

**SUNSET ADVISORY COMMISSION**

**Final Report  
to the  
Governor of Texas  
and  
Members of the Sixty-ninth Texas Legislature**

**January 1985**

STATE OF TEXAS  
SUNSET ADVISORY COMMISSION



Representative Charles Evans, Chairman

Senator Kent Caperton, Vice Chairman

Representative Gary Thompson  
Representative Bruce Gibson  
Representative Patricia Hill  
Mr. Harry J. Stone, Jr., Public Member

Senator Bill Sarpalius  
Senator Chet Edwards  
Senator John Sharp  
Mr. Jess M. Irwin, Jr., Public Member

January 1985

The Honorable Mark White  
Governor of Texas

Honorable Members of the Sixty-ninth Legislature  
Assembled in Regular Session

Ladies and Gentlemen:

The Sunset Advisory Commission, established in 1975 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) recommend legislation necessary to implement any proposed changes.

Between August of 1983 and December of 1984, the members of the Commission have worked to develop recommendations for the 31 agencies currently scheduled to terminate, unless continued by this Sixty-ninth Legislature. During this period of some 17 months, the Commission scheduled 15 days of public hearings for the purposes 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,

A handwritten signature in dark ink, appearing to be "Charles Evans", written over a horizontal line.

Chairman  
Sunset Advisory Commission



## MEMBERS OF THE SUNSET ADVISORY COMMISSION

Representative Charles Evans, Chairman  
Hurst

Senator Kent Caperton, Vice-chairman  
College Station

Representative Gary Thompson  
Abilene

Senator Bill Sarpalius  
Amarillo

Representative Bruce Gibson  
Cleburne

Senator Chet Edwards  
Duncanville

Representative Patricia Hill  
Dallas

Senator John Sharp  
Victoria

Mr. Harry Stone, Jr.  
Public Member - El Paso

Mr. Jess M. Irwin, Jr.  
Public Member - Austin



## TABLE OF CONTENTS

	<u>Page No.</u>
Letter of Transmittal .....	i
Members of the Sunset Advisory Commission .....	iii
Table of Contents .....	v
Introduction .....	1
<b>AGENCY RECOMMENDATIONS:</b>	
<b><u>Environmental Agencies</u></b>	
Texas Department of Water Resources .....	9
Texas Coastal and Marine Council .....	25
Texas Air Control Board .....	31
Office of State Entomologist .....	43
Office of State Forester .....	47
Interstate River Compacts .....	51
Gulf States Marine Fisheries Commission .....	55
Texas Parks and Wildlife Department .....	59
School Land Board .....	77
Board for Lease of University Lands .....	77
Boards for Lease of State-owned Lands .....	77
Veterans Land Board .....	93
State Soil and Water Conservation Board .....	105
Texas Conservation Foundation .....	113

**TABLE OF CONTENTS**  
(Cont.)

	<u>Page No.</u>
<b><u>Health and Human Service Agencies</u></b>	
Texas Department of Health .....	115
Occupational Safety Board .....	137
Texas Coordinating Commission for Health and Welfare Services .....	141
Office of Interstate Compact on Mental Health Administrator for Texas .....	145
Anatomical Board of the State of Texas .....	151
Texas Commission for the Deaf .....	159
Texas Health Facilities Commission .....	171
State Commission for the Blind .....	183
Texas Rehabilitation Commission .....	211
Texas Commission on Alcoholism .....	241
Texas Advisory Board of Occupational Therapy .....	263
Texas Department on Aging .....	267
<b><u>Judicial Agencies</u></b>	
Prosecutor Council .....	283
<b><u>Appendix</u></b>	
Overview of Sunset Review Process .....	299
Meeting Dates of the Sunset Advisory Commission .....	301
Tabular Summary of Sunset Action - 69th Legislature .....	303
Agency and Staff Assignments .....	305

## INTRODUCTION

## INTRODUCTION

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

The acceptance of this concept has been aided by a general agreement that unless legislative bodies are forced to act, no systematic review will be directed toward the efficiency and effectiveness with which governmental programs are carried out. The sunset process is, then, an attempt to institutionalize change and to provide a process by which 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 200 state agencies and advisory committees are scheduled for review or automatic termination at specified intervals. Under the provisions of the Act, agencies created after the effective date of the original Sunset Act are automatically scheduled for termination 12 years after their creation. 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 involves the preparation of an evaluation report by the staff of the Commission. The third phase involves 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.

To date the Commission has reviewed 117 agencies. Actions taken by the Sixty-sixth, Sixty-seventh, and Sixty-eighth Legislatures, under the sunset process, have been positive in terms of incorporating the concept into the existing legislative process.

This report to the Sixty-ninth Legislature contains the Sunset Advisory Commission's recommendations concerning the 31 agencies under review for 1985. As with the Commission's recommendations to prior legislatures, this report is intended to serve as a starting point for legislative deliberations on this group of agencies. In developing recommendations on these agencies, the Commission scheduled 15 days of public hearings from August 1983 through December 1984.

As with all agencies reviewed by the Commission, certain standards developed during the past reviews have been applied to the agencies currently under review. These standards have been developed to address common problems that can be categorized as a lack of public representation on the various boards or commissions, the lack of responsiveness to complaints by the public, lack of responsive enforcement powers and the avoidance of legislative review of expenditures through the appropriations process. The recommended approaches to these overall problems are set out and briefly explained below:

**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. Require an audit of the financial transactions of the agency by the state auditor at least once every biennium.**

Fiscal or other problems in agency management often are first apparent in the financial records of an agency. This provision is aimed at uncovering any such problems in a systematic fashion and insuring the continuing financial accountability of the agency.

- 10. 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.

- 11. 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.

- 12. 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.

- 13. 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.

- 14. (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.

**15. 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.

**16. 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.

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

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

**18. 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 agency's day to day activities. It removes the possibility of the board administering the agency in addition to setting agency policy.

**II. LICENSING (Applicable to agencies with licensing functions)**

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

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 licenses, 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 possess 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.**

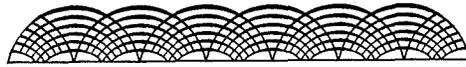
The rules of licensing agencies can be used to restrict competition by limiting advertising and competitive bidding by licensees. Such a restriction limits public access to information regarding professional services and hampers the consumer's efforts to shop for "a best buy". Elimination of these rules 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 was 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 for  
ENVIRONMENTAL AGENCIES



*Texas Department of Water Resources*  
*Texas Coastal and Marine Council*  
*Texas Air Control Board*  
*Office of State Entomologist*  
*Office of State Forester*  
*Interstate River Compacts*  
*Gulf States Marine Fisheries Commission*  
*Texas Parks and Wildlife Department*  
*School Land Board*  
*Board for Lease of University Lands*  
*Boards for Lease of State-Owned Lands*  
*Veterans Land Board*  
*State Soil and Water Conservation Board*  
*Texas Conservation Foundation*

**TEXAS DEPARTMENT OF WATER RESOURCES**

## Background

Prior to 1977 three agencies handled the state's water responsibilities: the Water Development Board, the Water Quality Board, and the Water Rights Commission. In 1977, the responsibilities of these agencies were combined in the Texas Department of Water Resources. Since that time the TDWR has exercised broad authority over many aspects of water development and management in the state.

The water-related functions of the Texas Department of Water Resources can be grouped into four main areas. First, the agency provides grant and loan assistance to local governments for water and sewer projects. Second, the department issues various permits and approvals controlling, among other things, the use and quality of state water. Third, as a natural extension of its permitting process, the agency enforces these permits and the state's water laws. Finally, to assist in decisions on permits, enforcement, and other water-related matters, the department engages in various support services such as large scale planning and data collection efforts. Of the agency's total 1983 expenditures of approximately \$30 million, 11 percent was spent in the category of water project assistance; 20 percent in the permits area; 23 percent for enforcement (including the superfund program); and 26 percent for planning and technical support (the remaining 20 percent was spent for administration). The primary activities and recommendations within these areas are described below.

Water Project Assistance. The TDWR provides water project grants and loans through two programs: the construction grants program and the Water Development Fund. The construction grants program is designed to help communities plan and construct facilities to meet their sewage treatment needs. The grants are funded by the federal government at a current level of 55 percent, with local governments providing the remaining percentage. Texas' share of this federal program is approximately \$100 million annually. There are some 500 active projects at this time, with another 78 projects scheduled as ready to proceed in fiscal year 1984.

The second assistance program of the agency involves loans to political subdivisions through the Water Development Fund and the Water Assistance Fund. Through these funds, low interest loans are made to local governments unable to obtain financing through commercial channels. Typically, loans are for reservoir construction, municipal water supply facilities, and sewage treatment plants.

Loans made from the Water Assistance Fund come from a \$40 million appropriation. However, most of the loans made by the agency are from the Water Development Fund. This fund is derived from the sale of the State of Texas Water Development Bonds. The agency is authorized to sell \$600 million of these general obligation bonds. Of this total amount, \$400 million is for water development purposes, with the remaining \$200 million being authorized for water quality projects. To date, the agency has issued slightly over \$430 million in bonds. The last bond sale was in February 1983 when a \$50 million issue was sold. Another \$50 million issue is currently pending. Since the beginning of the loan program in 1957 over 380 loans have been made from these funds.

Permits. The Texas Department of Water Resources performs its regulatory function mainly through the issuance of three basic types of permits. A water use permit is required in order to take, store, or divert surface water in the state.

During fiscal year 1983, the agency issued approximately 240 permits for water use. As of the end of fiscal year 1983, there were about 9,100 water use permittees in the state.

A second general type of permit the agency issues relates to water quality. There are basically three different kinds of water quality permits issued by the agency. A wastewater discharge permit must be obtained by any entity wishing to discharge waste into the waters of the state. In fiscal year 1983, approximately 750 wastewater discharge permits were issued. The total number of waste discharge permittees at the end of 1983 was approximately 3,600. The agency also issues permits to industrial solid waste disposal facilities. Entities which generate or transport hazardous industrial solid waste are not permitted but are registered and monitored by the agency. Very few industrial solid waste permits have been issued to date. This is because the majority of industrial solid waste disposal facilities are located at the site where the wastes are generated. Prior to the passage of the federal Resource Conservation and Recovery Act in 1976, these facilities did not need to be permitted. There are approximately 900 facilities in the state which will eventually be permitted. At the end of fiscal year 1983, about 2,500 generators and 600 transporters were registered. The agency also issues water quality related permits for underground injection wells. These wells are used to dispose of most of the industrial waste generated in Texas. In addition, underground injection well permits are needed for solution mining of uranium or sulphur. In fiscal year 1983, 32 waste injection permits were issued. The total number of injection well permittees as of the end of fiscal year 1983 was approximately 270.

The third basic area regulated by the agency is in the approval of water district creations and water district bond issues. Most of the activity in this area relates to municipal utility districts. In fiscal year 1983, 18 water district creations and 109 bond issues were approved. The total number of water districts approved by the agency since the program began was 1,139 with 623 of these being municipal utility districts.

Enforcement. Permits and other actions of the agency must be enforced. The major enforcement effort is directed towards water use and water quality permits.

To enforce its permits, the agency has 184 employees in its enforcement division. These employees are split between the central office and 14 district offices around the state. In fiscal year 1983, the division had an operating budget of about \$7.6 million.

As Texas has experienced a rapid rate of growth in population and industrial activity, enforcement of water-related laws has become more difficult. This is especially true in the area of water quality. Cities continue to have problems in properly planning for the increasing sewage treatment capacity they need. Industrial hazardous waste is also a concern because of its toxic nature and the volume generated in the state. Texas is the second largest generator of hazardous waste in the country. For these reasons the review centered primarily on the enforcement of water quality permits.

As indicated in the last section, the agency administers three water quality programs authorized under state and federal law. Facilities that must be permitted include the following: 1) industrial solid waste treatment facilities,

which are regulated under the federal Resource Conservation and Recovery Act (RCRA) and the Texas Solid Waste Disposal Act; 2) underground injection wells, regulated under the federal Safe Drinking Water Act and chapter 27 of the Texas Water Code; and 3) municipal and industrial waste treatment facilities, regulated under the federal Clean Water Act and chapter 26 of the Texas Water Code.

Initiation of enforcement action is the responsibility of the executive director and his staff. There are five official enforcement actions used by the agency in its enforcement program.

- 1) Citation - a citation is simply a notice of violation and is used only in the wastewater area;
- 2) Enforcement letter - an enforcement letter can originate from the district office or the headquarters. The letter describes the problem in more detail than a citation and usually recommends some type of corrective action;
- 3) Compliance agreement - a compliance agreement is usually used after one or more letters have failed to bring results. This agreement is reached during an enforcement conference at which time the violator and TDWR mutually determine what course of action to take;
- 4) Texas Water Commission enforcement order - the executive director may refer a case to the TWC, which will then initiate a hearing. This hearing can result in the issuance of a legally binding enforcement order; and
- 5) Referral to the attorney general - this action is the agency's enforcement option of last resort. A civil suit is initiated when administrative enforcement action is no longer considered by the executive director to be appropriate. Summarized enforcement data is presented on the following page.

Planning and Other Technical Support. The agency engages in various substantive activities in support of its regulatory and water development functions. Support activities of major importance include water resource planning, and data collection efforts.

As part of its planning activities, the agency is directed in statute to develop and maintain in current condition a comprehensive statewide water plan to ensure an adequate long-term water supply. To prepare this plan, long-term forecasts of the supply and demand for water are developed in order to estimate the need for new sources of supply. Schedules for water resource development are also prepared and research into new sources of supply, such as weather modification and water importation, is conducted.

The department is also engaged in planning efforts to manage the quality of the state's waters. In accordance with the federal Clean Water Act, the agency develops the State Water Quality Management Plan, and annually updates the plan. Water quality management plans include identification of water quality problem areas, pollution projections, needed wastewater treatment and collection systems, waste load allocations, and stream

standards. This information is used by the agency to determine the level of treatment and volume of waste which can be discharged without forcing the receiving stream segment to fall below its quality standard.

These and other planning efforts of the department, as well as other agency activities, require the development and use of large amounts of data. The department gauges stream flows and measures sediment loads. It also monitors groundwater levels and the quality of surface water and groundwater regularly to establish the data base for water resource management.

### **Organization**

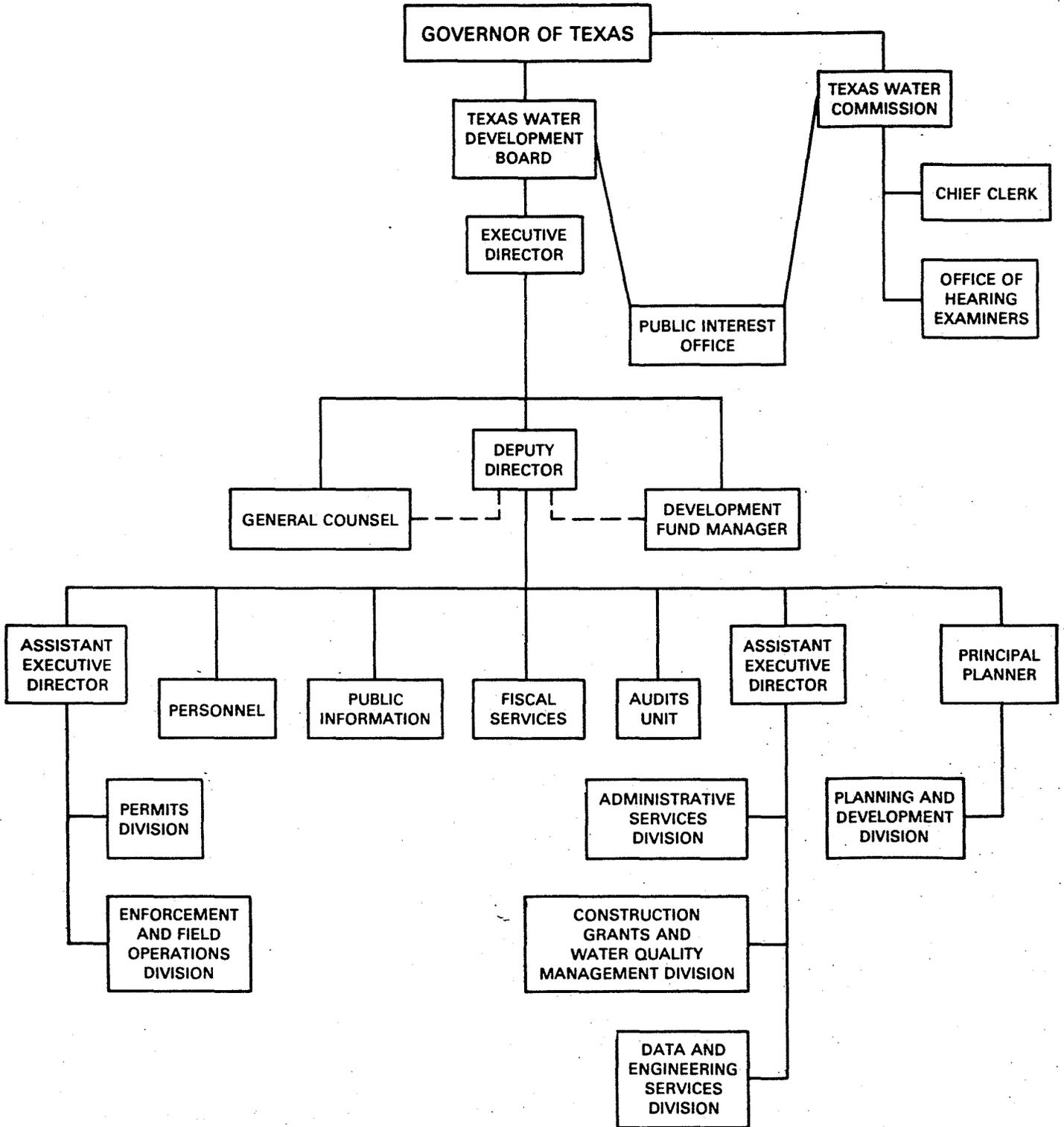
The agency is structured in a unique fashion to carry out its permitting, enforcement, and other responsibilities. By act of the legislature, the TDWR was structured into three parts. The Texas Water Development Board was retained as the "legislative" part of the agency with the responsibility of establishing policy for the entire organization. The Water Rights Commission was retained with the new name of the Texas Water Commission to act as the "judicial" branch of the agency. In this capacity the TWC holds quasi-judicial hearings for the purpose of issuing permits and making other judicial actions for the agency. The executive director of the agency and his staff constitute the "executive" part of the agency. The executive staff carries out the policies of the Water Development Board and drafts recommended permits and other recommended actions for the TWC. The executive director serves at the pleasure of the Water Development Board. This structure is supported by a total of 933 authorized staff and an operating budget of approximately \$30 million in fiscal year 1983. Funding in that year came from the following sources: 59 percent from general revenue; 38 percent from federal funds; and three percent from special funds. An organization chart, a chart showing agency expenditures by various categories, and a list of district offices are included on the following pages.

### **Guidelines for Reviewing the Agency**

To evaluate an agency of TDWR's size in a meaningful way, it is necessary to focus carefully on the areas to be emphasized in the review. Several guidelines were developed for this purpose. First, the review was seen as an opportunity to make sure that the agency has the necessary authority and procedures in place to deal with the major problems that it may face in future years. Agency operations thought to relate to potential problem areas were thus stressed. Second, the TDWR has an unusual history and structure in that the agency is a combination of three separate agencies existing prior to 1977. Attention was given to ensuring that a proper balance of prior agency responsibilities was achieved when the merger occurred. Finally, various other state task forces or committees are actively studying aspects or issues relating to TDWR's operation. Two such study groups are the Governor's Task Force on Hazardous Waste and the Joint Committee on Water Resources of the house and senate. Less staff time was devoted to areas under study by such groups because of this attention.

With these guidelines in mind, areas of particular concentration were selected. Information for this selection was collected through interviews with agency personnel, and interviews with interest groups and knowledgeable members of the public. Concerns raised by interest groups having experience

TEXAS DEPARTMENT OF WATER RESOURCES

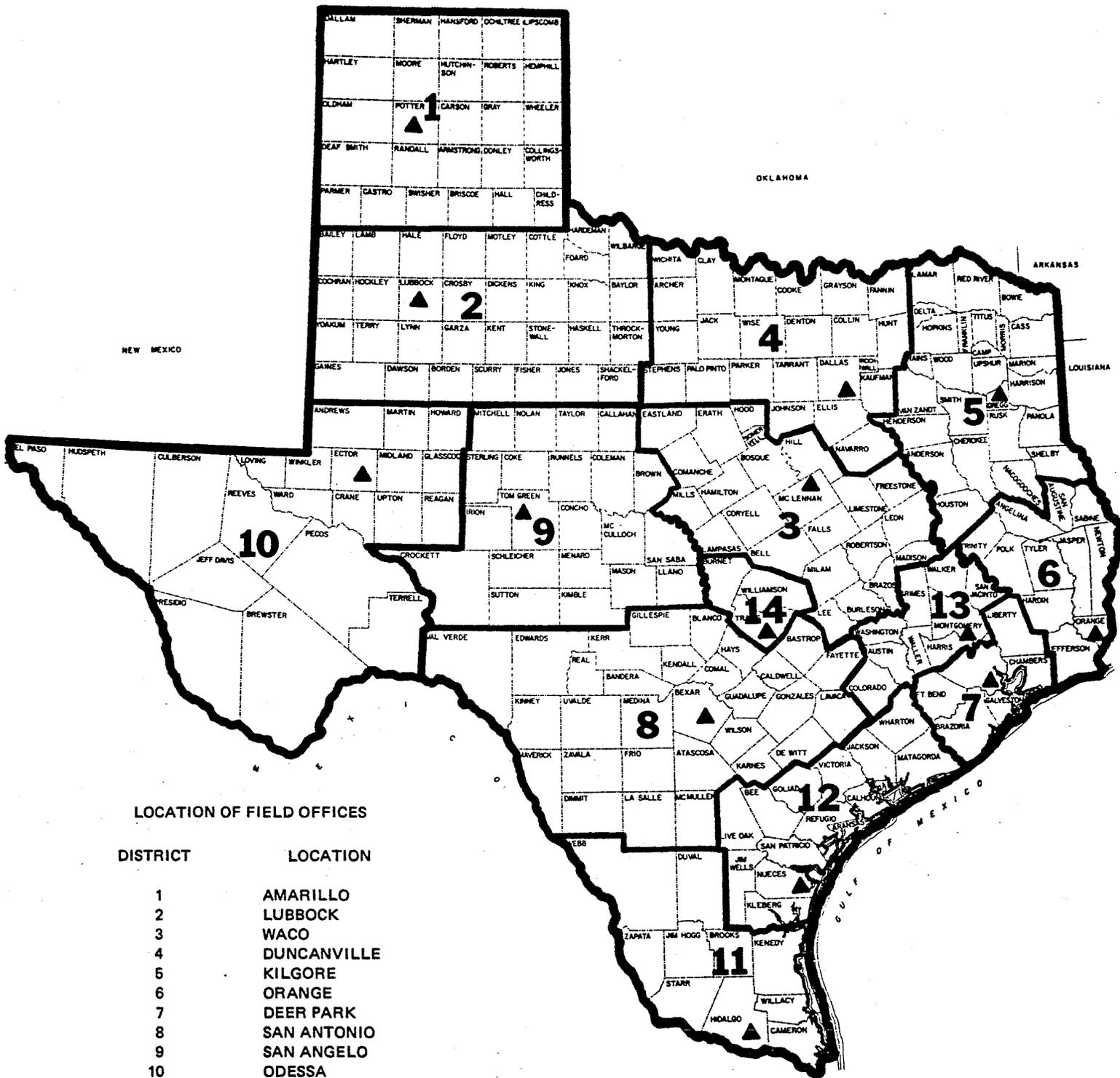


# TEXAS DEPARTMENT OF WATER RESOURCES

## Program Areas 1983 Expenditures

**\$29,955,861**

<b>Abandoned Hazardous Waste Site Cleanup</b>					<b>\$1,520,642</b>	
<b>Enforcement</b>					<b>\$5,534,606</b>	
<b>Waste Water 19%</b>	<b>Permits</b>			<b>Water Districts 8%</b>	<b>Injection Wells 13%</b>	<b>\$5,893,946</b>
	<b>Water Use 39%</b>	<b>Solid Waste 21%</b>				
<b>Water Project Financial Assistance</b>					<b>\$3,303,935</b>	
<b>Planning and Technical Support</b>					<b>\$7,821,376</b>	
<b>Administration</b>					<b>\$5,881,356</b>	



**LOCATION OF FIELD OFFICES**

DISTRICT	LOCATION
1	AMARILLO
2	LUBBOCK
3	WACO
4	DUNCANVILLE
5	KILGORE
6	ORANGE
7	DEER PARK
8	SAN ANTONIO
9	SAN ANGELO
10	ODESSA
11	WESLACO
12	CORPUS CHRISTI
13	SPRING
14	AUSTIN
<b>WATERMASTER</b>	<b>WESLACO</b>
	<b>EAGLE PASS</b>

**TEXAS DEPARTMENT OF WATER RESOURCES  
ENFORCEMENT AND FIELD OPERATIONS DIVISION  
FIELD OFFICES**

**DISTRICT 1**

3918 Canyon Drive  
Amarillo, Texas 79109  
806/353-9251 (TEX-AN 8-847-4264)  
David Mark Gates, Supervisor

**DISTRICT 2**

2321-A 50th Street  
Lubbock, Texas 79412  
806/799-1164 (TEX-AN 8-862-0047)  
Raymond L. Mittel, Supervisor

**DISTRICT 3**

3221 Franklin  
Waco, Texas 76710  
817/753-3688 (TEX-AN 8-820-1462)  
Joe Morgan, Supervisor

**DISTRICT 4**

203 James Collins Blvd.  
Duncanville, Texas 75116  
214/298-6171 (TEX-AN 8-831-5650)  
Charles D. Gill, Supervisor

**DISTRICT 5**

2807 Highway 42 North  
Kilgore, Texas 75662  
214/984-0636 (TEX-AN 8-214-984-0636)  
Billy Boggs, Supervisor

**DISTRICT 6**

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Kenneth W. Krueger, Supervisor

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James R. Stubblefield, Deputy Watermaster

with the agency were particularly useful as indicators of where potential problems might exist. Interest groups, for example, pointed out concerns with the agency's policy-making structure and enforcement activities, and these areas were addressed in the report.

After issues were identified through interest groups and other means, relevant areas for analysis were further researched and necessary data collected. Recommendations were finally developed from this information.

### **Need to Continue Agency**

Water in Texas is a scarce resource of basic importance to the state's citizens and economy. For this reason it is necessary that the resource be properly used and protected. The management functions of the TDWR continue to be needed to provide this protection.



**Sunset Commission Recommendations for the  
TEXAS DEPARTMENT OF WATER RESOURCES**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The name of the Texas Water Development Board should be changed to the Texas Water Resources Board.**

This name change was suggested in testimony before the commission. It was pointed out that the new name would more appropriately reflect the larger policy responsibilities of the Water Development Board that were assumed after the 1977 merger. This name change would require a constitutional amendment. However, other constitutional amendments will very likely be proposed in the water area by the next session of the legislature. The amendment for a name change could be logically grouped with other recommended constitutional changes in the water area.

- 2. The organizational structure of the agency should be changed by:**
  - a. Adding three public members (as defined by Sunset Commission language) to the current six member Water Development Board.**
  - b. Moving the assistant executive director for permits and enforcement under the control of the Water Commission for purposes of hiring and firing.**
  - c. Having the Water Development Board and the Water Commission jointly approve the budget and the substantive rules for the permitting and enforcement activities of the agency.**

These recommendations address two problems coming from the merger of three separate water agencies in 1977. The first problem is the narrow focus of the Water Development Board. The board is the policy-making body for the agency. Before the merger the board looked at water finance questions. Since the merger, that water finance orientation has continued, even though water quality issues are now a major concern of the combined agency. Adding three new public members to the six member board provides an opportunity to achieve a better balance between water quality and water finance issues. The second problem is the coordination between the Water Commission and the staff of the executive director. The merger statute set up the Water Commission as the independent hearing arm of the agency. Unlike the rest of the agency's staff, it is not under the direct control of the executive director. The Water Commission relies on permitting and enforcement information developed by the executive director, but the commission has little formal control over that information because of its separation from the rest of the agency staff. This situation has at times created problems in the Water Commission getting the permitting and enforcement information it needs. The assistant executive director for permits and enforcement is part of the executive director's staff. Giving the Water Commission the authority to hire and fire this person would shift some of the control over permitting and enforcement information to the Commission and away from the execu-

tive director. As part of this recommendation, the Water Development Board and Water Commission should jointly adopt substantive rules and the budget for the permitting and enforcement divisions of the agency. Finally, when one board request information from the other, it should be supplied within 30, but no less than 90 days.

- 3. The Sunset Commission's basic conflict-of-interest provisions defining public members should be applied to the Texas Water Commission.**

Commissioners of the TWC can be considered "public" members since the statute requires only that they be selected from different regions of the state. Standard language of the Sunset Commission places conflict-of-interest provisions on public members to ensure that they have no ties with the regulated group. Such provisions are lacking in the TWC statute and should be added to conform to the basic sunset approach.

### Evaluation of Programs

#### Overall Regulatory Authority

- 4. The PUC's jurisdiction over water and sewer rates should be transferred to the Texas Department of Water Resources.**

Jurisdiction over water and sewer rates and services is split between the PUC and the TDWR. During the 68th Legislature, S.B. 884 which was vetoed by the governor, proposed the transfer of the PUC's jurisdiction over private water and sewer companies to the TDWR. This transfer would assist in developing a coordinated water policy, ensure a consistent ratemaking approach, and free up more of the PUC's time for dealing with the state's large electric and telephone utilities.

- 5. The portion of the state's hazardous waste program currently under the jurisdiction of the Department of Health should be transferred and consolidated under the Department of Water Resources.**

In the regulation of solid waste, the Health Department has jurisdiction over municipal hazardous waste and the Department of Water Resources has jurisdiction over industrial hazardous waste. Consolidation of the regulatory programs would reduce confusion among the public and the regulated industries over the specific division of authority between the agencies, and provide one regulatory approach to controlling the handling and disposition of hazardous wastes. TDWR currently has jurisdiction over the majority of the state's hazardous waste, and as a result, it has developed much technical expertise in this area. Consolidation of the state's hazardous waste program in the Department of Water Resources is therefore appropriate.

- 6. The TDWR as well as the Railroad Commission should have the authority to file suit for oil and gas related pollution violations.**

The TDWR currently has broad authority over water quality in the state. Pollution resulting from oil and gas production, however, is under the exclusive jurisdiction of the Railroad Commission. The TDWR is also in a position to know whether these oil and gas activities may require enforcement action for water pollution violations. The water agency as well as the

Railroad Commission should therefore have the authority to bring suit for oil and gas related pollution violations.

- 7. The TDWR should review and comment prior to the Railroad Commission's decision on whether to let an oil producer use fresh water in secondary oil recovery.**

Testimony indicated that the last session of the legislature gave the Railroad Commission the authority to limit the use of fresh water in secondary recovery if other sources of water were reasonably available. The legislature considered giving the TDWR the responsibility of commenting on whether other sources of water were available; however, the authority was not granted. The problem that results is that the Railroad Commission cannot make as good a decision on the availability of sources of water other than fresh water because only the TDWR has that type of information. The problem could be solved by giving the TDWR a role in commenting on alternative water sources and the needs for fresh water in the region in question.

- 8. The Texas Department of Health should be given the authority to refer water pollution cases involving TDWR wastewater permit violators to the attorney general.**

Water pollution can be a health risk. However, the Texas Department of Health cannot refer TDWR wastewater permit violators to the attorney general. The Texas Department of Health should be able to take enforcement action on these water pollution cases involving its area of concern.

- 9. The statute should require that the Water Commission approve the purchase of strip mining equipment by a river authority if that purchase is in excess of \$1 million.**

A river authority is a governmental entity. Because of this, another unit of government cannot levy property taxes on strip mining equipment that a river authority owns. If the river authority leases the equipment, however, the machinery could be taxed since it remains under the ownership of a private business. Since strip mining equipment is often very expensive, taxes on the equipment could be a significant source of revenue for local governments. This recommendation would allow the Water Commission to determine whether it would be appropriate for a river authority to make a large purchase of strip mining equipment rather than using some other arrangement.

- 10. The statute should set up a special committee to study water districts and authorities and to make recommendations to the 70th Legislature.**

Water districts include river authorities and municipal utility districts. The districts carry out an important role in managing the state's water resources. However, there is little oversight or accountability to the state for many of the districts. It would be appropriate for a study committee to look at water districts to see if the role they play in the state's framework is proper, and whether they should be made more accountable to the state. The governor, speaker, and lieutenant governor should make the appointments to the committee. The composition of the committee should include representatives from water districts, environmental groups, and the legislature.

### Water Development Fund

11. **The statute should be amended to require that the state shall use the Water Development Fund to pay for releases of water that it requires to be made from reservoirs where the state owns a water right. The payment should include all costs involved in the release.**

The Water Commission can currently order releases of water from reservoirs where the state has a water right. There is not a policy in statute, however, as to how the reservoir operator (probably a river authority) would be reimbursed. This recommendation provides that the state would pay for the releases from the Water Development Fund.

### Permits

12. **The law should be amended to require consideration of water quality in granting a water rights permit.**

The law does not provide for consideration of water quality in deciding whether a water rights permit should be granted. A new water right could reduce the amount of water in a stream. There would then be less water to dilute the wastewater effluent flowing into the stream. The concentration of pollution could then exceed acceptable levels. The problem could be resolved by requiring consideration of water quality when the agency reviews an application for a water rights permit.

13. **The statute should be amended to eliminate mandatory hearings for uncontested water use cases.**

The statute requires the Texas Water Commission to hold hearings for water use permits whether they are opposed or not. Mandatory hearings are not required for other types of permits that are uncontested. This same approach could be used for water use permits and would result in a savings of hearing examiner time.

14. **The statute should be changed to require the agency to give notice to interested parties when a permit application is filed with the executive director.**

Testimony suggested that people protesting a permit application do not always get a reasonable amount of time to prepare a case for the TWC hearing. One of the main reasons for this problem lies in the way the statute sets up notice requirements to interested parties. The permit applicant files an application with the executive director, who makes a technical evaluation of the application that can last several months. The application then goes to the TWC for a hearing. The agency does not give notice to interested parties until the TWC gets the application. By the time this happens the applicant could already be working with the agency on the requested permit and has had the executive director's reviewing period to begin preparing for the hearing -- time which a protestant may not have because the agency has not yet given notice. The problem could be fixed by changing the statute to require the agency to give notice when the executive director receives the permit application rather than when it is sent to the TWC for hearing.

15. **The statute should direct the TWC to set up standards that define who can participate in a TWC permit hearings.**

The TWC has not set out any rules on who should have standing to participate in permit hearings. Testimony suggested that right now the TWC gives standing on a case by case basis without uniformity. This approach creates uncertainty as to who from the public can participate. To address this problem, TWC should set up guidelines for participation. The TWC should base the guidelines on the idea of giving standing to those persons who will be affected by a permit.

16. **The Texas Department of Water Resources should be required to collect fees to offset the cost of regulating its underground injection well and solid waste programs.**

Of the water quality permitting programs administered by the agency, only one, the wastewater discharge program, is supported in any meaningful way by fees. Generally speaking, some portion of the cost of regulating an industry or business should be borne by the regulated group. The statutes should be amended to require the establishment of a fee system for the TDWR's underground injection well and solid waste programs.

#### Enforcement

17. **The law should be changed so that the agency can set fines of up to \$25,000 per day for permittees under its jurisdiction who violate wastewater and underground injection well permit requirements.**

Current law sets fines of up to \$1,000 per day for any violation of a wastewater discharge permit and up to \$5,000 per day for underground injection well permit violations. Fines go to general revenue. The amount of these fines is low compared to fines for several other environmental programs. This change would provide a heavier penalty for permit violations to more effectively discourage their occurrence.

18. **The Texas Department of Water Resources should be authorized to assess administrative penalties.**

Currently, the department does not have the statutory authority to assess administrative penalties or fines. This authority would provide a mechanism to address compliance problems quickly. For these reasons, the agency's statute should be amended to authorize the use of administrative penalties.

19. **A mandatory enforcement hearing before the Texas Water Commission should be required for chronically non-compliant permittees.**

A substantial number of permittees under the agency's jurisdiction -- particularly municipal wastewater facilities -- tend to remain out of compliance with their permits over extended periods of time. By requiring the agency to hold mandatory enforcement hearings, triggered automatically after the passage of a predetermined period of time such as four years, these violators would be sure of facing specific enforcement action and potential litigation through the attorney general's office. The agency's statute should therefore be amended to require mandatory enforcement hearings before the TWC in situations where chronic problems exist.

### Public Participation

20. **All memoranda of understanding between TDWR and other state agencies should be processed through the APA rulemaking procedure.**

Several state agencies are responsible for administering the state's environmental protection laws. "Memoranda of understanding" are developed between agencies to address certain situations where jurisdiction needs to be clarified. These memoranda of understanding possess many of the characteristics of rules as defined by the Administrative Procedures Act. The agency's statute should therefore be amended to require that both current and future memoranda of understanding be processed through the APA's formal rule-making procedure, thereby allowing the opportunity for public input through the APA hearings requirement.

**TEXAS COASTAL AND MARINE COUNCIL**

## Background

The Texas Coastal and Marine Council (TCMC) was created in 1971 based on the recommendations of a house interim study committee on oceanography. The 16 members of the council must be Texas residents with a knowledge of, and interest in marine-related affairs. Appointments to the council are made by the governor, the lieutenant governor, and the speaker. Each appointing authority selects members which represent state government, education, business and commerce, and the general public. Members serve six year terms.

The council has four and one half employees. In fiscal year 1984 the council operated on a budget of \$198, 659 from general revenue (98 percent) and a \$5,000 (two percent) grant from the Texas A&M Sea Grant program. The agency's organization chart is shown in Exhibit 1.

The committee that recommended the creation of TCMC was formed to determine if there was a need in the state for an institute of oceanography. This committee did not find a need for an oceanographic institute, but did believe that the state needed a mechanism to focus attention on coastal and marine affairs.

To accomplish this they recommended the creation of a Texas Council on Marine-Related Affairs to provide the legislature, the governor, and the state in general with a source of experienced judgment and expert advice on coastal matters. The council was to serve as a forum where law makers could join experts in marine affairs to plan for the proper management of the state's coastal resources.

In response to the recommendations of this committee, the 62nd Legislature created the Texas Council on Marine-Related Affairs. This council consisted of twelve members appointed by the governor, lieutenant governor, and the speaker from categories of state government, education, the general public, and business.

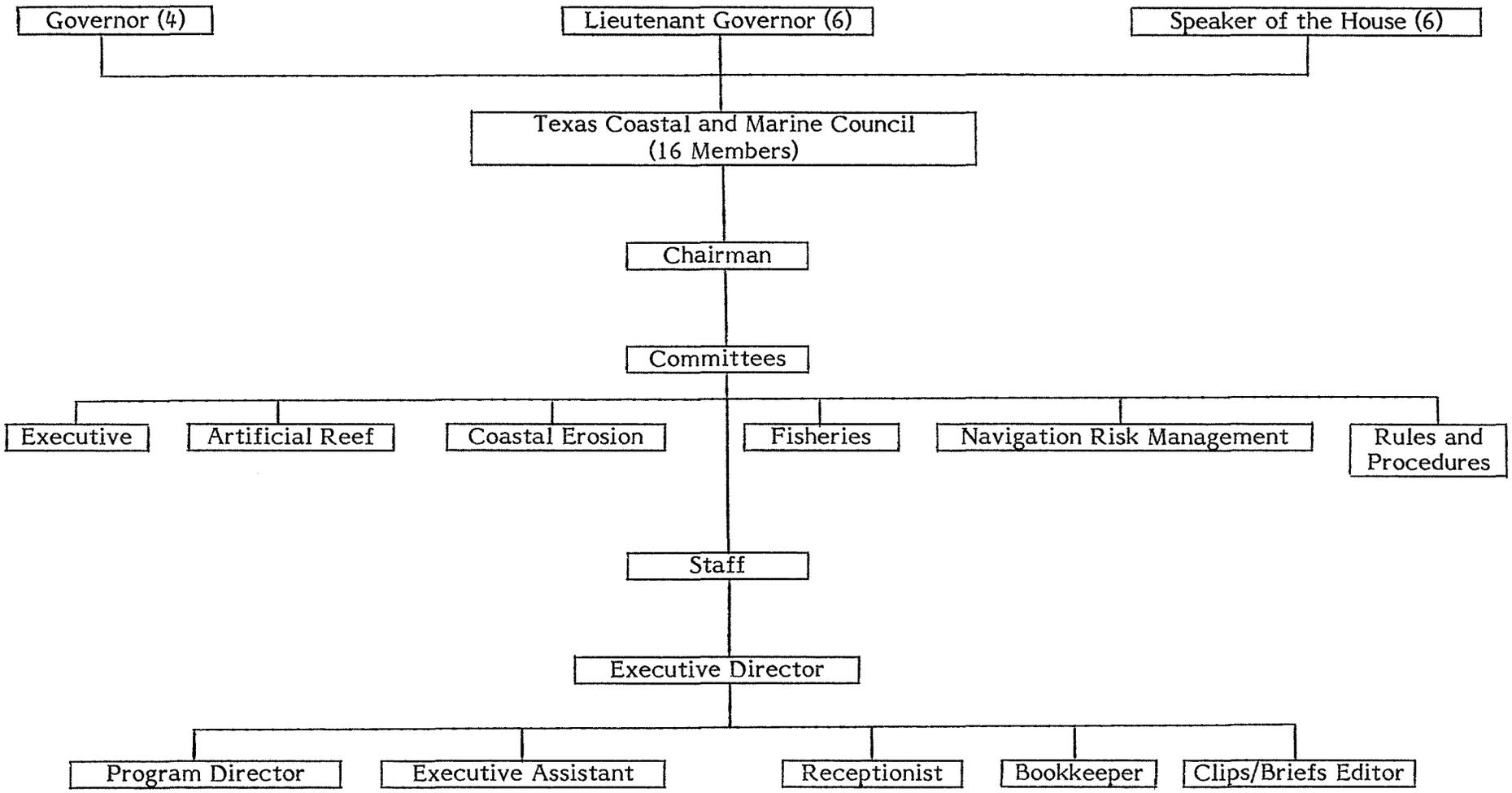
In 1973, the council's name was changed to the Texas Coastal and Marine Council and its membership was increased to 16 by adding four more legislators. The organizational structure and major activities of the council have remained essentially the same since that time.

The basic purpose of the council is to cooperate and assist in the assessment and planning of the state's coastal resources. To accomplish this purpose the council is directed by statute to serve as an advisory body to aid the legislature and other government entities with respect to coastal affairs. The council is also directed to maintain a liaison relationship with the federal government and hold public meetings on a quarterly basis.

A review of the ways in which other coastal states manage their coastal areas revealed a wide range of organizational arrangements. Several states have natural resources agencies with broad responsibility for the management of the coast as well as the rest of their natural resources. Others place this responsibility in some sort of economic development agency. In some states the governor has primary responsibility for coastal management. Still other states use two or more agencies to oversee their coastal affairs.

The unique nature of a coastal area makes it difficult for one agency to manage. In Texas, for example, the General Land Office has regulatory authority

Exhibit 1  
TEXAS COASTAL AND MARINE COUNCIL  
ORGANIZATIONAL CHART



over all beaches, state-owned coastal land, and state-owned submerged land. The state Department of Highways and Public Transportation has oversight responsibility for channels, waterways, ferries, tunnels, and causeways on the coast. The Department of Water Resources is responsible for the quality of the state's water, including coastal waters. The Parks and Wildlife Department manages the state's marine fisheries. The governor's office has the responsibility of handling coastal emergencies, such as hurricanes and oil spills. Coastal city and county governments also have authority to make decisions on certain issues affecting the coast. In addition, there are federal agencies with authority over coastal areas, such as the Coast Guard, the U.S. Army Corps of Engineers, and the EPA.

This decentralized approach to the state's management of its coastal affairs was the main reason for creating an agency such as TCMC. The council was designed to help coordinate and plan the activities of a large number of government entities which oversee an area of great environmental and economic significance.

The council has conducted a broad range of activities to accomplish its objective. For purposes of the review three major functions were identified and analyzed: 1) serving as a forum for discussion of coastal issues; 2) the offshore artificial fishing reef program; and 3) research and information services.

Forum for Discussion. The council performs this function in several ways. The primary one is through the open meetings held by the council every other month. Speakers are invited, the public gets the chance to address the council, and public notice of the meetings is given. Various cities along the Texas coast host these meetings.

Another way the council acts as a forum is through its membership. Each member represents certain interests. Legislators, for example, represent everyone in their district. Council members and the agency staff attend conferences, monitor federal activity which may affect the coast, and keep up with what other state agencies are doing in coastal areas, in order to bring relevant material for discussion into the meetings. The council has also solicited public opinion through a coastal issues survey, where coastal residents were polled to determine what the major problems on the coast were.

Artificial Fishing Reefs. The second major activity of the council is its artificial fishing reef program. The council has constructed five offshore artificial fishing reefs from obsolete navy vessels which were given to the state. These reefs are thought to provide places where certain types of marine life grow and prosper. The primary users of the council's fishing reefs are sportfishermen and scuba divers.

The Texas Coastal and Marine Council is currently seeking to expand this program by encouraging oil companies to donate offshore oil platforms no longer in use for reef materials. Three of the council's five reefs have no ongoing costs associated with them. The other two have permit requirements to maintain buoys that mark the sites for ships in the area. The cost of maintaining these buoys over the last four years has averaged \$37,250 annually. The council hopes to eventually construct a "fully-developed reef system" where reefs will be located on all of the best suited sites off the coast of Texas.

Currently, the council is working on ways to eliminate or reduce the costs to the state of maintaining buoys. The agency hopes to do this by getting oil companies to donate money to support the costs of the buoys. The agency has helped set up a private, non-profit corporation to work with oil companies and receive donations.

Research and Information Services. The council's purpose as an advisory body requires that it conduct studies and provide information. The legislature has by resolution directed the council to undertake specific projects on 15 occasions since it was set up. Topics that the council has done studies on range from estuarine inflows to hurricane evacuation to dredged material disposal.

The council also analyzes issues of its own choosing. Some of these projects are handled internally by agency staff, and some are done by outside parties under contract. The most recent emphasis has been on economic development. The council is planning to study this subject to see whether any economic opportunities exist that are not being explored.

Services of an informational nature performed by the council include channeling people to the right place to get questions answered. Since so many government entities are involved in coastal affairs and only one agency in the state focuses exclusively on coastal issues, part of the council's work involves telling people where to take certain types of problems. The council also gives other state agencies information on coastal problems. The council also publishes a clipping service called "Clips/Briefs" which contains press articles on coastal affairs. Finally, the council puts out a compilation of legislation every two years that deals with coastal affairs.

### Need to Continue Agency

The need for the council's functions was reviewed and this review indicated that there is a continuing need for the state to carry out these functions. Texas has the third longest coast in the continental United States. The state's coastal area contains a large percentage of the state's economic base. The coastal area is also very important from an environmental perspective. Still, Texas appears to have less planning and management of its coastal resources than other coastal states. Texas also has many different agencies which oversee different aspects of coastal activity. The council is the state's only agency that is authorized to coordinate, plan, and provide expert advice on coastal and marine related affairs.

**Sunset Commission Recommendations for the  
TEXAS COASTAL AND MARINE COUNCIL**

**I. MAINTAIN THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. Representation on the council should be expanded to include federal, county, and city government; marine navigation, marine fisheries, and environmental concerns.**

The current categories of representation are state government, business and commerce, education, and the general public. These categories do not include some of the major interests served by the council. Categories of representation should be expanded to make the council membership more reflective of the interests it serves.

- 2. The chair and vice-chair should be appointed alternately by the lieutenant governor and the speaker rather than elected by the members.**

The council's members elect their chair and vice chair every two years. A more common method of selection is to leave the choice up to the authority who appoints the members. The council historically elects legislators to serve as chair and vice chair, and the speaker and the lieutenant governor appoint legislative members to the council. In line with the more common approach, the speaker and lieutenant governor should appoint the chair and vice chair for two year terms.

**Overall Administration**

- 3. The council should be required to implement a fee system for its publications.**

It is the agency's policy to provide copies of its reports and studies on request, at no charge. Most of the state's advisory bodies which publish these kinds of documents charge fees because they feel that it is the intent of the legislature that the state's costs be recovered for these publications. A fee system would help the council stretch its budget and be more consistent with legislative intent.

**Evaluation of Programs**

- 4. The council should develop rules which describe the relationship between it and the Texas Marine Resources Foundation (TMRF). (management improvement/non-statutory)**

The council helped to create the TMRF to serve as a mechanism to finance its artificial fishing reef program. They have not yet developed rules as required by statute and should be directed to do so.

5. **The council should be required to report to the legislature and the governor on its activities.**

The council, unlike most of the state's advisory agencies, currently has no statutory reporting requirements. A reporting requirement would ensure that the legislature and the governor receive the council's advisory services and would increase the council's accountability.

**TEXAS AIR CONTROL BOARD**

## Background

The Texas Air Control Board was created in 1965 and is currently active. The board is responsible, under the Texas Clean Air Act (TCAA), for safeguarding the air resources of the state from pollution. The board originally operated with staff support from the Texas Department of Health and had limited responsibilities for regulating pollution from industrial facilities. However, the board's responsibilities and activities have increased significantly since 1965.

Board duties and powers were expanded in 1969 to include monitoring and research activities. The board was also allowed to establish air quality control regions throughout the state. In 1970, revisions to the Federal Clean Air Act required the board to determine emission reductions needed by the state to meet national air standards and to prepare plans for meeting the standards. The legislature, in 1971, expanded the board's responsibilities to require that entities constructing or modifying contaminant emitting facilities obtain a permit from the board before beginning construction and operations. Because of the substantial growth in the agency's activities, the board was separated from the Texas Department of Health and made an independent agency in 1973. Finally, as a result of requirements of the Federal Clean Air Act of 1977, the Texas statute was revised in 1979 to:

1. allow the board to collect permit fees and regulate radioactive air contaminants,
2. change the composition of the board to include five public members and four members with specific qualifications, and
3. require a pilot project for inspection/maintenance of vehicle emissions in the Houston area.

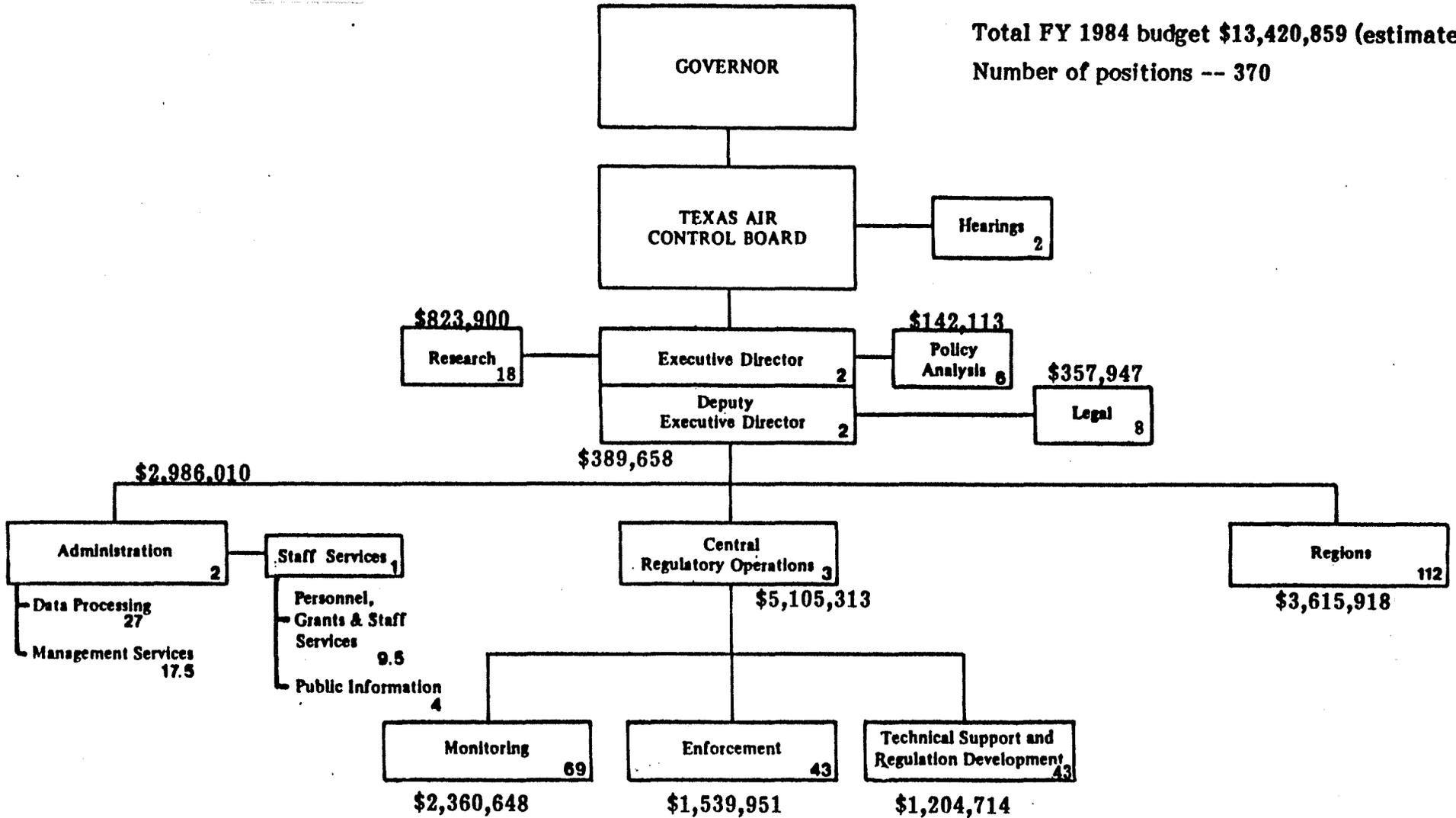
Currently, the Texas Air Control Board is a nine-member body with members appointed by the governor to staggered six-year terms. The TCAA sets out the board's membership to consist of a professional engineer with at least ten years experience in the area of air pollution control; a physician with experience in industrial medicine; an individual engaged in the management of a private manufacturing or industrial concern for at least ten years prior to appointment; an agricultural engineer with at least ten years of experience; and five public members. Exhibit 1 sets out the organizational structure of the agency.

Funding for the board in fiscal year 1984 totalled \$13,420,859. About \$10 million of this amount came from general revenue, with the remaining \$2.5 million coming from federal sources. The board has 370 employees and operates from a headquarters in Austin and from 12 regional offices located throughout the state. Exhibit 2 sets out the agency's activities functionally, and shows the percentage of the agency's budget and personnel used for each activity. The location of each of the agency's 12 regional offices is illustrated in Exhibit 3.

As mentioned earlier, the primary responsibility of the agency is to safeguard the air resources of the state. In order to meet its responsibilities the board performs two primary functions -- permitting of emission sources and enforcement of permit requirements and agency regulations. These functions are supported by various other agency activities such as monitoring and technical support. Descriptions of these functions and support activities are set out below.

EXHIBIT 1

Total FY 1984 budget \$13,420,859 (estimate)  
 Number of positions -- 370



REGIONAL OFFICES

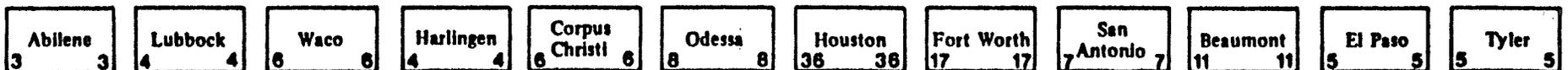


EXHIBIT 2

TEXAS AIR CONTROL BOARD

Functional Breakdown of Programs  
September 1, 1983 - August 31, 1984

Total Estimated Budget - \$13,258,133

Number of Positions - 370

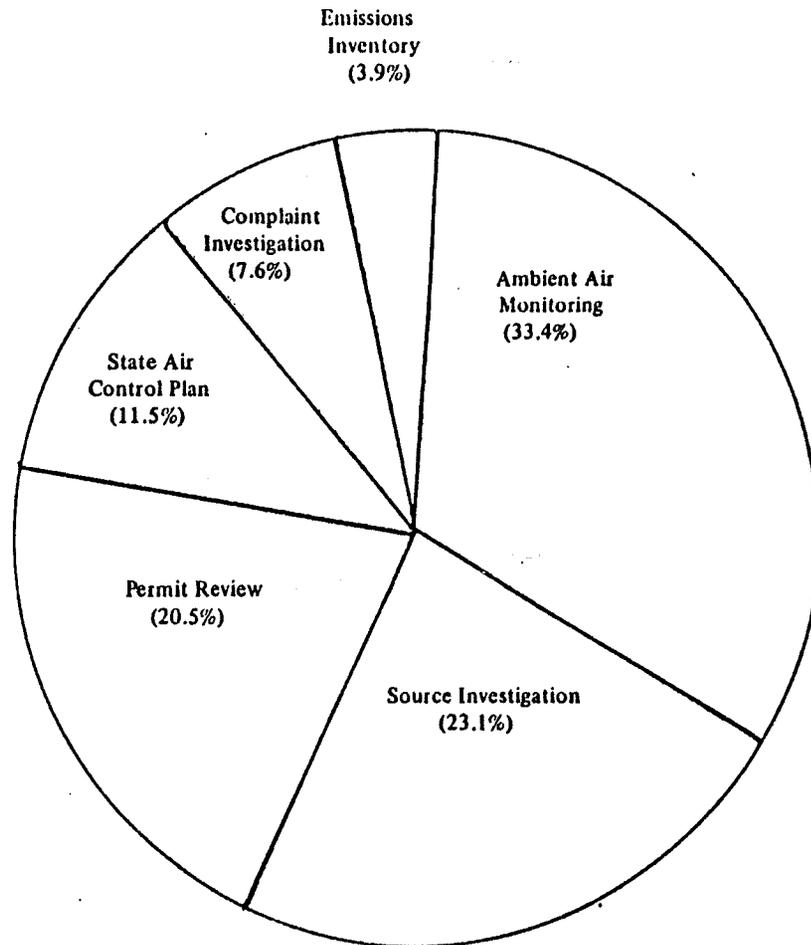
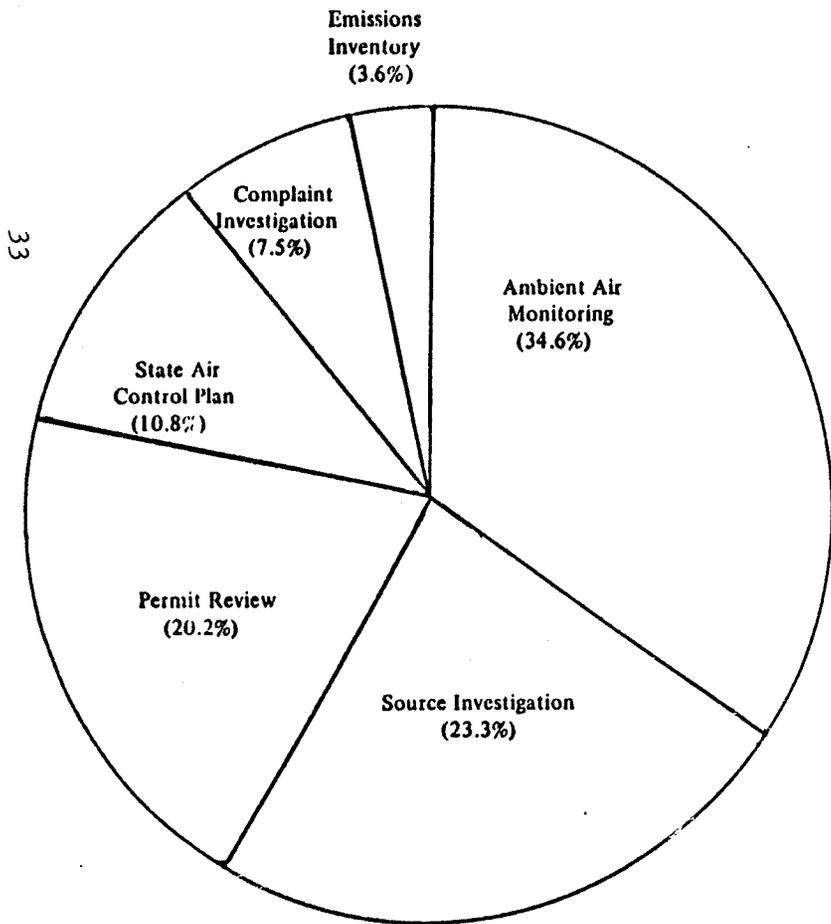
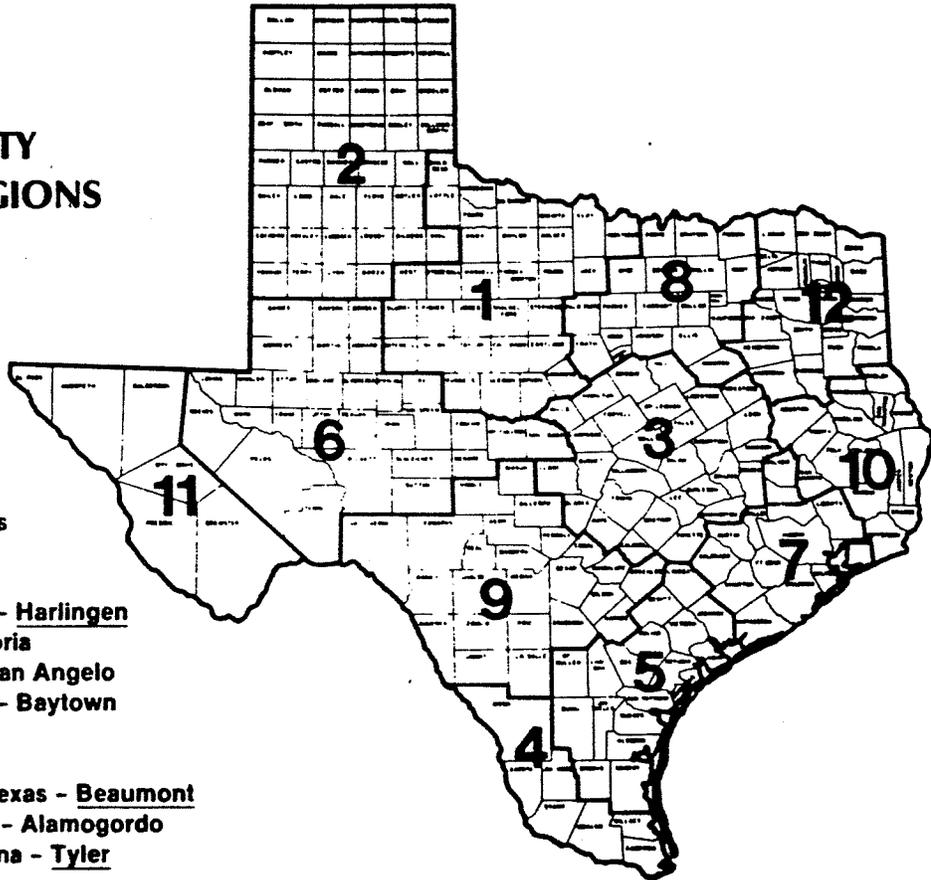


EXHIBIT 3

**AIR QUALITY  
CONTROL REGIONS**



- 1. Abilene - Wichita Falls
  - 2. Amarillo - Lubbock
  - 3. Austin - Waco
  - 4. Brownsville - Laredo - Harlingen
  - 5. Corpus Christi - Victoria
  - 6. Midland - Odessa - San Angelo
  - 7. Houston - Galveston - Baytown
  - 8. Dallas - Fort Worth
  - 9. San Antonio
  - 10. S. Louisiana - S. E. Texas - Beaumont
  - 11. El Paso - Las Cruces - Alamogordo
  - 12. Shreveport - Texarkana - Tyler
  - Interstate Regions
- Cities where Regional Offices are located are underlined.

Permits. The Texas Clean Air Act requires that all new and modified pollution emitting facilities obtain a construction permit before construction begins. The permit division reviews applications for construction permits to ensure that the operations of a new or modified source will include the use of best available control technology (BACT) and will not prevent the attainment or hinder the maintenance of any applicable federal air quality standard. The statute also authorizes the board to grant an exemption from the permit process if the completed facility will be an insignificant source of air emissions. An operating permit must be applied for within sixty days after a facility has begun operations.

Since the board began requiring and issuing permits in 1971, approximately 8,500 construction permits, 6,200 operating permits, and 6,000 exemptions from permit procedures have been issued.

#### Operating Permits by Region

<u>Region Number</u>	<u>Office Location</u>	<u>No. of Permits</u>
1	Abilene	336
2	Lubbock	491
3	Waco	414
4	Harlingen	207
5	Corpus Christi	432
6	Odessa	435
7	Houston	1841
8	Fort Worth	913
9	San Antonio	397
10	Beaumont	356
11	El Paso	122
12	Tyler	362

Facilities built prior to 1971 are not required to obtain a permit, although they must comply with rules and regulations of the board. In fiscal year 1983, 199 permits and 944 exemptions were issued by the permit division.

The permit process begins with the submission of an application and required fees by the entity requesting the permit. The application and supporting documentation are reviewed by an engineer to determine if BACT is being applied, and whether the proposed facility will meet all other applicable requirements. If appropriate, computer modeling and a health effects review are done to estimate possible effects of a facility's emissions. During this time, the TACB regional office or a delegated local agency reviews the plans and the physical site. Public notice is placed in local newspapers by the applicant according to TACB requirements, followed by a 30-day period for comments. If there is opposition to the issuance of a permit, the executive director has the option of calling a contested case hearing or issuing the permit without a hearing. In some cases an informal public meeting is called where the public, the company and agency staff get together to discuss concerns about the facility and see if an agreement can be

reached. If a hearing is denied by the executive director, a construction permit is issued and the director's decision can be appealed to the board. The appeal then results in a hearing being called, although construction on the project may begin and continue through the entire appeal process.

An operating permit must be applied for within 60 days after construction is complete and the facility begins operations. An inspection is performed and various monitoring data may be required. The operating permit is issued if all permit and regulation requirements are met.

Enforcement. In order to determine if compliance with TACB requirements and federal air quality standards are being maintained, routine inspections are conducted by personnel from the agency's regional offices on most major sources including permitted, exempt, and non-permitted facilities (those constructed prior to the permit program). Major sources of emissions are those that emit or have the potential for emitting 100 tons of contaminants per year. The agency has identified 1,662 major sources in the state, of these, 1,156 are permitted and 506 are non-permitted sources. The regional offices also conduct investigations of all contaminant emitting facilities in response to air pollution complaints made to the agency by the general public, other governmental entities and public officials. These activities allow the agency to identify sources in non-compliance and take appropriate steps to bring the source back into compliance in a timely manner. In fiscal year 1983, the board was involved in 10,079 routine inspections and 2,473 complaint investigations.

Inspections and investigations that identify sources out of compliance with permit requirements or agency regulations result in issuance of notices of violation (NOV) by regional office personnel. The regional offices issued 1765 NOV's in fiscal year 1983. Once an NOV is issued, agency personnel strive to obtain voluntary compliance by requesting the company to submit a plan and a timetable to achieve compliance. Further actions such as formal conferences with company management, calling enforcement hearings, and issuing board orders may be taken if timely compliance is not achieved. In addition, if these efforts fail, the board is authorized to take civil actions against facilities in non-compliance.

Cases against these facilities are prepared by the board's legal staff and are filed with the Attorney General's Office for further action. Under statute, violations of board rules and regulations are subject to a civil penalty of no less than \$50 and no more than \$1,000 per day per violation. The board can also seek injunctive relief against facilities in non-compliance. In fiscal year 1983, the board took legal action in seven cases. Fines were assessed in five cases for a total of \$217,508. The review revealed that the number of cases initiated by the board has fallen off steadily after 1973 when the board initiated legal action on 87 cases. Agency personnel indicated that this reduction is due primarily to better overall compliance in the state.

In addition to the agency's enforcement activities, there are six federally assisted locally operated air control programs that assist in enforcement efforts. Under authority granted by the Federal Clean Air Act and the Texas Clean Air Act, a local government can create a local air pollution control program for the purpose of protecting and enhancing the quality of air in that locality, in accordance with TACB rules and regulations. The following six programs receive federal funds to assist the TACB in performing such activities as investigations, monitoring the quality of air in their area, and assisting in state permitting

activities. These activities are described in "Letters of Agreement" between the TACB and local programs.

#### Federally Assisted Local Programs

<u>Local Program</u>	<u>Date of Current Letters of Agreement</u>
Galveston County	5/27/81
City of Houston	7/20/81
City of Fort Worth	5/27/81
City of Dallas	7/07/81
City of El Paso	5/27/81
City of San Antonio	5/27/81

Monitoring. The agency is involved in two types of monitoring activities which support the agency's enforcement function. Ambient air monitoring is conducted to determine if federal air quality standards are being achieved throughout the state, and localized monitoring and sampling are conducted to determine if an individual facility is complying with agency rules or with permit requirements. The agency performs these activities through its Monitoring Group, which consists of the Ambient Air Monitoring Division, Quality Assurance Division and the Sampling and Analysis Division. The group also performs analyses of ambient air and source emissions samples.

Activities of the Ambient Air Monitoring Division involve the operation of continuous (CAMS) and non-continuous (NCAMS) monitoring stations. These stations take ambient air samples in certain areas to determine compliance with federal air quality standards, and are not designed to determine an individual facility's compliance with rules or permit conditions. There are currently 31 CAMS and 101 NCAMS located in 35 counties across the state. The majority of the stations are in areas where most of the state's population and industrial and commercial activities are concentrated. In addition to determining compliance with federal standards, monitoring stations provide data which is used to support development of regulations to reduce air contaminants, and to assess the effectiveness of current strategies to attain and maintain air quality standards.

The Sampling and Analysis division is responsible for collecting and analyzing samples from specific emission sources. Sampling activities include stack sampling, evaluating the opacity of visible emissions, and property-line sampling. These activities are conducted to determine a particular facility's compliance with emission limits established in board rules and regulations and in its permit. Special non-routine ambient air monitoring is also conducted by this division in cases of localized, unusual pollution problems involving a toxic or hazardous air contaminant that cannot be evaluated by the CAM network.

The Quality Assurance division is involved in quality assuring the techniques and equipment used to obtain and analyze samples. Companies requesting the issuance of an operating permit must demonstrate the source is operating within emission limits imposed by the permit. The demonstration, usually accomplished

by sampling the source emissions, is performed by the source operator or a contracted consultant. Most of the activities of the Quality Assurance Division are directed toward ensuring that these tests are conducted properly and result in valid emission data. The division also assures the quality of data generated by the agency's equipment.

Additional Support Activities. The agency conducts several other activities which provide support for the primary functions. These activities are conducted by the Technical Support and Regulation Development Group, the Policy Analysis Section and the Administration and Research Program.

The Technical Support and Regulations Development Group assists the agency in developing appropriate regulations and supports the activities of the permitting and enforcement functions. Specifically, the group is responsible for evaluating and developing air control strategies and regulations for all facilities which emit air contaminants, including permitted, non-permitted and exempt facilities. The group also supports the agency's enforcement efforts by assisting development of emission control strategies for facilities built before permits were required in 1971. The group supports the permit process by conducting air quality modeling on a proposed facility to estimate what affect the type and amount of pollutants emitted by the facility would have on the surrounding air quality.

Further support for the agency's activities is provided by the Policy Analysis section and through research conducted by the Administration and Research Program. The Policy Analysis Section monitors state and national issues that may affect the board's activities. The Research Division is involved in efforts to identify new air contaminants and to determine potential health affects of contaminants so that control strategies can be developed. The agency received an appropriation of \$600,000 for the 1984-85 biennium to conduct health effects research.

### Need to Continue Agency

Enhancing the air quality of Texas is important for protection of the health and physical property of the state's population. The regulatory functions of the TACB continue to be needed to ensure that the quality of the air meets acceptable standards to provide this protection. The agency has generally carried out its functions in an efficient and effective manner. However, if the legislature decides to continue the agency, various improvements could be made in the operation of these functions.

**Sunset Commission Recommendations for the  
TEXAS AIR CONTROL BOARD**

**I. MAINTAIN THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The board's chairperson should be appointed by the governor instead of elected by other board members.**

Currently, the board chair is elected from the membership. Having the governor appoint the chair would provide greater continuity between executive and board policy.

- 2. Statutory authority for the board to issue variances is no longer needed and should be removed.**

Variances allow a company to operate in non-compliance with regulations if compliance would unnecessarily put them out of business. The variance provisions have not been used since 1975, and new regulations generally provide sufficient time for compliance. For these reasons, the board's authority to grant variances is no longer necessary and should be removed.

**Overall Administration**

- 3. The agency should be required to collect fees to offset the cost to the state of regulating the emission of air contaminants.**

The board's current fee structure results in collections that recover only a small portion of the agency's costs. Generally speaking, some portion of the cost of regulating an industry or business should be borne by the regulated group. To address this problem, the statute should be amended to require the agency's fee system to recover between 25 and 50 percent of the state's costs of the permitting and enforcement functions of the agency.

**Evaluation of Programs**

**Permits**

- 4. Public hearings on permit applications should be required when requested by those with valid concerns.**

The statute does not require a hearing to be held on permit applications even if requested by members of the public who may be affected by emissions from a proposed facility. Procedures exist in other state agencies to require public hearings when applications for permits are validly protested. In order to provide similar opportunities for persons potentially affected by actions of the TACB, permit hearings should be required when requested by those with valid concerns.

**5. The agency's list of standard exemptions from permit requirements should be adopted as rules.**

The statute provides that facilities may be exempted from permit requirements if they are insignificant sources of air contaminants. The agency maintains an informal list of types of facilities that are standard exemptions. This type of list, which informs the regulated industry of what is subject to agency requirements, is usually included in an agency's formal rules and regulations. In order to provide the public and the regulated industry access to requirements which have the effect of rules, the list of standard exemptions should be adopted as formal rules under the APA.

**6. Defining the term "facility" in agency rules would clarify the scope of permit requirements.**

The statute requires that a permit be obtained for construction and operation of any facility which may emit air contaminants. The term "facility", however, is not defined in the statute and the agency interprets the term on a case-by-case basis. In order to provide clear guidance and a consistent interpretation of a term which carries substantial statutory requirements, the agency should adopt a definition of "facility" in rules and regulations.

**7. The agency should develop and implement a system to review and renew operating permits every 15 years.**

Operating permits are issued by the agency for the life of a facility. A system of renewing these permits every 15 years provides an orderly means of reviewing the activities and conditions of each facility, and places the burden of proof for showing proper compliance on the permit holder rather than the agency. Additional requirements for changes in control equipment or operations and maintenance procedures could result, although the economic reasonableness of these requirements should be considered.

**8. The agency should be required to develop and implement a system for permitting grandfathered facilities.**

Facilities built prior to the start of the agency's permit program in 1971 are not required to obtain an operating permit from the board. However, these facilities are regulated through the agency's rule-making powers. This situation leaves facilities in the state operating under two systems of regulation. Requiring the agency to bring grandfathered facilities under their permit system would help standardize the regulatory system. It would also identify in a systematic and ongoing fashion those facilities previously grandfathered under the law. However, additional control technology should not be a requirement for a grandfathered facility to obtain a permit if that facility is currently in compliance with the Clean Air Act and board regulations.

9. **The statute should set up a committee to study and make recommendations to the legislature on the issues of permitting grandfathered facilities, renewable operating permits, and emissions from ships in Texas waters.**

Facilities constructed prior to 1971 are not required to obtain permits from the agency. Issues have been raised as to whether these facilities should now be required to obtain permits and what requirements would be placed on these facilities in the permitting process. In addition, issues have been raised as to whether permits should be required to be renewed after a specific length of time, and whether emissions from ships should be permitted or further regulated by the agency. A committee should be established to study these matters and to make recommendations to the 70th legislature. The committee should be composed of representatives from industry, environmental groups, and the legislature.

#### Enforcement

10. **Use of administrative penalties would increase the agency's ability to obtain quicker compliance and provide an additional deterrent to violators.**

The agency does not have the statutory authority to issue administrative penalties or fines. This authority would provide a mechanism to address compliance problems quickly without having to enter the lengthy litigation process in all protracted enforcement cases. The statute should therefore be amended to authorize the use of administrative penalties.

11. **Raising the statutory limits of civil penalties would increase incentive for compliance.**

The civil penalties in the statute were set in 1965 and authorize a minimum fine of \$50 and a maximum fine of \$1,000 per day, per violation. The size of these penalties does not provide an effective deterrent, particularly to large companies. In addition, other state and federal pollution control agencies have significantly higher financial penalties available to deter non-compliance. For these reasons, the statute should be amended to increase the maximum fine to \$25,000 per day, per violation.

12. **Statutory authority should be given to the executive director to refer enforcement cases to the attorney general without prior board approval.**

Currently, the executive director must obtain board approval before referring enforcement cases to the attorney general for legislation. This process increases the time required to resolve cases where facilities are in violation of the Clean Air Act. Giving authority to the executive director to refer cases directly to the attorney general would make the process of stopping violations of clean air laws more efficient.

- 13. The Department of Public Safety should be authorized to institute additional vehicle inspection programs that meet federal requirements.**

A vehicle emissions inspection and maintenance program is currently required only in Harris County. However, there are indications that EPA may require additional, and possibly different types of programs in other Texas counties. The DPS statute only allows the one type of program used in Harris County to be instituted in the state. Broadening the DPS statute to allow other types of inspection programs would avoid sanctions that can be instituted by the federal government if the state does not comply with EPA requirements and would give the state the ability to respond to any future changes in federal requirements.

#### **Public Participation**

- 14. Memoranda of Understanding between TACB and other state agencies should be adopted as rules of the board.**

Several state agencies are responsible for administering the state's environmental protection laws. "Memoranda of understanding" are developed between agencies to address certain situations where jurisdiction needs to be clarified. These memoranda of understanding possess many of the characteristics of rules as defined by the Administrative Procedures Act. The agency's statute should therefore be amended to require that these memoranda of understanding be processed through the APA's formal rule-making procedure, thereby allowing the opportunity for public input through the APA hearings requirement.

- 15. Placing signs on locations of pending permit applications would improve public awareness of the permitting process.**

The agency currently requires permit applicants to publish notices of intent to seek a TACB permit in a newspaper in the county where the facility is located. This procedure is carried out to inform the public of the proposed project and the agency's permit process. Because many people do not see public notices in newspapers, efforts to inform the public could be improved. Placing notices on the property where the proposed project is to be located would provide an additional means for the public to become aware of a project and of their right to become involved in the agency's permitting process.

**OFFICE OF THE STATE ENTOMOLOGIST**

## Background

The Office of the State Entomologist was created in 1899 and is currently active. The state entomologist, who is also known as the Chief Inspector of the Texas Apiary Inspection Service, operates as a component of the Texas Agricultural Experiment Station at College Station. The state entomologist is appointed by the director of the Agricultural Experiment Station, with the approval of the Texas A&M University Board of Regents. Agency operations are conducted by a staff of three persons and funded in fiscal year 1984 in the amount of \$99,444 from general revenue and \$17,000 from fees.

Originally, the Office of the State Entomologist was responsible for devising methods for destroying all insects that were a threat to agriculture in Texas. The state entomologist also served as professor of entomology at Texas A&M University. In 1903 the state entomologist's duties were expanded to include the operation of the Honey Bee Disease Control Program. Under this program, the state entomologist was given the responsibility for taking steps to prevent, control and eradicate diseases affecting honey bees. During this period it is estimated that approximately 65 percent of the hives in Texas were infested with disease resulting in significant economic losses for the honey bee industry. In 1925, the legislature eliminated all of the state entomologist's responsibilities except for the Honey Bee Disease Control Program.

The Office of the State Entomologist currently operates only the Honey Bee Disease Control Program, known also as the Texas Apiary Inspection Service. As mentioned earlier, the service was originally created to protect the honey bee industry from infectious diseases that caused economic hardships to the industry. In 1983, the agency's statute was updated, giving the state entomologist responsibility for controlling all infectious diseases and parasites which threaten the Texas honey bee industry. (The estimated annual value of the industry is between \$100 to \$200 million. This estimate is based on the sale of honey, bee wax, pollen, bees and the pollination of various crops in the state.)

Diseases and parasites affecting honey bees are transmitted when diseased hives come in contact with healthy hives. In order to prevent and control the outbreak of disease, the inspection service conducts what amounts to a licensing function which includes permitting, certification, inspection, and enforcement operations. Permitting and certification are designed to prevent the interstate and the intrastate movement of diseased bees. Beekeepers entering or leaving the state with hives or moving bees within the state must obtain a permit from the state entomologist signifying that the hives are disease free. In addition, persons involved in the sale of queen and package bees to out of state and foreign buyers must have their operations certified as being disease free by the state entomologist. In fiscal year 1983, 484 permits and 32 certificates were issued.

The inspection activity is also an important part of the disease control program. Inspections are conducted by the state entomologist and his assistant to: 1) monitor the state for outbreaks of disease; 2) establish the disease status of hives for permitting and certification purposes and; 3) ensure that beekeepers are complying with the law. In fiscal year 1983, the agency inspected 163 apiaries and a total of 11,537 hives.

Finally, enforcement activities are conducted to ensure compliance with the law. The state entomologist has the authority to place bee yards containing

diseased hives under quarantine. Under quarantine, the bee keeper is prohibited from moving bees in or out of the quarantined yards for 30 days. In fiscal year 1983, 15 yards were placed under formal quarantine by the state entomologist. The state entomologist can also initiate legal action when provisions of the law, such as failure to obtain a necessary permit, are violated. Formal complaints concerning violations are filed by the state entomologist with the district or county attorney in the county where the alleged violation occurred. Under the statute, a violation of the law is a class C misdemeanor which is punishable by a fine of up to \$200. In addition, the state entomologist can seek a court order to seize or prevent the sale of diseased bees or equipment. The state entomologist can also seek a court order to enter private or public premises on which bees, equipment, bee pollen or honey may be located to determine whether a violation of the law has occurred.

### **Need to Continue Agency**

The review indicated that there is a continuing need for the agency's function. A major characteristic of the honey bee industry is the movement of hives by beekeepers from one state to another. This movement allows beekeepers to take advantage of weather conditions and nectar-producing fields and crops found in other states. All states with a major honey bee industry carry out a licensing function designed to control diseases and parasites affecting honey bees. Interviews conducted with these states indicated that the various state disease control programs, as a whole, work together to control the spread of disease by preventing the interstate movement of diseased hives and equipment. Beekeepers are prohibited from moving or selling bees from one state to another without receiving from both states a permit certifying that the hives are disease free. The review indicated that without a Texas disease control program, beekeeping operations based in the state could be prohibited from moving or selling bees in other states, resulting in economic losses for the industry and Texas.

The results of the review indicated that, while the agency generally operates in an efficient and effective manner, there are changes which should be made in the event the legislature decides to continue the agency. These recommendations follow.

**Sunset Commission Recommendations for the  
OFFICE OF THE STATE ENTOMOLOGIST**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Overall Administration**

- 1. The statute should be amended to require the agency to make a reasonable effort to increase fees to at least 50 percent of the agency's total budget.**

The agency currently charges fees that are projected to cover 14 percent of the agency's budget. As a general state policy, at least 50 to 75 percent of the costs associated with regulating a profession or business are paid for through fees charged to the regulated industry. The agency's current fee structure does not cover at least 50 percent of the agency's budget. A solution to this problem is to require, in statute, that the agency make a reasonable effort to increase fees to cover at least 50 percent of the agency's total budget.

- 2. The statute should be amended to require that agency fee funds, currently in a local account outside the state treasury, be brought into a special fund in the state treasury.**

The agency's statute currently allows fees collected by the agency to be deposited in a special account outside of the state treasury. This practice runs counter to general state policy requiring licensing agencies to deposit fees and other charges in a special account in the state treasury. To solve this problem, the agency's statute should be amended to require the agency to deposit its fees in a special account in the state treasury.

- 3. The statute should be amended to change the title of "State Entomologist" to "Chief Apiary Inspector" to more accurately reflect the current duties of the officer.**

The title "State Entomologist" is currently used to identify the officer that is responsible for operating the Honey Bee Disease Control Program. This title does not accurately reflect the duties of the office and can be confused with the activities of entomologists working in the Texas Department of Agriculture. To solve this problem, the title "State Entomologist" should be changed to "Chief Apiary Inspector" to more accurately reflect the correct duties of the office.

**Evaluation of Programs**

- 4. The statute should be amended to require that specific information be supplied on bee hive locations to assist in enforcement efforts.**

Currently, the statute allows the state entomologist to require that bee keepers register the location of their hives by county so that the hives can be located for inspection purposes. This system of registration does not

establish the location of hives to the point where they can easily be located by the state entomologist for inspection. This problem can be solved by amending the statute to allow the state entomologist to require bee keepers to register, by map, the exact location of their hives.

- 5. The Department of Agriculture's statute should be amended to transfer the Apiary Equipment Brand Program from TDA to the Office of the State Entomologist.**

The Texas Department of Agriculture is responsible for administering and enforcing the Apiary Equipment Brand Program. However, TDA is not actively involved in inspecting hives and other apiary equipment with brands to ensure compliance with the law. The office of the State Entomologist does regularly inspect hives and can administer and enforce the program at no additional costs.

**OFFICE OF THE STATE FORESTER**

## Background

The Office of the State Forester was created in 1915. The state forester is the director of the Texas Forest Service which operates under the Texas A&M University System at College Station. The state forester is appointed by the Board of Regents of the Texas A&M University System and administers the Texas Forest Service. The review addressed only the Office of the State Forester and did not cover the operations of the Texas Forest Service as a whole.

When the Office of the State Forester was established, it was given broad responsibility for promoting and assisting in the practice of forestry by Texas land and timber owners. The state forester also was given the title of Chief of the Division of Forestry (which was once a component of the Texas Agricultural Experiment Station) and was professor of forestry in the academic division of Texas A&M University. At that time, the state forester was primarily involved in teaching forestry courses at Texas A&M. However, in 1921, the state legislature eliminated the teaching responsibilities of the state forester, thereby allowing him to devote full attention to forest related activities conducted by the Division of Forestry. In 1926, the Division of Forestry was renamed the Texas Forest Service. The state forester was given the additional title of director of the Texas Forest Service.

## Need to Continue Office

The review focused on identifying the various responsibilities of the Office of the State Forester beyond that of the Director of the Forest Service to determine whether these duties were appropriately assigned to the forester. The review showed that, since 1926, the State Forester does nothing that differs from what he does as the director of the Texas Forest Service. As a result, there is no need to continue the Office of the State Forester.



**Sunset Commission Recommendation for the  
OFFICE OF STATE FORESTER**

**I. ABOLISH THE OFFICE**

**The title of "State Forester" should be eliminated, and the title "Director of the Texas Forest Service" should be used in its place.**

Through the review, it was determined that the sole remaining responsibility of the Office of the State Forester is to direct the Texas Forest Service. Historically, the Office of the State Forester was established in 1915 for the purpose of assisting and promoting the practice of forestry by landowners. Originally, this was accomplished through the educational process, with the state forester primarily being engaged in teaching forestry courses at Texas A&M. By 1926, the state forester had been given the title of director of the Texas Forest Service and had been relieved of teaching duties in order to devote full attention to forest service activities. From this time to the present, all duties of the forester have been related to his position as director of the forest service.

In order to reduce possible misunderstanding, it is a general rule that agency and position titles should accurately reflect their duties and operations. Currently, the Office of the State Forester has no duties or responsibilities which are separate from the activities of the director of the forest service. Therefore, in order to more accurately reflect actual duties and responsibilities, the title of "Office of the State Forester" should be eliminated, and the title "Director of the Texas Forest Service" should be used in its place.



**INTERSTATE RIVER COMPACTS**

## Background

Beginning in 1939, five river compacts have been negotiated between Texas and neighboring states. These compacts, which are still in effect, apportion the water between compact states for five rivers: the Rio Grande, Pecos, Canadian, Sabine, and Red River. The compacts are legal agreements that must be approved by member states and the federal government. The compacts are administered by "interstate compact commissions" and each state selects commissioners to serve on these agencies. Basic information concerning the compacts for each of the five rivers is presented in the following table.

<b>INTERSTATE COMPACT COMMISSIONS</b>				
<u>Compact/ Date Established</u>	<u>States Involved</u>	<u>Number of Texas Commissioners</u>	<u>Term of Commissioners</u>	<u>Salary of Commissioners/ Total Budget for 1984</u>
Rio Grande 1939	Texas New Mexico Colorado	One	6 years	\$ 34,200 218,593
Pecos River 1949	Texas New Mexico	One	2 years	16,800 148,781
Canadian 1951	Texas New Mexico Oklahoma	One	2 years	8,900 58,253
Sabine 1953	Texas Louisiana	Two	6 years Overlapping	1,850 27,220
Red River 1980	Texas Oklahoma Arkansas Louisiana	Two	2 years	22,400 46,725

There has been only one change in the text of the river compacts since they became effective and that was a minor change in the Sabine Compact. In order for any change or amendment to be made to the text of an interstate compact, the change or amendment has to be ratified by the legislatures of each state involved plus the federal congress.

The Texas commissioners usually use an engineering advisor from the Texas Department of Water Resources (TDWR) and a legal advisor from the Texas Attorney General's Office. In addition, the Texas Department of Water Resources has designated an interstate compacts coordinator who coordinates other department support needed by the Texas component of the interstate commissions. The Rio Grande Compact is the only river compact that has a full-time engineer on its staff. Most of the Texas commissioners hire a part-time administrative assistant to help in the administrative work for the Texas component. The Sabine River Authority handles the administrative work of the two Sabine River commissioners for a fee of \$2,800 per year.

During its history, Texas has sued member states three times for failure to make deliveries of water as required by the compacts. In 1951 the Rio Grande commissioner had Texas file suit against New Mexico for failure to make water deliveries as required by the compact. This suit against New Mexico in the U.S. Supreme Court was dismissed in 1957 on grounds that the United States was an indispensable party to the suit because Indian lands in New Mexico would be affected by the litigation. In 1966, the states of Texas and New Mexico sued the State of Colorado for a large debt of water owed the two states. The three states are now operating under a U.S. Supreme Court continuance which stipulates that the suit will be held in abeyance so long as Colorado meets its annual obligations to Texas and New Mexico.

In 1975 the State of Texas filed suit against the State of New Mexico in the U.S. Supreme Court to force New Mexico to deliver water to Texas in compliance with the terms of the Pecos River Compact. This case is still in litigation and it will probably be several years before a final decision is rendered.

There is concern that New Mexico's on-going enlargement of the Ute Reservoir may put New Mexico in violation of the Canadian River Compact and cause litigation before the U.S. Supreme Court if the problem cannot be resolved by the Interstate Canadian River Commission. The issue centers around the compact's definition of "conservation storage" in reservoirs. New Mexico's interpretation of this definition is that New Mexico can build a million acre-foot capacity reservoir on the Canadian River at the Texas-New Mexico state line, stop all the water, and as long as New Mexico calls only 200,000 acre-feet as conservation storage capacity, there is compact compliance. (The compact limits New Mexico's conservation storage capacity to 200,000 acre-feet.)

The Sixty-eighth Legislature provided a law suit contingency fund for the Rio Grande, Pecos, and Canadian River Compact commissioners in case the State of Texas finds it necessary to file suit against the states of New Mexico, Colorado, the U.S. Army Corp of Engineers, or the Bureau of Reclamation for violations of provisions of the compacts.

### **Need to Continue Agencies**

The review indicated that there is a continuing need for the five river compacts. It is necessary that a river compact or some other enforceable document exist to apportion the water supply between the states and that an interstate commissioner or some other administrative body exist to serve as a forum to discuss and hopefully resolve water-related problems between the states.

If the state wished to withdraw from any of the compacts, there are legal obstacles to overcome. The five river compacts can be terminated only by action of all the legislatures of the states involved or by a finding of the U.S. Supreme Court that the compact is unenforceable. As long as the compact is in effect, the Texas component of the interstate river commission is required by state and federal laws. If the compacts are to be continued, the following changes are set out for consideration.

**Sunset Commission Recommendations for the  
INTERSTATE RIVER COMPACTS**

**I. CONTINUE THE COMMISSION WITH MODIFICATIONS**

- 1. The statutes for the Pecos, Red, and Canadian River Compacts should be amended to change the terms of all compact commissioners to six years.**

Terms of the three compact commissions should be extended from two years to six years to conform with other compact commissioners which currently have six-year terms. Two-year appointees lack the background and continuity to do the job effectively.

- 2. Requirements found in the preliminary sections of the compacts should be made consistent with one other.**

Certain basic administrative requirements are found in the preliminary sections of some compacts and not in others. For instance, specification of the length of commissioner terms and definition of employee administrative expense are found in all compacts except the Canadian. No reason could be found for the inconsistencies, and they should be eliminated to ensure like treatment for all the compacts.

- 3. The special state fund under the control of the Canadian River Compact Commissioner should be deposited in the State Treasury.**

A small state fund (about \$22,000) under the control of the Canadian River Compact Commissioner is currently maintained outside the State Treasury. General state policy and the standard approach of the Sunset Commission require that most state funds be maintained in the State Treasury, and this fund should not be an exception.

- 4. Notice of meetings to be held by the various compact commissions should be filed with the Secretary of State's Office.**

Since the compact commissions are neither purely state nor federal agencies, their meetings do not clearly fall under the public notice requirements of either member states or the federal government. The Texas public has not had notice of these meetings as it would for the meetings of typical state agencies. This problem should be corrected by requiring the Texas component of the commissions to follow the notice procedures set out in the state's Open Meetings Act.



**GULF STATES MARINE FISHERIES COMMISSION**

## Background

The Gulf States Marine Fisheries Commission (GSMFC), formed in 1949, is currently active. The commission is a 15-member body composed of three members from each of the five Gulf states. The head of the marine fisheries department of each state is one of the ex-officio members, the other being a member of the legislature of each state appointed jointly by the lieutenant governor and the speaker of the house of representatives. The third member from each state is a citizen who has knowledge of and an interest in marine fisheries, and is appointed by the governor with consent of the senate for a three-year term. The states which make up the commission are Texas, Alabama, Florida, Louisiana, and Mississippi.

The purposes of the GSMFC are to promote better utilization of the Gulf fisheries, develop a protection program for these fisheries, and recommend necessary legislation to both the member states and the United States Congress. The commission is also authorized to consult with and advise the proper administrative agencies of the member states regarding fishery conservation problems. In addition, the commission advises and testifies before the U.S. Congress on legislative and marine policy that affects the Gulf states. One of the most important functions of the commission is to serve as a forum for the discussion of various problems and programs of marine management, industry, research, etc., and to develop a coordinated Gulf policy to address these issues. Member states relinquish none of their rights or responsibilities in regulating their own fisheries. The commission is only given the power to recommend to the governors and legislatures of the states action on programs helpful to the management of their fisheries. The basis for such recommendations comes from studies made by experts employed by the several states and by the federal agency having marine responsibility, currently the National Marine Fisheries Service.

Regular meetings of the commission are held in March and October of each year and special meetings are called if needed. The regular meetings are rotated between the member states in order that the Commission may become familiar with the fisheries and coastal areas of the entire Gulf.

The activities of the compact are supported by contributions paid by member states and by federal funds. The Gulf States Marine Fisheries Commission budget for 1984 was \$225,000. Texas' contribution during this period of time was \$22,500 out of the state's Game, Fish and Water Safety Fund No. 9. Texas, Louisiana, and Florida each contribute \$22,500 while the states of Alabama and Mississippi each contribute \$11,250. The balance of the commission budget is from federal funds. The commission's activities are coordinated by an executive director who directs a staff of five. The commission's office is located in Ocean Springs, Mississippi.

## Need to Continue Agency

The review indicates that there is a continuing need for the Gulf States Marine Fisheries Commission. The commission acts as a clearing house of information on fishing and fishing problems within the Gulf area. The research and management activities of the coastal fisheries program of the Department of Parks and Wildlife is the main recipient of the programs of the Gulf States Marine Fisheries Commission. The Department of Water Resources and the General Land Office also use information obtained from the commission. While the commission is generally operated in an efficient and effective manner, there is one change that should be made in the event the legislature decides to continue the agency. The change is set out below.



Sunset Commission Recommendations for the  
GULF STATES MARINE FISHERIES COMMISSION

I. CONTINUE THE COMMISSION WITH MODIFICATIONS

Open Meetings/Open Records

**The Texas Department of Parks and Wildlife should be required to file notice of meetings of the Gulf States Marine Fisheries Commission with the secretary of state's office.**

The commission is neither purely a state nor a federal agency and, as a result, it is not subject to the notice requirements found in federal law or the state's Open Meetings Act. While the commission publishes notice of meeting dates in trade media and by other means, there is no notification to the general public as would be required for typical state agencies under the Open Meetings Act. The public protection afforded under the Open Meetings Act should be extended to meetings of the commission by requiring the Texas Department of Parks and Wildlife to file notice showing the time, date, and location of commission meetings with the secretary of state.



**TEXAS PARKS AND WILDLIFE DEPARTMENT**

## Background

The Texas Parks and Wildlife Department was created in 1963 from the merger of the old State Parks Board and the Game and Fish Commission, and is currently active. The department was established for the purpose of providing outdoor recreational facilities and managing the state's wildlife, fish, historic and natural resources. While the department's current structure is fairly new, resource management functions in the state have been carried out for more than 100 years, beginning in 1861 with legislative enactment of general game laws. Regulatory responsibility for fish management in the state began in 1895 with the creation of the Fish and Oyster Commission and evolved over the years to include game management, resulting in the establishment of the Game and Fish Commission in 1951. A separate regulatory body, the Parks Board, was created in 1923 to oversee park resources. Both regulatory bodies operated separately until the merger of the two agencies in 1963 which produced the Parks and Wildlife Department, with a three-member commission. The agency's responsibilities have expanded over the years, first with the passage of the Uniform Wildlife Regulatory Act in 1967 which placed all or portions of 213 counties in the state under department regulatory authority for wildlife and fishing regulations. The passage of a \$75 million park bond issue also occurred in 1967, greatly accelerating park acquisitions and facility construction. In 1969, the department's responsibilities were again expanded to include water safety regulation statewide and in 1973 to include protection of nongame and endangered species. The most recent expansion of the department's duties occurred in 1983 with the passage of the Wildlife Conservation Act, which places all 254 counties under the commission's regulatory authority with no exemptions, other than shrimp and oysters.

The Texas Parks and Wildlife Department is governed by a nine-member commission (expanded in 1983 from six members) appointed by the governor, with senate confirmation, to serve staggered six-year terms. The department has about 2,100 employees located statewide and operates on an appropriation of around \$90 million for fiscal year 1984, funded from general revenue, other state funds, and federal funds. The department operates from a headquarters in Austin, Texas, with regional and district offices around the state.

Current responsibilities of the agency include: management of the state's freshwater and saltwater fishery resources serving both recreational and commercial interests; surveillance of activities having a potentially adverse impact on the environment; management of game and nongame wildlife resources; provision of outdoor recreational opportunities for state park visitors; enforcement of rules and laws regulating state parks, water-related activities and wildlife; and administration of support activities and education efforts pertaining to parks and wildlife. These activities are accomplished through an organizational structure containing five programs: 1) fisheries, 2) wildlife, 3) parks, 4) enforcement, and 5) administration. A description of the major activities within each of these program follows.

Fisheries. The fisheries program is responsible for the effective management of the state's fishery resources. These resources consist of both finfish and shellfish which occur in the freshwater and coastal fisheries. Both the recreational fishing industry, in which over three million people participated during 1982, and the commercial fishing industry, which was valued at near \$180 million in 1983, are supported by this program. The department's objective in managing this resource is to provide maximum fishing opportunity and optimum yield of fisheries products. To accomplish this objective, the fisheries division has established several

programs designed to monitor and manage the inland and coastal fisheries, to protect the aquatic environment through pollution surveillance and environmental assessment, to control noxious vegetation, and to enhance inland and coastal fish populations through fish stocking efforts. The fisheries division employs over 225 persons with a budget of approximately \$7.5 million in 1984 from game, fish, and water safety funds and general revenue funds. Federal funds are available to reimburse many of the division's activities through the Dingell-Johnson Act.

The inland fisheries branch of the fisheries division is responsible for the freshwater fisheries resources. Because commercial fishing activities are severely restricted in freshwater, the primary focus of this program is to enhance the quality and value of freshwater fish resources for sportfishermen. Organizationally, the inland fisheries branch operates through four regional offices and three research stations. Field biologists in the different regions are responsible for surveying existing reservoirs, rivers, and streams and developing management plans to be presented to the authorities controlling the reservoir or stream. Recommendations in these management plans address fish stocking needs, habitat improvement, and fishermen's access and facilities. Currently, each reservoir or stream is surveyed once every five to seven years. Additionally, proposed reservoirs are reviewed to develop a preimpoundment plan making recommendations on brush clearing, facilities, stocking needs and stream flow needs. In 1983, 24 existing reservoirs were surveyed and two preimpoundment surveys were completed. Research stations located at Heart of the Hills, Palacios, and the Fort Worth fish hatchery are involved in conducting research on existing native species and on the suitability of introducing non-native species into Texas reservoirs.

The coastal fisheries branch is generally responsible for the coastal fishery which includes the coastal bay system and the Gulf of Mexico out to nine nautical miles. In these waters, both recreational sportfishing and commercial fishing activities are extremely active. The objective in managing this coastal fishery is to prevent depletion of resources and to provide equitable and reasonable fishing opportunities. Two program directors - a finfish director and a shellfish director - located in Austin supervise the field activities conducted in two different coastal regions. Through the finfish program, finfish abundance and stability is monitored for a variety of species, the harvest of finfish by sportfishermen and commercial fishermen is measured, the bay fishery is enhanced by stocking artificially spawned fish and recommendations on regulation changes are developed. Finfish abundance and population trends are determined through routine samples taken by department staff with gill nets, bag seines, and trawls. In 1983, almost 4,000 samples were taken to determine the status of finfish populations. Additionally, fish tagging activities help determine fish growth and movement trend data. Harvest information is collected through mail surveys and actual interviews with fishermen at coastal access points. One area that has received particular attention in this program is the monitoring of redfish and speckled sea trout. Due to the decline in their populations, these two species have been the subject of much controversy resulting in the legislative closing of the commercial fishery for these fish. Additionally, the hard freeze in December of 1983 killed many of these redfish and trout and further depleted the resource.

The shellfish program is basically responsible for monitoring shellfish abundance and stability with an emphasis on shrimp, oysters and blue crabs. While sport shellfish harvest is permitted, the major shellfish harvest occurs from the commercial operations. Of these commercial shellfish operations, shrimp is the dominant industry representing approximately 95 percent of the harvest by value.

Random sampling methods of the seven coastal bay systems with bag seines and other trawls are used to estimate shrimp and blue crab abundance. Oyster dredge sampling in four bays provides data on oyster abundance. Because of the harmful effects of siltation on live oyster reefs, commercial shell dredge operations must be monitored. However, no dredge activities are currently in operation.

The resource protection branch of the fisheries division is responsible for the protection of fish and wildlife resources and their habitats. While organizationally this branch is located in the fisheries division, its responsibilities extend to all fish and wildlife species. To provide this protection, the branch has three program leaders supervising three separate programs - pollution surveillance, environmental assessment, and permits. The branch has a staff of 16 persons and is budgeted \$518,000 in fiscal year 1984. The pollution surveillance program is basically involved in investigating fish kills and in coordinating discharge permits issued by the Texas Department of Water Resources and the Texas Railroad Commission to evaluate the possible impact of the permitted activities on fish and wildlife populations. In the environmental assessment unit, environmental impact statements required on major federally funded development projects are reviewed. Additionally, applications to dredge or fill in wetland areas and applications for construction projects in navigable waterways are reviewed and comments are provided where necessary to protect fish and wildlife resources. The permits section issues scientific and zoological permits which authorize research with protected wildlife species. This section also issues dredging permits required to remove sand, shell, gravel or marl from public waters.

The aquatic habitat enhancement branch is responsible for the control of noxious aquatic vegetation in public waters. Both chemical and biological means are used to treat approximately 48,000 acres of freshwater in the state which are infested with noxious vegetation. The branch also, with the cooperation of local volunteer groups, enhances reclaimed waters with artificial reefs and structures.

Finally, the fish hatcheries branch of the fisheries division is responsible for producing the fish to stock public fishing waters. Currently, the branch operates 12 different hatcheries around the state, including one saltwater hatchery. The sole responsibility of the hatcheries is to spawn and rear fish for stocking purposes. Eleven different species are produced in these hatcheries, resulting in approximately 15 million fingerlings stocked in Texas waters annually.

Wildlife. The wildlife program is generally responsible for the management of the state's wildlife resources. All wildlife in the state, regardless of whether they are located on public or private property, are the property of the state. In an effort to manage this resource, the wildlife division within the department has developed several programs to manage the wildlife populations, to protect and enhance habitat necessary to support Texas wildlife, and to operate wildlife management areas where proper management practices can be researched and demonstrated. The wildlife division employs over 130 persons with a budget of approximately \$5.8 million from game, fish, and water safety funds and from general revenue. Many of the activities conducted by the wildlife division are subject to a 75 percent federal funding reimbursement through the Pittman-Robertson Act. Operations are carried out by central staff located in Austin and a field staff organized in four regions covering the entire state.

The wildlife management program within the division is basically designed to manage the state's wildlife resources along sound biological lines. To accomplish

this objective, the division uses what is known as the species concept to manage the animal populations. Under this concept, each significant species is managed independently according to its needs. In implementing this concept, species which require similar management efforts have been grouped together, resulting in three major groups -- game animals, fur-bearing animals, and nongame animals.

Of the three groups, the management of the game animals receives the greatest attention from the division. Over 85 percent of the wildlife management budget is directed toward the game species. While the identification of wildlife species considered to be game species is provided in statute, game animals are generally those which provide the greatest recreational hunting opportunity. The management of game animals has been separated into three different programs -- big game, upland game, and migratory game. These three programs are each supervised by a program leader in Austin who directs the field biologists and technicians located in the various regions to perform the necessary field work. Operations generally conducted by field staff include evaluating populations of particular wildlife species, conducting hunter harvest surveys, trapping and transplanting animals, and conducting research projects. With this information, program leaders are able to make recommendations to the commission regarding changes in hunting regulations and in the annual seasons and bag limits for the various game species. The following list provides an indication of the major species in each of the game programs. A general indication of the dollars allocated to a particular species and the percent of the total 1984 budget for all programs allocated to that species is also provided.

	<u>Approximate 1984 Budget</u>	<u>Percent</u>
<b><u>Big Game</u></b>		
1. White-tailed deer	1,052,223	39
2. Mule deer	190,400	7
3. Pronghorn antelope	79,000	3
4. Javelina	24,650	1
5. Aoudad sheep	6,800	-
6. Bighorn sheep	56,100	2
7. Elk	10,200	-
8. Black bear	1,700	-
<b><u>Upland Game</u></b>		
1. Turkey	369,491	14
2. Quail	175,100	6
3. Prairie Chicken	39,780	1
4. Pheasant	177,470	7
5. Squirrel	3,400	-
6. Chachalaca	5,950	-
7. Rabbit	3,400	-
<b><u>Migratory Game</u></b>		
1. Waterfowl (ducks, geese)	293,704	11
2. Migratory, shore & upland game birds (dove, cranes, etc.)	210,370	8

The fur-bearing animal program encompasses the management of 20 major fur-bearing species in Texas. These species are generally those which have pelts of commercial value, including the beaver, otter, fox, and raccoon. Texas currently has approximately 33,000 licensed trappers who harvested about 900,000 pelts in 1982. Management of fur-bearers through this program consists of an evaluation of the annual fur harvest, some research, and the formulation of recommended regulation changes.

The nongame program consists of management activities directed toward all other animals that do not fall into the game or fur-bearing categories. Wildlife division programs in this area include a nongame and endangered species program and an alligator program. The nongame and endangered species program essentially manages all species that are not trapped, fished or hunted. Various mammals, birds, fish and reptiles are managed through this program. Although the entire nongame and endangered species program receives only seven percent of the wildlife management program funding, it is able to conduct activities which evaluate the status of certain wildlife species and conduct several research projects. In addition, protected plants are evaluated in this program.

Finally, an alligator management program has been established to conduct an American alligator survey and to perform management planning for the species. The purpose of this program is to maintain American alligator populations at biologically healthy levels.

In addition to the game, nongame and fur-bearing animal management programs, the wildlife division conducts several other activities. The division operates 19 wildlife management areas. These areas are located throughout the state and serve as research facilities, sites to demonstrate wildlife management techniques to the public, and locations to hold public hunts for deer, turkey, javelina and other game. Wildlife planning activities are also conducted by the division through a statewide habitat mapping operation and staff efforts to mitigate losses of wildlife habitat resulting from large development projects. A wildlife technical guidance program is provided to give technical assistance to interested landowners and sportsmen regarding the preservation and enhancement of wildlife habitat.

Parks. The parks division is responsible for providing sufficient recreation opportunities for more than 18 million visitors annually, through planning, acquisition, development and operation of state parks. Currently, the state park system consists of 118 park units covering over 194,000 acres, including recreational parks, historical areas and natural areas. The parks program employs over 750 persons, with a budget of \$46.2 million for fiscal year 1984, funded from the state parks fund, general revenue, and other state funds. The development of the state parks system has been assisted through the dedication of cigarette tax revenues to the state parks fund, which finances park acquisition and development, and to the Local Parks, Recreation and Open Space Fund (LPF) which finances local park and recreation projects, as well as through the sale of park development bonds used for acquisition and development of park sites. The park system is divided into nine regions, with a regional director in charge of 11 to 19 parks per region. The main activities provided by the parks program are divided into three functions, special services, planning and development, and system operations.

The main activities of the special services branch are to forecast statewide outdoor recreation needs through five-year planning cycles, which result in the

development of the Texas Outdoor Recreation Plan; to investigate and acquire park property through purchase, lease, gifts and other methods; to perform historic site restoration and development; and to provide financial assistance through federal pass-through Land and Water Conservation Funds and state LPF funds to political subdivisions for the planning, acquisition and development of local park projects. Other activities performed by this function are exhibit preparation, and funding assistance for local communities to maintain public beaches and to construct and maintain boat ramp facilities. An average of 30 new park site investigations a year are performed by this function, with acquisitions totalling 130,000 acres occurring from September 1971 through August 1982, at a cost of \$65.1 million.

Once the park site acquisition is made, the planning and development branch takes over to develop the acquired sites. To accomplish this development, the branch performs park master planning, park site development and repairs. In addition, local planning assistance is provided to approximately 20 local jurisdictions per year at no cost. Development projects are scheduled for six park sites for fiscal year 1984, most of which are on-going projects taking several years to complete.

Once park development and construction projects are completed, the park becomes the responsibility of the systems operation branch. Regional park operations are performed by a regional director, administrative assistant and a regional maintenance assistant for each of the nine regions who administer park field operations. Each park unit is supervised by a park superintendent and assistant superintendents that often live on the park grounds to provide park security and visitor assistance and is operated by park rangers who perform daily maintenance and operation of park facilities. There are also 66 commissioned peace officers in the park ranger force to provide additional park security. Park personnel are responsible for maintenance of over 13,000 developed park acres and 11,271 activity sites.

Enforcement. The law enforcement program is carried out by 554 employees statewide with a budget of \$20.3 million for fiscal year 1984 from general revenue and game, fish and water safety funds. The program is responsible for the enforcement of game, fish (both commercial and recreational), water safety and resource protection laws based on three objectives - public education, deterring violators and apprehension of violators. Over 400 Texas game wardens are responsible for carrying out the main program functions through 10 regional offices and 31 districts. There are approximately 40 game wardens assigned to each of the 10 law enforcement regions. They are responsible for patrolling 172.2 million acres of land and 1.7 million miles of streams and lakes in the state.

The main responsibility of game wardens is to patrol assigned areas for enforcement purposes in order to provide citizen assistance and to serve as a deterrent to violators through high visibility within the community. Responsibilities also involve informing the public about regulations and rules, and apprehending violators. Enforcement patrol activities cover all aspects of fishing, wildlife and water safety regulations such as commercial shrimping, game and nongame species and boating safety laws. Game wardens are responsible for covering an average of 449,000 acres of land per person, with some wardens patrolling multiple counties. Citations issued for violations have increased from 18,709 in 1974 to 48,000 in 1983. Most violations pertain to illegal big game and fishing activities.

Another important function performed by game wardens is public education. This is done through distribution of literature on hunting, fishing, water safety and other topics; presentations of programs to civic and school groups; and personal contacts with local residences. Game wardens are also responsible for boat registration and titling, and issuing various hunting and fishing licenses through the field office locations. Court procedures, such as filing cases, testifying as state's witness and collecting fines administered, are additional game warden duties.

The game warden training academy, which is provided by this program, trains new cadets through a four and a half month training class involving 1,050 hours of coursework. In-service training is also provided to commissioned officers in the field, involving 40 hours each year to keep officers informed on changing game and fish laws, new policies and enforcement techniques.

Another special activity operated by the law enforcement division is Operation Game Thief, directed by the six-member Operation Game Thief Committee. The program provides a toll-free number to report game violators and, through private donations, offers cash rewards for information resulting in the conviction of flagrant violators. Since the program's inception in 1981, over 1,500 calls have been received resulting in 633 convictions, with over \$78,000 collected in fines.

Administration. The administrative services program, primarily headquartered in Austin, directs and supports field activities of other department divisions through 274 employees and a fiscal year 1984 budget of \$9,780,586. This is performed through five main activities under the direction of the administrative services program director, including: finance, which performs fund and revenue accounting activities for millions of dollars of revenue yearly; general services, which maintains vehicles and equipment for employees; personnel; data processing; and information and education.

The information and education activity performs a highly visible service for the agency through the use of various media and public services. This activity receives much public attention because it provides a direct link between agency services and the public through the promotion of information pertaining to the state's park, fisheries, wildlife and other resources. This activity is operated by a staff of 30 which perform the following:

- publish a monthly magazine, Texas Parks and Wildlife, serving over 140,000 paid subscribers;
- distribute about 500,000 pieces of literature each year covering topics such as fishing regulations, park facilities, hunting information and wildlife management;
- operate two toll-free WATS lines that handle over 63,000 calls a year;
- distribute a weekly news release packet to 1,200 media outlets covering agency related news, public hearing and regulation changes;
- produce a 15-minute radio program distributed to local networks; and
- operate hunting and water safety education programs which certify 250 instructors and over 13,000 students annually.

This activity also performs a variety of other media and public presentation efforts. Information representing all programs within the agency is distributed through a variety of methods, requiring that efforts be coordinated through the information and education activity in order to keep abreast of program informational needs and current events. New informational efforts are continually being evaluated to more effectively disseminate information, such as through video presentations, television programming and an increased emphasis on education in public schools. Some of the efforts either currently in place or planned for the near future for public school education include: teacher-student packets containing color posters for elementary and junior high students; project wildlife packets for public schools put together by the Western Association of Fish and Wildlife Agencies covering conservation and environmental protection of resources; wildlife exhibits and presentations for elementary students; audio-visual slide shows on state parks, wildflowers and environmental protection; and cooperative efforts with the Texas Education Agency for distribution of agency slide shows.

### **Need to Continue Agency**

The need for each of the agency'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.

**Sunset Commission Recommendations for the  
PARKS AND WILDLIFE DEPARTMENT**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be amended to delete the mandatory county hearing requirement for the annual wildlife proclamation and establish a hearing process that would provide for a minimum of five public hearings in any location chosen by the commission, based on public need, and hearings when requested by 25 or more persons.**

The current county hearing process is designed to obtain public input on annual proposals for changes in the game and fish regulations. Attendance at these meetings has been generally low, except in areas where a proposed rule sparks controversy. To streamline the process but maintain the opportunity for public input, the statute should provide for a minimum of five meetings each year and for local meetings where needed.

- 2. The statute should be amended to require the commission to hold an annual public meeting to receive public comment.**

Although the commission conducts regular meetings throughout the year, little time is available during these meeting for members of the general public to provide comment on the commission's regulatory responsibility in general. This input is important if the commission's decisions are to be responsive to public concerns, and the commission should be required to hold meetings on an annual basis.

**Overall Administration**

- 3. The statute should be amended to clarify the department's authority to charge park user fees.**

The department has no clear authority to charge user fees for camping at state parks. These user fees are currently charged at state parks and the resulting revenue is essential to fund the park facility operations. To clarify the department's authority, the statute should be changed to give the department express authority to charge park user fees.

- 4. The statute should be amended to authorize the commission to set fees, while retaining the existing fee as a statutory minimum, for all fees currently fixed at a specified amount in the Parks and Wildlife Code.**

Approximately 75 fees charged by the department have the amount of the fee fixed in statute. Such a system requires legislative action to adjust the fees for factors such as inflation or increased cost of support programs. For additional flexibility, the statute should be changed to allow the commission

to set these fees at a reasonable amount, with a minimum amount fixed in statute.

- 5. The statute should be amended to consolidate four agency-administered funds into the State Parks Fund No. 64: the Mission San Francisco de los Tejas Building Fund; the Texas State Railroad Fund; the Jim Hogg State Park Building Fund and the Huntsville State Park Building Fund.**

Four of the 14 funds currently used by the department are relatively inactive and serve no useful purpose. Consolidation of these two funds into the Parks Fund would reduce the department's accounting burden and would have no effect on the legislative appropriation of the dollars in these funds for their current uses.

- 6. The department should use more extensive financial advisory services to assist on future bond issuances and investments.**  
(management improvement - non-statutory)

The department has experienced relatively low yield on investments made with funds generated from bond issuances. Long term planning and timing of bond sales are extremely important in maintaining a high yield on investments. For future bond sales, the department should seek additional financial advice in order to improve investment practices.

- 7. The statute should be amended to delete restrictions on selling and disseminating park information only at park sites and to authorize the department to enter into contractual agreements for the purpose of informing the public about parks and wildlife resources. Additionally, the statutory provision restricting the department from publishing and selling park materials at regular intervals should be deleted.**

Several statutory restrictions currently limit the department's ability to disseminate information about the state's park and wildlife resources. First, the department is unable to develop agreements with publishing houses to publish and distribute park information. In addition, the department is prohibited from publishing and selling park materials at regular intervals. Both of these restrictions serve no useful purpose and should be deleted.

- 8. The statute should be amended to authorize the department to deposit proceeds from publication sales to the credit of the fund from which publication expenses were paid.**

An existing statutory provision requires that proceeds from wildlife publications be deposited into the Game, Fish, and Water Safety Fund. This provision has limited the department's ability to use park funds for assistance in financing their monthly magazine. This magazine deals with both park and wildlife related topics and should receive financial support from both funding sources.

- 9. The statute should be amended to authorize the commission to set magazine subscription fees in an amount to recover costs.**

Currently, the statute requires that agency publications be sold for a price which doesn't exceed the cost of publication and mailing. For the monthly magazine which has subscriptions paid in advance, this limitation has resulted in the agency sustaining losses for the magazine publication. To allow the agency greater flexibility, the agency should be allowed to set reasonable subscription fees.

- 10. The statute should be amended to authorize the agency to receive royalties from the sale of agency publication materials.**

Existing statutory provisions limit the agency's ability to receive royalties for department materials and prints that appear in books produced by publishing houses. This limitation restricts the revenues the agency is able to receive from its own work and should be changed so that the agency's authority to receive royalties is clear.

- 11. The statute should be amended to delete the 10-day filing requirement on monthly sales reports for fishing licenses.**

Monthly sales reports from license deputies selling fishing licenses are required to be submitted to the department within ten days after the end of each month. For some license deputies, the ten day filing time frame is difficult to meet and as a result compliance with the deadline has not been consistent. The time limit is not required on other types of licenses and should be eliminated for fishing licenses.

- 12. The agency's rules should be documented in a consistent format for department use and public inspection. (management improvement - non-statutory)**

Only one copy of the agency's complete set of rules has existed within the department. To provide proper public and staff access to agency rules, complete copies of agency rules should be available for division use and for public inspection.

- 13. The statute should be amended to make provisions conform with the Administrative Procedure and Texas Register Act.**

Several provisions in the Parks and Wildlife Code do not conform with requirements in the APA. The provisions should be changed to comply with APA procedures.

## Evaluation of Programs

### Parks

- 14. The statute should be amended to establish a park classification system and to require the commission to adopt acquisition and development guidelines for that system.**

At present, the state park system consists of seven different classifications of park facilities specified in the agency's rules. These classifications overlap and provide no real guidance for department acquisition or development. To improve the park classification system, three classifications should be established in statute - recreational areas, historical areas, and natural areas. Additionally, the commission should be required to adopt guidelines for the acquisition and development of these areas.

- 15. The statute should be amended to authorize: 1) the Texas Historical Commission to review and comment on historical area plans, 2) volunteer groups to be established for historical areas, and 3) state matching funds for dollars raised by historical area volunteer groups.**

The Texas Historical Commission is a state agency that has expertise and interest in historical site preservation. This commission's review of Parks and Wildlife department plans for historical areas could help the department avoid potential restoration problems and better coordinate preservation activities around the state. Additionally, volunteer groups can assist particular historical areas by providing tours, sponsoring events, and generating local support for the site. Volunteer groups can also become active fund raisers in order to support on-going preservation efforts at historical areas. To support and encourage such fund raising efforts, a state matching fund program should be established to match contributed local funds.

- 16. The statute should be amended to require the agency to hold local public hearings on park master development plans.**

The agency has recently initiated a local hearing process where master plans for proposed park sites are reviewed during public hearings in a locality near the proposed park site. This process has been useful in providing timely public input on the nature and extent of development to occur in the park. To ensure that this process continues, the requirement should be placed in statute.

- 17. The agency should improve its methods for dealing with cost inefficient parks. (management improvement - non-statutory)**

The cost efficiency of individual parks within the state park system can vary widely, depending upon the type of park, the location, and overall park attendance. While standards of efficiency between types of parks may differ, inefficient parks within a category should be identified and proper action should be taken. The agency's current methods of dealing with inefficient parks - reducing costs or increasing visitation - should be expanded to include a wider range of options.

## Wildlife

- 18. The statute should be amended to authorize the department to establish a preference point system for the issuance of hunting permits on wildlife management areas.**

Current statutory limitations require that special hunting permits be issued by the department through an impartial method of distribution. To comply with this limitation, the department holds annual drawings to select the persons who will receive the permits to hunt on wildlife management areas. While the system is fair, it may not allow as many different people a hunting opportunity as possible. A system that gave selection preference to those that had previously applied but not been selected would be more equitable.

- 19. The statute should be amended to remove the prohibition against recreational hunting of deer in state parks.**

Although the department is authorized to permit hunting on park lands, the recreational hunting of deer on state parks is expressly prohibited. Oftentimes, state parks have deer populations that exceed the carrying capacity of the acreage. To allow the department to better manage deer populations on state parks and to provide additional hunting opportunity, the department should be allowed to hold public deer hunts on suitable park lands.

- 20. The statute should be amended to authorize the department to accept donations of property or money for department purposes authorized in the code.**

The agency does not currently have express authority to accept gifts of property or money for department purposes other than for parks. Additional financial support would assist the department in providing better services to the public. The statute should be changed to permit the agency to accept gifts for this purpose.

- 21. a. The statute should be amended to define the terms "nongame" and "nongame management" in Chapter 67 of the Parks and Wildlife Code.**
- b. The statute should be amended to authorize the department to issue permits where necessary for proper nongame management and to charge a fee for permits related to a commercial activity.**

The scope of the nongame program has been limited by insufficient funding and by vague statutory guidelines outlining the intended extent of the program. To improve the program's funding opportunities, the department should be authorized to issue permits for the taking of nongame species where necessary for the proper management of the species and to charge fees for these permits when they are related to a commercial activity. The scope of the nongame program can be clarified by defining the terms "nongame" and "nongame management" in Chapter 67 of the code dealing with nongame management in the same manner as they are defined in Chapter 11 pertaining to the creation of the nongame fund.

- 22. The statute should be amended to require the agency's director to amend the Texas endangered species list only when the modification of the federal list affects a species that occurs in Texas.**

Currently, the director of the agency is required to amend the Texas endangered species list every time the federal list is modified regardless of whether the change affects a species that occurs in Texas. Such a system serves no useful purpose and should be changed so that the director acts only when a species found in Texas is affected.

- 23. The statute should be amended to authorize the department to provide technical guidance to landowners concerning wildlife and habitat management upon request.**

The agency currently provides technical guidance to landowners who request assistance relating to wildlife management. Because the activity is conducted by only five biologists statewide, efforts have been limited. The education of landowners is an essential link in getting sound wildlife management techniques applied around the state. The program should be statutorily authorized in order to help justify funding requests and should be expanded in scope to include nongame, waterfowl, and fish management. The department should also cooperate with the Texas Agriculture Extension Service and any other agencies offering landowner education programs.

- 24. The department should promote more cooperative efforts between the Soil Conservation Service, Texas A&M Agriculture Extension Service and the department's technical guidance program.**  
(management improvement - non-statutory)

Because technical assistance is provided to landowners by the Parks and Wildlife Department, the Soil Conservation Service, and the Texas A&M Agriculture Extension Service, landowners have not always received consistent information. Greater cooperation would ensure that inconsistencies are minimized.

- 25. The department should increase wildlife science instruction for game wardens during their annual in-service training session.**  
(management improvement - non-statutory)

Because of the large number of game wardens around the state, game wardens maintain regular contact with a great many landowners. If the game warden is not familiar with the wildlife management practices being supported by the department in his area, a potential exists for the landowners to receive conflicting information. To minimize this risk, game wardens should be kept well informed of current wildlife management practices.

- 26. The statute should be amended to delete the \$20,000 annual ceiling on Black Gap Wildlife Management Area land acquisition expenditures.**

Present statutory language prohibits land acquisition expenditures for the Black Gap Wildlife Management Area from exceeding \$20,000 annually. While this limitation serves no useful purpose, it could hamper future land

acquisition efforts for property that becomes available. The limitation should be deleted.

- 27. The statute should be amended to authorize the commission to adopt rules relating to recreation in wildlife management areas.**

The agency currently has clear authority to regulate wildlife management on wildlife management areas, but this authority is too narrow to address recreational uses of such areas. Camping, picnicking, and hiking are allowed on some wildlife management areas and the department should have the authority to adopt rules to control these activity.

- 28. The statute should be amended to authorize the agency to use tracts of land for multiple purposes.**

Currently, the department is unable, because of funding limitations, to use park lands for wildlife purposes or to make parks from lands purchased with wildlife related funds. The authority to use acquired tracts of land for multiple purposes would allow the agency to better utilize existing or purchased sites and would encourage better inter-division coordination.

#### Resource Protection

- 29. The department should consolidate resource protection activities within a separate division in its organizational structure.**  
(management improvement - non-statutory)

Resource protection activities are now conducted in various units located within the fisheries and wildlife divisions. Consolidation of those activities would improve coordination between them. Additionally, the location of resource protection activities within the fisheries division creates several conflict of interest problems. Consolidation of all resource protection activities within a new separate division would improve coordination among the activities and reduce the potential for conflicts of interest.

- 30. The statute should be amended to authorize the use of Game, Fish, and Water Safety Funds for resource protection activities.**

Resource protection activities are funded from general revenue and have experienced only slight budget increases over the past few years. Because fish and wildlife populations are dependent upon the existence of adequate habitat, habitat preservation activities conducted by the resource protection branch are closely related to the intended purposes of the game and fish fund. Authorization for resource protection activities to be financed from this fund would expand the unit's funding options.

- 31. The statute should be amended to designate the department as the agency responsible for the protection of the state's fish and wildlife resources and expand its resource protection activities.**

Currently, no state agency has clear authority to act as an advocate for the state's fish and wildlife resources. To ensure that the department consistently acts as this advocate, the department's resource protection activities should be expanded and placed in statute. The authority should

include its current responsibilities of pollution surveillance and environmental assessment, while also including the responsibilities to provide information to other agencies making decisions affecting fish and wildlife resources and to recommend to TDWR flow schedules for bays and estuaries necessary to maintain stable fish populations.

- 32. The statute should be amended to require the department to intervene in Texas Water Commission hearings when a substantial deviation from the department's river and stream flow recommendations is at issue.**

Although a previous recommendation in this report suggested that the department provide TDWR with recommended schedules for flows into the coastal bays and estuaries, this information may not be sufficient to adequately protect the state's fishery resources in some situations. When reservoir releases or flow patterns which substantially deviate from department recommendations are at issue before the Texas Water Commission, the department should intervene in the proceeding as a party so that a proper balance of interests is present at the hearing.

- 33. The statute should be amended to require that scientific type permits expire one year from the date of issuance.**

The existing renewal procedure for these permits requires that all permits expire on the last day of the year. Such a system has imposed a high workload on the staff at renewal time. Staggering the permit renewals would provide for a more uniform workload.

#### Enforcement

- 34. The statute should be amended to provide a standard penalty schedule in the Parks and Wildlife Code which would be applied to the various Code violations by reference.**

The method used in the Parks and Wildlife Code to indicate violations and the penalties attached to those violations is confusing and has resulted in uneven application of penalties. A system such as that used in the Penal Code, where penalties are listed on a single schedule rather than scattered throughout the Code, would simplify the Parks and Wildlife Code penalty system.

- 35. The statute should be amended to: 1) authorize the department to obtain positive identification when issuing a citation for a violation that has enhanced penalties for multiple convictions; and 2) require court clerks to submit a certification of the conviction and the defendant's identity to the department for such violations.**

The Parks and Wildlife Code currently specifies some violations that carry enhanced penalties for multiple convictions. Because of the absence of positive identification of the defendants convicted in justice courts, the department has been unable to use these enhanced penalties. Enhanced penalties are an effective method to deal with habitual violators, and a system should be in place to allow the department to get convictions for multiple violations.

- 36. The statute should be amended to authorize the commission to recover damages for the value of illegally destroyed fish and wildlife.**

The commission's ability to successfully sue a person who illegally destroys fish and wildlife and recover damages is unclear. Fish and wildlife resources are the property of the state and when these resources are illegally destroyed, the state should be compensated. The commission's authority in this area should be clarified.

- 37. The statute should be amended to authorize the agency to revoke or suspend licenses or permits.**

The agency currently does not have clear authority to revoke or suspend any license or permit being held by a person that is convicted of violating a provision of the Parks and Wildlife Code. The agency should be given statutory authority to revoke or suspend the license of convicted violators.



**SCHOOL LAND BOARD**  
**BOARD FOR LEASE OF UNIVERSITY LANDS**  
**BOARDS FOR LEASE OF STATE-OWNED LANDS**

## **Background**

The State of Texas owns or has an interest in approximately 14.5 million acres of land. These public lands are administered by numerous boards and agencies having a range of leasing requirements and powers under the general supervision of the commissioner of the General Land Office (GLO). The GLO is empowered to execute and perform all acts relating to management of the public lands of the state. The commissioner acts as lessor on most of the state leases and enforces the provisions of the leases.

The land commissioner also serves as a member of the state leasing boards and is chairman in most cases. The primary purpose of these lease boards is to maximize revenues derived from leasing the land. The majority of revenues come from oil and gas development. The revenue generated is dedicated to three sources, resulting in three types of boards. These boards consist of the School Land Board which oversees lands dedicated to the Permanent School Fund for public education; the Board for Lease of University Lands which oversees land dedicated to the Permanent University Fund, and Boards for Lease of State-Owned Lands which oversee lands of various state agencies owning land. Administrative and technical support is provided by the GLO or the University of Texas System.

A description of the lease boards, the types of lands, leasing authority, and conditions of the leases are described in Exhibits 1 and 2.

All the state leasing boards, in cooperation with the GLO or the U.T. System, perform three essential functions. First, they select the time when minerals are to be leased and set the terms and conditions of lease. These conditions are determined not only by the current market demand, but also an estimate of the minerals' value if left in the ground for future use. Second, the boards have a responsibility of control. They ensure all revenue due the state from leasing activities is properly accounted for and collected. Third, they protect the land for future uses. These activities include development of the land to its highest immediate potential, yet maintaining the land so that renewable sources of income can be sought as a supplement and eventually replace the non-renewable sources such as oil and gas. In summary, there must be a balance of land use for current income against future income to ensure maximum monetary growth of the funds to which the lands are dedicated.

A brief description of the lease boards and related activities is set out in the following material.

### **School Land Board**

The Board of Mineral Development, predecessor of the School Land Board (SLB), was established in 1931 for the purpose of awarding mineral leases of state-owned riverbeds and channels for oil and gas development. It originally was composed of the governor, the commissioner of the General Land Office (GLO), and the chairman of the Railroad Commission. In 1933, the 58th Legislature abolished the Mineral Board and transferred its functions to the School Land Board. The School Land Board was specifically created to oversee the sale and lease of state-owned land and minerals dedicated to the Permanent School Fund. Originally, the board was composed of the commissioner of the GLO, as chairman, the governor, and the attorney general. However, the law was amended in 1963 to remove the governor and the attorney general as members and provided for two

Exhibit 1

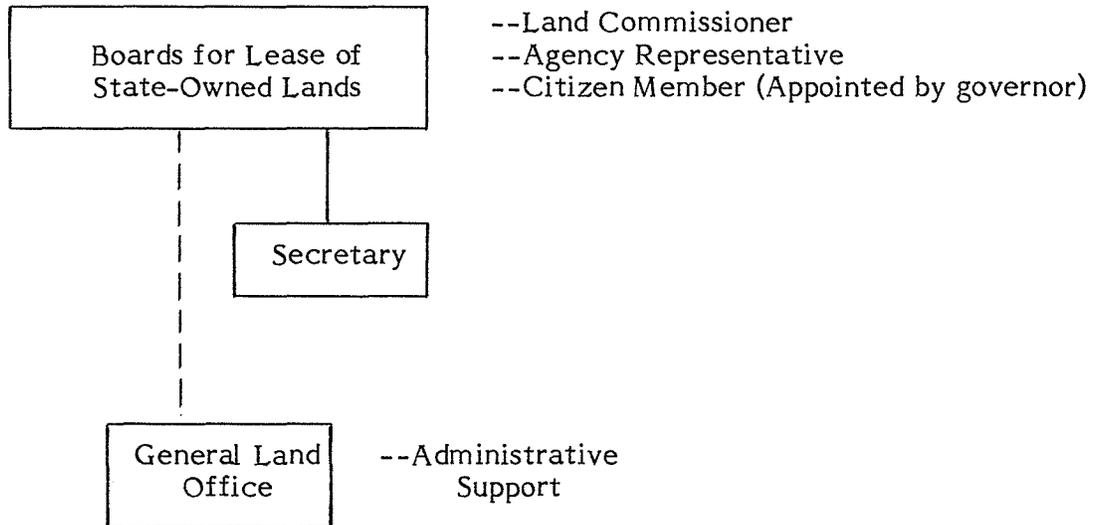
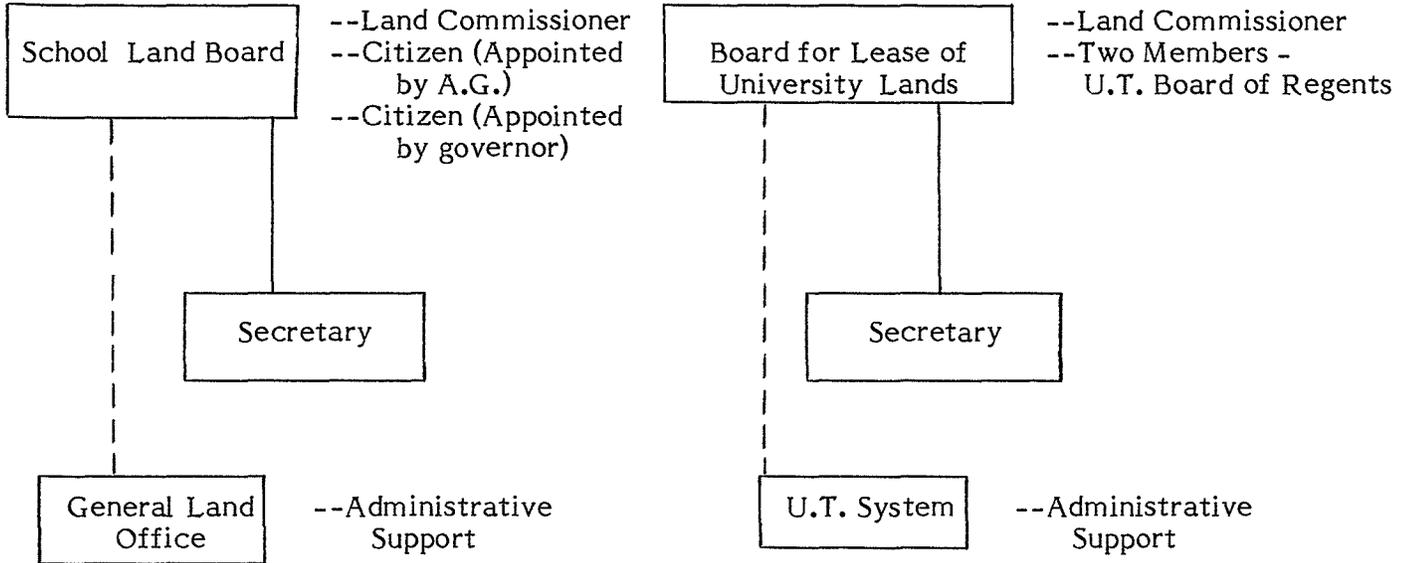


Exhibit II

	SCHOOL LAND BOARD	BOARD FOR LEASE OF UNIVERSITY LANDS	BOARD FOR LEASE OF STATE LANDS
Leasing Authority	<p>Lands under jurisdiction: Gulf of Mexico, bays, estuaries, river beds and other uplands. 4.75 million acres. Land dedicated to the Permanent School Fund.</p> <p>Land can be leased for oil and gas, geothermal leases; hard minerals (coal, lignite, sulphur, potash, and salt.)</p> <p>(Land commissioner authority over timber, grazing, other minerals, and exploration; and limited authority over 7.2 million acres of Relinquishment Act and Free Royalty Act lands.)</p>	<p>Lands under jurisdiction: Land dedicated to Permanent University Fund. Primarily land located in West Texas totaling 2.1 million acres.</p> <p>Land can be leased for oil and gas.</p> <p>(All other minerals and surface uses are under authority of U.T. System Board of Regents.)</p>	<p>The authority for state agency lands are found in three separate statutes. Lands under jurisdiction: All state lands under departments and agencies, a separate statute applies to state parks and eleemosynary lands. Approximately 180,000 acres.</p> <p>Land can be leased for oil and gas, minerals, timber and surface uses.</p>
Lease Sale	<p>Provides notice of sale, description of land, and conditions of sale. Sale is conducted through sealed bids, with flexible bidding on royalty and bonus. Must accept highest bid, but may reject all bids. Nomination fee and 1½ percent sale fee.</p>	<p>Same as School Land Board, except in addition to sealed bid, have ability to hold oral auction sales. One percent sale fee, no nomination fee. Tracts for bids are screened extensively.</p>	<p>Same as School Land Board, but no nomination fee authorized. One percent sale fee.</p>
Lease Document Contents	<p>Lease contains primarily three-year production clause for uplands, and five years for Gulf land; minimum one-fourth royalty, provisions for delays, rentals and assignment, plus conditions for forfeiture.</p>	<p>Same as School Land Board, but no Gulf Lands.</p>	<p>Lease contains three to five year production clause, 1/8 to 1/4 royalty, provisions for delays, rentals and assignments, plus conditions for forfeiture.</p>
Compliance Monitoring & Enforcement	<p>General Land Office (GLO) audits royalty payments and production reports performs field inspections.</p>	<p>U.T. System performs audit and inspection functions.</p>	<p>GLO performs audit and inspection functions.</p>

citizen members for two-year terms upon confirmation by the Senate. One citizen member is appointed by the governor and the other is appointed by the attorney general.

Since 1933, the board's responsibilities have expanded and the acreage controlled by the board has increased. For instance, in 1941, the acreage controlled by the School Land Board grew from 900,000 acres to approximately 4,000,000 acres by an act of the 47th Legislature. It dedicated to the Permanent School Fund all state lands within tidewater limits including islands, lakes, and bays and the submerged lands of the Gulf of Mexico extending three marine leagues (10.36 miles) from the coastal boundary. In 1973, the Coastal Public Lands Management Act was passed by the 63rd Legislature, expanding the types of uses for which leases and easements may be issued. The Act also gave the board the responsibility of preserving the natural resources of coastal public lands. Additionally, the 63rd Legislature granted the board authority to trade Permanent School Fund land for other lands in order to combine diverse holdings into manageable units, and to acquire lands of unique cultural, recreational, or biological value.

The School Land Board meets twice a month in public meetings. The secretary of the SLB is an employee of the GLO and the staff of the GLO performs all the necessary functions to assist the SLB in meeting its statutory obligations. Areas of support provided by the GLO include accounting, data services, field operations, surveying, appraisal, legal services, coastal, uplands, hard minerals, exploration and development, encroachments, and field inspections.

Other than per diem paid to citizen members, there is no expenditure of state funds directly attributable to the SLB. However, a substantial portion of the GLO activities are related to areas within the statutory authority of the SLB.

One of the main interlocking functions of the GLO is to provide the School Land Board a list of land areas subject to lease. The SLB sets the date for considering competitive lease bids on these lands, and, after hearing all of the bids on the nominated lands, decides whether to accept or reject any of the bids offered. The board is required by law to approve the highest bid of those accepted.

Other related responsibilities of the SLB include pooling or unitization agreements. In these cases, different tracts of state lands are combined, or state lands are combined with other lands, to form a drilling block eligible for the full Railroad Commission production allocation. The SLB also considers all school land trades that consolidate isolated tracts, yielding little or no income to the state, into larger tracts which will produce greater income. Finally, the SLB sets the fees which are charged for various uses of public school lands primarily for public benefit.

The purpose of the School Land Board is to maximize the amount of money in the Permanent School Fund (PSF) which, through a series of funding mechanisms, helps finance the education of Texas children. Essentially, the School Land Board leases the lands under its control for oil and gas development and the revenue is deposited in the PSF as provided by Section 15.01 of the Education Code. Investments of the fund are made under authority of the State Board of Education. All interest or dividends from these investments are placed in the Available School Fund. This fund includes, in addition to these sources of income, revenue from state fuel taxes and other appropriations made by the legislature. The fund is used

to assist financing of education by a formula which divides the money among the counties on the basis of population of elementary and high school age youths. A summary of the relationship between the boards and the funds are shown in Exhibit 3.

While the vast majority of revenues dedicated to the Permanent School Fund result from the School Land Board oil and gas leasing, certain other land uses remain under the exclusive jurisdiction of the land commissioner (see Exhibit 4). Various surface uses such as non-oil and gas leases, easements and minerals require only the commissioner's approval. Revenues from these activities are also dedicated to the PSF as shown in Exhibit 3.

The Relinquishment Act and Free Royalty lands, covering approximately 7.2 million acres, comprise a special category of state land dedicated to the PSF. Their historical development is often confusing and ownership of the state's mineral interests on these lands has been heavily litigated since the creation of the Texas Relinquishment Act of 1919. In summary, during the late 1800s, Texas released the mineral rights to the surface owners of public lands. However, subsequent court decisions determined that the surface owner did not own the mineral rights to the land, but rather acted as "agent for the state" for the purpose of leasing the state's mineral interests. The surface owner now negotiates the leases and receives one-half of any royalties, rents, or bonuses in lieu of any damages to the land. Currently, the land commissioner must approve these leases with the primary term of the lease not to exceed five years. The revenues from these lands are also deposited in the PSF.

#### **Board for Lease of University Lands**

The Board for Lease of University Lands was created by the 41st Legislature in 1929. The three-member board is comprised of the commissioner of the General Land Office and two members of the Board of Regents of the The University of Texas System selected by the Board of Regents. The board for lease was given the sole and exclusive authority to award oil and gas leases on 2.1 million acres of Permanent University Fund (PUF) lands.

During its history, the composition of the board has remained unchanged. Major changes in the board's responsibilities over the last decade are summarized as follows. In 1973, oil and gas leases were required to contain a provision which enabled the board, at its discretion, to accept royalty payments in kind rather than cash payments. In 1979, the responsibility for collection of oil and gas lease income was transferred from the commissioner of the General Land Office to the Board of Regents of The University of Texas System. The amendment further provided that lease amendments and extensions could be issued administratively by the Board of Regents in accordance with statute. Finally, in 1983, the board was given the discretion to use public auction or sealed bids in awarding oil and gas leases.

The primary function of the board is to provide sound management in the sale of oil and gas leases on university lands dedicated to the P.U.F. The board must also approve all oil and gas pooling and unitization agreements related to these lands. Consequently, the board's primary goal is to generate, through oil and gas lease sales and unitization processes, the maximum amount of revenue possible for the benefit of the PUF. Leasing and related activities are similar to those of the School Land Board and Permanent School Fund.

Exhibit 3

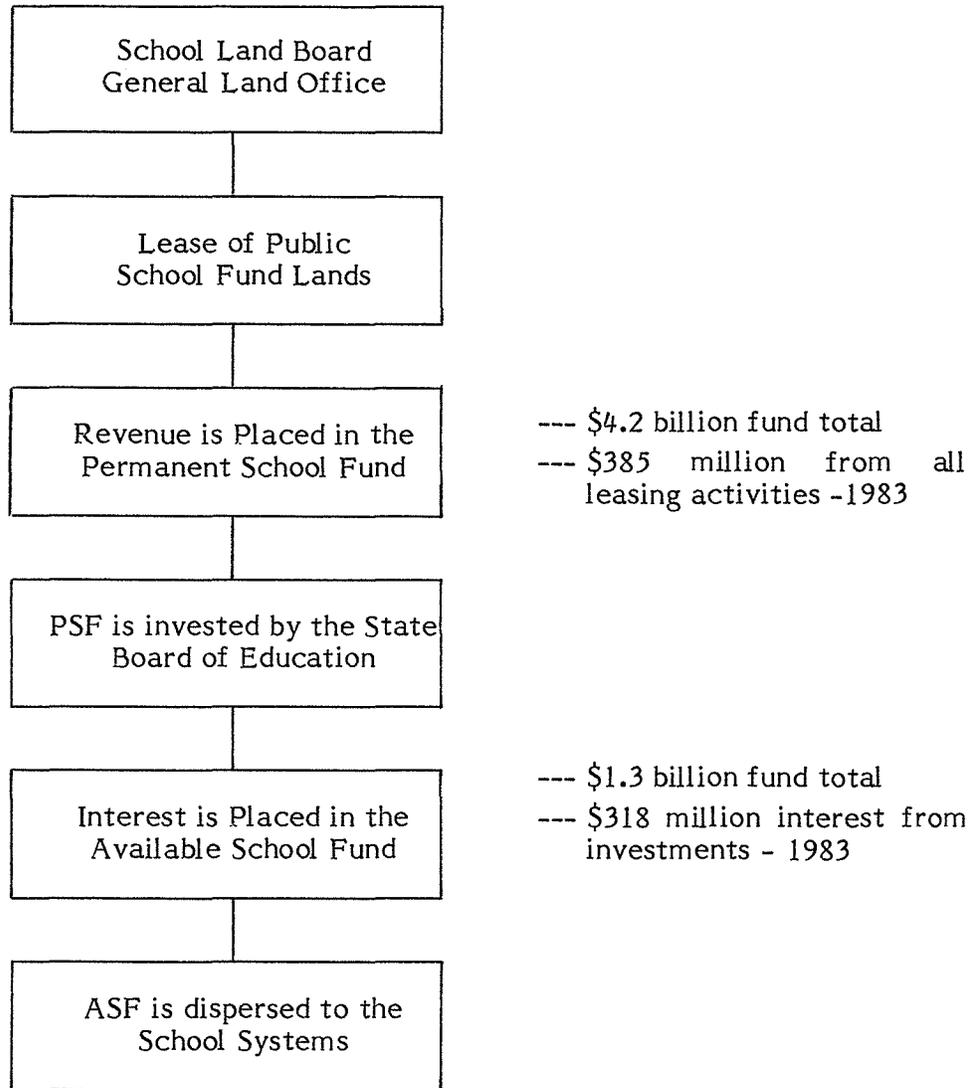


Exhibit 4

GENERAL LAND OFFICE/SCHOOL LAND BOARD ACTIVITIES

	Approval	
	<u>Commissioner</u>	<u>SLB</u>
<b>A. <u>Leasing</u></b>		
1. <u>Oil &amp; Gas</u> (except Relinquishment Act)		X
2. <u>Oil &amp; Gas on Relinquishment Land*</u> (including coal, lignite, sulphur, potash, and salt)	X	
3. <u>Other Minerals on Relinquishment Land</u>	X	
4. <u>Minerals</u> , including only coal, lignite sulphur, potash, and salt		X
5. <u>Other Minerals</u> , including precious metals, uranium, thorium, and all other minerals except coal, lignite, sulphur, potash, and salt	X	
6. <u>Other</u> , navigation, geothermal, public purpose on coast		X
7. <u>Other</u> , grazing, timber, commercial	X	
<b>B. <u>Easements</u></b>		
1. <u>Coastal</u> , associated with ownership		X
2. <u>Soil Conservation and Flood Prevention</u> and most other uses related to leasing	X	
<b>C. <u>Permits</u></b>		
1. <u>Cabins</u>		X
2. <u>Geophysical Surveys, Prospecting</u>	X	

\*On all Relinquishment Act lands, the surface owner acts as agent for the state and negotiates the lease terms.

The leasing board meets as needed to conduct business. In carrying out its responsibilities, the board employs a third-time secretary and utilizes the staff of the University of Texas System as administrative support. The board is assisted with legal and technical expertise in oil and gas law, mineral leasing development, and land management. On the average, the board meets four to five times a year, to consider various leasing activities.

The chairman of the board is elected by a majority of the three-member board. Currently, one of the Board of Regents members serves as board chairman, unlike the School Land and the Boards for Lease of State-Owned Lands where the commissioner of the General Land Office acts as chairman.

The commissioner serves on the board for his term of office while the Board of Regents members serve two-year terms. The Board of Regents members are prevented from being directly or indirectly employed by or being an officer of or an attorney for an oil and gas company. Board members are not compensated for their service, but are paid for their actual expenses for attending the meetings.

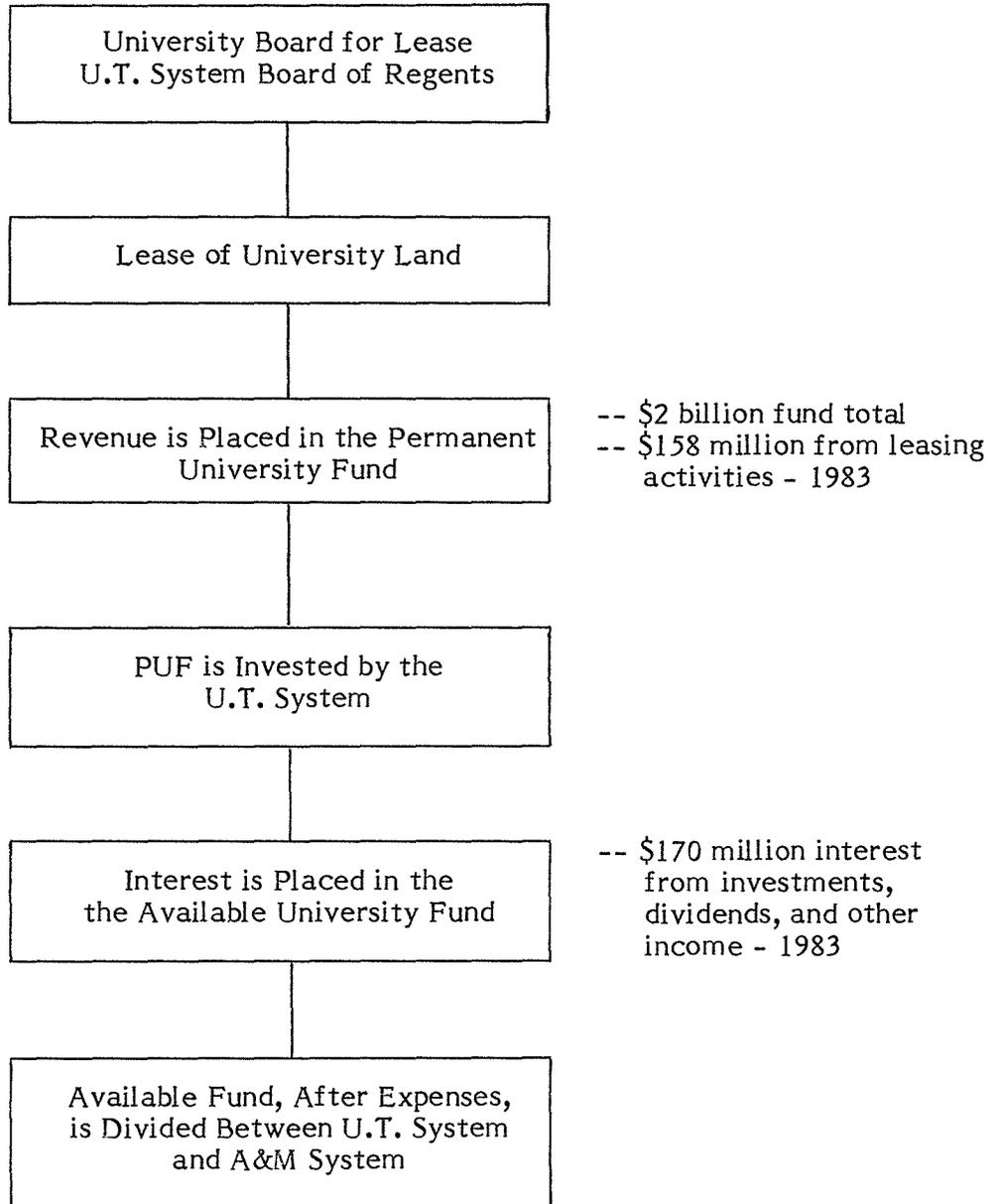
Revenues derived from the board's oil and gas leasing activities are dedicated to the Permanent University Fund, with the interest from this fund placed in the Available University Fund (see Exhibit 5). The PUF is structured like the Permanent School Fund, although the use of these revenues is for different purposes. Under authority of Article VII, Sections 11-a and 18 of the Texas Constitution, the Available University Fund can be used for permanent improvements, new construction, lands management, retiring bond obligations, and other related uses. The Available University Fund is divided, after expenses for management of the university lands by the U.T. System, between the Texas A&M University System, which receives one-third of the fund, and the University of Texas System which receives the remaining two-thirds. Furthermore, the two University Systems are given bonding authority for an amount not to exceed 20 percent of the total Permanent University Fund. Currently, the P.U.F. totals over \$2 billion dollars derived from the leasing of the university lands.

Authority over the use of the university lands dedicated to the PUF is divided among the Board for Lease of University Lands and the Board of Regents of the University of Texas System. The board for lease has authority only for oil and gas leasing. All other leasing activities fall under the jurisdiction of the U.T. System Board of Regents. Some of these activities include ranching and wildlife programs, commercial vineyard development, conservation and land utilization research, minerals (non-oil and gas) and water rights leasing. This lease revenue is also included in Exhibit 5.

### **Boards for Lease of State-Owned Lands**

The Boards for Lease of State-Owned Lands are three-member boards which oversee the lease of lands owned by state agencies. Many agencies own or acquire land while carrying out their responsibilities. Since these lands may hold revenue potential from leasing for mineral development and other uses on the property, the legislature, in 1930, began establishing a series of leasing boards. The 41st Legislature created the Board for Lease of Eleemosynary (Charitable) and State Memorial Park Lands, now under control of the Texas Department of Mental Health and Mental Retardation. In 1949, the Board for Lease of State Park Lands was created to lease land in the state park system. Finally in 1951, the 52nd Legislature created a general statute authorizing any state agency to create a board for lease as necessary.

Exhibit 5



At present, there are approximately 20 boards for lease which meet as the need arises. All boards operate much like the School Land Board, with specific powers to lease lands held in trust for the use and benefit of the agency.

Membership on each of the boards includes the commissioner of the General Land Office as chairman, the agency's board or commission chairman and a citizen appointment. Originally, the attorney general served on the boards. However, the 58th Legislature, in 1963, removed the attorney general and provided for a citizen member appointed by the governor for a two-year term. This policy is consistent except for the Board for Lease of State Park Lands which, by statute, has a citizen member appointed by the attorney general. Historically, the citizen member appointments have not been made and most agency boards for lease operate as a two-member board.

Statutory changes have also occurred related to the boards' jurisdiction. The Board for Lease of State Park Lands was originally authorized to lease only certain parks. However, an amendment in 1979 allowed the board to lease any land in the state park system. In 1981, oil and gas leasing of all lands under the control of the state Highways and Public Transportation Commission was prohibited. The legislature determined that the Highway Department leases were disruptive of oil and gas development on adjacent land and legal problems were associated with some of the lands leased.

The various boards for lease meet irregularly on an as needed basis. Depending upon the amount of property owned by the agency, some boards, such as the Board for Lease of Parks and Wildlife Lands, meet quite often while others such as the Board for Lease of State Library Lands have met only once.

Lease sales of agency lands are held at the same time as School Land Board lease sales. Whenever the appropriate board for lease decides there is adequate demand for the purchase of oil, gas or minerals leases on a tract of land, the board may place the leases for these tracts on the market. The board gives notice of the sale, establishes terms for bidding on the bonus, rental and royalty, primary terms of the leases, and sets other conditions. The board may also grant easements on the lands subject to its control.

Essentially, the Boards for Lease of State-Owned Lands have exclusive authority over all leasing of surface uses and minerals, unlike the School Land Board and Board for Lease of University Land, who share decision making authority for certain land uses with the commissioner of the GLO and the U.T. Board of Regents respectively. However, the amount of land controlled and the revenues derived from leasing are minimal by comparison. Exhibit 6 shows the recently active lease boards, acreage and revenues for 1982. Money received from leasing is deposited in the state treasury in special mineral funds and is subject to legislative appropriation for the benefit of that agency.

Expenses for the board are similar to those found with the School Land Board and Board for Lease of University Lands. Technically, each board for lease selects a secretary to prepare and maintain minutes of meetings, post notices and prepare mailings. In practice, the secretary is an employee of the General Land Office. Otherwise, board members are not compensated for their service, but are paid actual expenses for board-related activities from their respective special mineral funds.

Exhibit 6

ACREAGE, LEASING, AND REVENUE DATA  
VARIOUS AGENCY BOARDS FOR LEASE

	<u>Acres Available</u>	<u>Acres Leased</u>	<u>Oil &amp; Gas Royalty</u>	<u>Rental &amp; Receipts</u>	<u>Total Receipts</u>
<b><u>Special Mineral Funds 1982</u></b>					
Board of Corrections	61,588	61,588	\$ 1,376,801	\$ 1,111,121	\$ 2,487,922
Hospitals and Special Schools	886	886	3,079	5,515	8,594
Youth Council	929	929	474	1,000	1,474
Highway Mineral	1,152	1,152	116,780	32,114	148,894
Game & Fish	10,170	10,170	25,146	3,903	29,049
State Parks	5,223	5,223	650,000	223,056	873,056
National Guard Armory Board	160	160	10,935		10,935
Stephen F. Austin University	208	208		12,773	12,773
Midwestern University	600	600	7,064		7,064
Texas Tech University	246	246	39,329		39,329
Alabama-Coushatta Indian	<u>4,452</u>	<u>4,452</u>	<u>*</u>	<u>*</u>	<u>*</u>
<b>TOTAL, SPECIAL MINERAL FUNDS</b>	<b>85,614</b>	<b>85,614</b>	<b>\$ 2,229,608</b>	<b>\$ 1,389,482</b>	<b>\$ 3,619,090</b>

\*Figures Unavailable.

### Need to Continue Lease Boards

Since the three lease boards under review have similar functions, the boards were evaluated in a single review to provide a more effective comparison of leasing activities. This method encouraged consistency in the evaluation approach applied to all the lease boards resulting in recommendations that provide a more uniform state leasing policy. The need for the leasing boards was analyzed and the review indicated that there is a continuing need to perform the function of leasing of state lands. However, the review also indicated that changes should be made in the organizational structure of the boards. Separate leasing boards for each state agency owning land are not necessary to lease agency lands; these boards can be combined with the School Land Board. With regard to the University Board for Lease, the composition of that board should be changed so that each of the major interests involved are represented on the board. These changes and those following should be made in the event the legislature decides to continue the lease boards.

**Sunset Commission Recommendations for the  
SCHOOL LAND BOARD  
BOARD FOR LEASE OF UNIVERSITY LANDS  
BOARDS FOR LEASE OF STATE-OWNED LANDS**

**I. CONTINUE THE BOARDS WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be amended to expand the Board for Lease of University Lands to include a citizen member and a representative of Texas A&M University.**

Currently, the university board is composed of the land commissioner and two members of the U.T. System Board of Regents. The university board leases state lands with revenues dedicated to the Permanent University Fund. The PUF is divided, after expenses, between U.T. and Texas A&M. A representative of Texas A&M should be placed on the board to provide adequate representation. Like other state leasing boards, a citizen member should also be placed on the board to provide public input.

- 2. The statute should be amended to designate the land commissioner chairman of the Board for Lease of University Lands.**

Currently, the university board chairman is elected by the board which is different from the other leasing boards where the land commissioner is chairman. To provide consistent policy leadership for all the lease boards, the land commissioner should also be designated chairman of the university board.

- 3. The statutes should be amended to combine the Boards for Lease of State-Owned Lands with the School Land Board.**

Currently, the agency boards for lease function with two members, thereby defeating the purpose of using a board for decision-making. The boards operate in a similar fashion to the SLB and also receive administrative and technical support from the GLO. The boards could be combined with the SLB to provide uniform decision-making by one board concerning similar leasing activities.

**Overall Administration**

- 4. The GLO should develop a training and information program for those agencies owning land. (management improvement - non-statutory)**

Because expertise among the agencies owning land varies greatly, a stronger information network with the GLO is needed to prepare the agencies for oil and gas lease sales. Such a network could provide training to the agency personnel as well as administrative and technical support to assist agencies in all aspects of oil and gas leasing.

5. **The statute should be amended to authorize the School Land Board to charge fees necessary to carry out its responsibilities required by law.**

The School Land Board has responsibility to carry out a variety of statutory provisions but, in many cases, is not authorized to charge fees to recover related costs. Such authority would reduce the general revenue requirements related to SLB activities and should be given to the board.

6. **The statute should be amended to require soil and water conservation plans on all public lands.** (Issue presented in public testimony.)

Conservation plans have existed for university lands for many years and have proven very beneficial. This effort has also been recently initiated by the GLO for public school lands and a mechanism should exist to ensure that this effort is continued in the future.

### Evaluation of Programs

#### Leasing

7.
  - a. **School Land Board and GLO land management efforts should be increased including trades for land with multiple uses.** (management improvement - non-statutory)
  - b. **The statute should be amended to authorize the School Land Board to establish an escrow account for land trades.**

Current SLB and GLO efforts to develop manageable land holdings and increase the income potential of public school lands have been hampered by the cumbersome land trade process. Efforts to trade lands should be continued and simplified through establishment of an escrow account in which money from the sale of land could be held until an appropriate land purchase can be made.

8. **The statute should be amended to authorize the GLO to establish an escrow account for permanent improvements on state public school fee lands.**

It is standard industry practice to receive money from oil and gas exploration companies for damage occurring to the land due to roads, seismic testing, power lines etc. This has not always happened in a systematic way on public school fee lands. By contrast, a damage program has existed on university lands since 1968 and has been shown to be successful. A similar type of program is also needed for public school fee lands to guarantee reclamation, conservation and improvement of those lands.

9. **The statute should be amended to authorize the School Land Board to hold public auction bid lease sales.**

Currently, the SLB has authority to hold a sealed bid lease sale. The University board has authority for a public auction sale in addition to the sealed bid method. Because the public auction sale can be more profitable

under certain conditions, the SLB should have the flexibility to use this method when it is warranted.

- 10. The statute should be amended to eliminate the restrictions on easements issued by the GLO, UT Board of Regents and the agency boards for lease.**

Currently, authority to grant easements on state lands is limited to purposes specifically outlined in the statutes. These restrictions prevent the granting of easements for some purposes that could be beneficial to the state and improve the value of the land. Elimination of these restrictions would allow easements to be granted for any reasonable use.

#### Compliance

- 11. GLO compliance activities related to the School Land Board should be strengthened to ensure proper production reporting and payment of royalties. (management improvement - non-statutory)**

The GLO provides support to the SLB to account for all royalty payments from their leases. Efforts to strengthen the audit and compliance system through automation should be continued. An independent evaluation of reported information should be provided by field inspections.

#### Enforcement

- 12. The statute should be amended to authorize all the lease boards to increase penalties for late royalty payments and production reports.**

The current penalty rates for late royalty payments and reports are outdated and insufficient to recover the administrative costs involved in applying penalties. The boards should be given authority to increase penalty rates to recover administrative costs and unearned interest from late payments and reports. This authority would result in an adequate incentive for timely payments and reports.



**VETERANS LAND BOARD**

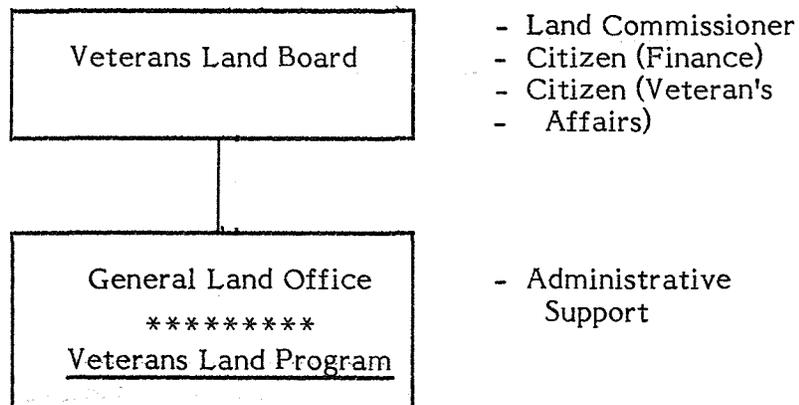
## Background

The Veterans Land Board was established in 1949 and is currently active. The board was originally created to provide eligible veterans low-interest loans for purchasing rural land. In recognition of their military services, the loan program was designed to provide a state benefit to veterans. During the history of the program, loan amounts and minimum acreage requirements have been changed as necessary to allow veterans to find affordable land under the program. Initially, maximum loan amounts were set at \$7,500 but have increased to a current \$20,000 maximum. Minimum acreage for eligible tracts has decreased from 20 acres to 10 acres. As additional funds for loans were needed, the bonding authority of the board for the land program has been increased several times by constitutional amendment. Currently, bonding authority is \$1.25 billion and the interest rate on the land loans is 8.5 percent.

In 1983, a constitutional amendment authorized the creation of a separate veterans housing program. This housing program was established to supplement the land program by providing low interest loans of up to \$20,000 to assist veterans in purchasing a home. The housing loans are also provided by proceeds from bond sales. Bonding authority has been set at \$500 million and loans are offered with a 9.97 percent interest rate. The program provides an alternative to veterans who have difficulty participating in the land program because of rising prices and the scarcity of available land in urban areas.

The Veterans Land Board (VLB) is composed of the commissioner of the General Land Office and two citizen members appointed by the governor. Appointments must comply with constitutional provisions requiring four-year terms for members and a composition including one citizen member well-versed in veterans affairs and one member well-versed in finances. The board is supported by various divisions of the General Land Office (GLO) with primary support provided by the veterans land program of the GLO (see Exhibit 1). In fiscal year 1984, 153 employees and \$4.7 million is budgeted for support of the VLB. This support is funded through fees charged by the GLO in the loan process and through revenue from bond sales.

### **Exhibit 1 VETERANS LAND BOARD**



Support provided by the GLO to the Veterans Land Board is almost entirely related to the land loan program. In contrast, the housing program is administered through a joint effort of the VLB, the GLO, private lending institutions, and the Veterans Affairs Commission. While both loan programs are designed to provide loans to veterans, they are not operated in the same fashion. The land program is structured so that the GLO acts as the lending institution for the loans. Loan applications are processed, eligibility of the veterans is determined, appraisals are conducted, legal documents are prepared, land is sold to the veteran and payments are processed by GLO staff assigned to support VLB activities.

The housing loan program is more complicated. The Veterans Land Board and the Veterans Affairs Commission determine the eligibility of veterans who can participate in the program. The actual administration of the program is contracted to a private lending institution by the Veterans Land Board. Loans are processed by private lenders approved to participate in the program. In most cases, the \$20,000 loaned to the veteran through the program is only a part of the financing needed to purchase the house. The remainder is loaned to the veteran by the lender using conventional funding sources. Consequently, the resulting loan is similar to conventional financing although \$20,000 of the total loan is at a lower interest rate which helps qualify veterans that may not otherwise be eligible.

The Veterans Land Board's current area of responsibility is oversight of the land and housing programs along with the issuance of bonds necessary to fund the programs: For the purposes of review, the VLB support activities were divided into four areas: 1) processing of land loans; 2) funds management; 3) outreach and 4) housing. A discussion of these activities is set out in the following material.

Processing of Land Loans. A major activity performed by the GLO involves processing of loan applications for the land program. Initially, a veteran locates a tract of land to purchase and requests an application packet from the agency. The veteran files the application with the agency along with the required down payment and other fees. Surveys of the proposed tract must also accompany the application. The application is reviewed by GLO staff to determine whether the veteran is eligible to participate in the land program. Eligibility requirements include 1) at least 90 consecutive days of active duty in the military; 2) residency in the state at the time of entry into the service or five consecutive years prior to filing an application; 3) residency at the time of filing; 4) applicant must not have been dishonorably discharged and; 5) applicant must not have previously participated in either the land or housing programs.

The loan process continues with an appraisal by staff appraisers to determine the fair market value of the land. The appraiser must, by statute, meet the veteran on the proposed tract of land to ensure that the veteran understands the land program and knows what land is being purchased. If the appraised value is less than the selling price, then the veteran must pay the additional amount or negotiate with the seller to reduce the price to the appraised amount.

Another aspect of the loan process involves a statutory requirement for review of the application by local county committees appointed by each county commissioner's court. Composed of three landowners in the county, the voluntary committee reviews the application and reports to the board on the credit rating of the veteran, the value of the land, and the reliability of the transaction. If a veteran lives in one county and is purchasing land in another, then both county committees must review the application. The county committees recommend

approval or disapproval of each application which is then forwarded to the GLO for further action. The loan transaction cannot be completed without the comment from the county committee. Prior to loan approval, a review of the application and the related warranty deed for the land along with any other necessary legal work is performed by GLO legal staff. The county committee's report is also reviewed and is used as a guideline by GLO staff.

If the loan is approved, the Veterans Land Board purchases the land from the seller and resells the land to the veteran. A forty-year contract of sale with monthly payments is used with the VLB holding title to the land until the terms of the contract are fulfilled. The veteran can assign the loan to another person after the contract has been in effect for three years.

During fiscal year 1983, loan processing showed the following volume of activity. Over 5,000 requests were received and a total of 14,000 requests were processed including those on a waiting list. Approximately 5,000 appraisals were conducted and 2,500 loans were closed. Of the more than 81,000 loans which have closed throughout the history of the program, over 46,000 are still active. The land loan process is outlined in Exhibit 2.

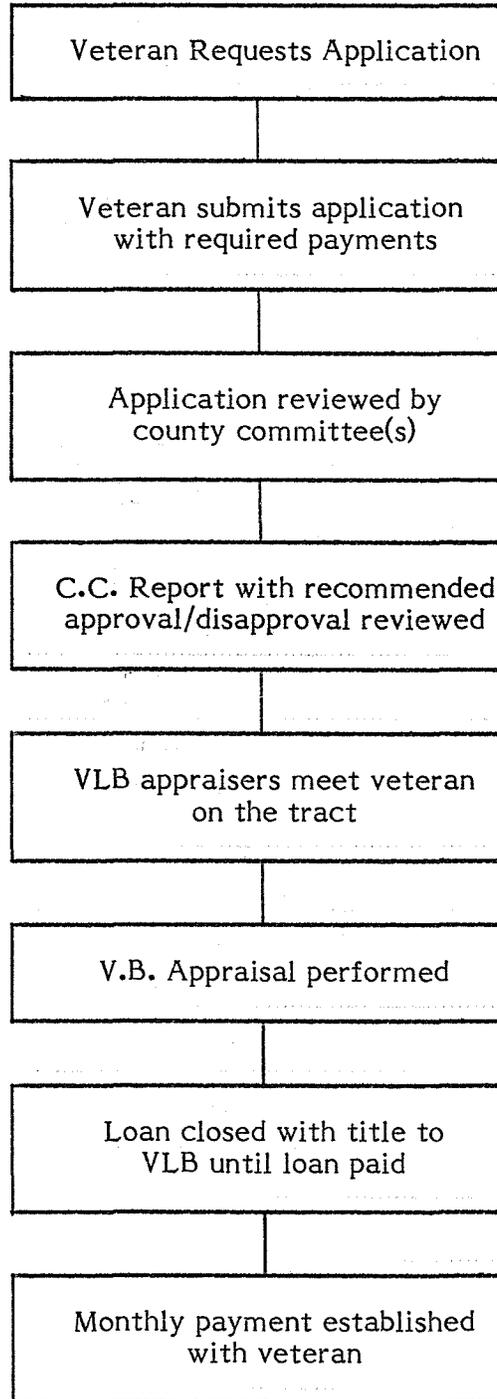
Funds Management. Another VLB activity performed by the GLO involves the issuance of bonds for the land and housing programs. The staff also manages the bond proceeds and payments from the veterans. The VLB is authorized by the Texas Constitution to issue general obligation bonds of the State of Texas to provide monies for the land and housing programs. Proceeds from these tax-exempt bonds are used to make loans to veterans, pay for expenses of the bond sales and making the loans, and to establish reserves to meet obligations related to retiring the bonds. Bonding authority is presently set at \$1.25 billion for the land program and \$500 million for housing. Currently, a total of \$800 million in land bonds and \$250 million housing bonds have been issued. The VLB also has the authority to issue revenue bonds as necessary to provide money for loans under the housing program. These bonds are not guaranteed by the state and are limited to the amount which can be repaid by loan payments made with the proceeds. The board has not issued any revenue bonds to date.

The issuance of bonds begins with the determination of need for a sale. This decision is approved by VLB based on a recommendation by the GLO staff and a private bond attorney retained by the board. A sealed bid process is used with the lowest net cost interest bid accepted by the board. The buyer can then sell the bonds on the bond market, however, most bonds are pre-sold to potential buyers contingent upon the outcome of the bond sale. These bonds have an AAA rating on the bond market since they are guaranteed by the state and collateralized by the land bought through the land program and interest from investment of program funds.

Bond proceeds and loan payments by veterans are invested by GLO staff based on projection schedules as to the need for available capital. Funds must be available at certain times to make interest and principal payments and to have money available for making loans. Investments are restricted by the Texas Constitution to U.S. government securities such as U.S. Treasury bills, notes and bonds. Money for loans is invested in short-term Treasury bills, while funds used as reserves and for long-term obligations are invested in medium to long-term notes and bonds. Federal regulations restrict the interest that can be earned from the investment of bond proceeds so that interest earned does not materially exceed the

Exhibit 2

**LAND LOAN PROCESS**



interest rate paid for the bonds. Violation of this so called "arbitrage" regulation can result in the forfeit of the tax-exempt status of the bonds.

Outreach. A relatively new VLB activity performed by the GLO involves efforts to provide information and education to veterans and the real estate community about the loan programs. This effort is an attempt to increase veteran participation in the programs and to target the veteran groups that have had traditionally low levels of participation such as minorities and Vietnam veterans. The staff works with veteran service organizations, county veteran service officers, the Veterans Administration, the Veterans Affairs Commission, county officials, relators and lenders to publicize the loan programs. Seminars, workshops, and public information meetings are conducted as requested and an attempt is made to provide some type of program in each county every six weeks. This is accomplished by 13 personnel located in three field offices around the state and in Austin. Since the program started in March, 1983, over 17,000 presentations have been conducted at conventions, public meetings, and seminars. Over 70,000 other visits have been made with persons from veteran service groups and agencies.

Housing. The Veterans Housing Assistance Program was approved by the voters with a constitutional amendment in November, 1983. The program will loan an eligible Texas veteran up to \$20,000 to use in conjunction with a loan from a private lending institution to purchase a home. The VLB is responsible for general oversight of the program, funding the program through bond sales, and selection of the program administrator. The Lomas and Nettleton Company, through a bidding process, was chosen to administer the program which initially involved working with the VLB to structure the program and to educate lenders wishing to participate in the program. Lomas and Nettleton is also responsible for continuing administration of the program.

Housing loans are made as part of a conventional loan process through an approved private lending institution. Veterans wishing to participate apply for a loan with an approved lender. The veteran must qualify for a loan based on standards similar to those for other loans. Normally, \$20,000 of the purchase price is provided by the housing program and the remainder is obtained through conventional loan sources.

The veteran must meet certain eligibility requirements to participate in the program. These requirements are similar to the land program in that a veteran must have served 90 consecutive days of active service and have been a resident of Texas at the time of entry into the service or for the last five years immediately preceding the application. The difference in the two programs relates to the veteran's discharge. A veteran must have been discharged under honorable conditions to participate in the housing program while under the land program a veteran cannot have a dishonorable discharge. Consequently, active military personnel can qualify for the land program but cannot under the housing program.

The Veterans Affairs Commission determines the veteran's eligibility in terms of service qualifications and residency requirements. Additionally, the veteran cannot have previously participated in the land or housing program.

The loan application process continues during the veteran's eligibility determination. The lender processes these loans using essentially the same criteria as other conventional loan programs. Once the loan is approved and closed, then the lender receives the \$20,000 for the housing portion loan from the VLB through a

bank designated as the custodian of the funds. Payments on these loans are sent by the veteran to the lender with the housing portion forwarded to the VLB through the custodian. The VLB has a joint first lien with the lender on the property. Since the housing program began operating in January 1984, over 4,000 loan applications have been requested under the program, however only a few loans have been closed to date. The housing loan process is set out in Exhibit 3.

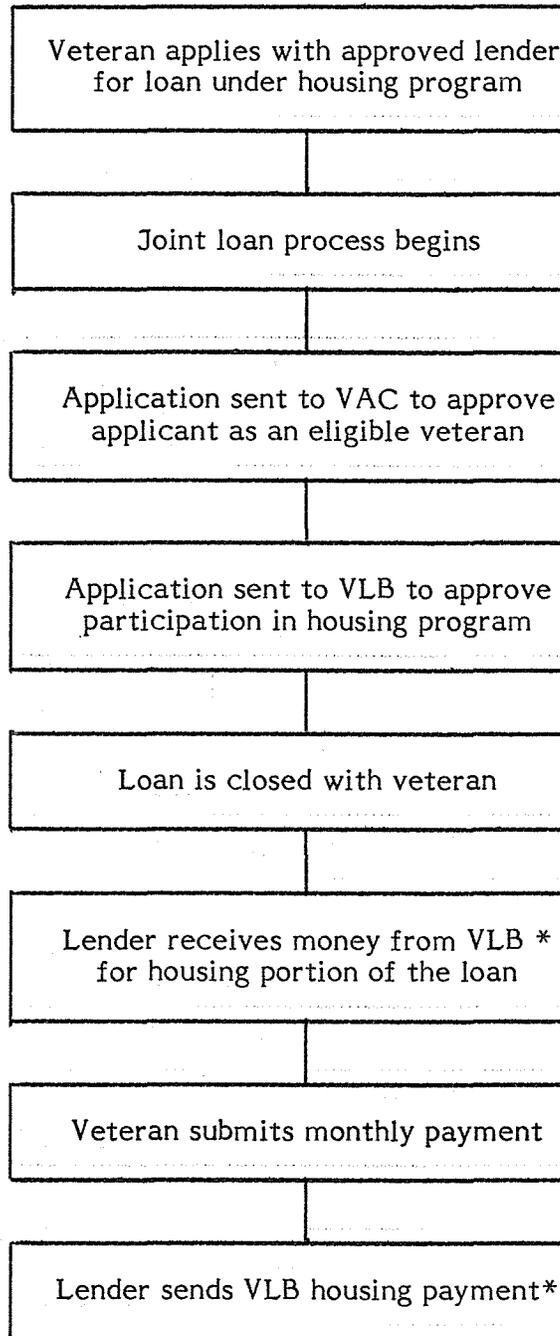
### **Need to Continue Agency**

The need for each of the board's responsibilities was analyzed and the review indicated that there was continuing need for state involvement in these areas. In regard to current operations, the review determined that the board and related support are operated in an efficient and effective manner.

While the Veterans Land Board is not subject to termination under the Sunset Act, the agency is subject to sunset review. The following are changes which should be made to improve the board's operation.

Exhibit 3

**HOUSING LOAN PROCESS**



\* A bank acts as the collection point for these payments



**Sunset Commission Recommendations for the  
VETERANS LAND BOARD**

**I. CONTINUE THE BOARD WITH MODIFICATIONS**

**Overall Administration**

- 1. The Veterans Land Board should be given authority to set the minimum acreage requirement in the land program at an amount not less than five acres.**

Today, veteran tracts are used primarily for investments or recreational purposes. Throughout the history of the land program loan amounts and acreage requirements for the program have been modified to meet the changing market conditions. However, each modification requires a statutory amendment which can limit the responsiveness of the needed program changes. The VLB should be allowed to make these changes by rule and reduce the acreage requirement as market conditions trigger a change.

- 2. The statute should be amended to provide the Veterans Land Board authority to operate the land program through private contractual agreements.**

The Veterans Land Board currently operates under a legislative mandate to control cost by limiting personnel assigned to the program. In the recently approved veterans housing program, the private sector is used to administer the program, thus no new state employees were added to support this activity. While the current land program works well, a similar option is needed for the veterans land program so that the Veterans Land Board could contract with a private entity to administer part or all of the land program if it became cost effective to transfer the activity.

- 3. The statute should be amended to require the board to adopt rules and procedures necessary to ensure the integrity of the program.**

Occasionally, changes in program operation are needed to protect the program from fraud or correct past problems. The board needs the ability to adopt rules and procedures to safeguard the integrity of the program.

- 4. The statute should be amended to include public health officers in the definition of an eligible veteran.**

Depending on federal requirements, public service officers have, at certain times, been eligible to participate in the Texas veterans program. Currently, service officers are excluded from participation although their exclusion was more an oversight rather than a policy decision by the legislature.

- 5. Constitutional and statutory provisions should be amended to authorize the Veterans Land Board to change the definition of a veteran in the land or housing programs when necessary to comply with federal requirements.**

The federal Tax Reform Act of 1984 has placed limitations on all veterans programs that are financed by tax exempt bonds. Both Texas veterans

programs are affected by these limitations which, among other things, restrict program eligibility for certain veterans groups. In order to comply with current and future federal requirements, the VLB should be statutorily authorized to adjust the definition of veterans eligible to participate in the state's programs. This change would require removing the definitions of eligible veterans for both programs from the Texas constitution.

- 6. The statute should be amended to increase the maximum interest rate for delinquent loan payments to the board from 10 to 20 percent.**

Currently, the maximum interest rate for delinquent payments to the board is 10 percent which, in certain cases, is less than the original interest rate of the loan. The maximum rate should be increased to 20 percent to allow the VLB to set a rate which will deter delinquent loan payments.

### Evaluation of Programs

#### Processing of Land Loans

- 7. The statute should be amended to allow the VLB to eliminate the county committee review process and require the VLB to obtain written credit reports from loan applicants.**

The county committee review process, using local participation to ensure a valid land transaction, may no longer be useful because of other steps which have been incorporated in the loan process. The VLB should be allowed to eliminate the county committees if it is determined that they are no longer needed and the change will not jeopardize the federal tax-exempt status of the program's bonds. By requiring written credit reports from the applicant, adequate checks and balances on land transactions will remain in place.

- 8. The statute should be amended to eliminate the requirement for the on-site meeting between the appraiser and the veteran and require an affidavit stating that the veteran has inspected the particular land to be purchased.**

Currently, the veteran must meet a VLB appraiser on the land being purchased to discuss the loan process. This procedure has been used effectively in the past to ensure that the veteran is familiar with the land being purchased. However, this process sometimes causes time delays and may not always represent the most efficient method of assisting the veteran.

- 9. The statute should be amended to allow the board to waive the requirement that a veteran inspect the property and allow a representative of the veteran to inspect the property.**

The Veterans Land Board needs flexibility to accommodate particular needs of veterans who may not be able to inspect the property. Upon showing of need, the board may authorize a representative of the veteran to inspect the property. If this authorization is granted, the veteran must sign a waiver allowing the veteran's representative to inspect the property.

Housing

10. **The constitution should be amended to authorize \$500 million in additional bonding authority for the veteran's housing assistance program.**

Current bonding authority for the veteran's housing program is expected to be depleted by the end of 1985. Additional bonding authority is needed to continue the housing program and the constitution should be amended to provide the Veteran's Land Board with the additional authority.



**STATE SOIL AND WATER CONSERVATION BOARD**

## Background

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 pin pointed 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.

### Need to Continue Agency

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.

Sunset Commission Recommendations for the  
STATE SOIL AND WATER CONSERVATION BOARD

I. CONTINUE THE AGENCY WITH MODIFICATIONS

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.

Open Records/Open Meetings

3. **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.



**THE TEXAS CONSERVATION FOUNDATION**

## **Background**

The Texas Conservation Foundation was created in 1969 and is currently active. The foundation is governed by a six-member board composed of three public members and three ex-officio members - the director of the Texas Parks and Wildlife Department, the Texas Land Commissioner and the director of the Texas Historical Commission. Appointment of the three public members is divided among the governor, the lieutenant governor and the speaker of the house. Public members serve at the pleasure of the appointing official, or for staggered six-year terms. The governor has the responsibility for selecting the board chairman from the existing board membership. Operations of the foundation are conducted from an Austin office by a staff of two, the executive director and administrative technician, with an appropriation from general revenue of \$97,962 in fiscal year 1984.

The Conservation Foundation was created in 1969 to address concerns about diminishing financial resources for park land and the loss of available natural resource areas caused by increasing land development in Texas. It is patterned after a non-profit park foundation benefiting the National Park System. The foundation was designed to provide a means by which individuals interested in supporting parks and preserving natural resources and historic sites could make tax deductible cash and property gifts to the state through a charitable, non-profit foundation.

Originally, the foundation board was composed of 12 members, including nine citizen appointments made by the governor. Foundation activities were sporadic for nearly ten years because it received no public funds, had no staff and had difficulty getting a quorum for meetings. In 1979, the 66th Legislature reorganized the foundation by reducing the board from 12 to six members, including three ex-officio and three public members, and divided the three citizen appointments among the governor, lieutenant governor and house speaker. A provision was added to the statute enabling the governor to appoint an advisory committee to assist the board in fund raising. In 1980, the foundation received its first state appropriation from Park Fund 64 and the two-member staff was hired.

While current statutory responsibilities of the agency are varied and include such mandates as collecting data and compiling an inventory of natural areas around the state, the agency's primary objective can be divided into two functions - fund raising and negotiating real property transactions for the benefit of state park, historical and natural resource conservation purposes.

The establishment of land conservation entities which perform responsibilities similar to those of the Texas Conservation Foundation is a fairly new but increasingly popular idea among other states also facing limited budgets for natural resource conservation activities. Texas is unique among other states because these responsibilities are carried out through a state agency established as a charitable, non-profit foundation. The majority of other states perform these functions through a private corporation established outside of state government that works directly with the state's park and recreation agency.

## **Need to Continue Agency**

The need for the foundation was analyzed and the review indicated that while the functions performed by the foundation are important, the foundation has had

only limited success in performing its two main functions, fund raising and negotiating real estate deals. The agency has been fairly inactive over the past several years, but recently negotiated a large land donation which will benefit the Parks and Wildlife Department. Because of this recent success in obtaining donated property, the Sunset Commission recommended that the foundation be continued for a period of two years, at which time the agency's usefulness will be reevaluated.

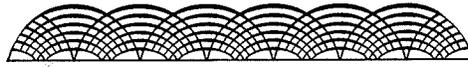
### **Sunset Commission Recommendations for the TEXAS CONSERVATION FOUNDATION**

#### **I. CONTINUE THE AGENCY FOR TWO YEARS**

**The statute should be amended to change the foundation's sunset termination date to September 1, 1987.**

Until recently, the foundation has had limited success in performing its primary responsibilities. Under the leadership of a new chairman, the foundation's performance is beginning to improve. To allow the foundation to demonstrate the ability to adequately carry out its responsibilities, the foundation should be continued for two more years. The agency will be reevaluated by the Sunset Commission during the 1986 - 1987 biennium.

**Agency Recommendations for  
HEALTH AND HUMAN SERVICE AGENCIES**



***Texas Department of Health  
Occupational Safety Board  
Texas Coordinating Commission for  
Health and Welfare Services  
Office of Interstate Compact on Mental Health  
Administrator for Texas  
Anatomical Board of the State of Texas  
Texas Commission for the Deaf  
Texas Health Facilities Commission  
State Commission for the Blind  
Texas Rehabilitation Commission  
Texas Commission on Alcoholism  
Texas Advisory Board of Occupational Therapy  
Texas Department on Aging***

**TEXAS DEPARTMENT OF HEALTH**

## Background

The Texas Department of Health is the public health service and planning agency for the state. In that role the department administers programs designed to prevent disease or illness, restore or improve the health of persons with certain conditions and plan with other agencies and organizations to promote and protect the quality of life in Texas. Organizationally, the department can be divided into one overall administration program (Support Services) and five major service programs: Community and Rural Health Services, Personal Health Services, Preventable Diseases, Special Health Services, and Environmental and Consumer Health Protection. As depicted in the agency's organizational chart (Exhibit 1), each of the major programs is headed up by an "associate commissioner." A brief description of each of the associateships follows.

The Associateship for Community and Rural Health helps coordinate the activities of the many different service and regulatory functions carried out by the department in all areas of the state. The department utilizes a regional structure to carry out its duties and has established 10 regional offices and 12 regional areas to provide localized management of its regulatory and service functions. In fiscal year 1984, 3,113 (65 percent) of the department's 4775 employees were stationed in regional areas. The 12 regions and 10 regional offices are identified in Exhibit 2. In general, the programs at central office provide for the policy and technical guidance for the work done in the regions. The associateship for Community and Rural Health coordinates the distribution of policies and technical guidance to the regions where the services are delivered or the regulation functions carried out.

Other duties of the associateship include the management and coordination of services delivered by state-participating local health departments, the provision of educational and career development consultation to public health nurses throughout the state and the state level management of the two hospitals operated by the department. In 1984, the associateship employed 1,131 persons and budgeted \$31,801,057 to carry out its activities.

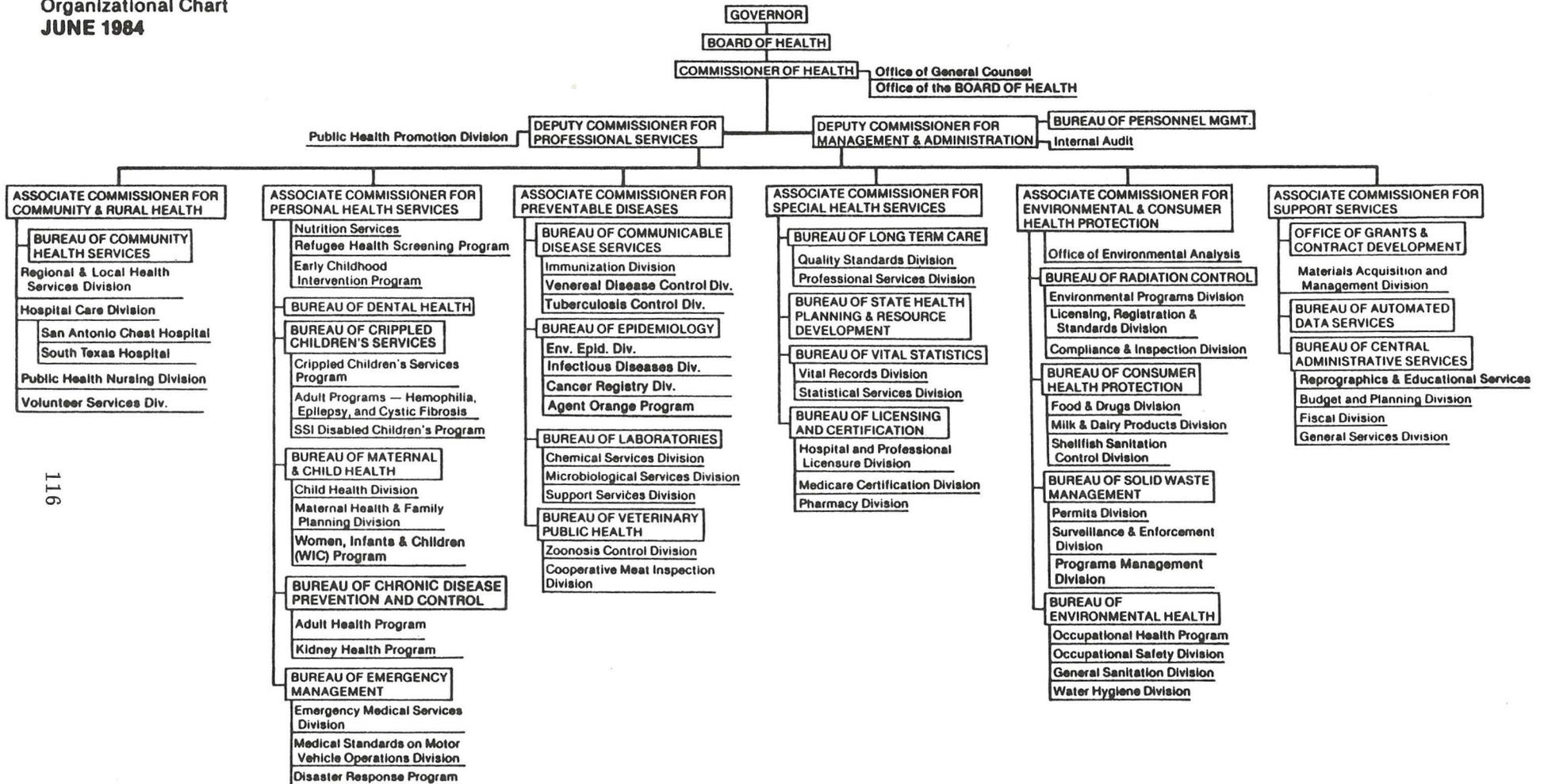
The Associateship for Personal Health Services provides diagnostic and restorative health services to persons with disabling health problems. A wide variety of problems are screened for diagnosed and treated in this program and the department estimates that over 6,000,000 persons received its services in fiscal year 1984. Major programs of the Associateship include Maternal and Child Health, Crippled Children's, Women Infants and Children (WIC), Kidney Health Care, Early Childhood Intervention, Family Planning, Dental Health, and Emergency Management (EMS). In 1984, the associateship employed 831 persons and budgeted \$152,083,717 to carry out its activities.

The Associateship for Preventable Diseases provides services designed to prevent or reduce the incidence of illness in the state. The major portions of the program include the following activities: immunization services, venereal disease control, tuberculosis services, epidemiological surveillance, laboratory services and veterinary health services (designed to prevent the transmission of diseases from animals to man). In 1984, the associateship employed 1,095 persons and budgeted \$31,345,431 to carry out its activities.

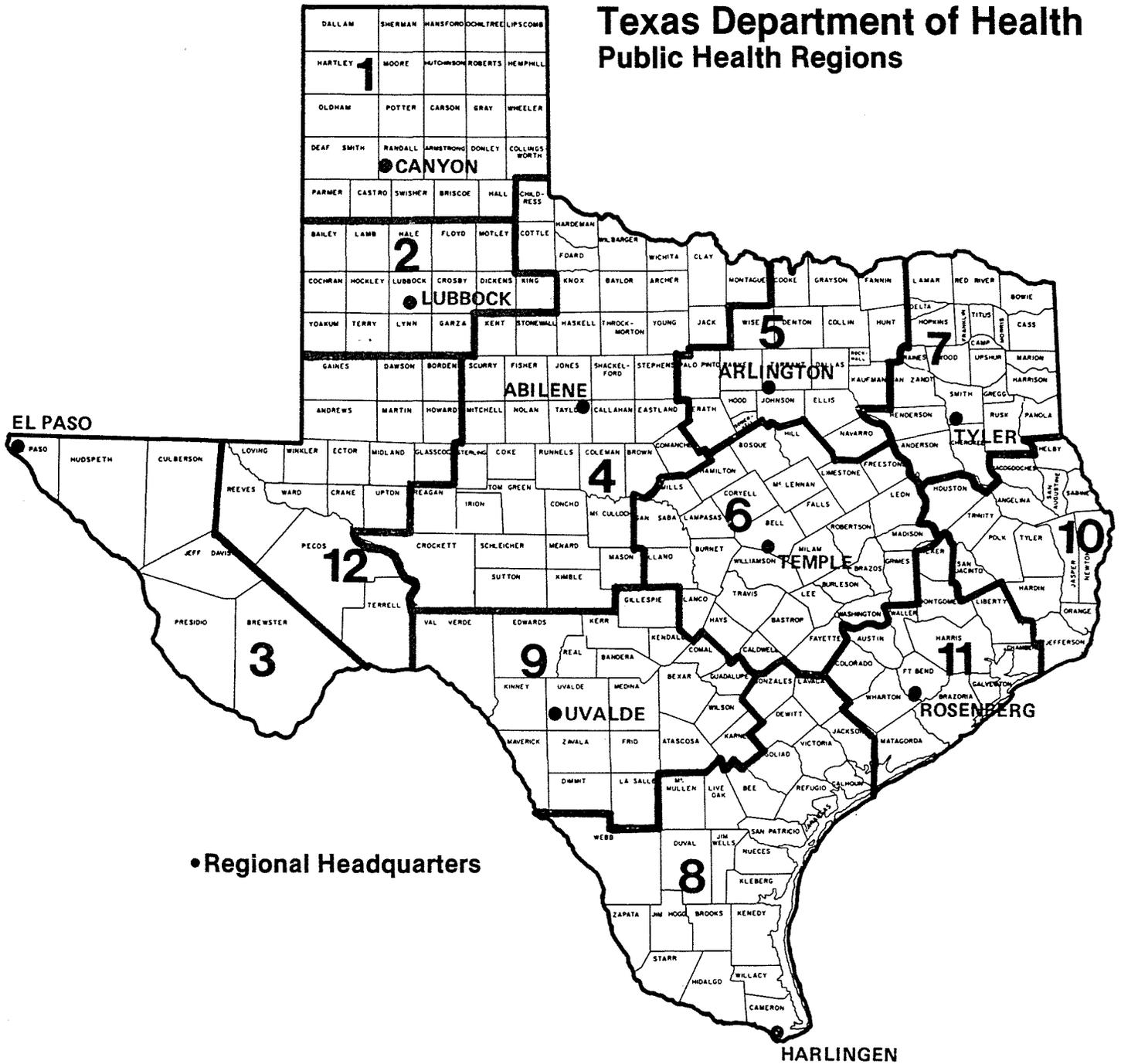
The Associateship for Special Health Services operates programs designed to regulate certain health care providers and facilities, (e.g. hospitals and nursing homes) to collect and maintain vital statistics on persons residing in Texas, and to

**Exhibit 1  
Texas Department of Health**

**Organizational Chart  
JUNE 1984**



# Texas Department of Health Public Health Regions



perform state health planning functions. In 1984, the associateship employed 790 persons and budgeted \$21,765,166 to carry out its activities.

The Associateship for Environmental and Consumer Health Protection operates programs to provide for the protection of the public health through inspection and regulation of industries which produce or provide milk and dairy products, food and drugs, shellfish products, hazardous household products, drinking water, wastewater, sanitation services, occupational hazards, radiation, and hazardous and non-hazardous solid wastes. In 1984, the associateship employed 453 persons and budgeted \$15,280,981 to carry out its activities.

The agency is provided general policy guidance by the Board of Health. This 18 member body, appointed by the governor, meets monthly and is active in the oversight of the many activities of the department. Due to numerous and diverse functions of the agency, the board has delegated many decision-making duties to the commissioner. By law the board reserves final rule-making authority. In total, the agency employs 4,775 persons and operates at least 42 separate programs. Total budgeted funds for the agency in fiscal year 1984 exceeded \$269 million.

### Scope of Review

Because of the size and diversity of the operation of the department, it was necessary to design the sunset review in a manner which focused staff efforts on selected areas of operation. These focusing efforts were guided by criteria which attempted to select programs that were primarily state funded; have had significant past, present or potential problems identified through review of legislative proposals of past sessions and discussions with agency staff and those knowledgeable of the agency's operations; or have specific 1985 sunset review dates. This focusing effort identified 11 separate programs for review. These programs include the Early Childhood Intervention Program, the Bureau of Dental Health, the Bureau of Crippled Children's Services, the Bureau of Communicable Diseases, the Bureau of Long Term Care, the Bureau of State Health Planning, the Bureau of Licensing and Certification, the Bureau of Radiation Control, the Food and Drug Division of the Bureau of Consumer Health Protection, the Bureau of Solid Waste Management and the Occupational Safety Division of the Bureau of Environmental Health. The review also examined the policy making structure of the department as well as its overall administration. In total, the funding of the aspects and programs reviewed represents 54 percent of the total state funding allocated to the department. The programs selected are also representative of the major service and regulatory methods used by the department to carry out its duties.

### Need to Continue Agency

The need for each of the programs was analyzed and the review indicated that except in one instance, there is a continuing need for state involvement in these areas. In regard to the current operations, the review determined that while these programs are generally operated in an efficient and effective manner, there are changes which should be made in the event the legislature decides to continue these programs.

**Sunset Commission Recommendations for the  
TEXAS DEPARTMENT OF HEALTH**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be amended to specify when the governor designates the chair and vice-chair of the board.**

The current statute specifies that the governor shall designate a chair and vice-chair biennially but does not specify a time frame for when the term will begin and end. To provide a structure for orderly transition, the terms should begin on September 1 of each odd-numbered year.

- 2. The Board of Health's authority to establish advisory committees as needed should be strengthened and statutory provisions establishing certain TDH advisory committees should be repealed.**

The agency utilizes many advisory committees to help carry out its diverse duties. Although the Board of Health has statutory authority to create advisory committees when needed, 13 of the 23 committees examined are established through statute. This statutory structuring of the committees inhibits the board's ability to determine the functions and reporting requirements of such advisory committees and thereby limits their use. Further, the current practice has led to a confusing system of appointments leading to delays and unfilled vacancies as well as excluding from membership on the committees certain persons representative of pertinent concerns of the agency. Overall, it appears the board should determine how the committees should be structured and used rather than specifying such matters in statute.

- 3. The Dental Advisory Committee of the Board of Health should be abolished and its broader advisory functions should be carried out by a similar committee appointed by the Health and Human Services Coordinating Council.**

The Dental Advisory Committee is designed to examine issues affecting the department's dental services as well as issues of statewide multi-agency service coordination. The committee is required to funnel all its work through the Board of Health. This structure does not provide a proper forum for the committee's work regarding agencies other than the Health Department. The Health and Human Services Coordinating Council does have a broad mandate including the concerns of multi-agency service coordination. It appears that this council can provide a more effective forum for the broader advisory functions of the Dental Advisory Committee.

**Overall Administration**

**Financial**

- 4. TDH should have clear authority to establish fees for all services and seek third-party reimbursements.**

The department has authority to charge fees for the public health services it delivers. Although this authority was recently enacted, the department has taken action in only one area (Title XX Family Planning) to begin the collection of fees for its services. Concern has arisen as to the intended scope of the term "public health service" used in the recent legislation. To clarify the authority, the statute should be amended to allow TDH to charge fees for any of its services. Other health related agencies do charge fees for certain services based on the ability of the service recipient to pay. Based on the state's current budget constraints, it does appear that the department should begin charging fees for its services. Although department-wide service fees might prove impractical due to security problems, it does appear it should begin charging fees where feasible (such as medical and laboratory services).

- 5. The department should establish administrative policy guidelines concerning the reimbursement rates of clinic physicians.**  
(management improvement - non-statutory)

The current system used by the department to establish fee amounts paid to local physicians for its clinic services around the state varies between programs. The fees now vary from \$18.50 to \$150 per clinic. In the area of consultant (non-physician) fees the department has adopted a policy which establishes an upper limit and a specific method for variance from the policy. The development of a similar policy for physician fees which reflects how the rate should fluctuate due to the level of specialization required for the clinic and the availability of local resources would ensure consistent application of the fee determination process around the state.

- 6. The department should establish reimbursement rates for pharmaceuticals that are consistent with other state health agencies.**  
(management improvement - non-statutory)

Three programs within the agency provide reimbursement for pharmaceuticals purchased by program participants. The rate of reimbursement is at the billed rate of the provider. The Department of Human Resources which operates the Vendor Drug Program for Medicaid recipients, uses a different process which excludes the profit margin built into the billed rate. That program has found an average of five percent savings using this reimbursement process. It appears that using the DHR process could save some \$69,000 per year in two of the TDH programs and should be implemented at the Health Department.

- 7. The method used for allocation of block grant funding to programs should be reviewed and formally adopted by the Board of Health and require board approval prior to allocation.** (management improvement -non-statutory)

The department currently receives \$22 million in federal block grant funds which are distributed between 11 programs. In 1983, the 68th Legislature enacted statutory provisions to establish a structure for administration of these funds in a manner that is responsive to public input. The department does hold public hearings regarding the block grant fund use but does not obtain input from the Board of Health prior to the allocation of dollars to its programs. The Department of Human Resources (which receives \$221 million in block grant funds) does obtain board approval prior to the distribution of

the funds to its various programs. This kind of policy level participation appears appropriate and should be in place at TDH.

### Organizational Structure

- 8. The Department's Legal Division should serve as a central point for the management of complaints.** (management improvement - non-statutory)

The handling of complaints by the agency is primarily the duty of each separate program. Given the complexity and size of the Department of Health, this type of complaint process gives little assurance to the public that complaints will be properly referred. The decentralized process used by the agency also makes it difficult for agency management to easily judge whether complaints are being handled appropriately by agency divisions. The department's Legal Division should assist in a review and improvement of complaint systems in use by the programs and serve as a central receiving and distribution point for complaints regarding the agency's activities.

- 9. TDH should adopt formal policies concerning the lines of authority involving the Associateship for Community and Rural Health and its relationship to the other divisions.** (management improvement - non-statutory)

The department carries out a large number of its services through regional offices and sub-offices around the state. In Austin, program policy and technical information is developed by central office staff which applies to the operations of the service or regulatory activities carried out by field staff. The communication between the central office personnel and the regional field personnel is funneled through the Associate Commissioner for Community and Rural Health. The routing of information and approval of certain personnel actions (e.g., merit raises) go through an elaborate chain of command involving several steps and persons. The department has not formally adopted policies and procedures concerning how this process is to occur. Due to the size of the department, the diversity of its services and the decentralized nature of its regional operations, the lack of written policies regarding such matters can cause confusion. To document the process so it can be understood and followed by those involved, the lines of authority and communication routing process should be developed as agency procedures and placed in the agency's Administrative Policy Manual.

- 10. The TDH should develop a compilation of health related statutes and forward its compilation to the Legislative Council by August 1985 to assist in the development of a Texas Health Code.**

The department currently operates under numerous separate statutes some of which are outdated and difficult to use. A common way to integrate a disparate set of statutes dealing with a common subject, in this case health service and regulation, is to develop a "code". The department should compile the separate statutes and provide the compilation to the Legislative Council so it can accomplish the necessary research to develop a "Texas Health Code" for legislative action by the 70th Session.

## Internal Control

### **11. The Board of Health should develop a policy for the internal audit function.** (management improvement - non-statutory)

The Internal Audit function at the TDH is dependent on funding from the programs it audits. This process tends to restrict the efforts of the audit program and leaves unreviewed small programs or programs that can defend their program dollars. Further, the Board of Health is not included in the information loop concerning the findings of the audits or in discussions concerning the general direction and scope the internal audit function should take. To maximize the use of the internal audit the members of the Board of Health should discuss the issues concerning the funding of the audit process and its scope and usefulness to the agency. These discussions should result in a clear policy regarding the audit's function and structure in the agency.

### **12. The Internal Audit Division should monitor the implementation of the management improvement recommendations adopted by the Sunset Advisory Commission.** (management improvement - non-statutory)

In all, the Sunset review of the TDH has produced some 16 management improvement recommendations. Many of them will require monitoring and oversight for a period of time to ensure that there is continuity in the procedural changes and that there is coordinated implementation of changes spanning several divisions of the agency. The Internal Audit Division can and should perform this function.

## Evaluation of Programs

### **13. Early Childhood Intervention Program**

**The Early Childhood Intervention (ECI) Program statute should be amended to clarify program operations and authorize current practices.**

The ECI program was established in 1981 to better coordinate services to children (ages 0-3) who demonstrate developmental delays. The council is made up of representatives of the TDH, MHMR, TEA, DHR as well as a public member and involves the activities of four agencies. The council governs the allocation of \$8 million per year to fund programs providing ECI services in 60 communities across Texas. Since the council's establishment, certain difficulties have been encountered in statutory provisions governing funding allocations, grant submissions, contracting, and program standards. The council appears to have worked out alternative methods of operation in these areas and the statute should be modified to authorize these methods.

### **14. Bureau of Dental Health**

**a. Statutory authority should be enacted for the current programs of dental health provided by the department.**

The dental health programs performs three distinct functions: 1) dental treatment; 2) dental education; and 3) fluoridation grants to certain communities. None of the functions is statutorily authorized. A basic statutory framework for these functions should be developed.

## 15. Bureau of Crippled Children's Services

### Crippled Children's Services Program

- a. **The Crippled Children's Services program should clarify the eligibility determination procedures used.** (management improvement - non-statutory)

The CCS program considers five criteria in determining client eligibility for the program. Two of the criteria, financial need and the potential for improvement through treatment are not easy to determine, but are critical in the eligibility determination process. The program has not developed specific rules concerning how these criteria are reviewed and client file documentation on the determinations is not complete. Lastly, the notification to the applying family does not include an explanation of how the determination for eligibility was reached. A similar effort conducted by the Texas Rehabilitation Commission provides a good model to follow to address the above concerns and should be used to improve the eligibility determination process at the TDH program for Crippled Children.

- b. **The Crippled Children's Services statutory provisions regarding medical eligibility should be amended to allow the Board of Health to increase services.**

The Crippled Children's Services program is primarily designed to assist children of low income families who have certain disabling diseases. Since the program's establishment in 1933 certain diseases have been added to enlarge the list of coverable conditions to seven. The coverable conditions are laid out in statute. The program does not have authority to add coverable conditions in contrast to two other TDH programs treating communicable and venereal diseases. The evolution of the CCS program indicates that it is designed to cover children in extreme need due to effects of severe chronic illness but the lack of flexibility in the program prevents it from serving certain conditions. It appears appropriate to provide a more flexible process to allow the program to treat additional conditions or diseases. The statute should be amended to allow the Board of Health to add a condition or disease if the legislature specifically appropriates dollars for the treatment.

- c. **The name of the Crippled Children's Services Program should be changed to the Disabled Children's Services Program.**

The current name dates back to 1933. As eligibility has been expanded certain conditions have been added such as cancer and deafness that may not involve an orthopedically "crippling" handicap and thus the current program name can be misleading. The term "disabled" is more appropriate for this program.

### Hemophilia Assistance Program

- d. **The Hemophilia Assistance Program's enabling statute should be amended to clarify "payee of last resort" provisions.**

The intent of the Hemophilia Assistance Program (HAP) is to provide payment to eligible persons for pharmaceuticals only after the patient's other

medical benefits have been used. However, the statute governing the program is not clear regarding what must be considered in making sure the HAP is the payee of last resort. The Crippled Children's statute provides a good model for such language and should be used to amend the HAP statute in this regard.

- e. **The Hemophilia Assistance Program should adopt financial eligibility guidelines through the Texas Register process.** (management improvement - non-statutory)

The HAP is designed to serve only those persons in financial need. The regulations regarding financial eligibility are not clearly defined as required by statute. The program serves 24 adults, 12 of which are employed. The program expects to double the population served in the next year and directing its resources to those most in need will become increasingly important. To improve the determination process, more specific guidelines patterned after the Rehabilitation Commission's regulation should be adopted as rules of the program.

#### Children's Outreach Heart Program

- f. **Statutory authority should be developed for the operation of the Children's Outreach Heart Program.**

The Children's Outreach Heart program is currently operated through a contract with the Children's Heart Institute of South Texas (CHIST). One hundred forty-seven thousand dollars of the Institute's \$415,000 budget is provided through an appropriation to the TDH. There is no statute which governs TDH's participation or provides authority for the current structure. In keeping with attorney general rulings, the current structure needs statutory guidance. It appears appropriate to allow the program to operate statewide and such authority should be established in statute.

- g. **The department should adopt rules for the operation of the Children's Outreach Heart Program.**

The TDH contracts biennially with the CHIST to provide screening and evaluation services related to congenital heart disease. The department has not developed rules governing the contract process as it has for a similar program serving persons with epilepsy. Rules should be adopted for the program to comply with the Administrative Procedure Act and to provide guidelines covering the type of clients to be served as well as other aspects of TDH's participation in the outreach program, rules should be adopted for the program.

#### SSI - Disabled Children's Program

- h. **The SSI-Disabled Children's Program should renegotiate and reinstitute MOUs with the related state agencies.** (management improvement - non-statutory)

The SSI-Disabled Children's Program provides casework services involving individualized assessments of eligible (SSI) children's needs and the availability of treatment services in the community. Program staff combine their efforts of counseling and casework with services available through TDMHMR,

DHR, TEA and others to assist the child and family in meeting their needs. Prior to the transition to federal block grant funding (in 1981), involved agencies were required by federal regulation to develop Memoranda of Understanding to govern the interrelationships between the many agencies. Without the MOUs, a great deal of the policy decisions needed to operate the program must be made by regional staff. The type of decisions that must be made (e.g. interagency transfer of confidential information) indicate that they need guidance from administrators that have a statewide perspective. This kind of perspective can be gained through the redevelopment of the MOUs previously required under federal categorical funding. The MOUs should provide a formal mechanism for negotiation between the various agencies regarding how the program should operate.

## **16. Bureau of Long-Term Care**

- a. The statute regarding the regulation of nursing homes should be amended to provide a funding source for trustee appointments.**

Current statutes governing nursing homes allow for the appointment of a trustee to oversee the operation of a nursing home under conditions which "present an immediate threat to health and safety of the patients." The department reports that in the past and possibly in the future, funding to allow the trustee to operate has and will be difficult to find. It appears appropriate to establish a fund controlled by the department that can be quickly accessed in situations where a trustee is needed but no funds are available to operate the home.

- b. Hearing and appeal provisions of the nursing home licensing statutes should be amended to conform to the Administrative Procedure Act.**

The nursing home regulatory statutes date back to 1953. Current provisions relating to hearings on license revocation cases and the appeal of those decisions are not current. To remedy this, the hearing procedures should be amended to comply with the Administrative Procedure Act and the current "de novo" requirement for appeal considerations should be changed to "substantial evidence."

- c. The Department of Health should be authorized to assess administrative penalties in its regulation of nursing homes.**

The use of administrative penalties is important in situations where quick regulatory action is needed to protect the environment or human life. Although the department has many enforcement tools to use in the regulation of nursing homes, the attorney general has indicated that administrative penalties would be a useful addition. Further, modifications in DHR's vendor hold process do not appear to be having the desired effect as several facilities have already reached contract cancellation status since new rules were instituted in November 1983. Allowing the TDH, the regulatory agency in the state for nursing homes, to impose administrative penalties would provide a useful addition to its regulatory tools.

- d. **The Department of Human Resources should be authorized to assess "liquidated damages" in the system it uses to contract with nursing homes.**

The use of liquidated damages would allow the Department of Human Resources to withhold a portion of Medicaid funds which are paid to the participating home. These funds can also be used to supplement the "Trustee Fund".

- e. **The Nursing Home regulatory statutes should be amended to require the department to collect fees in relation to the costs of the regulatory program.**

The current statutes require the collection of a licensing fee to help offset the cost of the licensure of nursing homes. The current fee level will offset about 25 percent of the cost of the current licensure effort. The current structure varies the fees depending on the size of the facility. Although this approach provides a rough approximation to how much it costs to carry out licensure aspects of various sized homes it does not provide for the collection of fees for the department's construction plan review and approval function. As a general rule, fees collected in regulatory efforts should offset 25 to 50 percent of the cost of the program and should be reasonably related to the cost of the agency's various activities. To comply with this approach the fee structure should not be specified in statute but the department should be required to develop a fee structure in keeping with above general concepts through its rulemaking processes.

- f. **The statute should be amended to prohibit retaliation against a nursing home employee who reports patient abuse in a nursing home.**

Important information concerning the quality of care delivered in nursing homes can be obtained from the employees working in the homes. The statute should be amended to help prevent "retaliation" against an employee who reports poor patient care to supervisors or enforcement authorities.

## **17. Bureau of State Health Planning and Resource Development**

- a. **The statute should be amended to clarify the duties of the SHCC.**

The Statewide Health Coordinating Council (SHCC) is a federally required policy body designed to provide guidance to the SHPDA in the development of the State Health Plan. State statutes make passing reference to the SHCC and provide no indication of its function within Texas government. To rectify this situation the statutes relating to health planning should be amended to specify the functions of the SHCC.

- b. **The statute should be amended to clarify the State Health Plan's purpose.**

Current statutes regarding health planning do not indicate what the purpose of the state health plan is. Texas has taken the approach of using the health plan development process to serve a range of functions addressing global planning issues as well as the specific technical data needs of the Health

Facilities Commission in its certificate of need review. To provide a framework for the planning process, statutory language should be developed outlining the purpose of the plan. This language should emphasize the need for the plan to propose both global and specific goals and that those goals be developed in close coordination with interested local, regional and state entities.

**c. The statute should be amended to require affected agencies to address funding aspects of the State Health Plan.**

The current proposed State Health Plan addresses several issues which will require funding. Although affected agencies are consulted during the plan development stage they are not required to comment on the plan and its funding requirements to the SHPDA or the Governor's or Legislative Budget Offices. It appears appropriate for agencies affected by the plan to comment on its recommendations, whether or not the agency is requesting funding in keeping with the plan, and provide a justification of deviation from the planning recommendations. This information should be submitted to budget offices by November 1 of even-numbered years to coincide with the biennial legislative cycle.

**d. The statute should be amended to require the adoption of the Approved State Health Plan by November 1, of even-numbered years.**

Current statutes do not specify when the State Health Plan should be developed. Since the plan contains recommendations for both statutory and budgetary action, its development should be timed to be worked into pre-legislation session activities regarding budget and revenue estimates. The timing of the current plan appears to be appropriate for such considerations.

**e. The statute should be amended to provide for improved coordination between TDH and the Texas Health Facilities Commission.**

The federal law requiring health planning contemplates that health planning should occur to ensure that health facilities and resources are developed in an orderly and economical fashion. The certificate of need (CON) process is designed to help this occur. As mentioned earlier, Texas uses the health planning process to address global or strategic goals and to provide specific data of use to the CON process carried out by the Health Facilities Commission. A continuing debate has developed between the SHPDA and the THFC concerning the plan's data in that the degree of specificity is not sufficient for the CON process. To help settle this debate the statute should specify that one of the duties of the SHPDA is to collect and disseminate data necessary to support state health plan goals which can be implemented through the certificate of need process.

- f. **The Texas Department of Health should be given the authority to initiate the imposition of sanctions on persons who fail to provide data determined to be necessary for effective health planning and resource development.**

The utilization of sanctions in the collection of health-care data can be a valuable tool for the health planning process. As issues become more controversial, dependence on a totally voluntary system means the virtual absence of data in a number of critical areas, for example, information on the costs of obtaining health-care services in Texas. With the ability to enforce their authority through the courts in the area of data collection, TDH should receive information in a more timely manner and would no longer have to limit their surveys to "non-controversial" issues in order to be able to maintain a good response rate. If sensitive data is received, it should be closed to the public to protect those submitting the data.

## **18. Bureau of Licensing and Certification**

### **Hospital Licensure**

- a. **The statute should be modified to require the TDH, TDMHMR and Commission on Alcoholism to develop a memorandum of understanding (as rules) regarding the inspection and licensure of the facilities under the jurisdiction of the involved agencies.**

The statute currently designates TDH as the lead inspection agency for general hospitals, psychiatric hospitals and alcoholism facilities. However, written procedures have not been developed concerning how the agencies involved in the operation of these facilities will interact regarding the licensure and inspection process. The development of a MOU will help ensure coordination of the inspection process.

- b. **Ambulatory surgical centers and free-standing birthing centers should be subject to TDH licensure and inspection procedures.**

Hospitals are currently required to comply with TDH licensure and inspection procedures to perform services that are now also available through certain types of free-standing clinics. To provide for equity in the licensure process and adequate protection to the public, legislation should be enacted to regulate both ambulatory surgical centers and free-standing birthing centers.

### **Pharmacy Division**

- c. **Local Health Departments should comply with the Pharmacy Act using their own staff resources. (management improvement - non-statutory)**

The pharmacy services of 64 of 72 Local Health Departments are supervised by two TDH pharmacists located in Austin. This appears to unnecessarily stretch the already thin resources of the TDH. Local Health Departments routinely obtain physician and nursing services to carry out their duties and it appears appropriate that they develop resources to supervise and monitor the activities of their pharmacies.

- d. **The department should increase its licensed pharmacist staff in the Pharmacy Division to comply with the Texas Pharmacy Act. (management improvement - non-statutory)**

As mentioned above, the TDH has two pharmacists to supervise pharmacy activities in its 84 licensed "Class D" pharmacies. Rules of the pharmacy board issued in July 1984 now require the pharmacists to supervise another 240 temporary clinic pharmacy locations. These requirements stretch beyond reasonableness the abilities of the two pharmacists in Austin to supervise the activities occurring in so many different areas of the state. The agency indicates that by adding seven additional pharmacists it could comply with the Pharmacy law and regulations. This appears to be an appropriate area for increased funding.

#### **19. Bureau of Radiation Control**

- a. **The Radiation Control Act should be modified to allow the Health Department to impose administrative penalties.**

The Bureau of Radiation Control regulates certain uses of radiation in the state. The regulation is aimed at preventing the severe consequences that can occur to workers, the public and the environment if radiation sources are mismanaged. The bureau carries out an active inspection and enforcement program designed to prevent such mismanagement but its program lacks one enforcement tool that appears to be useful in similar regulatory efforts. This tool is the "administrative penalty" and has been successfully used by state and federal agencies to prevent or stop dangerous practices like those regulated by the bureau. The bureau's and department's radiation regulatory program should be modified to include this tool.

- b. **The Radiation Control Act should be amended to clarify the definition of its registration provisions.**

The Radiation Control Act provides for a multi-faceted approach to regulating the various uses of radiation in the state. "Registration" is used to regulate the use and servicing of radiation machines - those machines, like x-ray, that emit radiation only when turned on. The definition of "registration" in the Act, however, includes references to the use, handling, etc. of radioactive materials. The bureau regulates these activities through "licensing". The statute (originally enacted in 1961) should be amended to conform to the registration approach now used by the bureau.

- c. **Requirements of the Radiation Control Act relating to the granting of registrations and licenses should be modified.**

The Act currently requires that an opportunity for a hearing concerning the granting of registrations and licenses be afforded by the bureau. Although it appears appropriate to provide notice of the granting of a license to process uranium or the disposal or processing of radioactive waste, it appears inappropriate and costly to provide notice of the several hundred other licensing and registration actions the bureau takes each year. The statute should be modified to require notice and opportunity for hearings only for the granting of "specific licenses" - those licenses which allow persons to use or process radioactive materials. This change will eliminate the requirement

for notice and hearings on less dangerous activities carried out by "registrants" such as the operation of x-ray machines.

- d. **Memoranda of understanding developed by the Bureau of Radiation Control with other state agencies should be processed through the APA rulemaking procedure.**

The bureau has developed an MOU with the Department of Water Resources concerning in-site uranium mining. This memoranda was adopted as a rule in compliance with the Administrative Procedure Act. To ensure future MOUs and modifications to the current MOU receive this treatment, the statute should be modified to require such action.

- e. **The Bureau of Radiation Control should consider "size of operation" of its regulatees as it refines its fee schedule structure.** (management improvement - non-statutory)

The bureau recently completed development of a fee structure designed to support a portion of the costs of running the program. A criticism of the fee schedule is that it does not take into account the "size of operation" or the number of radioactive sources a licensee may have. It is argued that the flat fee applied to these licensees does not take into account the varying amount of time needed to inspect a licensee with one source versus the amount of time needed to inspect a licensee with many sources. This criticism appears valid and as the bureau continues to refine its fee structure, this "size of operation" concept should be included in its fee recalculations.

- f. **The Bureau of Radiation Control should evaluate the possible connection between health problems in South Texas and the presence of uranium in that area.** (management improvement - non-statutory)

Testimony received during the public hearings indicated that South Texas has high natural levels of uranium and thus radioactivity. The region also has high cancer and infant mortality rates. Testimony indicated that there has been little attempt to evaluate the causes of these health problems and that the bureau should initiate public health assessments in the uranium rich areas and in those areas impacted by uranium production. The bureau should coordinate its work with the TDH water supply division and survey uranium levels in the groundwater of the area.

- g. **The statute should be amended to require TDH and the Department of Water Resources to develop a memorandum of understanding to ensure adequate management of hazardous and radioactive waste.**

The commission has recommended that the regulation of municipal hazardous waste be transferred to the Department of Water Resources. The Department of Health will retain regulation of municipal non-hazardous waste as well as radioactive waste. Testimony received during the public hearings indicated that a significant quantity of low level radioactive waste is stored until the waste's radioactivity decays to low levels. Concerns were expressed that this waste can still be hazardous due to its chemical composition and that much of it is disposed of in municipal landfills. To ensure that such waste is properly managed, the two agencies involved in its regulation should

develop a memorandum of understanding which sets out procedures for defining and coordinating responsibilities of the agencies concerning the management of radioactive and hazardous waste.

- h. The Radiation Control Act should be amended to authorize the Board of Health to stop the importation of out-of-state low level radioactive waste up to 24 months before the opening of the Texas low level radioactive waste disposal site.**

This proposal is made to address a concern related to the legislature's amendments to Article 4590f, V.A.C.S. to regulate low level radioactive waste. The amendments made in 1981, prohibit the storage, processing, or disposal of low-level radioactive waste generated outside of Texas. This amendment was made to discourage the stockpiling of such wastes due to planned development in Texas of a low-level radioactive waste disposal site. A Texas disposal site is still a number of years away from completion. Testimony received during the public hearings indicated that some provision is needed to prevent stockpiling as the Texas site nears completion and the recommendation is made to address that concern.

- i. The Board of Health should adopt rules which set a maximum routine inspection interval of five years for radiation producing devices which present a minimal threat to human health and safety.**

The inspection interval for x-ray machines is currently set at two years. Testimony received during the public hearings indicated that other states use a five-year inspection interval and that x-ray equipment manufacturers and sales and service personnel recommend the five-year interval. Testimony also indicated that x-ray equipment has improved dramatically in recent years and equipment in practitioner's offices are subject to relatively low-usage. Other types of radiation producing equipment such as cyclotrons present a greater threat to human safety and need more frequent inspections. It appears reasonable to allow the agency responsible for regulating x-ray and other radiation producing equipment to adopt inspection intervals of five years or less for the various devices. The different interval periods should relate to the differing threat the devices may present to human health and safety.

## **20. Bureau of Consumer Health Protection**

### **Division of Food and Drug**

- a. The Food and Drug Act should be clarified to allow the commissioner of health to issue emergency rules or an emergency order to stop violations of the Act.**

In responding to the EDB situation, the commissioner has noted that the Food and Drug Act is unclear in granting authority to the commissioner to issue rules to stop such actions as selling food products containing EDB. To clarify his authority to act quickly, the Act should be amended to allow the issuance of emergency rules by the commissioner and the issuance of an emergency order by the commissioner or his designee.

- b. The penalty for violation of the Food and Drug Act should be increased to a Class A misdemeanor.**

Acts of the 67th and 68th Legislatures established the penalty for failing to register as a wholesale distributor of drugs or a food manufacturer as a Class A misdemeanor. The penalty for violating provisions of the Food and Drug Act has been left unchanged at a Class C misdemeanor (Class B upon second conviction). It appears that the penalty provisions of the Act should be brought into uniformity and establish a violation of the Act as a Class A misdemeanor.

- c. Fees collected by the Food and Drug Division should be increased to offset a greater portion of its operating costs.**

For three of its four registration and enforcement activities, the division is authorized to charge fees. In fiscal year 1984, it appears these fees will support about 16 percent of the division's effort to regulate certain food, drugs, salvage, and methadone treatment operations. As a general rule, regulatory program's should support 25 to 50 percent of their state operational costs through fees. The statute should be modified to require the division to establish a fee schedule, through rulemaking, which will better meet this standard.

- d. The Food and Drug Act should be amended to allow the Health Department to assess administrative penalties.**

The Food and Drug Division carries out an active inspection and enforcement program designed to protect consumers from unfit food and drugs. The program lacks one enforcement tool that appear to be useful in regulatory areas where substantial harm can occur if regulated persons are not in compliance with laws and regulations. This tool, known as an "administrative penalty" provides a timely and effective deterrent to dangerous practices in industries that can substantially harm workers, the public and the environment. Since the Food and Drug Division carries out a regulatory program designed to protect the consuming public, it appears that addition of the administrative penalty to its range of enforcement actions is appropriate.

- e. A memorandum of understanding between the federal Food and Drug Administration, the TDH, and the Texas Department of Agriculture should be developed to ensure the disclosure of any test results showing the presence of pesticides in food.**

Testimony received during the public hearings indicated that the three agencies named above are involved in various aspects of testing and regulating food, regarding the presence of pesticides. To ensure that the agencies establish procedures to provide interaction and cooperation an MOU should be developed to outline how the agencies will assist each other in carrying out their various responsibilities.

- f. The Food and Drug Act should be amended to allow the attorney general to seek an injunction to restrain persons from violating provisions of the Act.**

During the process used to resolve the EDB situation, the department was criticized for moving too slowly. Allowing the attorney general to seek

injunctions independent of the agency can provide a quicker response to a similar situation in the future.

- g. The TDH should develop rules which limit the quantity of poisonous and deleterious substances in food.**

Testimony received during the public hearings indicated that the department does not have rules which specify permissible tolerance levels of poisonous or deleterious substances in food. The department uses the levels established by the Food and Drug Administration in its enforcement program. Testimony indicated Texas should have its own rules.

- h. The TDH should develop a systematic process to ensure that contaminated products are removed from grocery store shelves.**

Testimony received during the public hearings indicated that the department's response to the EDB situation needed improvement. To improve the situation it was suggested that the department formalize its process to remove contaminated products from grocery store shelves. Due to current staffing of the department's Food and Drug Division it must rely on local authorities to assist in the removal or tagging and detaining of contaminated products.

## **21. Bureau of Solid Waste Management**

- a. The Solid Waste Disposal Act should be amended to authorize the Department of Health to assess administrative penalties.**

The Bureau of Solid Waste regulates the management of municipal solid waste (hazardous and non-hazardous) in the state. The regulation is aimed at preventing the severe consequences that can occur to the public and the environment if wastes are not properly managed and disposed of. The bureau carries out an active inspection and enforcement program designed to prevent such problems, but its program lacks one enforcement tool that appears to be useful in similar regulatory efforts. This tool is the "administrative penalty" and has been successfully used by state and federal agencies to prevent or stop dangerous practices like those regulated by the bureau. The bureau's and department's solid waste regulatory program should be modified to include this tool.

- b. The Department of Health should be required to collect fees to offset the state cost of regulating solid waste management activities in the state.**

The bureau's budget for fiscal year 1984 is approximately \$2.8 million (about 55 percent state dollars) but the bureau is authorized to collect only one fee which will bring in about \$11,000 for the year. As a general rule, regulatory programs should support at least 25 to 50 percent of their state operational costs through fees. The statute should be amended to require the bureau to establish a fee schedule, through rulemaking which will better meet this standard.

- c. **Memoranda of Understanding developed by the Bureau of Solid Waste Management with other state agencies should be processed through the APA rulemaking procedure.**

The bureau has developed several MOUs with state agencies addressing various areas of potential overlapping jurisdiction. The Bureau of Radiation Control has also developed an MOU with the Department of Water Resources and adopted that MOU through the rulemaking procedures of the Administrative Procedure Act. The MOUs adopted by the Bureau of Solid Waste Management have not been adopted as rules. Since the MOUs do appear to meet the definition of "rule" as found in the APA, the Solid Waste Disposal Act should be amended to require future MOUs and revisions to the current MOUs be adopted as rules under the Administrative Procedure Act.

- d. **The department should study its rules regarding Solid Waste Management to determine if they should be modified to specify that the department respond within 30 days to written requests for information and review and respond within 30 days to all written technical data submitted in application or enforcement matters. (management improvement - non-statutory)**

Testimony received during the public hearings indicated this rule change would provide a method and incentive for a more timely response on the part of the department to requests for information and the review of technical data. Testimony also indicated that the current delays of 60 to 120 days for these responses can place financial hardships on those regulated by the department.

- e. **The portion of the state's hazardous waste program currently under the jurisdiction of the Department of Health should be transferred and consolidated under the Department of Water Resources.**

In the regulation of solid waste, the Health Department has jurisdiction over municipal hazardous waste and the Department of Water Resources has jurisdiction over industrial hazardous waste. Consolidation of the regulatory programs would reduce confusion among the public and the regulated industries over the specific division of authority between the agencies, and provide one regulatory approach to controlling the handling and disposition of hazardous wastes. TDWR currently has jurisdiction over the majority of the state's hazardous waste and has developed technical expertise in its regulation. Consolidation of the state's solid waste program in the Department of Water Resources is therefore appropriate.

- f. **The TDH should prohibit the disposal of decayed radioactive waste in municipal landfills unless the landfill is able to check the waste for radiation levels and hazardous constituents.**

Testimony received during the public hearings indicated that a significant quantity of radioactive waste is stored until the radioactive materials "decay" to low levels. At that point, the material is often disposed of in municipal landfills. Landfills do not have the capability to monitor for radiation levels and the testimony indicated that the waste can still be

hazardous due to its chemical composition. The testimony further indicated that such disposal practices should be prohibited unless the landfills receiving the waste are able to check the waste for radiation levels and hazardous constituents.

## **22. Division of Water Hygiene**

- a. The statute should be amended to provide more flexibility for local health departments in the hiring of sanitarians.**

Currently, the statute requires that persons hired as sanitarians must meet certain education and experience requirements as determined by the board. The recommended change would allow a director of a local health department to hire a person as a sanitarian who does not meet the educational requirements. To ensure that these hirings be limited in number, the statute should specify that they can occur only when there is a shortage of sanitarians and that a person can be employed under these conditions for no longer than a year.

## **Open Meetings/Open Records**

- 23. Board of Health committee meetings should be "posted" and "open" in compliance with the Open Meetings Act.**

The Board of Health currently has nine committees. Each carries out a specific function designed to expedite the work of the board. The meetings of these committees are not posted in accordance with the Open Meetings Act. Although the Act itself does not require such posting, two attorney general opinions indicate such meetings should be open.

- 24. The Hospital Licensing Act should be amended to remove language which closes hospital licensing information.**

The Hospital Licensing Act, enacted in 1959, closes certain types of information to the public which is readily available through other sections of the department. This restriction appears unnecessary and should be removed.

## **Public Participation**

- 25. The Public Health Promotion Division should assist in a one time assessment of agency program's public literature development and be assigned an oversight function concerning program public information on a continuing basis. (management improvement - non-statutory)**

The department currently has a division which assists programs in the development of information of interest and use to the public. Of the programs reviewed some had public information regarding their activities and others did not. In keeping with the general sunset criteria, it appears each program should develop information concerning the program's function and services for dissemination to the intended users of the services. To ensure the effort is complete, the Public Health Promotion Division should assist in a one time assessment and be assigned an oversight function regarding public information developed by the programs.

26. **The department's Office of General Counsel should establish a centralized, coordinative system to ensure that program rules are adopted in compliance with state statutes.** (management improvement - non-statutory)

The adoption of rules to govern the operation of agency programs is required by the Administrative Procedures Act. Currently, the duty to determine when and how rules are developed rests with the individual programs. While the regulatory programs of the department have developed rules, several of the service programs have not. It appears the department's legal office should develop a coordinative system to ensure that all programs develop and adopt rules as provided for in the Administrative Procedure Act.

**OCCUPATIONAL SAFETY BOARD**

## Background

The Occupational Safety Board and the Division of Occupational Safety operated under the direction of the board, were established by the legislature in 1967 for the protection of working men and women in Texas from death and disability due to unsafe working conditions. However, due to the lack of state funding since 1975, many of its statutorily authorized activities have ceased. The division currently operates through a contract with the federal Occupational Safety and Health Administration (OSHA) which provides for occupational safety and health consultation services to OSHA regulated employers, and the collection of data needed for inclusion in the nationwide occupational injury survey. The Division of Occupational Safety performs the safety activities required by the contract and collects the survey data. Another TDH division, the occupational health program, provides the health consultation required by the contract.

The Occupational Safety Board consists of three members, the commissioner of health, the commissioner of labor and standards, and a public member who serves as chairman and is appointed by the governor for a term of two years. The board is statutorily authorized to provide protection to Texas workers through the promulgation and enforcement of state occupational safety regulations, investigation of complaints from the public, publishing annual occupational injury statistics, and hiring and providing guidance to the division director in the administration of the division. The Occupational Safety Board is authorized to act independently of the department and Board of Health in the performance of these duties even though the Division of Occupational Safety which implements and enforces the policies the board establishes, is identified as a program of the Department of Health.

From 1967 until 1975, the board took an active role in the development of state occupational safety standards, hired and provided direction to the division director and published several in-depth state occupational injury surveys. The division grew from a staff of two engineers with a state funded budget of \$100,000 in 1967 to 38 engineers and \$1.1 million budget in 1975 at which time the division was performing approximately 8,000 inspections annually. The federal government began occupational safety and health activities at the federal level in 1970 by enacting the Occupational Safety and Health Act and creating a federal agency to implement the provisions of the Act. The Act preempted state enforcement in OSHA regulated workplaces unless the state got approval of its enforcement plan but allowed for state enforcement in non-OSHA regulated workplaces without an approved plan. Governmental entities (state, county, and municipal) are examples of non-OSHA regulated workplaces. The federal Act made provisions for federal matching funds for states that were willing to assume such responsibilities under an approved state plan so the Occupational Safety Board proposed to continue the enforcement activities that were already in place. However, to be eligible for state plan approval and the matching funds, some modification of the board's statute was needed. The board was unable to obtain those amendments through either the 63rd or 64th legislative sessions. In 1975, unable to grant the provisions needed for plan approval and recognizing that some protection was being provided at the federal level, the state legislature did not continue the annual general revenue appropriation of \$1.1 million for the previous state level occupational safety activities. Within Texas, the state-mandated functions which have been discontinued due to lack of state funds and are not the responsibility of any other entity include the investigation of complaints from employees and the public concerning workplace safety, the development of state occupational injury

statistics, and the protection of employees in non-OSHA regulated workplaces, specifically municipal and county employees.

Apart from the enforcement activities, the federal Act also contains provisions for funding to states that agree to provide certain consultative services to OSHA regulated employers concerning their voluntary compliance with OSHA regulations. Participation in the voluntary inspection and consultation service provides the employer a one-year exemption from the usual OSHA regulatory inspection and allows the employer an option to comply with the regulations without jeopardy of fine or penalty. The Texas Department of Health entered into such a contract in 1975 that continues in effect today for the provision of these services and the collection of Texas injury data necessary for inclusion in the nationwide occupational injury survey. These are the only services that are currently provided by the Occupational Safety Division.

In fiscal year 1984, the division operates with a budget of approximately \$882,000 in federal funds and a full-time staff of 21. In fiscal year 1983, the division completed 1,000 consultative inspections and assisted in the correction of 13,000 employer violations of OSHA regulations. The division estimates that this service saved Texas employers an estimated \$1,300,000 in penalties that OSHA could have assessed had this consultation service not been available. That same year, the division gathered occupational injury data from 12,000 employers for OSHA analysis.

The review of the Occupational Safety Board and the Division of Occupational Safety within the Texas Department of Health has necessitated an examination of the board and division history, shifting federal and state mandates and the board's unusual organizational and structural relationship with the department and the Board of Health. Specifically the evaluation analyzed the current activities and responsibilities of the division and board through the following areas of study: policy-making structure, administration of the division, the continued need for the activities, effectiveness of current activities, and the implementation of statutory mandates.

### Need to Continue Agency

The board was created to establish and enforce occupational safety regulations within the state. Since the board's creation in 1967, federal efforts have been initiated to regulate occupational safety and the legislature has discontinued funding for the state enforcement program. The Division of Occupational Safety within the Texas Department of Health operates a fully federally funded consultation program.

The review found that the statutorily authorized independent board, and the authority that it is given is no longer needed. It is recommended that the Occupational Safety Board be abolished and that the authority for hiring and supervising the division director be transferred to the Department of Health. In addition, the Board of Health should establish an advisory committee to assist with any problems encountered in the transition and the statute should be amended to mandate only those services currently provided by the division.

**Sunset Commission Recommendations for the  
OCCUPATIONAL SAFETY BOARD**

**I. ABOLISH THE BOARD**

**1. The Occupational Safety Board should be abolished.**

The Occupational Safety Board was originally created in 1967 as a board to regulate certain work places to ensure the safety of the workers. In 1975, the legislature removed the state funding for this function and the board no longer performs any traditional regulatory functions. The development of regulations for other Department of Health regulatory divisions is handled by the Board of Health. Further, the independent structure of the board and its oversight of the activities of the Division of Occupational Safety (a division staffed by employees of the Health Department) appears unneeded in comparison to other programs of the department. The function the board performs in selecting the division director of occupational safety can appropriately be handled by the commissioner of health or by someone delegated this function. For these reasons, it appears the Occupational Safety Board should be abolished.

**2. An advisory committee for the Division of Occupational Safety should be established. (management improvement - non-statutory)**

The non-regulatory functions now performed by the Board of Occupational Safety are more like those of the many advisory committees used by the Department of Health. It does appear that the Division of Occupational Safety could benefit from the advice and counsel of an advisory committee appointed by the Board of Health made up of representatives of the general public, employers and employees, professional safety engineers and state agencies related to the work of the division.

**3. The statute governing the Division of Occupational Safety should be amended to include only those activities currently carried out by the division.**

The statute governing the activities of the Division of Occupational Safety was enacted in 1967. Since 1975, the division has had federal funding to carry out "consultative services" relating to occupational safety but the regulatory functions contemplated by the statute have been left unfunded by the legislature. It appears that the current functions of the division are those sanctioned by the legislature and the statute governing the division should be modified to authorize only the consultative services now carried out by the division.



**TEXAS COORDINATING COMMISSION FOR HEALTH AND WELFARE SERVICES**

## Background

The Texas Coordinating Commission for Health and Welfare Services was originally established in 1959 to assist the legislature in developing health policy through the evaluation of existing and proposed health services. The commission is composed of nine appointed members and eight ex officio members. The appointed members include three public members appointed by the governor, three senators appointed by the lieutenant governor, and three representatives appointed by the speaker of the house. The eight ex officio members include the commissioner of health, the commissioner of mental health and mental retardation, the chairman of the Texas Health Facilities Commission, the commissioner of education, the chairman of the Texas Employment Commission, the commissioner of human resources, the executive director of the State Commission for the Blind, and the executive director of the Texas Youth Council. In addition, the governor may designate the executive heads of other health-related state agencies to serve on the commission. The chairman and the vice-chairman are designated by the governor biennially from among the commission members. Appointed members serve terms of two years all of which expire on December 31 of even-numbered years. The original commission never met due to a 1959 ruling by the attorney general (Opinion WW-729) that its composition violated constitutional provisions relating to the separation of powers of the legislative and executive branches of government.

In 1974, with the passage of the National Health Planning and Resources Development Act (P.L. 93-641), states were asked to develop several planning mechanisms designed to better coordinate the delivery of health services throughout the nation. In response to P.L. 93-641, Texas took several major actions which included:

1. the creation of the Texas Health Facilities Commission;
2. the development of the Statewide Health Coordinating Council (SHCC);
3. the designation of the Texas Department of Health as the State Health Planning and Development Agency (SHPDA);
4. the creation of the Health System Agencies (HSAs); and
5. the activation of a modified Coordinating Commission on Health and Welfare Services.

P.L. 93-641 required the development and defined the activities of the SHCC, the SHPDA, and the HSAs and placed specific requirements on the composition of the SHCC. The designation of the SHPDA and the HSAs was left to the state, with the governor playing the key role in the establishment of these bodies. The HSAs were defined by the Act as non-profit agencies or local governments which were to serve as regional planning entities for the provision of local input in several planning processes established by the Act such as the Certificate of Need process and the development of the State Health Plan. The SHCC was established as a council of HSA representatives to accomplish statewide health planning. The SHPDA was designated to provide support to the SHCC in the planning efforts. The Coordinating Commission for Health and Welfare Services was modified in composition and duties, and activated as a potentially needed and statutorily authorized coordination and evaluation agency.

Once the coordinating commission was activated, then Governor Briscoe requested that the commission review the HSA applications that had been submitted to him by several community agencies and advise him on how to best establish the HSAs across the state. The commission held three public hearings concerning the applications and forwarded its official recommendations to the governor on July 8, 1976. Once the HSAs were designated, no further action concerning them was required of the governor or the coordinating commission.

In response to the commission's statutorily mandated functions, the review of federal health grant applications and the evaluation of state health programs, the commission began the development of a grant information tracking system and initiated liaison and coordination activities with the major state health agencies and committees. Although the commission's annual report in 1976 recommended continued activity in these areas, no funding was made available for its continuation and the terms of all of its appointed members expired on December 31, 1976. The commission has not met since that time.

### **Need to Continue Agency**

The commission was created to evaluate and coordinate all state health-related services. The review indicates that while there is a need to continue efforts to evaluate and coordinate the delivery of health-related services within the State of Texas, this responsibility has been assigned to other agencies and there is no need to continue the Texas Coordinating Commission for Health and Welfare Services.

**Sunset Commission Recommendations for the  
TEXAS COORDINATING COMMISSION FOR HEALTH AND WELFARE SERVICES**

**I. ABOLISH THE AGENCY**

**The Texas Coordinating Commission for Health and Welfare Services should be abolished.**

The commission's primary functions of coordination and evaluation of health-related services have been assigned to other entities within state government. The Texas Review and Comment System (TRACS), which is operated through the Governor's Office, currently provides for the review of all types of federal grant proposals by both affected agencies and Councils of Government and can perform the grant review function envisioned for the inactive coordinating commission. The Texas Health and Human Services Coordinating Council, created in 1983 and currently active, is mandated to provide for the study and evaluation of all health-related services in the state. This council can perform the analysis and coordination functions originally assigned to the inactive Texas Coordinating Commission for Health and Welfare Services. Finally, the function the coordinating commission performed in advising the governor on the constitution of the state's health planning regions is currently being carried out through methods that do not require the reactivation of the commission. Since the commission has been inactive for the past seven years and other viable health service coordination mechanisms exist, its enabling statute should be repealed.



**OFFICE OF  
INTERSTATE COMPACT ON MENTAL HEALTH  
ADMINISTRATOR FOR TEXAS**

## Background

The Interstate Compact on Mental Health is a cooperative agreement between 44 states to allow the transfer of mentally ill and mentally retarded persons so they can receive services in the state where it would be most beneficial, irrespective of their legal residence. In the past, it was difficult to transfer individuals between states because of differing residency requirements and the lack of a central point that could make this happen. The Interstate Compact on Mental Health was formed to solve this problem. To be a member, a state must ratify an agreement that emphasizes treatment based on the welfare of the individual regardless of his or her current geographic location.

The compact was initially drafted in 1955, and Texas joined in 1969. On a nationwide basis, the compact is under the auspices of the National Association of State Mental Health Program Directors (NASMHPD). The NASMHPD coordinates the functions of the compact members, sponsors their nationwide meetings, and periodically updates the roster of member states.

On the state level, the compact agreement provides that the governor designates a compact administrator for that state. In Texas, the governor has always designated the commissioner of the Texas Department of Mental Health and Mental Retardation as the compact administrator. It is the "Office of Interstate Compact on Mental Health Administrator" that is subject to the Texas Sunset Act.

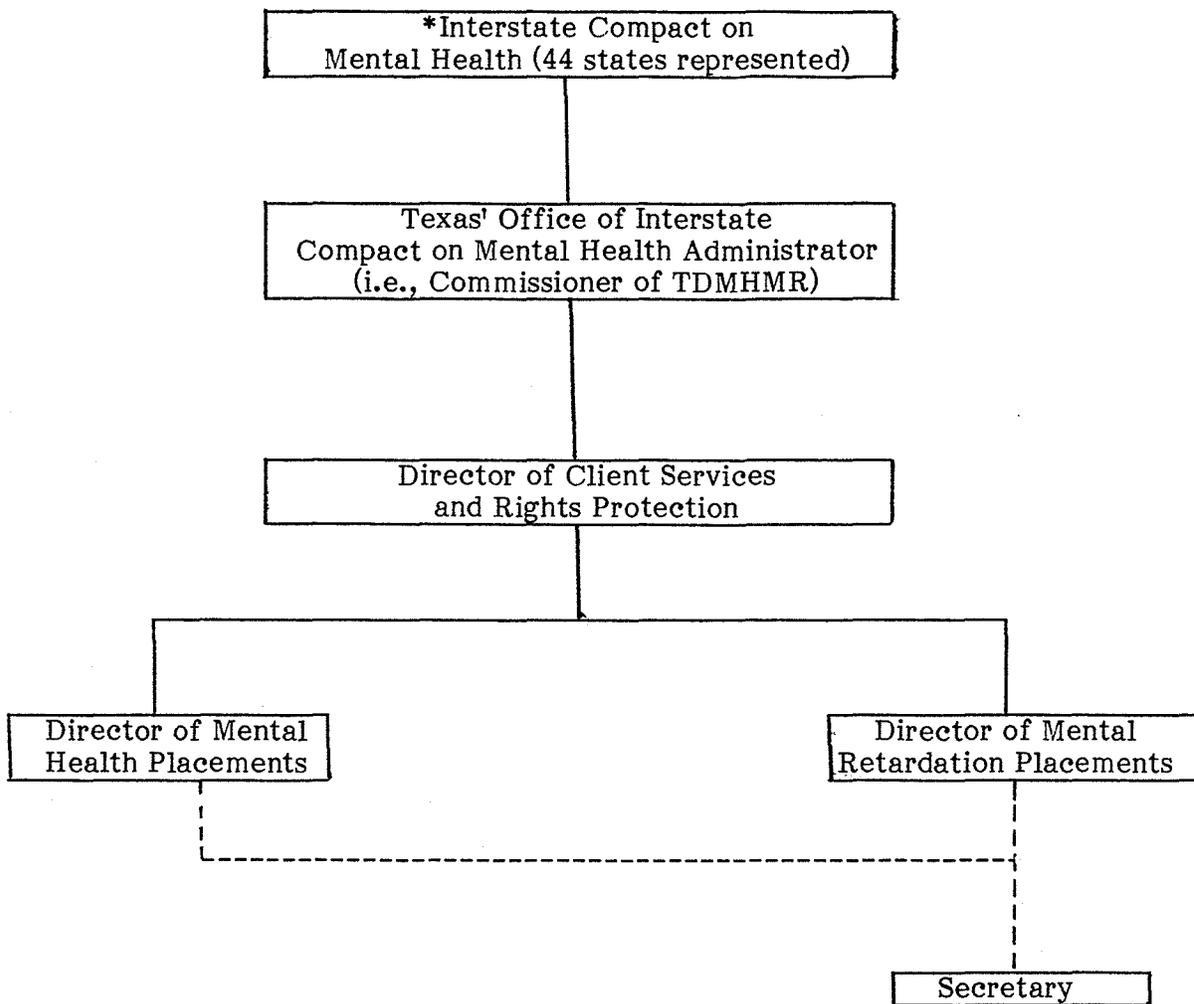
Administration of the Interstate Compact in Texas has remained the responsibility of the Texas Department of Mental Health and Mental Retardation since its enactment. In 1983, the duties were transferred within the agency from the Legal Services Division to the Client Services and Rights Protection Division. In fiscal year 1983, the Texas Department of Mental Health and Mental Retardation used \$16,578 appropriated from general revenue to carry out the administrative duties under the compact. These responsibilities require approximately 20-25 percent of the time of three administrative staff and one secretary (see Exhibit 1 for organizational chart).

The duties of the Office of Interstate Compact on Mental Health Administrator are carried out by staff in the Client Services and Rights Protection Division of TDMHMR. This division serves as the initial contact point for all incoming patient transfers. Once the case record is received from the out of state facility, community based program, or private facility, it is referred to either the Director of Admissions for State Hospitals or State Schools. Appropriateness of placement in Texas is then determined, followed by an assessment of the availability of a bed in the least restrictive environment. The case record is then sent to the facility for review. A person from each state operated facility is designated as a "compact coordinator" (in addition to their regular duties) to process the paperwork and make arrangements for the transfer.

The process works in a similar manner for out of state transfers. The compact coordinator in the state operated facility contacts the Director of Admissions for Texas State Hospitals or State Schools and sends the case record to that individual. Then the Director of Admissions contacts the other state operated facility, community based program or private facility for transfer approval.

As a part of the compact agreement the sending state agrees to pay the transportation costs and, in Texas, each state facility bears this expense. The

**Exhibit 1**



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\* A Division within the National Association of State Mental Health Program Directors -- Washington, D.C.

fiscal 1983 expenditures for transportation to out of state facilities totalled \$25,174 for thirteen mentally ill and three mentally retarded individuals. In contrast, during the same period, the state admitted sixteen mentally ill and one mentally retarded individual with transportation paid by the sending state.

### Need to Continue Agency

The review indicated that there is a continuing need for Texas to participate in the Interstate Compact on Mental Health. Transfers are triggered by a need to move individuals closer to their family and they often play an important role in the care and treatment of mentally ill and mentally retarded individuals. By maintaining membership in the compact, there is a central point for interstate transfers to occur in an efficient and effective manner. There are, however, certain modifications that should be made in the event the legislature decides to continue the agency. The related recommendations follow.



**Sunset Commission Recommendations for the  
OFFICE OF INTERSTATE COMPACT ON MENTAL HEALTH  
ADMINISTRATOR FOR TEXAS**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be amended to require the governor to appoint the commissioner of TDMHMR as administrator of the Interstate Compact on Mental Health in Texas and to allow the commissioner to designate an alternate to serve in his absence.**

The commissioner of the Texas Department of Mental Health and Mental Retardation is designated as the state mental health authority and has always been appointed administrator of the Interstate Compact on Mental Health. However, this is not required by statute. The position of commissioner of TDMHMR appears to be an appropriate designation for all future appointments for administrator of the compact and the statute should require this.

**Evaluation of Programs**

- 2. The statute should be amended to change the sunset date for the Office of Interstate Compact on Mental Health Administrator to coincide with the sunset date of the Texas Department of Mental Health and Mental Retardation.**

Employees of the Texas Department of Mental Health and Mental Retardation administer and carry out the duties of the compact. These duties are closely related to other functions within TDMHMR. The statute should be amended to allow the sunset review of the compact to coincide with the review of TDMHMR which will allow similar functions to be evaluated at the same time.

**Open Records/Open Meetings**

- 3. The statute should be amended to require TDMHMR to file notice of national compact meetings with the secretary of state's office.**

As a state official, the Texas compact administrator is subject to the Texas Open Meetings Act. However, as a body, the total membership of the compact is not subject to state or federal open meetings requirements. Within Texas, no public notification of the times, dates, and location of the compact meetings has occurred. The statute should be amended to require TDMHMR to file, in the Office of the Secretary of State, timely notices of any national meetings of compact members.



**ANATOMICAL BOARD OF THE STATE OF TEXAS**

## Background

The Anatomical Board of the State of Texas was established in 1907 and is currently active. The purpose of the board is to register and distribute human cadavers among institutions and individuals who require such material for the advancement of medical teaching and medical science. Originally, the board's only source of cadavers was limited to bodies required to be buried at public expense, or "unclaimed bodies". However, in 1961, the statute was amended to broaden the board's jurisdiction to include bodies "willed" for the purpose of advancing medical science. The board also approves institutions and individuals to receive and use cadavers, and ensures that the facilities where such material is used are suitable for that purpose.

The board currently has 22 members, made up of two professors from each of the 11 medical, dental, and chiropractic schools in the state. The board meets annually to discuss problems of cadaver supply and distribution, and to consider any issues which require the board's approval. The board elects from among its members a president, vice-president, and a secretary-treasurer for three-year terms. These three elected officials constitute the executive committee and are authorized to transact all necessary board business between meetings. The secretary-treasurer is responsible for conducting all the routine activities which do not require formal action of the board or its executive committee. This includes the maintenance of records on the supply and distribution of cadavers, and management of the board's funds.

The Anatomical Board has no employees, and operated on an annual budget of \$2,570 for fiscal year 1983, funded through a \$2.00 fee levied on institutions for each body received. The board's organizational structure is depicted in Exhibit 1 on the following page.

In fiscal year 1983, the board distributed 1,594 cadavers to 17 institutions approved by the board. These include the 11 medical, dental, and chiropractic schools represented on the board, along with one school of mortuary science, and five military hospital training programs. (See Exhibit 2.)

For the purposes of evaluation, the activities of the Anatomical Board were divided into two major functions: (1) the supply and distribution of cadavers and (2) the approval of institutions and facilities for the receipt and use of cadavers. A description of the activities within each of these two areas follows.

Supply and Distribution. The major function of the board, and the reason it was originally established, is to ensure the equitable distribution of cadavers to medical and dental schools throughout the state for use in teaching and research. In fiscal year 1983, a total of 747 bodies were used in teaching various aspects of anatomy to approximately 2,617 students at 17 institutions.

There are three ways a body comes under the jurisdiction of the board: (1) it is an unclaimed body required to be buried at public expense, (2) a person "wills" their body to medical science, or (3) a deceased person's family donates that person's body to medical science. Most of the institutions involved have initiated "willed body programs", with the goal of becoming self-sufficient in obtaining cadavers for their use. Institutions which receive cadavers directly have first claim to them. However, the board ensures equitable distribution to all authorized institutions based on a minimum student to cadaver ratio of four to one.

**Exhibit 1**

**ANATOMICAL BOARD OF THE STATE OF TEXAS  
Organizational Structure**

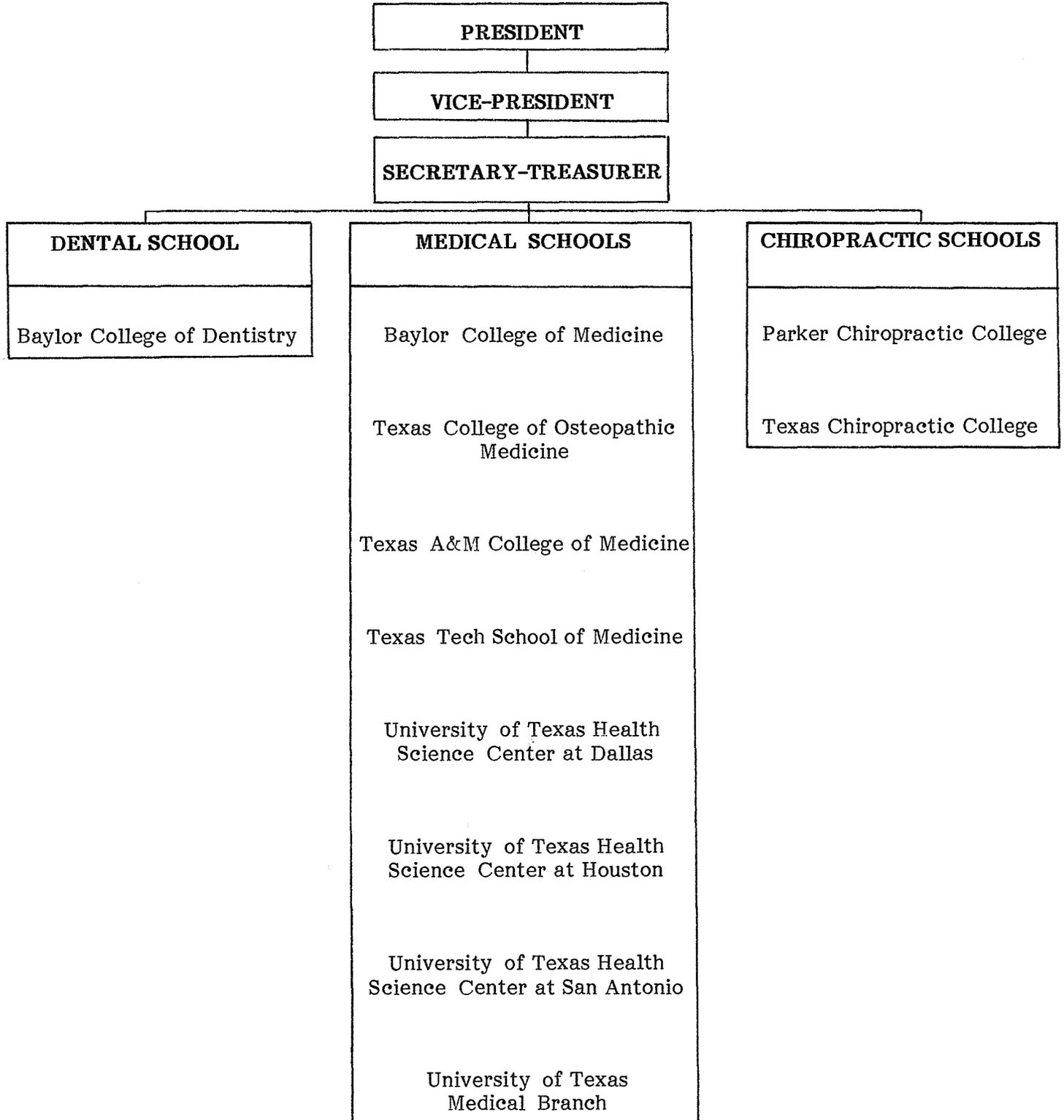


Exhibit 2  
**ANATOMICAL BOARD OF THE STATE OF TEXAS**  
**Supply and Distribution of Cadavers**  
**Fiscal Year 1983**

INSTITUTIONS	NUMBER OF CADAVERS			
	<u>Carry Over From 1982</u>	<u>Received Directly</u>	<u>Received By Transfer</u>	<u>Total</u>
<b>A. <u>MEDICAL SCHOOLS:</u></b>				
1. Baylor College of Medicine	5	140	0	145
2. Texas College of Osteopathic Medicine	17	18	12	47
3. Texas A&M College of Medicine	0	0	13	13
4. Texas Tech School of Medicine	18	62	0	80
5. U.T. Health Science Center at Dallas	125	315	3	443
6. U.T. Health Science Center at Houston	118	93	35	246
7. U.T. Health Science Center at San Antonio	160	171	0	331
8. U.T. Medical Branch	97	107	0	204
<b>B. <u>DENTAL SCHOOLS:</u></b>				
1. Baylor College of Dentistry	1	24	2	27
<b>C. <u>CHIROPRACTIC SCHOOLS:</u></b>				
1. Parker Chiropractic College	0	0	6	6
2. Texas Chiropractic College	0	2	24	26
<b>D. <u>OTHER:</u></b>				
1. Military Training Hospitals (5)	12	0	6	18
2. San Antonio College - Department of Mortuary Science	<u>4</u>	<u>0</u>	<u>4</u>	<u>8</u>
	557	932	105	<u>1,594</u>

Approval of Institutions and Facilities. For over 75 years the board has performed the function of approving institutions and individuals to receive, hold, and use human cadavers. The various institutions currently approved by the board include medical, dental, and chiropractic schools, along with hospital training programs and a school of mortuary science. Individual physicians are authorized by statute to receive cadavers but have not done so since the 1940's.

The process of obtaining initial approval from the board to receive cadavers centers around a site inspection conducted by at least two members of the board. The inspection is based on facility standards developed by the board in 1979. These standards include adequate means to protect the health and safety of people dissecting the bodies, provisions which assure that all areas are secure from public access and visibility, and requirements that remains are properly disposed of by cremation. If deficiencies are found, a reinspection occurs once the necessary corrections have been made. Following the site visit(s), the inspection team reports to the board, and upon acceptance of the report by a majority of the board, the institution is approved.

### Need to Continue Agency

The need for the board's functions was analyzed, and the review indicated that there is a continuing need for state involvement in this area. The orderly supply and distribution of cadavers is crucial to the educational programs of various medical, dental, chiropractic, and mortuary science schools throughout the state. Approval of these institutions and the facilities in which the cadavers are utilized assures that the bodies will be used in an appropriate manner. In general, the board is operated in an efficient and effective manner, however there are 12 changes which should be made if the legislature decides to continue the agency. A discussion of these recommended changes follow.

**Sunset Commission Recommendations for the  
ANATOMICAL BOARD OF THE STATE OF TEXAS**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

**1. The statute should be amended to reduce the size of the board.**

Currently the board is composed of 22 members, with two representatives from each of the eleven member institutions. The statute should be amended to reduce this to one representative from each institution. This would provide adequate representation, decrease costs, and reduce the board to a size which can operate more effectively as a decision-making body.

**2. The statute should be amended to specify the term of office for board members.**

No set terms are currently provided for board members. The statute should be amended to provide for two-year terms, with appointments to be made in the spring of odd-numbered years.

**Overall Administration**

**3. The statute should be amended to exempt the Anatomical Board from the State Funds Reform Act.**

Currently, the board holds its funds outside the treasury. These funds amount to approximately \$2,500 per year. The board currently falls within the State Funds Reform Act which requires their funds to be placed in the state treasury. The statute should be amended to exempt the Anatomical Board from this Act. Since the board's inception, it has operated at no expense to the state, funded through user fees and interest on reserve funds. To require the board to go through the appropriations process would increase costs and require hiring a paid staff person, when accountability of the board's limited funds is assured through an annual state audit of the board.

**4. The board should have statutory authority to collect fees.**

The board currently collects fees for the receipt of cadavers by approved institutions, however, it has no statutory authority to make such collections. The fees are appropriate and the statute should be amended to give the board this authority.

**Evaluation of Programs**

**5. The statute should be amended to add the board as an approved donee under the Texas Anatomical Gift Act.**

Currently, all of the institutions represented on the Anatomical Board are designated as appropriate donees of bodies under the Texas Anatomical Gift Act. However, the board itself is not included. When a body is donated to

the state as opposed to a specific institution the board has, in effect, acted as the donee and assigned the bodies to approved member institutions. In order to clarify the board's authority, the statute should be amended to include the board as an appropriate donee under the Texas Anatomical Gift Act.

6. **The statute should be amended to allow the board to promulgate rules for the transfer of bodies to approved institutions outside the State of Texas.**

Currently, Texas has an excess supply of cadavers, while medical schools in other states are in need of additional bodies. The board should be given authority to transfer bodies, in excess of Texas' needs, to approved institutions out of state for the advancement of medical teaching and medical science.

7. **The statute should be amended to clarify the board's authority to inspect and approve institutions and facilities for the receipt and use of cadavers.**

The statute does not currently provide the board with specific authority to inspect institutions and facilities for the receipt and use of dead bodies. It appears appropriate for the board to have this authority to ensure that the facilities in which the bodies are used meet basic health and safety standards, are secure from public access, and that remains can be properly disposed of by cremation. The statute should be amended to clearly state that the board has the authority to inspect and approve institutions and facilities for the receipt and use of dead bodies.

8. **The statute should be amended to authorize the board to revoke authorization of an institution to receive and use dead bodies, rather than requiring a penalty bond to assure against the improper use of dead bodies.**

Currently, the statute states that, in order to receive dead bodies, institutions shall post a \$1,000 bond stating that all bodies will be used only for the promotion of medical science. A better way to assure compliance would be to allow the board to revoke the authority of an institution to receive and use cadavers, or some lesser penalty, in the case of any improper use of a cadaver. It is recommended that the statute be amended to provide this authority and to remove the requirement that institutions post penalty bonds.

9. **The statute should be amended to remove any authority of the Anatomical Board over animal experimentation.**

The statute currently contains two references to the board's regulation of animal experimentation. However, the board has never exercised any authority in this area. State involvement appears unnecessary since federal law regulates all facets of animal experimentation. It is recommended that this authority be removed from the statute.

10. **The statute should be amended to state that the board is responsible for ensuring that all bodies received by the board will be handled in an appropriate manner.**

The board has seen this as a major responsibility since its inception, however, it is not specified in statute. It is recommended that the statute be amended to assure the public that bodies donated to the board and its' members for the advancement of medical science and research will be handled with respect and dignity.

11. **The statute should be amended to authorize the board to develop rules regulating the proper transportation of bodies received by the board.**

This is recommended in order to assure that the transport of bodies will be done in an appropriate manner, secure from public view, and with proper identification and papers.

12. **The statute should be amended to state that any activity the board determines to be "unauthorized or improper handling of a dead body" is not protected by the Anatomical Board Act, and could be punishable as a Class A misdemeanor under existing state law.**

Currently, the board's rules make provision for the reporting and handling of any improper activity, including possible criminal prosecution. However, it is recommended that this be clarified in statute, to assure the public that any unauthorized or improper handling of bodies would be punishable under state law.



**TEXAS COMMISSION FOR THE DEAF**

## Background

The Texas Commission for the Deaf, created in 1979 to replace the short-lived State Commission for the Deaf, is currently active. It is composed of nine members appointed by the governor, with the consent of the senate, for staggered six-year terms. Three members of the commission must be deaf persons, two must be parents of deaf persons, two must be professionals serving deaf individuals, and two must be persons representing the general public. Operations of the commission are carried out by a staff of 23 and an appropriation from state funds of \$1,155,039 in fiscal year 1984.

The agency also has a technical advisory council for planning and operations which was created by the legislature in 1979 to provide advice and guidance concerning priorities in serving the deaf population of the state. The council is composed of nine ex-officio members who are directors of major state health and human service agencies and three public members involved in educating or serving deaf people.

The original State Commission for the Deaf, created in 1971, was established to help deaf and hearing-impaired persons overcome the communication barriers encountered in attempting to get services from a multiplicity of state agencies. The commission was responsible for providing deaf persons with any service not delegated to another agency, conducting a census and preparing a registry of deaf people in Texas, and serving as a clearinghouse for information pertinent to deaf individuals. In 1977, the legislature, dissatisfied with the quality and overall availability of educational services to deaf people, created a Joint Advisory Committee on Educational Services to the Deaf. As part of this committee's work, the operations of the State Commission for the Deaf were examined. The examination resulted in recommendations that changes be made in the composition of the commission and its statutory mandates. These recommendations were adopted by the 66th Legislature in 1979 and resulted in an increase in the number of board members of the commission and the elimination of the specific mandates discussed above. Broader mandates designed to ensure a continuity of general and educational services to deaf persons were adopted and form the basic statute under which the commission operates today.

Current responsibilities of the agency include the provision of direct services to deaf individuals, the development of a directory of interpreters for the deaf and a directory of organizations and agencies providing services to deaf people in Texas, the training and certification of interpreters for the deaf, and the development of a recommended fee schedule for the payment of interpreters for the deaf. The agency is also active in the placement of telecommunication devices for the deaf in state agencies and emergency response centers, the development of pilot programs for deaf-blind individuals and their families, and the provision of an outdoor recreation program for deaf children. These are accomplished through an organizational framework consisting of four programs: 1) Direct Services, 2) Special Services, 3) Interpreter Development, and 4) Public Information. Although these programs are reflective of the agency's general categories of activity and the program structure developed for state appropriations, the sunset evaluation of the agency was structured around an analysis of the actual functions of the agency. In reviewing the performance of the Texas Commission for the Deaf the following five functions were identified and analyzed: 1) contract services, 2) technical assistance, 3) direct services, 4) certification, and 5) information services. A description of these functions and how they are carried out by the agency follow.

Contract Services. To maximize the usefulness of the dollars appropriated to the agency for the provision of services to deaf people, the TCD contracts with other entities for the actual delivery of certain services. The agency currently contracts with 17 nonprofit councils for deaf and hearing-impaired persons for the delivery of three basic services. These services are interpreter, message relay and information and referral services and are paid for by the agency on a reimbursement basis. For providing interpreter services in fiscal year 1983, the councils were reimbursed \$115,264 for provision of 9,466.5 hours of interpreter services to 4,412 deaf or hearing-impaired persons in medical, legal, economic and government related situations. Message relay services are provided to allow people with telecommunication devices for the deaf (TDDs) to contact people that don't have a TDD. For example, a deaf person with a TDD can call a council, which has a TDD, and ask that a message be relayed to an employer or a doctor. Since few people have TDDs, this type of communication between the deaf person and others would not be possible without someone providing the message relay service. Twenty-six thousand eight hundred fifty (26,850) units of the message relay service were provided by the councils in fiscal year 1983, and they were reimbursed \$11,640. Information and referral services include informing deaf people and their families of available services and providing information on deafness to the general public. In fiscal year 1983, the councils had 7,774 information and referral contacts, and were reimbursed \$2,746.

TCD currently contracts with eight of the 17 councils to provide Services to Older Hearing-Impaired Texans (SOHIT). The primary objective of this effort is to help deaf or hearing-impaired persons who are 60 years of age or older maintain their self-sufficiency and reduce their need for placement in a long-term care facility. The situation of elderly deaf individuals is particularly difficult since many of these people have had hearing capabilities for most of their lives. As hearing difficulties develop late in life, they become increasingly isolated and unable to function in the "hearing" world. The councils try to lessen this isolation by determining the needs of older hearing-impaired clients and then finding agencies that can provide the necessary services. In fiscal year 1983, this effort assisted 8,509 clients at a cost of \$19,350.

Four councils were contracted with in fiscal year 1983 to provide training for 203 deaf persons in basic living skills and job-seeking skills at a cost of \$9,745. Basic skills training focuses on helping deaf individuals with aspects of daily living such as budgeting, nutrition and food preparation, consumer information, appropriate use of interpreters, knowledge of insurance programs, basic legal transactions, and community involvement. Job-seeking skills training is designed to assist "job-ready" deaf and hearing-impaired individuals obtain employment. It includes training in resume preparation, interviewing techniques, submission of applications, seeking assistance from the Texas Employment Commission, and reading and understanding newspaper "want ads".

TCD has allocated \$232,928 for contracts with the councils in fiscal year 1984. On the following page, Exhibit 1 shows the councils with whom TCD has contracted; the amounts allocated by council for provision of interpreter service, message relay, information and referral, and SOHIT; and the total contract amount for each council.

The Direct Services Program staff is responsible for the contracts with the councils, but the staff of the Special Services Program also have contracting responsibilities. These include contracts for two camps and a contract for a pilot

Exhibit I

SUMMARY OF CONTRACTED SERVICES PROVIDED BY COUNCILS FOR FISCAL YEAR 1984

<u>Councils for the Deaf</u>	<u>Interpreter Service</u>	<u>Message Relay</u>	<u>Information and Referral</u>	<u>SOHIT*</u>	<u>Total Contract</u>
Central Texas (Waco)	\$ 5,246	\$ 240	\$ 270	\$ -0-	\$ 5,756
Corpus Christi	3,984	360	390	3,200	7,934
Deaf Action Center (Dallas)	29,926	3,000	810	6,940	40,676
Houston	14,641	3,000	390	3,200	21,231
East Texas (Tyler)	1,094	120	-0-	-0-	1,214
El Paso	13,536	1,500	390	6,500	21,926
HEAR-SAY (Houston)	500	120	390	3,200	4,210
Highland (Big Spring)	3,920	900	-0-	-0-	4,820
Lubbock	1,094	240	-0-	-0-	1,334
Panhandle (Amarillo)	2,678	720	-0-	-0-	3,398
San Antonio	7,646	480	-0-	-0-	8,126
San Jacinto (Baytown)	3,920	480	-0-	-0-	4,400
Southeast Texas (Beaumont)	6,794	180	-0-	-0-	6,974
Tarrant County (Ft. Worth)	18,504	1,800	810	3,000	24,114
Texoma (Sherman)	5,328	150	270	3,300	9,048
Travis County (Austin)	31,740	2,700	810	5,760	41,010
West Texas (Abilene)	2,264	120	-0-	-0-	2,384
Open Contracts	<u>2,208</u>	<u>565</u>	<u>300</u>	<u>3,200</u>	<u>6,273</u>
TOTALS	<u>\$155,023</u>	<u>\$16,675</u>	<u>\$4,830</u>	<u>\$38,300</u>	<u>\$214,828</u>

\*SOHIT = Service to Older Hearing Impaired Texas  
 \*\*Contracts have not yet been awarded for the operation of a skills training program, but the deadline for submitting a proposal to TCD was 1/27/84.

**NOTE:** Total Contract Balance \$214,828  
 Total Skills Training 18,100\*\*  
 GRAND TOTAL for FY 84 Contract Services \$232,928

program for deaf-blind individuals. This is the third fiscal year that the Commission for the Deaf has been responsible for providing deaf children with an outdoor skill training and recreational program. The agency has concluded that camping opportunities for deaf children are limited and that the camping experience offers deaf and hearing-impaired children an opportunity to develop or improve their social interaction, communication, personal care, leadership, and motor skills in a healthy, controlled environment. Since the program began in 1982, TCD has contracted with two facilities, Camp Lone Star in Athens, Texas in fiscal year 1982 and Camp Stewart in Hunt, Texas in fiscal year 1983. A total of 211 children have attended the sponsored camps to date. In fiscal year 1984, Camp Stewart will provide the services for approximately 150 deaf and hearing-impaired persons between the ages of 8 and 17 at a cost of \$30,700.

In 1983, the 68th Legislature transferred the authority for a summer outdoor training program for deaf-blind individuals from the Texas Education Agency to TCD. This camp has been held at Camp Soroptomist in Dallas for the last seven years and will be held there in fiscal year 1984 for approximately 50 individuals at a cost of \$16,000.

The Special Services Program is also in the process of developing a pilot program to provide deaf-blind individuals with an independent living program. The \$50,000 contract will cover the cost of residential services while day-time training will be obtained in the community. This contract service is still in the planning stage but is expected to be initiated in fiscal year 1984.

Technical Assistance. The staff of the Commission for the Deaf functions as a "technical adviser" by providing technical information and assistance to organizations and persons serving deaf and hearing-impaired individuals. Two of the agency's programs are active in this function. The Direct Services Program staff offer technical assistance to the councils with whom they contract and the staff of the Interpreter Development Program present workshops to improve the skills of interpreters for the deaf. They also assist post-secondary institutions in the development of interpreter training programs.

Many of the councils for the deaf with whom TCD contracts are staffed by volunteers. The provision of technical assistance to volunteers is important for two reasons: 1) to improve the quality of service offered to deaf and hearing-impaired people, and 2) to ensure that each council correctly accounts for the expenditure of state dollars. Technical assistance is provided in three ways. First, TCD annually conducts a contractor's training workshop which focuses on 1) how to complete the necessary accounting forms so the agency can reimburse the council for services provided, and 2) a thorough discussion of what services are reimbursable. In addition, TCD staff visit each council at least once annually to provide technical assistance related to specific problems of that council. Finally, agency staff provides some technical assistance through phone calls and correspondence with the councils. This occurs at the request of the council or when TCD has identified a problem while reviewing the monthly logs submitted by the contractors.

The Interpreter Development Program also offers technical assistance to interpreters for the deaf and to post-secondary institutions with interpreter training programs. These activities are a result of recommendations made to the 66th Legislature in 1979 by the Joint Advisory Committee on Educational Services to the Deaf. At that time there were no interpreter training programs in the state

of Texas and the deaf community was not satisfied with the quality of interpreter services available. To address these problems TCD formed the Sign Language and Interpreter Training Advisory Committee. This committee has worked with TCD and a representative of the Texas Education Agency to develop a model curriculum and plan for an interpreter training program on the post-secondary level. This type of training is now available at El Paso Community College, McLennan Community College in Waco, Southwest Collegiate Institute for the Deaf in Big Spring, and Lee College in Baytown.

The commission offers technical assistance to individual interpreters in the form of continuing education workshops. These are conducted by staff and consultants hired by TCD. Topics include ethical behavior of interpreters, sign to voice interpreting, structural differences in American Sign Language and English, and oral interpreting. The commission scheduled 16 workshops in seven cities in fiscal year 1983 and has scheduled 14 workshops in 11 cities for fiscal year 1984.

Direct Services. An agency provides a "direct service" when it, through the delivery of the service by its own staff, attempts to improve or prevent the deterioration of the life situation of a person or a group of persons. Two activities of the commission, although very different in nature, fit into this functional category. The first is the provision of counseling to family members of deaf-blind individuals. The second is the placement of telecommunication devices for the deaf in state agencies and emergency response centers operated by units of local government. Both activities are performed by the staff of the Special Services Program.

The counseling service performed by the agency offers a means by which the family of a deaf-blind person can be helped in caring for the person's needs. It has been estimated that there are approximately 1,200 Texans that are both deaf and blind and their needs are far greater than a person who is either deaf or blind. Three other agencies provide specific services to this client group. The Texas Education Agency has responsibility to provide educational services to deaf-blind persons up to age 21. The Texas Commission for the Blind and the Texas Rehabilitation Commission provide vocational services for deaf-blind individuals with the potential for employment. However, these services do not deal with all the needs of deaf-blind persons and TCD offers counseling to identify client needs and match these needs with available services.

At the present time, TCD's counseling program is in a developmental stage and only one person is assigned to the effort. It is anticipated that, when contacted by the family of a deaf-blind person, the staff will assess their needs and respond by providing them with information about services available in the state or methods of working with the deaf-blind person to help him reach his maximum potential.

The other aspect of direct services provided by the agency is the purchase and placement of telecommunication devices for the deaf in state agencies and emergency response centers of local governmental units. This activity was established in response to the request by numerous deaf individuals for improved telephone accessibility to local offices of state agencies and emergency centers operated by cities or counties. The placement of these devices would free deaf persons from having to rely on hearing people to conduct their business for them or to help them get assistance in life-threatening situations.

During fiscal year 1981, TCD assessed the need for these devices and purchased 274 instruments during fiscal year 1982 and 1983 at a cost of \$203,046. These were placed in the local offices of six state agencies: the Texas Employment Commission, the Department of Human Resources, the Texas Rehabilitation Commission, the Department of Public Safety, the Texas Department of Mental Health and Mental Retardation, and the Texas Department of Health. TCD was also given statutory authority to place TDDs in emergency response centers. The agency has worked with 17 councils for the deaf to determine the best locations for these TDDs. The agency anticipates placing approximately 25 TDDs in emergency response centers by the end of 1984, at a cost of \$11,000.

Certification. During the hearings conducted by the Joint Advisory Committee on Educational Services to the Deaf, deaf people complained about the quality of interpreter services for the deaf in Texas. At that time, deaf people relied on the national certification board, the Registry of Interpreters for the Deaf (RID), for assurance of competency of their interpreters. The testimony indicated that although RID has numerous levels of certification, possession of a certificate at one level did not consistently indicate a certain level of skills. In response to this testimony, the Texas Commission for the Deaf was authorized, in 1979, to establish a program of voluntary certification for interpreters for the deaf. This program is administered by a statutory five-member Board for Evaluation of Interpreters (BEI) appointed by the commission. The composition of the board is set in the rules of the agency as is the authorization for reimbursement of the members.

The BEI has developed rules for a certification program which fits in with the certification programs offered by two private groups, the National Registry of Interpreters for the Deaf (RID) and the Texas Society of Interpreters for the Deaf (TSID). The agency issues certificates for five levels of interpreter proficiency. At the present time the agency will grant an automatic certification for four of its levels if the applicant is certified by either RID or TSID. For the fifth level an examination is required. At the present time, BEI has certified a total of 169 interpreters: 32 at Level I, 41 at Level II, 65 at Level III, 26 at Level IV, and five at Level V. The BEI is in the process of developing other examinations so that an interpreter would have the choice of being certified by an agency examination or by maintaining their RID or TSID certification.

By statute TCD is required to promulgate a suggested fee schedule for interpreters. The fee schedule is updated annually. To update the fee schedule, the agency contacts people on a state, regional and national level to determine what are equitable hourly rates for interpreters with varying skill levels.

Information Services. The final function performed by the Texas Commission for the Deaf is the acquisition and dispersal of information related to deafness and services provided to deaf and hearing-impaired persons. The Public Information Program has primary responsibility for this function, but the Interpreter Development Program is responsible for one activity in this area.

The Public Information Program conducts an annual survey using questions which are developed: 1) to identify areas where more information is needed by deaf or hearing-impaired persons and the professionals in this field; 2) to obtain feedback on TCD programs; and 3) to determine the demographic make-up of the people responding to the survey. TCD staff also obtain information from other

state agencies, national organizations, and universities about services, legislation, and research of concern to deaf and hearing-impaired persons.

This information is provided to the public in various forms. The Commission for the Deaf publishes a newsletter, the Guide Post, which is mailed six times a year to approximately 13,000 people. The agency disseminates other information through brochures, press releases, the activities of Deaf Awareness Week, public service announcements, and appearances on radio and television talk shows. In addition, the staff respond to specific requests for information and publish a Directory of Services for Deaf Persons. The directory lists approximately 300 agencies and programs in the state that serve deaf and hearing-impaired persons.

The other activity within this function is the compilation of the Directory of Interpreters for the Deaf by the staff of the Interpreter Development Program. The agency is mandated to compile a list of qualified interpreters who are available for assignment by a state agency, court, or political subdivision to interpret proceedings for deaf persons. This registry must include recommendations on the appropriate selection and utilization of interpreters for the deaf with various skill levels. It is updated annually and disseminated to agencies, courts, political subdivisions, and the general public.

#### Need to Continue Agency

The need for each of the commission's functions was analyzed and the review indicated that there is a continuing need for state involvement in these areas. In regard to the current operations, there are eight statutory changes which should be made in the event the legislature decides to continue the agency. The statutory changes and suggestions to improve the management of the agency which should be made if the agency is continued are outlined in the following section.



Sunset Commission Recommendations for the  
TEXAS COMMISSION FOR THE DEAF

I. CONTINUE THE AGENCY WITH MODIFICATIONS

Policy-making Structure

1. **The statute should be amended to require that the governor appoint the commission chair.**

Currently the commission chair is elected from the membership. The general practice is for the governor to appoint. There is no reason that the general practice should not be followed here.

2. **The statute should be amended to require that the commission's Technical Advisory Council for Planning and Operations be abolished and its duties transferred to the Council on Disabilities.**

The above named advisory council's duties can be carried out by the newly created Council on Disabilities (68th Legislature). The statute should be amended to eliminate the agency's advisory council and integrate its responsibilities into the Council on Disabilities. The Council on Disabilities' membership should be modified to facilitate the assumption of these responsibilities by adding a representative from the Texas Employment Commission and the Texas School for the Deaf.

Overall Administration

3. **The statute should be amended to provide authority for the agency to collect fees.**

The agency currently collects fees for interpreter training. It has no statutory authority to make such collections. The fees are appropriate and the statute should be amended to give the agency this authority.

Evaluation of Programs

4. **The agency should modify and improve their efforts to provide technical assistance to councils for the deaf. (management improvement - non-statutory)**

The agency has created an advisory committee for the purpose of being able to pay travel costs of its members to come to Austin for training. The training is needed and travel costs can be paid without going through the fiction of an advisory committee. Further improvements in this area of agency operation can be gained by modifying its training evaluation efforts and by providing assistance in the expansion of the agency's current "Manual of Operations" for deaf council activities. The agency should discontinue the advisory committee and modify its training efforts as noted above.

- 5. The statute should be amended to require more competition in the process the agency uses to award council for the deaf contracts.**

The agency currently restricts its contracting for certain services to local councils for the deaf. There are other entities which could also provide these services. The agency should request proposals from all available service providers and award the contracts on a competitive basis.

- 6. The statute should be amended to require the Texas Commission for the Deaf to develop a formula for the allocation of funds to contracting organizations.**

The allocation of funds is currently based on the performance of a council during the previous year's contract. This does not provide the agency with a logical basis for determining how to fund new contracts or contracts in areas where needs are changing. The intent in requiring formula funding is to ensure that state dollars are dispersed to contracting organizations throughout the state in a logical, equitable fashion.

- 7. The statute should be amended to delete the pilot program status for services to deaf-blind persons.**

In 1981, the TCD gained authority to establish a maximum of four pilot programs to help deaf-blind persons attain self-sufficiency. In 1983, the agency received authority to develop counseling programs for parents of deaf-blind persons and to provide a camping experience for deaf-blind individuals. All of the programs are on "pilot" status and are scheduled to be abolished in September 1987. The need for these programs is ongoing and their pilot status should be deleted.

- 8. The statute should be amended to require the removal of unused telecommunication devices for the deaf from state agencies and the expansion of the message relay service statewide to provide deaf people with better telephone accessibility.**

Since 1981, the agency has been placing TDDs (telecommunication devices for the deaf) in state agencies. Agency records indicate that barely half of the units in place for six months or longer have been used. A more effective way of ensuring that deaf people have access to state agencies, as well as the ability to communicate with people that do not have TDDs, would be through an expanded message relay system. Therefore, it is recommended that the agency establish a toll-free message relay service at the agency Austin office and distribute the unused TDDs to locations throughout the state where they can be utilized for local message relay centers.

#### Open Records/Open Meetings

- 9. The commission should use the same interpreter(s) for its executive sessions as well as its open meetings. (management improvement - non-statutory)**

Currently, the commission uses different interpreters for its executive sessions and its open meetings. The interpreter frequently used for its executive sessions is the president of one of the councils the agency

contracts with to provide services to deaf people. To avoid any appearance of allowing such an interested party access to otherwise confidential discussions, the commission should use the interpreter(s) it has on hand for the regular open meetings.

### Public Participation

10. **The agency should adhere to provisions of the Administrative Procedures Act regarding the development and availability of rules concerning its operations.** (management improvement - non-statutory)

Currently, the agency's rules concerning its formal procedures are not up to date and some are conflicting. Further, public access to the rules is hampered by the agency's methods used to compile and maintain these rules. The agency should take immediate steps to repeal obsolete and conflicting rules and maintain the revised rules in a manner easily accessed and understood by the public.

11. **The statute should be amended to require the commission to hold an annual public meeting to receive public comment.**

Although the commission is required to meet six times per year, little time is available during these meetings for members of the general public to comment on the activities and responsibilities of the agency. This input is important if the commission is to be responsive to the needs of deaf people, and the commission should be required to hold public meetings on an annual basis.

### Conflict of Interest

12. **The agency should stop providing office space for the Texas Association of the Deaf unless it is provided as a part of a contract for services.** (management improvement - non-statutory)

For the last 15 months, the agency has been providing office space to the Texas Association of the Deaf without charge. This violates provisions of the state constitution and should either be stopped or continued only through development, by the agency and the association, of a contract for services of which space could be a component.



**TEXAS HEALTH FACILITIES COMMISSION**

## Background

The Texas Health Facilities Commission was created in 1975 and is currently active. It is composed of three full-time commissioners appointed by the governor, and confirmed by the senate, for staggered six year terms. At least one commissioner, at the time of appointment, must be a resident of a county with a population of less than 50,000; and no person who is actively engaged as a health-care provider or who has any substantial pecuniary interest in a health-care facility can serve as a commissioner. Operations of the commission are carried out by a staff of 29 and an operating budget from state funds of \$1,145,846 in fiscal year 1984. The agency's organizational structure and the allocation of funds are depicted in Exhibit I on the following page.

The commission was originally established to meet the requirements of the National Health Planning and Resources Development Act of 1974 (P.L. 93-641). This legislation mandated each state to establish a state health planning and development agency (SHPDA), a state health planning advisory council, regional health planning agencies, and a certificate of need program. The need for these programs stemmed from a history of state and federal concern about the availability, accessibility, quality, and cost of health care. The first substantial federal involvement in health planning began in 1946 through the federal Hill-Burton Act, designed to finance the construction of community hospitals in largely underserved areas. This program did much to improve the standards of hospital care and to increase the availability of adequate facilities.

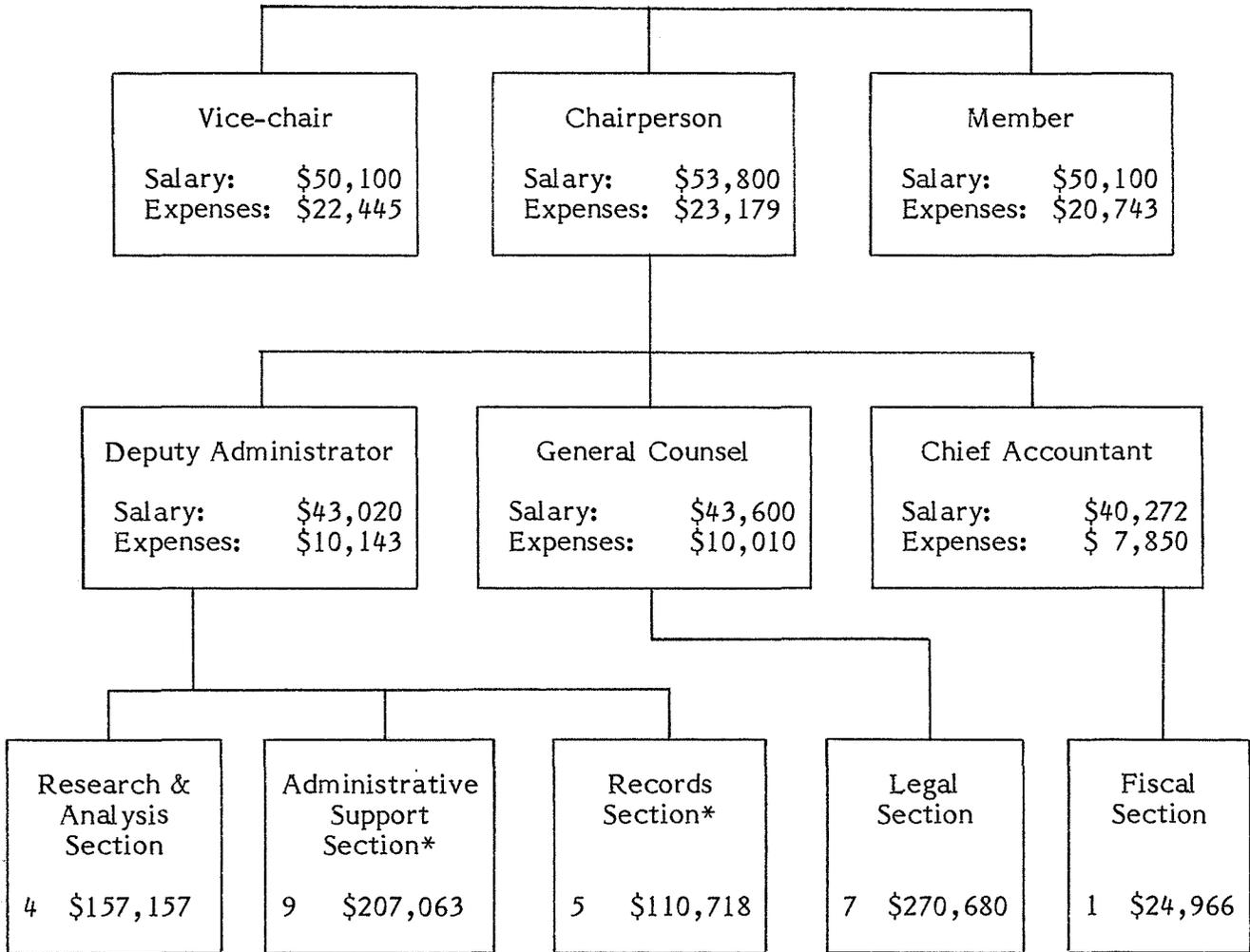
Throughout the 1950's and 1960's the population grew, standards of living rose and medical technology advanced rapidly. The quality of health care improved markedly, but the costs for this care soared. In 1966, the federal government established medicaid and medicare to provide greater access to health care for the poor and elderly, who could no longer obtain these services on their own due to the rising costs. However, this resulted in health-care costs becoming a sizeable and recurring percentage of federal and state budgets. This triggered greater public criticism of the efficiency and effectiveness of the health-care system.

Several attempts were made by the federal government to establish more effective health-care planning. The Comprehensive Health Planning Act of 1966 created a national health planning system, but the program lacked any real authority over the health-care industry and, therefore, was largely ineffective. In 1972, an addition to the Social Security Act (Section 1122) attempted to give the health planning agencies some control over the rising costs of health-care capital investments, but again this authority was limited, and state participation was not mandatory. In 1974, due to continuing concerns over health care, Congress enacted the National Health Planning and Resources Development Act which established the system under which we currently operate. This legislation authorized funding for state and local planning agencies to assess area health needs, set priorities, and attempt to direct health-care resources to the most needed services and locations. It also mandated each state to establish a certificate of need program to determine whether or not a "need" for a proposed facility or service existed, prior to its development.

In response, the 64th Legislature enacted the Texas Health Planning and Development Act (Article 4418h, V.T.C.S.). The Act designates the Texas Department of Health as the state health planning and development agency (SHPDA), with responsibility for developing the state health plan, and establishes

Exhibit I

TEXAS HEALTH FACILITIES COMMISSION  
ORGANIZATIONAL CHART AND  
DEPARTMENTAL BUDGET ALLOCATIONS



- Notes:**
1. For the five sections of the agency, the number indicated in the lower left corner of each box represents the number of positions in each section. The number in the lower right corner includes the salaries for these positions plus an allocation of associated expenses such as rent, utilities, supplies, and travel costs.
  2. The two sections, designated by an asterisk, provide support services for the entire agency.

the Texas Health Facilities Commission as an independent agency to conduct the state certificate of need program. The purpose of the Act is to "...ensure that health-care services and facilities are made available to all citizens in an orderly and economical manner...", and in compliance with federal requirements. This basic purpose has remained relatively unchanged over the nine years that the commission has operated. However, several modifications have occurred, largely in response to changes at the federal level. For example, in 1979, cost containment was identified as the overriding concern of the federal government relating to health care. The National Health Planning and Development Act was amended by P.L. 96-79 to specifically address the issue of cost containment. All state programs were directed to exempt health maintenance organizations (HMOs) and their activities from virtually all certificate of need review. Facilitating the development of HMOs was seen as a way of enhancing competition by providing the consumer with an alternative to the predominately "fee for service" insurance system, thereby encouraging increased cost-effectiveness overall. The federal government's recent shift to "prospective payment" for medicaid and medicare also has provided hospitals with an incentive to be more cost-effective.

Another change at the federal level occurred in 1981 in regards to the requirement that states review the appropriateness of existing health-care facilities. The Federal Omnibus Budget Reconciliation Act made provision for states to discontinue this review, so plans to enact appropriateness review in Texas were abandoned in 1982.

In that same year, the president's budget proposed terminating funds for the federal health planning program. However Congress, to date, has not achieved a consensus as to how or even whether health planning should continue. Since 1982, the program has been maintained by a series of continuing resolutions, and funded at \$57 million per year. This represents a substantial cut from the \$130 million average annual funding between 1976 and 1981. Due to the fact that the Texas Health Facilities Commission has never received any federal funding, this has not had a direct impact on their operations. However, with these decreases in federal funding, the governor opted to discontinue the receipt of local input through the health systems agencies (HSAs) in 1982 and to rely on the SHPDA to perform the local agencies' functions. Consequently, review by the HSAs is no longer required as part of the certificate of need process.

While a number of modifications have been made to the system in order to maintain compliance with the federal guidelines, the responsibilities of the commission still focus on determining if there is a "need" for proposed new health-care facilities and services, prior to their development. The agency also has the authority to investigate alleged violations of the Texas Health Planning and Development Act.

In conducting the sunset review, efforts were focused on a detailed analysis of the certificate of need review process. This approach was taken as all functions within the agency relate to accomplishing this task. A description of the certification process and how it is carried out by the agency follows.

Certificate of Need Program. To meet the requirements of both state and federal statutes, the Texas Health Facilities Commission conducts a certificate of need program. This process is designed to ensure that unnecessary duplications of services and facilities are avoided and that the health-care requirements of a particular service area are considered before specific projects are developed or

offered in that area. In fiscal year 1983, 297 applications for certificate of need (C.O.N.) were received, representing \$1,144,225,004 in project dollar volume for the year. The average capital cost involved in a C.O.N. application was \$3,852,609 in 1983.

Currently, a certificate of need is required prior to the development of a new facility, the offering of a new service, a change in beds of "10 beds or 10 percent", the obligation of a capital expenditure by or on behalf of a health-care facility in excess of \$600,000, or the obligation of \$400,000 or more for major medical equipment. Hospitals, nursing homes, other types of inpatient facilities, dialysis facilities, and ambulatory surgical centers constitute the primary groups regulated.

Criteria are established both in statute and by agency rule to determine whether there is truly a "need" for a proposed project. These criteria focus on the health-care needs of the community, the economic feasibility of the project, and any special needs addressed by the project such as providing services to indigent patients or to patients in sparsely populated areas. The burden of producing evidence to show that a need exists rests on the applicant.

The certificate of need process is scheduled within a 120 day time frame. This can be extended at any party's request, if the commission and all other parties agree. The process involves a review by a staff analyst of each C.O.N. application to determine the relationship of the proposed project to the C.O.N. criteria. This analysis is dependent on data obtained primarily from the Texas Department of Health, in regard to existing health services, population figures, and other factors affecting the health-care delivery system in the proposed service area.

A hearing officer reviews the staff analyst's findings and develops a recommendation to the chair, who decides whether a hearing should be conducted or waived. In fiscal year 1983, 144 applications or approximately 40 percent of a total of 364 applications went to hearing. Hearings are conducted pursuant to the Administrative Procedure and Texas Register Act, and are presided over by one of the commission's hearing officers, all of whom are licensed attorneys. Similar projects which are submitted during the same time frame and serve the same area are "joined" and heard together. The hearing provides the applicant with the opportunity to present evidence that the proposed project is "needed", and it provides others with the opportunity to contest applications to which they may be opposed. The hearing officer is responsible for preparing a written recommendation to the commission containing findings of fact, conclusions of law, and a proposed order.

Final discussion and/or arguments are heard by the commissioners at their weekly open meeting. It is at this time that a decision is made by vote of the three commissioners and an order issued approving or denying an application. Persons who are aggrieved by a commission decision may petition for reconsideration or rehearing. Appeals beyond the commission are made to district court in Travis County.

In fiscal year 1983, the length of time to obtain a decision on a C.O.N. application averaged 87 days if the hearing was waived and 173 days, or less than six months, when a hearing was required. Due to the concern expressed by applicants about the length of time involved in going through the C.O.N. process, the commission proposed rules on May 4, 1984 to streamline the process, especially for uncontested cases.

Other applications which are processed by the commission include: 1) declaratory rulings to determine whether a project falls within the requirements for a C.O.N.; 2) notices of intent for certain projects which are exempt from C.O.N. review; 3) amendments of previously issued commission orders; and 4) petitions for reissuance of a certificate of need. The commission is also authorized by statute to charge an application fee for all proposed projects. Currently, the fee for C.O.N. applications is based on 0.35 of one percent of the total project cost, with a minimum fee of \$250 and a maximum fee of \$7,500. The fee for other types of applications (notices of intent, declaratory rulings, etc.) is \$100.

Finally, the Texas Health Planning and Development Act provides sanctions for violations of the Act, specifically the development of a project without the commission's authorization. The commission may order a show cause hearing, and if a violation is found, may issue a cease and desist order. In addition, the commission may request the attorney general to institute legal action to enjoin the violation or to recover civil penalties of up to \$100 per day for each day of the violation.

### **Need to Continue Agency**

The analysis of the commission's function indicated a continuing need for state involvement in this area, but in a modified form. The current system is based on the federal requirements for a certificate of need process. This model has been closely adhered to in Texas law since the federal statute authorizes the imposition of sanctions on a state that does not have a certificate of need program in compliance with federal regulations. The penalty for non-compliance is the withholding of federal Public Health Extramural Awards (defined in the Public Health Service Act) which totaled approximately \$250.8 million in Texas in fiscal year 1983. However, 24 states are out of compliance with federal requirements and no sanctions have been imposed.

Another consideration for maintaining the current process is that amendments to the Social Security Act in 1983 require states to have in place by October 1, 1986, a "Section 1122" capital expenditure review program unless Congress acts before that date to include capital-related costs in a prospective reimbursement system. The Department of Health and Human Services has proposed rules to "dovetail" the requirements for certificate of need and 1122 review. If the Texas Health Facilities Commission is abolished, a similar structure will need to be developed by the state by October 1, 1986, or hospitals will not be eligible for medicare reimbursement of their capital expenditures. However, the future of 1122 review is uncertain. The federal government could place capital expenditures under a prospective reimbursement system or adopt some other method of containing capital-related costs before the October 1986 deadline.

Finally, the Texas Health Facilities Commission provides a mechanism to examine and avoid potential duplications of services and facilities, to consider the health-care requirements of a particular area before specific projects are developed or offered, and to direct how, when, and where public funds and resources are utilized for new health-care services and facilities. From June of 1975 until the end of the first half of fiscal year 1984, the agency had received 7,878 applications for projects costing approximately \$8.6 billion. Nineteen percent of this total, or \$1.6 billion in proposed project costs, have been denied, withdrawn, or partially reduced as a result of the certificate of need process. This is an indicator of the need for the process since a significant portion of the costs of

health-care facilities and services are borne either directly or indirectly by the public through tax-supported reimbursement systems such as medicare and medicaid.

In light of the above considerations, the Sunset Commission determined that the process should be continued, but in a modified fashion as it currently places an unnecessary burden on aspects of the health-care delivery system which have minimal impact on overall costs. Many of the proposed modifications are aimed at the development of a regulatory process that focuses on those projects which will have a major impact on the cost of health care in Texas. Although these changes will place the state out of compliance with federal requirements, provisions are added which will prevent any loss of federal funding to the state or health-care facilities in the state. These and other changes are described in the following outline.

**Sunset Commission Recommendations for the  
TEXAS HEALTH FACILITIES COMMISSION**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be amended to more accurately reflect the responsibilities of the chair as executive director of the agency.**

The administration of agency funds and the determination of personnel policies are usually considered managerial in nature and, therefore, the duty of an executive director. Statutorily these are the responsibilities of the three commissioners at the Texas Health Facilities Commission, but are actually handled by the chair who is also the executive director. This is an appropriate delineation of responsibilities and the statute should be amended to reflect this.

- 2. The statute should specify when the terms of the chair and vice-chair of the commission shall begin.**

The statute mandates the governor to biennially designate a chair and vice-chair, but does not specify when their terms should begin. To facilitate the transition between incoming and outgoing chairs and vice-chairs, the statute should be amended to require that the terms begin on September 1 of odd numbered years.

- 3. The statute should be amended to provide for an acting chair in the absence of the chair and vice-chair.**

The statute authorizes the vice-chair to assume the chair's duties in that person's absence, but makes no provision for these responsibilities when both are absent. To ensure the efficient ongoing operations of the agency at those times, these duties should be delegated to the third member of the commission.

**Overall Administration**

- 4. The statute should be amended to change the maximum application fee to one percent of the total project cost or \$15,000, whichever is less.**

In recent years, the general approach of the legislature, regarding the funding of the commission, has been to authorize the collection of application fees which have offset the operating costs of the agency. This has involved a maximum fee of \$7,500 or two percent of the total project cost, whichever is less. However, under the proposed changes to the regulatory process, this fee structure will not generate enough revenue to allow the agency to return to general revenue an amount equal to their annual appropriation. To continue the current approach, the statute should be amended to allow for a maximum application fee of one percent of the project cost or \$15,000, whichever is less.

5. **The statute should be amended to authorize the commission to charge protestants a fee.**

When an application for a certificate of need is contested, a hearing is required. This results in increased costs for the agency in terms of both staff time and paper processing. To help defray these costs, parties protesting an application should be charged a reasonable fee.

6. **The statute should be amended by adding a post-employment restriction on the commissioners and certain employees of the Texas Health Facilities Commission that is similar to the restriction in the Public Utility Regulatory Act.**

The Public Utility Commission statute prohibits the commissioners and certain employees from obtaining employment with a public utility which was in the scope of the commissioner's or employee's official responsibility while at PUC. The restriction covers the two years following a commissioner's term of office and one year following the employment of a staff person. Applying this type of restriction to the Health Facilities Commission would prevent or dissuade the commissioners and staff from being influenced in their decisions by promises of future employment in the health-care industry.

7. **The statute should be amended to more accurately reflect the relationship between the commission and the Texas Department of Health.**

The link between health planning and the regulation of the development of health-care facilities and services requires coordination between the Texas Health Facilities Commission and the Texas Department of Health. However, since the commission has always functioned independently, the current statutory administrative attachment between the two agencies should be deleted.

#### Evaluation of Programs

8. **The statute should be amended to increase the expenditure minimum to \$2 million per project. This threshold should be annually adjusted for inflation according to the Consumer Price Index, but shall not be less than \$2 million.**

The current statute provides for an expenditure minimum of \$600,000 based on the federal requirement. This level of regulation is too restrictive and results in the review of projects that have only limited impact on health-care costs. A \$2 million threshold reduces the regulatory burden on the industry while allowing the state to maintain some control over the development of health-care services and facilities in Texas.

9. **The statute should be amended to limit the requirements for a certificate of need to those proposed projects that will obligate a capital expenditure in excess of \$2 million for any of the following:**
  - a. **the development of a new health-care facility;**
  - b. **the expansion of an existing health-care facility;**

- c. **the addition or termination of a service in a health-care facility; and**
- d. **a change in the bed capacity of a health-care facility.**

The current requirements for a certificate of need are based on federal law. In Texas, this type of regulation seems to be excessive. The proposed change in coverage would require review of those projects most likely to have a significant impact on health-care costs.

**10. The statute should be amended to eliminate the review of inpatient hospices and all outpatient services and facilities.**

A major goal of the certificate of need process is cost containment. One of the ways this can be done is by encouraging the development of less costly, alternative ways of providing health care. Therefore, to ease entry of these types of services into the marketplace, it is recommended that inpatient hospices and all outpatient services and facilities be exempt from the requirements of the certificate of need process.

**11. The statute should be amended to eliminate review of the following:**

- a. **equipment acquisitions;**
- b. **all projects not directly affecting patient care;**
- c. **acquisitions of existing health-care facilities; and**
- d. **cost overruns or gross square footage overruns of ten percent or less in approved projects.**

The current certificate of need process is based on federal requirements which place a heavy burden on persons interested in developing health-care services or facilities. In Texas, a more appropriate form of regulation would be one that focused on those projects having the most significant impact on health-care costs. To achieve this, it is recommended that acquisitions of equipment and existing facilities, non-medical capital expenditures, and minimal cost or square footage overruns in approved projects be eliminated from the review process.

**12. The statute should be amended to exempt from review all projects approved by the Texas legislature or authorized by general obligation bonds.**

A project of this type has been the subject of one of two forms of intense scrutiny. The "need" has been determined and approved by receiving funding through the state legislative appropriations process or by obtaining local voter approval for the issuance of bonds. To require the Texas Health Facilities Commission to conduct a second review of the need for the project is an unnecessary duplication of effort. Therefore, these projects should be specifically exempted from review.

- 13. The statute should be amended to require the Texas Health Facilities Commission to grant or deny an uncontested application for a certificate of need within 45 days of the date of the publication of public notice.**

Currently the hearing is waived for 99 percent of the uncontested certificate of need applications. When this occurs less staff time is needed to develop a recommendation for the commission. Any delay in this process can result in unnecessary costs to the applicant. To ensure timely decisions, the commission should be required to develop a system of expedited review for unopposed applications.

- 14. The statute should be amended to prohibit the commission from becoming a party to any application.**

Although the commission has rarely exercised its authority to participate as a party, this action could increase the time needed for the review and the costs to the applicant. To ensure this does not occur, the commission should be prohibited from involvement as a party in any application for a certificate of need.

- 15. The statute should be amended to prohibit the commission from requiring an applicant to (a) submit architectural drawings and (b) establish that a project can be adequately staffed when completed.**

The Department of Health's licensing process includes a determination that a health-care facility meets fire and life safety code requirements and is adequately staffed. If a facility does not meet these standards, it will not be licensed and can not be operated. Therefore, it is unnecessary for these factors to be considered by the Health Facilities Commission during the certificate of need process.

- 16. The statute should be amended to place the burden of proof on the applicant until a prima facie case is established, then the burden of proof would shift to the protestant(s).**

There has been much concern over the length of time required for the commission to make a decision on a certificate of need application. In protested cases, this is often the result of the volume of information presented by the applicant and the parties. Developing a system in which the submission of an application in the form required by the commission establishes a prima facie case should reduce the volume of information and number of witnesses necessary for an applicant to show that the need for a service or facility exists. With the subsequent shift of the burden of proof to the protestant(s), it will be necessary for these parties to convince the hearing officers and, ultimately, the commission that a need does not exist. The difficulty in doing this may eliminate protests that are based on protection of the existing market rather than consideration of the community's needs.

- 17. The statute should be amended to provide a "safety net" provision which would authorize the governor to direct the commission to comply with federal laws and regulations if federal funds were jeopardized.**

The intent of the changes to the Texas Health Facilities Commission is to provide a less burdensome regulatory process that focuses on the needs of the state rather than the regulations of the federal government. To achieve this end, the state will have to go out of compliance with the federal requirements regarding certificate of need and Section 1122 of the Social Security Act. The penalty for non-compliance with the federal certificate of need law is the withholding of federal Public Health Extramural Awards which totaled approximately \$250.8 million in Texas in fiscal year 1983. Currently, these sanctions are not being applied, but they could be in the future.

The 1983 amendment to Section 1122 of the Social Security Act requires states to have a capital expenditure review program in place by October 1, 1986, unless Congress acts before then to include capital-related costs in a prospective reimbursement system. Failure to do so will mean hospitals will not be eligible for medicare reimbursement of their capital expenditures.

By including a safety net provision in the statute, the state and health-care providers in the state will be assured that there will be no loss of federal funding as a result of the proposed statutory changes.

**18. The statute should authorize the commission to establish a technical advisory committee.**

The regulation of the development of health-care services and facilities involves many complex issues. The commission's staffing pattern does not provide enough positions to obtain the expertise needed to understand all of these issues. A technical advisory committee appears to be a cost-effective method of obtaining the expertise needed to make more informed decisions on C.O.N. applications. The statute should authorize the commission to establish a technical advisory committee, as needed, composed of experts in the health-care field.

**19. The statute should be amended to provide mechanisms to improve the timeliness and usefulness of health facility data for the commission and the Department of Health.**

The statute specifies that the Texas Department of Health shall adopt rules regarding the collection and dissemination of data needed for proper and effective health planning and resource development, after consultation with the Texas Health Facilities Commission. The THFC needs to receive this data in a timely and complete fashion for use in the certificate of need process. However, no formal agreement as to the coordination of the two agencies in this area has been formulated since June of 1978. Therefore, the statute should require the two agencies to develop a memorandum of understanding which clearly defines procedures for the collection of data needed for health planning and regulation. Also, to facilitate the TDH in obtaining the data, the statute should require the THFC to develop rules which prohibit the acceptance of any applications or participation as a party in a hearing unless the applicant or party have filed the proper data required by the TDH.



**STATE COMMISSION FOR THE BLIND**

## Background

The State Commission for the Blind was created in 1931 and is currently active. The commission is composed of nine members who are appointed by the governor and confirmed by the senate. All members must be Texas citizens and two must be "reputable blind persons." Members are appointed for six-year staggered terms with no limit on the number of terms.

Three consultation committees have been established by statute and/or rule to serve in an advisory capacity to the board. The consumer advisory committee currently consisting of 16 members was created in 1976 to ensure interested citizens, and particularly direct beneficiaries of TCB programs, provide input regarding the way the rehabilitation program is administered and structured. The Optometric and Medical Advisory Councils were established to provide technical expertise on matters related to medical services to clients and to maintain a constructive relationship with some of the agency's primary service providers.

In fiscal year 1984, the commission is authorized 423 employees and a budget of \$17 million. Thirty-six percent of the agency's funds are appropriated from general revenue, 60 percent from federal funds and four percent from other sources. The agency has a central office located in Austin and 24 district offices located throughout the state. The agency's organizational structure is depicted in Exhibit 1. There are estimated to be approximately 174,000 blind or severely visually impaired citizens in Texas. Of that number the commission served approximately 35,000 individuals during fiscal year 1983.

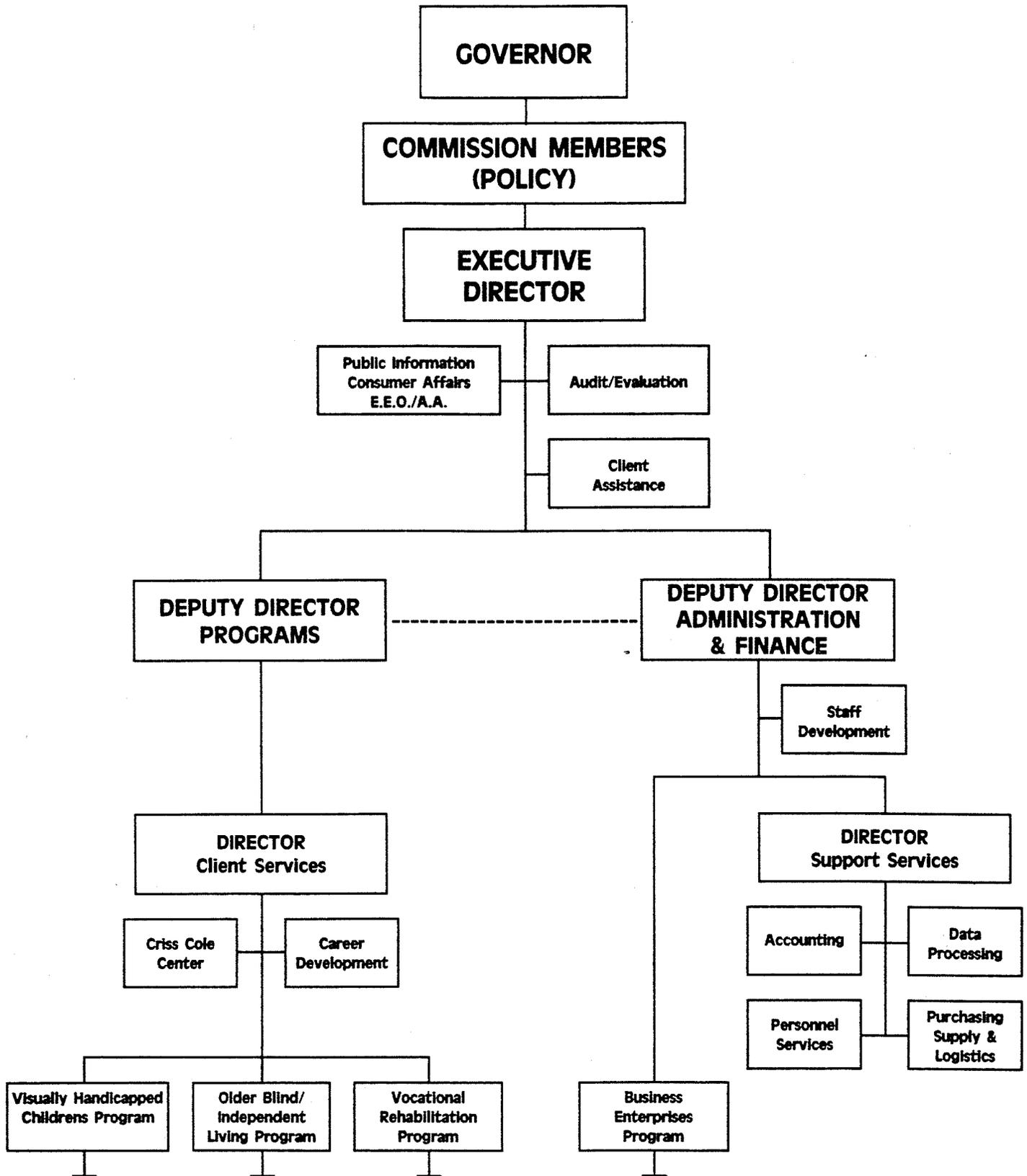
The commission was originally created in 1931 to prevent serious visual loss and to provide assistance to the visually disabled in becoming useful, productive and independent individuals. Prior to that time, state services for the blind and visually disabled citizens of the state were limited primarily to the Texas School for the Blind which offered an educational program for school age blind children. From 1931 to 1944, the commission provided limited services in the area of home teaching, sheltered workshop employment, selective placement, and medical assistance to restore or conserve the sight of both children and adults.

In 1944, the commission's responsibilities were broadened significantly when the agency was authorized to administer the vocational rehabilitation program for the blind, previously administered by the State Department of Education, now known as the Texas Education Agency. This program was made possible by the passage of federal legislation which provided federal matching funds to states instituting such a program.

The authority of the commission was again broadened in the sixties with the passage of several bills by the legislature. Services of the commission were expanded to include: serving persons with progressive visual conditions which could constitute a substantial vocational handicap, establishing vending stands in state-owned and operated buildings and properties; and certifying clients of the commission as meeting requirements for exemption from tuition and fees in state-supported institutions of higher education. During this time, the Commission for the Blind was designated as the single state agency with primary responsibility for providing services to visually handicapped persons while the Texas Rehabilitation Commission was created to carry out vocational rehabilitation activities previously performed by the Texas Education Agency.

Exhibit 1  
**TEXAS STATE COMMISSION FOR THE BLIND  
 ORGANIZATIONAL AND FUNCTIONAL CHART**

JULY 1984



Abilene · Amarillo · Austin · Beaumont · Bryan · Corpus Christi · Dallas · El Paso · Fort Worth · Galveston  
 Harlingen · Houston · Laredo · Lubbock · Lufkin · Odessa · Pasadena · San Angelo · San Antonio · Texarkana · Tyler  
 Victoria · Waco · Wichita Falls

Currently, the majority of the commission's activities are associated with programs which are approved for federal funding under the Rehabilitation Act of 1973 (Title I), and the Randolph Sheppard Act, C.F.R. (Title 45). The funds are allocated to the commission by the U.S. Department of Education. Federally funded programs administered by the commission include the vocational rehabilitation program, the business enterprise program and the sunrise program, a program for individuals who are both blind and mentally retarded. Major program areas funded primarily by general revenue funds include the visually handicapped children's program and services to older blind persons. The commission also shares responsibility with the state library for administering the talking book program. The objectives of these programs and the activities established to carry them out are summarized below.

Vocational Rehabilitation. The major objective of the vocational rehabilitation program is to assist blind and visually impaired adults in obtaining and/or maintaining gainful employment. Eighty percent of program costs are funded by federal dollars and the remaining twenty percent is paid from general revenue funds. During fiscal year 1983, the agency spent approximately eight million dollars in federal funds, one million dollars in state funds, and \$38,000 from other sources to carry out functions under the vocational rehabilitation program. Of that amount, the agency reports approximately one million dollars was spent in administrative costs and eight million dollars in service delivery. As a condition to receipt of federal funds under Title I of the Rehabilitation Act, the agency is required to administer the program in accordance with the state plan, the federal act, and federal regulations, policies, and procedures.

To be eligible for services, an individual's blindness or visual impairment must constitute a substantial handicap to employment and there must be a reasonable expectation that services provided will benefit the individual in terms of employability. The primary purpose of the program is to make clients job ready, either through the prevention of serious visual loss and/or vocational training, and to find suitable employment for them. Program staff are primarily responsible for ensuring that applicants meet federal eligibility requirements, determining what services are needed, purchasing these services, counseling clients and their families, finding an appropriate job placement and following up to ensure a smooth transition to the workplace.

The process begins with contact with one of the agency's 52 vocational rehabilitation counselors, located throughout the state in 24 district offices. The agency receives referrals from several sources including ophthalmologists, optometrists, local support organizations such as Lions Clubs, and potential clients or their families. Upon referral counselors are required by federal regulation to make the following determinations: 1) whether an individual is eligible for services based on medical and diagnostic information including an eye examination, a general physical, and a psychological evaluation; 2) whether the client, based on the family's income level and resources can pay for some portion of the costs of rehabilitation; and 3) whether the client is eligible for services or benefits available through other programs. Cases which result in a diagnosis of physical or mental handicap, but not a visual disorder, are referred to the Texas Rehabilitation Commission. Legally blind applicants with mental retardation are referred to the agency's Sunrise Program.

The agency has established a policy in accordance with federal guidelines concerning priority for selection of services which ensures that the most severely

handicapped persons receive services during periods of limited funding. The order of priority is: permanently, legally or totally blind clients, clients in imminent danger of permanent blindness; and public safety officers whose visually handicapping condition was sustained in the line of duty. As a result of these priorities the proportion of severely handicapped individuals served by the agency has risen from 49 percent to 55 percent between 1978 and 1983.

In determining eligibility, a diagnostic study must be made to evaluate whether there is both a substantial handicap to employment and rehabilitation potential. The counselor is responsible for obtaining whatever medical and psychological data are necessary to thoroughly appraise the disability. In addition to results of a general physical examination required in every case, needed diagnostic information may include reports of medical specialist examinations, and psychological or vocational testing. When existing data from past examinations is insufficient, the counselor is authorized to purchase needed diagnostic services. Based on review of all pertinent information obtained, the counselor makes the determination of eligibility. Commission policy requires that the factors considered in establishing eligibility must be fully documented in the case record. If an applicant is found ineligible, the counselor must notify the individual in writing stating the reasons for the decision, and informing the applicant of agency appeal procedures. In fiscal year 1983, of 4,736 individuals who applied for VR services, 2,153 were determined eligible for the program. Of 2,583 applicants found ineligible, less than 25 appealed that determination.

Once eligibility for services is certified, the VR counselor develops a program plan for the client to determine the nature and scope of services. In order to provide services which are tailor-made to the individual, the VR counselor develops, with the client, an individual written rehabilitation program (IWRP) which specifies the means and the time frames for achieving specific steps towards the goal. The IWRP satisfies the federal requirement for a written record of the rehabilitation program, facilitates communication between the client and the counselor, ensures that the rights of the clients are protected, and measures the progress of the client in achieving the long range goal. The agency indicates that clients are encouraged to actively participate in developing their IWRP and that they are routinely informed of procedures to appeal any decision concerning their rehabilitation plan if they are dissatisfied.

In developing the IWRP, the counselor also identifies who will pay for planned services. In some cases the client may be required to participate in the cost of services. Although agency regulations provide that economic need is not a requirement for eligibility for rehabilitation services, economic need is considered in determining the portion of service costs, if any, to be paid by the client. Where the client's income or liquid assets exceed monthly "basic living requirements" established by the commission, the client must participate in the costs of services. Program regulations also require that the agency consider any "similar benefits" or financial assistance available to the client under any other program to meet, in whole or in part, the cost of any services outlined in the IWRP. The counselor is responsible for encouraging and assisting VR clients to seek other resources to which they are entitled under such programs as medicare and medicaid, state and county hospitals, private health insurance, workmen's compensation or veterans benefits, and college loans and scholarships. Exhibit 2 provides a more complete listing of types of similar benefits considered. The counselor must fully consider such alternative funding sources and the client's ability to pay prior to expending commission funds to purchase client services.

**Exhibit 2**

**SIMILAR BENEFIT PROGRAMS AND OTHER RESOURCES**

<b>Administering Agency</b>	<b>Program</b>	<b>Primary Services</b>	<b>Eligibility Criteria</b>	<b>Primary Funding</b>
<b>A. FEDERAL</b>				
Department of Education	Student Financial Aid/(Basic Education Opportunity Grant BEOG)	<ul style="list-style-type: none"> <li>* Financial aid in form of yearly grant</li> </ul>	<ul style="list-style-type: none"> <li>* Undergraduate student</li> <li>* Attend eligible program at eligible institution at least half-time</li> </ul>	FEDERAL
	Supplemental Educational Opportunity Grant (SEOG)	<ul style="list-style-type: none"> <li>* Financial aid in form of grant</li> </ul>	<ul style="list-style-type: none"> <li>* Vocational or undergraduate students of exceptional financial need</li> </ul>	FEDERAL
Public Housing Administration (PHA)	Housing Assistance Program - Section 8	<ul style="list-style-type: none"> <li>* Rent subsidy</li> </ul>	<ul style="list-style-type: none"> <li>* Low income families and elderly individuals</li> </ul>	FEDERAL
Veteran's Administration Office	Veteran's Benefits	<ul style="list-style-type: none"> <li>* Hospitalization and medical care</li> <li>* Educational Assistance</li> <li>* Vocational rehabilitation</li> <li>* Pensions and Compensation</li> <li>* Housing Loans</li> </ul>	<ul style="list-style-type: none"> <li>* Former member of armed services</li> <li>* Discharge must be other than dishonorable</li> </ul>	<p>FEDERAL</p> <p>* Also Administered by: Local Veterans County; any Texas veterans affairs field office</p>
Department of Health and Human Services	Medicare	<ul style="list-style-type: none"> <li>* Health insurance program consisting of two types of coverage:                             <ul style="list-style-type: none"> <li>A. Hospitalization</li> <li>B. Medical</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>* Most persons age 65 or over</li> <li>* Disabled persons who have been entitled to SSDI benefits for 24 consecutive months</li> <li>* Persons requiring kidney transplants or dialysis</li> </ul>	* FEDERAL (Title XVIII of Social Security Act)
	SSI (Supplemental Security Income)	<ul style="list-style-type: none"> <li>* Financial aid in form of monthly checks</li> </ul>	<ul style="list-style-type: none"> <li>* Aged (over 65), blind, or disabled</li> <li>* Meet income guidelines</li> </ul>	FEDERAL

**Exhibit 2**  
**SIMILAR BENEFIT PROGRAMS AND OTHER RESOURCES**  
(Cont.)

Administering Agency	Program	Primary Services	Eligibility Criteria	Primary Funding
Department of Health and Human Services (cont.)	SSDI (Social Security Disability Insurance)	* Financial aid in form of monthly checks	* Technical eligibility (proof of age, work history, proof of relationship) * Disability determination	FEDERAL
<b>B. STATE</b>				
Department of Human Resources (DHR)	AFDC (Aid to families with dependent children)	* Financial aid in form of monthly checks	* Eligible children deprived of parental support * Families with children who lack support of parent	* STATE * FEDERAL (Title IV -A of Social Security Act) * AFDC recipients automatically eligible for Medicaid payments, WIN, and job training through CETA. Children under 21 eligible for EPSDT program
	Food Stamps	* Food stamps to be used at approved stores to purchase <u>food</u> items	* Depends on income of household (after deductions) in conjunction with size of house-hold	* STATE * Federal (USDA)
	Medicaid	Reimbursement for: * Medical assistance * Nursing Home Care	* Individuals receiving AFDC payments * Children in an approved foster care plan * SSI recipients * Individuals residing in Title XIX approved facilities	* STATE * FEDERAL (Title XIX of Social Security Act)

**Exhibit 2**  
**SIMILAR BENEFIT PROGRAMS AND OTHER RESOURCES**  
(Cont.)

Administering Agency	Program	Primary Services	Eligibility Criteria	Primary Funding
DHR (cont.)	Title XX Social Services	<ul style="list-style-type: none"> <li>* Community care for aged, blind and disabled</li> <li>* Adult protective services</li> <li>* Child protective services</li> <li>* Family planning services</li> <li>* Day care and foster care</li> </ul>	<ul style="list-style-type: none"> <li>* Some services available <u>without</u> regard to income</li> <li>* Some services available <u>with</u> regard to income</li> </ul>	<ul style="list-style-type: none"> <li>* STATE</li> <li>* FEDERAL ( Title XX of Social Security Act)</li> </ul>
189	WIN (Work Incentive) Program	<ul style="list-style-type: none"> <li>* Job training</li> <li>* Social Services</li> <li>* Day care and child care services</li> </ul>	<ul style="list-style-type: none"> <li>* AFDC recipient</li> </ul>	STATE
Texas Education Agency (TEA)	Special Education Services	<ul style="list-style-type: none"> <li>* Special Education</li> <li>* Related services</li> </ul>	<ul style="list-style-type: none"> <li>* Children with a handicap requiring special provisions</li> <li>* Age range of eligible blind and deaf-blind students is 0-22, inclusive</li> </ul>	<ul style="list-style-type: none"> <li>* LOCAL</li> <li>* STATE</li> <li>* FEDERAL</li> </ul>
Texas Department of Community Affairs (TDCA)	CAA/LPA (Community Action Agency/ Limited Purpose Agency)	Services vary, but may include: <ul style="list-style-type: none"> <li>* Head Start programs</li> <li>* Information and Referral</li> <li>* Transportation</li> <li>* Emergency Food and Medical Services</li> <li>* Legal Services</li> <li>* Community Food and Nutrition/ Food Stamp Outreach</li> </ul>	<ul style="list-style-type: none"> <li>* Economically Disadvantaged</li> </ul>	<ul style="list-style-type: none"> <li>* STATE</li> <li>* LOCAL</li> <li>* FEDERAL</li> </ul>

**Exhibit 2**

**SIMILAR BENEFIT PROGRAMS AND OTHER RESOURCES  
(Cont.)**

<b>Administering Agency</b>	<b>Program</b>	<b>Primary Services</b>	<b>Eligibility Criteria</b>	<b>Primary Funding</b>
Texas Industrial Accident Board	Worker's Compensation	* Compensation and medical care for employees injured on the job	* Workers injured in course of their employment whose employers subscribe to worker's compensation insurance	STATE
Texas Department of Health (TDH)	Crippled Children's Services	* Physical restoration (including Ortho., cancer, hearing)	* Children with physical impairment	STATE
Texas Department of Mental Health and Mental Retardation	Community MH/MR Services	* Counseling * Day Care * Respite Care * Short-term residential treatment * Sheltered Work * Outreach program	* Diagnosed MHMR Individual * Mentally retarded children	* STATE * COUNTY
Texas Employment Commission (TEC)	Unemployment Insurance	* Compensation to workers for portion of wage loss	Worker must be: * Unemployed * Physically able to work * Available * Actively seeking work * Registered for work with TEC office	* STATE * FEDERAL
	CETA (Comprehensive Employment and Training Act) program	* Job Training * Employment Opportunities	* Economically disadvantaged * Unemployed * Underemployed	* LOCAL * STATE * FEDERAL

**Exhibit 2**  
**SIMILAR BENEFIT PROGRAMS AND OTHER RESOURCES**  
 (Cont.)

Administering Agency	Program	Primary Services	Eligibility Criteria	Primary Funding
C. OTHER				
Mutual of Omaha Insurance Company	Champus (Civilian Health and Medical Program of the Uniformed Services)	* Medical Insurance	* Spouse or child of active duty member of uniformed service * Retired member of uniformed service and dependents	FEDERAL
191				
Independent Companies	Insurance	Insurance	* Medical Insurance	* Vary widely among companies
				* PRIVATE

A number of services can be provided by the commission in the course of a rehabilitation program. In addition to services routinely provided such as the evaluation of rehabilitation potential and counseling, guidance and referral, the agency also provides a number of other services. The most commonly provided services include: physical restoration services such as medical treatment, surgery and hospitalization; assistive devices such as glasses, optacons, and braille writers; and vocational training in a trade, business school, college, rehabilitation center or on-the-job situations. A detailed explanation of the type of services available and the funds expended in 1983 are shown in Exhibit 3.

The method of selecting service providers varies depending on the type of service being purchased. For example, in purchasing medical services, physicians or therapists are selected on the basis of such factors as pre-existing professional-client relationship, proximity to the client, and willingness to accept the limitations of the established maximum payment for the service. Counselors are authorized to pay the medical provider's usual and customary fee not to exceed the commission's maximum affordable payment schedule, MAPS, which establishes the maximum fees the agency will pay for specified medical services.

In addition to arranging and coordinating the provision of medical, training and other services the counselor is responsible for assisting the client throughout the rehabilitation process. The counselor provides counseling and guidance, for example, in making vocational choices, and monitors the provision of services and the client's progress. The frequency of contact is at the discretion of each counselor and varies depending on the complexity of the case, the type of disability, and the client's adjustment. On average, during the rehabilitation process, the agency reports that a VR counselor has contact with clients twice a month. The counselor monitors the provision of services through input from the client and required progress reports from service providers such as medical reports for a client receiving medical treatment or therapy, training progress reports for clients in work-related training in a technical school or rehabilitation facility, semester grades for a client in college or university, or residential living progress reports for a client in a half-way house. In addition, program regulations require joint reviews by the counselor and client of the IWRP and the client's progress toward achieving stated program objectives at least annually. Whenever significant changes occur in the client's vocational objective or the planned services, an amendment to the IWRP is required.

When a client has progressed through the rehabilitation program and is "job-ready," a major responsibility of the counselor is placement of the client. In order to provide this service, counselors are expected to seek out contacts with employers in the community and to be informed of the needs of the local job market. Placement services provided to a client might include informing the client of specific job openings, contacting potential employers and investigating suitable job opportunities, registering the client with TEC, and informing prospective employers of the client's job-related abilities and limitations. Once a client is successfully employed in a job consistent with his or her stated vocational objective, the counselor must continue to supervise the case until it is determined the client has adjusted satisfactorily to the job. Program regulations require that a client must have been suitably employed for at least 60 days before a case record may be closed as successfully rehabilitated. In some instances, counselors may provide postemployment services to assist a rehabilitated client to maintain suitable employment. The services to be provided must be planned in writing

**Exhibit 3**

**VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS COMMISSION FOR THE BLIND**

SERVICES	FY 1983		SERVICE DESCRIPTION		
	FUNDS EXPENDED	NO. CLIENTS SERVED	PURPOSE	EXAMPLES	PROVIDERS
1. Evaluation of Rehabilitation Potential	\$ 710,515.88	6004	Determine eligibility and  Determine nature and scope of rehabilitation services for clients	1) General physical examination, 2) eye examination, and 3) Psychological 4) Additional medical examinations to identify secondary handicaps 5) Vocational evaluations to identify client's work tolerance, ability to acquire job skills, and patterns of work behavior	1) Physicians 2) Optometrists or ophthalmologists, and 3) Psychologists 4) Specialists such as Internists and cardiologists 5) Rehabilitation centers such as Lighthouses for the Blind or Criss Cole
2. Counseling and Guidance	\$ 3,492,734.06	9,264 (includes clients for #7 and #13)	On-going service throughout rehabilitation process to assist clients, their families, and employers	1) Referrals to other agencies or community organizations for services; setting vocational goals, vocational adjustment, and 2) Personal problems	TCB vocational rehabilitation counselors, and  Professional counselors and psychologists

Exhibit 3

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS COMMISSION FOR THE BLIND  
(Cont.)

SERVICES	FY 1983		SERVICE DESCRIPTION		
	FUNDS EXPENDED	NO. CLIENTS SERVED	PURPOSE	EXAMPLES	PROVIDERS
3. Physical and Mental Retardation	2,801,526.66	2,142	To enable client to enter or retain employment by eliminating functional limitations	1) Medical services, surgery, 2) diagnosis and treatment of mental or emotional disorders, 3) dental works, 4) prosthetics or other assistive devices, 5) eye glasses, 6) therapy: physical, speech, hearing	1) Private physicians or medical schools, 2) TD-MHMR or psychologists, 3) private dentists or dental schools, 4) private opticals and University of Houston - School of Optometry, 6) specialist such as physical and speech therapist
4. Transportation	72,857.26	362	To assist and ensure client participation in rehabilitation process	Fares or travel costs to use public or private conveyances, and relocation and moving expenses through moving companies	TCB funds cash payments either directly to client or to vendor
5. Services to Family Members	1,226.00	7	To increase the effectiveness of the VR process for the client	1) Counseling and guidance 2) Transportation or expenses for spouse to be with client during medical treatment such as hotel, etc.	1) VR counselor 2) TCB funds cash payments either directly to client or to vendor
6. Interpreter Services	Included in Item 12	Included in Item 12	To assist and ensure participation of a deaf applicant or client	To communicate with medical personnel	Interpreters certified by the Registry of Interpreters

Exhibit 3

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS COMMISSION FOR THE BLIND  
(Cont.)

SERVICES	FY 1983		SERVICE DESCRIPTION		
	FUNDS EXPENDED	NO. CLIENTS SERVED	PURPOSE	EXAMPLES	PROVIDERS
7. Rehabilitation Teaching	1,092,111.34	Included in #2	To evaluate and develop client skills to function independently at home, in the community, and in a vocational setting	Training in: personal management, home management, communication skills (such as braille), use of low vision aids, orientation and mobility, social skills, pre-vocational skills, and utilization of community resources	TCB employs 32 rehabilitation teachers located in district offices throughout the state
8. Orientation and Mobility	146,383.23	392	To ensure the client is able to move about in his environment and safely, efficiently, and independently	Independent travel skills, including the use of long cane, crossing streets, traveling in business districts and residential areas	O&M specialists employed by rehabilitation centers or independent. (TCB considers an individual to be an O&M specialist if they are certified by an organization recognized for this function or has a degree in O&M from an accredited college or university)
9. Readers	171,344.12	248	To make printed material accessible to totally or legally blind clients	Academic or vocational training	Individuals hired by the client for a negotiated fee based on the complexity of the reading material
10. Telecommunications, sensory, and other technological aids and devices	Included in Item 12	Included in Item 12	To provide special devices to assist clients in training, employment, and job opportunities	Devices include any electronic, computer-based, or mechanical equipment such as braille writers, audio reading machines, tape recorders, or closed circuit television reading systems.	Career development unit of TCB

Exhibit 3

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS COMMISSION FOR THE BLIND  
(Cont.)

SERVICES	FY 1983		SERVICE DESCRIPTION		
	FUNDS EXPENDED	NO. CLIENTS SERVED	PURPOSE	EXAMPLES	PROVIDERS
11. Occupational licenses	3.75	1	To increase a client's prospects of successful employment or self-employment	Includes professional licensure such as real estate, state bar, or psychologist; occupational tools and equipment	TCB funds cash payments either directly to the client or to the vendor
Initial stocks and supplies provided in the VR program are included in Item 12. The following expenditures incurred in the BEP program are not included in this report:					
Equipment for new facilities -	\$28,480			Occupational tools and equipment and initial stocks and supplies	
Initial Stocks and Supplies -	\$18,420				
12. Other goods and services	58,803.39	180	To benefit the client in terms of employability	Rental payment for place of business, insurance premiums, union dues, and modifications to buildings to remove architectural barriers	TCB funds cash payments either directly to client or to vendor
13. Job Placement	134,638.95	Including with client total for #2	To prepare a client for work and assist in obtaining suitable employment	Develop client attitudes consistent with those required for a job, and reconciling problems or barriers to a client's employment such as architectural barriers, transportation, or employer attitudes concerning the visually handicapped	TCB - VR counselors

**Exhibit 3**

**VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS COMMISSION FOR THE BLIND  
(Cont.)**

SERVICES	FY 1983		SERVICE DESCRIPTION		
	FUNDS EXPENDED	NO. CLIENTS SERVED	PURPOSE	EXAMPLES	PROVIDERS
14. Maintenance	180,192.49	477	A supportive service to cover cost of incidental needs while in training	Food, shelter, clothing, medication	TCB funds cash payments either directly to client or to vendor
15. Vocational training	533,415.97	495	To develop a client's job skills and make the client job-ready	<ol style="list-style-type: none"> <li>1) Prevocational training to provide background knowledge or skills prior to receiving other training</li> <li>2) Vocational training to provide instruction in performing tasks required by an occupation</li> <li>3) On-the-job to provide specific job skills and knowledge of a work-setting</li> <li>4) Business school training for technical or vocational skills</li> <li>5) Correspondence training is permitted when specific skills training is not available by other means, and</li> <li>6) Academic training to attain a college degree required for entry level employment</li> </ol>	<ol style="list-style-type: none"> <li>4) Technical or vocational schools, both private and public</li> <li>5) Recognized educational institutions</li> <li>6) Clients are exempted from tuition in state supported colleges and universities</li> </ol>

Exhibit 3

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS COMMISSION FOR THE BLIND  
(Cont.)

SERVICES	FY 1983		SERVICE DESCRIPTION		
	FUNDS EXPENDED	NO. CLIENTS SERVED	PURPOSE	EXAMPLES	PROVIDERS
16. Post employment	Our data base is not segregated in this manner. Post employment transactions are coded, by the type of expense incurred.		For 60 days after job placement, a client is observed to ensure adjustment to job environment and job retention	If problems arise, client may receive additional training or equipment modification to maintain employment	TCB VR counselors
TOTAL	<u>\$9,395,753.00</u>				

through an amendment to the IWRP and the need for the services must be fully documented in the case record.

In most cases, VR services are continued until a client is successfully rehabilitated or a determination is made that the vocational rehabilitation goal cannot be reached. Program regulations require that certain procedures must be followed in order to terminate services including consultation with the client regarding the decision, adequate documentation of the rationale for the decision, written notice informing the client of agency appeal procedures, and at least one review of the decision at the end of a year.

To assist the counselor's employment placement efforts and expand the scope of employment opportunities to clients, the agency created a career development unit in 1980. Staff from this unit meet with top administrators of private industry and government agencies; disseminate vocational occupational information to agency staff; train staff in the placement of agency clients; participate in local, state and national meetings to show potential employers the type of technology available to clients and the jobs being done by the blind and visually impaired; and provide expertise on using technological aids to adapt jobs to the agency's clients.

The agency reports that the average time in rehabilitation is two years and the average cost per rehabilitation is \$2,530. Of the 9,342 blind and visually impaired clients served by the VR program in fiscal year 1983, 1,867 clients completed the vocational rehabilitation process with 286 blind and 449 visually impaired being assisted in finding competitive employment. Of that number, 228 went to work in jobs which paid \$10,000 or more. Another 107 severely handicapped clients went to work in sheltered workshop settings; 849 were trained as non-wage earners or homemakers; and 186 were assisted to become self-employed. Since most clients when they entered the program were either low wage earners (14 percent) or unemployed (78 percent) and receiving tax supported benefits, the agency estimates that \$2.46 will be returned to the taxpayer for each VR dollar spent.

While the vocational rehabilitation program of the agency is responsible for developing an appropriate individualized program of VR services and job placement of clients, many of the vocational evaluations and training services are provided by a network of facilities including rehabilitation centers and lighthouses or local associations for the blind.

A rehabilitation center provides a broad range of services to clients referred by VR counselors including medical and functional evaluations and instruction in travel skills and home and personal management skills. These services, designed to assist the individual in the development of basic dependent living skills in order to compensate for a client's visual loss, are generally a prerequisite to further job or academic training. Since clients live at the center for as long as 90 days the training tends to be more intensive and comprehensive than that available through home visits by the commission's vocational teachers. There is currently one center in Texas which offers this wide range of services to the visually disabled: the Criss Cole Rehabilitation Center which is located in Austin and operated by the Commission for the Blind. During fiscal year 1983, 389 clients and 262 professional staff were served by the Center training program. The center's operating costs for fiscal year 1983 totalled approximately \$2.2 million dollars in state and federal funds, which includes building costs associated with the sunrise program, diagnostic

and evaluation unit, the residential facilities, and other programs housed at the center. This provided rehabilitative services at \$5,822 per client.

The agency also provides financial support to private, non-profit facilities such as lighthouses or associations for the blind by making available federal grant funds for improvement or expansion of programs and facilities and through the purchase of services. The Rehabilitation Act of 1973 authorizes the agency to fund three types of grants with federal funds: 1) establishment grants to improve and expand services to the severely disabled by funding the acquisition, construction or renovation of physical facilities, the employment of staff or the purchase of equipment; 2) innovation or expansion grants to expand special service projects to address unusual or difficult problems in the rehabilitation of the handicapped; and 3) facility improvement grants to improve services and employment opportunities for the handicapped. All of these grants require a 10 to 20 percent match from local funds. Between 1980 and 1983, the commission awarded \$1.5 million--in establishment grants to 11 facilities and \$148,000 in innovation and expansion grants to one facility. No funds were awarded for facility improvement grants. As a condition of the grants the facilities must fulfill certain obligations which include reporting requirements concerning the number of clients served, the kinds of services rendered and the cost of services. The agency also requires each grantee to submit an independent financial audit annually. The agency performs their own financial audit only when there is a question or concern identified in the grantees independent audit or other information available to the commission.

The agency is also required by federal law to establish standards for facilities providing services to clients and each facility must be certified by the agency before services will be purchased. There are currently 11 certified facilities operating in Texas. The agency purchased more than \$655,828 in services from these facilities in fiscal year 1983. Services generally provided by these organizations to the commission's VR clients include training in travel skills, vocational evaluations, on-the-job training and sheltered employment. Certifications must be renewed annually. Until 1980, the agency had a special staff assigned to perform on-site evaluations of each facility for certification. As a result of an agency reorganization in 1980, responsibility for certifying these facilities was given to the agency's program evaluation and internal audit unit.

Business Enterprise Program. The Commission for the Blind was designated in 1936 as the state agency to administer the business enterprises program (BEP) as required by the Randolph-Sheppard Act. The program provides employment opportunities for qualified blind persons to manage food services, automated vending locations, and other BEP selected businesses on public and private properties throughout the state. In 1983 there were 133 facilities. BEP offers a specialized type of vocational training to promote financial independence and remove clients from public assistance. Towards these goals, the program has two primary functions: training and licensing of vendors and establishment of vending facilities throughout the state.

To be eligible for the program, an individual must be a client in the VR program. In order to qualify as a BEP trainee, a client must be referred by a VR counselor and undergo a series of entrance requirements which include testing, a pre-entry work evaluation and approval by the BEP regional supervisor and a screening committee. Once a client has been accepted as a trainee, he is scheduled for classroom training at the agency's Criss Cole Rehabilitation Center in Austin for a period of one month followed by on-the-job training with a licensed

vendor for a two-month period. Clients successfully completing the training program receive a training certificate and a BEP license issued by the agency.

Upon licensing, a client is then eligible to be assigned to a facility. If a newly licensed vendor is not assigned to operate a facility within 12 months of receiving his license, the license is revoked. The license may be reinstated if the vendor takes additional training. In fiscal year 1983, the program trained 20 individuals, of which approximately 80 percent received their license. Generally all newly licensed vendors are assigned a facility within a one-year period. In 1983 the average statewide annual net income for vendor facilities was \$24,674.

The agency is responsible for assisting the vendor in obtaining a sales tax permit, a tobacco permit and insurance. In addition, the agency provides each BEP facility with fixtures and equipment necessary to reasonably assure successful operation by the vendor and an initial stock of merchandise and cash. The commission retains ownership of all equipment and fixtures and replaces any as necessary. After the original stock of merchandise has been provided by the agency, the vendor assumes responsibility to purchase and maintain future inventories. The agency also retains the authority to determine prices charged for products sold through a BEP facility.

Once a vendor is in operation, the business supervisor for that region is required to make on-site inspections of the facility to assure operations are in compliance with all laws and regulations. The agency is authorized by federal law to take the necessary disciplinary action to deal with any vendor refusing to comply with the program's rules and regulations. The range of disciplinary actions includes probation and revocation of the license. During fiscal year 1983, approximately eight vendors were placed on probation and one vendor has his license revoked.

Agency staff are assisted in the administration of this program by an elected committee of operators authorized in federal law. The committee is composed of licensed blind vendors elected for two-year terms on the basis of geographic locations and type and size of vending facility. Representatives of this committee provide input on the program to the agency, interview all trainees prior to licensure, make recommendations to the program director concerning facility assignments, and advise the agency on fees charged the vendors.

The agency is authorized in federal law to collect a "set-aside" fee from the net proceeds of each facility to maintain and repair equipment; purchase replacement equipment; provide management services; and for other purposes permissible under federal statute. The fee is set by the agency, with advice from the elected committee of operators, and is approved by the federal Department of Education's Rehabilitation Services Administration. Proceeds from this fee in fiscal year 1983 totalled \$378,681 or 36 percent of the program's costs. The remaining costs were shared in the amounts of \$402,100 from Section 110 federal funds and \$256,759 in vending machine income from federal properties.

In addition to licensing vendors, the business enterprises program is also responsible for making a study of new facility locations to determine if the facility will be economically feasible. Under federal and state law, priority must be given to blind persons licensed through this program when awarding contracts to operate vending facilities on federal or state property. The agency planning to acquire a building is required to notify the commission by registered or certified mail 60 days

prior to acquisition to afford the commission the opportunity to determine whether the building includes a satisfactory site or sites for a vending facility. All new facilities surveyed must have a minimum net profit potential equal to or greater than one-half of the average net income of the total number of vendors within the state in order to be considered as a possible facility. In fiscal year 1983, 16 facilities were surveyed and of those, four were established. Since the agency has adopted a policy of replacing less profitable locations with more profitable locations the number of vendors and sites has declined. In the last two years, the number of facilities has been reduced from 149 to 129. During that period the agency opened or accepted 16 facilities and closed 36 facilities.

Sunrise Program. The Sunrise Program was begun in 1969 to provide vocational rehabilitation to people who are both blind and mentally retarded. Originally the program was a cooperative arrangement between the agency and the Texas Department of Mental Health and Mental Retardation (TDMHMR), located on the Austin State School campus and the Richmond State School campus. Costs for program operations were provided by both agencies, with 80 percent of the funding coming from the federal government. TDMHMR sought the assistance of the Commission for the Blind in order to provide rehabilitation teaching services to mentally retarded clients with visual handicaps. In response to a federal mandate to deinstitutionalize severely handicapped individuals, in 1979, the agency withdrew funding and staff from TDMHMR facilities and moved the program to the Criss Cole Rehabilitation Center. This change was a result of the continual threat of federal funding cutbacks and TDMHMR's decision to serve only those clients with an IQ of 55 or below in an institutional setting. Since these clients were too handicapped to benefit from the program, the focus shifted to identifying blind and mentally retarded individuals in communities who could be trained.

Currently, the commission's vocational rehabilitation counselors located in field offices throughout the state are responsible for identifying eligible individuals. They are assisted by the agency's diagnostic and evaluation unit which travels statewide conducting assessments to determine if individuals meet the program's eligibility requirements and would benefit from the training opportunities available through the program. Participants in the program are required to be at least 16 years old; certified as legally or totally blind and mentally retarded; medically stable and potentially employable.

Participants in the program are housed in two residential programs operated by the agency near the Criss Cole Rehabilitation Center where training is provided. The program's capacity, currently set at 23, is limited by the residential space available. Because of this limitation eligible applicants generally wait an average of three months before acceptance into the program. The training can be lengthy, ranging from two months to three years because of the difficulties in training multi-handicapped individuals. The program is funded with \$163,014 in state and \$608,885 federal funds for a total program cost of \$771,899 and the cost per client ranges from approximately \$4,000 to \$132,000. Despite the relatively high cost of training these clients, the agency estimates there is a substantial savings to the state since without this training clients would have to be eventually maintained in institutional settings whose costs currently range from \$74 to \$95 per day.

The Sunrise Program is designed to assist an individual in making the transition from the closely supervised environment of an institution to a more open and independent arrangement. Under the program, the participants learn: travel skills; home and personal management skills including care and maintenance of

clothing and personal effects; use of laundry facilities, kitchen appliances and utensils as well as basic food preparation; skills needed to function in a community setting such as braille writing, money concepts, telling time, and use of the telephone; and activities designed to help the client identify and manage recreational or leisure time. Examples of vocational training offered would include skills necessary to repair small appliances or assembly line production of small parts. The majority of the program's clients are placed in sheltered workshops sponsored by Lighthouses for the Blind or Goodwill Industries. A few clients have also been placed in jobs in the private sector, primarily as small parts assemblers. Living arrangements for clients once they have left the program can vary from supervised small groups to more independent arrangements.

Follow-up or post employment services are generally the same as those provided through the VR program since technically the clients remain part of the VR counselor caseloads. The primary difference, due to the nature of their handicapping condition, is that the sunrise staff provide extensive information to the employer and family or housing supervisor concerning the clients capabilities to perform various tasks which affect the client's performance both at work and at home.

Services for the Elderly Blind. Since federal funds are largely limited to individuals with employment potential, the commission's state funded program to serve the elderly blind is designed to fill service gaps created by restrictions on the use of federal funds. Clients of this program are at least 55 years of age and visually impaired or legally or totally blind who will not be seeking employment as a result of rehabilitation services provided by the commission. Services provided by the program are designed to help clients adapt and cope with difficulties caused by their visual impairment or blindness so that they can remain in independent living situations and avoid more costly living arrangements in long-term care facilities.

For a number of years a large part of the state funds appropriated to the commission for elderly blind was designated by a rider in the appropriations bill for use at a residential facility in Kerrville, Texas operated by the Texas Lions League. During the contract period September, 1982 to May, 1983, 62 individuals participated in the program at Kerrville. Client training generally took between four and twelve weeks depending on the needs of the individual. Based on the 1983 utilization rates, the average total cost per client was \$4,500. The program provided by the Lion's League included formal class instruction in learning braille, typing, handwriting adaptation, telling time, distinguishing different types of money, using calculators or an abacus and individualized instruction in independent travel skills, counseling and guidance, physical conditioning, psychological therapy and general medical and ophthalmological care.

In February of 1984, the Lion's League notified the commission that it would not renew its contract for fiscal year 1985. The commission requested an attorney general's opinion on how the funds appropriated for the Lion's Club contract for fiscal year 1985 could be utilized as a result of this change. The attorney general responded that the agency is empowered to contract with other organizations for the provision of rehabilitative services with these funds, and the commission will be entering into contracts with several local light houses, whereby the lighthouses will provide services to older blind individuals.

The remaining funds appropriated for the older blind services supports three independent living teachers located in Harlingen, San Antonio and El Paso. These teachers are the remnant of a cooperative program with the Department of Human Resources (DHR) utilizing federal Title XX funds and a 20 percent state match. With the federal cutbacks in Title XX funds to the state in 1981, DHR made the decision to discontinue the agreement. Since that time the legislature has appropriated an amount equal to the state match in effect at that time for continuation of this program on a smaller scale.

Services provided by the independent living teachers are generally delivered to the client in their own home and include skills training in travelling with a cane and on public transportation, personal grooming, money identification, meal planning and cooking, braille, housekeeping, and shopping. These teachers visit their clients approximately three times a week when training first starts and may only need to visit them once a month towards completion of the training. Training time depends on the needs of the individual and can range from two months to two years. Although this type of training is less intensive than that available in a residential setting, these teachers reach more individuals. State-funded ILR teachers provided services to 414 individuals in fiscal year 1983 for an average total cost per client of \$293.

Visually Handicapped Children's Program. The visually handicapped children's program is a state-funded program which serves individuals from ages 0 to 21 who are not eligible for federally funded vocational rehabilitation services. The program provides restoration services that improve existing vision or prevent blindness; assists children to maximize use of existing vision and to function more independently; and refers and assists families in obtaining services from other organizations.

A study by the Texas Society for the Prevention of Blindness indicates that there are over 27,000 children in Texas between the ages of 0 and 17 who are blind or visually impaired. Of that number, the VHC program served approximately 6,000 children in fiscal year 1983. In addition to state funds which totalled \$1.9 million in fiscal year 1983, the agency also received \$11,158 in donations from individuals or private organizations. During fiscal year 1984, the agency began tracking the dollar amount of services rendered to VHC clients from other sources. As of the end of April, 1984, clients had received \$395,542 in services provided by organizations such as Lions Clubs, Head Start programs, and Crippled Children's program.

Since the prevention of blindness in children can substantially cut down future outlays of public assistance and other governmental benefits over the entire lifetime of an individual, the cost benefits of this program are greater than any other program administered by the agency. The agency estimates that for each dollar spent, the state saves \$3.34 in special education costs and that the federal government will collect at least \$7.00 in additional taxes.

Eligibility for program services requires that: the child or his parents must be living in Texas; the child must be between the ages of 0 and 15 at the time of referral; the child must have visual impairment, and the child must not be eligible for services of the federally funded vocational rehabilitation program. All eligible children and their families are provided counseling, referral, guidance, educational support, and follow-up services. These services are provided by 31 VHC caseworkers located in all of the agency's regional offices. Caseworkers are also

responsible for: receiving referrals; determining eligibility, economic need, and identifying other available benefits; developing the client's individual written service program (IWSP); and ensuring that services in the IWSP are purchased for the client. The agency contracts with medical schools, universities and private individuals for the purchase of such services as: eye examinations, diagnostic evaluations, medical treatment, glasses or other visual aids, and physical therapy. These services are only provided to those children whose families meet the agency's economic need criteria and cannot receive the services from other available benefit programs. (See Exhibit 2).

The average age for children served in the VHC program is five to eight years old. Services can last from one month up to 60 months with contact from a caseworker once every two weeks, depending on the needs of the child and the family. Of the approximately 6,000 children served in fiscal year 1983, the program purchased medical care to prevent blindness, conserve eyesight or correct an eye condition for 1,924 children.

Since fiscal year 1982, the visually handicapped children's program has also employed three rehabilitation teachers in Dallas, Pasadena, and Houston which have a high number of blind persons within the communities. The teachers work with children in their homes on personal adjustment skills such as grooming, eating, and dressing. Rehabilitation teachers provided their specialized services to 106 of those children served in fiscal year 1983.

This population is also served by other agencies including the Texas Education Agency and the Texas Department of Health. However the Commission for the Blind uses its funds to provide services that individuals are not eligible for under TEA and TDH. The special education division of the Texas Education Agency is required by law to provide services necessary to ensure an adequate education for visually impaired children between the ages of 0 and 21 years. Services include the purchase of visual aid equipment, orientation and mobility training for children 3 to 21 years of age, training to bring children up to age appropriate skills levels, and training designed to prepare children for school. TEA provides these services through 30 special education teachers working with the state's school districts and staff trained to work with the visually handicapped located in each regional educational service center. TEA depends on the Commission for the Blind for identification and referral of children in need of their services. The Crippled Children's program, under the Texas Department of Health, is a federally assisted program that also receives state funds. It provides physical restoration services for crippling conditions such as strabismus for income eligible children ages 21 and under, on a statewide basis. The program also arranges and pays for diagnostic services, treatment, hospitalization, therapy, transportation, therapeutic devices, and appropriate follow-up services. The Commission for the Blind began referring clients to the Crippled Children's program for treatment of strabismus in September of fiscal year 1984. This was due largely to the need for additional funding for restoration services. During this time, the Crippled Children's program has paid for 86 surgeries for referred children.

Talking Books Program. The Commission for the Blind currently shares responsibility with the Texas State Library for providing a special library service to individuals who cannot read, hold or turn the pages of conventional print books because of physical impairments. The commission is responsible for the storage, maintenance, and distribution of specially designed portable record players, known as "talking book machines" and cassette tape players. The machines are purchased

by the Library of Congress and shipped to the commission for distribution to eligible individuals. Records and tapes for this equipment as well as large type printed and embossed braille materials are maintained and distributed by the State Library.

Eligibility for these library services includes U.S. citizenship and certification of the handicapping condition by a licensed physician. The Commission for the Blind certifies patrons utilizing the record and cassette players while the State Library certifies all others. Currently, there are 19,770 individuals statewide who have been certified as eligible for services provided by the commission. As of March, 1984 the commission had distributed 27,511 machines to these individuals.

### **Need to Continue Agency**

The need for each of the agency's responsibilities was analyzed, as well as the need to have a separate agency to administer federally-funded programs for the blind. The review concluded that there is a continuing need for the state to carry out current functions for the blind. This conclusion is based on the potential loss of approximately \$15 million dollars in federal funding to the state and the fact that an estimated 9,500 blind Texans would be denied vocational assistance. The need for a separate agency was also analyzed and it was concluded that there would be no significant benefits achieved by transferring the functions currently performed by the Commission for the Blind to another state agency. The review indicated that studies funded by the Rehabilitation Services Administration and the American Foundation for the Blind concluded that the strongest, most cost effective state agencies serving the blind are predominantly "independent" agencies which serve only the blind and visually handicapped. According to these studies, "independent" agencies have been shown to serve a more severely disabled population and to rehabilitate a greater percent of their clients. The federal government currently classifies 27 states as having agencies serving the blind which are either completely independent or organized as a division of a larger department with independent controls over budgets and a separate state plan. Also, Texas has had a separate agency for over 50 years. Lines of communication with this type of client population, never easy to establish or maintain, could be severely damaged by changing the present structure.

In regard to the current operations of the agency, 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. The recommended changes follow.

**Sunset Commission Recommendations for the  
STATE COMMISSION FOR THE BLIND**

**I. CONTINUE THE COMMISSION WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The present consumer advisory committee should be specified in statute.**

A review of the state statutes governing the Texas Department of Mental Health and Mental Retardation, the Department of Human Resources, and the Texas Department on Aging, revealed that these agencies were required by statute to establish advisory committees consisting of primarily service recipients or their families to provide advice on program planning, policies and service delivery. Although the Commission for the Blind does have a consumer advisory committee, it is not required by either state or federal law. Establishing a consumer advisory committee in state statute and requiring the board to adopt rules and regulations concerning size, geographical representation, number of meetings, reporting requirements, and duties and responsibilities will ensure a continued means of public input similar to that required for other health and human service delivery agencies in Texas.

- 2. The agency should adopt rules and regulations which clearly set out the composition, functions and responsibilities for both the Optometric and Medical Advisory Councils. (management improvement - non-statutory)**

During the review, concerns were expressed by a number of optometrists related to the agency's policies regarding utilization of optometrists, ophthalmologists, and the extent optometrists are allowed to provide input into agency policy decisions. While the review indicated that the agency appears to have appropriate procedures in place for determining whether clients should be referred to ophthalmologists, and optometrists, it was determined that the optometric and medical advisory councils would both benefit by adopting written rules and regulations which clearly delineate the composition, purpose and operations of the two committees, improving communications between the agency and some of its primary service providers and ensuring the agency maximizes its use of the available technical expertise.

- 3. The statute should be amended to provide per diem and travel reimbursement rates comparable to those authorized for similar health service agencies for commission and advisory council members.**

Currently, the agency is authorized to reimburse commission members and members of the commission's advisory committees only for actual and necessary expenses. However, board or commission members as well as members of advisory committees of other state agencies surveyed receive a compensatory per diem ranging from \$50 to \$150 per day in addition to travel reimbursement. Amending the statute to permit commission and consumer

advisory committee members to receive a compensatory per diem for attendance at official meetings and reimbursing the travel expenses of advisory committee members at the same rate as for state employees would make the commission's per diem and travel reimbursement policies consistent with those of similar health service agencies.

#### Overall Administration

- 4. The agency's statute should be amended to delete a number of obsolete administrative positions and outdated provisions relating to the executive director.**

The results of the review indicated a number of problems with the statutory language establishing the organizational structure of the commission including: 1) establishment of a large number of administrative positions which are not authorized in the appropriations bill and are obsolete; 2) assigning the director of the vocational rehabilitation program responsibilities which should be assigned to the commission or the executive director; and 3) not providing the executive director with the authority to appoint the deputy directors. Amending the statute to address these problems would eliminate any potential conflicts based on the specific division of authority set up under the current statute.

#### Evaluation of Programs

- 5. The agency should take steps to ensure that the client loan program is fully utilized.** (management improvement - non-statutory)

The 67th Legislature granted the commission the authority to make low interest loans to help visually handicapped individuals to purchase technological devices to assist them in obtaining or holding a job. To fund this activity, the agency has earmarked \$150,000 from an endowment fund with a current balance of more than one million dollars. However, the review indicated the agency has not approved any applications for a loan under this program. Including information on the loan program in the agency's vocational rehabilitation manual and ensuring that all counselors and their supervisors receive adequate information concerning the client loan program guidelines and taking whatever additional steps are necessary to encourage utilization of these funds would improve the services available to the agency's clients.

- 6. The agency should review its controls over similar benefits to ensure that the agency is fully utilizing other resources before spending TCB funds.** (management-improvement - non-statutory)

Federal and state regulations require the agency to fully utilize other resources to which clients are entitled before spending TCB funds to purchase needed medical services. These resources referred to as, "similar benefits", include contributions by the client, private health insurance, medicaid and medicare, workers' compensation, and services offered by other state agencies such as the health department. The review indicated there were inconsistencies in practices and monitoring methods used by the agency's field staff to prevent overpayment by the commission. Since the commis-

sion's expenditures for hospitalization and surgery or medical treatment amounted to over \$2 million, requiring the agency to review controls over similar benefits use and client contributions will maximize the total amount of medical services available to TCB clients.

7. **The agency should discontinue direct involvement in the talking book program, and transfer this function to the Texas State Library and Archives Commission, in accordance with state law.**  
(management improvement - non-statutory)

Article 91.082 of the Human Resources code authorizes the Texas State Library and Archives Commission to establish and operate a central media depository to provide materials and equipment for blind and visually handicapped individuals. Due to space limitations the library ceded responsibility for certification of program eligibility, storage, distribution and repair of tape machines to the blind commission. Since the library now indicates it has the space to accommodate these functions, transferring these responsibilities back to the library will eliminate any unnecessary duplication and reduce the number of state agencies program participants must deal with.

#### Public Participation

8. **The statute should be amended to require the commission to develop and adopt formal policies and procedures in agency rules for the administration of the commission's programs.**

Historically, the agency has operated programs according to policies and procedures which had not been formally adopted as rules in accordance with the Administrative Procedures Act. Adoption of formal rules would ensure compliance with state and federal law, adequate guidance and consistent treatment of clients, and provide increased public participation.



**TEXAS REHABILITATION COMMISSION**

## Background

The Texas Rehabilitation Commission (TRC) was created in 1969 and is currently active. The board consists of six members appointed by the governor with the consent of the senate for overlapping six-year terms. Members must be citizens of the state and must have demonstrated a constructive interest in rehabilitation services. The commission has two advisory committees. The consumer advisory committee, currently consisting of 18 members, was created in 1976 as a means by which interested citizens, and particularly direct beneficiaries of TRC programs, can provide information on the way the rehabilitation program is administered and structured. The medical advisory committee, currently composed of 16 members, was established in 1971 to provide advice on matters related to medical services to rehabilitation clients, including medical fees, and to maintain a constructive relationship with the medical community.

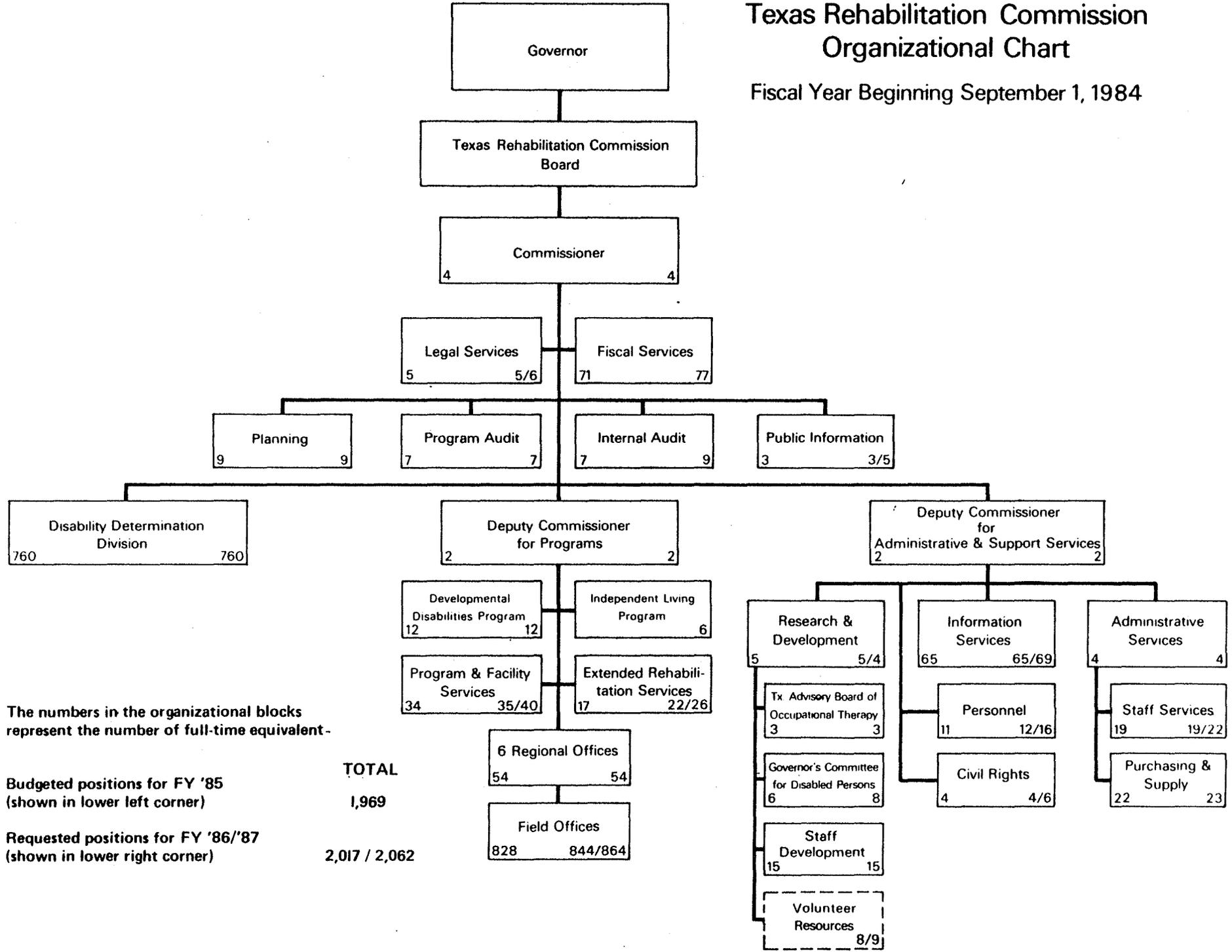
In fiscal year 1984, the agency has a staff of 1,820 and a total budget of approximately \$123.6 million, split between general revenue (23 percent), federal (76 percent), and other funds (1 percent). The agency has its headquarters in Austin and maintains six regional offices in Lubbock, Fort Worth, Austin, Houston, San Antonio and Dallas. The agency's organizational structure is shown in Exhibit 1. Commission programs served over 256,000 disabled individuals in fiscal year 1983, out of a total estimated population of 2.3 million handicapped persons in Texas.

The first vocational rehabilitation program was established in Texas in 1929 to provide services for disabled World War I veterans. It was recognized that by not rehabilitating these individuals, significant human resources would be lost to the state. To provide rehabilitation services, the state created the Vocational Rehabilitation Division in the State Department of Education. Federal legislation provided funds on a matching basis and provided for services to disabled persons through a joint state/federal program. The program was originally designed to provide services to physically handicapped persons, for the purpose of returning them to the workforce. Subsequent revisions in federal legislation and increases in state and federal appropriations changed the focus of the program by adding services to persons with mental, as well as physical disabilities, which would enable them to return to or enter employment. In 1954, the Disability Determination Division, with responsibility for determining the eligibility of persons applying for Social Security disability benefits was created and also placed under what had become the Texas Education Agency. As the scope of rehabilitation and related activities continued to expand, the need for a separate agency was recognized. In 1969 the Vocational Rehabilitation Division and the Disability Determination Division were removed from the Texas Education Agency, and together formed the Texas Rehabilitation Commission. The two programs have little programmatic relationship, except that they both involve determination of disabilities. Currently, major programs administered by the agency include: 1) Vocational Rehabilitation; 2) Disability Determination (Social Security); 3) Extended Rehabilitation Services; 4) Independent Living; and 5) Developmental Disabilities. The objectives of these programs and the activities established to carry them out are summarized below.

Vocational Rehabilitation. The objective of the vocational rehabilitation (VR) program is to provide services to disabled vocationally-handicapped individuals (except those with visual disabilities, who are served by the Commission for the Blind) that will assist them to enter or return to gainful employment. The joint

**Exhibit 1**  
**Texas Rehabilitation Commission**  
**Organizational Chart**

Fiscal Year Beginning September 1, 1984



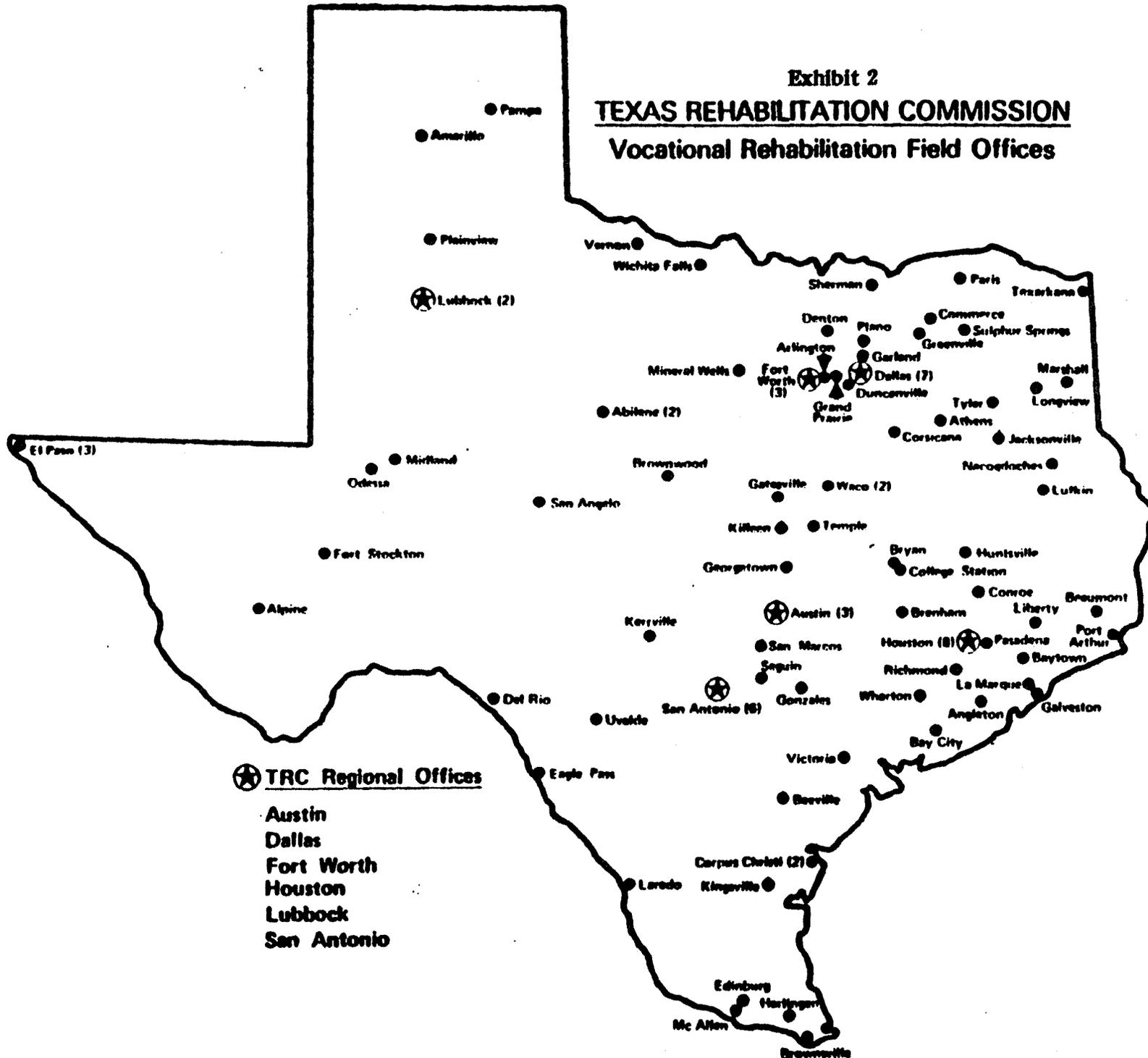
The numbers in the organizational blocks represent the number of full-time equivalent-

Budgeted positions for FY '85  
 (shown in lower left corner)

Requested positions for FY '86/'87  
 (shown in lower right corner)

**TOTAL**  
 1,969  
 2,017 / 2,062

**Exhibit 2**  
**TEXAS REHABILITATION COMMISSION**  
**Vocational Rehabilitation Field Offices**



state/federal program is supported through a combination of state general revenue appropriations and federal funds received from the U.S. Department of Education. Under the federal Rehabilitation Act of 1973, the Education Department is authorized to make grants to states to assist in providing vocational rehabilitation services in accordance with a required state plan. To be eligible to receive federal funding, the state must meet at least a 20 percent matching requirement. In fiscal year 1984, TRC's budget for the VR program included approximately \$42 million in federal funds and \$24 million in state funds.

The VR program is administered through an organizational structure which includes six regional offices in San Antonio, Houston, Lubbock, Fort Worth, Dallas and Austin. More than 340 VR counselors are located in 113 field offices around the state with responsibility for handling cases of eligible clients. The location of VR field offices is shown in Exhibit 2. In meeting the program's primary goal of assisting handicapped persons to enter or return to work, major activities of the VR division include: 1) determining whether a person is eligible for VR services; 2) planning the services a person needs once they are determined eligible; 3) coordinating or purchasing needed medical, training or other services; 4) providing counseling and placement services; and 5) monitoring provision of these services.

Federal and state law require that to be eligible for VR services, an applicant must meet two basic requirements: 1) the person must have a physical or mental disability that results in a substantial handicap to employment; and 2) there must be a reasonable expectation that VR services will result in gainful employment. Persons with a wide variety of disabilities are potentially eligible, including individuals with orthopedic or neurological impairments, such as amputees; mental health disorders, including alcoholism, drug addiction and character disorders; mental retardation; internal medical conditions, such as epilepsy; hearing impairments; and speech and language or learning disabilities. Exhibit 3 indicates the percentage of clients served in fiscal year 1983 by major disability group.

**Exhibit 3**  
**CLIENTS SERVED BY MAJOR DISABILITY GROUP**  
**Fiscal Year 1983**

<u>PRIMARY DISABILITY GROUP</u>	<u>CLIENTS SERVED</u>
Musculoskeletal Impairments (includes spinal cord injuries)	14,620
Deaf and Hearing Impaired	3,110
Mental Illness	13,812
Mental Retardation	2,433
Learning Disability	894
Other Disabilities	<u>11,644</u>
<b>TOTAL</b>	<b><u>46,513</u></b>

The agency has established a policy in accordance with federal guidelines concerning priority for selection of services which ensures that the most severely handicapped persons receive services during periods of limited funding. As a

result, the number of severely handicapped individuals served by the agency (based on clients receiving services at the year's end) has risen from 55 percent to 63 percent between fiscal years 1981 and 1983. The number of severely handicapped persons successfully rehabilitated has risen from 38 percent to 52 percent between fiscal years 1981 and 1983.

The determination of eligibility is made by the VR counselor who receives referrals of potential clients from a number of sources. Most frequently these come from physicians, the applicant's family or friends, MHMR centers and clinics, schools and hospitals. Individuals also frequently apply directly to VR offices for services. The majority of counselors manage generalized caseloads, and receive referrals of persons with many different types of disabilities. However, due to the special communication problems involved, applicants with hearing disabilities are referred to counselors who specialize in handling deaf and hearing-impaired clients. Currently such specialized counselors are located in 20 field offices. Counselors handle caseloads averaging approximately 30 referrals and applicants for services and 80 active clients.

In determining eligibility, a diagnostic study must be made to evaluate whether there is both a substantial handicap to employment and rehabilitation potential. The counselor is responsible for obtaining whatever medical and psychological data are necessary to make these determinations. In addition to results of the general physical examination which is required in every case, a counselor may need diagnostic information which can include past reports of medical specialist examinations, and psychological or vocational testing. When existing data from past examinations is insufficient, the counselor is authorized to purchase needed diagnostic services, and may use the services of VR staff psychologists, located in 10 field offices. Based on review of all pertinent information obtained, the counselor makes the determination of eligibility. TRC policy requires that the factors considered in establishing eligibility must be fully documented in the case record. If an applicant is found ineligible, the counselor must notify the individual in writing stating the reasons for the decision, and informing the applicant of agency appeal procedures. In fiscal year 1983, 41,137 individuals applied for VR services, 21,527 were accepted, and 2,875 were determined ineligible for the program. There were 48 VR client appeals, including appeals of ineligibility determinations, during fiscal year 1983.

When an applicant is found eligible, the counselor is responsible for developing, along with the client, an individualized written rehabilitation program (IWRP). The IWRP, required in every case by federal law, specifies both the client's ultimate vocational objective and the services to be provided to enable the client to achieve that objective, including the estimated duration for each service. In determining the nature and scope of services needed, federal law requires an appraisal, to the extent needed, of such factors as the individual's personality, intelligence level, educational achievement, work experience, personal and social adjustment and work opportunities. Diagnostic evaluation data compiled by the counselor, including medical, psychological and vocational examination results, along with counseling information, form the basis for this type of appraisal and development of a plan of services.

In developing the IWRP, the counselor also identifies who will pay for planned services. In some cases the client may be required to participate in the cost of services. Although agency regulations provide that economic need is not a requirement for eligibility for rehabilitation services, economic need is required to

be considered in determining the portion of service costs, if any, to be paid by the client. Where the client's income or liquid assets exceed monthly "basic living requirements" established by TRC, the client must participate in the cost of services. Program regulations also require that the agency consider any "similar benefits" or financial or other assistance available to the client under any other program to meet, in whole or in part, the cost of any services outlined in the IWRP. The counselor is responsible for encouraging and assisting VR clients to seek other resources to which they are entitled under such programs as Medicare and Medicaid, state and county hospitals, private health insurance, workmen's compensation or veterans benefits, and college loans and scholarships. Exhibit 4 provides a more complete listing of types of similar benefits considered. The counselor must fully consider such alternative funding sources and the client's ability to pay prior to expending TRC funds to purchase client services.

In addition to counseling and placement services, the range of authorized services available to VR clients includes the following: physical and mental restoration services, such as medical treatment, surgery, hospitalization, physical therapy, and provision of assistive devices such as artificial limbs, wheelchairs, and hearing aids; training services, including personal-social and work adjustment training in a rehabilitation facility, vocational training in technical and vocational schools or on-the-job, and academic training in a college or university; maintenance; transportation; occupational tools and equipment; and interpreter services for the deaf. Exhibit 5 provides a listing of authorized VR services. Counseling, guidance, and job placement services are provided directly by the VR counselors. Other services outlined in the IWRP are coordinated or purchased by the counselors from service providers outside the agency. In fiscal year 1983, TRC purchases of client services totalled nearly \$35.5 million. Of that amount, approximately 48 percent was expended for physical and mental restoration services, 26 percent for training, and 26 percent for all other services.

The method of selecting service providers varies depending on the type of service being purchased. For example, in purchasing medical services, physicians or therapists are selected on the basis of such factors as pre-existing professional-client relationship, proximity to the client, and willingness to accept TRC's established maximum payment for the service. Counselors are authorized to pay the medical provider's usual and customary fee not to exceed TRC's maximum affordable payment schedule, MAPS, which establishes the maximum fees the agency will pay for specified medical services. In purchasing training and other services from rehabilitation facilities, including personal-social and work adjustment training, skills training, and supervised living or halfway house services, counselors must use only those rehabilitation facilities "certified" as meeting TRC standards. These standards cover such areas as staff qualifications, client records, safety and accessibility of the facility, client-staff ratio, service planning, and time per week devoted to the service. To be certified, a facility must be surveyed for compliance with TRC standards, generally on an annual basis, by a team consisting of a TRC facility specialist, a VR counselor and his or her supervisor. TRC has established maximum fees that will be paid to these facilities for room, board and supervised living, as well as for certain work-related services based on the certification level of the facility.

In addition to arranging and coordinating the provision of medical, training and other services, the counselor is responsible for assisting the client throughout the rehabilitation process. The counselor provides counseling and guidance, for example, in making vocational choices, and monitors the provision of services and

**Exhibit 4  
SIMILAR BENEFIT PROGRAMS**

Administering Agency	Program	Primary Services	Eligibility Criteria	Primary Funding
<b>A. FEDERAL</b>				
Department of Education	Student Financial Aid/Basic Education Opportunity Grant (BEOG)	* Financial aid in form of yearly grant	* Undergraduate student * Attend eligible program at eligible institution at least half-time	FEDERAL
	Supplemental Educational Opportunity Grant (SEOG)	* Financial aid in form of grant	* Vocational or undergraduate students of exceptional financial need * Attend eligible institution at least half-time	FEDERAL
Veteran's Administration	Veteran's Benefits	* Hospitalization and medical care * Educational assistance * Vocational rehabilitation * Pensions and compensation * Housing loans	* Former member of armed services * Discharge must be other than dishonorable	FEDERAL * Also administered by: local veterans county service officer; any Texas veterans affairs field office
Department of Health and Human Services	Medicare	* Health insurance program consisting of two types of coverage: A. Hospitalization B. Medical	* Most persons age 65 or over * Disabled persons who have been entitled to SSDI benefits for 24 consecutive months * Persons requiring kidney transplants or dialysis	FEDERAL (Title XVIII of Social Security Act)
	SSI (Supplemental Security Income)	* Financial aid in form of monthly checks	* Aged (over 65), blind, or disabled * Meet income guidelines	FEDERAL (Title XVI of Social Security Act)
	SSDI (Social Security Disability Insurance)	* Financial aid in form of monthly checks	* Technical eligibility (proof of age, work history, proof of relationship) * Disability determination	FEDERAL (Title II of Social Security Act)

**Exhibit 4**  
**SIMILAR BENEFIT PROGRAMS**  
(cont.)

Administering Agency	Program	Primary Services	Eligibility Criteria	Primary Funding
Department of Labor	Federal Employees Workers Compensation Longshore and Harbour Workers Act	<ul style="list-style-type: none"> <li>* Medical services</li> <li>* Training services</li> </ul>	<ul style="list-style-type: none"> <li>* Workers injured on the job</li> </ul>	FEDERAL
<b>B. STATE</b>				
Department of Human Resources (DHR)	AFDC (Aid to families with dependent children)	<ul style="list-style-type: none"> <li>* Financial aid in form of monthly checks</li> </ul>	<ul style="list-style-type: none"> <li>* Eligible children deprived of parental support</li> <li>* Families with children who lack support of parent</li> </ul>	STATE FEDERAL (Title IV -A of Social Security Act)
	Food Stamps	<ul style="list-style-type: none"> <li>* Food stamps to be used at approved stores to purchase <u>food</u> items</li> </ul>	<ul style="list-style-type: none"> <li>* Depends on income of household (after deductions) in conjunction with size of household</li> </ul>	STATE FEDERAL (USDA)
	Medicaid	<ul style="list-style-type: none"> <li>Reimbursement for:</li> <li>* Medical assistance</li> <li>* Nursing home care</li> </ul>	<ul style="list-style-type: none"> <li>* Individuals receiving AFDC payments</li> <li>* Children in an approved foster care plan</li> <li>* SSI recipients</li> <li>* Individuals residing in Title XIX approved facilities</li> </ul>	STATE FEDERAL (Title XIX of Social Security Act)
	Title XX Social Services	<ul style="list-style-type: none"> <li>* Community care for aged, blind and disabled</li> <li>* Adult protective services</li> <li>* Child protective services</li> <li>* Family planning services</li> <li>* Day care and foster care</li> </ul>	<ul style="list-style-type: none"> <li>* Some services available <u>without</u> regard to income</li> <li>* Some services available <u>with</u> regard to income</li> </ul>	STATE FEDERAL ( Title XX of Social Security Act)

**Exhibit 4**  
**SIMILAR BENEFIT PROGRAMS**  
**(cont.)**

Administering Agency	Program	Primary Services	Eligibility Criteria	Primary Funding
	WIN (Work Incentive) Program	<ul style="list-style-type: none"> <li>* Job training</li> <li>* Social services</li> <li>* Day care and child care services</li> </ul>	<ul style="list-style-type: none"> <li>* AFDC recipient</li> </ul>	STATE * Also administered by TEC
Texas Education Agency (TEA)	Special Education Services	<ul style="list-style-type: none"> <li>* Special education</li> <li>* Related services</li> </ul>	<ul style="list-style-type: none"> <li>* Children with a handicap requiring special provisions</li> <li>* Age range of eligible blind and deaf-blind students is 0-22, inclusive</li> </ul>	LOCAL STATE FEDERAL
	Adult Basic Education	<ul style="list-style-type: none"> <li>* Adult education</li> </ul>	<ul style="list-style-type: none"> <li>* Age 16</li> <li>* Economically disadvantaged</li> </ul>	STATE LOCAL
Texas Department of Community Affairs (TDCA)	CAA/LPA (Community Action Agency/Limited Purpose Agency)	Services vary, but may include: <ul style="list-style-type: none"> <li>* Head Start programs</li> <li>* Information and referral</li> <li>* Transportation</li> <li>* Emergency food and medical services</li> <li>* Legal services</li> <li>* Community food and nutrition/food stamp/outreach</li> </ul>	<ul style="list-style-type: none"> <li>* Economically Disadvantaged</li> </ul>	STATE LOCAL FEDERAL
	Job Training Partnership Act Programs Operated by Private Industry Councils	<ul style="list-style-type: none"> <li>* Job training</li> <li>* Supportive services</li> </ul>	<ul style="list-style-type: none"> <li>* Economically disadvantaged</li> </ul>	FEDERAL

**Exhibit 4**  
**SIMILAR BENEFIT PROGRAMS**  
(cont.)

Administering Agency	Program	Primary Services	Eligibility Criteria	Primary Funding
Texas Industrial Accident Board	Worker's Compensation	* Compensation and medical care for employees injured on the job	* Workers injured in course of their employment whose employers subscribe to worker's compensation insurance	STATE
Texas Department of Health (TDH)	Crippled Children's Services	* Physical restoration	* Children with physical impairments	STATE
	Chest Hospitals	* Hospitalization	* Patients with T.B. or respiratory disease	STATE
Texas Department of Mental Health and Mental Retardation	Community MH/MR Services	* Counseling * Day care * Respite care * Short-term residential treatment * Sheltered work * Outreach program	* Mentally retarded * Mentally ill	STATE COUNTY
Texas Employment Commission (TEC)	Unemployment Insurance	* Compensation to workers for portion of wage loss	Worker must be: * Unemployed, but previously employed * Physically able to work * Available * Actively seeking work * Registered for work with TEC office	STATE FEDERAL
	Job Placement	* Job Placement	* None	STATE

**Exhibit 4**  
**SIMILAR BENEFIT PROGRAMS**  
(cont.)

Administering Agency	Program	Primary Services	Eligibility Criteria	Primary Funding
University of Texas	U.T.M.B. (John Sealy Hospital)	* Hospitalization * Outpatient services	* Indigent	STATE COUNTY
	M.D. Anderson Hospital	* Hospitalization * Outpatient services	* Suspected cancer	STATE
<hr/>				
<b>C. OTHER</b>				
City/County Hospitals, Hospital Districts	Hospital Services	* Hospitalization and medical care	* Medically indigent who reside within the boundaries of the city and/or county or hospital district in which the hospital is located	CITY COUNTY HOSPITAL DISTRICT
Hospitals	Hill-Burton Act Obligation	* Hospitalization and medical care	* Financial criteria (based on level of total family income)	PUBLIC PRIVATE
Colleges	Scholarships, Grants, Work/Study	* College expenses	* Financial, academic and other criteria depending on the institution	PRIVATE
Mutual of Omaha Insurance Company	Champus (Civilian Health and Medical Program of the Uni- formed Services)	* Medical insurance	* Spouse or child of active duty member of uniformed service  * Retired member of uni- formed service and dependents	FEDERAL
Independent Insurance Companies	Insurance	* Medical Insurance	* Vary widely among companies	PRIVATE

Exhibit 5

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS REHABILITATION COMMISSION

SERVICES	FY 1983		SERVICE DESCRIPTION		
	Funds Expended*	No. Of Clients Served*	Purpose	Examples	Providers
1. Evaluation of rehabilitation potential	\$ 5,004,024	29,462	To determine eligibility and to determine nature and scope of rehabilitation services for clients	<ol style="list-style-type: none"> <li>1) General physical examinations</li> <li>2) Specialist examinations</li> <li>3) Psychological testing</li> <li>4) Vocational evaluations to identify client's work tolerance, ability to acquire job skills, and patterns of work behavior.</li> </ol>	<ol style="list-style-type: none"> <li>1) Physicians</li> <li>2) Specialists such as internists and cardiologists</li> <li>3) Psychologists</li> <li>4) TRC - VR counselors and rehabilitation facilities</li> </ol>
2. Counseling and guidance	Provided by TRC staff/not a purchased service	46,513	To assist clients, their families, and employers throughout the rehabilitation process.	Assistance in setting vocational goals, dealing with vocational adjustment and personal problems	TRC -VR counselors
3. Physical and mental restoration	\$16,980,837	9,301	To enable clients to enter or retain employment by eliminating functional limitations	<ol style="list-style-type: none"> <li>1) Physician services, including surgery</li> <li>2) Hospitalization</li> <li>3) Treatment of mental or emotional disorders</li> </ol>	<ol style="list-style-type: none"> <li>1) Physicians, including specialists such as cardiologists</li> <li>2) Hospitals, including rehabilitation hospitals</li> <li>3) TDMHMR centers, psychologists and psychiatrists</li> </ol>

\*Figures are approximate

Exhibit 5

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS REHABILITATION COMMISSION  
(Cont.)

SERVICES	FY 1983		SERVICE DESCRIPTION		
	Funds Expended*	No. Of Clients Served*	Purpose	Examples	Providers
				4) Drugs and medical supplies 5) Prosthetic, orthotic or other assistive devices 6) Physical, occupational, speech and hearing therapy 7) Dental services	4) Pharmacies 5) Prosthetists and orthotists 6) Physical, occupational and speech therapists 7) Dentists
4. Training	\$ 9,112,392	12,935	To develop a client's job skills and make the client job-ready	1) Prevocational training to provide background knowledge or skills prior to receiving other training 2) Vocational skills training to provide instruction in performing tasks required by an occupation, including: a) On-the-job training to provide specific job skills and knowledge of a work-setting	1) Rehabilitation facilities and TRC staff 2) Employers, technical and vocational schools, and business schools

\*Figures are approximate

Exhibit 5

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS REHABILITATION COMMISSION  
(Cont.)

SERVICES	FY 1983		SERVICE DESCRIPTION		
	Funds Expended*	No. Of Clients Served*	Purpose	Examples	Providers
				b) Business, technical and vocational school training c) Correspondence course training 3) Academic training to attain a degree required for entry level employment 4) Personal-social and work adjustment training to acquire personality traits necessary to obtain and retain employment	3) Colleges and universities 4) Rehabilitation facilities
5. Maintenance	\$ 1,546,462	3,064	To provide subsistence expenses during any stage of the rehabilitation process	Client meals, housing, clothing, and health needs (toilet articles, etc.)	TRC makes cash payments either directly to client or to vendor
6. Transportation	\$ 178,979	1,529	To ensure client participation in the rehabilitation process	Transportation costs from client's residence to place where services are rendered including: 1) Payment of public carrier fare (bus, taxi, airline fare) 2) Payment of fee (per mile) for use of private vehicle	TRC makes cash payments either directly to client or to vendor

224

\*Figures are approximate

Exhibit 5

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS REHABILITATION COMMISSION  
(Cont.)

SERVICES	FY 1983		SERVICE DESCRIPTION		
	Funds Expended*	No. Of Clients Served*	Purpose	Examples	Providers
7. Other	\$ 2,461,457	5,257			
a. Occupational licenses, tools, and equipment			To increase a client's prospects for successful employment	1) Professional licensure such as barber, cosmetologist, nursing and teaching licenses 2) Occupational tools and equipment, such as carpentry tools, plumbing equipment, beautician's equipment	1) TRC makes cash payments either directly to client or to vendor 2) Private vendors
b. Self-employment enterprise			To enable the client to become self-employed	1) Payment of initial rent on business space 2) Payment of initial advertising costs 3) Payment of initial utilities costs 4) Provision of initial stocks and supplies, tools and equipment 5) Training for self-employment	Private vendors
c. Interpreter services			To assist and ensure participation of a deaf applicant or client in the rehabilitation process	Use of interpreter to communicate with medical or training personnel	Interpreters certified by the Registry of Interpreters, when available

\*Figures are approximate

Exhibit 5

VOCATIONAL REHABILITATION SERVICES PROVIDED BY THE TEXAS REHABILITATION COMMISSION  
(Cont.)

SERVICES	FY 1983		SERVICE DESCRIPTION		
	Funds Expended*	No. Of Clients Served*	Purpose	Examples	Providers
d. Modification of vehicles, job sites, and residences			To enable the client to participate in employment or in services such as training	1) Provision of hand controls in a car 2) Provision of wheelchair lifting device, raised roof, etc. in a van 3) Modifications to buildings to remove architectural barriers to handicapped 4) Installation of portable ramp, portable patient lift, porch lift, etc. in client's residence	Private vendors
8. Job placement	Provided by TRC staff--not a purchased service	14,060	To prepare a client for work and to assist in obtaining suitable employment	1) Developing client attitudes consistent with those required for a job 2) Reconciling problems or barriers to a client's employment, including architectural barriers and employer attitudes concerning the handicapped	TRC - VR counselors
9. Post employment services	\$ 201,475	437	To ensure client adjustment to job environment and job retention after placement and case closure	Additional counseling and guidance, physical restoration, and provision of assistive devices necessary to maintain employment	TRC - VR counselors, physicians, prosthetists, etc.

\*Figures are approximate

the client's progress. The frequency of contact is at the discretion of each counselor and varies depending on the complexity of the case, the type of disability, and the client's adjustment. However, the counselor must plan and document the frequency of client contact in the IWRP. The counselor monitors the provision of services through input from the client and required progress reports from service providers. Examples of these reports are medical reports for a client receiving medical treatment or therapy; training progress reports for clients in work-related training in a technical school or rehabilitation facility; semester grades for a client in a college or university; or residential living progress reports for a client in a half-way house. In addition, program regulations require joint reviews by the counselor and client of the IWRP and the client's progress toward achieving stated program objectives at least once a year. Whenever significant changes occur in the client's vocational objective or the planned services, an amendment to the IWRP is required.

When a client has progressed through the rehabilitation program and is "job-ready," a major responsibility of the counselor is placement of the client. In order to provide this service, counselors are expected to seek out contacts with employers in the community and to keep informed of the local job market. Placement services provided to a client might include informing the client of specific job openings, contacting potential employers and investigating suitable job opportunities, registering the client with TEC, and informing prospective employers of the client's job-related abilities and limitations. Once a client has been successfully placed in a job consistent with his or her stated vocational objective, the counselor must continue to supervise the case until it is determined the client has adjusted satisfactorily to the job. Program regulations require that a client must have been suitably employed for at least 60 days before a case record may be closed as successfully rehabilitated. In some instances, counselors may provide post employment services to assist a rehabilitated client to maintain suitable employment. The services to be provided must be planned in writing through an amendment to the IWRP and the need for the services must be fully documented in the case record. At the close of fiscal year 1983, 553 clients were receiving post employment services.

In most cases, VR services are continued until a client is successfully rehabilitated or a determination is made that the vocational rehabilitation goal cannot be reached. Program regulations require that certain procedures must be followed in order to terminate services including consultation with the client regarding the decision, adequate documentation of the rationale for the decision, written notice to the client informing him or her of agency appeal procedures, and at least one review of the decision at the end of a year.

Agency records show that in fiscal year 1983, of 46,513 disabled clients served by the VR program, 14,060 were successfully rehabilitated and placed in employment. The average client service expenditure per rehabilitated client was approximately \$1,500. Exhibit 6 shows successful 1983 rehabilitations by major disability group.

Exhibit 6

SUCCESSFUL REHABILITATIONS BY MAJOR DISABILITY GROUP

<u>PRIMARY DISABILITY GROUP</u>	<u>SUCCESSFUL REHABILITATIONS</u>
Musculoskeletal Impairments (includes spinal cord injuries)	3,767
Deaf & Hearing Impaired	1,009
Mental Illness	4,157
Mental Retardation	709
Learning Disability	297
Other Disabilities	<u>4,121</u>
<b>TOTAL</b>	<b><u>14,060</u></b>

Prior to rehabilitation, 24 percent of these clients were employed and earned a total of \$1,898,231 per month. After rehabilitation, the successfully rehabilitated clients earned a total of \$9,484,514 per month. Of the clients who were successfully rehabilitated, 52 percent were severely disabled.

Extended Rehabilitation Services. The objective of the extended rehabilitation services program (ERS), which has operated since 1977, is to provide rehabilitation services, including extended sheltered employment and community residential services, to those persons (excluding those whose primary handicap is blindness) not capable of entering competitive employment but who may achieve maximum personal independence through the provision of such services. Because federal funds cannot be expended for this purpose, the ERS program is supported entirely from state general revenue appropriations, which totalled approximately \$2.4 million for fiscal year 1984. TRC uses the state funds to contract for ERS program services with organizations which operate sheltered employment and in some cases semi-independent living programs. Currently, ERS contractors are operating 17 sheltered work programs in Alpine, Austin, Bryan, Dallas, El Paso, Fort Worth, Lubbock, San Antonio, Houston, Wichita Falls, and Sulphur Springs. These programs employ over 600 ERS participants. TRC contracts with five organizations to provide supervised living arrangements generally in residential houses or apartments for over 100 ERS participants in Austin, San Antonio, Lubbock, and El Paso. In addition to sheltered employment and residential services, ERS funds may also be used to purchase other client services, such as transportation and medical services, generally to enable clients to remain employed.

Agency records show that in fiscal year 1983, the ERS program provided sheltered employment to 626 participants, residential services to 51 participants, and other services such as transportation, medical services and assistive devices such as wheelchairs to 304 participants. The average cost per client per month was \$263, estimated to be about 35 percent of the cost of institutionalization.

Responsibility for supervising projects and handling client cases is divided among nine ERS counselors. Six are full-time and three spend some of their time as VR counselors or program managers. The counselors are assigned to specific

projects and are generally housed in VR field offices in the same city as the assigned projects. Their major responsibilities include: 1) determining eligibility of applicants; 2) purchasing or coordinating client services; 3) monitoring provision of services; and 4) providing technical assistance to service providers.

Referrals to the ERS program are received most frequently from VR counselors, physicians, and state schools and hospitals. Since the contract agreement with each project specifies a certain number of sheltered employment participants, in the event all contract spaces have been filled when a referral is made, the counselor will generally place the individual on a waiting list until a vacancy becomes available. As vacancies occur, referrals are screened by ERS counselors to determine eligibility based on established criteria. These criteria require that the individual must: 1) have a mental or physical disability which constitutes a substantial handicap to employment; 2) be incapable of entering the competitive labor market due to the severity of the handicap; 3) be able to benefit from ERS; and 4) be a legal resident of the state. Disabilities which may qualify a person for ERS include spine or brain damage, deafness, blindness (as a secondary disability), speech or hearing limitations, mental retardation, autism, cerebral palsy, and developmental disorders. Approximately 60 percent of those served during fiscal year 1983 were physically disabled, 40 percent were mentally disabled, and the majority were multi-handicapped.

In order to make the eligibility determination, the counselor will request available medical and psychological information from the referring source, and where necessary, will purchase needed diagnostic services. Individuals who appear eligible based on the initial screening are placed in probationary employment for a 60-day period. During this time the counselor evaluates the individual's work habits, work tolerance and earning potential. Participants must have the capacity to work six-hour days, five days per week, and the potential to earn approximately 15 percent of the federal minimum wage rate. If probationary employment is successfully completed, the individual is placed in permanent career sheltered employment.

Currently, 645 ERS participants are working in sheltered industries performing a variety of jobs. ERS contractors are responsible for providing meaningful, "real" work for participants, under supervised conditions, generally by seeking out job contracts with private companies or federal, state or local agencies. Types of contract work currently being performed by ERS participants include highway litter pick-up under a contract with the State Highway Department; public lake maintenance under a contract with the Corps of Engineers; city street and park maintenance; sorting, assembly and packaging work with private companies such as Pittsburgh Paint and Glass Industries, Inc.; and janitorial service and lawn maintenance. Contract agreements require that workers be paid a minimum of \$.50 per hour. Currently, wages range from \$.68 to \$3.35 per hour depending in large part on the quality of job contracts secured by the project. In fiscal year 1983, 636 ERS participants worked a total of 646,951 hours. These workers earned \$700,720, at an average wage of \$1.19 per hour, while producing over \$1.9 million in total contract income.

During a participant's career employment, the ERS program manager is responsible for determining the need for and purchasing or coordinating other authorized services. As indicated above, services provided under agreements with ERS contractors may include community residential services, depending on such factors as needs of participants and capabilities of and resources available to the contractor. Where residential programs are in operation, workers are placed in the

programs on an as-needed basis, with highest priority given to workers residing in institutions, such as state schools; and to cases where an individual can no longer be cared for at home, due to such factors as the illness or infirmity of parents, or extreme financial hardship. Through these residential services, participants are afforded the opportunity to reside in residential homes or apartments in a semi-independent fashion. Supervision is provided by a house manager who assists residents with such activities as personal hygiene, makes assignments of house-keeping duties and generally monitors household activities. Where necessary, residents may also receive assistance in handling income and expenditures. An individual living in a residential facility is generally required to contribute toward his or her living arrangements from Supplemental Security Income (SSI) payments, Social Security Disability Insurance (SSDI) payments, workshop earnings, or other forms of income. In addition to contributions from residents and ERS funding, these residences typically receive support from other sources as well, such as HUD and city housing authorities.

In addition to sheltered employment and residential services, other authorized services which may be purchased for clients include transportation to and from the work-site; medical services necessary to enable the individual to remain employed; assistive devices, such as wheelchairs, artificial limbs, braces and hearing aids; and interpreter services. Before purchasing any of these services, the program manager is responsible for assessing the client's ability to pay all or a portion of the cost and the availability of similar benefits, and assisting the ERS worker in applying for them. Since most ERS participants can never live totally independently and will need assistance all their lives, the ERS program manager plays a key role in seeking out services available to participants from other sources and coordinating with other providers, including state and federal agencies such as the Texas Department of Human Resources, the Texas Department of Mental Health and Mental Retardation, and the U.S. Department of Housing and Urban Development (HUD), to reduce duplication and ensure a continuum of services to these multi-handicapped individuals.

Another major responsibility of program managers is monitoring provision of services to ERS participants. The program manager is responsible for monitoring sheltered employment facilities with regard to production activity and quality and quantity of work contracts, and activities at the residential facilities with regard to quality of services. Monitoring is accomplished through site visits and review of reports required to be filed with TRC. ERS program managers generally visit each project a minimum of one to two times per week. Each month the workshop and residential programs must submit daily workshop attendance and housing reports prior to receiving payment and each quarter, must submit operations reports reflecting number of workers employed or ERS residents, wages and gross sales, and identifying progress or problems of participants. Semi-annual worker evaluations and residential services status reports for each participant and budget reports are also required. Finally, each project must submit an annual financial audit prepared by an independent CPA firm.

In the course of on-site visits to projects, or other contacts, program managers also provide some technical assistance to providers. Program managers are responsible for consulting with and making recommendations to ERS facility staff regarding contract procurement, marketing, public relations and overall program planning of the local operations. In addition, TRC has used the services of a consultant to assist the ERS sheltered industries in obtaining state "set-aside" contracts, improving production by modifying job stations, and using adaptive

devices, with the goal of increasing wages for workers and revenue for the sheltered industry.

Disability Determination Division. The Disability Determination Division (DDD) is responsible for determining eligibility for Social Security disability benefits for residents of Texas. The DDD is 100 percent federally funded and operates under Social Security Administration (SSA) regulations.

As in Texas, the Social Security Administration (SSA) has an agreement with each state to make determinations on disability claims. Approximately 37 other states assign this responsibility to the major agency responsible for vocational rehabilitation services. Twelve are within other agencies, and one state, Arkansas, has established an independent agency for this function.

During the 1984 fiscal year, the division had a staff of 659 full-time employees, including 40 part-time medical consultants and was budgeted approximately \$33 million. Staff of the division are located in TRC's central office in Austin. The division is largely self-contained including an administrative support division providing data processing, accounting personnel and other services.

The Disability Determination Division adjudicates disability claims under two federal programs: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). Social Security Disability Insurance (SSDI) provides cash benefits to eligible severely disabled workers and their dependents. During fiscal year 1983, there were 127,120 persons receiving SSDI benefits in Texas with payments totaling \$603.6 million for a monthly average benefit payment of approximately \$400. Supplemental Security Income (SSI) provides financial aid to disabled people who do not have enough social security payroll deductions to qualify for SSDI and whose income and resources fall below a certain level. More than 131,500 persons received SSI benefits with payments totaling \$288 million for a monthly average benefit of \$182.00 in fiscal year 1983. In addition, approximately \$2.5 billion in Medicare benefits were paid to Texas SSDI beneficiaries and \$1.5 billion in Medicaid benefits were paid to Texas SSI beneficiaries.

There are three types of claims handled by the DDD. First is the initial claim filed by a person who believes he is disabled. Second is the reconsideration claim filed by a person whose initial claim was denied or whose benefits were terminated. Third is the continuing disability review claim which involves a review of a person already receiving disability benefits to determine whether he is still disabled. Individuals living in Texas who believe they are disabled file a disability claim at the local Social Security district office. Personnel at the district office assist the claimant in completing the necessary forms. The claimant describes the disability, explains past work activity, lists sources of medical treatment, and signs authorizations for release of the information. This information is then forwarded to the Disabilities Determination Division (DDD).

When the claim is received by the DDD, it is assigned to a disability examiner who develops it to confirm the claimant's disability. The examiner is responsible for requesting evidence of the disability from medical sources such as doctors and hospitals or ordering additional evaluations in order to confirm the disability. When all evidence is received the examiner decides whether the individual is disabled and the claimant is notified by the Social Security Administration. If the claimants do not agree with the decision reached by the examiner they may file a claim with the local district office that the claim be reconsidered. The reconsideration claim is then returned to the DDD for further evaluation. During

fiscal year 1983, the division made 104,746 initial determinations, and handled 34,636 reconsideration claims. Agency records indicate that approximately 29 percent of the initial claims and 13 percent of the reconsideration claims were approved resulting in payments of about \$1.2 billion annually to disabled individuals.

The DDD also conducts medical reviews of individuals already receiving disability benefits to determine if they are still eligible for such benefits. In continuing disability investigations the examiner is responsible for evaluating the claimant's current medical condition and determining whether the beneficiary continues to be disabled. During fiscal year 1983 the division made 34,203 continuing disability reviews.

The DDD is required to meet a number of performance standards established by the Social Security Administration in connection with the processing of these claims. These standards address the accuracy of the claims determinations made and the time necessary to process those claims. In 1983, the division's accuracy rate averaged 95.7 percent. The division's processing time is currently 39.3 days (SSDI) and 44.2 days (SSI) which ranks first in the Dallas five-state region.

Currently, the nation's disability program is undergoing dramatic change. Congress and the Social Security Administration are striving to lessen the impact of the increased periodic review of continuing disability review cases, enacted in 1980, which resulted in an increase in the number of terminations, producing adverse public reaction. The SSA has curtailed unfavorable decisions on continuing disability review claims involving psychotic impairments until guidelines for evaluating the impairments can be rewritten. They also have begun offering face-to-face hearings to individuals before their benefits can be terminated for medical reasons. In response to these changes the DDD is in the process of decentralizing hearing units in five Texas cities -- Austin, Houston, Dallas, San Antonio, and Lubbock. In addition, the SSA placed a moratorium on periodic review of continuing disability review cases. Disability legislation pending in Congress contains provisions which would decentralize and at least double the size of the present staff. Field offices would also be required in at least five to six cities around the state.

Independent Living. The Independent Living program was established in July 1980 in response to amendments to the Rehabilitation Act of 1973. These changes allowed grants of federal funds to go to states to establish and operate independent living centers. The purpose of these centers is to provide comprehensive services for individuals with severe disabilities to enable them to live and function independently in their homes and communities. The program was initially awarded a three-year federal grant in 1980 for \$400,000 per year to fund independent living centers in Austin and Houston. In 1981, the program was awarded a three-year federal grant for \$150,000 per year to fund centers in El Paso and San Antonio. Finally in 1982, the program was awarded a two-year federal grant for \$200,000 per year to fund a center in Dallas. The federal grants for the five independent living centers are scheduled to expire in fiscal year 1984. In recognition of the need to continue funding of the centers and to bring the levels of funding for the centers located in San Antonio and El Paso in balance with the other centers, the Texas legislature appropriated approximately \$1.7 million for program support in fiscal years 1984 and 1985.

Independent living centers were designed to provide only those services not available elsewhere in the community and to help coordinate those services that

are available. Although the program is targeted for severely handicapped individuals, there are no specific eligibility requirements and each individual requesting services receives information about resources in the community or within the center which meet the individual's needs. When appropriate, the center staff and the individual jointly develop an initial plan for the provision and/or coordination of services. The plan includes specific goals for the individual and indicates the specific services to be provided. These services typically include training for participants in the skills necessary to live independently. Examples of independent living skills are: exploration of vocational training and education programs; methods of locating, training and working with personal care attendants; rearranging environmental elements to improve personal capabilities; awareness of assistive devices and equipment which are available; and exploration of various public and private modes of transportation. Centers use persons who are severely disabled as peer counselors for individual and group counseling to help clients develop meaningful lifestyles and adjust to society. The centers also act as an advocate in behalf of individuals to acquire medical, social, and financial benefits and services to which the individuals may be entitled, and in behalf of groups of disabled individuals regarding the rights of the handicapped. In addition to these services, the centers may offer other services depending on an individual's needs such as: arranging for an interpreter if the person is deaf; arranging for personal care attendants; identifying barrier free housing units which have personal care attendants; and acting as a clearing house for information on job availability from the Texas Employment Commission.

The agency contracts on an annual basis for independent living services with the five private, non-profit centers. The five centers were selected on the basis of: a survey of existing resources; grant applications submitted in response to a request for proposal; and a peer review of the applications by the Consumer Consultation Committee of TRC. Based on this information, the agency developed federal grant applications and submitted them to the Rehabilitation Services Administration in response to the federal request for proposals.

In fiscal year 1983, the centers provided services to 1,712 clients and information and referral services only to 4,391 persons. Exhibit 7 indicates the number of clients served by each center for contract year 1983.

Developmental Disabilities. Under the Developmental Disabilities and Construction Act of 1970, states were provided federal funding to establish councils which would encourage development of comprehensive plans on a statewide basis to ensure that people with developmental disabilities would receive the care, treatment and other services they need to achieve their maximum potential. This program was established in response to concerns that there were serious gaps in the health system serving persons with developmental disabilities. Federal law defines developmental disabilities as severe, chronic mental and/or physical impairments which occurred before the age of 22 and are likely to continue indefinitely limiting the individual in three or more of the following areas: self-care; self-direction; learning; language; capacity for independence; and economic self-sufficiency. Based on this definition, the agency estimates that there are approximately 240,555 persons in Texas with developmental disabilities.

The Texas Planning Council for Developmental Disabilities, first established in 1971 by executive order and later authorized by statute, is a planning body composed of 25 members including persons with developmental disabilities; immediate relatives or guardians of persons with developmental disabilities; and representatives of the principal state agencies, higher education training facilities,

Exhibit 7  
**TEXANS SERVED BY INDEPENDENT LIVING PROGRAMS**  
**Fiscal Year 1983**

Independent Living Center	<u>TRC Grant Award</u>	<u>Clients Served</u>	<u>Information &amp; Referral Only</u>
Austin Resource Center for Independent Living	\$ 200,000	241	723
Houston Center for Independent Living	200,000	982	996
San Antonio Independent Living Services	75,000	77	641
El Paso Opportunity Center for the Handicapped	75,000	232	1,356
Dallas Resource Center for Independent Living	<u>200,000</u>	<u>180</u>	<u>675</u>
TOTALS	\$ 750,000	1,712	4,391

local agencies, and non-governmental agencies and groups concerned with services to persons with developmental disabilities. At least 50 percent of the council membership must consist of persons with developmental disabilities or the immediate relatives or guardians of such persons. Members were appointed by the governor for six year terms. The Texas Rehabilitation Commission on behalf of the council awards grants to public and private non-profit agencies to establish model programs which provide direct services as well as demonstrating innovative rehabilitation techniques and training personnel to work with this population.

Federal and state law require the governor to designate a state agency to provide the council with supervision and support services. The Texas Department of Mental Health and Mental Retardation filled this role until January, 1983 when the governor transferred this responsibility to the Texas Rehabilitation Commission. Currently, TRC employs an executive director and 12 staff members to carry out the activities of the council.

The federal legislation makes funding available from the federal Department of Health and Human Services to the administering agency, TRC. In fiscal year 1984, the council received approximately \$2.2 million in federal funds. By federal law, a minimum of 65 percent of the funds for the council must be spent for grants to nonprofit organizations and agencies who will provide services for persons with developmental disabilities. In fiscal year 1984, the agency reports that \$1.8 million or 80 percent of all funds was awarded to 42 grantees. The remaining funds may be used for administering program costs of the council and staff, and for planning grants. This portion of council funds must be matched in a 75/25 percent state or local funding ratio. Since no state matching funds are appropriated, the match requirement is met by requiring matching rates for the grantees in excess of the 25 percent minimum. It is reported by General Counsel that federal regulations concerning matching will change so that the administering agency will no longer be able to use the excess match in any one grant to satisfy a shortage in matching funds from another grant or to provide match support for council and staff expenses. As a result, TRC is currently requesting \$224,000 in state funds for each year of fiscal years 1986 and 1987 to provide matching funds for the state administration of the program, and to provide matching funds for grantees who cannot meet the 25 percent match requirement.

The council's primary responsibilities can be divided into the following functions: evaluating and monitoring existing services for persons with developmental disabilities; planning in order to fill service gaps; supporting model projects in priority areas through grants; and advocating on behalf of those with developmental disabilities. Of these four functions, the council has historically focused their attention towards providing grants.

Federal legislation stipulates that 65 percent of the council's federal funds must be allocated for grant projects on one or, at the state's option, two of the following priority areas: child development services - to impact or assist efforts to prevent, identify and alleviate developmental disabilities in children; alternative community living arrangement services - which help the developmentally disabled to maintain suitable living arrangements; non-vocational social development services - which assist disabled persons in performing daily living and work activities; and case management - which makes it easier for developmentally disabled persons to gain access to social, medical, educational, and other services. The grantees are used as demonstration projects which work with the council to encourage others throughout the state to establish and fund similar programs. From 1971 to 1983, the projects funded were in the priority areas of child development and alternative

community living arrangements. Grants were provided to more than 125 projects across the state. Many of the programs sent trainers into the homes of disabled persons and demonstrated exercises and therapy which parents then used to help their developmentally delayed children. Some programs served as clearinghouses for high risk handicapped children, linking parents and professionals with needed services available in the community. Other projects made it possible for many adults with developmental disabilities to live for the first time in supervised apartments within the communities. These were individuals who had previously lived in institutions or their parents' homes.

Beginning in fiscal year 1984, the council recommended continued funding for alternative community living projects, but redirected the child development funding to non-vocational social development services. This change in priority came as a result of passage of a state law creating the Texas Program for Early Childhood Intervention Services. Projects in the non-vocational social development area assist developmentally disabled persons in making the transition from childhood to adulthood. Programs are designed to enhance independent living skills in preparation for vocational goals and lifetime activities. In fiscal year 1984, \$344,041 in continuation grants was awarded for child development services, serving approximately 1,350 children, and \$449,167 in new grants was awarded for non-vocational social development projects, serving approximately 1,028 individuals. During the same fiscal year, \$309,540 was awarded in new grants and \$568,538 in continuation grants for alternative community living projects which served approximately 695 adults.

Based on the goals and objectives established by the council, funding of priorities for direct service grants are developed and disseminated state-wide. Grantees are selected through a Request for Proposal (RFP) process. Requests for proposals are published in the Texas Register and mailed out to public agencies, nonprofit organizations, and institutions of higher education which are eligible to apply for project grants.

All grant applications received undergo both a technical and a competitive review process. The technical review conducted by council staff, examines the extent to which a proposal meets basic criteria with regard to completeness and conformance to funding priorities. Proposals meeting all technical review criteria are forwarded to a review panel made up of volunteers who have experience in the field of developmental disabilities as either consumers or providers of services, and may not be recipients of grant funds. Results are forwarded to the commissioner of TRC for a recommendation to fund or not fund. In the event an applicant does not receive funding, TRC has established a formal appeals process.

Since grants are funded for periods of one to three years, each year a grant is to continue, the grantee must submit a new workplan for review by council staff and TRC. The total funds requested by all continuation grants provide the basis for determining funds available for new grants. Funding is not on the grant award anniversary if: adequate federal funds are not available to support the project; the recipient has not complied with the terms and conditions of the award; the recipient's performance of the project is unsatisfactory; the federal government's interest is not adequately protected; or the council's funding priorities have changed.

TRC has an on-going monitoring system, which includes on-site visits to evaluate projects' programs and fiscal accountability. Site visits are made by council staff, at least once a year, to review program accomplishments and

management control systems, provide technical assistance as needed, and determine whether or not services are being delivered according to the goals, objectives and procedures of the approved grant application and workplan. As the administering agency, TRC is charged in federal law with the responsibility for all council funds. One auditor from TRC's internal audit division is assigned to conduct financial and compliance audit on projects and provide program monitoring technical assistance to council staff.

Planning activities of the council have been primarily in the form of "grants" or financial support and development of the council's state plan. Planning grants are awarded for the purpose of developing materials that will strengthen and improve the entire developmental disabilities program or to facilitate service delivery. During the 1983 fiscal year, the council supported seven planning grants totaling \$309,693 or 14.6 percent of total funds available. Planning grants awarded during the 1983 federal year are shown in Exhibit 8. Currently, grants awarded for planning or research do not follow the same process established for priority area service grants which is based on a request for proposal process. Instead, the council receives unsolicited letters and proposals year-round from consumer and service provider organizations who make suggestions or elicit support for planning or research activities. Suggestions are reviewed by the council's planning committee as well as the full council and all recommendations are submitted to the TRC commissioner for final action.

The council is mandated by federal and state law to act as an advocate for persons with developmental disabilities, as well as serving as a channel for concerns by consumers. The council through its advocacy committee monitors the progress of bills affecting the state's disabled population. The committee has supported legislation in all the major areas affecting the disabled. The council has also provided start-up funds for consumer organizations such as the Texas Society for Autistic Citizens and the Epilepsy Association of Texas. In addition, the council is establishing a public information campaign to educate the public about activities of the council and issues affecting persons with developmental disabilities. As part of this campaign, the council has developed a brochure, press releases, public service announcements for television, slide presentations, and their newsletter "Highlights".

### Need to Continue Agency

The need for each of the agency's responsibilities was analyzed and the review indicated that there is a continued need for state involvement in these areas. The conclusion is based on the potential loss of approximately \$50 million in federal funding to the state, and the fact that approximately 56,000 disabled Texans would be denied vocational assistance, independent living and other services. The need for the current agency structure was analyzed and it was determined that the agency should continue to be separate and should not be merged with other existing agencies.

In regard to current operations, the review determined that while the agency is generally operated in an efficient and effective manner, there are changes that should be made in the event the legislature decides to continue the agency. A discussion of the recommended changes follows.

Exhibit 8

COUNCIL FOR DEVELOPMENTAL DISABILITIES  
PLANNING GRANTS AWARDED IN FY 1983

<u>Organization</u>	<u>Amount</u>	<u>Purpose</u>
1. United Cerebral Palsy of Texas	\$ 44,215	To plan and implement an information and referral program for persons with cerebral palsy and their families;
2. Texas Council on Crime and Delinquency	\$ 42,000	To study the needs and resources of developmentally disabled adult offenders in Texas and develop model programs as alternatives to prisons;
3. The Association for Retarded Citizens in Texas	\$ 35,026	To develop, publish and disseminate a research manual clarifying the Texas implementation of a community care waiver program;
4. University of Texas at Arlington	\$ 35,000	To conduct a survey of governmental agencies and private organizations in Texas which provide services to individuals with developmental disabilities; to determine the use and effectiveness of computerized equipment in providing the services;
5. Advocacy, Incorporated	\$ 80,627	To conduct a series of public forums to receive information on gaps in services for persons with developmental disabilities and to expand networking among consumers;
6. University of Texas at Arlington	\$ 50,000	To conduct a survey to determine the demographics of persons with developmental disabilities in Texas;
7. Texas A&M University	\$ 22,825	To survey state agencies in 10 states to determine the types of nonvocational services that these states have included in their developmental disabilities program.

**Sunset Commission Recommendations for the  
TEXAS REHABILITATION COMMISSION**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The present consumer advisory commission should be specified in statute.**

Although the Texas Rehabilitation Commission has established a consumer advisory committee, it is not required by either state or federal law. A review of the Texas Department of Human Resources, the Texas Department of Mental Health and Mental Retardation, and the Texas Department on Aging showed that these agencies are required by law to establish advisory committees consisting primarily of service recipients or their families to provide advice on program development and implementation. Establishing a consumer advisory committee in state statute and requiring the board to adopt rules and regulations concerning size, geographical representation, number of meetings, reporting requirements, and duties and responsibilities will ensure a continued means of public input similar to that required for other health and human service delivery agencies in Texas.

- 2. The statute should be amended to authorize compensatory per diem rates comparable to those authorized for similar health service agencies for commission and advisory committee members.**

Current members of the agency's consumer and medical consultation committees are paid a consultation fee of \$100 per day and \$150 per day respectively, in addition to travel reimbursement. Board members are authorized to receive only travel reimbursement. However, a survey of other health service agencies showed that similar per diem fees paid to advisory committee members did not exceed \$50 per day and were specifically authorized in statute for both advisory committee and board members. Authorizing commission and advisory committee members to receive a compensatory per diem for attendance at official meetings would provide for consistency with the per diem policies authorized for similar state agencies.

**Evaluation of Programs**

**Vocational Rehabilitation Program**

- 3. The agency should review controls over use of similar benefits and client contributions in providing medical services to ensure the agency is fully utilizing other resources before spending TRC funds. (management improvement - non-statutory)**

Federal and state regulations require that the agency fully utilize other resources to which clients are entitled before spending TRC funds to purchase needed medical services. These resources include contributions by the client and such "similar benefits" as private health insurance, medicaid and medicare, worker's compensation benefits, and services offered by other agencies such as the health department. The review indicated that there were inconsistencies in practices and monitoring methods followed by agency

field staff to ensure proper application of similar benefits, and that there did not appear to be adequate procedural guidance available to staff to ensure adequate consistency in controls maintained. In fiscal year 1983, the agency's expenditures for hospitalization and surgery or other medical treatment amounted to over \$14 million. Requiring the agency to review controls over similar benefits use and client contributions will maximize the total amount of medical services available to TRC clients.

#### Extended Rehabilitation Services Program

- 4. The agency should implement adequate on-site monitoring of ERS projects.** (management improvement - non-statutory)

TRC contracts approximately \$1.6 million in state funds with organizations operating 17 sheltered employment projects and five supervised living programs. Although the projects must file periodic reports with the agency and ERS counselors visit the sites frequently, ERS facilities are not periodically evaluated by TRC staff according to standard monitoring procedures, comparable to those developed in the vocational rehabilitation program for monitoring sheltered employment and residential facilities serving VR clients. To ensure compliance with contract terms, efficient and effective facility operations, and full accountability for expenditures of state ERS funds, the agency should establish procedures for periodic evaluations of ERS facilities.

- 5. The agency should change the process of funding new ERS projects to provide for appropriate application procedures and review criteria.** (management improvement - non-statutory)

Although substantial amounts of state funds are contracted for new ERS projects each year, with approximately \$139,000 contracted for four new projects in fiscal year 1984, the agency has not developed formal application procedures for organizations interested in seeking funding. The current informal process used to inform persons of the availability of funds and to select contractors limits the number of groups who apply. Requiring the agency to utilize a request for proposal process, including regional advertising of the availability of funds, standard application procedures and review criteria, would ensure adequate opportunity for all interested groups to submit project proposals and a fair and unbiased selection process.

#### Developmental Disabilities Program

- 6. The council's statute should be changed to eliminate all language which duplicates or conflicts with provisions contained in federal law and to require that the governor appoint the chairperson of the council.**

The review showed that current language in state law under which the developmental disabilities council operates unnecessarily duplicates federal law. Since federal law is subject to change, and is in fact currently under review by Congress which is considering legislation to change the focus of the council, state law would need to be continually reviewed and revised to keep it in line with federal law. The state statute also contains language which is in direct conflict with provisions in federal law. The council's statute should be changed to eliminate language which duplicates or conflicts with provisions in federal law.

**TEXAS COMMISSION ON ALCOHOLISM**

## Background

The Texas Commission on Alcoholism was created in 1953 and is currently active. It is composed of six members who are required to have knowledge and interest in the subject of alcoholism. At least one member must be a physician and at least three members must have had personal experience as excessive users of alcohol. Commission members are appointed by the governor and confirmed by the senate for staggered terms of six years. The commission has 74 employees and is operating with a budget of \$9,828,981 from general revenue (39 percent) and federal funds (61 percent) during fiscal year 1984. Services provided by the commission are administered through a central office in Austin, six district offices located throughout the state, and 24 regional alcoholism authorities (RAA's) designated and funded by the commission to provide planning and technical assistance to grantees of the commission. The agency's organizational structure is depicted in Exhibit 1.

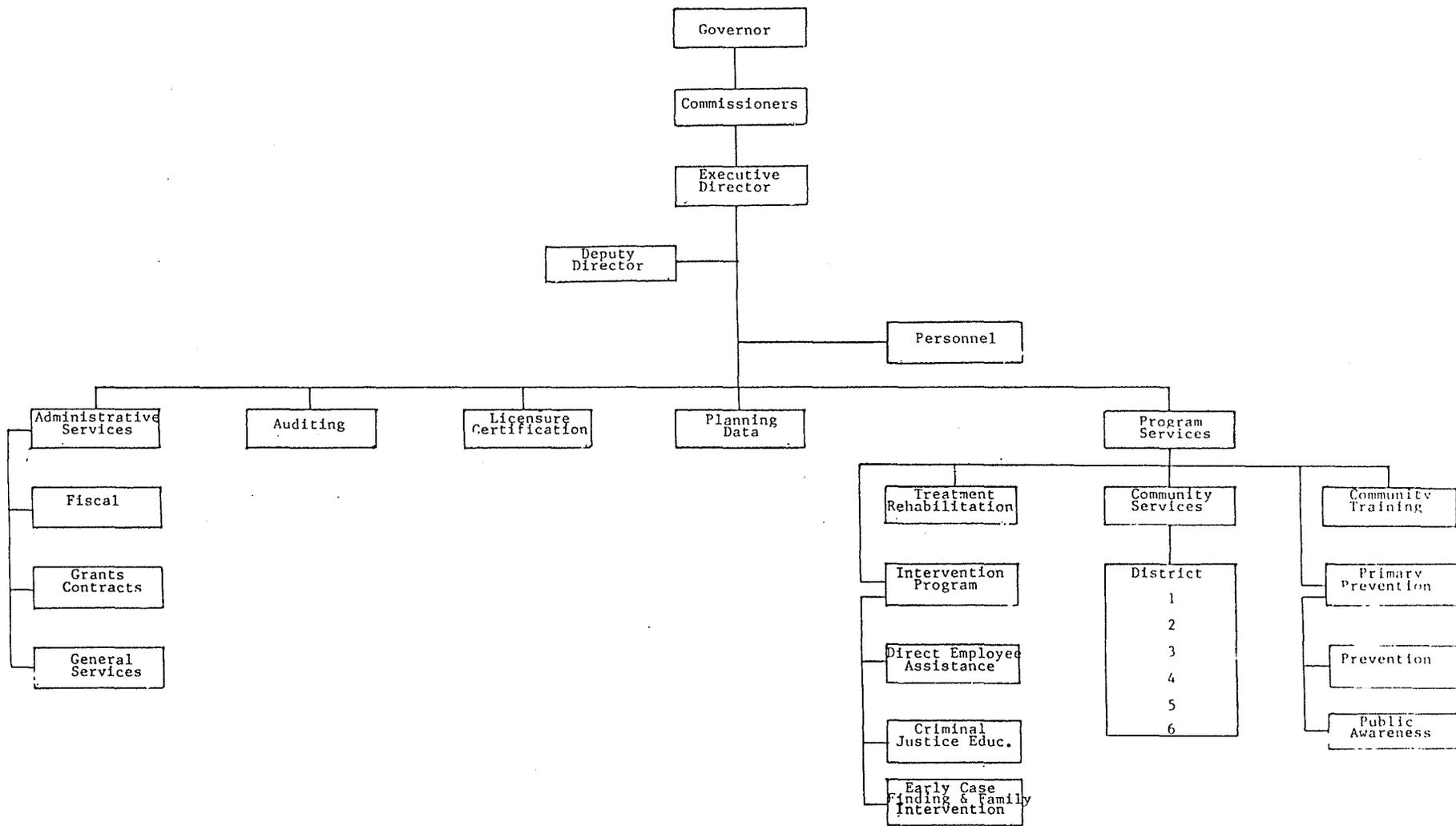
The Commission on Alcoholism was originally established in 1953 to provide for education and study relating to the problems of alcoholism and to promote the establishment of alcoholic treatment programs. No funds were appropriated for either agency administration or the provision of alcoholism treatment services until 1957. At that time, \$70,000 in state funds were appropriated to TCA providing for alcoholism counselors in each of the state mental health hospitals. The agency operated solely under state mandate and state funds until the passage by Congress in 1970 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act which provided federal funds to the states for use in alcohol and alcohol abuse programs. TCA was designated by the governor in 1971 to administer the state plan for carrying out the purpose of this Act.

A significant change in the agency's responsibilities occurred with the passage of the federal Omnibus Budget Reconciliation Act of 1981, which authorized a block grant to states for alcohol, drug abuse, and mental health programs, and repealed much of the enabling federal statutes for these program areas. As a result of an agreement between the three state agencies in Texas receiving ADM block grant funds, the governor authorized TCA to receive 23.5 percent of the block grant funds. Other portions of the ADM block grant are administered by the Texas Department of Community Affairs drug abuse prevention division (35 percent) and the Texas Department of Mental Health and Mental Retardation (41.5 percent). With the change to block grant funding, the agency also assumed the management of 12 programs which previously had been funded directly by the National Institute on Alcohol Abuse and Alcoholism and continues to administer and allocate federal, as well as state funds designated for alcohol related programs.

The potential population that could be served by the agency is reflected in a recent survey conducted by Texas Christian University under a TCA grant. The survey found that over half a million adults in Texas are problem drinkers. The survey also estimated that one out of every five Texas households has a member with a drinking problem, with 5.1 percent of the state's adult population or 727,612 people in need of treatment. These figures can be contrasted to the 10,000 clients currently within TCA's framework. Although Texas is the third most populous state, Exhibits 2 and 3 indicate that Texas ranks 52nd out of 52 states and protectorates in reported per capita spending for both drug and alcohol services for

Exhibit 1

TEXAS COMMISSION ON ALCOHOLISM



242

## Exhibit 2

### ESTIMATED STATE ALCOHOL AND DRUG FUNDS BY STATE AND PER CAPITA FOR FISCAL YEAR 1984

State	State Funds In Thousands	Population In Thousands	State Funds Per Capita	State Rank
Alabama	\$ 1,494	3,959	\$ .38	50
Alaska	12,671	479	26.45	1
Arizona	7,223	2,963	2.44	24
Arkansas	766	2,328	.33	51
California	68,766	25,174	2.73	21
Colorado	11,688	3,139	3.72	13
Connecticut	5,873	3,138	1.87	33
Delaware	2,299	606	3.79	12
District of Columbia	10,468	623	16.80	2
Florida	21,297	10,680	1.99	31
Georgia	18,067	5,732	3.15	17
Hawaii	1,646	1,023	1.61	36
Idaho	1,790	989	1.81	35
Illinois	41,067	11,486	3.58	14
Indiana	10,459	5,479	1.91	32
Iowa	3,034	2,905	1.04	45
Kansas	5,018	2,425	2.07	29
Kentucky	2,579	3,714	.69	46
Louisiana	9,496	4,438	2.14	28
Maine	5,453	1,146	4.76	7
Maryland	18,029	4,304	4.19	9
Massachusetts	24,465	5,767	4.24	8
Michigan	20,625	9,069	2.27	26
Minnesota	23,281	4,144	5.62	5
Mississippi	2,930	2,587	1.13	42
Missouri	6,258	4,970	1.26	39
Montana	2,236	817	2.74	20
Nebraska	4,086	1,597	2.56	23
Nevada	1,401	891	1.57	37
New Hampshire	1,114	959	1.16	41
New Jersey	8,089	7,468	1.08	43
New Mexico	8,617	1,399	6.16	4
New York	126,496	17,667	7.16	3
North Carolina	17,544	6,082	2.88	19
North Dakota	1,500	680	2.21	27
Ohio	15,773	10,746	1.47	38
Oklahoma	3,996	3,298	1.21	40
Oregon	6,300	2,662	2.37	25
Pennsylvania	24,425	11,895	2.05	30
Puerto Rico	13,084	3,261*	4.01	11
Rhode Island	2,510	955	2.63	22
South Carolina	1,784	3,264	.55	47
South Dakota	378	700	.54	48
Tennessee	1,960	4,685	.42	49
Texas	4,168	15,724	.27	52
Utah	6,542	1,619	4.04	10
Vermont	1,557	525	2.97	18
Virginia	10,122	5,550	1.82	34
Washington	14,847	4,300	3.45	15
West Virginia	2,080	1,965	1.06	44
Wisconsin	23,439	4,751	4.93	6
Wyoming	1,747	514	3.40	16
Totals	<u>\$ 642,539</u>	<u>237,241</u>	<u>\$ 2.71</u>	

\*July 1982 Estimate

Source: State Alcoholism and Drug Abuse Profile, April 1984

National Association of State Alcohol and Drug Abuse Directors

### Exhibit 3

#### TOTAL ESTIMATED ALCOHOL AND DRUG FUNDS FROM ALL SOURCES BY STATE AND PER CAPITA FOR FISCAL YEAR 1984

State	Total Funds In Thousands	Population In Thousands	Total Funds Per Capita	State Rank
Alabama	\$ 4,883	3,959	\$ 1.23	51
Alaska	14,175	479	29.59	1
Arizona	22,224	2,963	7.50	11
Arkansas	4,587	2,328	1.97	46
California	169,492	25,174	6.73	14
Colorado	20,959	3,139	6.68	15
Connecticut	27,078	3,138	8.62	10
Delaware	3,572	606	5.89	18
District of Columbia	12,859	623	20.64	3
Florida	47,752	10,680	4.47	28
Georgia	24,089	5,732	4.20	33
Hawaii	2,687	1,023	2.63	40
Idaho	3,037	989	3.07	38
Illinois	58,940	11,486	5.13	24
Indiana	13,337	5,479	2.43	41
Iowa	9,388	2,905	3.23	37
Kansas	8,924	2,425	3.68	36
Kentucky	6,578	3,714	1.77	48
Louisiana	13,522	4,438	3.05	39
Maine	8,393	1,146	7.32	12
Maryland	22,737	4,304	5.28	21
Massachusetts	32,039	5,767	5.56	20
Michigan	58,023	9,069	6.40	16
Minnesota	113,671	4,144	27.43	2
Mississippi	5,552	2,587	2.15	45
Missouri	11,823	4,970	2.38	42
Montana	12,652	817	15.49	5
Nebraska	6,728	1,597	4.21	32
Nevada	4,651	891	5.22	23
New Hampshire	2,165	959	2.26	43
New Jersey	31,326	7,468	4.19	34
New Mexico	16,709	1,399	11.94	7
New York	276,019	17,667	15.62	4
North Carolina	34,193	6,082	5.62	19
North Dakota	8,169	680	12.01	6
Ohio	47,162	10,746	4.39	30
Oklahoma	6,337	3,298	1.92	47
Oregon	16,889	2,662	6.34	17
Pennsylvania	60,356	11,895	5.07	25
Puerto Rico	17,121	3,261*	5.25	22
Rhode Island	4,283	955	4.48	27
South Carolina	7,160	3,264	2.19	44
South Dakota	1,212	700	1.73	49
Tennessee	5,965	4,685	1.27	50
Texas	17,265	15,724	1.10	52
Utah	14,125	1,619	8.72	9
Vermont	3,652	525	6.96	13
Virginia	24,084	5,550	4.34	31
Washington	19,687	4,300	4.58	26
West Virginia	7,254	1,965	3.69	35
Wisconsin	45,095	4,751	9.49	8
Wyoming	2,269	514	4.41	29
<b>Totals</b>	<b>\$1,412,847</b>	<b>237,241</b>	<b>\$ 5.96</b>	

\*July 1982 Estimate

Source: State Alcoholism and Drug Abuse Profile, April 1984

National Association of State Alcohol and Drug Abuse Directors

fiscal year 1984, spending approximately \$.27 per person from state funds and \$1.10 per person from all sources of funding.

The agency's current statutory responsibilities for addressing the problems of alcohol abuse and addiction in the state include carrying on a continuing study of the problems of alcoholism and focusing public attention on such problems; establishing cooperative relationships with other state and local agencies or other related organizations; promoting or conducting educational programs on alcoholism; and providing for the treatment and rehabilitation of alcoholics through grants and contracts to service providers. These statutory mandates are accomplished through an organizational framework consisting of five programs: 1) primary prevention; 2) intervention; 3) treatment and rehabilitation; 4) community services; and 5) administration. Although the five programs reflect the agency's activities and budget categories, the review of the agency was structured around the actual functions of the agency. For the purposes of the review, six functions were identified and analyzed: 1) grant and contract services; 2) technical assistance; 3) education and training; 4) coordination; 5) licensure and certification; and 6) planning and research. Each of the functions is described below.

#### Grant and Contract Services

The primary function of the agency is the allocation, administration and management of grants and contracts. All agency program areas are involved in the allocation of state and federal funds for the delivery of services at the local level. The administration program is responsible for the overall fiscal administration of grants and contracts, and other program staff serve primarily as program specialists for their particular grant or contract area.

Since its creation the agency's focus in allocating funds to different areas has shifted to reflect changes in statutory mandates, in funding patterns, in the population it serves, and in treatment philosophies of alcohol addiction and abuse. During the early years of the agency, treatment for alcoholics was provided through state institutions, such as mental hospitals, tuberculosis hospitals and prison systems. Today, as the emphasis has moved from institutional care to community-based care, the majority of TCA's treatment and rehabilitation funds (3.5 million out of 4.5 million) are allocated to community treatment programs. An amendment in 1981 to the agency's enabling statute served to strengthen this direction by providing \$4 million annually from the General Revenue Fund for the development of community-based prevention, treatment, and rehabilitation programs.

In addition, research indicating an increase of alcohol use and abuse prompted the expansion of agency services to include not only education, treatment, and rehabilitation services but also intervention services to intercept individuals in the early stages of alcohol abuse and addiction, and prevention services targeted to children and youth.

In fiscal year 1984, the agency allocated \$1,562,860 in general revenue funds and \$5,242,796 from the Alcohol, Drug Abuse and Mental Health (ADM) block grant established by the Omnibus Reconciliation Act of 1981 and from other special federal funds. Currently, to distribute these funds the agency either awards grants or contracts to approximately 180 entities. Each year the commission determines how much of the available funds are to be allocated to each of the program areas -

treatment and rehabilitation, intervention, occupational, DWI, prevention, training and regional service development.

Exhibit 4 shows how the commission has allocated funds between each of the categories and the number of grants and contracts involved. A description of each funding category and the types of projects which receive TCA funds within each category follow.

Treatment and Rehabilitation. Fifty one percent or 3.5 million of all grant and contract funds awarded in fiscal year 1984 were allocated to treatment and rehabilitation programs. The source of funding for treatment and rehabilitation programs is both state and federal funds. Most of TCA's funds in this category are distributed on a purchase-of-service basis to community-based facilities for the treatment and rehabilitation of alcoholics. TCA currently has 120 treatment and rehabilitation grants and contracts with various public and private non-profit entities providing a broad range of alcoholic treatment services including detoxification, residential, long-term care, and out-patient services.

Approximately 20 percent or \$572,975 of the funds allocated in the treatment and rehabilitation category are purchase of service contracts with residential facilities awarded on the basis of TCA's cooperative agreement with the Texas Rehabilitation Commission (TRC). Under this agreement, if a client is potentially eligible for TRC employment services, TCA provides financial support for the client during the first 30 days of sobriety. Only facilities certified by TRC are eligible for this type of purchase of service contract funds from TCA.

Community-based facilities of TDMHMR are also recipients of TCA treatment and rehabilitation funds. Sixteen of the 31 MHMR facilities were awarded TCA grants for fiscal year 1984, receiving approximately 40 percent or \$1.1 million of the treatment and rehabilitation allocation.

Another type of funds which fall into the treatment and rehabilitation category are direct transfer funds. In fiscal year 1984 these funds totaled \$1.1 million. Although these funds are included as line items in TCA's budget, the funds are transferred directly to TDMHMR state hospitals (\$453,350), state chest hospitals operated by the Texas Department of Health and the University of Texas at Tyler (\$65,677), and the Texas Department of Corrections (\$604,649) for use in the employment of alcoholism counselors. The alcoholism counselors who work in these institutions are jointly selected by TCA and the agency or institution.

Intervention. One of the agency's goals is to intercept individuals who are in the early stages of alcohol abuse or addiction and refer them to treatment or counseling. TCA supports programs that provide early case finding and family intervention activities in order to identify and refer persons to sources of help in the early stages of alcohol abuse or addition. In this category, TCA awarded \$52,167 state and \$903,795 federal funds as grants to 47 programs offering intervention services in fiscal year 1984. This total represents 14 percent of all grant and contract funds awarded in fiscal year 1984. Funds were awarded to councils on alcoholism, local units of government, community mental health centers, community clinics, public and private non-profit hospitals, Indian reservations, the Texas Hospital Association, YMCA's, Texas Education Foundation, Houston Municipal Courts, and medical schools for the provision of early alcoholic identification and referral services.

**Exhibit 4**  
**TEXAS COMMISSION ON ALCOHOLISM**  
**GRANT AND CONTRACT FUNDS ALLOCATED - FY 1984**  
**BY CATEGORY**

	<u>Treatment and Rehabilitation</u>	<u>Prevention</u>	<u>Intervention</u>	<u>Occupational</u>	<u>Regional Service Development</u>	<u>Other (DWI and Training)</u>	<u>Totals</u>
Amount Awarded	\$ 3,474,820	\$ 926,639	\$ 955,962	\$ 402,064	\$ 980,699	\$ 65,422	\$ 6,805,656
	(51%)	(14%)	(14%)	(6%)	(14%)	(1%)	100%
Number of Programs Funded	120	112	47	7	24	2	312

Occupational. Six percent of all grant and contract funds are awarded to programs which develop employer or institutionally based early intervention services for alcohol abusers and alcoholics. The agency estimates that alcohol-impaired employees cost Texas employers over \$1.5 billion annually due to the effects of lost productivity, increased sick benefit usage, high employee turnover and low morale.

Occupational grantees, which include city governments, private organizations, school districts, and labor unions, generally work with various businesses, industries and professional organizations helping them set up employee assistance programs. Employee assistance programs provide a means for early intervention, identification and referral for alcohol abusers and alcoholics while they are still employed.

The agency has also used funds allocated to occupational grants for the development of student assistance programs. Student assistance programs are aimed at early alcohol abuse intervention and follow-up services for school aged youth. The agency awarded \$402,064 in federal funds to seven occupational programs in fiscal year 1984.

Prevention. Three different types of grants totaling 14 percent of all grant and contract funds or \$926,639 were offered to service providers in the prevention area. These grants are a mixture of state (5 percent) and federal (95 percent) funds. During fiscal year 1984 when funds were available, TCA provided contracts to schools throughout Texas to purchase TCA-approved alcohol education curricula. Two private schools, 59 public school districts, and two non-profit organizations were awarded contracts totaling \$376,000 for this purpose.

The second type of grant in the prevention area goes to programs which provide prevention and education services to kindergarten through college students identified as high-risk. High-risk youth have been identified by the agency as children of alcoholics, who are at greater risk of developing an alcohol problem in later life. Prevention grantees such as community centers, girls clubs, community mental health centers, and community guidance centers were awarded \$174,318 in TCA funds to identify and provide intensive services to more than 617,000 of these children.

Under general prevention activities the agency allocated approximately \$96,500 to organizations to carry out education and information programs for parents, junior and senior high school students, and for the drinking and driving population of Texas. One example of an education and information prevention grant is the statewide junior and senior high Student Myth Information and Learning Experiences (SMILE) campaign, which is a peer education project operated through student councils.

Regional Services Development. Regional services development grants representing 14 percent or \$980,699 of all grant and contract funds were awarded, in fiscal year 1984, to 24 regional alcoholism authorities (RAA's). These authorities are divisions within Texas' 24 councils of governments (COG's). Responsibilities of each RAA include regional planning, development of resources, and coordination of local alcoholism services.

The regional service delivery system was established in 1973. Funded contracts were developed with an agency in each region of the state to provide for

a staff position and related administrative expenses. Although various agencies have served as the regional alcoholism authorities, since 1983 the councils of government have been fulfilling this function exclusively.

DWI and Training. At the present time, TCA is funding only one grant each in the DWI and training project categories. For fiscal year 1984, \$53,068 was awarded to Sam Houston State University for use in training of DWI education instructors and administrators. Texas Tech Health Science Center received \$5,293 in 1984 to train family practice medical students in the subject of alcohol use and abuse.

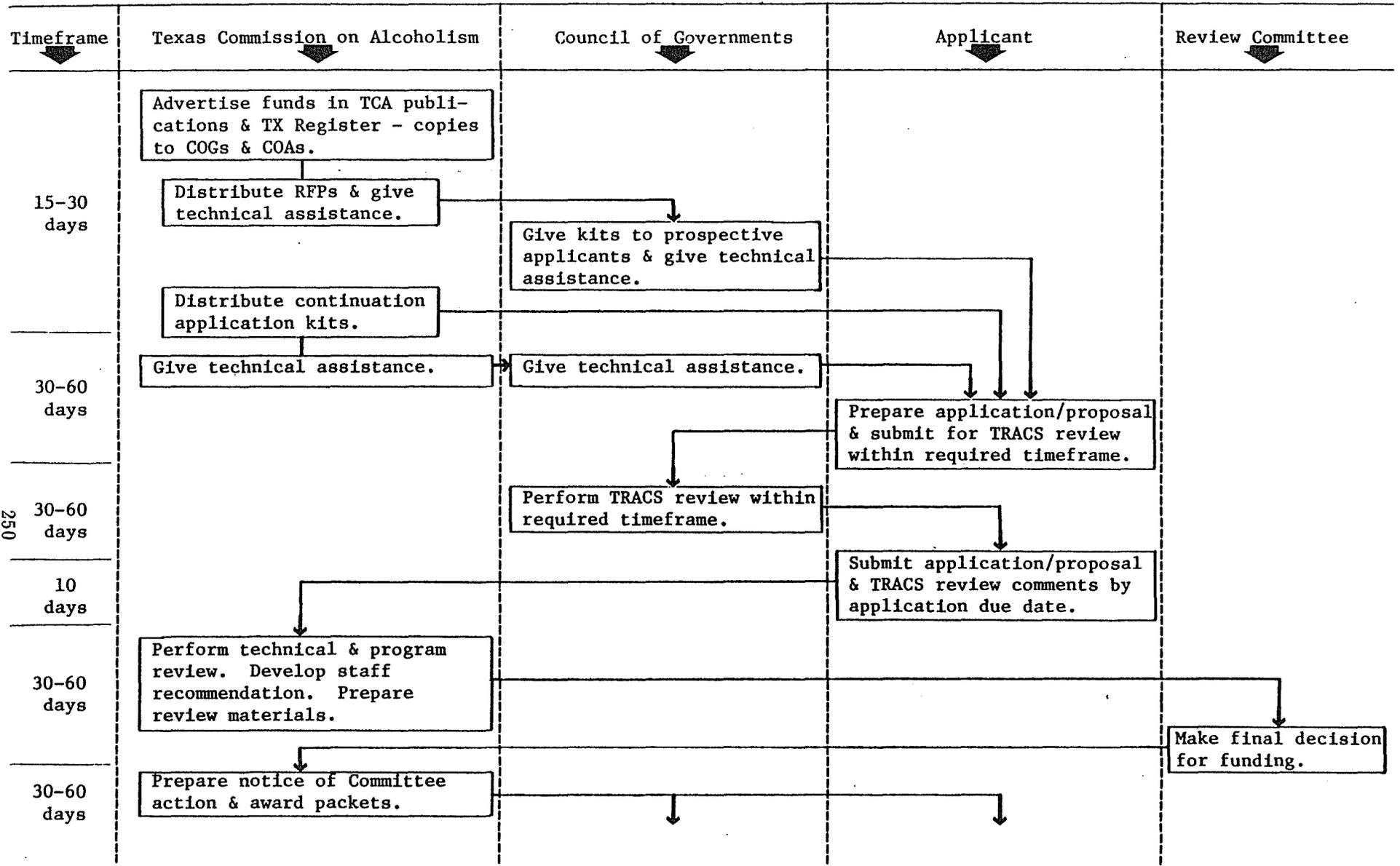
Like most agencies that allocate grants, TCA has established project funding categories that group various services for which funds can be allocated. Initial grant and contract applications in most of TCA's project funding categories are through a request for proposals (RFP) process. Under this process the agency indicates, through the Texas Register, which services are needed and outlines the process for applying. Entities seeking to receive funding first submit their application to the regional alcoholism authority for review and comment, where the merits of each proposal are evaluated and ranked according to specific criteria. A review group composed of TCA commissioners and advisory council members make the final decision for awarding available funds. Continuation grants funded by the agency are not required to go through the RFP process, but must submit an annual budget and description of major changes, achievements, and progress made in securing other funds to support the project. In fiscal year 1984, \$6,372,595 was allocated to continuation projects, while new projects received \$433,061. An outline of TCA's procedure for awarding both continuation and new grants is shown in Exhibit 5.

In the past, the agency has operated under a funding cycle that was unnecessarily complex and cumbersome. The review indicated that TCA has adopted a new grants funding cycle system for fiscal year 1985. Under this system, projects will be funded for one of four time periods, depending on the capability to become self-sustaining or to generate other sources of revenue.

Projects which have a high potential for picking up the costs in the future will be funded for a period not to exceed four years and will have an increasing match contribution requirement each year TCA funds are received. Projects with little or no potential to become self-sustaining, but which are necessary, will have a sustaining cycle. There is a separate funding cycle for special projects and a 12-month discretionary cycle used to address emergency situations.

A review of the agency's monitoring activities indicated that in the past the agency did not have a process which ensured systematic and timely evaluations of grantees. However, the agency recently implemented a new system for the monitoring of all grant and contract projects. By rule, all projects receiving TCA funds are subject to on-site inspection, monitoring, auditing, and other evaluations as required. Program monitoring of funded projects will now primarily be the responsibility of TCA's six district offices. District office staff will monitor all projects in their area at least annually to identify and correct problems in service delivery during the grant or contract period. Financial audits of projects funded by TCA are the responsibility of central office administration staff. The agency indicates that, beginning September 1, 1984, all organizations receiving \$20,000 or more per year will be required to have an annual independent audit of financial records. TCA will audit those with grants under \$20,000.

**Exhibit 5**  
**Texas Commission on Alcoholism**  
**FLOWCHART - APPLICATION PROCESS**



### Technical Assistance

As a state authority on alcoholism, an important activity of the agency is the provision of technical assistance. The agency provides technical assistance through agency staff or by contract. All TCA program areas are involved in some way with providing assistance or liaison services to program grantees and participants, other agencies and organizations, or the general public. An example of the kinds of technical assistance offered by TCA's central office program staff is the assistance provided by intervention program staff in the DWI education area. The Texas Commission on Alcoholism provides technical assistance to the state's certified DWI education programs through informing them of new resources, of legislative changes which may affect them, and of new developments in alcohol traffic safety education. Assistance and input is also given to agencies or organizations interested in developing DWI education programs as well as to the authors of curriculum used for the DWI classes. Technical assistance is provided by mail, phone, through workshops or on-site visits.

The agency also contracts with the 24 regional councils of government to provide a great deal of technical assistance to the state's alcoholism program operators. Staff of the COG's, which serve as designated regional alcoholism authorities (RAA's), provide guidance to service providers in their area on specifics such as how to apply for TCA funds and how to comply with TCA rules, regulations, policies and procedures. Because of their geographical proximity to the alcoholism program operators, the RAA is supposed to be the focal point for providing information and guidance to TCA grantees concerning the agency's functions, such as funding, licensure, or auditing. RAA staff are invited to attend any audits on funded programs conducted by TCA in their region and to assist the service providers in resolving TCA recommendations, requirements and conditions. Although TCA's district office staff in each of the six TCA districts have also offered technical assistance on the local level, within the past year the regional technical assistance function has been assigned to the RAA's in an effort to avoid overlap and duplication of service.

### Education and Training

Education and training activities at TCA were established to fulfill the agency's statutory requirement to develop educational and preventative programs on alcoholism. Education and training activities are carried on under three agency programs: the primary prevention program, the intervention program and the community services program.

The agency provides education and training services in two ways - distribution of materials and workshops. First, the agency maintains a public awareness service which provides information to the general public on alcohol abuse and alcoholism. A wide variety of newsletters, brochures, pamphlets, other publications and films covering areas related to alcohol use and abuse are provided to the public upon request. Agency-owned films are distributed on a free loan basis and publications are priced at cost. 194,291 copies of TCA literature were requested in the first six months of fiscal year 1984, primarily by alcoholism service providers. As mentioned earlier, much of TCA's education efforts involve grants for school curriculum. The agency also owns educational kits which are distributed to various elementary schools throughout the state for a specified loan period.

The second manner in which education and training activities are carried out is through statewide and local workshops and seminars. The largest state-wide workshop sponsored by the agency is the Annual Institute of Alcohol Studies, held each year in Austin. In 1983, the agency reported 656 participants attended the Institute to receive training from nationally known specialists in management, counseling skills, treatment and rehabilitation and research and prevention areas. The Annual Institute, which is funded through participant fees, also plays an important role in the credentialing of counselors by the Texas Association of Alcohol and Drug Abuse Counselors. Thirty of the total 180 hours required for certification as an alcohol and drug abuse counselor can be obtained at the TCA institute.

Other statewide training events sponsored by TCA include an annual conference on the prevention of alcohol/chemical abuse among youth and an annual employees assistance symposium. The employee's assistance symposium, co-sponsored by TCA and the Texas Association of Businesses, informs participants about state-of-the-art techniques in providing alcoholism intervention services in an occupational setting.

Training and educational services are also provided on a local or regional level. TCA requires by contract that each regional alcoholism authority (RAA) conduct a Regional Institute of Alcohol Studies for service providers and grantees in their regions. Guidelines and training priorities on the Regional Institutes are established by the agency's central office. Texas Commission on Alcoholism staff will, on occasion, also provide educational and training services to grantees, direct service providers, or potential direct service providers in the various regions as special needs arise.

A final training activity is the interagency training of TCA staff or staff of the regional alcoholism authorities (RAA's). Central office program staff are sometimes involved in training TCA district staff and RAA staff on agency procedures and alcoholism program areas. One example of this is the training of RAA directors who have TCA grantees in their region. The directors were recently trained in state and federal laws as well as in TCA procedures relating to grants so that they will be better able to assist and advise the grantees in their regions with technical problems.

### Coordination

The Texas Commission on Alcoholism is directed by statute to "coordinate the efforts of all interested and affected state and local agencies" which provide services relating to alcohol or alcoholism. The agency has directed its efforts to coordinating general alcohol awareness efforts and to coordinating alcoholism services carried out by state and local agencies and private organizations. Three specific program areas of the agency are responsible for more specific forms of alcoholism service coordination in the state.

Staff of the primary prevention program are responsible for coordinating statewide alcohol awareness and education campaigns. Texas Commission on Alcoholism staff design materials for these campaigns, which are utilized to educate Texans about alcohol use and abuse, the dangers of drinking and driving, and other alcohol-related problems. The campaigns are then conducted on a local level, with TCA coordinating the effort statewide by providing campaign guidelines, advice, and evaluation tools to each local provider. Another statewide

educational program, the DWI education program, is coordinated by the TCA intervention program. In 1981, legislation was enacted which requires misdemeanor DWI offenders to attend and complete state-approved DWI education courses. This legislation specified that TCA, along with the Department of Public Safety, the Texas Adult Probation Commission, and the State Department of Highways and Public Transportation, jointly approve and certify the DWI education programs. In an effort to prevent duplication, the other agencies also responsible for course approval recommended that TCA assume primary responsibility for coordinating the course approval procedures. Intervention program staff coordinate and monitor the DWI courses in the state in an effort to ensure uniformity and standardization.

Efforts to coordinate alcoholism services between state local and private operations and avoid duplication in the alcoholism treatment and rehabilitation area are carried out by the treatment and rehabilitation program through memorandums of agreements between TCA and other state agencies and private organizations. Currently, the agency has memorandums of agreement with the following agencies and organizations who provide services to alcoholics: the Texas Department of Mental Health and Mental Retardation, the Texas Department of Health, the University of Texas at Tyler Health Science Center, the Texas Department of Corrections, the Texas Rehabilitation Commission, the Texas Association of Alcoholism and Drug Abuse Counselors, and the Texas Association of Alcoholism Facilities. Each memorandum of agreement outlines the responsibilities of both parties in the provision of alcoholism services. These memoranda are reviewed annually. The purpose of the agreements is to further cooperation and coordination while precluding overlap and duplication of activities.

The community services program, which includes both district staff and staff of the regional alcoholism authorities, performs coordination activities on the local level. Regional alcoholism service directors (RASD's) in the 24 regional councils of government maintain liaison with all the alcoholism programs in their region. Coordination of regional alcoholism services is focused on strengthening the network among service providers and promoting the sharing of information and resources. The TCA district office director supports and monitors the regional coordination responsibility. District office staff also serve as a liaison to district offices of other state agencies.

#### Licensure and Certification

The agency is currently involved in three different licensure and certification procedures; the licensure of health care facilities treating alcoholics, the certification of DWI education programs, and the approval of treatment and rehabilitation facilities as eligible for participation in food supplement programs.

Facility Licensure. The licensure division, an activity of TCA's administrative program, is responsible for the regulation of health care facilities treating alcoholics. Texas Commission on Alcoholism received authorization for this voluntary alcoholism facility licensure activity from the legislature in 1977. Treatment facilities including public or private hospital alcohol treatment units, extended care facilities, outpatient care facilities, and other specialized facilities where inpatient or outpatient health care is provided for individuals with an alcohol condition, may voluntarily apply for a TCA license. Two agency staff perform all of the administrative duties associated with the licensure function. The licensure division processes applications, conducts on-site plant and program inspections, and

writes reports detailing findings and recommendations regarding on-site inspections.

Applicants are eligible for licensure upon meeting TCA licensure standards, including both program and physical plant standards, and payment of a licensure fee. Inpatient facility licensure fees are determined on a per-bed basis, with a maximum fee of \$1,000. The maximum fee charged for outpatient facility licensure is \$600. In addition, a \$50 application fee is required of all applicants. Once a facility has undergone an inspection visit by the licensure survey team and has paid the required fees, the TCA licensure review board considers the application for licensure. The eight-member review board, appointed by the commission from the staff of TCA, meets at least quarterly to approve or disapprove the applications for facility licensure. A flowchart depicting the entire TCA facility licensure and appeals process can be found in Exhibit 6.

An important impetus to the voluntary TCA facility licensure activity was a 1981 amendment to the Texas Insurance Code which provided for optional group insurance for the treatment of alcoholism. Under the Act, a drug or alcohol treatment facility may receive reimbursement if two conditions are met. First, a facility may receive reimbursement if there is a written treatment plan approved and monitored by a physician. Secondly, a facility may receive reimbursement under the Act if they are affiliated, licensed, or certified by certain specified entities, including the Joint Commission on Accreditation of Hospitals, the Texas Commission on Alcoholism, the Texas Department of Community Affairs, or other state agencies having the legal authority to license, certify, or approve.

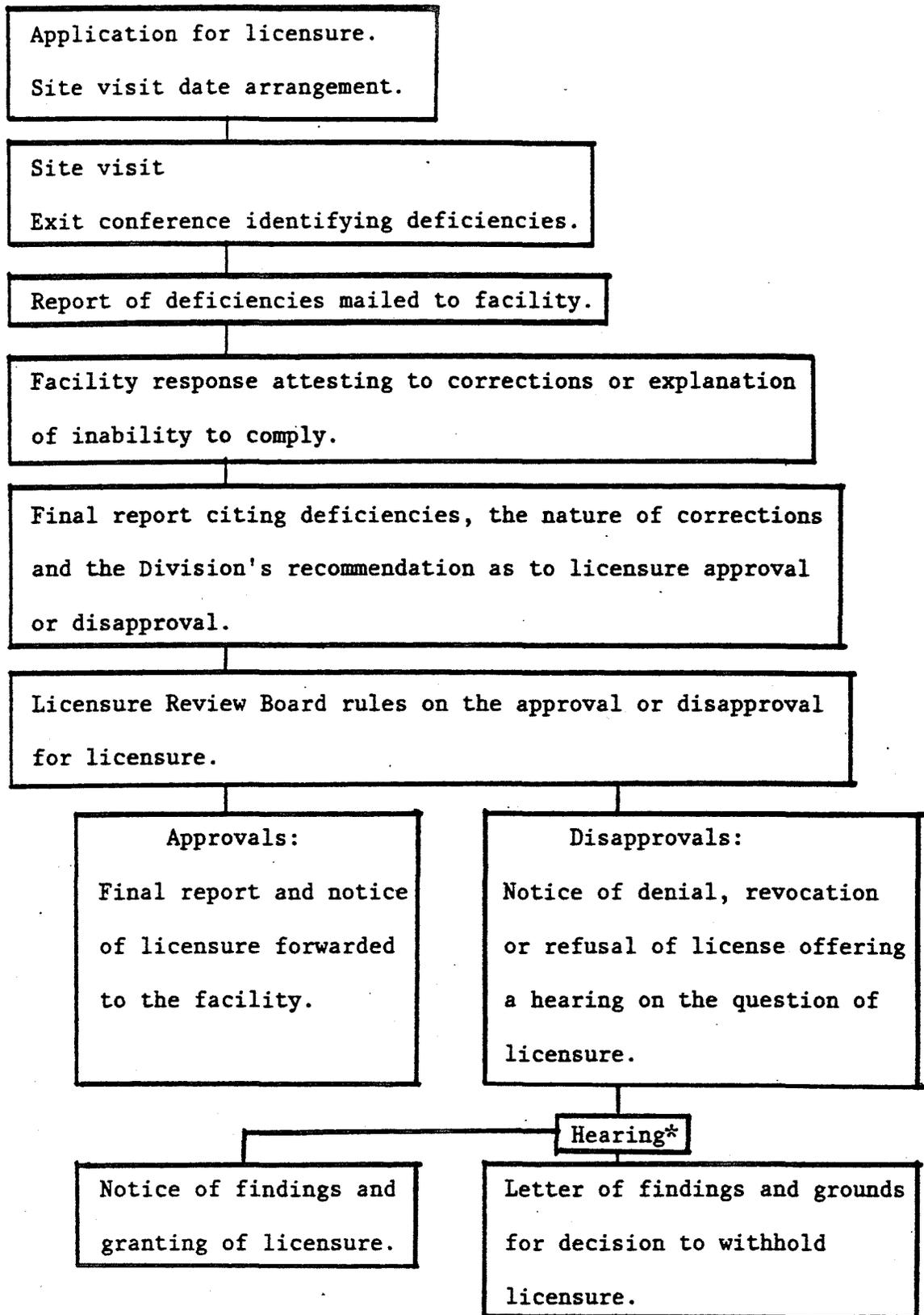
With passage of this legislation, many private-for-profit alcoholic treatment facilities began seeking TCA licensure to facilitate third-party payments. To date, out of an estimated 238 eligible facilities statewide, 28 alcoholic treatment providers are licensed by TCA. Of the 28 with TCA licensure, 23 are for-profit facilities and five are non-profit. Four of these licensed by TCA also receive funding from the agency.

Another reason treatment facilities seek TCA licensure is to be eligible to accept court-committed alcoholics. The agency's statute authorizes them to designate treatment facilities for the purpose of accepting alcoholics committed by a court for treatment. The statute allows the courts to remand alcoholics to TCA, its authorized representative, or a treatment facility approved by the Commission on Alcoholism for alcoholic detoxification or treatment purposes. Licensure is designated by agency policy as the official approval process and currently only facilities which are licensed by TCA are designated to accept court commitments.

Certification of DWI Programs. The legislature amended the Code of Criminal Procedure in 1981, directing the courts to require that misdemeanor DWI offenders attend an educational program jointly approved by the Texas Commission on Alcoholism, the Texas Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission. TCA was directed by the legislation to publish the jointly approved rules and regulations and to monitor and coordinate the educational programs.

The Texas Commission on Alcoholism has assumed the primary responsibility for statewide certification and monitoring of the DWI education programs. Any

Exhibit 6  
LICENSURE QUALIFICATIONS AND APPEALS PROCESS  
FLOWCHART



\*The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all hearings authorized by this Act.

DWI education program which receives court referrals must first be certified by TCA before providing classes. The agency's intervention program provides staff support for the DWI education certification procedure, including frequent program monitoring to ensure compliance with the DWI education program standards and procedures. The DWI programs, which are generally initiated by county governments, are required to meet certain standards before receiving certification. Each program must utilize state-approved curriculum, providing a minimum of eight hours of instruction with trained personnel. Programs must also screen clients, referring to treatment those identified with serious alcohol problems. The DWI programs are supported through fees for service, and there is no fee charged for TCA certification or the biennial recertification. Certification approval, denial, requests for waivers, and appeals are all authorized by TCA commission members. Currently there are 108 certified DWI programs in the state serving all Texas counties.

Supplemental Food Program Approval. The treatment and rehabilitation program handles the approval of residential alcohol abuse centers as eligible to participate in the Federal Food Stamp Program and the Texas Surplus Property Program. In this approval, TCA follows criteria as set forth by the Texas Department of Human Resources and the Texas Surplus Property Agency. Any non-profit residential facility providing services for alcohol abusers or alcoholics that could lead to their rehabilitation is a potential participant in the program. As the designated state alcoholism authority under Public Law 91-616, TCA is authorized to approve a facility as one that could lead to the rehabilitation of alcoholics. Treatment and rehabilitation staff accomplish this eligibility determination through a review of the services provided by the facility as outlined in an application letter. Sixty four facilities were approved for eligibility under this program in fiscal year 1983.

### Planning and Research

The planning and research function at TCA is an activity of the administrative program. Central administration planning and research staff are mainly responsible for two different activities: 1) the collection and maintenance of data, including data on clients of TCA funded projects as well as statewide alcoholism prevalence data; and 2) the coordination of statewide alcoholism planning.

The planning process at TCA is currently in a period of transition. When the agency functioned under the mandate of the federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, the state was required to submit a state plan prior to the receipt of federal funds. To accomplish this federal mandate, the agency utilized contracts with the regional alcoholism authorities (RAA's), located in the 24 councils of government throughout the state. Each RAA was responsible for providing staff support to a regional planning committee, which conducted local public hearings and otherwise obtained public input as well as statistical information from TCA for inclusion in a regional plan. Designated staff of the RAA would also work in cooperation with local elected officials, interested citizens, and service providers to develop a comprehensive system of services for alcohol addiction and abuse needs at the regional level. Once all the regional plans were submitted to TCA's central office, planning staff would review the plans for accuracy and compile pertinent information extracted from the regional plans with input from certain state agencies, block grant hearings, and the State Health Plan to produce a plan describing the overall goals

and activities for the state in the prevention, treatment, and control of alcohol addition and abuse.

The change to federal block grant funding in 1981 radically altered these requirements. TCA was no longer required to submit a state plan; however, the agency chose to continue this regional and state planning process. The latest plan published was the 1982-84 state plan. This plan now also serves as the intended use report for the state's block grant funds.

Since the agency is no longer required to submit a state plan to the federal government, it is currently reassessing the direction future planning efforts should take. The agency's planning staff is examining alternative means of accomplishing statewide planning for alcohol related services. As a result, the agency has not initiated the regional/state planning process for the 1984-85 fiscal year and contemplates a shift from annual to biennial planning. During this time, the agency is looking at issues such as what format will be used for the state plan, the relationship between the state plan and regional plans, whether planning should be long-term or operational and how to best implement the plan.

The Texas Commission on Alcoholism is also experiencing transition in the methods of data collection and maintenance. The agency is currently in the process of implementing the Client Oriented Data Acquisition Procedure (CODAP) data system, which will provide information on various admission and discharge characteristics of clients receiving treatment services from TCA funded facilities. The agency anticipates that all treatment and rehabilitation programs receiving TCA funds will be placed on the CODAP program by September 1, 1984. It is anticipated that availability of more complete client data will aid in planning, program monitoring and fund management activities.

In addition, planning staff are also currently processing data collected through a TCA sponsored research project conducted by Texas Christian University on the incidence and prevalence of alcohol abuse and alcohol addiction in Texas. This data, which will be updated as needed, provides TCA with a more accurate estimate of the number of problem drinkers in each county and will serve as an important planning guide in allocating funds among the regions.

### **Need to Continue Agency**

The need for each of the commission's functions was analyzed and the review indicated that there is a continued 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.



**Sunset Commission Recommendations for the  
TEXAS COMMISSION ON ALCOHOLISM**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be changed to allow the governor to appoint the chair of the commission.**

Currently the commission chair is elected from the membership. The general practice is for the governor to appoint the chair. There is no reason that the general practice should not be followed here.

- 2. The statute should be changed to authorize compensatory per diem and travel reimbursement rates comparable to those authorized for similar health service agencies for commission members.**

Authorizing commission members to receive a compensatory per diem of \$50 per day for attendance at official meetings would provide for consistency in the per diem policy authorized for similar state agencies and would reduce the likelihood of individuals being forced to refuse appointment due to financial hardships.

- 3. The statute should be changed to clearly authorize the present advisory committee.**

The agency has established a statewide advisory council to facilitate state-wide participation in the development and implementation of the agency's alcohol addition and abuse programs. Current regulations no longer require that the agency maintain an advisory council. Since the advisory council is considered an important component of the agency's decision-making processes, the agency's statute should be modified to provide for the creation of such a body.

**Evaluation of Programs**

**Grant and Contract Services**

- 4. The statute should be amended to require the agency to consistently monitor the expenditure of funds and the provision of services of all grant and contract recipients.**

The agency has not yet implemented comprehensive or consistent procedures to monitor recipients of its funds. Requiring the agency to monitor the expenditure of funds and the provision of services of TCA grantees and contractors would help to ensure proper accountability of state and federal funds.

5. **Decisions regarding the approval of grants and of DWI certifications should be made by the agency's executive director with appeal to the commission.** (management improvement - non-statutory)

In the areas of approval of grant awards and approval of DWI certifications, the members of the governing body of TCA make decisions and then entertain appeals regarding those same decisions. To ensure individuals dealing with the agency have a greater guarantee of impartiality and to maintain a clear delineation of policy-making and administrative responsibilities, the agency's executive director should make the final decisions regarding approval of grant applications or DWI certification with any appeals directed to the governing body for review.

6. **The statute should be amended to require that TCA grantees provide a cash match of at least five percent of the total TCA grant award.**

The review indicated that the agency's current statutory language concerning financial input from recipients of agency funds is outdated because the agency no longer provides funding to city or county alcoholic clinics, the only type of facility mentioned in the statute. Amending the agency's statute to require at least a five percent cash match from all grantees unless the commission determines such a requirement could jeopardize the provision of needed services would provide greater consistency in the conditions required of recipients of grant funds awarded by state agencies and ensure evidence of local support and commitment to entities receiving state funds.

7. **The agency should be required to use available alcoholism need indication data more fully in the funding process.** (management improvement - non-statutory)

A comparison of the prevalence of problem drinkers in each region of the state and the amount of money awarded by the agency to those regions revealed discrepancies which could not be fully explained. The agency should more fully integrate available service need data into the funding process to make sure that funds are most effectively and efficiently distributed to areas where the greatest need for services exist.

8. **The agency should be required to review its grant process to ensure the most efficient and effective use of available funds.** (management improvement - non-statutory)

Results of the review indicated the agency's average grant award to organizations providing alcoholism related services is relatively small. The agency has chosen to distribute its appropriations in smaller amounts to a greater number of service providers. While this practice allows the agency to fund more projects across the state, TCA's funding policy tends to increase the administrative costs of both the agency and its grantees, reducing the amounts available for direct services. Currently there exists a greater need than TCA is capable of providing given their current budget. The agency should review its funding policies and priorities in order to maximize services to alcoholics with the greatest need without compromising the ability to monitor and audit programs or incurring unnecessary administrative costs.

9. **The statute should be amended to require that the commission develop and adopt formal policies and procedures in agency rules for the administration of the agency's programs.**

Currently the agency is performing some of its functions according to informal policies and procedures which have not been formally adopted as rules in accordance with the Administrative Procedures Act. Adoption of formal rules would ensure compliance with state law, adequate guidelines as to basic procedural requirements regarding receipt of agency funds, and adequate public participation.

10. **The agency should implement a complaints process no later than January 1, 1985.** (management improvement - non-statutory)

The review indicated that although the agency has adopted a complaint procedure policy, no complaint system has yet been implemented whereby those affected by its programs are provided an accessible process to voice complaints and have them resolved in an unbiased manner. The agency should continue to work towards implementation of a complaint system in order to fulfill state requirements and to be able to respond to complaints in a systematic way.

#### Technical Assistance

11. **The agency should be required to provide grantees technical assistance materials consisting of guidelines and standards.** (management improvement - non-statutory)

Technical assistance is currently provided to the recipients of agency funds through both central administrative staff and staff of the regional alcoholism authorities. The review identified a need for a systematic method of providing grant and contract recipients technical assistance information concerning relevant state and federal guidelines. A more systematic provision of technical assistance information to agency grantees would increase the recipient's knowledge of important procedures and therefore increase the efficiency and effectiveness of the expenditure of funds.

#### Coordination

12. **A task force should be set up to study changes in the commitment procedures for alcoholics and other drug dependent persons.**

Current procedures for committing an alcoholic to treatment found in the agency's statute do not include adequate due process protection and may be unconstitutional. The review indicated that although the current commitment procedures for alcoholics as well as those for abusers of other drugs are in need of change, solutions to the problems associated with procedures are complex and may require further study. A task force consisting of representatives of all relevant parties to the commitment proceedings set up to study the issues would be one method of determining the best possible procedures for committing alcoholics and other drug dependent persons.

### Licensure and Certification

- 13. The statute should be amended to require that fees received for the licensing of alcoholic treatment facilities should cover not less than 50 percent of the licensing program by fiscal year 1987.**

The alcoholism treatment facility licensing act states that the commission may charge fees in such amounts as are necessary to cover the cost of the agency's licensing program. As a general state policy, at least 50 percent of the costs associated with regulating a profession or business are paid for through fees charged to the regulated industry. The agency's licensing program currently is projected to cover 29 percent of the program cost. The review indicated that fees charged to licensees could cover program costs by 1987 without necessitating an increase in fees if the number of licensees continues to increase at the present rate. The statute should therefore be amended to reflect more realistic requirements.

### Open Meetings/Open Records

- 14. Subcommittee meetings of the agency's governing body should be posted in accordance with the Texas Open Meetings Act.  
(management improvement - non-statutory)**

In the past, the agency's governing body has divided its membership into committees to study matters such as the agency budget and make recommendations back to the full commission. These meetings were not posted. To ensure those affected by the actions of the agency have adequate access to the decision-making process, commission subcommittee meetings should be posted in accordance with the Open Meetings Act.

**TEXAS ADVISORY BOARD OF OCCUPATIONAL THERAPY**

## Background

The Texas Advisory Board of Occupational Therapy was created by the Texas Occupational Therapy Act (S.B. 1213, 68th Legislature) to regulate the practice of occupational therapy in Texas. The effective date of the Act was September 1, 1983, and following initial board appointments the first meeting was held on November 7, 1983.

The Act specifies the appointment of a six-member board composed of three occupational therapists, one occupational therapy assistant, and two representatives of the general public. Board members are appointed by the governor and, except for initial appointees, serve staggered terms of six years. As of February 14, 1984, the governor has appointed five of the six board members. One public member position remains open. The board has three principal functions: 1) adopt rules and regulations to enforce the Texas Occupational Therapy Act; 2) receive and investigate complaints; and 3) examine, license and renew the licenses of qualified applicants.

The occupational therapy board is best described as an independent board administratively attached to the Texas Rehabilitation Commission (TRC). Although the board has the basic licensing and enforcement responsibilities associated with other independent occupational licensing boards, the TRC commissioner is statutorily required to appoint the board's executive director with board advice and TRC is statutorily directed to handle the board's appropriations. The board has also contracted with TRC for rental space and other administrative support services. General guidelines and procedures regarding the relationship between the board and TRC are contained in a memorandum of agreement, signed by both parties during an initial board meeting.

Board operations will be supported from fee income received by TRC and deposited to a special fund in the state treasury. Texas Rehabilitation Commission budget staff has estimated board expenditures for a ten-month period ending August 31, 1984 to be \$126,000. The board is authorized 2.5 FTE employees and is currently staffed by an executive director, and one secretarial assistant.

Regulation of occupational therapists in Texas takes the general form used by the other 21 states that have this type of regulation. Basically, there are two levels of licensure; licensure as an occupational therapist, or licensure as an occupational therapy assistant. To qualify for licensure as an occupational therapist, a person must have: 1) a baccalaureate degree in occupational therapy or evidence of completion of required undergraduate courses if the degree is not in occupational therapy; and 2) a minimum of six months supervised field work. Occupational therapy assistants are trained in the professional methods of therapy and practice, but they do not have the training to evaluate or plan treatment programs without the supervision of an occupational therapist. To qualify for licensure as an occupational therapy assistant, a person must have 1) an associate degree in occupational therapy or an occupational therapy assistant certificate, and 2) a minimum of two months supervised field work. In addition to meeting education requirements, both occupational therapists and occupational therapy assistants must also pass an examination approved by the board.

The board will use the American Occupational Therapy Association (AOTA) certification examination for occupational therapists and occupational therapy assistants. The exams given by the national association are developed and

administered by the Psychological Testing Corporation of America with assistance from AOTA. The standardized, multiple choice exams are administered to both occupational therapists and occupational therapy assistants twice a year in San Antonio, Dallas, and Houston.

Regarding procedures established for licensure in Texas, once education, experience, and exam requirements are met, upon payment of a fee and approval of the board, a license will be issued and renewed on an annual basis. A grandfather period ending March 1, 1984 allows the board to waive examination requirements for therapists and assistants already certified or registered on the national level of AOTA. Texas currently has approximately 1,400 occupational therapists and 300 occupational therapy assistants who have met the criteria for AOTA registration. The majority of this number will be grandfathered in by the March 1 date.

The board will rely on complaints from licensees and other members of the general public to identify violations of the Act. As of February 14, 1984, the review indicated the board has received four complaints, which are currently under investigation.

### **Need to Continue Agency**

To assess the need to license occupational therapists, the review focused on the scope of practice, the potential for harm, the evidence of other means of protecting the public, and the protection under the current Act. The results of the review indicated a continuing need to regulate occupational therapists based primarily on the potential for harm to the public which could result from unqualified individuals practicing occupational therapy. Although there is a well established private registration program for occupational therapists sponsored by the American Occupational Therapy Association which could assist the public in identifying qualified practitioners in the absence of licensing; without a state licensing act there is no way to prevent unqualified and untrained individuals from establishing an independent practice as an occupational therapist and to ensure that those therapists working with patients with medical problems will be referred and supervised by a physician.

The results of the review indicated that while the agency generally operates in an efficient and effective manner, there are changes that should be made in the event the legislature decides to continue the agency.

**Sunset Commission Recommendations on the  
TEXAS ADVISORY BOARD OF OCCUPATIONAL THERAPY**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be amended to require the board to consider the policies and procedures of TRC when adopting rules and regulations.**

Currently the Rehabilitation Commission has no legal or statutory input into decisions which could affect its operations. There is informal input but it should be made statutory.

**Overall Administration**

- 2. The statute should be amended to prohibit the appropriations of general revenue funds to fund the board's operations.**

Unlike most licensing agencies, general revenue funds could be appropriated to the board because the statute does not specifically require that the agency's appropriations be supported solely from fee revenues.

**Evaluation of Programs**

- 3. The statute should be amended to authorize additional fees in connection with the licensing of occupational therapists.**

There are no fees authorized for a number of services that will be required in the enforcement of the Act including collection of bad checks, issuance of duplicate licenses, and transfer of records.

- 4. The statute should be amended to provide for an inactive licensee status.**

Currently, an occupational therapist who is not actively practicing must either continue to renew their licenses annually or let the license expire and reapply for a new license if they choose to reenter practice.

- 5. The statute should be amended to require inactive licensees who resume active licensee status to meet educational or other requirements established by the board.**

This recommendation would ensure that licensees who have not practiced for an extended period of time have not lost contact with developments in technology and practice.

6. **The statute should be amended to permit only recent graduates of U.S. programs to apply for a temporary license as an occupational therapist or occupational therapy assistant.**

The current Act allows the board to issue temporary permits to 1) graduates of recognized programs both in the U.S. and abroad prior to taking the licensing examination; and 2) applicants seeking licensure by endorsement. It was determined that issuing a temporary permit to applicants seeking licensure by endorsement was unnecessarily duplicative. The review also indicated that, based on the significantly poorer pass/fail rates of graduates of foreign programs and applicants who had previously failed the exam, issuing temporary permits to these individuals does not provide sufficient protection to the general public from unqualified practitioners.

7. **The statute should be amended to require temporary permittees to practice only under the supervision of a licensed occupational therapist.**

There are currently no statutory provisions concerning the supervision of temporary licensees who are granted the same rights and privileges of licensed occupational therapists without having met all of the licensure requirements.

**TEXAS DEPARTMENT ON AGING**

## Background

The Texas Department on Aging, created in 1965, is currently active. When originally established, the agency was part of the governor's office and known as the Governor's Committee on Aging. Establishment of the committee was preceded by a decade of studies of aging problems and issues which led to a recognition of the need for a single, statutorily authorized agency to coordinate the state's resources to address the growing problems identified concerning the health, housing, financial and recreational needs of the state's elderly. The committee was also established in response to passage by Congress in 1965 of the Older Americans Act, which required the designation of a state agency on aging to become eligible for federal funds appropriated under the Act. The committee was directed to administer all federal programs related to aging which were not the specific responsibility of another state agency, as well as to coordinate all existing services provided by federal, state and local agencies and private organizations, and to assist in the development of services at the local level. Subsequent amendments to the Older Americans Act have expanded programs and created new ones, and federal funds appropriated under it have grown from \$6.5 million to nearly \$1 billion. The rapid growth in aging services and programs resulted in an expansion of the committee's responsibilities and activities and in the creation in 1981 of the Department on Aging as an independent state agency. Today the department serves a potential population of nearly two million older Texans or 13 percent of the state's population.

The board of the agency consists of ten members. Nine members are appointed by the governor with the consent of the senate for overlapping six-year terms. Experience qualifications of the members require that they must have shown an interest in and knowledge of the problems of aging. The tenth member, appointed by the governor, is designated as board chairman and serves during the tenure of the appointing governor.

Federal regulations and state law also require the creation of an advisory body to the state board. State statutes provide that advisory council members are to be appointed by the chairman of the board from each of the regions served by the area agencies on aging, which now number 28. The council's purpose is to advise and make recommendations to the board on matters related to the planning and coordination of services to the state's elderly. Council members participate in such activities as public hearings on the state plan, annual evaluations of area agencies, and in studying various issues affecting the elderly.

In fiscal year 1984, the agency has a staff of 41 and a budget of approximately \$42 million from general revenue and federal funds. Of that total budget, approximately \$1.3 million is appropriated for agency operations, and \$40.4 million is appropriated for pass-through grants for aging services.

In addressing the needs of the state's elderly, major programs administered by the department include: 1) local services designed to provide nutrition and supportive services to the elderly through a network of local area agencies and subcontractors; 2) the senior Texans employment program (STEP); and 3) the retired senior volunteer program (RSVP). In addition, the agency conducts a number of special programs and activities related to advocacy and coordination, including the long-term care ombudsman program and the legal services development program. Each of the programs are discussed below.

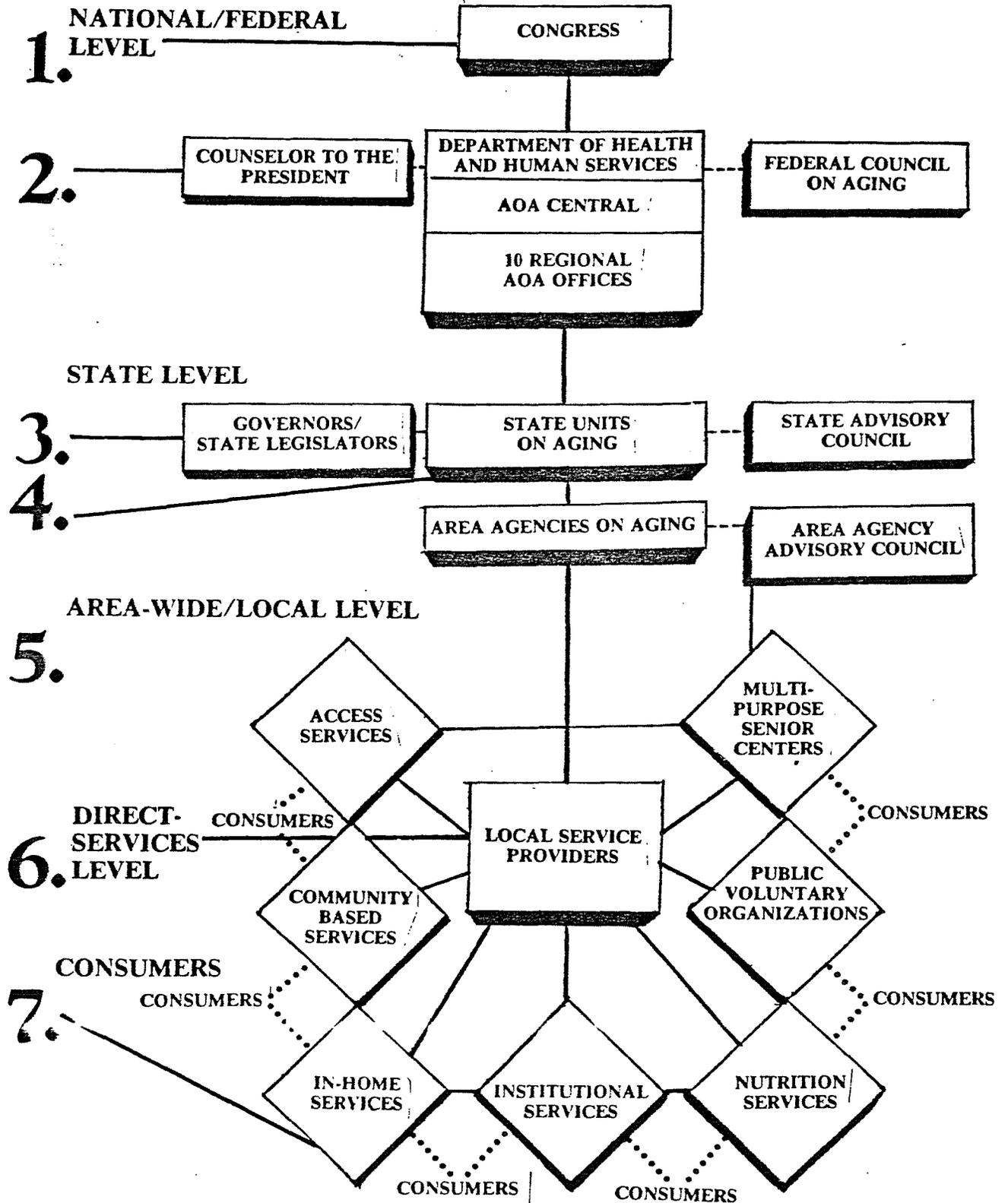
Local Services. The objective of the local services program is to promote the development of a comprehensive and coordinated system of services which will enable elderly Texans to remain active and independent in a home environment. The program structure and requirements are established in Title III of the Older Americans Act. The Act establishes an aging network consisting of the Administration on Aging under the U.S. Department of Health and Human Services, state units on aging, regional area agencies on aging, and local service providers (See Exhibit 1 on the following page). The Act provides for the designation of a state unit on aging, requires a division of the state into planning and service areas, and requires the designation of area agencies on aging (AAA's) with responsibility for community-based planning and coordination. Area agencies generally do not provide services directly, but are responsible for subcontracting with local public and private entities for delivery of services.

From 1973 to 1977, the Department on Aging established 28 area agencies on aging in all geographic regions of the state (See Exhibit 2). Twenty-four of these serve multi-county regions; the remaining four serve the state's four most populous counties: Harris, Dallas, Tarrant and Bexar. The majority of the AAA's operate as divisions of councils of government or regional planning councils, which are the grantee organizations for federal and state funding channeled through the Department on Aging. Area agencies subcontract funds to over 900 service providers for delivery of services at the local level.

Texas's allocation under the Older Americans Act is based on the state's proportionate share of the nation's population aged 60 and over. In fiscal year 1984, the department's budgeted appropriations for the program included approximately \$32 million in Title III federal funds and \$1.9 million in state funds. State appropriations are used as a portion of total funds required for federal matching. Federal and state funding is also supplemented by local match monies. The U.S. Department of Agriculture makes additional funds available to the agency, estimated at about \$5.5 million for fiscal year 1984, based on the number of meals served to elderly persons with Title III funds. Title III federal and state funds are allocated to the area agencies by TDoA based on a funding formula developed by the agency. The formula is based on three factors: the total 60 plus population in each area, the 60 plus minority population, and the 60 plus population with incomes below the poverty level. Area agencies receiving funds subcontract for the delivery of services in accordance with an area plan approved by TDoA. While funds allocated for congregate and home-delivered nutrition services must be spent for those services, the area agency is given greater flexibility in determining the particular mix of services to be provided with supportive services funds. The area agency subcontracts for supportive services based on identified priorities of the area. A broad range of supportive services is authorized under Title III of the Older Americans Act, including: access services such as information and referral, transportation and outreach services; in-home services, such as homemaking, visiting, and telephone reassurance services; legal services; and community services, including senior center operations, recreational services, and residential repair and renovation. In addition, supportive services funds may be used for the acquisition or renovation of multi-purpose senior centers, or where no suitable structures are available, construction of new facilities; and for counseling, placement and relocation assistance, and visiting services to residents of care-providing facilities.

All local services funded under Title III of the Older Americans Act must be available to anyone 60 years of age or older, regardless of income. While income

# NATIONAL NETWORK ON AGING



# Planning and Service Areas



cannot be used as a factor for Title III participation, federal law requires that preference be given to older persons with the greatest economic or social needs. Participant contributions are allowed, but must be voluntary in nature.

According to agency records, in fiscal year 1983 the service delivery system in Texas funded by Title III funds, and state and local match monies included 468 social service providers, 801 congregate nutrition service sites, and 174 home-delivered meals providers. Approximately 449,000 older persons were social service participants, 245,000 were congregate nutrition service participants, and 42,000 were home-delivered meal participants. Over 9.3 million congregate and 2.4 million home delivered meals were served.

In implementing the local services program as outlined above, major agency functions include state planning, review and approval of area plans, programmatic and fiscal monitoring, technical assistance and training, and coordination activities. Both TDoA and the area agencies must develop plans for aging programs as a prerequisite to the receipt of grant awards. The two-year state plan, adopted by reference in agency rules, includes the agency's estimated operating budget for each year of the period, projected program allocations to each of the area agencies for local services, the funding formula by which the allocations are made, and agency goals and objectives. The planning process includes development of preliminary objectives with input from area agencies and members of the state advisory council. In 1983, to develop the current plan, a series of hearings, conducted by advisory council and board members, were held in eight cities around the state, and attended by 761 persons. Information received during the hearings is incorporated into the goals and objectives statements by the state agency, and opportunity is provided for final review by the advisory council. Upon approval by the board, the plan is submitted to the Administration on Aging regional office in Dallas. Final approval by the U.S. Commissioner on Aging is a condition for Texas' eligibility for grants from its Title III allotments.

A similar process is required of each local area agency which develops a two-year plan defining services to be provided in the area, the method for financing the services, AAA goals and objectives, and assurances or commitments that the area agency will administer Title III activities in accordance with federal requirements. In developing the plan, area agencies are required to assess the kinds and levels of services needed by elderly in the area. They must hold at least one public hearing on the plan to ensure input from the area's elderly. As far as feasible, the objectives and goals along with the allocation of resources should reflect identified needs and concerns of the area's elderly. TDoA's responsibilities with respect to area planning include development of a standard format for area plans, and plan review and approval. Approval of the area plan by the board is required before a notification of grant award is issued to the agency. A plan has never been denied approval by the board, although a small number of grant awards have been issued with conditions attached.

The monitoring and compliance activity of the agency is intended to evaluate the fiscal and program performance of area agencies in implementing the area plans. Program monitoring is performed by six program specialists, each with responsibility for five to six AAA's, who annually conduct an on-site assessment and an on-site evaluation of each AAA. The assessment activity is intended to evaluate whether the program is set up properly to implement the area plan and ensure compliance with federal and state requirements. The purpose of the annual evaluation procedure is to determine the status of goals and objectives in the area

plan and to review the agency's performance during the past year. In addition to program monitoring, fiscal monitoring of Title III grantees is conducted in order to determine if good fiscal management practices are followed. Each grantee is monitored on-site at least annually by one of two TDoA staff accountants. The agency uses a written monitoring guide to assess fiscal compliance in a number of areas including accounting records, cash management, fiscal monitoring of and technical assistance to subcontractors, and fiscal reporting.

The agency indicated that generally when problems are identified in the course of monitoring activities, recommended corrective action is taken promptly. If a local agency does not act to correct instances of non-compliance with terms of the grant, the state agency may impose sanctions which include: changing to a reimbursement rather than advance payment method; withholding of funds; requesting return of funds not expended on allowable costs; or withdrawal of area agency designation. In fiscal year 1983, fiscal monitoring and program assessments and evaluations were conducted for all 28 area agencies. One grantee was temporarily put on a reimbursement payment basis.

Technical assistance is another major function performed by the agency in connection with the local services program. The agency indicated that areas of technical assistance provided by agency program specialists include: interpretation of federal and state laws and policies impacting the local services program; development of procedures for subcontract development and evaluation; budget development; area advisory council training; interpretation of fiscal and program management information, such as service unit cost data; resource identification and development; and development of new services and programs. Technical assistance is provided by the fiscal staff in such areas as financial reporting, the budget development and amendment process, allowable costs, property management, procurement policies and development of performance based contracts with service providers. Other technical assistance provided includes assistance by the planning staff in such areas as program performance reporting.

In addition, TDoA administers training activities funded through discretionary grants under Title IV of the Older Americans Act. Title IV provides authority for the U.S. Commissioner on Aging to grant awards to states for support of training, research and demonstration programs in the field of aging. Title IV discretionary grant funds awarded to TDoA during fiscal year 1983 totalled approximately \$230,000. Of that amount training funds totalling approximately \$31,000 were allocated by TDoA directly to AAA's in the form of grants to support individualized training programs developed by the AAA's. The major portion of funds supported training events planned and coordinated by TDoA, or financed attendance by AAA staff and service providers at events or conferences on aging issues coordinated by other agencies or organizations. Training covered such topics as nutrition and food handling; senior management skills; fiscal management; collection, reporting and use of program performance data; new state legislation of interest to the elderly; elderly abuse; and housing for the elderly.

Finally, in implementing the Title III program, the agency performs a number of activities related to coordination with other state agencies. The planning division circulates the goals and objectives of the state plan developed by TDoA among state agencies and organizations mentioned in the plan. Comments are requested particularly on those initiatives which would require interagency coordination. Beginning this year the agency indicates that more emphasis will be placed on coordination as a major function of the program staff. Recently revised

job descriptions for program specialists reflect that 50 percent of their time will be spent on coordination with certain state agencies including the Department of Human Resources, the Department of Mental Health and Mental Retardation, the Department of Health, the Department of Community Affairs, the Commission for the Deaf, the Commission for the Blind, the Department of Public Safety, the Highway Department, and the Governor's Commission on Physical Fitness.

Senior Texans Employment Program. The purpose of the senior Texans employment program (STEP) is to provide part-time employment and training opportunities for low-income Texans 55 years or older. STEP is funded through federal grants available under Title V of the Older Americans Act and through general revenue appropriations. Title V, administered by the U.S. Department of Labor, authorizes awards to state agencies on aging, and public and private non-profit agencies, including national contractors, to create employment positions that contribute to the general welfare of the community. A portion of total Title V appropriations in excess of amounts which must be awarded to national contractors, are required to be distributed to state agencies on aging according to a formula which takes into account the population aged 55 and older. Texas' total Title V allocation, including grants to national contractors operating in Texas and TDoA, amounted to approximately \$15.9 million for fiscal year 1984. Of that amount, approximately \$3.2 million was appropriated to TDoA with the remainder allocated to the following national contractors administering federal Title V funds in Texas: the American Association of Retired Persons, National Council on Aging, U.S. Forest Service, Green Thumb, the National Council of Senior Citizens, Pro-Spanish Speaking Elderly, and the National Urban League. In addition, the state appropriated approximately \$598,000 of general revenue funds during fiscal year 1984 for the STEP program. Part of the general revenue funds are used to meet federal matching requirements and the remainder funds a small state program.

TDoA contracts state and federal funds awarded to it with the Texas Farmer's Union Community Development Association, Inc. for management of the program. Currently, approximately 900-1,100 STEP workers are employed part-time on projects operated by state, county and regional governments and school districts, including projects designed to provide recreation, conservation, restoration and beautification services. They also fill positions at human service agencies, such as senior centers, nutrition projects, day-care centers, and hospitals. STEP enrollees must be 55 years of age or older, and must qualify under federal poverty guidelines. Responsibilities of Farmer's Union include publicizing the program; recruiting and determining the eligibility of applicants; and placing enrollees in projects best suited to their skills and interests. They also work to place enrollees in private sector or other jobs not funded by STEP.

TDoA functions in relation to the STEP program include development of a fair share distribution plan, monitoring and compliance, and technical assistance. The fair share distribution plan, intended to promote an equitable distribution of STEP placements throughout the state, is developed annually by TDoA and reflects each county's 55 plus population with incomes below the poverty level. Based on the plan, TDoA designates the counties in which Farmer's Union will place enrollees supported by state and federal funds. The agency also works with national contractors administering Title V funds in Texas and encourages their cooperation in ensuring a fair distribution of enrollees, although TDoA has no administrative control over these operations.

Farmer's Union is monitored by state agency staff to assess the overall effectiveness and efficiency of operations, and to ensure compliance with terms of the contract. Monitoring involves an annual on-site evaluation of Farmer's Union for purposes of determining administrative efficiency, including appropriateness of staffing and internal organization; adequacy of training provided by Farmer's Union to project sponsors, enrollees, and staff; and effectiveness in selected areas of program and fiscal management. The evaluation generally includes visits to project sites, providing an opportunity to question enrollees directly. Members of the local advisory council to Farmer's Union are encouraged to participate in project visits. Monitoring also includes an in-house review of quarterly and annual reports filed with TDoA with information on enrollees, job placements, and overall program accomplishments. In fiscal year 1984, the TDoA fiscal staff will begin fiscal monitoring of Farmer's Union to assess the adequacy of the financial management system. Agency staff also provide technical assistance upon request in such areas as staff and advisory council training, proper role of the advisory council, problems involving enrollees or project sponsors, reporting requirements and budgeting activities.

Retired Senior Volunteer Program. The retired senior volunteer program (RSVP) is designed to provide a variety of opportunities for volunteer community service to persons aged 60 and over. RSVP, originally authorized under the Older Americans Act, now operates under Title II of the Domestic Volunteer Service Act of 1973, and is administered by ACTION, a federal agency with responsibility for a number of volunteer service programs. Since 1978, TDoA has administered state funds appropriated for RSVP, which amounted to approximately \$550,000 in fiscal year 1984. TDoA disburses the funds to the 33 local RSVP project sponsors in Texas receiving approximately \$1.1 million in federal Title II grants directly from ACTION. The state funds may be used by the grantees toward federal matching requirements or any other authorized costs. In disbursing funds, the agency uses a formula which provides that 25 percent of the funds are distributed equally among the 33 sponsors, while the remaining 75 percent is allocated based on the number of volunteers in the project. The sponsors, located in 63 counties throughout the state, include public or private, non-profit organizations such as councils of government, cities, community councils, and such groups as Senior Citizens of Greater Dallas and the Houston Metropolitan Ministries. Sponsors employ a full-time project director responsible for publicizing the program; seeking out volunteer opportunities in the community; recruiting and placing volunteers in assignments appropriate to their interests and abilities; arranging for in-service training and supervision of volunteers at the work site; and paying for authorized volunteer expenses. State and federal funds may be used for payment of project costs, such as the director's salary, and volunteer expenses, including volunteer transportation costs, meals, accident and liability insurance and special events at which formal recognition is given to volunteers for service to the community. Approximately 23,000 RSVP participants are currently serving in a variety of capacities in Texas, including assisting in libraries and museums, working in senior centers and nursing homes, assisting in weatherization and restoration projects, and community beautification and conservation activities.

TDoA's major functions in administering state funds for the program include contract development, monitoring and compliance, and technical assistance. The agency contracts with each of the 33 sponsors for a one-year period. TDoA has developed a standard contract for use in the program which sets out the amount of state funds allocated to the project and covers certain responsibilities of the

contractor relating to the process for requesting payment, reporting requirements, retention of and access to records, and conflicts of interest.

Monitoring of projects is for the purpose of determining compliance with contract terms and assessing overall program and fiscal performance. Program monitoring is accomplished primarily through in-house reviews of reports required to be filed with the agency. The agency began conducting on-site reviews of a limited number of contractors in fiscal year 1983. Recently, the agency fiscal division began fiscal monitoring of RSVP contractors. A written on-site assessment guide has been developed and covers such areas as verification of volunteer strength, adequacy of financial record-keeping, and adequacy of supporting documentation for requests for reimbursement. On-site fiscal monitoring of all contractors has been scheduled for fiscal year 1984.

Technical assistance to contractors is provided by the two staff members with program responsibility for RSVP and by fiscal staff members. Assistance is provided during on-site visits, but is provided mainly by phone and generally involves questions concerning budgets, allowable costs, general reporting requirements and quarterly reports filed with the agency.

Advocacy and Coordination. TDoA conducts a number of activities and programs generally related to its mandated role as state advocate for the elderly and coordinator of programs impacting the elderly population in Texas. Major programs related to advocacy and coordination include the long-term care ombudsman program and the legal services development program.

TDoA is mandated by federal law to expend a portion of funds appropriated under Title III of the Older Americans Act for the establishment and operation of an ombudsman program for investigating and resolving complaints by residents of nursing homes and other long-term care facilities. It is intended to improve the quality of life for elderly Texans needing institutionalized care. At the state level, the program is supervised by the state ombudsman who is an employee of TDoA. Each of the 28 area agencies has one or more staff persons trained and "certified" by TDoA as ombudsmen, with responsibility for administering the local program in the area. In addition, the AAA ombudsman assembles a volunteer ombudsman task force whose members, currently numbering 266 statewide, are also "certified" to participate in investigations through training arranged by TDoA. Twelve area agencies have expanded their programs to include additional volunteers, about 741 statewide, who perform "friendly visiting" services in nursing homes. In fiscal year 1983, the area agencies dealt with 399 complaints, 2,905 requests for information, and made 87,285 resident visits under the friendly visiting program. TDoA has developed an interagency agreement with the Department of Health, the agency with principal responsibility for nursing home inspections and investigations, which outlines the respective roles of each. Under that agreement ombudsman staff and volunteers handle complaints and attempt to negotiate solutions to complaints with quality of life issues while complaints involving violations of Health Department regulations or serious complaints involving abuse or neglect are generally referred to TDH investigators. The state ombudsman routinely follows the progress of serious complaints referred to TDH and retains authority to perform independent investigations where there is a difference of opinion over results of a TDH investigation.

TDoA's legal services development program, currently provided through a Title IV-C discretionary grant under the Older Americans Act, is intended to

expand and strengthen provision of ombudsman and legal services to the state's elderly, and to monitor state and federal legislation which affects the elderly. Under this program the agency provides technical assistance and training to area agencies on aging and providers on how to improve their legal services programs, and on various legal issues affecting the elderly. In 1983, six formal training sessions were held around the state for AAA staff and legal service providers. In addition, the agency has developed technical assistance materials for distribution to AAA's in the form of a Legal Services Guidebook for the Elderly. This guidebook addresses legal issues affecting older persons in such areas as Social Security, Medicaid and Medicare, food stamps, nursing home care, estate planning, federal income taxation, and elderly abuse. Agency activities under the program also involve monitoring legislation of interest to the elderly at the state and federal levels. During the 1983 state legislative session, the agency tracked over 100 bills considered of interest to the state's elderly, and published a legislative summary of 30 bills finally passed. The staff attorney assigned to the program serves as liaison between TDoA and the State Bar of Texas in an effort to increase the formation of county and city bar programs which provide reduced fee or pro bono services for the elderly.

TDoA conducts a number of other activities generally related to advocacy and coordination. These include conducting special studies on aging, and serving as lead agency on the recently established Texas Long-Term Care Coordinating Council. As required by state law, the agency is nearing completion of a study on employment and training of the elderly. In compiling the report, the agency utilized surveys of both public and private sector employers regarding attitudes and practices on hiring the elderly, as well as surveys of colleges and universities regarding vocational programs available to older persons. The study, to be distributed to members of the legislature, selected state agencies, AAA's and others, includes recommendations of needed action by TDoA to develop training programs for the elderly to promote their employment.

In 1983, TDoA was named as lead agency of the newly created Long-Term Care Coordinating Council. The council is composed of not more than 17 members, including providers and consumers of long-term care services; citizen members; representatives of the Department of Human Resources, the Department of Health and the Department of Mental Health and Mental Retardation; and state legislators. The council is directed to update and review implementation of the Texas long-term care plan; to review issues concerning long-term care for the state's elderly and develop appropriate policy recommendations; and to encourage cooperative planning among public and private sectors for the provision of long-term care services. The Texas long-term care plan for the elderly, developed in 1982, contains a number of goals and objectives designed to meet the long-term care needs of elderly Texans. Long-term care is broadly defined under the Act as the "range of medical, social, and supportive services for elderly persons who have lost some capacity for self-care and who are expected to need care for an extended period of time." Staff support will be provided by TDoA and the other agencies represented on the council.

### Need to Continue Agency

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. The conclusion drawn from the analysis of the need was based on two primary factors. First, the state would lose approximately \$38 million dollars in federal funding and

second, an estimated 500,000 older Texans would be denied the ability to receive congregate and home-delivered meals, and in-home and other supportive services. 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.



**Sunset Commission Recommendations for the  
TEXAS DEPARTMENT ON AGING**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

- 1. The statute should be amended to reduce the board membership from ten to nine members and to authorize the governor to appoint the chairman from among the nine members.**

The current board structure consists of nine citizen members appointed by the governor with the advice and consent of the senate. Members serve six-year staggered terms. In addition to these nine members, the governor appoints a chairman who serves during the tenure of the governor. This board structure does not comply with constitutional provisions which require that boards with six-year terms have a membership number divisible by three.

- 2. The statute should be amended to require that all members of the state advisory council be members of their respective area advisory councils and to specify that it is a duty of advisory council members to facilitate the communication of local needs and concerns to policymakers and administrators at the state level.**

The state citizens advisory council consists of 28 members from each of the regions served by the 28 area agencies on aging (AAA's). A need exists for a mechanism to transmit problems and concerns from the local level to the board and agency staff. The council can fill this need since all areas of the state are included in its membership. Requiring advisory council members to come from the AAA's local area advisory council should ensure that the council member has a firsthand knowledge of the operations and concerns of the region and AAA he or she represents.

- 3. The statute should be amended to authorize compensatory per diem rates and travel allowances for board and advisory council members that are comparable with the policies of other health service agencies.**

Currently, the agency is authorized to reimburse board members and members of the advisory council only for actual and necessary travel expenses. However, board or commission members as well as members of advisory committees of other state agencies surveyed receive a compensatory per diem ranging from \$50 to \$150 per day in addition to travel reimbursement. Amending the statute to permit board and advisory council members to receive a compensatory per diem, as established in the appropriations act, for attendance at official meetings and reimbursing the travel expenses of advisory council members at the same rate as for state employees would make the agency's per diem and travel reimbursement policies consistent with those of similar health service agencies.

## Overall Administration

- 4. The agency should review its organizational structure to improve agency efficiency and effectiveness through separation of line and support functions and creation of a central administrative staff. (management improvement -non-statutory)**

Under the agency's current organizational structure there is no centralized administrative staff. Instead, these activities are supervised by various program supervisors who may not have sufficient expertise to effectively manage activities as diverse as planning and data processing. This structure also tends to limit the availability of support services to all programs within the agency, results in a lack of coordination among the staff, and generally reduces the efficiency and effectiveness of the agency's activities.

## Evaluation of Programs

- 5. The statute should be amended to require the board to develop and adopt formal policies and procedures in agency rules for the administration of the local services program, the senior Texans employment program, and the retired senior volunteer program.**

Currently, the agency is, in large part, operating programs according to informal policies and procedures which have not been formally adopted as rules in accordance with the Administrative Procedures Act. Adoption of formal rules would ensure compliance with state and federal law, adequate guidance as to basic program requirements, and adequate public participation.

- 6. The statute should be amended to require the agency to establish adequate controls over administrative costs at the area agency level.**

Although the Federal Government restricts administrative costs of area agencies to a statewide average of 8.5 percent, there are other categories through which area agencies are reimbursed for administrative costs where controls are limited or non-existent. Sufficient guidelines should be established for controlling these costs and thus maximizing service dollars.

- 7. The statute should be amended to authorize the agency to collect the information necessary to establish controls over administrative costs at the provider level.**

The amount of administrative costs allowed at the local services provider/subcontractor level could not be determined. The agency does not collect this information due to standard reporting formats it is required to use under the Uniform Grants Management Act. Specific statutory authority is needed to enable the agency to collect necessary data for establishing administrative cost controls.

8. **The agency should adopt a standard policy regarding carryover of funds by agencies rather than using a case-by-case approach.**  
(management improvement - non-statutory)

Currently, the board determines at the end of each fiscal year whether an area agency will be allowed to retain "unspent" funds in addition to the next year's allocation or whether the subsequent year's funds will be reduced by all or part of the amount of the carry-over funds. The absence of a consistent policy concerning the treatment of these funds creates uncertainty and confusion, and a potential for inconsistent treatment of the various area agencies.

9. **The statute should be amended to require the agency to monitor grantees, including area agencies and the STEP contractor, in a manner which provides for adequate documentation of work performed.**

The review indicated there was a general absence of any workpapers and other supporting documentation concerning the agency's evaluation, assessment and follow-up visits of grantees. No conclusion could be made as to whether the monitoring of grantees was adequate. Requiring the agency to adequately document monitoring activities would provide evidence that grantees' activities are being properly monitored and would serve as a defensible basis for allocating funds in the future.

10. **Technical assistance materials should be developed in the form of guidelines in areas of major area agency responsibility.**  
(management-improvement - non-statutory)

Provision of technical assistance to the 28 area agencies is one of the primary functions of the agency's program staff. A survey of area agencies indicated that the technical assistance currently provided was of limited effectiveness. The review identified a need for assistance in the form of guidelines for use by area agencies in developing and administering service systems, including information in areas of major AAA responsibility such as needs assessments, subcontractor management and evaluation procedures, and program performance standards. This information should be developed in order to ensure this need is met, and to maximize the effectiveness of agency program staff technical assistance activities.

11. **The agency should revise and clarify hearing procedures for service providers.** (management improvement - non-statutory)

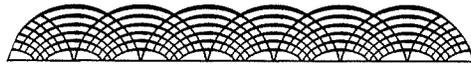
Currently, agency hearing procedures for service providers are not in compliance with federal regulations, and do not provide adequate due process guarantees.

12. **The statute should be amended to require adequate on-site monitoring of RSVP projects.**

The agency has conducted only limited on-site program monitoring of RSVP projects. Requiring the agency to conduct on-site monitoring on a frequent basis would help to ensure accountability of state funds.



**Agency Recommendations for  
JUDICIAL AGENCIES**



***Prosecutor Council***

**PROSECUTOR COUNCIL**

## Background

The Prosecutor Council was created in 1977 and is currently active. The council is composed of nine members who serve staggered six-year terms. Four members are appointed by the governor with the advice and consent of the senate and must be citizens of Texas who are not licensed to practice law. Five council members are incumbent elected prosecuting attorneys. These five must include at least one county attorney, one district attorney, and one criminal district attorney. The Texas Supreme Court has the statutory responsibility for promulgating the rules for electing prosecutors to the council. In fiscal year 1984, the agency has a staff of seven and a budget of \$627,266. The funds come from general revenue (\$250,906) and criminal justice planning funds (\$376,360). The agency's organizational structure is displayed in Exhibit 1.

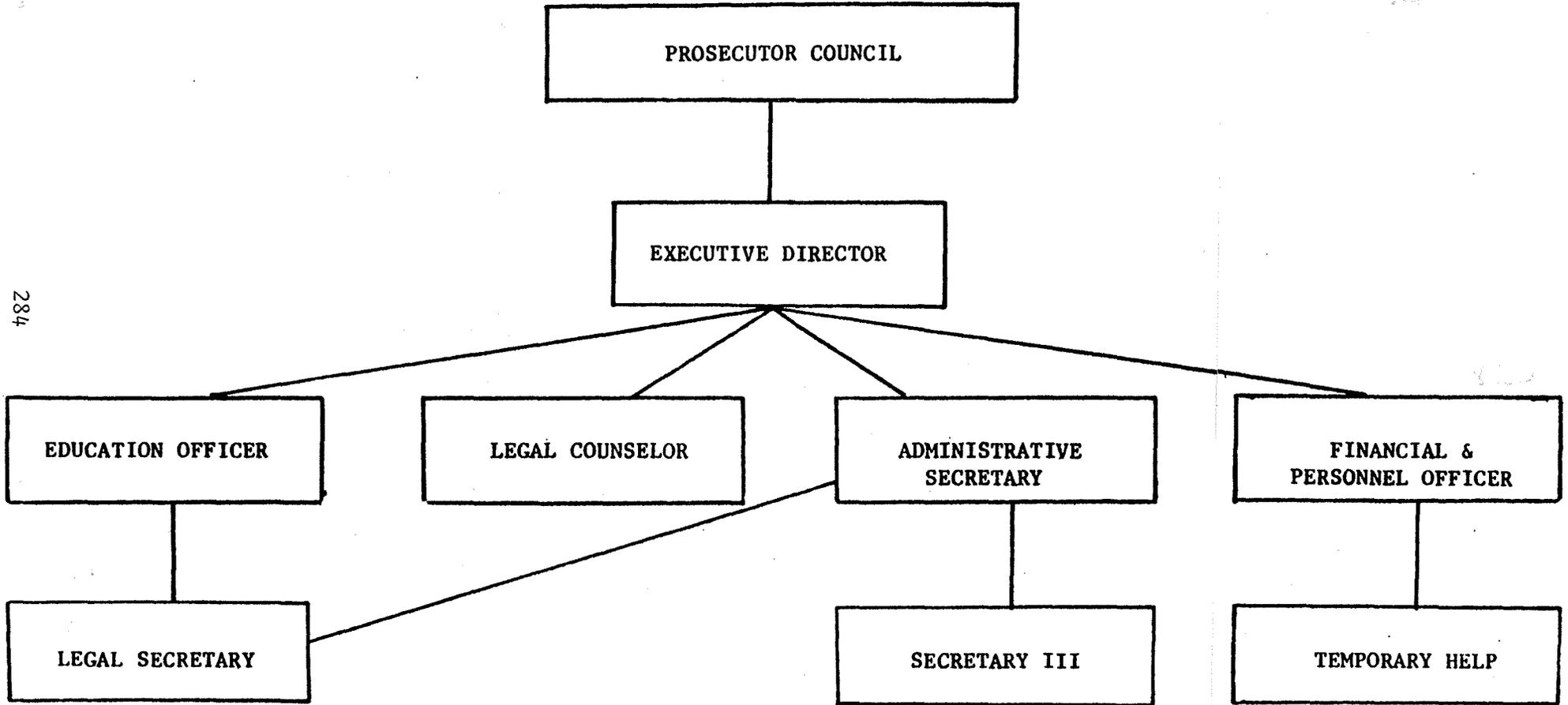
Texas is one of the few states where prosecutors are locally elected officials. In many states, the attorney general selects the district attorneys. While Texas' system of prosecutorial selection allows for independent local prosecution of crimes, several studies which preceded the establishment of the Prosecutor Council cited problems with the existing system and made recommendations to increase the level of coordination, professionalism, trial assistance, and uniformity of prosecution throughout the state. The legislature created the Prosecutor Council to meet the need of providing technical, educational, and professional development services to approximately 300 elected Texas prosecutors and their staff. In addition, the council is the designated agency to receive and act on complaints of prosecutorial misconduct. Except for amendments to the council's enabling statute in 1981 to clarify the council's authority to remove prosecutors from office, the overall responsibilities of the agency have remained relatively constant.

The council's statutory duties are accomplished through four organizational divisions: 1) discipline; 2) technical assistance; 3) training; and 4) information/services.

Discipline. One of the major duties of the Prosecutor Council is to accept and investigate complaints of prosecuting attorney incompetency and misconduct. The council's enabling statute outlines the procedures by which a prosecuting attorney may be reprimanded, disqualified, or removed from office. All elected prosecutors in the state are subject to disciplinary action by the council.

Before explaining the system used by the council to discipline prosecutors, it is useful to understand the Texas system of prosecution. The Texas Constitution establishes the pattern for prosecution in creating the offices of county attorney and criminal district attorney to represent the state in all district and inferior courts. In addition, the constitution allows the legislature to create the office of district attorney. This constitutional mandate, followed by a series of legislative enactments, has established a complex system of prosecution in Texas which is composed of four basic types of prosecutors: district attorneys, criminal district attorneys, county attorneys with felony responsibility, and county attorneys. These four types of prosecutors are all locally elected. The following table shows the current number of prosecutors by type in Texas as of August 31, 1984.

**Exhibit 1**  
**FUNCTIONAL ORGANIZATION CHART**  
**THE PROSECUTOR COUNCIL**



## TEXAS PROSECUTORS

District Attorneys	79
Criminal District Attorneys	35
County Attorneys with felony responsibility	25
County Attorneys	<u>194</u>
<b>TOTAL</b>	<b>333</b>

The office of district attorney is created by statute. As of August 31, 1984, there were 79 locally elected district attorneys in Texas. These prosecutors are authorized to prosecute cases in particular judicial district which may consist of one or more counties. District attorneys represent the state primarily in felony cases (with the exception of the District Attorney of Harris County who handles all prosecutorial duties in the county).

Criminal district attorneys represent the state in all criminal cases, both felony and misdemeanor, in all courts of the county. The legislature has, through the years, created the office of criminal district attorney in 35 Texas counties. When the office of criminal district attorney is created, the office of county attorney is abolished for that county. A criminal district attorney serves one county and when created, is the only elected prosecutor for that county.

A third type of prosecutor, county attorney with felony responsibility, is an elected office in 25 Texas counties. Like criminal district attorneys, county attorneys with felony responsibility represent the state in all courts in a county and are the only elected prosecutors in that county. The main difference between criminal district attorneys and county attorneys with felony responsibility is the method of appointment in the case of a vacancy. Replacements for county attorneys with felony responsibility are appointed by that county's commissioners court, while vacancies in the office of criminal district attorney are filled by the governor.

Finally, there are 182 county attorneys in Texas. A county attorney generally represents the state in courts below the grade of district court and they are mainly responsible for prosecuting misdemeanor cases. A county attorney has no jurisdiction beyond the bounds of his county. While the description of prosecutors presented here focuses on duties related to criminal law, studies conducted by the Prosecutor Council show that a significant amount of prosecutor's time is spent in civil and other non-criminal matters. A map depicting the location of the different types of prosecutors is displayed in Exhibit 2.

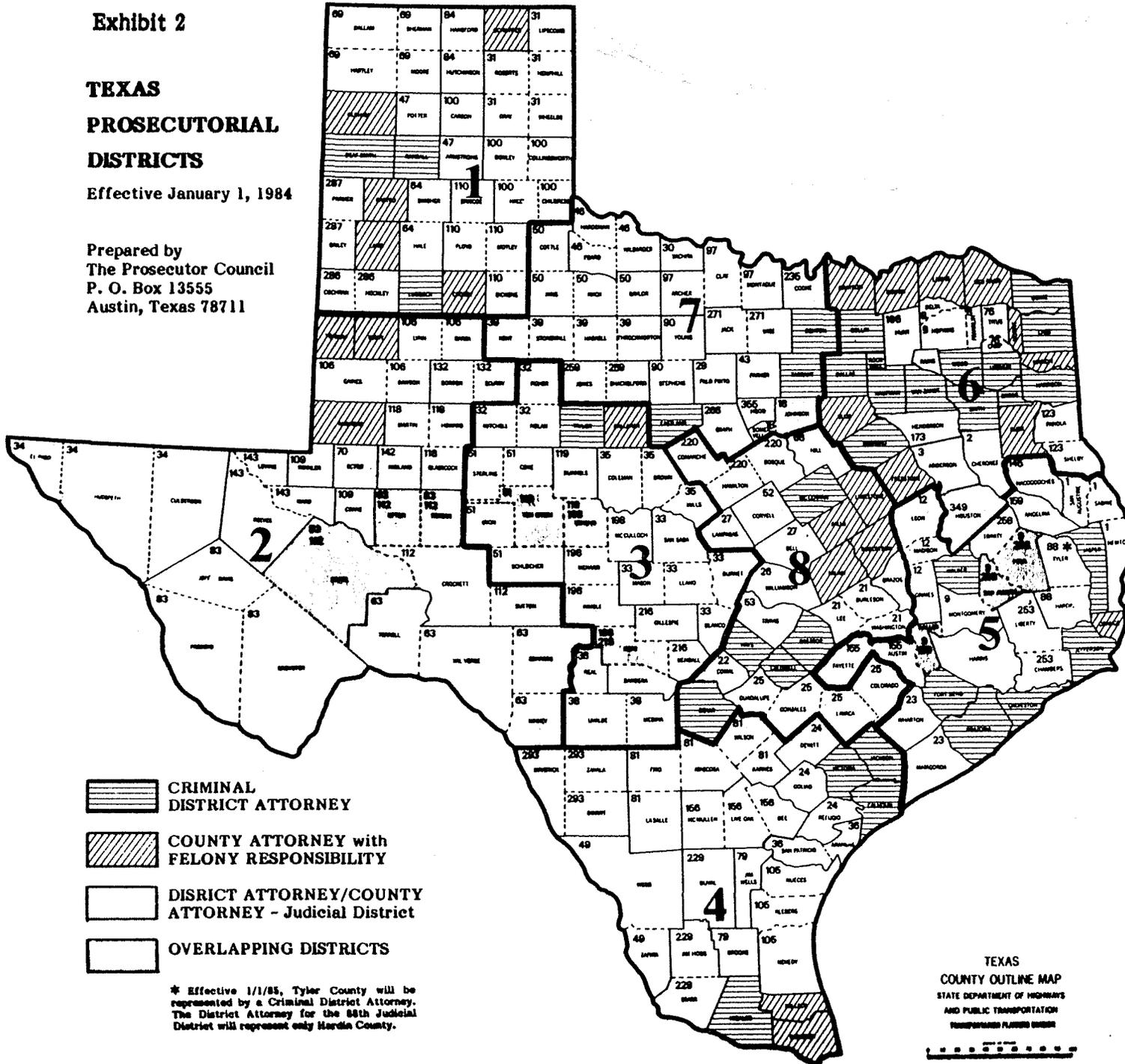
Prosecutors in Texas are funded by both local and state government. The state pays salaries and certain general expenses for prosecutors with felony responsibilities. In the case of county attorneys with no felony responsibility, all expenses of that prosecutor's office are paid by the county. In addition to the state salary, felony prosecutors are allowed to have a private law practice unless they have chosen to go under the Professional Prosecutors Act, which was passed in 1979. If they are under this Act, they cannot have a private practice but are given a higher state salary. Ninety of the 135 felony prosecutors are currently paid under this Act.

Exhibit 2

**TEXAS  
PROSECUTORIAL  
DISTRICTS**

Effective January 1, 1984

Prepared by  
The Prosecutor Council  
P. O. Box 13555  
Austin, Texas 78711



\* Effective 1/1/85, Tyler County will be represented by a Criminal District Attorney. The District Attorney for the 88th Judicial District will represent only Hardin County.

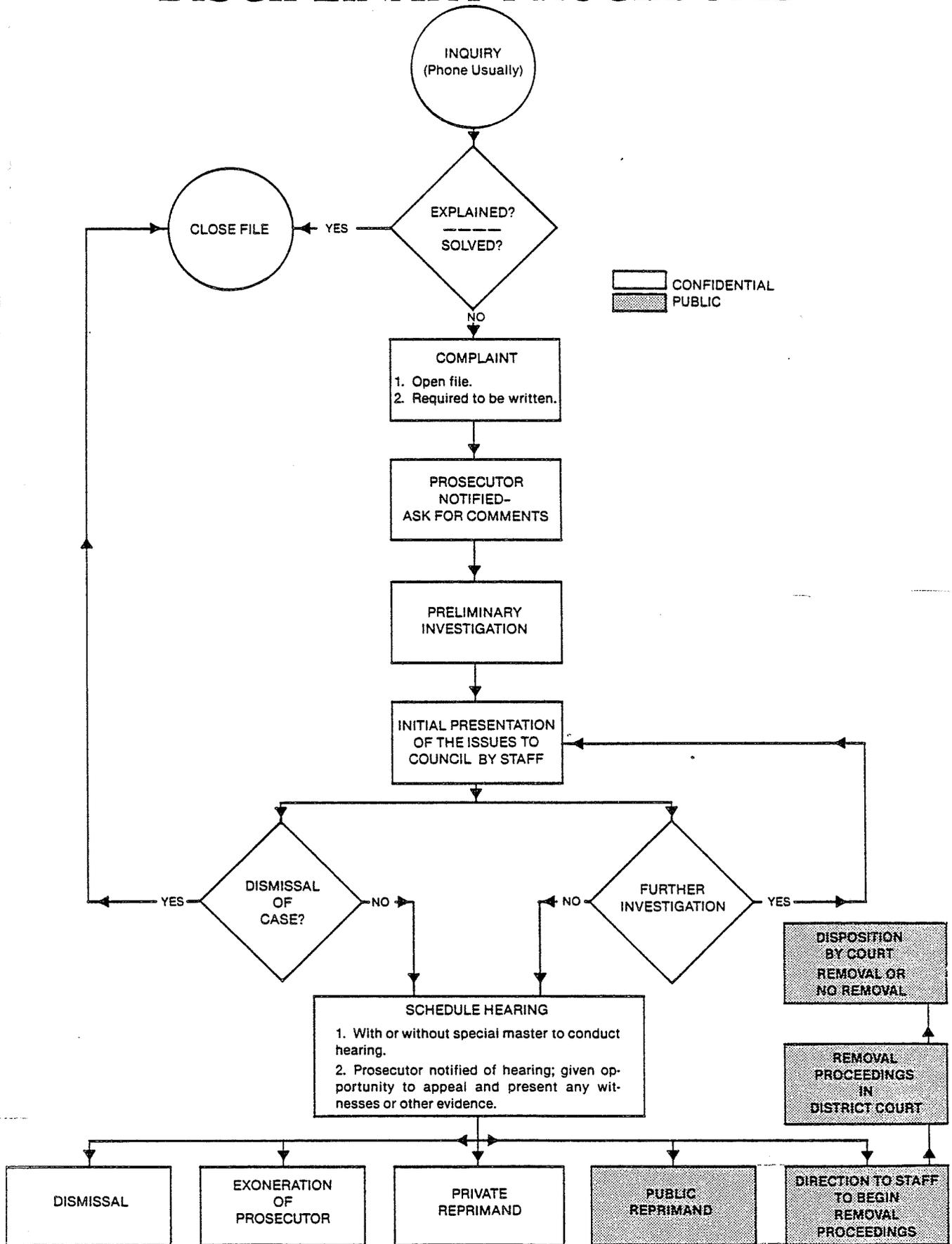
The Prosecutor Council was created, in part, to provide for a more comprehensive disciplinary process for the various kinds of prosecutors described above. The council's disciplinary process operates under rules established by the Texas Supreme Court. Disciplinary action against a prosecutor is initiated when a written complaint is received concerning the conduct of a prosecutor. A copy of the complaint is sent to the prosecutor asking for comments. At the same time, the person making the complaint is notified of the purpose and procedures of the council. A preliminary investigation of the complaint is then made by agency staff. The executive director then submits a written report of the staff's findings to the council. Based on the staff report, the council may: 1) dismiss the complaint as unwarranted, unfounded, or not within the jurisdiction of the council, 2) issue a private reprimand, 3) order a hearing before the council, 4) request the Supreme Court to appoint a master to hold a hearing, or 5) postpone action pending further investigation. If the council chooses to dismiss the complaint, both the complainant and prosecutor involved are notified of the council's actions and reason for dismissal. The complainant is also notified if the prosecuting attorney is given a private reprimand.

Upon reviewing a case, if the council decides the complaint of prosecutorial misconduct or incompetency is serious enough to require a hearing, they will conduct the hearing themselves or request the Supreme Court to appoint a master to conduct the hearing. By statute all complaint proceedings before the council are confidential. The hearings are non-adversarial and the accused prosecutor has no right to confront or cross-examine witnesses. Following the confidential hearing, the council decides either to dismiss the case, to issue a private reprimand, to issue a public reprimand, or to file a removal suit. It is important to note that the council does not make the final decision to remove a prosecutor from office. The council is authorized only to file a removal suit in district court if they believe there is good cause for removal. Removal suits are tried in the district court of the county where the prosecutor resides by a special judge appointed to hear the case. The judge appointed to preside over the proceedings in turn appoints a special attorney to prosecute the case. The entire disciplinary process of the council is outlined in Exhibit 3.

The council has voted three removal suits since its creation in 1978. They have issued three public reprimands and four private reprimands. The agency reports that, in addition, at least three prosecutors have resigned when faced with an investigation by the Prosecutor Council. As is evident by reviewing the figures provided in Exhibit 4, the council receives many more informal inquiries regarding prosecutor's conduct than formal written complaints. All formal complaints subject to council investigation are required to be in writing. Inquiries are defined by the agency as telephone complaints and/or inquiries about the prosecutor's role and authority. During fiscal year 1984, the council disposed of 67 formal complaints, four of which resulted in disciplinary action.

Technical Assistance. As a part of its statutory mandate to help create a uniform quality of prosecution, the Prosecutor Council provides legal assistance upon request to prosecutors' offices. Technical assistance offered by the council to prosecutors is broad in scope. Prosecutors can request assistance from the agency from the beginning of a case when it is brought to the prosecutor's office for screening through and including the post-conviction process on both the state and federal level.

**Exhibit 3**  
**DISCIPLINARY PROCEDURE**



CONFIDENTIAL  
 PUBLIC

**Exhibit 4**

**DISCIPLINARY PROCEEDINGS  
FISCAL YEAR 1984**

<b>1. Number of inquiries concerning prosecutor conduct</b>	
a. Number received	387
<b>2. Number of formal written complaints against prosecutors</b>	
a. Number received	119
b. Number pending at beginning of year	4
<b>3. Disposition of formal complaints filed in fiscal year 1984</b>	
a. Dismissals*	63
Complaints dismissed on the basis of:	
1) Action within prosecutorial discretion	24
2) Lack of substantial evidence	38
3) Not within council jurisdiction	8
4) Withdrawn by complainant	0
5) Properly handled through appellate process	4
6) Proper forum in District Court where criminal case pending	1
7) Other	7
* <b>Some dismissals were for more than one reason</b>	
b. Disciplinary Action	
1) Private reprimands	1
2) Public reprimands	2
3) Initiation of Removal Suit	1
c. No action	
1) Pending	56

Two main categories of assistance are provided by the agency; on-site prosecutorial assistance, and in-house prosecutorial assistance. According to technical assistance guidelines established by the agency's advisory committee, the council will give first consideration to the following types of on-site assistance requests:

1. Where the prosecutor requires special expertise that is not available on his staff to meet a particular criminal matter.
2. Where the case is of such magnitude that the regular staff of the prosecutor's office is unable to handle it and the normal course of business at the same time.
3. Where the prosecutor feels that the public confidence would be better served by the assistance of an outside prosecutor.

In order to receive assistance from the council, the prosecutor must first make a request in writing which includes a description of the type of case, the type of assistance required, and the estimated time required for assistance. Each prosecutor is also asked to propose how much money will be locally contributed towards the total cost of the assistance. Although the council does not have minimum guidelines for how much an individual prosecutor must contribute to the technical assistance cost, prosecutors are encouraged to pay as much of the total cost as their budgets allow.

The agency's executive director reviews all requests for technical assistance and determines whether they fit within the guidelines for technical assistance outlined by the advisory committee of the council. In most instances, agency staff do not actually provide on-site assistance to prosecutors, but instead are responsible for coordinating the process. If an on-site technical assistance request is approved, the agency's executive director will first attempt to fill the request by drawing necessary personnel from the pool of approximately 1,300 elected prosecutors, assistant prosecutors and investigators already employed in the various local prosecutorial offices. For example, the executive director might arrange for an assistant district attorney from Dallas county to go to Wichita county for a specified period of time to assist in a trial. Such arrangements are made using interagency and interlocal agreements. If the assistance is provided by a prosecutor, assistant, or investigator on the state payroll, salaries of the personnel are not reimbursed. The council will, however, reimburse the local entities for salaries of personnel providing technical assistance whose salaries are not paid by the state. Travel and subsistence funds are provided by the council for all prosecutors, assistants and investigators giving technical assistance services. In fiscal year 1984, the agency expended \$68,800 in general revenue funds for technical assistance.

If a person already employed in a prosecutorial office cannot be found to provide the assistance, the council will enlist the help of former prosecutors and other people who are in private practice. The assistance might come from attorneys, investigators, accountants, or other personnel with specialized knowledge. The council must sometimes utilize personnel outside of the prosecutorial offices due to time constraints or in situations where a particular experience is needed to properly prosecute a case. These personnel are reimbursed for their time through the council at a maximum of \$50 per hour. The prosecutor receiving the assistance coordinated through the Prosecutor Council has the total right of

approval and rejection of any and all personnel giving assistance. The personnel provided through the agency serve at the pleasure of the prosecutor receiving assistance.

Upon conclusion of the assistance, both the prosecutor requesting assistance and the person providing it are asked to send a written summary of the assistance activities to the council. The council then uses the summaries to evaluate the technical assistance program.

The council also provides certain in-house assistance to prosecutors. In-house assistance is provided by agency staff and includes telephone assistance to prosecutors in trial, referral to experts in other prosecutor's office, legal research, and assistance in the drawing of indictments. The Prosecutor Council has also, on occasion, given temporary financial aid to prosecutor's offices.

In fiscal year 1984, the council responded to 638 technical assistance inquiries. In 11 cases, the staff provided research and other assistance in office. In 35 cases, agency staff arranged for on-site investigation and legal assistance. All technical assistance for the period of September 1, 1983 through July 31, 1984 can be broken down as follows:

1.	<b>Total number of on-site assistance cases</b>	
	a. on-site	31
	b. in-house	11
2.	<b>Type of Personnel Requested</b>	
	Attorney	88%
	Investigator	14%
	Other (Specify)	0%
3.	<b>Type of Service Requested</b>	
	Investigation	24%
	Grand Jury Proceedings	21%
	Trial	45%
	Appellate	12%
	Briefing	12%
	Other (Specify)	2%
	(Coordination)	
4.	<b>Origin of Personnel</b>	
	Council	26%
	Another Prosecutor's	
	Office	48%
	Private Individual	24%
	Other (Specify)	2%
	(D.P.S.)	

Training. The council is involved in three training activities that provide education and professional development for prosecutors and their staffs. The council conducts and contracts for training courses, provides funds for travel

expenses to attend training courses, and has developed manuals which are used to standardize and upgrade procedures of prosecutors' offices.

In the area of training courses, the council contracts for three courses a year for the professional development of prosecutors and their staffs. To date, these courses have been provided by the Texas District and County Attorneys Association through a low bid contract. Two of the courses, the Investigator's School and the Basic Prosecution Course, are provided each year. The investigator's course is an annual refresher course to update investigators on current investigative methods and improve their skills. The prosecution course is designed for new prosecutors as an orientation on successful prosecution techniques. A third course is also offered each year which varies in subject matter based upon prosecutors' needs as determined by the council through its advisory committee. In 1984, this course dealt with capital murder cases and related issues. These courses are held in various places around the state and had 519 participants in 1984. (see Exhibit 5)

**Exhibit 5**  
**CONTRACT COURSES FOR 1984 WITH ATTENDANCE**

<u>Course</u>	<u>Attendance</u>
Investigator's School	130
Basic Prosecution Course	266
Capital Murder Seminar	123
<b>TOTAL</b>	<b>519</b>

In addition to the contract courses, the council staff also conducts its own training courses. These courses are sponsored by local prosecutors and law enforcement groups and are designed to coordinate local law enforcement efforts. For example, the Law Enforcement Workshop teaches law enforcement personnel improved report writing skills thereby providing prosecutors with complete, accurate evidence for cases. The council conducted six courses in 1984 with 561 attendees.

Another aspect of the council's training activity involves reimbursement of travel expenses for prosecutors and their staffs to attend council courses and other courses approved by the council. Through the use of its advisory committee, the council has established guidelines that identify those courses conducted by other groups which are eligible for travel reimbursement and has established procedures for approving additional courses. The legislature, by a rider to the council's appropriation, has limited reimbursement to the district attorney, assistant district attorney, or investigators, but no more than four persons from each office can claim reimbursement for any particular course. The council has established a reimbursement policy which generally conforms to the travel policy for state employees outlined in the Appropriations Act, but also includes several additional restrictions limiting reimbursement. In 1984, approximately \$138,000 was expended for travel of prosecutors and their staffs to attend training courses.

A final training activity of the council is the development of training and operations manuals for use by prosecutors and their staffs. The council determines the need for the manuals by using its advisory committee along with surveys of

prosecutors. Once the type of manual needed is determined the advisory committee directs the staff in developing the manual. A prosecutor or other individual with expertise on the subject may also be contracted with to write the manual. Once written, the manuals are updated by the council as necessary.

To date, six manuals have been developed and distributed to prosecutors' offices. (see Exhibit 6) A certain number are provided without charge; additional copies are available at cost. These manuals assist prosecutors with areas such as drawing valid indictments and developing a system for collecting hot checks. Over 12,500 were distributed to prosecutors' offices in 1984.

Information/Services. The council's information/services activity is designed to provide information to assist prosecutors in carrying out their responsibilities and to improve the overall public understanding of prosecutors' activities and needs. Since most prosecutors do not have the staff to develop this type of information, newsletters and pamphlets distributed to prosecutors, as described in Exhibit 7, allows them to keep up with current events in the field of prosecution. Also, prosecutors can use council information to educate the public about trends in criminal activity and how the prosecution system works.

The council also has the responsibility to develop information which can be used to improve prosecution efforts in the state. Included in this responsibility is a mandate to develop and adopt minimum standards for the operation of prosecuting attorneys' offices. By establishing minimum office standards, the council provides a basis for uniformity in office operation and funding. The council has developed office minimum standards for prosecutors which were reported to the 67th Legislature.

The council is also directed by statute to provide the governor and the legislature with information necessary to determine the proper jurisdiction and the adequate funding of local prosecutors' offices. In response, the council has developed and maintained information on prosecutors' salaries, personnel, and budgets.

### Need to Continue Agency

The need for each of the council's functions was analyzed and the review indicated that there is a continued need for state involvement in these areas. The need for the current agency structure was also analyzed and it was determined, that the existing structure is appropriate. With regard to current operations, the agency has performed adequately but certain changes should be made in the event the legislature decides to continue the agency.

The changes which should be made if the agency is continued are set out below.

**Exhibit 6**  
**TRAINING MANUALS**

1. **Investigator's Desk Manual:** It is a basic manual for the beginning investigator and provides basic investigative skills. It is used by law enforcement personnel throughout the state.
2. **Elements Manual:** This is a publication designed for prosecutors, grand jurors, and law enforcement officers. It is used by the Council at its law enforcement workshops and is included in the grand jury folders.
3. **A Guide to Report Writing:** A publication to assist the officer in preparing his report by detailing the information necessary for the more common crimes. It can be adapted to any offense report form.
4. **Reciprocal Child Support Manual:** This manual emphasizes "how to" skills with legal forms, office forms, and suggested letters. It provides a complete system to deal with this area of the law.
5. **Hot Check Manual:** This manual was devised to give the prosecutor a system for collecting hot checks, including a section on the hot check fee as well as providing the law and the forms for trying a hot check case.
6. **Indictment Manual:** This is a manual designed to assist prosecutors in drawing valid indictments and is a definitive dissertation on substantive law in this area. This manual is in loose leaf form and allows the council to provide changes that can be inserted directly into the manual to keep it up to date.

## Exhibit 7

### INFORMATION FOR PROSECUTORS

1. **Newsletter** - The council provides prosecutors with information as to the activities of the council, provides a means for disseminating the latest technical assistance information and also provides an opportunity for other prosecutors to know what is going on in the field of prosecution throughout the state. The newsletter includes articles on law, discipline, ethics, and technical assistance.
2. **Information Releases** - Another service of the council is providing information releases to local prosecutors so they can inform the public of duties and responsibilities as prosecutors.
3. **Audio-Visual Library** - A library of films, video cassettes, and audio cassettes have been compiled for the use of prosecutors. It is divided into two sections: 1) instructional material which are used by prosecutors in improving their skills; and 2) information materials which are used to inform the public of what they can do to assist in the law enforcement process.
4. **Advisory Bulletins** - Advisory bulletins are mailed to prosecutors when needed. They include "indictment alerts" to inform prosecutors of recent court decisions which affect pleadings. In addition, summaries of the statute of the law, such as the series on the law of search and seizure, are provided from time to time. These bulletins are sent out between issues of the newsletters.
5. **Pamphlets** - These are brochures which prosecutors distribute to the public to keep them informed about subjects such as hot checks.
6. **Grand Jury Folders** - The council provides an information packet which prosecutors give to their grand jurors. These folders contain information which assists the grand jurors in performing their duties.
7. **Crime Biters** - The council provides an educational program both for children and for senior citizens in the areas of crime prevention and understanding of the criminal justice system.
8. **Victim/Witness Assistance** - The council is just beginning to assist prosecutors in dealing with the treatment of victims or witnesses of crimes. Council staff provide information, pamphlets and suggested procedures.



**Sunset Commission Recommendations for the  
PROSECUTOR COUNCIL**

**I. CONTINUE THE AGENCY WITH MODIFICATIONS**

**Policy-making Structure**

1. **The statute should be amended to limit the membership of the council's advisory committee to 16 members.**

The council has established an advisory committee to review agency operations and advise it on needed services and programs. Currently, the advisory committee consists of 32 members, four from each of eight prosecutorial regions. This large membership has resulted in excessive travel expenses and has reduced the efficiency of the policy-making process. To streamline the advisory committee, its membership should be limited.

**Evaluation of Programs**

**Discipline**

2. **The statute should be amended to require the council to develop standards and guidelines for disciplinary proceedings.**

The council has never developed a code consisting of specific standards of conduct for prosecutors. Requiring that the council further define unacceptable prosecutorial conduct and incompetency would aid prosecutors in bringing their conduct in line with the established guidelines. These definitions would also give the council specific criteria by which to judge prosecutorial complaints.

3. **The council's disciplinary responsibility for elected prosecutors should be expanded to include assistant prosecutors.**

The council's current responsibility to discipline prosecutors for incompetency or misconduct is limited to only elected prosecutors. Assistant prosecutors who are the employees of elected prosecutors are subject to discipline by the elected prosecutors. The council's authority in disciplinary matters should be expanded to include assistant prosecutors. However, sanctions applied to assistant prosecutors should be limited to public and private reprimands. This increased disciplinary authority should make all prosecutors more accountable for their actions.

**Training**

4. **Travel reimbursement vouchers should be completed before prosecutors sign them. (management improvement - non-statutory)**

Current reimbursement policy allows prosecutors to submit a signed blank travel vouchers their request for funds. This policy does not allow prosecutors to verify the accuracy of the information on the

voucher and makes them liable for a mistake made on the form by council staff. The procedure should be changed so that prosecutors only sign completed travel vouchers.

5. **The statute should be amended to require that travel funds for prosecutors be allocated based on a system which funds 75 percent of the travel expense for each prosecutor office to attend one course per year and distributes the remainder of available travel funds as needed.**

The council provides travel funds to any prosecutor requesting funds. No system has been established to ensure that travel funds are distributed among all prosecutors' offices. Also, despite the joint state/local nature of prosecutors' offices, the council is, in most cases, providing all of the travel funds for training courses. To help ensure that travel funds are better utilized across the state and local support is provided for training, the council should be required to allocate funds based on a system which funds the travel expense of each office to attend one course per year. The remainder of the travel funds could be distributed on an as-needed basis. State reimbursement should be limited to 75 percent except for the those cases where the council approved funds based on need.

#### Information/Services

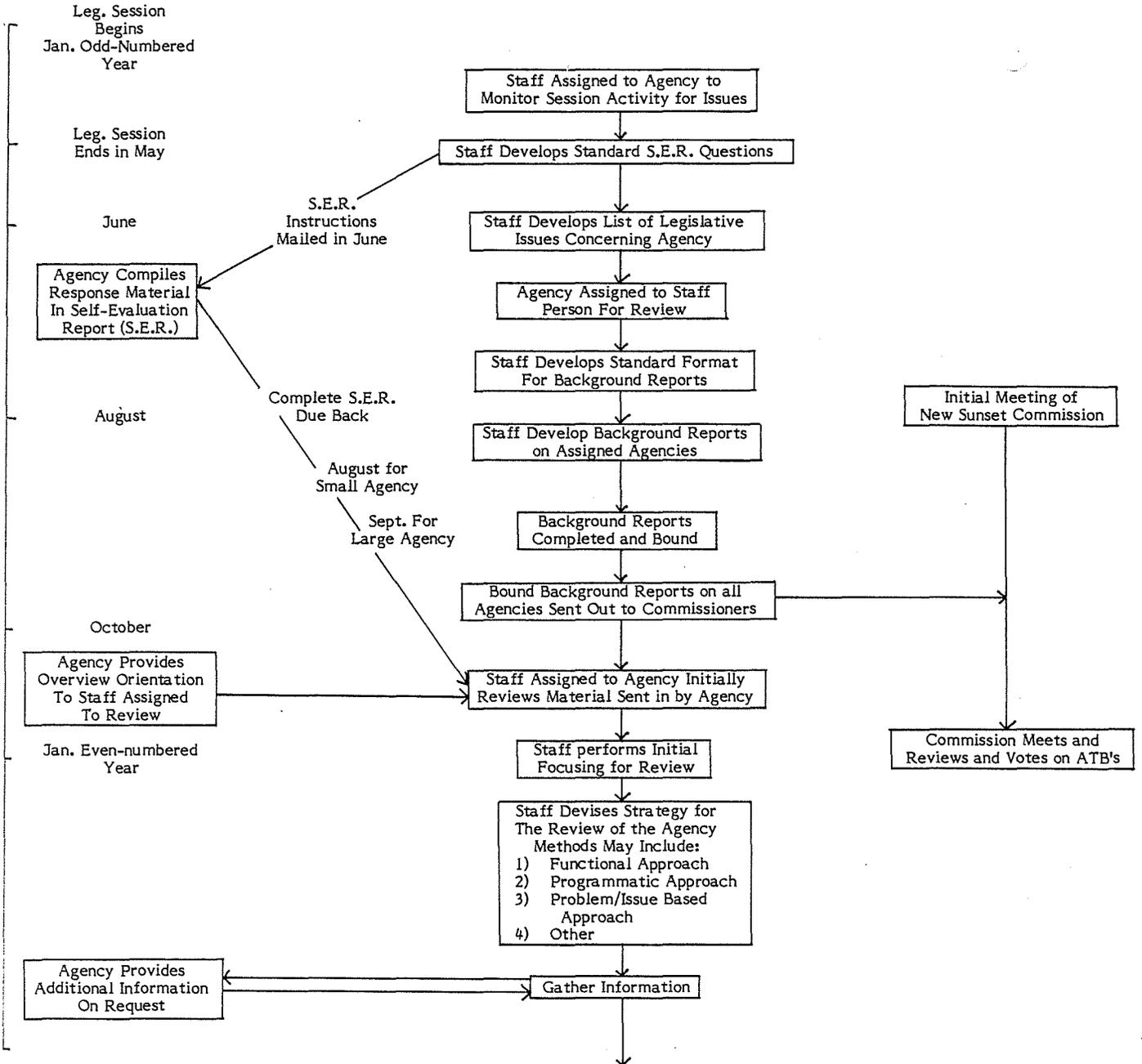
6. **The statute should be amended to give the council the responsibility to coordinate the development of a budget request for prosecutors to the legislature.**

Most local prosecutors currently receive a state salary and state funds for a portion of their office operating expenses. Prosecutors do not have a way to submit a budget request and participate in the legislative budget process. The council has the ability to coordinate the development of a budget request for prosecutors to be submitted to the legislature and should be given this responsibility.

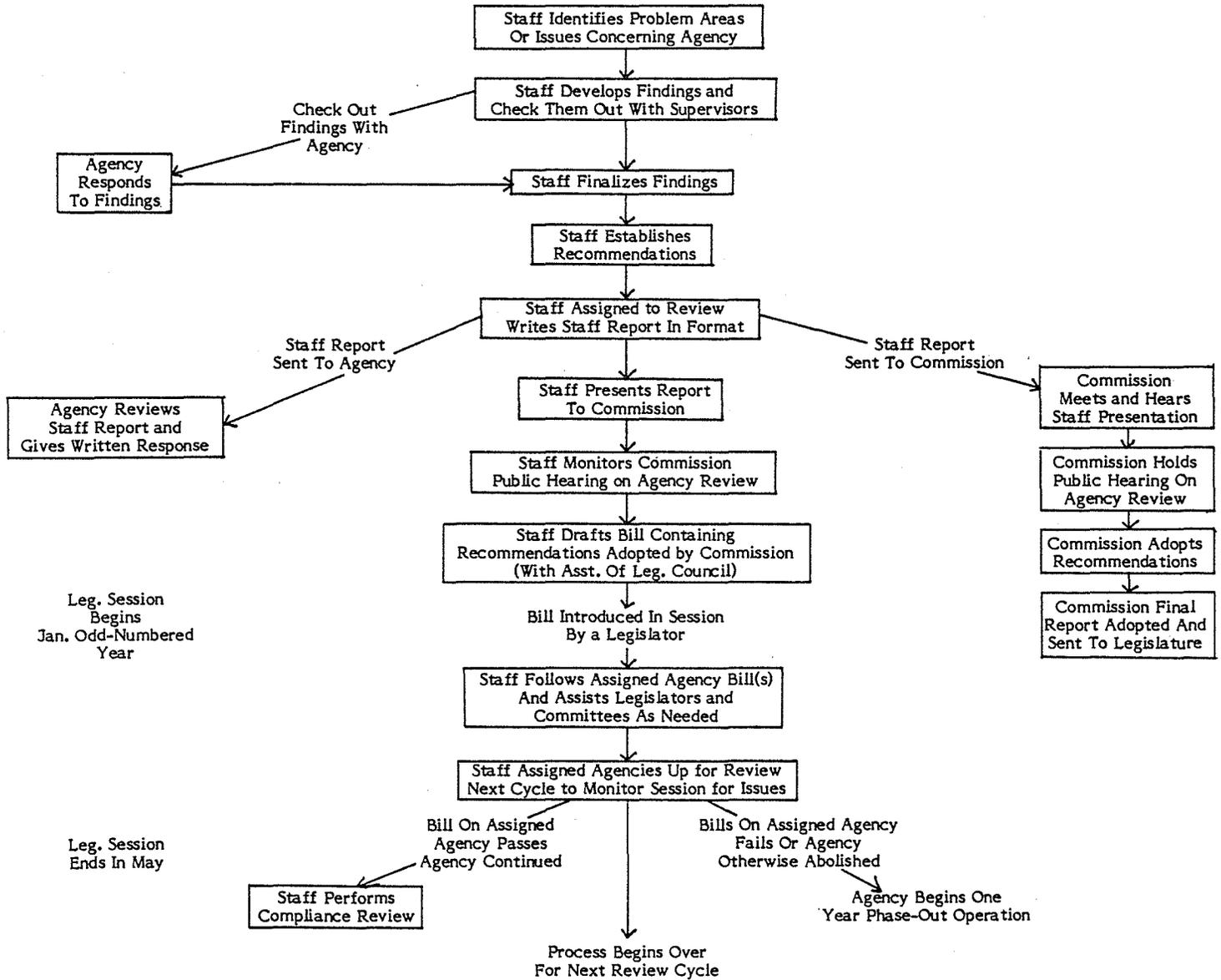
## APPENDIX

## **OVERVIEW OF SUNSET REVIEW PROCESS**

**OVERVIEW OF THE REVIEW PROCESS  
FOR AGENCIES SUBJECT TO SUNSET**



**OVERVIEW OF THE REVIEW PROCESS  
FOR AGENCIES SUBJECT TO SUNSET**



**MEETINGS DATES  
of the  
SUNSET ADVISORY COMMISSION**

**MEETING DATES**  
of the  
**SUNSET ADVISORY COMMISSION**

The Sunset Advisory Commission met 15 times between August 1983 and December 1984 to hear staff reports, take public testimony, and develop recommendations on the 31 agencies scheduled for sunset termination in September 1985. Meeting dates of the commission were as follows:

August 26, 1983	September 12, 1984
October 28, 1983	October 3, 1984
March 26, 1984	October 4, 1984
March 27, 1984	October 29, 1984
June 18, 1984	October 30, 1984
August 6, 1984	November 19, 1984
August 7, 1984	December 17, 1984
September 11, 1984	



**TABULAR SUMMARY OF SUNSET ACTION  
69th LEGISLATURE**

**TABULAR SUMMARY OF SUNSET ACTION  
69th LEGISLATURE**

Environmental Agencies

<u>Agency</u>	<u>Date Created</u>	<u>Commission Decision</u>
Office of the State Entomologist	1899	Continue w/modifications
Office of the State Forester	1915	Abolish
State Soil & Water Conservation Board	1939	Continue w/modification
Office of Canadian River Compact Commissioner for Texas	1951	Continue w/modification
Office of Pecos River Compact Commissioner for Texas	1949	Continue w/modification
Office of Red River Compact Commissioner for Texas	1980	Continue w/modification
Office of Rio Grande Compact Commissioner for Texas	1939	Continue w/modification
Office of Sabine River Compact Administrator for Texas	1953	Continue w/modification
Office of Gulf State Marine Fisheries Compact Commissioner for Texas	1949	Continue w/modification
Texas Coastal & Marine Council	1971	Continue w/modification
Texas Parks and Wildlife Dept.	1963	Continue w/modification
Texas Dept. of Water Resources	1977	Continue w/modification
Texas Air Control Board	1965	Continue w/modification
Boards of Lease of State-owned Lands	1951	Combine
School Land Board	1933	Continue w/modification
Board for Lease of University Lands	1929	Continue w/modification
Veterans Land Board	1949	Continue w/modification
Texas Conservation Foundation	1969	Continue for two years

**TABULAR SUMMARY OF SUNSET ACTION  
(Cont.)**

<u>Health Agencies</u>		
<u>Agency</u>	<u>Date Created</u>	<u>Commission Decision</u>
Texas Coordinating Commission for State Health and Welfare Services	1959	Abolish
Texas Department on Aging	1965	Continue w/modification
Occupational Safety Board	1967	Abolish
Office of Interstate Compact on Mental Health Adminis- trator for Texas	1969	Continue w/modification
Texas Department of Health	1879	Continue w/modification
Texas Commission for the Blind	1931	Continue w/modification
Texas Rehabilitation Commission	1969	Continue w/modification
Texas Commission on Alcoholism	1953	Continue w/modification
Anatomical Board for the State of Texas	1907	Continue w/modification
Texas Commission for the Deaf	1979	Continue w/modification
Texas Board of Occupational Therapy Examiners	1983	Continue w/modification
Texas Health Facilities Commission	1975	Continue w/modification
<u>Judicial Agencies</u>		
The Prosecutor Council	1977	Continue w/modification

**AGENCY AND STAFF ASSIGNMENTS**

AGENCY AND STAFF ASSIGNMENTS  
of the  
SUNSET ADVISORY COMMISSION

*Environmental Agencies*

Texas Department of Water Resources	Karl Spock
Texas Coastal and Marine Council	Jim Cash
Texas Air Control Board	Ken Levine
Office of State Entomologist	Bruce Crawford
Office of State Forester	Bruce Crawford
Interstate River Compacts	John Frasch
Gulf States Marine Fisheries Commission	John Frasch
Texas Parks and Wildlife Department	Allen Beinke
Boards for Lease of State-Owned Lands	Joey Longley
Board for Lease of University Lands	Joey Longley
School Land Board	Joey Longley
Veterans Land Board	Joey Longley
State Soil and Water Conservation Board	Joey Longley
Texas Conservation Foundation	Becky Bates

*Health and Human Service Agencies*

Texas Department of Health	Tim Graves
Occupational Safety Board	Cyndie Shelton Schmitt
Texas Coordinating Commission for Health and Welfare Services	Cyndie Shelton Schmitt
Office of Interstate Compact on Mental Health Administrator for Texas	Stuart Reynolds
Anatomical Board of the State of Texas	Ginny McKay
Texas Commission for the Deaf	Kathy Hutto
Texas Health Facilities Commission	Kathy Hutto
State Commission for the Blind	Jeri Kramer
Texas Rehabilitation Commission	Jeri Kramer
Texas Commission on Alcoholism	Anne Williams
Texas Advisory Board of Occupational Therapy	Anne Williams
Texas Department on Aging	Bruce Crawford

*Judicial Agencies*

Prosecutor Council	Anne Williams
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