

The logo for the Texas Sunset Advisory Commission is a semi-circular emblem with a dark, textured interior. The words "Texas", "Sunset", "Advisory", and "Commission" are stacked vertically in a bold, white, sans-serif font. The emblem is framed by a white border and sits atop a thick, dark horizontal bar.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

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State Soil and Water Conservation Board

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**A Staff Report
to the
Sunset Advisory Commission**

1984

STATE SOIL AND WATER CONSERVATION BOARD

March 1984

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SUMMARY

The State Soil and Water Conservation Board was created in 1939. The board was originally created to assist agricultural landowners in solving soil and water resource conservation problems through the creation of local soil and water conservation districts. The board's current areas of responsibility encompass several activities relating to soil and water conservation in Texas. These responsibilities include: 1) providing coordination and advice to local soil and water conservation districts; 2) providing funding assistance to local districts; 3) reviewing watershed projects and surface mining applications; and 4) conducting research and planning activities.

The need for each of the board's responsibilities was analyzed and the review indicated that there is a continuing need for state involvement in these areas. In regard to the current operations, the review determined that while the agency is generally operated in an efficient and effective manner, there are changes which should be made in the event the legislature decides to continue the agency. An analysis of alternatives to the current practices of the agency did not reveal any changes which offered substantial benefits without potential disadvantages. Two issues were identified however that could offer potential benefits but would also require major changes in current state policy and could involve potential disadvantages.

The changes which should be made if the agency is continued and a discussion of the additional policy issues are set out below.

Approaches for Sunset Commission Consideration

I. MAINTAIN THE AGENCY WITH MODIFICATIONS

A. Policy-making Structure

1. **The statute should be amended to change the terms of state board members from five to two years to comply with constitutional requirements.**

Currently the five-member board serves five-year terms, one elected each year. The constitution does not allow a board of this type to have terms of five years. Two-year terms would comply with constitutional provisions.

2. **The statute should be amended to change the terms of local district board members from five to four years to comply with constitutional requirements.**

Currently the local district board members serve five-year terms, one elected each year. The constitution does not allow terms of five years for this type of board. Four-year terms would comply with constitutional provisions.

B. Evaluation of Programs

1. **The statute should be amended to require improved planning and reporting by local districts to assist the state board in making matching fund decisions.**

Funds for local districts are requested without a planning effort which justifies the request using specific goals and objectives. Standard funding processes generally require this type of information to determine where funds can best be utilized. These procedures should be used by the board to direct its conservation efforts.

C. Open Records/Open Meetings

1. **The agency should develop a policy regarding public access to records to ensure release of information complies with the Open Records Act. (management improvement - non-statutory)**

The agency currently has no formal policy on access to records and all are considered open. Certain records are described as confidential in the Act. A formal policy would ensure proper control of these records.

D. Public Participation

1. **The statute should be amended to require the board to adopt rules for procedures used to make funding decisions for local districts.**

Currently, the board adopts informal guidelines relating to its funding processes. These guidelines fall within the definition of a rule under the Administrative Procedures Act. Adoption of informal guidelines as formal rules under A.P.A. would help ensure public participation and parallel procedures used by other agencies.

II. OTHER POLICY CONSIDERATIONS

- 1. Should board members be appointed by the governor rather than elected from state districts.**

Each board member is elected from one of five state districts. Most state officials are appointed by the governor, who is responsible for overall policy direction of the executive branch of state government. The agency indicated that the elections result in board members committed to soil conservation practices and directly responsible to local directors.

- 2. Should the agency be abolished and its functions transferred to the Department of Agriculture and the Department of Water Resources.**

These agencies have responsibilities in areas similar to the conservation board. Cost savings would result from utilizing the administrative structure of the Department of Agriculture. However, this approach could dilute the "grass-roots" concept of policy direction coming from the local users of the program.

- 3. Should the agency's water-related research and planning function be transferred to the Department of Water Resources.**

This function primarily includes watershed project reviews and non-point source pollution planning. The Department of Water Resources currently performs similar functions. This proposal would consolidate responsibilities for water policy in one agency.

AGENCY EVALUATION

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

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

Organization and Objectives

The State Soil and Water Conservation Board was created in 1939 and is currently active. The board was originally created to assist agricultural landowners in solving soil and water resource conservation problems through the creation of local soil and water conservation districts. In 1954, the agency was designated by the governor to carry out the state responsibility to review federal assistance applications for construction of watershed and flood prevention projects. In 1975, the agency assumed the planning and management responsibilities for control of agricultural and forestry-related pollution as required by the federal Water Pollution Control Act.

The State Soil and Water Conservation Board is composed of five members elected by delegates representing local soil and water districts. Board members must be at least 18 years of age, own agricultural land and be actively engaged in farming or ranching. Members are elected for five-year staggered terms with no limit on the number of terms. The board has 23 employees and a budget of about 3.5 million dollars from general revenue in fiscal year 1984. The agency operates from a headquarters in Temple, Texas and has 10 field representatives located throughout the state.

In Texas, current soil and water conservation activities involve the combined efforts of federal, state and local governmental organizations. This combined effort developed historically through a series of federal and state initiatives that resulted in a system in which the federal and local activities provide the actual conservation assistance to landowners and the state activity provides administrative support to the local district boards. In 1935, the Soil Conservation Service (S.C.S.) was created within the United States Department of Agriculture (U.S.D.A.) to provide technical assistance to landowners regarding farming techniques designed to conserve soil and water resources. In order to carry out this program, the Federal Government developed a model act which established a local district organizational structure through which the S.C.S. could provide technical assistance. In Texas, a soil conservation act, much like the federal model act, was passed which created the state board and provided for creation of local conservation districts where needed as determined by local option elections. Under this act, the state board had the responsibility to promote creation of districts and

assist them with their operations. Since the act was passed, 99 percent of the state's agricultural land has been included in the 201 conservation districts created.

With the local districts in place, the federal agencies provide technical assistance to landowners within the established districts. Each of the conservation districts has entered into cooperative agreements with the S.C.S. and the U.S.D.A. These agreements establish the system which is used by S.C.S. to provide assistance to the landowners in the districts. Under these agreements, each district is required to develop a long-range plan of work and S.C.S. assists the district in implementing the plan. Landowners in the districts who want assistance enter into cooperative agreements with the local districts. S.C.S. personnel work with the cooperative landowner to develop a conservation plan to implement whatever practices are necessary and feasible to protect the land under consideration. In 1983, \$21,259,097 was expended by S.C.S. in the conservation assistance program. S.C.S. personnel also direct the cooperators to other federal programs which could provide cost-sharing assistance to implement the conservation plans developed. The state board's role in the conservation effort is to support the local districts. This local support is primarily administrative and is provided through funding assistance, coordination, and advice necessary to maintain the district structure so that landowners in each district can receive federal technical assistance and financial assistance.

The board's current areas of responsibility encompass several activities relating to soil and water conservation in Texas. These responsibilities include: 1) providing coordination and advice to local soil and water conservation districts; 2) providing funding assistance to local districts; 3) reviewing watershed projects and surface mining applications; and 4) conducting various research and planning activities. For the purposes of review, the agency's activities have been grouped according to similarity and divided into four areas: 1) field services; 2) conservation assistance; 3) consultation services; and 4) research and planning. A description of these activities is set out in the following material.

Field Services

A major activity of the agency involves interaction with local soil and water conservation districts. The state board has the statutory responsibility to assist local districts in their efforts to promote conservation in the state. As discussed previously, the district structure is an essential part of the federal system of providing landowners in the state with conservation assistance.

The state board provides operating advice to districts and coordinates their efforts in order to maintain a working district structure. This is accomplished by ten agency field personnel located around the state. Districts are divided into five geographic regions with two field representatives assigned to each area. Field personnel live in their assigned areas, work out of their homes, and travel in personal vehicles. One of the activities performed by field personnel includes attending local districts' monthly board meetings. An attempt is made to attend all of the meetings to advise local directors on procedural matters such as mileage and per diem claims of the district directors and to monitor districts' uses of state matching and technical assistance funds. Over 1,532 local district board meetings were attended by field representatives in 1983.

Other field activities include assisting districts with awards programs, educational activities and local elections of district directors. Field personnel work with home office staff in planning and conducting an annual meeting of conservation district directors. This meeting, among other things, is used to train local district directors about district operations and coordinate the efforts and activities of the districts. Field representatives also work with S.C.S. personnel in their districts to help ensure that district operations meet the needs of S.C.S. in their technical assistance activities. In addition to district board meetings, over 3,300 contacts were made in fiscal year 1983 with district personnel and others concerning conservation matters. Contacts include meetings with S.C.S. personnel landowners, and local officials concerning conservation activities.

Conservation Assistance

The board has responsibility for operating two programs which provide direct financial assistance to local soil and water conservation districts. The matching funds program is designed to provide a base of general operating funds sufficient to ensure the continuation of the local district structure. The technical assistance program is designed to provide funds to local districts to hire personnel to assist landowners with their technical assistance problems.

The matching funds program, which began in 1969, provides funds on a dollar-for-dollar matching basis to local districts. These funds are used for operation of the district offices. The districts must raise sufficient additional local funds to match the state allocation prior to the receipt of state funds. In 1983, \$637,389 was appropriated for matching funds, with an average of \$4,000 allocated to each local district. The board has adopted guidelines for the proper use of these funds

which detail the types of activities for which state funds may be expended and the sources that local districts may use to raise matching funds.

To receive matching funds, each local district files a request with the state board, prior to the beginning of a fiscal year, for the amount of matching funds projected to be needed during the coming year. The board then allocates funds appropriated for this purpose to all the local districts. The allocation decision for a district is based on the district's request, total available funds, historical funding patterns, the district's ability to raise matching funds and other input from the board's staff. During the year, each district may request all or a portion of its allocation once they certify that their share of matching funds has been raised. The requests are checked for accuracy and vouchers are then processed through the state comptroller's office.

The second type of conservation assistance is provided through the agency's technical assistance program. This program was established and funded by the 68th legislature in 1983 to allow local districts to hire personnel to assist S.C.S. with its technical assistance activities. Reductions in the federal budget resulted in a cutback of funds for S.C.S. technical personnel to provide assistance to the landowners. State funding was authorized to alleviate some of the resulting shortage of technical assistance provided to landowners in the districts. By informal board policy, the funds are only used for salaries for technical personnel employed by the district. Through a cooperative agreement with the S.C.S., these personnel will work under the supervisor of local S.C.S. employees to assist landowners in applying conservation practices.

The technical assistance program began operating in September 1983 with \$1,176,000 budgeted for allocation. The board's process for making decisions concerning the allocation of funds is essentially the same as for the matching funds program. The funds disbursement process is also similar, although for this program the local district must pay all expenses of the technical assistance employee and then request reimbursement from the board for the salary portion of those expenses. Generally, those districts which received technical assistance funds were those capable and willing to pay the employee-related expenses not covered by the program. Allocations to the districts in the first year ranged between \$2,000 and \$13,000 per district depending on the needs expressed by those districts requesting funds. Approximately 160 half-time personnel will be hired under the program in the current fiscal year.

Consultation Services

Consultation services provided by the agency relate to project reviews required by federal or state laws. These include reviews of federal watershed projects, surface mining applications, and certain other projects involving federal funds. In each case, the state board is involved in order to review the various projects with regard to their impact on conservation. The state board has been designated by the governor to fulfill the state's responsibilities under P.L. 566 which is the federal law authorizing planning and funding of small watershed projects (250,000 acres or less). Agency personnel work closely with the S.C.S. in preliminary planning of project proposals including feasibility studies. The board is responsible for assigning priorities to those projects which S.C.S. submits for congressional approval of planning or funding activities.

Criteria used by the board in recommending priorities include adequate local sponsorship and a preliminary staff estimate that annual benefits exceed annual costs. Local conservation districts are included as one of the local project sponsors. In addition, one of the local sponsors must be a political subdivision with taxing authority and the power of eminent domain. This is necessary because, while construction costs are federally financed, maintenance costs and the purchase of any right of way easements are the responsibility of the local sponsors of the project.

Once the staff has determined adequate local sponsorship and preliminary feasibility, then the board will recommend the project to S.C.S. for detailed planning and construction. As of January 1983, 109 projects had received congressional authorization for planning in the state. Of those projects, 34 have been completed, 41 had construction in progress, and the remainder were in the planning stages or terminated. In 1983, the S.C.S. spent \$38,520,976 million on planning and construction of small watershed projects.

Another review responsibility placed on the board is required by the Texas Surface Coal Mining and Reclamation Act. The act requires the Railroad Commission to submit copies of permit applications to the board, among other agencies, for review and comment. The agency forwards copies of the application to the affected local conservation district and the S.C.S. Agency staff review the applications in conjunction with the local conservation district for the effect on the land in the proposed permit area and to determine whether an adequate reclamation plan is proposed. S.C.S. personnel also review the application and

assist the district with its review and comments. All comments are sent to the state board where they are combined with agency comments and forwarded to the Railroad Commission. The agency reviewed four applications in 1983. This process has been instrumental in identifying local concerns with surface mining operations and has resulted in a better working relationship between local districts and the various strip-mining companies.

The agency also performs another review function which relates to projects financed by federal funds. Federal regulations require that before an applicant can receive federal funds for a project an "A-95 review" must take place. In this process, the application has to be reviewed by a designated review agency for that region and the agency designated for statewide review if the project affects more than one region of the state. In Texas, regional councils of government and the governor's office performed these review functions. As part of the statewide review process, the governor's office sends the project applications to those state agencies whose area of responsibility might be affected by the project. The state board has been designated as one of the agencies reviewing projects affecting natural resources of the state. Each project application is reviewed by the staff for effect on soil and water resources. Any comments are sent to the governor's office and attached to the application when it is submitted to the federal agency involved. Twenty-eight "A-95" reviews were performed by agency personnel in 1983.

The Texas Review and Comment System (TRACS) is being developed by the governor's office to replace the "A-95 review" requirement and to expand the review of projects to include those projects involving state as well as federal funds. The agency's internal review process will change to comply with a uniform set of review criteria which have been developed for use by all review agencies and the source of projects will be expanded.

Research and Planning

The agency has been involved in several studies relating to conservation of soil and water resources. Also, the agency has been designated by the governor to carry out certain planning activities required by the federal Water Pollution Control Act. Research and planning activities are conducted by the agency to investigate conservation problems around the state, and provide information which can be used to alleviate these problems.

Under the federal act, the state has the responsibility to locate and eliminate sources of water pollution. Although the Department of Water Resources (DWR) has been given primary responsibility for maintaining overall water quality in Texas, the board has been given responsibility to develop a plan for management and control of agricultural and forestry related non-point source pollution. Non-point source pollution relates to those sources of pollution which cannot be pinpointed to one specific location such as pesticides from agricultural operations. As part of its responsibilities, DWR monitors the state to identify sources of pollution. If a non-point source of pollution is identified, DWR notifies the board and then it is the board's responsibility to work with the local district and the landowner to develop and implement a specific plan for controlling the pollution.

The board has developed and published a plan which outlines the major types of agricultural related pollution and potential abatement practices which are applicable in Texas. The plan is a guide for use in developing specific control plans when the need arises. At present, no non-point pollution problems have been identified by DWR.

The board has also developed a state conservation plan which outlines both conservation problems around the state and practices designed to address problems identified. This plan was developed by the staff in response to a perceived need by the state board for a determination of problem areas and solutions to identified problems. Included in the plan are the results of surveys of all local conservation districts. The staff used these surveys as a means of identifying conservation problems across the state. The board intends to update the plan every five years to maintain an accurate assessment of conditions.

Other research activities conducted by the agency include a salinity study identifying areas of the state with soil salinity problems. The study was started in response to a resolution passed at the 1982 meeting of local district directors which requested the state board to assist the local districts in determining how to reclaim land damaged by salinity. The board has recently entered into an inter-agency contract with DWR to expand the study through the hiring of an additional person to assist with more detailed surveys of problem areas. The information developed by the agency will be used to develop an approach for dealing with the salinity issue once the scope of the problem has been identified.

A final research activity of the agency is an on-going effort of conducting soil surveys of each county of the state. These surveys are instrumental in the

development of a landowner's conservation plan and are used by other state and federal agencies. The actual survey work is accomplished through contracts with the S.C.S. and the Texas A&M Extension Service and Experiment Station. State funding in this area supplements the federal effort to have accurate surveys for the entire state. The amount expended for soil survey contracts in 1983 was \$150,000. At the current level of effort, soil surveys for the entire state will be completed by 1991.

REVIEW OF OPERATIONS

This section covers the evaluation of current agency operations undertaken to identify any major changes which should be made to improve the efficiency and effectiveness of those operations; if the agency is to be continued. The evaluation is divided into three general areas dealing with: 1) a review and analysis of the policy-making body; and 2) a review and analysis of the overall administration of the agency; and 3) a review and analysis of the operation of specific agency programs.

Policy-making Structure

The evaluation of the policy-making structure was designed to determine if the current statutory structure contains provisions that ensure adequate executive and legislative control over the organization of the body; competency of members to perform required duties; proper balance of interests within the composition; and effective means for selection and removal of members.

The State Soil and Water Conservation Board is composed of five members elected for five-year staggered terms. Each member is elected from one of five statutorily defined districts of the state. Each state district holds elections at a convention of delegates representing each local conservation district once every five years to elect the board member representing their state district. Delegates must be a land-owner in the district, at least eighteen years of age, and actively engaged in farming or ranching. The delegates, by majority vote, elect a member to the board from among the delegates.

In addition to the state board, each district is under the supervision of a local five-member district board. Each member is elected from one of five zones in the district. Landowners in each zone hold elections once every five years to elect a landowner to represent the zone on the district board. Local board members have the same eligibility requirements as the state board. The review indicated that the structure of the state and local boards were generally appropriate for this type of agency. However, two concerns were identified relating to the state and local board members' terms of office.

Terms of state board members should be changed to comply with constitutional requirements.

Currently, the elected board members are serving staggered five-year terms of office. These five-year terms were originally part of the federal model act that was adopted in Texas. However, Article 16, Section 30 and 30a of the Texas Constitution provide that terms of office for state board members shall not exceed two years unless one-third of the membership is elected or appointed every two years in which case the terms of office should be six years. The existing terms for the conservation board members do not meet this constitutional requirement. The terms of office could be changed from five to six years but this would require changing the size of the board to a number divisible by three in order that one-third of the members' terms would expire every two years. The state regions would also need to be changed to correspond to this increase. This would result in a number of changes in the agency's operations since activities are often divided by regions.

However, the terms of office can be changed to two years and the current number of board members and the existing regional structure would not have to be changed. The election process could be changed to elect three members one year and two members the following year. This process would minimize changes in agency operations and it is recommended that the terms of the board members be reduced from five to two years in order to comply with constitutional requirements.

Terms of local district board members should be changed to comply with constitutional requirements.

Currently, local district board members are elected for five-year staggered terms. However, Article 16, Section 30 of the Texas Constitution provides that terms of office for local boards of this type shall not exceed four years. The existing terms of the local board members do not meet this constitutional requirement. The terms should therefore be changed from five to four years in order to comply with constitutional requirements.

Overall Administration

The evaluation of the overall agency administration was designed to determine whether the management policies and procedures, the monitoring of manage-

ment practices and the reporting requirements of the agency were consistent with the general practices used for internal management of time, personnel, and funds. The review indicated that the agency has established a reasonable administrative structure to support its program activities.

In addition to conducting the usual administrative activities, the agency has developed an information activity to increase public awareness of conservation efforts and to assist local districts, schools, and civic organizations with education programs concerning soil and water conservation. A monthly newsletter is also published and distributed to districts and interested parties. The newsletter includes information about board activities and state and federal action affecting conservation. The review of this function indicated that the information activities are adequately managed and the assistance provided seems beneficial to the recipients.

Evaluation of Programs

As discussed previously, the activities of the agency were divided into four main areas for purposes of evaluation: field services, conservation assistance, consultation services, and research and planning. Major areas of concern resulting from the evaluation are set out below.

Conservation Assistance

Improved planning and reporting by local districts would assist the state board in allocating matching funds.

Currently, local districts have planning and reporting responsibilities required by state and federal programs. According to state requirements, each local district is required to submit a proposed budget with its request for matching funds from the state board and submit an biennial audit of its operation. The budget requirement provides the board an estimate of a district's proposed use of funds. The statutorily mandated annual audit provides for an accounting of the district's expenditures with little or no description of district activities.

In response to federal reporting requirements, each district, as part of its cooperative agreement with the S.C.S., prepares an annual plan of work and an annual report of activities. These documents are used by S.C.S. in its planning activities and vary in form from an article in a local paper to a detailed booklet

describing a district's plans, activities, and accomplishments. Copies of these reports are usually submitted to the state board by the districts.

Decisions allocating matching funds to local districts are currently made by the board on the basis of available appropriated funds, the district's request, historical funding patterns, a district's ability to obtain necessary matching funds, and other input from staff (particularly when increases are requested). Districts generally receive equivalent allocations since the program is designed to provide a base of operating funds for the districts. Special circumstances such as a district's inability to raise sufficient matching funds can result in a higher or lower allocation.

In general, state and other government entities which make funding decisions require comprehensive planning and reporting efforts by those entities requesting funds. Plans are usually required which justify the request by showing specific goals and objectives to be accomplished using the requested funds. These goals or objectives should be realistically achievable with the amount of funds requested and should be directed toward the overall improvement of the program or activity involved. This information provides a sound basis for determining the need for the activity or the level of funding the activity receives. In addition, standard funding practices require an annual report of activities. This report should describe the results of funded activities and indicate whether stated goals were achieved.

Because current funding decisions for the matching fund program are based primarily upon factors which show whether funds have been and will be properly accounted for, and whether the funds generally will be used to promote conservation, the process does not require a planning effort which includes justification for requested funds using quantifiable goals and planned achievements. By requiring districts to better justify their requests for funds, the board will have comparative information for the intended use of funds. This should assist the board in making funding decisions which further its overall conservation efforts. Such a planning requirement would allow the board to maximize the benefits from funds used to to promote conservation and help districts to better focus their plans and programs. Districts could continue to receive a base amount of funding with additional funds allocated based on a district's proposed use of funds.

In addition, the board should require districts to submit an annual report of activities which details how well the plans were carried out and goals were met.

This requirement would give the board information on what the district accomplished with funds provided.

To provide for better planning and reporting, the statute should be amended to require each district to submit, in addition to a proposed budget, a plan of activities for the coming year when requesting matching funds. This plan should include quantifiable goals and objectives such as plans to increase district cooperators by a certain percentage. The board should cooperate with the S.C.S. and the local districts to include this plan of activities in the annual plan of work currently prepared by the district for the S.C.S. Districts should also submit an annual report of activities which could also be included in the report submitted by the districts to S.C.S. The format of the reports could be structured to fulfill the needs of both agencies.

EVALUATION OF OTHER SUNSET CRITERIA

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

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

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

This section covers the evaluation of the agency's efforts in applying those general practices that have been developed to comply with the general state policies which ensure: 1) the awareness and understanding necessary to have effective participation by all persons affected by the activities of the agency; and 2) that agency personnel are fair and impartial in their dealings with persons affected by the agency and that the agency deals with its employees in a fair and impartial manner.

Open Meetings/Open Records

The review indicated general compliance with the Open Meetings Act and the Open Records Act. Timely notices of board meetings are filed with the secretary of state's office and the minutes of board meetings revealed proper use of executive sessions. The review of compliance with the Open Records Act, however, did reveal one area of concern.

Developing a policy for public access to agency records would aid in compliance with the Open Records Act.

In general, the agency considers all of its records public and their release in compliance with the Open Records Act. However, the Open Records Act provides that certain categories of information in agency files are not subject to disclosure and that release of this information is not within the agency's discretion. The agency's informal policy does not protect this information specified as confidential in the Open Records Act. Although no cases were found where confidential information was improperly released, agency personnel cannot easily determine the confidentiality of information without an established procedure. The agency should develop a written policy regarding public access to records which identifies confidential information not subject to public disclosure and outlines a procedure which ensures that release of information complies with the Open Records Act.

EEOC/Privacy

A review was made to determine the extent of compliance with applicable provisions of both state and federal statutes concerning affirmative action and the rights and privacy of employees. The agency operates under an affirmative action plan last updated in 1980. The agency has established a committee composed of

employees to deal with problems relative to affirmative action and grievance matters.

Analysis of the agency's work force indicated a predominance of white males in professional positions. When a job vacancy occurs, various efforts are made to attract qualified applicants including posting of job openings with the Texas Employment Commission. Local conditions in Temple have made it difficult to recruit qualified minority applicants. Additionally, the agency has few job openings as the turnover rate of employees is fairly low. The results of the review indicated that the agency is in general compliance with state and federal statutes.

Public Participation

The agency's policies and practices were examined to determine whether the public and those involved with the activities of the board have been kept informed of its activities and whether the public has the opportunity to participate in agency policy formulation. The review indicated that the public and those served by the agency have had adequate access to information about the programs operated by the agency. This is accomplished through a variety of means including a monthly newsletter which is sent to district directors and other interested persons upon request. The agency also issues news releases to newspapers and radio and television stations around the state concerning state and federal conservation efforts and the annual meeting of conservation district directors. Documentary films have been made regarding various aspects of conservation and are made available to civic organizations, schools, and anyone interested in promoting conservation. Agency personnel and local district directors are also involved in information and education seminars around the state when requested by various schools, local groups and civic organizations.

While the agency has made an effort to inform the public of its activities, one improvement can be made regarding public participation in the agency's decision-making process.

Adoption of informal guidelines as rules would assist public participation in the agency's decision-making process.

Currently, the agency is operating under informal guidelines and procedures which should be adopted as rules to ensure adequate public participation in board decisions. These informal guidelines pertain to a number of agency activities such

as its funding assistance. In most other agencies where funding decisions or other important determinations are made, formal rules have been adopted in compliance with the Administrative Procedure and Texas Register Act to make the public more aware of the procedures used in making those decisions. The purpose of the act is to provide minimum standards of practice and procedure for state agencies and provide for public participation in an agency's policy-making process. The rule-making process allows for input from the general public and other interested parties as rules are considered and finally adopted. In addition, the agencies have a basis on which to justify decisions made according to rules and regulations. Examples of two other agencies currently under sunset review which provide funds to outside entities are the Department of Water Resources and the Department of Aging. Both of these agencies have adopted funding criteria as formal agency rules. Because the board's current policy of adopting informal guidelines does not ensure public participation and does not parallel procedures used by other agencies, the statute should be amended to require the board to adopt its funding procedures as rules under the Administrative Procedure and Texas Register Act.

Conflict of Interest

The review focused on agency efforts to inform board members and employees of responsibilities related to conflict-of-interest statutes and compliance with applicable statutes. New employees and board members are provided copies of the necessary statutes and are requested to read them. The conflict-of-interest statute (Article 6252-9b) requires that board members disclose any substantial interest in a business entity regulated by a state agency or a business entity that does business with a state agency. Agency directors are required to file an annual financial statement disclosing business interests and other financial information. These statements are to be filed with the Office of the Secretary of State.

The review indicated that board and agency efforts concerning the filing of appropriate statements have not been consistent. Although the executive director has filed the required annual financial statement with the Secretary of State, the agency was unaware of the filing requirements for board members. This requirement was discussed with the agency during the review and the agency indicated that board members would be requested to file any required disclosure affidavits with the Office of the Secretary of State.

OTHER POLICY CONSIDERATIONS

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

Arguments for and against these issues, as presented by various parties contacted during the review, are briefly summarized. For the purposes of the sunset report, these issues are identified so they can be addressed as a part of the sunset review if the Sunset Commission chooses to do so.

OTHER POLICY CONSIDERATIONS

This section covers that part of the evaluation which identifies major policy issues surrounding the agency under review. For the purpose of this report, major policy issues are given the working definition of being issues, the resolution of which, could involve substantial change in current state policy. Further, a major policy issue is one which has had strong arguments developed, both pro and con, concerning the proposed change. The material in this section structures the major question of state policy raised by the issue and identifies the major elements of the arguments for and against the proposal.

Change the selection process for board members from election to appointment.

Currently, the board members are elected to five-year terms by delegates representing local soil and water districts. This selection process is different from the usual appointive process for state boards and commission. An argument can be made that the selection of board members through gubernatorial appointment would be a more appropriate method of selection. Proponents of the appointive process indicate that the appointment of board members by the governor would make those members directly accountable to the person responsible for overall policy direction of the executive branch of state government. This process is used to select most board and commission members and provides a system of accountability which contributes to more uniform policy between related areas of the executive department. In addition, the appointive process makes available effective removal procedures which can be used when necessary.

Those who oppose any change in the board member selection process indicate that the electoral method has worked well since its inception in 1939. Interviews with local district directors and agency personnel during the review indicated support for the continuation of the election process. Because of their elective selection, state board members are accountable to the local district directors in the region that elected them. This contributes to the "grass-roots" nature of the operation and results in selection of board members who are involved with and committed to soil conservation practices.

A preliminary survey of policy-making structures of soil conservation agencies in other states revealed at least eight states where the electoral process was

used. Other states used a variety of appointment methods ranging from all members appointed by the governor to a combination of appointed and ex officio members.

Abolish the agency and transfer functions to other existing agencies.

During the review, two state agencies were identified that regulate or provide services in areas similar to the areas affected by the Soil and Water Conservation Board's activity. First, the Department of Agriculture is responsible for execution of the agricultural laws of the state including regulation of pesticides and herbicides and promotion of Texas agricultural products. Second, the Department of Water Resources (DWR) regulates the use and quality of water in the state as well as its development. In examining the common areas of activity, an argument can be made that cost savings could result if the conservation board were abolished as an independent agency and its responsibilities were transferred to these two other agencies. Proponents argue that conservation activities such as advice and funding assistance to local districts could be transferred to the Department of Agriculture. Watershed project reviews and non-point source pollution planning could be assigned to DWR.

Under this transfer, the state board could continue to be elected by local district directors but would become an advisory body to the commissioner of agriculture. The advisory board would continue to provide policy direction regarding the assistance to local districts and other conservation matters. Conservation programs in several other states are carried out by an advisory board to the state's Department of Agriculture.

The Department of Agriculture has an established framework to provide administrative support to other associated boards and advisory bodies and could provide support for this board. The field office structure of the department could be used to provide assistance to local districts and funding assistance activities could be carried out by department administrative staff. Cost savings would result primarily from utilizing the agriculture department's administrative support, computer capability, and information and education activities, thereby eliminating need for conservation board personnel currently providing these support activities.

Regarding the transfer of watershed project reviews and non-point source pollution planning to the Department of Water Resources, it can be argued that the

water agency performs similar functions and could carry out these review and planning responsibilities. The Department of Water Resources is involved in project reviews of construction of federal water projects and has planning responsibility for water pollution sources. In addition, DWR personnel have the expertise to develop plans for controlling identified pollution sources.

Opponents to abolition of the agency and the subsequent transfer of its functions argue that such a transfer poses two major problems. First, the current levels of support for conservation efforts would be reduced. The district structure is currently supported by an agency whose primary responsibility is directed toward soil and water conservation. A transfer of this responsibility to the Department of Agriculture, an agency with a number of other responsibilities, would dilute the attention currently provided the program.

Another argument against the transfer to the agriculture department relates to the policy direction provided by the board. Instead of an independent board with members accountable primarily to the regions electing them, board activities would be subject to additional direction by the agricultural commissioner. Other policy considerations of the department would affect the way conservation policies are developed and carried out thus changing the approach currently followed. Such a change would have a detrimental effect on the relationship with the local districts, since there would no longer be the same "grass roots" concept of the local districts electing state board members directly responsible for state conservation efforts.

Transfer the agency's water-related research and planning function to the Department of Water Resources.

Under the proposal, the agency's responsibilities for watershed project reviews and non-point source pollution planning would be transferred to the Department of Water Resources, which currently performs similar functions. The Department of Water Resources is involved in project reviews of construction of federal water projects and has responsibility for planning and implementing control procedures for water pollution sources. In addition, DWR personnel currently have the expertise to perform these tasks when a pollution source is identified. This proposal would also consolidate responsibilities for water policy in one agency.

Opponents to this transfer argue that small watershed projects are designed to prevent soil erosion, an activity of major interest to the conservation board.

The state board has been instrumental in the planning of these projects and in soliciting support of local conservation districts. In addition, agency personnel are in constant contact with the Soil Conservation Service, which has federal responsibility for planning and construction of the watersheds projects.

Opponents of the transfer also indicate that the state board can effectively deal with non-point source pollution control since this type of pollution is generated primarily from agricultural sources. The state board has the ability to coordinate the efforts of the S.C.S. and the local districts to deal with a pollution problem of this nature when it arises. S.C.S. can provide the technical expertise regarding the efforts necessary to control the pollution sources and the board can work with the local districts to get landowners to implement the necessary pollution control practices.

ACROSS-THE-BOARD RECOMMENDATIONS

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

STATE SOIL AND WATER CONSERVATION BOARD

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. GENERAL			
X		X	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
			3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Require that appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
X			5. Specify grounds for removal of a board member.
X			6. Require the board to make annual written reports to the governor, the auditor and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
X			9. Provide that the state auditor shall audit the financial transactions of the board at least once during each biennium.
X			10. Provide for notification and information to the public concerning board activities.
		*	11. Place agency funds in the Treasury to ensure legislative review of agency expenditures through the appropriation process.
X			12. Require files to be maintained on complaints.
X			13. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		X	14. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
**			15. Require development of an E.E.O. plan.
**			16. Require the agency to provide information on standards of conduct to board members and employees.
**			17. Provide for public testimony at agency meetings.
**			18. Require that the policy body of an agency develop and implement policies which clearly separates board and staff functions.

*Already in statute or required.
**Not approved for application.

State Soil and Water Conservation Board
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.

*Already in statute or required.
**Not approved for application.