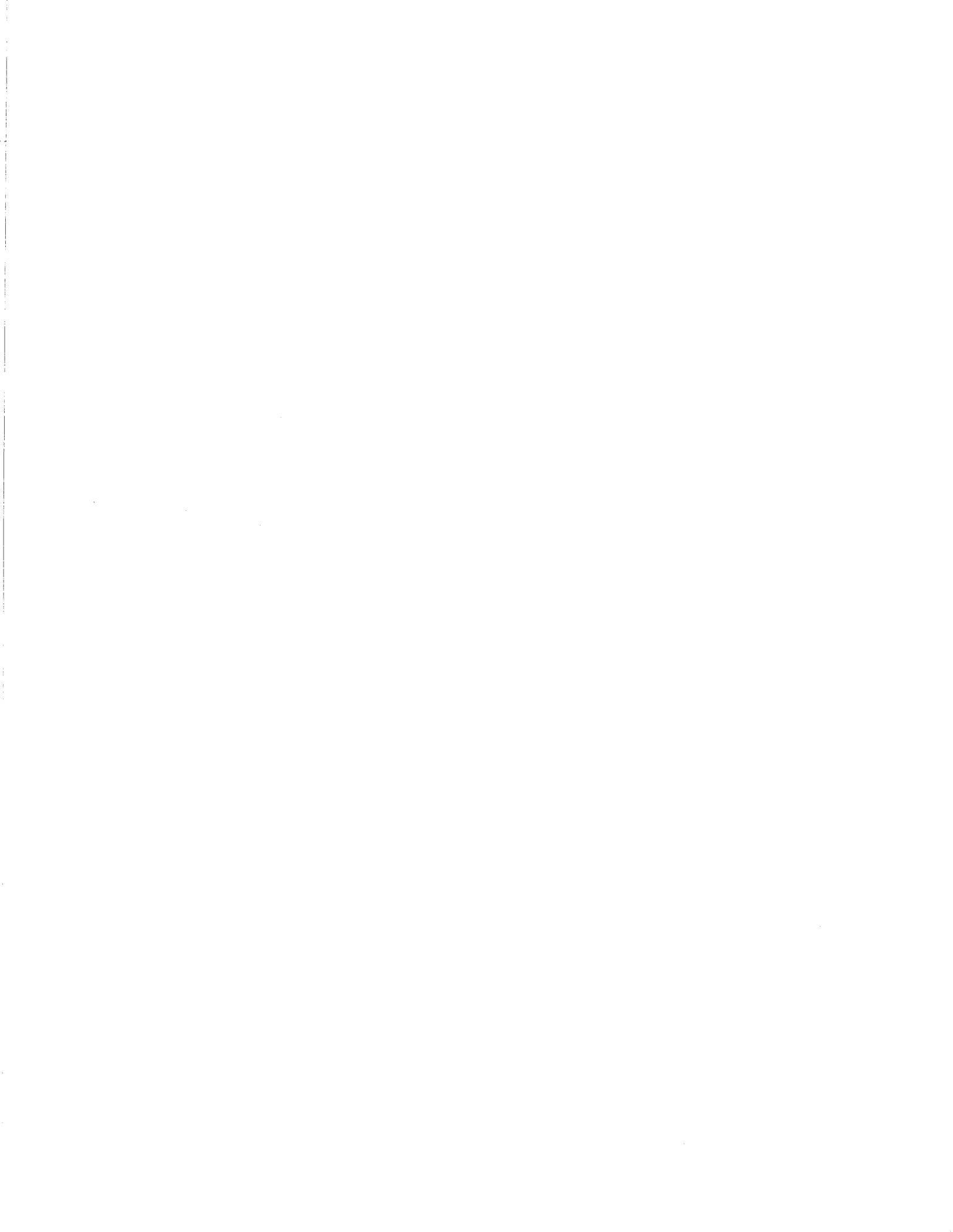


**TEXAS HISTORICAL COMMISSION**

**ANTIQUITIES COMMITTEE**

**March 1994**



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***SUMMARY***



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## SUMMARY

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The Texas Historical Commission (THC) and the Antiquities Committee are subject to the Texas Sunset Act and will automatically be abolished unless statutorily continued by the 74th Legislature in 1995. The THC and Antiquities Committee reviews included an analysis of agency operations with respect to the 13 statutory Sunset criteria, which are used to evaluate the agency's efficiency and effectiveness. Based on the assessment of these criteria, the staff report contains recommendations on whether the agency's functions continue to be needed; if benefits could be gained by reorganizing the agency; and if existing statutory policies should be changed to improve the agency's programs and functions. These recommendations are listed below.

### NEED FOR THE AGENCY

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The THC should be continued for 12 years and reviewed again in 2007. The review found that the agency's functions continue to be needed and are appropriately placed.

The Texas Antiquities Code should be continued, but the Antiquities Committee should be abolished and oversight of the antiquities code should be transferred to the THC.

### REORGANIZATIONAL ALTERNATIVES

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No substantial benefits of reorganization were documented. As a result, the staff report does not contain recommendations for reorganizing the agency.

### POLICYMAKING STRUCTURE

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If the Antiquities Committee is abolished and its functions are transferred to the THC, the commission's composition should be changed to provide specific kinds of expertise.

### OVERALL ADMINISTRATION

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The Texas Preservation Trust Fund should be maintained as a separate account in the general revenue fund and should be allowed to retain the interest earned on its principal.

### EVALUATION OF PROGRAMS

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The agency's programs and functions should be changed by:

- improving the antiquities permit process by adding specific notification requirements for projects that could impact archeological sites on state and local public property;

- requiring the THC to develop a state register of historic places to simplify the designation of historic properties, minimize staff efforts, and provide a basis for developing a more uniform approach to the state's preservation of historic sites;
- authorizing local property tax exemptions for state archeological landmarks to be consistent with existing optional tax exemptions for historic structures; and
- simplifying existing requirements for the THC to compile a list of historic structures available and suitable for state lease or purchase.

## ACROSS-THE-BOARD RECOMMENDATIONS

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All of the relevant Sunset across-the-board recommendations (ATBs) were recommended for the THC. Most of the ATBs were recommended for the Antiquities Committee if the committee is not abolished, with the exception of ATBs for administrative functions. In many cases, the ATBs were placed in the agency's statute during the last Sunset review but need updating to reflect current language. The standard recommendations for licensing agencies were not recommended because neither agency has a licensing function.

## FISCAL IMPACT

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Most of the recommendations in the staff report would not have a fiscal impact to the state or to local entities. The recommendation to abolish the Antiquities Committee would result in a fiscal savings of about \$1,800 a year that is currently spent on expenses incurred by members of the Antiquities Committee. The recommendation to add specific notification requirements to the permitting process could result in some minor additional costs to units of local government due to an increase in archeological surveys. However, this cost could also be offset by a reduction in more expensive archeological excavations. The recommendation to authorize local property tax exemptions for state archeological landmarks could slightly reduce property tax revenue for local taxing units that choose to offer the exemption, but the actual fiscal impact cannot be determined without more specific information. The fiscal impact of the staff recommendations for the THC and the Antiquities Committee is summarized in the following table.

Fiscal Year	Savings to the General Revenue Fund
1996	\$1,800
1997	\$1,800
1998	\$1,800
1999	\$1,800
2000	\$1,800

***BACKGROUND***



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## CREATION AND POWERS

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### **TEXAS HISTORICAL COMMISSION**

Historic preservation has been supported by state government since 1876, when the newly adopted state constitution authorized the Legislature to appropriate funds for preserving Texas history. In 1953, the Legislature created the Texas State Historical Survey Committee to oversee most of the state's historic preservation programs and coordinate the efforts of local preservation volunteers. The Legislature reorganized and renamed the committee in 1973 to create the Texas Historical Commission (THC). The THC is statutorily charged with leading and coordinating historic preservation efforts in the state, supplying information to the public, providing technical assistance for preservation and restoration activities, and administering state and federal laws and programs.

Congress passed the National Historic Preservation Act in 1966, establishing a national program of historic preservation to be carried out by the states. In Texas the Governor and the Legislature delegated this responsibility to the THC and designated its executive director as the state historic preservation officer, who is charged with implementing the federal act in the state. The federal act also set up the National Register of Historic Places, a federal program that recognizes historic sites of local, state, and national significance. The first Texas properties were placed on the National Register in 1969.

### **ANTIQUITIES COMMITTEE**

In response to public controversy over treasure hunting in Texas coastal waters, the Legislature passed the Texas Antiquities Code and created the Antiquities Committee in 1969. The Antiquities Committee was authorized to designate state archeological landmarks and issue permits for projects that impact archeological sites on state and local public property or designated state archeological landmarks. As its first major action, the Antiquities Committee investigated and recovered artifacts from a wrecked fleet of Spanish treasure ships that sunk off the Texas coast in the sixteenth century. The Legislature also transferred the office of the state archeologist from the now-defunct Texas State Building Services Commission to the THC and named the state archeologist as an *ex officio* member of the Antiquities Committee.

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## POLICYMAKING STRUCTURE

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### TEXAS HISTORICAL COMMISSION

The THC is composed of 18 citizen members appointed to staggered six-year terms by the Governor with the advice and consent of the Senate. To qualify for appointment, nominees must show a demonstrated interest in preserving the state's historical heritage. The commission is required by law to elect a chairman, vice-chairman, and secretary at the first meeting of the calendar year in odd-numbered years. Commission members serve without compensation except for travel expenses directly related to agency business. Commissioners usually serve on one or more of the commission's 10 standing committees and attend quarterly meetings in Austin and other Texas cities. The commission met four times in fiscal year 1993, once in Columbus and three times in Austin.

The commission sets policies and long-range agency goals and oversees implementation of the agency's statutory mandates. The commission hires the executive director of the agency and adopts rules related to aiding and encouraging preservation of the state's heritage. The commission has an executive committee and nine committees that monitor the operations of the agency's departments and appoints ad hoc committees as needed.

### ANTIQUITIES COMMITTEE

The Antiquities Committee is a nine-member board consisting of six *ex officio* members and three citizen members appointed to two-year terms by the Governor with the advice and consent of the Senate. The *ex officio* members are: 1) the chairman of the Texas Historical Commission, 2) the commissioner of the General Land Office, 3) the executive director of the Texas Parks and Wildlife Department, 4) the executive director of the Texas Department of Transportation, 5) the executive director of the Texas Natural Resource Conservation Commission, and 6) the state archeologist. The citizen members must be a professional archeologist from a recognized museum or institution of higher learning in Texas, a professional historian with expertise in Texas history and culture, and a professional museum director of a major, state-funded museum that has significant research facilities. The committee holds regular quarterly meetings and occasional special meetings and met four times in Austin during fiscal year 1993.

The committee adopts rules to protect and preserve the state's archeological and historical resources. The committee's staff director is hired by the THC's executive director and is considered to be a THC employee. The committee designates state archeological landmarks, issues permits for activities that impact archeological sites and designated state archeological landmarks, and oversees staff efforts to ensure compliance with the code.

## FUNDING AND ORGANIZATION

The THC staff provides administrative support to the Antiquities Committee and prepares budgets and legislative appropriation requests for both entities. In addition, all state and federal funds for both agencies are channeled through the THC. The total fiscal year 1993 expenditures of the THC and the Antiquities Committee were \$3,069,497. Exhibit A shows a breakdown of the agency's expenditures by program. Expenditures shown for the local history programs office, the national register programs office, the division of architecture, and publications services include pass-through grants provided by federal funding or legislative appropriations.

Exhibit A  
**EXPENDITURES BY MAJOR PROGRAM**  
Texas Historical Commission  
and Antiquities Committee  
Fiscal Year 1993

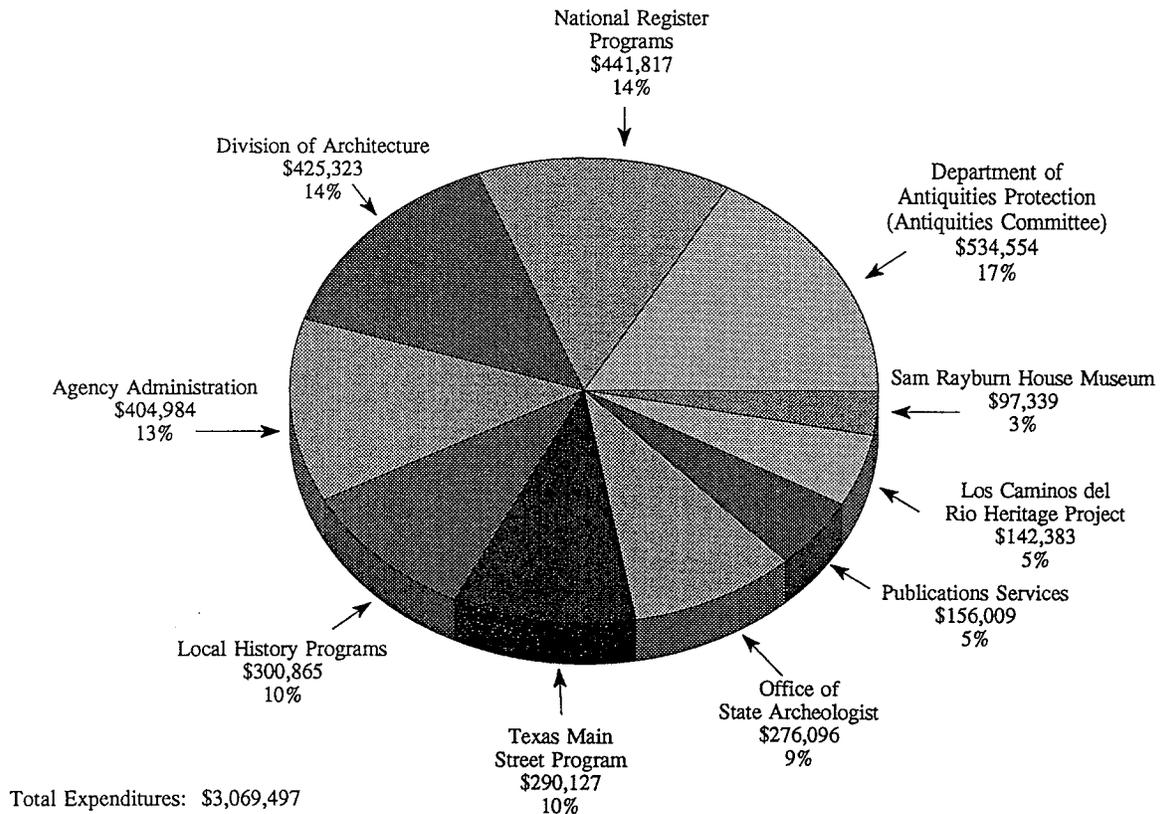


Exhibit B provides information on total agency expenditures for the last five fiscal years. Exhibit C provides a breakdown of all sources of funding for fiscal year 1993. The agency received most of its funding from general revenue, federal funding, and grants and donations.

Exhibit B  
**HISTORY OF EXPENDITURES**  
Texas Historical Commission  
and Antiquities Committee  
Fiscal Years 1989-1993

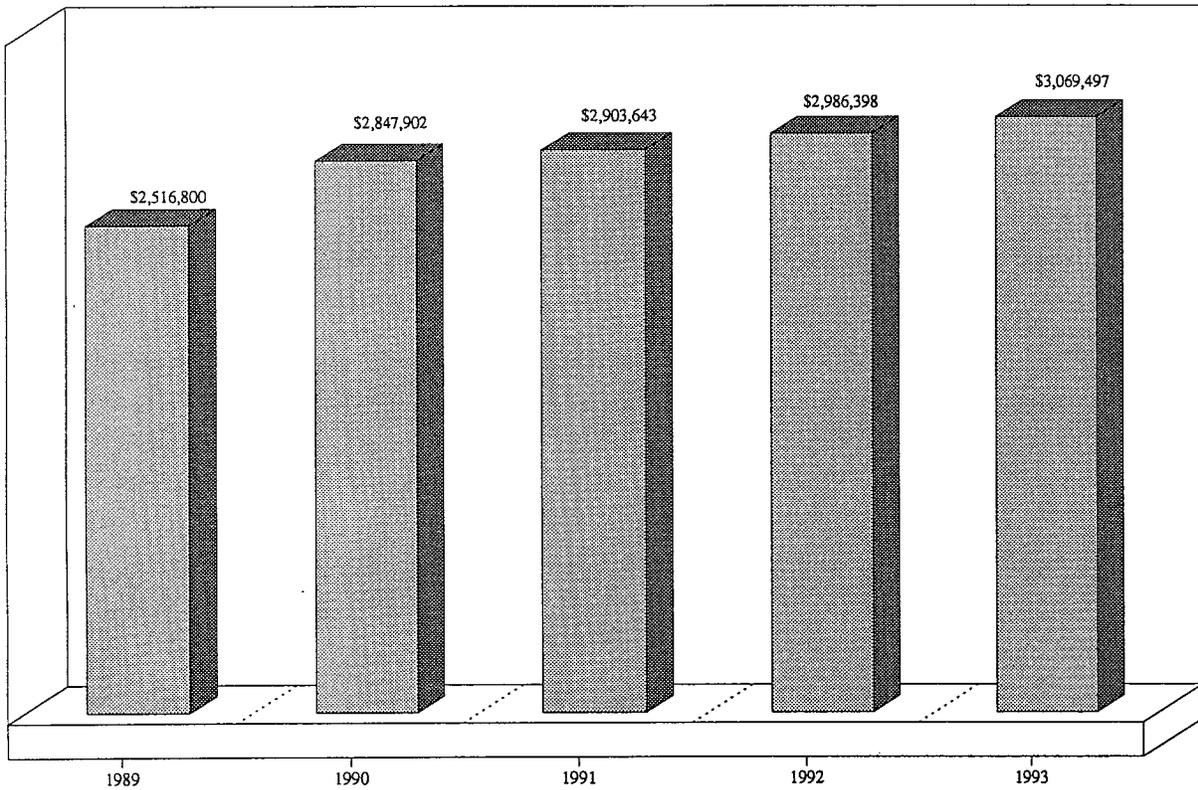
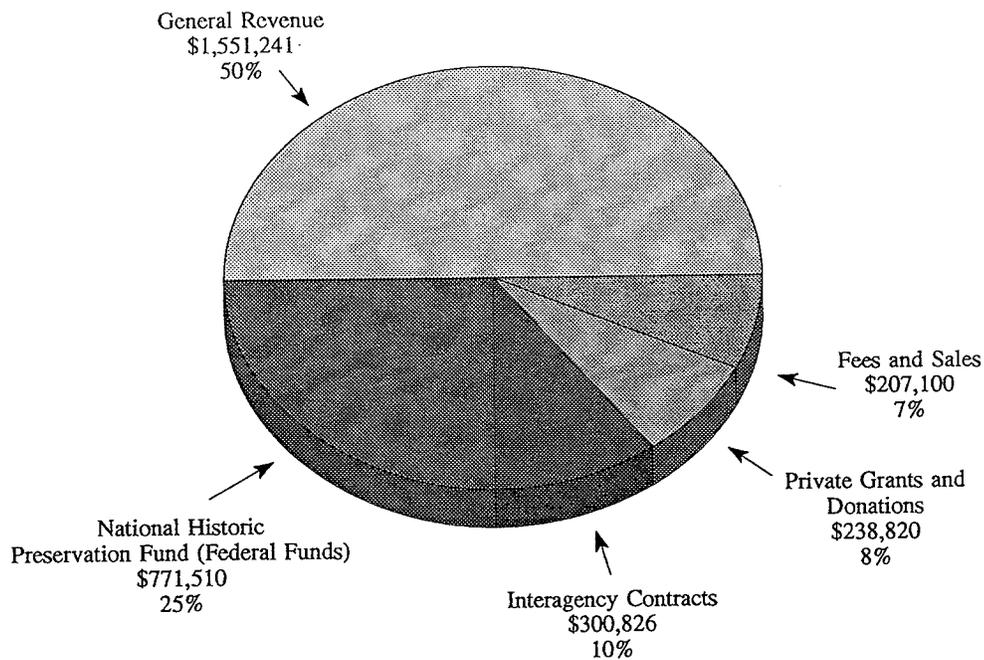


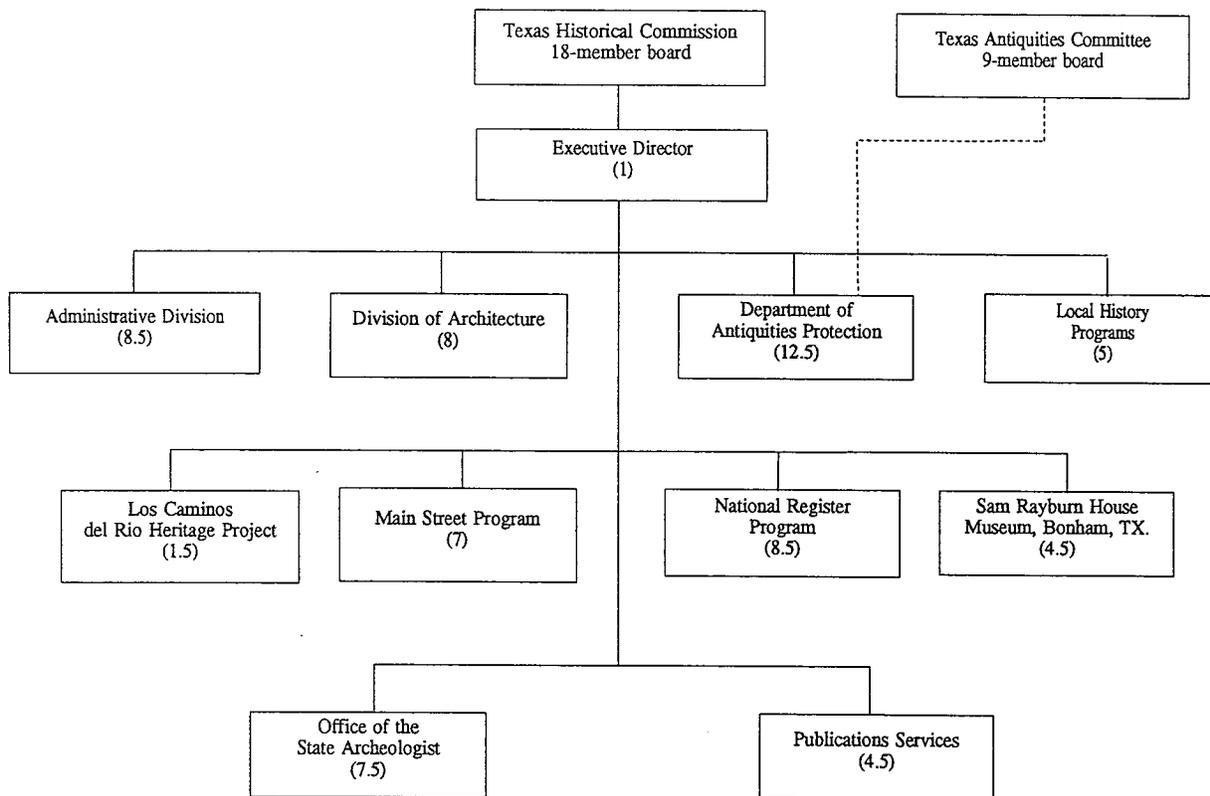
Exhibit C  
**SOURCES OF FUNDING**  
Texas Historical Commission  
and Antiquities Committee  
Fiscal Year 1993



Total Revenues: \$3,069,497

The agency employed 68 full-time equivalent employees in fiscal year 1993. The department of antiquities protection, which staffs the Antiquities Committee, had 12.5 full-time equivalent employees, or about 18 percent of the total work force. Four employees were assigned to the Sam Rayburn House in Bonham. Exhibit D provides an organizational chart showing the number of employees working in each of the agency's departments.

Exhibit D  
**ORGANIZATIONAL CHART**  
Texas Historical Commission  
and Antiquities Committee  
Fiscal Year 1993



Total Full-time Equivalent Employees: 68

A breakdown of the agency's work force is provided in Exhibit E. The chart shows how the makeup of the agency's work force has changed over a five-year period in different employment categories. The chart also compares the agency's work force composition with minority work force goals included in the General Appropriations Act.

**Exhibit E**  
**PERCENTAGE OF MINORITIES IN**  
**AGENCY'S WORK FORCE**  
Texas Historical Commission  
and Antiquities Committee

Job Category	1989 Total Work Force 56		1993 Total Work Force 84		1992-1993 Appropriations Act Statewide Goal for Minority Work Force Representation
	Total Positions	% Minority	Total Positions	% Minority	
Administrators	6	33%	10	40%	14%
Professionals	25	48%	40	68%	18%
Technicians	1	0%	1	0%	23%
Para-Professionals	11	55%	19	63%	25%
Administrative Support	12	12%	12	92%	25%
Skilled Craft	N/A	N/A	N/A	N/A	29%
Service/Maintenance	1	0%	2	50%	52%

## PROGRAMS AND FUNCTIONS

The THC carries out state and federally mandated programs to preserve Texas history and protect the state's cultural heritage. These programs focus on two types of preservation activities: federal and state reviews of projects affecting historic and archeological sites, and coordination and support of local preservation efforts. The THC carries out these activities through nine departments: National Register programs office, department of antiquities protection, office of the state archeologist, division of architecture, Main Street program office, local history programs office, Los Caminos del Rio heritage project office, publications services, and administration.

The Antiquities Committee's responsibilities under the Texas Antiquities Code are carried out by the department of antiquities protection. The major functions and activities of the THC and the Antiquities Committee are described below.

## **AGENCY REVIEWS OF PROJECTS IMPACTING HISTORIC AND ARCHEOLOGICAL SITES**

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State and federal laws preserve and protect historic and archeological sites that may be affected by construction projects and other activities. These laws are designed to allow a construction project to proceed after adequate consideration is given to protecting the sites. Not all historic or archeological sites encountered in a project need protection. State and federal guidelines help determine which sites are important and should be protected. The agency works with project sponsors to ensure that significant historic and archeological resources in Texas are not accidentally destroyed by construction projects and that development is not needlessly hindered. In fiscal year 1993, the THC reviewed approximately 8,100 projects to determine if they would affect historic structures, archeological sites, and other items of historical significance. All projects are logged into a computer database to keep track of the reviews. In fiscal year 1993, the agency completed 98 percent of the reviews in less than 30 days. Specific review programs at the THC are explained in the following sections.

### **► Federal Preservation Programs**

In response to public concern over the loss of significant historic sites to massive construction projects sponsored by the U.S. government, Congress passed the National Historic Preservation Act in 1966. The law established a national policy for the protection of historic and archeological sites and outlined the responsibilities of federal and state governments in preserving the nation's heritage. The THC carries out several federal programs that have been delegated to the states by the federal preservation act. In each state, a state historic preservation officer is responsible for carrying out the federal act's provisions. In Texas, this position has been assigned to the THC's executive director.

#### **▷ National Register Nominations**

The federal act established the National Register of Historic Places, which is a federal list of publicly and privately owned structures, sites, districts, and objects of historical significance. National Register listing can be advantageous for historic property owners. For example, federal tax benefits are available for the cost of rehabilitating a historic commercial building that is listed on the National Register. National Register properties may also qualify for federal grant assistance when available. In addition, National Register listing or eligibility triggers protective measures for historic buildings and archeological sites affected

by federally funded or permitted development projects. National Register designation does not restrict a private owner's use of the property unless the owner has accepted grant assistance or tax credits for the property.

To be eligible for listing on the National Register, a property must meet one or more of the following criteria:

- association with events that have made a significant contribution to the broad patterns of the nation's history;
- association with the lives of persons significant in the nation's past;
- embodiment of the distinctive characteristics of a type, period, or method of construction; representation of the work of a master; possession of high aesthetic values; or representation of a significant and distinguishable entity whose components may lack individual distinction; or
- has yielded, or is likely to yield, information important in U.S. prehistory or history.

In most cases, properties must also be at least 50 years old. Properties that have been moved or extensively remodeled, cemeteries, and birthplaces or graves of historical figures are not usually eligible for National Register listing.

Most applicants for National Register listing are property owners or local preservation groups. To begin the listing process, the applicant must complete a detailed federal nomination form. THC staff reviews each application and, when complete, submits it for formal consideration to the State Board of Review. The State Board of Review is appointed by the THC and is composed of 11 Texas residents who are experts in the fields of history, prehistoric archeology, historic archeology, architectural history, and architecture. If the board approves the application, the state historic preservation officer reviews the nomination and submits it to the keeper of the National Register for final approval and listing. The keeper of the National Register is housed in the National Park Service, which maintains the National Register.

In fiscal year 1993, the agency submitted 54 new listings to the National Register. Texas now has 127 historic districts and about 2,000 individual properties listed. The National Register program office spends about one-third of its budget and staff resources to process National Register nominations.

▷ Federal Section 106 Reviews

Section 106 of the National Historic Preservation Act requires federal agencies to consider the impact of construction projects and other activities on historic and archeological sites that

are listed or eligible for listing on the National Register. Federal law also requires projects that are federally permitted or licensed, use federal funds, or otherwise receive aid from the federal government to comply with Section 106 requirements. Section 106 requires project sponsors to work with the state historic preservation officer to identify and minimize impacts to historic properties. Federal law prohibits issuance of federal licenses or permits and expenditure of federal funds (other than funding for planning activities) for a project until the Section 106 process has been completed. Projects that are subject to Section 106 reviews include a new reservoir built by the U.S. Army Corps of Engineers, construction of a municipal waste water treatment facility that requires a permit from the U.S. Environmental Protection Agency, new highway construction by the Texas Department of Transportation that uses federal funds, and county housing improvement projects funded by the U.S. Department of Housing and Urban Development.

The THC's National Register programs office, division of architecture, and department of antiquities protection review construction projects that may impact National Register properties. The National Register programs office initially reviews projects to determine their impact. If the office identifies a potential impact to a historic structure, the division of architecture works with the project sponsor to minimize the impact by changing construction materials or methods, moving an important building away from the development area, or documenting the property before it is destroyed.

The department of antiquities protection also reviews federally funded or permitted projects to identify adverse impact to archeological sites listed or eligible for listing on the National Register. If a project presents a high likelihood of impacting a significant archeological site, the department asks the sponsor to conduct an archeological survey. Based on the survey's findings, the department may recommend that the project be altered to avoid the site. If this option is not feasible, the department may require further archeological investigations to determine the site's eligibility for National Register listing. If a site qualifies for National Register listing and cannot be avoided, the staff may propose excavation for samples of artifact deposits. After the samples have been analyzed and documented, the project may proceed.

In fiscal year 1993, the agency reviewed 6,680 projects under the Section 106 requirements. The National Register programs office devoted about a third of its budget and staff efforts to Section 106 reviews, the division of architecture allocated about 15 percent of its budget and staff to Section 106 projects, and the department of antiquities protection spent about 40 percent of its budget and staff on Section 106 reviews.

▶ Federal Section 110 Consultations

Section 110 of the National Historic Preservation Act requires federal agencies to identify and preserve historic properties owned or controlled by the federal agency. Section 110 also requires federal agencies to nominate qualifying properties under their control to the National Register. Federal agencies consult with the THC staff to identify and nominate historic properties and significant archeological sites on federally owned property in Texas. In calendar year 1993, the agency consulted with 14 federal agencies on 49 separate projects.

▶ Federal Tax Incentives

Owners of income-producing properties that are more than 50 years old and are listed or eligible for listing on the National Register may obtain federal income tax credits if they rehabilitate the property in accordance with federal guidelines. The THC's National Register programs office determines the eligibility of the property for listing on the National Register. The division of architecture helps property owners follow federal guidelines and conducts a final review of the rehabilitation work to certify that it meets those guidelines. In fiscal year 1993, the THC submitted certifications for 18 rehabilitation projects valued at about \$8.5 million. These certifications are awaiting approval by the National Park Service. Since 1981, about 300 projects in Texas have been granted one-time federal tax exemptions based on rehabilitation projects totaling about \$421 million.

▶ **State Preservation Programs**

The Texas Antiquities Code requires the Antiquities Committee to issue permits for activities that disturb archeological sites on public land owned by a state agency or political subdivision. The antiquities code protects all archeological sites on public land and authorizes the Antiquities Committee to formally designate sites as state archeological landmarks. The committee may also designate publicly owned historic structures listed on the National Register as state archeological landmarks. Historic properties that have been formally designated are protected by the antiquities code and cannot legally be disturbed without a permit. Archeological sites and historic structures on privately owned land cannot be designated as a landmark unless requested by the property owner. Sites on private property are not protected by the antiquities code unless they are formally designated as a landmark.

The statute requires construction projects and other operations to get a permit from the Antiquities Committee before removing, altering, damaging, destroying, salvaging, or excavating an archeological site on state or local public property. The Antiquities Committee has adopted rules for reviewing projects to determine potential impacts and actions needed to identify and protect archeological deposits. Examples of projects that may require a permit include reservoirs

built by river authorities and water districts, state-funded highway projects, new roads built by counties, construction of recreational parks or expansion of existing facilities by cities, and oil and gas exploration by private companies on public land.

▷ Designation of State Archeological Landmarks

The antiquities code identifies any archeological site on public land, including underwater archeological sites, as a state archeological landmark. In addition, the Antiquities Committee may formally designate archeological sites and historic structures listed on the National Register as landmarks. The committee may also formally designate sites located on private land upon request of the property owner. The committee has formally designated 2,258 publicly owned sites and 54 privately owned sites since 1969.

▷ Review of Projects on State Land

As staff to the Antiquities Committee, the department of antiquities protection reviews construction projects to determine if they will damage or destroy significant archeological sites on land owned by state or local governments. The Antiquities Committee may deny a permit and stop a project if it threatens to destroy a significant site or a designated landmark. Most permits are issued to survey, test, or excavate an archeological site. The department first determines if a project is likely to impact a significant or previously uninvestigated archeological site. Projects that do not appear to impact a site are cleared by the department and may proceed. If a project is likely to impact a site, the project sponsor must get a permit to arrange for an archeological survey of the property. After a site has been surveyed and determined to be insignificant, the project may proceed. If the survey identifies a potentially significant site, the project sponsor must get a permit for an archeological excavation to retrieve and record scientific data. After the site has been excavated, the project may proceed.

In fiscal year 1993, the committee received about 1,400 projects for review. The committee issued 141 permits related to those projects and cleared the rest without issuing a permit. The department of antiquities protection used about six percent of its budget and staff to review projects on lands owned by state or local government entities.

▷ Underwater Archeology and Coastal Shipwreck Management

The state marine archeologist, a staff member of the department of antiquities protection, manages and researches the state's underwater archeological resources. The marine archeologist primarily investigates historic shipwrecks, but the office also surveys submerged prehistoric and historic sites. Controversy over an out-of-state company's salvage of historic Spanish treasure ships off the southern Texas coast led to passage of the antiquities code and

creation of the Antiquities Committee in 1969. To protect the ships and the artifacts on them from private salvage operations, the antiquities code designated the shipwrecks as state archeological landmarks and the Antiquities Committee assumed ownership of the ships' treasures on behalf of the state.

The state marine archeologist reviews plans for construction projects that affect underwater archeological sites and makes recommendations on permit applications submitted to the Antiquities Committee. The state marine archeologist also carries out the state's duties under the federal Abandoned Shipwreck Act, which requires states to develop mechanisms to protect underwater natural resources, guarantee recreational and educational opportunities for sport divers, and allow archeological investigations of shipwreck sites. Shipwrecks are protected under the Section 106 process and the antiquities code and the Antiquities Committee has issued 38 permits for projects impacting underwater archeological sites during the past five years. In fiscal year 1993, the state marine archeologist reviewed 342 projects under Section 106 or state permitting requirements. The state marine archeologist also investigated three marine archeological sites, conducted nine field studies to document artifacts previously removed from marine archeological sites, and produced five reports summarizing these activities.

## LOCAL PRESERVATION PROGRAMS

---

The agency administers a variety of programs to encourage and facilitate local preservation projects. These programs were established to preserve archeological sites on privately owned land, rehabilitate downtowns, provide state historical markers, establish regional heritage districts, and provide field services. A description of each program follows.

### ► Office of the State Archeologist

The Legislature created the office of the state archeologist in 1965 to assist private landowners in protecting historic and archeological resources on their properties. The state archeologist was transferred from the Texas State Building Services Commission to the THC in 1969 when the agency's jurisdiction was expanded to include archeological sites. The state archeologist is charged with preserving the archeological heritage of the state and maintaining an inventory of the state's archeological resources. In addition, the state archeologist serves as an *ex officio* member of the Antiquities Committee.

The state has an estimated 1.4 million archeological sites, the majority of which are on privately owned land. Privately owned archeological sites are not protected by the antiquities code unless they have been designated as state archeological landmarks, so the state archeologist relies on

negotiation and public outreach to encourage protection and professional investigation of these sites as well as donations of significant archeological sites and artifact collections to the state. The state archeologist coordinates the activities of the Texas Archeological Stewardship Network, an organization of skilled avocational archeologists who investigate and monitor archeological sites statewide. During fiscal year 1993, volunteer archeological stewards donated 17,864 hours of work to the agency. With the help of the stewards, the office of the state archeologist documented 923 archeological sites during fiscal year 1993. In addition, the staff secured state archeological landmark designations for five sites on private land as well as donations of eight private artifact collections during fiscal year 1993.

The office also responds to requests for information about Texas' prehistoric and historic archeological sites. In fiscal year 1993, the staff provided technical assistance to 4,330 individuals and organizations and held two workshops on site-recording techniques. The office also produces and distributes educational and scientific materials to the public, including two technical report series that publish the results of the staff's scientific and preservation activities. In fiscal year 1993, the office of the state archeologist operated with a budget of \$276,096 and 7.5 staff members.

### ► Texas Main Street Project

The Texas Main Street project was begun in 1981 to help cities revitalize their downtowns by encouraging the restoration of historic buildings, marketing of the refurbished downtown areas, and fostering of local cooperation and support for the project. Each year, a state interagency council reviews applications for designation as official Main Street cities. The council also coordinates funding to the Main Street cities from other governmental agencies and is made up of THC staff members and representatives from the Governor's Budget Office, the Texas Department of Housing and Community Affairs, and the Texas Department of Commerce. The council reviews applications and makes recommendations to the THC, which selects the Main Street cities. Up to five small cities (populations under 50,000) and three urban areas (populations of 50,000 and over) are picked annually to participate in the program. The THC's Main Street program office administers the Main Street project in Texas.

Designated Main Street cities must hire a downtown manager and agree to participate in the program for three years. The Main Street program trains downtown managers, provides incentive grants of up to \$1,500, and helps arrange low-interest loans for businesses that want to restore the historical features of their building. The program also offers technical assistance in architecture and design, window display, and parking. The agency does not charge fees to designated small cities during the first three years, but cities that elect to stay in the program after three years must pay for additional training and materials. Urban areas must pay fees for services provided by the agency during each year of participation in the program. Cities not officially designated as Main Street cities may participate on a limited basis as self-initiated Main

Street cities if they hire a full-time downtown manager trained by the Main Street program and pay for all services received through the program. Many small Main Street cities start out as self-initiated cities. Since 1981, 67 small cities and 15 urban areas have participated in the program as official Main Street cities. An additional 15 cities have only participated in the program as self-initiated cities. At least 44 cities have elected to remain with the program after the three-year commitment and only four cities have dropped out early. The Main Street program office held six grant-writing workshops in fiscal year 1993 for more than 200 people from Main Street cities and heritage organizations. The office operated with a budget of \$290,127 and a staff of seven during fiscal year 1993.

The head of the agency's Main Street program serves on the Texas State Agency Tourism Council with representatives from the Governor's Office, Texas Department of Commerce, Texas Department of Transportation, Texas Parks and Wildlife Department, Texas Department of Public Safety, General Land Office, Texas Department of Agriculture, and Texas A&M University's department of recreation, park, and tourism sciences. The tourism council coordinates programs among the member agencies to promote tourism in the state.

### ► **County Historical Commissions**

Texas has 254 county historical commissions (CHCs), which are statutorily created units of county government authorized to operate programs suggested by the county commissioners court and the THC. The CHCs receive some local public funding, but are primarily self-supporting through grants, donations, and volunteerism. The local history programs office assists county historical commissions by answering questions, providing training, and offering information on preservation techniques and programs through a monthly newsletter and a biennial preservation handbook. The local history programs office also tracks the membership and activities of CHCs statewide and coordinates activities among the different organizations. In return, the CHCs help the THC implement state programs at the local level, such as reviewing applications for state historical markers and conducting surveys of local historic properties.

### ► **Certified Local Governments**

In 1980, Congress amended the National Historic Preservation Act to encourage local governments such as cities and counties to preserve their historic resources. Certified local governments may receive federal funds to support their preservation activities. The National Register programs office certifies local governments and allocates federal funds to them through local matching grants. The office allocates about one-third of its budget to the certified local government program. To qualify for certification, local governments must adopt historic zoning ordinances, appoint a local historic preservation officer, and establish a city landmark commission or county historical commission. Certified local governments also must inventory historic

properties within their jurisdiction and hold public hearings on National Register nominations. In fiscal year 1993, the National Register programs office assigned three employees to the certified local government program. The staff evaluated 26 certified local governments, monitored 40 grants, and certified two new participants in the program.

### ► State Historical Markers

The THC's local history programs office administers the state historical markers program, which promotes and preserves the state's heritage. Since 1962, the THC has issued about 12,000 historical markers and building medallions to recognize significant historical topics, individuals, events, and structures in Texas. Historical subject markers, known as official Texas historical markers, are solely educational in nature and carry no restrictions on the use of the property, though permission of the landowner must be obtained before a marker can be placed on the property. Building medallions and building markers designate historic buildings, homes, and bridges as recorded Texas historic landmarks (RTHLs), which places restrictions on changes to the structure. A property may qualify for designation as an RTHL or for listing in the National Register of Historic Places or both, but each designation has a separate application process. In fiscal year 1993, the agency received 219 applications for markers, 195 of which were approved. About 30 percent of the local history programs office's budget and staff was allocated to the marker program in fiscal year 1993.

Marker applications must be submitted to the THC by the county historical commission in the county where the marker is to be placed. The staff determines if the proposed site meets the agency's designation criteria, such as minimum age requirements and levels of historical significance. After reviewing the application, the staff sends copies of the application to members of the State Marker Review Board, which is composed of members of the THC who are appointed by the presiding officer. If the review board approves the application, the staff prepares an inscription for the marker based on supporting documents submitted with the application. The text is sent to the county historical commission and the marker applicant for approval. Once the THC staff, applicant, and county historical commission agree to any changes in wording, the staff sends the text to a foundry under contract with the THC, where the marker is cast, painted, and shipped. Markers and medallions are installed and dedicated during a local ceremony. Applicants pay the cost of the marker and no state funds are used to purchase markers. Prices range from \$250 to \$850 for subject markers and \$350 to \$850 for building medallions and markers. The RTHL properties may receive property tax exemptions if granted by local taxing entities.

### ► **Historic County Courthouses**

Texas law protects the historic character of the state's county courthouses, 210 of which are more than 50 years old, by discouraging drastic changes to the structure. The THC assists counties in preserving historic county courthouses. State law requires county governments to notify the THC of any proposed modifications to a county courthouse and to observe a 180-day waiting period before starting any construction or remodeling activities, other than ordinary maintenance and repairs. The law provides for a civil penalty of \$50 to \$1,000 for each day of violation. During the waiting period, the division of architecture offers advice to the county about how to make changes to the courthouse without destroying its historic integrity. During fiscal year 1993, the division provided about 270 consultations related to county courthouses, including advice on compliance with the federal Americans with Disabilities Act of 1990. Courthouses may also be listed on the National Register and designated as a state archeological landmark and recorded Texas historic landmark.

### ► **Texas Historic Preservation Grant Program**

The Texas historic preservation grant program makes state and federal funds available to nonprofit organizations and state political subdivisions for acquiring, planning, or developing historic structures. The preservation grant program has been a source of funding for the preservation and restoration of historic county courthouses as well as other important historic structures. Grantees must match awards locally with two dollars for each dollar of grant money and must commit to continued maintenance for a specified number of years. In fiscal year 1993, the division disbursed \$17,235 in grants to three projects. The 1994 preservation grant recipients include courthouses in Hill, Shelby, Grimes, and Caldwell counties. Since its inception in 1981, the program has provided about \$5 million to support 125 preservation projects, with about \$1.3 million in state-funded grants and about \$3.7 million in federally funded grants.

### ► **Texas Preservation Trust Fund**

Established in 1989, the Texas Preservation Trust Fund is an interest-earning pool of public and private contributions intended to provide grants and low-interest loans to public and private entities for the acquisition and preservation of National Register properties and recorded Texas historic landmarks. The trust fund was originally set up to become a self-sustaining source of funding for the preservation of historic structures and archeological sites throughout Texas. A trust fund advisory board serves as trustee for the fund, oversees the division of architecture's management of the fund, and raises money for the fund. The advisory board consists of nine members appointed every two years by the THC. The THC also appoints 21 "guardians" who serve two-year terms as members of a fundraising network for the fund.

No grants were made directly from the trust fund in fiscal year 1993. The trust fund account currently has about \$8,700 and is authorized to receive up to \$2.5 million in funds remaining in the capitol restoration fund upon completion of the state capitol renovation project. In 1993, the preservation trust fund was merged with other funds into the general revenue fund, where it will be maintained as a separate account until August 31, 1995. On that date, interest earned in the trust fund will begin to automatically revert to the general revenue fund.

### ► **Regional Heritage Program**

The Los Caminos del Rio heritage project was begun in 1989 to help establish a 200-mile, binational heritage corridor along both sides of the Rio Grande from Laredo and Nuevo Laredo to Brownsville and Matamoros. The project encourages preservation of cultural, historical, and environmental resources in the region and promotes tourism throughout the corridor. An interagency task force plans the development of the heritage corridor and attracts new project partners. The task force is made up of representatives from the Texas Historical Commission, Texas Department of Transportation, Texas Department of Commerce, Texas Parks and Wildlife Department, and Mexican governmental agencies interested in preservation activities and tourism. In fiscal year 1993, the Los Caminos del Rio heritage program operated with a budget of \$142,383 and a staff of 1.5.

### ► **Museum Aid and Grants**

The agency's local history programs office provides training and technical assistance to local museums. Agency staff consult with individuals and organizations on establishing or revitalizing museums, training museum board members and docents, cataloguing and preserving collections, and raising funds. The agency holds an intensive, 10-day museum training course each fall at the Winedale Historical Center for 20 applicants from Texas and other states and collects fees to cover the seminar's operating costs. The agency also distributes matching grants of up to \$1,000 to museums. Grantees may use the money for archival and cataloguing supplies, preservation storage equipment, and materials for public exhibitions and programs. In fiscal year 1993, grants totaling \$11,437 were awarded to 24 Texas historic museums. Funding for the grants is appropriated to the agency from the general revenue fund.

### ► **Governor's Mansion Preservation and Maintenance**

The THC preserves and maintains the exterior, interior, contents, and grounds of the Governor's Mansion. In fiscal year 1993, the agency inventoried the mansion's contents and is currently overseeing the replacement of the 92-year-old roof of the carriage house located on the grounds. The agency plans to spend about \$150,000 in appropriated funds on restoration activities at the mansion during fiscal years 1994 and 1995.

### ► **Sam Rayburn House Museum**

The Sam Rayburn House Museum, located in Bonham, is the only historic site and field office operated by the agency. In 1971, the Sam Rayburn Foundation, a charitable organization devoted to preserving the history of the former U.S. Congressman's life and career, donated the house and grounds to the THC. The deed transferring the property stipulates that if the agency does not properly maintain the property or if state oversight is transferred to another agency, ownership reverts to the foundation. The museum's director oversees the museum's day-to-day operations and provides technical assistance to museums and county historical commissions in East Texas and the Panhandle. Funded by general revenue appropriations, the museum had a budget of \$97,939 and a staff of four employees in fiscal year 1993.

## **PUBLICATIONS AND ADMINISTRATION**

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### ► **Publications Services**

The publications services department produces educational and informational materials in-house for other agency divisions and for the public. The agency's official newsletter, *The Medallion*, reaches 2,000 subscribers. The department also places a regular feature article in *Texas People and Places*, a tourism periodical that has 50,000 readers. The publications services department sponsors a traveling exhibit of post office murals painted during President Franklin Roosevelt's New Deal and funded by the federal Work Projects Administration. The department also sponsors an annual award for historical writing, which is supported by corporate funding. In fiscal year 1993, the publications services department had a budget of \$156,009 and a staff of 4.5.

### ► **Administration**

The administration office provides oversight, accounting, staff services, and other general support functions. The executive director oversees department programs and operations, directs department heads in agency planning, works with the commission to develop agency policies and goals, and represents the agency before the public. As the state historic preservation officer, the executive director also oversees federal programs that have been delegated to the states and coordinates with other states' preservation officers. The accounting and staff services section handles accounting, purchasing, property inventories, payroll and personnel records, and general maintenance. The staff services officer also serves as the equal opportunity officer for the agency. In fiscal year 1993, the administration office had a budget of \$404,984 and a staff of 9.5 employees.



***FINDINGS AND  
RECOMMENDATIONS***



## **OVERALL APPROACH TO REVIEW**



## OVERALL APPROACH

The Texas Sunset Act requires the Sunset Commission to consider 13 specific criteria when reviewing an agency. These criteria are used to evaluate the agency's efficiency and effectiveness. The staff review of the Texas Historical Commission (THC) and the Antiquities Committee used these criteria to determine whether the agency's functions continue to be needed, if benefits could be gained by transferring the agency's functions to another agency or by moving another agency's functions to the agency being reviewed, and if the agency's statutes should be changed to improve its programs and functions.

An analysis of the need to continue the THC and the Antiquities Committee focused on whether continued state involvement in preserving the state's historic and archeological resources is necessary. The analysis also took into consideration whether benefits would result from combining the THC or the Antiquities Committee with any other state agency. In addition, the review included consideration of beneficial statutory changes if the THC and the Antiquities Committee are maintained in their current forms.

To analyze each of these areas, the review team conducted a number of activities during the five-month review. These included:

- ▶ review of the scope and results of the previous Sunset review of the THC and the Antiquities Committee;
- ▶ review of agency documents and reports, state statutes, legislative reports, other states' reports and statutes, previous evaluations of agency activities, and literature containing background material;
- ▶ interviews with key agency staff;
- ▶ attendance of public meetings of the THC and the Antiquities Committee;
- ▶ discussions with legislative agencies and oversight committees;
- ▶ meetings and discussions with staff from the Comptroller's Office, the State Treasurer's Office, the General Services Commission, and the Texas Department of Transportation;

- ▶ telephone and personal interviews with individuals and groups involved in historic and archeological preservation in Texas, in other states, and at the federal level; and
- ▶ a survey of the agencies' constituent organizations and associations asking them to identify problems in the agency as well as potential solutions.

The overall approach to the review was shaped from these activities and focused on two primary questions. First, are both the THC and the Antiquities Committee needed to effectively carry out the agency's programs? Second, do the statutes need to be adjusted to improve the agency's ability to carry out its programs and functions?

Both the THC and the Antiquities Committee were previously reviewed through the Sunset process in 1983. The THC was continued with one major change: the agency was required to maintain information on historic structures available for lease or rent and provide the information to the General Services Commission. All but one of the recommended across-the-board provisions were incorporated into the agency's statute. The current review found that the requirement for maintaining information on historic structures available for purchase or lease is no longer feasible. The staff report contains a recommendation to update and improve this provision.

The Antiquities Committee was also continued with major changes. Major provisions in the Sunset bill gave the committee responsibility for artifacts recovered under permits issued by the committee, prohibited salvage and recovery of underwater archeological landmarks, allowed institutions of higher learning to initiate a contested case for proposed building designations and permitting requirements and listed specific items to be considered by the hearings officer, and required state agencies to notify the committee of changes to state-owned buildings 45 years old or older. All of the recommended across-the-board provisions were placed in the agency's statute. The provision for notification of changes to state-owned buildings has since been changed to apply to buildings 50 years old or older. The agency has implemented the provisions resulting from the previous Sunset legislation.

The recommendations in this report address only some of the issues raised during the review process. Some of the issues raised were outside the scope of a Sunset review or involved a change in agency management and could not be resolved through statutory changes. These issues were left for consideration by other legislative oversight agencies. The issues in this report were selected to provide the agency with the appropriate statutory structure and level of authority needed to effectively perform its duties.

## **NEED FOR THE AGENCY**



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**Issue 1: Continue the Texas Historical Commission for 12 years.**

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**Background**

Texas state government has supported historic preservation activities since 1876, when the state constitution authorized the Legislature to appropriate funding for preservation of historical properties. In 1953, the Legislature created the Texas State Historical Survey Committee to coordinate and promote historical preservation activities at state and local levels. The survey committee was renamed the Texas Historical Commission (THC) in 1973.

The THC is statutorily charged with providing leadership, coordination, and services in the field of historic preservation. To carry out these objectives, the THC has established nine divisions within the agency. These divisions are: the National Register programs office, the division of architecture, the department of antiquities protection, the office of the state archeologist, the local history programs office, the Texas Main Street program office, the Los Caminos del Rio heritage project, administration, and publications services.

Major activities at the THC include nominating properties to the National Register of Historic Places, reviewing federally funded projects to minimize impact to historic and archeological sites, and issuing permits for projects that could impact archeological sites on state and local public property, including historic structures that have been designated as state archeological landmarks. Other major programs include the Main Street program, which promotes economic revitalization and restoration of historic buildings in downtown districts; the state marker program, which recognizes historic sites and events in Texas and promotes local tourism; and coordination efforts with local government entities and volunteer groups, including county historical commissions and the Texas Archeological Stewardship Network. The THC also operates the Sam Rayburn House Museum, which serves as both a public museum and an agency field office.

To justify continuing an agency's functions, specific conditions should exist. First, the state should have a current and continuing need for providing the agency's functions or services. Second, the agency's functions should not duplicate services or functions being provided by other agencies. Third, the potential benefits of maintaining a separate agency must outweigh any disadvantages of transferring the agency's functions or services to other agencies. Evaluation of the need to continue the agency's functions led to the following findings.

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## Findings

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- ▶ **The Texas Historical Commission's programs and functions are needed to promote and coordinate preservation of historic and archeological sites in Texas.**
  - ▶ Through the agency's National Register nominations process, 127 historic districts and about 2,000 individual private properties in Texas have been placed on the National Register of Historic Places. The agency also helps owners of commercial properties listed on the National Register qualify for federal income tax credits, which have totaled about \$480 million since 1981. The agency also oversees an ongoing statewide survey of structures that are more than 50 years old and may be eligible for National Register listing.
  - ▶ Since 1962, the THC has issued about 12,000 historical markers in Texas, including subject markers and registered Texas historic landmark designations. Historical markers help protect historic properties by recognizing and preserving their historic features. The agency also works with county officials and private groups to help restore and preserve historic county courthouses.
  - ▶ The THC provides services and information to 254 county historical commissions, which are locally funded governmental bodies that carry out preservation programs at the county level. The agency also collects information annually about the county commissions' programs, services, planning efforts, and volunteer resources. The THC is the only agency collecting this information and coordinating activities among the county historical commissions.
  - ▶ The agency's Main Street program promotes preservation and restoration of downtown areas in Texas towns and cities. The 97 towns and urban areas that have participated in the Main Street program since 1981 estimate that the program has resulted in a net gain of nearly 8,000 new jobs; a net increase of more than 2,200 new, relocated, or expanded businesses; and total reinvestments of more than \$281 million, including rehabilitation projects, new construction, and sale of buildings. The THC accepts up to five small cities and three urban areas to the Main Street program each year.
  - ▶ The executive director of the THC serves as the state historic preservation officer, a position mandated by federal law to carry out federal historic preservation programs that have been delegated to the state. These programs include reviewing federally funded projects to minimize impacts to historic sites, helping federal agencies identify and preserve historic sites on federally owned

land, and certifying local governments that meet specific criteria, such as adoption of historic zoning ordinances. The THC received \$771,510 in federal funds in fiscal year 1993 for these programs.

- ▶ The THC's office of the state archeologist calculates that about 92 percent of the state's estimated 1.4 million archeological sites are located on private property. The state archeologist provides services and information to landowners to encourage preservation of privately owned archeological sites and helps negotiate agreements with private property owners for surveys and investigations of sites. The state archeologist also works with volunteer archeology groups to gather and analyze data from privately owned archeological sites. Through the volunteer groups, the state archeologist documented 923 archeological sites in Texas in fiscal year 1993.
  
- ▶ **A review of other states' organizational structures for carrying out historic preservation activities did not indicate any beneficial or less costly alternatives to the THC's existing structure.**
  - ▶ All 50 states perform functions that are similar to those of the THC.
  
  - ▶ Eighteen states have an independent, free-standing agency similar to the THC to carry out the state's historic preservation activities, including Illinois, Ohio, Oklahoma, and Pennsylvania.
  
  - ▶ Organizational structures for carrying out historic preservation activities in the remaining 31 states were widely varied. In these states, historic preservation programs were placed in an office or division within a larger state agency, such as commerce and tourism agencies, cultural affairs agencies, state education agencies, housing and community affairs agencies, natural resources and environmental agencies, state departments, and state parks agencies.
  
- ▶ **An assessment of the Texas Historical Commission and other existing state agencies did not reveal any beneficial alternatives for consolidation but did identify a possible transfer of functions.**
  - ▶ The agency's programs focus on restoring and preserving historic properties in Texas. No other state agency was identified that performs a similar function. Other agencies have programs related to Texas history but with a different purpose than that of the THC. For example, the Texas State Library and Archives Commission maintains some historic government documents such as

the state constitution, but the agency keeps all other archival state records as well. The Texas Parks and Wildlife Department operates state parks of historical significance, such as the Lyndon B. Johnson State Historical Park and the San Jacinto Battleground State Historical Park. However, the department also manages 123 other state parks.

- ▶ No other state agency was identified that could perform the THC's functions at a lower cost or more efficiently. Although some other agencies perform functions that are related to Texas history, these functions do not overlap with the THC's programs and activities. Combining these activities would not save money or improve services to the public.
- ▶ One area of consolidation was identified. The review led to the conclusion that the Antiquities Committee should be abolished and its functions transferred to the Texas Historical Commission. This recommendation is discussed in detail in the next issue of the report.
- ▶ **Abolishing the THC and its activities would result in a reduction in or loss of federal funding to the state and to local governments unless the agency's functions were transferred to another state agency.**
  - ▶ As mentioned previously, the federal government has delegated to the THC its duties in preserving historic sites located on federal land or affected by federally funded or permitted projects. If this role were eliminated, the state would lose federal funding that supports this activity. In fiscal year 1993, the state received \$771,510 in federal funds for carrying out federal historic preservation activities.
  - ▶ Local governments receive federal funding by way of pass-through grants awarded by the THC. In fiscal year 1993, \$73,000 in federal funding was granted to local governments by the THC. If the state were no longer receiving federal funds for historic preservation activities, this money would no longer be available.

## Conclusion

The functions assigned to the THC continue to be needed and are appropriately placed in the agency as currently structured. No local entities or other state agencies were identified that could assume the agency's functions with increased benefits to the state or at reduced costs. Abolishing

the agency could result in a loss of federal funds and could also result in disorganized and unfocused historic and archeological preservation efforts in the state.

### **Recommendation**

- **The Texas Historical Commission should be continued for 12 years.**

This recommendation would continue the THC for 12 years and would provide for Sunset review again in 2007. The agency would continue to perform its current statutory functions of providing leadership, coordination, and services in the field of historic preservation. The THC would also continue to carry out duties that have been delegated to the state by the federal government.

### **Fiscal Impact**

If the THC's functions are continued through the existing organizational structure, its biennial appropriation of about \$6.3 million would continue to be required, including \$772,000 in federal funds annually.



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**Issue 2: Continue the Texas Antiquities Code as currently structured; however, abolish the Antiquities Committee and transfer its functions to the Texas Historical Commission.**

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## Background

The Antiquities Committee is a nine-member, part-time policymaking body that was created in 1969 to protect significant historic, archeological, and underwater archeological sites in Texas. The Legislature established the Texas Antiquities Code and created the committee primarily in response to public outcry over an out-of-state private venture's looting of 16th century Spanish shipwrecks along the southern Texas coast. Texas has an estimated 1.4 million archeological sites, about 112,000 of which are on publicly owned land. The antiquities code is designed to protect these sites where possible and ensure preservation of artifacts and collection of data from sites that must be destroyed. The Antiquities Committee oversees the protection and preservation activities that take place in accordance with the code.

The Antiquities Committee has six *ex officio* members and three members with specific expertise who are appointed by the Governor. The six *ex officio* members include:

- presiding officer of the Texas Historical Commission (THC)
- commissioner of the General Land Office
- executive director of the Texas Parks and Wildlife Department
- executive director of the Texas Department of Transportation
- executive director of the Texas Natural Resource Conservation Commission
- state archeologist, who is employed by the Texas Historical Commission

The three remaining members must be a professional archeologist from a museum or institution of higher learning; a professional historian with expertise in Texas history and culture; and a professional museum director of a major state-funded museum with significant research facilities. The department of antiquities protection, a division of the THC, serves as staff to the Antiquities Committee. The THC's executive director hires the department's director after consultations with the presiding officers of the THC and the Antiquities Committee.

The Antiquities Committee performs three main functions. First, the committee oversees the THC staff's implementation of the Texas Antiquities Code. Second, the committee adopts rules related to carrying out provisions of the code. Third, the committee formally designates state archeological landmarks (SALs), which may include historic structures listed on the National Register, significant archeological sites, and underwater archeological sites such as shipwrecks.

Most designated sites are on public land, although sites on privately owned property may be designated at the landowner's request.

The antiquities code requires permitting of projects that will impact an archeological site on state or local public property. The THC staff reviews these projects to determine if they will disturb a significant archeological site, including a designated SAL. If the staff determines that a project would have such an impact, the statute requires the project sponsor to obtain a permit from the committee before the project may proceed. Examples of projects that may require a permit include reservoirs built by river authorities and water districts, new county or state road and highway construction, expansion of recreational parks by cities, and oil and gas exploration by private companies on public land. Most permits are processed by the THC staff and signed by the committee's presiding officer, but the committee itself considers approval of controversial or contested permits during a public meeting.

To justify continuing a policymaking body's functions, specific conditions should exist. First, the state should have a current and continuing need for providing the policymaking body's functions. Second, the policymaking body's functions should not duplicate functions being carried out by other policymaking bodies. Third, the potential benefits of maintaining a separate agency must outweigh any disadvantages of transferring the policymaking body's functions to other agencies. An evaluation of the need to continue the Antiquities Committee's functions led to the following findings.

## Findings

- ▶ **The functions currently performed under the antiquities code by the Antiquities Committee continue to be needed to protect the state's historic, archeological and underwater archeological resources.**
  - ▶ Since 1969, the committee has designated a total of 2,312 archeological sites and historic structures listed on the National Register as state archeological landmarks (SALs). Designation as an SAL emphasizes that a site is subject to protection under the permitting requirements of the antiquities code.
  - ▶ The code requires the Antiquities Committee to issue a permit for projects that will adversely impact a significant site on state or local public land. The THC staff processes the permits, which are signed by the committee's presiding officer. The permitting requirements help ensure minimal destruction to the site and provide for excavation and study of sites that must be demolished. In fiscal year 1993, the staff reviewed about 1,400 projects under the antiquities code.

The staff cleared most of these projects within two weeks without requiring a permit and issued 141 permits for the remaining projects.

- ▶ The committee also oversees protection of underwater archeological sites, primarily historic shipwrecks. These sites are also considered to be state archeological landmarks and are eligible for formal designation by the committee. In the past five years, the committee has designated a total of 16 shipwrecks as state archeological landmarks.
  
- ▶ **While the protection provided through the antiquities code continues to be needed, two separate policymaking bodies are not necessary to protect the state's historic and archeological resources.**
  - ▶ The Antiquities Committee and the THC both have extensive responsibilities for the identification and designation of archeological and historic sites and structures. The Antiquities Committee designates historic structures listed on the National Register and significant archeological sites as state archeological landmarks. The THC oversees designation of historic properties, including archeological sites, through the issuance of state historical markers and through nominations to the National Register. The agency's staff currently works on designations under both the Antiquities Committee and the THC, depending on the nature of the property and the type of designation being sought. Transferring designation of state archeological landmarks from the Antiquities Committee to the THC would ease confusion while having little impact to the agency staff or the designation processes.
  
  - ▶ The workload of the Antiquities Committee would not place an extensive burden on the THC's commissioners. Further, a portion of the Antiquities Committee's workload is related to ongoing THC activities. During the past five years, the Antiquities Committee designated 367 archeological or historic properties as state archeological landmarks, which is an average of 73 sites per year. The committee performs this function during its quarterly meetings, and only a handful of these designations have resulted in public testimony before the committee. Eleven of these sites have been historic structures and 21 have been historic county courthouses, which are also subject to designation by the THC. The THC could easily assume the committee's designation function, which would allow one policymaking body to designate all historic and archeological sites in the state.

- ▶ In fiscal year 1993, the Antiquities Committee issued 141 permits out of 1,400 projects reviewed. All of the permits were processed by the staff and signed by the committee's presiding officer. None of the permits came before the full committee for consideration. The Antiquities Committee's permitting function is largely carried out by THC staff now and could easily be assumed by the THC's commissioners.
  - ▶ The Antiquities Committee and the THC both have a role in oversight of construction projects on public lands. The Antiquities Committee issues permits for projects that will impact archeological sites on state or local public land and designated state archeological landmarks, including historic structures. The THC reviews federally funded or permitted projects on public or private property to minimize the project's impact to historic structures and archeological sites. The THC's staff performs both types of reviews and some projects come under the review of both the Antiquities Committee and the THC. In fiscal year 1993, the THC staff reviewed about 6,700 federally funded projects under the Section 106 process and about 1,400 projects under the antiquities code. About 400 of these projects went through both the state and federal review processes.
  - ▶ Federal, state, and local governments may be subject to both the state and the federal review processes for their projects. In these cases, the projects are subject to different rules and requirements for the same types of sites. Combining the regulatory oversight of both processes into one policymaking body could help increase uniformity in rules and reporting requirements and could help eliminate regulatory duplication that may exist between the two processes as currently organized.
  - ▶ The statute authorizes both the THC and the Antiquities Committee to adopt rules to carry out their duties. Most significant rulemaking under the antiquities code has already been established and the rules would be transferred to the THC if the Antiquities Committee were abolished. The agency staff indicate that little additional rulemaking activity related to the antiquities code is expected in the near future. In addition, a separate recommendation in the staff report suggests changing the commission's membership to provide expertise needed to perform the activities related to the antiquities code, including rulemaking.
- ▶ **The THC has two independent policymaking bodies overseeing the operations of a single staff, resulting in an awkward organizational structure.**

- ▶ The antiquities code authorizes the committee to employ personnel necessary to perform its duties to the extent provided for by the General Appropriations Act. However, all appropriations are made to the THC. As a result, the staff director of the department of antiquities protection answers primarily to the Antiquities Committee but is also responsible to the THC's commissioners. The director is hired by the THC's executive director with input from the presiding officers of both policymaking bodies. All staff, whether doing work for the Antiquities Committee or the THC, are considered staff of the THC.
- ▶ The office of the state archeologist is a division of the THC and the THC's executive director hires the state archeologist. However, the state archeologist also sits on the Antiquities Committee and participates in budget decisions, confidential personnel discussions, and other executive matters affecting the department of antiquities protection, another division within the agency. The Sunset Commission routinely adopts an across-the-board recommendation that requires agencies to clearly separate the functions of the policymaking body and the agency staff. Having a staff member of the THC serve on the Antiquities Committee conflicts with this standard approach.
- ▶ **Abolishing the Antiquities Committee would not negatively impact coordination efforts between the THC and other state or local agencies.**
  - ▶ The committee has four *ex officio* members who represent other state agencies: the commissioner of the General Land Office, the executive director of the Texas Parks and Wildlife Department, the executive director of the Texas Department of Transportation, and the executive director of the Texas Natural Resource Conservation Commission. These agencies have entered into or are in the process of establishing formal agreements with the Antiquities Committee and THC staff. These agreements streamline the permitting process for agencies that regularly submit projects to the THC staff for review.
  - ▶ Other state and local agencies not represented on the Antiquities Committee have also entered into similar formal agreements with the committee and staff. These entities include the Texas Water Development Board and the City of Dallas. THC staff indicate that these agreements would continue under the THC's oversight and they are working on additional agreements where appropriate.
- ▶ **Transferring oversight of the antiquities code to the THC would not change the provisions currently in law protecting state archeological landmarks.**

- ▶ Under this proposal, the antiquities statutes would remain in the Natural Resources Code and would not be substantively changed. The responsibility for enforcement of the antiquities code would simply move from the Antiquities Committee to the THC.
  
- ▶ **Many other states have combined oversight of their archeological permitting processes and historic preservation functions within one policymaking body.**
  - ▶ Alabama, Connecticut, Hawaii, Illinois, Indiana, Kansas, Maine, Massachusetts, Mississippi, North Dakota, Oregon, Pennsylvania, Rhode Island and South Dakota are examples of states that have one policymaking body to oversee both historical preservation activities and antiquities permitting functions.
  
  - ▶ Nearly all of the other states that have separated oversight of historic preservation functions from oversight of archeological permitting functions are not structured as a separate historical preservation agency and do not have two independent policymaking bodies sharing a single staff.

### \_\_\_\_\_ Conclusion \_\_\_\_\_

Functions currently performed by the Antiquities Committee continue to be needed to protect the state's significant historic and archeological sites. However, two separate policymaking bodies are not needed to provide this protection. As presently structured, both the Antiquities Committee and the THC have extensive responsibilities for the identification and designation of archeological and historic sites and structures. In addition, THC staff have two independent policymaking bodies overseeing operations of the staff, resulting in an awkward organizational structure and unusual lines of authority.

### \_\_\_\_\_ Recommendation \_\_\_\_\_

- **The responsibilities of the Antiquities Committee under the Texas Antiquities Code should be transferred to the Texas Historical Commission and the Antiquities Committee should be abolished.**

This recommendation would continue the Texas Antiquities Code and the activities that take place as a result of that code, but would move responsibility for those activities to the THC. One agency would be the focal point for efforts to protect the state's historic and archeological

heritage. Problems related to confusion of responsibilities and possible duplication of efforts would be resolved. Protection provided by the antiquities code would not be changed and should be enhanced through better coordination with other state protection efforts. Under this proposal, the THC would also be authorized to appoint ad hoc advisory committees to consider matters related to the antiquities code and make recommendations to the full commission.

**\_\_\_\_\_ Fiscal Impact \_\_\_\_\_**

This recommendation would result in a fiscal savings of about \$1,800 a year that is currently spent on expenses incurred by members of the Antiquities Committee. The department of antiquities protection would remain as a division of the THC and would continue its current regulatory functions under the commission.

<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>
1996	\$1,800
1997	\$1,800
1998	\$1,800
1999	\$1,800
2000	\$1,800



# **POLICYMAKING STRUCTURE**



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**Issue 3: If the Antiquities Committee is abolished and its functions are transferred to the Texas Historical Commission, change the commission's composition to provide expertise in archeology, architecture, and history.**

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### **Background**

Issue 2 in the staff report recommends abolishing the Antiquities Committee and transferring oversight of the Texas Antiquities Code to the Texas Historical Commission (THC). The Antiquities Committee is made up of six *ex officio* members and three citizen members appointed by the Governor. These members are required by statute to be a professional archeologist from a museum or institution of higher learning, a professional historian with expertise in Texas history and culture, and a professional museum director of a major state-funded museum with significant research facilities.

The THC's policymaking body is composed of 18 members appointed to six-year, staggered terms by the Governor and confirmed by the Senate. Each appointee must be a citizen of Texas and must have a demonstrated interest in preserving the state's historical heritage. The statute requires the Governor to attempt to have each geographical region of the state represented on the commission to the extent possible.

The THC's programs are both regulatory and service-oriented. Regulatory activities include reviews of federally funded or permitted projects affecting historic and archeological sites. Service-oriented programs include nomination of historic properties to the National Register of Historic Places, promotion of economic revitalization and restoration of historic buildings in downtown districts through the Main Street program, preservation of historic structures through the state marker program, and preservation of archeological sites on privately owned land through the state archeologist's office.

The primary function that would transfer from the Antiquities Committee to the THC is the designation of state archeological landmarks, which include historic buildings and significant archeological sites. The antiquities code also establishes permitting requirements for projects on state or local public land that impact archeological sites. The Antiquities Committee's authority over permitting activities would also transfer to the THC, but these functions are primarily carried out by THC staff now and would not be affected.

If the Antiquities Committee is abolished and its functions are transferred to the THC, the commission should have the same levels of expertise that are available to the committee in

overseeing the state archeological landmark designation and permitting processes. A review of both policymaking bodies' existing structures and activities resulted in the following information.

## \_\_\_\_\_ Findings \_\_\_\_\_

- ▶ **If the Antiquities Committee is abolished, its functions would transfer to the THC. None of the commission's members are required to have the type of expertise that is mandated for the Antiquities Committee.**
  - ▶ The majority of the Antiquities Committee consists of *ex officio* members who have no special knowledge or experience in the preservation of historic or archeological sites. Instead, these members represent state agencies that are regulated by the Antiquities Committee. However, the committee is also required to have three members with expertise in archeology, history, and museums to act as a resource for the majority of the members.
  - ▶ The Antiquities Committee primarily designates state archeological landmarks and issues permits through the THC's department of antiquities protection. The committee also adopts rules to regulate archeological surveys and excavations, establish reporting requirements for recording the results of archeological activities, set guidelines for evaluating the significance of archeological sites, and adopt other detailed requirements regarding the protection and preservation of archeological sites.
  - ▶ Issue 2 in the staff report recommends transferring these activities to the THC, which does not currently have requirements for specific expertise on the commission. Instead, the commission's statute simply requires members to have a demonstrated interest in preserving the state's historical heritage.
- ▶ **Requiring appointment of an archeologist, architect, and historian to the commission would ensure that the commission has adequate resources and expertise for carrying out duties being transferred from the Antiquities Committee.**
  - ▶ Appointing members who are knowledgeable in technical matters would ensure that this expertise is available to the commission and would provide a balance between public and professional opinions and perspectives for carrying out the regulatory functions currently assigned to the Antiquities Committee.

- ▶ The Antiquities Committee currently is required to have a historian and an archeologist serving on the committee. Expertise provided by these members has proven helpful, as indicated by the agency staff.
- ▶ Historic structures with distinctive architectural features may be designated as state archeological landmarks. The antiquities code requires permits for projects that will impact a historic structure designated as a state archeological landmark. However, neither the THC nor the Antiquities Committee is required to have a member with architectural expertise. This expertise would be beneficial to the commission when designating historic structures and approving permits for projects affecting historic structures.
- ▶ The antiquities code requires the Governor to appoint a professional museum director of a major, state-funded museum with significant research facilities. One of the committee's first responsibilities after being created was to recover artifacts from 16th century shipwrecks off the Texas coast and provide for their curation in a Texas museum. No similar projects requiring a museum director's expertise have come before the agency in recent years. As a result, the need for this expertise has diminished. In addition, a historian can provide expertise comparable to that of a museum director.
- ▶ **The THC could benefit from requiring archeological, architectural, and historical expertise on the commission because the agency's activities are focused on preservation of historic structures and archeological sites on privately owned land.**
  - ▶ The commission currently oversees the agency's administration of federal historic preservation programs that have been delegated to the THC, including review of federally funded projects to minimize impacts to historic sites. The commission also oversees nominations of properties to the National Register. These sites are usually nominated based on historical, architectural, or archeological significance.
  - ▶ The commission approves applications for state markers that recognize and preserve historic properties, based on historic events and people or architectural design and significance. The commission also reviews and approves proposals for changing the architectural design or appearance of historic structures that have been designated as a recorded Texas historic landmark.
  - ▶ The office of the state archeologist operates under the commission's authority. The commission adopts rules regarding the office's archeological programs that

define archeological terms and activities, set guidelines for determining significance of archeological sites, and provide regulations for investigating, inventorying, and preserving sites.

- ▶ **Requiring three of the 18 commission members to have specific expertise would not diminish the public members' input yet would ensure that adequate expertise is available to the committee.**
  - ▶ Requiring three of the commission's 18 members to have professional expertise would leave five-sixths of the members as public members, yet would ensure that adequate expertise on archeological, architectural, and historical matters is available as needed.
  
- ▶ **The federal government requires specific expertise on each state's board of review, which reviews and forwards nominations of historic properties to the National Register of Historic Places.**
  - ▶ The U.S. Department of the Interior has adopted rules based on the National Historic Preservation Act that require states to establish a state board of review to review and approve nominations to the National Register of Historic Places. The federal rules require each state's board to have members who represent the professional fields of American history, architectural history, historic architecture, and prehistoric and historic archeology. In Texas, the THC appoints a state board of review that meets these qualifications but is limited to reviewing nominations to the National Register.
  
- ▶ **Several other states require appointment of members with specific expertise to historical commissions and boards.**
  - ▶ The nine-member California State Historical Resources Commission has five members appointed by the Governor who must be recognized professionals in archeology or architecture. Other members must be knowledgeable in ethnic history and folklife. The commission oversees all historic preservation efforts in the state.
  
  - ▶ The seven-member New Mexico Cultural Properties Review Committee is appointed by the Governor and has members who are professionally recognized in the fields of architectural history, history, architecture, prehistoric archeology, and historic archeology. The committee reviews proposals for preserving cultural properties, maintains a state register of historic places, adopts related

rules, and issues permits for examination or excavation of archeological sites on state land.

- ▶ The 13-member New York State Board for Historic Preservation has eight members appointed by the Governor who must be qualified through education and experience in the fields of history, architecture, archeology, and other related disciplines. The board oversees historic preservation activities in the state.

### \_\_\_\_\_ Conclusion \_\_\_\_\_

If the THC assumes the functions currently assigned to the Antiquities Committee, the commission should have appointees who can provide archeological, architectural, and historical expertise. Requiring these appointees on the commission would ensure that adequate expertise is available for carrying out duties being transferred from the Antiquities Committee. Requiring members with this expertise would also benefit the THC's current activities, which are focused on preservation of historic structures and significant archeological sites on privately owned land. Changing the commission's composition would not diminish the public members' input. Both the federal government and other states require appointment of members with specific expertise to historical commissions and boards.

### \_\_\_\_\_ Recommendation \_\_\_\_\_

- **If the Antiquities Committee is abolished, the statute should be changed to require appointment of a professional archeologist, a licensed architect, and a professional historian to the Texas Historical Commission.**

This recommendation would ensure that the THC has adequate expertise to carry out the Antiquities Committee's functions if the committee is abolished and its functions are transferred to the THC. This type of expertise would also benefit the THC's current activities, which are focused on preserving historic structures and significant archeological sites on privately owned land. The three members with expertise would be appointed to six-year terms that would begin as soon as commission seats become available.

\_\_\_\_\_ **Fiscal Impact** \_\_\_\_\_

This recommendation would not have a fiscal impact to the state because the size of the commission would not be changed.

## **OVERALL ADMINISTRATION**



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**Issue 4: Allow the Texas Preservation Trust Fund to remain a separate account in the general revenue fund and to retain the interest earned on its principal.**

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### **Background**

The Legislature created the Texas Preservation Trust Fund in 1989 to provide grants and low-interest loans for the acquisition, restoration, and preservation of endangered historic buildings and significant archeological sites. The Texas Historical Commission (THC) appoints seven members to an advisory board that oversees the operation of the preservation trust fund. The THC's division of architecture manages the trust fund, which is primarily funded through private donations from individuals though it may also receive state appropriations, federal funds, and foundation grants.

The preservation trust fund currently generates between \$30 to \$40 in interest each month and had a balance of about \$9,000 at the end of fiscal year 1993. For the 1994-1995 biennium, the Legislature did not appropriate any money for the preservation trust fund itself, but the THC must deposit money appropriated to the Texas historic preservation grant program, a separate grant program administered by the THC, into the preservation trust fund. Currently, \$25,000 in preservation grant program funding is planned for deposit in the preservation trust fund for each year of the current biennium. In addition to these funds, the Legislature has also directed that the preservation trust fund receive up to \$2.5 million of any unspent funds left after the state's capitol restoration project is completed.

In 1991, the Legislature initiated a funds consolidation effort that decreased the number of separate funds in the State Treasury. The Legislature also wanted to abolish many of the statutory dedications of revenue that had led to restrictions on the use of state money and large unused balances. To reform the management of funds in the State Treasury, the 72nd Legislature created the Funds Review Advisory Committee to make recommendations for eliminating or continuing funds, accounts, and revenue dedications.

The resulting funds management reform process, adopted by the 73rd Legislature, has two phases: consolidation of funds into the general revenue fund as a separate account and abolition of dedicated revenues. The first phase, consolidation, occurred on August 31, 1993; the second phase, abolition of dedicated funding, will occur on August 31, 1995, unless the Legislature rededicates revenues for specific accounts.

The Funds Review Advisory Committee did not recommend exempting the preservation trust fund from consolidation because the committee categorized the fund as an operating account for the THC rather than a true trust fund that holds money in trust for others. The trust fund was determined to be an operating account because it receives state appropriations allocated to the historic preservation grant program and because it is set up to receive appropriations for trust fund grants and loans, although no state money has been allocated for that purpose to date. Currently maintained as a separate account within the general revenue fund, the preservation trust fund will be credited with interest earned on its principal until August 31, 1995. At that point, the trust fund will cease to remain a separate account and will be merged with the general revenue fund. All interest earned on funds that had been in the separate account will go to the general revenue fund as well.

The intent of the Legislature in establishing the preservation trust fund and the general characteristics of the fund were reviewed to determine if the fund should be exempted from the funds consolidation process. The results of this review are discussed in the findings presented below.

### Findings

- ▶ **The Legislature's original intent for the preservation trust fund was that the fund retain the interest earned on its principal.**
  - ▶ When establishing the fund, the Legislature specifically mandated that income earned on money in the fund be deposited to the credit of the fund. In addition, a rider to the THC's appropriation for the 1994-1995 biennium reappropriates unexpended balances of interest on donated funds back to the preservation trust fund.
  - ▶ Discussions with the agency staff and trust fund guardians indicated that the preservation trust fund was created with the intention of letting it become a self-sustaining source of funding for the preservation of historic structures and archeological sites in Texas.
  
- ▶ **As of August 31, 1995, the fund will no longer be maintained as a separate account in the general revenue fund. The merger significantly changes the intent of the Legislature regarding the use of the trust fund.**
  - ▶ The fund was set up to provide financial aid to public or private entities for the acquisition, restoration, or preservation of historic property in the state.

Properties may be historic structures or archeological sites, with priority given to those that are endangered by demolition, neglect, underuse, or other threats. The bill analysis for the legislation establishing the trust fund stated that the fund was being created to provide a stable, secure source of funding for these preservation projects.

- ▶ The statute establishing the preservation trust fund requires that money donated to the fund be used only for the projects or purposes designated by the donor. If the donor does not specify a purpose, the statute requires that 90 percent of the money be used for architectural projects and 10 percent for archeological projects. Merging the principal of the trust fund with general revenue would make donations available for purposes other than those specified by the statute creating the fund.
- ▶ The 1993 General Appropriations Act also requires that all bequests and gifts of money to state agencies that have authority to accept gifts, including the THC, shall be used for the purposes specified by the donor.
- ▶ **Merging the trust fund principal and interest with general revenue would discourage private donors from contributing to the fund.**
  - ▶ Discussions with private donors who have contributed to the trust fund indicated disapproval of letting the interest earned on their donations revert to general revenue. The donors contributed to the trust fund with the understanding that their gifts would help the fund grow by accruing interest, which would be used for the purposes specified by them and the trust fund statute. If the donors had known that their gifts or the interest accrued on their donations would go to general revenue, they indicated they would not have given money to the trust fund.
- ▶ **The preservation trust fund has several characteristics associated with trust funds that warrant maintaining the fund as a separate account.**
  - ▶ According to the Funds Review Advisory Committee, a state trust fund is a fund "created to account for assets held by the state in a trustee capacity for individuals, private organizations, or other government entities."
  - ▶ Attorney General opinions have established the following general characteristics of a trust fund held by the state: the trust fund is administered by a trustee or trustees; the state neither receives money for the trust fund in a sovereign

capacity nor for the general operation of state government; and money in the trust fund is spent and invested for specific, limited purposes for the benefit of a specific group of individuals.

- ▶ The preservation trust fund shares many of these criteria. The fund holds money donated by private contributors for specific historical preservation projects or purposes and for the benefit of persons and groups interested in the preservation of historical structures and archeological sites in Texas. The statute establishes a seven-member advisory board that serves as trustee for the preservation trust fund. Further, the statute prohibits money in the fund from being used to pay the agency's operating expenses.
  
- ▶ **The Legislature has allowed other consolidated funds to retain their interest.**
  - ▶ The Texas Parks and Wildlife Department (TPWD) has a game, fish, and water safety account that will remain a separate account in the general revenue fund. Money in the account is used for restoration of boats and dredges and protection of fish and wildlife resources, among other purposes. Similarly, the preservation trust fund is used for restoration of historic structures and protection of historical and archeological resources. In 1993, the Legislature mandated that interest due the game, fish, and water safety account be credited to the account.
  
  - ▶ The TPWD also has an artificial reef account that will now be maintained as a separate account in the general revenue fund and allowed to retain its interest. Funds in the artificial reef account are dedicated to constructing and managing artificial reefs. Like the preservation trust fund, the artificial reef account may accept grants, donations, and other forms of aid from public and private sources.

## ————— Conclusion —————

The preservation trust fund will lose the principal and interest earned on its principal unless the Legislature maintains the fund as a separate account within the general revenue fund and rededicates the interest to the account. Allowing the fund to be merged with general revenue would significantly change the Legislature's original intent and would differ from many private donors' wishes. Also, if the trust fund loses its principal or interest, private contributors would be discouraged from contributing to the fund. Further, the Legislature has allowed other funds to retain their principal and interest by setting them up as segregated, dedicated accounts in the general revenue fund.

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## Recommendation

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- **The statute should be changed to allow the preservation trust fund to remain a separate account within the general revenue fund and retain its interest.**

This recommendation would maintain the preservation trust fund as a separate account within the general revenue fund. Interest earned on the trust fund's principal would be retained in the account. The principal and interest could then be available for its intended purposes and could help the trust fund become a self-sustaining source of grants and loans for historic preservation projects. The impact of retaining the principal and interest becomes increasingly important if the fund receives up to \$2.5 million from unspent capitol restoration funds, as may happen at the end of fiscal year 1995.

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## Fiscal Impact

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Maintaining the preservation trust fund as a separate account will have no fiscal impact on the general revenue fund because the money in the trust fund will still be available for certification of available revenue by the Comptroller's Office. After grants were awarded, between \$8,000 to \$9,000 from private donations remained in the trust fund at the end of the 1993 fiscal year. The fund presently generates only about \$500 per year in interest.

This recommendation would continue to limit the way that the money in the trust fund can be spent and where it can be spent. The proposal would also limit the way that any remaining capitol restoration funds of up to \$2.5 million designated for the trust fund could be spent if these funds are deposited in the trust fund.



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**Issue 5: Improve the permitting process required by the Texas Antiquities Code by adding specific notification requirements for projects that could impact archeological sites on state and local public property.**

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## Background

The Texas Antiquities Code was established to protect significant archeological sites in Texas. The code does this in two ways: authorizing designation of important sites as state archeological landmarks (SALs), and requiring permits for projects that impact SALs or archeological sites on state or local public property. The statute requires construction projects and other operations to get a permit from the Antiquities Committee before removing, altering, damaging, destroying, salvaging, or excavating an archeological site on state or local public property. Examples of projects that may require a permit include federal, state, or local roadway construction, expansion of city-owned recreational parks, oil and gas exploration by private companies on public land, and excavation and study of an archeological site by university students.

The department of antiquities protection, a division of the Texas Historical Commission (THC), serves as staff to the Antiquities Committee. The department reviews projects that have been submitted to the agency to determine if the project needs a permit to proceed. The department also reviews projects that are already underway and have been reported by amateur archeologists, citizens, and other interested parties. Most projects reviewed by the department do not impact significant archeological sites and are cleared to proceed immediately without a permit. If the department finds that a project is likely to impact a significant archeological site, the staff issues a permit for an archeological survey of the area. If the survey indicates that no significant archeological sites are present, the project may proceed. If the survey identifies significant sites, the department works with the project sponsor to avoid or minimize damage to the site or arrange for excavating and recording the site before it is destroyed. Once the site has been avoided or excavated and recorded, the project may proceed. The department has set a maximum of 30 days for responding to permit inquiries and most responses are issued in less than two weeks.

The Antiquities Committee has adopted rules to further define and implement the permitting requirements. These rules provide specific guidelines for recognizing and evaluating archeological sites to determine their significance. The rules also require contractors who discover an archeological site during a construction project on state or local public land to notify both the Antiquities Committee and the state agency or political subdivision that owns the land. The committee will then review the site and issue a permit for the project if necessary.

Licensing and permitting requirements are generally established to protect the public's health and welfare or the public's interest in limited resources such as archeological sites. State licensing and permitting requirements should be as clear as possible to provide adequate protection, minimize unintentional violations, and avoid confusion among licensees and permittees. A review of the permitting requirements in the Texas Antiquities Code resulted in the following findings.

## Findings

- ▶ **The Legislature has determined that the state's archeological resources are valuable and should be protected and preserved through a regulatory permitting process.**
  - ▶ The antiquities code states that it is the public policy and in the public interest of the state to locate, protect and preserve all sites, objects, buildings, historic shipwrecks, and other locations of historical, archeological, educational, or scientific interest.
  - ▶ The code requires construction projects and other operations to get a permit from the Antiquities Committee before removing, altering, damaging, destroying, salvaging, or excavating an archeological site on state or local public property. Without the permit, these activities are in violation of state law.
- ▶ **The antiquities code does not explicitly require projects that are likely to impact an archeological site to be reviewed by the agency during the planning stages to determine if the project will need a permit.**
  - ▶ The antiquities code does not specifically require advance notification to the agency of projects that could impact archeological sites on public land. Instead, the code requires construction projects and other operations to get a permit from the committee before removing, altering, damaging, destroying, salvaging, or excavating an archeological site on state or local public property. However, the committee has interpreted the code as requiring project reviews prior to impact of an archeological site.
  - ▶ Archeological sites are primarily underground and usually can be identified only through an archeological survey. Unless the project site is reviewed by the department of antiquities protection or surveyed by an archeologist, project sponsors have no way of knowing the potential impact of a project to an archeological site.

- ▶ **State and local projects that use federal funds are reviewed by the THC staff early in the planning stages.**
  - ▶ The federal government has adopted clear notification requirements in its review process for federally funded or permitted projects that may impact significant archeological sites and historic structures. State agencies and political subdivisions, such as city housing departments, must comply with the federal review requirements if a project is federally funded or permitted.
  - ▶ The National Historic Preservation Act requires a review of the impact of federally funded or permitted projects to properties either listed in or eligible for listing in the National Register of Historic Places, including significant archeological sites. In Texas, these projects undergo a review process through the THC's staff. The review process must take place early in the project's planning stages, prior to federal permitting or approval of federal expenditures for the project.
  - ▶ The federal early review process provides more flexibility for changing project plans to preserve historic sites. The THC and others who use the federal process indicate that the early review process results in more historic sites being preserved with little or no adverse effect on the project itself.
- ▶ **Problems have occurred where archeological sites were disturbed during construction, resulting in violations of the code. Early review would reduce these types of incidents.**
  - ▶ The agency has received complaints from the public about locally sponsored projects that uncovered archeological sites on public land. However, by the time these complaints were made and investigated, the archeological deposits had already been heavily damaged or destroyed. Destruction of a site results in the permanent loss of scientific data contained within the deposits. Although sanctions are available for these cases, the agency has indicated it would prefer to obtain information from a site prior to destruction than to pursue sanctions.
  - ▶ The antiquities code requires projects to stop if they hit an archeological site and apply for a permit from the Antiquities Committee. Many state agencies, such as the Texas Department of Transportation and the Texas Parks and Wildlife Department, regularly report these incidents to the Antiquities Committee. However, the department of antiquities protection indicated that no project occurring on land owned by a political subdivision has ever reported a similar incident.

- ▶ **Adding the notification requirements would decrease the likelihood of unintentional violations and help ensure that significant sites are identified and preserved or recorded before the site is destroyed.**
  - ▶ The department of antiquities protection has an effective project review process in place. The department reviews most projects currently submitted in less than two weeks, with a maximum goal of 30 days. The department maintains statewide maps of archeological surveys that have been conducted by the agency and other archeologists. The department uses these maps as well as an evaluation of other criteria, such as distance from a major water source, to determine a project's likelihood of impacting a significant archeological site. The agency does not require permits for projects that will impact an insignificant site that would not provide new archeological information.
  - ▶ If the department finds that a project is likely to impact a significant archeological site, the staff works with the project sponsors to avoid or preserve the site. If impact to the site cannot be avoided, the department works with the project sponsors to recover archeological data from the site before it is destroyed.
- ▶ **A notification requirement would enable the state to preserve and record significant archeological sites without being burdensome or costly to state agencies or political subdivisions.**
  - ▶ The notification and review process could take place at the same time the project sponsor is applying for other local, state, and federal permits without causing any additional delays. The department of antiquities protection reviews and clears most projects within two weeks of notification. During this timeframe, for example, a project sponsor may also notify utility companies to determine if utility relocation or protection is required for the project.
  - ▶ Permits are required only for sites that are likely to impact a significant archeological site. In fiscal year 1993, the department reviewed about 1,400 projects and issued 141 permits.
  - ▶ Reviewing projects before they begin allows more flexibility for making minor changes to avoid archeological sites. Once a project has begun and an archeological site has been uncovered, the project is committed to a particular location or route and cannot easily be modified. State law requires projects to stop and apply for a permit if an archeological site is uncovered during a

project. By the time the site has been impacted, the only way to recover valuable data is through an archeological excavation. Route changes or archeological investigations needed after a project is under construction are costly and time-consuming.

- ▶ In comparison, archeological surveys conducted prior to start of construction are inexpensive. The THC indicated that the average cost for an archeological survey is about \$15 to \$25 per acre. A notification requirement would better enable state agencies and political subdivisions to identify significant archeological sites through an inexpensive survey and change project plans when possible to avoid or minimize damage to significant sites, eliminating the need for a more time-consuming and expensive archeological excavation.
  
- ▶ **Many other states that issue permits for projects that may impact archeological sites on public property have clear statutory instructions on when the project review process should begin.**
  - ▶ A number of states have a permitting process for projects on state or local public property that may impact an archeological site. Most of these states have clear statutory guidelines on when the permitting process should begin. For example, Alabama, Illinois, Louisiana, Maine, and Oregon require the permitting process to begin prior to commencement of land-disturbing activities. Mississippi requires permits to be issued in the early planning stages of a project, and North Dakota requires the permitting process to begin during the planning process and prior to implementation. Rhode Island requires the permitting process to take place as early as possible, prior to either irrevocable commitment or physical impact.

## ————— Conclusion —————

The Legislature has established a policy of protecting and preserving the state's archeological resources through a regulatory permitting process. However, the code does not explicitly require projects to be reviewed before they impact an archeological site, at which point the project is in violation of the law. Permitting violations are very likely occurring because stopping a project to conduct an archeological investigation once construction is underway can be costly and time-consuming. Review of projects during the planning stage allows for flexibility to avoid or minimize impact to sites and leaves time for proper investigation if necessary. In addition, a notification requirement would not be burdensome or costly to state agencies or political

subdivisions. In fact, these entities already use an early notification and review process whenever federal funds or permits are used for a project.

### **Recommendation**

- **Permitting requirements in the Texas Antiquities Code should be improved by requiring notification prior to construction or excavation of projects that could impact archeological sites on state and local public property.**

This recommendation would further protect the state's archeological resources by ensuring that the permitting process begins before projects have impacted designated state archeological landmarks or archeological sites on property owned by the state or its political subdivisions. Adopting clear notification requirements would result in fewer unintentional violations of the code because archeological sites could be identified before they have been damaged or destroyed. Requiring the process to begin before construction has occurred would also provide more flexibility to modify plans to avoid an archeological site altogether. This recommendation would not have a significant impact to these projects because the review process is timely and could be done simultaneously with other permit applications. The agency should adopt the notification process in rules to ensure adequate public input on making the process as easy to use as possible.

### **Fiscal Impact**

The agency indicates that any additional review and permitting activities resulting from this recommendation can be handled by existing staff and resources. Additional costs to units of local government should be limited to conducting archeological surveys in certain cases. The THC indicated that the average cost of an archeological survey is about \$15 to \$25 an acre.

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**Issue 6: Require the Texas Historical Commission to develop a state register of historic places to simplify the designation of historic properties, minimize staff efforts, and provide a basis for developing a more uniform approach to the state's preservation of historic sites.**

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## \_\_\_\_\_ Background \_\_\_\_\_

The Texas Historical Commission (THC) was created to help protect and preserve the state's historical resources, particularly historic structures and archeological sites. To encourage preservation, the agency grants state historical markers and other types of designations to properties of historic significance. These designations generally place restrictions on significant changes to the property but can also be used to qualify for local property tax exemptions and federal income tax exemptions. The agency has four types of designations for historic properties in Texas, which are described below.

State Historical Markers. The commission issues two types of historical markers to help preserve and record local and state history. These markers cannot be issued for a public or privately owned property unless agreed to by the owner. Historical subject markers are solely educational and carry no property restrictions. Building medallions and markers are used to designate historic buildings, bridges, and other structures as recorded Texas historic landmarks (RTHLs), which places restrictions on external changes to the structure unless the property owner first notifies the commission. The commission may remove the building's designation if a change is made without notification or if the change is determined to be inappropriate. Properties that have been designated as an RTHL may qualify for local property tax exemptions. The agency has issued about 12,000 markers since 1962 and estimates that about 25 percent, or 3,000 markers, are RTHLs.

National Register of Historic Places. The National Register is a listing of districts, sites, buildings, structures, and objects that have significance in American history, architecture, archeology, engineering, or culture. The National Register also designates national historic landmarks, which are properties of national historic significance such as the Alamo Shrine in San Antonio. Privately owned properties cannot be listed on the National Register if the property owner objects. Nominations of sites in Texas must be presented to the National Register by the state historic preservation officer, who is the executive director of the THC. Commercial properties listed on the National Register may qualify for federal income tax exemptions. Texas has 127 historic districts and about 2,000 individual private properties listed on the register.

Historic County Courthouses. Texas law protects historic county courthouses by discouraging major changes to the structure. State law requires county governments to notify the THC of any proposed modifications to a county courthouse and to observe a 180-day waiting period before starting any construction or remodeling activities, other than ordinary maintenance and repairs. During the waiting period, the THC's division of architecture works with the county and other local groups when necessary to develop alternative proposals that would preserve the courthouse's historic integrity. The THC has identified at least 210 potentially historic county courthouses in Texas.

State Archeological Landmarks (SALs). The Texas Antiquities Code designates all archeological sites, objects, structures, and artifacts on land owned by the state or its political subdivisions as state archeological landmarks. These sites may include Native American burials, historic battlegrounds, and underwater archeological sites such as historic shipwrecks. The Antiquities Committee may formally designate archeological sites as a landmark to reinforce a site's significance. Structures must be listed on the National Register before they can be formally designated as an SAL. Sites located on private land may be designated as a landmark at the request of the property owner. All SALs are protected by state law and cannot legally be disturbed without a permit from the Antiquities Committee. The committee has formally designated 2,258 publicly owned sites and 54 privately owned sites as SALs since 1969.

The THC has three divisions that administer applications for designations. The local history programs office administers the state marker program, the National Register programs office reviews applications for national registration nominations, and the department of antiquities protection handles nominations for state archeological landmark designations. Each federal and state designation carries different levels of protection and is awarded based on different criteria. Many historic properties in the state have multiple designations. Each of the three divisions separately maintains information about designations granted through their programs.

State agency programs and activities that serve the public should be effective, accessible, and as uncomplicated as possible. Agencies should also be able to track the results of their programs for reporting and evaluation purposes. The THC's processes for reviewing and awarding designations to historic properties were examined to evaluate their effectiveness and accessibility. The agency's ability to keep detailed information about its designation programs was also reviewed. The resulting information is contained in the following findings.

## Findings

- ▶ **The absence of a uniform system for recording state and federal historic designations results in confusion to the public about the available designations, duplication of staff efforts, and a lack of detailed information about the results of the designation programs.**
  - ▶ The designation processes for historic properties is confusing to the public and time-consuming for the THC staff. The state statutes set up the state designations in separate codes, while federal law establishes the National Register listings. As a result, the agency does not have a single entry point or process for designation applications. Instead, each proposed designation goes through a separate, independent application or nomination process without a mechanism in place for coordination and sharing of information among the different departments reviewing the applications. General information about the designations is more difficult to convey to the public as well. Historic structures often qualify for multiple designations and each designation has separate requirements and protections. But because these programs operate independently, the public must investigate each type of designation separately and through different agency departments.
  - ▶ Public confusion about the designations also arises from vague definitions in the statutes that could be clarified in a state register. For example, the Texas Antiquities Code specifies that all archeological sites on public land are state archeological landmarks. However, the Antiquities Committee may also formally designate sites as state archeological landmarks. The law allows the agency to determine the types of sites that are protected and that require a permit prior to disturbance or excavation.
  - ▶ The departments responsible for administering the designation programs do not have easy access to information about previous designations granted by the agency because no central listing or database containing this information exists. Without a central listing, each department must rely on the property owner for designation information or must search through other departments' files and records. Other agency activities are hampered as well. For example, the agency reviews federally funded and permitted projects as well as projects on state and local public land to determine the impact to historic structures and archeological sites. The staff must continually check other departments' files and records to locate historic properties when conducting these reviews.

- ▶ The agency has difficulty keeping detailed information about the effectiveness of its designation programs without a single source of information such as a state register. The local history programs office keeps a manually generated list of historical markers and is in the process of converting the information to a database. The National Register programs office keeps a list of National Register properties and maintains a collection of survey cards on properties that have been identified as potentially being historic. State archeological landmarks are maintained on a separate list by the department of antiquities protection. The agency cannot determine how many properties in Texas have received a designation. Although 16,649 designations have been granted, many properties qualify for multiple designations and the actual number of designated properties is unknown.
  
- ▶ **Requiring the commission to develop a state register would streamline and simplify the application process, minimize the staff's efforts, and result in more detailed information about the effectiveness of the agency's designation programs.**
  - ▶ Although the designations are governed by separate state codes and federal laws, the agency's designation application processes could be combined into a single process through the development of a state register. The state register could also be used to clearly indicate to applicants the levels of protection and incentives for each designation, allowing applicants to compare the available designations and choose the most appropriate ones for their property. A single application process would also make it easier for property owners to apply for multiple designations at one time.
  
  - ▶ A state register could be used to further identify and define vague provisions in the statutes. For example, if the state register were set up to reflect different levels of protection, it could be used to determine the types of archeological sites that should be protected under the antiquities code.
  
  - ▶ Development of a state register would reduce the staff's time and efforts spent on designations and other activities. A central listing of historic sites would enable the staff to quickly identify previously designated sites and reduce research and documentation efforts for designation applications and federal and state project reviews.
  
  - ▶ More detailed information about the effectiveness of the agency's designation programs would be available if a state register were developed. For example, the agency could determine how many properties have been designated. This

information could also be used to help the agency and others identify structures that qualify for increased protection. Once those properties are identified, the agency could work with the property owners and county historical commissions to nominate the properties for additional protection.

- ▶ **Gaps in the state's preservation policies and inconsistencies in existing laws could be identified through the development of a state register and considered during a subsequent legislative session.**
  - ▶ Some types of historic properties are not specifically protected by existing designations. For example, historic cemeteries are not eligible for designation as a recorded Texas historic landmark or, with rare exceptions, National Register listing. These sites may in some cases be protected as state archeological landmarks, but this designation is rarely if ever used for historic cemeteries.
  - ▶ Another gap in the state's preservation designations are state-owned and local government-owned historic structures that do not have a state marker and are not listed on the National Register. These structures cannot be designated as a state archeological landmark until they are listed on the National Register. As a result, they are unprotected from construction projects and major alterations that could damage or destroy their historical significance.
  - ▶ The state register development process would enable the agency to identify gaps and inconsistencies in state law. The agency could then make recommendations to the 75th Legislature to address these issues and other problems identified through the development process.
- ▶ **The federal government and other states have adopted the approach of developing a register of historic places to preserve and protect public and privately owned historic properties.**
  - ▶ The federal government has developed the National Register of Historic Places, which lists public and privately owned buildings, sites, districts, and objects that have been determined to be of historical significance. This listing is used as the basis for evaluating the impact of federally funded or permitted projects to historic properties.
  - ▶ According to the National Conference of State Historic Preservation Officers, 31 states have developed a state register of historic places, including seven of the 10 most-populated states: California, Illinois, Michigan, New Jersey, New York,

North Carolina, and Ohio. Neighboring states New Mexico, Oklahoma, and Arizona also have adopted a state register.

- ▶ Responses to a survey of other states' historic preservation agencies indicated that these agencies have incurred little or no costs in developing and maintaining a state register. Some states indicated that the state register program is operated in conjunction with the National Register nomination process and federal requirements for conducting a state survey of potentially historic structures.

### \_\_\_\_\_ Conclusion \_\_\_\_\_

Absence of a uniform system for recording the state's historic landmarks has resulted in confusion about state and federal designations and has led to duplication of staff efforts. Development of a state register would streamline the staff's efforts, clarify the types of designations that are available and the protections that accompany them, and provide a basis for developing a more uniform approach to the state's protection of historic sites. The federal government and other states have adopted the approach of developing registers of historic places to preserve and protect historic sites.

### \_\_\_\_\_ Recommendation \_\_\_\_\_

- **The statute should be changed to require the Texas Historical Commission to:**
  - **develop a state register for all existing designations, including recorded Texas historic landmarks, subject markers, National Register listings, and state archeological landmarks;**
  - **adopt rules as necessary to develop and implement the state register within existing statutory provisions; and**
  - **report back to the 75th Legislature with recommendations for statutory changes needed to fully implement the state register and ensure uniform and adequate protections for historic properties.**

This recommendation would require the commission to develop a state register of historic places within existing statutory provisions and report back to the 75th Legislature with recommendations to eliminate gaps, inconsistencies, and duplication in the state's preservation policies. The commission would also be authorized to adopt rules as necessary to develop and implement the

state register. Development of a state register would streamline the application process, minimize the staff's efforts, clarify the types of designations that are available, and provide a basis for developing a more uniform approach to the state's preservation of historic sites. The proposal does not set a deadline for the state register to be in place because the development and implementation process could take several years.

### **Fiscal Impact**

The development of a register process can be implemented within the agency's existing resources. The agency may incur some initial costs for staff time and computer software and equipment, but these costs should be offset by additional savings in staff time and effort for other activities, especially property designations and federal and state project reviews. In addition, the agency has already begun taking steps to transfer information on state historical markers to a database.



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**Issue 7: Authorize local property tax exemptions for state archeological landmarks to be consistent with tax exemptions for historic structures.**

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**Background**

The Texas Historical Commission (THC) is responsible for protecting the archeological resources of Texas on both public and private land. The agency has several programs to protect sites on public land. On private land, primary activity is through the state archeologist, who investigates and documents sites and works with private landowners to preserve archeological resources on their property.

Landowners who want to protect archeological sites on their property have several options. Upon the request and written consent of a landowner, the Antiquities Committee may designate an archeological site on private land as a state archeological landmark. The Texas Antiquities Code requires a permit to be obtained from the Antiquities Committee before a state archeological landmark can be disturbed and provides civil and criminal penalties for violations. The landowner can also nominate an archeological site for listing on the National Register of Historic Places. If approved, this designation protects the site from construction projects receiving federal funds or permits. However, few archeological sites are listed on the National Register due to a more difficult nomination process and fewer incentives.

Other preservation options available to the landowner involve tax incentives. These options include donating or selling the site to the state or a nonprofit preservation foundation. The landowner may also create a conservation easement on an archeological site and assign it to a government body or charitable organization. By transferring ownership or an interest in the archeological site to a government body, nonprofit foundation, or charitable organization, the landowner may obtain local property tax reductions and federal income tax deductions, as allowed by the local taxing unit or the U.S. Internal Revenue Service. However, the easement holder retains an interest in the site that allows limitations to be placed on the use of the site. For the easement to qualify as a charitable donation for income tax reduction, the archeological site must be listed on the National Register.

The Texas constitution limits the kinds of property tax exemptions the Legislature may grant. In 1977, the state constitution was amended to allow the Legislature to authorize property tax exemptions for the preservation of cultural, historical, or natural history resources. In that year, the Legislature also authorized local taxing units to offer property tax exemptions for designated historic structures. The exemption applies to structures that have been designated as a recorded Texas historical landmark by the THC or as a site deemed worthy and in need of an exemption

for preservation by the local taxing unit. The taxing unit may exempt all or part of the assessed value of the eligible structure and the land necessary for access to and use of the structure. Counties may delegate the review of applications for tax exemptions to the local county historical commission.

Statutory protection of resources can be achieved in different ways. Sanctions establish a disincentive to damaging resources. Providing financial incentives for preservation can also be an effective mechanism. The review included an examination of whether preservation statutes have an appropriate array of incentives and disincentives to protect historic and archeological sites. The findings presented below discuss the need for adding property tax exemptions for significant archeological sites to existing exemptions for historic structures.

## Findings

- ▶ **The current approach to tax incentives for preservation of historic buildings versus archeological sites is inconsistent.**
  - ▶ The Texas constitution authorizes exemptions for historic structures and archeological sites. However, only tax incentives for historic structures have been authorized by the Legislature.
  - ▶ No similar incentives exist for preservation of archeological sites. State archeological landmark designation does not provide any economic benefit to the landowner. Conservation easements are costly to put into effect because the process requires property owners to pay legal fees. In addition, federal income tax deductions for easements are limited to properties that are listed on the National Register, which rarely occurs with archeological sites.
- ▶ **Archeological sites are an important resource deserving of protective incentives similar to those authorized for historic buildings.**
  - ▶ Texas has an estimated 1.4 million archeological sites. About 50,000 of these sites have been documented on public and private land. Roughly 1,000 new sites are documented each year, so the figure changes monthly. The THC estimates that 92 percent of the recorded sites on non-urban land are on privately owned property.
  - ▶ The office of the state archeologist has identified the following properties as examples of sites on private land that need economic incentives for their

preservation. Significant Native American cemeteries in Texas are located mostly on private land and are being plundered by looters. Privately owned land in Oldham, Potter, Hutchinson, Moore, Roberts, and Hemphill counties in the Texas Panhandle includes a corridor of pueblo-style dwellings occupied by prehistoric farmers and bison hunters who settled in the Canadian River Basin.

Private ranchland in South Texas contains numerous ruins of sandstone structures occupied by Hispanic ranchers who settled there during the eighteenth century, when Spain controlled the region, and whose successors continued to occupy the region during the Mexican period of the early 1800s.

The archeological remains of Camp Elizabeth in Sterling County represent a military site that was occupied by an African American cavalry unit during the late 1800s. A similar site needing additional protection is the ruin of the stone redoubt near Indian Hot Springs in Hudspeth County where African American troops of the U.S. 10th Cavalry Unit fought the Apaches. This archeological area, which covers multiple tracts of private property, also contains sites occupied by Native Americans during prehistoric and historic periods. The Indian Hot Springs area has been listed on the National Register of Historic Places, but this designation only protects the sites from federal activities. The Trans-Pecos region of West Texas has other important rock shelter sites on private land. Once occupied by prehistoric and historic Native Americans, these sites are being looted by individual and commercial relic collectors.

- ▶ **Use of property tax exemptions has been an effective tool for encouraging preservation of historic buildings.**
  - ▶ At least 17 cities and three counties in Texas offer property tax exemptions for historic structures, including the cities of Dallas, Houston, San Antonio, and Plano and the counties of Collin, Gregg, and Llano. Many properties in these jurisdictions have qualified for the exemption. For example, in the City of San Antonio, 62 historic properties currently receive tax abatements. Three historic properties receive tax abatements from the City of Dallas. The City of Fort Worth approved 28 exemptions for historic sites in 1993. The City of Abilene grants property tax reductions to 27 properties within its historic zones. A total of 25 properties were granted historic site exemptions by all taxing units in Collin County during 1993.
  - ▶ Records from the Comptroller's Office show that five school districts report adoption of a historic property tax exemption, including Brownsville, Plano,

Lamar Consolidated, Austin, and Pflugerville. The Austin Independent School District granted property tax exemptions for 198 historic structures in 1993.

- ▶ **Mechanisms are already in place to designate sites as state archeological landmarks and to certify sites as being eligible for exemptions.**
  - ▶ The state archeologist already has a process to nominate sites on private land as state archeological landmarks. The Antiquities Committee, which reviews the nominations, grants an average of five to six designations a year on private land based on the recommendations of the state archeologist.
  - ▶ Local taxing units could use the state archeological landmark designation to identify properties that qualify for an exemption. Counties primarily grant exemptions for historic buildings based on recorded Texas historic landmark designation, which is granted by the THC. Most cities that offer an exemption have their own historic designation program for granting exemptions and could adopt the state archeological landmark designation as the standard for exemption of archeological sites. School districts generally adopt the historic certification method used by the county or the city with which they share taxing jurisdiction.
- ▶ **Granting property tax exemptions for archeological sites on private land would not have a significant fiscal impact on the state's political subdivisions.**
  - ▶ A property tax exemption for archeological sites would be optional, allowing each local taxing unit to independently decide whether to adopt the exemption.
  - ▶ Requiring archeological sites to be designated as a state archeological landmark before receiving an exemption would limit the number of sites exempted. Sites must be significant and landowners must go through a nomination and review process to obtain the designation.
  - ▶ The Antiquities Committee has designed 54 privately owned state archeological landmarks, most of which are archeological sites. The state archeologist estimates that of about 46,000 identified archeological sites on private land, probably less than 10 percent or 4,600 sites would be significant enough to warrant an exemption. Assuming exempted properties average one to five acres in size, only 4,600 to 23,000 acres statewide are estimated to qualify for an exemption from one or more taxing units.

## Conclusion

Although significant protections are in place for archeological sites on public land, few incentives exist for private landowners to protect their sites. State law authorizes local taxing jurisdictions to provide tax exemptions for historic buildings, but no such exemptions are authorized for archeological sites. This approach to preservation is inconsistent in comparison to other preservation statutes that provide similar protections to both archeological and historic sites. In addition, agency staff indicate that tax exemptions would be an effective mechanism to encourage private landowners to protect and preserve archeological sites on their property with no significant loss of revenue to local entities.

## Recommendation

- **The statute should be changed to authorize local taxing units to grant property tax exemptions for privately owned archeological sites that have been designated as state archeological landmarks.**

This recommendation is intended to encourage private landowners to preserve archeological sites by providing financial incentives to do so. The proposal would parallel existing tax exemptions for historic structures to provide a similar economic incentive to landowners who agree to protect significant archeological sites on their property. While the fiscal impact on local taxing units should be minimal, significant archeological sites may be preserved. The state archeological landmark designation process is already in place and an existing network of skilled avocational archeologists who live in the counties where sites would be exempted could help the THC monitor the sites for compliance. The exemption would be granted only as long as the site remained designated as a state archeological landmark and the taxing unit chose to grant the exemption. As with exemptions for historical structures, local taxing units would determine the amount of the exemption. Local taxing authorities could appraise the value of the sites and process the applications for exemptions, while the THC could certify that the site had been designated a state archeological landmark. Local taxing units that have been granting exemptions for historic structures would already have procedures in place to process archeological site exemptions.

**Fiscal Impact**

The recommendation would not have a fiscal impact to the THC. Private landowners would benefit economically from property tax exemptions. Local taxing units, including school districts, could sustain a small reduction in property tax revenue. The fiscal impact on local tax bases cannot be estimated since it is unknown how many taxing units would choose to offer an exemption.

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**Issue 8: Simplify unworkable requirements for the Texas Historical Commission to compile a list of historical structures suitable for state lease or purchase.**

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## Background

The statute governing the General Services Commission (GSC) requires most state agencies to give preference to historic structures when considering building or leasing state offices. Some agencies are exempted from this requirement, including the Texas Department of Transportation, Texas Parks and Wildlife Department, Texas Department of Agriculture, and public universities. When considering construction of a new office building, the GSC must request from the Texas Historical Commission (THC) a list of suitable historic structures that are available for state purchase in the proposed construction area.

When considering leasing office space for state agencies, the GSC must notify owners of historic buildings and historic preservation organizations in the county where the leasing is proposed. The THC is required to furnish the GSC with a statewide list of owners of historic buildings that are available and suitable for lease as well as a list of individuals and organizations interested in the preservation of historic structures in each county. The THC must update these lists annually.

The types of historic structures to which the GSC must give preference are defined by the THC's statute, which includes historic structures that are listed or eligible for listing on the National Register of Historic Places, designated or eligible for designation as recorded Texas historic landmarks or state archeological landmarks, or certified as worthy of preservation by the THC. The GSC must also give preference to a building that has been designated a landmark by a local government. Since 1979, when the Legislature directed the GSC to give preference to historic buildings, the agency indicated that it has purchased only one historic structure for the state, the Christianson Liebermann House in Austin, which is undergoing restoration to house the THC's Main Street program office. The GSC currently leases 13 historic structures for use by state agencies.

The statutory reporting requirements in place for the GSC and the THC were intended to make sure that historic structures are given preference when the state is considering buying or leasing office buildings. These requirements were reviewed to determine their effectiveness. The results of this review are discussed in the following findings.

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## Findings

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- ▶ **The THC does not have the data or the resources to provide to the GSC lists of historic properties that are available and suitable for state purchase or lease.**
  - ▶ Real estate information on the availability of historic structures is limited. Owners of historic structures do not notify the THC when their properties are available for sale or lease and realtors generally do not compile and maintain lists of historic properties.
  - ▶ To fully comply with its statute, the THC would have to continually investigate local real estate markets to discover available historic properties, a function the agency is neither qualified nor funded to do. The THC also does not have the expertise to evaluate the suitability of particular properties for use as state offices.
  - ▶ The THC does not have a list of all the designated historic buildings because the agency has not been required to compile a master list of landmarks. Instead, each department in the agency keeps separate lists of designated structures for which it is responsible and the information is not available on a computerized database. Without a master list of federal, state, and local landmarks, the THC cannot compile a list of historic properties regardless of whether they are available for sale or lease.
  
- ▶ **To give preference to historic structures, the GSC does not need the lists the THC is statutorily required to provide.**
  - ▶ The GSC has often been able to identify designated historic structures without consulting the THC because those properties bear a plaque or building medallion, carry a notation in the deed record, or have some type of documented certification the owner can produce.
  - ▶ In cases where a property owner has offered to sell or lease an undesignated structure to the state but has indicated that the property is historic, the GSC contacts the THC to verify whether the building is eligible for landmark designation or is worthy of preservation. Such instances are rare: the GSC contacts the THC to verify the historic status of a building less than five times a year.

- ▶ **The two agencies have developed an alternative approach that allows the GSC to perform the real estate functions and the THC to verify the historic status of a building.**
  - ▶ When considering building or leasing state offices, the GSC goes through a standardized bid process. In their bid proposals, owners indicate whether their properties are historic. In isolated cases, the GSC has questioned the historic status of a building submitted for consideration and has contacted the THC for verification. The THC is better equipped to determine the historic status of a building because the agency has the resources and experience in this area. Both agencies have indicated that this system has worked effectively in ensuring that historic structures are considered when appropriate.
  
- ▶ **The state's approach to giving priority to historic structures can be simplified by requiring the GSC to give preference only to properties that have been officially designated as landmarks.**
  - ▶ Because the instances are so rare in which a building owner has offered the state an undesignated historic property for sale or lease, the GSC can accomplish its mandate to give preference to historic buildings by considering only properties that have been designated as landmarks by federal, state, or local governments.
  - ▶ This approach would also encourage owners of historic properties to seek designation for their property, which benefits the state because an important historical resource will be preserved.

## ————— Conclusion —————

The THC is neither equipped nor qualified to determine which historic structures are both available and suitable for state purchase or lease. Instead, the staff is skilled in determining the historical qualifications of a structure. The GSC is better equipped to handle the real estate functions of finding available, suitable properties for state purchase or lease. The intent of existing statutes is to give preference to historic properties and can best be met by considering only structures that have been officially designated as being historic by federal, state, or local governments.

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## Recommendation

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- **The statutes regarding the use of historic properties by state agencies should be simplified by:**
  - ▶ **removing the requirement that the THC provide the GSC with a list of historic structures available for state purchase and a list of owners of suitable historic structures available for lease; and**
  - ▶ **requiring the GSC to give preference only to historic structures that have received historic designation from federal, state, or local governments.**

This recommendation would remove the requirement for the THC to provide real estate information to the GSC about historic buildings without eliminating the requirement that the GSC give preference to historic structures when purchasing real property or leasing space for the use of state agencies. The GSC would be required to give first consideration only to structures listed on the National Register, designated as state archeological landmarks or recorded Texas historic landmarks, or designated as landmarks by local governing bodies. The GSC would no longer give preference to properties that are not clearly historic structures. The THC would continue to be required to provide information on historic preservation groups to the GSC, a resource the GSC could use to help it locate available historic properties in the area of proposed construction or lease. The THC would still assist the GSC in determining the historic status of a building when requested to do so.

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## Fiscal Impact

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No fiscal impact is anticipated from this recommendation.

***ACROSS-THE-BOARD***

***RECOMMENDATIONS***

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

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<b>TEXAS HISTORICAL COMMISSION</b>	
<b>RECOMMENDATIONS</b>	<b>ACROSS-THE-BOARD PROVISIONS</b>
<b>A. GENERAL</b>	
Apply/Modify	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Update	3. Prohibit persons required to register as a lobbyist from acting as general counsel to the agency or policymaking body or serving as a member of the policymaking body.
Apply	4. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Update	7. Require the agency to establish career ladders.
Update	8. Require a system of merit pay based on documented employee performance.
Update/Modify	9. Provide for notification and information to the public concerning agency activities.
Apply	10. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Update	11. Require information to be maintained on complaints.
Update	12. Require that all parties to written complaints be periodically informed in writing as to the status of the complaint.
Update	13. Require development of an E.E.O. policy.
Update	14. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Update	15. Provide for public testimony at meetings of the policymaking body.
Apply	16. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	17. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Apply	18. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	19. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	20. Require training for members of policymaking bodies.

<b>TEXAS HISTORICAL COMMISSION (cont.)</b>	
<b>RECOMMENDATIONS</b>	<b>ACROSS-THE-BOARD PROVISIONS</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Not Applicable	3. Provide an analysis, on request, to individuals failing the examination.
Not Applicable	4. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	5. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	6. Authorize the staggered renewal of licenses.
Not Applicable	7. Authorize agencies to use a full range of penalties.
Not Applicable	8. Specify disciplinary hearing requirements.
Not Applicable	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	10. Require the policymaking body to adopt a system of continuing education.

ANTIQUITIES COMMITTEE	
RECOMMENDATIONS	ACROSS-THE-BOARD PROVISIONS
	<b>A. GENERAL</b>
Apply/Modify	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Update	3. Prohibit persons required to register as a lobbyist from acting as general counsel to the agency or policymaking body or serving as a member of the policymaking body.
Apply	4. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Update/Modify	5. Specify grounds for removal of a member of the policymaking body.
Not Applicable	6. Require agencies to prepare an annual financial report that meets the reporting requirements in the appropriations act.
Not Applicable	7. Require the agency to establish career ladders.
Not Applicable	8. Require a system of merit pay based on documented employee performance.
Update/Modify	9. Provide for notification and information to the public concerning agency activities.
Not Applicable	10. Require that all agency funds be placed in the treasury to ensure legislative review of agency expenditures through the appropriations process.
Update	11. Require information to be maintained on complaints.
Update	12. Require that all parties to written complaints be periodically informed in writing as to the status of the complaint.
Not Applicable	13. Require development of an E.E.O. policy.
Apply	14. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	15. Provide for public testimony at meetings of the policymaking body.
Apply	16. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Not Applicable	17. Require development of an accessibility plan and compliance with state and federal accessibility laws.
Apply	18. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	19. Require the agency to comply with the state's open meetings law and administrative procedures law.
Apply	20. Require training for members of policymaking bodies.

<b>ANTIQUITIES COMMITTEE (cont.)</b>	
<b>RECOMMENDATIONS</b>	<b>ACROSS-THE-BOARD PROVISIONS</b>
	<b>B. LICENSING</b>
Not Applicable	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Not Applicable	3. Provide an analysis, on request, to individuals failing the examination.
Not Applicable	4. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	5. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Not Applicable	6. Authorize the staggered renewal of licenses.
Not Applicable	7. Authorize agencies to use a full range of penalties.
Not Applicable	8. Specify disciplinary hearing requirements.
Not Applicable	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Not Applicable	10. Require the policymaking body to adopt a system of continuing education.

**TEXAS HISTORICAL COMMISSION  
ANTIQUITIES COMMITTEE**

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