

**TEXAS AERONAUTICS COMMISSION**

Staff Report  
to the  
Sunset Advisory Commission

Legislative Budget Office  
Program Evaluation  
P.O. Box 13066, Capitol Station  
Austin, Texas 78711

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## FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Texas Aeronautics Commission, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current functions of the agency. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Other Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the Sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Other Alternatives and Constraints section combines the Sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the Sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

## I. SUMMARY AND CONCLUSIONS

Prior to World War II, travel by commercial airline was not widespread due to its high cost and limited development. During the war, advances in aviation technology resulted in larger, faster, and more efficient aircraft, thereby leading to commercial fares more easily affordable by the general public. A basis for a national air transportation system was provided at the end of World War II when over 600 airports built for military transportation and more than \$25 billion worth of surplus aviation equipment and supplies were made available for civil use. In response to the growth of aviation as a form of transportation, and in anticipation of pending federal airport legislation requiring some form of state participation for receipt of federal funds, the Texas Aeronautics Commission was established in 1945.

The six-member commission is directed through its enabling legislation to encourage, foster, and assist in the development of aeronautics, airports, and air navigational facilities within the state. In addition, the commission regulates the economic and safety aspects of intrastate air carrier operations and distributes airport aid grants. Activities of the commission are financed primarily through general revenue appropriations.

Review of agency operations indicated that the agency has been successful in achieving its major programmatic objectives in the areas of air carrier regulation and aviation facilities development. While the agency has generally operated in an efficient and effective manner, several areas of concern were identified during the review. In the area of fiscal management, it was noted that inadequate internal control was exercised over agency cash and warrants in that small amounts were kept in an unlocked file cabinet during the period of the review. With regard to fees collected by the agency, fees collected for pilot recertification clinics do not

appear to be authorized by statute. The agency does not charge a fee for its general information publications and fees collected by the agency to defray the cost of air carrier certification have not been increased since 1961.

Review of the agency's research and development activity indicated that management information generated through the Texas Airport System Plan has not been used by the agency in managing agency operations or in securing federal funds. Consequently, the plan has been of little benefit to the general public or to the agency. In the area of airport facility development, a rider to the current appropriations act (H.B. 558 of the Sixty-sixth Legislature) places a \$100,000 ceiling on airport grants made for the benefit of any one city, town, or community. This \$100,000 ceiling creates a major obstacle to the effective funding and administration of new airport construction.

Under current agency procedures, few records are maintained of the agency's surveillance and enforcement activities. As a result, there is little indication of agency effectiveness in this area, and only limited records of carrier performance exist for public inspection. The review further indicated that passenger confusion regarding carrier operating procedures could be reduced if the carriers were required to notify the public of carrier liability limitations on baggage and cargo, and other basic operating procedures. Carriers should also be required to inform the public that they are regulated by the TAC and that carrier rules and tariffs are available for inspection.

### **Need for Agency Functions**

After World War II, the aviation industry in the United States grew rapidly. In response to this growth, and to federal legislation, the TAC was created in 1945. During the years from 1945 to 1961, the TAC provided technical and educational services to the public and attempted to coordinate the development of aeronautics

within the state.

In 1961, the TAC was charged with the responsibility of regulating intrastate air carriers not certificated by the C.A.B. Need for state regulation arose from concerns regarding the safety of the carrier operations and the public need for an extensive and reliable air transportation system. In 1963, the airport facilities development program of the agency was initiated to provide assistance to communities in financing the high cost of airport construction and maintenance. Since 1970, state grant funds have also been used to match federal funds for airport development.

Conditions existing today have not eliminated the need for agency functions. The experiences of other states, which have deregulated intrastate air carriers, indicate that regulation is probably beneficial to the maintenance of a stable and inexpensive air transportation system. Increases in the number of Texans relying on aviation as a means of transportation create a continuing need for a state airport grant program to help communities maintain and develop local airports and to provide assistance to communities in matching available federal grants. In addition, legislation currently being considered by Congress could require the state to administer the federal airport aid program, thereby significantly expanding the state's role in this area. Public requests for technical and advisory services provided by the commission have also increased with the growth of aviation. It therefore appears that the original need for commission functions still exists, and that these functions should be continued.

Functions performed by the TAC are highly specialized. While these functions could be consolidated with those of another agency, no benefits in terms of increased efficiency or effectiveness could be anticipated to result from such a consolidation.

## Alternatives

If the legislature determines that the commission and its functions should be continued, the following alternatives could be considered:

### **1. CONTINUE THE COMMISSION AND ITS FUNCTIONS WITH MODIFICATIONS:**

This approach would maintain an independent commission to perform regulatory, advisory and airport development functions. The review indicated that the following changes should be implemented if agency functions are to be properly carried out:

a) the planning process under the research and development activity should not be continued unless planning requirements are imposed by the Federal Government (page 14);

b) surveillance and enforcement activities relating to air carriers should be documented (page 17);

c) the collection of fees for educational services should be clearly authorized (page 13);

d) fees should be collected for agency publications which do not serve a direct safety function (page 13);

e) application fees for air carrier certification and amendments to certificates should be increased (page 13);

f) cash and warrants on hand should be secured by locking the cabinet in which they are kept and supervising access to the key (page 12);

g) grants for new airport construction should be exempted from the \$100,000 ceiling on airport aid grants established in the appropriations act of the Sixty-sixth Legislature, and the commission's statute should be amended to prioritize projects funded so that first priority is given to safety-related projects, second priority to the maintenance of existing facilities, third priority to the expansion of existing facilities, and fourth priority to new construction (page 18); and

h) carriers should be required to notify passengers of luggage liability limitations and other basic operating procedures, to inform the public that carrier

tariffs and regulations are available for inspection, and to notify the public that carriers are regulated by the TAC (page 17).

**2. ABOLISH THE TEXAS AERONAUTICS COMMISSION AND TRANSFER THE FUNCTIONS OF THE COMMISSION TO ANOTHER STATE AGENCY.**

This approach would eliminate the independent Texas Aeronautics Commission but maintain the current agency functions. Any one of several state agencies, including the Department of Highways and Public Transportation, the Railroad Commission, and the Texas Department of Community Affairs, could perform the functions of the commission. Because of the specialized aeronautic functions of the commission, no improvements in the efficiency or effectiveness with which the functions are carried out could be anticipated to result from this alternative. If the legislature adopts this alternative, the substantive changes contained in the preceding alternative should be implemented.



## II. BACKGROUND

### Historical Perspective

The Texas Aeronautics Commission was established by the Forty-ninth Legislature in 1945. The agency's establishment can be directly attributed to the growth of civil aviation as a viable mode of public transportation.

Prior to World War II, travel by commercial airline was not widespread due to its high cost and limited development. However, the original obstacles to the development of an air transportation system were eliminated as a result of two major war-related developments. During the war, advances in aviation technology resulted in larger and faster aircraft. These developments lowered commercial airline operating expenses, thereby leading to fares more easily affordable by the general public. In addition, a basis for a national air transportation system was provided at the end of World War II when over 600 airports built for military transportation and more than \$25 billion worth of surplus aviation equipment and supplies were made available to the private sector for use.

In an effort to foster and maintain this foundation for a modern air transportation system, the federal government began consideration of legislation for airport development. In general, legislation proposed in Congress embodied the concept of federal aid for airport development contingent upon some form of state participation or action. In anticipation of the Federal Airport Act, which was finally passed in 1946, and in response to the growth in aviation as a form of transportation, all but 11 states had established some type of agency to promote or regulate aviation by the end of 1944. Texas joined those states with aviation agencies in 1945 through the creation of the Texas Aeronautics Commission.

Through its enabling legislation, the commission was directed to encourage, foster, and assist in the development of aeronautics within the state and to encourage and assist in the establishment of airports and air navigational facilities. The original act prohibited the commission from promulgating rules or regulations which would impose restrictions on aviation and from issuing certificates of public convenience and necessity to air carriers. In response to these legislatively mandated responsibilities, the commission developed programs to promote aviation services through the sponsorship of aviation clinics and the distribution of aviation publications and films.

The commission's powers were expanded in 1961 when Texas became the nineteenth state to enact legislation regulating intrastate air carriers. The agency was authorized to issue certificates of public convenience and necessity to intrastate carriers and to regulate the economic and safety aspects of their operation. Regulation of intrastate air carriers, who were largely exempted from regulation by the federal Civil Aeronautics Board, was sought by the carriers themselves. The carriers hoped to benefit from the regulation of carrier entry into markets and the resulting stable pattern of service. In addition, certification by the state carried with it the expressed approval of a carrier's fiscal position and served as an indication to lending institutions of the economic viability of company operations. Communities and airports throughout the state also anticipated benefits from a stable system of carrier service based upon the state's determination of public need rather than the airlines' profit-making approach.

The pattern of state regulation provided for in 1961 remained virtually unchanged until the passage of the Airline Deregulation Act of 1978. This act preempted state regulation of the rates, routes and services of various categories

of air carriers. All carriers certificated by the TAC in 1978 fell into the deregulated group. As a result of the federal act, TAC rules were modified and the certification criterion of public convenience and necessity was removed. In addition, the policy of regulating service to individual communities, rather than the routes of carriers, was adopted by the commission.

The TAC was given the authority to provide financial assistance for airport development when it was created in 1945. However, the state did not implement this portion of the act until the Fifty-eighth Legislature appropriated \$200,000 for airport development grants to local communities in 1963. The grant program was initiated to help communities finance the high cost of airport construction and maintenance. Since 1970, state grant funds have also been used by communities to match federal funds for airport development. From the inception of the program, the commission has participated in over 450 airport construction, navigation, and maintenance projects in 208 communities. These projects include the development of 71 new airports in communities previously without access to air transportation.

Currently, the operations of the commission are directed through a six-member policy body appointed by the governor and confirmed by the senate. In fiscal year 1979, the agency carried out its duties with a staff of 40 budgeted positions. During the 1978-79 biennium, the commission expended \$4,573,595 in support of its various programs. Approximately 65 percent of these funds were from the General Revenue Fund, 30 percent from the Aircraft Fuel Tax Fund No. 150 and the remaining five percent from federal funds.

### **Comparative Analysis**

In order to determine the pattern of the promotion and regulation of aeronautics within the United States, a survey of the 50 states was conducted.

Of the 50 states surveyed, only Colorado and Nevada have not assigned aeronautic functions to a specific agency. Responsibility for aeronautics in 33 states is assigned to a division of the state Department of Transportation. Twelve states, including Texas, have established independent aeronautics agencies. In 35 states, as in Texas, the board or individual with policy-making responsibility for agency operation is appointed by the governor. In 17 states, as in Texas, the governor's appointments must be confirmed by the legislature.

The agency with responsibility for aeronautics receives appropriated general tax revenue in 30 states, as does the Texas Aeronautics Commission. Fees collected by the agencies serve as a source of revenue in 26 states, not including Texas. Aeronautics agencies in 43 states, including Texas, disburse state airport grants. All state aviation agencies provide technical assistance in airport site selection, planning, financing, and operation. Twenty-nine states provide public education services, as does Texas.

With regard to regulatory activities, seven states indicate that they regulate either scheduled or unscheduled carriers. In Texas, scheduled air carriers are regulated. In eight states, not including Texas, air freight carriers are regulated. In Texas, as in 26 other states, consumer complaints are investigated by the agency. In 16 states, including Texas, disciplinary hearings are conducted by the agency.

States which possess aeronautics agencies indicate that the agencies perform the basic functions of promotion, airport facility development, and regulation.

### **III. REVIEW OF OPERATIONS**

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

#### **Organization and Objectives**

The Texas Aeronautics Commission is composed of six members appointed by the governor and confirmed by the senate. Commission members serve six-year terms and are reimbursed for actual and necessary expenses incurred in performing their duties. The commission is staffed by an executive director and 46 authorized positions. Activities of the commission are funded through general revenue appropriations, federal grants and contracts, and the collection of reproduction and filing fees.

Commission members indicate that they participate in the promulgation of agency rules and regulations, review of operating budgets, the development of personnel policies, and agency hearing processes.

#### **Evaluation of Agency Activities**

The broad objectives of the Texas Aeronautics Commission are to encourage, develop, assist, and coordinate aeronautical endeavors within the state and to cooperate with other governmental entities in establishing a national system of civil aviation. To achieve these objectives, commission activities are organized into three programs: 1) aviation facility development; 2) air carrier regulation, and

3) central operations, which is composed of the agency activities relating to administration, research and development, and aviation services. These programs of the agency were reviewed to determine the extent to which agency objectives have been achieved.

### **Central Operations**

#### **Administration**

The general objective of the administration function is to provide for the efficient operation of all agency activities. Review of the agency indicated that agency administration is generally conducted in an efficient and effective manner. Based on a review of the latest audit report, the TAC utilizes accepted standard procedures in accounting, record-keeping, property management, and purchasing activities. The commission operates under written personnel policies and procedures, which are made available to every employee.

Agency effectiveness has been enhanced through the use of an aircraft for travel to airport inspection and construction sites. Travel by aircraft has significantly reduced the travel time required of agency engineers and other employees, thereby allowing agency staff more productive work time.

While the agency is generally administered in an effective manner, there are several aspects of agency administration that could be improved. During the period of review, agency cash on hand and miscellaneous warrants were kept in an unlocked file cabinet. Although the total amounts on hand were relatively small, the general practice of limiting employee access to agency cash and warrants by locking the cabinet in which they are kept and supervising access to the key is a procedure that is recommended by the State Auditor for all state agencies. Discussion with agency personnel during the review of the draft report resulted in

an agreement to modify this practice.

A second area of concern pertains to fees collected by the agency. Air carrier application fees of \$50 for a certificate of operating authority and \$25 for amendments to a certificate, collected for the purpose of defraying the operating expenses of air carrier certification, have not been increased since 1961. Although these fees presently generate little revenue, an increase in fees consistent with inflationary increases would help to defray agency administrative costs. Fees of \$200 for initial certification and \$100 for an amendment to a certificate would not place an excessive burden on applicants and would generate revenues to help balance administrative costs.

In another area related to fees charged, the commission, in conjunction with Texas A&M University, conducts six flight instructor seminars per year throughout the state. An attendance fee of \$25 is collected by the commission for the purpose of reimbursing Texas A&M University for costs incurred in presenting the seminars. The commission, while possessing the statutory authority to collect a fee for technical services, does not have the clear authority to collect a fee for conducting educational flight clinics. An amendment to the commission's statute authorizing the collection of fees for educational purposes would allow for the continued funding of flight instructor seminars.

Under present commission policies, the agency does not charge for any of its publications. To insure maximum distribution, agency publications which meet a safety-related need are made available to the public at no charge. However, many agency publications which provide general aviation information do not serve a direct safety function. Costs to the agency of printing these publications, which include "Farm and Ranch Airstrips", "Tips on Engine Care", "Sport Aircraft Builder's Guide for Texans", and the "Mexico Flight Manual", could be recovered,

and agency efficiency enhanced, through the collection of nominal fees for the publications.

### **Research and Development**

The research and development activity within the Central Operations Program has the responsibility of developing and updating the Texas Airport System Plan. In the years 1976 to 1980, the commission will expend state general revenue funds totaling \$231,015 in developing and updating the plan, which includes among its broad objectives, the provision of reasonable access to scheduled air transportation and the preservation and development of smaller towns as viable economic and social entities. Expenditure of these state funds could be expected to result in a document which is used by the agency in its operations or which is used to secure federal funds. Review of agency activities indicated that the Texas plan has not been used to direct the development of the Texas airport system and that no apparent use has been made by the agency of information developed through the plan. TAC staff indicate that the plan is not used in allocating state airport grants or to secure federal funding, and that planning activities serve a promotional function for the agency. As a result, the planning effort does not need to be continued as a specific funded element of agency operation and expenditures for this purpose should be discontinued. Promotional functions of the planning activity could be performed, as necessary, by the ongoing Aviation Facility Development Program.

Federal legislation currently assigns responsibility for the development of a National Airport System Plan, and its component state plans, to the Federal Aviation Administration. F.A.A. staff indicate that the federal government must assume complete responsibility for development of the Texas part of the national plan should state funding and participation cease. F.A.A. staff further indicate



that no loss of federal airport grant funds would result from the state's withdrawal from the planning process. Legislation under consideration by Congress could assign responsibility for the planning and disbursement of certain federal airport grants to the state. Should such legislation be enacted, the maintenance of a state-developed airport system plan could be required.

### **Aviation Services**

Through the aviation services activity, the agency distributes numerous publications, conducts educational and safety programs, and provides technical and consulting services to the public in response to its statutory responsibility of fostering and assisting in the development of aeronautics. As the only state agency with aeronautic responsibilities, the commission responds to a wide variety of requests for information concerning aircraft, airports, and state and federal laws and regulations. The TAC also maintains a technical aviation library and provides films for public use from its aviation film library. The review indicated that the agency has been successful in providing informative aviation services to the public.

### **Air Carrier Regulation**

The Air Carrier Regulation Program was established in 1961 when the commission was granted the authority to exercise economic and safety regulations over scheduled intrastate air carriers not certificated by the Civil Aeronautics Board. Enactment of the federal Airline Deregulation Act of 1978, which preempts state regulation of the rates, routes, and services of air carriers, makes the future of state air carrier regulation uncertain. Two states, California and Illinois, possessing state regulatory programs similar to the Texas program, have been enjoined by federal courts from exercising regulatory authority over intrastate

carriers. Other states are currently involved in similar court actions; however, no such court action pertaining to Texas regulatory activities has been filed.

The broad objective of the Air Carrier Regulation Program is to bring the highest level and greatest frequency of service to Texans at the lowest cost. The program is composed of the certification and rates activity and the surveillance and enforcement activity.

Review of the certification and rates activity indicated that the agency has been successful in achieving its objective of fostering a system of intrastate air transportation adapted to the needs of the citizens of the state. Under TAC regulation, the number of points served by intrastate carriers has increased from 12 in 1970 to the current 38, while passenger enplanements have increased from 231,639 to approximately six million during this period. Sixteen Texas communities are served solely by TAC-certificated carriers.

Review of carrier activity during the period from 1972 to 1978 indicated that the commission has been successful in determining carrier financial stability and in assessing the capability of a market to support a carrier. During the years 1972 through 1978, carriers failed in only 25 of the 251 markets approved by the commission. Studies conducted by the federal Department of Transportation in 1976 indicate that the Texas flying public has benefitted from fares often as much as 40 percent lower than those in comparable interstate markets.

The surveillance and enforcement activity of the commission has the responsibility of insuring that carriers operating under TAC authority are in compliance with agency rules and regulations. To fulfill this responsibility, agency staff inspect carrier facilities throughout the state, monitor carrier filings required by TAC rules, and conduct inspections in response to passenger complaints. In

addition, agency staff perform carrier management evaluations and provide carriers and communities with advisory assistance.

The agency has adopted the policy of inspecting local facilities of TAC-regulated carriers in each community receiving service. Under present agency policies, no formal record is made of the findings of an inspection or of any action taken by the agency or the carrier to correct problems identified through inspections. As a result, no basis exists for an evaluation of the effectiveness of the inspection activity or of carrier compliance with TAC policies. At one time the agency adopted limited procedures for documenting inspections. These procedures were never fully implemented. A systematic pattern of inspection could be expected to insure uniform service to the public at all carrier facilities. In addition, if inspection records were maintained by the agency, inspection results could be of benefit to the TAC, industry, and communities in identifying past carrier service patterns and in determining carrier entry into new markets.

Review of the agency's complaint procedures indicated that consumer complaints are handled in a timely and effective manner. Consumer complaints were found to relate primarily to luggage problems and to the cancellation of flights. It was also noted that complainants were often unaware of the TAC's regulatory jurisdiction. To inform the public of their operating procedures, carriers should be required to notify the public of carrier luggage liability limitations and other basic operating procedures. Carriers should also inform the public that they are regulated by the TAC and that carrier rules and tariffs are available for inspection.

In the area of technical consultation, agency staff perform carrier management evaluations and provide advisory assistance to carriers and communities. In 1978, 68 advisory tasks were performed by the agency. In general, these advisory

efforts assist air carriers and airport authorities in planning carrier ground facilities and in dealing with federal regulations. Records of the specific nature of the advisory services have not been maintained by the agency. Therefore, the benefit to the general public resulting from these activities is unclear.

### **Aviation Facilities Development**

The objective of the Aviation Facilities Development Program is to foster air transportation through the development of a safe, efficient, and convenient system of airports. To achieve this objective, the agency disburses grants for airport development, inspects airport facilities, and provides communities with aviation-related engineering and technical services.

Review of program activities indicated that the agency has been successful in achieving its objective of fostering an airport system. Agency criteria for allocating grants are well defined and impartial, and procedures for disbursing grants result in the protection of the state's interest in funded airport projects. Inspections conducted by staff engineers insure that projects comply with grant requirements and have resulted in an accurate inventory of airport facilities. Since the inception of the grant program in 1965, a total of \$11,890,729 has been distributed to 464 airport development projects. During the period from 1966 to 1978, state grants were supplemented by federal funds totaling \$26,604,469.

During the review, it was noted that a rider to the General Appropriations Bill (H.B. No. 558, Sixty-sixth Legislature) prohibits the making of an airport development grant in excess of \$100,000 for the benefit of any one city, town, or community. This dollar limitation, which establishes a reasonable ceiling for grants made for airport renovation and repair, was found to seriously limit funds available to communities for construction of new airports. As a result, several

TAC grants, made over a two or three year period, are often required to finance individual airport construction projects. This procedure results in inflated construction costs and creates an administrative burden for both the TAC and the communities involved. Review of grants made in 1978 and 1979, and of past projects still outstanding in those years, indicated that the estimated cost of only 12 of 162 state and locally funded projects exceeded \$100,000. Examples of delays in airport construction and resulting higher construction costs resulting from grant ceilings were found in the communities of McKinney, Garrison, Mineola and Higgins, Texas. These problems could be avoided by removing the \$100,000 limit on grants for new airport construction. To insure that grants continue to be broadly distributed by the commission for both airport repair and new construction, the commission's statute could be amended to prioritize grant applications giving first priority to safety-related projects, second priority to the repair of existing facilities, third priority to the expansion of existing facilities, and fourth priority to new airport construction.

### Summary

The evaluation of the Texas Aeronautics Commission indicated that the agency has been successful in meeting its major programmatic goals. Operations of the agency are generally conducted in an efficient and effective manner; however, several areas of concern were identified through the review. In the area of fiscal management, access to cash and warrants on hand was not adequately controlled during the period of the review. Fees collected by the agency for pilot instructor certification clinics are not authorized by statute and no fees have been collected by the agency for agency publications containing general aviation information. In addition, application fees collected to defray the costs of air

carrier regulation have not been increased since 1961.

In the area of air carrier regulation, the TAC has been successful in fostering an effective and stable air transportation system. However, under present agency procedures, activities of the air carrier surveillance and enforcement activity are inadequately documented.

Although consumer complaints are handled in an efficient manner, confusion over the TAC's regulatory jurisdiction could be reduced by requiring carriers to inform the public that they are regulated by the TAC. In addition, carriers should be required to notify passengers of baggage liability limitations and that carrier rules and tariffs are available for inspection. Review of the agency's research and development activity indicated that information generated through the agency's planning processes has not been used to direct agency operations or to secure federal funds, and has consequently been of little benefit to the agency or to the general public.

In the area of airport facility development, the \$100,000 ceiling currently placed on airport development grants by the General Appropriations Act creates a major obstacle to the effective funding and administration of new airport construction. If new construction projects were exempted from the \$100,000 ceiling, the legislature could insure that grants are broadly distributed by prioritizing projects so that first priority is given to safety-related projects, second to maintenance of existing facilities, third priority to expansion of existing facilities, and fourth priority to new construction.

#### **IV. OTHER ALTERNATIVES AND CONSTRAINTS**

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

##### **Consolidation Alternatives**

The organization of aeronautical activities in other states was reviewed to identify potential patterns of agency consolidation in Texas. Responsibility for aeronautics is assigned to a division within the state Department of Transportation in 33 states. In California, air carrier regulation has been performed by the Public Utility Commission. Aeronautics activities in Montana and Arkansas are performed by the Department of Community Affairs.

Since Texas has no Department of Transportation, the consolidation option used in a majority of states cannot be considered as a practical alternative. However, Texas does have a Public Utility Commission and a Department of Community Affairs. In addition to these possibilities, other Texas agencies can be identified as consolidation alternatives. While no agency other than the TAC has aeronautical responsibilities, both the State Department of Highways and Public Transportation and the Texas Railroad Commission perform many of the basic transportation-related functions carried out by the Aeronautics Commission.

Although such similarities in functions exist, TAC airport development and regulatory functions are highly specialized. Consequently, while these functions could be consolidated with those of an existing agency, no benefits in terms of increased efficiency or effectiveness could be anticipated to result from the utilization of the expertise or resources existing in other state agencies.

### **Regulatory Alternatives**

Texas is one of only approximately 12 states, which, because of population distribution and geographic characteristics, are capable of supporting a system of intrastate air carriers. Of these twelve states, seven, including Texas, currently regulate intrastate air carriers. The regulatory scheme used by these seven states involves regulation of rates, schedules, services, capitalization, market entry, and market exit. An alternative used by the states of California, Illinois, Oregon, and Florida does present the less restrictive approach of carrier deregulation.

Before a regulatory alternative can be considered as a reasonable alternative to that currently used in Texas, the option should offer at least the same degree of public protection as the current method. In addition, the alternative should be less restrictive than the present system. An analysis of the approaches used by states which do regulate air carriers indicates that there is no significant variation used by those states which could be considered to be a less restrictive regulatory alternative.

With respect to the deregulation option, insight into the possible results of such an alternative can be gained from the experience of four states: California, Illinois, Oregon, and Florida. These states have ceased regulating intrastate carriers since 1978, with apparently negative results. Intrastate fares have increased by approximately 50 percent in California and Illinois since state



deregulation, and the pattern of air carrier service has been seriously disrupted. In California, service to 30 points has been discontinued subsequent to deregulation. While Texas may not be strictly comparable to these states in all respects, the experiences of these states indicate that the deregulation of Texas intrastate air carriers would not appear to benefit the general public.

### **Summary**

Transportation-related functions, similar to those of the TAC, are performed by several state agencies. Although the functions of the TAC could be consolidated with those of an existing agency, no benefits in terms of increased efficiency or effectiveness could be anticipated to result because of the highly specialized aeronautic responsibilities of the TAC. The regulatory approach adopted by the commission, while relatively unrestrictive, has been successful in promoting and directing the development of an extensive system of intrastate air carrier service. No alternative regulatory approaches, including deregulation, would appear to result in additional benefit to the public.

## V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals. In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation.

### Conflict of Interest

Commission members, as appointed state officers, are subject to statutory standards of conduct and conflict-of-interest provisions (Article 6252-9b., V.A.C.S.). A review of the documents filed with the Secretary of State indicates that both the commission members and the executive director of the agency have complied with the filing requirements set out in the state's general statutes concerning conflict of interest. In addition, a review of the commission's minutes from 1976 to the present indicates that commission members follow the practice of disqualifying themselves from deliberation of matters in which they have a personal or financial interest, as required by law. All commission members also receive a manual outlining the statutes affecting members of state boards, including a comprehensive statement on ex parte communications.

### **Open Meetings - Open Records**

A review of records maintained by the Secretary of State indicates that the commission has complied with the Open Meetings, Open Records, and Administrative Procedures and Texas Register Act. Proper procedures have been followed in relation to publication of notices of commission meetings and executive sessions. Only two types of records, personnel files and traffic and financial information required of certificated carriers, are considered confidential by the board, pursuant to the Open Records Act (Sec. 3(a), Article 6252-17a., V.A.C.S.). Carrier information is subject to public disclosure after a period of six months.

### **Employment Practices**

The TAC has developed an Affirmative Action Plan under the guidance and direction of representatives from both the Governor's Equal Employment Opportunity Office and the Attorney General's Office. An analysis of the commission's work force in 1979 indicates that 17 of the 36 full time positions were held by minorities. Of these 17 minorities, 13 were females employed in all the occupational categories of the agency except for the technician group.

Since 1976, the agency has operated under a written employee grievance procedure. A copy of the Affirmative Action Plan, which was updated in 1979, and the grievance procedure is supplied to each employee of the commission.

Two charges of discrimination have been filed against the agency. According to the San Antonio office of the Equal Employment Opportunity Commission, the EEOC process ended in the first case in 1976 with a conciliation attempt, while the second charge is still pending EEOC investigation.

### Summary

The commission has complied with statutory requirements regarding conflict of interest, open meetings, and open records. Two charges of discrimination have been filed against the agency, one of which is still pending investigation.

## VI. PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

### Agency Activities

Review of agency activities indicates that public participation in rule-making has been encouraged through notifications published in the Texas Register in compliance with general state law as well as through agency notification of interested parties. In addition, proposed substantive rule changes may be published in the Texas Aeronautics Commission Bulletin. Although the agency has encouraged public participation, no members of the general public or consumer groups have presented testimony to the commission regarding proposed changes in agency rules during the period under review.

Since calendar year 1975, nine of ten proposed rule changes have been adopted by the commission. Changes adopted provide for regular meetings of the commission, limit the commission's regulatory purview, and simplify grant application procedures. These changes are of clear benefit to the general public.

Publications distributed by the commission include the bimonthly TAC Bulletin as well as brochures which inform the public of agency programs and services. In addition, the commission publishes a bimonthly "Airport Advisory Bulletin", the "Texas Airport Directory", "Mexico Flight Manual", "Sport Aircraft Builder's Guide for Texans", and the "Farm and Ranch Airstrips Booklet", and distributes documents and reports related to the Texas Airport System Plan. In calendar year 1978, 75,199 documents were distributed by the commission. The commission also informs the general public of its activities through press releases and through public meetings held throughout the state for the purpose of determining the airport development needs of counties. Twenty-seven such meetings, attended by 588 citizens and county officials, were held in 1978.

### **Public Membership**

All members of the commission may be considered representatives of the general public. Commission members have no relationships with the regulated industry other than as consumers and may be assumed to represent the interests of the general public in their deliberations.

### **Summary**

The agency has encouraged public participation in its rule-making activities through several means: notifications to the public through the Texas Register in compliance with general state law, notification of interested parties, and publication of proposed substantive rules in the TAC Bulletin. Despite commission efforts, representatives of the general public have not presented testimony regarding proposed rule changes.

The agency has made an effort to inform the general public of its operations through public meetings and through the distribution of periodicals and printed brochures. In addition, the point of view of the general public is represented on the commission through its current membership.

## VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates, and the nature of statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to only adopted changes.

### Past Legislative Action

The Texas Aeronautics Commission was granted responsibility for the promotion and development of aeronautics within the state through enabling legislation enacted in 1945. The commission was authorized to recommend necessary legislation, to assist in the operation, development, maintenance or acquisition of airports, and to assist in determining the location, type of construction, and cost to the state of airports owned, operated or directly financed by the state. The commission was specifically prohibited from issuing certificates of convenience and necessity in the original Act.

In 1961, Senate Bill No. 76, Fifty-seventh Legislature, vested the commission with broad authority to promulgate economic and safety regulations over scheduled intrastate air carriers not holding certificates issued by the Civil Aeronautics Board and prohibited such intrastate carriers from operating without Texas Aeronautics Commission certification. In addition, the bill increased the number



of commissioners from three to six, added experience in professional and aeronautical matters to appointment requirements, and granted the commission authority to hold in trust land and navigational aids or aviation facilities given to the state. The board member requirement concerning aviation experience was later removed by House Bill No. 823, Sixty-first Legislature (1969).

With regard to air carrier regulation, House Bill No. 823 also amended the TAC's authority by granting the agency explicit power to approve or disapprove rates and schedules of TAC-certified air carriers, and to establish the minimum requirements of an application for a certificate of public convenience and necessity. In addition, the bill expanded the TAC's jurisdiction to include both scheduled and non-scheduled carriers operating within the state. The TAC's power to regulate the schedules of air carriers was removed by Senate Bill No. 904 in the Sixty-third Legislature (1973), which also applied the substantial evidence rule to appeals of the commission's actions and clearly defined the certification process. The TAC's air carrier regulation powers were modified further in 1977 (Sixty-fifth Legislature) by House Bill No. 633, which allowed the commission to establish classes of air carriers and to exempt classes of carriers from regulation when in the public interest, and by Senate Bill No. 38, which allowed the commission to establish freight and baggage liability limitations for carriers.

The aviation facilities development program was established pursuant to House Bill No. 43, Fifty-ninth Legislature, 1965. This bill made state grants and loans available to incorporated cities in Texas for airport development. In the Sixty-sixth session in 1979, House Bill No. 272 expanded eligibility to receive these grants and loans to include any governmental entity and changed the percentage of the total project cost to be provided from other than state sources from 50 percent

to 10 percent. It should also be noted that the commission's act was amended in 1977 to make the agency subject to the Texas Sunset Act (Senate Bill No. 54, Sixty-fifth Legislature, 1977).

The commission rarely took an active role in seeking legislation. In the limited number of cases where an active role was taken, the commission generally sought legislation to simplify its administrative procedures or to limit its scope of regulation.

### **Proposed Changes**

Apart from the successful legislation mentioned above, review of legislation introduced in the last four legislative sessions indicates that several bills affecting the commission's operations were unsuccessfully submitted to the Sixty-fourth Legislature (1975). These bills are as follows: House Bill No. 1652, which would have raised the filing fee for certification from \$50 to \$250 and brought regulation of CAB carriers under TAC authority; Senate Bill No. 698, which would have permitted the TAC to require carriers to provide air service requested by a city under a schedule of service and rates approved by the commission; Senate Bill Nos. 770 and 900, which would have limited the TAC's authority to grant or authorize routes without the cooperation of municipalities involved; and House Bill No. 1454, which would have merged the TAC with other transportation agencies into a new Department of Natural Resources and Transportation. The commission took no position and did not present testimony on any of the above proposed legislation.

The agency made no suggestions concerning modifications to its enabling legislation in its self-evaluation report.

### Summary

Since its passage in 1945, the enabling legislation of the Texas Aeronautics Commission has been amended several times. Two of these amendments significantly expanded the original authority of the agency. In 1961, the commission was granted the power to authorize the operation of intrastate air carriers through certificates of public convenience and necessity and to exercise regulatory authority over economic and safety aspects of such carrier operations. In 1965, the act was amended to establish a grant and loan program for airport development in the state. Other amendments to the TAC's enabling legislation have generally altered various aspects of the agency's certification and grant programs.

Apart from such successful legislation, four bills were unsuccessfully introduced in the Sixty-fourth Legislature in 1975. Three of these bills would have modified the specific regulatory authority of the TAC, while the fourth bill would have merged the TAC and other transportation agencies into a new Department of Natural Resources and Transportation.

The agency made no suggestions concerning modifications to its statute in its self-evaluation report.