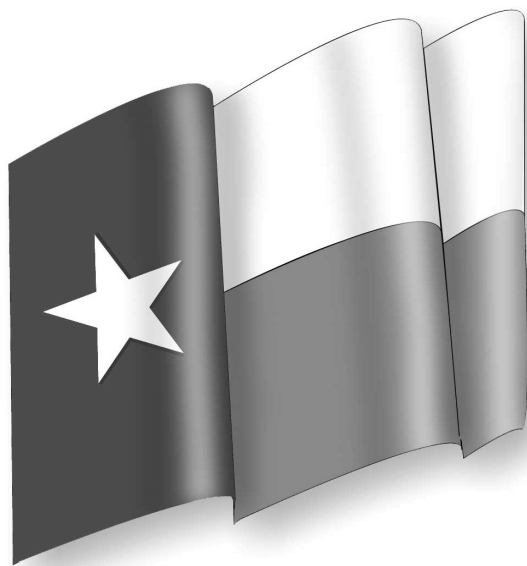


SUNSET COMMISSION DECISIONS



Texas Historical Commission

May 2006

Agency Information

Agency at a Glance

The Texas Historical Commission is the state agency for historic preservation. The Legislature originally created the Texas State Historical Survey Committee in 1953 to identify important historic sites across the state, later expanding its role to include protecting and preserving the state's heritage. In 1969, the Legislature created the Texas Antiquities Committee to protect all cultural resources, historic and prehistoric, on public land in Texas. Today, these two missions are combined in the renamed Texas Historical Commission (THC), whose mission is to protect and preserve Texas' unique historic resources. THC also acts as the State Historic Preservation Office for Texas, implementing federally mandated historic preservation programs. To accomplish its mission, THC:

- ◆ identifies and designates historic resources in Texas;
- ◆ reviews proposed projects to help protect historic resources on public and private land;
- ◆ provides financial and educational assistance to communities and organizations for developing and preserving historic resources; and
- ◆ acts as a steward to preserve and interpret historic resources entrusted to the State's care.

Key Facts

- ◆ **Funding.** In fiscal year 2005, the agency operated with a budget of \$26.9 million, funded through bonds, general revenue, interagency transfers, and federal funds. The largest expenditure, about \$19.8 million, went to 19 counties in grants to support the preservation of historic county courthouses.
- ◆ **Staffing.** The Commission employs 119 staff, mostly in its Austin headquarters. Four employees also run the Sam Rayburn House Museum in Bonham, and 13 employees operate the National Museum of the Pacific War in Fredericksburg.
- ◆ **Grants.** In fiscal year 2005, THC awarded \$20.5 million in grants to communities, owners of historic properties, and historic preservation education and training initiatives to support the preservation and promotion of Texas' historic resources.
- ◆ **Historical Markers and Designations.** THC identifies and designates many types of historic properties. Among these, THC has helped individuals and organizations mark 13,000 significant sites with Official Texas Historical Markers, and assisted citizens in preparing 3,000 nominations to the National Register of Historic Places.
- ◆ **Review of Proposed Projects.** THC works to protect important historic resources on public land by reviewing proposed construction projects to ensure that they do not negatively affect those resources. In fiscal year 2005, THC reviewed about 9,000 federal projects, as required by Section 106 of the National Historic Preservation Act of 1966. The agency also completed about 3,000 Antiquities Code reviews on state-held land, as required by state law.
- ◆ **Texas Main Street Cities.** THC has many programs to help local communities and organizations further preservation goals on the local level. The Texas Main Street Program, the most recognizable of these programs, has helped nearly 150 cities revitalize their historic downtowns.

Issues/Recommendations

Issue 1 THC Benefits From the Support of Its Associated Nonprofit Corporation, But Clarifying Each Entity’s Role Would Help Guard Against Any Potential Conflicts of Interest.

Recommendations

Change in Statute

1.1 Require THC to adopt rules governing the relationship between the agency and any affiliated nonprofit organization.

This recommendation would ensure that THC defines the relationship between the agency and any affiliated nonprofit organization, eliminating any appearance of improper conduct or conflict of interest. Adoption of rules to govern its relationship with nonprofit organizations would ensure that THC receives any applicable public input through the open rulemaking process. To best define this partnership, these rules should take into account applicable accepted best practices and standards as referenced in the staff report, as well as ensure full THC compliance with Government Code sections requiring such rules to address agency staff roles in relation to the nonprofit organization and funds.

At minimum, the rules should prohibit direct fundraising activities by agency staff with regulatory responsibilities, including the Executive Director. Agency staff, including those involved in regulatory activities, possess a high level of expertise and would not be prohibited from serving as resources during the fundraising process. Additionally, the rules should define the relationship between the THC and any nonprofit organization, including requirements of state employees and affiliated nonprofits. These changes would help ensure that the agency and the nonprofit understand the appropriate conduct for state employees regarding affiliated nonprofit organizations, which does not include

soliciting funds in agency publications and fundraising by employees with regulatory responsibilities. This recommendation is not intended to prevent the Commission from exercising its statutory authority to accept gifts and grants.

1.2 Prohibit the THC Executive Director from serving as a voting member of the board of any affiliated nonprofit organization.

This recommendation would align THC’s practices with accepted standards for the relationship between state agencies and closely associated nonprofit entities by statutorily prohibiting the Executive Director’s participation as a voting member of an affiliated nonprofit board. Because the Executive Director will always inherently have regulatory duties as the head of the agency, the Executive Director should not vote on fundraising priorities at the supporting nonprofit corporation. This change would not prohibit the THC Executive Director from serving as an ex officio nonvoting member of such a board.

1.3 Clarify in statute what staff and financial support THC may provide for associated nonprofit organizations.

To clarify the distinct roles of the agency and any associated nonprofit corporation, under this recommendation, the statute should prohibit all THC employees from directly soliciting funds for a private corporation. Additionally, the agency should be prohibited from designating a THC staff member as the primary staff person or spokesperson for an associated nonprofit corporation. The statute should also prohibit THC from providing

cash support to or paying the expenses of affiliated nonprofit organizations, through contracting or any other mechanism, but would not affect the agency's ability to provide office space, utilities, and similar limited support to any closely associated nonprofit, as permitted by Attorney General opinions. The statute should require THC to establish written guidelines to define any such limited support the agency provides to affiliated nonprofits. The guidelines should address administrative support, such as bookkeeping and accounting, as well as support for meetings of nonprofit organizations' boards of trustees.

This recommendation is intended to establish boundaries to govern the extent of THC's cash, fundraising, and in-kind support of affiliated nonprofits established to benefit the agency. The recommendation would not prohibit agency support for the nonprofit, but would ensure that THC provides limited support for any nonprofit, not the sole support.

THC could still designate one staff position, currently titled a development officer, to conduct certain agency fundraising activities and protect THC's interest in working with associated nonprofits. Such an employee would be the sole coordinator of fundraising at THC, responsible for certain aspects of fundraising, such as identifying the agency's fundraising needs, identifying potential sources of supplemental funds, and working with associated nonprofits as a liaison, including coordination and assistance duties. As stated above, the agency's fundraising employee would not be involved in any direct solicitation or donor relations on behalf of a nonprofit organizations; any associated nonprofit organization would be responsible for its own primary fundraising duties. As stated in Recommendation 1.1, other THC employees would not be directly involved in any fundraising activities other than in a resource capacity. Specifically, the Executive

Director's role in fundraising should not include the direct solicitation of funds for any private nonprofit corporation.

Nonprofit organizations that operate solely to raise funds to support THC's efforts benefit the agency and share its primary goal: to further historic preservation in Texas. As such, close coordination between the agency and any associated nonprofit is necessary. This recommendation is not intended to completely sever the operations of the agency and any associated nonprofit, but rather to strictly define the level of services the State provides to a separate nonprofit corporation. If the two entities' missions align, then the State's interest is best served by providing assistance, expertise, and limited administrative support to an associated nonprofit. However, the State should not be put in a position of providing the only staff and sole support for a separate, private corporation, established to benefit the State.

Management Action

1.4 Direct THC to establish a clear and open process to prioritize projects for financial assistance from Friends.

THC, as an agency rather than on the division level, should create a process by which projects and initiatives are reviewed for prioritization for Friends funding. The agency should examine whether Friends funding would be most useful for supporting large projects aligning directly with the agency's goals and mission, or the extra resources of Friends might be better directed toward some of the agency's newer and less critical initiatives. With direction of Friends funding determined, THC should establish and implement a process to ensure that projects are examined consistently to determine their alignment with the agency's goals for Friends funding. The THC Commission, in an open meeting, should adopt the strategy for funding prioritization,

including a process for interim approval of fundraising activities in unforeseen situations. This would introduce a strategic element into THC's use of Friends funding, allowing the agency to maximize the benefit of its supporting organization.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. Defining and limiting fundraising activities by agency staff may have an impact on agency effectiveness or efficiency, but no direct fiscal impact would result.

Responses

Agency

Recommendations 1.1, 1.2, and 1.4: The Commission agrees with these recommendations.

Recommendation 1.3: The Commission disagrees with this recommendation and maintains that its financial support of associated nonprofit corporations should be permitted. The Commission believes statutorily prohibiting THC staff from directly soliciting funds for associated nonprofit corporations, prohibiting THC staff from acting as the primary staff person or spokesperson for associated nonprofit corporations, and prohibiting THC from providing cash support or paying the expenses of associated nonprofit corporations would disable the agency and the Friends from successfully raising funds for important programs of the State.

(John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission)

Agency Modification

1. Require the agency to establish guidelines that will identify and define the type of administrative and financial support the agency should give to the Friends.

(John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission; also supported by Brian Shivers, Chairman of the Board of Trustees – Friends of the Texas Historical Commission, Austin)

For

Recommendations 1.1, 1.2, and 1.4

Daniel G. Carey, Director – Southwest Office, National Trust for Historic Preservation, Fort Worth
Brian Shivers, Chairman of the Board of Trustees – Friends of the Texas Historical Commission, Austin

Against

Recommendation 1.3

John W. Crain, President – Summerlee Foundation, Dallas

Brian Shivers, Chairman of the Board of Trustees – Friends of the Texas Historical Commission, Austin

Recommended Action: Adopt Recommendations 1.1 through 1.4.

Commission Decision: Adopted Recommendations 1.1, 1.2, and 1.4. In lieu of Recommendation 1.3, the Commission adopted Agency Modification 1, which requires THC to establish guidelines that will identify and define the type of administrative and financial support the agency should give to the Friends.

Issue 2 THC Lacks a Statewide Strategy for Recognizing Resources in the Historical Marker Program, Limiting the Program's Effectiveness as an Educational and Tourism Tool.

Recommendations

Change in Statute

2.1 Require THC to approach the marker program more strategically by awarding a more limited number of markers based on statewide themes and significance.

This recommendation would ensure a more strategic approach to how THC awards historical markers. To begin this process, THC should develop statewide themes for the marker program, linked to the agency's broader preservation plan for Texas. As part of this recommendation, THC should limit the number of markers it awards annually, initially by possibly as much as half, and select only the most qualified resources once a year. THC should develop guidelines for this process in rules, including criteria for ranking the applications. The criteria for awarding markers should give priority to resources that relate to the statewide themes developed by the agency.

THC could continue to award markers for resources that are significant locally, but that fit into the overall themes identified by the agency. After the agency awards markers to resources that are linked to the statewide theme, to the extent that the agency has not met its annual limit, it could then award markers to resources that tell unrelated local stories.

Approaching the marker program more strategically would help link this tool to THC's broader goals, particularly in the areas of education and tourism. By limiting the total number of markers, and awarding them based on statewide themes and significance,

THC would ensure that markers remained more of an honor than a commodity.

Management Action

2.2 Direct the agency to help build the capacity of County Historical Commissions to more effectively research and evaluate resources appropriate for official historical markers.

To build local capacity, THC should provide training and educational materials to help CHCs and communities in effectively researching, documenting, and evaluating the historical significance of resources appropriate for official markers. The agency should make this information available on its website and through workshops targeted at more directly assisting CHCs with the greatest need. In turn, marker applications should be more complete before reaching THC.

Assisting local communities in building their capacity to evaluate historic resources would allow CHCs to act more independently. Local communities, with access to local resources and greater knowledge of local history, are well-positioned to be effective partners to THC in the marker program. Improved county-level evaluations should also enable THC to spend less time assisting applicants in researching local history, and more time developing statewide stories to tell through the marker program.

2.3 Direct THC to establish an application fee for historical markers.

This recommendation would direct THC to use its existing statutory authority to establish a reasonable fee to be submitted with

historical marker applications. In developing the fee amount, the agency should consider the approximate amount of time staff needs to evaluate each marker application. The money brought in through application fees should be directed back into the agency's historical marker program.

Fiscal Implication

These recommendations would not have a net fiscal impact to the State. The

recommendation directing THC to develop and institute a historical marker application fee would result in increased funds for the agency, and these funds would be used to offset the costs of the marker program. The agency should use increased revenue generated by the application fee to cover the costs of CHC training.

Responses

Agency

The Commission agrees with recommendations 2.1, 2.2, and 2.3.

(John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission)

For

Recommendations 2.1 through 2.3

Anne Dennis, Marshall

Brian Shivers, Chairman of the Board of Trustees – Friends of the Texas Historical Commission, Austin

Recommendation 2.2

Tammy Kubecka, Chairperson – Burlison County Historical Commission, Caldwell

Against

Recommendation 2.3

Jay J. Johnson, Sr., Del Rio

Recommended Action: Adopt Recommendations 2.1 through 2.3.

Commission Decision: Adopted Recommendations 2.1 through 2.3.

Issue 3 Texas Has a Continuing Need for the Texas Historical Commission.

Recommendations

Change in Statute

3.1 Continue the Texas Historical Commission for 12 years.

This recommendation would continue THC as an independent agency for 12 years.

Management Action

3.2 Direct THC staff to evaluate and prioritize its many programs and initiatives, linking them back to the agency's most important goals.

This recommendation would instruct THC staff to evaluate and prioritize its programs and initiatives to better guide the agency's preservation efforts. In doing so, the agency should consider how each program and initiative relates to the agency's most important goals, and which programs should take priority within the context of those goals. The agency should examine the importance of

each program and assign agency resources accordingly. THC is currently revising its strategic plan, and could use this process to evaluate and prioritize its activities.

Fiscal Implication

If the Legislature continues the current functions of the Texas Historical Commission, using the existing organizational structure, the agency's current annual appropriation of about \$8.7 million from the General Revenue Fund, General Revenue Dedicated Funds, and interagency transfers would continue to be required for its operations. THC would also continue to receive federal funds for its responsibilities as the State's Historic Preservation Office under the National Historic Preservation Act. The recommendation to prioritize programs would not result in a fiscal impact, but could help the agency better use its existing resources by strategically directing its efforts.

Responses

Agency

The Commission agrees with recommendations 3.1 and 3.2.

(John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission)

Affected Agency Response

The Texas Parks and Wildlife Department agrees with the Sunset Advisory Commission's determination that Texas has a continuing need for THC. (Walt Dabney, State Parks Division Director – Texas Parks and Wildlife Department)

For

Recommendation 3.1

Tammy Kubecka, Chairperson – Burlison County Historical Commission, Caldwell

Jan H. Soechting, Main Street Manager – City of New Braunfels, New Braunfels

David Teel, Director, Planning and Projects – Texas Travel Industry Association, Austin

Jay J. Johnson, Sr., Del Rio

Recommendations 3.1 and 3.2

Daniel G. Carey, Director – Southwest Office, National Trust for Historic Preservation, Fort Worth

Brian Shivers, Chairman of the Board of Trustees – Friends of the Texas Historical Commission, Austin

Against

None received.

Recommended Action: Adopt Recommendations 3.1 and 3.2.

Commission Decision: Adopted Recommendations 3.1 and 3.2.

Across-the-Board Recommendations

Texas Historical Commission

Recommendations	Across-the-Board Provisions
Update	1. Require public membership on the agency’s policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency’s policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

New Issues

New Issues

The following issues were raised in addition to the issues raised in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

4. Statutorily authorize the Texas Comptroller of Public Accounts to invest the Texas Preservation Trust Fund in accordance with Government Code 403.1068, which gives the Comptroller additional flexibility in managing the assets of certain permanent funds of the State. (John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission)

For

Daniel G. Carey, Director – Southwest Office, National Trust for Historic Preservation, Fort Worth

Against

None received.

5. Remove an outdated statutory provision that enabled the Texas Historical Commission to assist Fort Bliss Military Reservation in establishing a museum and study center. (John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission)

For

Daniel G. Carey, Director – Southwest Office, National Trust for Historic Preservation, Fort Worth

Against

None received.

6. Exempt the Texas Historical Commission from Government Code 2113.107(g), which requires all state agencies that publish free periodicals to notify recipients that they must submit a written request to the agency to continue to receive the publication. (John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission)

For

Daniel G. Carey, Director – Southwest Office, National Trust for Historic Preservation, Fort Worth

David Teel, Director, Planning and Projects – Texas Travel Industry Association, Austin

Against

None received.

7. Appropriate funds to allow the Texas Historical Commission to better use technology to deliver services, interact with and train constituents, and promote heritage tourism destinations. (John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission)

For

Daniel G. Carey, Director – Southwest Office, National Trust for Historic Preservation, Fort Worth

Ron Ralph, Past President – Texas Archeological Society, Manchaca

David Teel, Director, Planning and Projects – Texas Travel Industry Association, Austin

Against

None received.

8. Insert statutory language providing that violations of the Texas Antiquities Code be subject to a civil penalty or a lawsuit. (John Nau, III, Chair and F. Lawrence Oaks, Executive Director – Texas Historical Commission)

For

Daniel G. Carey, Director – Southwest Office, National Trust for Historic Preservation, Fort Worth

Julianne Fletcher, Executive Director – Preservation Texas, Austin

Ron Ralph, Past President – Texas Archeological Society, Manchaca

Against

None received.

Recommended Action: Staff makes no recommendation on any of the new issues.

Commission Decision: The Commission did not adopt any of the new issues.