



**Texas  
Sunset  
Advisory  
Commission**

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**STAFF EVALUATION**

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***Texas Conservation Foundation***

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

**1986**

**TEXAS CONSERVATION FOUNDATION**

**October 1986**



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## SUMMARY

The Texas Conservation Foundation was established in 1969. It is responsible for providing financial support for state parks, natural resource conservation areas, and historical areas through its status as a state agency operating as a private, non-profit foundation. In order to accomplish its mandate, the foundation's primary responsibilities are to solicit donations of cash and property and to serve as an intermediary for negotiating the transfer of real estate from citizens to the state. Cash and property received by the foundation primarily benefit land managing agencies such as the Parks and Wildlife Department.

The Texas Conservation Foundation was reviewed in 1985, and the sunset staff recommended abolition. The legislature chose to continue the agency for two years and subjected it to a second review in 1986. This review analyzed the need for the foundation and found that, while the functions performed by the agency are important, they cannot be effectively carried out by a state agency. In order to preserve the foundation's functions, yet provide it with the flexibility needed for effective functioning, the following recommendation was adopted:

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### RECOMMENDATION

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- 1. A statute should be adopted that changes the status of the Texas Conservation Foundation from that of a state agency to that of a private, non-profit organization.**

The foundation has not been effective in performing its main responsibilities of fund raising and intermediating real estate transactions. The major cause of this ineffectiveness is its status as a state agency, which restricts its functioning in several areas of operations. In order to preserve the valuable service performed by TCF, yet provide it with the flexibility with which to perform its mandate, the agency should be abolished and a statute adopted which establishes TCF as a private, non-profit corporation.



**AGENCY EVALUATION**



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

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

### Organization and Objectives

The Texas Conservation Foundation was created in 1969 and is currently active. The foundation is governed by a six-member board composed of three public members and three ex-officio members--the director of the Texas Parks and Wildlife Department, the Texas Land Commissioner and the director of the Texas Historical Commission. Appointment of the three public members is divided among the governor, the lieutenant governor and the speaker of the house. Public members serve at the pleasure of the appointing official, or for staggered six-year terms. The governor has the responsibility for selecting the board chairman from the existing board membership. Operations of the foundation are conducted from an Austin office by a staff of two, the executive director and administrative technician, with an appropriation from general revenue of \$86,975 in fiscal year 1986.

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

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

The foundation came under sunset review in 1985. For reasons explained later in this report, the staff recommended abolishment of the foundation as a

state agency. However, the foundation was continued as a state agency by the legislature for a period of two years. Funding for the foundation was made along with an appropriations rider directing that the foundation raise at least one million dollars during each of the 1984-85 and 1986-87 bienniums. The foundation exceeded the minimum set by the legislature by raising a total of \$5,214,551.61 during the last two bienniums. While current statutory responsibilities of the agency are varied and include such mandates as collecting data and compiling an inventory of natural areas around the state, the agency's primary objective can be divided into two functions - fund raising and negotiating real property transactions for the benefit of state park, historical and natural resources conservation purposes.

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

## REVIEW OF OPERATIONS

### Evaluation of Programs

As previously mentioned, the Texas Conservation Foundation performs two primary activities, fund raising and negotiating real property transactions. A description of these activities follows, along with major findings and recommendations identified during the review.

#### Fund Raising

The foundation raises funds and accepts tax deductible donations of money and property to be used to benefit state parks, natural resource conservation areas and historic sites. This is accomplished by the foundation's executive director and board members through contact with prospective corporate and individual donors. Once money or property is donated to the foundation, the primary recipients of such gifts are the Parks and Wildlife Department, General Land Office, Texas Historical Commission and local park groups. From 1980 to 1984, the foundation raised about \$790,000 in total donations. A \$300,000 computer system represented the largest property donation made to the foundation. In fiscal years 1985 and 1986, total donations were \$5.2 million in cash and property. Three tracts of land on the San Jacinto Battleground valued at \$4.8 million constitute the largest donations made to the foundation. Almost all donations are solicited by the Foundation for special projects. For example, the agency has chosen to solicit cash donations for the acquisition of Bellaire Park in Houston, the restoration of the fire-damaged Senate wing, and litter clean up projects at several state lakes.

#### Intermediary for Real Property Transfer

The foundation negotiates transfers of real estate from individuals and corporations to the state. Current statutory authority allows the foundation to accept land donations, purchase property, exchange unsuitable land holdings for more useful land, and act as trustee for donations until they can be transferred to other land managing bodies. Examples of foundation real property transactions include transfer of the ten acre Steadman-Adair archeological site to the Texas Historical Commission and acquisition of land holdings in Bell and Chambers counties for eventual sale.

By designating an intermediary agent to perform both fund raising and negotiation of real estate transactions, a useful device is created for addressing statewide conservation needs. Fund raising functions involve seeking out

interested donors and offering tax deductions on contributions as an incentive to attract donors to support state conservation efforts.

The function of acting as a real estate negotiator benefits land managing agencies such as the Parks and Wildlife Department (P&WD) in several ways. Property that P&WD would like to obtain often becomes available at a time when funds are lacking and the intermediary has the capability of negotiating and moving quickly on such acquisitions. Property can then be held by the non-profit organization until P&WD can accept possession of it. This flexibility to accept donations, make purchases and trade lands provides several options for negotiating land transactions. Another benefit that can be provided by such an organization is its ability to accept donations of property unsuitable for park development and to sell it, with the money going to P&WD.

In 1984, the sunset staff review focused on two major issues: the need for a state agency to perform fund raising and real property negotiations and the agency's effectiveness in performing these activities. The review concluded that TCF had not effectively performed its functions and had, therefore, not proven to be a useful method for conservation efforts. Based on these findings, the review recommended that TCF be abolished as a state agency. The present review adopted the method employed by the 1984 review and found that the agency's track record has improved somewhat. It is still questionable, however, whether the foundation can perform with maximum effectiveness as a funded state agency.

**Changing the Texas Conservation Foundation from a State Agency to a Private Organization would Improve its Effectiveness.**

The Texas Conservation Foundation was initially established to address concerns about the lack of funding for park and natural resource areas and the apparent need for an agency to accept gifts of money or property for conservation purposes.

There is little question about the need for more money to finance acquisition of park and natural resource areas in the state. Of all 50 states, Texas ranks third in population, but ranks 41st in park acreage per capita. Soaring land prices and increasing population projections for the state will most likely cause this situation to worsen in the years ahead. It was hoped that the agency would also be a means by which landowners could donate money or fragile property to the state for conservation purposes, since the Parks and Wildlife Department (P&WD) was, at the time, using cash and property donations primarily for recreational purposes.

While the two functions the foundation was established to perform are designed to address these concerns, the agency has had limited success in either raising funds or in acting as an intermediary for property transfers.

The agency's total donations have increased from \$790,000 in the four years between 1980 and 1984 to approximately \$5.2 million in 1985 and 1986. Cash and personal property donated during 1985 and 1986 totaled \$376,000. The remainder of TCF's \$5.2 million in total donations during this period consists of real property in the San Jacinto Battleground area, donated by two donors, and valued at \$4.8 million.

Of the cash donated, less than \$1,000 has gone to the foundation's primary beneficiary, the P&WD. The TCF has spent \$15,000 for the benefit of the General Land Office, on an on-going project to compile a collection of historical maps. Other projects, such as lakeshore clean-up, Senate wing furnishings, and publications have used most of the money contributed.

In its role as an intermediary for the transfer of real estate to the state, the foundation continues to make limited use of its authority. Since 1980, the foundation has not made a direct property purchase and has not traded any land holding for more useful property. In 1984, TCF transferred one archeological site acquired prior to 1980 to the Texas Historical Commission and has four current land holdings valued at over \$65,000, two of which were acquired since 1980. The General Land Office, which was intended to be another beneficiary, has not received any property holdings as a result of TCF real estate transactions, but has received some financial benefit from minerals attached to the archeological site. The P&WD has received the two above-mentioned San Jacinto Battleground tracts from TCF, but has not received any other money or land from the sale of land transacted by the foundation.

The 1984 review identified two reasons for the agency's difficulties in attracting a significant number of donors and using its power to conduct land transactions to the fullest extent. The first, a lack of support by the agency's first board chairman, has been remedied by the appointment of an enthusiastic and dedicated chairman. Further, the governor has appointed a nine-member advisory board to help attract donors. The second problem, TCF's status as a state agency, continues to cause difficulties for the foundation. As discussed in the first review, performing fund raising and real property negotiations as a state agency seems to hinder TCF operations more than it helps. First, a state agency is subject to

several restrictions when handling funds and real estate. For example, investment ability is limited because foundation funds must be placed in the state treasury since they are state funds. Due to the requirement that agencies turn back all unused funds at the end of each fiscal year, the agency is hesitant to accept endowments because it cannot insure the donor that the legislature will permit TCF to hold over the endowment. Quick action on bargain land transactions is important in real estate acquisitions, but this process can be slowed down by weeks, pending TCF board approval and the necessity to go through state purchasing procedures. Lack of access to cash due to the need to go through state appropriation processes to get funds may also hinder the foundation's ability to make necessary land purchases.

Finally, donors may be reluctant to work with a state-administered foundation in negotiating a donation because the foundation is considered a public body. Since some individuals and corporations would not want the source of the contribution made known, they may be hesitant to deal with a public foundation. This reluctance could result in the loss of some donations to the foundation.

The foundation cannot easily do other things that are routinely done by private organizations when soliciting contributions. It cannot entertain prospective donors or even buy them a meal. Such techniques are common to successful fund raising efforts in the private sector, but are considered questionable practices by a state agency expending state funds.

Because of the constraints placed on the foundation due to its status as a state agency and the lack of flexibility that entails, the Texas Conservation Foundation should be abolished as a state agency. The foundation's performance has not improved to a degree sufficient to negate the previous review's conclusion given the current limitations.

While the foundation may not function with maximum effectiveness as a state agency, the need for the foundation's functions still exists. In some cases, another state agency could perform the function. For example, the San Jacinto Battleground tracts could have been accepted directly by the P&WD. Where the state cannot act, these functions can best be performed in the private sector by a charitable foundation having more flexibility to carry out real estate transactions and aggressively recruit donations. The following recommendation is aimed at accomplishing this goal:

- **A statute should be adopted that changes the status of the Texas Conservation Foundation from that of a state agency to that of a private, non-profit organization.**

There are a number of advantages in carrying out TCF functions through a private organization. Advantages of using the private sector include: quicker land acquisition procedures for good deals that arise; confidentiality for contributions made; ability to aggressively recruit donors by offering entertainment and recognition incentives; and greater cash investment ability. Such a private sector foundation could be established through the secretary of state's office under articles of incorporation as a private, non-profit corporation. In order to continue to attract tax deductible donations, non-profit corporation status could also be obtained from the Internal Revenue Service. The foundation could continue to be operated by a board of directors, along with an appointed advisory committee, with policies established by the board in a set of administrative by-laws. Finally, funding for such a private sector corporation would need to come from donations provided by the private sector.

There are many examples of successful private conservation groups in Texas, as well as around the country. Groups such as the Texas chapter of the Nature Conservancy, the Trust for Public Land, the Texas Historical Foundation, and many small conservation groups, all provide private support for conservation efforts in the state. Most of these groups would agree that there is room for more organizations to perform the same function because of the size of the job to be done. Nationally, the California State Park Foundation serves as somewhat of a model for the establishment of new private support foundations designed to directly benefit state parks, historical sites and natural area land acquisition efforts. This foundation is operated by a board of directors and a set of procedural by-laws which outline foundation policies. Although it accepts no state appropriations, since it began 15 years ago, over \$55 million in cash and property donations have been raised. Such foundations have sprung up in over one-fifth of the states and many are patterned after the California example.



Research indicates that the state could require the establishment of the TCF as a private organization in statute. Legislative authorization has a number of advantages. It gives the organization additional status as a state endorsed entity -- a position which helps in securing donations. Legislative authorization also gives the state some ability to shape the goals and structure of the private organization to the best benefit of the state, and helps ensure the establishment of the organization.

## **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 are denoted in abbreviated chart form.

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**TEXAS CONSERVATION FOUNDATION**

To be Applied if Agency is Maintained

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

\*Already in statute or required.

**Texas Conservation Foundation**  
(Continued)

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

