

The logo for the Texas Sunset Advisory Commission is a black semi-circle with a white border. Inside the semi-circle, the words "Texas", "Sunset", "Advisory", and "Commission" are stacked vertically in a bold, white, serif font.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

*Office of Compact
for Education Commissioner for Texas*

A Staff Report
to the
Sunset Advisory Commission

1989

**Office of Compact for
Education Commissioner for Texas**

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January 1989

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Background and Focus

Creation and Powers

The compact for education is a cooperative agreement between 48 states, the District of Columbia, the Virgin Islands, Puerto Rico, and American Samoa. The compact establishes the Education Commission of the States. The purpose of the compact is to establish and maintain close cooperation and understanding among political, educational, and lay leaders at the state and local levels; provide a forum for discussion, development, and recommendation of public policy alternatives in the field of education; and provide a clearinghouse of information on matters relating to educational problems and how they are being met.

The compact was drafted and sent to the states for ratification in September 1965. A few months later the commission became official when the tenth state had approved the compact. The compact was created in response to concerns of the states. At that time, the states felt an increasing involvement of the federal government in education and wanted an agency through which state interests could be represented at the federal level. In addition, there was no central organization to gather educational data and statistics and to disseminate this information to all states. Since that time, the federal government's role in education has diminished, but states continue to face a wide range of educational issues that warrant discussion and study with other states.

To become a member of the compact, a state or jurisdiction must enact the compact legislation. Texas entered into the compact in 1967 with the passage of House Bill 755. To withdraw from the compact, the member state must repeal that statute. In addition, the withdrawal will not take effect until one year after the governor of the withdrawing state has given written notice of the withdrawal to the governors of all the member states or jurisdictions. To date, no state or jurisdiction has withdrawn from the compact.

Policy-making Structure

The Education Commission of the States is composed of seven commissioners from each member jurisdiction, with each commissioner having one vote. Generally, the seven members consist of the governor of the state, two legislators, and four appointees of the governor of which one is a head of a state agency or institution responsible for public education in the state. The states have the authority to modify the section of the compact which speaks to the state's representation. Approximately half of the members have altered this section. The Texas representation is composed of the governor or his designee and six members to be appointed by and serve at the pleasure of the governor. Of the appointees, one may be the head of a state agency or institution responsible for public education. Exhibit A lists the Texas compact commissioners. The full commission meets annually and the location of the meeting varies. The meetings rotate from a location on the east coast to a central location, to the west coast, to Denver, Colorado.

To conduct the business of the commission between annual meetings, the commission elects a steering committee. The steering committee is composed of one delegate from each member jurisdiction. The steering committee meets twice a year in addition to the annual meeting. In addition, the steering committee has three standing committees. The location of these meetings also varies.

Exhibit A

Texas Compact for Education Commissioners

1. William Clements
Governor
2. Winston Power
Superintendent
Highland Park Independent School District
Dallas, Texas
3. Bill Hammond
State Representative
Texas House of Representatives
Austin, Texas
4. Alton Bowen
Vice-President of Marketing and member of the board of directors
Citizens Bank
Bryan, Texas
5. Abner McCall
President Emeritus
Baylor University
Waco, Texas
6. Billy Reagan
Vice President
Harcourt, Brace and Jovanovich Publishers
Houston, Texas
7. John Townley
Director of Field Services
University of North Texas
Denton, Texas

Funding and Organization

The Education Commission of the States is headquartered in Denver, Colorado, and most of the activities are carried out from this office. The commission employs 51 full time permanent staff in Denver and hires part-time interns and consultants as necessary. In addition, there is a Washington office staffed by one employee as a liaison to the government and other organizations headquartered there.

The compact is funded through membership fees; grants from the federal government, foundations, or corporations; contracts with states and the federal government; and miscellaneous revenue from such items as the sale of publications. The total revenue for 1987 was approximately \$4.5 million. State membership fees accounted for approximately \$2.0 million or 46 percent of total revenue in 1987, while grants accounted for 28 percent and contracts accounted for 18 percent. The membership fees are based on a state's population and per capita income in relation to other states. Texas' share of the membership fees in 1987 was \$80,400 or approximately 4 percent of the total amount of fees collected. The Texas compact commissioners pay for their own travel and accommodations, either out of agency funds or personally. However, the Education Commission of the States pays for the expenses of the Texas steering committee member to attend all of the meetings.

Programs and Functions

To meet the purpose of the compact, the commission performs a variety of activities. These activities include producing and distributing publications, providing technical assistance, maintaining an information clearinghouse on educational topics, conducting research on various education issues, sponsoring seminars, and providing support to policy seminars conducted by member states.

The commission puts out a number of publications, such as the State Education Leader, free to compact commissioners. Many of the publications are quite lengthy and cover many topics. Some of these topics include: youth at risk, drop out programs, adult literacy, textbooks, school reforms, teaching and the teaching profession, and school finance. These publications are provided to the commissioners on request and are available to the public at a nominal cost.

The staff of the commission provides technical assistance to the member states. Technical assistance provided by the staff ranges from providing information compiled to specifically address a state's request, to assisting a state to set up a study or project, to actually conducting a study for the state. On-site technical assistance of less than a week is generally provided free; however, for longer periods of time a member would contract with the commission or the staff would put the member in touch with a consultant.

The staff maintains an information clearinghouse on a wide range of educational topics. Requests for information are frequent and the staff tries to provide an answer within 24 hours of the request. Printed information from the clearinghouse is generally provided free to the member states.

Research is conducted in a number of areas. The commissioners prioritize the topics and direct the staff as to which topics will be research projects. For example, two current research projects concern at-risk youth and the participation of minorities in

higher education. In addition to the major projects, the staff conduct small research projects in other areas. This research may be the result of a contract, technical assistance or questions asked by several states that the clearinghouse was unable to fully answer.

As another of its activities the commission sponsors seminars. In addition to the seminars conducted in conjunction with its annual meetings, two major seminars sponsored by the commission are the Advanced Legislative Program Services and the Large Scale Assessment Conference. The commission, in conjunction with the National Council of State Legislatures, sponsors Advanced Legislative Program Services (ALPS) seminars. These seminars are funded with state membership fees and by the Ford Foundation. A six-member advisory panel composed of representatives of both organizations sets the agenda for the seminars and the staff plan and carry out the seminars. These seminars generally cover one issue or topic. For example, in January 1988 an ALPS seminar focused on how to pay for college. Topics discussed at the seminar included programs in other states, such as tax exemptions and savings programs; and the current status of loan and grant programs nationwide. The Large Scale Assessment Conference, co-sponsored by the Education Commission of the States and the University of Colorado, focuses on statewide and large city or school district testing of students. The annual conference brings together the range of individuals and groups involved in testing from state administrators of testing programs to representatives of testing companies. The main topic of the conference varies from year to year to cover the various aspects of testing. These conferences are funded with state membership fees and conference registration fees.

In addition to the conferences sponsored by the Education Commission of the States, at least 35 states conduct State Education Policy Seminars (SEPS). These seminars are conducted by the states at their own initiative and funding. The seminars focus on topics of interest or concern to an individual state. The commission provides support to the member states that conduct SEPS through technical assistance and the provision of materials and workshops to the coordinators of these seminars.

Focus of Review

The review of the office of Compact for Education Commissioner for Texas focused on two areas: whether there was a continuing need for Texas' participation in the compact and whether there was adequate information provided to the legislature, state agencies and the public regarding Texas' participation in the compact.

The assessment of a continuing need for Texas' participation in the compact focused on Texas' use of services provided by the Education Commission of the States and the benefits derived from those services. The review concluded that:

- Texas regularly uses the services of the commission including the information clearinghouse and on-site technical assistance. In addition, Texans have attended the Advanced Legislative Program Services seminars and Large Scale Assessment Conferences.
- Texas has benefited from the services and information provided by the Education Commission of the States. The commission receives requests from the legislature, state agencies and public school districts for information on a range of educational topics.

- Texas has benefited from active participation in the Large Scale Assessment Conferences in designing and implementing our state's testing program.
- Texas is likely to continue to benefit from its participation in the compact. The state is currently in the planning stages of its first State Education Policy Seminar.

The review concluded that there is a continued need to participate in the compact of education, but there is no need to have a separate sunset date for the compact. The recommendation addressing this issue is located in the Findings and Recommendations section of the report.

The assessment of adequate information being provided regarding Texas' participation in the compact concluded that:

- The Education Commission of the States is not a state or federal agency and is not subject to either state or federal open meeting requirements. However, the Texas compact commissioners, as state officials, are subject to the Texas Open Meetings Act. The date, location, and time of the commission meetings are not being published in the Texas Register in compliance with the Open Meetings Act. The governor's office should be given responsibility for providing proper notification.
- The commission is required by the compact to send an annual report covering general compact activities to the governor and the legislature of each of the member states. In Texas, the compact commissioners do not submit an annual report that highlights the activities and expenditures of Texas' participation in the compact. This report could be provided as part of the governor's annual financial report, as explained later in the report.

Recommendations addressing these issues are located in the Findings and Recommendations section of the report.

During the review, questions concerning the "most favored nation" provisions in Texas and other states' statutes were raised. The questions focused on the influence these provisions have on textbooks. Most favored nation provisions generally have two basic aspects: 1) a state is prohibited from paying more for a textbook than any other state and 2) a publisher must reduce the price of his textbook in a state if he offers to sell the book at a lower price in another state. Since these provisions influence both states with and without most favored nation clauses, the Education Commission of the States appears to be an appropriate body to study this question. The recommendation addressing this issue is located in the Findings and Recommendations section of the report.

The recommendations contained in this report would have minimal fiscal impact.

Findings and Recommendations

ISSUE 1: Texas membership in the Compact for Education should be continued without a separate sunset date.

BACKGROUND

Texas has been a member of the compact for education since 1967. The current members are 48 states, the District of Columbia, American Samoa, Puerto Rico, and the Virgin Islands. The purpose of the compact is to establish and maintain close cooperation and understanding among political, educational, and lay leaders at the state and local levels; provide a forum for discussion, development, and recommendation of public policy alternatives in the field of education; and provide a clearinghouse of information on matters relating to educational problems and how they are being met. The compact establishes the Education Commission of the States. Each state or jurisdiction is represented on the commission by seven delegates. The governor is a delegate and the remaining six are appointed by and serve at the pleasure of the governor.

Texas' compact fees were \$85,200 in 1988, which accounted for approximately four percent of the total fees collected from all members. State fees to the commission comprise approximately 46 percent of their funding with funds from foundations and contracts also comprising approximately 46 percent. The remaining eight percent is obtained from various sources, such as the sale of publications.

A review of Texas' involvement in the compact indicated the following:

- ▶ As a service of the commission to the states, the commissioners regularly receive the State Education Leader, a quarterly review of issues and events in education and politics. In addition, the commissioners are notified of all the commission's publications, which are provided without additional charge upon request.
- ▶ Membership in the compact allows Texas to access information in the Education Commission of the States clearinghouse without additional charge. The clearinghouse staff receives a number of requests from Texas each year. Requests are received from local school districts, state agencies and the legislature.
- ▶ Texas has participated in the seminars sponsored by the commission.
 - In 1985 and 1986, the commission in conjunction with the National Conference of State Legislatures sponsored Advanced Legislative Program Services seminars that were held in Austin and San Antonio. The topic of the first seminar was early childhood education and day care and the second seminar's topic was education reform. Many Texas legislators attended these seminars.
 - Texas has been a regular participant in the Large Scale Assessment Conferences. Texas' testing program has benefited from our participation in these conferences.

- Texas is in the planning stages for holding its first State Education Policy Seminar (SEPS).
- ▶ The Education Commission of the States compiled and analyzed data for the Texas Select Committee for Education in 1988. The commission also provided the select committee with on-site technical assistance.
- ▶ The benefit of Texas' participation in the compact is monitored by the governor as a compact commissioner, the legislature through the appropriations process, and by a legislator who historically has been appointed as a compact commissioner by the governor. This degree of monitoring eliminates the need for a periodic sunset review.

PROBLEM

Texas' participation in the compact for education has been beneficial to the state and should be continued. The office of the Compact for Education Commissioner for Texas is subject to the Sunset Act and will be abolished effective September 1, 1989 if not continued through new legislation. Because of the current level of oversight for compact activities, continued review through the sunset process every 12 years is not necessary.

RECOMMENDATION

The statute should be amended to:

- continue Texas' participation in the compact for education; and
- eliminate the separate statutory sunset date for the office of the Compact for Education Commissioner for Texas.

This recommendation would continue the state's participation in the compact in order to benefit from the services provided to the state. The continued oversight of the governor and the legislature on the activities of the compact eliminates the need for a sunset review on a twelve year cycle.

FISCAL IMPACT

No additional expenditures are expected from the adoption of this recommendation. The governor's office pays the annual fees for the state's continued participation in the compact. The estimated annual fees for 1990 are \$93,000 and for 1991 are \$97,200.

ISSUE 2: The governor's office should post notice of the commission's meetings in the Texas Register.

BACKGROUND

As state officials, the Texas compact commissioners are subject to the Open Meetings Act. The Education Commission of the States itself is neither a state nor federal agency and is not subject to state or federal open meeting requirements.

The review indicated the following:

- ▶ The commission has procedures for notifying the commission members and the public of national compact meetings. The bylaws of the commission require the commissioners to be provided with 60 days written notice of the time and place of the commission meeting. The staff of the commission also publishes notice of the meetings in leading public education journals, and sends notice to all those individuals who have requested that they be informed of meetings.
- ▶ All of the meetings of the commission are open to the public and records of the proceedings are kept. In addition, a summary of the actions taken by the commission at the annual meeting and steering committee meetings are automatically sent to all the commissioners and others who attended the meeting.
- ▶ Publication in the Texas Register of the date, time, and location of commission meetings has not occurred.

PROBLEM

Notice of the annual meeting of the Education Commission of the States and the meetings of the steering committee are not provided in accordance with the state's notice requirements in the Open Meetings Act.

RECOMMENDATION

The statute should be amended to:

- require the governor's office to post notice of national compact meetings with the secretary of state's office for publication in the Texas Register.

This recommendation would provide the public with notice of the commission and steering committee meetings. The governor's office would be required to notify the secretary of state's office of all future meetings as required by the Open Meetings Act.

FISCAL IMPACT

There is no expected change in expenditure from the adoption of this recommendation.

ISSUE 3: An annual report on the activities and expenditures relating to Texas' participation in the compact for education should be included in the annual financial report of the governor's office.

BACKGROUND

Annual reports are generally required of most state agencies in Texas to provide information on their activities and expenditures to the legislature, other state agencies, and the public of Texas.

The review indicated the following:

- ▶ The Education Commission of the States is required to send a copy of the annual report on general compact activities to the legislature and the governor of each member state.
- ▶ The annual report sent to Texas does not provide information specific to Texas' participation in the compact.
- ▶ The Texas compact commissioners currently do not provide a separate report on the activities and expenditures relating to Texas' participation in the compact.
- ▶ The governor's office has the overall responsibility for maintaining Texas' membership in the compact in that the governor appoints Texas' commissioners and the governor's office pays Texas' compact fees.

PROBLEM

A report on Texas' participation in the compact is not systematically provided to the legislature, state agencies, and the public. Annual reports of state agency activities are commonly required.

RECOMMENDATION

The statute should be amended to:

- require the governor's office to report on the activities and expenditures relating to Texas' participation in the compact in its annual financial report.

This report should provide more information on compact activities. In addition, the report may increase the general awareness of Texas' participation in the compact and the availability of the services provided.

FISCAL IMPACT

Minimal cost would be involved to incorporate this information into the annual financial report of the governor's office.

Issue 4: The governor's office should pursue all avenues available to have the Education Commission of the States investigate the impact of "most favored nation" provisions on the price of textbooks in the states.

BACKGROUND

At least 25 states, including Texas, have "most favored nation" provisions in their statutes relating to textbooks. In addition, a number of states and cities include similar provisions in their contracts with publishers. These provisions generally have two basic aspects: 1) a state is prohibited from paying more for a textbook than any other state and 2) a publisher must reduce the price of his textbook in a state if he offers to sell the book at a lower price in another state.

Recently, several concerns have been raised relating to the influence of these provisions on Texas. First, these provisions appear to prevent Texas from receiving volume discounts on textbooks. Second, it is unclear that Texas actually receives lower prices as a result of these provisions. Finally, publishers frequently re-copyright their books and offer them as new editions, thereby circumventing the provisions. While it is possible for Texas to eliminate its most favored nation provision, this action will not necessarily eliminate the problems because of the provisions in other states' statutes and the influence they have on Texas.

The review indicated that:

- ▶ At the present time it is difficult to assess whether states do or do not benefit from the most favored nation provisions. In addition, it is uncertain if the provisions actually work in the way they were intended or if the provisions are frequently circumvented.
- ▶ The Education Commission of the States has procedures that member states can follow to have topics or projects considered for research by the commission staff.

PROBLEM

The impact of most favored nation provisions on the price of textbooks in Texas and other states is difficult to assess. The results of modifying or removing most favored nation provisions are unknown and should be analyzed.

RECOMMENDATION

As a management suggestion the following is recommended:

- the governor's office should pursue all avenues available to have the Education Commission of the States investigate the impact of most favored nation provisions on the price of textbooks and the effects of removing these provisions.

Implementation of this recommendation would give Texas a better basis for determining the appropriateness of its most favored nation provision and any changes in the law that might be needed.

FISCAL IMPACT

There is no change in expenditure expected from the adoption of this recommendation.