state treasurer with private lenders. The state will receive interest of two percent less than the market rate from the lenders who will pass the savings on to eligible agricultural borrowers who are loaned money at a discount. The second program established by the 70th Legislature is the Texas Agricultural Finance Authority. Under this program, the authority can issue up to $500 million in revenue bonds to make long-term, reduced interest loans for eligible agricultural projects.

Direct Marketing. The direct marketing program is designed to help producers sell their products directly to consumers, retailers, or restaurants. The goals of the direct marketing effort are to by-pass the middle man, or broker, for the purpose of keeping the profits the broker would have earned in the hands of the producer and small agribusiness and to provide access to new markets for those products.

The direct marketing program has eight full-time employees that are involved in helping producers both at the direct retail and direct wholesale level. Three components make up the direct retail program: farmers markets, farm trails and pick-your-own. Generally, farmers markets provide producers with an outlet to supplement their income by selling their secondary, alternative crops or the excess from their primary harvests. The department's role is to help the producers organize and meet legal requirements including the legal procedures of incorporation and obtaining any required local permits. In the four years since the farmers market program has been in place, 58 markets have been established with TDA's help in 49 towns and cities. In 1986, over 2,000 producers participated in a farmers market. Gross sales from the markets combined exceeded $6 million.

The second area of retail assistance is farm trails. Three farm trails have been organized by the department around the state. Farmers set up individual roadside or farm stands from which to sell their produce. All such stands in the area are printed on farm trail maps distributed by the department for tourists and the local community alike. The third retail effort is "pick-your-own". "Pick-your-own" farms are individual operations where consumers can go to pick their own produce. Producers are saved the labor costs and consumers get less expensive, fresh produce. TDA marketing field staff have helped to organize 129 pick-your-own businesses. Assistance the staff provide includes helping a grower start a business, find markets and assist with promotion.

International Marketing. The international marketing program is similar to the other marketing programs but is geared to international sales. The program has 19 full-time employees. The goal of this program is to gain access to international markets for Texas producers and agribusinesses to increase profitable exports. To that end, TDA has on their staff four regional specialists who conduct trade missions, develop contacts, and identify trade opportunities and market potential for Texas products in four geographic regions: Latin America, the Middle East and Africa, Asia, and Europe. To date, TDA has export development projects in over 30 countries.

A primary activity of the international marketing staff is to facilitate direct sales of livestock and commodities to Mexico and other nations. The staff act as a

clearinghouse for buyers and sellers by publishing buyer's guides for specific commodities which they distribute domestically and overseas. The other aspect of the the international marketing program is the operation of six livestock export facilities located in Brownsville, Laredo, Eagle Pass, Houston, El Paso, and Del Rio. All livestock being shipped out of the country via Texas must pass through one of these pens. In 1983, 72,000 head of livestock were exported through the facilities, representing $6 million. In 1985, the number increased to 300,000, with a value of $77.5 million.

Cooperative Market Information Programs. The Texas Department of Agriculture participates in two cooperative programs with the USDA to gather and disseminate agricultural production and market news. The main objective of these cooperative efforts is to collect, compile and distribute timely and accurate information to enable the agricultural community to make informed production and marketing decisions. These information efforts are carried out by two programs, the Federal-State Market News Service and the Texas Agriculture Statistics Service.

The news service deals with the daily reporting of agricultural prices for grain, poultry, eggs, fruits and vegetables. The news service is part of a nationwide program operated by the Agricultural Marketing Service of the USDA in cooperation with state agencies across the county. In Texas, TDA is the state agency that coordinates with the USDA to provide a funding structure for the news service. Both agencies provide staff support, market news reporters and other support staff. The program is operated by 15 full-time state employees and 10 federal employees. The primary function of the news service is to gather information, compile it into various forms and disseminate it to the agricultural community, other interested parties and the general public.

The statistics service is the other program that TDA cooperates with the USDA to provide agricultural information. The statistics service differs from the market news in that it reports, not on current activities, but on past information. Reports are generated on past production and prices paid and projections are made on acres to be planted using past production figures. The service is located and operated within the USDA. The statistics service is jointly funded by the USDA and TDA. The service is required by federal mandate to collect information on certain commodities (currently 72) on a statewide basis. Federal funding is provided for this purpose. State funding allows the service to collect data which provides crop information on a district and county basis. State funding also allows information collected on commodities not included in the national program but are important to Texas. Finally, state funding provides staff support for information dissemination (currently nine employees). Funding from the state was approximately $200,000 for the fiscal year 1988. Dissemination is provided through news releases, a weekly production of crop progress and conditions and a bi-weekly publication of price and inventory statistics. Yearly compilations are also published on a statewide basis. Information on a county and/or district basis was also published until recent cuts in legislative appropriations reduced the state's contribution to the service's budget. Currently, information is not collected at this level of detail.

Commodity Boards. The department has certain responsibilities relating to Texas commodity producers boards, under the Texas Commodity Referendum Law. The law grants authority for producers of a particular commodity to form producer boards and assess a levy on all sales of that commodity. The purpose of the law is to allow producers to "tax" themselves to raise money to conduct research and

promotion. Commodity producer boards are state agencies and their accounts are subject to audit by the state auditor.

The governing bodies of the commodity boards are elected in biennial referendums. The law provides that each board file a proposed budget with the commissioner and that funds may only be expended after the commissioner has approved the budget. The law permits funds to be expended on programs of research, disease and insect control, predator control, education and promotion. Funds are prohibited from being used for lobbying or other political influence. Budgets of the nine boards range from $100,000 to $1,000,000 annually. All funds are raised solely by a levy collected at the first point of sale. In addition to budget oversight, the department helps the boards organize and conduct referendums as needed.

Exhibit 4 shows the commodity boards which currently exist in Texas, the sponsoring organization, the year of incorporation, the region affected by the check-off, and the levy assessed.

Exhibit 4

Commodity Boards

Crop	Sponsor	Year/Region	Levy Amount
Corn	Texas Corn Growers Association	1980 - 7 counties	1/2 cents/bushel
Wheat	Texas Wheat Producers Association	1971 - 34 counties 1985 - statewide	1/2 cents/bushel
Grain Sorghum	Texas Grain Sorghum Producers Association	1969 - 29 counties 1985 statewide	0.8 of one cent/hundred weight
Mohair*	Mohair Council of America	1976 - 54 counties	4 1/2 cents/pound
Peanuts	Texas Peanut Producers Board	1969 - statewide	$1/net farmer stock ton
Pork*	Texas Pork Producers Association	1974 - statewide	0.3 of one percent of total dollar value of market hogs
Cotton	Scurry County Cotton Producers Association	1984 - 1 county	1/2 cents/pound
Soybean	Texas Soybean Producers Association	1970 - 32 counties	2 cents/bushel
Rice	Texas Rice Council and Texas Rice Research Foundation	1987 - 11 counties	8 cents/hundred weight

*Federal subsidy program, in effect, replaces state program.

Central Administration

Administrative activities which support the entire agency are located in the department's Austin headquarters. In fiscal year 1988, 71 employees worked in the department's central administration. Generally, these activities are divided between the deputy commissioner and the associate deputy commissioner.

The activities which report to the deputy commissioner primarily involve the department's outreach efforts with agricultural constituency groups. These activities include assistance for farmers with problems that do not relate to the department's other programs, such as drought assistance. Other activities that report to the deputy commissioner include the department's district office operations, the office of health and safety, and intergovernmental relations efforts.

The associate deputy commissioner is responsible for the day-to-day operations of the department. The activities which report to the associate deputy commissioner include information services, general services, personnel and EEO, internal audit, management information, planning and evaluation, and financial services.

Central licensing, though not a part of the department's central administration, does provide administrative support for the department's two regulatory programs. The central licensing program has 10 employees involved in processing all licenses which the department issues.

Focus of Review

The review of the department included all aspects of its activities. A number of efforts were undertaken to gain an understanding of the department and its programs. These activities included:

- review of documents developed by the department, legislative reports, other states' and federal reports and books containing background resource material;
- interviews with department staff in the central office;
- visits to district offices, laboratories and an export facility;
- accompanying field personnel on inspections of eggs, weights and measures devices, LP gas tanks, grain warehouses, pesticide dealers and applicators and nursery businesses;
- accompanying marketing field personnel on visits with persons, businesses and organizations that the department works with in the marketing area;
- interviews with other state and federal agency personnel that interact with the department;
- phone interviews with other states' and federal agriculture officials; and
- meetings with interest groups and individuals affected by the department.

These activities yielded a basic understanding of the purpose and objectives of the department and identification of the many issues affecting its operations.

While a number of issues were identified, the review of the department focused on four general areas. First, continuing need for the department was examined. The assessment of the continuing need for an agriculture department concluded that:

- the department was created in 1907 to encourage and promote proper agricultural development. This purpose has been expanded over the years to also include protecting consumers and the public's interest;
- almost every state (45 of 50) has an agriculture department;
- agriculture in Texas is the second largest industry; and
- the department's efforts have been instrumental in developing and promoting the agricultural interests of the state. These efforts will continue to be important as Texas works to establish a more diversified economy.

The review concluded that a separate agency is needed to continue the focus and concentration on agriculture in the state. In determining the need for the agency, no attempt was made to address the merits of an elected commissioner versus an appointed commission. This is a political judgment that cannot be determined by staff analysis.

The second area of inquiry related to the transfer of functions from other agencies. During the review certain functions performed by other agencies were identified which could be considered for transfer to the department. The functions of the Texas Forest Service and the Structural Pest Control Board were specifically examined to see whether a transfer were justified. The review of this area indicated the following:

- the Texas Forest Service is part of the Texas A&M University System and is involved in all aspects of forest management. Its activities include assistance to private forest owners, management of state forests, fire control, growing of seed trees and forest research;
- the service also has general forest pest control authority; and
- the only direct connection that TDA has with the service is its authority over the types of pesticides used in forest pest control.

During the review it was suggested that the functions of the TFS be transferred to the department. A review of this possibility did not reveal any overlap of functions that could be corrected or any substantial cost savings that could be realized from a merger. Based on these findings, no recommendation was made in this area.

The possibility of transferring the authority to the Structural Pest Control Board (SPCB) to the department was also examined. The SPCB shares responsibility with the department for regulating pesticide applicators. The board licenses commercial applicators of pesticides for control of pests in and around homes

and structures. The Texas Department of Agriculture regulates most other applicators - those using pesticides for agricultural purposes, both commercial (for-hire) and non-commercial. The department also regulates all pesticides used in the state including those used by licensees of the SPCB.

During the review issues were raised regarding the possible duplication of effort between the two agencies and the need to consolidate the regulation of pesticides. Regarding the first issue, some overlap and duplication was identified as both agencies arguably have the same or overlapping authority over certain applicators. This problem is currently being reviewed by the attorney general's office in response to requests for an opinion by both agencies. The attorney general opinion has not been issued, to date, but should provide a clear separation of the two agencies' authority and responsibility.

Regarding consolidation, the SPCB is scheduled for sunset review in 1991 and a decision as to the need for a separate agency to regulate structural pest control operators will be made as part of that review. Also, an interim committee of the legislature, the Special Committee on the Organization of State Agencies, is studying the consolidation of a number of agencies including the SPCB into TDA. Therefore no recommendations were made regarding the merger of SPCB and the department.

The third area of inquiry related to the regulation of pesticides. The review focused on the pesticide program because of the importance of the program, increased public awareness of the environmental and public health risks of pesticides and the fact that recent changes in federal and state law and regulations have caused controversy among the groups and individuals most affected by the changes. The review indicated improvements were needed in several areas. First, the department does not have a routine process in place to ensure that all interests and viewpoints are represented when pesticide regulations are developed and adopted. Because of the difficulty of striking a balance between the different and competing interests a specific structured approach is needed to provide that balance. The review concluded that a committee structure to assist with the development of program rules can better ensure that the needed balance is provided. A recommendation to this effect is included in the report.

The review of pesticide regulation also indicated that applicators of restricted-use pesticides need better training before they are allowed to use these more dangerous pesticides. First, certification requirements for private applicators should be strengthened. Private applicators are typically farmers who use pesticides in agricultural production. Current statutes do not require training to ensure that these applicators are competent to properly apply restricted-use pesticides. A recommendation to address this problem is contained in the report. Second, for-hire applicators under the supervision of commercial applicators should also receive standard training to ensure that they can use pesticides properly. Commercial applicators are required to pass a test and be licensed to apply pesticides as a for-hire business. However, individuals under supervision of a licensed commercial applicator do not have to be trained or licensed before they may use the same pesticides. The supervision requirements do not ensure that the assistants applying these pesticides are qualified to do so and a recommendation requiring training and licensing can be found in the report. In a related matter, the review also indicated that better training was also needed for the department's inspectors that work in the pesticide program. A management directive in this area is also included in the report.

The review of pesticides also examined the relationship of the various agencies with responsibility for regulation. The review indicated the following:

- the Texas Department of Agriculture is the lead agency with responsibility over the use of pesticides and most applicators;
- the SPCB, has authority over structural pest control applicators;
- the Department of Health licenses applicators of pesticides for health related control (e.g. mosquito control), has authority over pesticides and other contaminants in food and has responsibility to work with TDA and other agencies to evaluate health risks from pesticides; and
- the Texas Water Commission regulates disposal of pesticide wastes as part of its responsibility for hazardous waste disposal. The commission also has overall responsibility for surface and groundwater quality. If pesticides are the cause of water contamination, the commission can become involved.

The examination of the interaction of these and other agencies involved in pesticide regulation issues indicated that the jurisdiction and responsibility of agencies overlap and that difficulties have arisen when the agencies have attempted to resolve problems. The review concluded that the agencies should develop a joint memorandum of understanding which would establish their respective responsibilities in the regulation of pesticides. A recommendation requiring such an agreement is included in the report.

The final area of pesticide regulation examined during the review was the department's enforcement authority. The departments statute provides a range of enforcement tools to ensure compliance with the state's pesticide law and rules and regulations. The review indicated that the department's administrative and civil penalty structures were inadequate when compared to other state environmental agencies and federal law. Administrative penalties can only be assessed as an alternative to license suspension and cannot be applied to non-licensees. The maximum penalties are also low when compared to federal and other state agencies' authority. Civil penalties are also comparatively low. A recommendation to address these problems is contained in the report. The review of the department's enforcement authority for its other regulatory programs indicated that changes related to administrative and civil penalties and injunctive relief were also needed. A recommendation to provide these changes is contained in the report. A related general enforcement concern is also addressed in the recommendations of the report. The department's statutory provisions relating to misdemeanor penalties for all its enforcement programs are out of date and need to be modernized and aligned with the state's current Penal Code.

The fourth area of inquiry related to changes needed in the department's other programs. Several areas were identified where adjustments were needed to improve the department's operations. First, in the administrative area, the review indicated that the department's fee authority needs to be changed. Unlike many state regulatory programs, TDA does not recover a majority of the costs of its regulatory efforts through fees charged. Also, the department is not mandated by its statutes to recover costs and no systematic review of its fee levels is required. Other fee authority changes identified included the designation of certain fees as non-

refundable, additional late fees and creation of new fees in certain areas. Recommendations to address these needs are contained in the report. Other administrative changes identified included the need for specific statutory authority to accept gifts, grants and donations from public and private sources to supplement program funding. Also, the department is not required to conduct a systematic review of commercially available support activities performed in-house to determine the cost benefit of contracting for those services. Finally, the department is not required to have a policy which encourages minority small businesses to participate in its contracting process. Recommendations in these three areas are also included in the report.

The second program area reviewed was the administration of the Produce Recovery Fund. The review of the fund focused on changes needed to improve the payment of claims from the fund. The review indicated that the department is unable, in most cases, to pay legitimate claims out of the fund when the licensee involved has been granted bankruptcy. The fund was established to pay producers to help offset losses from bad transactions. This payment is currently prohibited when the licensee has declared bankruptcy. A recommendation is included in the report to address this problem.

The third program area reviewed was the department's inspection efforts. The department conducts inspections to enforce a number of laws for which it has responsibility. The review indicated that the department is required to conduct annual inspections in three programs. In two of these programs, weights and measures and nursery/floral, the annual requirement reduces the department's ability to concentrate enforcement efforts where needed to ensure compliance. A recommendation to remove this requirement is included in the report.

Finally, the review examined the State Seed and Plant Board. The board assists the department in administering the state's seed certification program. The review indicated that several other states also use a separate board to license growers, approve varieties of seed for certification and set seed certification standards. The review indicated that the expertise provided by the board is valuable and needed. Therefore, the board should be continued to meet the responsibilities for which it was created. Also, the review concluded that a separate sunset date was unnecessary as the board would be reviewed as part of future sunset reviews of TDA.

The recommendations contained in the report would have a net positive fiscal impact of approximately $1.9 million per year.

Sunset Commission Recommendations for the

Texas Department of Agriculture

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy Making Structure

1. The department should be required to establish a pesticide advisory committee to review and comment on proposed pesticide rules and regulations. The department's statute should be modified to:

   - establish a ten-member advisory committee within TDA to review and comment on proposed pesticide rules and regulations;
   - specify that membership on the committee include the following persons or their representatives:
     - a person directly involved in agricultural production;
     - a pesticide applicator;
     - a person involved in the agricultural chemical industry;
     - a person directly involved in agricultural labor;
     - a person with a demonstrated interest in protecting the environment;
     - a person involved in consumer issues;
     - the director of the Texas Agricultural Extension Service;
     - the commissioner of the Texas Department of Health;
     - the commissioner of the Texas Department of Agriculture; and
     - a person with health care expertise related to pesticides.
   - specify that members be appointed by the agriculture commissioner, who shall also chair the committee;
   - specify that the commissioner can appoint other members, as needed, to provide additional expertise required to review and comment on any proposed rules; and
   - specify that the department can adopt rules, on an emergency basis, without review and comment by the committee.

Pesticide regulation has historically been a controversial area with a number of interests which need to be heard and considered. Because of the number of interested parties and their strongly held beliefs, the department can have difficulty balancing the different interests in its regulation of pesticides.

Providing a committee to assist the department with the development of pesticide rules and regulations would ensure that a proper balance of interests is obtained during the development and implementation of pesticide regulations.

2. **The department, the Texas Water Commission, the Texas Department of Health, the Structural Pest Control Board, the Texas Agricultural Extension Service and the State Soil and Water Conservation Board should be required by statute to develop a memorandum of understanding which clearly establishes the responsibility of each agency in the regulation of pesticides.**

These state agencies have responsibility for various aspects of the state's regulation of pesticides. The review of the interaction of these agencies indicated that their jurisdiction and responsibilities overlap and difficulties have arisen when the agencies have attempted to resolve problems. Requiring the establishment of a memorandum of understanding between the agencies will provide a mechanism to address these problem areas and improve the coordination of pesticide regulation.

Overall Administration

3. **Fees charged should recover costs within regulatory program areas. The department's statute should be changed to:**

   - **require the department to submit a fee schedule as part of its legislative appropriations request which provides for cost recovery in its regulatory programs as follows:**

     - **within four years the fee schedule should provide for at least 50 percent cost recovery in each of its programs;**

     - **subsequent fee schedules submitted should strive toward the goal of 100 percent cost recovery; and**

     - **specific programs would be exempted from increased cost recovery if the increase was contrary to the purpose of the program.**

This change would require the department to determine and submit to the legislature the cost of administering each regulatory program. It would also require the department, by statute, to recover at least 50 percent of these costs, minus the department's overall administrative costs. The department could exempt a program from the requirement if cost recovery would be contrary to the purpose of the program. If the fees currently charged under a program do not result in the recovery of 50 percent of costs and the statutory maximum has been reached, then the legislature, under recently granted authority, could increase them through the appropriations process.

Implicit in this recommendation is the need for the agency to justify the level of fees within program areas. Specifically, the department often conducts numerous inspections or tests as part of regulation required under one law. The department would have to determine and justify in the appropriations process that the costs associated with each activity are properly and equitably allocated among the members of the industry who are impacted by the department's efforts.

For the most part, the specific fee amounts now paid by regulated industries would not be immediately affected since most of the programs currently recover 50 percent of costs. There might be some shifting of fee levels within programs depending on the outcome of any cost allocation analysis undertaken by the department, as discussed above. Several areas were identified where fee increases could be required to ensure 50 percent cost recovery. These included the weights and measures, nursery/floral and seed and grain warehouse programs and the metrology laboratory services.

Finally, this recommendation would require the department to work toward the goal of recovering 100 percent of overall program costs, where reasonable.

4. **Certain license fees should be designated as non-refundable. The department's statutes should be modified to:**

   - **designate the following fees as non-refundable because of the time and expense involved in the processing and investigation of the application:**

     - **pesticide registration;**
     - **pesticide applicator license;**
     - **nursery/floral certification;**
     - **public weighers certification;**
     - **certified seed grower's license; and**
     - **grain warehouse license.**

The department issues several licenses and certifications for which the fee charged is refundable. The refund is required if an application is unsuccessful even though most or all of the processing has been completed and associated costs incurred. This recommendation would designate those license and certification fees as non-refundable. The applications which would be affected are those from the areas specified above which are submitted and then withdrawn or rejected by the department.

5. **The department's late fee authority should be changed. The department's statutes should be modified to:**

   - **require late fees for the following licenses and registrations:**
     - **grain warehouse license,**
     - **egg broker, dealer, wholesaler and processor licenses,**

- pesticide applicator license,
- herbicide dealer license,
- nursery/floral certificate.

- base the late fee on the following schedule:

Time Elapsed	Late Fee Amount
1 to 30 days	20% of the original fee
31 to 90 days	50% of the original fee
91 to 365 days	100% of the original fee
Over one year	Cannot renew; must reapply

- replace the current late fee authority for pesticide registrations and pesticide dealer licenses with the schedule above.

This change would require the department to charge a late fee when a license or registration renewal is delinquent in the areas indicated above. The late fee would be set as a percentage of the original license or registration fee according to the length of time an applicant is delinquent. The late fee schedule proposed is similar to that for most regulatory agencies, particularly those that have gone through the sunset process, and is based on the schedule provided in the sunset across-the-board (ATB) recommendation on standard time frames for delinquent renewals. The schedule is modified somewhat because of the different, often seasonal, nature of the regulated businesses. Also, the ATB fee schedule is based on examination fee rates; however, with two exceptions, there are no examinations for the licenses involved in this recommendation.

6. The department should be provided new fee authority in certain areas. The department's statutes should be modified as follows:

   - create fee categories for certain laboratory analyses, participation in the department's lean meat and organic certification programs and membership in the Taste of Texas and Texas Grown programs;

   - structure the fee authority as follows:

     - Laboratory analyses for walk-in requests:

       A range of $5 - $150 per analysis should be set in statute. The specific fee for each type of analysis would be set by the department in rules at an amount necessary to recover at least 50 percent of the cost of running the analysis.

     - Lean meat and organic certification:

       A statutory limit of $150 should be set in statute. A fee would be imposed by rule to recover the cost of the inspection required for certification.

- Taste of Texas and Texas Grown membership:

  A statutory limit of $50 should be set in statute. A fee would be established by rule which reasonably recovers the costs of publications and other promotional materials.

- fees for lean meat and organic certification and Taste of Texas and Texas Grown membership should be set by the department at levels sufficient to recover a reasonable percentage of the department's costs but not so high as to harm the overall purpose of the programs.

This change would require TDA to levy fees for certain programs where fee authority is not currently available. The fees charged would be set to recover a reasonable percentage of the costs to the department from those individuals and businesses which receive the service. Fees for laboratory services should be set using the guidelines for cost recovery outlined in Issue 2. The fees charged in the lean meat and organic certification and Taste of Texas and Texas Grown programs should be set so that smaller farmers and businesses can continue to participate.

7. The department's statute should be amended to provide specific authority to the department to accept gifts, grants and donations for use in all its programs.

This authority would allow the agency to supplement its efforts, especially in the areas of marketing and agricultural development, with resources from sources other than general revenue. The manner in which gifts, grants, and donations would be accepted and expended would be controlled by a rider similar to rider number eighteen, which is in the department's current appropriations bill pattern.

8. The department should initiate a review of commercial activities performed in-house. The department's statute should be changed to:

   - require the establishment of a competitive review process for commercially available support activities; and

   - phase in the department's responsibility by limiting the review to warehousing and mail handling during the first two years.

This change will require the department to determine the cost of performing certain support activities in-house. The process will require the department to bring its cost in-line with those of the private sector if significant differences are found. Including the department in the newly-established competitive review process will trigger a systematic review of certain support activities to decide whether there are advantages to contracting with private businesses for those services. Limiting the department's responsibility in the first two years will allow time to adequately develop and refine procedures.

9. The department should be required to establish policies to improve the participation of minority owned small businesses in the department's contracting process. The department's statute should be amended to:

   - require the department to establish policies which encourage and assist minority owned small businesses in bidding for agency contracts and open market purchases;

   - require the agency to make an annual determination of the number, types and value of the contracts awarded to minority owned small businesses;

   - require the agency to submit the policies to the State Purchasing and General Services Commission and the Texas Department of Commerce; and

   - require the commission to report on the effectiveness of the department's policies to the governor, lieutenant governor, and the speaker of the house, prior to each legislative session.

This change will ensure that the department's policies are reviewed to ensure that they promote agency contracting with small businesses which are owned by people who have been socially and economically disadvantaged, due to their inclusion in certain groups. These groups include women, black Americans, Mexican Americans and other Americans of Hispanic origin, and American Indians. Requiring policies which assist these businesses will improve their ability to negotiate for the contract work needed by the department. The Texas Department of Commerce is responsible for promoting minority owned small businesses in Texas and a identification of state agency policies in this area will be helpful in this effort. Annual information on the extent of contracting with these businesses will allow for an analysis of the effectiveness of the policies. This requirement will also be recommended for the Texas Education Agency and the Higher Education Coordinating Board. This change, along with those recommended for the other agencies, will assist the governor and legislature in determining the effectiveness of various approaches to encouraging minority small business contracting.

Pesticide Regulation

10. Certification requirements for private applicators should be strengthened and the department's statutes should be modified to:

    - strengthen the certification requirements of private applicators as follows:

      - require private applicators to attend a training session conducted by the Texas Agricultural Extension Service (TAEX) before they can be certified to use restricted-use and state-limited-use pesticides. The option for home, self-study would be eliminated. Private applicators would not be required to pass an examination for certification. The Extension Service would be

responsible for certifying that each applicant has completed the necessary course work and would forward this information to TDA, which would issue the certification and maintain records on each certified private applicator;

- apply the certification requirement immediately to all new applicants for private applicator certification. Existing private applicators would be required to be recertified within five years;

- require continuing education at least every five years to achieve recertification, similar to the department's proposal for recertifying other applicators;

- require private applicators to pay a $50 certification fee on a staggered five year schedule to defray training and related enforcement costs; and

- require the department to coordinate with TAEX through a memorandum of understanding to implement the training requirements in this recommendation. The agreement between TAEX and TDA would include procedures for sharing fee revenue generated from private applicator certification; a plan for certifying existing private applicators within five years; and, a plan for recertifying private applicators.

This change in certification will ensure that private applicators receive training on a periodic basis to be certified to apply restricted-use pesticides. The recertification of private applicators is as important as the recertification of other licensed applicators. Recertification is needed to keep these applicators up to date with changes in both the technology of pesticide applications and the requirements of pesticide laws and regulations. Recertification would also assure that applicators receive the latest information regarding the risks and the safe use and handling of pesticides. These applicators will be required to receive this training from the Extension Service, which has a program in place, instead of being allowed to self train through a home study course. The Extension Service has indicated that, with adequate funding, it has the capability to provide the needed training. Recertification will be provided in the same manner as the department's plans for all other applicators. The training requirements will not place an undue burden on persons needing certification because the extension service has county agents in all but two counties in the state which will make the training readily available. The $50 certification fee which would be assessed, is consistent with fee amounts for private applicator certification in other states. This fee is needed to offset not only the cost of training but also the ongoing cost of enforcement. The fee would be paid every five years based on a schedule developed by the department.

11. For-hire applicators under the supervision of commercial applicators should be licensed and the department's statute should be modified to:

    - remove the provision that allows unlicensed individuals to use pesticides as part of a business under the supervision

of a commercial applicator. These individuals should be required to receive training to become "licensed technicians" before they may apply pesticides;

- require trainees to receive both formal training provided by the Texas Agricultural Extension Service and at least ten hours of verifiable on-the-job training before they may be licensed as technicians;

- require licensed technicians to pay an annual licensing fee to defray training and related enforcement costs and require them to be recertified through re-training in the same manner as the department will recertify other applicators. This fee should be set by the department at an amount, not to exceed $30, to recover costs; and

- require the department and the Extension Service to develop a memorandum of understanding to implement the training requirements in this recommendation. This agreement should include details regarding training required to become a technician in each commercial use category; plans for licensing all persons currently under the supervision of commercial applicators; and procedures for sharing licensing fee revenue generated as a result of this recommendation.

These changes would require applicators working for a licensed commercial applicator to receive training and licensing as a technician. This requirement is similar to the change made to the Structural Pest Control Act and would ensure that all applicators working for hire receive training before they can use more dangerous restricted-use pesticides on someone else's land.

The Extension Service would provide training through its established training programs. Training would be provided in each commercial use category, such as field crop or fruit and vegetable pest control or predatory animal control. The Extension Service has indicated that, with adequate funding, it could provide the training needed. Licensed commercial applicators would be responsible for ensuring that technicians working for them receive at least ten hours of on-the-job training in each area of pesticide use in which the technician will work.

The annual fee of $30 is the same amount which the Structural Pest Control Board is authorized to charge licensed technicians. This amount is necessary to cover the costs of the more specialized training that these technicians must receive in the different types of commercial applications. The fee is also necessary to cover the costs of enforcement efforts against these applicators who apply pesticides as part of a business.

12. As a management directive, the department should improve the training of its pesticide inspectors by:

    - providing training on investigative techniques; and

    - providing continuing education similar to requirements for pesticide applicators.

The department currently provides a number of training program for its inspectors. This recommendation directs the department to provide additional training on how to conduct investigations. Also this proposal requires the department to provide continuing education for its inspectors in areas similar to those currently being established for commercial pesticide applicators.

Produce Recovery Fund

13. **The department's statute should be changed to authorize payment of legitimate claims out of the Produce Recovery Fund regardless of whether the licensee involved has been granted bankruptcy.**

Currently, the department cannot, in most case, pay claims if the licensee involved has been granted bankruptcy. This change would allow the department to pay claims even if the licensee has been relieved of the debt through bankruptcy. Repayments to the fund currently amount to less than ten percent of all claims that have been paid from the fund. Therefore, payment of claims with no repayment possibility will not substantially affect the fund's balance.

Annual Inspections

14. **Statutory requirements for annual inspections in the weights and measures and nursery/floral programs should be removed to allow the department to conduct inspections in a more flexible manner.**

This change will provide the department with flexibility that is currently available in most of its other programs. The department cannot, with current personnel, inspect every business or device every year. This flexibility will allow the department to target its inspection as necessary to ensure compliance. Trouble spots such as repeat violators will be checked more frequently. Under the targeting plans currently being developed and implemented, every business or device will be inspected at least every other year with more frequent spot checks possible. Larger businesses and areas of concentrated activity will be checked annually.

Enforcement Authority

15. **Administrative and civil penalty authority relating to the pesticide program needs to be changed. The department's pesticide law should be changed to:**

    - **authorize the use of administrative penalties independently or in conjunction with other enforcement actions;**
    - **authorize the use of administrative penalties against any violator, licensed or unlicensed;**
    - **increase the maximum administrative penalty amount to $5,000 per violation, per day for violations; and**

- **increase the maximum civil penalty amount to $10,000 per violation, per day.**

These changes would provide the department with administrative and civil penalty authority for pesticide enforcement similar to that of other state environmental agencies and the federal government. The increased administrative penalty amount is the same as current federal limits regarding violations of the federal pesticide laws. The increased civil penalty amount is the same as current limits provided for violation of the state's water quality laws and would allow the attorney general's office to prosecute pesticide cases in a more cost effective manner.

16. **Increased enforcement powers are needed in certain regulatory programs. The department's statutes should be changed to:**

    - **provide the department with general authority to seek application of civil penalties for violations of the department's weights and measures, egg, APA, nursery/floral and quarantine programs. The maximum civil penalty for violations of the weights and measures, APA and egg law should be $500 per violation, per day. The civil penalty for violations of the nursery/floral program should be a minimum of $50 and a maximum of $1000 per violation per day. The civil penalty for violation of the state's quarantine laws should be a minimum of $250 and maximum of $10,000;**

    - **authorize the use of administrative penalities for violations of the department's weights and measures, egg, APA, seed, grain warehouse, nursery/floral and quarantine programs. The maximum penalty for the weights and measures, egg, APA, seed and grain warehouse programs should be $500 per violation, per day. The maximum penalty amount for the nursery/floral program should be $2,000. The maximum penalty for the quarantine programs should be $5,000;**

    - **provide the department with specific statutory authority to issue stop-sale orders on nursery/floral products found to be in non-compliance with the department's statute or rules and regulations; and**

    - **authorize the department to seek injunctive relief through the attorney general in the weights and measures, egg, APA, nursery/floral and quarantine programs.**

These changes would provide the department with a wider range of enforcement tools which would allow action to be taken against violations. Authorizing civil penalty authority would provide a penalty with a less stringent standard of proof allowing for a more effective enforcement tool. Authorizing injunctive relief would allow the department to stop unlawful or harmful activities when warranted. The authorization for administrative penalties would provide the department with either additional or new authority to more quickly penalize violators to ensure compliance. The penalty amounts recommended are comparable to amounts available in other

states but are adjusted downward in some cases to better reflect the severity of the violations involved and match other penalty amounts available to the department for similar violations of other laws.

17. The department's statutes should be amended to change the current misdemeanor penalty provisions so that they match those set out in the Penal Code.

This change would involve removing references to specific penalty amounts and replacing them with the designation class A, B, or C misdemeanor. The actual penalty would be that provided in the Penal Code.

This change would make the department's penalties consistent with the Penal Code and would reduce any confusion regarding which set of penalties should be referred to when dealing with a violation. Future amendments to the Penal Code would thereby automatically update the department's statutory penalty provisions.

State Seed and Plant Board

18. The State Seed and Plant Board should be continued without a separate sunset date. The State Seed and Plant Board statute should be amended to:

- **continue the board; and**
- **remove the specific sunset review date that applies to the board.**

This change would allow the board to be examined as part of future sunset reviews of the Texas Department of Agriculture.

Other Changes Needed in Agency's Statute

19. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. The "across-the-board" recommendations have been applied to the Department of Agriculture.

TEXAS ANIMAL HEALTH COMMISSION

Texas Animal Health Commission

Background and Focus of Review

Creation and Powers

In the mid 1800's tick fever in Texas had become a major problem for livestock nationwide. Infested cattle from Texas were being transported to other states, transmitting the disease to other cattle and causing cattle to die. By 1855, 15 states had passed laws refusing entry of Texas cattle. The federal government established a Bureau of Animal Industry within the United States Department of Agriculture (USDA) to determine the cause of the fever tick problem and develop a plan to deal with it. The forerunner to the Texas Animal Health Commission was established in 1893 as the Livestock Sanitary Commission and was created to deal with restrictions on the interstate movement of Texas cattle imposed by the federal government and other states because of tick fever.

In 1949, the original commission, composed of three "practical" livestock raisers, was expanded to nine members representing all aspects of the livestock industry and given its current name, The Texas Animal Health Commission. Additionally, the commission's authority was expanded to include not only the control and eradication of tick fever but to all animal and poultry diseases that were dangerous and communicable to other animals and, in some cases, to humans. In 1983, the commission was again expanded to its current size of twelve members when three representatives of the general public were added to its membership. Other changes were also made in 1983 to make the commission's enabling statute comply with federal regulations. These changes were needed to avoid a quarantine of Texas cattle by the USDA. A quarantine of Texas cattle would have had a drastic effect on the state's cattle industry and its economy. The cost, in 1983, to Texas producers of complying with movement restrictions, the reduction of prices received and the loss of ability to send cattle interstate for feeding and grazing was estimated in 1983 to be $200 million per year. The USDA had changed its regulations to reflect a new direction for the control and eradication of brucellosis. The commission had changed its regulations to comply with the federal regulations, but its statute was not structured to provide clear authority to administer the brucellosis program as established in regulation. These changes were a major shift in regulation and were needed to avoid a quarantine. The lack of authority was proven by a court ruling which concluded that the commission could not enforce its regulations because its statute did not provide authority for the establishment of the regulations. The legislature, in a special session to address the situation, restructured the commission's statute to provide it with the ability to operate a program that met federal requirements. Without the changes, the state would have no longer had an adequate brucellosis program and Texas cattle would have been quarantined by the USDA.

The commission operates as one of 12 independent agencies established among the states for animal health. The other 38 states have animal health control within a department of agriculture. The commission has responsibility for disease control and eradication of the leading livestock industry in the nation. Exhibit 1 provides information on the livestock and poultry for which the commission has responsibility.

Exhibit 1

Livestock Industry Statistics

Industry	National Ranking	Total Cash Value	Number of Animals
Cattle	1	$ 4,556,000,000	13,400,000
Swine*	18	$ 44,115,000	510,000
Sheep	--	$ 125,450,000	1,930,000
Goats	1	$ 77,591,000	1,670,000
Poultry	6	$ 441,000,000	280,600,000

*1986 - all other data is for 1987.

In line with its basic mission to control animal diseases that present a danger to humans and the various livestock industries important to the Texas economy, the commission operates programs to control and/or eradicate brucellosis, fever ticks, tuberculosis, hog cholera, scabies, pseudorabies, and various poultry diseases.

Policy-making Structure

The commission is composed of 12 members appointed by the governor with the advice and consent of the Senate for staggered six-year terms. The chairman of the commission is appointed by the governor. The commission composition is shown in the following exhibit.

Exhibit 2

Commission Member Categories

- Practitioner of veterinary medicine
- Dairyman
- Practical cattle raiser
- Practical hog raiser
- Sheep or goat raiser
- Poultry raiser
- Individual involved in the equine industry
- Individual involved in the feedlot industry
- Individual involved in the livestock marketing industry
- Representatives of the general public (3)

The commission is responsible for establishing the rules and guidelines under which its personnel and agency programs operate. The commission is also involved in agency operations through the use of oversight subcommittees that monitor and

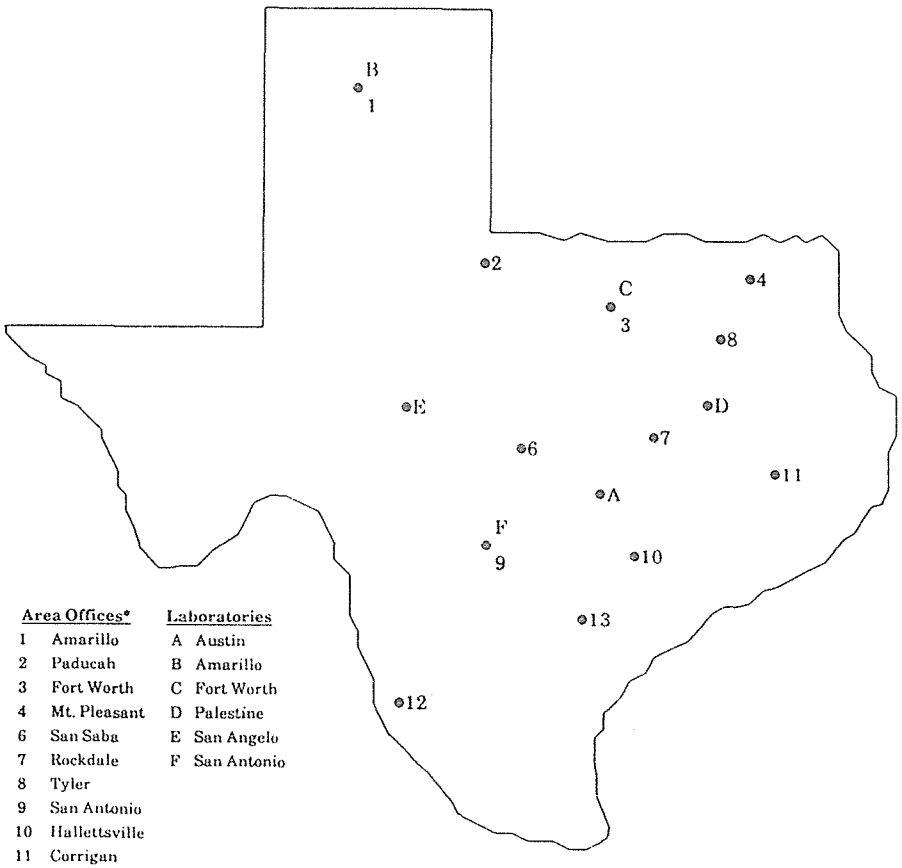
guide the agency's activities. The commission holds meetings on an as needed basis, roughly four to six times per year. The commission also conducts hearings upon request by an animal owner for the purpose of determining whether the owner can justify an exception to a commission rule or a decision made by the executive director. In 1987, the commission held three such hearings.

Funding and Organization

The commission operates from its headquarters in Austin and 12 area offices and six laboratories located throughout the state. Exhibit 3 shows the location of the field offices and laboratories. The commission has 320 employees budgeted for 1988, 50 in Austin and 270 in the area offices and laboratories. The commission is operating on a $11,272,517 budget for fiscal year 1988. The budget (see Exhibit 4) is structured to reflect its legislative appropriation pattern which is based on the disease programs it operates. The commission is supported by general revenue funds and $3 million in federal funds for its brucellosis program. The agency is organized both by the disease programs it operates and by the functions it performs in those programs. The organization structure is provided in Exhibit 5.

Exhibit 3

Location of Area Offices and Laboratories



Area Offices*		Laboratories	
1	Amarillo	A	Austin
2	Paducah	B	Amarillo
3	Fort Worth	C	Fort Worth
4	Mt. Pleasant	D	Palestine
6	San Saba	E	San Angelo
7	Rockdale	F	San Antonio
8	Tyler		
9	San Antonio		
10	Hallettsville		
11	Corrigan		
12	Laredo		
13	Beeville		

* The commission's area office number five in Corsicana was recently closed.

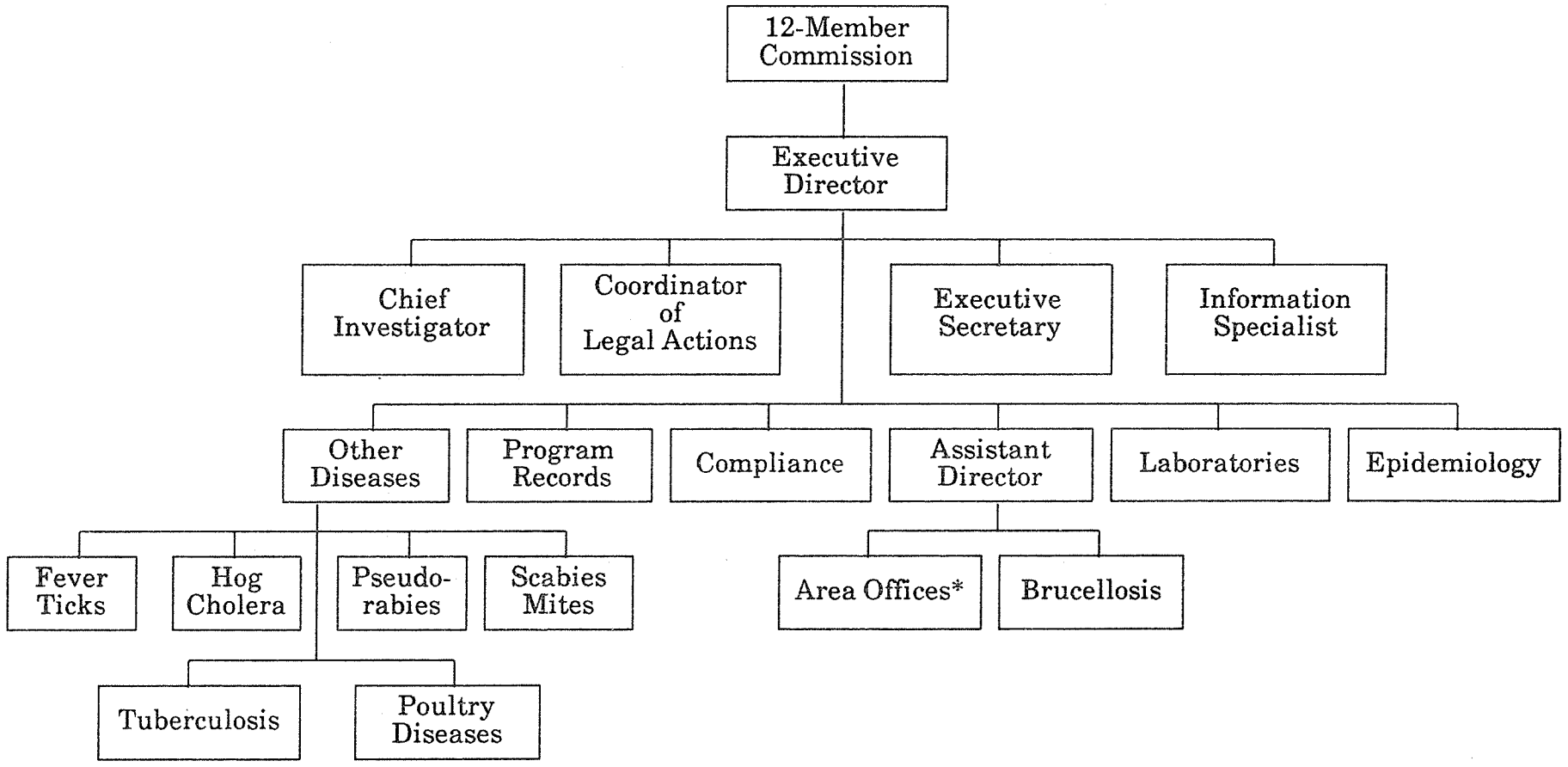
Exhibit 4

Budget Expenditures for 1988 by Program Category

Administration	$ 1,010,656
General Operations	
Inspection and Compliance	$ 2,083,660
Statistical Services	693,265
Laboratory Support	954,462
Indemnity	5,090
Epidemiology	160,945
	3,897,422
Specific Operations	
Brucellosis	
- Surveillance	$ 2,441,109
- Adult Vaccination and Testing	2,134,407
- Calfhood Vaccination	684,094
Hog Cholera	197,859
Tuberculosis	45,946
Pseudorabies	35,034
Fever Tick	400,542
Scabies	379,997
Poultry Disease	45,451
	$ 6,364,439
TOTAL	$ 11,272,517

Exhibit 5

TAHC Organization Structure



* The other diseases are also dealt with by field personnel, however most of the field effort is towards brucellosis.

Programs and Functions

The commission's functions fall into the categories of prevention, control and eradication. As mentioned previously the commission operates programs dealing with the following specific diseases:

- brucellosis
- hog cholera
- pseudorabies
- scabies
- tuberculosis and
- poultry disease

The commission has basically organized its activities by disease. However, as seen in Exhibit 5, the commission also has organizational units that reflect a function performed rather than as a specific disease program. To gain a better understanding of the commission's efforts, the review examined the programs operated and the functions performed . While the methodologies differed between the various disease programs, the functions performed by commission personnel can be placed into general functional categories as shown below:

- administration
- disease detection
  - inspection/monitoring
  - testing
  - prevention/treatment
- enforcement actions

The following description provides detail on the specific disease programs operated by the commission and, in a separate section, the functions performed in those programs.

Disease Programs

The commission currently operates specific programs which focus on brucellosis, fever ticks, tuberculosis, hog cholera, pseudorabies, scabies and poultry diseases. While these diseases are not all those that fall within the commission's jurisdiction they represent the ones that currently require specific attention by the commission. Details concerning the diseases and elements of the disease programs are provided below.

Brucellosis. Brucellosis is a bacteria that affects the reproductive ability of cattle. Infection causes the abortion of calves, weakened calves and reduced milk production. The disease is transmitted to other animals in close contact with the infected animals. Humans can contract the disease, called undulant fever, through contact with a diseased animal during calving, at slaughter and through raw milk. Cattle with brucellosis are suitable for human consumption as the bacteria does not survive after slaughter and processing of the meat. The brucellosis program, a cooperative effort between the commission and the USDA, accounts for approximately one-half of the commission's budget and one-third of its personnel. The USDA provides direct financial support of approximately $3 million per year to the commission to partially fund its program. The USDA also furnishes equipment and supplies for the program worth $ 1 million per year. Finally, the USDA has staff located in the state that work in the program under the agency's supervision. The purpose of the brucellosis program is to locate, control and eradicate the disease in the state.

All states are required by federal law to have a brucellosis program. The USDA, through its regulations (the Uniform Methods and Rules and the Code of Federal Regulations), requires that certain elements be included in the program and that states meet certain deadlines for control and eradication. States are classified by the USDA based on the amount of disease present in the state's cattle population. Exhibit 6 shows the classifications used and the corresponding disease rates.

Exhibit 6

State Brucellosis Classifications

Classification	12 month Accumulative Herd Infection Rate*	12 month Adjusted MCI Reactor Rate**
Free State	Zero	$\leq .05$
Class A State	$\leq .25$	$\leq .10$
Class B State	≤ 1.5	$\leq .30$
Class C State	> 1.5	$> .30$

* This number represents the percentage of herds that test positive for brucellosis out of the estimated total herd population.

** This number represents the percentage of cattle that test positive for brucellosis at slaughter, livestock markets, shows, farms and ranches. "MCI" stands for the Market Cattle Identification program.

Currently Texas is classified as a "B" state with a herd infection rate, as of March 1988, of .72 and 1,040 herds under quarantine because of disease. Exhibit 7 on the following page provides a listing of each state's classification along with the number of herds under quarantine. Texas must reach or have made substantial progress toward Class "A" by October, 1990 or face restrictions by the USDA as well as other states on the interstate movement of its cattle. Exhibit 8 details the state's progress toward the control and eradication of the brucellosis disease.

Exhibit 7

Classification of States and Herds Under Quarantine as of March 1988

State	Class	Number of Quarantined Herds
Alabama	A	42
Alaska	Free	0
Arizona	A & Free	1
Arkansas	B	123
California	A	19
Colorado	A	4
Connecticut	Free	0
Delaware	Free	0
Florida	B&C	878
Georgia	A	13
Hawaii	Free	0
Idaho	A	1
Illinois	A	10
Indiana	A	8
Iowa	A	7
Kansas	A	30
Kentucky	B	79
Louisiana	C	409
Maine	Free	0
Maryland	Free	0
Massachusetts	Free	0
Michigan	Free	0
Minnesota	Free	0
Mississippi	B	307
Missouri	A	65
Montana	Free	0
Nebraska	A	9
Nevada	A	1
New Hampshire	Free	0
New Jersey	Free	0
New Mexico	A	4
New York	Free	0
North Carolina	Free	0
North Dakota	Free	0
Ohio	Free	0
Oklahoma	B	229
Oregon	A	0
Pennsylvania	Free	0
Puerto Rico	Free	0
Rhode Island	Free	0
South Carolina	Free	1
South Dakota	A	3
Tennessee	A	10
Texas	B	906
Utah	Free	0
Vermont	Free	0
Virginia	A	1
Virgin Islands	Free	0
Washington	A	0
West Virginia	Free	0
Wisconsin	Free	0
Wyoming	Free	0
TOTAL		3,160

Exhibit 8

Progress of the Brucellosis Program Herd Infection Rate

	FY 85	FY 86	FY 87
Infected Herds	2,483	1,681	1,464
Accumulative Herd Infection Rate	1.63	1.07	1.03

* As of March, 1988

Each state establishes its own entry requirements for cattle coming from other states. These requirements are important because of the number of cattle transported between states. For example, in 1986, 1,702,000 head of cattle were shipped from Texas to other states while 2,920,000 were brought into Texas. States without a disease problem attempt to ensure that cattle brought into their states do not create a problem. The need for smooth and efficient interstate movement was one of the primary reasons the USDA established national guidelines and requirements for a brucellosis disease program. The state's program, operated by the commission, is patterned after the federal standards. The basic components of the program involve testing cattle to find the disease, placing diseased or suspected herds under quarantine, developing a specific herd plan to deal with the problems, removing diseased catted from a herd and sending them to slaughter and, in many cases, vaccinating the remainder of the herd to help prevent the further spread of the disease. As another preventive measure, the agency also provides partial funding for calfhood vaccination. Other preventive measures used include the testing of herds adjacent to infected herds for possible spread of the disease and the designation of special control counties for areas where the disease is a particular problem. Restrictions are placed on cattle movement within and from these counties to assist with disease control. Currently 14 counties in southeast Texas are included in the special control area. The commission operates the brucellosis program through the functions described later in this background section.

Tick Fever. Cattle fever is transmitted by the fever tick. Cattle that contract the fever suffer drastic weight loss and usually die very quickly (within weeks). Tick fever is not transmittable to humans. The fever tick problem in the late 1800's was primarily responsible for the creation of the commission, and was essentially brought under control in Texas in 1943. Today, the fever tick is primarily found on the Texas-Mexico border. Mexico continues to have a tick infestation problem and ticks are occasionally transported into the state on cattle from the border area. The last outbreak of tick fever in the state occurred in 1985.

The commission has a cooperative program with the USDA to ensure that the fever tick does not become a problem again in the United States. The USDA is responsible for inspecting all cattle coming into Texas from Mexico and regularly patrols the border to prevent infested cattle from straying or being smuggled into the state. The agency provides surveillance in the border counties checking cattle for ticks at markets and on private land. Inspecting for ticks involves a thorough physical examination (scratching) of the animals - cattle and horses - to determine the presence of fever ticks. When ticks are found, the animal, its herd, and premise

of origin and adjacent herds are quarantined. All animals are treated with insecticide through dipping or, in some cases , spraying. The quarantine lasts for nine months. Treatment is done by USDA personnel with insecticide provided by the agency. Counties along the border provide public treatment facilities. The potential for the presence of fever ticks has resulted in special requirements for a large portion of Cameron County on the southern tip of Texas. All animals moving within or out of this special control area must be scratch tested and dipped before movement.

Tuberculosis. Tuberculosis is a disease of domestic animals as well as humans. The disease is characterized by a long incubation period and is debilitating in that it causes loss of muscle function including the functioning of the lungs. Humans can contract the disease from eating meat from an infected animal, however, the primary source of problems for humans is milk. Both state and federal agencies are involved in the detection and control of tuberculosis. The USDA has primary responsibility for the disease in cattle. Meat inspection by meat inspectors at slaughter is the usual source of detection. When the disease is found in the field, the infected animal is sent to slaughter. These animals may be fit for human consumption depending on the progress of the disease. The animal's herd of origin is placed under quarantine for a minimum of ten months with release dependent on the passing of tests which vary with the severity of the situation.

Hog Cholera. Hog cholera is a viral disease of swine characterized by rapid spread and high mortality. The disease is not transmittable to humans. At one time hog cholera was a serious problem for Texas pork producers, however, a successful eradication program has left Texas essentially free of the disease since 1974. The commission's program is now one of prevention. Activities involve the inspection and tagging of swine at livestock markets for identification and tracing purposes. Also, the agency licenses and inspects swine feeding operations that feed garbage containing meat products to swine. The inspection process is used to ensure that the garbage is properly cooked to prevent any cholera in the garbage from being fed to the swine.

Pseudorabies. Pseudorabies is a herpes virus found in swine which can also be transmitted to other animals, although not to humans. The disease causes abortions and significant death losses in suckling pigs. Pseudorabies is a major swine health problem in large pork producing states of the midwest, however it is currently not a problem in Texas. When the disease has been found in Texas, it has been detected in its early stages of spreading and has been controlled before a problem has developed. When infection is found, the herd is quarantined and infected animals are slaughtered. Release of quarantine occurs once the herd has met testing requirements.

Scabies. Scabies mites are a microscopic parasite that can infect sheep and cattle but do not pose a threat to human health. Infested animals tend to stop eating and become consumed with the "mad itch" caused by the scabies mites, thus experiencing dramatic weight loss and hide damage. The disease spreads quickly among animals in close contact. Sheep scabies is not found in Texas. Scabies among cattle is now effectively treated with injections of the drug ivermectin. Infested animals are quarantined and required to undergo treatment - either injecting them with ivermectin or dipping them in a treatment solution. Animals are released from quarantine after treatment.

Poultry Diseases. Poultry diseases are controlled by several agencies in Texas. Exhibit 9 indicates the agencies involved and their respective responsibilities. The poultry industry itself is the main source of disease detection through participation in the "National Poultry Improvement Plan", a voluntary national disease control program. The plan provides for detection through, among other things, the testing of flocks for disease. The Texas A&M Agricultural Experiment Station also provides disease detection through the inspection of poultry (usually small flocks) not covered by the national plan. When A&M inspectors find disease, they issue a quarantine on behalf of the commission.

Exhibit 9

Responsibilities for the Regulation of Poultry Disease in Texas

Agency	Responsibility
Poultry Improvement Board	Serves as contact agency with the USDA to administer the National Poultry Improvement Plan.
Poultry Industry	As plan participants, industry members comply with disease control requirements, test their flocks and vaccinate to prevent disease.
Texas Animal Health Commission	Has general authority for control of animal disease, including quarantine power over diseased poultry.
Texas A&M University Agricultural Experiment Station	Operates a disease control program for poultry not covered by the national plan (small, backyard-type operations, exhibitions, shows).

The human danger involved in poultry diseases is salmonella, which is a generic disease term which includes the primary disease of pullorum typhoid. Salmonella can be transmitted to humans from diseased poultry that is not properly cooked. The effects of salmonella on humans is similar to other food poisoning and can cause nausea and vomiting and can be fatal depending on severity.

The agency's effort related to control of poultry diseases is mainly control and eradication. When disease is found the commission gets involved through the development of a plan to address the problem using vaccination, disinfection and possibly the depopulation of the diseased flock. Diseases controlled for include pullorum typhoid, gallisepticum, synoviae and meleagridis which are covered by the national plan. Pullorum typhoid among small flock owners is monitored through the A&M program. Also, the agency is involved in checking for laryngotracheitus and exotic newcastle although these diseases are not commonly found in Texas.

Functions

As mentioned previously the commission's activities can be placed into general functional categories. Exhibit 10 describes these functions and indicates where they are performed in the commission's disease control programs. Exhibit 11 provides an approximation of expenditures by function to indicate the relative emphasis placed on the various functions. A description of the functions is set out below.

Exhibit 10

TEXAS ANIMAL HEALTH COMMISSION

Disease Control by Function

Functions	Brucellosis	Cattle Tuberculosis	Tick Fever	Scabies	Hog Cholera	Psuedo Rabies	Poultry Disease
Administration							
a. General Administration	X	X	X	X	X	X	X
b. Information Services	X	X	X	X	X	X	X
c. Accounting	X	X	X	X	X	X	X
d. Personnel	X	X	X	X	X	X	X
e. Data Processing	X	X	X	X	X	X	X
f. Purchasing	X	X	X	X	X	X	X
g. Statistical/Clerical Services	X	X	X	X	X	X	X
Prevention, Control, and Eradication Program							
a. Disease Detection Activities							
1. Inspections/Monitoring							
-- Markets/Feedlots/Premises	X		X	X	X		X
-- Slaughter Plants	X	X					
-- Roadblocks	X		X	X			
-- Permit Compliance	X	X	X	X	X	X	X
-- Tracebacks	X	X	X	X	X	X	
-- Garbage Feeders					X		
-- Tick Scratching			X				
2. Testing							
-- Markets	X						
-- Herd Testing	X	X				X	
-- Milk Plants	X						
-- Laboratory	X	X	X				

Exhibit 10

TEXAS ANIMAL HEALTH COMMISSION

Disease Control by Function

Functions	Brucellosis	Cattle Tuberculosis	Tick Fever	Scabies	Hog Cholera	Psuedo Rabies	Poultry Disease
b. Prevention/Treatment 1. Vaccinations	X						
2. Dipping/Injections			X	X			
3. Indemnity		X					
4. Epidemiology	X	X	X	X	X	X	X
c. Enforcement Actions 1. Hold Orders/Quarantines	X	X	X	X	X	X	X
2. Informal/Formal Hearing	X	X	X	X	X	X	X
3. Misdemeanor Complaints/Fines	X	X	X	X	X	X	X
4. Investigations	X	X	X	X	X	X	X
5. Injunctions	X	X	X	X	X	X	X

Exhibit 11

Budgeted Expenditures for 1988 by Functional Category

Administration	$ 1,707,786
Prevention, Control and Eradication	
A. Disease Detection	
1. Inspections/Monitoring	3,266,776
2. Testing	5,380,372
B. Prevention/Treatment	792,458
C. Enforcement Actions	125,125
TOTAL	$ 11,272,517

Administration

Administration activities support the agency's operation of its disease programs. Basic administration functions are performed such as oversight of the commission's field offices, cost control and efficiency studies, maintenance of program records and the overall monitoring of the commission's efforts. Accounting, personnel, purchasing, leasing and data processing functions are also provided. The agency also has an information services activity to provide information to the public and persons affected by the commission's efforts. Finally, administrative personnel operate a computer information system with the USDA called the Brucellosis Information System (BIS) which tracks key information related to the brucellosis disease control program.

Disease Detection

The disease detection function encompasses a large portion of the agency's efforts. Disease detection can be divided into two main activities, Inspection/Monitoring and Testing.

Inspections/Monitoring. Efforts in this area involve the inspection of cattle, swine and other animals at livestock markets and feedlots for compliance with disease control requirements such as record-keeping, testing and permitting. In 1987, 12,829 inspections were made involving 22,614,956 head of cattle and 507,555 swine. Also, 11,710 movement permits were issued. Slaughter plants are also periodically checked for compliance with blood sample and record-keeping requirements (1,220 inspections in 1987). Also, agency personnel stop vehicles on a random basis when they enter the state and check for compliance with movement permit and entry requirements. Last year, 4,083 vehicles were stopped and 158,412 animals were checked. Disease detection is also carried out through traceback investigations. Animals identified as having a disease are traced back to their herds of origin in an attempt to find where the disease came from so that it can be controlled. In 1987, 4,240 investigations were conducted resulting in the traceback of 8,688 infected animals and the quarantine of 776 herds.

Detection functions are also performed through the license and inspection of swine garbage feeding operations. Inspection of these operations ensures that garbage is properly cooked so that diseases are not transmitted to the swine. Last year, 2,520 garbage feeder inspections were conducted. One other detection activity involves the inspection of animals in the Mexico border area for the presence of fever ticks. This effort ensures that infested animals are identified and treated and fever ticks are not allowed to spread to other areas of the state. In 1987, 2,740 herds with 523,225 head were inspected for ticks.

Testing. This effort involves the payment for and the monitoring of brucellosis testing of cattle at market. Market tests are performed by private veterinarians and are paid by the markets. The agency provides funds to the markets. In 1987, 1,248,941 head of cattle were tested at market. Agency inspectors monitor the testing activity at market. Inspectors perform the tests themselves on cattle located on an individual's property or on land adjacent to infected or suspect herds. Last year, 8,750 herds were tested in the field involving 557,123 head of cattle. One last component of the testing function involves testing conducted in the commission's laboratories. Laboratory tests are used to confirm field tests performed by field personnel as well as private veterinarians. Tests are also used to supplement the results of field tests to determine the exact type of disease involved (such as a vaccine - caused reaction versus field - strain disease reaction). Tests are conducted on milk samples collected from milk plants and tissue cultures from slaughter plants either to confirm the findings of previous tests or as an initial screening test. Laboratory activity for 1987 included 3,313,929 blood samples tested, 13,640 milk samples tested and 3,575 tissue and milk cultures developed and tested.

Prevention/Treatment

Prevention and treatment efforts are designed to prevent the spread of disease and, where possible, to eliminate the disease. For brucellosis, when a diseased animal is detected, the remainder of the herd is vaccinated to help prevent the spread of the disease. These vaccinations are performed by commission personnel and federal veterinarians. Commission personnel adult vaccinated 25,905 head of cattle in 1987. As another preventive measure, the commission encourages calfhood vaccinations and pays approximately one-third of the fee (currently $1) charged by private veterinarians performing the service. In the last fiscal year, 1,113,133 calfhood vaccinations were performed at a cost to the state of $1,343,106. Treatment and prevention efforts related to fever ticks involves the spraying or dipping of infested animals as well as any other animals in the herd of origin or on adjacent land. The actual treatment is carried out by federal personnel while the insecticide used is provided by the state. Approximately 76,000 head of cattle were treated in 1987 by federal and state personnel (3,078 by state personnel). Treatment for scabies involves a requirement that infected animals undergo treatment at owner's expense. Treatment cures the animals and prevents the spread of the disease. No animals were identified by agency personnel as needing treatment in 1987. In the case of tuberculosis, no treatment is available and infected animals are required to be slaughtered. The commission has the authority to pay indemnity of up to $25 to the owner for each animal destroyed. In 1987, the agency paid approximately $400 in indemnity to owners for 16 animals destroyed. The final aspect of the commission's prevention and treatment effort is the use of epidemiological investigations. Epidemiology is the science pertaining to the incidence, distribution and control of disease in a population. The commission employs two epidemiologists to work with commission personnel, producers and private veterinarians to develop specific control and eradication plans for herds where disease is found. The plan

specifically includes an attempt to trace the origin of the disease and any possible spread of or exposure to the disease. In 1987, 2,390 consultations were made by the staff epidemiologist and commission veterinarians with herd owners and/or their private veterinarians. Also, 1,362 herd plans were developed.

Enforcement Actions

The commission's enforcement efforts are designed to ensure compliance with the state's animal health laws and with its rules and regulations. Commission personnel have the ability to quarantine animals that either have disease or are suspected of having disease and to enter public or private property to enforce animal health laws or regulations. An animal owner can be required to test animals and follow specific treatment plans developed to deal with disease problems found. An animal owner must comply with these requirements but can request a hearing with the executive director for an exception. If not satisfied with the director's decision, the owner can request a hearing with the commission. The failure of an owner to comply with the commission's decision results in the filing of a complaint in district court in the county where the owner resides. Violations of other provisions of the commission's laws and regulations are filed by the agency with a justice of the peace in the precinct or county where the owner resides. Continued non-compliance following j.p. court action causes an injunction to be filed by the commission in the district court having jurisdiction where the violation occurred. Enforcement activity for 1987 included 776 herds quarantined, 63,428 animals quarantined at market, 1976 investigations conducted, 743 complaints filed in the justice of the peace court and 16 injunctions sought during the year.

Focus of Review

The sunset review of the Texas Animal Health Commission included all aspects of the commission's activities. The review focused specifically on the brucellosis control program because of its size and importance relative to the commission's other programs and because the state is required to meet certain federal requirements by October 1, 1990 to avoid restrictions on the interstate movement of Texas cattle. A number of activities were undertaken to gain a better understanding of the commission and its programs. These activities included:

- visits to area offices;
- visits with field personnel to slaughter plants, dairy farms, ranches, swine garbage feeders, livestock markets and shows;
- accompanying compliance officers on roadblocks;
- discussions with commission personnel in the central office and with USDA regional and area personnel;
- meetings with interest groups; and
- phone interviews with other state's animal health personnel.

These activities yielded a basic understanding of the general objectives of the commission and the identification of key issues affecting its operations. The issues identified generally fall into four specific areas. First, is there a continuing need for the function of the commission? Second, is a separate agency necessary to carry out

the commission's functions or can the functions be placed in another state agency to increase overall efficiency and effectiveness or to produce significant cost savings? Third, what is needed to ensure that the commission has adequate funding when and if federal assistance is phased out? Fourth, what approaches are needed to improve the commission's overall performance and to allow the state to reach Class 'A' status for its brucellosis program as quickly as possible?

Regarding the first area, the review focused on whether there is a continuing need for the commission's function. Research indicates that each state must administer several disease control programs based on minimum standards established by the USDA. Failure to have acceptable programs would result in the USDA and, in most cases, other states placing severe restrictions on the interstate movement of the state's livestock. This would result in significant economic hardship for the state's livestock industry. For example it was estimated in 1988 that the Texas livestock industry would suffer an estimated annual loss of $72 million if a quarantine were placed on the interstate movement of Texas cattle because of the failure of the program to meet federal requirements. Therefore, the function performed by the commission should be continued to ensure the free interstate movement of Texas livestock.

Regarding the second area, research was conducted to determine if a separate commission should continue to carry out the animal disease control functions or whether the functions should be merged with the Texas Department of Agriculture (TDA) or with the Texas Agricultural Experiment Station. The research indicated that there is no apparent justification for a merger.

Regarding the first area of merger, there is no duplication of effort or overlap between the two agencies' programs and functions. The primary role of the Texas Department of Agriculture is the promotion of Texas agriculture. The TDA also regulates the production and sale of seeds, pesticides, eggs, and milk. However, TDA has no programs or functions that directly relate to animal health. TDA does have responsibility for the regulation of pesticides used on livestock and operates import/export facilities for cattle awaiting transportation after sale. Those activities do not relate directly to control of animal health diseases. The commission, on the other hand, has one responsibility, controlling and eradicating diseases that affect livestock and poultry. The review did indicate that merging the two agencies offered some potential cost savings through reductions in administrative and computer support staff. In addition, a merger could result in the consolidation of at least four area offices resulting in savings in rent, utilities and some support staff. However, even if merged, the current programs, program staff and laboratories of the commission would have to be maintained given TDA's lack of expertise in the area of animal disease control. Therefore placing the commission's function in TDA solely on the basis of cost savings is not justified.

The second potential area for merger examined during the review relates to poultry disease regulation which is currently split between the commission, the Texas Agricultural Experiment Station and the poultry industry itself. The poultry industry provides much of the regulation through participation in a voluntary national disease program. The Experiment Station operates an inspection program for poultry owners that are not participants in the national program. The Experiment Station operates the program because of its expertise in poultry and poultry diseases and because of its laboratory capabilities. As with all animal health diseases, the commission has overall responsibility for poultry disease control and, when a quarantine action is needed, the commission issues the final order. The

review found that the current split scheme used for poultry regulation was efficient and effective. The industry's participation was reviewed as part of the sunset review of the Poultry Improvement Board and was found to be effective in controlling poultry diseases. With respect to the Experiment Station's program, the review indicated that the Experiment Station has the expertise and capability to operate its inspection program and that similar capabilities would need to be established in the commission if the program was transferred. Therefore, no cost savings would be realized if the programs were consolidated. Also, if the inspection program was moved from the Experiment Station to the commission, personnel involved would need to work constantly with the Experiment Station because it has the most expertise related to poultry. Regarding the commission's role in poultry disease control, the review indicated that it was appropriate for the commission to have final authority for poultry diseases as with all other animal diseases. The review concluded that coordination between the Experiment Station and the commission was adequate and that maintaining the current split of responsibility was justified. One recommendation was developed to clarify the authority of Experiment Station inspectors to issue quarantines, when necessary, on behalf of the commission.

Regarding the third area, the review focused on what could be done to ensure that the state's brucellosis program was adequately funded in the event cutbacks in federal funding occurred. The commission currently receives approximately $3 million per year from the USDA to partially fund its brucellosis disease program. The USDA also provides supplies for the program as well as personnel to work in the program. The USDA has indicated that direct funding for the program will be reduced in 1990 and other support currently provided will either be eliminated or reduced. Unlike most state regulatory agencies, the commission has no fee setting and collection authority. The review indicated that the commission needs this ability to generate revenue to offset any federal cutbacks in funding. A recommendation to provide the commission with the authority to generate revenue to offset any federal cutbacks in funding is contained in this report.

Regarding the fourth area, the review focused on all the commission's activities to determine if they were sufficient to control and eradicate livestock and poultry diseases. The review determined that changes could be made to improve the commission's ability to detect and locate diseases and to enforce its statutes. As a result, one recommendation was developed that specifically authorizes the commission to obtain certain types of records needed to detect and locate disease and to conduct compliance investigations. Other recommendations were developed to strengthen the commission's overall enforcement powers. These include making the misdemeanor penalties in the commission's statute consistent with current fines and penalties in the Penal Code and authorizing the commission to enforce penalty provisions relating to record keeping requirements for livestock markets and slaughter plants. Another recommendation developed to strengthen the commission's enforcement powers requires development of interagency agreements with the Department of Public Safety and local sheriff's departments which would provide for better coordination of enforcement efforts. A final recommendation related to enforcement provides authority for the commission to delegate its quarantine powers for poultry to inspectors of the Texas Agricultural Experiment Station.

The recommendations contained in the report have no fiscal impact that can be estimated. One recommendation provides for fee authority to offset an anticipated loss of federal funds. This recommendation could produce additional revenue if implemented but it is not possible to determine the exact amount.

Sunset Commission Recommendations for the
Texas Animal Health Commission

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

The review of the agency's policy-making structure indicated that no changes are needed.

Overall Administration

1. **The commission's statute should be changed to authorize the commission to charge fees for services as necessary to offset the reduction or elimination of federal funding and support of the brucellosis program.**

The commission receives approximately $3 million per year from USDA to partially fund its brucellosis disease program. The USDA also provides supplies and personnel for the program. The USDA indicates that direct funding for the program will be reduced in 1990 and other support currently provided will also be eliminated or reduced. The commission has no fee setting and collection authority to generate revenue to offset the potential elimination of federal support. The commission should have the authority to generate revenue to offset federal cutbacks in funding or support.

Record Keeping Requirements

2. **The commission needs additional authority to require records of livestock transactions. The commission's statute should be amended to:**

   - **require cattle dealers and slaughter plants to keep records regarding livestock movements and transactions;**
   - **establish a definition of cattle dealer that is currently used by the federal government; and**
   - **provide a Class C misdemeanor penalty for non-compliance with these requirements.**

The agency's ability to trace outbreaks of brucellosis to the herd of origin depends greatly on the records of transactions maintained by dealers and livestock markets. Requiring cattle dealers to keep records will provide information that is currently unavailable and needed to conduct tracebacks. Currently, livestock markets are required by statute to maintain records of cattle movement. However, there is no similar requirement for cattle dealers. This recommendation would add such a requirement along with a penalty for non-compliance.

Penalty Provisions

3. **The misdemeanor penalties in the commission's statute should be made consistent with current fines and penalties in the Penal Code.**

Most of the commission's penalty provisions were put into statute before the current Penal Code was adopted and do not match the current provisions in the code. Because of the differences between the Penal Code and the commission's statute, there is potential for confusion as to which penalties and fines are applicable to a violation. Changing the commission's penalty provisions to reflect current limits in the Penal Code would make them consistent throughout the commission's statutes and would remove any differences that currently exists between the commission's statute and the state's penal statutes.

Authority to Enforce Penalty Provisions

4. **The commission should be given the authority to enforce penalty provisions relating to non-compliance of record keeping requirements for livestock markets and slaughter plants.**

Livestock markets and slaughter plants are required by statute to maintain records relating to livestock movement. The commission has the responsibility to define the types of records livestock markets are required to maintain. The commission also has the responsibility to inform slaughter plants of their record-keeping requirements and to conduct spot checks to ensure compliance. Penalty provisions are provided in statute to ensure compliance by markets and slaughter plants with the recordkeeping requirements, however, the statute is silent on what agency or entity has the authority to enforce them. These records are important to the commission for traceback purposes. Giving the commission authority to enforce these penalty provisions would ensure that proper records are maintained by livestock markets and slaughter plants so that the commission can conduct successful tracebacks.

Delegation of Quarantine Power

5. **The commission's statute should be modified to authorize the delegation of quarantine power to inspectors of the Texas Agricultural Experiment Station.**

Responsibility for control of poultry diseases is split between the commission, the Texas Agricultural Experiment Station and the poultry industry itself. The commission and the Experiment Station have established a method to coordinate their disease control efforts. When disease is found or suspected, an Experiment Station inspector will issue a quarantine of the flock on behalf of the commission. This procedure allows for quick action to prevent the spread of disease through movement of a diseased flock, however, the commission does not have the specific authority to delegate its quarantine power. Providing the commission with this authority would eliminate any problems that could result if the delegation of quarantine power to the Experiment Station inspectors was ever challenged by a poultry owner.

Assistance from Law Enforcement Agencies

6. **The commission needs to coordinate its enforcement activities with law enforcement agencies. The commission's statute should be amended to establish interagency agreements between the Department of Public Safety and sheriff's departments to improve the commission's enforcement of the state's animal health laws. The agreement would include the following provisions:**

   - **DPS officers and sheriff's and deputies would perform a cursory check for health papers and permits when a livestock vehicle is stopped for other reasons in the regular course of their duties;**
   - **DPS staff and sheriff's departments would report potential problems found to commission staff;**
   - **commission staff would investigate the possible violations;**
   - **DPS officers and sheriff's departments would offer assistance whenever possible;**
   - **commission compliance personnel would notify DPS officers and sheriff's departments as to the location of roadblocks, particularly special or night operations; and**
   - **commission staff would provide basic information to DPS and sheriff's departments regarding the requirements to check for.**

The agency currently has personnel involved in stopping vehicles bringing livestock vehicles into the state (roadblocks) to ensure compliance with entry requirements for the animals. These efforts are limited because of the large number of interstate highways coming into the state and the small number of commission personnel available to perform the activity. Receiving assistance from state and local law enforcement personnel located in the 28 counties where livestock movement is significant would strengthen the commission's roadblock activities.

Other Changes Needed in Agency's Statute

7. **The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations have been applied to the Animal Health Commission.

8. **Minor clean-up changes should be made in the agency's statute.**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute is found in Exhibit 12.

Exhibit 12

Minor Modifications to Texas Animal Health Commission Statute

Chapters 148, 161, 163 and 164 - Agriculture Code

Change	Reason	Location in Statute
Add a provision requiring slaughter plants to collect blood for testing.	To ensure that slaughter plants participate in the brucellosis program. Currently a federal requirement and a commission rule.	Section 163.072
Remove language relating to the responsibilities of county commissioner's courts regarding scabies.	To remove outdated language.	Section 164.007
Remove the word "practical'" from the definition of commission members representing cattle and swine.	To remove language which is unnecessary.	Section 161.021
Remove the bonding requirement for commission members.	To remove language which is unnecessary.	Section 161.023
Remove the language specifying per diem for commission members.	To remove language which is unnecessary. Per diem is specified in the appropriation bill.	Section 161.026
Remove the requirement that commission rules must be "proclaimed" by the governor.	To remove outdated language. Rulemaking is covered by the Administrative Procedure and Texas Register Act.	Section 161.046
Remove language related to compensation for animals destroyed with "glanders".	To remove outdated language.	Section 161.066
Substitute the word "recognized" for "accredited" in the definition of veterinarian.	To accurately define a veterinarian authorized by the federal government to participate in federal disease control programs.	Sections 161.081 and 161.083
Add the commission to the list of those with authority to seek injunctive relief for violation of the TAHC statute.	To ensure that the commission has specific power to seek injunctive relief.	Section 161.131
Remove the permit requirements for the interstate movement of sheep.	To remove language that addresses a scabies problem that no longer exists.	Section 164.061
Add a provision allowing private veterinarians to issue health permits for sheep.	Authorizes a procedure for sheep currently allowed for cattle and other livestock in Texas and other states.	Section 164.062
Remove language related to appeal of commission rules or orders.	To remove unnecessary language. Appeals are governed by the Administrative Procedure and Texas Register Act.	Section 163.067

POULTRY IMPROVEMENT BOARD

Poultry Improvement Board
Background and Focus of Review

Creation and Powers

The Poultry Improvement Board was established in 1949 and is currently active. The board is part of the national effort begun in 1935 to improve poultry products and reduce poultry disease. The federal government established the National Poultry Improvement Plan to reduce the widespread losses being suffered by the poultry industry due to uncontrolled diseases. Under the plan, the federal government and participating states set national standards aimed at identifying diseased poultry, controlling the spread of the disease, and eventually making the poultry industry disease-free. These efforts are accomplished through testing, vaccinations and maintenance of acceptable sanitation levels.

Members of the poultry industry who participate in the plan and meet the standards are authorized to use logos and designations which signify that their products meet the standards. While participation in the plan is voluntary, products cannot generally be sold without meeting the standards.

All 47 states that have a poultry industry are participants in the plan. Texas is a participant because the poultry industry is a significant part of the Texas economy. The industry was worth $650 million at the farm level in 1986 which made it the sixth largest sector of the state's agricultural economy. The Texas poultry industry ranked seventh in the nation in 1986 in terms of production and gross income.

Texas' regulatory scheme for the control of poultry disease is carried out by several entities as described in the following exhibit.

Exhibit 1

Responsibilities for the Regulation of Poultry Disease in Texas

Entity	Responsibility
Poultry Improvement Board	Serves as contact agency with the USDA to administer the National Poultry Improvement Plan.
Poultry Industry	As plan participants, industry members comply with disease control requirements, test their flocks and vaccinate to prevent disease.
Texas Animal Health Commission	Has general authority for control of animal disease, including quarantine power over diseased poultry.
Texas A&M University Agricultural Experiment Station	Operates a disease control program for poultry not covered by the national plan (small, backyard-type operations, exhibitions, shows).

The Poultry Improvement Board is responsible for acting as Texas' representative to work with the USDA in setting the national standards and carrying out the national plan. In this role the board assists the USDA to determine how well the program is working to control poultry diseases in Texas and provides

information to the USDA as to the level of plan participation by Texas' industry members. The board also makes suggestions to the USDA as to changes needed to improve the program, sends delegates to the annual National Poultry Improvement Plan convention (to consider plan changes needed), and informs the industry of changes as they occur.

The statute creating the board allows the Texas Poultry Improvement Association to determine the board's size and composition. The association is a private industry association composed of industry representatives concerned primarily with health and disease control. The association is a sub-group of the Texas Poultry Federation, the state's main poultry association. The current board composition is as follows:

- Head of the Poultry Science Department at Texas A&M University (chairman);
- a member of the Poultry Science Department staff representing the research function of the department;
- a member of the Poultry Science Department staff representing the extension function of the department;
- Head of the Department of Veterinary Microbiology and Parisitology at Texas A&M University.
- President of the Texas Poultry Improvement Association;
- Executive vice-president of the Texas Poultry Improvement Association; and
- three industry representatives from the TPIA elected by the association's board of directors.

Board members serve on an as-needed basis for a one year term with provisions for reappointment. The board receives no separate state funding and board members' expenses are paid by the organizations they represent.

Focus of Review

The sunset review of the Poultry Improvement Board was confined to the function assigned to the board: that of representing the interests of the Texas poultry industry in setting voluntary national standards for the control of poultry diseases. The overall regulatory scheme used by the state for controlling poultry diseases was not examined as part of this review and will be dealt with in the review of the Texas Animal Health Commission.

The review analyzed the need for the statute creating the board and also the need for changes which could improve the efficiency and effectiveness of the board should the legislature continue it in statute.

Currently 47 states participate in the voluntary federal program created to develop standards to assure that poultry products are disease free. Participation in the program is critical to a state's poultry industry because a state that does not participate essentially cannot market its poultry products in other states.

The review indicated that Texas needs to have a contact point with the federal government in order to participate in the disease control program; however, the contact point does not need to be a statutory state agency such as the Poultry Improvement Board. A survey of surrounding states and other major poultry producing states indicated that five states use their private poultry associations as the contact point for participation in the national plan. While Indiana provides this designation in statute, Kansas, Ohio, Georgia, and Mississippi do not. Interviews with the USDA confirm that private associations can serve as the contact point.

In Texas, the state's poultry association also essentially controls the state's participation in the plan. While the Poultry Improvement Board is the official contact by statute, the Texas Poultry Improvement Association is responsible for determining the composition of the board and the appointment of its members. The Texas Poultry Improvement Association is a part of the state's main poultry association, the Texas Poultry Federation. In the absence of a statutory designation, the Texas Poultry Federation would either continue the present system of electing a board to act as Texas' contact or assume the responsibility itself. In either case Texas would continue to have a contact with the federal government so that it could continue to participate in the national plan.

Texas can achieve the purpose for which the board was created without a statutory authorization. A recommendation which eliminates this authorization follows. No fiscal impact will result from this recommendation.

Sunset Commission Recommendation for the
Poultry Improvement Board

THE POULTRY IMPROVEMENT BOARD SHOULD BE ABOLISHED

1. The Poultry Improvement Board should not be continued in statute.

The federal government does not require states to have a statutory board such as the Poultry Improvement Board as a state contact point to participate in the federal poultry disease program (the National Poultry Improvement Plan). In the absence of the statutory Poultry Improvement Board the Texas Poultry Federation, the state's poultry association, can assume the responsibility as the contact point. Therefore, continuation of the Poultry Improvement Board as a state agency is not needed.

Recommendations for

EDUCATIONAL AGENCIES

Texas Education Agency

Texas Higher Education Coordinating Board

Texas Guaranteed Student Loan Corporation

Office of Compact for Education Commissioner for Texas

Western Information Network Association

TEXAS EDUCATION AGENCY

Texas Education Agency
Background and Focus of Review

Creation and Powers

The Central Education Agency is defined in statute as being composed of the State Board of Education, the state commissioner of education, and the state department of education. The board also serves as the State Board for Vocational Education. The State Board of Education is to be reviewed but not abolished under the Sunset Act. In contrast, the office of commissioner and the department are scheduled to be abolished in 1989 unless continued by the legislature.

The Central Education Agency, more commonly known as the Texas Education Agency, is part of an educational system that began its development in the mid 1800's. After the civil war, the constitution of 1869 required free public schools for all children of the state. The constitution also established a permanent funding source for public education called the Permanent School Fund. While the law changed frequently through the years, the real basis of the modern public school system began with passage of the Gilmer-Aiken Act in 1949.

The Gilmer-Aiken Act formalized a partnership between the state and local school districts. The state's role was set up to be carried out by an elected policy body, the State Board of Education, and administered through the Texas Education Agency.

The purpose and responsibility of the agency is to exercise general control of the system of public education through the planning of public education policy, distribution of funds to local school districts, oversight of local districts through the accreditation process, establishment of curriculum standards, provision of technical assistance to districts, and ensuring the quality of teachers. Over time, the agency has been given additional detailed responsibilities by the legislature. Some of the more recent changes include:

- a statewide student testing program in 1979;
- major curriculum reform in 1981 which set in law the subjects which must be taught in schools, and required the board to designate the essential elements of each subject at each grade level; and
- the Education Reform Act of 1984 (House Bill 72) which included teacher testing, a teacher career ladder system, limits on class size and extracurricular activities and other measures designed to improve student achievement.

The direct provision of educational services to school children is through the 1060 local school districts throughout the state. These districts have local policy boards which have taxing authority and set local public education policy based on state laws and regulations of the State Board of Education. The activities of these districts are overseen through the various monitoring functions of the Texas Education Agency.

Policy-making Structure

The State Board of Education is currently composed of 15 members appointed by the governor from 15 geographic districts throughout the state. Prior to passage of House Bill 72 in 1984, one member of the State Board of Education was elected from each congressional district in the state. In 1984, legislation created the current 15-member appointed board on an interim basis. In November of 1987, a statewide referendum was held on the question of having an appointed or elected State Board of Education. The voters preferred an elected board, and under current law, the board will change to an elected body of fifteen members in 1989. Members will be elected from the fifteen districts in November 1988. All terms of the current board expire on January 1, 1989, at which time the elected board will take office. The elected board will serve staggered four-year terms. The chair of the board will be appointed by the governor for a two-year term. The vice-chair and secretary will be elected by the membership of the board.

The current board is assisted by 15 advisory committees. Ten of these are statutory and five are created by the board. The statutory advisory committees are the Advisory Council for Technical-Vocational Education, the Accountable Costs Advisory Committee, the Apprenticeship and Training Advisory Committee, the Proprietary School Advisory Commission, the Commission on Standards for the Teaching Profession, the Price Differential Index Advisory Committee, the Software Advisory Committee, the State Textbook Committee, the Teachers' Professional Practices Commission, and the Training for School Board Members Advisory Committee. The commissioner of education also has created some eight advisory committees to assist him in his duties.

Funding and Organization

The Texas Education Agency is headquartered in Austin and most of the activities of the agency are carried out from its central office. However, there are seven field offices for the School Lunch Program and five field offices for the Regional Day School Program for the Deaf. The agency has 1007 full time employees, 985 of which are headquartered in Austin. Exhibit 1 illustrates the organizational structure of the Texas Education Agency.

Funding for public school education in Texas is supported by federal, state, and local governments. The Texas Education Agency distributes most state and federal funds to school districts. In fiscal year 1988, federal and state funds that TEA either expended or passed through to local school districts amounted to approximately $5.9 billion. Local school districts also make considerable effort to support their education programs. While the exact figure is not available at this time, it is estimated that local expenditures for operations were roughly $5 billion in 1988.

Exhibit 2 and Exhibit 3 provide information only on the $5.9 billion in federal and state funds that TEA either expended in its internal operations or passed through to local school districts in 1988. Exhibit 2 illustrates how the funds were expended by category. Of the $5.9 billion, approximately $37 million or less than one percent was devoted to agency operations. TEA distributed the remaining amounts to local school districts. Regular Education/General Purpose was the largest category of distribution and accounted for about 66 percent of the $5.9 billion. These funds basically provide financial support to the regular education programs in the public schools. Additional state and federal funds were expended for instructional materials, school transportation, vocational education, child nutrition,

Exhibit 1
Texas Education Agency Organizational Structure

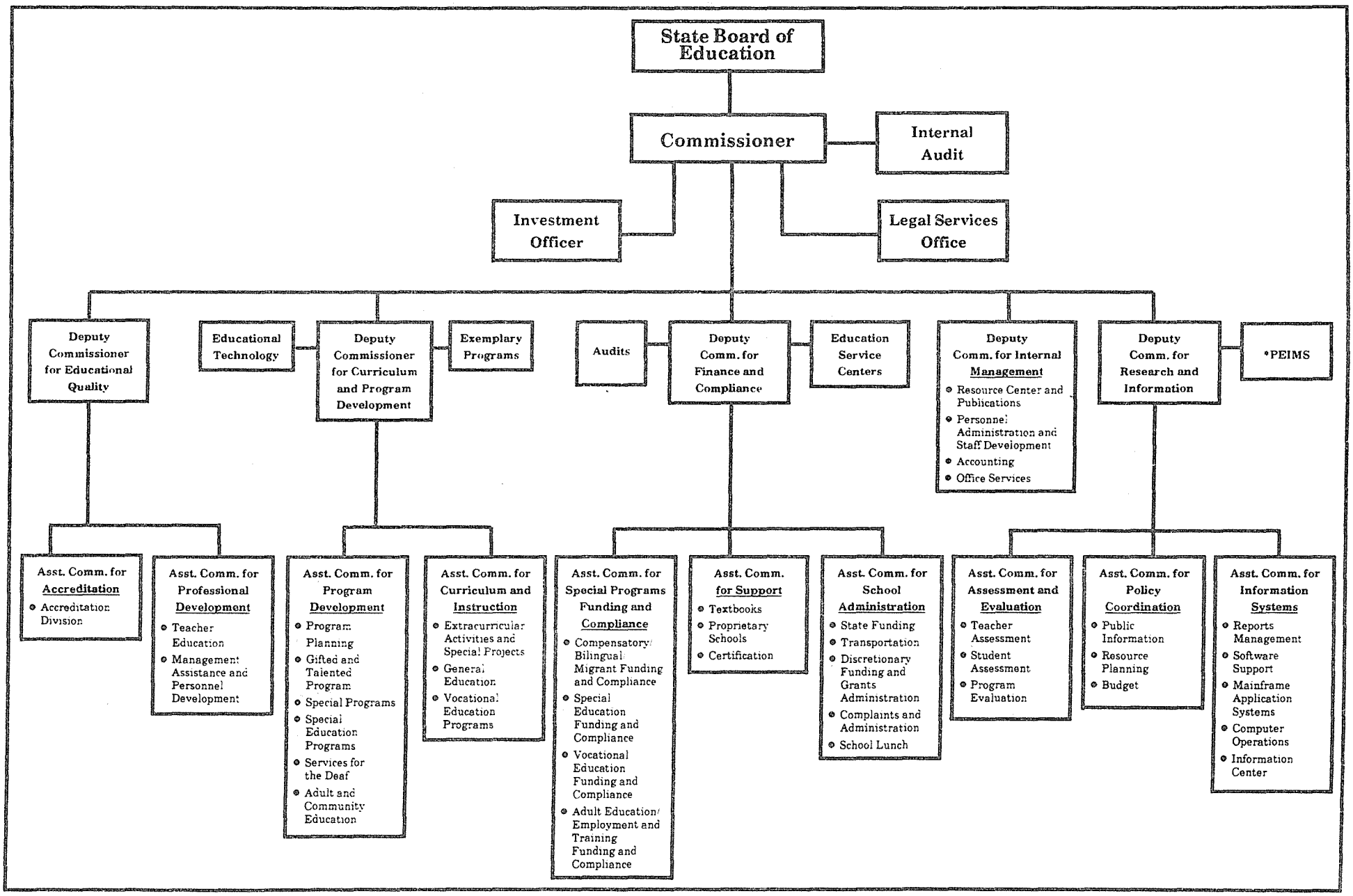
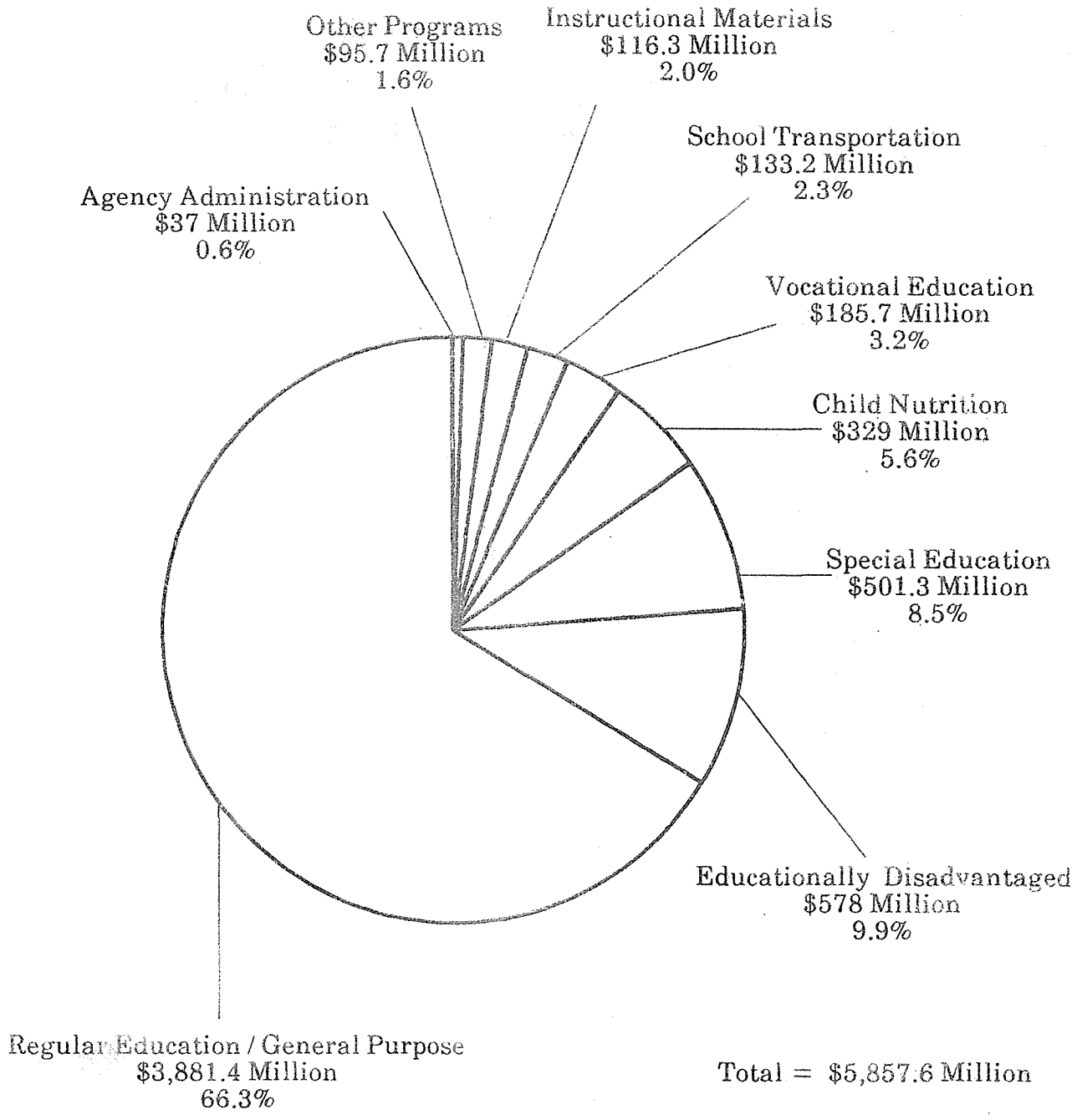


Exhibit 2

Estimated State and Federal Funds Distributed by TEA by Category

Fiscal Year 1988



Total = $5,857.6 Million

special education, and programs for the educationally disadvantaged. Included in the item titled "Other Programs" in Exhibit 2 are Bilingual Education with $30 million, Gifted and Talented with $5.6 million, Adult and Community Education with $15.6 million, and Discretionary/Agency-Related Programs with $44.5 million.

Exhibit 3 shows primarily the portion of the $5.9 billion contributed by the state as compared to the portion contributed by the federal government. The state's part amounts to approximately 86 percent of the total, with federal funding making up the remaining 14 percent.

As Exhibit 3 shows, by far the largest amount of state funding is made available through the Foundation School Program. This funding program is intended to guarantee that each school district in the state has adequate resources to provide each student with a basic instructional program suitable to his educational needs. The program funds regular, special, and vocational education; gifted and talented programs; bilingual or English as a second language programs; student remediation programs; teacher career ladder; additional pay for the retention of experienced teachers; salaries of non-teaching personnel; and student transportation systems.

The cost of the Foundation School Program is shared between the state and local school districts. On a statewide basis the state pays for two-thirds and the local districts pay for one-third of the program. Exhibit 3 depicts the state share only. In fiscal year 1988 the state share totaled almost $4.8 billion or approximately 82 percent of all state and federal expenditures distributed or expended by TEA that year.

In addition to the Foundation School Program, in fiscal year 1988 the state allocated $280.4 million through other state funding sources. Out of this total allocation, $113.5 million was expended for the purchase of textbooks, and the remaining funds were primarily distributed to the Regional Day Schools for the Deaf, the state schools, the regional education service centers, and adult education.

A third source of school district funds, as shown in Exhibit 3, is the federal government. Federal funds for public education in fiscal year 1988 accounted for $794.8 million. These funds are available for 21 programs including special education, vocational education, national school lunch, and funds for the remediation of educationally disadvantaged children.

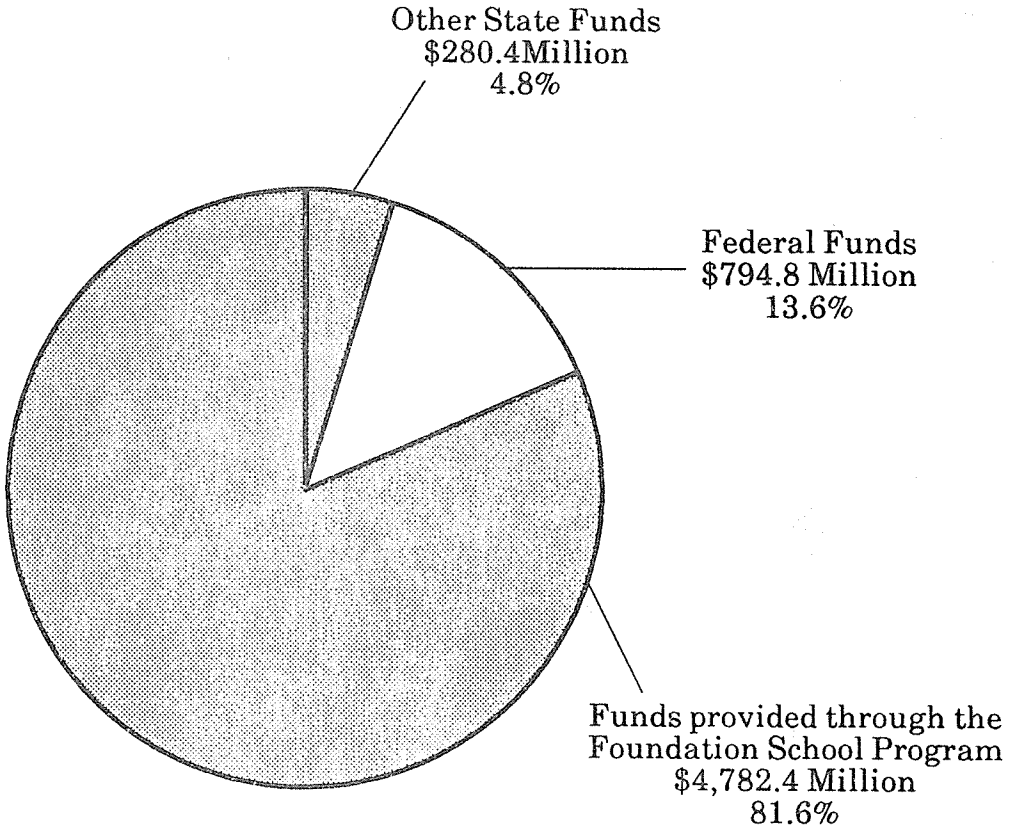
Programs and Functions

The substantive operations of TEA can be divided into eight functions:

- curriculum development
- textbook selection
- evaluation of student performance
- evaluation of school districts
- assurance of quality teacher performance
- research and information activities
- technical assistance to school districts
- regulation of proprietary schools

Exhibit 3

Estimated State and Federal Funding Distributed by TEA for Public Education in Texas Fiscal Year 1988



State Funds

Federal Funds

Total = $5,857.6 Million

The first five of these functions comprise TEA's activities to develop a quality educational curriculum, to monitor that system, and to provide for qualified teachers. These activities are supported by the research and information function as well as the provision of technical assistance to school districts. As a final aspect of its authority apart from public schools, the agency also regulates proprietary schools.

Not all of the activities of TEA can be categorized in these functions; however, these eight areas represent the majority of the agency's responsibilities. The sections that follow highlight these primary agency functions.

Curriculum Development

House Bill 246, which was enacted in 1981, amended the statute to require school districts to offer a well-balanced curriculum that includes: English language arts, mathematics; science; fine arts; social studies; economics; Texas and U.S. history; health; physical education; other languages, to the extent possible; business education; and vocational education. The legislation directed the State Board of Education to designate the essential elements for each of these subject areas and the appropriate grade level at which they should be taught.

The agency's division of Curriculum and Instruction is responsible for the development of the essential elements and for assisting local school districts in developing curriculum that incorporate the essential elements. The essential elements provide local school districts with a broad outline of the key areas to be covered in each subject area and grade level. The school districts are responsible for developing a curriculum that reflects these essential elements in what is to be taught on the local level.

School districts began implementing these requirements in 1983 and districts throughout Texas have now established curriculums in which these essential elements are covered. The Texas Education Agency staff have developed a number of publications to assist districts in this task. In fiscal year 1987, the agency responded to approximately 4,500 requests for assistance in this area from local school districts.

The essential elements, according to board rules, are to be reviewed and updated every five years. A statewide advisory committee composed of some 725 members representing all grade levels and subject areas has been established to assist the board in this area. The members of this group meet periodically to discuss areas within the essential elements which need improvement. The first formal review and update is scheduled for school year 1990-1991.

Textbook Selection

Textbooks are an important element in teaching the curriculum developed by the state and local school districts. The State Board of Education is responsible for approving a list of textbooks for use in schools throughout the state. The legislature established the State Textbook Committee to assist the board in this task. The committee examines all the textbooks submitted for adoption and recommends to the board a list of textbooks it determines are appropriate for adoption by the board. Legislation passed in 1987 expanded the number of textbooks that could be adopted by the board in each subject area from five to eight textbooks. Local school districts select their textbooks from the list of state adopted textbooks for use in their schools.

The committee consists of 15 members, one person from each of the 15 State Board of Education districts. The board appoints the textbook committee members based on the recommendations of the commissioner of education. Members are allowed to serve only one term which lasts one year.

All of the committee members must be experienced and active educators teaching in the public schools, who are appointed because of their expert background in subject fields in which adoptions are being made. The committee members are allowed to select up to six official advisors in each of the subject fields being considered for adoption. On the average, the committee reviews books in six to twelve subject areas. This results in committee members having as many as 72 advisors each to assist them in reviewing books which are outside their subject area. The total amount budgeted for the textbook committee in fiscal year 1987 was $40,500 with staff support provided by the agency.

The textbook adoption process in Texas is a three year process. In the first year, a proclamation is issued by the State Board of Education calling for bids on textbooks in specific subject areas. The proclamation is developed by the curriculum staff at TEA. The proclamation lays out a summary of what the books in various subject areas should address, particularly in relationship to the state's essential elements. A public hearing is held to provide for input on what should be included in the proclamation. The agency staff also obtains input from a variety of educational organizations and teacher groups statewide. In 1987, the board called for books in nine subject areas including science, social studies, mathematics, fine arts, language arts, business education, physical education, and trade and industrial education.

In the second year of the textbook selection process, the textbook committee is appointed to review books submitted based on the proclamation issued the year before. Committee members and their advisors review an average of 175 to 200 texts over a period of approximately three months. Public hearings are held before the commissioner and the textbook committee in order to obtain input on the books under consideration. The committee later meets to select by ballot the books it recommends for adoption by the State Board of Education. The committee can select up to 8 books in each subject area and grade level. In 1988, the committee reviewed 175 books and recommended 157 for adoption. Another public hearing is held by the State Board of Education prior to their final decisions on which books to adopt. The board has the authority to remove a textbook recommended by the committee, but it is prohibited by the statute from adopting a book that has not been recommended by the committee. The board can also require that changes be made to a book before adoption. Once the textbooks are formally adopted by the State Board of Education, the local districts are informed of the official list of adopted textbooks. Publishers are currently required by board rule to furnish each school district with a sample of the adopted textbooks for review on the local level.

In the third year of the selection process, the local school districts review the state adopted textbooks and select those textbooks they want to use in their schools. The local districts send their textbook orders to TEA which then orders the books from the textbook depositories where the publishers store their books. There are eight textbook depositories in Texas. One of the textbook depositories is owned by the state, is located in Austin, and serves mainly to repair worn textbooks. The other seven depositories are in Dallas and provide a centralized location to store the books to be used in classrooms. The agency typically pays the depositories for the textbooks delivered to the schools and the depositories pay the publisher for the

books. The board recently adopted changes in rules which allow direct payments for textbooks to publishers upon request of a publisher. In fiscal year 1988, the state spent over $113 million on textbooks and instructional materials, or approximately $35 per enrolled student.

Evaluation of Student Performance

One of the agency's primary responsibilities is to determine how well students learn the curriculum established by the state and local school districts. The evaluation of the educational performance of public school students stems from increasing legislative interest over the past decade. In 1979, the legislature first directed the Texas Education Agency to implement a student testing program. Thus, the agency started the Texas Assessment of Basic Skills testing program which tested students in grades three, five, and nine for basic skills. This program was designed to assess Texas school children on a sample basis and provide data to improve teaching performance.

The scope of the testing program was widened with the passage of House Bill 72 in 1984, when the legislature greatly expanded student testing requirements. Students are now required to be tested for basic skills in reading, writing, and mathematics in first, third, fifth, seventh and ninth grades as well as in the 11th grade as a graduation requirement. To fulfill this requirement the Texas Education Agency developed the Texas Educational Assessment of Minimum Skills program (TEAMS). The TEAMS testing program has been administered annually since the 1985-1986 school year.

The State Board of Education sets the minimum level of satisfactory performance for students taking the TEAMS test. As students become better prepared for the exam, the criteria indicating student mastery of the subject area are adjusted. The board, under directive of the long-range plan, is also responsible for reviewing and raising the passing standards as appropriate.

The Texas Education Agency currently contracts with a private testing company on a two year basis for the development, production, and grading of the TEAMS test. The Division of Student Assessment, currently operating with a full-time staff of 11 and an administrative budget of approximately $520,000, has coordinated the efforts to develop the TEAMS test. Committees of educators are used to develop specifications for test questions and review the actual test items after being written by the testing company. The test questions are field tested and statistically evaluated and screened again by committees of educators. This process allows a bank of test items from which to draw for different forms of the TEAMS test and allows additional test questions to be added to the bank of test questions when necessary. The testing company is responsible for grading the tests and providing the results to the school districts who in turn are required to report to the agency. The statute requires that individual test scores remain confidential. However, aggregated student scores are reported on a statewide, district, and campus basis.

The statute requires that all school districts provide remediation for students failing the basic skills test in order to bring students up to a minimum level of competency in reading, writing, and mathematics. In addition to being used for remediation purposes, TEAMS scores are used as a part of the school accreditation process. In preparing for an accreditation visit, accreditation staff review a school's TEAMS scores to assist in identifying any potential problem areas.

The Texas Education Agency coordinates the administration of the testing program. The agency prepares instructional strategy guides to assist teachers in preparing students for the exam. The agency trains members of the TEAMS Advisory Committee and education service center personnel to deliver test administration training to local school district personnel. The TEAMS Advisory Committee consists of testing coordinators and district superintendents throughout the state.

Approximately 1.4 million students are tested annually. The agency contracted with the testing company for $4.75 million in fiscal year 1988 to develop and to administer the testing program. Exhibit 4 provides information on the performance of students on TEAMS for the past three school years. The figures demonstrate the percentage of students passing the reading, writing, and mathematics segments of the exam.

Exhibit 4

Percentage of Students Mastering TEAMS Test

	1986	1987	1988
Grade 3	52%	63%	69%
Grade 3 (Spanish)	not available	72%	78%
Grade 5	56%	60%	72%
Grade 7	57%	65%	73%
Grade 9	55%	58%	58%
Grade 11	83%	72%	not available

Evaluation of School Districts

Assessment of the performance of school districts is another aspect of TEA's evaluation responsibilities. The agency has two main activities in this area: compliance monitoring and accreditation. While these duties may appear very similar, they are in fact different. The compliance monitoring process focuses specifically on whether the special educational programs offered by the district (such as vocational education, compensatory education and special education) are operated in compliance with federal and state requirements. In contrast, the accreditation process evaluates the quality of all educational programs within the district.

The two programs operate separately with two distinct staffs. While joint inspection visits have been attempted in the past, such practices were discontinued. Each program examines the district from a different perspective and covers a different set of material. Because of this, each program currently conducts inspections of districts separately.

Both compliance monitoring and accreditation reviews are conducted on a five year cycle. The agency has recently implemented a staggered cycle of review in which compliance monitoring is done one year before the accreditation review. This eases the workload on the district by having the two on-site visits conducted a year apart. The compliance monitoring program provides its findings to the accreditation program for consideration in its review of the district. This provides additional information to focus accreditation efforts as well as an additional method of following up on compliance problems. Both programs also make follow-up visits to districts in which significant problems were noted in the regular review.

Compliance Monitoring. The federal government requires the agency to monitor federally funded programs provided by local districts to ensure that the programs operate in compliance with federal requirements. In addition, there are monitoring requirements for programs that are supported with state funds. The compliance monitoring program focuses on what is known as special programs, meaning those that are available in addition to the regular education program. Examples of special programs include: vocational education, special education, bilingual education, and compensatory education (for educationally disadvantaged students). If federally funded programs are not operated by local school districts in compliance with federal requirements, funding for those programs throughout the state can be discontinued.

Due to the complexity of the requirements and the unique types of instruction provided by each special program, the agency has three main divisions within the compliance monitoring program: vocational education, special education, and a consolidated program to monitor compensatory, bilingual, and migrant education programs. The agency uses staff from each division to conduct a monitoring visit. While monitoring a district, the team reviews each local special program based on that program's regulations and agency requirements.

Following the monitoring visit, the agency develops a report citing any discrepancies observed, recommended corrective actions, and time frames for those corrective actions. The school district has the right to appeal any of the findings to the agency. If the district repeatedly fails to respond to the agency's requests for corrective action, the agency is authorized to withhold all or part of the district's funding for that program or withhold the superintendent's salary . Each year, the agency visits approximately 200 districts for regular compliance monitoring. The agency also conducts follow-up visits to examine compliance efforts, as time permits. The agency has never found it necessary to use either of the sanctions available in compliance monitoring.

Accreditation. While the compliance monitoring program focuses mainly on compliance with state and federal regulations in special programs, the accreditation program focuses on the quality of education throughout the school. Accreditation is a requirement for districts receiving state funding. By ensuring the quality of education in public schools, the accreditation process provides a uniform system for the transfer of student credits between districts and ready recognition of the validity of transcripts. State statute sets out the basic standards for an accreditation review. These include, for example: the quality of learning based on achievement scores; the quality of teacher and administrator performance appraisal practices; fulfillment of curriculum requirements; and the effectiveness of programs for special populations.

The accreditation review is, generally, an evaluation based on performance indicators and a site-visit to the district. Prior to the site-visit, the agency examines performance indicators such as scores on achievement tests and basic skills tests (TEAMS), attendance information, and personnel information. This analysis provides a "district performance overview" which the accreditation team uses to identify areas for closer examination. During the site-visit, the team conducts a structured evaluation. This includes observing classroom activity, examining teaching materials and talking with teachers and administrators, as well as examining documents such as student and school board records, curriculum, and district and campus plans.

Once an accreditation review is completed, the division reports the findings of the evaluation to the commissioner of education and to the district. The report includes evaluative information about the district's educational services and a listing of practices which the team found to be commendable, as well as those practices in which discrepancies with standards were found. For practices that do not meet agency standards, the report suggests corrective actions and sets time frames for improvements. The report also recommends an accreditation status for the district. The district may appeal any of the findings in the report. There are four accreditation classifications established in state law, including:

Accredited - A district is in substantial compliance with accreditation requirements.

Accredited, Advised - A district has significant discrepancies between its operations and accreditation requirements.

Accredited, Warned - A district has either serious discrepancies or has not corrected problems after being placed on "advised status".

Unaccredited - A district has failed to meet or maintain the accreditation requirements.

The commissioner of education is authorized by state law to lower a district's accreditation to "advised" or "warned" status. However, only the State Board of Education may revoke a district's accreditation. When a district's accreditation status is lowered to advised status, a "monitor" may be appointed by the commissioner to advise a district's board on ways to address the discrepancies. A monitor is appointed when a district has not taken corrective actions as requested or circumstances in the district warrant immediate intervention. The commissioner is authorized to appoint a "master" to oversee the major functions of the district when the efforts of a monitor have not been successful. A master may approve or disapprove any action of the district's board of trustees or superintendent. Salaries of monitors and masters are paid by the local school district.

During fiscal year 1988, approximately 200 school districts were scheduled for accreditation reviews. Approximately 40 districts were scheduled for follow-up visits to review whether previous, serious deficiencies had been corrected. As of October 1988, 26 districts were on advised status and one of these districts had a monitor in place. Thirteen districts were on warned status. Seven of these districts had been assigned a monitor and three had been assigned a master. The revocation of one district's accreditation was recommended to the board and, unless significant improvements are made, the district's accreditation could be revoked at the end of the school year.

Assurance of Quality Teacher Performance

Preceding sections described TEA's responsibilities to set essential elements and monitor performance of school districts. The legislature has also assigned the overall responsibility for ensuring the quality of teachers in the public schools to the Texas Education Agency. To accomplish this, the Texas Education Code gives the agency the authority to oversee teacher education programs in Texas colleges and universities, set standards for teacher certification, and develop a system for local school districts to use in evaluating the performance of their teachers. Under this authority, the agency has developed programs in the areas of teacher education, teacher certification and teacher appraisal.

Teacher Education. The Texas Education Agency is responsible for overseeing the services and programs provided by colleges and universities for students pursuing a career, or advanced training, in teaching. The agency's primary role in maintaining quality teacher education is through the approval and monitoring of teacher education programs.

The approval and monitoring of teacher education programs is performed by the Commission on Standards for the Teaching Profession in cooperation with TEA's Division of Teacher Education. The commission was created in 1979 as a replacement for the State Board of Examiners for Teacher Education. The commission has a separate sunset date and unless continued by a specific act of the legislature, will be abolished in 1989. The purpose of the commission is to recommend standards for teacher education and certification programs to the state board. The commission is also responsible for reviewing individual teacher education institutions and their programs. The state board has delegated the authority to approve or disapprove teacher education programs in Texas to the commission.

The State Board of Education adopted new teacher education standards in 1987 as a result of the requirements of Senate Bill 994, passed by the 70th Legislature. The bill requires candidates for teacher certification to hold an academic degree, and in most cases, limits the schools from requiring more than 18 credit hours of education courses toward the degree. With the new standards in place, the commission will review approximately 3,400 programs at 68 institutions, both public and private, by September 1989 to determine their compliance with the guidelines.

The Division of Teacher Education assists the commission by providing technical assistance to colleges and universities concerning implementation of the education standards, reviewing teacher certification programs of the colleges and universities, and coordinating with the commission in the on-site evaluations of teacher education programs. The Division of Teacher Education is also responsible for administering the alternative certification program. The alternative certification program prepares college graduates without formal training in education to become certified teachers. The agency has developed guidelines for this new program and provides technical assistance to school districts and colleges concerning the program's requirements in addition to monitoring the programs on-site.

The Division of Teacher Education works with the Higher Education Coordinating Board in a cooperative effort to develop teacher recruitment and induction programs. The aim of the teacher recruitment program is to identify and recruit talented students into the teaching profession through information and multi-media presentations in high schools and institutions of higher education. The teacher induction program, still in the development stage, will establish a support network for new teachers to assist them in their first year of teaching.

Teacher Certification. The Texas Education Agency is responsible for issuing teaching certificates to individuals that have successfully completed TEA certification requirements. The Division of Teacher Certification issues certificates to those students who have completed the required course work and field work, passed the appropriate certification tests, and have been recommended by approved teacher education programs.

To become a certified teacher in Texas, satisfactory performance on one or more examinations is required. The teacher testing programs are shown below.

- **PPST (Pre-Professional Skills Test)** - a basic skills test required for admission to teacher education programs in colleges and universities.

- **TASP (Texas Academic Skills Program - still in development)** - a basic skills test for all incoming college freshman. The purpose of this test will be to identify areas of academic weakness for remediation. When implemented, the TASP will replace the PPST currently used for students entering teacher education programs.

- **EXCET (Examination for Certification of Educators in Texas)** - a test that examines the person's knowledge in general teaching principles as well as specific subject areas. The test must be taken upon graduation from college in order to become a certified teacher.

- **TECAT (Texas Examination of Current Administrators and Teachers)** -a test of basic literacy skills which was given to teachers and administrators who were certified before May, 1986. Teachers certified after May 1986 take the EXCET test.

The agency issues four basic types of teaching certificates: provisional, professional, one-year, and temporary. The provisional certificate is the basic lifetime certificate that requires completion of an approved teacher education program including: educational course work, an academic specialization, and field experience. In 1987, the agency issued 12,760 provisional teaching certificates.

The professional certificate is a lifetime certificate that requires completion of requirements for a basic classroom teaching certificate and the completion of at least 30 semester hours of graduate-level courses beyond a bachelor's degree in an approved teacher education program. This certificate also requires previous of teaching experience. In 1987, the agency issued 3,806 professional teaching certificates.

The one-year certificate is non-renewable and may be issued to an individual who has been issued a standard teacher certificate by another state department of education and who meets all requirements for certification except for the passage of the appropriate components of the EXCET test. The agency issued 2,033 one-year certificates in 1987.

Temporary certificates are issued to previously certified individuals who are seeking certification for school administrative positions. They are also issued to persons seeking naturalization who have satisfied all academic and examination requirements for certification. Temporary certificates are issued for a period of five years and are non-renewable. The agency issued 640 temporary certificates in 1987.

In 1984, the legislature established an alternative method for certification of persons who are not graduates of a teacher education program to be certified. This program provides the opportunity for individuals with college degrees, but who are not graduates of teacher preparation programs, to become certified teachers. Developed and monitored by TEA staff, the alternative certification program is implemented at the local district level. Currently, 11 programs are underway with 87 schools districts participating. Since the program was established, approximately

750 students have been certified through alternative certification. For the 1988-1989 school year, approximately 700 interns are participating in the program. The components of an alternative certification program are as follows:

- the district must demonstrate a teacher shortage and design a program for training program interns to gain approval of the State Board of Education;
- the student must complete the alternative certification program requirements as set out by the district, including passage of the EXCET test in his or her chosen academic field;
- the local district must recommend the individual for certification through the agency; and
- the individual is reviewed and certified like those in the traditional certification process.

Teacher Appraisal. The mandate to assess teacher performance was an important element in the educational reform efforts of House Bill 72. The Texas Education Code requires the State Board of Education and the Texas Education Agency to develop and maintain a teacher appraisal process and career ladder system. The purpose of the teacher appraisal and career ladder system is to generally improve teaching performance and provide incentives for quality teachers to remain in the classroom. Whereas the agency is responsible for developing the appraisal system, the local school districts are responsible for conducting the appraisals and making career ladder placements.

The agency developed the Texas Teacher Appraisal System (TTAS) which was implemented in the fall of 1986. Approximately 150,000 teachers were appraised in the 1987-1988 school year. According to statute, most teachers receive two appraisals each year, although certain more experienced teachers may receive only one appraisal. Teachers are appraised on teaching performance in five major areas: instructional strategies, classroom management and organization, presentation of subject matter, learning environment, and professional growth and responsibility. Teachers are evaluated by two appraisers who are trained through appraiser training programs designed by the agency and provided by the regional educational service centers. Usually, the school principal and other school district personnel conduct the appraisals.

The State Board of Education requires two formal, 45 minute observations for one appraisal. One observation must be scheduled in advance. The other observation may be unscheduled or scheduled depending on the policy of the local school district. Results of the TTAS are used for career ladder decisions by the local districts.

In addition to the TTAS, efforts to improve teacher performance are made through in-service training and continuing education. Agency staff are responsible for coordinating advanced academic training courses, teacher and administrator in-service programs and school board member training.

A final component in the basic method used to monitor teacher performance is the Teacher's Professional Practices Commission. This commission was created, by law, in 1969. Its role is to establish standards of ethical practice for the teaching

profession and to provide for a system of professional self-discipline. The commission consists of 15 members from various professional groups of educators. All members must have at least five years teaching experience. The commission receives complaints concerning violations of the "Code of Ethics and Standard Practices for Texas Educators" and makes recommendations to the commissioner of education as to the disposition of those complaints. Only the commissioner may take action on a teaching certificate, including: warnings, reprimands, and certificate suspensions or revocations. From 1972 to 1987, the commission held an average of three hearings annually, and received an average of fourteen complaints each year. The commission is subject to the Texas Sunset Act and will be abolished September 1, 1989 unless continued by the legislature.

Research and Information Activities

The research and information function supports the need for information in all the agency's substantive operations. Emphasis on this function increased with the passage of House Bill 72 in 1984. This bill directed TEA to conduct ongoing research and provide current information on the status and condition of the Texas public school system. This effort is accomplished through the agency's research and information program which includes three major areas: assessment and evaluation, policy coordination, and the Public Education Information Management System (PEIMS).

The assessment and evaluation area implements the statutory requirements to conduct the statewide assessment of students' basic skills, the teacher certification testing program and the admissions test for teacher education. These activities are discussed previously in this section of the report. Evaluations of the effectiveness and impact of certain programs in public schools are performed as part of the activities in this area. In the past year, this division has completed extensive evaluations of compensatory education, programs for gifted/talented students and the bilingual education program.

The area of policy coordination is responsible for the development of the agency's operating and program budget, and for the administration of the operating budget. In addition, this area develops studies on issues in public education identified by the state board or the commissioner, and facilitates communication between the agency and other entities, including the general public and school districts.

The research and information activity includes the development and implementation of the Public Education Information System (PEIMS). The purpose of PEIMS is to manage the collection, storage and use of information from and about local school districts. The system was developed as a result of the legislative mandate of House Bill 72 for greater accountability in public education. The basic concept is to combine the bulk of school district data collections under one umbrella to streamline reporting, reduce district effort and duplication, return data for local district use and produce a standard set of statewide data. When complete, the collected data will include information on school district staff, school finance, school district organization, students, dropouts, and facilities. The project is in its second year of a five-year implementation plan. An increasing amount and type of data is expected to be collected in each year of implementation. The system is expected to be completed by the 1992-93 school year.

Technical Assistance to School Districts

One of the primary responsibilities of the Texas Education Agency is to provide assistance to school districts in meeting the requirements of the Texas Education Code and the regulations of the agency. The agency gives technical assistance in all of the preceding functional areas.

The agency's technical assistance efforts can categorized into four basic groups: publications; requested assistance; targeted assistance; and services provided through regional education service centers. In the area of publications, a large variety of informational items are produced by the agency to inform and assist school districts, education service centers, professionals in the teaching field and the public. These items may range from informational pamphlets to curriculum guides to audiovisual training tapes.

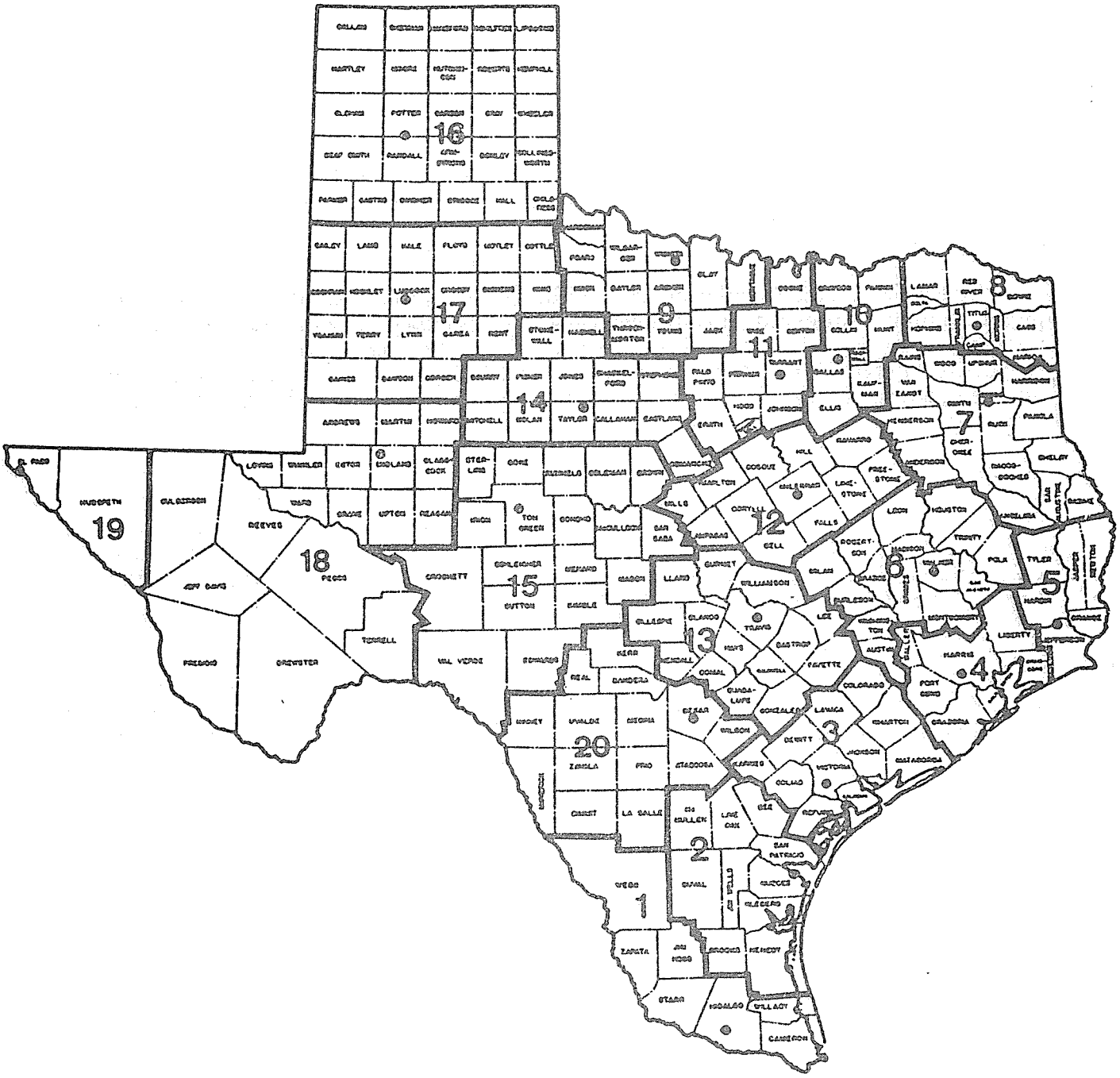
The agency receives many requests for assistance and training each year. These requests can fall into any of the programmatic or technical areas of the agency. In most cases, in order to maximize the effectiveness of their employees and programs, the assistance is usually provided in the form of workshops or seminars and not on a one-to-one basis.

In certain areas, the agency identifies the need for and initiates technical assistance efforts. For example in the curriculum area, a targeted assistance program has been initiated for low-performing schools identified in the latest accreditation cycle. These schools are provided assistance in the analysis and use of student performance data scores and how to plan and implement appropriate programs to increase student performance.

The regional education service centers (RESC's) are the other primary provider of technical assistance to local school districts. There are twenty service centers located throughout the state as can be seen in Exhibit 5. The service centers are funded through a combination of federal, state and local funds to provide programs and services for the school districts in that region.

The State Board of Education adopts a plan for RESC's that, among other things, outlines a series of 15 core services that each center must provide. The larger core services that relate to technical assistance and training include the following:

- assisting school districts with education technology and computer services;
- assisting school districts in developing and reporting PEIMS data to TEA;
- assisting districts before and after accreditation visits from TEA;
- assisting in curriculum development;
- assisting in the development and implementation of gifted and talented, bilingual, and special education programs; and
- providing various direct training activities including training of teacher appraisers and school board members.



REGIONAL EDUCATION SERVICE CENTERS

REGION	HEADQUARTERS	REGION	HEADQUARTERS
1	Edinburg	11	Fort Worth
2	Corpus Christi	12	Waco
3	Victoria	13	Austin
4	Houston	14	Abilene
5	Beaumont	15	San Angelo
6	Huntsville	16	Amarillo
7	Kilgore	17	Lubbock
8	Mount Pleasant	18	Midland
9	Wichita Falls	19	El Paso
10	Richardson	20	San Antonio

Regulation of Proprietary Schools

Most of TEA's activities involve public schools. One smaller area of responsibility involves proprietary schools. The Texas Proprietary School Act assigns the oversight of proprietary schools to the Texas Education Agency through responsibilities for the regulation and certification of such schools. The statute also creates the nine member Proprietary School Advisory Commission whose membership is appointed by the State Board of Education. The advisory commission is responsible for making recommendations to the state board on any proposed rule changes that would affect the proprietary school industry.

A proprietary school is defined in the education code as any business enterprise operated for a profit, or on a nonprofit basis, which offers instruction to persons for the purpose of training the person for a business, trade, technical or industrial occupation or for a vocational or personal improvement. The statute also exempts many schools from regulation, such as those supported by taxation from either local or state funds; a religious, denominational or similar public institution that is exempt from taxation; schools offering pure a vocational or recreational subjects; private colleges or universities which award a recognized baccalaureate or higher degree; aviation schools which are approved and regulated under the Federal Aviation Administration; and any other school which is otherwise regulated under any other law of the state.

The Act specifies that in order to operate in Texas, proprietary schools must be certified annually by the Texas Education Agency. The general criteria for certification is set out in statute. Some of these criteria are, for example, that schools must provide quality courses and curriculum, adequate space and equipment, and adequate and qualified instructors and administrators, and copies of refund policies to student. The statute also requires that schools be bonded for either $5,000 or $25,000, depending on the total amount of annual gross tuition before a certificate of approval can be issued by the Texas Education Agency.

The Division of Proprietary Schools and Veterans Education is the division within TEA that has the responsibility for regulating and certifying proprietary schools. This division has approximately 14 full-time equivalent employees involved in the regulation of proprietary schools. In fiscal year 1988, the budget associated with the regulation of proprietary schools was approximately $460,000. The current appropriations act states that proprietary school regulation should be self supporting through fees. The division was able to achieve this goal in Fiscal Year 1988.

The division is responsible for all activities related to the proprietary school certification process. Prior to original certification, agency staff conduct an in-house review of the school's financial status and an on-site survey to ensure that the school is in compliance with the criteria in the Act and state board rules. This initial review process determines whether or not a school is eligible to be certified and operate in Texas. If a school is eligible it pays the appropriate fees and receives certification for a one year period. The school must then apply annually for recertification. The annual recertification process is similar to the original certification process.

The agency staff issue a report after each recertification survey. The report details any problems that were found and includes recommendations to correct the problems. According to the agency, typical problems include violations of the refund policy, poor record-keeping, failure to terminate students according to attendance

policies, lack of or faulty equipment, and violations of the admissions policy. Schools are notified of any discrepancies and given 15 to 30 days to come into compliance.

If a school is in full compliance the agency will issue a certificate of approval for one year. The agency can also issue a conditional certificate of approval, indicating that there are some areas in which the school needs to improve. However, if a school fails to comply within the 15 to 30 days, the agency sends the school a notice of intent to revoke. If a school still does not resolve the problems after receiving the notice of intent to revoke, the certificate of approval is revoked. Schools have the right to appeal any decisions made by the division to the commissioner and ultimately to district court.

Besides the ability to revoke certification, the agency has two other mechanisms that allow them to enforce the statute. The commissioner has the authority to seek injunctive relief through the Office of the Attorney General as well as the ability to file a criminal suit with a county or district attorney for violations of the Act. In fiscal year 1988, there were four active cases with the Office of the Attorney General but the agency has never pursued a criminal suit against a school.

In fiscal year 1988, the agency conducted 496 on-site reviews, closed 36 schools, and certified 51 new schools. As of August 31, 1988 there were 394 schools certified in the state. Agency data shows that approximately 1,170 discrepancies were found during surveys conducted in fiscal year 1988 and the division's most recent status report indicated that they had issued 57 intent to revoke notices.

Focus of Review

The focus of the review of TEA and the recommendations developed from that focus resulted from a number of activities. These activities included:

- a review of recent legislation on public education;
- discussions with representatives of groups interested in public education issues;
- discussions with division directors, assistant commissioners, deputy commissioners and the commissioner of education;
- discussions with staff of other legislative offices interested in the operation of the Texas Education Agency, including the Speaker's Office, the Lieutenant Governor's Office, and the Governor's Office;
- a review of previous studies and evaluations of TEA and public education;
- a review of other efforts currently being made to evaluate TEA's operations or change education policies; and
- telephone interviews with staff of public education agencies in other states.

From these activities, a determination was made to exclude several areas from the review. The first area excluded was the structure of the policy-making body. The State Board of Education has been the subject of significant recent discussion, legislation and voter participation to determine whether to re-create an elected 15-

member policy-making body to oversee public education in Texas. The review, therefore, did not focus on the structure of the board.

School finance is another issue that has been the subject of considerable recent discussion, as well as being the subject of a current court suit, Edgewood Independent School District v. Kirby. The court suit involves the constitutionality of the Texas public school finance system. The district court ruled that the system is, in part, unconstitutional. The court of appeals has overturned the district court ruling, however, this decision is currently being appealed by the plaintiffs. The final results of the suit may cause significant changes in the state's financing system. As a result, the Governor created the Select Committee on Public Education to look into school finance and other issues. The sunset evaluation did not focus on this area because of judicially mandated changes and the significant attention already being given to the school finance issue.

Major questions of public education policy have been debated heavily in the last few years. House Bill 72, passed in 1984, was the focal point of recent policy activity. This legislation made dramatic changes in state educational policies with the aim of improving the educational performance of the state's public schools. These changes must have time to be implemented fully, and the review did not attempt to evaluate or change the focus of these efforts.

The final area that was not included in the review concerned major policy questions that are currently being addressed by interim legislative committees. The major focus of such activity relates to the Select Committee on Public Education which, in addition to the finance issues previously mentioned, is also looking at student performance and other related issues. The Joint Interim Committee on High School Dropouts is also examining proposals for addressing the problem of student dropouts.

The exclusion of the areas discussed above led to an examination of the need for the agency and the way the board and the agency carry out their current statutory mandates. The primary aim of this effort was to look at board actions and agency programs to see if the mandates were being met, and if those activities could be performed in a more effective and efficient manner.

From this analysis, a number of issues were identified which generally fell into ten areas. First, an analysis was made of whether or not there was a need for the agency and its functions. The examination of the overall need for the agency indicated that the agency and its functions should be continued. A review of the oversight of public education in other states showed that all 50 states had a central agency to perform certain statewide education functions. Although the structure of the policy-making body varied across the states, the operating agencies had a number of common functions such as distribution of state funds and administration of categorical programs which involve compliance monitoring, technical assistance, auditing and evaluation responsibilities. This type of involvement in public school education is necessary and is appropriately performed by a separate state agency such as the Texas Education Agency.

The second area of inquiry concerned the board's oversight of the University Interscholastic League. The review focused on the structure of the league and oversight of league rules. It was found that the structure of the league should be clearly established in statute and that additional oversight of rules by an advisory committee and the State Board of Education would be beneficial.

The third area of inquiry concerned the effectiveness of certain administrative activities of the agency. The review focused on whether the board and the agency have sufficient mechanisms in place to evaluate their activities. The review showed that limited efforts are currently in place for the board and agency administration to evaluate the management of programs and the cost effectiveness of certain activities. In particular, the functions of the agency's internal auditor are limited at the current time and should be expanded. Expansion of the auditor's scope of review and greater organizational independence for the auditor should give the agency and the board better information on which to base management and policy decisions.

The evaluation also identified one administrative area, the Office of Hearings and Appeals, where a significant backlog of uncompleted cases had accumulated. One of the causes of the backlog is the current statutory language which allows almost any action of a local school board to be appealed to the state commissioner of education. Limits on the types of items that can be appealed to the commissioner would help reduce the backlog and the division's workload. In addition, the review identified certain areas where the agency performs support activities in-house which are available through the private sector. No systematic review is performed to determine whether these activities could be performed less expensively if contracted to the private sector. Finally, it would be desirable for the agency to develop a policy to improve the participation of minority owned small businesses in the agency's contracting process. Recommendations have been adopted to address these problems.

The fourth area of inquiry relates to the oversight by TEA of the activities and performance of local school districts. The Texas Education Agency has the statutory responsibility to accredit school districts and is required to review each school district every three years. The review of the accreditation process showed that the process itself is generally working well. However, a set cycle does not focus the agency's efforts on districts where educational problems are evident. Furthermore, the three year review cycle is not workable within existing resources.

Two particular problems were identified in the course of the review of the accreditation process. The agency is not consistently gathering information from parents as part of the accreditation review of a school district as is currently required by statute. The agency should also ensure that teachers can comment to TEA without prior screening by local school officials. It was determined that parental and teacher comments in the accreditation process are quite important and should be emphasized. In addition, the agency should provide notice to local area newspapers prior to an accreditation review to ensure adequate parental participation.

The federal government also gives TEA oversight responsibilities. As a requirement for receiving federal funds, the state is required to monitor local districts' programs that use federal funds to ensure that federal guidelines are being met. The agency developed a monitoring process to meet this requirement. The board also assigned oversight responsibilities for certain specially funded state programs to the monitoring staff. The review of the monitoring process showed that although most problems found are brought into compliance in a timely manner, the agency's process does not ensure that compliance has been achieved before the case is closed. The review also showed that the agency's monitoring of regional education service centers should be strengthened, and that methods of monitoring early childhood intervention programs could be improved.

Another problem identified concerns the timing of compliance monitoring visits for special education programs. The agency currently conducts monitoring visits of all school districts with special education programs on a five year cycle. The review showed that a significant amount of complaints received and hearings held by the agency result from problems stemming from special education programs in the local school districts. In addition, in 1981 the legislature set a three year monitoring cycle for bilingual education. Special education program monitoring used to be on a three year cycle, and consideration should be given to returning to this time-frame. Recommendations have been adopted to address these issues.

The fifth area of inquiry concerned the agency's responsibilities for the certification of teachers and the development of a system for the appraisal of teacher performance. The review focused on the requirements to obtain teacher certification and, in particular, the alternative certification program. The alternative certification program was established by H. B. 72 to provide an opportunity for college graduates to become certified teachers even if they did not take education courses in college. The evaluation showed that the agency has effectively implemented the program. However, the board limited the use of the program to school districts where there is a teacher shortage in a particular subject area. This was not the intent of the legislature, and was not required in H. B. 72.

In the area of development of the teacher appraisal system, the review focused on the steps taken by the board to ensure that the system is evaluated and updated when needed, and that the system ensures the quality of appraisers. The review revealed that neither state board rule nor the statute requires systematic monitoring and adjustment to the appraisal system. Although some changes have been made, they were in response to individual problems as they came up. A more systematic approach could be more effective. The evaluation also showed that the effectiveness and credibility of the teacher appraisal system is dependent, to a large extent, on the qualifications of the appraisers. Although the agency has arranged for appraiser update training through the regional service centers, recertification and testing are not required. These steps would provide a quality assurance measure that is currently not in place. In addition, a concern was identified relating to use of campus personnel to evaluate teachers. It was concluded that the impartial nature of appraisals would be strengthened if one of the appraisers was from a different campus than the person being appraised.

Another area of concern related to the teacher certification examination (EXCET). Currently the agency does not evaluate teacher education institutions based on the overall pass/fail rates of students taking the examination. Requiring the agency to set standards and sanctions for institutions not meeting desired levels should result in improved teacher education programs. The review also concluded that the development of the EXCET tests could be improved, both in terms of tests for teachers of the deaf and the general test, by including input from deaf educators. Recommendations have been adopted to address these issues.

The sixth area of inquiry focused on the responsibilities of TEA in special education. The analysis of the agency's special education activities fell into five areas: planning, improving the program's processes, internal evaluation of the process, student development, and the system of funding.

The first area of analysis concerned the planning process in place for special education programs. Two issues were identified concerning the structure and use of advisory committees. The Continuing Advisory Committee for Special Education,

although active, does not appear to be serving as a focal point for public participation in special education planning as is contemplated by federal law and board rule. In addition, the review showed that the local special education advisory committees are not in place in all districts, although this is required by board rule.

The second area of analysis concerned improving certain programmatic processes. Three issues were identified that relate to coordination of the special education program with other agencies or programs. The review indicated that there is not sufficient coordination between school districts and intermediate care facilities for the mentally retarded concerning the provision of classroom space and certain therapies for students residing in these facilities. The coordination of services to students residing in residential treatment centers could also be improved. In addition, the review showed that additional planning efforts are needed to ensure that vocational education programs address the needs of handicapped students.

The third area of analysis concerned the agency's process of evaluating the special education program. The review showed that the agency does not currently have an on-going effort to evaluate the effectiveness of special education at the state and local level. Their activities are directed primarily at ensuring the provision of services to students by the local school districts.

The fourth area of analysis was then directed at the provision of services that directly affect student development. As a result of this analysis, two problems were identified relating to the decision-making structure developed by the board to be used by local school districts in deciding the educational services to be received by a disabled student. In general, the approach required by the state is more restrictive than either federal requirements or the approaches used by many other states. In addition, the review indicated that the various state and local agencies concerned with providing services to handicapped students and adults are not consistently developing individual students' programs that ensure the transition of special education students into adult life. The review also showed that the current statutory requirement that all TEAMS scores, including those of special education and english as a second language students, be reported publicly in an aggregated form may cause some students who could take the test and benefit from the results to be exempted by the local school district. In certain cases, participation in an activity such as the TEAMS test may be an important component of the process for a student's development, and should not be discouraged for reasons outside of this process.

The fifth area of analysis related to the system of funding used by the agency to provide special education program funds to local school districts. Two issues were identified in this area. The first concerns the agency's system for determining the amount of funds to be received by the school districts for special education students. The system, which is not adopted as a board rule, uses a statewide average of "contact hours" for each type of services received by a student rather than the actual amount of contact hours. The district is then reimbursed on this average rate. Although this system may be appropriate and has reduced paperwork requirements of school districts, it can affect a district's funding and should be considered and adopted by the board instead of being decided at the staff level. The second issue is related to a concern that the agency does not have sufficient methods in place to allow the funding of extended year services. Certain special education students may need a 12-month school program in order to ensure that their abilities do not significantly regress during the usual summer vacation period. The agency's current funding process does not encompass such a program. Recommendations have been adopted to address all the special education issues identified above.

The seventh area of inquiry concerns the oversight of proprietary schools in the state. The Texas Education Agency is responsible for the regulation and certification of such schools. The review considered the entire regulatory structure of the program. The evaluation found that the agency does not have an appropriate range of sanctions available. The current sanctions authorized in statute and used by the agency all result in a school having to cease operations, and certain less drastic sanctions would be effective for some violations of the Proprietary School Act.

Three issues were identified which relate to the relationship between proprietary schools and their students. First, the review showed that schools are not required to provide students with information that would assist them in assessing the effectiveness of a school and its programs. Second, a significant number of proprietary schools are being cited by the agency for failure to make tuition refunds in a timely manner to students who leave the school. Third, there is not a system in place to allow students who need to leave school to return and complete their program.

Another issue identified concerns the composition of the Proprietary School Advisory Commission. The commission is composed of nine members appointed by the board. Four members must be owners or executive level employees of proprietary schools, three members must be public school officials and two must be distinguished citizens of Texas with an interest in vocational-technical training. The commission's responsibility is to provide advice about the regulation of proprietary schools and the current structure does not ensure a necessary balance between technical and general public perspectives in the regulation of the industry.

Another issue relates to the regulation of proprietary school courses in subjects for which a license can be obtained from another state agency. The responsibility for regulation of certain portions of these courses between TEA and the licensing agency is unclear. This area of regulation should be clarified.

One final issue concerns the regulation of certain associate level degree programs offered by proprietary schools. During the review it was determined that confusion and controversy existed regarding the roles of the Texas Education Agency and the Higher Education Coordinating Board in the regulation of associate degree programs offered by proprietary schools. Recommendations addressing these issues on proprietary schools have been adopted by the commission.

The eighth area of inquiry relates to the State Textbook Committee and the textbook selection, distribution, and purchase processes. The Sunset Act directly places the State Textbook Committee under review with a termination date concurrent to that of TEA. The review focused on the need for the committee as well as its structure, responsibilities and activities. Four particular issues were raised during the review relating to the textbook committee. First, the review examined the need for a textbook committee and the statewide adoption process. It was determined that such a process is used in many other states and that the committee serves a needed function in the adoption process.

The second issue examined concerns the structure of the committee. The review showed that the current structure of one general committee to review all books up for adoption does not provide for adequate expert coverage of all subject areas under consideration. In addition, the current structure, time constraints, and the volume of books submitted do not allow for all books to be carefully read and

reviewed. Appointment of subject matter committees will ensure that books are reviewed by those with expertise in that particular subject, and reduce the volume of books to be read by each committee member.

The third and fourth issues relating to the committee concern the composition of and eligibility to serve on the committee. The current statutory requirements do not allow for those outside the public school system to serve on the committee, thus excluding input from those who may have expertise in a given subject area but are not currently a public school teacher or administrator. Further, the current conflict of interest prohibitions prevent experienced and well qualified teachers in the state from serving on the committee for reasons that represent no current conflict of interest. The conflict of interest provisions also do not prevent a teacher from immediately going to work for a publisher after serving on the committee. In addition, there is no system in place to require teachers to notify the state and local school administration of conflicts prior to serving on the state or local textbook selection committees. Recommendations have been adopted which address the four textbook committee issues.

Three issues were identified relating to the textbook selection process. First, an analysis was performed of the prices paid and total expenditures for textbooks purchased by the state. The analysis showed that prices have risen at a rate substantially higher than the rate of inflation over the past ten years. However, Texas is exerting minimal control over the prices it is paying for textbooks.

The second issue relating to the textbook selection process concerns the ability of local districts to select books not on the state adopted list. The current system only allows non-adopted textbooks to be used if they are paid for by the local district and used as a supplement to a state adopted book. Several other states provide additional flexibility for local school districts to select some books not on the adoption list at state expense. The third issue relates to a concern that all districts receive samples of all adopted books even if some of the samples are not needed by a district. Recommendations have been adopted which address the three textbook selection issues.

One other issue concerns the distribution of textbooks to local school districts. The state requires publishers to ship all textbooks to one of several privately owned textbook depositories located in Dallas. The agency then ships the books to local school districts. The review showed that this system may not always be the most efficient method of distribution and a recommendation concerning this issue has been adopted.

The ninth area of inquiry relates to two TEA advisory committees that the Sunset Act places under review with termination dates concurrent to that of TEA. These committees are the Commission on Standards for the Teaching Profession and the Teachers' Professional Practices Commission. The review of these advisory bodies addressed the need for the committees, as well as their structure, responsibilities, and activities.

The review of the Commission on Standards for the Teaching Profession showed that the commission is active and serves a useful function. The commission recommends a set of standards to the State Board of Education for teacher education programs in public and private institutions, and performs reviews of teacher education programs to see if the standards are being met. The commission has been

particularly active in the past year as a result of major changes in the teacher education statutes made by the 70th Legislature.

The review of the Teachers' Professional Practices Commission showed that there is not a continuing need for this commission as a separate body. The commission was created in 1969 to establish a code of ethical practice for the teaching profession and to hold hearings on allegations of violations of the ethics code. The commission adopted an ethics code in 1971 which has recently been updated. The analysis showed that the duties of the TPPC could be handled by the Commission on Standards for the Teaching Profession. However, changes to the composition of the commission are needed to better reflect these additional duties. Recommendations have been adopted which address the issues relating to these two commissions.

The tenth and final area of inquiry relates to the system of General Educational Development (GED) testing set up by board rule and statutory provisions. The review showed that this system limits students ability to take the test while still in school, even for certain students greatly at-risk of dropping out of school. In addition, little or no training for GED tests are provided through the regular school system. Certain changes in this system and the age at which students are allowed to drop out of school could combine to provide an alternative program to keep at-risk students in school longer and provide them with high school credentials. Recommendations concerning these issues have been adopted.

Several of the recommendations contained in the report will have fiscal impacts. The fiscal impacts that can be determined at this time will result in a cost to the state of approximately $8 million. However, certain recommendations are expected to result in significant savings, although the amount of those savings cannot be estimated at this time.

Sunset Commission Recommendations for the
Texas Education Agency

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

1. **The State Board of Education should conduct a study of the University Interscholastic League. The study should:**

   - **be a one-time comprehensive study of the rules, by laws and procedures of the University Interscholastic League;**
   - **include a review of the structure and minority representation of the governing bodies of the UIL; and**
   - **require a report of the results of the UIL to be submitted to the legislature by September 1990.**

House Bill 72 gave the state board the responsibility of approving, modifying or disapproving the University Interscholastic League's rules. At that time the board "grandfathered in" all existing rules. A one-time study undertaken by the state board to review all the current rules of the UIL would help to determine if the current rules, bylaws, and procedures are appropriate and necessary. In addition, the study would include a review of the governing bodies of the UIL to determine if they appropriately represent the various groups affected by UIL operations.

2. **The responsibilities of the Texas Education Agency over extracurricular activities in school districts should be clarified and strengthened. The statute should be changed to:**

   - **give the agency clear authority to approve, modify or disapprove any existing or proposed University Interscholastic League rule;**
   - **give the agency the same rule approval authority for all organizations conducting school sponsored extracurricular activities;**
   - **require the agency to monitor, on a schedule adopted by the state board, school districts' compliance with the rules of organizations conducting school sponsored extracurricular activities; and**
   - **require the agency to take a leadership role to determine how extracurricular activities should be carried out in the state.**

The Texas Education Agency has rule approval authority over the UIL; however, the scope of their authority is unclear. In addition to the UIL there are approximately 150 other organizations that also conduct extracurricular activities. The oversight

of extracurricular activities in public schools in the state is provided by numerous organizations rather than one oversight body. This recommendation gives the agency a clear leadership role as well as providing it with the necessary tools to give uniform direction to extracurricular activities in the state.

3. **The University Interscholastic League should be defined in statute and receive funding for its administrative operations through the appropriations process. These statutory changes would include:**

   - **defining the UIL as a non-profit voluntary organization that is part of the Department of Continuing Education of the University of Texas at Austin; and**

   - **requiring that funding for the UIL's administrative operations would be made available through legislative appropriations. The funds used for the operation of league competitions would continue to be held outside the state treasury.**

The University Interscholastic League was created by the University of Texas at Austin as a voluntary non-profit organization to conduct interscholastic competitions between public schools in Texas. The league is administered by representatives of the member schools and the University of Texas with little or no legislative oversight. This recommendation will establish in statute the status of the University Interscholastic League as a non-profit, voluntary organization and its relationship to the University of Texas. In addition, the league will be subject to the appropriations process for the funds necessary to cover administrative costs. The funds collected to operate league competitions and make the appropriate rebates to participating schools would continue to be held outside the state treasury and would not be subject to the appropriations process. This recommendation would increase the amount of state oversight given to the University Interscholastic League.

4. **An advisory committee should be established in statute to advise the UIL Legislative Council and the State Board of Education on the rules relating to extracurricular activities. The advisory committee would be composed of:**

   - **two state board of education members appointed by the chairman of the board;**

   - **two state legislators appointed by the Speaker of the House and the Lieutenant Governor;**

   - **two UIL Legislative Council members appointed by the chairman of the Legislative Council;**

   - **two current public school board members appointed by the commissioner of education; and**

   - **three at large members, who may be students, parents, or teachers, appointed by the commissioner of education.**

Extracurricular activities governed by UIL rules affect the majority of school districts and a large portion of students in the state. The current process does not ensure that input from the different groups affected by UIL rules and responsible for oversight of the public school system is received. This recommendation would create an advisory committee that is composed of various groups concerned with the activities of the UIL and would provide a mechanism to ensure that their input is received by the state board.

Overall Administration

5. **The statute should be changed to reduce the scope of cases appealable to the commissioner by providing that the commissioner of education hear appeals only from persons with disputes arising under the school laws of Texas or rules adopted by the State Board of Education.**

This change continues the commissioner's responsibility to hear appeals from local school board decisions involving State Board of Education rules or school laws of the state, and appeals from some agency decisions. It also continues the commissioner's responsibility to conduct hearings on detachment and annexation cases. These appeals will include: teacher contract non-renewal, contract termination, demotion/reassignment or other change of employment, career ladder, agency employees' grievances, proprietary schools, and teacher certification. This approach eliminates the commissioner's responsibility to hear appeals that are only interpretations of local school board policy. Grievances or disputes from local boards' policies or decisions will be resolved at the local level, and if a continued disagreement exists with the local school board decision, the decision can be appealed to the appropriate district court for resolution.

The change will reduce the number of appeals received by the division by approximately 15 percent. For example, if this requirement had been in place in fiscal year 1988, there would have been 51 fewer cases filed with the agency. This reduction will thus assist the Office of Hearings and Appeals in resolving the current backlog. Hearings for special education would continue to be carried out by the agency as they currently are.

6. **The agency's statute should be amended to strengthen the structure and scope of the internal audit function by requiring that:**

   - **the internal audit division be organized as recommended by the governor and the state auditor to insure its independence and the assessment of program results. This would include the following:**

     - **the internal auditor would be appointed by the commissioner with the concurrence of the board;**

     - **the internal auditor would report to the commissioner but would have the authority to submit reports directly to the board in situations specified by board rules; and**

     - **the appropriate committee of the board would meet at least quarterly with the internal auditor.**

- **as one of its duties, the internal audit division should coordinate the agency's efforts to evaluate and improve its management information. The state auditor would review the quality and the effectiveness of the process for developing management information as part of his responsibility to conduct expanded scope audits of state agencies.**

The Governor's Office as well as the State Auditor have recognized the importance of internal audit and have recommended that all major state agencies establish an internal audit function that meets the guidelines laid out in Governor Clements' Executive Order WPC 87-18 and the State Auditor's Statewide Report on Internal Auditing. The agency has an internal audit division that operates according to rules set out by the State Board of Education. The internal audit division meets many, but not all of the guidelines relating to independence and scope of responsibilities. In addition, the agency does not have a systematic and planned approach to providing information to manage and evaluate its internal operations. This recommendation requires the agency to modify its internal audit division to reflect the guidelines related to independence and scope of responsibilities. This change would also strengthen the internal auditor's independence and assure the independence would be maintained. Expanding the scope of internal audits would give the agency and the board better information on which to base management and policy decisions. The internal auditor's review of management information would provide that systematic attention be focused on this problem area.

7. **The agency's statute should be changed to require a review of commercially available support activities performed in-house as follows:**

   - **require the agency to initiate the competitive review process for commercially available support activities which are operated by the agency in-house; and**

   - **limit the agency's responsibility for review to one definable activity in the first two years.**

The TEA, like many state agencies, performs certain support activities that are commonly available through the private sector. These activities include, for example: warehousing, printing, and data processing. These activities are located in Austin with an annual budget of approximately $1.5 million. In the last legislative session, a process was established to help agencies determine whether in-house provision of commercially available services was advantageous, based on cost as well as quality, when compared to contracting for those services in the private sector. This process is known as "competitive review" and is modeled after a program which is used by the federal government. In the past nine years of operations, the federal government estimates that this requirement has reduced costs by an average of 20 percent.

This change will require the agency to identify a commercially available support activity (or part of an activity which is definable for bidding purposes), and determine the cost of performing the activity in-house. The agency will modify its costs for the activity to be in-line with those of the private sector if significant differences are found. After the first two years, the agency will be responsible for

expanding the process to other support services. Including the agency in the competitive review process will trigger a systematic review of certain support activities by using a standard decision-making tool to decide whether there are advantages to contracting with private businesses for those services. Limiting the agency's responsibility in the first two years will allow time to adequately develop and refine procedures. While cost savings are expected once the review process is implemented, some initial costs to establish a cost estimate system and a bidding process are likely.

8. **The agency should be required to establish policies to improve the participation of minority owned small businesses in the agency's contracting process. The agency's statute should be amended to:**

   - **require the agency to establish policies which encourage and assist minority owned small businesses in bidding for agency contracts and open market purchases;**
   - **require the agency to make an annual determination of the number, types and value of the contracts awarded to minority owned small businesses;**
   - **require the agency to submit the policies to the State Purchasing and General Services Commission and the Texas Department of Commerce; and**
   - **require the commission to report an analysis of the effectiveness of the agency's policies to the governor, lieutenant governor, and the speaker of the house, prior to each legislative session.**

This change will ensure that the agency's policies are reviewed to ensure that they promote agency contracting with small businesses which are owned by people who have been socially and economically disadvantaged, due to their inclusion in certain groups. These groups include women, black Americans, Mexican Americans and other Americans of Hispanic origin, and American Indians. Requiring policies which assist these businesses will improve their ability to negotiate for the contract work needed by the agency. The Texas Department of Commerce is responsible for promoting minority owned small businesses in Texas and an identification of the state agency policies in this area will be helpful in this effort. Annual information on the extent of contracting with these businesses will allow for an analysis of the effectiveness of the policies. This requirement will also be recommended for the Texas Department of Agriculture and the Higher Education Coordinating Board. This change, along with those recommended for the other agencies, will assist the governor and the legislature in determining the effectiveness of various approaches to encouraging minority small business contracting.

Accreditation and Compliance Monitoring

9. **The statute should be changed to require that the frequency of on-site accreditation inspections of schools are based on school performance as follows:**

- require that all districts be reviewed every six years by either desk review or on-site review, or both;

- require the agency to perform accreditation reviews of districts with poor performance more frequently than districts with high performance; and

- clarify that the agency may waive the "on-site" review of a district which demonstrates exemplary performance, as defined by the board. However, the on-site review may only be waived after an on-site audit of the district's performance indicator reporting practices and publication of a notice to solicit written comments from parents concerning the proposed waiver. Further, the agency must conduct an on-site accreditation review at least every twelve years.

State law requires TEA to conduct accreditation reviews at least every three years and investigate districts more frequently if they are found to be below any accreditation standard. Statutory accreditation standards include quality and performance standards, as well as compliance standards. In practice, the TEA has adopted a standard five-year cycle of on-site accreditation visits. Not adjusting the regular schedule when problems are suspected prevents the agency from focusing its accreditation efforts on correcting certain identifiable problems.

This change will establish the framework for a performance-based accreditation visit cycle. Better focusing of the frequency and scope of the agency's accreditation review efforts based on indicators of educational quality should intensify agency services on problem schools. This will help identify and correct problems within schools while relieving exemplary districts from on-site state inspections. The changes will not prohibit the agency from conducting a site visit to any district. The basic accreditation cycle is changed from three years to a more workable six year cycle. This will provide the agency the flexibility to spread the number of on-site visits required over a slightly longer time frame so that existing resources may be refocused to make more frequent visits to problem districts. The changes incorporate the current flexibility provided in statute to monitor districts more frequently if their operations are below standard. The existing provisions are, however, strengthened by requiring the board to provide direction to the staff concerning the indicators to be used to focus the on-site review efforts. The board would also have the flexibility to define the level of performance it considers exemplary. Requiring that the agency conduct an on-site audit of the district's reporting practices ensures that the school's performance indicators are accurate. Posting a notice in the local newspaper to inform parents how to submit written comments concerning the waiver of on-site inspection ensures that the agency have valuable information from another perspective concerning the school's operations.

10. The statute should be changed to require the board to adopt a set of indicators of educational quality for the agency to use to identify poor performing districts for the accreditation inspection scheduling process, as follows:

    - require that the indicators be developed by an advisory panel which includes members from both the educational and business communities;

- require that proposed indicators be submitted to the Legislative Education Board for comment prior to being finalized;

- require that, at a minimum, the indicators include a comparison of the district's actual performance to a projection of the expected performance and the findings of the agency's most recent compliance monitoring review of the local special education program;

- require that the indicators be adopted by the board by January 1, 1991, and that the board submit a report to the legislature concerning the indicators adopted and the reasoning for each; and

- require the agency to use the indicators for each school district in the state to develop a biennial report to the legislature on the status of education in Texas.

Indicators are currently available to identify districts where a high proportion of students are not able to pass the basic skills test. The agency is developing other measures which can be used to evaluate the quality of learning on an on-going basis without an actual visit to the school. This recommendation establishes an advisory panel of members of both the educational field and the business community to determine which measures most accurately reflect the quality of learning. Such a group will provide a balanced perspective as to the scope of the indicators and the critical factors which should be examined. Submitting the proposed indicators to the Legislative Education Board for comment will provide an additional perspective in evaluating the appropriateness of the measures. Adoption of standard quality indicators through the rule-making process will provide consistency and ensure that districts and the public will have an adequate opportunity to provide input into the indicators chosen. A report to the legislature concerning the indicators chosen will ensure that state leaders will have a clear understanding of the measures being used and the reasoning for each. Finally, an on-going, biennial report is established to provide the legislature with an analysis of the status of education in Texas as measured by the performance indicators.

11. The agency's statute should be changed to reinforce existing parent and teacher comment requirements concerning accreditation reviews by:

    - requiring the board to develop a process, in rule, for the agency to use to solicit parent comments in the accreditation process and describe how those comments will be included in the report;

    - requiring the board to develop a process, in rule, for the agency to use to solicit teacher comments in a manner which is not subject to screening by district personnel; and

    - requiring that a formal district accreditation review should not be considered complete unless comments have been received from parents of students in the district.

The purpose of state accreditation is to ensure that every school district maintains certain levels of quality in its operations and makes constant efforts toward improvement. The agency uses several sources of information in its evaluation including: standardized test scores, school planning and curriculum documents, student records, observation of classroom teaching, and interviews with administrators and teachers. State law requires the agency to obtain information during the accreditation review from parents of students in the district, as well as school administrators and teachers. Agency rules also contain this requirement.

The review indicated that despite the requirements, the agency is not consistently gathering information from parents as part of the accreditation process. In addition, testimony indicated that information from teachers is not collected in a way that ensures teachers are free to offer comments without district screening. It is particularly important for the agency to use all sources of information that can assist in the evaluation of the educational quality of the school due to the short time allocated for each accreditation review.

The changes recommended will strengthen the requirement for considering parent and teacher input in the accreditation process. Providing that the review may not be considered complete without parent comment will ensure that no final report is issued without such information. This emphasizes the importance of the perspective of parents in the evaluation of schools and strengthens the current statutory requirements. The board will develop a standard process to receive written or oral comments. The statute will not specifically require a personal interview or public hearing. Adopting the process through rule-making will provide for public comment to ensure that the process is workable for parents, teachers, and district staff.

12. **As a management directive, the agency should consider requiring districts to document resolution of problems identified in compliance monitoring visits by requiring districts to submit evidence of full compliance with all cited discrepancies upon completion of corrective action plans.**

The agency's compliance monitoring reports often require districts to submit plans for implementation of corrective action as well as a time-line for implementation. Submission of this plan usually results in the case being closed and districts are not always required to submit further evidence of full implementation and compliance. This management directive would lessen the possibility of districts not following through on corrective action plans and would allow the agency to track the timeliness of districts' compliance efforts. Although the agency currently receives assurances from district superintendents indicating an intent to comply, this policy would provide the agency with an assurance that compliance has been achieved. The agency should have the option of determining what constitutes full compliance.

13. **The agency's statute should be changed to increase the special education compliance monitoring effort by:**

    - **requiring the agency to conduct compliance reviews of special education programs at least every three years;**

    - **requiring the board to develop a process, in rule, for the agency to solicit parent comments in the special education compliance monitoring process and describe how those**

comments will be included in the report. The agency should not consider a formal compliance monitoring report of a special education program to be complete unless comments have been received from parents of students in the program; and

- clarifying that the agency may vary the scope of the visit to the extent appropriate.

The federal government holds the TEA responsible for ensuring that local special education programs throughout the state operate in compliance with federal requirements. For many handicapped students, these programs are the only form of education available to the student. Federal requirements concerning special education are complex and non-compliance with federal requirements is often the subject of complaints and due process hearings. In recent years, the agency has changed the monitoring cycle for special education from three years to five years. A change back to more frequent compliance efforts appears necessary at this time.

Changing the monitoring cycle for special education programs to a three year cycle will increase assurances that local special education programs operate in compliance with federal requirements and will make the cycle consistent with the requirement in law that bilingual education programs be monitored every three years. Continued follow-up efforts to local districts with serious discrepancies will assist those that are having difficulty bringing their program into compliance.

To avoid potential over-monitoring of high quality programs, the recommendation allows the agency to vary the scope of the monitoring review, as appropriate. Requiring the agency to solicit and receive comments from parents of students in the special education program before finalizing a compliance monitoring review will ensure that this important resource of information is considered in the review. Board adoption of procedures for requesting and reporting information from parents will encourage the development of a uniform and workable approach. Increased compliance will help strengthen the special education program. The three year monitoring cycle will fit easily into the six year accreditation cycle being proposed in another recommendation.

14. As a management directive, the agency should notify the public of its activities with regard to accreditation and compliance monitoring. Specifically, the agency should:

    - establish a process to notify the general public that an accreditation review is being conducted and how the public can submit comments for consideration in that review; and

    - send a notice to major local newspapers when reports concerning the district's accreditation or compliance monitoring reviews become available.

Accreditation reviews examine many aspects of a school's operations. The change recommended will ensure that the general public that lives in the school district has an opportunity to add their perspective in the accreditation review process.

Accreditation and compliance monitoring reports can provide valuable information to the public as to the strengths of the local school district as well as the areas which need improvement. While the reports are subject to the Open Records Act, many people are not aware of their findings and occasionally only the favorable findings reach the public. Notifying the local press, directly, of the availability of the agency's report and how to request a copy will help increase the public's access to the information.

15. **The statute should be amended to improve State Board of Education oversight of regional education service centers by requiring that:**

    - **the Texas Education Agency conduct an evaluation of the quality of core services delivered by each of the regional education service centers once each fiscal year;**

    - **the State Board of Education review the results of the evaluations at least once every six years and make a determination as to the continuance, need for consolidation and reorganization of the service centers; and**

    - **the Texas Education Agency conduct management and service audits on a six-year cycle rather than on a five-year cycle.**

The agency currently conducts management and service audits of each regional education service center once every five years. The State Board of Education also recently adopted rules requiring an evaluation of each service center's effectiveness. The evaluation includes elements of quality such as timeliness, cost-effectiveness, and availability of the service as well as the long-term utility, usefulness, and effectiveness of the service. The requirement for the evaluation should be made a statutory requirement in order to ensure that evaluations of service center effectiveness continue to occur. This change will also ensure that the board actively considers the validity of the service center system on a regular basis and decides whether changes are needed.

Teacher Certification and Appraisal

16. **The statute should be amended to require the State Board of Education to develop a plan to systematically evaluate the Texas Teacher Appraisal System in the following manner:**

    - **require the State Board of Education to develop a policy for evaluating the effectiveness of the Texas Teacher Appraisal System; and**

    - **require that the policy include provisions for the agency to monitor the system and propose modifications to the state board on a biennial basis.**

Such a policy should identify an approach for collecting appraisal scores and other relevant data, evaluating system reliability, and conducting research on the impact of the TTAS. Though agency staff indicates a management plan is being developed

and some improvements have been made, a plan for systematically evaluating this important process and recommending improvements has not been put in place. Establishing a policy to regularly evaluate the Texas Teacher Appraisal System will help TEA staff identify problems and ensure that the State Board of Education's attention is systematically focused on possible solutions.

17. **The Texas Teacher Appraisal System should be modified in statute to ensure the objectivity of appraisers as follows:**

    - **require that at least one appraiser be from a different campus than the teacher being appraised;**
    - **provide for an exception to the above requirement when a district's circumstances make it impractical to comply; and**
    - **require the board to determine, in rules, appropriate guidelines for determining when such a requirement is impractical.**

Most teachers receive two or more appraisals each year. Currently the teacher appraisals are conducted by two appraisers, one being the teacher's supervisor and the other being approved by the local board of trustees. This recommendation would require schools to use an appraiser from off-campus to ensure greater accuracy and objectivity in the appraisal process.

18. **As a management directive, the teacher appraisal instrument should be broadened to include student performance as one of the elements in evaluating a teacher's performance.**

The statute currently requires teacher appraisals to be based on observable, job-related behavior, including teachers' implementation of discipline management procedures. The instrument developed by the agency includes appraisal of: instructional strategies, classroom management and organization, presentation of subject matter, learning environment, and professional growth and responsibilities. Including actual student performance as a component of the teacher appraisal instrument would provide a more complete view of teacher performance and increase the accountability and quality of the educational system.

19. **The statute should be changed to require recertification of teacher appraisers every three years or when substantial changes are made to the appraisal system.**

Appraisers are required to demonstrate their proficiency on only one occasion, at the time of their original certification as appraisers. Although update training is provided, recertification is not required, and thus an important quality control measure in the appraisal system is lacking. Recertification will provide an opportunity to check the competency of appraisers and hold appraisers accountable to a level of proficiency important in maintaining consistent appraisals throughout the state. Recertification would require appraisers to regularly review and identify the current standards being used, thus improving appraiser performance in the local districts. Recertification would also help identify weaker appraisers and provide an opportunity for remediation. In general, it is expected that the overall reliability of the system would be increased through recertification and testing.

20. **As a management directive, the state board should take the following actions to improve the development of the certification exam for teachers of the hearing impaired:**

- **ensure that future exam development include input from deaf education experts outside the state of Texas and prelingually deaf teachers of the deaf, hearing teachers of the deaf, and professional organizations;**
- **require pilot use of the examination to assure lack of bias; and**
- **consider providing extensions to the one-year temporary certificate for prelingually deaf educators on an emergency basis.**

Passage of a teacher certification examination is required by state law in order for a person to teach in his or her selected teaching field. Prelingually deaf educators who are teaching for the first time, or who have taught in other states, are currently having difficulty passing the EXCET test for teaching the hearing impaired. The examination requires knowledge of speech therapy, speech pathology, auditory training, auditory testing, diagnosis of speech problems, and the teaching of listening skills. Since deaf educators, especially the prelingually deaf, do not have hearing experiences, it is difficult for the deaf educator to relate to auditory functions and speech disorders as a hearing educator does.

The recommended changes would provide needed improvements to the methods of developing the certification exam and the exam itself while improving the fairness of the exam for the prelingually deaf seeking certification in this area.

21. **As a management directive, the agency should examine methods for increasing regulation of substitute teachers.**

Currently, there are no regulations in place related to the use of substitute teachers in public schools. Responsibility for screening and hiring substitute teachers lies solely with the local school district. Substitute teachers are not required to be certified as an instructor or evaluated through the TTAS. A more active role in regulating substitute teachers by the state board could help ensure that students receive the most competent and safe instruction when circumstances prevent the use of certified teachers.

22. **The statute should be changed to make it clear that an alternative certification program need not be contingent upon a teacher shortage.**

The alternative certification process has been fashioned as a teacher shortage program by State Board of Education rule. The statutory provisions that established the alternative certification route do not require the demonstration of a teacher shortage. Opening the process further should encourage additional participation in the program by school districts and allow the districts to take further advantage of qualified, mature professionals interested in teaching.

23. **The statute should be changed to require the State Board of Education to set standards for the overall performance of a teacher education program's students on the certification examination and sanction schools that do not meet those standards.**

The state board currently has the authority to sanction teacher education programs. Currently available sanctions include placing a teacher education program on probation for up to 24 months, or revoking the program's accreditation. This recommendation would have the state board set a passage standard that the schools of education are expected to meet. This passage standard would require that a certain percentage of a school's students are expected to pass their certification examinations. Schools that fall below this standard would be sanctioned by the State Board of Education.

Special Education

24. **The statute should be changed to set out the following requirements concerning the decision-making process of the Admission, Review, and Dismissal (ARD) committees:**

- **establish the ARD committee in state law;**
- **clarify that decisions concerning the Individualized Education Plan (IEP) should be based on a mutual agreement between the school and the parent, whenever possible. If mutual agreement is not possible, a statement of the basis for disagreement must be attached to the ARD committee report;**
- **prohibit the use of voting to reach decisions concerning the IEP; and**
- **direct the state board to develop procedures, in board rules, for appropriate methods to reach decisions in the ARD committee when mutual agreement is not possible.**

Federal law entitles all handicapped children to be educated according to an Individualized Educational Plan (IEP). The IEP is developed and revised by a committee of people knowledgeable about the student's needs and capabilities. Federal law leaves flexibility in terms of who will participate in the committee. While there are no federal requirements as to how the committee reaches decisions, official interpretations issued by the U.S. Department of Education specify that parents are to be equal participants in deciding what services will be provided to the student and generally encourage decisions through mutual agreement.

The TEA limits the flexibility provided in federal law as to who will participate in the committee process and how decisions will be reached. For the past several years, state board rules have required committee decisions to be made through a voting process and specified who can vote. No state, other than Texas, requires members of the committee to reach decisions on the IEP by voting.

Parents testified to the commission that the concept of voting along with the high ratio of district personnel that participate in the committees, sets an adversarial

tone in some meetings. During the commission's review, the state board made modifications to this rule to remove the term "voting" but retained the requirement that decisions be based on a majority of specified committee members.

The change recommended attempts to reduce the adversarial nature of the ARD committee process which has developed in Texas over the past few years by encouraging decision-making through mutual agreement and prohibiting voting on the IEP. In committees that find it impossible to reach mutual agreement, a statement of the disagreement will be attached to the committee report. The right granted by federal law for the student and the student's parents to appeal committee decisions with which they disagree will not be affected by this change. Guidance from the state board as to how to reach decisions when mutual agreement is not possible will ensure that reasonable, productive and consistent methods are used, statewide.

25. **Establish the Continuing Advisory Committee for Special Education in statute, and:**

    - **require that the composition of the advisory committee be consistent with federal law;**
    - **require that the committee have all the duties set out in federal law and that the committee also be responsible for advising the State Board of Education on the development of the state plan required by state law;**
    - **require that the committee solicit input from local advisory committees in relation to advising the board of unmet needs in special education; and**
    - **clarify that the committee is advisory to the board and the commissioner and that members are appointed by the governor for two year terms.**

Federal law requires each state to establish a special education advisory committee to advise the state education agency on unmet needs, and to review and comment on the state plan for special education, as well as state fund distribution plans and policies relating to special education. In Texas, this committee is the Continuing Advisory Committee for Special Education which is established by state board rule. While the committee is active, it does not appear to be serving as a focal point for public participation in special education planning as in contemplated by federal law and state rule. Also, there is no mechanism in place for the state advisory committee to receive and pursue concerns identified by local advisory committees. A long range plan with programmatic content for special education, similar to the long range plan developed by other TEA programs, is not available.

The changes recommended will better focus the activities and responsibilities of the committee. Clarifying that the committee is advisory to the state board and that the committee is to solicit input from local special education advisory committees reinforces the committee's role in advising the state in planning for the special education program. Having the governor appoint the committee is consistent with federal law and strengthens the committee. The state board should review its existing rules concerning the reporting requirements and duties of the committee to determine whether modifications are needed to effect the changes set out above. As

part of that review, the board should examine whether a separate state plan for special education, like that developed for vocational education, is needed to meet the intent of the requirement in state law and better set out the focus and future direction of special education in Texas. Assisting the board in developing a similar plan for special education would provide useful direction to special education in Texas and would be consistent with the mission of this committee.

26. **As a management directive, the state board should change the rules requiring local special education advisory committees to make them more effective. These rule changes should specify that:**

    - **less than 50 percent of the local advisory committee members should be school district personnel;**
    - **the chairman of the committee should not be a school district representative;**
    - **the committee should report to the superintendent of the school district;**
    - **the local advisory committees should be required to file an annual report with the state special education advisory committee; and**
    - **other requirements for the operation of effective local special education advisory committees, as determined necessary by the board.**

State board rules require each special education program to establish a local special education advisory committee to provide for public participation from those in the community who are concerned about special education. The rules do not specify the composition of the committees and there are no provisions in state or federal law concerning the local committees. The change proposed would encourage the state board to further clarify the composition of the committees and reporting requirements. Clear direction in these areas will ensure that effective local advisory committees exist for all special education programs.

27. **The statute should be amended concerning TEAMS testing for special education students to:**

    - **clarify that the scores of handicapped and English as a second language students may be disaggregated from those of non-handicapped students for the purposes of public reporting and campus and district comparisons; and**
    - **require that the board develop guidelines, as rules, to be used by ARD committees to determine whether a special education student should be exempt from TEAMS testing.**

House Bill 72 reforms began a program to evaluate all students on basic academic skills through a testing program commonly referred to as TEAMS (Texas Educational Assessment of Minimum Skills). The statute requires the agency to

compile overall student performance data and report it, with appropriate interpretations, by campus and district to local school boards and the legislature. Under this requirement the agency reports the aggregate scores of all students who took the test. The TEAMS test results are widely used to measure district performance. A detailed analyses used in the accreditation process, statewide analyses and district rankings all tend to use district-wide total scores of all students, including special education students and those in bilingual classes.

As a major tool for evaluating student and school performance, it is important that TEAMS be useful. The above changes will remove a concern that has arisen as scores are used increasingly to evaluate districts. They will also encourage more consistency in how districts use the exemption provisions currently in state law. Clarifying that district performance rankings may be based on scores which exclude the scores of handicapped students should eliminate a significant reason for exempting students that could otherwise benefit from the testing program. In a similar manner, allowing TEA to consider the scores of students with limited English proficiency separate from other students for performance evaluations and rankings will ensure that districts with a high concentration of these students will not be ranked poorly, because of their scores.

28. **As a management directive the board should consider reviewing and adopting, as rules, a system using average contact hours for special education funding.**

State law sets out a method of funding for special education which is based on the number of full-time equivalent students that attend the various types of special education classes. Due to the extensive reporting required to record individual hours for students, the agency developed a process which assigns contact hours based on statewide averages for the various types of classes. However, this process has not been adopted as formal rules of the agency.

Using statewide averages as a basis for special education funding can substantially affect the funding of districts, especially those with practices that do not mirror the statewide average. Such decisions are generally adopted through the rule-making process of an agency board. The data on which the current average contact hours are based has not been updated recently to determine whether local practices have changed.

Having the board set forth any average contact hour funding system in rules will ensure that all school districts and the public have an opportunity to comment on the potential impact. Guidelines provided by the board should address the methods to be used to update the average contact hours and how often they should be reviewed and updated.

29. **Transition planning should be required for every special education student age 16 and over. The statute should be changed to:**

    - **require that a memorandum of understanding concerning transition planning in public schools be developed and maintained between the Texas Education Agency, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission by September 1, 1990. The Texas Department of Human**

Services, Texas Department of Health, Texas Commission for the Blind, Texas Commission for the Deaf, Texas Employment Commission and other state agencies should be asked to participate in the memorandum, as needed;

- require local school districts to develop and update, as needed, a transition plan for each special education student age 16 and over;

- require all agencies that are a party to the memorandum of understanding to participate in transition planning on the request of the school district.

Many special education students currently receive services from public agencies after public school such as vocational training, institutional care, and public financial assistance. However, there are currently no specific requirements for schools to coordinate with other agencies to prepare the students for life after public school.

The changes would require the TEA and other appropriate state agencies to develop an agreement as to how interagency planning can best be accomplished to ensure that special education students make a successful transition into adult life. Districts would be required to start transition planning when the student reaches age 16 and update the plan as needed. Other agencies will be included in the planning process as determined appropriate for each individual student. Long term planning for the transition from school to adult life has been shown to have many benefits. It will ensure that educational resources focus on developing skills which will be useful to the student as he or she leaves school. The agencies which may provide services to the student as an adult will be able to make adequate preparation for the student so that little, if any time, need be lost in the transition. Adequate transition planning can reduce the cost to the state for long term services to handicapped adults by making rehabilitation efforts more effective through interagency coordination and planning.

30. The statute should be amended to require the agency to evaluate the effectiveness of special education in preparing students for life after public school and report its findings and recommendations to the legislature in January 1991. This evaluation should examine:

    - the effectiveness of special education services through the state;

    - methods to monitor the effectiveness of local special education programs; and

    - whether accountability measures, like a modified skills testing program or modified essential elements, can be implemented with special education programs.

The agency does not currently have an on-going effort to evaluate the effectiveness of special education at the state or local level. The change proposed would provide an evaluation of the effectiveness of special education as well as a review of methods which can be used in the future for an on-going evaluation of special education at a

state and local level. Providing the results of this evaluation to the legislature will give them useful information to judge the need for policy changes and resources in this area.

31. **As a management directive, the state board should develop mechanisms which would allow state funding of extended year services for special education students who need 12-month schooling.**

Foundation School Program funds are provided to school districts on a basic allotment which relates to the cost of educating a student for the standard nine month school year. A recent court decision indicated that handicapped students are entitled to extended year services if, due to their handicap, they would suffer serious regression of skills over the summer break. However, there is no mechanism which allows districts to receive state funding for this extended service. Therefore, these services are currently provided through local funds.

32. **The statute should be amended to require a memorandum of understanding between TEA and the Department of Human Services, adopted as rules of both agencies by September 1, 1990, to clarify and assign financial responsibility for the provision of the classroom space and related therapies for students who reside in ICF-MR facilities, consistent with federal Medicaid policy.**

Intermediate care facilities for the mentally retarded (ICF-MR facilities) are funded by the federal Medicaid program. Federal regulations state that educational and related services required in the student's Individual Educational Plan are the responsibility of the school district and are exempt from reimbursement through Medicaid. The TEA adopted rules that specify that some of these services are the facilities' responsibility. For example, TEA rules require that an ICF-MR facility provide appropriate classroom space when the student must be educated in the facility. Medicaid specifically excludes reimbursement for this. Also a TEA rule sets out the general responsibility of the ICF-MR facility to include such services as physical therapy, speech therapy, occupational therapy, psychological services, training and habilitation services. Medicaid excludes these services from funding if they are required in the student's IEP or provided in the school day.

The change proposed would require DHS, as the state Medicaid agency, and TEA to study this issue along with Medicaid regulations, and come to an agreement in these areas. The DHS will act as lead agency in developing the MOU. The requirement that the agreement be formalized in rules will increase school district and ICF-MR facility awareness of the agreement and ensure both have an adequate opportunity to comment on the agreement's contents.

33. **The statute should be changed to establish the following requirements concerning early childhood intervention programs for children birth to age three. The agency should, to the extent consistent with federal law:**

- **adopt, by reference, the Early Childhood Intervention (ECI) Council's rules and regulations for all children birth to age three enrolled in both ECI and Chapter 1 programs; and**

- **allow compliance monitoring for Chapter 1 funds to ECI programs to be conducted at the biennial ECI monitoring visit by the interagency team that monitors ECI regulations.**

The ECI Council was created by the legislature as a joint council of three major agencies and the private sector, to oversee, coordinate, and provide services to young children with developmental delays and their families. The TDMHMR and DHS have adopted ECI rules concerning ECI programs they fund and regulate. However, TEA has not. This means that programs that receive federal Chapter 1 funds from TEA must meet a separate set of guidelines. Also these programs are currently monitored by ECI interagency monitors biennially, and by TEA Chapter 1 monitors every five years. Requiring the TEA to coordinate its monitoring with the ECI Council and adopt standard ECI rules for ECI programs accepting Chapter 1 funds, to the extent allowed by federal law, will streamline the regulatory requirements of these programs and ensure that the monitors are familiar with the special orientation of ECI programs.

34. **As a management directive, the agency should change its requirements concerning children who are eligible for early childhood intervention services and Chapter 1 funding, as follows:**

- **the agency should provide for non-categorical labeling of children birth to age three; and**

- **the eligibility requirements for Chapter 1 funding to ECI programs should be expanded to include students in state supported private, as well as public, programs.**

The TEA regulations for ECI programs that receive Chapter 1 funds require the program to report the number of children they serve by handicapping condition. It is difficult to accurately determine the degree and type of disability in a child under the age of three years. In addition, labels associated with a child at that age are difficult to remove and unnecessary for program funding. Some states already use non-categorical terms to identify the types of children served by ECI programs. Such a change would allow programs the flexibility not to formally diagnose these young children solely for the program to receive Chapter 1 funds.

The second change addresses a concern that the agency limits eligibility for Chapter 1 funds to "public" ECI programs. This can create an inequitable situation. For example, a child in a state funded private program cannot receive funded services. However, the same child would receive funded services in a public program, such as one operated by a school district or MHMR center. Both types of programs are

accountable for the same standards so the programs do not differ in quality. This change would allow all programs which receive state funding through other sources to apply for Chapter 1 funds.

35. As a management directive, the agency should make the following changes concerning visually handicapped students who are eligible for ECI services:

    - the Admission, Review and Dismissal Committee for visually handicapped students who need early childhood intervention services should include a representative of the local ECI program; and

    - state funds for services to visually handicapped students who are placed in an ECI program should follow the child.

There is a separate state program for visually handicapped students under the age of three. However, ECI programs are available in some areas which can appropriately serve visually handicapped infants and toddlers. This change would ensure that the local ECI program is considered for these children and that funding can flow to the ECI program if that program is considered most appropriate.

36. As a management directive, the state board should establish a policy statement that one of the focuses of planning vocational education programs should be to ensure that appropriate training is available to handicapped students to prepare them for employment after public school.

The statute requires the State Board of Education to develop, and update annually, a master plan for vocational education. Generally, the focus of the planning is to ensure that all students have an opportunity to participate in vocational education. This change would encourage the state board to adopt a policy statement which clarifies that one of the focuses of the master plan will be to develop and maintain appropriate training opportunities for handicapped students.

37. As a management directive, the agency should establish a method to inform school districts of provisions for districts to contract with residential treatment centers for educational services and promote effective models for such contracting.

The Texas Education Code currently authorizes school districts to contract for educational services with private schools and residential treatment centers. School districts in some parts of the state contract for these services to a limited degree. This option could be more effective and economical than the most usual practice of district personnel providing services within the facility. This change would ensure that districts are aware of the possibility of contracting for these services, how it can be done to the benefit of both parties, and the potential benefits available.

38. The statute should be changed to authorize the position of "school social worker" to be paid based on the minimum compensation schedule in the Texas Education Code.

The Texas Education Code (Section 16.056) sets out the minimum salary schedule for school personnel. This list does not include the position of "school social worker".

The commission heard testimony which indicated that some schools may not employ school social workers because of this omission. The change would add the position to the list and clarify that Foundation School Program funds may be used for such positions.

39. **As a management directive, the agency should clarify that social work services may only be provided consistent with state law concerning the regulation of social workers.**

State law requires that the term "social work services" be reserved for services provided by certified social workers. The Texas Education Code lists social work services as a related service to be provided in special education programs. The state board has considered adopting rules which would authorize the provision of social work services by professionals other than social workers (such as school psychologists). The change would encourage the board to ensure that social work services are provided consistent with the requirements in state law for social work certification.

Proprietary Schools

40. **A broader range of sanctions should be available to TEA for enforcement of the Texas Proprietary School Act. The statute should be amended to:**

- **authorize the agency to suspend a proprietary school's enrollment of new students for violations of the Act; and**
- **authorize the agency to file civil suits through the Office of the Attorney General with penalties up to $1,000 per day for violations of the Texas Proprietary School Act. Revenues generated from the collection of civil penalties should be deposited to the General Revenue Fund.**

Most regulatory agencies are authorized to use a range of sanctions that can be applied depending on the seriousness of a violation. The current array of sanctions available to TEA for enforcing the Proprietary School Act are either too severe to deal with most violations or are difficult to implement and have not been used by the agency. This recommendation will provide TEA with a broader array of sanctions that will more appropriately address the types of violations common to TEA's regulation of proprietary schools. The ability to suspend enrollments will provide the agency with an enforcement tool that is less drastic than injunctive relief or revocation of certification, the sanctions currently available to TEA. Including civil penalty provisions provides the agency with an enforcement tool similar to other regulatory agencies. The setting of the fine at a maximum of $1,000 per day provides a significant deterrent to violations, while not depriving students of the educational opportunity which would occur through closing a school by revoking its operating certificate.

41. **The statute should be amended to require that proprietary schools provide all prospective students with information on the school's placement/employment rate of former students.**

Proprietary school students are not always provided with information necessary to make decisions about the effectiveness of a school or the success of its past students

in the job market. This recommendation will give students information they need to make an informed decision on the quality of the program offered by a school. Information on the placement/employment rates of former students would provide an indication of potential employability. This information is either currently kept by most schools or will be compiled for the statewide labor market survey.

42. The statute should be amended to strengthen student tuition refund policies for proprietary schools as follows:

    - require proprietary schools to pay interest on late student tuition refunds in the following manner:

        - if a refund is not made within the allowable 30-day period, the student must also be paid interest by the proprietary school, in addition to the full refund that is due;

        - the level of interest should be determined by the commissioner of education on an annual basis at a level sufficient to provide a deterrent to the retention of student funds;

    - require that the agency include an evaluation of compliance with this provision during all annual reviews of proprietary schools; and

    - provide that if a school demonstrates a good faith effort to refund a student's tuition, but has been unable to locate the student, the school will be exempt from paying interest on the refund. Schools must provide documentation to the agency, upon request, demonstrating their efforts to locate the former student.

The Texas Proprietary School Act outlines the conditions for which a proprietary school student is eligible for a partial or full refund of tuition. The law also requires that refunds will be made within 30 days of the effective date of the student's termination. A significant percentage of proprietary schools are being cited for failure to make tuition refunds in a timely manner. Requiring a school to pay interest on late refunds will give schools an incentive to refund a student's money within the statutory time requirement. Students will benefit from this recommendation because they will be receiving their refund in a more timely manner, as well as direct compensation if it is late.

43. Proprietary school students who withdraw from school should be allowed to return to finish the uncompleted portion of their coursework. The statute should be amended to:

    - require proprietary schools to allow students that withdraw for non-academic reasons to receive a grade of incomplete if the student withdraws during the last quarter;

    - require students to request a grade of incomplete prior to leaving their school program and demonstrate appropriate

reasons for being unable to complete their course requirements;

- allow students a period of twelve months to re-enroll and complete the unfinished portion of the program that the student originally enrolled in; and

- require proprietary schools to notify current and future students of this option.

Currently, there are no statutory provisions which require proprietary schools to issue grades of incomplete under any circumstances. Proprietary school students are reimbursed for partial tuition costs if they withdraw prior to completing 75 percent of their course work. Beyond that point, students are no longer eligible for tuition refunds nor are proprietary schools required to issue grades of incomplete. This recommendation will provide proprietary school students with an option similar to the policies in most post-secondary institutions, permitting students to receive a grade of incomplete for non-academic reasons. The difference will be that proprietary schools will only be required to issue a grade of incomplete if a student withdraws during the last quarter of the school program, since students receive tuition refunds for any uncompleted portion of their course work prior to the last quarter.

44. **The composition of the Proprietary School Advisory Commission should provide a balance between people involved in vocational-technical training and the general public. The statute should be amended to:**

    - **require that the Proprietary School Advisory Commission have the following composition:**

        - **four owners or executive level managers of proprietary schools, as is currently required;**

        - **four public members having no direct connection with vocational-technical training;**

        - **one representative of public schools; and**

    - **provide that the current advisory commission members be allowed to serve the remainder of their current terms of office.**

The commission's responsibility is to provide advice about the regulation of proprietary schools. However, the current structure does not ensure a necessary balance between technical and general public perspectives in the regulation of the industry. The recommendation will ensure that the composition of the commission provides for a balanced perspective between people with expertise in the field of vocational-technical training and members of the general public with no ties to the vocational field, while continuing to provide for input from the public school community. This recommendation will not affect other existing compositional requirements set out in the statute.

45. The statute should be clarified as to the degrees authorized to be used by proprietary schools. The statute should be amended to:

- clearly specify the authority of the Coordinating Board to approve AAA/AAS degrees. The board would have no authority over degrees approved by TEA;
- no AAA/AAS degree programs shall be approved by TEA after January 1, 1989 and any new programs would be regulated by the Coordinating Board;
- all proprietary school AAA/AAS degree programs approved and regulated by TEA prior to January 1, 1989 will continue to be regulated by TEA for a period of four years from the effective date of enactment of this legislation, after which time regulation will go to the Coordinating Board;
- any student enrolled in an AAA/AAS degree program offered by a proprietary school at the time that the four-year period expires will be grandfathered under the requirements established under TEA's regulation;
- authorize TEA to approve for use by proprietary schools the degree title "Associate of Applied Technology" or variations of this title which can clearly be distinguished from AAA/AAS degree titles; and
- require TEA to consult with the Coordinating Board on any new associate degree titles to ensure that titles used by TEA are distinctly different than those authorized by the Coordinating Board.

The Associate of Applied Arts and the Associate of Applied Science degrees are being offered by both proprietary schools, which are regulated by TEA, and public community colleges, which are regulated by the Coordinating Board. The authority to approve degree titles is statutorily placed under the jurisdiction of the Coordinating Board. There are significant differences between the AAA/AAS degree programs offered by community colleges and proprietary schools in terms of academic course requirements and the transferability of those courses. The current state policy does not provide, however, a mid-range of degrees which are more than a proprietary school certificate, but have less requirements than a community college degree. This structure would create a mid-point between certificates and community college associate degree titles. It will allow proprietary schools to continue to offer advanced programs and will provide an appropriate title for those programs. Proprietary schools who wish to offer AAA/AAS degrees in the future can do so if they meet Coordinating Board requirements.

46. The statute should be amended as follows to clarify the role of TEA in the regulation of courses partially regulated by state licensing agencies:

- state agencies that issue a license for the practice of an occupation which elects not to regulate course hours that exceed the minimum education requirements necessary for the issuance of a license shall enter into a memorandum of understanding with TEA for the regulation for those course hours;

- the approval of courses by the licensing agency prior to entering a memorandum of understanding with TEA is effective until that course is reviewed by TEA; and

- the licensing agency may terminate the memorandum of understanding at any time, upon notice to TEA.

Many state licensing agencies have minimum course requirements specified in their statutes. The Proprietary School Act exempts from TEA regulation "a school which is otherwise regulated and approved under and pursuant to any other law of the state." These two policies have resulted in a gap in regulation of those course hours that exceed the minimum course requirements which may not be regulated by the licensing agencies nor by TEA because of the exemption in the Proprietary School Act. This recommendation will direct TEA to regulate that portion of courses that exceed a licensing agency's minimum education requirements if the licensing agency chooses not to regulate those course hours. This will ensure that all proprietary school courses are fully regulated and approved either by the licensing agency or by TEA.

Textbooks

47. The statute should be amended to continue the State Textbook Committee without a separate sunset date.

The State Textbook Committee assists the State Board of Education in selecting a list of textbooks for use in schools across the state. Unless continued by law, the committee will be automatically abolished on September 1, 1989. The adoption of this recommendation will provide for the continuation of a committee that performs a necessary function for the state board. Even without a specific sunset date for the committee in statute, it will continue to be reviewed every 12 years as part of the sunset review of the Texas Education Agency.

48. The statute should be amended to require the State Board of Education to appoint subject area textbook committees as follows:

    - require that the State Textbook Committee be composed of independent subject area textbook committees;

    - specify that each independent subject area textbook committee have final responsibility for recommending to the board a complete list of textbooks which it approves for adoption in its subject area;

    - authorize the board to determine the number of committees needed based on the number of subject areas up for adoption; and

- **authorize the board to set the number of members per committee within a range of 7 to 15 members per committee. The size of the committee would depend on the range of books being called for in a particular subject and the anticipated number of books to be reviewed.**

The State Board of Education currently appoints one 15-member textbook committee to review all books up for adoption in a given year. This does not provide for adequate expert coverage of all subject areas under consideration, and the volume of books to be reviewed can not be carefully read. The adoption of this recommendation would result in six to ten individual subject area committees. Each committee would focus on one subject area in which all of the members have expertise. The changes will increase the number of committee members from 15 to approximately 90. This will reduce the workload for each committee member to an average of between 20 to 40 books in one subject area, rather than 200 books in 10 different subject areas.

Members will be able to carefully read and review all of the books they are responsible for reviewing and making recommendations on. There should no longer be a need for members to appoint a number of advisors to assist them in reviewing the books. The members could continue to obtain advice, but on a less formal basis. Members will be in a better position to evaluate advice they receive because it will be on books in their area of expertise and on books which they have carefully read. Overall, these changes should result in a more thorough, focused review of the books being considered for adoption. This, in turn, should help to ensure that only high quality books are selected for use by students in schools throughout the state.

49. **The statute should be amended to require that at least two members of each subject area committee of the State Textbook Committee be persons from outside the public school system who are recognized for their expertise in the subject fields for which adoptions are being made.**

The statute currently specifies that all members of the State Textbook Committee be employees of the Texas public school system with a majority being classroom teachers. While the perspective of public school teachers and administrators is critical to the process, limiting the representation to this group excludes the appointment of qualified experts from outside the public school system, including university professors and people employed in the private sector who are experienced practitioners in subject areas up for adoption. This change will maintain the requirement that a majority of the members be classroom teachers while providing for the inclusion of people from outside the public school system who are recognized authorities in the subject area for which books are being considered.

50. **As a management directive, it is recommended that TEA evaluate ways to improve the techniques for selecting textbooks for use in Texas schools.**

The selection of textbooks in Texas is primarily determined by two processes. The first is the development of the proclamation, or request for textbooks. This document provides guidelines for publishers as to what TEA expects the textbooks to cover, focusing primarily on inclusion of the essential elements for that subject and grade level. The second process is the evaluation of books by the State Textbook Committee. The committee currently uses a variety of different techniques to

evaluate the books. Textbooks are then selected for adoption by the State Board of Education based on recommendations provided by the State Textbook Committee. Two concerns were raised about this process. The first is that many of the requirements for participating in the process, including what is requested in the proclamation and changes requested by the committee or the board, could be costly and could drive up the price of textbooks. The second is that the selection process may be overly influenced by graphics and colorful illustrations. It is recommended that the selection process be examined to evaluate these concerns and alternative techniques that could be implemented to address these concerns.

51. The statutory conflict-of-interest provisions for State Textbook Committee members should be modified to:

- **prohibit appointment if, for two years prior to appointment, a person or the person's spouse has been employed by or receives funds from a textbook publishing firm or owns or controls any interest in a textbook publishing firm or entity receiving funds from such a firm;**
- **prohibit a person or the person's spouse from engaging in any of these activities while serving on the committee; and**
- **prohibit a person or the person's spouse from going to work for a textbook publishing firm for two years from the time the person's term expires.**

The current conflict of interest provisions prohibit appointment if a person has ever been connected, either directly or indirectly, with a textbook publisher; but it does not prohibit any future connection. These provisions do not specify what constitutes a "connection" to a publisher or limit how long ago the connection may have occurred. They also do not ensure against conflicts of interest which would arise from members accepting employment from a publisher within two years of their service on the committee. These changes provide clearer conflict of interest restrictions, and specific time frames for the restrictions. The changes also add a new restriction to ensure against a member going to work for a publisher for two years after serving on the committee.

52. The statute should be amended to require school district employees to register with their superintendent and with the commissioner of education any transactions with a textbook publisher doing business with the state, if such transactions result in that employee being paid.

Currently, the only requirement in law concerning publishers and school districts is a prohibition against a teacher acting as an agent or attorney for any textbook publishing company selling books in Texas. This does not prohibit transactions between teachers and publishers in which a teacher may be paid, for example, for reviewing or field testing a textbook. These transactions could constitute a conflict of interest if the person were selected to serve on a state or local textbook selection committee. This change will require public school employees to register with their superintendent and the commissioner any transaction they conduct with a publisher doing business with the state, for which they are paid. This will help ensure against the appointment, to either a local or state textbook committee, of a person who has a potential conflict of interest with a publisher.

53. TEA should be given additional means to control price increases in the area of textbook purchases by amending the statute to:

- require TEA to develop a system for the implementation of price limitations;
- indicate that price limitations could be placed in areas that show significant increases in price;
- require TEA to solicit cost information from publishers in order to evaluate the need for and level of a price limitation; and
- require that any price limitation be set by the state board.

The prices for textbooks have increased dramatically over recent years, with the annual appropriation going from $44 million in 1982 to $112 million in 1988. There is no competitive bid process because the state wants to list as many as eight books in each subject area. Local districts can select any one of the up to eight books listed and are not required to consider price as a factor. Therefore there is no systematic means for keeping the price of textbooks from rising well in excess of the standard rate of inflation. These changes will require TEA to develop a system to regularly evaluate the price of textbooks to determine areas in which the prices have increased rapidly. The board could set a price limit based on this evaluation to keep price increases within a reasonable level.

54. The statute should be amended to authorize publishers to ship textbooks directly to local school districts with the following requirements:

- except as indicated, the state shall reimburse the publisher for the difference between the cost of shipping the books directly to the school district and the cost of shipping the books to the depository. It is possible that this difference may be greater than what the state would have normally spent to ship the books from a depository to the school district. If it is, the maximum that the state would pay would be the state's expected shipping cost from the depository to the school district;
- the publisher shall meet requirements for computer capabilities, as set by the board;
- the publisher shall guarantee delivery of textbooks to school districts in the time frame specified by TEA;
- the publisher shall be responsible for resolving all complaints from school districts concerning shipping errors, damaged shipments, and back orders;
- the board may require the publisher to provide TEA with consolidated statements of all transactions;

- **the publisher shall guarantee that a sufficient stock of textbooks will be readily available to supply Texas' needs for the entire adoption period;**

- **all contracts shall be between the publisher and TEA, not individual school districts;**

- **the publisher shall be subject to reasonable penalties set by the state board for failure to comply with board rules or contract requirements; and**

- **the publisher shall be required to return to the depository system for repeated failure to meet requirements, as determined by the board.**

Currently, publishers are required to ship their textbooks to a central depository in Texas. The depository is responsible for the receipt and distribution of textbooks within the state and for maintaining a stock of books in Texas to ensure availability of the books when needed by local school districts. Publishers are required to pay the costs of using a depository in Texas and for shipping their books to this depository. The state pays for the distribution of these books within Texas, utilizing consolidated lot shipments in which all the books for a particular school district are combined at the depository into one delivery. Some publishers indicate that the cost of the depository system increases the cost of textbooks to the state. They also indicate that they could provide textbooks at a lower price if they could store their books in their national warehouse and ship the books directly to each school district, without having the expense of maintaining a depository in Texas. Changing the current requirements in law will allow publishers the option of using the depository system or shipping the books directly to local school districts. The specific requirements that have to be met by publishers in order to ship books directly help to ensure that the state will not incur any additional shipping costs and that local school districts continue to receive the same level of services that is provided through the depository system.

55. **Local school districts should be allowed to obtain waivers from having to use state-adopted books on a limited basis by amending the statute to:**

    - **require the State Board of Education to develop a process for local school districts to apply to the board for a waiver from the state adoption list;**

    - **provide that school districts only be allowed to request a waiver in a course area being considered for state adoption that year. The school districts would have to use the books for the same time period that the state-adopted books are in use;**

    - **require that the request for a waiver be limited to one course area per school district per year;**

    - **provide that the state would agree to purchase these books; however, the state would only pay the equivalent of the average price of books offered in that course area and the**

local district would pay any difference. These books could only be ordered in place of the state adoption books, not as supplementary material;

- authorize the board to approve the waiver if all standards for state adopted books were met. These include requirements regarding the durability of the books, bonding of publishers, and compliance with state laws prohibiting anything of a partisan or sectarian character;

- allow the board to approve a book that does not meet all of the essential elements, provided that the local school district shows that all of the essential elements would be covered in the classroom by the teacher. This could be monitored by the agency's accreditation team; and

- authorize the state board to limit the total number of waivers that the agency could reasonably evaluate in a year.

The current state adoption process provides almost no flexibility to use anything other than state adopted books. One exception has been to allow districts to purchase a book as a supplement and still require them to have the state adopted book available. The implementation of these changes would provide local school districts with a greater amount of flexibility in purchasing books that they feel meet their needs. At the same time, the overall state adoption process would be maintained. The recommendation would also help eliminate the occurrence of the state and the local district each buying a textbook for the same course. This is because school districts would be able to apply for a waiver from the state to purchase a non-adopted book with state dollars.

56. As a management directive, it is recommended that the State Board of Education amend their rules to allow publishers to provide sample textbooks to local school districts only upon request by the district.

Board rules currently require publishers to provide a minimum of one sample of each adopted textbook to every school district in the state offering that course. Providing samples to as many as 1,060 districts can be very costly and some districts may not need samples of all the books available through the state. This change would limit sampling to those districts which request a sample rather than requiring districts to be sampled automatically.

Commission on Standards for the Teaching Profession

57. The statute should be amended to continue the Commission on Standards for the Teaching Profession without a separate sunset date.

The purpose of the Commission on Standards for the Teaching Profession is to recommend a set of standards for teacher education programs in public and private institutions for approval by the State Board of Education. The standards identify the program administration, faculty, and curriculum requirements necessary to become an approved teacher education program. In addition to recommending the standards

for teacher preparation, the commission reviews and approves the college and university academic programs leading to teacher certification based on the quality standards for teacher education.

This recommendation provides for the continuation of this needed component of the teacher education system in the state. Since the commission operates as an advisory body to TEA, future sunset reviews of its operations will automatically coincide with review of the agency.

Teachers' Professional Practices Commission

58. **The statute should be amended to abolish the Teachers' Professional Practices Commission and transfer its functions to the Commission on Standards for the Teaching Profession. The statute should:**

- **abolish the Teachers' Professional Practices Commission;**
- **provide for the continuation of the Code of Ethics and Standard Practices for Texas Educators. The Commission on Standards for the Teaching Profession should establish procedures for revisions of the code. The procedures should include the participation of members of the teaching profession;**
- **specify the composition of the Commission on Standards for the Teaching Profession to include five teacher members, two administrator members, and two representatives of higher education, for a total of nine members; and**
- **require appointments to the commission to be made by the governor and be subject to senate confirmation.**

The Teachers' Professional Practices Commission (TPPC) was created in 1969 to establish standards of ethical practice for the teaching profession and to provide for a system of self-discipline. The commission is responsible for hearing complaints from any certified teacher of alleged violations of the "Code of Ethics and Standard Practices for Texas Educators". Transferring the functions of the TPPC to the Commission on Standards for the Teaching Profession will continue the teaching profession's ability to define its ethical standards while eliminating the duplication of having two separate commissions concerned with standards for the teaching profession.

Dropouts

59. **The statute and State Board of Education rules should be amended to establish a pilot program for certain students at risk of dropping out of school. These students in participating districts would be allowed to enter a program to prepare for and take the GED exam while still in school. The following changes would be needed to implement this concept:**

- require TEA to request authorization from the GED Testing Service to conduct a pilot program to allow certain students to take the GED exam while still in school;

- lower the statutory age for taking the GED from age 17 to "following completion of the academic year in which a student's 16th birthday occurs";

- require the State Board of Education to review its rules to ensure that no student is prevented from immediately taking the test upon withdrawal from school;

- require school districts participating in the pilot program to offer GED preparatory classes to students during the year in which their 16th birthday occurs and to provide these students with information on when and where to take the GED examination;

- require the State Board of Education to develop the criteria for student participation in the program. The criteria for student participation must include the following:

  - the student and the parent must agree to the student's participation in the program;

  - the student could not reasonable be expected to graduate with his cohort class;

  - a reasonable expectation must exist that the student would be able to pass the GED; and

  - other requirements determined by the board to be necessary, such as requiring that a counselor refer students to the program or having a committee (similar to the ARD committee) approve or disapprove entry into the program;

- require that the pilot program be followed up in January, 1993 with a report to the legislature on the results of the program including recommendations on whether the program should be expanded to all school districts and all students who cannot reasonably be expected to graduate with their cohort class. This report should also address potential effects on drop-out rates and on measures to ensure that students are not directed into this program as an alternative to the standard high school graduation program;

- require TEA to develop and implement the pilot program, although participation is optional for local school districts; and

- **provide that the pilot program would only be implemented if state funds are appropriated to cover the costs of the program to local school districts.**

Persons in Texas who pass the General Educational Development (GED) test receive a certificate of high school equivalency. State law limits GED testing to persons age 17 or older. State Board of Education rules require that a person must be officially withdrawn from school in order to receive a certificate of high school equivalency. This rule is consistent with GED testing service requirements that only persons out-of-school are eligible to take the test. A state may petition the GED Testing Service for permission to administer the test to enrolled high school students. One state, Virginia, has received such an exemption to conduct a three-year pilot program to test students enrolled in alternative high school programs.

This recommendation would allow TEA to implement a program on a pilot basis to allow certain students to take GED preparatory classes and the GED test while still in school. Only those school districts wishing to participate would do so. The program would be aimed at allowing students who have fallen behind others in their class due to lack of credit or excessive absences, and are therefore at-risk of dropping out of school, to take GED preparatory classes while still in school. If the GED Testing Service approves the waiver, students would then also be able to take the GED test while still in school. If the waiver was not granted, then students would only be eligible to take the GED test once they had met compulsory attendance requirements and had left school. The report to the legislature will indicate the effectiveness of such a program and provide the basis for a decision on whether or not the program should be expanded to all school districts in the state.

60. The statute should be amended to raise the age for compulsory school attendance from the completion of the academic year in which a student's 16th birthday occurs to completion of the academic year in which a student's 17th birthday occurs.

Current state law requires every child, except for certain exempt children, from age seven through completion of the academic year in which the child's 16th birthday occurs, to attend school. The child is required to be in attendance for a minimum of 170 days of the regular school term. This upper time limit allows students to leave school prior to graduation, since most students graduate at ages 17 or 18. Increasing the upper age limit to the completion of the academic year in which the student's 17th birthday occurs will result in students not being legally allowed to drop out of school until the lowest common age for graduation. This change, in conjunction with the previous recommendation on the GED testing program, should encourage at-risk students to stay in school and complete their education either through regular graduation or the alternative of a certificate of equivalency.

Other Changes Needed in Agency's Statute

61. The relevant across-the-board recommendations of the Sunset Advisory Commission should be applied.

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations have been applied to TEA.

TEXAS HIGHER EDUCATION COORDINATING BOARD

Texas Higher Education Coordinating Board
Background and Focus of Review

Creation and Powers

The Coordinating Board, Texas College and University System was created in 1965 with the passage of the Higher Education Coordinating Act. The Act was passed as a result of a two year study by the "Committee on Education Beyond the High School." The mandate to the board was to provide leadership and coordination for the Texas higher education system, and its governing boards and institutions so that the state could achieve excellence and effective utilization of all available resources and eliminate costly duplication in program offerings, faculties and physical plants.

The state's population was growing rapidly in the 1960s and the Coordinating Board initially was seen as a means of bringing order to the corresponding growth occurring in higher education. New college campuses were needed to provide widespread access to higher education for the growing numbers of high school graduates. As a result, the board's early years were spent assisting the expansion of higher education, assuring diversity of degree programs, and keeping up with the increasing pressure for instructional, research, and administrative space on campuses. In contrast, today's main challenges center on ensuring quality and efficiency as the demands on the state's limited resources increase.

The legislature has assigned a broad range of responsibilities and authority to the Coordinating board to permit it to carry out its central mandate. From its inception, the board has had broad authority over each public institution's role and scope, expansion of degree and certificate programs, and creation or major changes in the organizational configuration of departments and schools. It has had similar approval authority over land purchases and the construction and rehabilitation of buildings at public institutions. The board's role in providing financial aid to students dates from 1965 and has expanded in a variety of ways since then. Through the budgetary funding formulas it recommends to the legislature, the board exerts a major influence on the manner in which state funds are distributed to public higher education institutions.

There have been several major modifications to the board's authority since its creation. In 1975 provisions were enacted to require board approval for construction and major repair and renovation projects that had previously been exempt. Subsequent modifications removed its approval authority from construction projects at community colleges and projects that were funded more than one half from the Permanent University Fund.

The board has been given responsibility and authority to administer a variety of student loan and grant programs. These range from low-interest loans made under the Hinson-Hazlewood Loan Program created in 1965, the Tuition Equalization Grant Program created in 1971 for students attending private colleges, to more than a half dozen new state and federal grant and loan programs created within the past decade.

In 1985 the 69th Legislature added three major new responsibilities to the board. It transferred authority over technical-vocational programs at community

colleges and the Texas State Technical Institute (TSTI) from the Texas Education Agency to the Coordinating Board and gave it degree and facility approval authority over TSTI. The legislature also directed the board to administer the Texas Advanced Technology Research Program, which provides funds to stimulate research at public universities to strengthen science and technology in Texas and contribute to the diversification of the state's economy. In 1985 the legislature appropriated $35 million for this program and the 70th Legislature appropriated $60 million.

The 70th Legislature further expanded the board's authorities. Among the responsibilities added were the charges to develop and administer a basic skills testing program for all entering college freshmen at public institutions, set enrollment limits for state colleges and universities, administer the funding allocations for four major research programs, develop a statewide higher education telecommunications network, conduct a sunset review of all doctoral programs, and review institutions core curriculum policies. The 70th Legislature also changed the name of the board and its agency from the Coordinating Board, Texas College and University System to the Texas Higher Education Coordinating Board.

Policy-making Structure

The board is composed of 18 members appointed by the governor with the advice and consent of the senate for staggered six-year terms. No member may be employed professionally for remuneration in the field of higher education during his term of office. The governor appoints the chairman and vice chairman while the board appoints a secretary whose duties are prescribed by the board and law. The board is responsible for approving requests from public higher education institutions for creating new organizational units, degree programs, and for capital improvements projects, and for establishing the rules and guidelines under which its personnel and agency programs operate. The board is also involved in agency operations through the use of oversight committees that monitor and guide the agency's activities. The board holds quarterly meetings and as called by the chairman.

The board uses advisory committees extensively for input and assistance in issue review and program and policy development. During the review over 30 advisory committees were involved in a variety of issues and assignments. Five of these are specifically created in statute. The advisory committees have numerous subcommittees and task forces working under them.

Funding and Organization

The board maintains its headquarters in Austin. It has no field offices or staff assigned outside of its headquarters. The board had 214.5 employees in fiscal year 1988 and an operating budget of $9,612,183. During 1988 the board was supported by $7,784,570 from general revenue, $1,156,621 from federal funds, $530,992 from interagency contracts, $10,000 from certificate of authority fees, and $130,000 from private donations. The board is organized by functions into the commissioner's office and nine divisions that are staffed as follows: commissioners' office--2; Administration and Planning--64; Universities and Health Affairs--25; Financial Planning--8; Campus Planning--4; Community Colleges and Technical Institutes--21.5; Research Programs--6; Student Services--72; Educational Opportunity Planning--5; and Special Programs--7. Exhibit 1 shows the agency's sources of funds and the distribution of funds by division. The organization structure is provided in Exhibit 2.

Exhibit 1

HECB Sources of Revenues
FY 1988

Source	Amount	Percent
General Revenue	$ 7,784,570	81.0
Federal Funds	1,156,621	12.0
Interagency Contracts	530,992	5.5
Fees	10,000	.1
Private Donations	130,000	1.4
	$ 9,612,183	100.0%

HECB Expenditures
FY 1988

Expenditure	Amount	Percent
Commissioner's Office	$ 176,314	1.8
Planning and Administration	3,532,884	36.8
Special Programs	243,104	2.5
Universities and Health Affairs	1,106,521	11.5
Community Colleges and Technical Institutes	1,004,890	10.4
Research Program	411,000	4.3
Financial Planning	334,931	3.5
Campus Planning	169,552	1.8
Student Services	2,295,013	23.9
Educational Opportunity Planning	337,974	3.5
	$ 9,612,183	100.0%

Exhibit 2

Information on Proprietary School Degree Programs

Typical Proprietary School Degree Programs	Typical Number of General Academic Quarter Credit Hours Required *
Associate of Applied Arts	
Fashion Merchandising	14 - 21 quarter hours
Interior Design	14 - 21 quarter hours
Visual Communications	14 quarter hours
Associate of Applied Science	
Business Management	20 - 24 quarter hours
Court Reporting	15 - 20 quarter hours
Electronics Technology	14 - 18 quarter hours
Business Technology	14 - 15 quarter hours
Electronic Engineering Technology	14 - 17 quarter hours

* One quarter hour is equal to 2/3 of a semester hour.

Texas Proprietary Schools Offering AAA/AAS Degrees

Houston
Art Institute of Houston
ITT Technical Institute (two campuses)
National Educational Center (two campuses)
Video Technical Institute

Dallas
Art Institute of Dallas
Court Reporting Institute of Dallas
Dallas Institute of Funeral Service
KD Studio, Inc.
National Education Center
Video Technical Institute

Arlington
Bauder Fashion College
ITT Technical Institute

San Antonio
CBM Education Center at San Antonio, Texas
Hallmark Institute of Technology (two campuses)
ITT Technical Institute
National Education Center

Austin
ITT Technical Institute

Fort Worth
National Education Center
Texas Court Reporting College, Inc.

El Paso
Southwest Institute of Merchandising and Design

Programs and Functions

The agency's programs and functions are organized into ten divisions. Those divisions and their major responsibilities are outlined as follows:

- Commissioner's Office

- Planning and Administration
  - Agency support
  - Higher education employees uniform insurance benefits program
  - Higher education master planning

- Special Programs
  - Public Information
  - Legislative liaison
  - Special projects

- Universities and Health Affairs
  - University coordination
  - Health affairs
  - Private schools
  - Texas Academic skills program
  - Education for Economic Security Act (EESA)

- Community Colleges and Technical Institutes
  - Program and course approval and monitoring
  - Administration of postsecondary vocational education funds

- Research Programs
  - Research program administration
  - Research program evaluation

- Financial Planning
  - Formula development and appropriations review
  - Uniform reporting system for public higher education institutions

- Campus Planning
  - Higher education facilities planning
  - Facility construction, repairs and renovation

- Student Services
  - Loan program
  - Grants and Scholarships
  - Tuition, fees, and residency determination policies

- Educational Opportunity Planning
  - State educational opportunities plan
  - Youth Opportunities Unlimited Program

Commissioner's Office

The commissioner is responsible to the board for carrying out its policies and administering the agency's programs. He is responsible to the board for assuring the efficiency and effectiveness of agency operations and in its interactions with representatives of the universities and colleges, other state agencies, the legislature, and the public. The office had two employees in fiscal year 1988.

Planning and Administration Division

The three major functions within the division are agency support, administration of the Texas State College and University Employees Uniform Insurance Benefits Program, and higher education master planning.

Agency support duties include personnel, accounting, budgeting, purchasing, data processing, management information system, educational data center, supply and printing activities. The basic group life, accident, and health insurance coverage programs for employees in the state's public institutions of higher education are authorized by the Texas College and University Employees Uniform Insurance Benefits Act. A statutorily created nine member Administrative Council oversees the program. The division, through its personnel office, provides staff support to the Administrative Council. Its staff reviews and analyzes each institution's insurance plan to ensure that the plan meets the standards established by the Administrative Council. If staff identifies any exceptions to the plan's compliance, they report them to the Administrative Council. The Council then formulates plans with the institution president to resolve the deficiency.

The 70th Legislature amended the agency's statute and charged it to develop a five year master plan for higher education in the state and update the plan annually. A draft of the plan has been developed and is to be submitted to the board in the fall of 1988. The division had 64 employees in fiscal year 1988.

Special Programs Division

The division provides public information, legislative liaison, and special project assistance to the commissioner. Agency public information services include preparation of press releases, brochures, newsletters, and other printed material for use by the media and institutions of higher education. Legislative liaison office staff monitor legislation and legislative committee activities and are responsible for keeping agency division and program managers informed on the status of legislation. The office maintains the agency library which contains directories, legislative documents, and research and statistical reports. Requests for information from legislators, the media, and the public are directed through this office. The division had seven employees in fiscal year 1988.

Universities and Health Affairs Division

The Universities and Health Affairs Division performs the agency's primary functions that relate directly to the academic programs and operations of the state's public senior colleges and universities and the health related institutions, centers and programs. Further, it performs the agency's oversight and certification authority for the operation of private schools that are not accredited by one of the nationally recognized accreditation bodies. In its oversight role of the public universities the division performs program and course reviews, evaluates

institutions' requests for new degree programs and academic administrative units and makes recommendations to the board for their approval or disapproval. Review of existing courses and degree programs and requests for new ones is a major responsibility of the division. During the period from 1984 through 1987, the board approved 85 requests for new degree programs at public senior institutions, 11 at the associate level, 34 at the baccalaureate, 33 at the master's, and seven at the doctoral level. During the same period the board denied 17 degree program requests and proposals to create new administrative units. During the 70th legislative session the board was charged to perform sunset review of all doctoral programs. In this process the board must take steps to eliminate programs lacking sufficient student demand and institutional support. Annually staff review approximately 20,000 course changes or requests for new courses; an estimated 4,500 are considered substantive changes or additions. Staff also must review and approve all courses offered at military bases, off campus and out-of-state.

The Coordinating Board adopted formal policies concerning televised instruction in 1985. Since that time, the division has been responsible for the administration and monitoring of instructional telecommunications activities at public higher education institutions throughout Texas. In 1988, 25 individual institutions and seven community college districts were authorized to offer courses via various telecommunications media including interactive closed-circuit television, broadcast television and computer modem. Division staff approve the institutions' instructional telecommunications course inventories annually, and are also responsible for coordinating planning efforts for a statewide educational telecommunications network which was mandated by the 70th Legislature.

A primary coordinating function performed by the division is its development and maintenance of each institution's role and mission statement. This process is done in consultation with the university's president and board of regents. In the 34 senior colleges and universities for which the division has responsibility for their role and mission statement development, 26 have tables of degree programs approved by the board and 18 have narrative role and mission descriptions approved as of July 1988.

Division staff in the health affairs section perform similar functions regarding role and mission development for the health science centers and medical schools and monitor all program offerings in health-related fields at all public universities and health science centers.

In situations where a private college or university is not accredited by an accrediting body approved by the board, the division issues certificates of authority to award degrees. During the time a private institution is under such authority, the division oversees its operations and assists it to move toward accreditation by a recognized accrediting body. This normally occurs within an eight year period after the initial request for authority is granted. As of July, 1988, eight private institutions were operating under such certificates.

The division also administers the federal Education for Economic Securities Act competitive grants program. This program is designed to enhance the training of public school teachers in the areas of science, math, foreign languages, and computer learning. In fiscal year 1988 the board awarded approximately $1.5 million in EESA grants to support 35 projects offered by public and private junior and senior institutions.

A new responsibility assigned to the agency by the 70th Legislature and administered by the division is the creation and administration of the Texas Academic Skills Program (TASP). TASP is an instructional program designed to ensure that students attending public institutions of higher education have the basic academic skills necessary to be successful in college-level course work. It is designed to identify, through an assessment test, students who require remedial courses. Students must successfully pass the test before they complete 60 hours of course work, or be limited to lower division course work until they do pass. The program becomes effective in September 1989 and an estimated 200,000 students per year will take the test. During fiscal year 1988 the division had 25 employees.

Community Colleges and Technical Institutes Division

The Community Colleges and Technical Institutes Division was created by the board in 1985 after the 69th Legislature transferred responsibility for postsecondary vocational and technical education for community colleges and technical institutes from the Texas Education Agency to the Coordinating Board. The division coordinates oversight of 49 community and junior college districts having 66 separate campuses, two centers and four campuses of the Texas State Technical Institute, and the two lower division institutions of Lamar University at Orange and Port Arthur.

The division evaluates and recommends board approval of programs, transfer courses and compensatory courses offered at these institutions. The staff of this division conducts periodic evaluations of postsecondary technical and vocational programs. These evaluations can lead to the abolition of programs upon the initiation of either the institution or the agency.

A major funding program for vocational education administered by the division is the Carl D. Perkins program, a federal program to assure access to quality vocational education and provide services for the disadvantaged and handicapped adults with limited English proficiency, adults in need of job training and retraining, individuals who are single parents or homemakers, and displaced persons. The basic grant for this program including state administrative costs totaled $22.3 million in fiscal year 1988. Most of these funds are allocated through a formula process, but approximately $3.7 million are available to all public institutions of higher education through a competitive proposal process in the categories of personnel development, curriculum development, model program and demonstration projects, and "state-of-the-art" studies and research. During fiscal year 1988 the division operated with 24 employees.

Research Programs Division

The Research Division is a new division in the agency and its primary responsibility is to administer four research programs created by the 70th Legislature. In addition, the division is an advocate for university-based research in the state, evaluates the Texas university research enterprise, and facilitates communications among members of the state's higher education research community.

The 70th Legislature created two new major research programs to support both basic and applied research. The Advanced Research Program is funded for $20 million for this biennium to be used for basic research grants in the biological and behavioral sciences, chemistry, engineering, mathematics, physics, earth sciences,

material sciences, computer sciences, information sciences, astronomy, atmospheric science and oceanography, and social sciences. In April, 1988 144 projects were funded from this program. The Advanced Technology Program (ATP) is funded for $40 million to be used over the biennium for applied research grants in the fields of: biomedicine, microelectronics, biotechnology, agriculture, aquaculture, energy, aerospace, marine technology and telecommunications. In April, 1988 208 projects were funded from this program. The proposals for both programs were reviewed on a competitive basis by panels of out-of-state peer reviewers, and an advisory committee of scientists made the final funding decisions.

In addition, this division works with the Legislative Budget Board to conduct an evaluation of all research-oriented special item appropriations funded for the 1988-89 biennium and with the governor's energy management center in supervising competitive peer review awards for the energy research in applications program ("oil overcharge" funds). Other activities of the division include: compiling a directory of specialized research centers in the state, summarizing research activities being conducted in Texas public universities, and reviewing and approving the intellectual property policies of each public institution. During fiscal year 1988 the division operated with six employees.

Financial Planning Division

The Financial Planning Division administers the agency's primary higher education financial planning and funding functions. It continuously develops, reviews, and revises formulas to achieve an equitable distribution of state funds available for higher education institutions. These formulas are used by the governor and legislature as the mechanism in making recommendations for distribution of appropriation dollars to institutions of higher education. The formula process allocated $689 million or 73.4 percent of the $938 million general revenue funds appropriated to the public senior colleges and universities in fiscal year 1988. The division is also responsible for the administration of the Higher Education Assistance Fund. This fund is a constitutionally based fund that provides $100 million annually for those institutions that do not participate in the Permanent University Fund. The responsibilities of the agency for this program include financial planning, analysis and recommendations regarding changes in the allocations received by the participating institutions.

The division prepares fiscal notes on bills related to higher education, and it provides analyses of state and national demographic and economic data as requested by the agency, the governor, and the legislature. The division will be responsible for the performance of a new function required by the 70th Legislature to provide the governor and legislature a comprehensive analysis of institutional appropriation requests. In collaboration with the Office of the Comptroller, the division maintains a uniform reporting system for all institutions of higher education. To define elements of cost on which appropriations shall be based and on which financial records shall be maintained.

The division also administers three programs which allocate funds to medical schools and/or medical residency programs: the Compensation of Resident Physicians, the Family Practice Residency Training Program, and the contracts with Baylor College of Medicine and the Baylor College of Dentistry. Under the Resident Physicians' Compensation Program, the board allocates appropriated funds to medical schools once each fiscal year for the purpose of compensating their graduate students while practicing as residents at approved teaching hospitals.

Approximately 200 residency positions are funded, not including family practice. In fiscal year 1988, $3,151,875 was provided to support 210 residents at the seven eligible schools. Family practice residents are supported by the Family Practice Residency Training Program. In fiscal year 1988, $7,295,000 was provided to support 462 residents enrolled in 26 programs.

In addition, the state contracts with the Baylor College of Medicine and the Baylor College of Dentistry in order to provide more available slots for Texas residents in the state's medical and dental schools. In fiscal year 1988 the board served as the dispersing agent for $29,686,930 for 580 Texas residents at the Baylor College of Medicine, and $13,104,741 for 344 Texas residents at the Baylor College of Dentistry. During fiscal year 1988 the division had eight employees.

Campus Planning Division

The agency assists the board in its responsibility for efficient campus development through the Campus Planning Division. The division maintains current campus master plans and facility inventories for all public senior colleges and universities. It conducts site visits and, based on need and utilization of existing facilities and resources, recommends which campus construction, renovation and land acquisition projects should be approved or denied by the board. The division recommends policies regarding the efficient use of construction funds and development of physical plants. In fiscal year 1988 the division reviewed 60 projects totaling over $256.5 million. The board approved $175.3 million, disapproved $20 million, deferred action on $49.3 million, and took no action on $11.8 million.

The staff and board must deal with a situation that is unique to Texas. Institutions do not usually request construction funds for specific projects from the legislature. Instead, institutions have constitutionally authorized funds specifically provided for construction projects and are required only to justify their plans for spending these funds by project, to the agency and board. The agency, therefore, works in an environment in which additional pressures to expand facilities or undertake construction projects exist. The staff and board work closely together and use both formal and informal approaches to promote the efficient use of funds. Site visits are made to institutions which plan new construction projects and, for projects which exceed $500,000, the agency has authority to consider such costs and suggest adjustments when appropriate alternatives exist. The staff and board also negotiate informally with institutions which desire to undertake new construction projects by encouraging the "mothballing" of underutilized space or the repair or renovation of space which an institution has deferred for budgetary or other reasons. The communication between institution personnel and the staff often results in institutions delaying requests for new projects or developing project requests in such a manner that they are likely to meet agency criteria and be approved.

Division staff, in conjunction with the Financial Planning Division, prepare recommendations for the allocation of the Higher Education Assistance Funds, which are available to institutions not participating in the Permanent University Fund. The allocation formula for an institution is based on its space deficiency, the condition of its facilities, and its educational complexity, which is related to the types and levels of degree programs the institution offers. During fiscal year 1988 the division operated with four employees.

Student Services Division

The major function of the student services division is to administer student financial aid programs. It is also responsible for the coordination of the state's tuition, fees and residency determination policies and the development and distribution of publications on these topics. The division conducts annual surveys of all public higher education institutions on the amounts of tuition and fee revenues they received, the amounts of tuition exemption and waivers they granted, and how they utilized certain campus-based grant and scholarship programs. Once each biennium the division also calculates tuition rates charged nonresident students at public senior institutions. The division is primarily responsible for the administration of approximately 15 state or federal financial aid programs. In Texas, financial aid programs are decentralized: the financial aid offices at each institution determine student eligibility and recommend award amounts. The Coordinating Board promulgates rules and regulations for the financial aid programs, monitors the applications, and coordinates the issuance of student financial aid checks through the State Comptroller's office.

The major loan program which the Coordinating Board administers is the Hinson-Hazlewood College Student Loan. In 1965 a Texas constitutional amendment was adopted which authorized the issuance of state general obligation bonds to finance the student loan program. A total of $285 million is authorized and $205.5 million in bonds have been issued since the program's inception. The last bonds were sold in 1977 and the program has operated as a revolving fund since then. In August, 1988 there were $97.8 million in bonds outstanding. Under the umbrella of the Hinson-Hazlewood loan program, there are seven portfolios. The division no longer originates loans under two of the older loan portfolios: uninsured loans issued prior to the fall of 1971, and federal insured loans (FISL) issued between the fall of 1971 and summer 1984 which are guaranteed by the U.S. Department of Education. The currently active portfolios include: guaranteed student loans (GSL) and supplemental student loans (SLS) which are insured by the Texas Guaranteed Student Loan Corporation; Health Education Assistance Loans (HEAL) insured by the U.S. Department of Health and Human Services; the uninsured Health Education Loan (HELP); and the newly authorized College Access Loan, which is an uninsured alternative loan program for students ineligible for guaranteed student loans. In fiscal year 1988, the division issued loans in the five active portfolios totaling $22 million to 6,259 students. The principal value of all loans currently outstanding is $158.3 million and approximately 157,000 persons have received a Hinson-Hazlewood loan since the program's inception.

Functions this division performs for the loan programs include reviewing and approving loan applications, servicing the approximately 9,600 loan accounts of borrowers still in school, converting loans to repayment when students leave college and arranging for payment deferrals and adjustments when necessary. In addition, the division collects approximately $21.5 million in payments annually from 41,000 persons currently in repayment and deposits them in the State Treasury. Under the terms of an agreement which was reached with the federal government in 1976, the division files suit in Travis County on defaulted loans, obtains judgments on defaulted borrowers, and pursues collections of those accounts rather than filing a default claim. In return, the federal government continues to pay the interest due on the defaulted loans and special lenders allowance funds. There are approximately 22,000 of these loan accounts. In addition, there are another 17,000 accounts for which a default claim has been paid by the federal government but which continue to

require service by the division to answer borrower inquiries and to assist the federal government's collection efforts.

In addition to the Hinson-Hazlewood loans, the division makes loans to students who plan to become teachers under the state Teacher Education Loan and Future Teacher Loan programs (one-time appropriation of $ 2.2 million in 1985), and the federal Paul Douglas Teacher Scholarship program ($1.2 million awarded to 342 students in 1988). For these teacher education loan programs, the division tracks 751 students and graduates to confirm eligibility for cancellation of the loans or to place them into a loan repayment status. The division also provides loan repayments to physicians who practice in certain areas or for certain state agencies ($86,955 in 1988).

The division is responsible for a number of grant and scholarship programs. The division collects the necessary data and determines how state or federal funds appropriated for these programs will be allotted for students at each participating institution, establishes the rules and procedures governing program eligibility, and reviews documentation submitted and audit reports of the institutions for compliance. The major grant programs which the division administers include: the state funded Tuition Equalization Grant program (TEG) which provided $18.6 million to 15,000 students attending independent colleges in the state in 1988; the state funded State Student Incentive Grant (SSIG) program which provided $1.5 million to 5,000 students at public institutions; and the federally funded SSIG program which provided $4 million to 5,000 public school and 4,000 private school students in 1988. The division also oversees the Texas Public Educational Grant program (TPEG), a campus-based program funded through set-asides from tuition revenues which provided $21 million to 36,000 students in 1988. Scholarship programs administered by the division include the State Scholarship for Ethnic Recruitment ($235,000 per year plus an equal institutional match), the Minority Faculty and Staff Recruitment program ($47,000 per year plus an equal institutional match), the Good Neighbor Scholarship program ($900,000 in annual tuition waivers), and the federal Robert C. Byrd Honors Scholarship program ($550,000 per year). During fiscal year 1988 the division operated with 72 employees.

Educational Opportunity Planning Division

The commissioner established the Equal Educational Opportunities Division as an independent division in the spring of 1988. Previously, its programs and functions had been administered through a section in the Special Programs Division. Its primary responsibilities are the implementation the Texas Equal Educational Opportunity Plan for Higher Education, coordination of the state's minority recruitment and retention programs, and the administration of the Youth Opportunities Unlimited (YOU) program.

In 1983 the state entered into an agreement with the federal Office for Civil Rights to operate its postsecondary institutions on a totally desegregated basis and submitted a five year desegregation plan. Since that time the agency has been required to submit annual progress reports to the federal agency. This plan expired in August 1988. In January 1988 the governor directed the Coordinating Board to work with the higher education institutions to develop and implement on equal educational opportunity plan to replace the federally mandated plan. The agency is in the process of drafting a new five year plan.

The YOU program is a program funded through the Department of Commerce' federal Job Training Partnership Act. It was transferred to the board from the Texas Department of Community Affairs in 1987. The purpose of the YOU program is reduce the high school dropout rate. The agency identifies eighth and ninth grade students who are at high risk of dropping out. These youth live on college campuses for eight weeks during the summer and take classes in mathematics and English for course credit. They also hold part-time jobs, receive help from tutors and counselors, and participate in other cultural and educational activities. In 1988 over 1,800 students on 18 campuses participated in the program at a total program cost of $215,000.

The division's activities in minority recruitment and retention are directed toward the goal of increasing the number of minorities entering and graduating from the state's higher education institutions. Those activities include working with advisory groups and institutions to identify projects to increase the number of minority students recruited to and successfully completing college. During fiscal year 1988 the division had five employees.

Focus of Review

The review of the Texas Higher Education Coordinating Board included all aspects of the board's activities. Initial efforts were designed to examine the board's three basic functions: coordination, advocacy, and regulation. A number of activities were undertaken to gain a better understanding of the board and its responsibilities. These activities included:

- discussions with the agency commissioner and staff;
- visits with the chancellors and designated key executives of the university systems in Austin or at their respective offices;
- meetings and telephone conversations with presidents and others from community colleges and non-system universities;
- review of past legislation and reports prepared by the Select Committee on Higher Education;
- review of numerous reports regarding higher education in Texas and other states;
- group and individual meetings with groups, associations and other persons involved with the agency and higher education; and
- phone interviews with persons in higher education coordinating agencies in other states.

From these activities, a number of issues were identified which generally fell into the following six areas: 1) the need for the agency and its functions; 2) higher education planning and resource allocation; 3) coordination of higher education programs and course transfer policies; 4) student financial assistance; 5) oversight, monitoring, and evaluation; and 6) the Texas College and University Employees Uniform Benefits Program. Also included in this review was the Office of the Southern Education Compact Commissioner of Texas. This office is an independent entity with its own sunset date. It was included in the review of the Coordinating

Board because the agency is appropriated the funds to support the state's contribution to the compact, and it serves as the state's operating link to the Compact.

First, the review examined whether or not there was a need for the agency and its functions. The review concluded that the agency and its functions should be continued.

The second area of inquiry was whether the board is effectively performing its higher education planning and resource allocation responsibilities. The board is the state's highest authority for matters concerning higher education and is responsible for the planning and coordination of higher education. It determines each public institution's role and mission and develops, encourages, and coordinates programs that fulfill the state's higher education needs. Its statutory responsibilities provide authority to review and approve academic programs and organizational units as well as physical facility projects.

An assessment was made of the board's basic planning functions as they relate to academic program development and coordination, and the planning and development of the state's physical plant investment. It was determined that several functions could be improved to better meet the needs of the state's higher education decision-makers. The role and mission statements required of the board for all institutions of higher education were not completed for all institutions. Of those completed, many lack the information necessary to be effective to the institution or the board in planning and coordinating educational programs, research, or physical facility decisions.

In the campus planning function the review determined that several aspects should be modified. First, institutions were not required to report deferred maintenance information in their campus master plans. The absence of this information deprives the board from adequately assessing the deferred maintenance needs of the state's colleges and universities or from making sound decisions regarding approval of new construction or major renovation projects. A related issue that was identified pertains to the allocation formula for Higher Education Assistance Funds. It was determined that there was not always adequate information available to the persons reviewing the allocation formula regarding the extent the allocated funds were used to meet the deferred maintenance needs of the participating institutions. Without this information, a basic purpose for which the fund was created cannot be assessed.

Finally, three other issues were identified where recommendations were needed to improve the board's operations. These include: clarification of the board's authority over the approval of gifts of land and buildings to an institution and their lease-purchase agreements; the space standards the board uses to determine an institution's need for new construction or renovation; and the statutory cost amounts of repair and renovation projects on which the board must take action.

The third area of inquiry was whether the board is effectively coordinating higher education programs and course transfer policies. The board has the responsibility to control the degree programs offered at all public institutions, and approves all degree programs offered at private institutions that are not accredited by a recognized accrediting body. With regard to degree programs in public institutions, the board approves or disapproves all requests by institutions for new degree programs or organizational units that administer such programs. Part of this

responsibility includes staff review of course changes to degree programs after they are approved as well as any new courses offered to assure that the institution does not create degree programs that are not approved by the board. While the agency has allowed some flexibility to institutions in creating new courses outside degree programs, the review determined that the process needs to allow less restrictive degree program development.

In regulating degrees offered in private institutions, the board is responsible for issuing certificates of authority before any such institution may award any degree using the terms bachelors, master's, or doctor's. During the review it was determined that the board's authority to regulate the ability of proprietary schools to grant associate of applied arts and associate of applied sciences degrees was under question.

The board also has the responsibility to assure that lower division courses are freely transferred among all public institutions of higher education. The review focused on the board's policies and institution practices in this area. It was determined that deficiencies existed with respect to an effective process to assure that all transferring students received proper course credits.

Two issues in this area were reviewed but, because of extenuating circumstances, no recommendations were made. The first was the issue of the development of programs in the South Texas area. During the review, there was a legislative committee studying the needs of area. In addition, both the University of Texas system and the Texas A&M system are involved in possible merger discussions and program development plans for the area. The second issue is the mandatory academic skills testing program. This program became effective September, 1989. The test and its related policies and procedures were under development during the review, and there was no basis for any analysis of the program on which findings or recommendations could be made.

The fourth area of inquiry was whether the student financial assistance programs are structured and operating efficiently and effectively. The review included the grants and loan programs administered by the board and focused on the efficiency and effectiveness of their operations. Recommendations were adopted to direct the board to file claims on insured Hinson-Hazlewood student loans with the guarantor as soon as possible. Currently, the board conducts extended litigation and collections on those accounts. Adoption of those recommendations would increase the funds available to the board to make more loans. The review also determined that the purpose of the loan forgiveness programs could be met through a more effective alternative structure. It was further determined that the programs for which the Rural Medical Board was created to administer are no longer the most desirable alternatives to meet the needs in these areas. In addition, problems have arisen over the transfer of the administration of these programs and their funds to the board.

The fifth area of inquiry is whether the board is performing appropriate oversight, monitoring, and evaluation of its own responsibilities regarding higher education. The agency has a variety of responsibilities and the review focused on those that had implications for the operations of the agency and those that had a direct impact on the areas in institutions for which the board has direct involvement. It was determined that, because of the nature of several operations within the agency, the board would benefit from the review and information provided by an

internal auditor. A review of the criteria that guide whether or not an agency should have an internal audit function revealed that the board should have such a position.

The sixth area of inquiry related to the health insurance component of the Texas College and University Employees Uniform Benefits Program. The review focused on the administrative structure of the Administrative Council, the administrative body that oversees the program and its basic operations, and the council's responsibilities with respect to the program. The current system of administering health insurance plans was examined to determine if the program provided for cost-efficient benefits for higher education employees which were comparable to those provided to state employees. The review determined that the current statutory structure of the health insurance program permits institutions to establish individual group plans or to form combined groups with other institutions if they desire to do so. The result is that 65 separate group health insurance plans currently exist. Some of the plans have not consistently met the minimum standards required of them, and the costs to institutions and employees in some cases have been excessive. Therefore, it was determined that the health insurance program should be modified to improve its cost effectiveness. Further, it was determined that additional insurance expertise and a more balanced representation is needed on the council.

Finally, the review examined the Southern Regional Education Compact Commissioner for Texas. The state is one of 15 states participating in a regional educational compact that enables education and government leaders to work cooperatively on key issues and generate comparative information in the education field. The state's participation is based in law and has a sunset date of September 1, 1989. The focus of the review of the compact was to determine if the state should continue its membership, and, if so, to determine if its services and programs could be improved. The review concluded that the office of the Southern Regional Compact Commissioner for Texas should be continued. However, the review did reveal that some improvements should be made to the statute and recommendations are included in the report that address the needed improvements.

The overall fiscal impact of the commission's recommendations for fiscal year 1990 will result in additional expenditures of $408,350. This amount includes $155,000 for a one-time facilities audit and $175,000 for consulting fees and studies related to the Higher Education Employees Insurance program. The net effect for fiscal year 1991 and thereafter is projected to be an increased administrative cost of $80,000. The recommendations on the Hinson-Hazlewood program could result in an annual administrative cost savings of $400,000 beginning in fiscal year 1991, but could also result in a loss of federal lender allowance funds of approximately $633,000. In 1991 an additional $25 million will be available to the Texas Opportunity Plan fund for additional student loans.

Sunset Commission Recommendations for the

Texas Higher Education Coordinating Board

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

The review of the agency's policy-making structure indicated that no changes are needed.

Overall Administration

1. **The Coordinating Board's statute should be changed to require the appointment of an internal auditor. The statute should also:**

   - **require the internal auditor to report to the commissioner but authorize the submission of reports directly to the board in situations specified by board rules;**
   - **require the board's planning and administration committee to meet with the internal auditor at least as frequently as each quarterly meeting of the board;**
   - **state that the duties of the internal auditor will include the review and appraisal of the accounting, financial and operating activities of the board, including its internal management information system, as well as an appraisal of the agency's effectiveness in meeting its statutory duties; and**
   - **state that the state auditor will review the quality and the effectiveness of the agency's internal management information system as part of his responsibility to conduct expanded scope audits of state agencies.**

For the last three years the state auditor has recommended that the board hire an internal auditor but the board has not done so, since no funds have been specifically appropriated for that purpose. Requiring the internal auditor in statute will ensure that the agency places sufficient priority on the internal auditing function. In addition, the statutory language will provide direction to the agency on how to implement the internal auditing function by specifying general areas of responsibility and reporting requirements.

2. **The board should be required to establish policies to improve the participation of minority owned small businesses in the board's contracting process. The board's statute should be amended to:**

   - **require the board and each senior institution of higher education to establish policies which encourage and assist**

minority owned small businesses in bidding for contracts and open market purchases;

- require the board and each senior institution of higher education to make an annual analysis of the number, types and value of the contracts the board and the institutions award to minority owned small businesses;

- require each institution to submit its policy and annual analysis to the board;

- require the board to develop a summary analysis of the information submitted by the institutions;

- require the board to submit its policy and analysis and the policies and summary analysis of the information submitted by the institutions to the State Purchasing and General Services Commission and the Texas Department of Commerce; and

- require the commission to report an analysis of the effectiveness of the board's and each senior institution of higher education's policies to the governor, lieutenant governor, and the speaker of the house, prior to each legislative session.

This change will ensure that the board's policies for its own operation and for each senior institution of higher education are reviewed to ensure that they promote contracting with small businesses which are owned by people who have been socially and economically disadvantaged, due to their inclusion in certain groups. These groups include women, black Americans, Mexican Americans and other Americans of Hispanic origin, and American Indians. Requiring policies which assist these businesses will improve their ability to negotiate contract work needed by the board and the senior institutions of higher education. The Texas Department of Commerce is responsible for promoting minority owned small businesses in Texas and a listing of state board policies in this area will be helpful in this effort. Annual information on the extent of contracting with these businesses will analyze the effectiveness of the policies. This requirement is also recommended for the Texas Department of Agriculture and the Texas Education Agency. This change, along with those recommended for the other agencies, will assist the governor and legislature in determining the effectiveness of various approaches to encouraging minority small business contracting.

Coordination of Higher Education

3. The content of role and mission statements for senior institutions should be improved and the agency's statute should be amended to:

   - require senior colleges and universities to develop role and mission statements using prescribed elements. The board and its staff will assist in the preparation and updating of role and mission statements and develop criteria by which the board will approve or disapprove the statements;

- specify that all senior colleges and universities must have approved tables of programs and role and mission statements approved by the Coordinating Board and the statements contain the required elements within the following time frames:

  - institutions that do not have role and mission statements approved by the Coordinating Board by September 1, 1989 shall be required to have them approved by June 1, 1991 and the statements must contain the required elements;

  - an institution with a role and mission statement approved by the Coordinating Board prior to September 1, 1989 shall develop its statement that contains the newly required elements in compliance with a schedule developed by the Coordinating Board;

- require the Coordinating Board to review the table of programs and role and mission statement of each institution with the chairman of its respective board of regents, or his designee, at least every four years; and

- direct the agency's formula advisory committee and the committee's formula area study groups to seek methods through which formulas could be modified or suspended in lieu of alternative approaches based on role and mission statements.

Role and mission statements are essential to effective planning and coordination. Although these statements have been included as a board responsibility since 1965, during the review it was found that key components of these statements were incomplete or lacking for about half of the senior colleges and universities. Further, the content of those completed varied significantly. The implementation of the elements of this recommendation will achieve the completion of the role and mission process, improve the quality of the statements, and assure that they remain current and useful to decision-makers. The integration of the funding process and the defined role and mission of an institution must occur in order for the legislative funding process to adequately achieve what is defined for each institution

Control of Degree Programs

4. The agency's current requirements and approaches to degree program approval and subsequent course approval for public senior institutions should be changed and the statute should be amended to:

   - direct the Coordinating Board to begin requiring each institution to submit a declaration of intent to inform the board of its potential to develop new degree programs or related new organizational units that would administer new degree programs. Such declaration is for the Coordinating Board's information only, but must be

submitted at least one year prior to the institution's request to the Coordinating Board for approval and funding of any new degree program or related new organizational unit. The Coordinating Board may waive this requirement if circumstances warrant;

- eliminate the requirement for prior approval by the Coordinating Board of any new, changed, or deleted on-campus courses offered in a public senior college or university;

- continue the board's authority to withhold funding of courses that are not authorized, including: professional school courses when a professional school has not yet been authorized; doctoral level or graduate courses in fields which graduate degree granting authority has not been permitted; and of lower-division courses offered at upper-level institutions or centers.

This recommendation will continue the board's authority to approve the degree programs and their course content, but will provide additional information, at an earlier date, to review these requests and make a determination as to their need. Additionally, the recommendation will eliminate the time-consuming and unnecessary process for pre-approval of all course offerings and changes. Control over course changes will be continued through control over the funding.

5. The statute should be clarified as to the degrees authorized to be used by proprietary schools. The statute should be amended to:

   - clearly specify the authority of the Coordinating Board to approve AAA/AAS degrees. The board would have no authority over degrees approved by TEA;

   - all proprietary school AAA/AAS degree programs approved and regulated by TEA prior to January 1, 1989 will continue to be regulated by TEA for a period of four years from the effective date of enactment of this legislation, after which time regulation will go to the Coordinating Board;

   - any student enrolled in an AAA/AAS degree program offered by a proprietary school at the time that the four-year period expires will be grandfathered under the requirements established under TEA's regulation;

   - authorize TEA to approve for use by proprietary schools the degree title "Associate of Applied Technology" or variations of this title which can clearly be distinguished from AAA/AAS degree titles; and

   - require TEA to consult with the Coordinating Board on any new associate degree titles to ensure that titles used by

TEA are distinctly different than those authorized by the Coordinating Board.

Current law gives the Coordinating Board responsibility for approving degree titles. Under interagency agreements, TEA has exercised this authority and has approved degree titles for programs offered by proprietary schools. The degree titles approved by TEA for proprietary schools are the same as those approved by the Coordinating Board for community college programs. Designating identical degree titles for programs which are not the same has caused confusion. The recommendations would eliminate the confusion by creating a new and distinct degree title for proprietary schools. TEA would have the sole authority to award this title. The Coordinating Board would have sole authority to determine the use of all other titles.

Schools using degree titles authorized under current law could continue to use those titles for a four year period. After that time the schools would have to seek approval from the Coordinating Board or TEA for an appropriate degree title.

Transfer of Courses

6. **The agency should be required by statute to develop a process for resolution of transfer disputes which would include:**

   - **requiring a receiving institution to notify both the student and the sending institution when it denies the transfer of course credits;**
   - **requiring the institutions involved, along with the student, to attempt to resolve the problem locally, in accordance with rules which the Coordinating Board will develop;**
   - **requiring the receiving institution to report the case within 45 days to the Coordinating Board, along with the reason for denying the transfer of course credit, if the student or sending institution is not satisfied with the disposition of the local process;**
   - **requiring the Coordinating Board to establish rules and initiate a review process to resolve transfer disputes which can not be resolved at the local level. The Commissioner or his designee will be responsible for making the final determination on each case;**
   - **requiring the agency to collect data on the types of transfer problems which occur and the disposition of each case which it considers; and**
   - **requiring both sending and receiving institutions to publish procedures for resolving transfer disputes, including the state level review process, in their course catalogs.**

The Coordinating Board has had responsibility for developing policies for the transfer of courses since 1965. Over 54,500 students each year transfer from one

higher education institution to another institution, and the receiving institution has final authority over which courses will be accepted from transfer. While only a small percentage of course credits from sending institutions are denied for transfer, such denial can be costly to the state, because institutions are partially funded based on the number of students in each class. When a student must repeat a course because the transfer of a comparable course was denied, the state essentially funds both the denied course and the new course.

Despite the mutual efforts of the agency, sending institutions and receiving institutions' disputes still occur between institutions regarding which courses should appropriately be transferred. Students and sending institutions currently have no recourse to appeal to an impartial party when courses will not transfer.

The process outlined in this recommendation will ensure that students and sending institutions have recourse, after exhausting a local resolution process, when lower division courses are denied for transfer. The Coordinating Board will have more data available for use in developing policies to improve transferability of courses as a result of the process.

Campus Planning Activities

7. **The agency's statutes relating to the approval process for capital expenditure projects at public higher education senior institutions should be modified to:**

   - **raise the current $300,000 limit on repairs and renovations to $600,000 except that repair and renovation projects over $300,000 which increase square footage of the facility being repaired or renovated by one percent or more would continue to require Coordinating Board approval;**

   - **require that the agency conduct a periodic audit of construction projects to confirm that prior approval of projects is appropriately sought when required, and that institutions complete approved projects as indicated in their requests for approval; and**

   - **require that each institution include in its campus master plan the source of funds for all projects over $300,000 and report any changes in the funding source of a project to the Coordinating Board prior to the project's initiation.**

Generally, all new construction and major repair and renovations of public higher education senior institutions in Texas must be reviewed by the agency if the project costs exceeds $300,000. The primary purpose of the agency's involvement is to ensure that physical plants of public institutions are developed in an orderly and efficient way to accommodate projected college student enrollments.

The Sunset Commission determined that new construction projects, which add square footage to an institution's facilities inventory, and therefore generate additional formula funding, require more oversight than repair or rehabilitation projects. Routine repair and rehabilitation projects, when delayed or avoided, can result in a costly "deferred maintenance" backlog.

Distinguishing repair and renovation projects from new construction projects with regard to the approval process and making them easier to accomplish could result in an improvement in the state's deferred maintenance problem. The $600,000 limit was identified as a minimal change with relatively few risks which would add to institutions' ease and flexibility in completing such important projects and accommodate inflation which has occurred since the original $300,000 limit was set. The review identified only eight projects under $600,000 out of 60 total requests which were submitted to the Board for prior approval in fiscal year 1988. Requiring periodic audits of institutions' projects will minimize the risk of removing certain projects from the agency's prior approval authority and permit the agency to analyze an institution's actual compliance with standards and guidelines after projects are completed. The agency has the ability to correct problems it may identify through the audit. For example, incorrectly classified property could be correctly classified on the facilities inventory; facilities improperly recorded on the inventory could be removed and projects funded by the wrong source of funds reported to the state auditor.

8. **The statute should require the Coordinating Board to approve gifts of buildings and land as well as lease-purchase arrangements when the institution proposes to place such an item on the facilities inventory for state funding. Such approval would be required only when:**

   - **the institution proposes to place the property on its facilities inventory; and**
   - **the value of the property exceeds $300,000.**

State law requires the Coordinating Board to review and approve new construction and repair and renovation projects on public senior institutions' campuses which cost more than $300,000. The law helps to ensure that capital construction projects are undertaken only when necessary and appropriate. Oversight of such projects is necessary because state funds are frequently used to operate and maintain the buildings once they are constructed. When an institution acquires land or a building by gift or a lease-purchase arrangement, this property may also require state funds for maintenance or operation; however, the law does not address the agency's authority to approve such acquisitions.

Under the recommendations above, the Board would be authorized to approve, or delay until the legislature meets, the placement of the property on the inventory but would not have authority over the institutions' acceptance of any gift.

This change will provide the Coordinating Board with the ability to prevent certain acquisitions from being inappropriately placed on the facilities inventory, while leaving the institutions with the flexibility and autonomy to accept gifts or make lease purchase arrangements as they see fit. Although institutions would not be prohibited from accepting any gift, they would have a stronger incentive to consider not only the benefits of the acquisition but also the likelihood of receiving Coordinating Board approval for the acquisition to receive state maintenance funding in the future. The $300,000 trigger for approval of such acquisitions would be consistent with the trigger for approval of new construction projects. The two types of acquisitions are similar because they both generally add square footage to the facilities inventory for formula funding.

9. The statute should require institutions to report deferred maintenance information in their campus master plans as follows:

   - require that institution campus master plans include an assessment of the institution's deferred maintenance needs and a plan for addressing these needs. The plan should include an assessment of regular, preventive maintenance needs as well, since attention to these needs can prevent future deferred maintenance problems;

   - require institutions receiving allocations from the Higher Education Assistance Fund to include plans for expenditure of the funds in the campus master plan;

   - require institutions to indicate in the plan an amount which is to be designated each year for repairs, renovations and deferred maintenance projects;

   - require the agency to develop, by rule, a definition of deferred maintenance and the specific information which should be reported in the plan; and

   - require the agency to use the information reported in the plan to assess the deferred maintenance needs in the state and include its findings in its regular annual report.

Institutions already report their long range plans for campus development in a campus master plan, but do not specifically identify in these plans information regarding their major maintenance and repair backlog. Because the deferral of necessary maintenance or repair can be very costly to the state, institutions should be required to assess their maintenance needs and compare these needs to available funds. Such information would also provide the agency with additional data which can be used to structure future audits of institutions and plan other agency activities. For example, if the agency identifies through the campus master plan that an institution which is over-built by the agency's standards is planning major new construction while doing little to resolve deferred maintenance problems, the agency may conduct more frequent audits of the institution or offer other consultation to address the problems identified.

10. The statute should require that future reviews of the Higher Education Assistance Fund (HEAF) allocation formula should include the following information on institutions' deferred maintenance:

    - a comparison of institutions' deferred maintenance needs and the extent to which the funds have been used to meet these needs; and

    - an evaluation of the effectiveness of the current HEAF formula to determine if additional incentives should be built into the formula to encourage institutions to address deferred maintenance needs to a greater extent.

The statute requires the formula for the Higher Education Assistance Funds (HEAF) to be reviewed periodically. Since one of the intended uses of the funds was to meet the repair and rehabilitation needs of the institutions, the formula reviewers can benefit from evaluating the extent to which funds were used to meet such needs. This type of evaluation will result in an up-to-date understanding of the deferred maintenance problems in the state and facilitate an adjustment in the formula to address these problems if the formula reviewers deem an adjustment to be appropriate.

11. **The statute should require the Coordinating Board to reassess its current space standards and develop new space standards which address the differences between teaching, research and service activities.**

The Coordinating Board uses a set of space standards developed in 1980 to assess space needs and current utilization of space at each public higher education institution except community colleges. The standards are generally less detailed than those used in other states. While they may be appropriate for evaluating the classroom and teaching laboratory space at an institution, they are not always valid indicators of the need for research or service-related space. Having standards which address the three missions of higher education institutions would provide the agency with a more equitable and realistic management tool for assessing an institution's space needs. The use of such standards would help to ensure that state funds are spent for projects based on valid, documented needs. In addition, institutions with research and public service functions would be evaluated by standards more appropriately related to these functions.

12. **The statute should require the agency to conduct an audit of facilities on public senior institutions to verify the facilities inventories and use the updated inventories to assess the effectiveness of campus planning activities as follows:**

    - **require the agency to conduct a comprehensive audit of all educational and general facilities on the campuses of the public senior institutions and the Texas State Technical Institutes (TSTI) to verify the accuracy of the facilities inventories;**

    - **require the agency to conduct periodic audits to confirm the appropriateness of the institution's budget requests, and to assess the effectiveness of campus planning activities of both the agency and the institutions. The audits should be used to determine whether projects undertaken by the institutions meet the agency's standards and guidelines; and**

    - **require the agency to report its findings to its board, the Legislative Budget Board, and to the audited institution with recommendations for improvement.**

The public senior institutions prepare or update a facilities inventory and submit it to the Coordinating Board annually. Through the formula process, the institutions receive their state funding for facilities operation and maintenance based largely on the data contained in the inventory. The data is based on information reported by

the institutions and is not verified on a systematic basis. This recommendation will require the agency to conduct an initial, on-site review of educational and general facilities at public senior institutions and TSTI in order to update inventory data. The agency will subsequently use the updated data to evaluate the effectiveness of the institution's campus planning activities and compliance with standards and guidelines. The agency will initiate an audit process which will allow for each institution to be audited periodically using appropriate sampling techniques or other methods adopted by rule. The information obtained in the audit will be used to update the inventory. This process will result in more accurate information on which state funding is substantially based, and enable the agency to assess its own effectiveness as well as that of the institutions in coordinating campus planning.

Financial Aid Programs

13. The statute should be amended to improve the board's administration of the Hinson-Hazlewood College Student Loan Program. The board should be directed to:

    - establish separate funds within the Texas Opportunity Plan fund and account separately for each of its loan portfolios;
    - terminate its federal litigation agreement and file claims on insured loans in a more timely manner;
    - make loans available to proprietary school students in degree programs that are regulated by the board;
    - eliminate its rule that freshman borrowers obtaining a guaranteed student loan from the Hinson-Hazlewood program obtain a co-signer; and
    - report, on an annual basis, information concerning the default rate of borrowers in the board's student loan programs in a manner that is consistent with the reporting of defaults on student loans made by commercial lenders and allows for a clear comparison.

Under the terms of an agreement reached with the federal government in 1976, the Coordinating Board files suit on defaulted accounts and pursues collections of these accounts on its own rather than filing a default claim. Although the board continues to receive federal interest and lender's allowance payments on those defaulted loans during the litigation process, the review determined that the board should terminate this agreement and settle with the appropriate guarantor on a more timely basis. Settling these claims will result in approximately $25 million being returned to the loan fund for the purpose of making more loans. In addition, establishing separate sub-accounts within the loan fund will provide a better accounting for each of the four currently active loan program portfolios and allow more informed decision making as to what interest rates to charge on each type of loan, what origination fee to charge on the uninsured loans, etc. The review also determined that since the Hinson-Hazlewood loan program is financed with public funds, the loans should be made available to more Texas residents. Currently, students at proprietary schools are not eligible for Hinson-Hazlewood loans if they are unable to obtain a loan from a commercial lender. In addition, the review determined that the board should not

impose additional rules requiring credit worthiness of borrowers if those loans are guaranteed and the same requirements are not made by other lenders. Finally, data on the board's loan default situation needs to be developed in a manner that allows for comparison with student loans made by commercial lenders and guaranteed by the Guaranteed Student Loan Corporation.

14. **The appropriate statutes should be modified to restructure the agency's loan forgiveness programs into loan repayment programs in the following manner:**

    - **restructure the Teacher Education Loan program so that its provisions are similar to the physician student loan repayment and physical therapist student loan repayment programs;**
    - **repeal provisions relating to the Future Teacher Loan program;**
    - **define transitional provisions for current loan recipients; and**
    - **remove the section regarding cancellation of Hinson-Hazlewood loan repayments after first combining provisions into the relevant sections on teacher and physician loan cancellations, as necessary.**

The Coordinating Board currently administers several programs which offer financial assistance to provide incentives for persons to practice in a particular field or in an under-served area of the state. These programs are either loan forgiveness or loan repayment programs. The review found that the forgiveness programs, where loans are made to students and later canceled when the service obligations have been met, were more costly to administer. These recommendations would redefine the state's student financial assistance incentive programs to all be loan repayment programs. The Future Teacher Loan program would not be needed since the restructured Teacher Education Loan program would serve the same objectives. In addition, by combining or deleting existing provisions regarding Hinson-Hazlewood loan cancellations, all the provisions regarding loan cancellations would be in one statutory location and clarify that loans from any lender are eligible for repayment.

15. **The appropriate statutes should be changed to abolish the State Rural Medical Education Board and the agency should consider consolidating the administration of various physician incentive programs. Specific elements of the recommendations are as follows:**

    - **assign the continuing administrative duties of the abolished State Rural Medical Education Board to the Coordinating Board;**
    - **add three governor appointees to the Family Practice Residency Advisory Committee who represent the health concerns of rural medically underserved areas of the state;**

- change the name of the advisory committee and direct it to advise the board on issues of rural medical health professional shortages;

- remove the restriction regarding Texas lenders for eligible loans in the Physician Student Loan Repayment program; and

- recommend to the Coordinating Board that it consider consolidating the responsibilities for administering the Physician Student Loan Repayment program, the rural medical education scholarships, and the other physician incentive or compensation programs in one division at the agency.

This recommendation would amend the statutes to conform with expressed legislative intent regarding the State Rural Medical Education Board and provide for continued administration of existing loan obligations. Adding three new appointees to the existing statutory Family Practice Residency Advisory committee and directing it to also focus on rural health care professional shortage issues will provide continued attention to this problem and advice to the Coordinating Board. In addition, consolidating the administration of all the physician incentive or compensation programs within the Coordinating Board will ensure that the efforts are coordinated and provide more focus on the objective. Removing the requirement that only Texas loans can be eligible for physician repayments will increase the number of persons who might be attracted to practice medicine in the rural and underserved areas of the state.

Higher Education Health Insurance Program

16. The statute should be amended to provide for greater standardization of health plans and to provide for oversight to ensure standardization. Specific requirements would include:

    - require the Administrative Council to contract with consultants or use an advisory committee to study the risks and benefits of combining health insurance programs and report the findings of the study to the 72nd Legislature. Authorize the study to include consideration of the new "triple option" concept emerging in the health care industry;

    - require the council to standardize the health insurance plan bid specifications;

    - require insurance groups with fewer than 500 enrollees to use the standard specifications;

    - authorize the council to require institutions with 500 to 10,000 enrollees to use the standard bid specification under certain circumstances;

    - require contract submission to the council 30 days prior to the contract's effective date;

- **authorize the council to require the institution and insurance carrier to renegotiate if the contract is found to be out of compliance;**

- **require the council to report plan deficiencies to an appropriate faculty or staff body of the affected institution(s);**

- **require the State Auditor to conduct periodic audits of the institutions' programs;**

- **prohibit council members from participating in a decision regarding the compliance of their own institutions' plans with the council's standards; and**

- **require the Coordinating Board staff to report an institution's contract deficiencies to an appropriate faculty or staff body.**

Although the statute establishing the Higher Education Health Insurance Program allows insurance groups to voluntarily combine to form larger groups, 65 different health plans currently exist and each institution generally must manage its own benefits plan. This system differs from the health insurance program for regular state employees which is centrally administered. The high costs of insurance premiums and the increasing difficulty institutions experience in meeting health insurance standards have emphasized the need to examine alternative methods for providing health insurance. In addition, the Administrative Council which sets the insurance standards and oversees the plans, needs additional oversight authority to help keep plans in compliance.

The above recommendations would help reduce the costs and risks of operating 65 separate health insurance plans for higher education employees. The requirement for institutions with less than 500 enrollees to use uniform bid specifications approved by the council will relieve smaller institutions from the cost and responsibility of developing specifications. Having the authority to require institutions with more than 500 but less than 10,000 enrollees to use uniform bid specifications under certain circumstances will also give the administrative council an additional tool for keeping costs down and plans in compliance. The recommendations regarding oversight and compliance are designed to force the correction of compliance problems in a timely manner and notify enrollees of deficiencies in their plans. Finally, the requirement for the State Auditor to verify that program enrollees are eligible for the program helps ensure that state funds are appropriately spent.

17. **The statutory composition of the Administrative Council should be changed to:**

    - **require that three members having knowledge of the actuarial principles needed to analyze higher education insurance plans be appointed by the governor;**

- require that two members be higher education employees elected by the members of the Administrative Council's advisory committee;

- require that two members be designated by the presidents of the three senior level institutions having the highest number of employees; and

- require that two members be designated by the presidents of the three junior level institutions having the highest number of employees.

The current Administrative Council of the Higher Education Insurance Program consists of three appointees of the presidents of the six senior level institutions having the highest number of appointees, three members who are appointed by the presidents of the three junior level institutions having the highest number of employees and three persons selected by the commissioner of higher education. Traditionally, these members have been institution executives or insurance managers at their respective institutions. The increasingly complex insurance arena and the new duties which the council would assume under the previous recommendations make the need for additional expertise on the council more critical. The current composition does not ensure that a balance of employers, employees and experts in the insurance field are represented on the council. The above recommendation will result in the council having additional expertise and capabilities available as well as providing a balance of interests on the council. The current advisory committee and its structure would not be affected by the recommendation.

Overall Statutory Mandates of the Agency

18. The Coordinating Board's statute should be changed to remove unnecessary statutory duties and responsibilities from the respective chapters of the Education Code.

Since the agency was created in 1965, its operating statutes have included a wide variety of duties envisioned to shape and coordinate the state's higher education system. Statutory responsibilities have been amended and numerous new responsibilities have been added. In this process some statutory provisions have become impractical, unnecessary, met by other requirements, or marginally valuable. Therefore, such provisions should be deleted.

Office of the Southern Regional Compact Commissioner

19. The statute should be amended to continue the Office of the Southern Regional Education Compact Commissioner for Texas and:

    - require the commissioner of higher education, on behalf of the Texas members of the SREB to file notice of national compact meetings with the secretary of state's office;

    - remove the agency from the sunset review process; and

- **require the Coordinating Board to include an annual report of the activities of the state in the SREB in the agency's regular annual report.**

The state of Texas, through its governor, entered into a regional education compact with thirteen other states in 1948. Fifteen states currently participate in the compact which enable education and government leaders to work on key issues and generate comparative information in the education field. The compact provides a means for state residents to enroll in graduate programs in other participating states on an in-state tuition basis.

Continuing the state's participation in the compact allows Texas to provide its residents with access to costly specialized programs which might otherwise have to be offered in Texas. In addition, the recommendations above would result in the public having access to information about the national compact meetings and the degree and type of participation by the state in compact activities.

Other Changes Need in the Agency's Statute

20. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations have been applied to the Coordinating Board.

TEXAS GUARANTEED STUDENT LOAN CORPORATION

Texas Guaranteed Student Loan Corporation

Background and Focus of Review

Creation and Powers

The Texas Guaranteed Student Loan Corporation (TGSLC) was created by the 66th Texas State Legislature in 1979. The corporation was created as a public nonprofit entity to administer the federal guaranteed student loan program in Texas and to guarantee student loans under the terms of that program. The corporation does not make any loans itself, it guarantees loans made by financial institutions and the Texas Higher Education Coordinating Board against the death, disability or default of the borrower. In that sense, the TGSLC acts like an insurance company.

The TGSLC is not a state agency and receives no appropriations of state funds. The corporation is subject to the Texas Sunset Act however. In addition, an attorney general opinion found that the TGSLC is subject to the Texas Open Records Act because of an initial appropriation of lender's allowance funds from the Texas Higher Education Coordinating Board made to help establish the corporation.

The original national guaranteed student loan program was created by the federal 1965 Higher Education Act as a way of removing financial barriers to higher education opportunities. Under the loan guarantee program, the government initially encouraged private lenders to make loans available to students by providing an 80 percent guarantee that the lender would be reimbursed should the student not repay the loan. Other incentives to lenders to make capital available for student loans included a federal interest subsidy that made the return on the loans attractive and the existence of secondary market agencies whose primary purpose was to purchase guaranteed student loans from lenders. Secondary markets provided smaller lenders with needed liquidity of their assets. However, even with these incentives, the participation of lenders in the program did not keep up with the demand for student loans. It was determined that the high degree of centralization in the federal student loan insurance program was hindering its growth. Lenders had to wait too long to have a claim for reimbursement on defaulted loans processed and often had claims rejected. Consequently, the Higher Education Act Amendments of 1976 created financial incentives to states to create guarantee agencies which would administer the guaranteed student loan program at the state level. These incentives included federal advance funds to help establish the agency, 100 percent reinsurance on all defaults for the first five years of the program, and administrative cost allowance funds. In addition, the lender's guarantee was increased to 100 percent. As a result of these financial incentives being offered, the Texas legislature commissioned an interim study conducted in 1978 by the accounting firm of Touche Ross & Co. The study evaluated alternatives for a student loan guarantee program in Texas and the creation of the TGSLC in its present form was recommended by that study.

Since the incentives were offered to set up state guarantee agencies, all fifty states, the District of Columbia, Puerto Rico, Guam, American Samoa, North Marianas and the Trust Territories have established a guarantee agency or designated one of two national private nonprofit guarantee agencies as their guarantor. Twenty five states and Puerto Rico have designated a state agency to be the guarantee agency, 18 states, including Texas, have established nonprofit corporations as guarantee agencies, and 7 states and the District of Columbia have

designated one of the national private guarantee firms (Higher Education Assistance Foundation or United Student Aid Funds).

Currently, the guaranteed student loan program represents the largest student financial assistance program in the state, as well as in the nation. The TGSLC guarantees the principal and accumulated interest to private lenders for each eligible student loan they make. Participation in the program and loans guaranteed have grown steadily since the TGSLC was created, as seen in Exhibits 1 and 2. The drop in the number of lenders participating in the program in 1987 (Exhibit 2) is due, in part, to an increase in Texas bank failures and mergers, and to smaller lenders dropping out as large "open-door" lenders have entered the student loan market.

Policy-making Structure

The board of the Texas Guaranteed Student Loan Corporation is composed of 11 members. Eight of these are appointed by the governor with the advice and consent of the senate, and serve for six year terms. Three of the governor appointees must be from the field of commercial finance, three must be members of the faculty or administration of an eligible post-secondary institution, and two must be public members not affiliated with either commercial finance or higher education. In addition, a student appointed by the Commissioner of Higher Education sits on the board and serves for a six year term (or as long as that person is a full time student). Thus, nine members serve staggered six year terms. The other two positions on the board are filled by the Comptroller of Public Accounts, and a member of the Texas Higher Education Coordinating Board, appointed by the chairman of the Coordinating Board, who serve in an ex officio capacity.

Funding and Organization

The headquarters and only office of the Texas Guaranteed Student Loan Corporation is located in Austin, as required by statute. The corporation employs approximately 200 full time employees and owns the building which it occupies. The employees are not state employees and the corporation has its own retirement and benefits programs. The operating budget for the corporation in its fiscal year ending September 30, 1987 was $10 million and the budget for fiscal year 1988 is $11.6 million. Exhibit 3 shows the organizational structure of the corporation.

When the TGSLC was created the Texas legislature appropriated $1,500,000 to it from the federal special lender's allowance fund at the Coordinating Board. This fund had a balance at that time of over $4 million and represented earnings from the state's direct student loan program. This was a one-time appropriation designed to provide the total funds necessary for the TGSLC to become a self-sustaining entity.

In addition to this start up appropriation, the TGSLC was eligible to receive two types of federal advance funds under sections 422(a) and 422(c) of the Higher Education Act of 1965. These advance funds were made available by the federal government for the purposes of helping regional guarantee agencies get established and build up adequate reserve funds. The TGSLC received approximately $10 million in federal advances which may be recalled. Consequently, these funds are segregated in the TGSLC's reserve fund as contingent liabilities.

Annual and Cumulative Student Loans Guaranteed

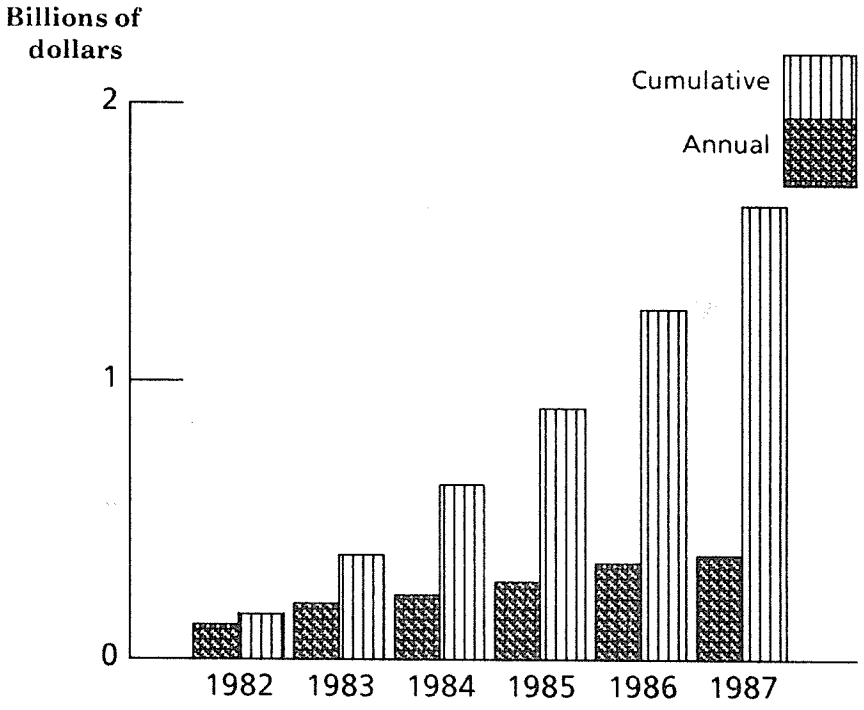


Exhibit 2

Eligible Lenders and Schools in the Program

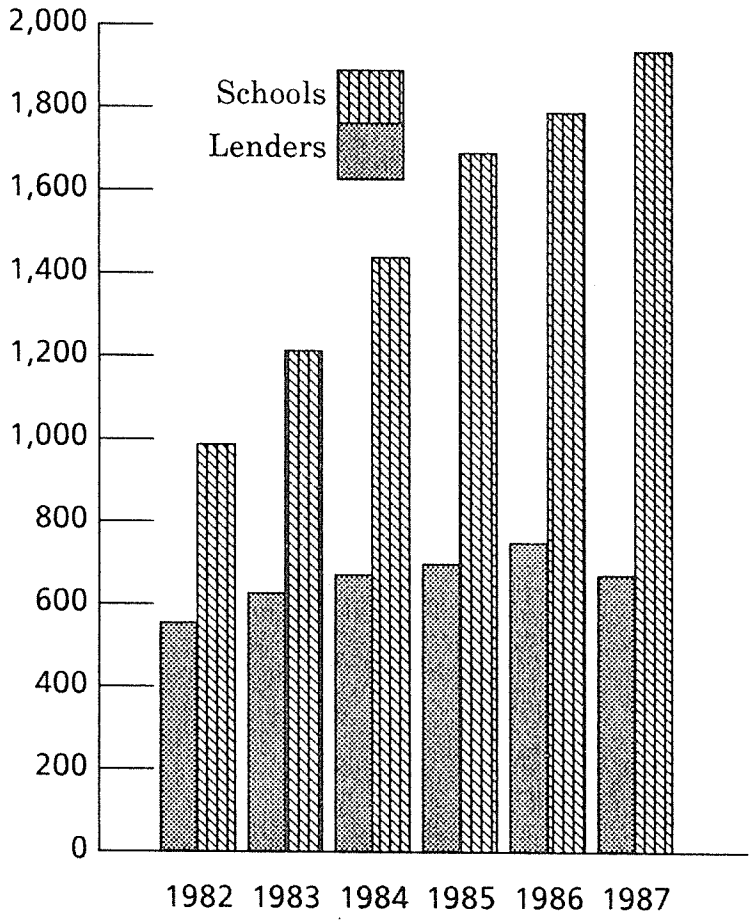


Exhibit 3

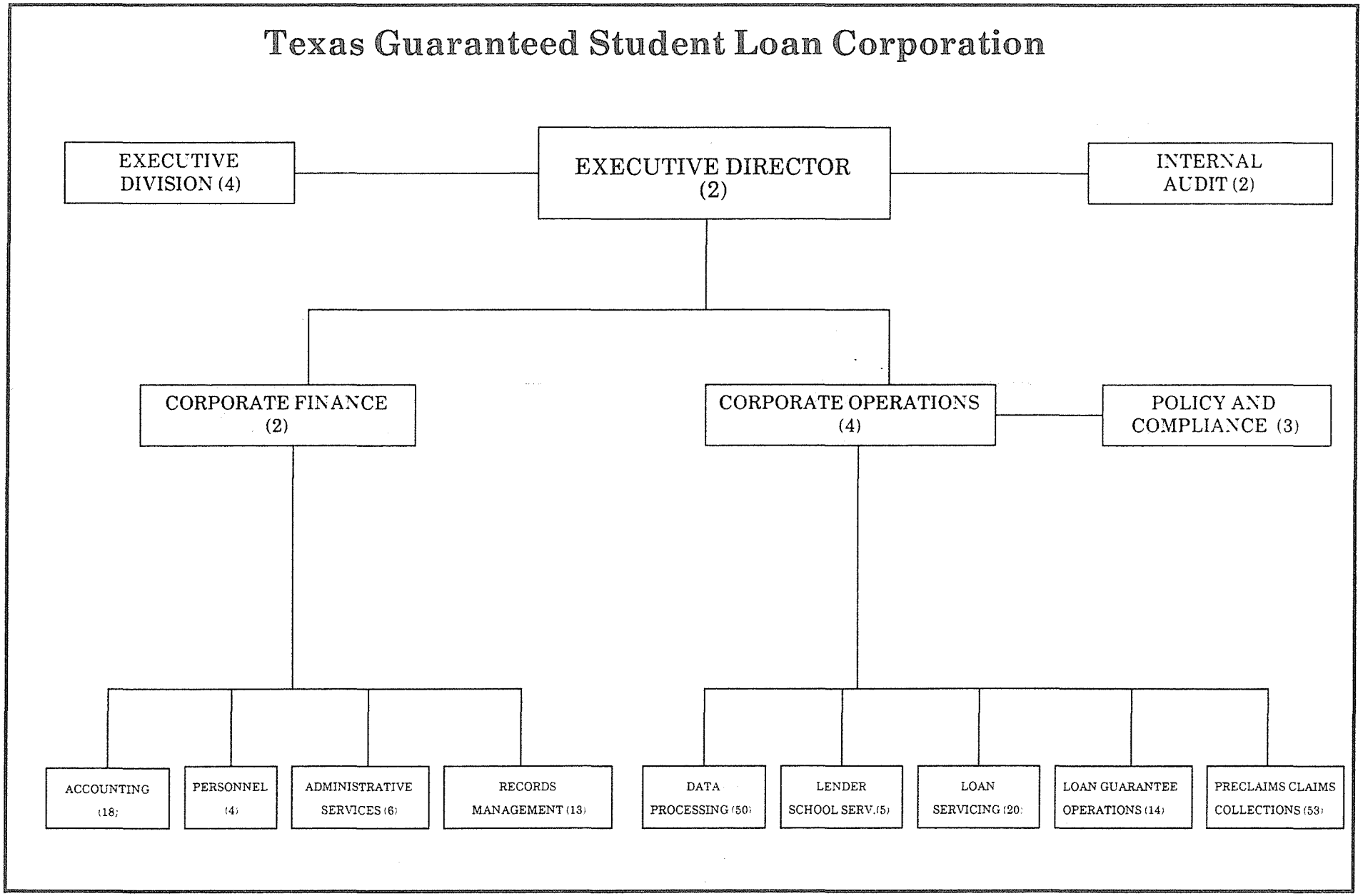
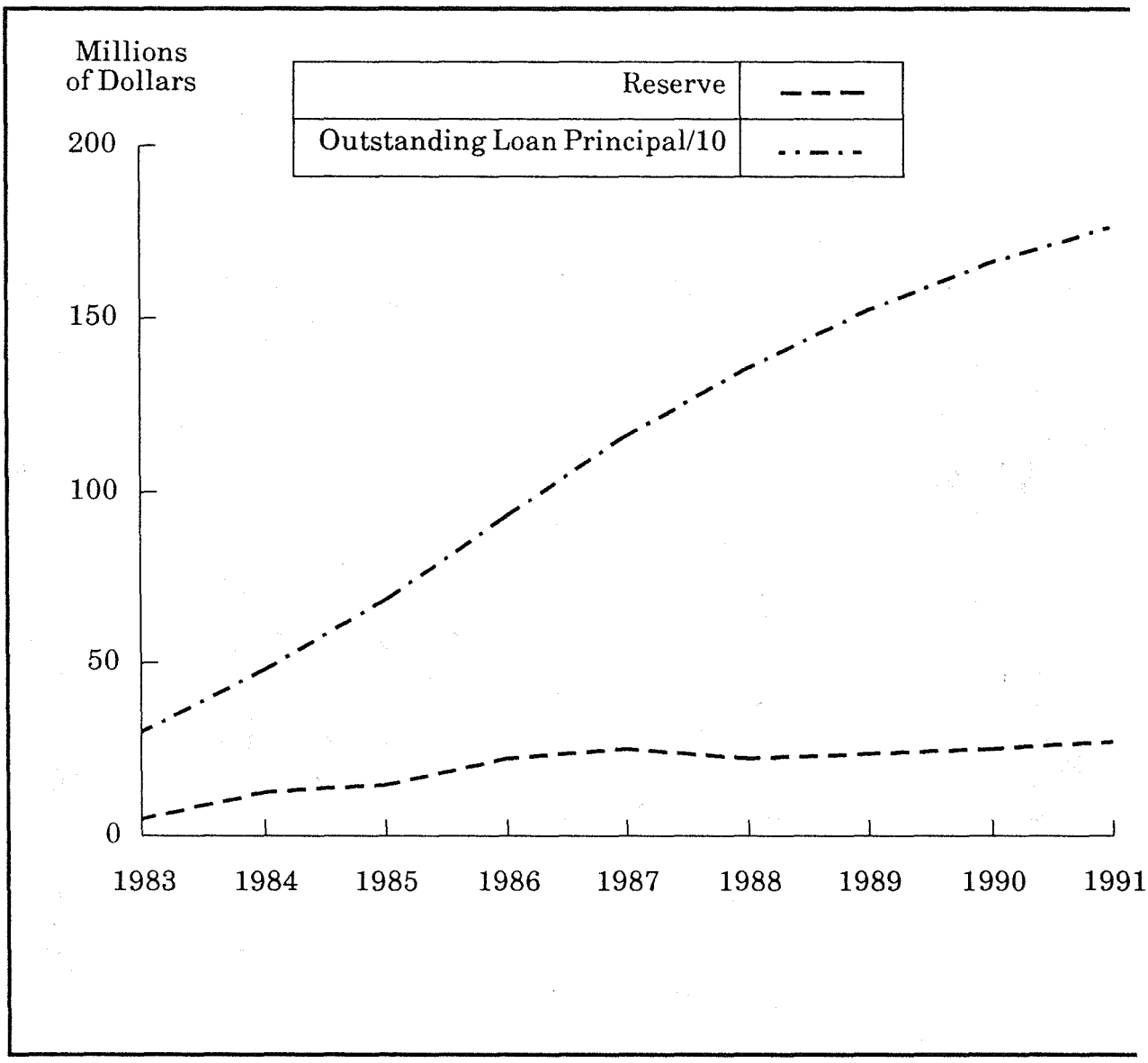

Texas Guaranteed Student Loan Corporation
EXECUTIVE DIVISION (4)
EXECUTIVE DIRECTOR (2)
INTERNAL AUDIT (2)
CORPORATE FINANCE (2)
CORPORATE OPERATIONS (4)
POLICY AND COMPLIANCE (3)
ACCOUNTING (18)
PERSONNEL (4)
ADMINISTRATIVE SERVICES (6)
RECORDS MANAGEMENT (13)
DATA PROCESSING (50)
LENDER SCHOOL SERV. (5)
LOAN SERVICING (20)
LOAN GUARANTEE OPERATIONS (14)
PRECLAIMS CLAIMS COLLECTIONS (53)

Exhibit 4

Actual and Projected Corporate Reserves Versus Total Outstanding Loan Principal



By state law, the TGSLC reserve fund is divided into two accounts: the operating account and the guarantee account. Income to the corporation in the form of insurance premium receipts from students, federal administrative cost allowances, the corporation's share of collections on defaulted loans, and loan servicing fees is deposited to the operating account, from which the corporation's operating expenses are paid. The federal advance funds, federal reinsurance receipts, investment earnings and corporate earnings not needed for operations are deposited into the guarantee account. Funds may be withdrawn from the guarantee account for the sole purpose of paying lenders' claims on defaults. The TGSLC board has a policy of maintaining reserves equivalent to 1.5 percent of outstanding loans. The relationship between outstanding loans and reserves is shown in Exhibit 4. This reserve is the guarantee fund balance, as illustrated in Exhibit 5. Management transfers funds into the guarantee account, according to a complex financial forecasting model, to maintain the proper allowance for defaults.

The TGSLC is limited by statute to investing in United States government securities such as treasury bills and securities of federally backed agencies like Fannie Mae. The investment policy adopted by the corporation specifies the types of investments the corporation will make in order to maintain liquidity and limits the investment maturities to three to five years.

Programs and Functions

Loan Guarantee Operations

The main function of the TGSLC is to guarantee student loans under the terms of the federal guaranteed student loan program. The guaranteed student loan program consists of three student loan components: the Guaranteed Student Loan Program (GSLP), which is the original loan program created in 1965; the Parent Loan for Undergraduate Students Program (PLUS), created in 1980 to encourage loans to parents of dependent undergraduate students; and the Supplemental Loan for Students Program (SLS), created in 1986 to encourage loans for independent students. The features of these three programs are summarized in Exhibit 6. From an operational standpoint, the TGSLC guarantees loans under the three components in the same way, therefore there is no differentiation among the three in terms of corporate staff, income, or expenses.

The loan guarantee function operates as follows. First a student undergoes a financial needs assessment processed by a national firm, which forwards the results to the school financial aid office indicated by the student. An overall determination of the student's need is made by a financial aid officer who then prepares a financial aid package for the student, first offering whatever grant or scholarship aid may be available. Student loans are offered as a last alternative to make up the difference between the student's resources, expected work earnings, and gift aid and the expected costs of attending the institution. The student completes the loan application and the school certifies that the student is at least a half time student and meets the financial need criteria. The student then takes or mails the application to a participating lender who may accept or deny the application, depending on the lender's own criteria. If accepted, the lender forwards the loan application to the TGSLC. The TGSLC processes the application on its computer system which has various automated editing checks to see that the application meets all the eligibility criteria and checks to see if the student has ever previously defaulted on a TGSLC guaranteed loan.

Exhibit 5

TGSLC Revenues and Disbursements

	FY 1986	FY 1987	FY 1988 (estimated)
Operating Account			
Cash-Beginning	$ 3,600,345	$ 5,107,815	$ 5,925,803
Guarantee Fees	7,133,928	8,192,880	7,897,366
Administrative Cost Allowance	4,348,410	4,215,937	3,499,907
Loan Servicing	117,487	365,725	1,750,000
Investments	441,142	382,072	490,450
Recoveries	550,016	1,314,219	2,578,399
Rental/Loans/Others	1,124,869	0	0
Cash Available	$ 17,316,197	$ 19,578,648	$ 22,141,925
Less:			
Operating Budget	8,611,827	9,932,271	11,551,842
Reinsurance Fee	0	0	1,891,503
Loan Principal	559,755	220,158	105,000
Transfer Out	3,036,800	3,500,416	2,258,121
Cash-Ending	$ 5,107,815	$ 5,925,803	$ 6,335,459
Guarantee Account			
Cash-Beginning	$ 10,899,615	$ 16,713,753	$ 13,322,322
Reinsurance	30,486,046	43,548,771	63,585,923
Investments	1,726,100	882,197	1,184,023
Transfer In	3,036,800	3,500,416	2,258,121
Federal Advance	3,961,158	0	0
Other	75,744	0	0
Less:	$ 50,185,463	$ 64,645,137	$ 80,350,389
Claims Reinsured	32,333,014	49,020,629	64,808,015
Claims Non-Reinsured	1,138,696	2,302,186	4,304,823
Cash-Ending	$ 16,713,753	$ 13,322,322	$ 11,237,551
Receivables	$ 6,815,897	$ 11,959,299	$ 13,207,202
Guarantee Reserve	$ 23,529,650	$ 25,281,621	$ 24,444,753
TOTAL RESERVES	$ 28,637,465	$ 31,207,424	$ 30,780,212
Outstanding Loans (Millions $)	$ 837.80	$ 1,021.80	$ 1,339.50
Guarantee Reserve Percent (Guarantee Reserve/Outstanding Loans)	2.81%	2.47%	1.82%

Exhibit 6

Texas Guaranteed Student Loan Corporation Loan Program Components

	Texas Guaranteed Student Loan Program (TGSL)	Texas Supplemental Loans For Students (TSLS)	Texas Parent Loan Program (TPLUS)
Eligible Borrowers	• Undergraduate and graduate students who - are citizens or eligible non-citizens, - enrolled at least half time or accepted for enrollment in an eligible school - making satisfactory progress and in good academic standing, if applicable - having no defaults on prior NDSL (or Perkins Loans), FISL, GSL, SLS, ALAS, or PLUS loans and owing no refunds on Pell, SEOG, or SSIG Grants, - registered with the U.S. Selective Service System, and - who certify their intent to use the loan proceeds for educational purposes.	• Available to borrowers who are not eligible for Guaranteed Student Loans and/or those who need funds in addition to their GSL and/or PLUS borrowings. • Other requirements are the same as those for TGSL.	• Available to borrowers who are not eligible for Guaranteed Sudent Loans and/or those who need funds in addition to their GSL and/or SLS borrowings. • Parents of dependent undergraduate, graduate or professional students - who are citizens or eligible non-citizens, - who have no defaults on prior NDSL (or Perkins Loans), FISL, GSL, SLS, ALAS or PLUS loans and owe no refunds on Pell, SEOG, or SSIG Grants, - who have stated their intent to apply the proceeds to the educational costs of the student, and - whose dependent undergraduate student(s) meet all the criteria outlined for the TGSL eligibility.
Financial Eligibility	• Determined by the school based on an analysis of student "need" which considers the family financial condition, estimated cost of education, and eligibility for other financial aid.	• Same as TGSL.	• Determined by the school based on an analysis of student "need" which includes estimated costs of education less other financial aid. • Financial capacity to repay the loan is determined by the lender.

Exhibit 6

Texas Guaranteed Student Loan Corporation Loan Program Components

(cont.)

	Texas Guaranteed Student Loan Program (TGSL)	Texas Supplemental Loans For Students (TSLS)	Texas Parent Loan Program (TPLUS)
Interest Rate, Fees and Repayment Responsibilities	• 8 % interest rate. • Guarantee fee not to exceed 3 % of principal amount (currently 2.25%). • Origination fee, currently 5% of prinicipal amount • No payment of principal required during the student's in-school period plus six months; interest subsidized by the U.S. Government during this time. • Borrower payment of principal and interest begins after school is completed.	• Annually adjusted variable rate not to exceed 12%. • Guarantee fee not to exceed 3% of prinicipal amount (currently 2.25%). • Borrower payment of principal and interest begins within 60 days of loan disbursement. SLS borrowers are eligible for certain deferments, including full-time enrollment at an eligible school. Deferment entitles borrowers to postponement of principal payments. Interest must be paid or capitalized to principal.	• Annually adjusted variable rate not to exceed 12%. • Guarantee fee not to exceed 3% of principal amount (currently 2.25%) • Borrower payment of principal and interest begins within 60 days of loan disbursement. The only deferment currently available to parent borrowers is for unemployment. Additional deferments will be added for "new" borrowers beginning July 1, 1987. Deferment entitles borrowers to postponement of principal payments. Interest must be paid or capitalized to principal.
Maximum Loan Amounts	• Freshmen, Sophomores $2,625 annually • Juniors, Seniors $4,000 annually • Cumulative Undergraduate $17,250 total • Graduate/Professional $7,500 annually • Cumulative Graduate/ Professional $54,750 (total includes undergraduate GSL, SLS and student PLUS borrowings)	• $4,000 annually (in addition to GSL and/or PLUS borrowing) • $20,000 cumulative total	• $4,000 annually per dependent student (in addition to GSL and/or SLS borrowing) • $20,000 cumulative total per dependent student
Repayment Terms	• $50 per month minimum • Ten year maximum repayment term	• Same as TGSL	• Same as TGSL

When all application requirements are met, the TGSLC issues the guarantee and sends a notice of guarantee back to the lender. The loan guarantee processing operates 24 hours a day, employs 15 people, and the current turnaround time at TGSLC to process a guarantee is 48 hours. When the lender receives the loan application back with the guarantee, he issues a check in the student's name -- after first deducting the loan insurance and origination fees from the loan amount -- and sends the check to the school's financial aid office. The total elapsed time between the student's submission of the application to the lender and the arrival of the check at the financial aid office is approximately seven days. The loan insurance fee is sent to TGSLC and the origination fee is applied to the first federal interest subsidies the lender will receive. For an average $2,000 student loan, the student would receive $1,855 after the insurance fee of $45 and the origination fee of $100 were deducted.

Loan Servicing

In 1982 the TGSLC board, under statutory authority, began a loan servicing program for lenders in order to attract more lenders into the program. The servicing of guaranteed student loans does not fit well with the servicing of a lender's traditional commercial lending portfolio. The guaranteed student loans are subsidized loans, of a generally small amount, and are very long term. In addition, there are numerous "due diligence" procedures that must be followed and documented. These due diligence procedures include a series of letters and phone calls to the delinquent borrower that the lender must make in an effort to collect on the loan prior to filing a claim with the TGSLC. The steps are illustrated in Exhibit 7.

Exhibit 7

TGSLC Lender Due Diligence Process

Days of Delinquency on the Loan	Action
0 to 30	Two notices
30 to 60	One phone contact and two letters
60 to 90	One phone contact and one letter Request for TGSLC assistance
90 to 120	One phone contact and one letter Request for TGSLC assistance
120 to 150	One phone contact and one letter
150	Demand letter is sent to borrower
180	First day to file claim with TGSLC

Consequently, many smaller lenders find it more economical to pay a servicer to service guaranteed student loans. The TGSLC offers this service to participating lenders; there are also other national firms that offer this service. For the loans it services, the TGSLC will bill the federal government quarterly for interest and special allowances due the lender, process deferments, collect the payments and wire transfer them to lenders, process forbearances, perform all the due diligence

requirements, and prepare and file claims if necessary. The TGSLC bills each lender monthly for servicing. Loan servicing is a fast growing function of the TGSLC. In fiscal year 1988, net revenues of approximately $800,000 are expected and 19 new full time employees will be added to the 20 employees that currently carry out this function. Income from loan servicing helps to offset the corporation's large investment in data processing (51 employees) which supports the loan guarantee, loan servicing, and claims activities.

Preclaims, Claims, and Collections

This department is responsible for helping lenders prevent defaults on loans, for processing lender claims once a default occurs, and for collecting claims on defaulted guaranteed student loans. Fifty-three people work in this area. The preclaims process is initiated when a lender notifies the TGSLC that an account is 60 days past due and files a request for assistance. The preclaims staff contact the borrower and generally supplement the activities of the lender in trying to collect the loan payments by making phone calls and sending letters. At 180 days past due, after the lender has issued a demand letter to the student calling in all the loan, the lender may file a claim with the TGSLC. The lender must file the claim before the 220th day past due and the average claim is filed at the 210th day. The lender signs over the promissory note and the documented account history which is reviewed at TGSLC. Data is entered into an automated system that checks the claim to verify that all the due diligence procedures have been followed by the lender. If they have, a check is issued automatically to the lender. This process takes from 24 hours to 10 days from receipt of the claim. A new expedited process is being introduced for lenders with historically low claims rejections rates that will reduce the number of TGSLC personnel involved in claims review and allow them to focus more on preclaims and collections activities.

TGSLC may not bill the federal government for claims reinsurance until the 270th day of delinquency, and usually receives the reimbursement around the 330th day of delinquency. Since the TGSLC pays the claim to the lender around the 220th day of delinquency, there is a "float period" of approximately 110 days for $10 to $15 million which the TGSLC must cover with its own funds.

Secondary Markets

Student loans are unlike any other type of commercial loans that lenders make since they are for relatively small amounts and have very long repayment periods. A student has up to ten years to repay the loan and the repayment period doesn't begin until six months after graduation or leaving school. In addition, there are 19 types of deferments available to students in special categories. For example, loan repayment may be deferred if a student goes to graduate school, joins the armed forces, becomes unemployed or takes parental leave. These deferments prolong the loan repayment period and make handling student loans all the more difficult. Consequently, the Congress established the Student Loan Marketing Association (Sallie Mae) to purchase student loans from lenders, thereby providing lenders the necessary liquidity on their investment. Sallie Mae is thus a secondary market for student loans. Sallie Mae is a private corporation, financed by private capital, which received federal fund advances and administrative allowances to help get it established. In addition to Sallie Mae, Texas statutes authorize the creation of local Higher Education Authorities which function as regional "mini Sallie Maes." The authorities are created by the governing body of a city (or cities), usually near a large university, and issue revenue bonds for the purpose of purchasing guaranteed

student loans from local lenders. There are nine Higher Education Authorities in Texas. A local lender in Texas then has three possible purchasers of his student loan portfolio: the authorities, Sallie Mae, or any other eligible lender. Many lenders sell their student loans to a secondary market, unless their student loan volume is large enough that they can achieve the economies of scale needed to make holding the loans profitable. Although secondary market agencies are not recognized as eligible lenders in the guaranteed student loan program (they must operate through a designated trustee bank), they must meet the same due diligence requirements of primary lenders and the guaranteed student loans they purchase retain the original guarantee of 100 percent insurance.

Loan Consolidation

Students can find themselves after graduation making monthly payments on several guaranteed loans, all to different lenders or secondary market agencies. Under the federal regulations of the guaranteed student loan program, lenders may provide loans to certain borrowers to consolidate the borrower's student loan obligations into one monthly payment to one institution. This consolidation must be initiated at the borrower's request and the borrower must have at least $5,000 in outstanding loans, be in repayment status, and not be delinquent on any account. Loan consolidation does not apply to parent loans. Guarantee agencies, such as the TGSLC, may sign agreements with eligible lenders and secondary market agencies and issue certificates of comprehensive insurance coverage for the purposes of loan consolidation. The TGSLC is currently entering into such agreements with some lenders on an experimental basis, primarily as a service to them, since the guarantee agency may not charge any fees for guaranteeing consolidated loans.

Lender of Last Resort

The federal guaranteed student loan program statutes require that each state designate a lender of last resort: either the guarantee agency itself; or another eligible lender in the state through an agreement with the guarantee agency. The TGSLC was designated the state's lender of last resort by the state legislature in 1985. The lender of last resort provisions require the TGSLC to make a guaranteed student loan to any eligible student who certifies that no other eligible lender in the state, nor the Texas Higher Education Coordinating Board, is willing to make a guaranteed student loan to that student. To date, the TGSLC has not made any loans as a lender of last resort because there are many lenders in the state who will make guaranteed student loans to any eligible student.

Focus of Review

The sunset review of the Texas Guaranteed Student Loan Corporation included all aspects of the corporation's activities and focused on the appropriateness of the structure and non-state agency status of the corporation and ways to improve the operations of the corporation to more effectively carry out its student loan guarantee function. A number of activities were under taken to gain a better understanding of the corporation. These activities included:

- discussions with key corporation staff;
- discussions with five board members individually;

- visits to two lender operations, one higher education authority and two schools;

- review of past legislative issues and relevant evaluation studies and reports;

- phone discussions with officials of guaranty agencies in six other states; and

- discussions with persons in other state agencies knowledgeable of the corporation's development and functions.

These activities yielded an understanding of the general objectives of the corporation's functions and the key issues related to the corporation and the state/federal partnership that exists to carry out the guaranteed student loan program. The issues identified generally fell into three related areas of inquiry. First, is the structure adopted for the state's guarantee program in 1979 still the best alternative for the state? Second, what changes are needed to improve the corporation's overall performance and accountability to the state? Third, what changes can be made at the state level to address the problem of increasing defaults in the guaranteed student loan program?

Regarding the first area of inquiry, an extensive review was made of the work of the interim committee which investigated options for establishing a guarantee agency in Texas following the 1976 Higher Education amendments in Congress. These amendments provided many federal incentives to states to establish guarantee programs. The recommendations and expectations of that committee were measured against the corporation's seven year track record to determine if the committee's and the legislature's decision to establish a state chartered public nonprofit corporation, instead of a state agency, to administer the program still makes sense today. In summary, the review indicated the decision was a wise one:

- trends in other states indicate that the use of nonprofit agencies, like the TGSLC, has grown from 10 states in 1985 to 18 states in 1987 while the use of state agencies in the program has decreased from 35 to 25 in the same period. No state has converted a nonprofit guarantee agency into a state agency;

- loan capital available to students increased from $40 million in 1981 to over $378 million in 1987 demonstrating lender satisfaction with the program and that any eligible student can now obtain a guaranteed student loan;

- the corporation has operated successfully without state appropriations, has built up a loan insurance reserve fund of approximately $25 million and has not incurred any liability for the state;

- entire elimination of the program would force the federal government to designate a guarantor from another state which would reduce the service and attention to Texas lenders, schools, and students, and would likely adversely affect the lender participation in the program; and

- no substantial benefit to the state could be identified by making the corporation a state agency. Although changes are needed to improve the corporation's operations, they can be implemented through modifications of the corporation's existing statutes.

Regarding the second area of inquiry, numerous modifications in the corporation's current operations and statutory structure were identified which would improve the corporation's accountability to the state and its overall performance. Examples of these modifications are: including the corporation under the Open Meetings Act; requiring the state auditor to review the independent audits of the corporation; directing the board of the corporation to evaluate and modify its investment policy; and authorizing the corporation to engage in additional revenue generating activities that are consistent with its mission. Besides improving the corporation's accountability, these recommendations follow a theme of enhancing the corporation's revenues and performance in order to decrease the guarantee fee charged to student borrowers.

Regarding the third area of inquiry, the review focused on areas that can be addressed by the Texas statutes and the TGSLC to reduce or prevent student loan defaults. Since the TGSLC is reimbursed by the federal government at a reduced rate as the number of default claims it pays to lenders increases, controlling these defaults is essential to the corporation's fiscal viability and reduces pressures to increase the guarantee fee charged to students. The review found that the range of options available to the state to reduce defaults is very limited because the program is primarily federal. However, within that limited range a number of initiatives were identified and recommended which include: directing the TGSLC to take an active, pivotal role in student loan default prevention and reduction initiatives in this state; directing the TGSLC to increase the number of program evaluations at schools where students are defaulting at high rates; directing the corporation to impose additional program eligibility requirements of high default lenders and schools; and providing default data on proprietary schools to the Texas Education Agency. In addition, a recommendation was adopted providing that holders of a state professional or occupational license may not have that license renewed, after a one-year warning period, if that person is in default on a guaranteed student loan and fails to make repayment arrangements with the TGSLC.

Since the TGSLC is not a state agency and it receives no state appropriations, there will be no fiscal impact on the state due to the implementation of the commission's recommendations related to the corporation. The fiscal impact on the corporation itself is expected to be minimal as most of the recommendations can be implemented with the corporation's existing staff. Many of the state's licensing agencies could be affected by the new requirements but the costs involved would be minimal.

Sunset Commission Recommendations for the
Texas Guaranteed Student Loan Corporation

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

1. **Statutory provisions regarding the make-up of the board of the TGSLC should be modified to provide for the following:**

   - **five members with knowledge of or experience in finance appointed by the governor, none of whom shall be either on the board or an employee of a participating lender or secondary market in the guaranteed student loan program;**
   - **one full-time student member appointed by the governor; and**
   - **the Comptroller of Public Accounts, or his designee, as an ex officio voting member.**

The board of the Texas Guaranteed Student Loan Corporation is currently composed of 11 members. Eight of these are appointed by the governor and the other slots are filled by a member of the Texas Higher Education Coordinating Board, a full-time student, and the Comptroller of Public Accounts. Of the governor appointed members, three must be from the field of commercial finance and three from higher education. The review determined that this composition has inherent conflicts of interest in regards to the lenders represented on the board and that the board should instead be made up primarily of public members with financial expertise who are not representatives of lenders participating in the program. The three positions appointed by the governor which represent institutions of higher education would remain unchanged and the total number of board members will be ten.

2. **The TGSLC's school and lender advisory committees should be required in statute and clear statutory directives concerning the corporation's use of advisory committees should be established.**

The corporation's two existing advisory committees provide an effective means of providing input to the board from those directly affected by the board's decisions. These should be structured in statute and be made up of a balanced representation of the different types of lenders and schools participating in the program. The committees should be appointed by the board on the recommendation of the executive director.

3. **The TGSLC should be subject to the Open Meetings Act.**

The corporation, since it is not a state agency, currently is not subject to the provisions of the Act. Although the board meetings are open to the public and minutes are filed regularly with the Legislative Reference Library, specifically

subjecting the corporation to the Act's provisions will ensure that these practices continue and that the meetings will be announced in the Texas Register.

Overall Administration

4. **The corporation's statute regarding fiscal audits by a certified public accountant should be modified to provide that:**

   - **a copy of the annual audit be submitted to the state auditor for his review; and**
   - **the state auditor have the authority to examine any workpapers from the audit or conduct his own audit if his review of the independent audit indicates this need.**

The corporation's audit requirements could be improved by increasing the accountability of the agency to the state. This can be accomplished by involving the state auditor in the review of the audit currently conducted annually by a certified public accountant.

5. **The corporation's statute should be modified in the following ways to improve the corporation's use of its internal auditor:**

   - **require the appointment of the internal auditor by the executive director with the concurrence of the board;**
   - **require the internal auditor to report to the executive director but authorize the submission of reports directly to the board in situations specified by board rules;**
   - **require the board's executive committee to meet with the internal auditor on a regular basis; and**
   - **clearly state the duties of the internal auditor to include the examination of the corporation's system of internal controls, as well as its system of identification of fixed and variable costs, including administrative costs.**

The TGSLC has recently hired the corporation's first internal auditor. By statutorily requiring this position and specifying the internal auditor's duties, an ongoing check over administrative costs and good management practices is ensured.

Guarantee Fees

6. **The statute should direct, as a matter of policy, that the board is to charge the lowest guarantee fee possible under federal requirements which will not endanger the fiscal viability of the corporation.**

The guarantee fee charged to the student or parent borrower represents the corporation's largest single source of income. This fee, however, increases the costs to students of obtaining a loan. Texas has a high effective insurance fee when compared to other large state programs. The statute should direct the corporation to keep this fee as low as possible to better serve Texas students.

Investments

7. **As a management directive, the board should evaluate the corporation's investment policy and make changes as needed. The evaluation should address:**

   - **the development of a plan to dispose of IBM and Exxon shares;**
   - **the benefits of authorizing longer term investments; and**
   - **the benefits of investing guarantee account funds with the Texas Treasury Safekeeping Trust Company.**

Improving the rate of return on the corporation's investments is one way to hold down the guarantee fees. Increasing revenues from other sources, such as investments, decreases the reliance on guarantee fees to fund the reserve. The corporation's investment policy has not been revised since 1984 and needs to be re-evaluated. Special consideration should be given to lengthening the maturity dates on some investments. In addition, the corporation does not have statutory authority to hold equities and should take steps to dispose of these types of instruments. The potential benefits of investing through the state treasury should also be examined and considered.

Other Revenues

8. **The statute should authorize the TGSLC to engage in additional revenue generating activities that are consistent with the corporation's mission:**

   - **prior to engaging in any such activities, the TGSLC board must find that revenues collected will be (at an estimated future date) enough to cover costs and reduce students' guarantee fees;**
   - **the TGSLC shall be specifically prohibited in statute from guaranteeing loans for other states; and**
   - **TGSLC shall not require schools or students to use any of the additional services.**

In addition to revising its investment policy, the TGSLC should have the statutory authority necessary to develop alternative revenue sources to help keep students' guarantee fees to a minimum. Requiring the board to examine the costs and potential benefits prior to engaging in any new activity ensures that each option will be carefully studied and only those activities that have a high probability of producing net revenues will be undertaken. Specifically prohibiting the corporation from guaranteeing loans for other states ensures that the reserve fund will not be exposed to increased risk and yet allows the corporation to contract with other state guarantee agencies to provide services for a fee.

Controlling Loan Defaults

9. The TGSLC should be directed in statute to take an active role in coordinating, facilitating, and providing technical assistance on guaranteed student loan default prevention and reduction initiatives and programs in the state. In doing so it shall work with, but not be limited to, the following entities:

   - schools;
   - lenders;
   - servicers;
   - secondary markets;
   - the Texas Higher Education Coordinating Board;
   - the Texas Education Agency; and
   - state professional/occupational licensing agencies.

This approach defines the TGSLC as the focal point in the state for student loan default prevention and reduction initiatives. The review determined that each of the entities listed above has a role in the loan default problem and that solutions to the problem need to address each one of the elements in concert.

10. To better address the problem of high default rates among students attending certain schools, the appropriate statutes should be amended to:

    - require the TGSLC to notify all schools of their students' default rates at least twice a year;
    - require the TGSLC to notify the Texas Education Agency (TEA) of the default rates and of any sanctions against proprietary schools it applies;
    - direct the TGSLC to require proprietary schools to provide program completion rate data to the TEA; and
    - require the TEA to review the data to determine its relationship to the default rate of that program or school's students.

The TGSLC is currently authorized under federal regulations to notify schools of their default rates and required to respond to any requests for this information. The corporation currently only responds to information requests. Requiring the semi-annual reporting of default rates would increase schools' awareness of the problem and facilitate the schools' cooperation. In addition, requiring the submission of dropout data by proprietary schools participating in the guaranteed student loan program to the TEA, as well as providing the TEA with proprietary schools' default data and status in the loan program, will enable that agency to be better informed in its regulation of those schools.

11. **The corporation should be given several new tools and directives to correct default problems in school and lender settings. To accomplish this, the following statutory changes are needed:**

- **The TGSLC should be required in statute to establish default rate "triggers" for schools and lenders as follows:**
  - **the default rates will be defined in a manner consistent with federal regulations and policies;**
  - **the corporation will define trigger rates for each type of eligible school and lender; and**
  - **the default rate triggers will be determined after consultation with the eligible schools and lenders.**
- **If the default rate for a participating school exceeds the established trigger rate:**
  - **the TGSLC would be required in statute to conduct program evaluations of the school or provide technical assistance, or both;**
  - **the TGSLC would be authorized to impose a set of additional default prevention actions upon the school which are not generally required for participation in the program as a condition of continued eligibility; and**
  - **the additional actions could only be imposed after review by the school advisory committee.**
- **If the default rate for a participating lender exceeds the established trigger rate:**
  - **the TGSLC would be authorized to impose a set of additional default prevention actions upon the lender which are not generally required for participation in the program as a condition of continued eligibility;**
  - **the additional actions could include requiring disbursement of loans in more installments than required by federal guidelines and notifying schools and students in clear language when loans are sold; and**
  - **the additional actions could only be imposed after review by the lender advisory committee.**

The TGSLC's current policy regarding schools' eligibility for participation in the loan program expressly states that a high default rate alone is not a criterion for eligibility. For lenders, the policy states that their default rate should generally be less than 15 percent - but it is not strictly enforced. While student characteristics are the strongest predictors of loan defaults, school and lender administrative practices do influence the default rate. This recommendation focuses the corporation's

attention on working with those schools and lenders with the highest default rates and authorizes stricter program participation requirement for those entities. These steps should help address the default problem without penalizing students who have not defaulted by denying them access to loans and allows lenders to continue to make loans to students whose high risk and lack of good credit history make them ineligible for any other loan program.

12. **The corporation's statute should be amended to establish that defaulting on a guaranteed student loan is a ground for not renewing a state professional or occupational license:**

    - **authorize the TGSLC to require licensing agencies to collect, and submit to the corporation, licensee or applicant information (full name, social security number, date of birth, etc.) needed to match TGSLC borrower data;**

    - **require the TGSLC to notify each state professional and occupational licensing agency of persons regulated by the agency who are in default on loans guaranteed by the corporation;**

    - **establish that a licensing agency may renew the license of a licensee who is in default on a student loan only once after the agency has been notified of the licensee's default status;**

    - **establish that a person who is in default must enter a repayment agreement with the TGSLC in order to have his license subsequently renewed;**

    - **establish that an initial license can be issued to a person who is in default but that person would not be allowed to renew unless the person enters a repayment agreement with the TGSLC;**

    - **require licensing agencies to provide written notice of this law to all applicants and licensees and provide an opportunity for a hearing to a licensee prior to any non renewal of licenses; and**

    - **establish that actions concerning non renewal of a license can only take place after September 1, 1991.**

Many persons use guaranteed student loans to get an education to enter an occupation or profession which is regulated by the state. Amending state professional and occupational licensing statutes to make defaulting on a guaranteed student loan a ground for not renewing the license would increase the sanctions available for defaulted student loan borrowers and discourage future defaults. The provisions, as outlined above, provide for at least a one-year notice to any licensee who would potentially be affected. This allows ample time for the person to make repayment arrangements with the TGSLC on the defaulted loan. Because of these warning provisions it is anticipated that the primary effect of the law will be to provide a strong incentive to licensees to rectify their loan situation and that very few licenses will actually not be renewed. Consequently, little fiscal impact or increased administrative burden for the licensing agencies involved is anticipated.

Use of Private Collection Agencies

13. As a management directive, the TGSLC should evaluate the costs and benefits of using private collections agencies to assist in collecting on defaulted student loans.

The corporation currently pursues all collections activity through an in-house operation. The U.S. General Accounting Office reports that most other guarantee agencies supplement their in-house efforts by using private collection contractors. The TGSLC should formally study this alternative to see if it might produce results in Texas.

Other Changes Needed in Agency's Statute

14. The relevant across-the-board recommendations of the Sunset Commission should be applied to the corporation.

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations have been applied to the Guaranteed Student Loan Corporation.

15. Minor clean-up changes should be made in the corporation's statute.

Certain non-substantive changes should be made in the corporation's statute. A description of these clean-up changes in the statute are found in Exhibit 8.

Exhibit 8

Minor Modifications to the Texas Guaranteed Student Loan Corporation Statute

Chapter 57 -- Education Code

Change	Reason	Location in Statute
Substitute "Texas Higher Education Coordinating Board" for "Coordination Board, Texas College and University System".	To reflect the change made by the 70th Legislature.	Sections 57.41(c)(2) and 57.47(a)
Remove the requirement that an eligible lender have its principal place of business in Texas.	To comply with federal provisions added in 1986 that require guarantee agencies to guarantee otherwise eligible loans regardless of the lender's principal state of business.	Subsection (2) of Sec. 57.45
Remove the prohibition against the corporation or on eligible lender discriminating against an eligible student on the basis of "income."	To comply with federal requirements that loans be made on the basis of financial need.	Section 57.50
Delete transition provision.	To remove language that expired in 1981.	Section 57.51

OFFICE OF COMPACT FOR EDUCATION COMMISSIONER FOR TEXAS

Office of Compact for Education Commissioner for Texas

Background and Focus of Review

Creation and Powers

The compact for education is a cooperative agreement between 48 states, the District of Columbia, the Virgin Islands, Puerto Rico, and American Samoa. The compact establishes the Education Commission of the States. The purpose of the compact is to establish and maintain close cooperation and understanding among political, educational, and lay leaders at the state and local levels; provide a forum for discussion, development, and recommendation of public policy alternatives in the field of education; and provide a clearinghouse of information on matters relating to educational problems and how they are being met.

The compact was drafted and sent to the states for ratification in September 1965. A few months later the commission became official when the tenth state had approved the compact. The compact was created in response to concerns of the states. At that time, the states felt an increasing involvement of the federal government in education and wanted an agency through which state interests could be represented at the federal level. In addition, there was no central organization to gather educational data and statistics and to disseminate this information to all states. Since that time, the federal government's role in education has diminished, but states continue to face a wide range of educational issues that warrant discussion and study with other states.

To become a member of the compact, a state or jurisdiction must enact the compact legislation. Texas entered into the compact in 1967 with the passage of House Bill 755. To withdraw from the compact, the member state must repeal that statute. In addition, the withdrawal will not take effect until one year after the governor of the withdrawing state has given written notice of the withdrawal to the governors of all the member states or jurisdictions. To date, no state or jurisdiction has withdrawn from the compact.

Policy-making Structure

The Education Commission of the States is composed of seven commissioners from each member jurisdiction, with each commissioner having one vote. Generally, the seven members consist of the governor of the state, two legislators, and four appointees of the governor of which one is a head of a state agency or institution responsible for public education in the state. The states have the authority to modify the section of the compact which speaks to the state's representation. Approximately half of the members have altered this section. The Texas representation is composed of the governor or his designee and six members to be appointed by and serve at the pleasure of the governor. Of the appointees, one may be the head of a state agency or institution responsible for public education. The full commission meets annually and the location of the meeting varies. The meetings rotate from a location on the east coast to a central location, to the west coast, to Denver, Colorado.

To conduct the business of the commission between annual meetings, the commission elects a steering committee. The steering committee is composed of one delegate from each member jurisdiction. The steering committee meets twice a year

in addition to the annual meeting. In addition, the steering committee has three standing committees. The location of these meetings also varies.

Funding and Organization

The Education Commission of the States is headquartered in Denver, Colorado, and most of the activities are carried out from this office. The commission employs 51 full time permanent staff in Denver and hires part-time interns and consultants as necessary. In addition, there is a Washington office staffed by one employee as a liaison to the government and other organizations headquartered there.

The compact is funded through membership fees; grants from the federal government, foundations, or corporations; contracts with states and the federal government; and miscellaneous revenue from such items as the sale of publications. The total revenue for 1987 was approximately $4.5 million. State membership fees accounted for approximately $2.0 million or 46 percent of total revenue in 1987, while grants accounted for 28 percent and contracts accounted for 18 percent. The membership fees are based on a state's population and per capita income in relation to other states. Texas' share of the membership fees in 1987 was $80,400 or approximately 4 percent of the total amount of fees collected. The Texas compact commissioners pay for their own travel and accommodations, either out of agency funds or personally. However, the Education Commission of the States pays for the expenses of the Texas steering committee member to attend all of the meetings.

Programs and Functions

To meet the purpose of the compact, the commission performs a variety of activities. These activities include producing and distributing publications, providing technical assistance, maintaining an information clearinghouse on educational topics, conducting research on various education issues, sponsoring seminars, and providing support to policy seminars conducted by member states.

The commission puts out a number of publications, such as the State Education Leader, free to compact commissioners. Many of the publications are quite lengthy and cover many topics. Some of these topics include: youth at risk, drop out programs, adult literacy, textbooks, school reforms, teaching and the teaching profession, and school finance. These publications are provided to the commissioners on request and are available to the public at a nominal cost.

The staff of the commission provides technical assistance to the member states. Technical assistance provided by the staff ranges from providing information compiled to specifically address a state's request, to assisting a state to set up a study or project, to actually conducting a study for the state. On-site technical assistance of less than a week is generally provided free; however, for longer periods of time a member would contract with the commission or the staff would put the member in touch with a consultant.

The staff maintains an information clearinghouse on a wide range of educational topics. Requests for information are frequent and the staff tries to provide an answer within 24 hours of the request. Printed information from the clearinghouse is generally provided free to the member states.

Research is conducted in a number of areas. The commissioners prioritize the topics and direct the staff as to which topics will be research projects. For example,

two current research projects concern at-risk youth and the participation of minorities in higher education. In addition to the major projects, the staff conduct small research projects in other areas. This research may be the result of a contract, technical assistance or questions asked by several states that the clearinghouse was unable to fully answer.

As another of its activities the commission sponsors seminars. In addition to the seminars conducted in conjunction with its annual meetings, two major seminars sponsored by the commission are the Advanced Legislative Program Services and the Large Scale Assessment Conference. The commission, in conjunction with the National Council of State Legislatures, sponsors Advanced Legislative Program Services (ALPS) seminars. These seminars are funded with state membership fees and by the Ford Foundation. A six-member advisory panel composed of representatives of both organizations sets the agenda for the seminars and the staff plan and carry out the seminars. These seminars generally cover one issue or topic. For example, in January 1988 an ALPS seminar focused on how to pay for college. Topics discussed at the seminar included programs in other states, such as tax exemptions and savings programs; and the current status of loan and grant programs nationwide. The Large Scale Assessment Conference, co-sponsored by the Education Commission of the States and the University of Colorado, focuses on statewide and large city or school district testing of students. The annual conference brings together the range of individuals and groups involved in testing from state administrators of testing programs to representatives of testing companies. The main topic of the conference varies from year to year to cover the various aspects of testing. These conferences are funded with state membership fees and conference registration fees.

In addition to the conferences sponsored by the Education Commission of the States, at least 35 states conduct State Education Policy Seminars (SEPS). These seminars are conducted by the states at their own initiative and funding. The seminars focus on topics of interest or concern to an individual state. The commission provides support to the member states that conduct SEPS through technical assistance and the provision of materials and workshops to the coordinators of these seminars.

Focus of Review

The review of the office of Compact for Education Commissioner for Texas focused on two areas: whether there was a continuing need for Texas' participation in the compact and whether there was adequate information provided to the legislature, state agencies and the public regarding Texas' participation in the compact.

The assessment of a continuing need for Texas' participation in the compact focused on Texas' use of services provided by the Education Commission of the States and the benefits derived from those services. The review concluded that:

- Texas regularly uses the services of the commission including the information clearinghouse and on-site technical assistance. In addition, Texans have attended the Advanced Legislative Program Services seminars and Large Scale Assessment Conferences;

- Texas has benefited from the services and information provided by the Education Commission of the States. The commission receives requests

from the legislature, state agencies and public school districts for information on a range of educational topics;

- Texas has benefited from active participation in the Large Scale Assessment Conferences in designing and implementing our state's testing program; and

- Texas is likely to continue to benefit from its participation in the compact. The state is currently in the planning stages of its first State Education Policy Seminar.

The review concluded that there is a continued need to participate in the compact of education, but there is no need to have a separate sunset date for the compact.

The assessment of adequate information being provided regarding Texas' participation in the compact concluded that:

- the Education Commission of the States is not a state or federal agency and is not subject to either state or federal open meeting requirements. However, the Texas compact commissioners, as state officials, are subject to the Texas Open Meetings Act. The date, location, and time of the commission meetings are not being published in the Texas Register in compliance with the Open Meetings Act. The governor's office should be given responsibility for providing proper notification; and

- the commission is required by the compact to send an annual report covering general compact activities to the governor and the legislature of each of the member states. In Texas, the compact commissioners do not submit an annual report that highlights the activities and expenditures of Texas' participation in the compact. This report could be provided as part of the governor's annual financial report.

During the review, questions concerning the "most favored nation" provisions in Texas and other states' statutes were raised. The questions focused on the influence these provisions have on textbooks. Most favored nation provisions generally have two basic aspects: 1) a state is prohibited from paying more for a textbook than any other state and 2) a publisher must reduce the price of his textbook in a state if he offers to sell the book at a lower price in another state. Since these provisions influence both states with and without most favored nation clauses, the Education Commission of the States appears to be an appropriate body to study this question.

The recommendations that have been adopted would have minimal fiscal impact.

Sunset Commission Recommendations for the
Office of Compact for Education Commissioner for Texas

CONTINUE THE AGENCY WITH MODIFICATIONS

1. **Texas membership in the Compact for Education should be continued without a separate sunset date. The statute should be amended to:**

   - **continue Texas' participation in the compact for education; and**

   - **eliminate the separate statutory sunset date for the office of the Compact for Education Commissioner for Texas.**

Texas has participated in the compact for education since 1967 and has benefited from the services provided to the member states.

This recommendation would continue the state's participation in the compact in order to benefit from the services provided to the state. The continued oversight of the governor and the legislature on the activities of the compact eliminates the need for a sunset review on a twelve year cycle.

2. **The governor's office should be required to notify the public of Texas of national compact meetings. The statute should be amended to require the governor's office to post notice of national compact meetings with the secretary of state's office for publication in the Texas Register.**

The notification of national compact meetings is currently limited to the efforts of the Education Commission of the States to notify the commissioners and the public. This effort includes notifying the compact commissioners in writing and publishing notice in leading public education journals. While the commission is not subject to either state or federal open meeting requirements, Texas compact commissioners are subject to the Texas Open Meetings Act. In Texas, notice of the national compact meetings has not been provided to the public through publication in the Texas Register.

This recommendation would provide the public with notice of the commission and steering committee meetings. The governor's office would be required to notify the secretary of state's office of all future meetings as required by the Open Meetings Act.

3. **As a statutory change, an annual report on the activities and expenditures relating to Texas' participation in the compact for education should be included in the annual financial report of the governor's office.**

The Education Commission of the States is required to send a copy of the annual report on general compact activities to the governor and the legislature of each member state. This annual report does not provide information specific to Texas'

participation. In addition, the Texas compact commissioners do not provide a separate report on their activities and expenditures. Annual reports of this nature are commonly required of state agencies in Texas.

An annual report of the Texas Compact Commissioners should provide more information on compact activities. In addition, the report may increase the general awareness of Texas' participation in the compact and the availability of the services provided.

4. **As a management directive the governor's office should pursue all avenues available to have the Education Commission of the States investigate the impact of "most favored nation" provisions on the price of textbooks and the effects of removing these provisions.**

At least 25 states, including Texas, have most favored nation provisions in their statues relating to textbooks. Although this type of provision protects Texas from paying more for textbooks than is charged in another state, it also prevents Texas from paying less for textbooks. While it is possible for Texas to eliminate its most favored nation provision, this action will not necessarily eliminate the concerns because of the provisions in other states' statutes and the influence they have on Texas.

Implementation of this recommendation would give Texas a better basis for determining the appropriateness of its most favored nation provision and any changes in the law that might be needed.

WESTERN INFORMATION NETWORK ASSOCIATION

Western Information Network Association

Background and Focus of Review

Creation and Powers

The association, created by statute in 1967, was established to promote the educational programs of state-supported institutions of higher education in Texas by authorizing the establishment and operation of a cooperative system for communications and information retrieval and transfer between the institutions and private educational institutions, industry, and the public. This improved communication was to be facilitated by the use of two-way, closed-circuit television, and other electronic communication facilities.

Although the association has a board and the authority to issue bonds to finance and carry out the operations of the association, it has never functioned and is currently inactive.

Focus of Review

The sunset review of the association did not identify any interest in continuing the agency.

Sunset Commission Recommendation for the
Western Information Network Association

THE ASSOCIATION SHOULD BE ABOLISHED

1. **The statute establishing the Western Information Network Association should be repealed.**

The need for the association has never been established. Its statutory structure should be repealed.

Recommendations for

TAX-RELATED AGENCIES

State Property Tax Board

Office of Multistate Tax Compact Commissioner for Texas

Committee on State Revenue Estimates

STATE PROPERTY TAX BOARD

State Property Tax Board

Background and Focus of Review

Creation and Powers

The State Property Tax Board (SPTB) was created in 1979 to assist in the consolidation of local appraisal functions within the central appraisal districts and to encourage uniformity in appraisal practices. One of the agency's primary functions is conducting the annual property value study of school districts for use in state formulas to determine school funding. Using the same data, the agency also conducts the annual ratio study to determine the level and uniformity of appraisals within each appraisal district. The agency is also authorized to establish appraisal methods for special properties such as agricultural property and timberland. Further, the SPTB assists appraisal districts by offering technical assistance, providing public information and uniform forms, developing standards for district operations, conducting performance audits of appraisal districts under certain circumstances and developing courses on property tax administration. The agency also assumed several duties previously performed by the State Comptroller including appraising the intangible value of the assets of certain businesses, such as oil pipelines and railroads, and apportioning their value among the various counties in which the businesses operate for property tax purposes.

Policy-making Structure

The board is composed of six members, who are appointed by the governor with the advice and consent of the senate for staggered six year terms. The governor designates one member of the board to serve as chairman. The statute requires that at least two members be active property tax professionals who are certified with the Board of Tax Professional Examiners.

The duties of the board include the selection of the executive director, approval of the agency budget, and oversight of agency administration. The board also adopts rules and makes final decisions on appeals from school and appraisal districts regarding the annual studies conducted by the agency.

The part-time SPTB board is required to meet at least every calendar quarter. It has met in Austin five times in 1986 and 1987, respectively.

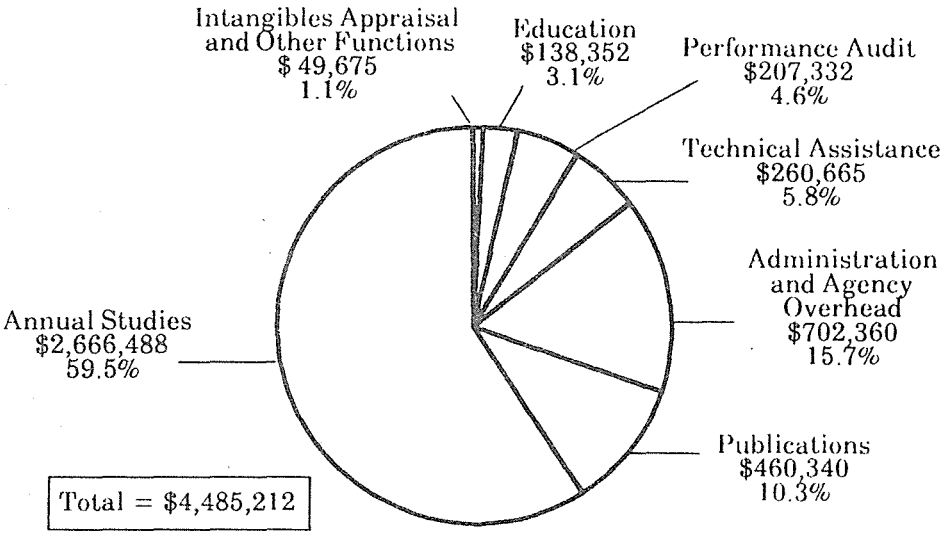
Funding and Organization

The agency has a fiscal year 1988 budget of approximately $4.5 million. The agency's General Revenue Appropriation is $4,247,880 and an additional $207,332 is allocated by rider for the purpose of auditing the performance of appraisal districts in accordance with H.B. 354, passed by the 70th Legislature. The board is directed to reimburse the General Revenue Fund with all monies received from appraisal districts or property owners as reimbursement for the cost of conducting the performance audits. An additional $30,000 in the 1988 budget reflects revenue of $28,000 from publication sales in excess of the amount projected in the 1988 appropriation and $2,000 in agency fees for issuing certificates of service on out-of-state delinquent taxpayers. Exhibit 1 analyzes the agency's budget for fiscal year 1988 by program.

As Exhibit 1 shows, the largest portion of the agency's budget is allocated to the annual studies that determine school district property wealth and evaluate appraisal district performance. Also, 8.6 percent of the agency's budget is allocated to administrative costs, and 7.1 percent of the budget is allocated to agency overhead costs.

Exhibit 1

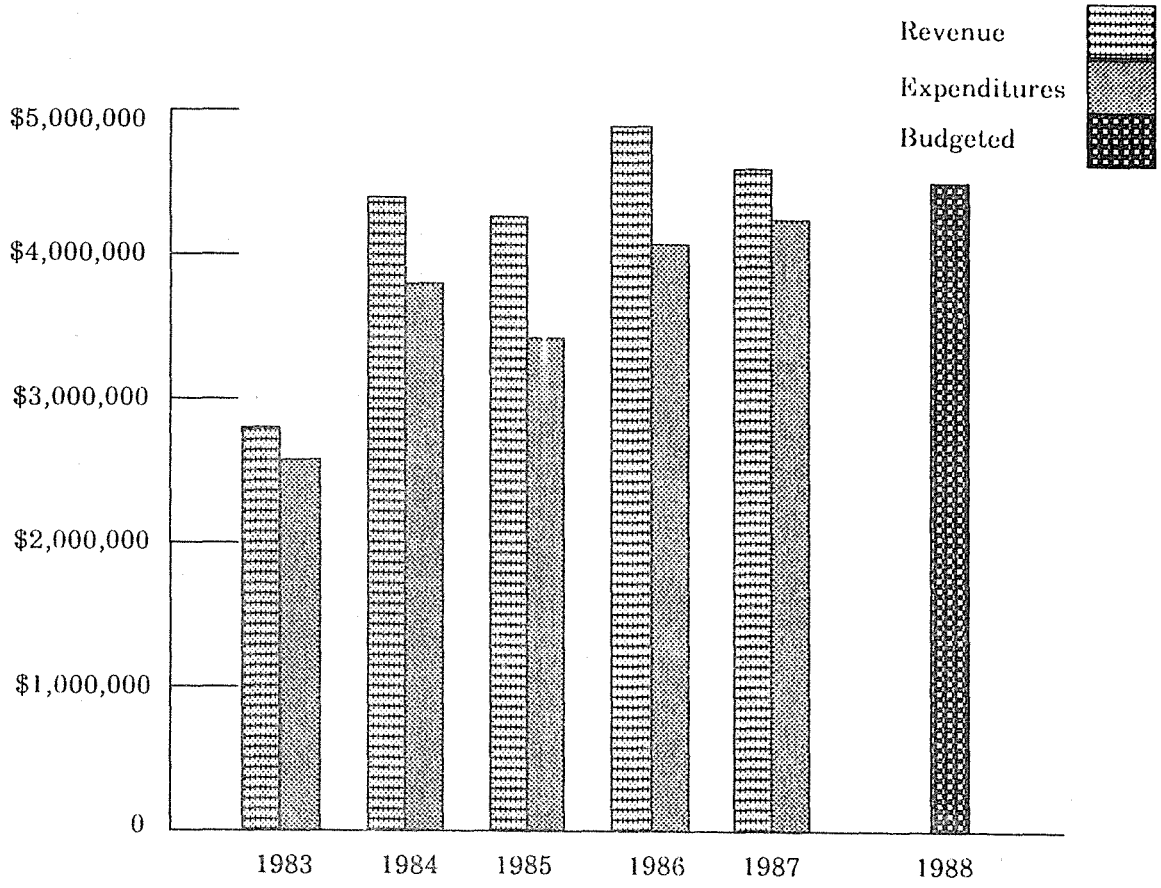
State Property Tax Board
Fiscal Year 1988
Budget by Program



The agency's revenues come from four sources: General Revenue; two fee generating programs; and an interagency contract. For fiscal year 1988, the agency is appropriated approximately $4.4 million from the General Revenue Fund. The largest source of fee generated funds is from sales of publications. Over $65,000 per year is collected from this activity. Most of this is included in the agency's appropriation, but in 1988 it is expected that revenue will exceed the amount appropriated by about $28,000. Another source is the interagency contract between the agency and the Board of Tax Professional Examiners (BTPE). The agency provides many administrative services for the BTPE. The projected revenue for 1988 from this contract is $17,300. Finally, the agency collects fees for issuing certificates of service on out-of-state delinquent taxpayers. This duty will result in revenues of about $3,000 in 1988. Total projected revenues for 1988 are estimated at $4,512,021. Exhibit 2 analyzes the agency's revenues and expenditures since 1983 and generally reflects a gradual increase in both.

Exhibit 2

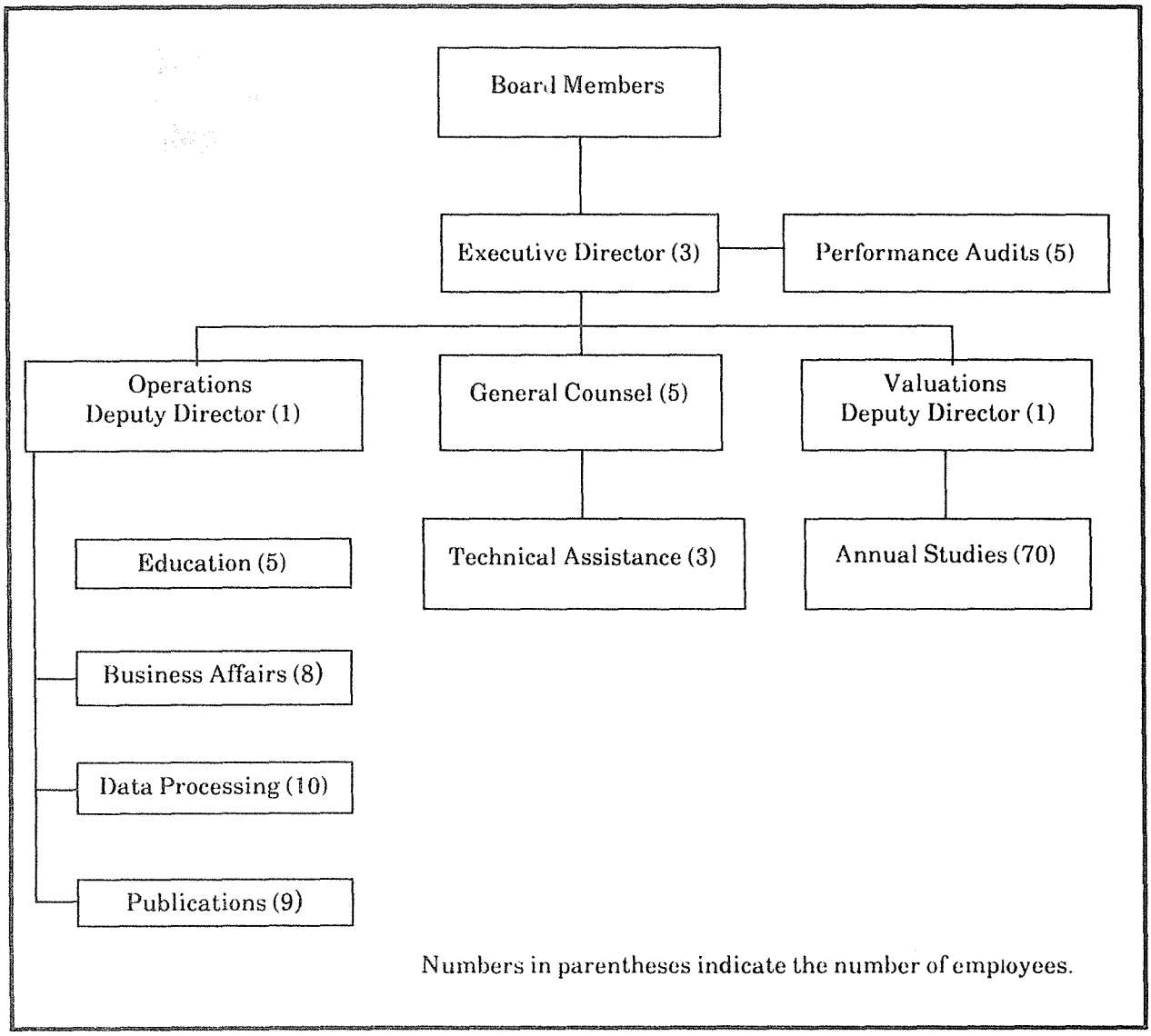
State Property Tax Board
Revenues and Expenditures



The agency has 120 full-time employees in fiscal year 1988. Ninety employees work in the agency's headquarters in Austin. The other 30 employees are field appraisers, stationed in regions throughout the state. The agency does not maintain any regional offices and the field appraisers work out of their homes. Exhibit 3 shows the organizational structure of the agency.

Exhibit 3

State Property Tax Board
Plan of Organization



Numbers in parentheses indicate the number of employees.

Programs and Functions

Annual Studies Program

The SPTB is required by law to conduct two annual studies. Section 11.86 of the Texas Education Code requires the agency to conduct an annual property value study to estimate the total taxable value of each type of property within each school district. The value study estimates are used by the Texas Education Agency as a basis for distributing state education aid to school districts. The second study, the annual ratio study, determines the level and uniformity of property tax appraisals within each appraisal district. The same data is used for both studies. The agency uses 71 staff to conduct the studies.

Rather than appraising each item of taxable property in the state, the agency analyzes a sample of property from each district. The agency compares its appraisal, or estimate, of market value for each property in the sample to the value of the same property recorded in the appraisal district's rolls. Sales data is used in the agency's analysis as an indicator of market value, when available. Based on the comparisons, the agency determines the level and uniformity of local appraisals and the degree to which the reported local appraisal roll values should be adjusted to determine the total market value for property in the school district. The "level of appraisal" shows whether the appraisal district has appraised properties at full market value as required by law. This "level" is determined by calculating a median appraisal ratio which shows roughly how close appraisals are to market value. Since 1981, the statewide median level of appraisal of property has risen from 63 percent to 93 percent. Most districts are appraising at or above 80 percent of market value overall.

The "uniformity" of appraisals by an appraisal district must also be determined. Uniformity exists when similar properties are appraised at about the same level. For example, one piece of residential property may be appraised at 90 percent of market value. For uniformity to exist, all similar pieces of residential property must also be appraised at 90 percent of market value. The agency calculates a coefficient of dispersion (COD) for each category of property to measure how much variability exists among appraisals. If the appraisal district has uniform appraisals, the COD will be small. A low COD indicates that an equitable tax burden exists even if the level of appraisal is less than 100 percent.

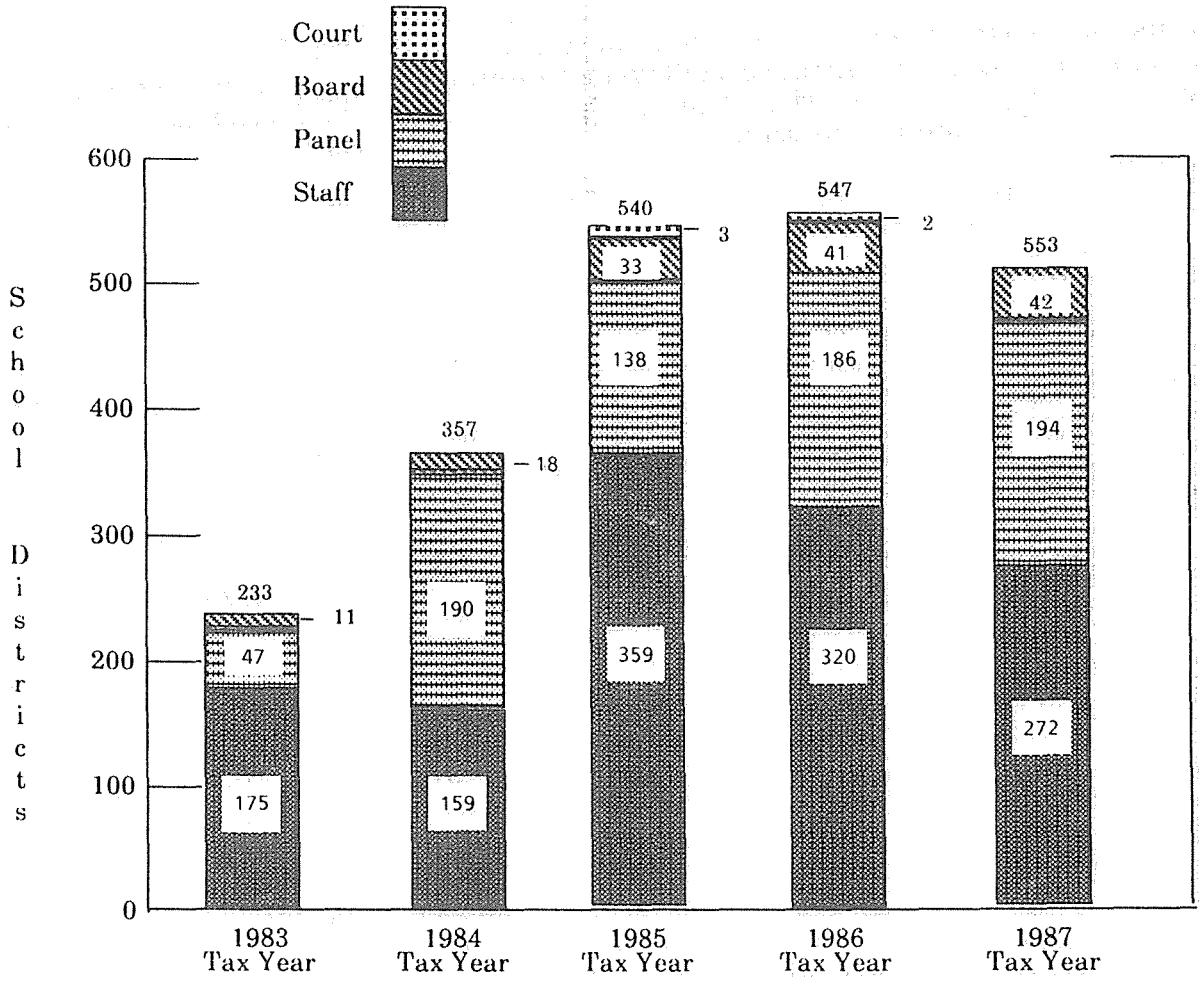
Both the value study and the ratio study are published in the same annual report. The value study portion of the report is used primarily for school funding purposes. It indicates the SPTB's estimate of the total value of taxable property in each school district. In contrast, the ratio study part of the report serves as an appraisal "report card" to the public listing both the level of appraisal and the uniformity of appraisals for each category of property in each county.

The agency publishes a preliminary report of the findings of the two studies so that corrections can be made through an appeals process when necessary. The appeals process provides a system for school and appraisal districts to protest findings of the studies. Exhibit 4 shows the number of appeals that have been filed in the last four years and the stages at which the appeals were resolved. In 1987, over half of the approximately 1,060 school districts protested their findings. Fifty-eight percent of these protests, however, were resolved by staff without a hearing process.

Exhibit 4

Trends in Annual Studies Appeals

Stage of Process Where Appeals Are Resolved



There are a series of activities which take place after a district files an intent to protest. First, the SPTB staff review all evidence submitted by the districts and make adjustments to appraisal ratios or market value estimates as appropriate. As mentioned above, a substantial number of protests are resolved through this informal process. If the agency cannot informally resolve the protest, it schedules a hearing before a three member appeals panel of appraisal experts. Appraisal districts and school districts who disagree with the panel's findings may protest the findings of the appeals panel to the SPTB board. All appeals must be resolved within 120 days of SPTB publishing its preliminary findings so that a final report of the value study can be certified to the Texas Education Agency (TEA) in accordance with the statutory requirement.

appraisal district. The bill prohibits, however, a performance audit in financial or tax collection duties. The findings of a performance audit are reported to the petitioners, all taxing units, the chairman of the appraisal district board of directors, and the chief appraiser.

Under law, the SPTB is reimbursed for the costs of a performance audit. The appraisal district is required to pay the cost of performance audits that are requested by its taxing units. Property owners are responsible for the cost of the performance audits they request. However, taxpayers that petition for an audit can be reimbursed for the cost in two cases: 1) if the results confirm that the median level of appraisal for a class of property exceeds 110 percent; or 2) if the results confirm that the median level of appraisal for a category of property varies by more than 10 percent from the median level of all property in the district.

This program became effective on January 1, 1988. It received an annual appropriation of $207,332 for 1988 and 1989, respectively. Five full-time staff have been assigned to this function but, at the time of the review, there have not been any requests for performance audits. Rules have, however, been adopted to guide the operations of the program.

Technical Assistance

The agency is authorized to provide information, assistance, and legal interpretations of the Property Tax Code to taxpayers and property tax professionals. The staff responds to phone and written requests for information. The technical assistance program also collects and compiles data on the local property tax system. For example, counties report tax levy information to the agency. This information, along with other types of data on local operations, is compiled and published annually. This program also compiles information regarding county indigent health expenditures for the Texas Department of Human Services (TDHS) for use in distributing indigent health care funds. There are eight employees in this division.

Other Functions

Counties are allowed to tax the intangible value of certain businesses such as oil pipelines and railroads. Property is considered to be intangible if it cannot be perceived by the senses. An example of intangible property is corporate stock. The Property Tax Code requires the SPTB to appraise these intangible values and apportion the value, for tax purposes, among the counties in which the businesses operate.

The agency also apportions railroad rolling stock values to counties, so that these values can be taxed. Rolling stock is railroad equipment such as freight cars which are transported across more than one county.

The Property Tax Code also requires the agency to render Permanent University Fund (PUF) lands to counties and represent the state on PUF value appeals. The PUF lands are state-owned properties for which county taxes must be paid. The renditions, which the agency prepares, basically list the property which is taxable, its location, and an estimate of the property's value. Another function performed by the agency is acting as the agent for service on delinquent out-of-state taxpayers to assist in disposing of lawsuits against them.

Education Program

Section 5.04 of the Property Tax Code directs the agency to "conduct, sponsor, or approve courses of instruction and in-service and intern training programs on the technical, legal and administrative aspects of property taxation." The agency is also instructed to cooperate in developing curricula with other public agencies, educational institutions and private organizations.

Through its education program, the State Property Tax Board disseminates property tax information to tax professionals. The agency writes educational materials and textbooks for 11 courses which are taught by private entities such as the Texas Association of Assessing Officers, community colleges and businesses. Large central appraisal districts also offer SPTB courses.

There are several advantages to having the State Property Tax Board perform the education function described above. First, courses are standardized across the state so all tax professionals learn the same skills. In addition, the standardized exams help to ensure that all persons completing SPTB courses have in fact learned the same skills. There are five staff in the Education Division.

Publications Program

Most of the agency's publications are produced under requirements of state law. Section 5.05 of the Property Tax Code requires the agency to prepare and issue a general appraisal manual, special appraisal manuals, cost and depreciation schedules, news and reference bulletins, annotated digests of all laws relating to property taxation, and a handbook of all rules promulgated by the board. The monthly newsletter, "Statement", is sent to all tax professionals registered with BTPE and other interested persons. Most of the agency publications are printed in-house. Textbooks and workbooks developed by the agency for use in the professional certification courses are also printed through this program. In 1987, 12,000 textbooks and workbooks were distributed. In addition, this program develops and oversees the annual printing of a public information pamphlet titled "Taxpayer Rights, Remedies, and Responsibilities". Publication of this pamphlet is specifically required by the code. About a half million of these pamphlets are distributed each year. Due to the large volume required, these pamphlets are printed by outside contract. The Publications Division handled 19,000 requests for publications in 1987. There are nine staff in this division.

Performance Audit Program

House Bill 354 of the 70th Legislature created a new performance audit duty for the SPTB. This bill established a process by which local taxing units and taxpayers can petition for a performance audit of their local appraisal district. That bill allows the petitioners to specify the type of audit to be done, requires the SPTB to conduct the audit, and requires the appraisal district to cooperate. The results are provided to the petitioners. The petitioners are required to pay for the cost of the audit.

Performance audits may be requested by either a majority of the appraisal district's taxing units or at least 10 percent of the property owners of a class of property that makes up at least five percent of the value of property in the appraisal district. The petitioners may specify that the SPTB conduct a general audit, an evaluation of appraisal practices, or an audit of any aspect of the operation of an

Focus of Review

Many issues related to property tax have been brought to the Texas Legislature in recent years. These issues range from property tax exemptions for certain types of property and groups of people, to a major restructuring of local tax administration. In the initial phase of the Sunset review of the State Property Tax Board (SPTB), many of these issues were examined for their relevance to the operations of the agency. The analysis indicated that some of these issues, while important to the local property tax system, had little association with the efficiency and effectiveness of the SPTB. For example, changing the qualifications for tax exemptions or the method of collecting taxes in each county has little bearing on the overall responsibility of the SPTB. However, issues such as the composition of the board and the need for sales information for the agency's annual studies were directly related to agency operations. Because of the numerous issues dealing with property tax and the specific mandate of the Sunset Commission, the review was focused on the agency's authority, its operations and changes that are needed to improve those operations.

The review of the agency's operations focused on four general areas: 1) whether there is still a need for the agency and its activities; and if so, 2) whether the policy-making structure fairly reflects the public and state interests; 3) whether the agency's management policies and procedures are consistent with accepted agency management practices; and 4) whether the agency meets the needs for which it was created in an efficient and effective manner.

Analysis indicated that there is still a need for the agency's services. The Texas Education Agency's allocation of state aid to local school districts depends on the findings of the board's annual property value study. In addition, the local property tax system depends on the SPTB for the annual ratio study, uniform appraisal standards, tax forms, public information material, professional training, and technical assistance. These services were found to be important to ensure statewide consistency in the operations of the local tax system.

Another question in looking at the need for the agency was whether the state's purposes were best served by the agency's status as an independent agency. Several bills introduced in the 70th Legislative Session dealt with a merger between the agency and the Board of Tax Professional Examiners. An analysis of the two agencies' administrative structures indicated that because of the degree to which the agencies share administrative costs, little if any savings would be available through such a merger. Further analysis of the responsibilities and policy-making structure of the two agencies indicated that there was a potential conflict in those responsibilities being carried out by one board. The only responsibility of the BTPE is the regulation of tax professionals. The primary responsibilities of the SPTB are to independently assess local taxable values and provide a report card on the fairness of local tax appraisals. Having the regulation of tax professionals performed by a board which is separate from the agency that provides the local report card appears to serve as an important safeguard to ensure the independence of those two state functions. Since no cost-savings potential was identified through such a merger, and there were no indications that the separate operations hamper the effectiveness of either agency, no recommendation for such a merger is made. The Board of Tax Professional Examiners is scheduled for sunset review in 1995. At that time, the issue should be reviewed again to determine if any benefits to a merger of the two agencies exist.

The examination of whether the policy-making structure fairly reflects the public and state interests indicated a change is needed in the composition of the board. The current statutory structure does not ensure a balanced membership of tax professionals and representatives of the general public. A recommendation is made to address this concern. Another area of concern addressed in a management directive to the agency is the lack of consistent policies dealing with advisory committees.

The review of the agency's overall administration was designed to determine whether the management policies and procedures, the monitoring of management practices, and the reporting requirements of the agency were consistent with generally accepted government practices. This review indicated that the agency's management policies and procedures do fall within generally accepted standards. However, a review of the agency's fee structure indicated one of the agency's fee programs recovers an unusually low proportion of the program's costs. Changes are recommended to the statutory fee structure for certificates of service fees to address this concern.

The evaluation of the agency's programs focused on its four major programs: education, publications, the annual studies and performance audit. Each program was reviewed to determine whether a continued need exists for the program, whether the program is operated in compliance with the agency's statutory authority, and whether it operates in an efficient and effective manner. The analysis of the education and publications programs indicated that there is a continued need for these services and that they are operated satisfactorily. The review of the rest of the agency's programs indicated that improvements could be made in the program that produces the annual studies and in the agency's performance audit program.

The review of the annual studies indicated that specific statutory changes could be made to enhance the agency's ability to provide accurate results. A statutory change is recommended to ensure that agency staff have reasonable access to properties for appraisal purposes. This authority is similar to that already provided to local appraisers. A management directive is made encouraging the agency's work with appraisal districts to ensure that the agency has complete appraisal rolls. Another management directive made by the commission encourages the agency to provide the board and appeals panel with available information on the accuracy of sample used to develop study findings which are the subject of appeals. A final change recommended concerning the annual studies establishes a technical advisory committee to review the study methodology. The committee is recommended as a way to ensure that the methodology used in the study provides the highest level of accuracy possible within the limitations of available resources.

The evaluation of the performance audit program indicated that performance audits can provide a useful assessment of appraisal district performance and can identify inappropriate or unfair practices and steps needed to correct those practices. However, changes are recommended to increase the effectiveness of this program. First, targeting the audits automatically to appraisal districts whose appraisal practices are repeatedly below acceptable levels is recommended to ensure that districts that need audits, receive them. Second, an incentive is recommended for districts that demonstrate continuing high quality appraisal practices by providing them an exemption from performance audits initiated through the existing petition provisions.

The recommendations contained in the report have been examined for their potential fiscal impact on the state. The increased fees for Certificates of Service will cover the cost of the program whereas the program currently operates at a cost to the state of approximately $9,000 annually. Minimal costs may be associated with the reimbursement of the technical advisory committee members for their travel and lodging expenses related to committee meetings.

Sunset Commission Recommendations for the
State Property Tax Board

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

1. **The statute should be changed to require that at least three of the six board members must be public members that have none of the statutory qualifications of the other members.**

State law leaves a high degree of flexibility in the composition of the board. A change to law which became effective in 1983 required that at least two of the six members of the SPTB board be certified as property tax professionals. Prior to that time, no tax professionals served on the board. In the past five years, as many as four members of the board have been local tax officials. The proposed change would provide more assurance that the board composition represents a balanced perspective of experts in the field and the public.

2. **As a management directive, the board should adopt rules which provide general guidelines concerning the structure and operations of advisory committees.**

The agency has used advisory committees for advice in technical matters for many years. However, the agency has not formalized its policies concerning advisory committees. Rule-making in this area will ensure that committees have a balanced composition, a clearly stated purpose, and that members are compensated in a standard way. In addition, the rule-making process will ensure that the public has an opportunity to participate in the development of the policies used to establish committees which advise the board.

Overall Administration

3. **Fees for the agency's services regarding notice to out-of-state delinquent taxpayers of pending lawsuits should be changed to match those of the Secretary of State. The statute should be changed to:**

   - **authorize a new $25 fee for maintaining a record of service of process; and**
   - **reduce the fee for a certificate of service from $25 to $10.**

The agency recovers only a small percentage of its costs of handling processes for delinquent tax lawsuits involving out-of-state taxpayers. The current statutory fee structure only allows SPTB to charge a fee for a small portion of its services. Other state agencies which perform similar services are authorized to charge fees which reimburse them for their costs. The proposed fee structure is similar to the one used by the Secretary of State and will cover more of the SPTB's direct costs associated with this responsibility.

4. **The statute should be changed to authorize the SPTB to enter income-producing property to inspect it for appraisal purposes.**

Physical inspection of property is often important in the appraisal of complex property such as commercial businesses and industrial plants. Appraisal districts are provided statutory authority to inspect such property at reasonable times for the purpose of appraisal. Providing the agency with similar authority will result in more accurate appraisals being used in the studies and increase the efficiency of conducting such appraisals.

5. **As a management directive, the SPTB should continue to work with appraisal districts to set the format for appraisal rolls and require their submission to the agency.**

The agency currently has the statutory authority to require appraisal districts to submit appraisal rolls to the agency. In recent years, the agency has only required districts to submit a summary of the rolls. This year, the agency has begun working with appraisal districts to establish a useful and manageable format for submission of the complete roll. Having the appraisal rolls submitted to the agency is an important step in improving the agency's access to information needed to improve the accuracy of the annual studies. The agency should be encouraged to continue its efforts with appraisal districts to put together a workable system for the exchange of this information.

6. **As a management directive, information on the statistical accuracy of a study finding under appeal should be routinely provided to the appeals panel and board for consideration.**

There are two levels of formal hearings used to review study findings that are appealed: one conducted by a board-appointed appeals panel and one conducted by the board. Written documentation submitted by the appellant, agency work papers, and agency recommendations concerning the protest are reviewed regularly at both levels of hearing. However, statistical measures that are developed by the staff to examine the probable accuracy of the findings are not included in the information reviewed. This change will ensure that they panel and the board receive information which could assist them in identifying findings that need further examination.

7. **The SPTB should establish a technical advisory committee to advise the board on the study methodology. The statute should be changed to:**

   - **require the board to establish a technical advisory committee;**
   - **specify the committee's duties to include conducting a review of the study methodology and providing advice to the board on the accuracy of the study; and**
   - **require the advisory committee to submit an annual report to the board on its findings.**

The annual property value study has a significant bearing on the method used to distribute state educational aid to local districts. Therefore, the methodology used to

conduct the study must provide the highest level of accuracy possible within the limitations of available resources. This change will establish a technical advisory committee made up of experts in the field to review the study methods and advise the board on appropriate methodology. This will provide the board with the technical expertise necessary to make reasonable improvements to the accuracy of the study.

8. **The existing program authorizing SPTB to conduct performance audits of appraisal districts should be changed to better target audits based on performance. The statute should be changed as follows:**

   - **Districts with high appraisal quality (appraisals consistently close to market value and uniform) would be exempt from existing petition-initiated audit requirements;**
   - **districts with low appraisal quality (appraisals consistently way below market value or very non-uniform) would have a performance audit conducted by the SPTB, at district expense;**
   - **districts would be subject to the current petition-initiated audits if they were not high enough or if their performance was low;**
   - **individual audit plans for all SPTB audits would be approved by the board after public comment; and**
   - **performance levels would be set in statute as:**
     - **high appraisal quality--overall median level of appraisal between 90 and 110 percent, an overall coefficient of dispersion below 15 percent, and a variation of less than 20 percent in median levels of appraisal between categories of property.**
     - **low appraisal quality--overall median level of appraisal below 75 percent, an overall coefficient of dispersion above 30 percent, or a variation greater than 45 percent in median levels of appraisal between categories of property.**

Currently, the statute requires the agency to conduct a performance audit of an appraisal district when requested to do so by a petition signed by a significant number of taxpayers or taxing units in the district. Such audits can provide taxpayers and local officials with a useful assessment of district performance and identify inappropriate or unfair practices. However, the current method for initiating an audit from the local level is awkward.

The annual ratio study provides a review of district appraisal practices which can be used to contrast districts with poor appraisal practices from those with high quality appraisal practices. The changes proposed will ensure a review of poor performing districts, provide an incentive to improve or maintain high quality appraisal practices, and continue the ability of taxpayers and local officials to petition for an

audit of districts which have neither exceptionally poor practices nor exceptionally good practices.

Other Changes Needed in Agency's Statute

9. **The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. The "across-the-board" recommendations are applied to each agency and a description of the provisions and their application to the State Property Tax Board are found in the "Across-the-Board Recommendations" section of this report.

10. **Minor clean-up changes should be made in the agency's statute.**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in Exhibit 5.

Exhibit 5

Minor Modifications to the State Property Tax Board Statute

Chapter 5 -- Property Tax Code

Change	Reason	Location in Statute
Delete transition provision.	To remove language that expired in 1983.	Section 5.01 (d)
Substitute "Board of Tax Professional Examiners" for "Board of Tax Assessor Examiners".	To reflect the current name of the board.	Section 5.01 (d)
Substitute "Chapter 325, Government Code" for "Article 5429k, Vernon's Texas Civil Statutes".	To reflect the correct statutory citation for the Texas Sunset Act following recent codification.	Section 5.11
Limit the number of copies of documents the agency must provide free of charge to local officials to one copy.	To reflect current practice.	Section 5.05 (c)
Authorize the agency to provide a reasonable quantity of Taxpayer Remedies publications without charge, but allow the agency to require reimbursement of costs when bulk quantities are requested.	To reflect current practice.	Section 5.06

OFFICE OF MULTISTATE TAX COMPACT COMMISSIONER FOR TEXAS

Office of the Multistate Tax Compact Commissioner for Texas

Background and Focus of Review

Creation and Powers

The Multistate Tax Compact (MTC) is a model law for adoption by states intended to help solve historical problems with interstate taxation. The enabling legislation was drafted by the National Association of Tax Administrators, the National Association of Attorneys General, and the Council of State Governments in 1966 to help multistate taxpayers determine and comply with state and local tax laws, avoid duplicative taxation, encourage uniformity in state and local tax policies, and to advance state interests with respect to federal tax policy.

To be a member, a state must pass the common legislation, or compact. In 1967, upon ratification by seven states, the compact went into effect. Texas ratified the compact in 1967, becoming the eighth member. Pursuit of a few controversial audit issues in the early years prompted business organizations to lobby non-member states against ratification which slowed the momentum of membership. Today, 19, mostly Western, states are members; ten states are associate members. Compact staff believe a renewed momentum is underway for non-member states to adopt the compact.

The need for the compact arose when historical problems with uniformity and discrimination in interstate commerce taxation raised the likelihood of federal intervention. Legislation pending in Congress (the "Willis bill") would have curtailed existing state and local taxing power in an effort to force more uniformity and equality in taxation practices across states.

Because businesses buy and sell goods and services across state lines, a mechanism was needed to help taxpayers and the states apportion a company's tax burden equitably among the states in which it was doing business.

The Multistate Tax Compact (MTC) was drafted to address these problems. To that end, the compact defines member states' responsibilities and rights under the law, defines procedures for the states and businesses to follow to fairly and legally apportion taxes among all eligible states, and establishes a voluntary arbitration mechanism for taxpayers. It is concerned with sales, use and income taxes. The compact does not, however, interfere with a state's autonomy in setting tax rates or policy.

Policy-making Structure

The compact creates a commission to carry out programs and functions. This commission is composed of one representative from each state who, by statute, must be the head of the member state's tax department. The member may designate an alternate to attend meetings in the member's absence. Also, the attorney general from each state may attend all meetings of the commission but may not vote. The full commission meets once a year. An executive committee, composed of seven members elected annually by the commission meets quarterly to handle policy and administration issues. The current Texas representative, State Comptroller Bob Bullock, has served on the executive committee for a number of years.

Administration of the compact is carried out by an executive director and approximately 25 staff headquartered in Washington, D.C. This includes a staff of 17 auditors who work out of offices in Houston, Chicago and New York. There are three program areas in which commission staff are actively involved. First, the MTC works with Congress on behalf of member states. From its inception, the existence of the commission has been successful in stalling congressional efforts to increase federal control over state policy and the commission has been continuously active in working with Congress on a variety of related bills and interests.

Second, the MTC employs a 17-person audit staff to perform audits of national companies on behalf of member states. Through these audits, the commission is able to ensure that the audited company is paying member states the taxes legally due, ease the audit burden of smaller states and, perhaps more importantly for Texas, use the process to test legal principles of taxation.

Third, the MTC employs a legal staff to provide support to the audit and legislative programs and to member states who request assistance. This staff is also active in developing legal arguments to try to overturn court decisions unfavorable to the states or to support state and federal legislative efforts.

Funding and Organization

When Texas became a member in 1967, the Office of the Multistate Tax Compact Commissioner for Texas was created. It is that office which is subject to the Texas Sunset Act.

The Texas statute provides that the governor shall appoint the comptroller as the state's representative to the commission; the comptroller serves in this position for his tenure as comptroller. The comptroller may designate one of his division chiefs as an alternate to conduct the business of the compact in his absence. The Texas statute also creates two advisory committees to meet with the comptroller on matters relating to the compact.

As the comptroller is the representative to the commission, his office provides administration for the Office of the Multistate Tax Compact Commissioner for Texas. Minimal staff time is involved in this function; the office processes travel vouchers for the member or his alternate and pays Texas' annual dues.

Funding for the commission is derived from dues and audit fees from member states; by statute, 40 percent is apportioned among member states and 60 percent is collected in fees for audit services rendered by commission auditors under agreement with member states. Texas' contribution in fiscal year 1987 was $104,644. Dues are derived from general revenue and are paid out of the comptroller's operating fund (062). Membership dues are listed in the comptroller's annual report to the governor; travel expenses are also recorded in the report aggregated with all other travel expenditures.

Focus of Review

The review of the Office of the Multistate Tax Compact Commissioner for Texas focused on two primary areas. First, consideration was given to whether Texas' participation in the compact should be continued. This assessment concluded that:

- participation has been valuable to Texas. The state has reaped the rewards of many of the advocacy efforts the commission undertakes on behalf of member states;

- these efforts have returned a significant amount of revenue to the state. For example, from fiscal years 1985-1987, commission efforts yielded at least $3,144,460 in revenue for Texas; during the same years, dues to the compact from general revenue totaled $345,330; and

- Texas has played a major role in the compact, and it is anticipated that continued influence on the direction of future activities will also benefit Texas.

Second, the elements unique to the Texas statute were examined to determine a) whether current practice follows the statute, b) whether any element of the statute is outdated and should be changed, and c) whether provisions should be added to the statute to improve its operation. The review indicated changes were needed in several areas:

- first, the two committees established to advise the comptroller on matters relating to the compact are not active and serve no function. This authority should be changed to remove these specific committees and to give the comptroller authority to assemble advisory committees as the need arises;

- second, the statute allows the comptroller to designate an alternate representative to the commission in his absence. The current designation of division chief, however, is too restrictive and should be changed to allow the comptroller to appoint any top associate;

- third, the statute does not provide for public notice of the annual national commission meetings and notice is not published in the Texas Register; and

- fourth, the statute does not provide for reporting of the functions of the compact as they impact the state of Texas.

In analyzing the merit of continued membership in the compact, no attempt was made to determine whether changes needed to be made to the common language of the compact itself since any such changes would require ratification by all member states. Also, no attempt was made to evaluate particular commission activities or areas of concern except to determine the extent to which Texas benefits from these activities relative to other states. All programs and activities are carried out by staff hired by the commission; the Office of the Multistate Tax Compact Commissioner for Texas does not perform independent programs or functions. Again, any changes in the administration of the compact would require consent of all member states. Analyses of this nature are outside the scope of this review and no recommendations are made in these areas.

The recommendations contained in the report would not result in any significant change in state expenditure on behalf of the compact or related activities.

Sunset Commission Recommendations for the
Office of Multistate Tax Compact Commissioner for Texas

CONTINUE THE AGENCY WITH MODIFICATIONS

1. **Texas membership in the Multistate Tax Compact should be continued and the sunset date removed from statute.**

Texas participation in the compact is beneficial to the state and should be continued. However, the statute authorizing participation will be repealed in 1989 unless amended this next session. The recommendation would continue Texas' participation in the Multistate Tax Compact in order to continue to benefit from the initiatives of the commission. Removing the sunset date would allow the compact to continue without the requirement for another review in twelve years. Since it is a program wholly within the comptroller's office, funding and activities of the compact will still be subject to all other controls placed upon state agencies and, with the enactment of the other recommendations, there will be sufficient legislative oversight.

2. **The Multistate Tax Compact Advisory Committee and the Local Government Council should be abolished. The statute should be amended to:**

   - **abolish the two committees;**
   - **provide the comptroller with the authority to assemble advisory committees to obtain local or state-wide perspectives as needed; and,**
   - **authorize the comptroller to pay expenses of the committee members.**

The statute requires the comptroller to meet regularly with a local consulting committee and an advisory committee. Neither committee exists and, therefore, current practice does not comply with the statute.

This recommendation would remove the requirement that the comptroller meet with the advisory committees as they are currently outlined in statute. However, as topics arise which may require counsel, the comptroller will have the authority to convene committees (from a local or state-wide perspective) to provide the needed expertise.

3. **Designation of the state's alternate representative should be changed. The statute should be amended to:**

   - **allow the comptroller to designate a principal deputy or assistant as his alternate representative to the compact.**

This approach would give the comptroller flexibility to appoint his alternate without being restricted to the title of division chief, as the statute now requires. Changing

the designation to a principal deputy or assistant gives the comptroller needed flexibility while still ensuring that the alternate is a high-level, qualified employee.

4. **The comptroller's office should be required in statute to post notice of commission meetings in the Texas Register.**

Notice of the annual national tax compact commission meetings is not provided in the public in Texas. This change will afford the public with notice of commission meetings.

5. **The comptroller should report on the functions and expenditures relating to Texas' participation in the compact. The statute should be amended to:**

   - **require that the report be included as part of the annual financial report of the comptroller's office.**

The comptroller's office currently includes the expenditures for annual dues to the compact in the comptroller's annual report to the governor. However, the comptroller currently does not provide in that report a summary of compact functions and their impact on the state. A report of this nature would provide information on compact functions particularly as they relate to the interests of the state.

COMMITTEE ON STATE REVENUE ESTIMATES

Committee on State Revenue Estimates

Background and Focus of Review

Creation and Powers

The committee, authorized in 1959, is designed to review all estimates made by the comptroller concerning revenues available for expenditure during upcoming biennial budget periods. The committee is also required to report the result of the review in an "official public document to the budget divisions of the governor's office, the legislature and the comptroller".

The committee is inactive, having met only once during Preston Smith's tenure as governor.

Focus of Review

The sunset review of the committee did not identify any interest in continuing the agency.

Sunset Commission Recommendation for the
Committee on State Revenue Estimates

THE COMMITTEE SHOULD BE ABOLISHED

1. **The statute establishing the Committee on Revenue Estimates should be repealed.**

A need for the committee does not exist and the statute should be repealed.

Recommendations for

RESEARCH AGENCIES

Natural Fibers and Food Protein Commission

On-site Wastewater Treatment Research Council

NATURAL FIBERS AND FOOD PROTEIN COMMISSION

Natural Fibers and Food Protein Commission

Background and Focus of Review

Creation and Powers

The Natural Fibers and Food Protein Commission (NFFPC) is a state agency that developed from the Cotton Research Committee of Texas, created in 1941. The committee was originally set up to fight a growing loss of markets for Texas, which was and still is the major producer of cotton among states. At that time, there was an immense surplus of Texas cotton because of lack of demand, resulting in lower prices and lost revenue for the farmer. The committee was originally appropriated $250,000 for the establishment of cotton research facilities in the state in order to find ways to expand current markets for cotton, cottonseed and their by-products, to develop new trade markets and to improve cotton processing and marketing technology. Presidents of three universities made up the committee and were to oversee the programs--the University of Texas, Texas A&M University and Texas Technological College (Texas Tech). Texas A&M University was designated to do genetic cotton breeding and cottonseed crushing research, while the University of Texas became the center for marketing and fiber testing. Texas Tech was involved as the textile spinning and weaving research center.

Several expansions of the Cotton Research Committee have been made since 1941. In 1959, the president of Texas Woman's University was added to the committee because of the university's research on fabric utilization and nutritional uses of cottonseed by-products. In 1969, several agricultural leaders in the state were successful in adding wool, mohair, textile products and oilseeds (including peanuts, soybeans, sunflowers and sesame seeds) into the research program.

These changes led to a need for a name change for the committee and in 1975 the Cotton Research Committee became the Natural Fibers and Food Protein Commission.

Today, the Natural Fibers and Food Protein Commission is believed to be the only state agency of its kind among states, based on a survey of over ten other major agricultural states. The establishment of a unique agency such as this stems from Texas' ranking as the number one producer of cotton, wool and mohair (natural fibers) in the United States. Cotton is the number one cash crop in the state, with an estimated value of $1.4 billion in 1987, while cottonseed ranks number eight, with an estimated value of $159 million in 1987. It is estimated that the production of cotton alone results in about $4 billion dollars of income for the Texas economy annually based on cash receipts at the farm level. Texas produces 97-100 percent of the nation's mohair and 19 percent of the wool. In 1986, the total value of Texas-produced mohair and wool was $38,152,000 and $13,284,000 respectively.

The goal of the NFFPC is to bring additional revenue into the state by funding research aimed at improving the quality and spinnability of natural fibers, finding new market potential and new processing techniques for food proteins and oilseeds, and marketing the quality and utilization of Texas-produced natural fibers and food proteins.

Policy-making Structure

The commission currently consists of four members: President, University of Texas at Austin; Chancellor, Texas A&M University System; President, Texas Tech University; and, President, Texas Woman's University. Commission members serve on NFFPC during their tenure as university president/chancellor. Chairmanship of the commission rotates alphabetically between the four universities, with terms beginning at the start of each odd-numbered fiscal year. The chairman of the commission, with the approval of the full commission, appoints a 50-member advisory committee which splits into a 25-member natural fibers advisory committee and 25-member food protein advisory committee. Both committees review university research proposals and make recommendations on research that should receive funding. A seven-member executive committee composed of the chairmen of the natural fibers and food protein advisory committees and five other industry committee members also exists to advise the commission on program and budget matters.

Funding and Organization

The NFFPC is staffed by three people, an executive director, executive assistant and secretary. The administrative office is located in Dallas and is housed with the Texas A&M Research and Extension Center--Dallas branch.

The NFFPC's administrative office distributed state research and development funds in fiscal year 1987 totaling $1,266,416 to the four contracting universities who employed 98.86 FTE in their NFFPC-funded research efforts. The agency also administered two federal contracts for fiscal year 1987 totaling $190,000. The total for both administration and research and development in fiscal year 1987 was $1,414,904 in state funding, all from general revenue. The funding provided to the four universities by NFFPC has remained fairly constant over time and is illustrated in Exhibit 1 which follows.

Exhibit 1

State Funds Allocated Through NFFPC to the Universities

University	1975	Percent of Funds	1980	Percent of Funds	1987	Percent of Funds
Texas A&M	$322,608	41%	$599,859	55%	$624,253	49%
Texas Tech	189,759	24%	197,440	18%	32,277	18%
University of Texas	75,674	9%	29,940*	3%	60,873	5%
Texas Woman's University	208,496	26%	267,583	24%	349,013	28%
TOTAL	$796,537	100%	$1,094,822	100%	$1,266,416	100%

*Funded through Cotton and Harvest Aide Chemical Research at Texas A&M University.

State funds for research were matched with outside funds from various companies, foundations, and associations amounting to $1,583,359 in outside funding for fiscal year 1987. Agency administrative costs for the same year amounted to $148,488 and represented about 10 percent of their state appropriation, or about five percent of combined state and private funding. The combined total of state funds from NFFPC, outside funds and federal grants resulted in $3,039,775 total funding for the various research projects administered by NFFPC in fiscal year 1987.

Programs and Functions

The primary activity of the agency is to administer research funds for natural fibers and oilseeds at the four member universities. A total of 54 research projects are currently funded by the NFFPC. Exhibit 2 on the following page provides an outline of these major research projects.

As the exhibit indicates, the research covers every facet of natural fibers and oilseeds production, from the beginning cycle of breeding, growing and harvesting through the end product of textile manufacturing or use of food proteins in making baked goods. The primary goal of all the research being done is to improve the use and quality of the natural fibers and oilseed products in order to obtain more income for Texas farmers and the state's economy.

With assistance from NFFPC's funding and research directives, Texas is recognized as the leader in oilseed research among all states and ranks near the top in textile development, laundering and nutrition research. Some of the more important research results using NFFPC funds at the four universities are highlighted in Exhibit 3, which follows. The projects were funded in part by NFFPC, along with outside matching funds, other state funds and some federal grants.

Because of the small size of the NFFPC administrative office, there are no program divisions. The major activities carried out by the three staff members in administering research funds for the four universities are: (1) public information; (2) research coordination; (3) funds acquisition; and (4) budgeting/accounting.

Focus of Review

The Natural Fibers and Food Protein Commission is a funding pass-through and coordination body that administers research funds to four universities. The first major area of focus of the sunset review was to determine if the NFFPC performs an isolated function in funding research geared to improving the quality and marketability of cotton produced in Texas.

The sunset review found that the NFFPC is responsible for funding a relatively small segment of agricultural research through its structure as a state agency. While there are no similar state agencies for other crops or commodities in the state of Texas, nor are there similar state cotton or natural fibers commissions in other major cotton and oilseed producing states, most other states do use state funds for agricultural research related to the state's major cash crops. A review of other states indicated all states contacted have devised methods to research and promote their major cash crops and underdeveloped or new commodities. Research generally focused on pest control, growing conditions and production problems. Research in most other states is conducted at the state's land grant university and is funded to only a small degree by producer associations, with the majority of funding coming from the state's appropriations. So, while the structure of NFFPC is unique, state-supported agricultural research is common in other states.

Exhibit 2
NFFPC-Funded Research and Development Project

University	Major Research Projects	Areas Research Covers
Texas A&M University System	Cotton and Harvest-Aid (TAES) Chemical Research (TAES) Sheep and Goat Research (TAES) Food Protein Research and Development (TEES)	- Genetic breeding and growing of cotton resistant to pests and diseases - Improving quality of seed and fiber and improving yield - Improving quality and production efficiency of wool and mohair through breeding and diets of sheep and goats - Improving marketability and use of lamb products - Evaluating quality of wool and mohair fiber traits - Developing new food, feed and industrial uses of food proteins and oilseeds - Improving efficiency and economy of extraction and processing methods
Texas Tech University	Textile Research and Development of Wool, Cotton and Mohair	- Conducting instrument evaluations of the quality of cotton, wool and mohair fibers - Disseminating data from fiber and spinning tests that show the benefits of Texas-produced natural fibers - Developing new blends of natural fibers for textile production - Spinning, dyeing and finishing of textiles
Texas Woman's University	Nutrition Utilization Research Natural Fibers Utilization Research	- Evaluating physical and chemical properties of oilseeds and food proteins - Evaluating cottonseed protein and oil for improving quality of diets - Examining effect of oilseeds on various diseases or illnesses - Analyzing storage properties of foods containing oilseeds - Improving flame retardancy of natural fibers - Improving durability of textiles with different chemical finishing treatments and of laundering care - Producing carbon fibers - Promoting the use of natural fibers in the apparel design and manufacturing industries
University of Texas -Austin	Natural Fibers Information Center	- Publishing and disseminating educational packets on Texas natural fibers - Researching the marketing and economic value of cotton, wool, mohair and oilseed products - Serving as a central depository for statistics and research on natural fibers

Exhibit 3

Research Results by University Funded in Part by NFFPC

TEXAS A&M UNIVERSITY	TEXAS TECH UNIVERSITY	TEXAS WOMAN'S UNIVERSITY	UNIVERSITY OF TEXAS-AUSTIN
Only oilseed processing laboratory in the U.S. serving the food industry containing $3.5 million in donated equipment.	$44 million denim textile mill in Littlefield, Texas resulted from research and fiber quality control data.	Official control testing laboratory for the National Laundering and Dry Cleaning Association with over $1 million in donated equipment.	Research feasibility study leading to establishment of a $33 million textile mill for an underwear manufacturer.
Only wool and mohair top-processing laboratory in U.S. needed for spinning tests on wool and mohair.	Spinning, dyeing, finishing and cotton/wool/mohair blending,. done exclusively at the Textile Research Center.	Equipment and research have been used to save the state $100,000 a year in institutional laundries.	Developed first fiber testing laboratory geared to the cotton breeding program in the state.
Trains 85 percent of the cottonseed processing industry's operations supervisors.	Fiber technology and spinning research justifying "light spot" classification of cotton funded by NFFPC has been estimated to have returned $500 million since 1975 to Texas farmers who were receiving unfair discounts prior to this.	Research led to development of first accepted flame retardant upholstery used by furniture manufacturers.	This above laboratory led to the development of the HVI method of classing cotton, which is adapted to volume merchandising of cotton.
Developed non-toxic glandless cottonseed kernels and food protein flours, concentrates and isolates which are used for human consumption.		Accredited by NASA for doing research for first primate and manned space flights examining the impact of oilseed protein supplements on bone density loss in flight.	
Developed aflatoxin removal or neutralization for cottonseed and peanut meal.		Ongoing research on affect of dietary oilseed protein on down's syndrome children and senior citizens.	

The sunset review also found that the function of funding agricultural research is carried out by both public and private agencies in Texas, as well as in other states. In Texas, there is a fragmented configuration of groups participating in research, marketing, promotion, education and lobby efforts. This includes the independent research done at the universities, various regional associations and cooperatives that assess a fee on producers, a national cotton "check-off", or levy system, and independent commodity boards. The primary research funding for natural fibers and oilseeds comes through the research body of Texas A&M University, the Texas Agricultural Experiment Station (TAEX). This is similar for all states that receive federal "Hatch Act" funds in that each state must designate a land grant university to house an experiment station and extension service to be the recipient of federal funding for that state's major agricultural products. Consequently, federal matching funds and the majority of state funds for agricultural research are concentrated at the research body of Texas' land grant university, Texas A&M. Other universities also receive some state funding for various natural fibers and oilseeds research projects.

There are a number of independently formed regional marketing cooperatives and associations in the state that have been formed by producers to fund marketing, promotion and some education and research for cotton, wool and mohair. These groups generally finance themselves through a membership fee or voluntary levy based on quantity of production. Some of these groups, such as the Plains Cotton Cooperative Association, focus almost entirely on marketing while others fund some research, especially to address problems specific to their growing region.

A national commodity check-off system is also in place for cotton, wool and mohair, with the wool and mohair check-offs being tied to the federal price support system. The cotton check-off is overseen by the USDA and is administered through a quasi-governmental agency known as the Cotton Board. All cotton producers in the 19 cotton-producing states pay $1 plus .6 of one percent per bale of cotton at the first point of sale into the National Cotton Board, with provision for a refund. This revenue is then used for research and promotion activities through a contract with Cotton Incorporated. The majority of the funds now go to promotion efforts, but the funding dedicated to research is often funneled back into the states on a contract basis.

Finally, the sunset review found that all major cash crops in Texas receive research funding through one means or another. Many crops, in addition to being supported by state-funded research at TAEX, are supported through commodity boards administered by the Texas Department of Agriculture. These voluntarily instituted boards are active for eight different crops on a regional or statewide basis and are funded through a check-off system. The funds generated may be used for research, disease and predator control, education and promotion of the commodity. Creation of such boards must be initiated at the will of the producers of the commodity through a referendum. Other voluntary regional associations have been formed for most major crops besides cotton, wool and mohair, as well.

The second major area of focus of the sunset review was to determine if alternatives to the NFFPC structure existed that could produce the same basic results with less cost or with greater benefits. Several alternatives were examined. First, the review examined the alternative of abolishing the agency altogether and funding the four universities directly. This would have eliminated the current NFFPC coordination system, however, that assures that the money is used where it is most needed. Without NFFPC, there would be no formal mechanism for industry

input into the research funding process. The loss of this mechanism would eliminate a valuable oversight role that helps link the research proposal to the needs of the producer and the industry, thereby maintaining the relevancy of the research. The mechanism also provides an incentive for industry to provide matching funds since industry representatives have a voice in what research gets selected for funding.

Another alternative was examined which would have allowed the commodity board system to assume the current functions of NFFPC, thereby making it a private function with no state funding. This alternative, however, would not assure that the money generated through a commodity check-off would be used for research to the extent that it is now since the state research "seed money" would be eliminated and producers could elect to spend a greater proportion of the money on marketing. This would also result in a double taxation system for cotton producers since they are already subject to the national cotton check-off levy described earlier.

The review also evaluated the merits of transferring NFFPC's functions to four other state agencies, but identified problems that made recommending a transfer inadvisable in all four cases. First, the Texas Department of Agriculture (TDA), through its marketing and agricultural development program, does promotion and direct marketing for major commodities in the state, including cotton. However, TDA is primarily a regulatory and marketing agency and does not fund university research, which is the NFFPC's main function. The Texas Higher Education Coordinating Board does fund university research for agriculture and other areas through its relatively new advanced technology program. The funding, however, is distributed to Texas universities through an out-of-state peer review committee system that may choose to fund aerospace, energy or other research instead of agricultural research. The Coordinating Board also has no special expertise in natural fibers and oilseeds and has a different mandate than that of the NFFPC.

The Texas Department of Commerce (TDC) was also investigated because of its domestic and international business development programs which focus on textiles and agriculture, among other state resources. The TDC, however, does not fund university research as does NFFPC and has no special expertise in cotton, wool, mohair and oilseeds. Finally, the research body of Texas A&M University, TAES, was considered because the majority of agriculture research in the state already occurs here. Two major problems were found in transferring NFFPC's functions to TAES. First, it would allow one university to more tightly control the research funds distributed to itself and three other universities instead of allowing a neutral structure to do so. This would create a potential for biasing the flow of the funding to one university and could disrupt the flow of funding support for major research laboratories, facilities and projects already in place at the other three universities. Second, the research selected for funding through the NFFPC industry prioritization process has a different focus than does the entire gamut of research at TAEX. The NFFPC selects research proposals for funding that are close to fruition or have a time deadline and are market-oriented or have value-added goals. The Texas Agricultural Experiment Station does fund this kind of research, but also funds a substantial amount of more basic, experimental research across all agricultural research areas. Additionally, a potential exists for losing part or all of the $1.5 million in industry-generated funds if the NFFPC's activities are transferred to another agency and if industry support is consequently lost or diminished. The special attention given to natural fibers and oilseeds would also be diminished if the functions were transferred since none of the four agencies focus efforts on these commodities to this degree.

The sunset review concluded that alternative organizational structures could not produce the same results at less cost or with greater benefits. The review found that the NFFPC provides a brokerage service for the universities and industry. The agency's use of state appropriations as seed money matched with outside industry donations ensures that the money goes farther for research and also creates a partnership between the two groups for prioritizing the research that should receive the joint funding. This partnership allows for the best use of the universities' expertise, which is in performing the actual applied research, and the best use of the industries' expertise, which is to provide input into the areas needing research based on knowledge of the industry and first-hand experience in producing the commodity.

The review concluded that none of the alternative solutions examined could preserve the focus of the NFFPC and that there is a need to maintain the commission as a separate body with certain improvements.

Regarding the operations of the commission, the review examined its policy-making structure, overall administration and programs. First, the evaluation of the policy-making structure indicated that no substantive changes need to be made in this area other than minor changes covered in the Minor Modifications section of the report.

Second, the evaluation of the overall agency administration focused on the budgeting, accounting and rule-making activities carried out by the agency. The review concluded only one change is needed in the rule-making area, which is covered in the Minor Modifications section of this report.

Third, the analysis of the agency's substantive operations focused on two major functions: marketing efforts made by the agency to promote cotton-related products; and, the allocation of funds to research projects. The review indicated that the administrative staff has been cost effective in the dissemination of information and in the promotion of Texas natural fibers and food proteins. The review concluded that no changes are needed in this area and no recommendations are made. On the other hand, the examination of the allocation of funds to research, the central focus of the agency's work, indicated that several changes should be made to strengthen this process. The allocation function involves two steps: the acquisition of funds for research; and the distribution of the funds to the four universities currently participating in NFFPC. Funds are allocated to research which addresses production and manufacturing problems as well as to areas that promise a greater economic return for natural fibers and oilseeds. NFFPC-funded research is also directed to building a foundation for future study.

The review indicated that while the allocation efforts were generally effective, the current methods for prioritizing research to be funded should be improved to strengthen statewide coordination of natural fibers and oilseeds research and promotion. Recommendations have been adopted to address this issue.

The recommendations contained in the report would have no fiscal impact.

Sunset Commission Recommendations for the
Natural Fibers and Food Protein Commission

CONTINUE THE AGENCY WITH MODIFICATIONS

1. **The commission's statute should be amended to:**

   - **restrict commission funding to current areas of research;**
   - **prohibit the commission's funding of research on new commodities; and**
   - **require that commission expenditures for research be matched by private funds.**

The overall purpose of the commission is to prevent duplication in the use of scarce research dollars. This policy should be clearly reflected in statute. This recommendation would exclude new and more exploratory commodity research from NFFPC funding. The NFFPC's emphasis will thus be focused on research funding for the current natural fibers and oilseeds areas. Also, this recommendation would require that private funds match, on a dollar-for-dollar basis over a biennium, the commission's total state expenditures. This will encourage the commission to continue to fund relevant, market-oriented research projects.

2. **The statute should be changed to clearly state that research funding should be given priority over marketing and other efforts.**

This recommendation would protect the use of scarce research dollars by ensuring that NFFPC concentrate on those areas of scientific research in which it best serves the state and the agricultural community and would prevent any potential future overlap with other regional, state and national commodity groups which regularly conduct consumer and other market research.

3. **The commission's research project funding decisions should be required by statute to take into account:**

   - **similar research performed by the four member universities; and**
   - **marketing activities of the Department of Agriculture and the Department of Commerce.**

The statute currently does not require the commission to review all similar research being done by the four member universities as part of its funding decision, nor is there any required input from two agencies that have an interest in the commission's efforts. Reviewing all related research and consulting with all interested parties before funding decisions are made would improve coordination, could prevent duplication of research efforts and would help NFFPC to better address the state's long-term economic development goals for agriculture. This change would not

require new committees or staff be added to the commission's current composition and staffing pattern.

Other Changes Needed in Agency's Statute

4. **The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.**

Through the review of many agencies, the Sunset Commission has develop a series of recommendations that address problems commonly found in state agencies. The "across-the-board" recommendations are incorporated into each agency's statute.

5. **Minor clean-up changes should be made in the agency's statute.**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in Exhibit 4.

Exhibit 4

Minor Modifications to the Natural Fibers and Food Protein Commission Statute

Chapter 42 - Texas Agriculture Code

Change	Reason	Location in Statute
1. Add language requiring the Natural Fibers and Food Protein Commission to adopt rules on commission and committee proceedings and on the funding process.	To ensure standard procedures are followed according to the Administrative Procedures Act.	Section 42.003
2. Change the name of the Natural Fibers and Food Protein Commission to Texas Food and Fibers Commission.	To simplify the name and minimize confusion.	Sections 42.001-42.007
3. Change the language to rotate the chairmanship of the Natural Fibers and Food Protein Commission annually among the university presidents.	To reflect current agency procedure.	Section 42.003(a)
4. Change the language to clarify that the five persons appointed to the executive committee are selected from the existing industry committee.	To clarify language in the statute which incorrectly implies that five of the seven members might be selected from outside the advisory committee membership.	Section 42.007(a)(3)
5. Modify the language to require the industry advisory committee to meet at least once a year, but without reference to specific months.	The months specified in the statute are no longer relevant.	Sections 42.005(d) and 42.006(d)
6. Change the agency's policy statement by deleting ", and the establishment of outlets for, farm products, especially"....	The wording is confusing and incorrectly implies all farm products should be focused on by the commission.	Section 42.001

ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

On-site Wastewater Treatment Research Council

Background and Focus of Review

Creation and Powers

Most homes and businesses are hooked up to publicly owned and operated sewage systems. However, where these facilities are not available, sewage is disposed of at the location where it is produced. Systems designed for this type of waste disposal are called on-site wastewater treatment systems. The most common type of on-site wastewater treatment system is the septic system. Not all types of terrain are suitable for septic systems. For instance, soils that are primarily clay do not always provide adequate drainage. Engineers have developed alternatives for some of those circumstances where traditional septic systems are not appropriate.

The Texas Association of Builders reports that alternatives to the conventional septic system have not gained wide acceptance in some areas. County officials, as well as other local officials, can choose to regulate on-site disposal systems. These officials have not always been willing to issue permits for systems other than traditional septic systems.

Interviews indicated that the On-site Wastewater Treatment Research Council was established to help gain wider acceptance and use of alternatives to traditional septic systems. The council was established in 1987 during the second called session of the 70th Legislature. The council's primary purpose was to fund research that would help demonstrate and develop alternative waste disposal systems. Results of the research were to be passed along to county and other local officials and other users of waste disposal technology.

An early version of House Bill 32, the bill creating the council, gave the agency a 12-year sunset date of 1999. The final version of the bill was amended to give the council a two-year sunset date of 1989.

Policy-making Structure

The council is composed of 11 members appointed by the governor from various groups interested in or related to on-site wastewater treatment systems. The council members serve for two-year staggered terms. Seven members have been appointed to the council. Each year, the council is required to elect one of its members as chair. Because the appointment of the full council has not been completed, a chairman has not been elected.

Funding and Organization

Funding for the council comes from the collection of a $10 fee for each on-site wastewater treatment permit that local governments issue. Currently, according to the Texas Department of Health, 84 counties, 31 cities, seven river authorities, five public health departments, and seven special districts issue these permits. The money collected is deposited in the state treasury in the On-site Wastewater Treatment Research Account. Fees have been collected since November 1987. As of October 31, 1988, the account balance was $144,070. However, the legislature made no appropriation to the council so no funds have been spent.

The bill setting up the council authorizes it to contract with the Texas Department of Health for administrative support. TDH also collects the fees on behalf of the council. To date no contract has been negotiated since no funds are appropriated. The department has devoted some staff time to developing the system for collecting permit fees and to accounting for those funds.

Programs and Functions

The council is authorized to award competitive grants to support applied research at accredited colleges and universities. According to the statute, the studies have to concern on-site wastewater treatment technology and systems applicable to Texas. Also, the research has to be directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers. Finally, the statute directs the council to disseminate information about new on-site wastewater treatment technology. To accomplish this function the council is authorized to conduct educational courses, seminars, symposia, publications, and other forms of information dissemination. Since the legislature appropriated no funds to the council, the agency has not awarded any grants or undertaken any activities to spread information on new on-site treatment technologies.

Focus of Review

The review of the On-site Wastewater Treatment Research Council focused on the continuing need for the council to award grants for research projects concerning on-site wastewater treatment technology, and to distribute information regarding new technology. A number of activities were undertaken to gain a better understanding of the council and its purposes. These activities included:

- interviews with staff of the Texas Department of Health, Texas Water Commission and Comptroller's Office;
- interviews with council members and individuals supporting the bill that created the council; and
- review of the history regarding the creation and funding of the council.

These activities provided a basic understanding of the purpose and objectives for which the council was created.

The review concluded that the council, established in 1987 with a two-year sunset date, was created primarily to demonstrate the practicality of alternatives to traditional septic systems. This was to be done through research and subsequent distribution of research findings to permitting officials and users of disposal technology. The council was not intended to be an ongoing agency after this purpose was accomplished. To date, the council has been unable to accomplish this purpose because the fees it collects were not appropriated for its use. The review concluded that the On-site Wastewater Treatment Research Council should be continued until September 1, 2001, at which time it should cease operations. This approach gives the council 12 years to accomplish its specific purpose. During this period the legislature and governor should appropriate to the council the permit fees it collects.

In addition, one employee of the Texas Department of Health should be included as a council member. This is because beginning September 1, 1989, the TDH will take on additional responsibilities for the regulation of the waste disposal

systems. The TDH employee will replace the public member in the council membership.

Statutory recommendations of the Sunset Committion for this agency have no fiscal impact.

Sunset Commission Recommendation for the
On-site Wastewater Treatment Research Council

CONTINUE THE AGENCY WITH MODIFICATIONS

1. **The council should be continued with the following changes in its powers, duties, and funding:**

   - **continue the council for 12 years, at which time the agency should be abolished;**
   - **replace the public member designated for the council in statute with an employee from the Texas Department of Health;**
   - **require in statute that the Texas Department of Health monitor grants that continue to run after the council ceases operations; and**
   - **as a management directive, the fees collected should be appropriated to the council.**

This approach gives the council 12 years to accomplish its purpose of demonstrating that feasible alternatives to septic systems exist. At the end of 12 years, the council would go out of existence. Projects started by the council that would extend beyond its abolition date could continue to be monitored by the Texas Department of Health. In addition, if universities determined that projects started by the council to be worthwhile, they could seek funding directly from the legislature. Finally, it is recommended that a TDH employee be placed on the council in place of the public member currently designated in statute. This change is recommended since the TDH will have primary responsibility for the regulation of this type of disposal system as of September 1, 1989.

Recommendations for

GENERAL AGENCIES

Metropolitan Transit Authority of Harris County
Corpus Christi Regional Transit Authority

Texas Department of Labor and Standards

Texas Surplus Property Agency

Texas Commission on Human Rights

Texas Indian Commission

Interagency Council for Genetic Services

Governor's Commission on Physical Fitness

State Board of Canvassers

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY

CORPUS CHRISTI REGIONAL TRANSIT AUTHORITY

Metropolitan Transit Authority of Harris County and Corpus Christi Regional Transit Authority

Background and Focus of Review

During the last legislative session, the Corpus Christi Regional Transit Authority, the Metropolitan Transit Authority of Harris County, and the Austin Metropolitan Transportation Authority were placed under sunset review. The transit authorities are to be reviewed, but are not subject to being abolished under the Sunset Act. The Corpus Christi and Houston transit systems were scheduled for review immediately, with a report to the legislature in 1989. The Austin MTA sunset review was delayed to the following biennium, with a report to the legislature in 1991. The San Antonio, Dallas, and Fort Worth transit authorities were not placed under sunset review.

Metropolitan Transit Authority of Harris County

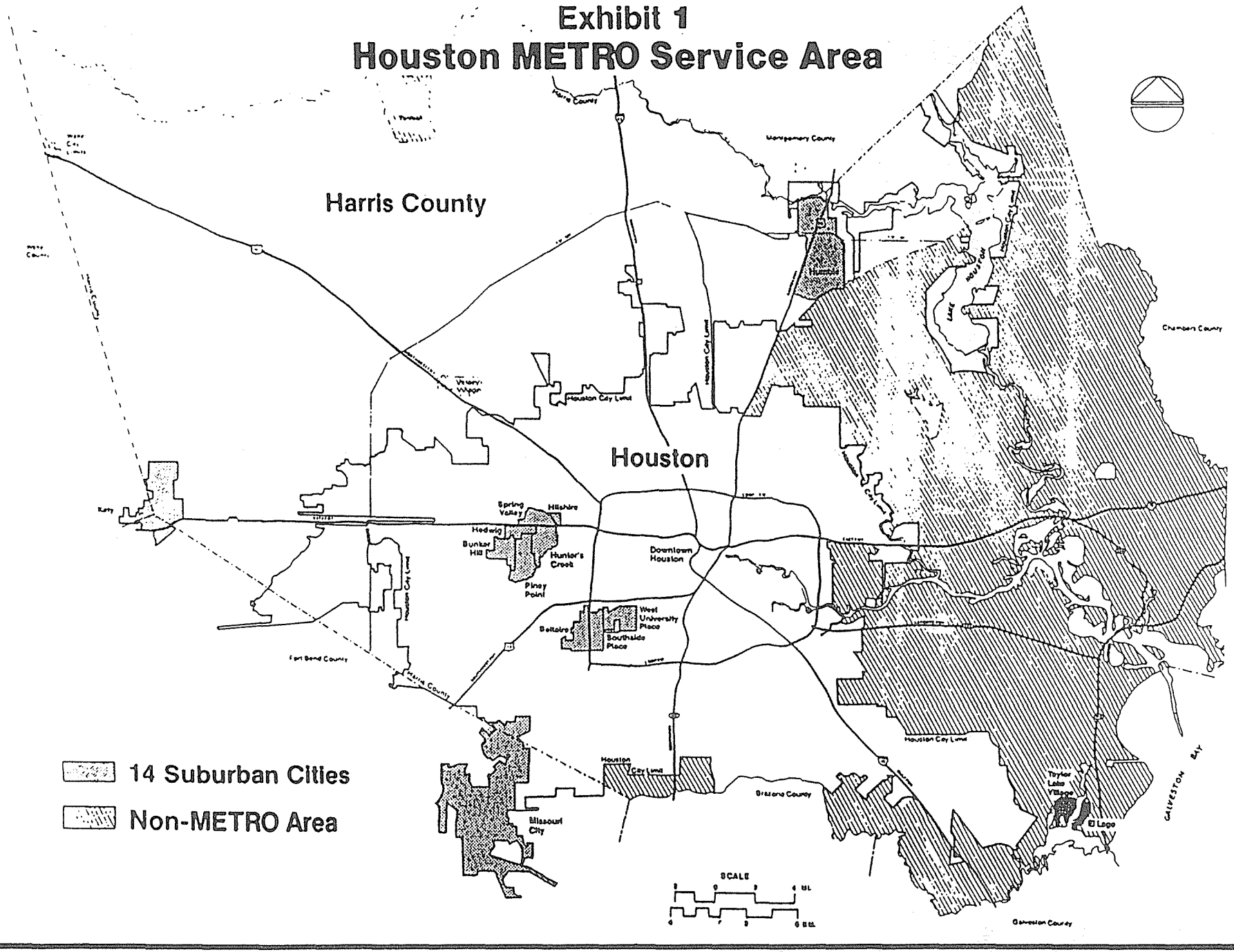
Creation and Powers

The Metropolitan Transit Authority of Harris County, generally known as Houston Metro, is responsible for providing a regional transit system in the Houston/Harris County area. The process of establishing the MTA began in December 1977 when an interim board was appointed by locally elected officials to determine if an MTA would be feasible and beneficial in the Houston/Harris County area. The interim board recommended that an authority be created and developed a regional transit plan to present to the public. The plan called for immediate improvements in bus services; the expansion of services to the whole region; new and better buses; and the development of a system for high occupancy vehicles separate from the regular flow of freeway traffic.

On August 12, 1978, a confirmation and tax election was held. This election confirmed the establishment of the Authority, approved the original plan, and authorized the collection of a one percent sales tax to support the authority's activities. The areas voting to participate in the authority included the City of Houston, fourteen suburban cities and the northern and western portions of unincorporated Harris County (see Exhibit 1). Houston Metro began actual operations on January 1, 1979 when they took over the existing local city bus system.

The statute provides broad powers for Houston Metro in implementing a regional transit authority. The board may levy and collect any kind of tax, other than a property tax or tax prohibited by the Constitution, if approved by a majority of the voters of the authority. The authority may issue bonds, with voter approval, for any purchases, construction or improvements to the transit system the board considers necessary. The authority has the right of eminent domain to acquire lands needed for the development of the transit system. It may employ and commission its own peace officers with power to make arrests on their property. The authority also sets all rates and fares for the use of the transit system and makes rules and regulations governing the use, operation, and maintenance of the system.

Exhibit 1
Houston METRO Service Area



These broad powers have not changed significantly over the nine years that Houston Metro has been in operation. The authority has implemented most of the provisions called for in the original plan approved by the voters in 1978 and has now embarked on a new 13-year plan to further develop the transit system in the Houston area. The new plan involves the development of a light rail system and the commitment of 25 percent of the sales tax revenue to general mobility projects which will improve the street system throughout the region.

Policy-making Structure

Article 1118x provides three distinct board sizes for transit authorities: a 7, 9, or 11-member board. The board size is determined by the percentage of the county population outside of the principal city that resides within the authority. Between 50 and 75 percent of the population of Harris County, outside the Houston city limits, resides within the authority. As a result, the statute requires that Houston Metro have a nine-member board. Five of the members are appointed by the mayor of the city of Houston and confirmed by the Houston City Council, two members are appointed by the Harris County Commissioners Court and two members are selected jointly by the mayors of the 14 suburban cities that voted to participate in the authority.

Metro board members serve on a part-time basis and are compensated $50 for each board meeting, up to five meetings per month. Prospective board members must be resident citizens and qualified voters of the authority. Metro's enabling statute provides for four-year staggered terms. However, Metro has opted to use two-year non-staggered terms due to a concern that the four-year terms are unconstitutional.

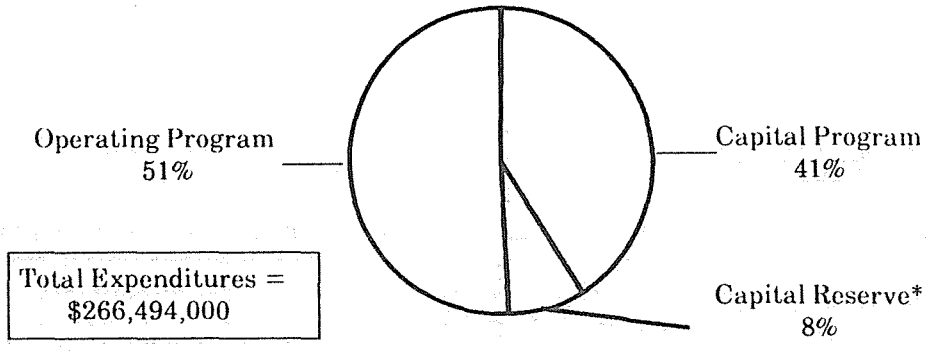
The board is responsible for the management, operation and control of the authority. They are also authorized to hire and remove all employees, as well as prescribe their duties, tenure and compensation. The board delegates much of this authority to a general manager who carries out the day-to-day operations of the authority. The board meets at least once a month and works by dividing into standing committees on Finance and Administration, Community Relations, Transit Operations and Future Programs. These committees review information and make recommendations to the full board. The board also receives citizen input concerning services for the elderly and handicapped through their MetroLift Advisory Committee.

Funding and Organization

As Exhibit 2 shows, in fiscal year 1987 Houston Metro expended over $266 million. These expenditures are divided into funding for the agency's operating program, its capital program, and its capital reserve. Operating expenditures include the cost of providing daily bus services and the cost of administrative activities that support these services. Slightly over one-half of the agency's budget, or about $135 million, was spent in this category. Capital expenditures include costs related to developing and implementing any capital projects or purchasing any capital items, such as building park and ride lots or purchasing buses. These expenditures totaled approximately $109 million. Metro's capital reserve funds are for upcoming capital projects. Some $22 million was put into this account in fiscal year 1987.

Exhibit 2

Houston Metro Fiscal Year 1987 Expenditures

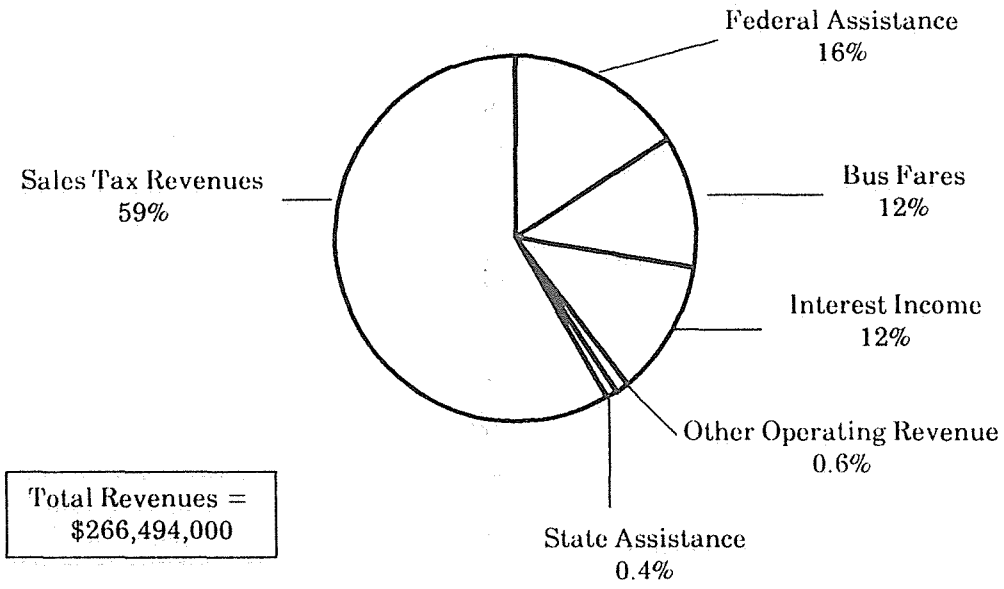


*These funds are placed in reserve for expenditure in the future.

Metro's funds are derived from a variety of sources. As shown in Exhibit 3, these sources include sales tax revenues, federal assistance, bus fares, interest income, state assistance, and other operating revenues (which includes income from leases and grants for various work and training programs).

Exhibit 3

Houston Metro Fiscal Year 1987 Revenues



Sales tax revenues and federal assistance are the largest sources of revenue for Metro. As can be seen from Exhibit 3, the sales tax alone accounts for 59 percent of the agency's funding. Federal assistance is a distant second to the sales tax as a source of revenue for Metro. This source accounted for 16 percent of the agency's

funding in fiscal year 1987. Metro receives two kinds of federal assistance: operating assistance and capital grants. The operating assistance totaled $10.2 million in fiscal year 1987 and was utilized to supplement the operating budget. This money comes from the Urban Mass Transportation Administration Section 9 funding and is distributed through a federal allocation formula to various transit systems across the country. The federal capital grants in fiscal year 1987 totaled $31.8 million. These funds are distributed to qualifying transit systems on a project by project basis. The funds are allocated using an 80-20 match formula, 20 percent being the local match requirement.

Bus fares of $33.2 million accounted for approximately 12 percent of Metro's revenue in fiscal year 1987. Only a small percentage of Metro's total revenue in 1987, just over $1.2 million, came from state assistance. This amount was received from the State Public Transportation Fund and used in the agency's capital program.

Metro's one percent sales tax has provided the primary source of revenue for daily bus operations and capital projects. Approximately 65 percent of the sales tax revenue is used to fund the daily bus service. The remaining 35 percent is utilized to fund Metro's capital program. The sales tax funds within the capital program have been used to provide the local match to obtain a significant amount of federal funds for capital projects. The receipt of these additional federal funds has offset the need to spend sales tax dollars on these capital projects. As a result, Metro had accumulated approximately $385 million as of the end of fiscal year 1987 in its capital reserve account. Exhibit 4 shows how this fund has grown through contributions made each year since Metro began operating in 1979. These funds are being held in reserve to fund a portion of Metro's Phase II capital program, which is described in detail in a subsequent section on Metro's capital program.

Exhibit 4

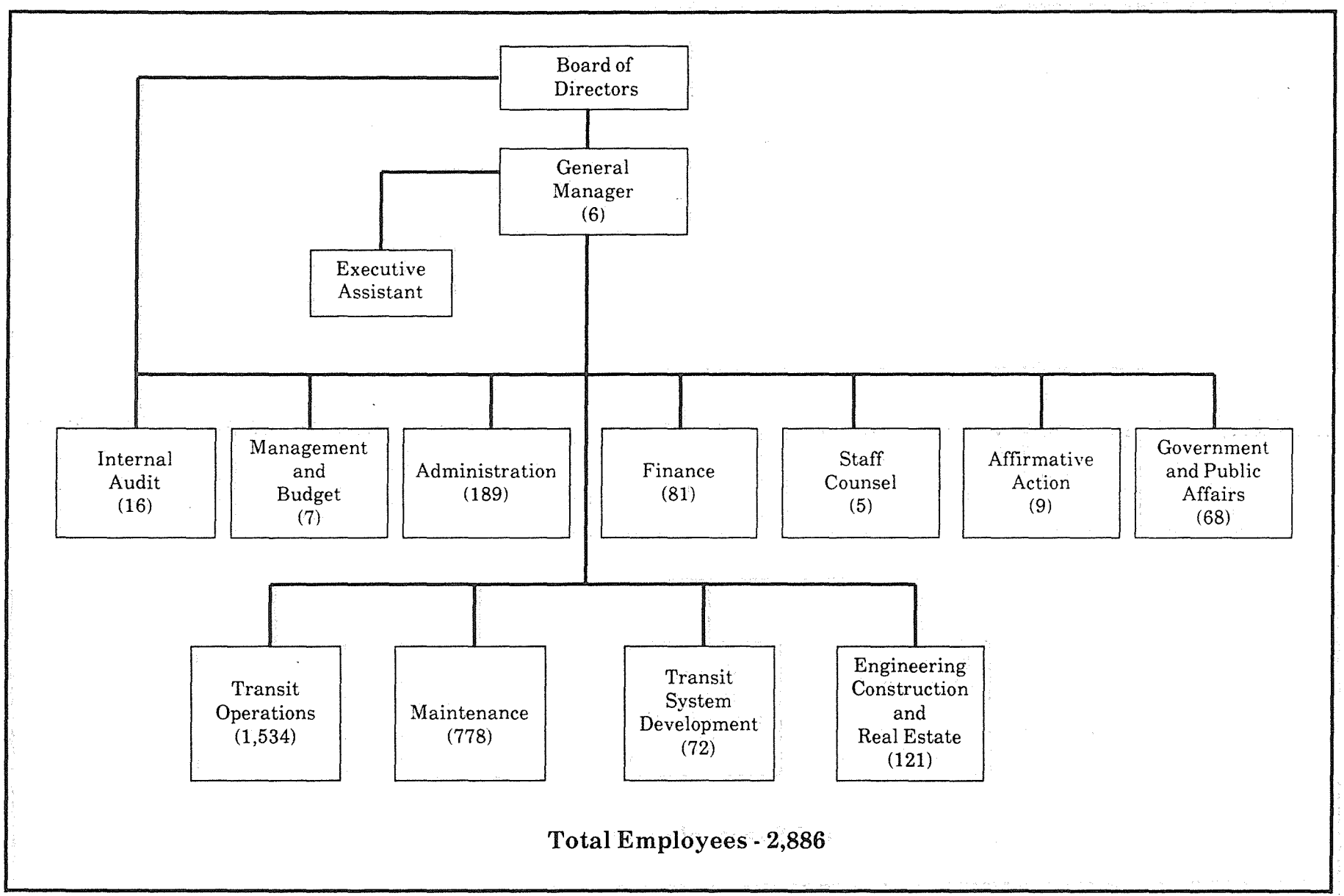
Capital Reserve Contributions: Fiscal Year 1979 - 1987

Fiscal Year	Amount
1979	$29 million
1980	$58 million
1981	$54 million
1982	$59 million
1983	$12 million
1984	$72 million
1985	$52 million
1986	$21 million
1987	$28 million
TOTAL	**$385 million**

Houston Metro employs a total of 2,886 employees (see exhibit 5). The majority of these employees are directly involved in operating or maintaining the buses and primarily work out of five bus operating facilities located throughout the

Exhibit 5

Houston Metro Organizational Chart as of October 1, 1987



Total Employees - 2,886

Houston/Harris County area. Metro also leases administrative offices in downtown Houston which house 475 of its employees.

Programs and Functions

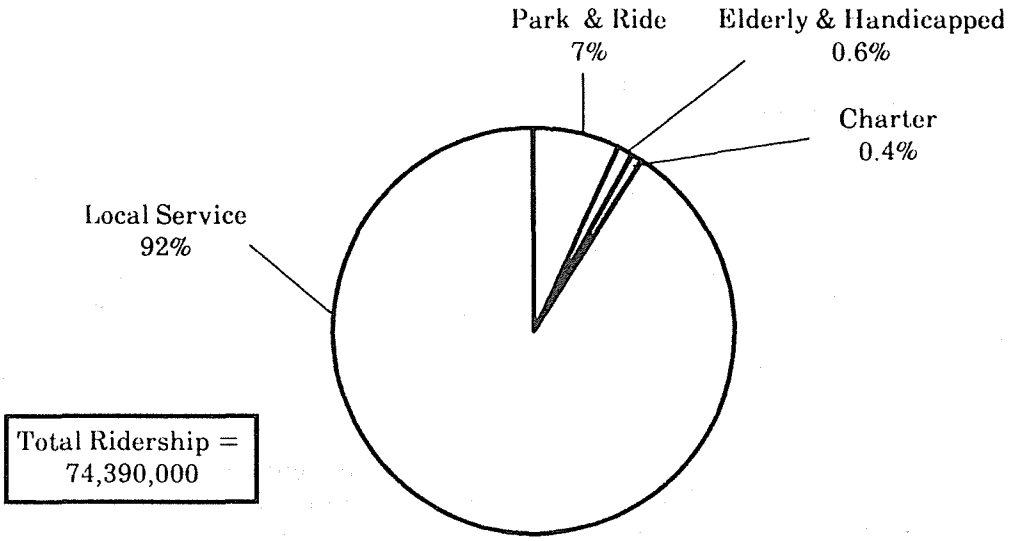
Houston Metro provides a regional transit system through an operating and capital program. Metro also has a number of administrative functions that support the ongoing needs of these programs. The activities performed through these programs are described in the following material.

Operating Program

The operating program provides public transportation and transportation support throughout Metro's service area. Metro uses a total of 1,079 buses to provide a variety of transportation services. The following is a description of the services provided through the operating program. Exhibit 6 shows the portion of ridership represented by each transportation service offered by Metro.

Exhibit 6

Houston Metro Fiscal Year 1987 Ridership by Program



Local Service. Local service is scheduled fixed-route bus service that operates throughout the MTA region. Metro has 835 buses available to provide local services. In fiscal year 1987, these services accounted for 68,194,000 passenger trips on 82 routes or 92 percent of Metro's total ridership. Local services generally run from 5 a.m. to 11 p.m. for a fare of 60 cents per trip. Expenditures for local bus service in fiscal year 1987 were approximately $107.2 million.

Park & Ride. Metro's Park & Ride service is the commuter service that carries people from Park & Ride lots to major employment centers in Metro's service area. Metro operates 23 routes from 19 Park & Ride lots, using 185 buses. This service accounted for 5,441,000 passenger trips in fiscal year 1987 or seven percent of Metro's ridership. Park and Ride services are run only on weekdays primarily

during rush hour for a fare that ranges from $1.15 to $2.35 depending on the distance traveled. Expenditures for Park & Ride services in fiscal year 1987 were approximately $20.8 million.

Elderly and Handicapped Programs. Metro's elderly and handicapped services, generally known as MetroLift, are specialized door-to-door transit services for people who are unable to use regular bus services. Eligibility for MetroLift services requires certification by a physician indicating that the individual is unable, due to age or disability, to use regular bus services. MetroLift services are provided through vans and a subsidized taxicab program. MetroLift services accounted for 483,000 passenger trips in fiscal year 1987 or 0.6 percent of Metro's ridership. Expenditures for these services in fiscal year 1987 were about $6 million. The services provided by MetroLift meet current federal requirements for services to the handicapped.

MetroLift van services are provided by a private contractor, using 47 wheelchair lift-equipped vans and 12 modified 15-passenger vans. Services are offered within a 375 square mile area, seven days a week, on the average of 17 hours a day. Trips are pre-scheduled on a first-call, first-serve basis at a cost of $1.00 to the passenger.

MetroLift's subsidized taxicab service, initiated in 1985, expanded the service area for handicapped patrons. The program provides taxicab services to eligible persons throughout Metro's entire 1,275 square mile service area. Services are generally available within 30 minutes and are utilized by people who are unable to make reservations on a MetroLift van, live outside the MetroLift service area, or who have emergency trip needs. The cost to the passenger is $1.00 plus any fare in excess of $9.00. Metro pays the other $8.00.

Charter Services. Federal regulations to encourage "privatization" limit the use of buses purchased with federal funds for charter operation. The charter service program therefore only supplements private charter operators by providing additional buses when the private sector cannot meet the demand for major events in the Houston area. Charter services carried 264,000 passengers in fiscal year 1987 with expenditures for these services totaling just over half a million dollars. Metro charges $51 per hour for charter services. This rate is structured to cover the full cost of providing the services.

Rideshare Services. Rideshare is a computerized carpool/vanpool matching service. Individuals or companies that are interested in forming a carpool or vanpool for commuting purposes are matched according to similar home and work locations and work hours. Expenditures for rideshare services in fiscal year 1987 were $179,594. There is no charge for these services.

Transitway Operations. Transitways are separate barrier-protected lanes in the middle of the freeway that lead into the downtown area, carrying traffic in-bound in the morning and outbound in the evening. At the end of fiscal year 1987, there were two transitways , the North and Katy transitways, open for use by buses and vanpools. The Katy transitway is also open to carpools of two or more persons. During rush hour traffic, the transitways can move as many people as all other peak direction freeway lanes combined. Transitways are often viewed as an alternative to building additional freeway lanes.

The transitway operations program employs 14 people to ensure that the transitways are open and fully operational. The primary activities include monitoring the lanes and removing disabled vehicles from the lanes. Expenditures in fiscal year 1987 for this program were $459,029. There is no charge for using the transitways.

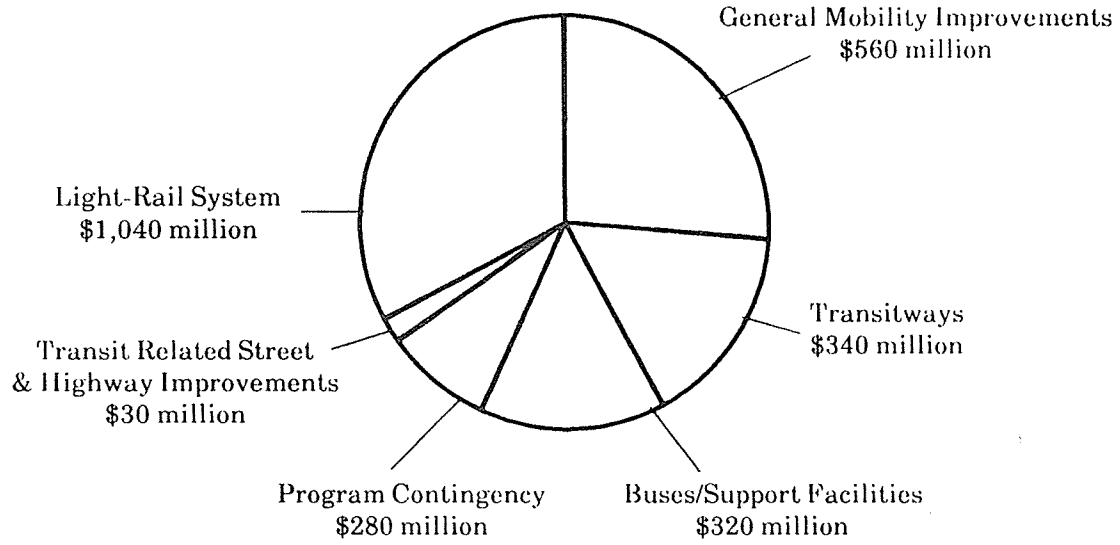
Transit Police. Metro's transit police provide security for Metro's passengers, employees and properties. The police are certified law enforcement officers and are authorized in statute to make arrests when necessary to prevent or hinder criminal activity on the authority's property. Their primary activities include ensuring the safety of passengers and drivers on Metro buses, patrolling Park and Ride lots, enforcing proper use of the transitways, investigating reported crimes and providing routine security services for other property belonging to the authority. This department has 85 employees and contracts for an additional 31 security officers to monitor the park and ride facilities. The fiscal year 1987 budget totaled $2.7 million.

Capital Program

Houston Metro's capital program provides the infrastructure for the regional transit system. Metro has had an active capital program since its inception in 1979 and in January 1988, the voters within the authority approved a second phase of capital improvements which extend Metro's capital plans through to the year 2000. The plan, referred to as the Phase II Mobility Plan, includes five major elements. Exhibit 7 shows estimated costs for each element of the capital plan.

Exhibit 7

Houston Metro Phase II Projected Capital Costs
1988 through 2000



Total Expenditures = $2.6 billion

The first element of the plan involves "general mobility projects." These projects involve major street system improvements and include projects aimed at

connecting discontinuous streets, modernizing older streets and constructing grade separations to improve the overall flow of traffic. Most of these projects will be financed by Metro, with a small amount being financed in conjunction with various local governments. The plan, as approved by the voters, specifies that 25 percent of the sales tax revenues Metro receives be dedicated to this element of the plan. An estimated $560 million is projected to be expended in this area. The objective of this element of the plan is to increase overall mobility for the whole region and to ensure that the entire region benefits from the long-range plan.

The second element of the plan involves the construction of transitways, transit centers, and park and ride lots. Transitways are special lanes reserved for high occupancy vehicles, as described earlier in the section on the operating program. The transitways are constructed in conjunction with the State Department of Highways and Public Transportation. Metro had 20.6 miles of transitways in operation at the end of fiscal year 1987, 11.5 miles on the Katy Freeway and 9.1 miles on the North Freeway. The capital plan calls for constructing an additional 54.3 miles, resulting in 74.9 miles of transitways by the year 2000. Transit centers are facilities located outside of the downtown area which provide a point for bus routes to converge so that passengers can transfer to other routes. This allows passengers to transfer without having to go all the way into the downtown area. Metro currently has five transit centers in operation. The capital plan calls for constructing 12 additional centers, bringing the total to 17 by the year 2000. Metro's park and ride lots provide parking space for passengers commuting on the park and ride buses. Metro currently has 19 lots in operation. The capital plan calls for constructing 12 more lots bringing the total to 31 park and ride lots by the year 2000. An estimated $340 million is projected to be expended in this area.

The third element of the plan calls for building a "system connector." Metro has proposed building a 20-mile rail system that will connect the transit centers and the four major employment centers in the area. Bus routes will converge at the transit centers, enabling riders to transfer to rail or other bus lines. The 20-mile rail system should be fully operational by the year 2000 at an estimated cost of approximately $1 billion. The rail plan calls for approximately 52 percent federal funding, 36 percent local/Metro funding and 12 percent private sector funding.

The fourth element of the plan involves the continued replacement of old buses, the construction of one new support facility, and installation of additional bus stop shelters. The plan calls for an ongoing replacement and expansion of the bus fleet and the replacement of support vehicles and other miscellaneous equipment as necessary. The second item in this category is Metro's bus operating facilities, which provide bus storage, vehicle cleaning, fueling and all maintenance activities. Metro currently has five bus operating facilities in operation and the capital plan calls for constructing one new facility to replace an existing operating facility. The third item involves Metro's bus stop shelters, which provide passengers with a protected area in which to wait for a bus. Currently, Metro has 696 bus stop shelters and the capital plan calls for installing an additional 1,404, resulting in 2,100 bus stop shelters by the year 2000. The plan calls for an estimated $320 million to be expended in this area.

The final element of the plan involves transit related street and highway improvements. These projects include rebuilding, resurfacing, and widening central business district streets utilized by Metro buses. This element also includes the building of grade separations at major intersections and building additional freeway

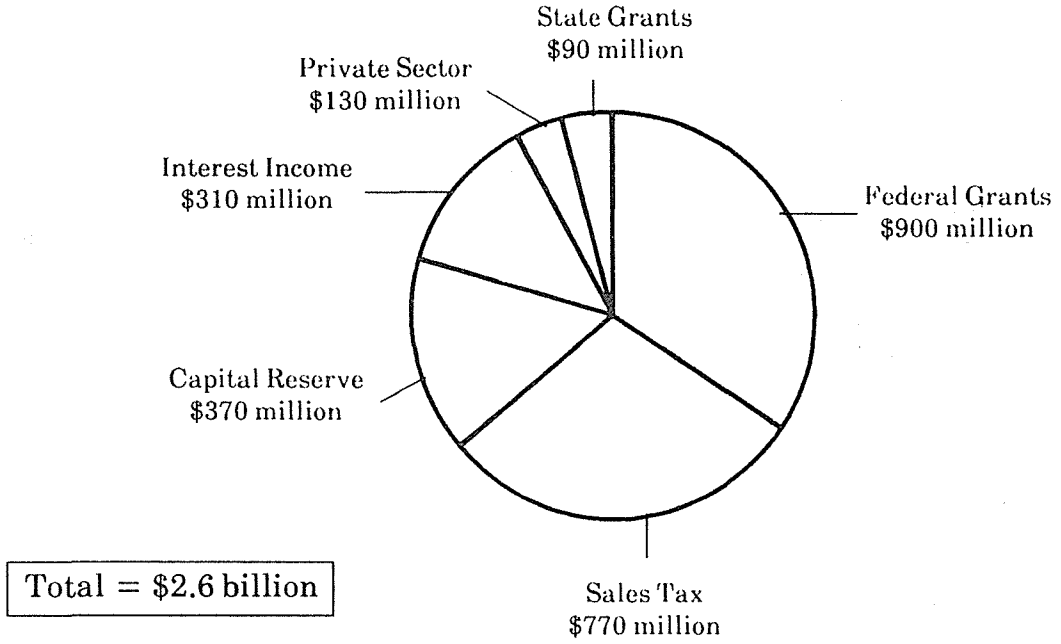
exit ramps to improve the flow of traffic. An estimated $30 million is projected to be spent in this area.

In addition to these five elements, Metro has also planned for a program contingency fund of approximately $280 million as part of the Phase II Mobility Plan. The program contingency is a cash reserve set up to ensure that sufficient working capital is available through the end of the Phase II capital plan.

As was shown in Exhibit 7, the total cost of this capital program is estimated at approximately $2.6 billion. Exhibit 8 shows the projected funding sources that will be used to finance the Phase II capital plan. The largest single source is the $900 million from federal grants, which comprises over 35 percent of the total estimated funds. Sales tax revenues are estimated to provide approximately 30 percent of the funds. The capital reserve and interest income from the reserve together will comprise over 26 percent of the estimated funding. The remainder of the funding is anticipated to be provided through private sector funding and state capital grants. This description illustrates the importance of the capital reserve in funding Metro's Phase II capital plan.

Exhibit 8

Houston Metro Phase II Projected Capital Resources: 1988 through 2000



Administration

Houston Metro has a number of administrative functions which support the operating and capital programs. Of the 2,886 employees at Metro, 381 or 13 percent of the positions are responsible for administrative support activities. Several of these functions are typical administrative support activities including budgeting, purchasing, contracting, computer support, personnel, legal services and finance

activities. Other administrative activities designed to monitor and evaluate agency programs and effectiveness are conducted by the Office of Audit and the Office of Management and Budget. Finally, Metro also has several special functions including marketing, coordinating government and community relations, and promoting minority and disadvantaged business participation.

Corpus Christi Regional Transit Authority

Creation and Powers

The Corpus Christi Regional Transit Authority, the RTA, is responsible for providing mass transit services in the Corpus Christi and Coastal Bend area. The creation of the authority began in June 1984 when the Corpus Christi City Council appointed an interim board to work towards establishing a regional public transportation system. After considerable public input, the "Corpus Christi Regional Transit Authority Plan" was developed. The plan called for expanding regular bus service to include more bus routes, more service hours, and greater frequency of service. It also called for starting regional commuter services, expanding elderly and handicapped services, improving bus shelters and developing transit centers.

On August 10, 1985 a confirmation and tax election was held which confirmed the establishment of the Corpus Christi Regional Transit Authority, approved the transit plan and authorized collection of a one-half of one percent sales tax to support the authority's activities. The election established the RTA in the city of Corpus Christi, five suburban cities (Agua Dulce, Driscoll, Robstown, Gregory, and San Patricio) and the unincorporated areas of Nueces county (see exhibit 9). On January 1, 1986, the Corpus Christi Regional Transit Authority began officially operating the former city-run bus system. In an election held in April 1987, the voters of Port Aransas elected to join the authority as well.

The statute provides broad powers for the Corpus Christi RTA similar to those previously described for Houston Metro. These include authority to levy certain taxes, issue bonds with voter approval, make rules and regulations concerning operation of the system and the right of eminent domain. These powers have not changed since the RTA began operating in 1986.

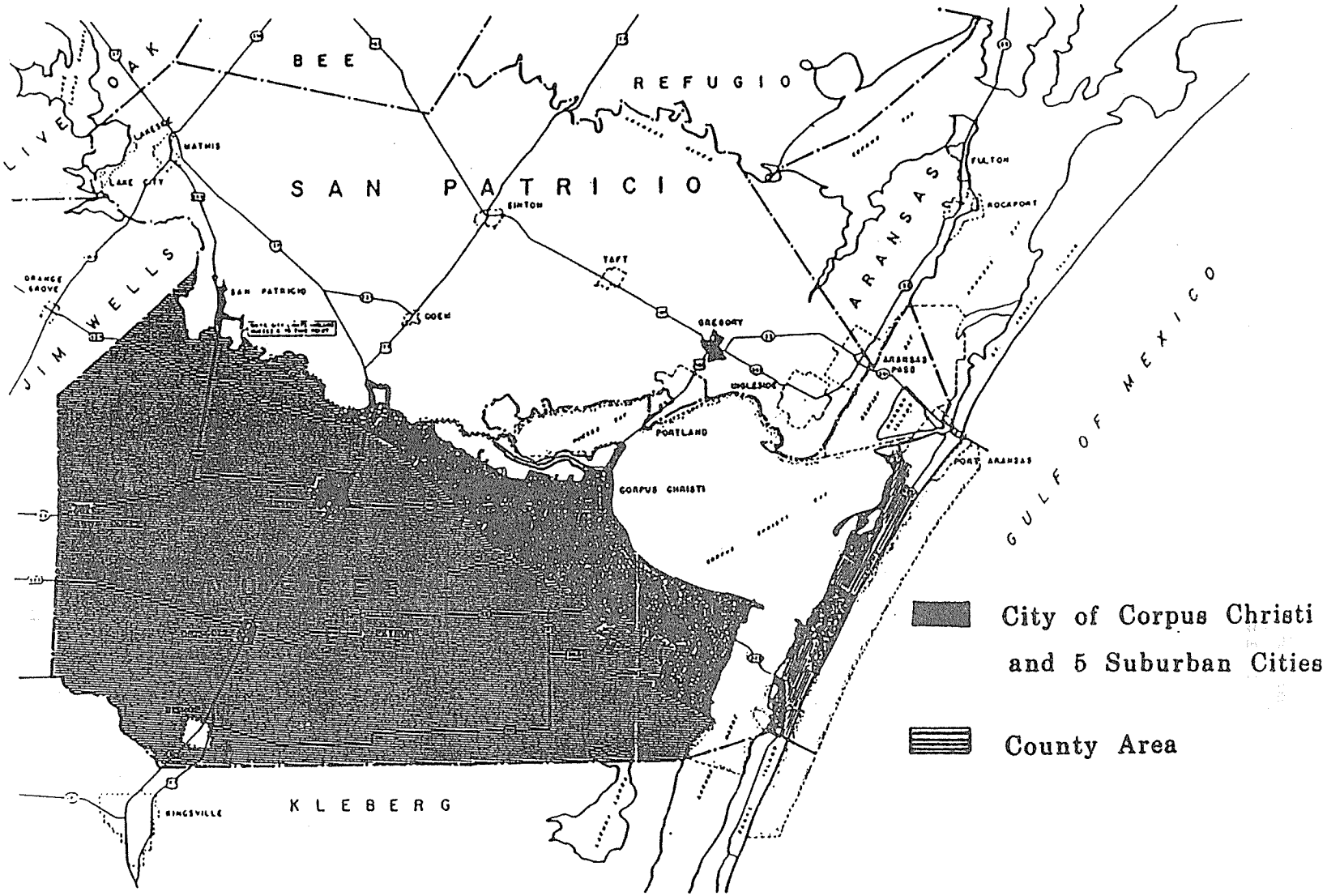
Since its inception, the RTA has focused on achieving the goals of the original transit plan. Currently, the RTA is developing a long-range transit plan for the area. Some of the elements that are being considered include expanding the commuter services, building more bus terminals, replacing large capacity buses with smaller ones and implementing a high-speed water transportation system in the Corpus Christi Bay area.

Policy-making Structure

Article 1118x provides three board sizes, including a 7, 9, or 11-member board. Board size is determined by the percentage of the county population outside the principal city that resides within the authority. Since almost 100 percent of the Nueces County population outside the Corpus Christi city limits resides within the authority, the Corpus Christi RTA has an 11-member board. Five board members are appointed by the Corpus Christi City Council, three members are appointed by

Exhibit 9

Corpus Christi RTA Service Area



the Commissioner's Court of Nueces County and two members are appointed jointly by the mayors of the suburban cities. The eleventh member is appointed by the majority of the other board members and serves as chairman. The members serve four-year staggered terms, are a part-time board and receive no compensation for their service other than expenses.

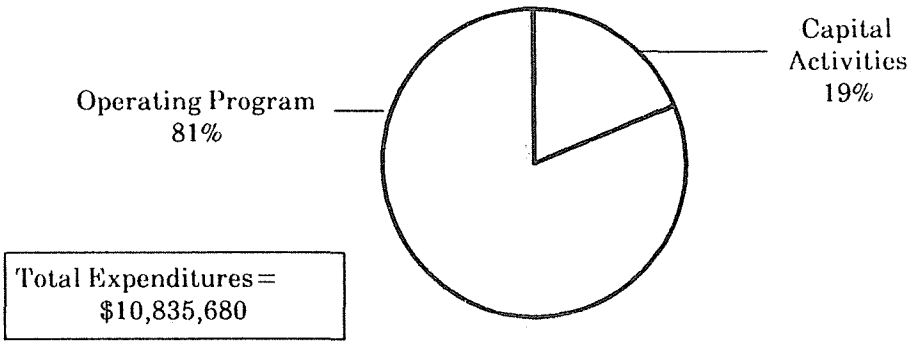
The board is responsible for the management, operation and control of the authority. The board is authorized to hire and fire all employees as well as prescribe their duties, tenure and compensation. However, the majority of the daily operations of the RTA are carried out by the general manager, who is hired by the board. The board meets twice a month and often works by dividing into four subcommittees; Legislative, Planning/Building, Finance, and Personnel/ Compensation. The board also recently appointed a special services advisory committee to obtain input concerning eligibility, fares and services of the RTA's transit system for the elderly and handicapped.

Funding and Organization

As shown in Exhibit 10, the Corpus Christi RTA expended approximately $10.8 million in fiscal year 1987. These expenditures were divided between the agency's operating program and a small amount of capital activity.

Exhibit 10

Corpus Christi Fiscal Year 1987 Expenditures



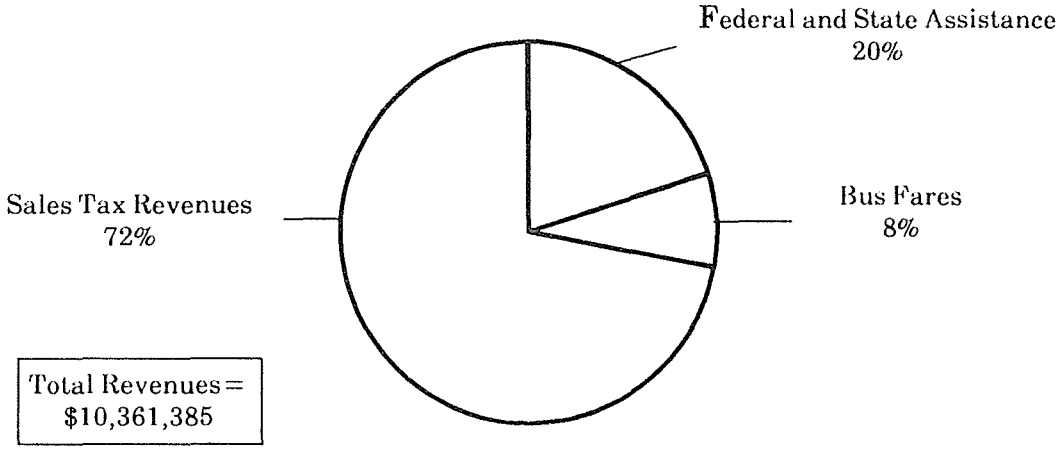
The RTA expended approximately $8.8 million in the agency's operating program. These expenditures include the costs of providing the daily bus services and the administrative activities that support these services. Capital expenditures accounted for approximately $2 million in fiscal year 1987. These expenditures include the costs associated with capital projects, such as purchasing buses and constructing bus shelters.

The Corpus Christi RTA's funds are derived from a variety of sources as shown in Exhibit 11. These sources include sales tax revenues, bus fares, and federal and state assistance. The Corpus Christi RTA receives capital grants from the federal government through the Urban Mass Transportation Administration of the U.S. Department of Transportation. This money is distributed on a project-by-project basis to qualifying transit systems. These funds are allocated using an 80-20 match formula, 20 percent being the Corpus Christi match requirement. In fiscal year 1987, the RTA received a total of $2 million in federal capital grants. The Corpus Christi RTA also received $6,722 in state capital grants through the Public

Transportation Fund. Federal and state capital grants are used to support the RTA's capital activities, which are described later in the Programs and Functions section.

Exhibit 11

Corpus Christi Fiscal Year 1987 Revenues



As shown in Exhibit 12, the Corpus Christi RTA employs 187 people to carry out the various activities of the authority. The RTA operates from two locations, an administrative office in downtown Corpus Christi and one bus operating facility. Almost 79 percent of the RTA's employees are responsible for daily bus operations and maintenance activities, while the remainder provide administrative and support activities.

Programs and Functions

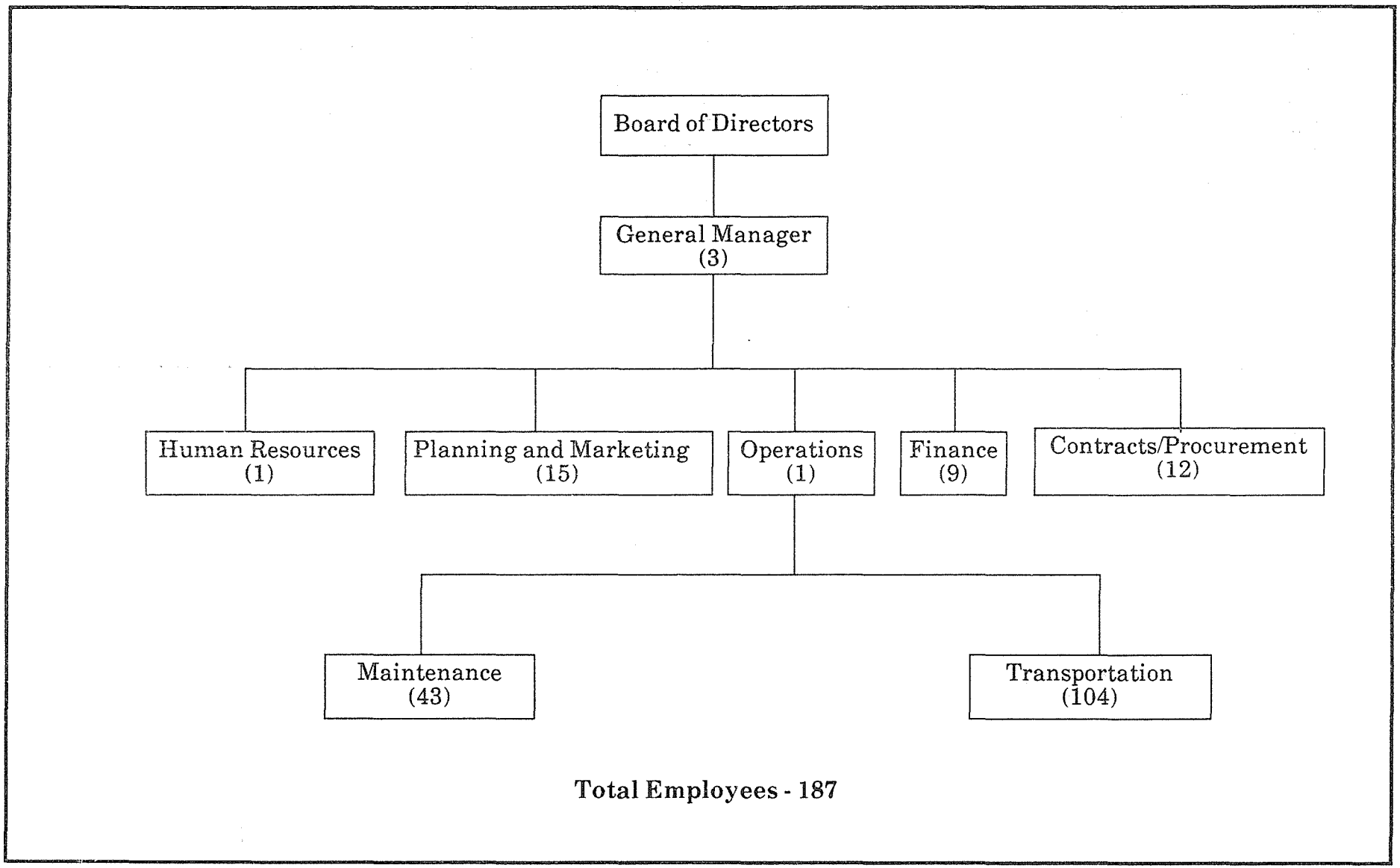
The Corpus Christi RTA pursues its objectives primarily through an operating program and a small amount of capital activity. There are also administrative functions which support these activities.

Operating Program

The Corpus Christi RTA's operating program provides public transportation throughout the service area. The RTA has a total of 85 buses available to provide the transportation services described in the following material. Exhibit 13 shows the portion of ridership represented by each service offered by the RTA.

Exhibit 12

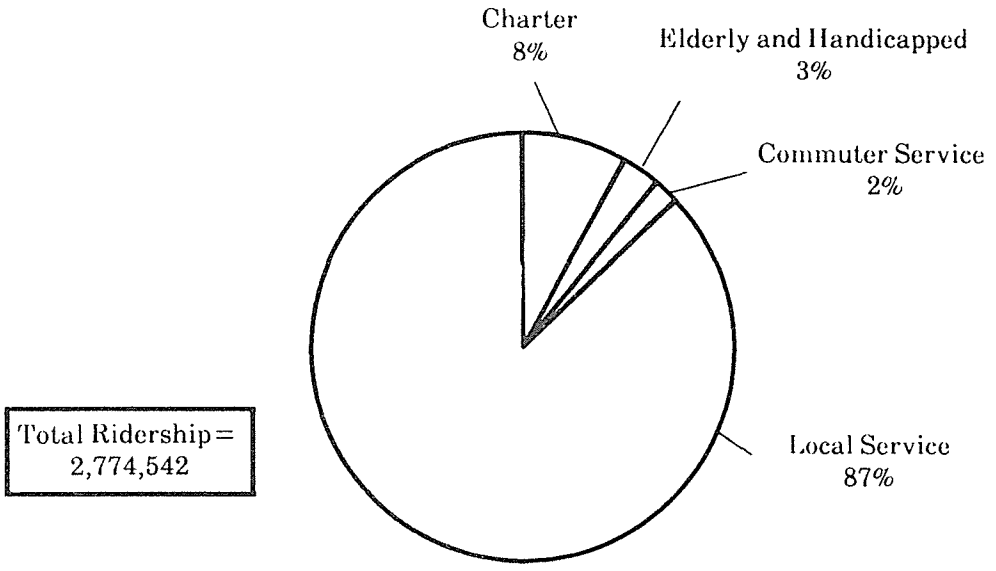
Corpus Christi Regional Transit Authority
Organizational Chart as of October 1, 1987



Total Employees - 187

Exhibit 13

Corpus Christi Fiscal Year 1987 Ridership by Program



Local Service. This activity provides bus services that operate on fixed routes and fixed schedules throughout the Corpus Christi area. The authority operated 23 routes, which carried 2,427,041 passengers in fiscal year 1987. This was 87 percent of the RTA's total ridership. There were 68 vehicles available for local services. These services generally run six days a week from 5 a.m. - 10 p.m. at a cost of 50 cents to adults and 25 cents for students, elderly and handicapped passengers. Total expenditures in fiscal year 1987 for this service were $4.6 million.

Commuter Service. The Corpus Christi RTA's commuter services provide transportation for suburban city and Corpus Christi residents working at the Naval Air Station in Corpus Christi. Commuter services are provided from parking lots located in Robstown, Calallen, Gregory and the Mission Shopping Center in Corpus Christi. These services are provided through a contract with the ATE Management Company and cost the RTA $454,180 in fiscal year 1987. Four commuter routes were provided which carried 45,025 passengers in fiscal year 1987 or two percent of the authority's total ridership. ATE maintained six buses to provide commuter services. Services run from 5:45-6:40 a.m. and from 3:30-4:30 p.m. at a cost of $1.00 to the passenger.

Elderly and Handicapped. The Corpus Christi RTA's special transit program provides door-to-door transit services to elderly and handicapped persons. These services are also provided through a contract with the ATE Management Company. In fiscal year 1987 elderly and handicapped services accounted for 68,771 passenger trips, using 11 buses. Expenditures for this program were $430,000 in fiscal year 1987. There are two types of elderly and handicapped services, including regular door-to-door and subscription services.

Regular door-to-door services are available to persons that are at least 65 years old or disabled. Prospective passengers must show proof of disability or age in order to be certified by the RTA's operations department. These services are available on weekdays from 6 a.m. to 6 p.m. The fare is 35 cents or less based on the passenger's ability to pay.

The second type of elderly and handicapped service is subscription service. Three human service agencies have contracted with the RTA to transport their clients to various activities related to the sponsoring agency's agenda. For example, under a contract with the Senior Community Services in Corpus Christi, the RTA picks up senior citizens and transports them to various community centers that have senior activities. The cost to the passengers and hours of operation vary under each agreement.

Charter Services. The Corpus Christi RTA provides charter services for conventions, community activities and recreation events. Charter activity is expected to decrease due to federal requirements limiting direct charter activity by federal grant recipients. During fiscal year 1987, the RTA provided transportation services for 44 events and carried 233,705 passengers. Total expenditures for this service were $57,700 in fiscal year 1987. Expenditures are recovered through a $40 per hour charge to the client.

Capital Activities

The Corpus Christi RTA's capital activities are limited in nature and focus on facility and vehicle improvement. In fiscal year 1987, activities included improving the bus operating and maintenance facility, purchasing tools and equipment for the operating facility, and purchasing seven regular service buses and five elderly and handicapped service vehicles. The RTA also built several bus shelters for the local service routes and constructed one shelter for the commuter service routes.

In fiscal year 1988, the RTA's capital plans include installing more bus shelters, identifying potential demand for high speed water transportation in the Corpus Christi Bay and surrounding regions, developing a long-range commuter program and identifying long-range objectives for the RTA.

Administration

The Corpus Christi RTA has 39 employees that perform administrative functions. These functions include typical administrative duties such as personnel management, contract management, budgeting, auditing, and pension, health care and investment management. The RTA also has a division that is responsible for short and long-range planning, evaluating service demands, and promoting system ridership.

Focus of Review

The Corpus Christi, Houston,and the Austin metropolitan transit authorities were placed under sunset review by the 70th Legislature. The Corpus Christi and Houston authorities were scheduled for review by the 71st Legislature in 1989. The Austin MTA is scheduled for sunset review by the 72nd Legislature in 1991. The San Antonio, Dallas and Fort Worth transit authorities were not placed under sunset review. This review deals with the Houston and Corpus Christi regional transit authorities.

In placing these transit agencies under review the legislature shaped the focus of these sunset reviews in two ways. First, the transit authorities are to be reviewed, but are not subject to being abolished under the Sunset Act. Consequently, emphasis was placed on recommendations to improve the structure and operations of the agencies, rather than on evaluating the overall need for continuing the two authorities.

Second, the concern of the legislature in placing these two transit authorities under sunset review appeared to center on the need for greater accountability. The language added to the MTA statute placing the transit agencies under sunset review specifically refers to the review as an "accountability review." To address the issue of accountability, the review was structured to assess the overall framework of the regional transit authority structure and current procedures for the oversight of MTA activities. The review also examined the overall efficiency and effectiveness of the two transit authorities under review. The aim of this part of the review was to determine generally whether the authorities' structure and operations are cost-effective.

In order to examine the accountability and cost-effectiveness of the Houston and Corpus Christi transit systems, a number of activities were undertaken to gain a better understanding of the transit authorities and the statutory provisions under which they operate. These activities included:

- a review of previous legislation on regional transit authorities and an evaluation of the current statutory provisions;
- a review of previous reports, studies and evaluations of the transit authorities;
- visits to both the Houston and Corpus Christi transit authorities and discussions with key staff of each authority to overview their major programs and functions;
- site visits to bus operating and maintenance facilities, park and ride lots, transit centers, and transitways;
- discussions with several MTA board members and the locally elected officials who appoint the board;
- discussions with persons knowledgeable about transit issues both nationally and in Texas, including federal and state officials, and representatives of the other four transit authorities in Texas; and
- phone discussions with nineteen transit systems in 14 other states to gain an understanding of their approach to transit.

These activities resulted in an improved understanding of the operations of the Corpus Christi and Houston systems and of transit issues in general. Based on the focus on accountability, a number of issues were identified which generally fell within the three following areas: the structure of the regional transit authorities and their boards, oversight of the authorities, and the overall efficiency and effectiveness of the operation of each authority.

The first area, the structure of the regional transit authorities and their boards, focused on an examination of the statute creating the Houston and Corpus Christi transit authorities to determine whether the regional MTA structure included appropriate mechanisms to ensure accountability. The transit authorities are primarily held accountable for the services they provide and the money they expend through the board that is appointed to oversee and manage the authority. The review analyzed whether the statutory framework and structure of the policy-making body of the authorities provides accountability to each of the following entities with an interest in their operations: the general public and taxpayers, users of the transit system, and locally elected officials who appoint the board.

The review found that the regional structure set up in statute generally appears to be functioning well as a means for coordinating the transit needs of the various local entities participating in the MTA. The size and appointment of the MTA boards by locally elected officials ensures that each of the local entities is appropriately represented on the board. The review also found that the current boards have acted appropriately in their efforts to be accountable for the services provided by the authorities. However, it was determined that a number of changes could be made to improve the structure and operation of the board. These changes include appointing a regular rider of the transit system to each board, modifying the boards terms from four to two years, and authorizing the local officials who appoint the board members to also be able to remove them if grounds exist. It is recommended that each board develop a policy that clearly separates the function of the board from the duties of the staff in the day-to-day operation of each authority. The statute should also be amended to clarify that any advisory committees must be appointed by the board and be given specific powers and duties to maximize their effectiveness to the board.

The last two recommendations in this area deal with the structure and authority of the regional transit systems. The first one directs the Houston and Corpus Christi authorities to work with their local state lawmakers on statutory changes that would allow voters to periodically be able to petition to withdraw from the authority. Houston and Corpus Christi are the only transit authorities in Texas without some type of withdrawal ability provided in statute. The last recommendations in this area only applies to Houston Metro. It clarifies in law the ability for Metro to construct and maintain roads and highways in order to improve the overall flow of traffic in Houston.

The second area focused on an examination of the statute creating the Houston and Corpus Christi transit authorities to determine whether adequate mechanisms are provided for oversight. First, the mechanisms for appropriation of funds to the authorities and their resulting budgeting process were reviewed to determine if they were appropriate. Second, financial audit requirements were examined to determine if they were sufficient. Third, as part of the review, the sufficiency of the independent oversight of the activities and performance of the authorities was analyzed. Finally, the data that is reported by the transit authorities was examined to determine if it was adequate to meet the needs of those interested in overseeing the activities of the transit authorities.

The review led to the conclusion that the financing of service agencies such as the metropolitan transit authorities differs significantly from most state agencies or city and county services. The funds for the transit authority are not appropriated to an authority by an independent governing body, and are only limited by the amount of sales tax collected. This differs from the method of funding state agencies, for

example, where the agencies must justify the amount of funds needed to provide services and then receive an appropriation from the state legislature. City departments also must justify expenditures through a budget request to the city council prior to the receipt of funds. In the case of the transit authorities, however, no outside governing body is involved in approving the funds for the operation of their services. The transit authority legislation only authorized a funding source, and it is a local decision whether or not to utilize this authority to provide a direct funding stream for transit services. This funding mechanism allows the metropolitan transit authorities virtually complete discretion in how funds are expended to provide transit services. Although the lack of appropriations type process removes one step of a usual oversight structure, no alternatives to the current funding process were identified which would strengthen the structure but retain complete local control. However, the level of oversight over funds can be strengthened.

The transit authorities are required to have an independent financial audit performed annually. Although this process generally works well, the degree of outside oversight relative to the audits could be increased. Having the state auditor review and comment on these audits, and conduct an investigation if any problems are found, provides the state with an additional check on the proper use of these funds. The review also examined the need to require the MTA's to conduct performance audits of their operations. Although performance audits are used by the authorities to evaluate their operations, there is not a requirement for this type of evaluation. Requiring regular performance audits, with a standard set of indicators, and reporting of the results to appropriate state and local officials, will increase the accountability of each MTA for the efficiency and effectiveness of the services they provide. Finally, it is also recommended that the collection of transit statistics by the State Department of Highways and Public Transportation be continued but reported in a manner that allows for comparison across the authorities. This will provide more useful data for both state and local officials.

The last area focused on evaluating the efficiency and effectiveness of the actual operations of the Houston and Corpus Christi transit authorities. The review did not perform an in-depth analysis of each aspect of the agencies operations. The intent was, however, to make a general determination of how well the two authorities perform overall, particularly in comparison to other transit authorities of similar size. The review examined the organizational structure of the authorities, performance statistics related to the authorities' operations, and the levels of expenditures for certain functions of the authorities' operations.

In general, the structure, performance and expenditures of the two transit authorities appear to follow the accepted pattern of the transit industry. However, one area relating to administrative costs appeared to vary from industry standards in both the Houston and Corpus Christi authorities. Houston Metro's overall administrative costs did not appear high in comparison to a sample of similarly sized transit agencies in the U.S., but the review indicated that some areas of Metro's administrative costs did appear high in comparison to these agencies. The administrative cost areas that appeared higher are marketing, system security, and general management. It is recommended that Metro evaluate these areas for potential cost reductions. In the case of the Corpus Christi RTA, the overall level of administrative costs appeared high for the current level of services provided. This finding is connected to the costs of setting up an administrative structure which would meet the demands of an expanding system. It is recommended that the RTA

reassess these costs in two years to ensure that these costs have gone down in relation to the total budget.

The last issue related to the operations of the transit systems concerns services to low-income people. While transit authorities provide a variety of services in this area, it is recommended that they coordinate with human services agencies to develop specific programs to assist low-income groups through reduced or free fares. This will ensure that greater focus is placed on the potential benefits transit systems can provide through coordination with existing human services agencies.

A major difficulty that developed during the review was the question of applying the statutory recommendations to only the Houston and Corpus Christi authorities. While the legislative intent of focusing the sunset review on only these two agencies was clear, two concerns were identified with limiting the recommendations to only these two authorities. First, many of the recommendations developed were based on an examination of the statutory provisions in Article 1118x. This general statute governs not only the Houston and Corpus Christi regional transit authorities, but also the Austin and San Antonio regional transit authorities. The Dallas and Fort Worth transit authorities are governed by a totally separate statute (Article 1118y). The changes recommended to improve the statutory provisions of Article 1118x were generally not based on particular problems in the Houston and Corpus Christi authorities, but on problems with the statutory structure itself. The statutory recommendations developed for the two transit authorities under review, if adopted, could be effective for all four of the authorities governed under Article 1118x.

Second, in order to apply these statutory changes only to two of the four transit authorities governed by Article 1118x, the provisions would have to be "bracketed" to apply to only the Houston and Corpus Christi systems. The process of bracketing involves applying statutory provisions to entities falling within certain parameters such as a population range or based on some other descriptive characteristic. However, problems with bracketing can arise if the provisions are inappropriately constructed to apply to specific cities or localities, because they may be considered as local law.

The Texas Constitution prohibits making any local law in state statute (see Article III, Section 56). The prohibition was designed to ensure that state statutes involve general provisions that apply statewide, and not a series of local laws that apply only in certain areas or cities. Provisions can be bracketed to apply to a special class or group if there is a logical and reasonable problem that necessitates the separate classification. For example, the state may decide to enact a general law limiting cities to one dogcatcher per 50,000 people. However, one city differs from all other cities because it is bordered by an area with packs of wild dogs that raid the city periodically. It is reasonable to make an exception for this city, so that it can have more than one dogcatcher per 50,000 people but the constitution prohibits this from being done specifically for one city. The law would, therefore, have to be structured to exempt "cities bordered by uninhabited areas conducive to packs of wild dogs." The exception is not for a specific city, but is open to other cities that may meet the same conditions.

Bracketing many of the recommendations to apply only to the Houston and Corpus Christi transit systems could be questionable under the constitutional prohibition against making local law in state statute. Singling out these two authorities is difficult to justify based on any standard type of bracketing when the

recommendations could be applied to all four transit authorities. For example, if population brackets were used, there would have to be a logical reason that the provisions were being applied to authorities whose principal city has a population below 250,000 (Corpus Christi) or above 1.2 million (Houston), but not to authorities whose principal cities have populations in between (Austin and San Antonio).

In addition, Article 1118x currently contains a number of provisions that could be applicable to all four authorities, but were bracketed to only apply to an individual city's transit system. Many of these existing provisions could be questioned due to bracketing problems. Therefore, the legislature may wish to consider examining the MTA statute to ensure that changes adopted, as well as many of the existing bracketed provisions in Article 1118x, are properly applied to all four authorities when they are general in nature, and bracketed only when a reasonable need exists.

The following recommendations address changes to improve the accountability and operations of the regional transit authorities. The recommendations are generally limited to the Houston and Corpus Christi transit authorities, as these were the two authorities under sunset review. None of these recommendations will have a fiscal impact to the state; however, there will be a fiscal impact to the Corpus Christi and Houston transit authorities. It is estimated that the recommendation to conduct a performance audit every four years will involve additional costs of approximately $10,000 for the Corpus Christi authority and $80,000 for Houston Metro. These costs will only be incurred in the year the audit is conducted. It is also anticipated that the requirement to conduct a performance audit, along with the recommendations to examine administrative costs, will result in savings to the authorities in excess of any additional costs, but the exact amount of these savings cannot be estimated.

Sunset Commission Recommendations for the
Houston and Corpus Christi Transit Authorities

CONTINUE THE AGENCIES WITH MODIFICATIONS

MTA Board and Regional Structure

1. **As a management directive, the appointing bodies of the Houston and Corpus Christi transit boards should consider the appointment of a regular rider of the transit system to each board.**

The statute currently provides for board members of the transit authorities to be appointed by the city, county and suburban cities within the authority. This structure appropriately ensures the representation of the general public in each of the geographical areas participating in the authority, but not the people most directly impacted by the actions of the board - the regular riders of the transit system. Adding this representation to the boards will provide a more balanced representation of the interests affected by the boards' decisions, give the boards a unique perspective that is currently missing, and increase the overall accountability of the boards to the people who use the system.

2. **Statutory provisions regarding the terms of office of the Houston and Corpus Christi transit authority board members should be modified to:**

   - **provide for two-year terms; and**
   - **limit members to four terms.**

The statute currently provides for four-year terms of office and a maximum of two terms. A letter opinion from the attorney general's office found the four-year terms to be in conflict with constitutional restrictions which limit the duration of certain public offices to two-year terms. Changing the length of the terms to two years will bring the statute into compliance with the constitutional provisions. Limiting members to four two-year terms will maintain the overall limit of eight years of service on the board.

3. **Statutory provisions regarding the removal of board members from the Houston and Corpus Christi transit authority boards should be modified to:**

   - **authorize removal of board members by majority vote of the governing body that appointed and/or confirmed that member; and**
   - **provide more specific grounds and procedures for the removal of board members.**

The responsibility for the removal of board members currently rests only with the transit board itself. This procedure differs from the standard approach in most

enabling statutes in which the responsibility for removing a board member rests with the governing body that appointed the member. Authorizing the appointing body to remove its appointees when grounds for removal exist will increase the accountability of board members to the elected officials that appointed them. Requiring more specific grounds and procedures will provide a clearer picture of what can constitute a grounds for removal from the board and what action is to be taken if grounds exist.

4. **The statutory provisions governing the management of the Houston and Corpus Christi transit authorities should be amended to:**

   - **specify that it is the duty and responsibility of the general manager to administer the operations of the authority on a day-to-day basis, including the hiring and firing of all employees; and**

   - **require the board to develop and implement a policy which clearly separates board and staff functions.**

The MTA statute currently gives the MTA board the responsibility for management of the authority and authorizes the board to hire and fire all employees. These provisions differ from most enabling laws that stipulate that a board appoint an executive director to manage the agency and the staff. Changing the MTA statute to reflect this policy will clarify the role of the general manager, provide clear lines of authority for the operation of the agency, and ensure against any problems that could result from the board becoming directly involved in the day-to-day operations of the authority.

5. **The statute should authorize, but not require, the Houston and Corpus Christi transit authorities to establish advisory bodies that:**

   - **are appointed by and serve at the pleasure of the MTA board;**

   - **have a balanced composition that represents the viewpoints of persons or groups with knowledge and interest in the committee's work; and**

   - **have specific powers and duties.**

The two MTA boards utilize advisory committees to provide input to the board from those directly affected by the board's decisions. However, the structure and appointment of the committees is not currently authorized in statute. The lack of statutory authority and direction has resulted in certain advisory committees not functioning in a manner that is beneficial in obtaining public input for the board. Implementing these changes will ensure that the advisory committees are appointed by the board, are appropriately structured, and have clear powers and duties in order to maximize their effectiveness in providing input to the board.

6. **As a management directive, it is recommended that the Houston and Corpus Christi transit authorities work with**

their local state delegations on statutory changes that would authorize voters to petition to withdraw from the authority.

The initial participation of a city, suburban city, or county in a regional transit authority is contingent upon approval of voters in the area. In addition, all of the regional transit authorities in Texas, except for Houston and Corpus Christi, have statutory provisions that allow various entities belonging to the authority to withdraw from the MTA under certain circumstances. Directing the authorities to work with their local delegation on this issue will ensure that consideration is given to the need for similar statutory provisions for the Houston and Corpus Christi authorities and that any decision is based on the particular circumstances that exist within each locality.

7. **The statute should be amended to clearly allow Houston Metro to use a portion of its sales tax revenue to improve the overall flow of traffic within the boundaries of their authority through authorization to conduct the following activities:**

   - **the construction, reconstruction, or maintenance of any highway, road, thoroughfare, or arterial or local street, including any bridge or grade separation; and**

   - **the placement and erection of traffic signals.**

The statute currently provides broad authorization for transit authorities to construct, operate and maintain a transit system. This includes the right to relocate and alter the construction of any street, highway or road as necessary or useful in the operation of the transit system. Houston Metro has adopted a long range plan, with voter approval, that devotes twenty-five percent of their sales tax revenues to projects to improve overall mobility within the authority. These projects involve certain activities that may be authorized under the agency's broad powers to construct and maintain a transit system, but are not specifically addressed in statute. This change will clarify in law that Houston Metro is authorized to use a portion of its sales tax revenue to engage in such activities.

Oversight Procedures

8. **The statute should require that the Houston and Corpus Christi transit authorities submit a copy of their independent financial audits to the state auditor for review and comment. The state auditor should have the authority to:**

   - **examine any workpapers from the audit; and**

   - **audit the financial transactions of the MTA if the review of the independent audit indicates this need.**

Both the state statute and federal regulations require the metropolitan transit authorities to have a financial audit performed by an independent certified public accountant at least once each year. However, there is limited state involvement in the oversight of the MTA financial audits, even though the legislature authorizes the collection of a local sales tax, with voter approval, to fund the authorities. Authorizing the state auditor to review these audits and to conduct an investigation

if any problems are found allows the state to place an additional check on the proper use of these funds.

9. **The statute should require that independent performance audits of the Houston and Corpus Christi transit authorities be conducted every four years. The performance reviews should include the following:**

   - **an examination of one or more of the following areas: administration/management, operations, or maintenance;**
   - **an examination of performance in terms of a series of indicators with recommendations for methods for improvement in performance if needed; and**
   - **an examination of compliance with applicable state statutes.**

Although performance audits are used by the transit authorities to evaluate their performance, there is no requirement that this type of evaluation be performed on a regular basis. Also, there is not a consistent base of indicators used to evaluate the performance of an MTA over time, or to compare performance among transit authorities. Requiring a regular performance audit provides a mechanism for the Houston and Corpus Christi transit authorities to assess and make improvements to their operations. The audit also provides a method for increased accountability to state and local officials by ensuring the availability of evaluative information on the performance of the transit authorities.

10. **As a management directive, it is recommended that the State Department of Highways and Public Transportation:**

    - **continue to annually publish a statistical report on transit in Texas; and**
    - **report the information in a manner which allows for comparisons across the metropolitan transit authorities.**

The State Department of Highways and Public Transportation currently collects and reports statistical information from transit authorities and city operated transit systems across the state. However, problems were identified with the usefulness and comparability of the data collected. Improving the comparability of the data will provide more useful information for state and local officials and for the transit authorities in comparing the performance and operations of the various transit authorities in Texas.

Efficiency of Operations

11. **As a management directive, it is recommended that Houston Metro evaluate its higher than average costs in the areas of marketing, security and executive management for potential cost reductions.**

An analysis of Houston Metro's administrative costs determined that Metro's overall administrative costs compared favorably with transit systems of a similar size.

However, the percentage of total operating costs which Metro devotes to the areas of marketing, security, and executive management were identified as high compared to the other systems studied. Requiring Metro to evaluate these functions will ensure that each of these areas is examined for potential cost reductions.

12. **As a management directive, it is recommended that the Corpus Christi authority reassess its administrative costs within the next two years to ensure that these costs have gone down in relation to the total operating budget.**

The review found that the administrative costs of the Corpus Christi authority were relatively high for fiscal years 1986 and 1987. These were the first two years of the authority's operation, and like any new business, the authority would be expected to have higher administrative costs initially while in the process of expanding and refining its services. Requiring the authority to reassess these costs in two years will ensure that an examination is made of the appropriateness of the authority's administrative costs in relation to its operating costs once the level of services is more stabilized.

13. **As a management directive, it is recommended that the six metropolitan transit authorities in the state coordinate with human service agencies to develop programs to assist low income groups through reduced or free fares.**

Transit authorities in Texas are not required in law to provide assistance to low income transit riders. In general, reduced fares are offered to assist the elderly and the handicapped, rather than low income groups. Human service agencies serve various low-income level people who could benefit from reduced fares or free transit services while looking for employment or receiving training to eventually get off state assistance. Directing the six metropolitan transit authorities to coordinate with these agencies to develop such programs will help ensure that greater consideration is given to the potential benefits transit authorities can afford to low-income groups.

TEXAS DEPARTMENT OF LABOR AND STANDARDS

Texas Department of Labor and Standards

Background and Focus of Review

Creation and Powers

The Office of the Commissioner of Labor and Standards was originally created as the Bureau of Labor Statistics in 1909 to collect and analyze workforce data and to administer labor laws. Although the Department of Labor and Standards has retained jurisdiction over a few labor issues, the agency's primary emphasis today has shifted toward business and professional regulation for public safety, consumer and industry protection purposes.

During an economic downturn in Texas in the early 1900's, the state's workforce shifted from a predominantly agricultural base to an industrial base. The Bureau of Labor Statistics was created to gather statistics on labor in Texas. The bureau was also given responsibility for enforcing existing labor laws in the areas of safety and health, such as the inspection of employment establishments, and for publicizing the state's natural resources to encourage expansion of Texas industry. For example, the bureau played a role in getting the "Buy-It-Made-In-Texas" program started during a time of high unemployment, focusing attention on tapping the state's own abundant natural resources in order to re-open factories and increase employment.

During the first two decades of the century, the bureau was given new labor laws to administer, such as the Semi-Monthly Pay Day Law of 1915 and the Emigrant Agency Law passed in 1929 to control movement of laborers out of the state. In the post-Depression years of the late 1930's and early 1940's, the bureau became the local administrator for the National Recovery Act which involved setting wages and hours for industries.

In the 1930's, the original charge of gathering statistics was reduced as these functions were given to other state agencies, and new regulatory functions were given to the agency. As the Boxing and Wrestling (1933) and Texas Boiler Laws (1937) were added to its jurisdiction, the current organizational structure of the agency began to take shape. Four divisions were defined: labor, boiler, boxing and wrestling, and oil and gas enforcement. In 1973, the name was changed from the Bureau of Labor Statistics to the Texas Department of Labor and Standards. With the passage of the Texas Manufactured Housing Standards Act of 1969, the 1977 amendment to the Boiler Law, and the transfer of oil and gas enforcement to the Railroad Commission, the agency's current structure solidified. In 1979, the Labor, Licensing and Enforcement (L,L&E) Division was formed to assume administration for the remaining diverse group of laws for which the agency was given jurisdiction, including the labor laws and the boxing and wrestling regulation.

Policy-making Structure

The Texas Department of Labor and Standards is one of four state agencies in Texas that is operated by a direct appointee of the governor. The agency is administered by a commissioner who is appointed to a two-year term by the governor. Two advisory boards function as advisors to the commissioner: the Board of Boiler Rules and the Air Conditioning and Refrigeration Contractors Advisory Board. The Texas Industrialized Building Code Council functions as a policy-making body.

The Texas Industrialized Building Code Council (IBCC) was created in 1985 to assure that industrialized housing and buildings in the state meet the mandatory state construction codes. The decisions of the IBCC are binding on the agency. The council was given the responsibility to: set criteria for engineering designs; certify third party design review agencies, inspection agencies, and inspectors; serve as a liaison with local building officials in the interpretation of state building codes and with manufacturers in questions of code equivalency; and, establish inspection procedures.

The Board of Boiler Rules was included in the Texas Boiler Law in 1977 to act in an advisory capacity to the commissioner in formulating definitions, rules and regulations for the safe construction, installation, inspection, operation, alteration, and repair of boilers. Most topics handled by the board are technical in nature and are assigned to task forces appointed by the chairman which include other members of the industry recruited for their particular expertise. Recommendations from the task forces are voted on by the full board and, if passed, become recommendations to the commissioner who has final approval authority.

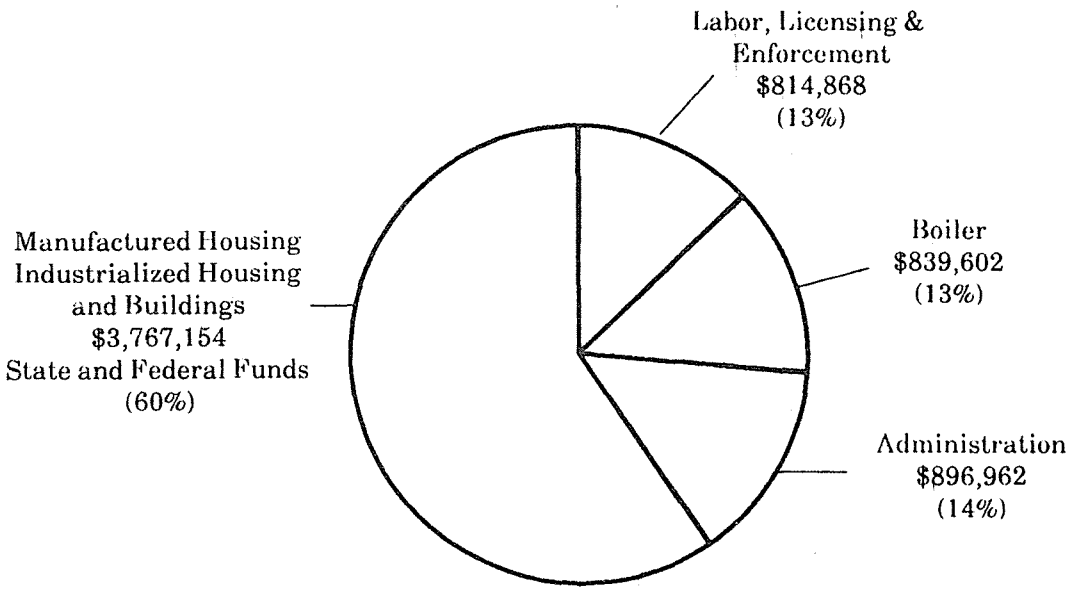
The Air Conditioning and Refrigeration Contractors Advisory Board was established by the 70th Legislature to advise the commissioner in adopting rules, setting fees, and enforcing and administering the act. Members represent the major segments of the industry and provide for geographical diversity.

Funding and Organization

The Texas Department of Labor and Standards is headquartered in Austin. Its ten field offices are located in Arlington, Corpus Christi, Edinburg, El Paso, Houston, Lubbock, San Antonio, Tyler, Waco and Wichita Falls, and are staffed by inspectors from one or more divisions. Some field offices have clerical staff, the expense of which is shared across divisions. The department employs 210 persons in the following programs: administration division, 36; manufactured housing division, 108; boiler division, 35; and, labor, licensing and enforcement division, 31 employees.

Funding for fiscal year 1987 totaling $6,318,586, came from the following sources: $5,848,427 from general revenue, $330,656 in reappropriated revenue (from license fees), $136,031 in federal funds (from the U.S. Department of Housing and Urban Development under the manufactured housing program) and $3,472 in interagency contracts. Revenue from license fees is reappropriated back to four operating programs within the agency -- vehicle storage, tow trucks, health spas, and membership campgrounds -- in accordance with appropriation act provisions. The agency recovered 85 percent of its costs through fees in fiscal year 1987 and projects this to increase to 93 percent in fiscal year 1988. Exhibit 1 shows the distribution of funds by division.

Exhibit 1
Texas Department of Labor and Standards
Funding by Division



Programs and Functions

Because the agency administers 15 disparate laws, four operating divisions have been formed to reflect categories of activities: administration; manufactured housing; boiler; and labor, licensing and enforcement (L,L&E). Currently, each division is administered separately and is described as follows.

Administration Division

Accounting.

The accounting staff prepare the agency's budget, maintain budget reports for the divisions, keep the general ledger and process travel, payroll and purchase vouchers. In fiscal year 1987, the staff processed 3,131 vouchers.

Data Processing.

The department is in the process of automating all of its programs. Three functions, accounting, payroll and employee time systems, are automated through the State Purchasing and General Services Commission and ten systems have been implemented on the agency's in-house computer. Program automation is only partially completed for each division at the current time. The data processing staff, however, is in the process of writing a comprehensive licensing and registration program which will incorporate all of the programs and functions under the L, L&E division and will, in time, encompass the functions of the boiler and manufactured housing divisions as well. Each division has a staff person assigned as liaison to the data processing group to assist in prioritizing projects for that division.

Personnel and Administrative Services.

The personnel and administrative services staff carry out a wide variety of duties, including keeping employee records, staff training, handling grievances, and coordinating all supply needs and building concerns in Austin and in the field offices. Employee training, until recently, has primarily consisted of technical instruction conducted by the divisions for new inspection staff. The personnel and administrative services staff have developed a new agency personnel manual and have hired a training coordinator to provide new employee orientation. In 1987, the agency underwent a job reclassification effort in order to assess the appropriate classification and pay schedule for each position within the department.

Legal Services.

The legal services staff includes the general counsel, two staff attorneys and one paralegal, which serve as legal advisors for the agency. The staff's principal duties are to interpret the agency's statutes for agency personnel, for the general public, and for other state agencies; assist in writing the agency's rules; participate in investigator training programs; and, coordinate the administrative hearings process. In fiscal year 1987, 562 legal documents and legal opinions were produced and 63 hearings were held across all divisions.

The functions of the legal staff are varied because of the divergent authorities provided by each statute the agency administers. Some of the agency's programs, such as the Texas Membership Camping Act, provide the agency with no enforcement authority while others, such as the Texas Manufactured Housing Standards Act, give the agency authority to levy a full range of sanctions for violations of the statute. The general legal process can be characterized in two ways. First, for the statutes that give the agency enforcement authority, each division seeks to resolve problems with violations of the law and secure compliance through field investigators or Austin personnel. If this process is unsuccessful, the legal staff will initiate administrative hearings where the statute allows. The general counsel acts as legal advisor to the commissioner during the hearings process. Second, since several statutes do not provide the agency with enforcement responsibilities, the complaints must be referred to the Attorney General's (A.G.) Office. In these cases, the general counsel will act as the liaison with the A.G.'s office and in the small percentage of agency cases that go on to court, TDLS legal staff will help prepare the casework.

Manufactured Housing Division

The Manufactured Housing Division administers two separate acts, the Texas Manufactured Housing Standards Act (TMHSA) and the Industrialized Housing and Buildings Act (IHB). The type of products regulated under these acts are similar in that they are built in a manufacturing plant apart from the location where they will be used and are transported to the property for installation. The regulations under both Acts are similar in that they exist for protection of the persons who will be occupying the units, as well as for general public safety, and both pose unique inspection requirements. Unlike site-built homes, manufactured and industrialized homes are constructed at a plant and, consequently, must be inspected at the plant to ensure all systems are properly installed before initially moving the unit.

Manufactured Homes.

Mobile homes, or "manufactured homes" as they are now called in Texas, are unique in that they are capable of being moved by the owner. Manufactured housing is a large industry in Texas; it is estimated by the TDLS that one-quarter of all housing in the state is built off-site and that Texas is home to the largest number of units of any state in the country. In 1969, Texas began setting the standards and monitoring the construction of mobile homes. The initial state law focused on requiring manufacturers to comply with national construction codes related to electrical, plumbing, and heating systems. However, all state regulation of construction standards was pre-empted in 1974 when Congress passed the Mobile Home Construction and Safety Standards Act. Congress intervened because of the rapid rise in the number of new manufactured homes and the growing concern about the quality and safety of these homes. Inconsistent state regulation was burdensome on interstate relocation of the homes and some states did not have any standards or regulations at all. Since 1976, the construction of these types of homes must follow codes established by the U.S. Department of Housing and Urban Development (HUD).

The federal act provides for a joint federal/state regulatory relationship. When the federal act was passed, its stated intent was one of public and consumer protection. HUD is responsible for the development of construction standards and, through its agents, monitors manufacturers. However, the federal law makes provisions for states to participate with HUD. States can choose their level of involvement in the federal program from virtually no participation to serving as the sole regulator of manufactured housing in the state. A state can elect to be an exclusive in-plant inspection agency (IPIA) in its state, where it monitors the quality control inspections in manufacturing plants and can become a state administrative agency (SAA). This latter role is one in which the state handles the resolution of consumer complaints, oversees manufacturer's notifications to owners of defective homes, assures the repair of these homes as required by HUD in event of a class action by HUD, and conducts administrative hearings related to the manufacturer's compliance with the regulations. Texas has chosen to participate as extensively as possible in the federal program and acts as the sole IPIA in the state and is the SAA.

HUD regulations further "urge" states to provide additional public protection by:"... monitoring of dealer's lots for transit damage, (HUD) seal tampering, and dealer performance generally..."; approving all alterations by dealers and assuring that the alterations do not cause the unit to be out of compliance with the code; monitoring the installation to assure units are properly installed; providing for the inspection of used homes to ensure they meet a minimal level of safety and durability at the time of sale; and providing for the regulation of the transportation over the road. Through enactment of the TMHSA in 1975 as the state's companion law to the federal Act, the state enacted the full range of protections suggested by the HUD regulations. Since the initial passage of the Act, numerous amendments have been made to enhance the clarity of the regulation and extend the areas of state regulation.

The department's main functions under the manufactured housing program are described as follows. First, the division registers manufacturers, retailers, brokers and installers. In addition, a bond of $100,000 is required of manufacturers, $30,000 for retailers, $20,000 for brokers and $10,000 for installers.

Second, the state is extensively involved in the inspection process under this program. The department certifies plants to produce manufactured homes in Texas, based on the plant's capability to build safe homes according to the federal construction, electrical, plumbing, and heating, ventilating and air conditioning (HVAC) codes and based on the manufacturer's adherence to a sound quality assurance program. In choosing the exclusive IPIA role, the department has undertaken the burden of doing all plant inspections, whereby agency personnel inspect the manufacturer's quality assurance inspectors during the building of all homes at each stage of production. Depending on production schedules, state inspectors are in a given plant several days per week. In fiscal year 1987, the department's personnel conducted 1,777 plant inspections. The department also inspects retailer locations to ensure that homes on the lot have the proper HUD seal attached at the plant, which signifies that the homes are built according to HUD standards, and to ensure that the seal has not been tampered with since leaving the plant. Inspectors examine used homes on the lot for any visible damage or conditions that would make them uninhabitable. They also spot-check the retailer's paperwork to make sure they are registered and bonded under the law and have notified consumers of certain provisions, such as the health notice required to be posted in each manufactured home. In fiscal year 1987, agency personnel conducted 27,779 retailer inspections. When the home has been purchased and moved to its residential lot, the state inspects the integrity of the installation, or tie-down, to ensure installation was in accordance with the manufacturer's instructions or state installation standards. Proper installation is critical to the satisfactory performance of any manufactured home. Likewise, installation inspections are an important safety factor, particularly in hurricane or high wind zones. In fiscal year 1987, agency inspectors performed 28,366 installation inspections.

Third, the department issues titles for all new and used manufactured homes and distributes HUD seals to approved manufacturers to put on new homes. In fiscal year 1987, 23,616 labels and seals were issued and 204,386 title documents were processed. If all documentation is in order, the turnaround time is one day to issue a title.

Fourth, enforcement of the TMHSA provides for the department to revoke or suspend a license for a violation of the Act. Department personnel can investigate and, in some cases, mediate consumer complaints. The general nature of most consumer complaint investigations concerns the failure of the manufacturer and/or the retailer to fulfill obligations under new home warranties. In fiscal year 1987, 286 consumer complaint inspections were conducted. The department's enforcement authority under the law includes preventing release of new homes off a manufacturer's assembly line if the inspector finds construction problems and applying a variety of administrative sanctions for violations of the law. The statute provides for due process through the agency's administrative hearings process, and after a hearing, the commissioner is authorized to impose civil penalties on a manufacturer of up to $1,000 per violation with an aggregate total not to exceed $50,000. In fiscal year 1987, 18 hearings were held for manufactured housing and $2,500 was assessed in penalties.

Industrialized Housing and Buildings.

Industrialized housing and buildings are units that are also built in a manufacturing plant. This form of construction, whether the unit is designed to be used for a residence or commercial use, is distinguished from manufactured housing in that it is constructed to be placed on a permanent site. Even though these units

may be manufactured in one state and located in another, their construction is not addressed by any federal legislation. While this industry has become significant only in recent years, most states currently have some form of regulatory control over the standards by which units must be constructed. Thirty-eight states have standards for industrialized housing and 34 states have them for buildings. In 1986, Texas began regulating this type of construction.

The functions under the IHB program differ to a certain extent from those under the manufactured housing program. First, registration in the program is more limited since there are no retailers in industrialized housing and the installer is generally the manufacturer. The department certifies the manufacturer and third party inspectors who perform plant inspections. Second, since industrialized buildings are individual units built according to unique designs, the department has to approve each design for its adherence to the code requirements of the localities to which the units are to be shipped; whereas in manufactured housing, each manufacturer builds only a limited number of previously approved designs. Third, the inspection procedures for the IHB program are similar to those used for manufactured housing although the scope is more limited. The agency conducts an initial plant inspection to ensure the manufacturer has adopted the appropriate building standards and quality control procedures. For in-state manufacturers, department staff perform one inspection during construction of all units that will be installed in Texas. For out-of-state manufacturers, department staff perform the initial inspection of the plant as part of the manufacturer's certification process and then allow department-approved third party inspection agencies to perform the on-going inspections of construction. In fiscal year 1987, agency inspectors conducted 312 plant inspections in Texas and 10 out of state.

Proper installation is as important for industrialized buildings as it is for conventionally built structures. Although the modular units are fabricated off-site, they are installed as real estate on permanent foundations, and are generally used by the public for commercial purposes. For these reasons, cities take responsibility for the installation inspections, as they would for inspections of site-built homes and buildings. Approximately 95 percent of all IHB installations are located in incorporated areas. The agency inspects only IHB installations for buildings outside the municipalities. In fiscal year 1987, agency personnel did 186 of these inspections. Finally, enforcement authority under the IHB act is similar to that under manufactured housing. The agency can revoke, suspend or deny licenses for violations of the Act. The statute provides for due process through the agency's administrative hearings process. No hearings were held for IHB during fiscal year 1987.

Boiler Division

The Boiler Division administers the Texas Boiler Law, including regulation of nuclear boilers, and the Air Conditioning and Refrigeration Contractors Licensing Law.

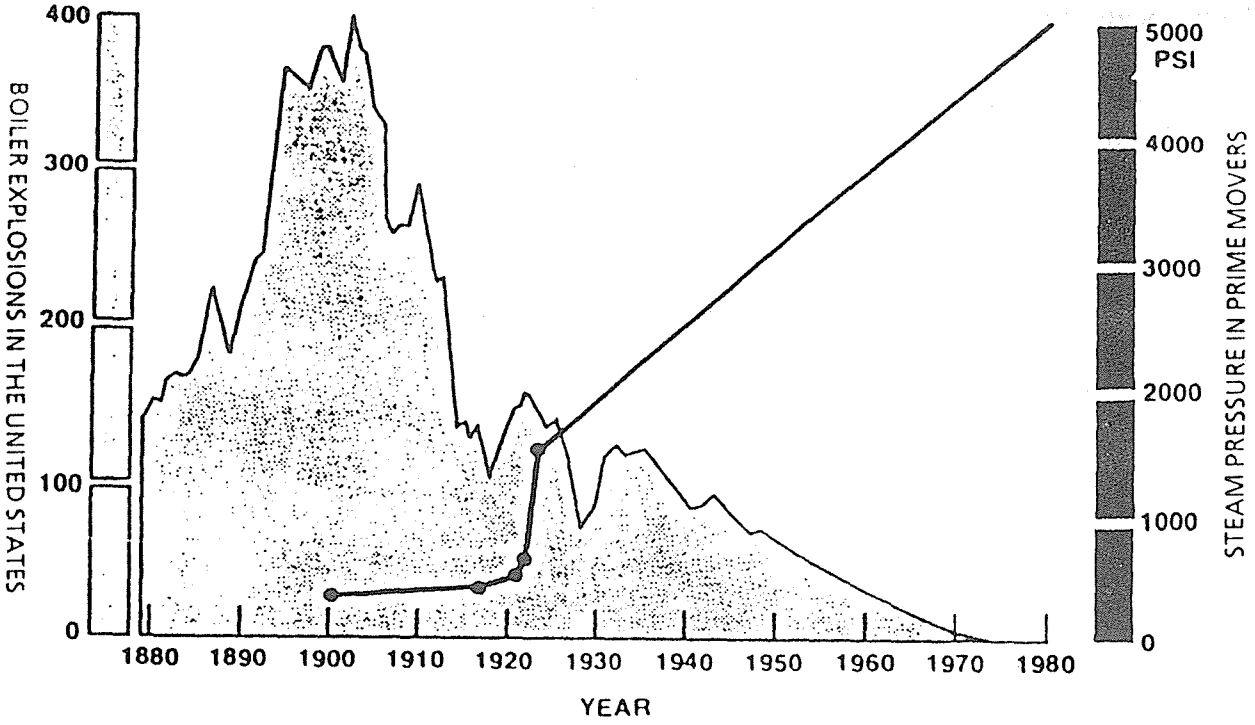
Boilers.

The Texas Boiler Law was passed in 1937 as a result of a boiler explosion in New London, Texas in 1934 which killed 196 school children. Forty-eight states have laws regulating boilers, most of which were also adopted during the first half of the century. Exhibit 2 which follows depicts the incidence of boiler explosions nationwide over time as state regulatory programs have been adopted. There are no

federal standards and the internationally accepted American Society of Mechanical Engineers' (ASME) boiler and pressure vessel code for construction and operation of nuclear and non-nuclear boilers serves as the basis for boiler regulations.

Exhibit 2

Boiler Explosions Nationwide
Since State Regulations Have Been Adopted



The purpose of the boiler law is to ensure the public's safety against boiler explosions through the registration and inspection of boilers operating in the state. A boiler is essentially a safe machine, but like any machine in constant use it is subject to wear, tear and corrosion. Usually a boiler fails because of poor maintenance or faulty safety mechanisms. When a boiler does fail, it presents a serious safety hazard since it is a vessel containing hot water and steam under pressure and the risk of explosion is high.

Under the law, a dual track system of inspection exists; that done by the state and that done by agency-authorized insurance company inspectors, a system common among all states. Boilers are often insured against explosion. Insurance companies inspect the boilers as a part of issuing an insurance policy. For boiler inspections, authorized insurance company inspectors essentially act as agents of the state and their inspections are accepted in lieu of state inspections under the law. Under this scheme, the authorized inspection agencies (A.I.A.s) report to the state the results of the inspections as well as the insurance status of the boilers so the department can serve as a clearinghouse for information on the boiler program. The state, through the TDLS, is responsible for inspecting uninsured boilers, including boilers for which insurance policies are discontinued but which are still operating.

The A.I.A.s perform 65 percent of boiler inspections statewide and the state performs the remaining 35 percent.

The department also registers both the state and the insurance company inspectors. Registration requires that both groups of inspectors must pass either the exam developed by the agency or by the National Board of Boiler and Pressure Vessel Inspectors in Columbus, Ohio. These commissions, or licenses, are renewed annually by the division. The number of commission holders has remained fairly constant over time; in fiscal year 1987, there were 326 commissioned inspectors in Texas.

The inspection program has two features. First, as the agent for the ASME, department inspection specialists perform accreditation reviews of plants which fabricate boilers that will be operating in Texas by reviewing the manufacturer's quality control manual and procedures and by verifying for the National Board and the ASME that construction meets ASME code. There are 426 manufacturers in Texas, the largest concentration of manufacturers in any state in the country. In fiscal year 1987, department inspection specialists conducted 166 ASME plant inspections.

Second, department and insurance company inspectors inspect all operative boilers registered in the state. It is the responsibility of the boiler owner to contact the state for registration of a boiler. State or authorized insurance agency inspectors then schedule a certificate inspection and, if found to be in safe working order, the registration, or certificate of operation, is issued and attached to the boiler. There are 70,000 boilers currently registered by the department, although there are an estimated 15,000 to 20,000 additional unregistered boilers operating in violation of the law.

Inspections are made according to the ASME-recommended schedule: power boilers receive an annual inspection; heating boilers, biennial; and, hot water supply boilers, a triennial inspection. Inspectors check for ASME requirements, giving priority to the safety systems, the safety relief valve and the low water cut-off valve. Although the agency and each A.I.A. reports and documents repairs differently, seven to thirty percent of all certificate inspections generate a repair report, which indicates that inspections are accomplishing their purpose of catching safety hazards. Common repair requirements would be the descaling of piping, stoppage of leaks, and replacement of the pressure relief valve or of the low water safety cut-off valve. When safety violations are spotted, the inspector issues to the owner a repair requirement report detailing the needed repairs. If the repair represents a serious safety hazard, state inspectors will re-inspect the boiler within 30 days. In fiscal year 1987, the agency conducted 9,279 inspections; 6,681 of these were certificate inspections for registration, 464 were follow-up inspections after a repair requirement was issued, 1,670 were out-of-service inspections, and 464 were random location checks. Altogether, division staff processed 28,257 agency and A.I.A. inspection reports.

Enforcement of the boiler law subjects the owner, for failure to report a boiler or fix a repair, to a misdemeanor penalty of not more than $200 and/or 60 days in county jail. Additionally, if a dangerous condition is found by an inspector, the law gives the agency authority to shut down the unsafe boiler. The law requires the attorney general or a district attorney to seek a temporary restraining order. In practice, agency personnel alert the local fire marshal of an unsafe boiler who, in

turn, is able to shut down the boiler. No other enforcement power over any segment of the industry is given in the law.

Nuclear Boilers.

In 1977, the legislature adopted the ASME code for nuclear boilers under the boiler law, including "section III" for construction and "section XI" for in-service inspection with the intent of regulating the reactor and pressure-containing systems at the Comanche Peak Steam Electric Station and the South Texas Project Electric Generating Station

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Because the state and the Nuclear Regulatory Commission (NRC) have both adopted the ASME code for nuclear power plants, the utility hires ASME code-certified contractors to fabricate and construct the plant in accordance with the code. The NRC has jurisdiction over the owner, which is the utility, and all of the inspectors on-site at the plant. Given the magnitude of the regulation, the NRC personnel primarily interface with the utility to approve the construction and operating plans for the power plant. The NRC is responsible for approving the owner's quality assurance plan and the utility employs hundreds of quality control (QC) inspectors to oversee compliance with that plan. The QC inspectors are monitored by owner-employed authorized nuclear inspectors (ANIs), who are highly trained inspectors from the same agency-approved authorized inspection companies. ANIs are present to monitor whether the plant is being built to code, and to report their findings to the owner and the NRC.

The state is concerned mostly with monitoring the work of the authorized nuclear inspectors; since these inspectors are owner-employed, there is a potential for a conflict of interest and the agency and the NRC believe it is important to monitor their work for compliance with the ASME code. The ASME code also provides the states with a unique role of arbitrator and final authority over any technical or legal area where the code is silent, either where new issues arise or where disputes occur in interpretation.

The state inspectors performing the nuclear function have attained the highest possible certification level for nuclear inspectors from the National Board. The nuclear inspectors performed 43 oversight inspections in fiscal year 1987, recovering 95 percent of the cost of the program.

Air Conditioning.

The Air Conditioning Contractors Licensing Law was passed in 1983 as both an industry and consumer protection measure. Prior to passage of the legislation, many municipalities required air conditioning contractors to obtain a city license to practice in their city. Often, a license was required to bid on a job. For example, some contractors needed 30 different municipal licenses to practice within a 50 mile radius of Houston. Contractors, therefore, wanted a state-wide licensing program that would supersede the requirements for multiple municipal licenses. Amendments added in 1987 included refrigeration in the regulation, established the air conditioning advisory board, clarified exemptions for other crafts which interface with contractors in air conditioning work, and added enforcement authority.

The air conditioning group under the boiler division test and license contractors after obtaining proof of required training, prior experience and three peer recommendations. The exam tests applicants based on principles of the

Universal Mechanical Code and the Standard Mechanical Code. Applicants can apply to be tested for one or both of two endorsements, or levels of licensure: "A" licensees are qualified to do all air conditioning systems and "B" licensees are limited to systems of not more than 25 tons cooling capacity or 1.5m Btu/hr. Under the original law, all practicing contractors were required to take the exam; they were not grandfathered in. In fiscal year 1987, the division issued 1,941 air conditioning contractors' licenses.

The 1987 amendments also provided for the division to establish a program to address consumer complaints and to pursue some enforcement. At present, homeowners are the primary source of the complaints. A total of 386 inquiries and 59 complaints have been received in the air conditioning and refrigeration area since the enforcement provisions went into effect in September 1987. The vast majority of complaints have been logged by licensed contractors against other contractors operating without a license in violation of the law. The statute does not give the agency clear authority to do field inspections in response to complaints; rather, attempts are made to resolve disputes through written and telephone correspondence. This Act has a separate sunset date and, if not continued by the legislature, is abolished on September 1, 1989.

Labor, Licensing and Enforcement Division

As mentioned earlier, the Labor, Licensing and Enforcement (L,L&E) division was created in 1979 to encompass the labor and the remaining regulatory functions over which the agency has jurisdiction. Each activity has different statutory provisions for administration and enforcement. The programs within this division represent a variety of unrelated regulatory activities and responsibilities for new programs have been added gradually over time. The programs have a general theme of industry or consumer protection.

Auctioneers.

This section administers the Auctions and Auctioneering Licensing and Regulation Act passed in 1975 by the 64th Legislature (Article 8700, V.T.C.S.). The objective of this law is to provide a measure of consumer protection from fraudulent or deceptive business practices, such as false advertising or misrepresentation of items auctioned, and to ensure that monies are exchanged in a timely and legitimate fashion. The major activities include the administration of examinations for auctioneers, licensing of auctioneers and associate auctioneers, and random inspection of auctions. In fiscal year 1987, 1,843 auctioneer and 112 associate auctioneer licenses were issued.

Random inspections of auctions held in the state can involve examining the financial records of the licensee and observing the actual bid calling and conduct of the auction. Many of the investigations are prompted by consumer complaints, usually regarding suspected fraud or unfair business practices. If a problem is found, the division will attempt to mediate a resolution between the complainant and the auctioneer. If the matter cannot be resolved, the investigator will forward the case to the agency's legal staff for administrative proceedings. The sanctions available to the department, after administrative hearings, include the denial, suspension, or revocation of the auctioneer's license. Once those avenues are exhausted, the matter is forwarded to the Attorney General's office for mediation. In fiscal year 1987, a total of 22 investigations were conducted and 10 hearings were held by the agency, resulting in three probations, six suspensions and one revocation.

Boxing and Wrestling.

The Texas Department of Labor and Standards is responsible for the regulation of professional boxing, wrestling and kickboxing in the state under the Texas Boxing and Wrestling laws (Article 8501-1, V.T.C.S.) passed in 1933 and revised in 1977. Protection of the health and safety of the contestants is the goal of the regulation of these events. The department issues licenses to promoters, managers, boxers, wrestlers, referees, judges, timekeepers, matchmakers and seconds. In fiscal year 1987, 1,192 boxing and wrestling licenses were issued. A surety bond is also required for boxing and wrestling promoters and the department collects a gross receipts tax on three percent of the ticket sales proceeds from boxing and wrestling events.

In the case of boxing, division personnel do background checks on the fighters, which includes previewing a boxer's card and tracking down a boxer's record for the date and outcome of their last fight and suspension status before they will approve a match being held in the state. Before the fight, in the case of both boxing and wrestling, agency investigators inspect the arena and other safety features laid out in the rules, such as construction of the ring and the distance of the ring from the audience. Also, investigators verify that medical exams are conducted by agency-approved physicians to assure the fighter is in good physical health. For boxing matches, since the contest is considered more dangerous, inspections are more stringent and the medical exams are more comprehensive. Department personnel inspect every boxing match and most of the wrestling matches in the state. In fiscal year 1987, about 56 boxing and 722 wrestling matches were held in Texas.

If there is a violation of the Act, the commissioner has the authority to order forfeiture of a portion of the fighter's purse in an amount not to exceed $1,000 pending further investigation. The agency can also deny a license application and can revoke or suspend the license or permit of any participant for violation of department rules. A total of 11 hearings were held in fiscal year 1987 related to boxing resulting in one purse forfeiture, three contract recessions, four revocations and three license denials.

Personnel Employment.

The administration of the Texas Personnel Employment Regulation law (Article 5221a-7, V.T.C.S.) has undergone several changes since 1969 when it was originally signed into law. The current statute, which evolved from a long-standing immigrant law, created the Texas Private Employment Agency Regulatory Board in 1969. The board was abolished by sunset legislation in 1979.

Division personnel screen applicants for evidence of prior complaints against the firm; issue a certificate of authority to all personnel employment agencies which qualify to operate in the state and pay the required $5,000 bond; process fees and review bond certificates; and respond to consumer complaints. During fiscal year 1987, 640 agencies were registered in the state.

The objective of the personnel employment act is to protect consumers against deceptive business practices. One of the primary complaints with personnel employment agencies over time has been the charging of up-front fees prior to receiving services. Requiring payment of up-front fees is now prohibited. In 1987, the department was given authority to suspend or revoke a firm's certificate after a

hearing is held if it charges the up-front fees and to impose penalties of twice the amount charged for services.

Career Counseling.

The Texas Department of Labor and Standards was given authority in 1987 by the 70th Legislature to administer Article 5221a-8,V.T.C.S., the regulation of career counseling services. While personnel employment firms primarily focus on job finding, career counseling centers, on the other hand, help job-seekers to become more marketable and attractive to employers through counseling. Their target groups are the unemployed or people seeking career changes. Consumer complaints directed toward such firms have centered around false advertising and high up-front fees.

The objective of the law is to provide protection for consumers who utilize the services of career counseling centers from misrepresentation of services. To that end, the primary functions of the division's staff are to issue certificates of authority to career counseling businesses qualifying to operate in the state; verify the posting of a required $10,000 bond, plus separate bonds per location; and, respond to consumer complaints. The division also requires the posting of signs in career counseling locations notifying consumers of the department's oversight role if they have complaints; also a consumer complaint resolution program must be adopted by each firm. As of spring 1988, only three career counseling services were registered with the TDLS.

The department has authority under the statute to suspend or revoke a certificate after a hearing is held and to asses a penalty of up to twice the amount charged the consumer in up-front fees.

Health Spas.

In 1985, the 69th Legislature passed the Health Spa Act (Article 5221.l, V.T.C.S.) in response to problems with misrepresented services, unstable financial conditions and contract violations by health spas. The predominant complaint has involved those health spas that offer long-term memberships for an initial fee, and then go out of business a short time later without refunding money to customers. The legislation requires the department to register health spas after review of registration statements which must contain proof of no litigation against the spas within the past two years as well as the filing of a bond, certificate of deposit, or letter of credit. The department also manages notarized escrow statements filed by registered health spas, showing that an account has been established for prepayments of membership. By the end of fiscal year 1987, the department had registered a total of 298 health spas in Texas.

The department acts mainly as a listing agent for the registration of health spas and enforcement of the law is the responsibility of the attorney general. While the department has the authority to investigate consumer complaints and inspect spa owners suspected of violating the Act, actual resolution of the complaints is the responsibility of the attorney general. Violations are punishable as a Class A Misdemeanor and a $2,000 fine. In 1987, the attorney general filed ten lawsuits and mediated 572 health spa complaints.

Membership Campgrounds.

In 1987, the 70th Legislature passed the Texas Membership Camping Resort Act (Article 8880, V.T.C.S.) in response to complaints concerning misrepresentation of resort services and facilities, high pressure sales and deceptive advertising. Membership campgrounds operate on a time-share basis whereby an individual may purchase a membership interest or right to use a camping resort periodically during the year. The resorts generally operate by allowing purchasers to hook up recreational vehicles at a particular site and to use any of the amenities on the premises.

The primary objective of the bill is to protect consumers who negotiate a contract with camping resort operators by registering all membership camping resorts operating in Texas as well as all sales persons and contract brokers associated with the resorts. As is the case with health spas, the department was only given authority to act as a listing agent for the campgrounds. The statute does not provide the agency with authority to reject an application for past litigation or financial insecurity, or to take any enforcement action. It is estimated that there are 25 membership camping locations in the state; as of May, 1988, seventeen resorts have applied for registration.

Tow Trucks.

In 1987, the 70th Legislature enacted the Texas Tow Truck Law (Article 6687-9b, V.T.C.S.) which regulates the tow truck industry in order to ensure that minimum insurance and safety requirements are followed and in order to provide one valid statewide operating license. Prior to this legislation, it was common for operators to be required to obtain licenses from all municipalities through which they traveled, without regard to the primary location of the towing business. Now, municipalities may only require permits for consent towing businesses located within the city boundaries and for all non-consent towing businesses working within the municipality.

The department screens registration applications based on proof of insurance and processes the registration fees set at $125 per vehicle. It is estimated that 10,000 vehicles are subject to registration. During the review approximately 6,000 tow trucks had been registered by the agency. The department's enforcement procedure is to investigate complaints and inquiries regarding the proper registration, identification, safety and insurance requirements for tow trucks. The statute gives the agency authority to deny, revoke, or suspend the registration after a hearing.

Vehicle Storage Facilities.

The Vehicle Storage Facility Law (Article 6687-9a, V.T.C.S.), enacted in 1985 by the 69th Legislature, relates to the licensing and regulation of motor vehicle storage facilities. The objective of the legislation is to protect consumers whose vehicles are towed to a vehicle storage lot on a non-consent tow and to provide liability protection for the storage lot operators.

Licensure of the storage lots requires payment of a $100 yearly fee and disclosure of convictions for felonies and certain misdemeanor offenses. Inspections are made of the physical condition and paperwork of the facilities, as well as handling of the vehicles. The storage lots must be maintained in accordance with

the statute and rules which include requirements to post signs at the entrance to the facility, have proper lighting at night, place protective fencing around the property, and post the storage lot's operating license on the premises. The statute also requires the lot operator to notify the police of the location of a towed vehicle within two hours and the owner within ten days of the car's arrival on the property in order to help the car owner locate where the car has been towed.

Under the statute, the agency may deny a license if the applicant has submitted false or incomplete information on the application, if the owner has been convicted of a felony or certain misdemeanors, or if the facility for which the license is being sought does not meet the prescribed standards. In fiscal year 1987, the agency held one hearing concerning a vehicle storage lot which resulted in the denial of a license. They agency may also revoke a license after opportunity for a hearing. As of September 1, 1987, violation of the law is considered a Class C Misdemeanor.

Child Labor.

Under the federal Fair Labor Standards Act, children are protected from potentially hazardous or burdensome employment and an extensive set of rules exists for defining what jobs children of various ages are permitted to hold. The Texas Child Labor law (Article 5158.1, V.T.C.S.) enacted in 1925 and amended in 1979 virtually mirrors the federal program and the TDLS is, in essence, the federal government's agent in the administration of the Act. If a clause in the Texas act differs from the federal law, the more restrictive provision prevails. The state agency primarily issues certificates of age to children who intend to be employed, upon proof of the child's age; acts on hardship case requests; investigates complaints; and initiates any enforcement proceedings. The certificate of age verifies the minor's age; it does not authorize any particular employment situation for the child. With the blossoming film industry in Texas, many of the certificates of age are issued to child actors. In fiscal year 1987, 578 certificates of age were issued.

The department's enforcement responsibilities generally begin and end with an on-site investigation and if a violation is found, the investigator refers the case to the attorney general and/or the U.S. Department of Labor. In fiscal year 1987, no child labor complaints were referred for prosecution.

Minimum Wage.

The Texas Minimum Wage Act of 1970 (Article 5159d, V.T.C.S.) applies only to a small segment of the state's population not already covered under the federal minimum wage law. On September 1, 1987, the minimum wage in Texas was raised from $1.40/hour to the federal minimum wage of $3.35/hour. Since that time, the agency's primary activity regarding the minimum wage law has been to disseminate information on the state and federal minimum wage level. Most complaints are referred directly to the U.S. Department of Labor which administers the federal minimum wage since the department does not have enforcement authority. However, the division investigates issues presented by persons, such as students under 18 employed full-time, who may be affected by unique provisions of the Texas minimum wage law.

Pay Day.

The pay day laws (Articles 5155-5159, V.T.C.S.) were enacted in 1915 and require employers to pay wages to an employee for work done. There is no federal

counterpart to the Texas Pay Day Laws. Under the statute, the division handles a high volume of inquiries and complaints concerning non-payment of wages and makes determinations on possible violations of the law. Although the department was given no enforcement authority under the law, agency policy has been to carry the investigation process as far as possible in an attempt to mediate a settlement.

The agency receives approximately 10,000 unpaid wage inquiries and complaints a month; of those, about 1,000 per month are investigated by the department. For fiscal year 1987, the department estimated that over $2 million in unpaid wages was returned to Texas workers due to TDLS intervention. Numerous cases are also referred to the attorney general's office for enforcement. The pay day laws consume nearly half the resources of the L,L&E division and no revenue is generated by the program.

Focus of Review

The sunset review of the Texas Department of Labor and Standards covered all aspects of the agency's activities in order to address five general areas of inquiry: 1) whether there is a continuing need for the functions of the agency; 2) whether the agency's current governance structure and basic statutory authority is consistent with its current role; 3) whether the programs administered by the agency could be carried out by other state agencies; 4) whether there is a continuing need to regulate all of the areas currently regulated by the TDLS; and 5) whether the department's level of involvement in the areas regulated is appropriate. A number of activities were undertaken by the commission to gain a better understanding of the department and to answer the areas of inquiry. These activities included:

- discussions with agency commissioner and staff;
- visits to field offices and discussions with field staff;
- accompanying staff on inspections of boilers, health spas, vehicle storage lots, wrestling matches, manufactured housing retailers and employers allegedly violating pay day laws;
- discussions with the U.S. Nuclear Regulatory Commission, Houston Lighting and Power and the Texas Utilities Electric Company concerning nuclear power boiler regulation;
- phone interviews with other states that have agencies which administer boiler, manufactured housing and licensing laws;
- phone interviews with the U.S. Department of Labor and other states' labor agencies;
- phone discussions with national consumer, industry and interest groups;
- meetings with interest groups in Texas; and
- meetings with nine different state agencies concerning the transfer of various programs out of the TDLS.

Regarding the first area of analysis, the review concluded that the need leading to the creation of the agency no longer exists but has been replaced with a new role.

The TDLS (formerly Bureau of Labor Statistics) was created in 1909 to gather and analyze workforce statistics concerning women and children in the workforce and safe and sanitary working conditions. Responsibility for labor laws was added soon after this. Since the agency was originally established, however, other state agencies have been created to assume some of the early TDLS responsibilities including the Texas Employment Commission, Industrial Accident Board, and the Texas Department of Health, Division of Occupational Safety. Consequently, responsibilities for tracking employment and worker safety data have shifted to other agencies and there is no longer a need for TDLS to be involved in these areas.

While employment and labor responsibilities have diminished within the agency, new licensing and regulatory functions have been added over the years, causing the TDLS to evolve into a licensing agency for miscellaneous activities. The licensing responsibilities of the TDLS are quite diverse and include boilers, manufactured housing, boxing and wrestling, personnel employment services, and auctioneers, among others. Typically, the TDLS has been selected as the recipient of new licensing programs created by the legislature because they do not clearly fit within the purview of other agencies. After contacting other states in an effort to understand if this situation is unique to Texas, the review found that about one half of the states have a centralized licensing agency of some sort such as an "umbrella" licensing agency or a state agency responsible for administering a diversity of licensing functions. The review found the evolving licensing and regulatory functions of the TDLS to be necessary to provide benefits to consumers and industries in Texas. Overall, these benefits merit continuation of the agency.

The second area of inquiry examined the agency's basic structure and authority. If the agency continues to evolve as a licensing and regulatory agency in state government, its basic governance structure and authorities should be designed to meet that function. The review examined the appropriateness of the governor-appointed commissioner as the governing authority of the agency. In comparison to the governance structure of other regulatory agencies, it was determined that an appointed commission would be more in keeping with the licensing and regulatory functions assigned to the agency. Such a change would require the creation of a commission and clarification of the statutory duties and responsibilities of the commission and a commissioner and their interrelationship with each other. Further, the review examined the effects of such a restructuring of the agency's governance on its existing statutory authority regarding its basic responsibilities as a licensing and regulatory agency. The review determined that the basic statutory authority of the agency should be revised and updated consistent with the current and future role the agency will serve in state government. A new definition of mission would be required and clear and consistent administrative regulatory authority would need to be defined.

Concerning the third area of inquiry, the review found that several programs could be transferred out of the agency to other more appropriate state agencies. Because the current TDLS statutes contain an uncommon mixture of outdated, labor-related and regulatory functions, the review effort placed special emphasis on defining an appropriate role for the agency. Early in the review, an analysis was made of licensing and registration programs within the TDLS that appeared to overlap with programs in other agencies. Interviews were held with the staff of nine other state agencies to explore the benefits of transferring related programs out of the TDLS. While not all of the transfers explored yielded benefits, recommendations are made to transfer administration responsibilities for a total of five laws from the TDLS to other state agencies. The program transfers would add new responsibilities

to two agencies, the Texas Employment Commission and the Secretary of State, thereby eliminating certain programs from the purview of the TDLS. Transfer recommendations are made where TDLS functions overlap with those of other agencies; where efficiency, public access and cost gains can be attained; or where the activities are considered no longer appropriate for the TDLS. Discussions were held with agencies identified to be the recipients of the TDLS programs to discuss how the new functions would fit within the agencies, the degree of support for the transfer, staffing and funding needs, and impact on services. The cumulative effect of both the recommended program transfers and the direction in which the agency has evolved is to redefine the agency's purpose as that of a business and occupational licensing and regulatory agency. The programs that should remain with the agency fit well within this newly defined role. Other minor changes are also outlined in the report which coincide with the redefinition of the agency's mission and include repealing outdated labor functions in the statute and removing the word "labor" from the name of the agency, since these responsibilities are recommended for transfer.

The fourth area evaluated during the review was whether there is still a need to regulate all of the activities currently administered by the agency. Normally, regulatory schemes are established for activities that could adversely impact the health, safety or welfare of the state's citizens and state regulatory efforts should, therefore, offer a measurable degree of protection from such adverse impact. All of the programs administered by the TDLS were analyzed from this standpoint and, for the most part, a continued need to regulate the various activities was found. The TDLS licensing and enforcement scheme generally provides the public with some protection from injury or fraud. For example, the regulation of boilers helps prevent explosions and the regulation of auctioneers, career counseling firms and health spas provides some protection from consumer fraud or deception.

After reviewing the numbers and kinds of consumer complaints on file with the agency, the Attorney General's Office and the Better Business Bureau, as well as accident reports and hearings held on the various regulatory programs, justification for regulation was found for all but one program. State regulation of professional wrestling should be discontinued since the number of complaints, incidences and hearings in this area has been nominal and state involvement does not appear to have a significant impact on the health, safety or welfare of the sport's participants. However, provisions should be made to continue collecting the gross receipts tax on the events.

The fifth area of review addressed any changes needed in the regulatory laws that would remain in the agency. Each was reviewed and most were found to be adequate in their current form and were being appropriately administered by the agency. However, several areas did need improvement. Two areas in the boiler inspection law were found in need of change. The current law does not provide a misdemeanor penalty that is adequate for effective enforcement nor consistent with current definitions of misdemeanors. In addition, the agency has had difficulty registering all boilers in the state because many are difficult to locate. In the absence of registration, inspection is unlikely. Alternative approaches to enhance the agency's efforts to locate unregistered boilers were examined. Further, the existing requirements in the Air Conditioning and Refrigeration Contractors law were found unnecessarily limiting. There is currently no provision for any form of temporary license to be issued in the event of the death or incapacitation of the licensee, which is normally the business owner. This prevents continuation of work and contracts in progress at the time of the death or incapacitation. A further limitation in this act prohibits members of the Air Conditioning and Refrigeration

Contractors Advisory Board from receiving reimbursement for expenses incurred in performance of board duties. This prohibition is inconsistent with the reimbursement practices for other such statutorily created policy advisory bodies. Additionally, the current limitation in the tow truck law that requires that only tow trucks operating for compensation be registered with the department has proven to be a significant impediment to effective enforcement of the act. The DPS and other law enforcement officers have found it impractical to require operators that do not have a TDLS registration tag to provide proof of ownership of a vehicle being towed. In many cases this situation has discouraged officers from checking for any TDLS registrations.

In relation to the regulatory scheme for manufactured housing and industrialized housing and buildings, the review focused on the statutory requirements of the Texas Manufactured Housing Standards Act (TMHSA) and the manner in which the department has implemented and met those requirements. The review was conducted with a perspective that strongly considered the unique aspects of the manufactured housing industry, as well as the need to assure that the public in general--and the residents of these homes in particular--are properly protected from both a safety and economic perspective. Consequently, the review examined the department's methods for ensuring public protection while doing so in a cost-effective manner to the consumer, the state, and the industry.

While most activities of the department appeared appropriate, several areas should be changed. The review found that the department's designation as the sole in-plant inspection agency in the state can have a detrimental impact on staffing needs since more staff must be hired during good economic times when production is high and then reduced when the economy and production slows down. Additionally, the level of involvement of the department in the installation inspection process could be reduced since it was determined that many cities around the state could play a significant role in performing installation inspections. Although the statute encourages the department to develop contracts with local governments to perform these inspections, this effort has been a low priority. The review also indicated that the agency's involvement in regulation of used home sales is unnecessary. The review concluded that effective alternative approaches were available for protecting the consumer who purchased a used manufactured home and recommendations on these approaches are included in the report.

The TDLS is also responsible for the administration of the Texas Industrialized Housing and Buildings Act (IHB). The basic need for regulation in this area is similar to that of manufactured housing and traditional site-built homes, which is to ensure that the structures are built in compliance with minimum construction codes and standards. The review focused on the manner in which the department implemented and met requirements of the Act. The review determined that the nature and extent of the regulation of this industry as prescribed by the statute and performed by the department is appropriate. The review did determine, however, that two aspects of the law should be changed. First, the law includes an unnecessary requirement for manufacturers to pass payments to third party agencies for inspection fees through the department. Second, the law does not allow the agency to enter into reciprocal inspection agreements with other states. Granting the department this authority would be beneficial to the manufacturers in Texas shipping units to other states as well as those shipping to Texas. Recommendations on these needed changes are included in the report.

Finally, the review took into consideration past and current legislative interest in adding or transferring new licensing and regulatory schemes into the TDLS. Examples of this include past legislative attempts to regulate crane operators, elevators and pressure vessels, placing administrative responsibility with the TDLS. Another example is the direction the Special Committee on the Reorganization of State Agencies (created by HCR 36 during the 70th Legislative Session) is taking whereby occupational licensing functions would be consolidated from numerous independent state agencies into the TDLS. It was determined that if the department's responsibilities are to be expanded over the years, the first step in this process should be to ensure that the department can effectively administer its various existing programs. Consequently, the review focused on ways to improve administration and did not consider recommendations to add or transfer new responsibilities into the department.

The fiscal impact of the sunset review recommendations for fiscal year 1990 is a net savings of $422,835. This amount includes an estimated expense of $200,000 to update the agency's computer program for manufactured housing titling. In fiscal year 1991 and thereafter the net savings will be $557,210.

Sunset Commission Recommendations for the

Texas Department of Labor and Standards

CONTINUE THE AGENCY WITH MODIFICATIONS

Program Transfers

1. **The statute should be changed to transfer responsibility for administering the Minimum Wage, Child Labor and Pay Day Laws to the Texas Employment Commission.**

Functions related to employment and to worker and workplace safety have been vested in several state agencies subsequent to the creation of the Texas Department of Labor and Standards. Two of the three employment laws which remain in TDLS, minimum wage and child labor, are the counterparts of federal laws under the U.S. Department of Labor and, as such, require little activity. The third law, pay day, is not best suited to the evolving role of TDLS. Transfer of all three laws to the TEC would provide a more logical and easily identifiable point of contact for Texas employees and employers and would consolidate wage-related laws under one agency.

2. **The statute should be amended to strengthen the enforcement provisions for the Pay Day laws by allowing the TEC to hold administrative hearings and assess penalties using the following framework:**

   - **authorize an employee to file a claim with a TEC office within one year after the date the wages in question were withheld;**
   - **require TEC staff to make an initial determination within 30 days, and if the complaint is valid, notify the employer of the complaint and amount due;**
   - **provide 14 days for the employer to respond to the complaint;**
   - **require TEC staff to investigate if there is no response from the employer or if facts are disputed;**
   - **require issuance of a determination order dismissing the complaint or requiring payment of back wages and/or an administrative penalty. A hearing could be requested within 14 days by the employee or employer to contest the determination;**
   - **require a TEC hearings officer to conduct the hearing. The hearing should be exempt from the Administrative Procedure Act as are the TEC's other hearings for contested cases related to unemployment insurance claims;**

- authorize the hearings officer to affirm, modify or rescind the previous order and assess an administrative penalty of up to $1,000 per violation as a final order. The complainant could be assessed a penalty of up to $1,000 if the hearings officer determined the complaint to be frivolous;

- authorize the attorney general to enforce payment of the penalty through the courts;

- authorize appeals to be made to district court under the substantial evidence rule; and

- require penalties collected to be placed in the TEC's penalty and interest fund.

The Texas Pay Day laws have been in place since 1915 with very little legislative change. The impact of this recommendation on employees that have been wrongfully denied payment of wages should be both increased and quicker action on the part of the administering agency since it is anticipated that the TEC can resolve cases, including investigation and an administrative hearing, within 30 to 60 days. For employers, this will provide a fair, balanced means of mediating the case and hearing both sides of the story since there are cases where complaints filed by an employee are not justified.

3. The regulatory scheme for Health Spas and Membership Camping Resorts should be changed by amending the statutes to transfer the administration of the Acts to the secretary of state's office.

In order to clarify the role of the various state agencies involved in consumer and industry protection, the review concluded that licensing and enforcement functions should remain within the TDLS and that registration functions of businesses for oversight of financial integrity, without enforcement, should be transferred to the secretary of state's office. Since the state's approach to health spas and membership campgrounds is primarily aimed at assuring their financial integrity, responsibility for these acts should be transferred. There are several benefits to such a transfer. The registrations can be handled rapidly and efficiently by the secretary of state. Further, the secretary of state is familiar with disclosure forms as required in their current registration of automobile clubs, business opportunities and credit service organizations.

4. The consumer protection provisions of the Health Spa Act should be improved and the statute should be amended to:

- require the registration of each spa location;

- modify the surety bond requirements so that a $20,000 surety bond is required to be filed with the secretary of state before the spa is opened, and that the surety bond is continuously maintained;

- allow locations operating prior to the effective date of these amendments to be subject to the surety requirements in effect at the time of registration;

- require retention of cash or other security on file to remain on file with the secretary of state two years after the owner ceases business or at such time as the agency determines that no claims exist against the cash deposit or security;

- require that, in event that a claim reduces the required security, the person posting the security shall restore it to the required amount within 20 days; and

- add Travis County as a court of competent jurisdiction wherein the attorney general may bring suit for violations committed in another county.

The Health Spa Act, passed in 1985, required only registration with the TDLS and placed enforcement authority of the Act with the attorney general by making violations of the Act violations of the Deceptive Trade Practices - Consumer Protection Act. In practice the attorney general has been hampered from effective enforcement of the Act due to lack of clarity in the law.

The recommendations clarify that each spa location is required to be registered. Changes to the requirements for surety bonds or other security deposits will ensure the consumer is protected in event a membership is purchased but the spa never opens, as well as after the spa ceases to operate. Authority to file suits in Travis County is specified and will reduce the prosecution costs to the attorney general for violations committed in other counties.

Program Deregulation

5. Professional wrestling regulation should be repealed while retaining the three percent gross receipts tax on the events and the statute should be amended to:

   - remove the requirement that the statute shall regulate professional wrestling but that wrestling promoters be registered with the secretary of state;

   - require the three percent gross receipts tax on wrestling events be collected quarterly by the comptroller in a manner that the comptroller shall prescribe by rule; and

   - eliminate the requirement for wrestling promoters to file a bond with each municipality in which events are held and to require that a single statewide bond of $5,000 be filed with the secretary of state.

TDLS currently has responsibility for ensuring the safety and welfare of participants and spectators at professional boxing and wrestling matches. The review found that professional wrestling does not endanger the participants in the same manner as boxing and that the state's inspection was not found to contribute in a significant way to participant or spectator safety and welfare at the matches. This recommendation would leave the responsibility for ensuring the safety of the fighters to the promoters and managers. Protection of the public would be the responsibility of the municipal authorities where the fight is held. Collection of the

three percent (3%) gross receipts tax would shift to the comptroller's office, which already collects the sales tax on wrestling events. The requirement for a single statewide bond of $5,000 will simplify the requirements for promoters and ensure an adequate amount is available to recover any gross receipts tax that should be paid as well as any change that may be done to a facility in which an event is held.

Policy-making Structure

6. **The agency's governance should be changed from an appointed commissioner to an appointed commission and the statute should be amended to:**

   - **require the agency to be governed by a six-member commission appointed by the governor and confirmed by the senate;**
   - **require that all members be public members, and, after initial appointments, that members serve six year staggered terms; and**
   - **allow commission members to receive reimbursement for expenses as authorized by the General Appropriations Act.**

Since the TDLS was created in the early 1900s, it has not had a governing board or commission as do most state agencies. When the agency was established, the common practice was to have only one person responsible for a governmental function. The TDLS is administered by a governor-appointed commissioner that serves a two-year term. Today, this structure is almost totally unique among Texas state agencies. The absence of such a body has reduced the agency's ability to develop and maintain a comprehensive and consistent policy direction for the areas it regulates.

This recommendation would shift responsibility for policy decisions from a governor-appointed commissioner to a governor-appointed board. This change would add needed elements of consistency to the guiding of the agency's mission, continuity to the administration of the programs, and increased accountability of agency staff.

7. **The department's operating statutes should establish the powers and duties of the commission and its commissioner and the statute should be amended to:**

   - **define the powers and duties of the commission to include:**
     - **the appointment of the commissioner to a one-year term and supervision of the commissioner's administration of the agency;**
     - **the approval of the agency's appropriations request and operating budget;**
     - **the formulation of agency policy;**
     - **the setting of fees for licenses, registrations, certificates and permits;**

- the establishment of renewal periods and fees for licenses, registrations, certificates and permits; and

- the issuance of final orders relating to administrative penalties.

- define the powers and duties of the commissioner to include:

  - the promulgation of rules and procedures for the programs administered by the agency;

  - the administration and enforcement of all laws and regulations of the programs of the department;

  - the issuance of licenses, registrations, certificates, and permits authorized by rule or law;

  - the employment of staff; and

  - the performance of duties assigned by the commission or state law.

The creation of a policy-making commission for the department will require the adjustment of the laws under which it operates to clarify the duties and powers of the commission and its commissioner. The adjustments will basically set out the commission's overall policy-making authority and duties and leave the current authority of the commissioner to administer and enforce the many laws the department oversees.

8. **The agency's duties should be revised in statute to reflect its current responsibilities.**

Many of the responsibilities of the agency which are outlined in the statute are outdated and have remained in the statute since the agency was created in 1909. New duties have arisen over the years to replace old responsibilities, but are not reflected in the statute. This recommendation would update the agency's general statutes, Articles 5144 through 5151c, V.T.C.S., to more accurately reflect the current, and revised, mission and duties of the restructured Department of Labor and Standards.

Overall Administration

9. **The agency should set its fees by rule in amounts to recover the costs of administering assigned programs and the statute should be amended to:**

   - abolish statutory fees or limits; and

   - authorize the commissioner to set by rule a method to prorate any of the fees set by the commission for the initial issuance of a license, certificate or registration.

- and, as a management directive, the agency should:

  - develop cost management procedures that enable it to determine the cost to the agency, within a reasonable degree of accuracy, for each licensing and inspection function.

Some fees are set in statute while others are set in rules. Often, various fees under the same program are split between statute and rules. All of the fees should be set in rule to give the agency appropriate flexibility to change the fees as costs and circumstances change without having to request changes in its statutes. However, as a prerequisite to the responsible, accurate setting of fees, the agency should develop cost management procedures to determine, within a reasonable degree of accuracy, the cost to the agency of administering each function on which fees are based.

10. The agency's range of administrative sanctions should be broadened in specific areas and should be centralized in the general provisions of the agency's Act to apply to all statutes administered by the agency. The agency's statute should be amended to:

    - authorize the commissioner to issue warnings; impose probation; assess an administrative penalty; suspend or revoke licenses, registrations, certificates or permits; and deny application for licenses, registrations, certificates or permits;

    - authorize the commissioner or attorney general to seek injunctive relief to restrain a person who is in violation, or is threatening to violate, a rule or order of the commissioner; and

    - authorize the department and the attorney general to collect reasonable expenses incurred in filing suits for injunctive relief including court costs, reasonable attorney fees, witness fees, and deposition expenses.

Over the years the agency has been charged with the administration of numerous regulatory laws, but has inconsistent authority for administrative sanctions which can be applied for violations of the various laws or rules. In many cases, the range of administrative sanctions provided the agency in statute is not adequate to effectively enforce some or all of the provisions of the law or is inappropriate to the severity of the infraction. This recommendation would authorize the agency to employ a range of sanctions, unless otherwise designated, consistent with its regulatory functions by establishing a centralized enforcement scheme, which follows the Administrative Procedure Act, in the agency's general administrative statutes.

Manufactured and Industrialized Housing

11. As a management directive, the department should petition the federal Department of Housing and Urban Development (HUD) to amend its rules to allow each state the flexibility to

choose which manufacturers it will inspect and which manufacturers it will authorize to use third party inspection agencies.

The agency's inspection program for construction of manufactured housing is largely controlled by the federal law and the rules of HUD. The current regulation scheme set up by HUD does not allow the states flexibility in their regulation of the manufactured housing industry. The scheme requires a state to designate a state agency to inspect all manufactured housing operations or to allow the manufactured housing industry to choose between state or private, third party inspectors. This approach leaves Texas, and other states, in an awkward position in terms of staffing demands that shift due to fluctuations in the industry and with a regulatory structure that is potentially ineffective. Although the department can't change the federal regulatory scheme, it can ask HUD to modify its requirements and allow Texas, and other states, to use a more logical approach to the regulation of the manufactured housing industry. This approach would allow TDLS to choose which manufacturers it will inspect and which manufacturers it will allow to use a private, third party inspection agency.

12. The Texas Manufactured Housing Standards Act (TMHSA) should be amended by requiring the agency to contact all municipalities biennially to make them aware of the program for contracting installation inspections.

Inspection of the method used to install a manufactured home is regarded as a major consumer protection activity. Currently, almost all inspections are performed by department staff. The Manufactured Housing Standards Act allows TDLS to contract with municipalities to conduct the installation inspections of manufactured housing in lieu of the state inspection. Many municipalities already conduct installation inspections to protect homeowners and the community. However, many municipalities are not aware of the TDLS installation inspection program. This recommendation would require the agency to initiate contact with municipalities in an effort to share the responsibility for these inspections and, thereby, to reduce the duplication that currently exists.

13. The TMHSA should be amended regarding the sale of used manufactured houses as follows:

- exempt all persons who sell only used homes from the requirement to be registered as a retailer;
- the requirements for the department to inspect for and make determinations about the habitability of used homes should be eliminated;
- any person selling more than one unit during a 12-month period, beginning with the sale of the second unit, should be required to complete, for the buyer, a disclosure statement prescribed by the department; and
- requirements for lien holders to be licensed as retailers should be eliminated from the law and they should be covered as any other person that sells more than one unit in any 12-month period.

TDLS inspectors inspect used manufactured housing on retailer lots to determine habitability of the homes. In practice, habitability inspections are ineffective and do not protect consumers because of the volume of sales and inconsistent use of standards. Instead, a disclosure statement provided to the consumer which affirms the safe, operational condition of the home should be required. Lending institutions would no longer be required to register with the department if they sell more than three used (usually repossessed) units in a 12 month period, but would have to provide the disclosure statement if they sell more than one in any 12-month period.

These changes to this Act will eliminate most of the agency's activities regarding used manufactured homes but will provide a more substantial process by which the consumer can determine the responsibilities of the seller and the conditions of the sale. Further, the disclosure statement will enhance the documentation needed by the attorney general in resolving consumer complaints regarding these sales.

14. **The Industrialized Housing and Buildings Act should be amended to eliminate the requirement for manufacturers to pass payments to third party inspection agencies through the department.**

Under the IHB program, third party inspection agencies contract with manufacturers, with TDLS approval, to inspect buildings which are under construction outside the state but will be permanently located in Texas. The statute currently requires that payment for services by the manufacturer to the third party agency pass through TDLS for review. Since the TDLS does not get involved in the negotiation for fees or the inspection itself, the pass-through function serves no purpose and TDLS, in practice, simply forwards the check to the third-party agency. The requirement should be eliminated. Needless paperwork will be eliminated in the TDLS and unnecessary delays to an inspection agency receiving its payments will be avoided.

15. **The Texas Industrialized Housing and Buildings Act should be amended to permit reciprocity inspection agreements with other states that are willing to inspect according to Texas code requirements.**

Currently, Texas law allows out-of-state manufacturers shipping units to Texas to contract with third party inspectors to monitor the construction of industrialized housing and buildings for adherence to Texas standards. Equivalent monitoring could be done by the manufacturing state's inspectors under a reciprocity agreement with TDLS if such authority existed. Since the state inspection fees are generally lower than third party agency fees, this would result in reduced inspection costs for the manufacturer. Comparable benefits will occur if TDLS can perform similar services for other states.

Boiler Regulation

16. **The misdemeanor penalty in the boiler inspection act should be increased in statute to a Class B Misdemeanor.**

The Texas Boiler Law includes an antiquated penalty, which falls between a Class C and a Class B Misdemeanor in the current Penal Code, for failure of owners to register boilers operating in the state. The consequences of violating the boiler law

can result in injury, property damage and loss of life and, therefore, the misdemeanor classification should be raised to align with the potential consequences of the infraction.

17. **The statute should be amended to require the agency to develop formal agreements for the reporting of boilers with:**

    - **the state fire marshal;**
    - **local fire marshals; and**
    - **the Occupational Safety and Health division under the Texas Department of Health.**

The agency is required by law to periodically inspect boilers to ensure they are in safe operating condition. Weak enforcement authority under the Texas Boiler Law has hampered the registration and inspection of boilers in the state and efforts to find the unregistered boilers have been labor intensive and largely unsuccessful. State and local fire marshals, during routine building inspections, and TDH/OSHA inspectors, during inspections for asbestos in schools, regularly come across boilers in public buildings. In an effort to identify the location of all boilers subject to the law, these inspectors should report to TDLS any unregistered operating boilers they find for subsequent TDLS inspection and registration. These agreements will result in increased registrations and improved safety of boilers that have escaped the inspection program.

Air Conditioning Contractors Regulation

18. **The Air Conditioning and Refrigeration Contractors law should be continued and the separate sunset date should be repealed.**

The Air Conditioning and Refrigeration Contractors law was placed under the Department of Labor and Standards but was given a separate sunset date of September 1, 1989. The purpose and provisions of the law were found to be generally satisfactory. This recommendation would continue the law under TDLS and would remove the separate sunset date so subsequent sunset reviews of the agency would automatically incorporate the air conditioning law.

19. **The commissioner should be authorized to issue a temporary air conditioning and refrigeration contractors license. The statute should be amended to:**

    - **authorize issuance of temporary licenses; and**
    - **require the temporary licensee to submit an application and required fee prior to issuance.**

Currently, one member of an air conditioning and refrigeration contracting firm must be licensed for the company to do business in the state. If, for reason of illness, death or other circumstance, the license is no longer employed at the firm, all work in progress must be halted until another employee can appear for the quarterly test and receive a license. The recommended approach would allow the commissioner to

issue a temporary license to an employee in the interim so that scheduled work is allowed to continue.

20. The statute should be amended to allow reimbursement of expenses for members of the air conditioning advisory board.

Currently, members of the Air Conditioning and Refrigeration Contractors Advisory Board do not receive compensation or reimbursement for their travel and lodging expenses to attend board meetings. The statutory composition of the board is geographically balanced so that most members often have to travel large distances to attend the meetings. This recommendation would reverse the current prohibition in statute denying members reimbursement for their expenses. Compensation is still not authorized and all reimbursements are subject to the General Appropriations Act.

Tow Truck Regulation

21. The Tow Truck Act should be amended to require that all tow trucks, including those not operating for compensation, be registered with the agency.

The current law requires that only tow trucks operating "for compensation" to be registered with the department. This exempts operators such as salvage yards and automobile dealers from registration because they are towing only their own property. This exemption has caused problems for law enforcement and operators alike. When TDLS registration checks are made by the Department of Public Safety and other law enforcement officers, they must require the operator to provide proof of ownership of the vehicle being towed. This has proven to be impractical. The recommendation will simplify and improve enforcement of the law.

Other Changes Needed in Agency's Statute

22. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations have been applied to the department.

23. Minor clean-up changes should be made in the agency's statute.

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in Exhibit 3.

Exhibit 3

Minor Modifications to the Texas Department of Labor and Standards Statutes

Change	Reason	Location in Statute
1. Delete language of "spider law" regulating cotton industry machinery.	To remove outdated language since regulated machinery is no longer used in the industry.	Chapter 111 of the Agriculture Code.
2. Repeal reference to labor commissioner's role in investigating of non-profit corporations involved in organized labor.	To remove outdated language. Agency does not perform this function.	Article 1396-2.01, V.T.C.S.
3. Repeal reference to labor commissioner's role regard- ing issuance of injunctions on corporations.	To remove outdated language. Agency does not perform this function.	Article 1524k, V.T.C.S.
4. Repeal language which requires TDLS to report labor statistics to the governor biennially.	To conform to current practice. Agency no longer collects labor and workforce statistics.	Article 5145, V.T.C.S.
5. Delete requirement that the agency perform func- tions in conjunction with the Texas Energy and Natural Resources Advisory Council (TENRAC).	To remove outdated language. TENRAC was abolished by the legislature in 1983 and the functions are not performed by TDLS.	Article 5145a, V.T.C.S.
6. Delete requirement that the agency collect and report health and safety statistics.	To conform to current practice. The Texas Department of Health and the Industrial Accident Board now perform those functions originally given to the Bureau of Labor Statistics.	Article 5146, V.T.C.S.
7. Delete language that requires agency to preserve agency records.	To remove outdated language which has been superseded by Chapter 441, Government Code, relating to the preservation of records by state agencies.	Article 5147, V.T.C.S.
8. Delete obsolete language requiring factories, mines, mills, etc. to make reports to the commissioner upon request.	To remove outdated language. Agency no longer performs this function.	Article 5147a, V.T.C.S.

Exhibit 3

Minor Modifications to the Texas Department of Labor and Standards Statutes

Change	Reason	Location in Statute
9. Delete obsolete language empowering the commis- sioner to enter factories, mills, mines, etc. and modify statute to retain authority for department personnel to enter businesses for inspections required under the agency's laws.	To remove outdated language while retaining authority to make currently authorized inspections of businesses.	Article 5148 and 5148a, V. T. C. S.
10. Delete obsolete language requiring the commis- sioner to give written notice to county or district attorneys for violations of workplace laws.	To remove outdated language. Agency no longer enforces violations relating to work safety.	Article 5149, V.T.C.S.
11. Delete language giving the commissioner the power to take testimony.	To remove language that is superseded by and conflicts with the Administrative Procedures Act.	Article 5150, V.T.C.S.
12. Delete language that authorizes a penalty for failure to testify.	To remove language that is superseded by the APA.	Article 5150a, V.T.C.S. and all other statutes administered by the agency.
13. Rename the agency the Texas Department of Licensing and Regulation.	To make the agency's name better reflect its current duties.	Article 5151a, V.T.C.S.
14. Modify provision which allows the agency to withhold names of those under investigation to incorporate all of the agency's inspection activi- ties and also remove criminal penalties.	To update and continue agency's ability to maintain confidentiality of investigations prior to hearings.	Article 5151b, V.T.C.S.
15. Delete obsolete language and modify statute to retain a general prohi- bition against businesses interfering with the agency's current duties.	To remove outdated language while retaining a prohibition against interference with the agency's duties.	Article 5151c, V.T.C.S.

Exhibit 3

Minor Modifications to the Texas Department of Labor and Standards Statutes

Change	Reason	Location in Statute
16. Delete obsolete language which makes available to the commissioner any "working agreements", filed with the Secretary of State, between labor unions and employers.	To remove invalid language. Such working agreements were found unconstitutional in American Federation of Labor, et al v. Mann, et al. in 1945 by the Court of Civil Appeals.	Article 5154a, Sec. 6, V.T.C.S.
17. Delete obsolete language requiring the commis- sioner to collect occupa- tional health and safety statistics.	To conform with current practice. TDLS no longer collects these statistics. Federal law supersedes the clauses and the Texas Department of Health has subsequently been given responsibility to collect similar occupational safety and health data.	Articles 5173-5180, V.T.C.S.
18. Delete language giving commissioner responsibil-ity for providing the Texas Department of Health with labor statistics.	To conform with current practice. TDLS no longer collects labor statistics.	Articles 5182a, Sec. 7(a), V.T.C.S.
19. Delete language pertain- ing to labor agency law.	To remove invalid language. Statute was amended and repealed in the same session. This clause remained and is no longer valid.	Article 5221a-5, Sec. 7(e), V.T.C.S.
20. Modify langauge to remove specific reference to the American Society of Mechanical Engineers (ASME) from statute but let the agency adopt the code in the rules.	Statutory reference to a private organization is considered an inappropriate delegation of legislative authority.	Article 5221c, V.T.C.S.
21. Delete statute which requires the commissioner to inspect mines.	To conform to current practice. Federal law supersedes the provisions and the Texas Department of Health has subsequently been given responsibility for the health and safety of mine workers.	Articles 5892-5920a, V.T.C.S.

Exhibit 3

Minor Modifications to the Texas Department of Labor and Standards Statutes

Change	Reason	Location in Statute
22. Delete language setting commissioner's and other agency personnel salaries.	To remove outdated language which sets the commissioner's salary at $3,000 per annum and other salaries at or below $2,000 per annum.	Article 6814, V.T.C.S.

TEXAS SURPLUS PROPERTY AGENCY

Texas Surplus Property Agency
Background and Focus of Review

Creation and Powers

The Texas Surplus Property Agency (TSPA) operates the federal surplus property distribution program in Texas. This program helps state and local governments and certain non-profit agencies obtain donations of usable federal surplus property. The TSPA has provided this service for over 40 years and has supported all its operating expenses through handling fees for the property. In each of the past five years, the agency has distributed property in Texas which originally cost the federal government approximately $22 million.

Federal property management laws provide the framework through which the TSPA accesses the surplus property. Under those laws, equipment, furniture, vehicles, and machinery on the inventory of federal agencies must pass through many check points before it can be discarded. Property which is not needed by an agency is declared to be "excess property" and is offered for transfer to other federal agencies. Excess property which is not transferred to another federal agency is declared "surplus" to the needs of the federal government. This property is offered for donation through state agencies like the TSPA. Federal law requires each state to establish a program and file a state plan of operation to administer the federal surplus property distribution program within the state. Without such a program and plan, eligible agencies in the state cannot receive donations of federal surplus property.

The specific duties of state agencies designated to coordinate property distribution, like the TSPA, are to locate usable items from the approximately $2.5 billion of federal inventory which is declared surplus each year and find a public purpose for those items in their state. Property which the federal government has declared surplus and released to the distribution program is donated to eligible agencies, regardless of its original cost. This federal donation program was founded on the principle that since the goods were purchased with tax dollars, any unused value remaining in the items should be donated to another public purpose, without charge. All 50 states and many U.S. territories participate in the federal program. In summary, federal law puts three main restrictions on the state distribution activities:

- it requires that the property be donated;
- it limits the program to the following entities:
  - state and local government agencies; and
  - non-profit agencies that provide human services; and
- it requires that property be put to use by the eligible agency for 12 to 18 months, depending on the original cost of the item.

The Texas Surplus Property Agency was created by Executive Order of the Governor in 1945 following World War II. At that time, the federal government was faced with large amounts of often unused surplus war rations, supplies, and equipment. Federal leaders began a temporary program of donating the surplus to

civil defense efforts throughout the country, instead of selling the surplus in the already unsteady economy. Each state was required to establish a program to guide the distribution of the surplus property within the state. Texas responded by creating a temporary, independent, self-supporting agency called the Texas Surplus Property Committee. Even though the federal program was initially a temporary program, a steady supply of federal surplus was available for many years after the war. From 1945 to 1971, a resolution was passed each session authorizing the operations of the agency. In 1971, the 62nd Legislature adopted H.B. 216 which established the Texas Surplus Property Agency (Art. 6252-6b, V.A.C.S.). There has been little change to the agency's statute since it was adopted.

The TSPA has had essentially the same duties since its creation:

- Locate usable federal surplus property and put it to a public use in Texas:
  - Distribute the property fairly among eligible agencies;
  - Donate the property but charge enough through handling fees to support the program; and
  - Check to see that property is actually put to a public use.

Policy-making Structure

The board of the Texas Surplus Property Agency is composed of nine part-time, public members appointed by the governor with the advice and consent of the Senate for staggered six-year terms. The statute requires that appointees be "outstanding citizens of the state who are knowledgeable in the field of property management". The board is required to meet four times a year and its chairman is elected by the board. The board's duties include the selection of the executive director, adoption of agency rules, approval of the agency budget, updating the state plan, and oversight of agency administration.

The board has met an average of four times a year in the last two years and meetings were held in all areas of the state. Meetings are usually held at district warehouse locations so that members can become familiar with agency operations.

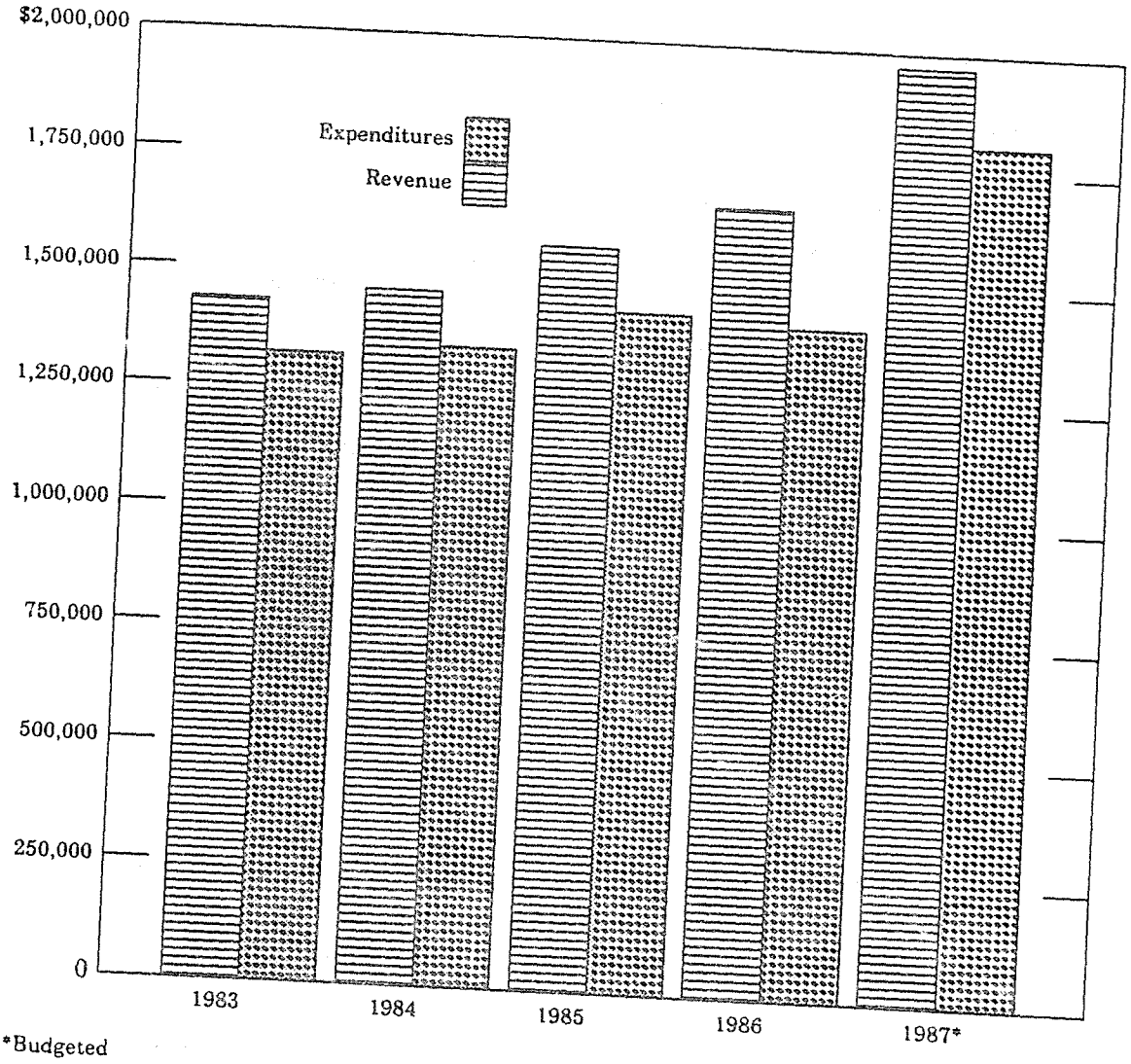
Funding and Organization

In 1987, the 70th Legislature made the TSPA's expenditure subject to the appropriation process for the first time. The agency's budget is set in the General Appropriations Act at $2,734,561 for fiscal year 1988 and $2,937,028 for fiscal year 1989. The agency's actual operating budget for fiscal year 1988 is $2.03 million. The balance of the agency's appropriation was made to cover the cost of building new district warehouses in Fort Worth and Corpus Christi. Funding of this construction is contingent on adequate revenue. The revenue source for agency funding is service and handling fees and interest earned on its fund balance. Exhibit 1 analyzes the agency's revenue and expenditure trends for the past five years.

Exhibit 1

TEXAS SURPLUS PROPERTY AGENCY

Expenditures and Revenue 1983 thru 1987



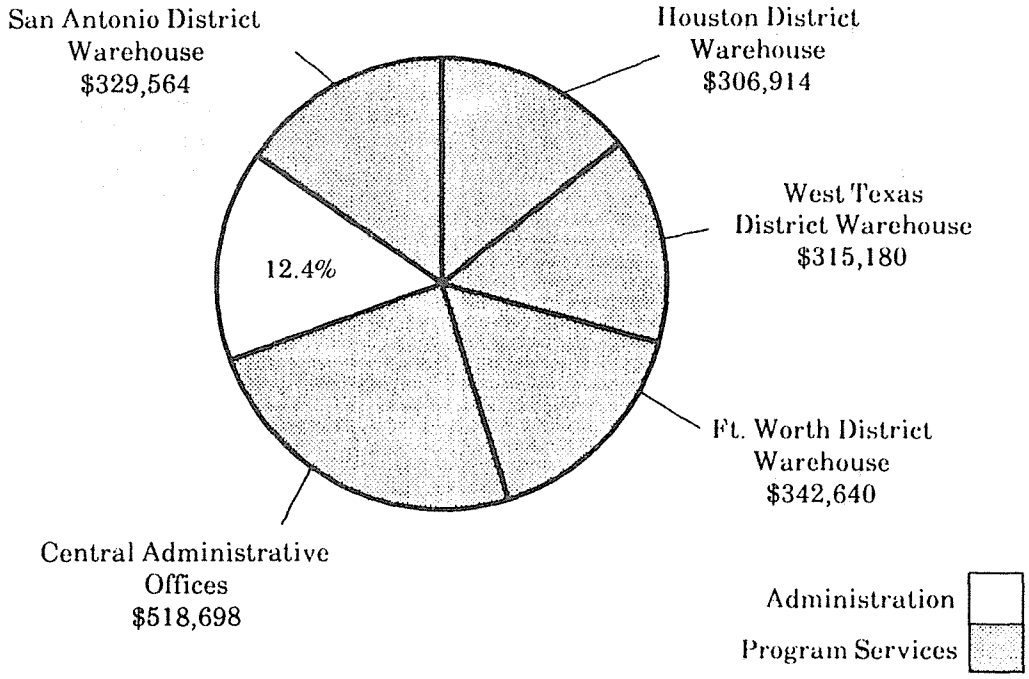
Property recipients are charged a service and handling fee to cover the cost of TSPA activities. The fee includes the costs of locating the property, freighting, warehousing, and some minor reconditioning of the property. Overall, TSPA fees are approximately 7.5 percent of the price the federal government paid for the item new.

The agency has 48 employees and operates four district warehouses located in San Antonio, Fort Worth, Lubbock, and Houston. The agency's funding allocation is analyzed in Exhibit 2. Agency administrative costs are estimated to be approximately 12.4 percent.

Exhibit 2

TEXAS SURPLUS PROPERTY AGENCY

Fiscal Year 1987 Budget



Programs and Functions

The agency accomplishes its major program functions through its system of district warehouses. These functions include:

- locating available property, and screening the property for needed and usable items;
- transporting, warehousing, advertising, and making the property available for inspection;
- distributing the property and collecting handling fees; and
- monitoring the use of the property once distributed.

Locating usable and needed federal property, obtaining that property and transporting it to the district warehouses is a main focus of the agency's operations. Each year, the federal government makes over $2.5 billion in property available to the 50 state programs and similar programs in Washington D.C. and five U.S. territories. The TSPA reviews inventory lists of this property and selects items for on-site screening. The TSPA staff screens about five to ten times the amount of property it obtains each year. Screening of large amounts of property helps the TSPA ensure that its efforts are focused on the most usable federal surplus property that is available.

The locations for district warehouses are chosen for proximity to federal installations which distribute surplus property to reduce agency travel and shipping costs. The installations which TSPA uses most frequently are located in Texas and the surrounding states. In fiscal year 1987, approximately 59 percent of the property secured by TSPA came from federal installations within Texas.

The TSPA reviews the inventory of the individual warehouses frequently to ensure that similar types and quantities of property are available in all areas of the state. The information below gives an indication of the level of activity of each district warehouse.

District Warehouse	Inventory at Acquisitions Cost (12-31-87)	Distributions (1987)
San Antonio	$ 4,582,000	$ 4,705,000
Houston	3,182,000	5,405,000
Fort Worth	3,275,000	5,305,000
Lubbock	2,648,000	6,257,000
TOTAL	$ 13,687,000	$ 21,672,000

For each of the past five years, the TSPA has distributed property which originally cost approximately $22 million, to 2,700 agencies. Below, is a listing of how the property was distributed in fiscal year 1987 among the various types of eligible agencies.

Entities	Amount Received	Percent
Cities and Counties	$ 8,499,000	39.1%
School Districts	5,782,000	26.7%
Higher Education	3,097,000	14.3%
Non-profit Agencies	2,786,000	12.9%
State Agencies	1,508,000	7.0%
TOTAL	$ 21,672,000	100.0%

Once the property is distributed, the federal government requires the TSPA to monitor whether it is being used by an eligible agency in accordance with federal requirements and the state plan of operations. Federal guidelines require that property be used by an eligible agency for 12 to 18 months, depending on the original cost of the item, before full ownership transfers from the federal government. The TSPA is required to document its activity to monitor compliance with this requirement on all property which originally cost over $5,000. During fiscal year 1987, the agency monitored 323 items of property under this requirement. All but two items of property were found to be used in compliance with federal requirements. One of the items in non-compliance was returned to working order and is now in compliance. However, one item had to be recovered by the TSPA due to unauthorized use.

The end result of the distribution of surplus property is to reduce costs which would have been necessary if the property were purchased new. The following examples illustrate the types of cost savings achieved through the use of federal surplus property in Texas:

- Port Arthur Navigation District of Jefferson County benefited from the relocation of a surplus World War II floating dry dock from Pearl Harbor, Hawaii. The dry dock cost the federal government over $18 million in the 1940's but its estimated value today is in excess of $30 million. It is estimated that the dry dock will result in 500 new jobs and add over $74 million to the economy of the area;

- City of Brownfield received a fire truck from California for a transportation and handling fee of $1,800 enabling the city to postpone the purchase of a new fire truck until the mid 1990's. This was a net savings of $100,000;

- Martin County received a tractor-scraper and bulldozer for their sanitary landfill operations and road construction projects. Purchased new the equipment would have cost over $400,000. However, through TSPA the actual cost, which included shipping from California, was $25,000;

- Hill College in Hillsboro completely furnished its machine shop with machines through TSPA and every vehicle used in the school's maintenance department was obtained through TSPA. The school also uses federal surplus in the cafeteria, as well as, the art, automotive, and agriculture departments. In total, the school reported annual savings of over $100,000 for the past several years through the use of surplus federal property;

- Fort Bend County Major Crime Task Force received a night vision scope through the TSPA to help in its efforts to stop illegal drug trafficking. It was previously used by the U.S. Customs and was originally purchased for $40,000. The TSPA service fee was $1,728. The cost for a new night vision scope, today, would be $80,000; and

- Cameron County Appraisal District reported that 90 percent of its office furnishings have been obtained through TSPA at one-tenth the cost if purchased new.

Focus of Review

The review of the Texas Surplus Property Agency focused on five general areas: 1) whether there is still a need for the agency and its services; and if so, 2) whether the policy-making structure fairly reflects the public and state interests; 3) whether the agency's management policies and procedures are consistent with accepted management practices; 4) whether the agency meets the need for services in an efficient and effective manner; and 5) whether additional unmet needs exist within Texas that the agency is particularly equipped to serve.

Analysis indicated that there is still a need for the agency and its services. Many agencies and political subdivisions that use the services of the agency report that the services are valuable to them in their efforts to contain costs. There also appears to be a constant level of surplus federal property available indicating that

the supply of material to distribute will continue. A final consideration was that federal law stipulates that for eligible agencies within a state to access federal surplus property, the state must operate a distribution program approved by the federal General Services Administration, such as TSPA. These three factors--service user desire for the program, continued program resources, and federal requirements for the program--lead to the conclusion that there is a need to continue the services of the Texas Surplus Property Agency.

The review of the policy-making structure of the agency indicated that two changes to the statutorily mandated structure would improve the agency. These changes include authorizing the governor to designate the chairman of the board and adding a representative of the State Purchasing and General Services Commission to the board. Both changes are expected to enhance the agency's ability to work with other state agencies.

The review of the agency's management practices indicated that the agency's overall administration is generally effective. Therefore, no recommendations were made concerning changes to the agency's administration.

The analysis of whether the agency meets the need for services in an efficient and effective manner lead to the question of whether the state's purposes were best served by operating two separate surplus property functions -- TSPA's, which deals with federal surplus property, and the state surplus property function performed by the State Purchasing and General Services Commission. An assessment of the multiple state policies involved in the operation of the two separate programs was not possible within the time and resources available for the review of TSPA.

A more limited analysis indicated that because of the substantial differences in focus between the two programs and the potential for disruption of services, there would be little gain in simply combining the programs. However, the analysis showed that expanding some TSPA services to state surplus property distribution will improve the state's overall system of surplus property management. Changes are recommended that provide for that expansion with minimal disruption of both programs. In addition, authorizing the agency to assist other state agencies, on contract, with any phase of surplus property handling is recommended.

The recommendations developed for the agency will have no fiscal impact to the state. The recommendations are expected to increase the ability of tax-supported agencies to use state surplus property. Significant long term cost avoidance can therefore be anticipated.

Sunset Commission Recommendations for the
Texas Surplus Property Agency

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

1. **The statute should be amended to require that the governor select the board chairman.**

The members of the TSPA board elect a chairman from the board membership. This deviates from a recent trend to allow the governor to select the chairman. Vesting this authority with the governor enhances accountability and continuity within the executive branch of government.

2. **The statute should be amended to modify the composition of the board to include the perspective of the state's purchasing agency.**

The TSPA's board is composed of nine public members who are knowledgeable in the field of property management. While this provides a broad based perspective for the interests of the state's citizens as a whole, it does not facilitate an understanding of how TSPA services relate to those of another state program which has similar goals. The all public member composition also limits the board's perspective on how TSPA services can better address state agency needs. Adding the chairman of the State Purchasing and General Services Commission to the TSPA board will provide the TSPA an ongoing resource of information concerning the potential uses of federal surplus property by state agencies, as well as, the operations of the state surplus property program.

Overall Administration

The review of the agency's overall administration indicated that no changes are needed.

Coordination of Surplus Property Efforts

3. **The agency should assist in distributing state surplus property to governmental and certain non-profit agencies. The statute should be amended to:**

   - **modify the time sequence for state surplus property distribution to include a 25 day time period for the TSPA to attempt to distribute state surplus property which is otherwise destined for state auction;**

   - **allow the TSPA to distribute state surplus property to non-profit human service agencies, as well as the public agencies which are already eligible; and**

- require the agency and the State Purchasing and General Services Commission to develop a memorandum of understanding, as rules of both agencies, concerning TSPA's handling of state surplus property.

Recycling usable equipment within government saves public funds. It allows agencies to use existing government property at a fraction of its original cost. Without an effective method to encourage recycling surplus property, agencies buy new equipment and their usable but no longer needed property is disposed of at auction. An examination of the state and federal surplus property programs in Texas found that the federal program, operated by the TSPA, was more effective in encouraging the use of surplus property. Currently, only 25 percent of state surplus property is used within government, while 75 percent is sold at state auctions. In contrast, 90 percent of the federal surplus property allocated to Texas is used by government and certain non-profit agencies.

The TSPA program was reviewed to determine if it was possible for the agency to help distribute state surplus property. While a complete merger of the state and federal programs was not recommended in this review, a workable method was found for the TSPA to assist the state program.

The change proposed will lengthen the state surplus property distribution time frame from the current 40 days, to 60 days. State agencies and political subdivisions will both be allowed to request property directly from the owning agency within 35 days of initial posting, with state agencies having first priority. After that time, a period of 25 days would be set aside for the TSPA to attempt to find a purchaser for remaining property. The TSPA would encourage agencies which are currently eligible for state surplus property (including state agencies, political subdivisions, and the Texas Partners of the Alliance) to purchase the property before it proceeds to public auction. Also, the TSPA would be authorized to encourage non-profit human service agencies (such as programs for homeless individuals), which are already eligible for federal property, to purchase the property. The TSPA will act essentially as a broker in finding an eligible agency that needs the property and negotiating the sale with the owning agency. To cover its costs, the TSPA will be authorized to retain a handling fee to be agreed upon in advance. The TSPA will negotiate a memorandum of understanding with the State Purchasing and General Services Commission, the state agency responsible for the state surplus program, concerning the specific procedures that will be used and how handling fees will be negotiated and collected. This agreement will be adopted as rules of both agencies. The proposed changes enhance the ability of the two programs to work together effectively by allowing the TSPA to focus its assistance only on property which has not been distributed through the existing state program, minimizing changes to the timing and mechanics of both programs, and making the same agencies eligible for both programs.

4. **The statute should be amended to authorize the Texas Surplus Property Agency to assist state agencies, on contract, in all phases of surplus property handling.**

On an individual basis, a state agency may decide that it can more effectively and efficiently dispose of its surplus property by contracting with the TSPA for services beyond those addressed in the above recommendation. For example, some state agencies may need to contract for warehousing their property, reconditioning, negotiating for sales, or regional auctions. The regional location of TSPA

warehouses make contracting particularly advantageous for agencies with regional operations. However, the TSPA is not authorized to contract with state agencies. Providing the TSPA with the necessary authority to offer such services, on contract, will facilitate such assistance when, on a case-by-case basis, both agencies agree that TSPA assistance is in the best interest of the individual agency and the TSPA.

Other Changes Needed in Agency's Statute

5. The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations have been applied to the Texas Surplus Property Agency.

6. Minor clean-up changes should be made in the agency's statute.

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in Exhibit 4.

Exhibit 4

Minor Modifications to the Texas Surplus Property Agency Statute

Article 6252-b, V.A.C.S.

Change	Reason	Location in Statute
1. Delete language which set the terms of the initial board appointees to allow for staggered terms.	To remove outdated langauge since initial appointments have expired and all appointments are now staggered.	Section 1
2. Modify references to provisions in state law to conform with codification of the state purchasing act.	To conform with modern statutory citations.	Section 4(g)
3. Delete requirement that the agency meet federal Merit System standards.	To remove obsolete language.	Section 4(i)
4. Modify reference to the state plan being adopted by the executive director to instead require that it be adopted in a manner consistent with federal law.	To provide flexibility to comply with federal regulations.	Section 4(k)
5. Modify language to place funds in the State Treasury.	To conform with current practices as required by State Funds Reform Act.	Section 4(m)
6. Rename the TSPA Special Fund to delete "Trust Fund" status.	To make name better reflect the funds status as an operating fund.	Section 4(m)
7. Delete language that transferred the authority of the agency as created under Concurrent Resolution to the agency as created under Art. 6252-6b, V.A.C.S.	To remove outdated language.	Section 5

TEXAS COMMISSION ON HUMAN RIGHTS

Texas Commission on Human Rights

Background and Focus of Review

Creation and Powers

The Texas Commission on Human Rights was created in the First Called Session of the 68th Legislature in 1983. With the creation of the commission, the legislature also adopted the Texas Commission on Human Rights Act consolidating and expanding state law prohibiting employment discrimination. The Act prohibits discrimination in the work place on the basis of race, color, handicap, religion, sex, national origin, or age. Also, for the first time, the state anti-discrimination law applied to private as well as public employers with 15 or more employees. Employers, public or private, with fewer than 15 employees are not covered.

In addition, the Act established an administrative process for resolving complaints arising under the law before resorting to the courts. The Texas Commission on Human Rights (TCHR) is responsible for implementing the administrative processes under the Act. This process involves investigating and seeking to resolve complaints through the voluntary agreement of both parties. If voluntary means fail, the commission may take an employer to court to achieve compliance, but it has no authority to order corrective action. Under the Act, complainants have a separate right to take private action in court if the complaint has not been settled after processing or if the commission has not taken legal action. However, administrative remedies must be exhausted before a complainant may take legal action.

With the creation of TCHR, the state became involved in prohibiting employment discrimination under state law. The state law roughly parallels federal anti-discrimination law in the work place, but it does not supersede federal law. Federal laws prohibiting discrimination in employment are enforced primarily by the U.S. Equal Employment Opportunity Commission (EEOC). Cities may also address employment discrimination through municipal ordinances.

This three-tiered approach to dealing with job discrimination results from federal policy encouraging the creation of state and local fair employment agencies. Under this arrangement, the federal government retains responsibility for enforcing federal law. However, it requires employment complaints to be processed under state or local laws that are similar to federal law. State or local agencies that have been approved by EEOC actually process the complaints.

When state or local agencies meet federal requirements, federal law requires complaints to be "deferred" from EEOC to these state or local agencies for processing. The details of this deferral process are specified in federal regulations and in worksharing agreements between EEOC and the state and local agencies. These agreements basically divide complaint processing between the state and local agencies and EEOC. The final disposition of all complaints must still be approved by EEOC. For each closed complaint which it accepts, EEOC pays these approved state and local agencies $400. The exact terms of this reimbursement are worked out in a contract between EEOC and these agencies. Currently, the state commission has deferral status with EEOC, as do local commissions in Austin, Corpus Christi, Fort Worth, and Wichita Falls.

The state Act also establishes a framework for a partnership between TCHR and local commissions that is similar to the deferral relationship established in federal law. Local commissions may seek "certification" from the state commission enabling them to share cases with TCHR and to have access to powers in the state Act, such as the power to issue subpoenas and to file civil action in state court. Also, citizens in cities with certified commissions would be able to sue in state court. While the state agency is authorized to pay a local commission for processing cases, no funds have been appropriated for this purpose.

To date, commissions in Austin, Corpus Christi, and Wichita Falls have entered this partnership with TCHR by becoming certified commissions. The Fort Worth Human Relations Commission has not chosen to seek certification with TCHR. As a result, the Fort Worth commission processes cases only as a deferral agency with EEOC and only under the authority of its local ordinance. It does not exercise any of the powers under state law.

Policy-making Structure

The Texas Commission on Human Rights is composed of six members, appointed by the governor. The governor designates one of the commissioners as chair. The statute specifies that one member must represent industry, one member represents labor, and four are public members. The statute also specifies that the governor should strive to achieve diverse representation with respect to economic status, sex, race, and ethnicity.

Funding and Organization

The Texas Commission on Human Rights has one office which is located in Austin. The agency employs 25 full-time employees and has one additional employee on loan from the Texas Employment Commission. Exhibit 1 illustrates the organizational structure of the state commission. The agency had an operating budget of $573,915 in fiscal year 1987 and the projected budget for fiscal year 1988 is $669,054.

Exhibit 2 shows that most of the state commission's budget comes from federal funds. Since its creation, TCHR has received federal funds to offset much of its costs of processing employment discrimination complaints. The amount of federal funds the state commission receives each year depends on the number of employment discrimination complaints it processes under a charge resolution contract with EEOC. In this contract, the state commission and EEOC determine the number of complaints that EEOC will pay TCHR for processing. In fiscal year 1987, the state commission processed 878 complaints under its contract and has agreed to process 1,041 complaints under its fiscal year 1988 contract. Generally, EEOC reimburses the state commission $400 for each case resolved that is accepted by EEOC. However, the state commission's cost for processing a complaint in the last fiscal year was approximately $550.

Exhibit 1

TEXAS COMMISSION ON HUMAN RIGHTS

Organizational Chart

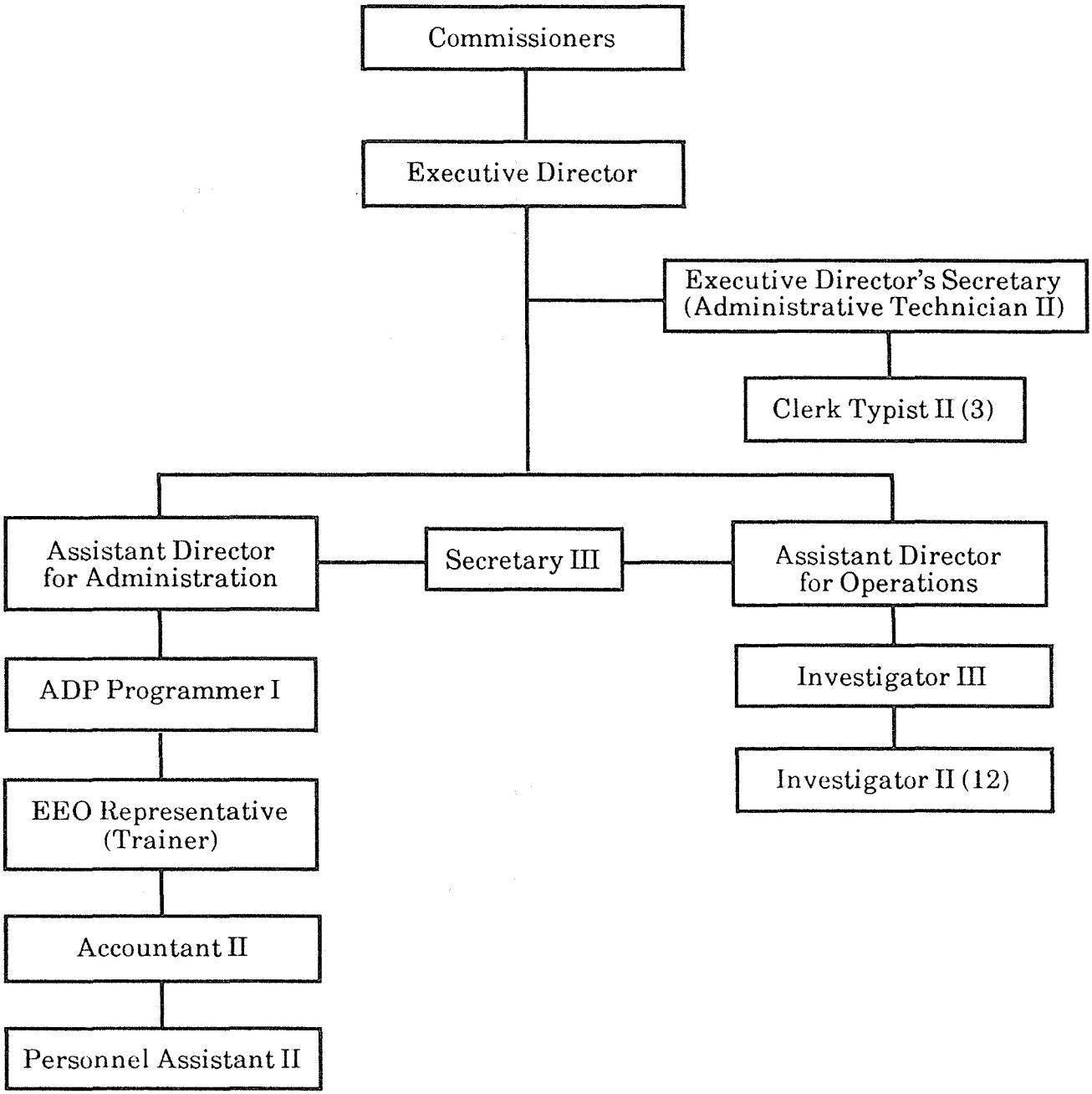


Exhibit 2

Source of Revenues
FY 1988

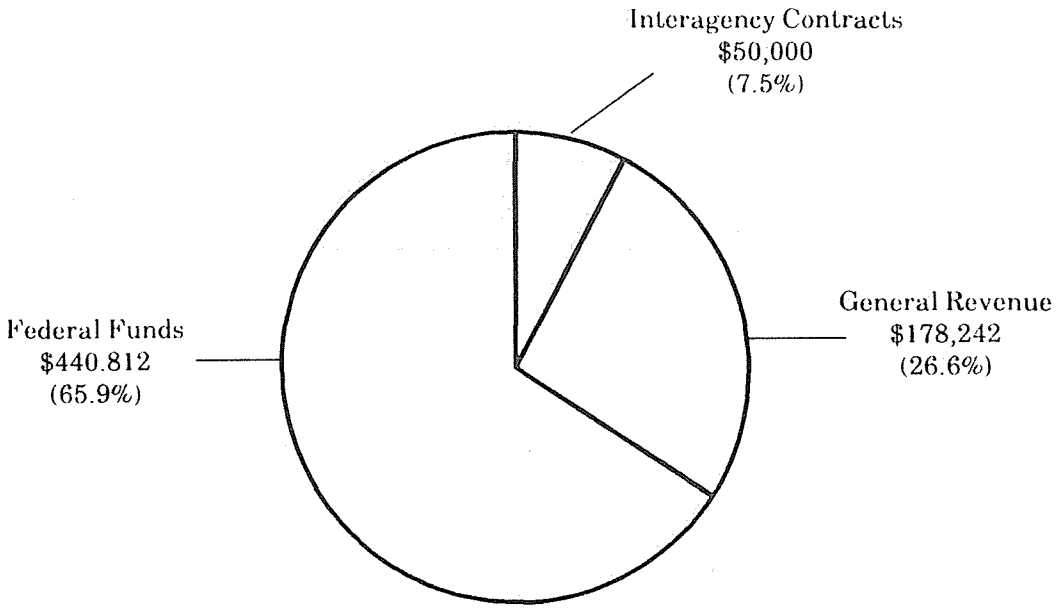
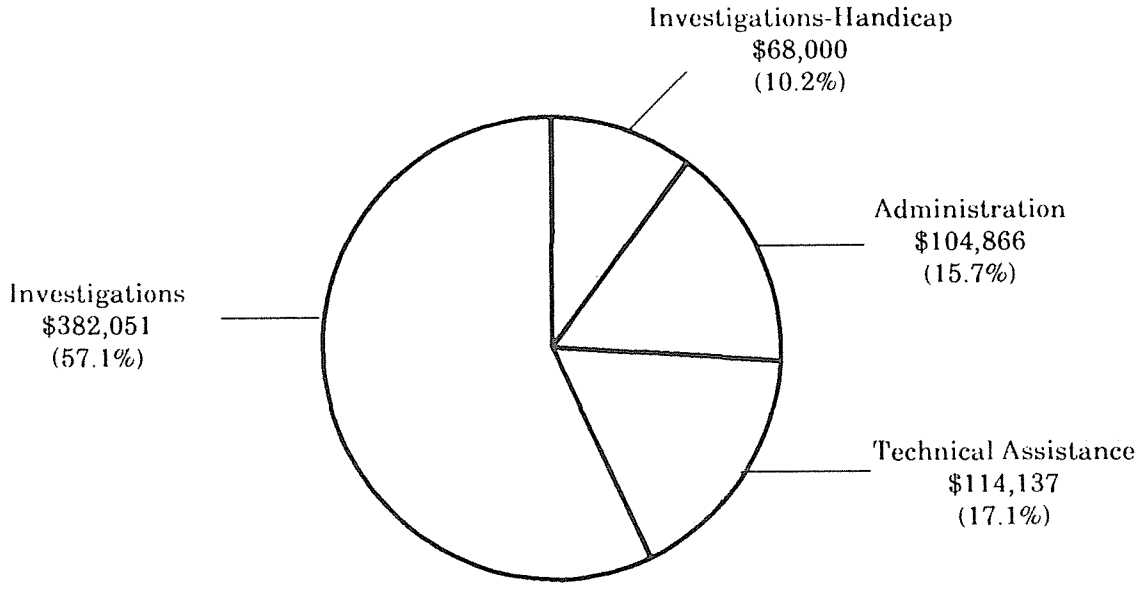


Exhibit 3

Projected Expenditures
FY 1988



General revenue is the commission's second largest source of funding. In fiscal year 1988, TCHR received its first appropriation from general revenue to help compensate for the loss of earned federal funds as a source of revenue. General revenue funding helps cover administrative costs and supports the agency's efforts to process employment discrimination cases based on handicap. In 1987, the commission processed 130 handicap complaints. The federal government does not reimburse the state commission for processing handicap complaints as it does other job discrimination complaints.

In addition to federal reimbursements and general revenue funding, the state commission earns revenue through interagency contracts for providing EEO training to other state agencies. The commission provides this training to state agencies and recovers the cost through interagency contracts.

In the past, the commission has also had to rely on emergency appropriations from the governor's office. The commission has used emergency funds to pay investigators' salaries while waiting to receive contract money from EEOC.

Exhibit 3 illustrates the commission's projected expenditures for fiscal year 1988. The investigation of complaints is the largest expenditure accounting for 57 percent of the agency's outlays. Technical assistance and training is the next largest expense. The commission's administrative costs require 15 percent of the fiscal year 1988 budget.

Programs and Functions

The sunset evaluation focused on the two major program areas administered by the Texas Commission on Human Rights. A description of the administrative review process and the technical assistance and training program is provided below.

Administrative Review

The investigation and resolution of employment discrimination complaints is the major activity of the Texas Commission on Human Rights (TCHR). In fiscal year 1987, the commission processed 1,008 complaints of employment discrimination under the Texas Commission on Human Rights Act. This activity accounted for about 65 percent of the commission's fiscal year 1987 budget.

As Exhibit 4 shows, the Act applies to employers as well as employment agencies, labor organizations, and apprenticeship and job training programs. Under the Act, an employer is a person who has 15 or more employees. This definition includes private employers as well as state agencies, political subdivisions, and public institutions of higher education. Employers with fewer than 15 employees are not covered under the Act. Exhibit 5 shows the total number of employers who are covered under the Texas Commission on Human Rights Act because they have more than 15 employees. Exhibit 6 shows the number of state agencies and political subdivisions who are covered under the State Act.

Exhibit 4

Unlawful Employment Practices Under the Texas Commission on Human Rights Act

Coverage	Unlawful Employment Practices	Basis of Discrimination
Employer	Failure or refusal to hire or improper discharge; Discrimination with respect to compensation and terms, conditions, and privileges or employment; Limiting, segregating,or classifying employees in a way that adversely affects employment opportunities.	Race, color, religion, sex, national origin, age or handicap.
Employment Agency	Failure or refusal to refer for employment or other wise discriminating against an individual.	Race, color, religion, sex, national origin, age, or handicap.
Labor Organization	Exclusion or expulsion from membership or otherwise discriminating against an individual; Limiting, segregating, or classifying members or failing or refusing to refer an individual for employment in a way that adversely affects a person's employment opportunities or causes the employer to violate the Act.	Race, color, religion, sex, national origin, age, or handicap.
Job Training Program	Discrimination against an individual in admission to or participation in apprenticeship, on-the-job, or other training programs.	Race, color, religion, sex, or national origin.

Exhibit 5

Employers Covered under the Texas Commission on Human Rights Act September 1987

Type of Employer	Number of Employers	Percent	Number of Employees	Percent
Employers with 15 or more employees	48,620	15.6%	5,217,635	84%
Employers with fewer than 15 employees	262,493	84.4%	991,776	16%
TOTAL	311,113	100.0%	6,209,411	100%

Exhibit 6

State Agencies and Political Subdivisions Covered under the Texas Commission on Human Rights Act September 1987

Size of Employer	Number of Employers	Percent	Number of Employees	Percent
State Agencies & Political Subdivisions with 15 or more employees	2,551	59.8%	981,700	99.1%
State Agencies & Political Subdivisions with fewer than 15 employees	1,718	40.2%	9,142	0.9%
TOTAL	4,269	100.0%	990,842	100.0%

Most complaints processed by TCHR are against private employers. Exhibit 7 shows the number of complaints filed against different types of respondents received by the commission last year. The total number of complaints does not include complaints filed on the basis of handicap.

Exhibit 7

Complaints Against Respondents FY 1987

Type of Respondent	Number of Complaints Against Respondents
Private Employers	724
State Agencies or Political Subdivisions	189
Public Schools	19
Public Colleges	15
Employment Agencies	5
TOTAL	952

Generally, the Act prohibits discrimination in the work place on the basis of race, color, handicap, religion, sex, national origin, or age. As Exhibit 8 shows, the largest number of complaints filed with TCHR in 1987 were on the basis of race. The total number of complaints includes some complaints that were filed on more than one basis, such as a complaint based on both race and sex.

Exhibit 8

Complaints Filed by Basis
FY 1987

Basis of Complaint	Number of Complaints	Percent
Race	363	28.9 %
Color	6	0.5 %
Handicap	171	13.6 %
Religion	5	0.4 %
Sex	271	21.6 %
National Origin	193	15.4 %
Age	196	15.6%
Retaliation	52	4.1%
TOTAL	1,257	100.0%

Discrimination is prohibited basically for the same reasons found in the provisions in federal law and in the fair employment law in other states. However, the Texas Act does go further than federal law in prohibiting discrimination on the basis of handicap. Protection for individuals based on handicap in federal law applies only to the federal government, federal contractors, and recipients of federal funds. Texas law includes handicap in its general coverage for prohibiting employment discrimination.

As mentioned, the state commission operates with the U.S. Equal Employment Opportunity Commission (EEOC) and local human relations commissions as part of a three-tiered approach to eliminating employment discrimination. Because of this approach, mechanisms were developed to define the responsibilities at each level of government. For example, federal law requires that most employment complaints which fall under federal law be deferred to TCHR or to the appropriate local commission for 60 days after they are filed for processing. However, to avoid confusion regarding who would be responsible after 60 days, EEOC develops worksharing agreements with TCHR and with each of the local commissions. These agreements establish guidelines for dividing complaints among the commissions for processing. The state commission has a deferral relationship with local commissions which it certifies, but on a much smaller basis.

Exhibits 9 and 10 show this division of responsibility between EEOC, the state commission, and the four local commissions in the state. The local commissions generally process complaints against private employers within their city limits, but do not process complaints against state agencies or political subdivisions. Also, except for the Austin commission, these local commissions do not process complaints on the basis of age or handicap. In 1987, these commissions processed 590 complaints.

The state commission generally processes all complaints originally filed with it and up to 90 complaints each month sent from EEOC. The state commission processes most complaints against other state agencies and political subdivisions, and it processes complaints based on handicap against most employers in the state. In 1987, the commission received 1,123 complaints for processing. Of these, 587 were originally filed with the commission, and 536 were sent from EEOC for processing.

Exhibit 9

Jurisdiction for Charges of Employment Discrimination in Texas

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Charges of employment discrimination under Title VII of the Civil Rights Act of 1964 on the basis or race, color, religion, sex, or national origin, except those sent to TCHR or local commissions for processing;

Charges under the Age Discrimination in Employment Act, except those sent to TCHR for processing;

Charges under the Equal Pay Act;

Charges of discrimination on the basis of handicap involving the federal government;

Title VII charges received between 180 days and 300 days if originally filed with TCHR or local commission;

Charges initiated by an EEOC Commissioner;

Charges stemming from EEOC outreach programs;

Charges against recalcitrant employers;

Charges in which TCHR or a local commission has a conflict of interest;

Charges against TCHR or a local commisison.

TEXAS COMMISSION ON HUMAN RIGHTS

Charges originally filed, except for charges within the jurisdiction of EEOC;

Up to 75 Title VII charges and 15 age charges per month from EEOC;

Most charges filed against state agencies and political subdivisions;

Charges of discrimination on the basis of handicap.

LOCAL COMMISSION

Charges originally filed with the city limits, involving private employers, except for charges within the jurisdiction of EEOC. The bases covered by the ordinances of the four local commissions are given below:

Austin:	race, color, religion, sexual orientation, national origin, age, physical handicap.
Corpus Christi:	race, color religion, sex, national origin.
Ft. Worth:	race, color, creed, sex, national origin.
Wichita Falls:	race, color, religion, sex, national origin.

Exhibit 10

Distribution of Employment Discrimination Complaints in Texas FY 1987

	Federal	State	Local			
	EEOC	TCHR	Austin	Corpus Christi	Ft. Worth	Wichita* Falls
Beginning Inventory	7,423	588	379	66	75	N/A
Complaints Originally Received	9,143	587	416	213	293	N/A
Complaints Sent From:						
EEOC	---	536	5	2	6	N/A
TCHR	511	---	0	0	8	N/A
TOTAL	9,654	1,123	421	215	307	N/A
Cases Processed	7,391	1,008	240	120	230	N/A
Cases Waived to:						
EEOC	---	26	40	89	32	N/A
TCHR	0	---	0	0	0	N/A

* The Wichita Falls commission was not fully operational in 1987.

The EEOC processes the remainder of the employment complaints in Texas, comprising most of the complaints arising in the state. The EEOC processes complaints waived by the state or local commissions and also has exclusive jurisdiction for many complaints, such as violations of the federal Equal Pay Act and charges against recalcitrant employers. In 1987, EEOC processed 7,391 complaints, or about 82 percent of the employment complaints processed in Texas.

The Texas Commission on Human Rights Act established two distinct procedures for dealing with employment discrimination. First, it details a process for parties to resolve employment complaints administratively, without resorting to legal action. Complainants must try to settle their cases through these administrative procedures before they may go to court. If administrative efforts to settle fail, however, the Act also assures that individuals have the ability to take legal action.

The administrative review procedures of the state commission are shown in Exhibit 11. The process begins with the filing of the complaint with the commission. Complaints must be filed within 180 days of the alleged unlawful employment practice. Under the statute, the commission has 180 days after this filing date to process complaints before it must give notice to the complainants informing them of their right to take action in state court. However, no mechanism exists for expediting the issuance of the notice of right to sue for persons who feel they are being discriminated against because they have a life-threatening illness After receiving the notice of right to sue, complainants have 60 days in which to take legal action, but may not take action after one year from the original filing date with TCHR.

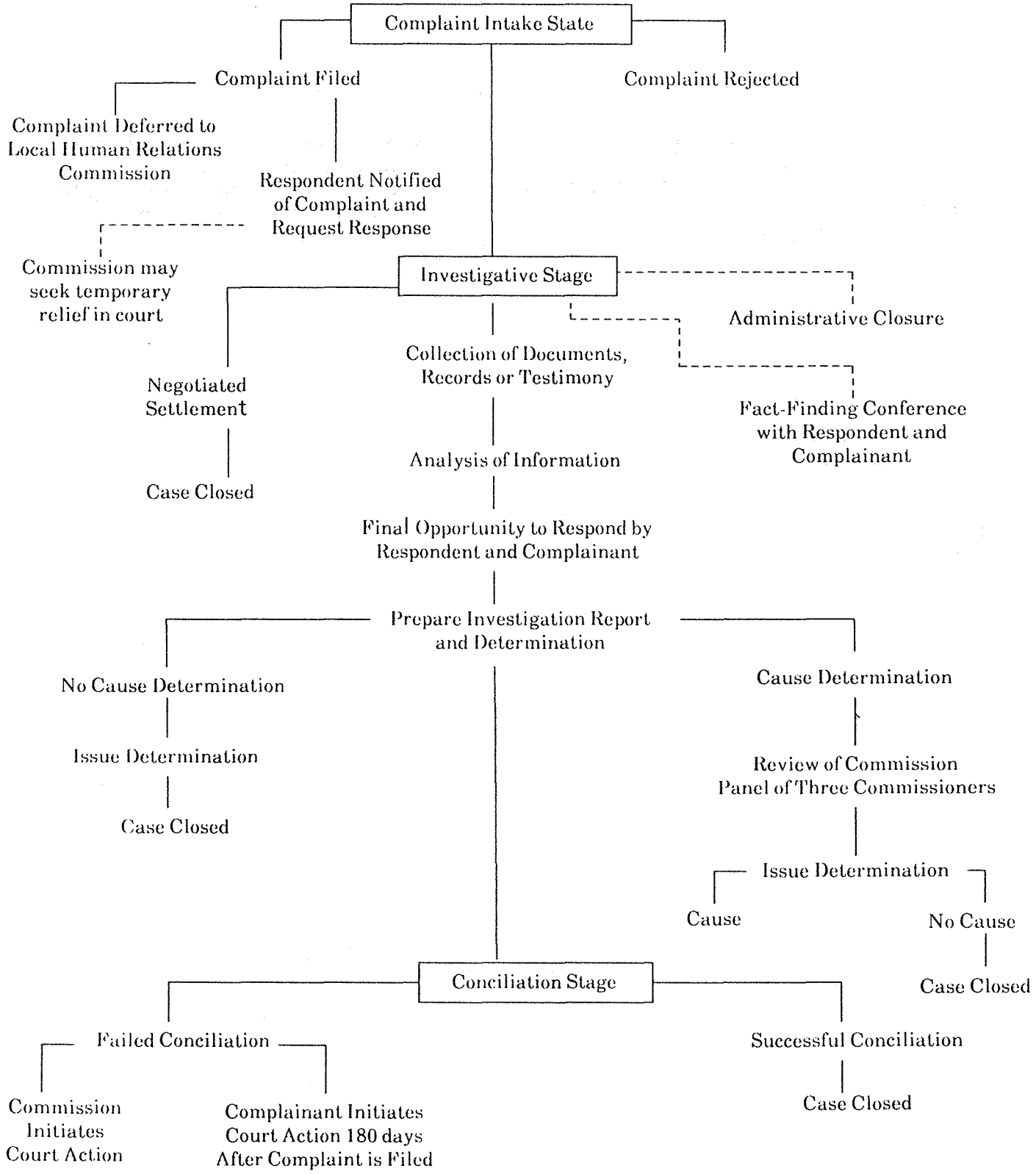
Complaints may be filed with the commission either in person, by phone, or by mail. When the commission receives a complaint, it screens it to assure that it comes under the authority of the Act. The commission estimates that 40 percent of the complaints received last year were screened out of this process during the intake stage. Once a complaint becomes a legal charge, the commission seeks a response from the employer and begins it investigation to determine if reasonable cause exists to believe that an unlawful employment practice has occurred. Investigations are generally conducted in the commission's office. Investigators collect most information about the employment practice and the employer's work force by telephone or from questionnaires sent to employers. The commission estimates that it conducts fewer than ten percent of its investigations on-site.

Throughout this process, the commission tries to reach an agreed settlement between the parties involved in the complaint. In fact, many complaints are settled just before the commission prepares to issue a finding against an employer. Once settled, the commission closes the case. Also, complaints may be closed for administrative reasons, such as the inability to locate the complainant or the complainant's refusal to accept an offer of full relief from the effects of the employment practice.

If efforts to resolve the case voluntarily are unsuccessful or if the case is not dismissed, the investigator analyzes the testimony, documents, and records collected and makes a preliminary determination of whether there is cause to support the complaint. In cases receiving a no cause finding, the commission notifies the complainant, giving him or her the right to bring legal action, and closes the case.

Exhibit 11

Overview of Complaint Processing System by Texas Commission on Human Rights



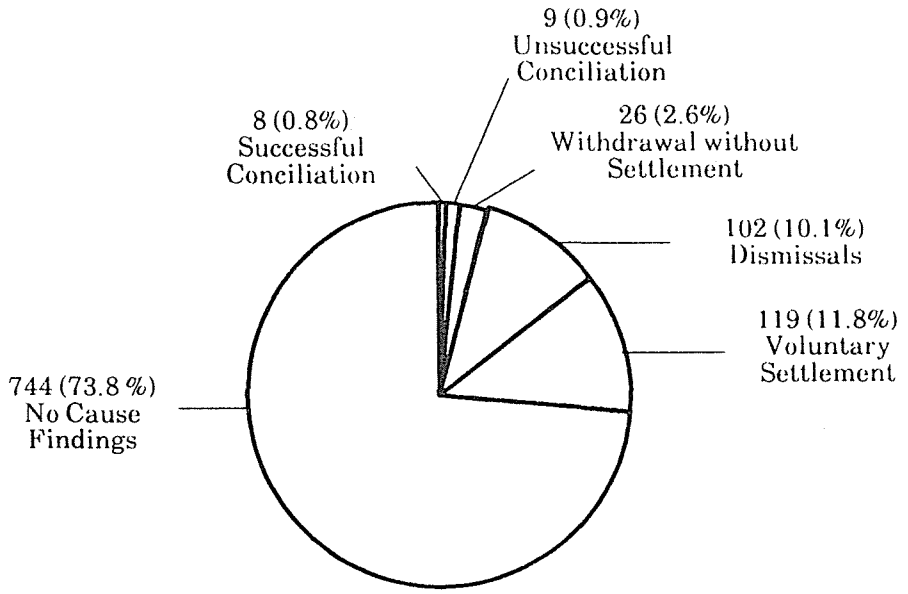
Where there is cause to believe that an unlawful action did occur, the case undergoes a staff review and is presented to a panel of three commissioners for a final cause determination. If two of three panel members agree with the staff recommendation, the commission issues a reasonable cause finding. The executive director then sends the complainant and respondent a written determination citing the evidence in support of the finding and an invitation for them to participate in the conciliation process.

The director seeks to achieve conciliation between the parties to the complaint. The director develops an agreement containing provisions eliminating the alleged unlawful employment practice and providing appropriate relief for the complainant. If conciliation is acceptable to the parties involved, the commission closes the case, but if conciliation fails, either the commission, the complainant, or both may initiate civil action.

Exhibit 12 shows how the complaints processed by the commission in 1987 were closed. Most complaints were closed because of a no cause finding. Approximately 12 percent of the cases were closed after the parties agreed to voluntary settlements, and 10 percent were closed for administrative reasons. Seventeen complaints went through conciliation, with eight of these resulting in successful conciliation, while nine failed conciliation. In three of the complaints that failed conciliation, the commission had filed suit against the employer by the end of the fiscal year. In addition the commission had filed amicus briefs in two other complaints.

Exhibit 12

Disposition of Cases Processed by TCHR
FY 1987



Once TCHR closes a case, the entire case file is submitted to the appropriate EEOC district office for its review and approval. The EEOC has district offices in Dallas, Houston, and San Antonio. If EEOC agrees with the action taken by the state commission, it also closes the case. The EEOC issues its notice of right-to-sue

in federal court to individuals whose complaints have not been settled. Complainants, thus, may choose whether to pursue legal action in either state or federal court, but not in both. If EEOC finds a flaw either in the work or in the decision rendered, it may send the case back to TCHR for further investigation. In fiscal year 1987, EEOC accepted 99 percent of the state commission's cases.

Because the state commission has been in operation for four years, it may not have to continue sending cases for a full file review by EEOC. The state commission may qualify for limited review status, thus substantially reducing TCHR's work load in the EEOC review process. To qualify for the minimum review status, the commission must be evaluated for 12 months and must achieve a 95 percent acceptance rate for cases reviewed during that period. After TCHR qualifies, it would be subject to a full review of only a small number of charges. Also, EEOC would still review a case upon the request of a party aggrieved by a decision of the state commission.

The second procedure established in the Texas Commission on Human Rights Act is a process for taking action in court if the administrative process fails to resolve the complaint. These procedures are important because TCHR does not have authority under the Act to order an employer to take corrective action. The commission can require compliance with the Act only through the courts. These procedures also guarantee the legal rights of individuals who are dissatisfied with the outcome of administrative processing. Even during the administrative process, the ability to take judicial action or the threat to litigate may be important in helping individuals settle their complaints. Typically, complainants give up their right-to-sue when they agree to settle with an employer. Without access to courts, however, complainants have no leverage to help their bargaining position.

Under the Act, the commission may take an employer to court after a cause finding and after efforts to conciliate have failed. The commission can only bring legal action in state court, though it may also participate in private actions brought by individuals. Individuals have a separate right to take an employer to court if the commission dismisses the case or if the commission has not achieved a settlement or filed civil action within 180 days of the original filing date of the complaint. As mentioned earlier, after they have exhausted their administrative remedies, individuals have a choice whether to bring civil action in state or federal court. They may not bring action in both forums.

Since its creation, the commission has filed suit 14 times against the employers listed below:

- Texas Department of Mental Health and Mental Retardation (one case filed in 1985; two cases filed in 1986)
- Limestone County (four cases filed in 1985)
- State Board of Private Investigators and Private Security Agencies (three cases filed in 1988)
- Austin Community College (one case filed in 1988)
- private employers (three cases filed)

In addition, the commission has filed amicus briefs in six cases brought by individuals. However, the commission has no way of knowing how many civil

actions were filed by individuals. Conceivably, 85 percent of the complainants going through TCHR would have the right to bring civil action in either state or federal court.

In cases brought under the state Act, the court may order appropriate relief for the complainant, including:

- hiring reinstatement, or upgrading the applicant or employee, with or without backpay;
- admission or restoration of union membership;
- reporting on the manner of compliance; and
- payment of court costs.

The court may allow the prevailing party, other than the commission, to receive attorney's fees as part of costs. However, state agencies and political subdivisions are not liable for attorney's fees.

Technical Assistance and Training

The Texas Commission on Human Rights provides technical assistance and training to familiarize employers with equal employment opportunity law and prevent employment discrimination from occurring. The program has two related activities. First, technical assistance involves responding to questions about what is and is not allowed under EEO law. The commission's staff provides this assistance generally over the telephone, as questions arise.

The second activity, training, involves a more formal approach to informing people about EEO law. The commission offers training seminars to employers as a way of eliminating employment discrimination that occurs because an employer does not know the law. The commission delivers approximately 90 percent of its training efforts to state agencies requesting it, while the remaining 10 percent is delivered to private employers. The training program emphasizes the practical application of fair employment practices and is often tailored to the needs of the group being trained. Training sessions generally include a review of: the major laws prohibiting employment discrimination, personnel transactions covered under EEO law, case examples of employment discrimination, defenses available to employers, the state commission's procedure for processing complaints, and the employer's personnel policies and their compliance with EEO law. The agency's training program is supported entirely by payments of participants. The commission offers on-site training at a rate of $800 for an eight hour session and $400 for a four hour session for a group of 30 to 40 people. In fiscal year 1987, TCHR collected $44,707 in payments for training services and spent $32,687 to provide the training sessions. In that same year, the agency provided 314 hours of training to a total of 2,223 participants in attendance.

The commission anticipates that its training efforts will increase in fiscal year 1988. The agency is also expanding the areas in which it provides training. The commission has recently negotiated a contract with the Dallas-Fort Worth Airport for specialized EEO training and monitoring and a contract with the Texas Rehabilitation Commission for a complaint processing system for clients.

Focus of Review

The review of the Texas Commission on Human Rights included all aspects of the commission's activities. The review focused on the role the state should play in eliminating job discrimination and the ability of the commission to achieve this goal. A number of activities were undertaken to gain a better understanding of the commission. These activities include:

- discussions with commission staff;
- discussions with the staff of the U.S. Equal Employment Opportunity Commission (EEOC) in two district offices in Texas;
- telephone discussions with EEOC staff in Washington headquarters;
- discussions with staff of local human relations commissions in four cities;
- survey of statutes and rules and regulations of 46 states with human rights agencies;
- telephone survey of 12 states' human rights agencies; and
- survey of attorneys dealing regularly with the state commission.

From these activities, a number of issues were identified which generally fell into three areas. First, the review analyzed the state's approach to eliminating employment discrimination to determine the need for a state commission and to evaluate the appropriateness of the existing structure. Second, the review examined the state's human rights law to determine its adequacy in helping to eliminate job discrimination. Finally, the staff assessed the quality of the commission's procedures in implementing the state law.

Regarding the first area of investigation, the review addressed the need for a state commission operating along side of EEOC and four local commissions. After examining the existing framework for eliminating job discrimination in Texas and in other states, the review concluded that there is a need for the state commission in assuring fair employment practices.

One measure of need for the state commission is the number of employment discrimination complaints filed in Texas. Employment discrimination is a continuing problem in Texas as it is throughout the country. In 1987, over 11,700 total complaints alleging employment discrimination were filed in Texas.

Another perspective of the need for a commission may be seen in how other states deal with this problem. The review found that almost every state has recognized the need to deal with employment discrimination. When TCHR was created in 1983, Texas became the 45th state to establish a fair employment practices agency. In 1987, Virginia became the 46th state to create an agency of this type. Only four states, Alabama, Arkansas, Louisiana, and Mississippi, do not have fair employment agencies. One advantage of having a state commission is that the state can become involved in eliminating job discrimination for very little investment. Federal law encourages state and local governments to take action in this area on their own. The EEOC pays state and local agencies for most of the complaints they process. In 1987, EEOC provided 59.6 percent of the state

commission's total funding. In addition, EEOC prefers to deal with a single state commission rather than multiple local commissions. Once a state commission like TCHR is established, EEOC policy makes it difficult to fund newly-created local commissions.

Another advantage of having a state commission is local control. The state is not bound to follow all aspects of federal law, and may expand beyond federal law as Texas has in creating broader job protection for individuals on the basis of handicap than is found in federal law. The state also determines what procedures it will use to implement the state law. For example, the state guarantees the quick disposition of employment complaints by requiring that civil action be taken within one year of filing with an administrative agency. The EEOC has no statute of limitations for filing legal action for most employment discrimination cases it processes.

Finally, having a state commission has meant benefits to employers, complainants, and the state. The state commission processes complaints more quickly than EEOC and the local commissions. The state commission processes contract complaints in an average of 118 days, while EEOC's average processing time is over twice this rate. The processing time for local commissions ranges from a low of 180 days per complaint in Fort Worth to a high of 207 days in Corpus Christi. The faster processing time by the state commission means that relief gets to complainants more quickly while it also reduces the period of time for which employers are liable if they should lose the case. The commission estimates that it secured $627,592 in benefits to complainants through its administrative efforts in 1987.

Tangible benefits also result from the training program conducted by the agency. As a result of EEO training provided to state agencies, the commission estimates that it has saved the state approximately $73,000 because of a reduction in the number of employment complaints filed after they receive training.

In addition to evaluating the need for the function performed by the agency, the review concluded that performing the function through a separate agency was appropriate. Several alternatives that had been considered in the past, such as placing the commission within the Texas Employment Commission or the Department of Labor and Standards, were examined. While these locations have merit, the review found that the commission's existing structure is also appropriate. Of the 46 states with fair employment agencies, 34 have independent agencies.

In the second area of investigation, the review identified several issues relating to adequacy of employment discrimination law in Texas. The review examined the law to assure that the interests of employees and employers are being considered equally. Regarding the policy-making structure of the commission, the review found that some classes of individuals who are protected from employment discrimination are omitted from the statutory provision regarding membership of the commission. A recommendation that would provide for a better balance of interests on the commission addresses this problem. The review also focused on determining where the rights of individuals to be protected from employment discrimination end and where the rights of employers to control their operations begin. The review found that changes were needed to clarify who should be protected from employment discrimination under the state Act. Other changes identified in the review would make the remedies available to complainants more equitable for all individuals. Finally, the review addressed the way employers may establish occupational qualifications which exclude entire classes of individuals from consideration for

employment. The recommendations which make these changes are contained in the report.

In the third area of investigation, the review identified issues concerning the commission's procedural efforts to implement the Act. In this area, the review evaluated the commission's ability to enforce the law and the adequacy of its investigative procedures. This activity is the largest part of the commission's operations. The review identified several changes that would improve the commission's procedures in implementing the state Act. First, the review found that the commission's procedures for giving complainants notice of their right to sue in state court should be improved. The commission's enforcement authority could be improved if the commission could conduct studies of state agencies' EEO policies and programs. The review also indicated that improvements were needed in the way the commission provides access to its files. Finally, the review concluded that the rights of complainants to take legal action should not be jeopardized by any failure on the part of the commission to act on a complaint. The recommendations which address these findings are described in the report

The estimated fiscal impact to the state that would result from the recommendations contained in the report is approximately $8,000 per year.

Sunset Commission Recommendations for the

Texas Commission on Human Rights

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

1. **The membership of the commission should represent a diverse background with respect to all classes of individuals who are protected under the Texas Commission on Human Rights Act. To achieve this diverse background, the statute should be amended to specify that the governor should strive to achieve representation with respect to handicap, religion and age.**

The state Act directs the governor to strive to achieve representation on the Texas Commission on Human Rights with respect to economic status, sex, race, and ethnicity. This provision does not mention individuals protected from discrimination because of handicap, religion, and age. Including these groups with other groups that are already listed in the statute will make it clear that the interests of all individuals protected under the Act are of equal concern in making appointments to the commission.

Overall Administration

The review of the agency's overall administration indicated that no changes are needed.

Definition of Employer

2. **The statute should be amended to expand the definition of "employer" to include all state agencies, counties and cities, regardless of the number of employees they have.**

State and federal fair employment laws prohibit job discrimination by public and private employers with 15 or more employees. Employers with fewer than 15 employees are not covered. Changing the definition of employer to apply the state Act to state agencies, counties and cities would satisfy two public policy objectives. First, this change would help assure that public funds, collected from all citizens, would not be used in a way that discriminates against any citizen. Second, by making this change, the government would set an example to private sector employers for eliminating employment discrimination.

Employment Discrimination in Apprenticeship Programs

3. **Additional classes of individuals should be protected from discrimination in apprenticeship programs. The statute should be amended to prohibit discrimination in apprenticeship and job training programs because of:**

- handicap; and
- age, for individuals 40 to 55 years of age.

The state Act prohibits employment discrimination on the basis of race, color, religion, sex, national origin, age, or handicap. It generally applies to employers, employment agencies, labor organizations, and apprenticeship and job training programs. However, the Act omits discrimination on the basis of handicap or age from the section dealing with apprenticeship programs. This provision would assure that persons who are already protected from discrimination on the basis of handicap under the Act receive the same level of protection in job training programs. By protecting people 40 to 55 years old, the provision would also assure that only those individuals most likely to provide productive labor after completing the job training program would be protected from discrimination based on age.

Definition of Handicap

4. The definition of handicap in the Texas Commission on Human Rights Act should be changed to continue the broad interpretation under which the commission has operated. The definition should be generally patterned after the language used by the federal government in the Federal Rehabilitation Act of 1973. Under this definition, the statute should be amended to define a handicapped person as one who:

   - has a physical or mental impairment substantially limiting one or more of the person's major life activities;
   - has a record of such impairment; or
   - is regarded as having such an impairment.

Since the passage of the Texas Commission on Human Rights Act, the definition of "handicap" has been interpreted broadly to include many mental and physical conditions without regard to severity. Recently, the Texas Supreme Court has adopted a much narrower interpretation, which limits the protection given to individuals based on handicap to those with severe impairments. The ruling raises concerns that employment protection will be limited to just those individuals with severe impairments who would probably not be qualified anyway for most jobs. By using the definition of handicap in the Federal Rehabilitation Act, the state Act would continue the same level of protection given to individuals on the basis of handicap that existed before the Supreme Court ruling.

Protection from Age Discrimination

5. The statute should be amended to protect individuals over the age of 70 from employment discrimination based on age.

The state Act currently protects individuals between the ages of 40 and 70 from age discrimination. Federal law, however, has recently been amended to protect all individuals over 40 from job discrimination. By eliminating the upper age range in the state Act, Texans over 70 would have basically the same protection under state law as they already have under federal law.

Attorney Fees

6. **The statute should be amended to authorize courts to require the payment of attorney's fees by the state and political subdivisions.**

In complaints requiring legal action, the court may award attorney's fees to the prevailing party to cover court costs. However, the Act exempts the state and political subdivisions from this requirement. Requiring the state and political subdivisions to pay attorney's fees would make public employers liable for costs to the same extent as private employers

Back Pay Awards

7. **The statute should be amended to specify that back pay awarded as a result of an employment discrimination case should be reduced by any amount of workers' compensation benefits received during the period covered by the discrimination award.**

The statute already specifies that the amount of back pay awarded to the victim of a discriminatory job action shall be reduced by any interim earnings or unemployment compensation received since the occurrence of the discriminatory action. The recommendation would create the same reduction for workers compensation payments received.

Bona Fide Occupational Qualifications

8. **A "bona fide occupational qualification" used by employers in making employment decisions should not exclude an entire class of individuals from consideration unless there is adequate reason to believe that no member of that class could perform the job. The definition of a bona fide occupational qualification in the statute should be changed to mean a qualification for which there is a factual basis for believing that no person of the excluded group would be able to perform the job with safety and efficiency.**

Both state and federal law provide for limited exceptions to anti-discrimination provisions in employment. An employer may exclude persons from employment based on "bona fide occupational qualifications". However, this is allowed only under carefully defined circumstances which prevent an employer from using the exemption to improperly exclude persons from employment.

The current statutory language could be construed to give the employee an improper degree of latitude in excluding persons from employment. The recommendation would eliminate this possibility.

Notice of Right-to-Sue

9. **The statute should be amended to require the commission to inform complainants 180 days after receiving the complaint that they may request notice of their right to sue in state court. The commission would be required to issue the notice once it is requested by the complainant.**

The statute currently requires the commission to issue notice giving persons the right to sue when the commission dismisses the complaint or if the commission has not resolved the complaint or taken legal action with 180 days of the filing date of the complaint. In practice, however, the commission takes longer than this to issue this notice in many instances, particularly when it believes a violation has occurred. Complainants who want to take legal action on their complaint should not have to wait longer than 180 days to be able to take legal action. This provision would establish a mechanism to inform complainants of their right to take legal action, while allowing the commission to continue processing complaints where no civil action is pursued.

10. **The commission should be able to expedite the issuance of the notice giving certain individuals the right to sue in state court. The statute should be amended to require the commission to issue the notice of right to sue earlier in its process when:**

   - **individuals claim to be victims of employment discrimination because of their status as having a life threatening illness and;**
   - **the executive director certifies that administrative processing of any complaint will not be completed within 180 days of the filing date.**

The statute currently requires the commission to issue notice giving individuals the right to sue when the commission dismisses a complaint or if the commission has not resolved the complaint or taken legal action within 180 days of the filing date. The commission does not expedite its processing of complaints brought by persons with a shortened life expectancy. This proposal would allow persons who feel discriminated against because they have a life-threatening illness such as cancer or AIDS to bring legal action more quickly. Under this proposal, the notice giving these persons the right to sue in state court must be issued within five working days of the date the commission receives the complaint. The executive director would be authorized to issue this notice on behalf of the commission.

As a second part of this change, any complainant would be allowed to bring legal action more quickly if the executive director certifies that the complaint cannot be processed within 180 days of the filing date.

Studies of EEO Policies

11. **The commission should have the authority to conduct studies regarding equal employment opportunity policies and programs of state agencies. To focus the studies which may be undertaken, the statute should be amended to:**

- require the commission to develop an inventory of documented EEO policies and programs of state agencies each biennium; and

- authorize the commission to conduct studies of selected agencies' EEO policies and programs by resolution of the legislature or by action of the governor.

Though many state agencies have developed EEO policies and programs, no agency is responsible for monitoring these policies and programs. The commission has the expertise to study and report impartially on EEO issues of state agencies. By using this expertise as directed by the legislature or the governor, the commission may be able to identify and resolve possible patterns of employment discrimination in state agencies before complaints arise.

Access to Case Files

12. Complainants and respondents should have reasonable access to documents and evidence in the commission's files relating to cases to which they are parties. The statute should be amended to:

    - require the commission to develop rules regarding access to commission records;

    - require the executive director to make information in the files available upon written request following final action of the commission or if a civil action relating to the complaint has been filed in federal court; and

    - specify that the commission may not give access to files on complaints in which a voluntary settlement or conciliation is reached.

The statute currently prohibits the commission from releasing information regarding a complaint under investigation except as part of a proceeding under the Act. In practice, the commission releases the information in its files when it dismisses a complaint or when it discovers that a civil action has been filed in federal court on the complaint. The information thus becomes available to use in legal proceedings in either state or federal court. This provision would assure that these practices continue, while safeguarding information on cases closed through negotiated settlement or conciliation. The recommendation is consistent with the existing provisions for secrecy of the commission's files, and it is also consistent with EEOC's policies regarding access to files.

Timeframe for Judicial Action

13. The statute should be amended to specify that a failure or omission on the part of the commission will not adversely affect a complainant's right to seek judicial action under the Act.

This recommendation would make it clear that a complainant would not lose his or her right to take judicial action under the state law because of any failure or

omission on the part of the commission. For example, under the Act, if a complainant wants to take legal action, he or she must do so within 60 days of receiving the notice giving them the right to sue, but no later than one year from the date of filing the complaint with the commission. However, under this proposal, if the commission did not issue the right-to-sue notice until 310 days after receiving the complaint, the complainant would still have 60 days -- or until after the one-year statute of limitations -- to take legal action.

Change "Handicap" to "Disability"

14 **The Texas Commission on Human Rights Act should be amended to change references to the word "handicap" whenever they appear to "disability".**

This recommendation would make the statute reflect current usage of the terms referring to individuals protected for employment discrimination on the basis of physical or mental impairments. This recommendation is not meant to change the level of protection given to individuals under the Act.

Other Changes Needed in Agency's Statute

15. **The relevant across-the-board recommendations of the Sunset Commission should be applied to the agency.**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. The "across-the-board" recommendations have been applied to the Commission on Human Rights.

16. **Minor clean-up changes should be made in the agency's statute.**

Certain non-substantive changes should be made in the agency's statute. A description of these clean-up changes in the statute are found in Exhibit 13.

Exhibit 13

Minor Modifications to the Texas Commission on Human Rights Statute

Article 5221k, V.T.C.S.

Change	Reason	Location in Statute
Remove language prohibiting the commission from meeting and exercising power in a political subdivision having a local commission.	To enable the commission to continue meeting in Austin.	Section 3.02, Subsection (2)
Delete appropriation provision for 1984-85 biennium.	To remove language that expired in 1985.	Section 10.04

TEXAS INDIAN COMMISSION

Texas Indian Commission

Background and Focus of Review

Creation and Powers

The roots of what is now the Texas Indian Commission go back to the first days of the Republic of Texas. From the republic's inception, a series of legislative enactments dealt with various aspects of Texas' Indian population. The legislation covered topics ranging from authorizing agents to seek peaceful coexistence with the Indians through treaties and payments to authorizing appropriations for ammunition to fight off the "depredations of hostile tribes." The Republic of Texas first developed treaties with Indian tribes in 1836 and recognized the Alabama tribe specifically in 1840.

After statehood, the special relationship with the tribe was allowed to continue as an exception to the federal Indian Tribes Intercourse Act of 1834 which specified that only the federal government was allowed to deal with Indian tribes. Under this relationship, in 1854, the Texas legislature purchased 1,280 acres of land in East Texas, and deeded it to the Alabama Indians but prohibited the tribe from selling the property.

From 1854 to 1928, the state began a period of sporadic assistance to the tribe and employed agents to work on the reservation. In 1928, the Alabama reservation boundaries were altered when the tribe petitioned for and received federal trust status. As a part of the trust status the federal government purchased an additional 3,071 acres of land for the tribe, adjacent to the original tract. Under the new arrangement, both the federal and state government provided assistance and funding to the tribe. In 1938, the tribe became officially known as the Alabama-Coushatta Indians, according to the tribal constitution.

In 1953, under the Eisenhower administration, policies were adopted to relieve the federal government of its duty to supervise the lives and property of Indians. The federal government terminated its trust relationship with reservations, started sending Indian children to public schools, and implemented various programs aimed at getting Indians off the reservations and relocated to urban areas. These actions had two primary impacts on the Indian population in Texas. First, the non-reservation Indian population began to increase and became centered around Dallas which was a federally designated relocation center. Second, the state accepted trust responsibility from the federal government for the Alabama-Coushatta Indians in 1954. The state assumed trust for the 3,071 acre tract of land purchased by the federal government. The tribe, however, retained title to the other 1,280 acres. Federal statutes authorized the tribe to convey those acres to the state, but the tribe decided to retain the land. The governor designated the Board of State Hospitals and Special Schools as the state agency responsible for the trust.

Between 1965 and 1968, the state clarified and expanded its responsibilities to its Indian population. In 1965, a separate agency was created to assist the Alabama-Coushatta Indians which were, at that time, the single federally recognized tribe in Texas. In 1968, a second tribe, the Ysleta del Sur Pueblo (Tigua) Indian tribe, was federally recognized and the federal trust responsibility for this tribe was transferred to Texas.

Until 1984, the responsibility of the Texas Indian Commission was directed toward providing a management structure through which the Alabama-Coushatta and Ysleta del Sur Pueblo (Tigua) Indian tribes could develop their tribal enterprises and secure federal and state grants. In 1984, an additional tribe, the Texas Band of Kickapoo Indians (Eagle Pass), became federally recognized. The trust responsibility for the Kickapoo tribe was not transferred by the federal government and the state's role in assisting this tribe was limited to providing technical assistance that did not conflict with the band's status as a federally recognized Indian tribe or its relationship with the United States government. No state funds have been appropriated for the Kickapoo and the commission has functioned as a link between the Kickapoo and state agencies.

In 1985, the Alabama-Coushatta and Ysleta del Sur Pueblo Indian tribes, concerned over their future status with the state and dissatisfied with the general level of state funds and services, began the process to restore their federal trust status. The trust status was restored in 1987 and the 70th Legislature in 1987 passed S.B. 610 to implement the transition to federal status. The legislation provides for the transfer by the state of all trust responsibilities for those two tribes to the United States. Transfer of the trust involves a number of steps. First of all, all assets held in trust by the state for the benefit of those tribes, including all real property, buildings, and improvements on that property, must be transferred by the governor to the Secretary of the Interior. It also includes the transfer of all equipment and other items on both reservations to the respective tribes. Currently, real property includes the Ysleta del Sur Pueblo 97-acre reservation, and the 4,351-acre Alabama-Coushatta reservation. The Texas Indian Commission is to assist the governor and the tribes during the transition process. The transfer should be completed before the end of fiscal year 1989.

Policy-making Structure

The Texas Indian Commission is composed of three members, at least one of whom must be an Indian. Members of the commission are appointed by the governor with the advice and consent of the senate. Each member holds office for a term of six years. The chairman of the commission is elected by the members for a two-year term. The commission hires the executive director, reviews and approves the agency's operating budget, hears activity reports from each of the reservations, and adopts resolutions pertaining to Indian affairs issues. The commission is required by statute to hold at least three public meetings per year.

Funding and Organization

The headquarters of the Texas Indian Commission is located in Austin. The commission employs 14 full-time employees of which two are in the administrative office in Austin, two on the Alabama-Coushatta reservation near Livingston, and 10 on the Ysleta del Sur Pueblo (Tigua) reservation in El Paso. The commission appoints an executive director who is a full-time administrator and responsible for the management and supervision of the agency. The executive director employs a superintendent on each reservation who is a program administrator and administrator for the tribal council.

Expenditures for the commission in the fiscal year ending August 31, 1987 were $488,143, and the budget for fiscal year 1988 is $450,418. In 1987, $358,745 was expended from general revenue funds to the commission administration and the Ysleta del Sur Pueblo reservation. The balance of $129,398, designated for the

Alabama-Coushatta reservation, was appropriated from the Alabama-Coushatta Mineral Fund No. 157. For fiscal year 1988, $292,144 is appropriated from general revenues and $158,274 from the Alabama-Coushatta Mineral Fund No. 157. Again, the general revenue funds are for the administration of the commission and the Ysleta del Sur Pueblo reservation, and the mineral fund for the administration of the Alabama-Coushatta reservation. Prior to fiscal year 1986, and resuming in fiscal year 1989, the state provided general revenue funds for the Alabama-Coushatta reservation. Exhibit 1 shows the commission's appropriations since fiscal year 1974. Total expenditures for the 16-year period are $7,439,775.

Exhibit 1

State General Revenue Expenditures Through the Texas Indian Commission

Year	Alabama-Coushatta Reservation	Ysleta del Sur Pueblo (Tigua) Reservation	Administrative Office***	TOTAL
1974	$ 245,468	$ 156,771	$	$ 402,239
1975	273,424	177,487		450,911
1976	194,685	262,245	40,014	496,944
1977	177,641	257,774	42,938	478,353
1978	107,702	236,876	46,969	391,547
1979	36,400	238,382	53,721	328,503
1980	95,946	260,151	72,640	428,737
1981	109,946	283,009	82,566	475,521
1982	133,649	290,749	88,957	513,355
1983	135,269	286,851	88,154	510,274
1984	133,850	292,135	102,892	528,877
1985	148,584	315,810	105,989	570,383
1986	69,478*	297,438	107,083	473,999
1987	129,398*	257,797	100,948	488,143
1988**	158,274*	209,160	82,984	450,418
1989**	158,274	209,990	83,307	451,571
TOTAL	$ 2,307,988	$ 4,032,625	$ 1,099,162	$ 7,439,775

* Out of the Alabama-Coushatta Mineral Fund No. 157.

** Budgeted.

*** During 1974 and 1975, there was no separate appropriation for the commission's administrative office.

The Alabama-Coushatta Mineral Fund No. 157 is made up of revenue collected on mineral leases from tribal lands. Natural gas was discovered on Alabama-Coushatta tribal lands in 1983. At that time it was estimated that the tribe could be receiving mineral funds up to $160,000 per month for the next ten years. Consequently, the legislature ceased appropriating general revenue funds for the

Alabama-Coushatta reservation beginning with fiscal year 1986. Although the legislature could not directly appropriate the mineral fund to the tribe because it is a trust fund, the appropriations bill and its riders for the TIC, in essence, allowed the tribe to purchase the services of the state employees on the reservation. By the time the 70th Legislature convened in 1987, however, it was clear that mineral revenues would not reach the amounts that were at first projected. Therefore, general revenue appropriations to the Alabama-Coushatta reservation resume in fiscal year 1989.

Programs and Functions

Assistance to State Trust Tribes

The main function of the TIC is to carry out the state's trust responsibility for its two Indian tribes. This responsibility involves protecting the legal status, land, property, resources, and lives of the tribal members. The TIC does this by hiring a superintendent for each tribe to administer and supervise the reservation, and to implement the commission's policies. The superintendent hires a financial officer and other staff, according to the tribe's needs and budget, to assist the tribal council in improving their health, educational, agricultural, business, and industrial capacities. For example, tribal enterprises on the Ysleta del Sur Pueblo (Tigua) Indian reservation include two restaurants, an arts and crafts center, and a spice plant. In 1987, total sales of these businesses amounted to approximately $1,000,000. The Alabama-Coushatta's tribal enterprises include a service center, an amusement center, a gift shop, a restaurant, a camp ground, a pottery plant, timber sales, and an oil and gas lease. Total sales for the Alabama-Coushatta tribal enterprises in 1987 were $1,020,381. In the context of assisting the tribes, the TIC is authorized to receive gifts or donations, and to negotiate with any agency of the United States to obtain grants for the tribes' development. The only gifts, grants, or donations the TIC has received directly for the development of the reservations were a series of small grants made by the Moody Foundation in the 1970's. These were annual amounts of $500 to $5,000 given to the TIC administrator on the Alabama-Coushatta reservation for the tribe's theatre production.

The bulk of federal grants for Indians are given to qualifying Indian tribes or Indian organizations, not to state agencies. The TIC does not actually receive any federal grants. What the TIC does is provide technical assistance to each of the tribes in identifying and applying for those grants and provide for the management structure necessary to receive grant awards. The superintendent and fiscal officer at each reservation bear the primary responsibility of writing the grant applications and administering any grants received (the funds go to the tribes, not the TIC). Currently, the Alabama-Coushatta receive a $76,000 grant from the Administration for Native Americans, a $32,000 community service block grant from the Texas Department of Community Affairs, and a $274,000 grant from the federal Department of Housing and Urban Development for housing rehabilitation. The Ysleta del Sur Pueblo Indian tribe has a $35,000 contract with the Texas Rehabilitation Commission and a $200,000 grant pending. Both tribes are also designated as prime sponsors for the Indian Job Training Partnership Act program (JTPA).

Housing Authority

Another function the commission has served is that of Indian Housing Authority. The U.S. Department of Housing and Urban Development (HUD) currently has housing development projects at each of the reservations. These are

operated under the terms of HUD's special Indian Housing Program. The residents of the homes make monthly payments and eventually own the homes. These payments are deposited in a local operating account, out of which the local housing manager's salary and expenses are paid. The balance of the funds are eventually sent to HUD and that agency is responsible for auditing the program. The TIC receives regular reports from the housing managers, and approves their budgets and annual contracts with HUD. Currently, there are 127 units on the Alabama-Coushatta reservation, of which 34 are already paid off. The average monthly payment for a unit is $131. The Ysleta del Sur Pueblo (Tigua) reservation has 112 units, all of which are currently making payments which average $189 per month. Because the state holds title to the tribal lands where the homes are located in trust, the Texas Indian Commission was designated as the Housing Authority when the program was established. Texas is unique in this situation. When the trust relationship with the state is terminated, each of the reservations will establish its own housing authority, the current housing managers will be referred to as housing directors, and they will report to the tribal housing authority instead of the TIC. There are no state funds involved in this housing authority function.

Other Functions

Although the appropriations to the TIC have been geared toward providing an administrative infrastructure for the reservations, the statute does authorize the TIC to engage in a number of other functions. These include assisting the Texas Band of Kickapoo Indians in improving their welfare without conflicting with their status of federally recognized tribe; promoting unity and understanding among American Indians in the state; and increasing the understanding of American and Texas Indian culture and history among the general public. To accomplish this, the TIC is authorized to conduct research in cooperation with other state agencies; to prepare and disseminate information; and to cooperate with state and federal agencies in matters relating to Indian affairs. Examples of activities the TIC has undertaken in this area include a survey of Indian affairs offices throughout the nation; the development of working definitions of "Indian" and "Indian business" for use by other state agencies; and assistance provided to the Texas Historical Commission on issues concerning Indian burial sites. The commission and staff have engaged in these activities to varying degrees as time and funding have permitted.

Focus of Review

The review of the Texas Indian Commission focused on three general areas of inquiry: 1) whether the need which led to the commission's creation still exists; 2) whether another need to continue the commission exists; and if so, 3) whether the duties of the commission could be carried out by other state agencies. A number of activities were undertaken to gain a better understanding of the agency and to gain answers to the areas of inquiry. These activities included:

- discussions with the executive director and the reservations' superintendents;
- visits to the three reservations;
- discussions with members of the Alabama-Coushatta, Ysleta del Sur Pueblo (Tigua) and Kickapoo tribal councils;
- phone discussions with officials of other states' Indian affairs offices;

- discussions with persons in other state agencies knowledgeable of the agency's operation and functions;
- a meeting with individuals from the Dallas-Ft. Worth area knowledgeable of the urban Indian population situation and needs;
- phone discussions with officials of federal agencies that fund Indian organizations and programs;
- discussions with independent individuals in the state involved in Indian affairs; and
- review of past legislative issues, attorney general opinions, and relevant evaluation studies and reports.

Overall, the review indicated that the need that led to the creation of the original commission no longer exists. The United States Department of the Interior, through the Bureau of Indian Affairs, will now carry out the commission's primary purpose of administering the trust of the state's Indian tribes. However, the review determined that other needs of the Indian population exist and should be addressed by the commission. The review concluded that the commission should be continued for a four-year period. During this period, the commission should develop a plan to become a private, non-profit foundation. Private, non-profit Indian organizations have proved to be efficient in the delivery of services and assistance to the non-reservation Indian population in Texas and other states. In addition, the commission should be expanded to add representation of the different American Indian populations of the state.

Since the trust responsibility for the three Texas tribes now rests with the federal government, the commission and its activities in the state should now be redirected. The commission should assist the three Texas tribes in a manner that does not interfere with or duplicate the assistance functions of the federal government. The commission should also increase its efforts to assist the non-reservation population in obtaining general services provided for low-income or disadvantaged individuals. Further, it needs to encourage American Indian organizations to apply for funding from programs designed to assist such organizations and provide technical assistance to enable the creation of non-reservation Indian organizations. Lastly, the commission needs to provide general support to other state agencies and the general public regarding American Indian affairs.

It is anticipated that there would be an annual savings of approximately $258,000 per year if state funding to the two reservations is eliminated and the agency's administration budget is approximately doubled to meet its new duties.

Sunset Commission Recommendations for the
Texas Indian Commission

CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

1. **The statute should be changed to require the commission to:**

   - **develop a plan to become a private, non-profit foundation;**
   - **submit the completed plan to the Texas Sunset Advisory Commission not later than September 1, 1991; and**
   - **provide a September 1, 1993 sunset review date for the commission.**

Private, non-profit intertribal organizations have proved to be effective in providing services and assistance to Indians. These organizations qualify for funding from federal, state and local governments, as well as from other private, non-profit organizations. This approach will provide the commission time to develop a plan to transform the TIC to a private, non-profit foundation, including suggested sources for funding. In developing the plan, the TIC would be authorized to conduct needs assessment research to determine the types of programs that would be beneficial to Texas Indians and which could be performed by such a foundation. The next sunset review of the Texas Indian Commission, in 1993, will focus on the developed plan.

2. **The statute should be amended to change the composition of the commission as follows:**

   - **one member of the Alabama-Coushatta Indian Tribe of Texas;**
   - **one member of the Ysleta del Sur Pueblo (Tigua) Indian Tribe of Texas;**
   - **one member of the Texas Band of Kickapoo Indians; and**
   - **three American Indians who reside in different geographic areas of the state, and who are not members of the three Texas tribes.**

Currently, only one of the three members of the commission is required to be an Indian, and the statute does not specify that this member must be a member of a Texas tribe. This approach will provide representation on the commission of the American Indian population in the state, from both the reservation as well as the non-reservation population.

3. **The statute should be changed to provide a definition of "Indian" as follows:**

   - **an Indian is a person who is an enrolled member of a federally or state recognized American Indian tribe, band, nation, rancheria, or pueblo or who is an Alaska Native and a member of an Alaska Native Village or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act.**

This change, patterned after federal law, will provide guidance for appointment of members to the commission as well as who will be served or assisted by the agency. Since the overall purpose of the commission is changing, the statute should provide a frame work that enables the commission and agency to structure its work efforts.

Overall Administration

The review of the agency's overall administration indicated that no changes are needed.

Agency Responsibilities

4. **The statutory responsibilities of the commission to administer the trusteeship of the Alabama-Coushatta and Ysleta del Sur Pueblo Indian Tribes should be repealed.**

The responsibility for assisting tribal or reservation Indians now rests with the federal government. The federal government has assumed trusteeship for all three Texas Indian tribes and will carry out the responsibilities formerly exercised by the state.

5. **The statute should be changed to require the commission to:**

   - **provide technical assistance, general support, and advocacy to the three Texas Indian tribes; and**

   - **provide technical assistance and support to non-reservation American Indians and American Indian organizations in the state.**

These changes will require the commission to assist the three Texas tribes in a manner that does not interfere or conflict with the tribes' status of federally recognized and assisted Indian tribes. This is consistent with the relationship the commission has maintained in the past with the federally-recognized Kickapoo. In addition, the commission will promote and encourage non-reservation Indians to apply for funding from public and private programs especially designed to provide services to these groups. Under this approach the commission will also increase the access of Indians to services provided for the general population.

6. **The statute should be changed to authorize the commission to:**

   - **assist in the establishment of non-reservation American Indian organizations; and**

   - **provide technical assistance and support to other state agencies and the general public.**

This approach authorizes the commission to help Indians, particularly those in urban areas, to form Indian organizations to assist or provide services to the Indian population in the area. The commission will also be authorized to cooperate with governmental entities and the general public in issues related to Indian affairs. For example, the commission may provide advice on legal issues related to American Indians, review grant applications submitted by American Indian organizations, review grant applications for programs that would benefit American Indians, and provide information or referral services to the general public related to American Indians.

Other Changes Needed in Agency's Statute

7. **The relevant across-the-board recommendations of the Sunset Advisory Commission should be applied to the agency.**

Through the review of many agencies, the Sunset Commission has developed a series of recommendations that address problems commonly found in state agencies. These "across-the-board" recommendations have been applied to the Indian Commission.

INTERAGENCY COUNCIL FOR GENETIC SERVICES

Interagency Council for Genetic Services
Background and Focus of Review

Creation and Powers

The Interagency Council for Genetic Services (IACGS) was created by S.B. 257 during the 70th legislative session. Genetic services have been of interest across the nation for many years. More than 5,000 genetic disorders have been identified which affect approximately three percent of the general population. Examples of some of the more prevalent disorders include Down's syndrome, PKU, spina bifida, congenital heart disease, sickle cell anemia, and cystic fibrosis. Many genetic disorders are preventable through a variety of genetic services, such as genetic screening of potential parents, prenatal services or newborn screening. The prevention and/or identification of one severe case of genetic disease through a genetic study can potentially save the state $1.53 million in long-term care costs. The cost savings that could be realized through an efficient system of genetic service delivery as well as the decrease in human suffering, has made the need to evaluate and coordinate the genetic services delivery structure a topic of continuing interest in Texas.

The genetic services system in the state that has developed since the mid-70's has three distinct components: state agencies, medical schools, and private providers. Efforts to ensure that the state has a cost-effective, coordinated service delivery structure have been sporadic. In 1983 the Community Health Foundation was engaged by a number of state agencies to conduct a review of genetic services provided through TDH and TDMHMR to identify strengths and weaknesses, to assess costs incurred in carrying out genetic activities and to recommend methods of improving program performance and productivity. Many of the recommendations that came from this report, the Campbell Report, highlighted a need for greater coordination among genetic service providers.

In 1985, the Texas Genetics Network (TEXGENE) was established. This was an informal group composed of genetic service providers, agency representatives, consumers and professionals. At the same time, federal funds through the Bureau of Maternal and Child Health, Health and Human Services Administration became available to coordinate the provision of genetic services through regional networks. At this time,Texas was the only state that was not in a regional network, although federal officials indicated that Texas was large enough to qualify as a separate region.

In 1987, TEXGENE attempted to secure one of these federal grants but was unable to do so. Federal officials at the time perceived Texas as having a fragmented service delivery structure split between the Texas Department of Mental Health and Mental Retardation, the Texas Department of Health and private providers.

The apparent lack of coordination in the past, led to the creation of the IACGS. The legislature directed the council to:

- survey current resources for genetic services in the state;

- initiate a scientific evaluation of the current and future needs for the services;
- develop a comparable data base among providers that will permit the evaluation of cost-effectiveness and the value of different genetic services and methods of service delivery;
- promote a common statewide data base to study the epidemiology of genetic disorders;
- assist in coordinating statewide genetic services for all state residents;
- increase the flow of information among separate providers and appropriation authorities; and
- develop guidelines to monitor the provision of genetic services, including laboratory testing.

These activities were intended to provide a formal method for coordinating services and comparing costs in order to determine the most efficient and cost-effective method for delivering genetic services and ensuring that a comprehensive network of genetic services is available for all state residents.

Policy-making Structure

The Interagency Council for Genetic Services consists of seven members. Three of the members are representatives from each of the following state agencies, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Department of Human Services. Each of these members are appointed by the commissioner of their respective agencies. The remainder of the council membership consists of one representative from the University of Texas system who is appointed by the Chancellor of the University of Texas system; one representative from the public and private entities that contracts with the Texas Department of Health, who is elected from their membership; and two members that are consumers, family members of genetic service consumers or representatives of consumer groups, appointed by the governor.

The representative from the public/private entities and the two consumer members serve two-year terms and may be reappointed or reelected. The state agency representatives and the University system representative serve at the pleasure of their appointing body. The council is mandated to meet at least quarterly.

Funding and Organization

Currently, the IACGS does not receive any direct state appropriations. The cost of clerical and advisory support staff is shared by the agencies represented on the council. The council's state agency representatives worked together to secure $10,000 from their respective agencies to fund a study of the costs of genetic services based on calendar year 1987 data. Additionally, the council was recently awarded the long sought federal grant in the amount of $245,049, to carry out a number of duties :

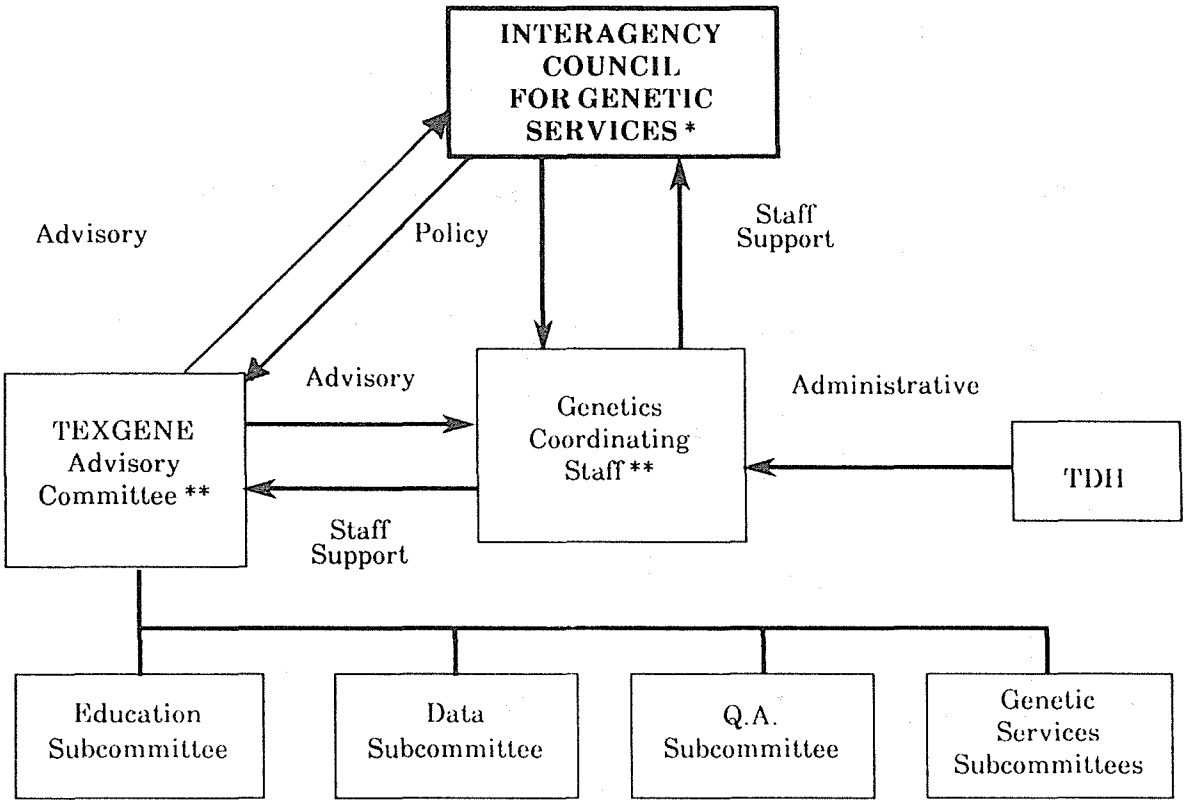
- coordinate and share resources among service providers ;
- collect data on genetic services;

- assure quality laboratory standards; and
- increase professional and public awareness of genetically related diseases.

These funds will be used to pay for various expenses associated with continuing the mandated activities of the council, and to hire three staff people for the Genetics Coordinating Office. The council will not have any employees until the staff people authorized under the new federal grant are hired. Exhibit 1 depicts the organizational structure of the council and related advisory committees.

Exhibit 1

Interagency Council for Genetic Services Structure



* Funding provided for travel to council members through the federal grant.

** Funding provided for genetics coordinating staff and activities of advisory committee and subcommittees through the federal grant.

TEXGENE has assisted the council since the council's creation. This group of genetic service providers and other professionals serves as an advisory committee to the council.

Focus of Review

The review of the Interagency Council for Genetic Services focused on two primary areas. First, consideration was given to the need to continue the council. This assessment concluded that:

- although in operation only a short period of time, the council has been active in working to accomplish the specific objectives set out for it in S.B. 257 of the 70th Legislature in 1987;
- useful dialogue is occurring as a result of the council's operation between the many facets of the genetic services delivery system; and
- the existence and work of the council was instrumental in obtaining a $245,000 federal grant for staff support for the council and coordination of the state's genetic services efforts.

Second, the review examined whether or not the council should be given additional duties and powers to enable it to better carry out its coordination duties. As part of this area of inquiry the review concluded that the council's statute and operations need adjustment to:

- require the council to study and determine the most cost-effective and functional method or methods for the state's delivery of genetic services;
- require the council to develop a biennial resource allocation plan to guide agencies and decision makers on the distribution of funds for genetic services;
- effect better coordination between the council and agencies serving persons with environmental genetic disorders; and
- encourage the council to obtain broad based information through health insurance companies or other sources regarding genetic services provided or not provided by the private sector.

Overall, the review concluded the council should be continued for a six-year period to carry out its original duties as well as those identified above. A shorter time frame for sunset review would give the legislature an opportunity to assess the effort of the council.

The recommendations contained in the report would not result in increased state expenditures on behalf of the council.

Sunset Commission Recommendations for the
Interagency Council for Genetic Services

CONTINUE THE AGENCY WITH MODIFICATIONS

1. **The council should determine the most cost-effective and functional method(s) for delivering the state's genetic services. The council's statute should be amended to:**

   - **require the council and its support staff to conduct a study to determine the most cost-effective and functional service delivery method or methods for the state to deliver genetic services;**

   - **require the study to include an examination of the costs, benefits and disadvantages of the methods used by the Genetic Screening and Counseling Services program of the Department of Mental Health and Mental Retardation, the state's medical schools, the Department of Health, the Department of Human Services and other agencies or providers the council deems appropriate;**

   - **require the council to propose any necessary changes in the state's approach to the delivery of genetic services. These changes should address the need to:**

     - **modify the state's approach to the delivery of genetic services;**

     - **reallocate staff and service dollars between agencies and service providers to maximize the limited resources the state can devote to genetic services; and**

     - **make any other adjustments the council determines appropriate.**

   - **require the council to finish its study by April 1, 1990 so that it can be included in the deliberations occurring prior to and during the 72nd Legislative Session.**

Currently, state and federally funded genetic services in Texas are essentially provided through two distinct service delivery structures. One structure has a traveling, satellite clinic component, the other does not. Concerns about the cost-effectiveness of the different delivery structures have been raised by the legislature since 1981. The distinct cost and policy concerns presented by the two service delivery structures have yet to be fully addressed. The recommendation will provide a solid base for decision making regarding the need for any adjustments the state needs to make in its genetic services programs.

2. The council should be required to develop a biennial resource allocation plan for the delivery of genetic services. The council's statute should be amended to:

   - require the council in its plan to clearly identify the level of financial support and service delivery structure for each component of the genetic services system that receives state funding or federal funding funneled through the state;

   - require entities affected by the plan to cooperate with the council and supply information requested by the council;

   - authorize the council to hold hearings to gather information needed to develop the plan;

   - require the council to incorporate the findings of the April 1, 1990 cost-effectiveness study in its first biennial allocation plan;

   - require that the plan be approved by a majority vote of the council;

   - require any medical school or state agency affected by the recommendations of the plan to follow those recommendations or:

     - develop a written explanation and justification for each deviation from the plan; and

     - submit the written explanation and justification to the council, the Legislative Budget Board and the governor's budget office by November 1 of each even-numbered year.

   - require the biennial resources allocation plans to be developed and published by June of each even-numbered year, the first plan is to be finished June 1, 1990; and

   - require the council to distribute the plan to all affected agencies and any other entity that the council deems appropriate.

Texas uses a variety of providers and structures to deliver genetic services. The Interagency Council has been established to help coordinate service delivery, but it lacks the traditional powers to plan for the allocation of the available service resources. This recommendation will enable the council to play a more effective role in the use of state funds for genetic services. The recommendation will not remove the ultimate control of the funds by the legislature, governor and components of the system but will place the council squarely in the middle of the process used to determine how the programs are structured and financially supported.

3. **The council's statute should be amended to require the council to coordinate with state entities that serve persons affected by environmental genetic disorders.**

Many Texans are affected by environmental genetic disorders, which include disorders such as, "fetal alcohol syndrome". Several state agencies are concerned about and must deal with various aspects of environmental genetic disorders. Although one of the council's statutory requirements is to collect and analyze information regarding genetic disorders and services in the state, the statute does not provide any directive to include environmental genetic disorders in its deliberations. The recommendation will not require the council to conduct any studies with regard to environmental genetic disorders, instead it will specify that the council's duties include coordination with agencies serving persons affected by or at-risk of having children with environmental disorders.

4. **The council should use the resources of its membership to gain a better understanding of the genetic services being provided through the private sector. As a management change, the council should consider:**

   - **using the knowledge and abilities of the agencies and groups represented on the council to establish a means of obtaining broad based information from health insurance companies or other sources regarding the amount, types and costs of genetic services provided or not provided by private physicians and hospitals;**

   - **identifying the availability of genetic services coverage in insurance policies currently available to state employees;**

   - **assessing the cost of including genetic services coverage on those state employee insurance policies that currently do not insure such medical expenses; and**

   - **encouraging the Employee Retirement System to consider the council's assessment of genetic services coverage when negotiating insurance policies available to state employees.**

Genetic counseling and services provided outside of public agencies and medical schools is difficult to quantify since it is often provided by a private physician or hospital. Information on this activity is important for the council to have a complete understanding of the incidence, cost and types of services currently available. The management change recommended, will allow the existing relationships between the concerned agencies and the insurance companies or other sources to be used to help obtain information which is difficult to obtain but necessary for the council to carry out its work.

GOVERNOR'S COMMISSION ON PHYSICAL FITNESS

Governor's Commission on Physical Fitness

Background and Focus of Review

Creation and Powers

The Governor's Commission on Physical Fitness was created in 1971 (Chap. 446, Government Code). Until the 69th Legislature terminated the commission's funding for fiscal year 1987, the 15-member governor-appointed commission operated with a staff of four full-time persons based in Austin. The staff activities of the commission ceased in August of 1987 upon exhaustion of funds provided by the governor's office for the purpose of completing unfinished projects and transferring the commission's programs to other organizations or state agencies.

The commission was established to educate the public concerning the needs for and benefits of physical fitness, to coordinate the physical fitness related efforts of state agencies, local school boards and private organizations and to promote physical fitness programs. Its membership was required to represent "all fields of physical fitness programs for both youth and adults." The commission was also responsible for collecting and disseminating physical fitness information and evaluating existing programs.

The commission operated with an appropriation from the General Revenue Fund of $138,546 for fiscal year 1986 and received about $80,400 from the Governor's Emergency/Deficiency Fund for 1987. The commission has no state appropriation for 1988 or 1989.

Programs and Functions

The commission operated three major programs in addition to its general duties. These programs are described below.

Youth Fitness Program

The youth fitness program administered by the commission was established in response to national reports that the fitness levels of school age youth have declined in recent years. Such reports prompted a study in 1984 by the commission, the American Heart Association and the Texas Association for Health, Physical Education, Recreation and Dance of over 6,600 school age youth in Texas. The study revealed an overall deterioration of youth fitness levels from the preceding decade, especially in cardiorespiratory endurance. The youth fitness program developed by the commission includes a fitness and motor ability test for children in grades four through twelve and a fitness curriculum for kindergarten through grade twelve designed to improve cardiorespiratory fitness, strength and endurance. The staff of the commission served as a resource to school districts desiring to implement the program and trained teachers on the use of fitness tests for students. The program has been successfully transferred to the American Health and Fitness Foundation, a nonprofit corporation which worked closely with the commission during its existence. Over 200 school districts currently participate in the youth fitness program, covering the major metropolitan areas of the state.

Senior Citizen Fitness Program

The senior citizen fitness program was conducted by the commission through an interagency contract with the Texas Department on Aging (TDoA). Using federal funds provided by TDoA of $9,950 in 1986, the commission conducted training programs throughout Texas for persons desiring to be senior citizen fitness instructors. Training was done by a commission-selected task force of university and public school volunteers. Persons completing this training were qualified to conduct subsequent training classes. Five hundred persons were trained as instructors in 1986 and qualified to conduct senior citizen fitness classes in such settings as senior citizen centers and local Area Agencies on Aging.

When the commission ceased functioning, materials for this program were transferred to the TDoA because of the agency's financial support for the development of the program. Although the agency has had to designate the federal funds previously used for this program to other general programs for the aging population due to funding cutbacks, the agency has a continuing interest in the promotion of senior citizen fitness. Texas Department On Aging provides federal funds to local Area Agencies on Aging and these agencies may use such funds for physical fitness activities if desired. Also, certain centers funded through the agency (designated as multi-purpose senior centers) are required to conduct some form of physical fitness program. There are at least 280 such centers in Texas which offer these programs, covering the major metropolitan areas of the state.

Employee Fitness Program

Responsibility for this program was established by the State Employees Health Fitness and Education Act of 1983 (Art. 6252 - 27 V.T.C.S.). The Act authorizes state agencies and institutions to spend appropriated funds such as lapsed or unexpended funds for state employee fitness activities. Before expenditure of state funds, agencies were required to submit written plans for review by the Governor's Commission on Physical Fitness and approval by the Governor. As of September, 1986, 27 agencies representing 65,000 employees had approved plans. The commission, with the assistance of an Employee Fitness Task Force comprised of health and fitness professionals from the private sector and state agency administrators, developed guidelines to assist agencies in establishing plans. The commission transferred responsibilities for the program to the Health Promotion Division of the Texas Department of Health (TDH). The Department of Health does not currently allocate funds specifically to the State Employee Health Fitness and Education program but does continue to operate its Health Promotion Division and to oversee the implementation of the Employee Health Fitness Act. The Health Promotion Division of TDH offers public health information and educational material to agencies, schools, local health departments and other groups with the purpose of preventing death or illness caused by smoking, lack of exercise, poor diet or inattention to safety concerns.

Focus of Review

The review of the Governor's Commission on Physical Fitness focused on four general areas: 1) whether the need which led to the commission's creation still exists; 2) if so, whether the commission is likely to meet that need; 3) whether the duties of the commission could be carried out by other state agencies; and 4) whether improvements could be made to any of the programs or functions which are determined to be necessary.

Overall, the review indicated that the need that led to the creation of the original commission no longer exists. Other mechanisms are in place to carry out its overall purpose of increasing the statewide level of awareness of the benefits of physical fitness. The review also found that certain functions of the commission, such as its review and approval role for state agency health fitness plans, need to be continued. These functions have been assumed by appropriate agencies, but the transfer of duties needs to be formalized through statutory modifications. Lastly, the review found a continuing need exists to ensure that state agency fitness programs designed to assist state employees or the persons the agencies serve, are developed and monitored in a coordinated fashion to ensure their cost effectiveness. No additional costs will result from the proposed changes.

Sunset Commission Recommendations for the Governor's Commission on Physical Fitness

THE GOVERNOR'S COMMISSION ON PHYSICAL FITNESS SHOULD BE ABOLISHED

1. **The statute establishing the Governor's Commission on Physical Fitness should be repealed.**

The need for continued physical fitness promotion and education exists in Texas. However, the legislature has eliminated funding for the Governor's Commission on Physical Fitness and other public and private mechanisms exist to perform these functions. Therefore, the statutory structure for the Governor's Commission on Physical Fitness should be repealed.

2. **The State Employee Health Fitness and Education Act of 1983 should be amended to designate the Texas Department of Health as the agency responsible for administering the Act.**

This Act, formerly administered by the Governor's Commission on Physical Fitness, provides a mechanism for state agencies to use existing funds to establish health fitness programs. The commission used the advice of health and fitness professionals and agency personnel to develop guidelines for operating health fitness programs. The commission also reviewed the agencies' fitness plans for compliance with the guidelines and submitted these plans to the governor for approval. Since the Employee Health and Fitness program has been transferred to the Texas Department of Health, this change would authorize responsibilities which are already in place.

3. **The statute should require that guidelines used to administer the State Employees Health Fitness and Education Act of 1983 include a requirement that agency plans incorporate a method for evaluating the costs and benefits of such programs.**

Existing guidelines for the Employee Health Fitness and Education program generally require agencies to report the purpose, duration and costs of the fitness programs they offer in a plan which was reviewed by the commission and approved by the governor. The guidelines do not require that agencies set out in the plans a process to ensure that the costs of the programs do not exceed the programs' potential benefits.

Significant benefits could be realized by the state from making physical fitness activities or information available to state employees, given proper fiscal oversight of the programs. Requiring agencies submitting plans for health fitness to include procedures for evaluating the costs and benefits of the activities would help to ensure the cost-effectiveness of such activities.

4. **As a management directive, an interagency council consisting of representatives of the Office of the Governor, the Texas Department of Health, the Texas Education Agency, and the Texas Department on Aging should be established to coordinate health fitness programs or activities offered by state agencies.**

At least five state agencies have some statutory responsibility to provide health fitness programs or information concerning health fitness. A mechanism is needed for the agencies to share expertise and discuss the ways in which populations such as school age children, the elderly and others with health risks can best be served.

An interagency council on health fitness would help to coordinate health fitness related services offered by the state and prevent duplication of services. This would help to achieve more efficient use of funds spent on these activities and could result in cost benefits to the state.

STATE BOARD OF CANVASSERS

State Board of Canvassers
Background and Focus of Review

Creation and Powers

The responsibility for canvassing the statewide results of elections by the secretary of state in the presence of other state officials dates back to 1848. Currently, the State Board of Canvassers meets after general elections and after special elections for legislative offices to canvass, or count, the returns from the state's counties. The canvass determines the official result of the election on the basis of the votes received. Based on this canvass, the certificates of election for each candidate are prepared. Candidates elected to an office canvassed by the board must have this certificate of election in order to take office.

Policy-Making Structure

Originally, the responsibility for canvassing elections was performed by the secretary of state in the presence of the governor, lieutenant governor, and attorney general. The State Board of Canvassers was created in 1897 to carry out the function and is composed of three members. These are: the secretary of state, serving as the presiding officer; the governor; and a public member, appointed by the governor for a two-year term.

Funding and Organization

The board does not receive a line item appropriation, and it does not employ staff. Instead, the board receives financial and staff support from the secretary of state's elections division. Funding for the board is limited to paying expenses for the private member to attend state canvasses. The secretary of state's office receives and tabulates the returns from the counties. However, the secretary of state does not maintain workload measures and cannot estimate the amount of staff time spent on state canvassing activities.

Programs and Functions

The State Board of Canvassers is responsible for canvassing, or tabulating, the county election returns for president and vice-president of the United States, statewide offices other than governor and lieutenant governor, district offices, and statewide measures, such as constitutional amendments. Specifically, the state board canvasses the elections shown in Exhibit 1. The legislature, in accordance with constitutional provisions and established practice dating back to 1845, canvasses the returns for elections for governor and lieutenant governor. The canvass determines the official election results upon which the certificates of election are issued to the candidates receiving the most votes.

Before the state canvass may occur, local canvassing boards composed of the county judge and commissioners' court in each county must meet to canvass precinct returns throughout the county. This local canvass must occur within six days of the general election, and within three days of a special election to fill a vacancy in the legislature. The county results must be forwarded to the secretary of state's office within 24 hours of the completion of the canvass. These county election returns sent to the secretary of state must be in an officially prescribed form provided by the secretary of state.

Exhibit 1

Elections Canvassed by the State Board of Canvassers

Federal Offices

President and vice-president of the United States
United States senator
United States representative

State Offices

Attorney general
Comptroller of public accounts
State treasurer
Commissioner of the General Land Office
Commissioner of agriculture
Railroad commissioner
Chief justice, supreme court
Justice, supreme court
Presiding judge, court of criminal appeals
Judge, court of criminal appeals

District Offices

Member, State Board of Education
State senator
State representative
Chief justice, court of appeals
Justice, court of appeals
District judge
Criminal district judge
Family district judge
District attorney
Criminal district attorney

Statewide Measures

Constitutional amendments

The secretary of state's staff receives and tabulates these county returns for the state board of canvassers. This function is basically a mechanical, mathematical procedure of adding the vote totals from each of the counties for each of the offices which the board canvasses. The board only receives county vote totals, and does not receive the ballots. The board does not have the authority to analyze returns to look into the regularity of an election. The board does not get involved in contested elections, except in a contest of the election of presidential electors, where it has exclusive jurisdiction. Similarly, the board does not have the authority to recount

votes. The board may, however, recanvass returns based on recounted vote totals if the recount changes the result of the election.

The board must meet between 15 days and 30 days after a general election to perform the state canvass. The board must also meet within seven days of a special election to canvass the returns of elections to fill vacancies in the legislature. The board members sign the canvassing documents prepared by the secretary of state's office, making official the results of these elections. Based on these official results, the governor prepares and issues certificates of election for each candidate elected to office. After the canvass of a presidential election, the secretary of state prepares and issues election certificates to the presidential elector candidates. These election certificates entitle the candidates to assume the offices to which they were elected.

Focus of Review

The review of the State Board of Canvassers focused on the continuing need for the board to conduct the canvass of statewide election returns in Texas. A number of activities were undertaken to gain a better understanding of the board and the canvassing function. These activities include:

- discussions with staff of the secretary of state's elections division;
- review of state laws dating to 1848 regarding the canvassing of elections in Texas; and
- review of approaches developed regarding the canvassing of elections in other states.

These activities yielded a basic understanding of the purpose and objectives of the board of canvassers and they provided insights into alternative methods for canvassing statewide election returns.

The review indicated that there is a continuing need to canvass statewide election returns. However, the review indicated that there is no longer a need to have a board of canvassers perform this function. The tabulation of returns from each of the counties for statewide and district elections and the certification of official results of these elections can easily be performed without a state board. The review concluded that the State Board of Canvassers should be abolished and that the responsibility for canvassing statewide election returns should be transferred to the governor's office. The tabulation of election returns should be performed by the secretary of state's office, as is the current practice. The governor should be responsible for certifying the official results and for issuing the certificates of election. The board's responsibility for settling contests for the election of presidential electors should also be given to the governor's office.

Abolishing the State Board of Canvassers would cause some savings to the state resulting from eliminating travel expenses of the public number. These savings, however, would be very small.

Sunset Commission Recommendation for the
State Board of Canvassers

THE STATE BOARD OF CANVASSERS SHOULD BE ABOLISHED

1. **The State Board of Canvassers should be abolished and its functions transferred to the governor. The statute should be amended to give the governor the responsibility to:**

   - **certify the results of all elections currently canvassed by the state board; and**
   - **settle contests involving the election of presidential electors.**

This recommendation would not significantly change the way that state canvasses currently occur. The staff of the secretary of state's office would continue to tabulate the statewide results, and the governor's office would continue to issue the election certificates based on these results. The major change would be that the governor, alone, would certify the canvassed results. The largely ceremonial procedure of certifying these results by the state board would be removed.

AGENCY AND STAFF ASSIGNMENTS

AGENCY AND STAFF ASSIGNMENTS

SUNSET COMMISSION REVIEW SCHEDULE
1987-1989

Texas Department of Agriculture

Joey Longley (In-charge)
Bruce Crawford
Elizabeth Pyke
Joe Walraven

Texas Animal Health Commission

Bruce Crawford (In-charge)
Joey Longley

Poultry Improvement Board

Joey Longley

Texas Education Agency

Ken Levine (In-charge)
Charla Ann Baker
Ann Blevins
Kelley Jones
Ginny McKay
Carlos Gonzalez-Pena
Cyndie Schmitt

Texas Higher Education Coordinating Board

Ron Allen (In-charge)
Chris Cook
Angela Moretti

Texas Guaranteed Student Loan Corporation

Angela Moretti (In-charge)
Carlos Gonzalez-Pena

Office of Compact for Education Commissioner for Texas

Ann Blevins

Western Information Network Association

Karl Spock

SUNSET COMMISSION REVIEW SCHEDULE
1987-1989
(cont.)

State Property Tax Board

Cyndie Schmitt (In-charge)
Ann Blevins
Chris Cook

Office of Multistate Tax Compact Commissioner for Texas

Elizabeth Pyke

Committee on State Revenue Estimates

Tim Graves

Natural Fibers and Food Protein Commission

Elizabeth Pyke

On-site Wastewater Treatment Research Council

Carlos Gonzalez-Pena

Metropolitan Transit Authority of Harris County

Ginny McKay (In-charge)
Kelley Jones
Ken Levine

Corpus Christi Regional Transit Authority

Ginny McKay (In-charge)
Kelley Jones
Ken Levine

Texas Department of Labor and Standards

Ron Allen (In-charge)
Elizabeth Pyke

Texas Surplus Property Agency

Cyndie Schmitt (In-charge)
Ann Blevins

Texas Commission on Human Rights

Joe Walraven (In-charge)

Charla Ann Baker

SUNSET COMMISSION REVIEW SCHEDULE

1987-1989
(cont.)

Texas Indian Commission

Angela Moretti (In-charge)
Carlos Gonzalez-Pena

Interagency Council for Genetic Services

Kelley Jones

Governor's Commission on Physical Fitness

Chris Cook

State Board of Canvassers

Joe Walraven