Texas Department of Commerce

April 1992

Table of Contents

Table of Contents

Findings and Recommendations (cont.)

SUMMARY

SUMMARY

The Texas Department of Commerce (TDOC) is subject to the Sunset Act and will be automatically abolished unless statutorily continued by the 73rd Legislature in 1993. As required by statute, the review of the department included a determination of whether the department fills a real and continuing need; whether there were benefits to be gained by reorganizing the department; and finally, if current statutory policies should be changed to improve the efficiency and effectiveness of the department.

Need for Agency

The review concluded that the department should be continued for an eight year period and reviewed again in 2001 instead of the standard 12-year review period. This will allow the agency to be reviewed together with other agencies with similar functions. The functions currently assigned to the TDOC are appropriate and the state should continue to perform the functions. While the review determined a need to continue the department, several changes were identified that could improve state operations. The department's responsibilities relating to promoting state contracting with disadvantaged businesses should be transferred to the General Services Commission to simplify and consolidate state procedures. In addition, the review indicated that one of the department's current activities should be funded totally by user fees. With these considerations, the review concluded that the department should be continued.

Reorganization Alternatives

As a part of the review, various reorganizations were considered to determine if all or part of the department's functions should be transferred to other agencies. No substantial benefits could be documented and therefore there are no recommendations to reorganize the agency.

Policymaking Body

- The policymaking body of the department should be given clear responsibility for rulemaking for department programs.

Overall Administration

A review of the statutory policies concerning the agency's work force, administration, and timeframes did not produce any issues and therefore no recommendations.

Evaluation of Programs

- The operation of the department's programs should be improved by:
  - -- requiring that the department's direct technical assistance and training functions be fully supported by user fees and not from general revenue;

-- changing the rural loan guarantee program so that more loans can be guaranteed within existing resources;

-- simplifying the state's process to promote the number of disadvantaged businesses doing business with the state by transferring the TDOC's role in the process to other agencies;

-- continuing the authority for the state to use the enterprise zone program but setting the amount of state tax incentives authorized for use in the zones through the appropriations process;

-- clarifying the policy board's responsibility to make rules for the administration of the JTPA program;

-- changing the requirements of the work force development incentive program to increase services within existing resources; and

-- authorizing the department to generate additional revenue by selling advertising space in its tourism publications.

FISCAL IMPACT

Preliminary estimates indicate that, overall, the recommendations would result in additional funds available to the general revenue fund. Eliminating general revenue funding for direct assistance to business and authorizing the department to sell advertising in travel promotion literature is expected to result in additional revenue of $935,000 annually. One recommendation will increase cost to the state. The recommendation to simplify and consolidate the disadvantaged business certification process is anticipated to increase the cost for this program by $2,000 each year. While overall savings will result as work at each state agency is reduced, the comptroller's office will have new responsibilities that require funding.

Fiscal Year	Net Gain to General Revenue Fund
1994	$ 933,000
1995	$ 933,000
1996	$ 933,000
1997	$ 933,000
1998	$ 933,000

BACKGROUND

Creation and Powers

The Texas Department of Commerce (TDOC) was created by the 70th Legislature in 1987 with the enactment of Chapter 481, Government Code. The purpose of the TDOC is to create new jobs and improve the economic prosperity of the state. The department does this by attracting new businesses and encouraging the growth of existing businesses, working with local entities to improve the economic prosperity of their communities, promoting Texas as a travel destination, and improving the skill level of the Texas work force.

In Texas, state-level economic development activities date back to 1959. That year, the legislature expanded the role of the Texas Industrial Commission (TIC) in response to a constitutional amendment authorizing state economic development activities to include business recruitment and trade promotion. Four years later, the legislature established the Texas Tourist Development Agency and provided the first state funding for marketing Texas as a travel destination to people outside the state. The two agencies developed their programs over the next two decades with the TIC establishing the state's first foreign office in 1971 and the state's first rural business loan program in 1973. In 1983, the Sunset Commission reviewed the activities of the TIC. At that time, the TIC operated many of the same programs that exist under the business development division of the Texas Department of Commerce including: business recruitment and retention, trade promotion and a rural industrial loan program. After the sunset review, the legislature changed the name of the TIC to the Texas Economic Development Commission and added special requirements to increase public input in agency operations. Five years later, the legislature abolished both the Texas Economic Development Commission and the Texas Tourist Development Agency and transferred their functions to become the core activities of the newly created Texas Department of Commerce. The legislature also transferred two major programs from the Texas Department of Community Affairs into the TDOC. These programs included the federally-funded Community Development Block Grant and Job Training Partnership Act programs.

The legislature expanded the department's programs in 1989. Recognizing the usefulness of the Mexico City office in foreign trade promotion, the legislature required the TDOC to also establish foreign offices on the Pacific Rim and in Europe. That same session, the legislature also established several new loan programs to provide financing to businesses for exporting and product development.

The following session, the 72nd Legislature changed the department to a cabinet-level agency by authorizing the governor to appoint the executive director. That same year, the legislature also transferred several programs out of the TDOC. The Community Development Block Grant Program was transferred to the newly created Texas Department of Housing and Community Affairs, and the Texas Film Commission and Texas Music Commission were transferred to the governor's office.

POLICYMAKING BODY

The TDOC policy board is composed of nine members. Six board members are public members appointed by the governor with the advice and consent of the senate, and three are ex officio voting members. The three ex officio voting members are the chairpersons of the State Job Training Coordinating Council, the International Trade Commission, and the Texas-Mexico Authority. The appointed members of the board serve six-year staggered terms. The statute requires the governor to give geographical representation to all regions of the state when making board appointments. The governor designates the chairperson of the board. The duties of the board are to:

- develop long-range plans for the future goals and needs of the department;
- establish policy for the department's programs;
- approve and issue bonds;
- review and comment on the department's budget; and
- prepare an annual report of the department's activities for the governor and the legislature.

As mentioned above, the 72nd Legislature changed the decision-making structure of the department to resemble a cabinet-type agency. A direct line of financial accountability was established between the governor and department management through three key changes: authorizing the governor to appoint the department director; transferring final budget authority from the board to the director; and requiring the department's internal auditor to report directly to the governor. The role of the board was also modified from that of a "governing board" to one of a "policy board." This new role shifted the board's focus from governing the administration of programs to providing policy direction for the department.

Four governor-appointed advisory bodies are administratively attached to the department and have broader powers than a traditional agency advisory committee. The State Job Training Coordinating Council was created in 1982 under federal requirements and advises the governor and the department in the operations of the Job Training Partnership Act program. The Texas Literacy Council and the Interagency Work Group were established in 1989 to advise the legislature and the major state agencies in the provision of literacy services. Two other advisory bodies were created in 1991 to advise the legislature and the department on trade issues. The Texas-Mexico Authority advises on trade with Mexico and the International Trade Commission advises on international trade issues. Both committees have been appointed and the chairpersons of both boards also serve as ex officio voting members of the TDOC board.

State statute establishes two advisory committees to assist the department in developing policy and reviewing applications for its loan programs. These are the Product Commercialization Advisory Board and the Product Development Advisory Board. The department is also authorized to establish other advisory committees to assist in the operation of its programs. The department has established by rule the Texas Exporter Loan Review Committee and the Texas Rural Development Loan Review Committee.

The legislature authorizes the department to establish non-profit corporations to help the department in its economic development efforts. The department uses the non-profit corporations to solicit funds and finance activities for which state funds are not primarily available. Four of the five non-profit corporations currently used by the department are established in statute, including: the Texas Economic Development Corporation, the Statewide Certified Development Corporation, the Texas Small Business Industrial Development Corporation and the Texas Major Employer Development Corporation. The department has assisted in establishing one additional organization, the Quality Texas Foundation, to solicit funds and administer awards for the new department-sponsored Quality Texas program.

FUNDING AND ORGANIZATION

In fiscal year 1991, the department's expenditures totaled $317.3 million. These expenditures were in the following program areas: central administration, business development, work force development, tourism, and community development block grant. Exhibit A shows the department's expenditures by program for fiscal year 1991. While the Community Development Block Grant (CDBG) program accounted for a significant portion of the department's expenditures in 1991, the 72nd Legislature transferred this program to the Texas Department of Housing and Community Affairs. The TDOC currently operates only a small portion of the CDBG program, the Texas Capital Fund, through an interagency contract with the Texas Department of Housing and Community Affairs. Exhibit B shows the expenditures for the department for the four fiscal years since its creation.

Exhibit A
Expenditures
Texas Department of Commerce
FY 1991

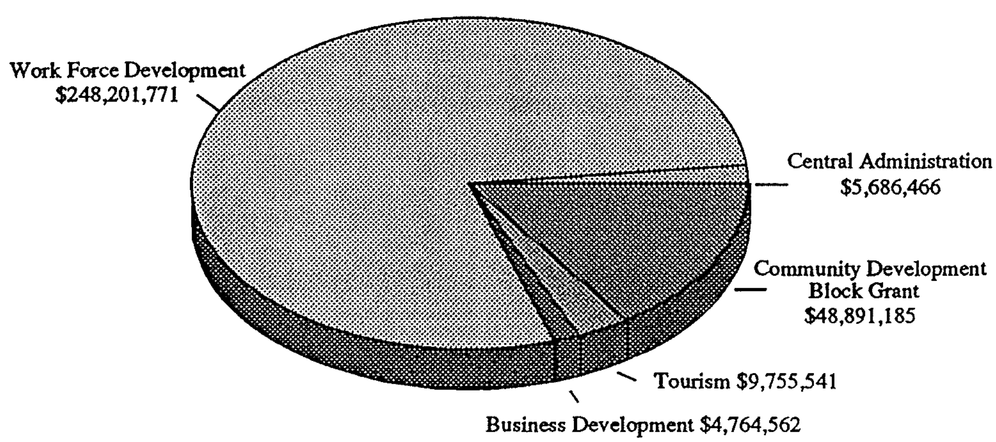
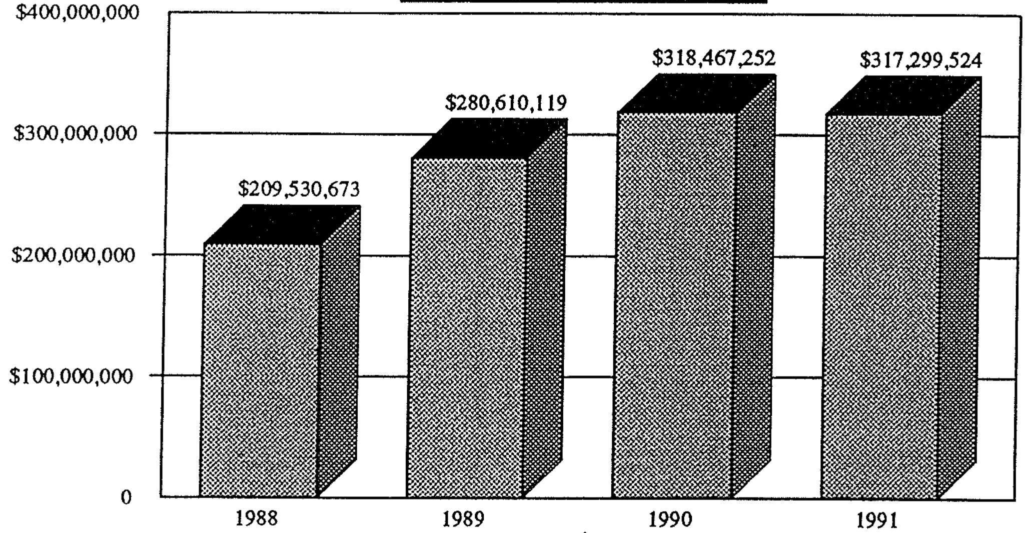
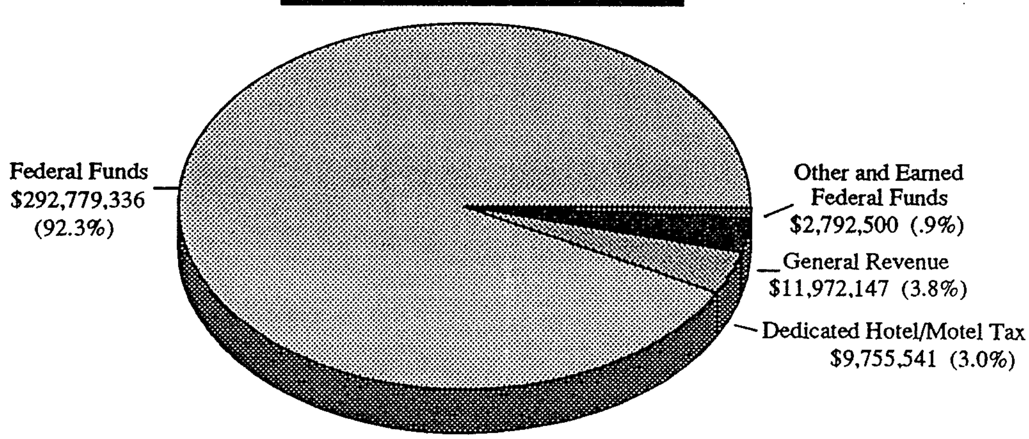


Exhibit B
Expenditures
Texas Department of Commerce
FY 1988 - FY 1991



Revenue supporting the TDOC's expenditures comes from five sources. The largest portion of the department's revenue, approximately 92 percent in 1991, comes from federal funds that fully support the operation of the Job Training Partnership Act (JTPA) program. The next largest source of revenue is a dedicated portion of the state hotel/motel occupancy tax. One-half cent of this six-cent tax on hotel and motel charges is statutorily dedicated to the TDOC's tourism promotion function. The third major funding source is general revenue. General revenue supports the business development activities and administration of the department. In addition, the department receives a small portion of its funding through earned federal funds and user fees. Exhibit C shows the department's revenues by source for fiscal year 1991.

Exhibit C
Sources of Revenues
Texas Department of Commerce
FY 1991



The TDOC employed approximately 374.2 full-time equivalent (FTE) employees in fiscal year 1991. In response to a legislative requirement that all executive branch agencies reduce staff, the department's current work force totals only 321.1 FTE employees.

All staff on the TDOC payroll work from the central office in Austin with the exception of one employee who is stationed at the Texas Office of State-Federal Relations in Washington, D.C. The department has no field offices in the state. However in 1991, it operated four foreign offices in Mexico City, Mexico; Taipei, Taiwan; Tokyo, Japan; and Frankfurt, Germany. In addition, the TDOC contracted for representatives for Texas in Monterrey, Mexico; Seoul, South Korea; Brussels, Belgium; and Paris, France. These operations were carried out through independent contractors with the TDOC providing oversight. In fiscal year 1991, the total budget for the foreign offices was approximately $1.2 million.

The TDOC provides all of its work force development services and some of its business development services through existing local agencies. The federally-funded JTPA program uses 35 local private industry councils that plan and provide the services. In 1991, the TDOC distributed $235.6 million of federal funds to these local service providers. The department uses a variety of private and public organizations to distribute information about its business development services. These organizations include the 56 small business development centers in Texas that are administered by public universities with matching funds from the federal Small Business Administration; local chambers of commerce; economic development organizations; and public utility companies. In March 1992, the department's 321.1 FTE work force is generally allocated to department functions as follows: 103.5 FTEs for central administration; 126 FTEs for work force development programs; 63.6 FTEs for business development programs; and 28 FTEs for tourism promotion programs. Exhibit D is the current organizational chart for the department. Exhibit E analyzes the makeup of the department's work force.

Exhibit D
ORGANIZATIONAL CHART
Texas Department of Commerce

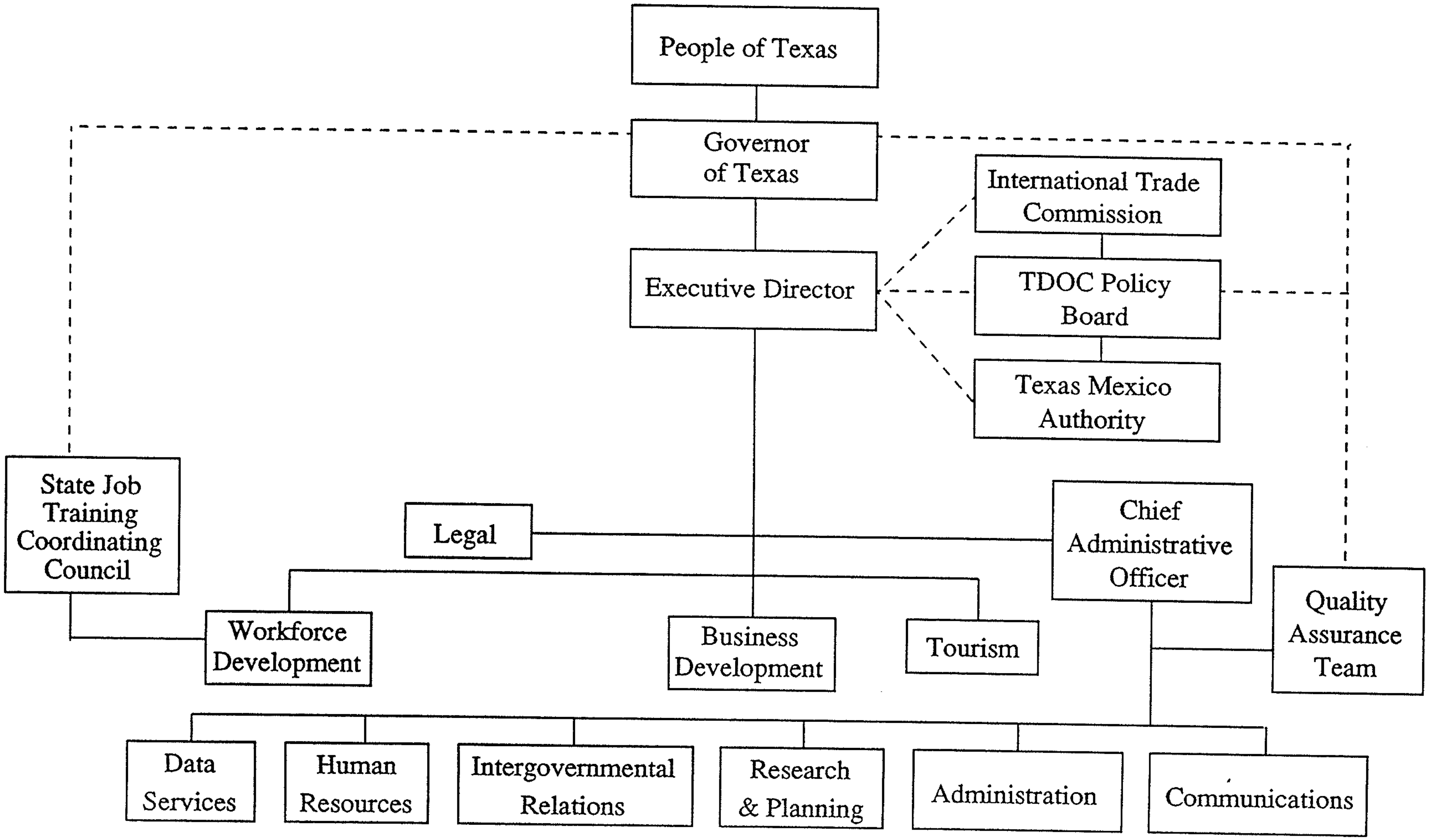


Exhibit E

PERCENTAGE OF MINORITIES IN AGENCY'S WORK FORCE

Texas Department of Commerce

Job Category	1987 Total Work Force 89		1991 Total Work Force 315		1992-1993 Appropriations Act Statewide Goal for Minority Work Force Representation
	Total Positions	% Minority	Total Positions	% Minority	
Administrators	25	24.0%	80	37.5%	14%
Professionals	23	13.0%	98	21.4%	18%
Technicians	21	14.3%	84	29.8%	25%
Protective Service	0	0	0	0	48%
Para-Professionals	0	0	0	0	25%
Administrative Support	20	20.0%	53	58.5%	25%
Skilled Craft	0	0	0	0	29%
Service/Maintenance	0	0	0	0	52%

PROGRAMS AND FUNCTIONS

The Texas Department of Commerce operates a variety of programs to promote the state's economic development. These programs can be grouped into three substantive areas with a division dedicated to each broad area. The business development division administers a variety of functions aimed directly at bringing new businesses to Texas and helping existing businesses grow. The work force development division operates programs to develop and train the state's work force. The tourism division promotes tourism to the state. Programs of these divisions are described below, along with a final section outlining the department's major administrative and support functions.

Business Development Division

The department's business development division contains the main programs the TDOC uses to improve the economic prosperity of the state and create new jobs. The division's activities generally fall into three types of programs: programs that recruit new businesses to Texas, programs that provide services to help businesses stay in Texas and grow, and programs that help communities prosper.

Within the last year, the focus and size of this division has changed. In 1991, the legislature changed the focus of the TDOC's business assistance activities by transferring the federally-funded Community Development Block Grant (CDBG) Program to the Texas Department of Housing and Community Affairs. That program distributed $47.8 million dollars to help communities prosper. The TDOC still provides some assistance to communities and continues to administer a small part of the program, the Texas Capital Fund. While in 1991 the division expended $5.8 million and employed a staff of 109.2 FTEs, the division's budget after the transfer is $4.9 million with a budgeted staff of 62.9 FTEs. A functional description of the department's current business development activities is provided below.

Recruitment of New Business for Texas

Recruiting new business for the state is one way the TDOC creates new jobs. All recruitment efforts require working with businesses outside the state. The TDOC uses four basic approaches to recruit new business: maintaining foreign offices in strategic foreign markets, marketing at trade shows, providing trade leads to interested businesses, and participating in marketing trips with other economic development organizations.

Nearly all states in the United States operate foreign offices for trade promotion. The department maintains offices in three foreign countries to help identify trade and relocation prospects in strategic foreign markets. Texas currently has offices located in Mexico City, Mexico; Taipei, Taiwan; and Frankfurt, Germany. The main responsibilities of these offices include recruiting foreign investment, promoting trade and tourism, and recruiting businesses to relocate in Texas. The second strategy the TDOC uses to recruit business is participation in trade shows throughout the United States and the world. The TDOC uses this opportunity not only to promote Texas in general, but also to represent specific communities. The TDOC also provides an affordable way for Texas businesses and communities to participate personally in shows by selling sections of the Texas booth. In fiscal year 1991, the TDOC staff represented 51 communities on marketing trips, represented the state in 21 trade shows, took 162 businesses to these shows, identified 2,888 trade leads, identified 246 businesses interested in relocating to Texas and recruited 23 businesses to expand or relocate in Texas.

While recruiting business is a major activity of the department, it is only one part of the work necessary to turn opportunities into new jobs. The important next step is matching trade or relocation leads with the businesses or communities that can take advantage of these opportunities. The TDOC uses a network of "export assistance centers" composed of local economic development organizations to distribute trade leads to businesses through out the state. These export assistance centers also provide technical assistance to the businesses in their area on various aspects of exporting. A similar statewide network of "allies" is used by the department to match businesses considering relocating in Texas with communities that can meet the businesses needs. The network of allies consists of local or regional economic development entities, predominately public utility companies, that provide information about their communities and any other assistance the business requests. The department also provides information directly to those businesses considering Texas as a relocation site. In fiscal year 1991, the TDOC distributed 2,888 trade leads through the export assistance centers. The department reports that an average approximately 15 percent of businesses assisted by the department export after being assisted. Also in fiscal year 1991, the department reports that their efforts led to 23 businesses announcing plans to open plants in Texas.

Assistance to Existing Texas Businesses

In addition to getting new business prospects for Texas, the TDOC offers programs that help existing businesses stay in Texas and grow. These programs are of two general types: those that provide business financing assistance and those that provide technical assistance.

The department offers a variety of programs to help businesses with financing. Two loan guarantee programs that are currently operating constitute an important part of the financial assistance available through the TDOC. The purpose of a loan guarantee program is to make it easier for a business to obtain financing through a private lending institution. The program promises the institution that it will pay, or "guarantee", up to a set percent of the amount of the loan outstanding if the borrower defaults. Banks are thus insured against total losses.

The TDOC's loan guarantee programs serve businesses that have been refused loans by commercial lending institutions. The programs guarantee up to 90 percent of a loan's amount. The legislature established the rural industrial loan program in 1973 to promote industrial development in rural areas of the state. In 1989, the legislature changed the program to a guaranty and loan program. The program guarantees loans of up to $350,000 for a maximum term of 15 years. Currently, the program is fully obligated on 21 loans with the loans and guarantees totaling $4 million. The exporters loan guarantee program assists businesses that need to borrow to fulfill an export contract. This type of borrowing need is frequently short-term, and as a result loans guaranteed have a maximum term of one year. In 1991, the exporters loan guarantee program provided guarantees on five loans for a total value of $1.3 million. The final finance program currently active is the Product Commercialization Fund. The legislature established this fund in 1989 to provide direct loans to businesses to bring products to market. The department is in the process of approving four applicants for loans totaling $429,000.

These state finance programs operate through revolving funds that were originally created with general revenue appropriations. Other state funding sources are available to the TDOC to finance some programs. The TDOC has the general authority to issue revenue bonds to support its programs. No cap exists on the amount of revenue bonds the department can issue. The department is currently working with the Bond Review Board to receive approval to sell revenue bonds to establish new finance programs. The department also has specific authority to issue general obligation bonds for two programs. The department has not started these programs due to restrictions in the state appropriations bill prohibiting the department from using general revenue to pay off any general obligation bonds. Currently, the department is exploring several ideas that would allow it to utilize the general obligation bond authority without using general revenue funds.

The department administers four federally-funded financial assistance programs that assist businesses. These four programs are part of a set of programs administered by the department under the Texas Capital Fund. The Texas Capital Fund is one portion of the federally-funded Community Development Block Grant (CDBG) program which was transferred to the Texas Department of Housing and Community Affairs (TDHCA) in 1991. However, the TDOC continues to administer the Texas Capital Fund under an interagency contract with the TDHCA. Under the contract agreement, the department receives, reviews and processes the requests for assistance under the Texas Capital Fund and makes funding recommendations to the Texas Department of Housing and Community Affairs. The TDHCA decides which applications will be funded. The programs under the Texas Capital Fund are generally targeted to businesses in small cities and rural counties. These programs include a small business incubator program and loan programs that assist small and minority firms and firms impacted by defense-related cutbacks. In fiscal year 1991, the loan programs made six new loans of $1.5 million to businesses in Texas. The small business incubator program is a new component of the Texas Capital Fund and has not been fully implemented. The program was created to provide grants for the creation or expansion of small business incubators in Texas.

Apart from financial assistance, the department also provides training and technical assistance to individual businesses. The TDOC staff help businesses develop feasible financing structures for both domestic and exporting opportunities, identify new markets for their products, apply for federal Small Business Administration and Export-Import Bank of the United States loans and loan guarantees, and incorporate total quality management principles in their operations. This assistance is typically provided after business plans have been developed by a small business development center or an outside consultant. In addition, the TDOC manages the state's disadvantaged business enterprise (DBE) certification program, and publishes and distributes to state agencies a directory of such companies. The purpose of the program is to ensure that minority and woman-owned businesses receive an equitable share of state business. In fiscal year 1991, the TDOC staff provided individual technical assistance to 9,567 businesses, conducted 99 training seminars with a total of approximately 4,075 in attendance and certified 901 DBEs.

Assistance to Communities

The TDOC also works with communities in a variety of ways. The main tool the TDOC uses to help communities grow is the enterprise zone program. This program provides tax incentives for businesses to locate and create new jobs in economically depressed areas. Communities designate enterprise zones in depressed areas and may provide businesses additional services and local tax abatements as an incentive for them to locate in those areas and employ area residents. State sales and franchise taxes can also be rebated. In the 1992-1993 biennium, the TDOC is authorized to grant about $27 million in tax rebates to be paid over five years. In 1991, the TDOC approved 27 new zones raising the total zones administered to 98. Additionally, 10 enterprise projects were designated that resulted in the commitment to create 3,314 new permanent jobs and provided businesses about $6.6 million in potential state tax rebates.

The department also has a statutory requirement to provide oversight of the issuance of local industrial revenue bonds. Industrial revenue bonds are generally tax-exempt and can be used to fund a variety of projects including industrial and manufacturing facilities, transportation facilities such as airports, solid waste disposal facilities, and warehouse facilities. State law authorizes non-profit corporations to issue industrial revenue bonds on behalf of local governments for eligible projects. The act places the Texas Department of Commerce and the attorney general in an oversight role. The department and attorney general review and approve each industrial revenue bond issue. Recent modifications to the act allow certain cities to issue industrial revenue bonds without approval of the department. Currently, 66 cities are exempt from the department's review. In addition to the state law, the industrial revenue bonds must also comply with certain federal laws to maintain their tax-exempt status. For fiscal year 1991, tax-exempt industrial revenue bonds issued in Texas totaled $120 million.

The department also assists communities through the Texas Capital Fund, administered on contract with the Texas Department of Housing and Community Affairs. The programs that assist communities are the infrastructure grant and real estate development grant programs. The infrastructure grant and real estate development programs generally assist small cities and rural counties. The infrastructure grant program assists with the financing of infrastructure such as water and wastewater facilities, public road construction, and electric or natural gas service. In fiscal year 1991, grants totaling $4.7 million were awarded to 11 communities. A new program starting this year encourages businesses to relocate to or expand within a community by guaranteeing real estate development loans to purchase or rehabilitate property in the community.

The department has a special program to help rural communities. The rural community development program provides economic development technical assistance and training to rural communities. The program helps communities identify economic development strategies and opportunities in their area and potential funding sources. The program's primary purpose is to assist communities develop economic development plans.

Work Force Development Division

The work force development division is by far the largest of the department's divisions, accounting for approximately 94 percent of the department's revenues in 1991. The goal of this division is to develop a quality work force in Texas by improving job skills. This division runs three programs. They are the federally-funded Job Training Partnership Act (JTPA) program, the state-funded work force development incentive program, and the literacy assistance program. This last program is primarily funded through the federal JTPA allocation. A description of the three programs and their operation follows.

Job Training Partnership Act Program

The TDOC administers the federally funded Job Training Partnership Act (JTPA) program in Texas. The JTPA was enacted by the federal government in 1982 to provide job skills training to people who face serious barriers to employment. The forerunner to the JTPA was the federal Comprehensive Employment and Training Act (CETA) program.

The federal government designed the JTPA program as a partnership among federal, state, and local governments, and private industry. The federal government provides funding; the state government provides general policy guidance, fund distribution, and oversight; and local governments and businesses provide policy direction and direct services. The U.S. Department of Labor is responsible for interpreting federal policy and monitoring state implementation of the act. The federal government allocates funds to the state based on a formula that measures employment and other economic factors.

Federal law gives the governor the responsibility for the JTPA program within the state. The governor is responsible for submitting a state plan of operations, designating an agency to administer the program, and establishing goals and objectives for the program. Federal law also requires the governor to establish a policy advisory committee called the State Job Training Coordinating Council (SJTCC).

Federal law sets out broad requirements for the composition and duties of the SJTCC. The composition must include representation from business, state and local government, educational institutions, organized labor, community-based organizations, and the general public. The main duty of the SJTCC is to recommend to the governor plans for JTPA program service delivery, coordination, and resource allocation. The SJTCC is also charged with monitoring the TDOC's administration of the program. The Texas SJTCC has 40 members all of whom are appointed by and subject to removal by the governor. In 1991, the SJTCC expended $120,500. The SJTCC staff and budget are allocated from federal JTPA funds appropriated to the TDOC.

The TDOC is designated as the state agency responsible for administering the JTPA program. In this role, the TDOC contracts with and allocates funds to local grant recipients designated in each service delivery area, provides them with technical assistance, and monitors compliance with federal requirements and state policies.

Local implementation of the JTPA program is also defined by the federal law. The federal law requires the state to be divided into service delivery areas by the governor based on requirements of the act and recommendations by the SJTCC. Texas has been divided into 35 service delivery areas. Each service delivery area has at least one chief elected official, generally a mayor or county judge, who is responsible for forming a "private industry council" that serves as the policy body for the service delivery area. The federal law requires the members of the private industry council to include a majority of local business people, as well as local education providers and related service providers. State law further requires the regional administrator of the Department of Human Services to serve on the council. The private industry council is responsible for developing local training priorities and policies; selecting through a local partnership agreement with the chief elected officials the entities to provide the financial oversight and administer the training services, and monitoring the local services. Currently, 34 private industry councils in Texas provide policy guidance and oversee activities under their job training plans for 35 service delivery areas (one council is responsible for two service delivery areas). In addition, 13 of the private industry councils have designated the local council of government as the entity to administer the training services.

In 1987, the legislature transferred the JTPA program from Texas Department of Community Affairs to the TDOC. In addition to this transfer, the Texas Legislature also amended the state statute implementing the JTPA program to strengthen the legislature's role in the program. The legislature established an additional "legislative" monitoring committee to oversee the administration of the JTPA program and clarified that there should be consultation between the governor and the state legislature in implementing the JTPA program. Members of the joint committee are appointed by the lieutenant governor and the speaker of the house of representatives. The committee is charged with making recommendations for legislative actions to be taken regarding the JTPA program. The legislature recently amended the state JTPA law to incorporate changes recommended by this committee, including requiring conflict-of-interest provisions for members of the local private industry councils and requiring the councils to submit annual reports to the committee.

During fiscal year 1991, the JTPA program used the $248 million in federal funds to fund training for 130,236 Texans. This training focused on the development of skills that are transferable to many occupations and allow the individual to access employment and earnings not previously available. This training can be divided into three broad categories: basic education training, work readiness training and job skills training. In 1991, 39 percent of the participants received basic education training; 41 percent received work readiness training; and 49 percent received job skills training. The job skills training focused on many occupational categories including: clerical occupations (38 percent); professional, technical and managerial occupations (20 percent); and service occupations (17 percent). During fiscal year 1991, approximately 80 percent or 103,660 trainees finished training. Exhibit 1 on page 65 provides additional detailed information about the types of training. The TDOC reports that of the 64,000 that received job skills training, 53 percent got a job. Approximately 14,600 obtained jobs for which they were trained, 9,200 found jobs in fields related to the training they received and another 10,100 found jobs not related to the training.

Work Force Development Incentive Program

The department helps Texas businesses pay for training new and existing employees through the work force incentive program. The training is tailored to the company's needs and equipment and is intended to help create or retain jobs.

In 1973, the state established the industrial start-up program to provide customized industrial training. The program was administered through the Texas Education Agency (TEA). The program used the public schools to prepare workers for jobs available in incoming industries. The TEA and the Texas Industrial Commission were required to work together to establish and refine the program.

In 1989, the legislature established the work force development incentive program at the TDOC modeled after the TEA program. Also in 1989, the industrial start-up program was abolished by the legislature. The department is required to consult with TEA in the development of the work force development incentive program. The work force development incentive program provides funding for pre-employment training and retrains current employees. The department funds pre-employment training for those individuals that the business has agreed to hire if they complete the training. If the business does not hire any of the trainees, it must reimburse the program for the costs associated with those individuals.

In practice, there are two types of companies that use the program: those that plan to create new jobs in Texas but need trained employees, and those that face laying off employees unless they can retrain their existing employees in new technologies. A company applies to the TDOC for the state-subsidized training. The company specifies the types of training needed and the number of jobs that will be created or retained as a result of the training. Training is often tailored to specific equipment or manufacturing practices. The TDOC works with the company and local public colleges and technical institutes to develop the training. The TDOC pays the local education provider for the training. Training subsidies average about $500, and generally do not exceed $1,000, for each job retained or created. The program is staffed by two FTEs and expended approximately $2.2 million in fiscal year 1991, which was funded through the general revenue fund. In fiscal year 1991, the program funded training projects for 34 businesses. Approximately 5,141 workers received training.

Literacy Assistance

The last program in the work force development division is literacy assistance. The department administers the literacy assistance program under the direction of the Texas Literacy Council. The Texas Literacy Council is composed of 17 members appointed by the governor, lieutenant governor and speaker of the house of representatives that represent business, industry, labor, education, and organizations with expertise and interest in literacy.

The literacy assistance program receives its funding through the federal Job Training Partnership Act (JTPA) and state general revenue. The program helps fund local literacy councils through grants to literacy partnerships. Literacy partnership are coalitions of local literacy councils and other providers of literacy services. To be eligible to receive a grant the literacy partnership must include the JTPA service delivery area as the administrator. Fifteen federally funded grants are awarded to literacy partnerships to coordinate literacy services in their areas. The program also operates a hotline to refer students and volunteers to the service providers in their area. The literacy assistance program received its first general revenue appropriation in fiscal year 1992. These funds are being used to conduct several forums around the state. These forums include workshops to train literacy tutors, train trainers of literacy tutors, and provide information on how to administer a local literacy council. In addition to the functions administered by the department, the Texas Literacy Council is responsible for developing the state's five year plan on literacy.

In fiscal year 1991, the program had a staff of three FTEs. The program expended approximately $1.3 million from federal JTPA funds. In 1991, the program funded 13 competitive grants. These grants funded services to 964 participants. Texas A&M University operates the hotline under contract and responded to 2,575 calls on the literacy hotline.

Tourism Division

The department's third major division is responsible for tourism promotion. The division focuses its efforts on marketing Texas, nationally and internationally, as a travel destination.

The department's primary tool for promoting Texas as a travel destination is an out-of-state advertising campaign. Most of the campaign is developed and administered through a personal services contract with a national advertising agency. In addition to the advertising campaign, the division works with travel writers and tour operators to encourage them to promote travel to Texas by conducting educational tours and promoting Texas at travel trade shows.

The state's tourism promotion programs began in 1963 with the creation of the Texas Tourist Development Agency. The agency was an outgrowth of a private-sector program launched by Governor Price Daniel following a period when income from tourists was declining in Texas even though tourism was booming nationally. With the creation of the agency also came the first appropriation for out-of-state tourism advertising. Recognizing the impact tourism can have on economic prosperity, the legislature merged the activities of the Texas Tourist Development Agency into the newly-created TDOC in 1987. The legislature also for the first time dedicated a portion of the state's hotel/motel occupancy tax to tourism marketing by the department. One-half cent of the six-cent tax is dedicated to the division and totaled approximately $10.1 million in fiscal year 1991.

In addition to the TDOC, seven other state agencies have a significant role in tourism promotion. While the TDOC has responsibility for attracting out-of-state travelers to Texas, the Texas Department of Transportation (TxDOT) is responsible for promoting travel within Texas. The TxDOT operates travel information centers throughout the state, publishes the state's official travel magazine, and distributes highway maps and travel guides. The TxDOT provides the travel guide and map that are sent to people that call the state for travel information in response to TDOC advertisements. In addition to the TDOC's and the TxDOT's efforts, the Texas Parks and Wildlife Department is responsible for providing travelers the opportunity to experience Texas' natural and cultural resources through its parks system. Other agencies that have smaller tourism promotion responsibilities include the Texas Historical Commission, the General Land Office, the Texas Department of Agriculture, the Texas Department of Public Safety and Texas A&M University.

In 1988, these eight agencies established the Texas State Agency Tourism Council to formulate a comprehensive plan to stimulate tourism and increase state-level coordination. In 1990, the agencies adopted the plan and a memorandum of understanding to formalize their commitment to participating in the council.

In fiscal year 1991, the division expended approximately $9.7 million of the $10.1 million dedicated tax revenues and employed a staff of 24.6 FTEs. Approximately 860,000 people responded to the division's national advertising campaign by calling the toll-free number to inquire about travel to Texas. Tourism staff represented 152 communities on 10 educational tours; represented the state at 30 travel shows; and assisted 1,921 journalists. The division estimates that 2.3 million people travelled to Texas in 1991 as a result of the division's advertising and promotion efforts.

Administration and Support

The substantive programs of the TDOC are supported through the administrative programs of the TDOC. Major support programs of the department include legal services, quality assurance, governmental relations, research and planning, fiscal services, personnel services, data services, and media relations.

The TDOC research and planning program deserves separate mention because it supports both the department's planning efforts and business development research. In addition, the program acts as a data clearinghouse to the TDOC clients and the public. The TDOC is designated as the lead agency for the state data center program and is the state's official administrator of the U.S. census state-federal cooperative program as part of its research and planning effort. The program funds annual population estimates and projections for Texas counties and provides the data through TEXIS on-line data service.

In fiscal year 1991, the department spent approximately $5.7 million and allocated 117.3 FTEs to administrative programs mentioned above. One significant additional administrative responsibility was added in 1991 to both the TDOC and most other state agencies. During the 72nd regular session, the legislature passed a bill requiring most state agencies to develop a six-year strategic plan. The strategic plans are the first step in building a long-term statewide budgeting and planning process. The department is presently working on its strategic plan, which is required to be completed by June 1, 1992. The completed plan will be submitted to the governor, lieutenant governor, speaker of the house of representatives and several legislative oversight agencies, including the Sunset Advisory Commission.

FINDINGS AND

RECOMMENDATIONS

Overall Approach to Review

OVERALL APPROACH TO THE REVIEW

The Sunset Act requires an assessment of several factors as part of an agency's review. The factors include: a determination of the continued need for the functions performed by the agency; a determination if those functions could be better performed by another agency; whether functions performed by another agency could be better performed by the agency under review; and, finally, a determination of the need for any statutory changes in the agency's statute.

While the Texas Department of Commerce has never been reviewed through the sunset process, its predecessor, the Texas Industrial Commission (TIC) was reviewed in 1983. At that time, the TIC operated many of the same programs that exist under the TDOC's business development division including: business recruitment and retention efforts, trade promotion, foreign offices, and the rural industrial loan program. The sunset commission recommended several changes to the TIC's statute to increase the opportunity for public participation in the department's operations and strengthen its administrative structure. These changes were adopted by the legislature. The legislature also changed the name of the agency to the Texas Economic Development Commission.

In accordance with the Sunset Act, the review of the Texas Department of Commerce included an assessment of the need to continue the department; a review of the benefits that would be gained by changing the organizational structure of the department; and finally, if the functions performed and the current organizational structure are maintained, whether changes are needed to improve the efficiency and effectiveness of the department.

The need to continue the department focused on whether continued state involvement in economic development initiatives was necessary. The review also included an examination of whether benefits would result from combining the department with any other state agency. The review then focused on changes needed if the department was maintained in its current form.

To make determinations in each of the review areas, the staff performed a number of activities over a six-month review period. These activities included:

- 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;

- discussions with legislative agencies and committees with responsibility for oversight of the department;

- attendance at public meetings of the Texas Department of Commerce's policy board and department advisory bodies;

- phone and personal interviews with persons involved in economic development activities at the state, local and federal levels in this state and in other states;

- a survey of the department's employees requesting the identification of problems in the department as well as potential solutions;

- a survey of the department's board and committee members requesting the identification of state policy issues for consideration during the review; and

- interviews with groups affected by, or interested in, the activities and policies of the department.

Out of these activities, the overall focus of the review took shape. A good deal of the organizational and program structure that the agency uses today was developed in the 1970s. The review focused on the following questions: Does the state's approach to economic development meet the modern standards for organization? Does the state have an effective balance of economic development and management tools to ensure that the programs operate in an manner consistent with public expectation?

The recommendations included in this report represent only a small percentage of the total number of issues that were raised during the review process. Many of the issues raised were management issues and could not be resolved through a change in statute. This type of issue was left to other legislative oversight agencies to deal with. The policy issues finally selected were based on their relative importance to the statutory structure of the department and represent a good faith effort to balance the competing interest inherent in the issues surrounding economic development.

NEED FOR THE AGENCY

ISSUE 1: The Texas Department of Commerce should be continued for an eight-year period.

BACKGROUND

The Texas Department of Commerce (TDOC) was created in 1987 by combining the Texas Economic Development Commission, the Texas Tourist Development Agency and two programs from the Texas Department of Community Affairs into the new department. The department's purpose is to create new jobs and improve the economic prosperity of the state. In 1991, the department became the first cabinet-level agency in Texas with a governor-appointed executive director and a policy board.

To accomplish its objectives, the department is organized into four major divisions: work force development, tourism, business development and central administration. The work force development division's primary responsibility is administering the federal Job Training Partnership Act program. The tourism division's major efforts include: attracting tourists to Texas through a national advertising campaign; marketing the state to tour operators; and helping businesses and communities market to tourists. The business development division's activities fall into three categories: recruiting new business to Texas; assisting Texas businesses; and helping communities. The department assists business through its financial assistance and technical assistance programs. To help communities, the department administers several programs that provide technical and financial assistance directly to the communities or through the communities to local businesses. The department's central administration division provides administration, and research and planning support for the other divisions.

To justify the continuation of an agency, certain conditions should exist. First, a current and continuing need should exist for the state to provide the functions or services of the agency. In addition, the functions or services should not duplicate those currently provided by any other state agency. Finally, consolidating the functions or services of the agency into another state agency should not result in significant organizational benefits or cost savings. The evaluation of the need to continue the department resulted in the following findings.

FINDINGS

- **The primary functions of the Texas Department of Commerce continue to be needed to stimulate economic development in the state.**

  -- Attracting tourists to Texas continues to be an important function that stimulates economic development in the state. Tourism is a major industry in Texas and contributes significantly to the state's prosperity. In 1989, tourism in Texas accounted for $751 million in state tax revenue and more than $451 million in local taxes. That same year, the travel industry accounted for 364,000 Texas jobs with a combined payroll of $5.2 billion.

-- Recruiting new businesses to Texas is a major function that creates new jobs for Texans. In fiscal year 1991, the department assisted in the relocation of 23 businesses to the state which resulted in approximately 3,000 new jobs in Texas.

-- Acquiring financing can be a major stumbling block for many Texas businesses. The department's financial assistance function includes guaranteeing loans made by private lenders and helping businesses receive federal loans or loan guarantees. Businesses continue to need assistance in acquiring financing to start new businesses and expand existing businesses.

-- Training Texans to meet the demands of the work force in the future is a function that continues to be needed. The availability of literacy training, job skill training and work readiness training continue to be in demand. The federal Job Training Partnership Act (JTPA) program targets funds to help meet the training needs of the state.

- **Two separate functions of the department were identified where a potential for increased benefits or reduced costs exist if the function was transferred to another agency or state funding was eliminated in lieu of fee support.**

-- The first function identified is the certification of disadvantaged business enterprises and related activities. An evaluation of the benefits of transferring the function to the General Services Commission is contained in a later section of this report.

-- The second function identified is the training and technical assistance provided to individual businesses, local economic development entities and communities. An evaluation of the benefits of eliminating state funding for these functions is also contained in a later section of this report.

- **The Texas Department of Commerce is the most appropriate place to perform the state's primary economic development functions.**

-- Several state agencies perform one or more functions similar to the department. The Texas Department of Transportation and the Texas Historical Commission also perform tourism promotion functions. The Texas Employment Commission, Texas Education Agency, and Texas Higher Education Coordinating Board also provide work force training functions. In addition, the Texas Department of Agriculture, Comptroller of Public Accounts, Treasury Department, Texas Department of Housing and Community Affairs, and Texas Growth Fund perform various economic development functions. However, transferring TDOC functions to these various agencies would not result in any significant cost savings since a similar number of staff and resources would be needed to perform the functions.

-- Although most communities have economic development programs, these programs focus on improving local conditions and are often competing with each other for new businesses locating in Texas. The department is responsible for economic development for the state as a whole and works with the local entities to benefit the state. Local economic development entities are not structured to perform the department's statewide functions.

- **While organizational structures may vary, most other states use an agency similar to the Texas Department of Commerce to perform their economic development functions.**

  -- Forty-nine other states have a separate state agency that is responsible for encouraging industry to locate, develop and expand in the state.

  -- A review of available literature indicated that at least 35 of the 49 other states' tourism functions are located in their economic development agency.

  -- A review of available literature indicated that at least four other states administer the federal Job Training Partnership Act through their economic development agency. The JTPA program is administered by various agencies in the other states. Twenty-seven other states administer their JTPA program through their labor and employment agency.

CONCLUSION

Many of the functions currently assigned to the department continue to be needed and are appropriately placed in the department. However, benefits could be achieved from the transfer of the disadvantaged business enterprise certification process and other related activities to the General Services Commission, and from the elimination of some state funded training and technical assistance. The benefits that could be achieved from each of these changes are discussed in a later section of this report. In addition, no local entities or other state agencies were identified that could assume the department's primary functions with increased benefits to the state or reduced costs. Based on these factors, the review concluded that the department should be continued.

RECOMMENDATION

- **The statute should be changed to continue the Texas Department of Commerce for a eight-year period.**

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This recommendation would continue the department for an eight-year period instead of the standard 12-year review period. The shorter period will allow the agency to be reviewed with the appropriate functional group of agencies. The department would continue to perform the state's economic development functions including attracting businesses and tourists to the state. If the state abolished the department, local communities would be left without the benefit of a state agency to lead business recruitment, trade and tourism promotion, and work force development activities.

FISCAL IMPACT

If the department is continued, its annual appropriations of $269 million would continue to be required. The department is primarily funded through federal funds of approximately $248 million, the hotel/motel occupancy tax of approximately $10 million, and general revenue of approximately $11 million each year.

POLICYMAKING BODY

ISSUE 2: The policy board of the Texas Department of Commerce should be given clear responsibility for rulemaking for department programs.

BACKGROUND

In 1991, the legislature considered a plan by the governor to establish a cabinet form of government in Texas. The focus was to increase accountability to the governor by giving the governor the power to appoint and remove the directors of key executive branch agencies. While the approach was not generally adopted, it was applied in modified form to the Texas Department of Commerce.

Under the usual policymaking structure, the governor would appoint the board members, subject to senate confirmation. The board members would hire the agency director, approve agency budget expenditures, and adopt rules governing the operation of the agency.

The new approach applied to the TDOC makes substantial changes to the usual structure. Under this structure the governor appoints not only the board members, but also the agency director. The board is no longer a "governing board" because it does not have the authority to hire or fire the agency director or approve or disapprove budget expenditures. The board becomes a "policy board" to advise the agency director. The board does have direct responsibility for issuing bonds and shares a responsibility with the agency director for adopting rules governing the operation of the agency.

Normally, shared responsibility is not the best method for fixing accountability. This is particularly true in terms of rulemaking which is a major responsibility of a state agency. An analysis of the TDOC's structure and this approach to rulemaking resulted in the following major findings.

FINDINGS

- **The statutory provisions relating to the TDOC's rulemaking process do not fix final responsibility for rulemaking.**

  -- The statute gives rulemaking powers to both the board and the agency director. The board may delegate authority to the director.

  -- Prior to the statutory changes in 1991 establishing a policy board, the agency board exercised final rulemaking authority.

-- In the fall of 1991, the agency changed its rulemaking process and posted and adopted rule changes for the enterprise zone program without final approval of the rules by the policy board. Even though the board had not formally delegated authority, the executive director adopted the rules.

- **Legislative intent in structuring the new division of responsibilities was to split the responsibilities of budget authority and rulemaking.**

  -- Discussions with legislators and legislative staff involved in drafting the legislation indicated that responsibilities were to be split.

  -- Responsibilities were intended to be allocated so the governor appointed the director who controlled the budget. The board was to give advice and shape the major agency policies through rulemaking.

CONCLUSION

Most state agencies in Texas are directed by boards who are responsible for final adoption of the rules under which agency programs operate. These responsibilities are generally set out in statute. Recent changes to the statute for the Texas Department of Commerce are unclear as to the new policy board's responsibility regarding the final adoption of rules. Legislative intent behind the changes indicates that the board was to be responsible for final rule adoption.

RECOMMENDATION

- **The statute should clearly identify the TDOC policy board as having final rulemaking responsibility for the department programs.**

This change will clarify that the TDOC's policy board has the authority and responsibility to adopt rules through the Administrative Procedure and Texas Register Act for programs administered by the department. This is a workable structure that many state agencies use to balance the authority of the board and the agency director. In this agency, it will clarify the policy board's authority for policy decisions in contrast to the director's role in budgetary decisions.

FISCAL IMPACT

The adoption of this recommendation will not have a fiscal impact.

EVALUATION OF PROGRAMS

ISSUE 3: The department's direct technical assistance and management training functions should be funded through user fees and not from general revenue.

BACKGROUND

The Texas Department of Commerce has statutory responsibility to assist three different groups in their business and training needs. Individual businesses are the first and largest group that TDOC helps. The second group consists of local economic development organizations like chambers of commerce and public small business development centers. The third group is units of government in rural areas of the state. In fiscal year 1992, the agency budgets approximately $800,000 to this function from the $4.9 million budget of the business development division.

In general, the department provides technical assistance and training in response to a request for help. While often people call the department for information, this is not what is traditionally thought of as technical assistance. Instead, the technical assistance and training the department provides involves first determining the resources and needs of community or business and helping them develop a plan for expansion or economic improvement. The department then advises the client on strategies to reach their goals and assists them in obtaining resources. Sometimes this assistance is provided in the TDOC offices and sometimes staff travel to the client to provide the services. In addition, the department provides management training seminars. These are provided on a regular basis throughout the state.

The kinds of technical assistance and training needed by the three differing groups served by the agency vary. Individual businesses frequently request individual guidance in the development of their company. The agency advises businesses on how to export products, on the types of public and private financing available, and on how to put together loan applications. In addition, the department has recently undertaken a new management training program to teach "total quality management" techniques. The agency organizes seminars in different locations in the state to teach these techniques to small businesses. All of these efforts assist individual businesses to handle the technical areas needed to make a business profitable.

A different kind of technical assistance and training is used for economic development organizations like chambers of commerce. These development organizations need training on techniques and resources they can use to assist to their local businesses and communities. The TDOC is equipped to offer this service since the types of assistance available from the TDOC and local economic development entities are often very similar. For instance, local chambers also give exporting advice as well as advice on how to obtain financing.

The TDOC provides a technical assistance program for rural community development as requested by cities. The TDOC helps communities identify areas with a potential for future economic development. With these areas identified, the TDOC then assists the community in developing a plan for getting this development to occur. Finally, TDOC assists in implementing the plan by helping to locate financing for the development and by providing its own technical resources like enterprise zone projects and tourism promotion initiatives. All of these efforts are to help rural communities develop a better economic base.

The department either charges, or is authorized to charge, fees for some of these services. Training seminars are partially supported through fees. The statute authorizing export assistance requires the imposition of a reasonable fee for department services. However, the legislature has generally chosen to fund the department's technical assistance functions through appropriations from general revenue.

Generally, state tax dollars should not be spent where services are readily available from other sources, whether private or public. The TDOC's training and technical assistance activities were reviewed using this policy as a guide. Findings from the review follow.

FINDINGS

- **Services to assist in business and community development activities are available from a wide variety of sources.**

  -- Businesses have a wide variety of resources. The federal Small Business Administration (SBA) provides matching funds to establish local organizations to provide individual counseling and assistance to small businesses in Texas. These funds help support 60 small business assistance centers and satellite centers and 34 small business institutes throughout the state. In 1991, these programs assisted 803,000 businesses. The federal government also helped establish 11 minority business assistance centers throughout the state. Over 560 communities have established local chambers of commerce as a vehicle to help local businesses. In addition, many private organizations, public community colleges and business consultants and trainers provide this type of service on a fee basis.

  -- Organizations that provide business development services receive training from various governmental and professional sources. The federal government provides training and technical assistance to the local organizations they help establish like the small business development centers and minority business assistance centers.

  -- Communities receive assistance through the federal government and local public utilities. Many public utility companies work with communities in their area to help encourage economic development. They are a major resource in many rural areas. In addition, the federal Department of Commerce's Economic Development Administration has established economic development districts in most areas of the state and provides technical assistance and funding for local economic development initiatives.

- **The TDOC offers similar services to the same groups.**

  -- Businesses receive the majority of the services provided by TDOC. State law requires the TDOC to provide direct assistance and training to individual businesses. In 1991, the department provided training and advice to approximately 4,700 small businesses and assisted another 4,000 businesses with exporting.

  -- Newly created training programs also target businesses. The department has established a new program in 1992 to provide training seminars in "total quality management" principles to small businesses. The department plans to train approximately 1,000 people this year through this program.

  -- Economic development agencies also receive training and technical assistance from the department. This assistance focuses mainly on methods to train local businesses. In 1991, the department worked with approximately 60 agencies, mainly the small business assistance centers and some chambers of commerce.

  -- Communities also receive direct assistance from the department. In 1991, the department assisted 55 communities to varying degrees in developing and implementing an economic development plan for their area.

- **Since the TDOC and other agencies and organizations offer training and technical services to the same groups, the program should be structured to ensure the TDOCs assistance is needed before it is offered. The program is not structured to provide this indication of need.**

  -- The agency is not required to, and does not, check whether a client has access to assistance elsewhere at a cost fitting his circumstances. The department's policy is to give technical assistance free of charge on a first come, first-served basis.

  -- The department is not required to, and does not, charge a fee to cover the costs of its direct technical services. A cost-recovery fee is one means of determining whether a service is needed. Businesses would not be willing to pay for the service if they did not really need it.

- **Supporting services through user fees builds in accountability. It assures that services are only provided to the extent there is a demand by the customer and that the cost of the service is not greater than its value to the customer.**

  -- Businesses, organizations and communities will not pay for the services if they do not need and value the services provided.

  -- In the private sector, market factors influence the availability, quality and cost of the service. For this type of service, it is reasonable to allow the market factors to determine the extent to which TDOC is involved.

CONCLUSION

Direct assistance and training is available to Texas businesses and communities through a wide variety of sources in both the public and the private sector. The TDOC offers services in these same areas. Supporting these services through fees would ensure that they are only provided if needed.

RECOMMENDATION

- **The department's direct technical assistance and management training functions should be funded through user fees and not from general revenue.**

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This change will refocus the department's state funded efforts to functions that are not readily available through other providers. The department may continue the service if it can fully support the direct and indirect cost of the services through user fees. Supporting these services through user fees will build in accountability to ensure that the taxpayer does not pay more to provide direct assistance to Texas businesses than the businesses think the service is worth to them.

FISCAL IMPACT

Preliminary estimates indicate that this change would decrease the need for state general revenue appropriations by approximately $800,000 a year.

Fiscal Year	Increased Revenue or Savings to General Revenue Fund
1994	$800,000
1995	$800,000
1996	$800,000
1997	$800,000
1998	$800,000

ISSUE 4: The rural loan guarantee program should be changed so that more loans can be guaranteed within existing resources.

BACKGROUND

Many states help rural businesses finance their start-up and expansion costs through direct loan and loan guarantee programs. In direct loan programs, the state's role is the same as a bank. The agency is responsible for reviewing and approving the loan application, drawing up loan papers, servicing the loan, and collecting payments. The state's role in a loan guarantee program is different. Through a loan guarantee program the agency works with a borrower who has been refused a loan from a local bank. The agency agrees to "guarantee" a portion of the loan amount to the bank if the borrower defaults. This allows the banks to make riskier loans than would be available without a guarantee. In a loan guarantee program, the bank, not the state, performs all the usual lending functions.

In 1971, the legislature established the rural industrial development fund to provide direct loans to rural manufacturing businesses. The fund received an initial appropriation of $600,000 and by 1981, had grown through grants and additional appropriations to $1.9 million. Between 1973 and 1989, the program made 23 direct loans for a combined total of $3.6 million. Under the direct loan program, two loans went into default at a loss to the state of approximately $415,000.

In 1989, the legislature modified the program. The program could provide loan guarantees in addition to direct loans, and could serve all types of businesses not just manufacturing. Also, the name of the fund was changed to the rural economic development fund. The fund guarantees long-term loans for any type of business in rural communities. The fund received an additional appropriation of $1.5 million in 1989 and currently has an operating balance of approximately $3.5 million. State law allows the department to guarantee no more than 90 percent of the loan. The department limits guarantees to $350,000 and a term of no more than 15 years. Ten businesses currently have loan guarantees through the program with a combined value of $2.7 million. The program currently has four applications pending and if approved, the guarantees will total the amount in the fund. As loans are paid off and guarantee obligation are reduced, additional funds for loans and guarantees will be available.

In general, state law should provide a framework for agencies to provide effective programs that efficiently and effectively use the public dollars available. The review examined the statutory structure of the rural loan guarantee program to determine its ability to make the best use of the existing resources. The findings of the review are set out below.

FINDINGS

- **Many states operate loan guarantee programs for small business financing.**

  -- Nineteen states, including Texas, operate some type of loan guarantee program.

- **A major advantage of a loan guarantee program is that the state can encourage lending for business finance but not expend state funds except in the unusual case that a business defaults.**

  -- When the department guarantees a loan, it does not give the business or bank any money but instead establishes a guarantee agreement that if the business fails to pay the loan the state will pay the actual loss the bank incurs after all collection provisions are exhausted. In contrast, when the department issues a direct loan, the department gives the business the money and the business agrees to repay the loan.

- **Loan guarantee programs used in various other states increase the effectiveness of state guarantees by allowing the programs to guarantee loans based on a loan guarantee-to-reserve fund ratio. This approach allows the program to guarantee loans that total more than the state is holding in the reserve fund. The ratio is based on the default experience of the program.**

  -- California operates a business loan guarantee program and the state allows its program to guarantee $4 for every $1 on deposit. Washington and New Jersey allow their funds to guarantee $3 for every $1 they have on deposit. Minnesota, Maryland and Indiana allow their programs to guarantee $2 for every $1 on deposit. (State law allows the program in Indiana to guarantee up to eight times the amount in the fund; however, the agency currently guarantees only twice the balance of the fund.)

  -- These states report that they base the extent to which they guarantee loans in excess of the balance of the fund on the experience of the fund. They examine the payment history and other economic conditions to determine the amount of risk and adjust the guarantee-to-reserve ratio accordingly. Some states supplement this review with an independent review of the program. Exhibit 2 on page 66 provides additional information on the practices in other states.

- **Other Texas programs that provide loan guarantees are not limited to guarantees based only on actual deposits.**

  -- The Texas Water Development Board was recently authorized by constitution and state law to establish a bond insurance program to insure the payment of bonds issued by local governments for the purpose of water conservation, quality enhancement and flood control. The state's liability is limited to $250 million for this purpose and the board is authorized to insure bonds up to twice that value. Similar to a guarantee, under this program the state agrees to pay bond obligations if the community is unable to pay.

  -- The Texas Guaranteed Student Loan Corporation bases the amount of loans it guarantees on a complex analysis of loan activity. The agency has adopted a policy of maintaining approximately three percent of the actual amount of loans guaranteed in a reserve fund to pay for defaulting student loans.

- **The department is not statutorily authorized to guarantee amounts that total more than the amount in the rural economic development fund.**

  -- The statute was originally written to authorize a direct loan program. The program operated from 1973 to 1989 as a direct loan program. Since the funds were paid out when a loan was made, it was not possible for the department to loan more than was available for the purpose. In 1989 when the statute was changed to allow the program to offer guarantees, the legislature did not add provisions concerning the loan guarantee-to-reserve fund ratio.

- **The rural loan guarantee program has not had a default since 1989 and the previous program had very few defaults. The states interests are reasonably protected under the guarantee agreement with the lender.**

  -- The TDOC reports that the program has not had a loan default since it began offering guarantees in 1989. Between 1973 and 1989, the program loaned a total of $3.6 million and had two loans default totalling approximately $415,000.

  -- The diverse types of businesses the program works with reduces the financial risk of the program. The program guarantees loans for all types of businesses in all areas of the state thereby limiting the potential risk to the guarantee fund in the event of an economic down turn in any one industry or area of the state.

-- The department has established numerous contract conditions that protect the state's interest. Under the guarantee agreement, the department holds a shared first lien with the lender. This means that the state and the lender are both entitled to first payment of debt. The program has strong requirements for collateral and the department requires the lender to provide quarterly reports on the payment history of the loan. In the event of a default, the lender is responsible for collections and liquidation and the state's obligations are paid first with the proceeds. In practice, if a borrower defaults, the lender is required to liquidate all the collateral securing the loan and use the proceeds to pay off the outstanding debt. If any debt remains on the loan, the lender would request that the department pay off the remaining balance from the rural economic development fund.

CONCLUSION

Many states guarantee business loans made through banks. It is not uncommon for a state to allow such programs to guarantee loans with a combined value that exceeds what is on deposit in the fund. Instead of limiting the guarantees based on actual funds on deposit as is done in the rural loan guarantee program, these states base the guarantee-to-reserve ratio on the payment experience of the fund. In a similar way, two Texas programs can guarantee loans in excess of the balance in their reserve funds. The state has operated a rural finance program for more than 20 years and has only had two defaulted loans. The structure of the current program provides reasonable protection against losses, and the diversification of business activities the rural loan guarantee program serves reduces the financial risk of the program.

RECOMMENDATION

- **The statute for the rural loan guarantee program should be changed so that more loans can be guaranteed within existing resources. Specifically, the changes proposed include:**

  -- **specifying that the program can guarantee loans with a combined value not to exceed twice the amount available in the fund for guarantees;**

  -- **requiring the TDOC board to adopt rules setting the guarantee-to-reserve ratio and review that ratio annually based on the payment experience of the loans and recommendations by the state auditor; and**

-- **requiring the state auditor to review the loan and payment activity of the program annually and advise the policy board in establishing its policy.**

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These changes would increase the TDOC's ability to ensure that Texas businesses receive the maximum benefit from this program. Expanding the flexibility of the board to set reasonable limits on the rural loan guarantee program will expand the usability of these state resources. Allowing the fund to guarantee up to twice the balance in the fund is reasonable considering the approach used in other states and the default experience of the program. Requiring the TDOC board to adopt rules to govern how this authority is used will provide oversight. Annual review of these rules based on the experience of the fund will allow the board to correct the policy if financial conditions change. Involving the state auditor in reviewing the fund's loan and payment activity will provide the board with appropriate and independent advice necessary to safeguard the state's interest.

FISCAL IMPACT

The adoption of this recommendation will not have a fiscal impact. However, it will allow the department to increase the financial assistance available through the program. If the policy board determines that it is appropriate to authorize the maximum loan guarantee-to-reserve fund ratio, the program will be able to guarantee approximately $3.5 million in additional loans to rural business within existing resources. Any additional administrative costs that result from additional loan guarantee activity can be recovered under the department's existing cost recovery fee structure.

ISSUE 5: The state's process to promote the number of disadvantaged business enterprises doing business with the state should be simplified by transferring the TDOC's role in the process to other agencies.

BACKGROUND

A disadvantaged business enterprise (DBE) is a business 51 percent owned, and operated by, a woman or minority. This is a definition that appears in both state statute and appropriations bills. Over the years the state has developed a number of policies regarding DBEs. One of the state's policies is to give DBEs, as well as small businesses, training and technical assistance in small business operations. State statute assigns this responsibility to the TDOC along with the responsibility for certifying businesses as part of the DBE target group. Another policy is to increase the number of DBEs with which the state does business. This responsibility was given to the General Services Commission (GSC) by the 72nd Legislature along with a goal that 10 percent of the GSC's purchases be from DBEs. This goal conforms to the United States Supreme Court decision in Croson v. City of Richmond which ruled states could not establish mandatory set-aside quotas unless a study was conducted showing narrowly defined discrimination. In the absence of proof of such discrimination, purchasing goals could be established as long as those goals reflected the number of DBEs in the business community. The basic responsibilities of other state agencies generally appear in the appropriations bill. These agencies are required to encourage DBE participation in agency contracts. To that end, they are to establish "goals" in the amount of business they will do with DBEs.

As would be expected, a policy to promote state purchases from DBEs would require a way of verifying which firms meet the criteria of a DBE. A means of communicating this information to agency purchasers would also be necessary. A monitoring process would need to be in place to determine the degree to which the targets were being met as well. Lastly, an outreach effort would be needed to recruit DBEs to be placed on agencies' bid lists to ensure a maximum amount of DBE participation. The state has each of these components in one form or another as explained below.

State statute assigns the aspect of identifying DBEs to the TDOC. The TDOC receives self-certification forms from businesses wishing to be identified as DBEs by the state. The form contains the state definition of a DBE, alluded to above, and asks the person filling out the form if their business meets that criteria. If the answer is "yes", the person signs the form and sends it to the TDOC. The TDOC also accepts the certification of certain municipalities and transit authorities which the TDOC determines have essentially the same definition as the state. To date, approximately 2,700 businesses have been certified as DBEs by TDOC out of the 450,000 minority and woman-owned firms in Texas identified by the U.S. Census.

The TDOC has the responsibility to communicate the list of certified DBEs to other state agencies as well. This list takes the form of the Texas Certified Disadvantaged Business Directory. The directory is published in January and July of each year and is distributed to the purchasers of all Texas state agencies and local government purchasers and others, on request. Agencies can then use the directory to identify DBEs from which to solicit bids.

State agencies' use of DBEs is monitored through a "use" report. By law, each state agency must fill out a use report twice per year. The report shows to what degree each agency made purchases through DBEs based on the total purchases that agency made. A DBE cannot be counted in the report unless that business has submitted a self-certification form to the TDOC. The "use" report from each agency is submitted to the TDOC which in turn compiles these reports into a summary report and sends this to the presiding officers of both houses of the legislature. It is through the "use" report that the state monitors its progress towards the state DBE-use goal.

The final aspect of the DBE program is the recruitment of DBEs to bid for state contracts. The appropriations act and statute require the TDOC to identify DBEs for state bid lists, to offer assistance and training in state procurement practices, and to educate DBEs on contracting opportunities with the state. However, the TDOC is not the only state agency with a DBE outreach program. The GSC also conducts outreach and DBE activities as required by riders to appropriations bills dating back to 1978.

A DBE policy such as the one described above should be structured to provide for maximum identification of DBEs. The various aspects of the structure used to implement the policy should work together smoothly with as little burden on the DBEs as possible. The findings of the review in light of these considerations are set out below.

FINDINGS

- **The state's process to identify and certify DBEs is not structured in an effective way. There is no process for state agencies to have the DBEs they do business with included in the certified DBE list without the DBE making separate application with the TDOC. This process is unnecessarily complicated. This may reduce the number of state certified DBEs, prevent these businesses from being published in the DBE directory and limit the volume of DBE purchasing documented in the "DBE use" report.**

  -- The state DBE certification process serves two purposes in encouraging contracting with DBEs: it helps state agencies identify the businesses with which to increase contracting; and it helps the state monitor its progress in increasing state contracting with these businesses. To be effective, such a process should be as easy as practical for businesses but provide safeguards to ensure that only bona fide businesses are included.

-- Businesses that want to sell to state agencies as certified DBEs have to complete a two-step process. First, the business must apply to the TDOC, or an approved municipal program, for certification. Then, the business must apply to be placed on the GSC state bid list or an individual agency's bid list. Completing the certification process alone does not ensure that the business will be contacted for a bid.

-- All agencies use a list of vendors they regularly solicit for bids on state purchases. As the state's central purchasing agency, the General Services Commission maintains a large bid list and other agencies often supplement their bid list with vendors from the GSC list. In addition, vendors on the GSC bid list are solicited for all state agency purchases made through the GSC. Most state agencies are required to make purchases over $5,000 through the GSC.

-- In the application to be placed on the GSC's bid list, vendors are asked if they are a DBE, but there is no defined link between the GSC and the TDOC. Currently, the GSC has more firms indicating they are DBEs on its bid list than the TDOC has in its directory. The firms on the GSC's list may or may not be state certified. Other state agencies that develop their own bid lists typically do not ask whether a firm is a DBE. Thus, these agencies may be doing business with DBE firms and not tracking it.

-- The lack of a direct link-up between state agencies and the process to certify DBEs could result in the directory of certified DBEs being incomplete. The directory's purpose is to identify DBEs to solicit to bid on state purchases. An incomplete list lessens the exposure of DBEs for purchases and hinders the state in promoting this purchasing goal.

▸ **The problems with the current process for identifying DBEs for certification could be resolved by using all agencies as collection points for identifying potential DBEs and funnelling that information to the certifying agency. A specialized application form, already endorsed by an interagency work group headed by the governor's office, could serve as the vehicle for identifying DBEs and getting that information to the certifying agency.**

-- As indicated above, state agencies frequently maintain their own bid lists. Each agency's bid list application process could be used to identify potential DBEs.

-- A specialized state bid list application form could be developed for this purpose. The form would ask the business whether it is a DBE as defined by state law. The form could also consolidate other related information in one place. The form could identify whether a business wished to be added to a state agency's bid list and could also be used as an application for a comptroller's payee identification number. Consolidation of these pieces of information streamlines the process by reducing three different forms into one.

-- An interagency work group headed up by the governor's office has suggested this solution. The work group is composed of representatives from the Texas Department of Transportation, the Texas Rehabilitation Commission, the University of Texas System, the Texas Department of Commerce, the General Services Commission, the comptroller's office and the governor's office. Use of this type of consolidated form, however, would require legislative clarification since there is no expressed authorization for these agencies to require a consolidated form.

- **The TDOC is currently responsible for producing a report showing each agencies' use of certified DBEs. If the proposed unified application procedure mentioned above is implemented, responsibility for producing the "DBE use" report should be shifted from the TDOC to the comptroller's office. Other streamlining changes should also be made in the "DBE use" report.**

-- Currently, each state agency is required to report on its use of certified DBEs twice a year. This information goes to the TDOC, who compiles it into a report and distributes it annually to the presiding officers of both houses of the legislature.

-- The consolidated form that has been endorsed by the interagency work group contains information for the identification of a business as a DBE as well as the business's payee identification number used by the comptroller's office. Using this application process, the comptroller's office will be able to identify payees that are DBEs. The comptroller also maintains detailed information on state agency purchases. With that information, the comptroller's office can identify each agency's use of DBEs. This eliminates the need for each agency to produce this information separately every six months. It also eliminates the need for the TDOC to compile the report since that capability would already exist within the comptroller's office.

- **In addition to preparing the "DBE use" report, the TDOC is also responsible for certifying DBEs, compiling and distributing the directory of certified DBEs, and recruiting additional DBEs for bidding on state contracts. The GSC offers a reasonable alternative to the TDOC for carrying out these remaining duties.**

-- The GSC is the state's main purchasing agent, whereas the TDOC is primarily responsible for economic development. Since the DBE program is principally required to promote state purchases from DBEs, placement of this certification program at the GSC seems appropriate.

-- The GSC currently maintains a bid list on computer. This bid list is accessed by modem by about half of the state's agencies, including all of the state's major agencies. The directory of certified DBEs could be added to this system, making this list readily available and up-to-date for agencies wishing to use it. The state should, however, continue to publish a directory for those that do not have computer capabilities.

-- The GSC has a history of working with DBEs. It has encouraged contracting with minority-owned businesses since 1978 and has provided a formal DBE outreach program on state purchasing procedures since October 1987. In 1991, the agency held about 50 seminars and training sessions around the state specifically for DBEs.

CONCLUSION

The state's process for encouraging disadvantaged business enterprises to do business with the state could be strengthened so that both the state and DBEs can gain increased benefits. The list of certified DBEs could be made more complete to provide more exposure to DBEs. In addition, the process for reporting state agencies' use of DBEs could be streamlined to reduce agency time and work. Modifications needed to achieve these results, though requiring statutory change, have been worked out by an interagency task force headed up by the governor's office. Apart from these changes, it would also be appropriate to transfer to the General Services Commission the statutory responsibilities of the TDOC for certifying DBEs, publishing the directory of DBEs, providing an on-line version of the directory, and assisting both state agencies and DBEs in their state contracting efforts.

RECOMMENDATION

- **The process for tracking and promoting contracting with disadvantaged business enterprises (DBEs) should be simplified by:**

  -- **authorizing the consolidation of the application forms for DBE certification, application for a comptroller's payee identification number, and application to be placed on a state agency procurement bid list;**

  -- **transferring and consolidating the responsibility for compiling the annual report on agencies' use of DBEs from the TDOC and individual agencies to the state comptroller's office; and**

  -- **transferring the TDOC's responsibilities to the General Services Commission, including:**

- **certifying DBEs;**
- **publishing and maintaining an on-line directory of certified DBEs for use by state agencies, local governments, and the public;**
- **recruiting and training for DBEs to encourage them to bid for state contracts; and**
- **assisting other state agencies in efforts to recruit DBEs to bid on contracts.**

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This recommendation will change the existing DBE certification structure so that DBEs can access the state program at any state agency rather than primarily through the TDOC. These changes will simplify the process for DBEs, encourage more DBEs to become certified, and allow more DBE exposure to state procurement activities. The reporting process on DBE use will be simpler for agencies since the comptroller will be compiling one report for all state agencies rather than each agency compiling its own and submitting it to the TDOC twice a year. Finally, it would consolidate the main responsibilities for promoting use of DBEs in state contracting in one place. This transfer is appropriate since the GSC is the state's central agency responsible for contracting. Staff resources, equipment and records dedicated to the DBE program at the TDOC would be transferred to the GSC.

FISCAL IMPACT

The adoption of this recommendation will result in an overall cost of $2,000 a year and transfer staff and program revenues from the TDOC to the GSC. The disadvantaged business enterprise program at the TDOC has a staff of two FTEs. The two positions would be transferred to GSC along with the records, property and equipment currently allocated to the program. In addition, the $29,000 the TDOC currently budgets for printing, postage and travel related to the program would also transfer to the GSC. In total, approximately $75,000 would transfer from the TDOC to the GSC. Requiring the comptroller's office to compile the "DBE use" report for all state agencies, will eliminate work for each agency resulting in some cost savings; however, the amount of this savings cannot be estimated at this time. The comptroller's office estimates that it would cost approximately $2,000 for the office to produce the "DBE use" report each year.

Fiscal Year	Cost to General Revenue Fund
1994	$2,000
1995	$2,000
1996	$2,000
1997	$2,000
1998	$2,000

ISSUE 6: The state should authorize the continued use of enterprise zones as an economic development tool; however, the amount of state tax incentives authorized for the zones should be set through the appropriations process.

BACKGROUND

Economic development has been seen as one of the responsibilities of government since the implementation of the New Deal in the 1930's. Targeting economic development to meet the needs of specific areas has become more of a concern of government ever since. To that end, the concept of enterprise zones was developed in the United Kingdom in the late 1970s. In the early 1980s the concept gained acceptance in the United States. Enterprise zones are areas with reduced government regulation and incentives to attract investment. In 1983, following the lead of 10 other states the legislature passed the Texas Enterprise Zone Act (Article 5190.7, V.T.C.S.). Since then, 106 enterprise zones have been created throughout Texas to provide incentives for businesses to locate, invest and create jobs in economically distressed areas of the state. Exhibit 3 on page 67 shows the location of the enterprise zones in Texas.

Communities create enterprise zones by passing local ordinances or orders establishing the zone and local incentives or service enhancements. The local government can then apply to the Texas Department of Commerce for designation as a state enterprise zone and eligibility for state incentives. The TDOC determines eligibility for state zone designation by examining such factors as the unemployment rate or population loss in the zone and at least one other distress factor such as low average income of zone inhabitants, deteriorating structures or high instances of inability to pay taxes. Once eligibility factors have been demonstrated, the TDOC can designate the local zone as a state enterprise zone for a period no longer than seven years.

Both state and local governments in Texas offer benefits to businesses locating in an enterprise zone. Local governments offer incentives such as reduced regulation, reduced permitting, zoning changes and a variety of local tax abatements. When the state designates a local zone as a state enterprise zone, businesses in the zone are eligible for one-time refunds on state sales and franchise taxes up to a maximum refund amount of $5,000 per business. Additional incentives are offered to businesses that apply for and receive designation as an "enterprise project." The designation allows a business to receive sales tax refunds of $2,000 for each new additional job it creates during the designation period. The enterprise project is also eligible to receive franchise tax refunds for each of the five years of its designation.

Since the legislature first authorized the enterprise zone program, it has set limits on the use of enterprise projects. Limits are necessary since these projects, as well as other incentives, cost the state money in the form of refunded tax dollars to businesses. The legislature at first authorized a limit to be placed on the total number of enterprise projects that could be designated each year. The 72nd Legislature changed this limitation to a maximum number of jobs created by all enterprise zone projects. The state will give enterprise projects tax refunds for no more than 10,000 jobs for the 1992-1993 biennium. After August 31, 1993, the statute does not authorize the TDOC to designate new enterprise zone projects and the incentives that go along with this designation will not be available to businesses in any enterprise zone. However, incentives already awarded to enterprise projects would remain in effect. In addition, local incentives and the other state incentives not associated with enterprise projects would still exist.

Enterprise zones are an approach to economic development that Texas and other states have used for many years. The zones need to have sufficient incentive "tools" available to them to attract business to the area and accomplish their purpose. Enterprise zone tools, however, are also costly in that they reduce tax funds flowing to general revenue. They need to be structured in a way that will allow timely adjustment in the dollar amount of incentives that the state will offer. This flexibility is needed to balance changing needs in tight economic times.

The elimination of one level of state incentives, enterprise zone projects, at the end of this biennium is a reduction in tools available for attracting business to the zones. The review analyzed this tool to determine whether it should be continued. The review also evaluated the program to determine whether its structure gives the legislature sufficient flexibility to adjust its size when budgetary priorities of the state change. Findings from this review are indicated below.

FINDINGS

- **A primary purpose of state and local tax incentives offered in the enterprise zone program is to stimulate economic development in the zone. While it cannot be conclusively shown that state and local incentives have caused development to occur, growth and other benefits have occurred in the zones.**

  -- To date, 106 enterprise zones have been created in Texas. The department indicates that businesses in these zones have pledged to make a total of $2.9 billion in capital investment in the zones. The TDOC reports that these businesses have either created or pledged to create 10,738 jobs within those zones.

  -- As part of the review, a survey was conducted of 12 enterprise zones. These zones were chosen for their geographic dispersion and availability of data. The unemployment rate has been reduced by an average of three percentage points in those zones over, generally, a two-year period. One zone reported a decrease of 8.5 percentage points over a four-month period.

-- While benefits appear to have occurred in the zones, it cannot be concluded that the enterprise zone program accounted for those improvements. No cost-benefit analysis linking zone growth to the state and local incentives is available at this time from the TDOC or from other sources. In addition, no studies exist in other states that show a direct cause and effect relationship between zone growth and tax incentives.

- **State law eliminates any new enterprise zone project designations after August 31, 1993. If growth in the enterprise zones is related to incentives, elimination of projects takes away a significant incentive tool.**

-- Enterprise project incentives are a major part of the state incentives available for economic development. Tax credits provided through enterprise projects can amount to $4.8 million or 60 percent of all enterprise zone incentives each year.

- **If enterprise projects are designated in the future, this tool should be available to promote job retention in addition to its current focus on job creation. This additional dimension is important given the current economic environment.**

-- The enterprise program as it is currently structured cannot be used as a tool to retain jobs in times of economic downturn. The department has few tools to encourage businesses to avoid lay-offs. Not making this tool available for such purposes can delay economic recovery from such downturns and shorten the periods of growth between economic downturns.

-- Currently, three other states structure their enterprise zone program for both job creation and retention purposes. They are Illinois, New York and Minnesota. These states all conduct investigations into the operations of the businesses applying for enterprise zone incentives to determine if they are in danger of losing positions. Once this determination is made, the business can qualify for those incentives by not reducing its work force. These jobs are then considered to be retained for the purposes of the enterprise zone program.

- **An examination of other states indicated that a large majority of them use enterprise zones as an approach to economic development. Components of the programs vary, and none use project designations like Texas. However, state incentives are common in all schemes.**

-- Thirty-four states use enterprise zones as an economic development tool. All 34 states provide state-level tax incentives. Three of the four states that border Texas are included in this total. They are Arkansas, Louisiana, and Oklahoma, with New Mexico being the exception.

▸ **While enterprise zones are common, tax incentives are expensive when their direct drain on state taxes collected is considered. This is true in other states as well as Texas. Enterprise projects are no exception.**

-- The review examined amounts refunded in other states. It was found that most states with enterprise zone programs do not have mechanisms to track refunded taxes. However, in those states that do try to track taxes refunded, estimates vary from a low of $2.4 million in Minnesota in fiscal year 1989 to a high of about $81 million in California in fiscal year 1990.

-- Companies designated as enterprise zone projects in Texas, receive an average of about $2,925 for every job the company creates. State law authorizes the TDOC to allocate rebates for 10,000 new jobs this biennium. If all these jobs were allocated, it would amount to a cost of about $30 million to the general revenue fund over the next five years.

▸ **The significant amount of tax money allocated by designation of enterprise zone projects makes it a significant spending decision. However, the spending decision is not structured in the same manner as other major spending decisions. The approach used limits the ability of the legislature to easily adjust costs of the program as state funding priorities shift.**

-- The statute historically has given the TDOC the authority to allocate either the number of enterprise projects or the number of enterprise project jobs that can be created. Up until 1991, an increasing number of projects could be created each year. Then, in 1991, the legislature changed the allocation from a number of projects to the 10,000 enterprise project jobs that can be created this biennium. These figures represent large blocks of money that can only be changed in statute. The 10,000 jobs available this biennium could amount to a reduction of $30 million in state revenue over the next five years.

-- In comparison to this approach, many other major spending decisions are made through the appropriations process rather than in statute. The appropriations process provides a structured and systematic process for weighing one spending need against another each biennium.

-- A flexible system for making spending decisions on enterprise zone projects is particularly important in light of the difficult nature of determining the real effect of tax incentives on economic development. The appropriations process provides an ongoing process to evaluate the usefulness of project incentives compared to other state needs.

CONCLUSION

Texas, like most other states, uses an enterprise zone program as a tool for economic development. Economic development has occurred in these zones, though it is hard to establish a direct connection between the development and the incentives available in the program. One component of the program makes state tax reductions available to businesses that receive a "project" designation from the TDOC. Projects are expensive and will lose statutory authorization at the end of the biennium. As a potentially important tool in the state incentives package, the program should be continued. However, the amount authorized to be spent should be changed from a statutory limitation. This type of limitation does not allow the appropriations process to balance this spending against other needs of the state.

RECOMMENDATION

- **The statutory requirements concerning enterprise zones should be changed to:**
  - -- **authorize the TDOC to establish new enterprise zone projects;**
  - -- **require the number of enterprise project jobs that the TDOC may designate each biennium to be set in the general appropriations bill instead of the statute;**
  - -- **allow the program to be used for job retention as well as job creation; and**
  - -- **require the state auditor's office to conduct a biennial cost-benefit analysis of the enterprise zone program and submit it to the appropriations committees and the legislature by January 1st each odd-numbered year.**

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This change would continue the project designation portion of the enterprise zone program. The number of jobs available for the TDOC to allocate for the enterprise project's tax rebates would be set through the general appropriations bill. The appropriations process would allow for changing factors, such as the economic well-being of the state, to influence the dollar amount of incentives the state is willing to offer. This change would also allow the pool of jobs to be used for job retention as well as job creation and therefore allow the enterprise zone program to be used as a tool for economic stimulation in times of economic downturns. Furthermore, the cost-benefit analysis done by the state auditor's office would allow an independent agency to aid the legislature in identifying the costs and benefits to the state resulting from the enterprise zone program so it can better assess how many jobs to authorize in the appropriations bill for the upcoming biennium.

FISCAL IMPACT

The adoption of this recommendation will not have a fiscal impact. The work required for the state auditor's biennial cost-benefit analysis will not require additional staff and can be absorbed within current state resources. The changes will allow the number of enterprise zone project tax rebates to be controlled by the appropriation process. While there may be a cost associated with the decisions made in the appropriation process, those costs are not inherent in the adoption of this recommendation.

ISSUE 7: The department board should be clearly required to adopt rules for the administration of the Job Training Partnership Act program.

BACKGROUND

State agencies follow policies and procedures that are defined through several formal methods. Through these mechanisms, the public is informed about agency operations and provided with a forum for input into the development of agency policies and procedures. Often these mechanisms are defined in an agency's enabling statute and will detail the agency's responsibilities, policies and procedures. In other instances, an agency's statute directs the agency to adopt rules in a particular area of responsibility. Rulemaking procedures are set out in general law in the Administrative Procedure and Texas Register Act (Article 6252-13a, V.T.C.S.).

The Administrative Procedure and Texas Register Act (APTRA) requires that certain areas of policy and procedure be adopted as rules. The definition specifies these areas by delineating those areas that are not subject to rules.

> *"Rule" means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendments or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. (Section 3(7), Article 6252-13a, V.T.C.S.)*

Each state agency has the responsibility to ensure that policies and procedures be adopted as rules as needed. In addition to defining the policy areas that are subject to rulemaking procedures, the act specifies a set of procedures that must be followed in the rulemaking process. These procedures provide an opportunity for public input before the adoption or revision of agency rules. The act requires that an agency post notice of the proposed rules in a state publication, the Texas Register, 30 days before adoption and provide a forum for public comment, either orally or by writing. In emergency situations, agencies are allowed to adopt rules on a temporary basis without prior public posting.

The APTRA also requires that all rules previously adopted be indexed and available for public review. This requirement provides an opportunity for the public to inspect and have access to information about the procedures and policies that an agency follows in a variety of situations.

In 1983, the state enacted the Texas Job Training Partnership Act (Article 4413(52), V.T.C.S.) to authorize the governor and the Texas Department of Community Affairs to perform the activities necessary to implement the federal Job Training Partnership Act in

Texas. During that same legislative session the Texas Department of Community Affairs (TDCA) was required to adopt rules necessary to carry out programs and responsibilities assigned by the legislature or the governor. The department adopted rules related to the state and federal Job Training Partnership Act. In 1987 the Texas Department of Commerce was created and the TDCAs administrative duties for the federal JTPA program was transferred to the new agency. After the transfer of the program, the TDCA repealed the rules that they no longer needed.

The Texas Department of Commerce currently administers the federal Job Training Partnership Act program in Texas. The federal law and regulations control a large portion of the state's activities related to administering the program. However, the state is provided with flexibility in several areas.

The review compared the policy and procedure development process the TDOC uses for the JTPA program to those processes in other states, other Texas state agencies, and the requirements of APTRA. The findings from the review are indicated below.

FINDINGS

- **The state has established a policy through the Administrative Procedures and Texas Register Act that requires state agencies to adopt program policies and procedures as rules. The department has not used this approach for the JTPA program but has instead established a formal issuance system.**

  -- The APTRA specifies the procedure state agencies must use to adopt policies or procedures as rules. Once an agency has developed the proposed rule, the agency is required to give at least 30 days public notice of the proposed change by filing the proposed language, along with specific information about its anticipated impact, with the secretary of state for posting. The public notice requirement is met by publishing the rule in the Texas Register along with information about how to submit comments for consideration in the final adoption of the rule. The act requires that the agency provide the opportunity for a public hearing on the rule if requested by an agency, by at least 25 people, or by an association having more than 25 members. At the end of the 30 day posting period, the agency may adopt the rule and it becomes effective 20 days after adoption.

  -- The state JTPA law is silent in its requirement that the TDOC adopt rules under APTRA. Instead, the TDOC has established a formal issuance system that involves various levels of review and comment by service providers and the State Job Training Coordinating Council. The length of time it takes to finalize a policy or procedure through the TDOC issuance system varies on the type of issuance from a few days up to one year. Contracting guidelines, program guidelines, and performance and monitoring guidelines are all established through the issuance system. The local entities are given a minimum of two weeks to respond to the proposed issuance, but the average time is 30 to 45 days. The director of the work force development division has final approval of the administrative issuances and approves policy issuances before they are sent to the SJTCC.

- **The TDOC staff develop policies and procedures relating to the JTPA program that could appropriately be adopted as rules according to APTRA.**

  -- The APTRA requires that all policies and procedures pertaining to agency operations that affect private rights and do not concern internal management be adopted through the rulemaking process. For example, contracting procedures are subject to the rulemaking process while internal personnel policies are not.

  -- The TDOC staff adopt policies and procedures through the issuance system in the areas where, according to APTRA, rules could be used. These include, for example, contracting guidelines, program guidelines, and financial and performance monitoring guidelines.

- **Requiring the TDOC to follow the APTRA rulemaking process will provide an opportunity for public input. This opportunity is not available to the same extent in the current process that the department uses for developing issuances.**

  -- The TDOC is responsible for administering roughly $250 million federal JTPA funds each year. Although the program served 130,000 Texans in 1991, the department estimates that due to fund limits, it serves only five percent of those eligible for services. This would mean 2.6 million Texans could be eligible for services. It is important for the public to have an opportunity to provide input into basic guidelines and procedures for the program.

  -- The issuance process provides for input from the local service providers, the State Job Training Coordinating Council and the governor. However, the input of the general public, other interested parties and the service recipients is not solicited. In addition, the issuance process is not set out in statute or other readily accessible manner available to the public. This limited accessibility makes it harder for interested individuals to find out how the procedure works.

  -- The APTRA provides an opportunity for the public to find out about and comment on proposed rules before their adoption. The procedures provide an opportunity for all interested parties to obtain information about the standard processes that the agency will follow.

- **The TDOC's ability to operate in a prompt manner when necessary should not be inhibited through the application of the APTRA's rulemaking process.**

  -- The APTRA requires an agency to give at least 30 days notice to the public through the Texas Register before the agency can adopt a rule. However, APTRA allows for emergency rulemaking procedures in the event that an agency is unable to wait the required 30 days for public comment before the rule is adopted.

  -- Under APTRA, rules adopted on an emergency basis have a duration of 180 days. During the same 180-day period, the agency may introduce the same rule into the standard process in order to make the emergency rule a permanent agency rule.

- **The Texas Department of Community Affairs, the agency that administered the JTPA program before the TDOC, adopted rules through the APTRA process.**

  -- The state statute implementing the JTPA program authorizes the governor to develop rules. The governor has never adopted rules for JTPA program administration.

  -- When the JTPA program was administered by the Texas Department of Community Affairs (TDCA), that agency had a clear directive in statute to adopt rules necessary to carry out the responsibilities assigned by the legislature and the governor. Under this provision, the TDCA adopted rules under the APTRA process for the JTPA program. These rules related to how program funds were distributed and revoked, contracting and auditing procedures, local provider personnel standards, and sanctions. When the program was transferred from the Texas Department of Community Affairs to the TDOC, the TDCA repealed these rules since the program was not longer under its authority.

- **It is common for agencies with large federally-funded programs to adopt rules through APTRA's rulemaking process.**

  -- The Texas Department of Human Services and Texas Department of Mental Health and Mental Retardation adopt rules according to APTRA for all of their federally-funded programs.

  -- The Texas Department of Housing and Community Affairs adopts rules according to APTRA for the federal Community Development Block Grant program.

-- The Texas Education Agency adopts rules according to APTRA for the federally-funded special education and adult education programs and the Carl-Perkins vocational education program.

- **Many other states require their JTPA programs to adopt rules under their administrative procedure acts.**

  -- A phone survey of other states indicated that, in at least 11 states, the JTPA administering agency had adopted rules for their program in accordance with their administrative procedures act. These states included: Illinois, Florida, Utah, Iowa, Rhode Island, Idaho, Louisiana, New Mexico, Alabama, Wisconsin, and North Carolina.

CONCLUSION

The department has not adopted department policies and procedures for the JTPA program through the state's standard rulemaking process under the Administrative Procedures and Texas Register Act. Instead, the department is using another procedure to establish the guidelines for the program. The state's process provides a forum for the public to comment on proposed policies and procedures being adopted as rules. The department's current process for establishing program guidelines does not provide this benefit. Other state agencies that administer federal programs use the standard rulemaking process and JTPA programs in many other states also use this approach. The rulemaking process includes provisions that would not inhibit the department's ability to operate in a prompt manner.

RECOMMENDATION

- **The statute should be changed to clarify that the TDOC board is responsible for the APTRA rulemaking process for the administration of the JTPA program.**

This change will ensure that policies and procedures for the JTPA program follow the APTRA process as is done for other programs in the department and other state agencies. The recommendation will also provide greater opportunity for public input in the department's rulemaking process.

FISCAL IMPACT

The adoption of this recommendation will not have a fiscal impact. The current resources used in the issuance development process could be shifted to support the rulemaking process.

ISSUE 8: The requirements of the work force development incentive program should be changed to increase services within existing resources.

BACKGROUND

The TDOC administers two programs that fund work force training. These programs are the federally-funded Job Training Partnership Act (JTPA) program and the state-funded work force development incentive (WFDI) program.

The JTPA program is by far the largest of the two training programs. In 1991, approximately $248 million flowed to Texas under the JTPA program as compared to the $1.9 million allocated to the state's own work force development incentive program. The JTPA program flows federal funds to regional programs that train people who are unemployed or about to be laid off. The program provides job skills training to prepare people for a stable job with reasonable income. In 1991, the JTPA program provided training for 130,000 people in Texas.

The state's own work force development incentive program has as its historical predecessor a program established in 1973. The industrial startup program was established at the Texas Education Agency to provide job skill training for adults through local public schools. In 1987, the program was transferred to the Texas Department of Commerce. In 1989, the 71st Legislature changed the name of the program, and refocused the program to provide job training as an incentive to help businesses create new jobs and retain existing jobs. The program funds job skills training that is customized to a business' needs. The local community college or technical school usually provides the training even though it is often conducted at the business site using the business' own equipment. Last year the program funded training in areas such as: machine and equipment operation, machine maintenance and repair, and computer skills. According to the TDOC data available for the most recent year, the incentive program provided training to 5,141 people in fiscal year 1991 at a cost to the state of approximately $2.2 million.

State law places certain restrictions on the way the WFDI program operates (Section 481.076, Government Code). While a major purpose of the program is to provide incentives for businesses to move into or startup in Texas, state law requires that at least 40 percent of the training funds be set aside to help existing Texas businesses. Match requirements are also established in state law. Any business that receives over $250,000 in training is required to match the state's contribution with $2 for each state dollar. No match is required for smaller projects. In addition, the statute sets out priority groups to receive training under the program. Recipients of federal Aid to Families with Dependent Children (AFDC) and other Texans who receive public assistance are in the first priority group. Unemployed people are in the second priority group and other Texans are in the third and final priority group. The department is required to report each year on the number of workers trained in each group.

The JTPA and WFDI programs both provide work force training and both are required to focus the training on the same groups of people. One program is federally funded and one program is state funded. The review of the state-funded program examined whether the department efficiently allocates the program resources to ensure that state dollars are spent on training that is not available through the federally-funded program and whether the statutory restrictions on the state program are effective. The findings of this review are listed below.

FINDINGS

- **State law focuses the work force development incentive program to serve people that could be eligible for the federally-funded JTPA program.**

  -- State law sets priority groups for WFDI program training. The first priority is Texans who receive public assistance like AFDC or unemployment payments. The second priority group is unemployed Texans. The third and final priority group is other Texans.

  -- The JTPA program mainly serves people who are unemployed, are on public assistance like AFDC or unemployment, or who live below the poverty level. People who are notified to be laid off due to an eminent plant closing or mass layoff are also eligible.

  -- It is possible that some of WFDI program trainees may have been eligible for training through the JTPA program. In 1990, the program funded training for 3,898 people. Of the total, 555 newly hired trainees had been on public assistance and 1,739 had been unemployed before they received training through the program.

- **Requiring that the potential to use federal JTPA funds be evaluated in the application review process for the state's work force development incentive program would ensure efficient use of both federal and state training dollars. While JTPA funding is considered informally, there is no standard assessment.**

  -- Considering the use of JTPA funds where available before the use of state funds ensures that state funds will not be used where federal dollars are already available. Any duplication in the use of funds would be avoided.

  -- The TDOC staff indicate that the possibility of JTPA funding is considered informally when considering requests for WFDI program training.

However, no consistent assessment is included in the WFDI application review process.

- **Most other states have both a JTPA program and a state-funded work force training program like the Texas program. The review identified some states that have specific requirements that the potential to use JTPA funds be examined before state funds are allocated.**

  -- Five states' programs have a linkage with JTPA programs. For example, the state of Illinois, by statute, requires that federal programs be consulted and determined inappropriate before the use of state funds for training new employees. The state of Iowa also requires companies to contact JTPA programs first before they get funding from the state program. The states of New York, New Jersey, and Florida have similar linkages between their state-funded training programs and their JTPA programs.

- **The current matching requirement does not encourage joint funding of training but instead serves as a cap. Some other states have different match requirements that stretch the benefit of the program to more workers and businesses within existing resources.**

  -- Texas law requires a two dollar match from the company for every state dollar of training received if the company receives more than $250,000. For fiscal years 1992 and 1993, two grants of $250,000 have been promised, but none of the projects during the program's history has exceeded $250,000. In fiscal year 1991, each company received an average of $64,706 worth of training.

  -- A phone survey of other states identified 18 states that require a matching contribution for their state work force training program. These states generally require matching contributions based on the total project cost and do not reserve the match requirement only for large projects. Most of the states identified require a 50 percent matching contribution but allow in-kind contributions to cover the match. In-kind contributions often include training space, training staff, and disposable training materials such as welding supplies. Exhibit 4 on page 68 provides additional information on these states.

- **A match of no less than 25 percent by the company would not eliminate the incentive nature of the program and would allow the program to increase services within existing resources.**

  -- The review found that a 25 percent matching contribution would be a reasonable requirement to place on companies that benefit from this program. Out of the 18 states that require a match from the company, 12 require companies to match 50 percent or more of training costs. Most of the states allow companies to match with both in-kind and cash contributions.

-- If there had been a 25 percent match requirement in Texas in fiscal year 1991, the program could have provided services to approximately 1,300 more workers.

CONCLUSION

State law targets the work force development incentive program to serve people who could potentially be served by the federally-funded JTPA program. As a result, it is possible that some of the WFDI program trainees could have been trained through the JTPA program. The agency indicates it checks for this possibility now, even though it is not required. However, a statutory requirement that federal JTPA funds be used when appropriate before the state's funds for the work force development incentive program ensures efficient use of both federal and state training dollars in the future. Most states operate both types of programs and some have specific requirements that the potential to use JTPA funds be examined before state funds are allocated. In addition, the current matching requirement by the WFDI program does not encourage joint funding of training but instead serves as a cap. Match requirements used in other states stretch the benefit of the program to more workers and businesses within existing resources. While a minimum match of 25 percent by the company would not detract from the incentive, it would allow the program to increase services within existing resources.

RECOMMENDATION

- **The statute for the work force development incentive program should be changed to:**

  -- **require the department to evaluate applications for the work force development incentive funds to determine whether JTPA funds could be used instead; and**

  -- **require the department to obtain from a company receiving state incentive funds a matching contribution of no less than 25 percent of the training project's costs.**

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These changes will strengthen the state-funded work force development incentive program by reducing the potential that the limited funds in this state program are used for projects that could be funded by the larger federal JTPA program. Requiring that the department review all WFDI program applications for the potential of JTPA funding is consistent with the policy adopted in other states and used informally within the TDOC. It is not unreasonable to make this type of review a statutory requirement considering the potential for overlap between the two programs. The department would not be prevented from funding projects under the state incentive program in any case, but instead would be instructed to review the potential for JTPA funding as one factor in its application review process. Changes to the match requirement will encourage partnership funding of these training projects and is an effective way used in other states to stretch state resources. The board would be required to adopt, as rules, the criteria by which the department would set the match requirement for individual projects. In-kind contributions by the company, such as consumable training supplies, would also apply toward the matching contribution requirement.

FISCAL IMPACT

This recommendation will not have a fiscal impact. The matching requirement will not result in additional revenue to the state but instead will reduce the participaton of the state in the funding of each training project to no more than 75 percent of the costs. The company will assume at least 25 percent of training costs. This change will not reduce program costs overall but is intended to increase the amount of training available within current resources.

ISSUE 9: The department should be authorized to generate additional revenue by selling advertising space in its tourism publications.

BACKGROUND

Tourism is a major industry in Texas. Texas ranks third behind California and Florida as a pleasure travel destination for U.S. residents. Tourism generated more than $751 million in state tax revenue and more than $451 million in local taxes in 1989. That year, the travel industry accounted for 364,000 Texas jobs with a combined payroll of $5.2 billion.

The Texas Department of Commerce has as one of its responsibilities the promotion of this large and important industry in the state. One method the department uses to fulfill this responsibility is to develop and distribute literature promoting the state. The department produces several publications and purchases the *Texas State Travel Guide* from the Texas Department of Transportation. The TDOC's publications include the "Texas Tour and Meeting Guide," "Texas Annual Events Calendar," "Texas-It's Like A Whole Other Country" brochure, and other brief descriptions about Texas. Funding for the travel literature as well as other TDOC activities promoting tourism comes from a portion of the state hotel/motel occupancy tax. One half cent of the six-cent tax is dedicated to tourism promotional efforts and cannot be spent on other activities. This portion of the hotel/motel occupancy tax generated approximately $10 million in fiscal year 1991.

The review of the tourism function focused on the approach used to fund the tourism promotional literature. Various other state agencies fund their publications partly out of advertising they sell to go into the material. The review examined this approach to determine whether selling advertising would also be appropriate for the TDOC. Findings from the review are indicated below.

FINDINGS

- **In addition to the Texas Department of Commerce, two state agencies produce and distribute travel and tourism literature.**

  -- The Texas Parks and Wildlife Department publishes *Texas Parks & Wildlife* magazine, a hunting and fishing guide, individual park guides and maps, and several guides on specific topics such as birding.

  -- The Texas Department of Transportation publishes *Texas Highways Magazine*, the *Texas State Travel Guide*, the official highway map, and several informational pamphlets including the "Flags of Texas" and the "Texas Capitol Guide".

- **These two agencies sell advertising in their promotional literature to generate additional revenues.**

  -- The Texas Parks and Wildlife Department has sold advertisements in their magazine, *Texas Parks & Wildlife*, since the 1940s. The department's advertising generated about $100,000 in fiscal year 1991. These funds are deposited in the state's fish and game fund and are available to be appropriated to the department.

  -- The Texas Department of Transportation was authorized by the 72nd Legislature to sell advertising in its state travel guide and various other publications it distributes. The department did not request this authority be extended to the *Texas Highways Magazine*. The department has not sold advertising in any of its publications at the time of this report, but is developing its advertising policy and indicates it will adopt this policy as rules.

- **Texas state agencies are not alone in selling advertising in their travel publications. Almost half of the states frequently use advertising sales to offset the costs of producing their promotional literature.**

  -- Twenty-two of the 50 states surveyed by the U.S. Travel Data Center reported using advertising in their promotional travel literature.

  -- Four states reported recovering the full cost of the promotional travel literature through advertising.

- **No reason could be found not to authorize the Texas Department of Commerce to sell advertising in its promotional publications. The advertising would generate additional funds which could be used by the department for additional promotional efforts.**

  -- The TDOC estimates that the advertising it would sell would generate about $135,000 in additional revenues annually.

  -- The TDOC indicates that these additional funds would provide a useful supplement to the state hotel/motel occupancy tax money dedicated to the department. The additional funds could be used to add to the types of promotional literature available to the public or for other tourism development purposes.

- **Not all Texas agencies selling advertising have specific statutory authority to do so. However, specific statutory authorization eliminates any question about an agency's ability to use this revenue tool.**

-- The Texas Department of Transportation has specific authority to sell advertising in most of its publications. The Texas Parks and Wildlife Department, however, does not have specific authority for its advertising.

-- Statutory authorization for the TDOC to sell advertising would clearly make this revenue tool available to the department. Statutory treatment also gives the legislature the ability to establish guidelines for the use of the additional funds.

CONCLUSION

The Texas Parks and Wildlife Department and the Texas Department of Transportation currently produce travel literature similar in nature to that of the Texas Department of Commerce. These two agencies sell advertising in their promotional literature to generate additional revenues. In addition to these two agencies, other states frequently use advertising sales to offset the costs of producing their promotional literature. The review found no significant reason why the Texas Department of Commerce should not sell advertising to go in its promotional publications. The sale of advertising would generate additional funds which could be used for additional tourism promotional efforts.

RECOMMENDATION

- **The statute should be changed to authorize the department to generate additional revenue by selling advertising space in its tourism publications. Specifically these changes would:**

  -- **clearly authorize the department to sell advertising in its promotional travel literature;**

  -- **require the board to adopt rules specifying how it will implement its authorization to sell advertising; and**

  -- **specify that the proceeds from the sale of advertising would be deposited in the dedicated state hotel/motel occupancy tax special account in the general revenue fund.**

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This recommendation would clearly authorize the department to sell advertising in its current publications as well as publications it produces in the future. This change will provide the department with the same authority that the Texas Parks and Wildlife Department and the Texas Department of Transportation currently have. In addition, this recommendation would also require the board to adopt rules on the procedures to be used in selling advertising. Additional revenues would be deposited in the state hotel/motel occupancy tax special account and could be appropriated back to the department to supplement funds available from the hotel/motel occupancy tax. These additional revenues could be used to add to the types of promotional literature available to the public or for other tourism development purposes.

FISCAL IMPACT

The department estimates that selling advertising in its publications would increase the revenue to the department by approximately $135,000 annually. Approximately half of the revenue would come from the sale of advertising in existing publications. The remaining half would come from the sale of advertising in new publications which would not be produced by the department without advertising to offset the costs.

Fiscal Year	Increased Revenue to Hotel/Motel Occupancy Tax Special Account
1994	$135,000
1995	$135,000
1996	$135,000
1997	$135,000
1998	$135,000

ACROSS-THE-BOARD

RECOMMENDATIONS

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.

Texas Department of Commerce

APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			A. GENERAL
	X		1. Require public membership on boards and commissions.
	*		2. Require specific provisions relating to conflicts of interest.
		*	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.
		*	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.
	**		5. Specify grounds for removal of a board member.
	**		6. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
		*	7. Require the board to establish skill-oriented career ladders.
		*	8. Require a system of merit pay based on documented employee performance.
	**		9. Provide for notification and information to the public concerning board activities.
X			10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
		*	11. Require files to be maintained on complaints.
		*	12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		*	13. Require development of an E.E.O. policy.
		*	14. Require the agency to provide information on standards of conduct to board members and employees.
		*	15. Provide for public testimony at agency meetings.
		*	16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
		*	17. Require development of accessibility plan.
X			18. Place agency under the state's competitive cost review program.

* Already in law -- no statutory change needed.
** Already in law -- requires updating to reflect standard ATB language.

Texas Department of Commerce (cont.)			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			B. LICENSING
		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) related to 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.

* Already in law -- no statutory change needed.
** Already in law -- requires updating to reflect standard ATB language.

APPENDIX

Exhibit 1

TYPES OF TRAINING PROVIDED BY THE JTPA PROGRAM

Texas Department of Commerce

TYPE OF TRAINING		
	Number*	**Percent***
Basic education training	51,054	39.2
Work readiness training	53,021	40.7
Occupational skills training	64,160	49.3
All Training	130,236	
OCCUPATIONAL TRAINING		
Professional, technical, and managerial occupations including occupations in medicine & health	12,656	19.7
Clerical occupations	24,095	37.6
Sales occupations	1,199	1.9
Service occupations	11,004	17.2
Agricultural, fishery, forestry and related occupations	1,934	3.0
Processing occupations	702	1.1
Machine trades occupations	3,900	6.1
Benchwork occupations	1,541	2.4
Construction occupations	5,861	9.1
Miscellaneous occupations	2,810	4.4
All Occupations	64,160	

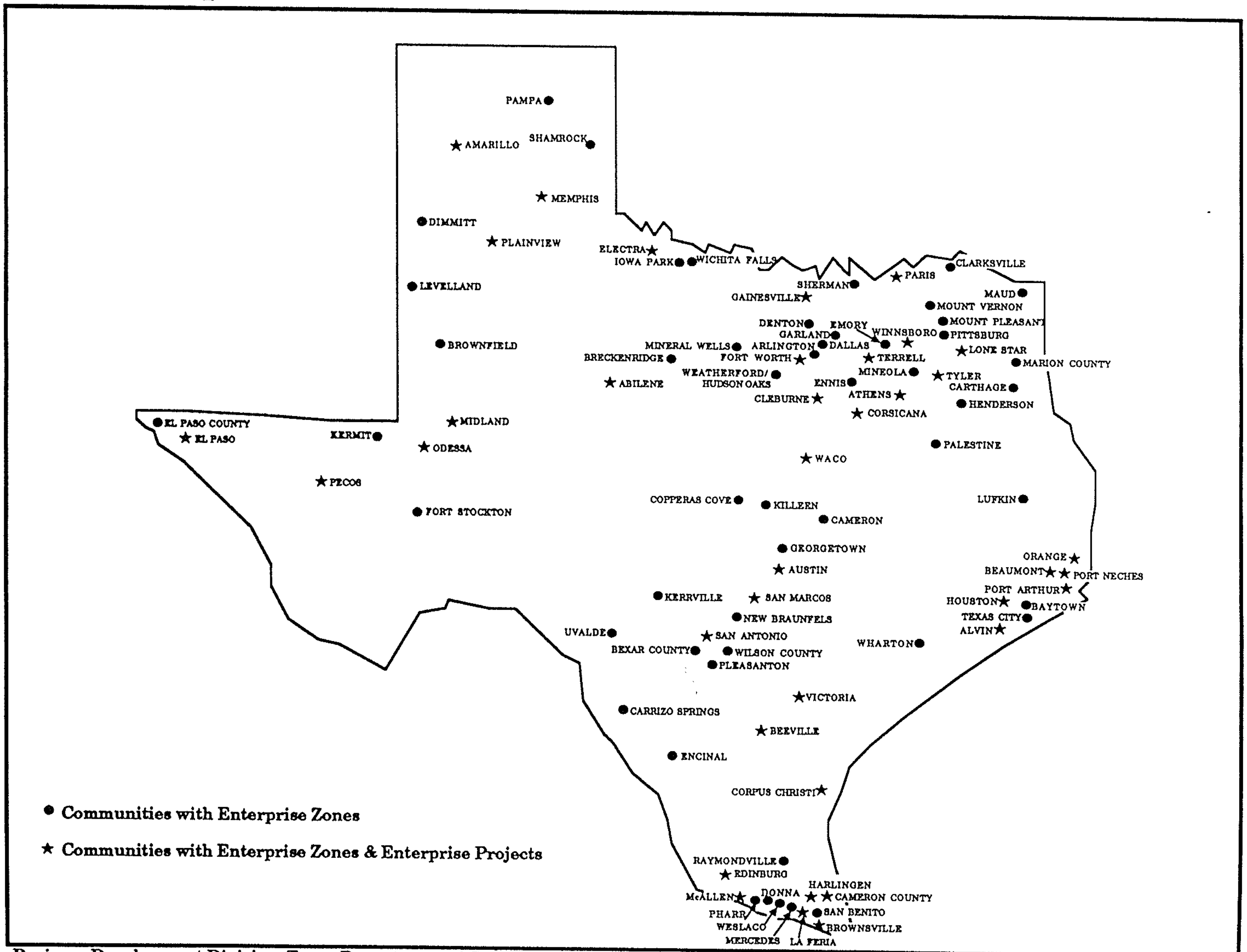
*Note: Columns do not sum to totals because some participants receive more than one type of training and/or training in more than one occupational category.

Exhibit 2

LOAN GUARANTEE-TO-RESERVE FUND PRACTICES IN OTHER STATES

State	Type of Business or Activity Eligible	Total Value of Guarantees Outstanding	Time Program Has Been In Operation	Guarantee-to-Reserve Ratio	Frequency That The Ratio Is Reviewed	Outside Entity That Assists With Review
California	All Small Businesses	$7 to $10 million	More than 10 years	4 to 1	Board and staff review ratio periodically but there is no required frequency	None
Washington	All Businesses for Export Activities	$300,000	18 months	3 to 1	Frequency has not been set (program is new)	Policy has not been determined (program is new)
New Jersey	Manufacturing and Other Labor Intensive Businesses	$75 million	17 years	3 to 1	Annually	None
Minnesota	Rural Businesses in Economically Distressed Counties	$20,000	1 year	3 to 1	No review	None
Maryland	All Businesses	$25 million	10 years	3 to 1	Annually	Legislative Review
Indiana	Businesses Involved in Manufacturing, Exporting, Waste Management, and Computers	$2.5 million	12 years	2 to 1	Monthly	Contractor

Texas Enterprise Zone Communities



Business Development Division, Texas Department of Commerce

4/5/92

Exhibit 4
MATCHING REQUIREMENTS FOR INDUSTRIAL TRAINING PROGRAMS

State	In-kind Contributions Counted Toward Company Match	Level of Match
California	Yes	Varied match requirements for repeat companies only.
Florida	Yes	Varied
Illinois	Yes	By law, company pays up to 34% of costs; in practice, it pays up to 50% of costs.
Iowa	No	Company provides 50% of costs for retraining only.
Maryland	No	Company pays a portion of instructors' salaries.
Massachusetts	Yes	Company pays 50% of costs; company pays 20% if it hires AFDC recipients and unemployed persons.
Missouri	Yes	Company pays up to 50% of costs for on-the-job training only.
New Jersey	No	Varied
New Mexico		Company pays 50% of costs.
New York	Yes	Company pays at least 50% of costs.
North Carolina	Yes	Company pays for at least 50% of all non-salvageable materials that cost under $100 per job, and all costs above $100 per job.
Ohio	Yes	Varied
Pennsylvania	No	Company pays at least 30% of costs for upgrade training, and a varied portion for others.
Rhode Island	No	Company pays at least 50% of extraordinary costs incurred.
Vermont	Yes	Company pays at least 50% for on-the-job training, 50% of travel costs, and a varied portion of classroom instruction.
Virginia	Yes	Company pays at least 50% of all travel costs, and for all production materials.
Washington	No	Company pays at least 50% of costs.
Wisconsin	Yes	Company pays at least 50% of costs.

Texas Department of Commerce

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