

**Sunset
Advisory
Commission**

FINAL REPORT

to the
GOVERNOR OF TEXAS
and
**Members of the
SIXTY-SEVENTH
TEXAS LEGISLATURE**



December 1980

SUNSET ADVISORY COMMISSION

Final Report
to the
Governor of Texas
and
Members of the Sixty-seventh Texas Legislature

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STATE OF TEXAS
SUNSET ADVISORY COMMISSION



Representative Bennie Bock, II, Chairman

December 1980

Senator Ed Howard, Vice-Chairman

Rep. Bill Ceverha
Rep. Charles Evans
Rep. Mike Ezzell

Sen. Lloyd Doggett
Sen. A. R. (Babe) Schwartz
Sen. O. H. (Ike) Harris

The Honorable William P. Clements
Governor of Texas

Honorable Members of the Sixty-seventh Legislature
Assembled in Regular Session

Ladies and Gentlemen:

The Sunset Advisory Commission, established by Senate Bill 54 of the Sixty-fifth Legislature, is directed to: 1) review and evaluate the performance of agencies listed in the Act; 2) develop recommendations for the abolition or improvement of specified agencies; and 3) recommend legislation necessary to implement any proposed changes. The commission is required to report its findings and recommendations to the Sixty-seventh and succeeding legislatures.

I am sure you are aware of the many hours of work on the part of the members of the Senate and House who have labored during the interim to develop the material and information required to systematically and logically evaluate the 28 agencies reviewed for this Sixty-seventh Session of the Legislature.

The members of the Sunset Advisory Commission are pleased to forward to you their findings and recommendations in this initial report. The report is composed of three separate volumes: the first contains a summary of the commission's findings and recommendations; the second incorporates a more detailed explanation of the agency reviews; and the third sets out drafts of legislation necessary to effectuate many of the recommendations.

As with any legislative undertaking, the commission has not been unanimous in its decisions concerning all of the agencies covered in the report, but it does represent the affirmative approval upon a final vote of three members of the Senate and three members of the House of Representatives. We are hopeful you will find this report informative, and useful as we complete the sunset review process on the agencies reviewed this session. The members of the commission and its staff are appreciative of the cooperation received from the state agencies whose operations were reviewed.

Respectfully submitted,


Chairman
Sunset Advisory Commission

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New Braunfels

Senator Ed Howard, Vice-chairman
Texarkana

Representative Albert D. Brown, Jr.*
San Antonio

Senator Lloyd Doggett
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Senator O. H. Harris
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*Representative Brown was appointed in November 1980 to fill the position left vacant by the resignation of Representative Mike Ezzell of Snyder.

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INTRODUCTION

INTRODUCTION

Over the past several years, there has been a sustained interest among the states in a new concept in legislative review popularly described as Sunset. Since 1976, more than half the states have enacted legislation which embodies the primary element of Sunset, the automatic termination of an agency unless continued by specific action of the legislature.

The acceptance of this concept has been aided by a general agreement that unless legislative bodies are forced to act, no systematic review will be directed toward the efficiency and effectiveness with which governmental programs are carried out. The Sunset process is, then, an attempt to institutionalize change and to provide a process by which this can be accomplished on a regular systematic basis.

A variety of approaches to the basic Sunset concept have been enacted into law by different states, including one shot reviews of all agencies, staggered reviews of designated agencies over a defined time period, reviews that allow the reviewing body to determine the time periods and agencies, and reviews that are directed not to agencies but to selected functional groupings of state services.

The Sunset process and approach finally adopted by Texas was developed around concepts proposed by the Constitutional Convention in 1974 and the Joint Advisory Committee on Government Operations in 1976. Under the Texas Sunset Act, 177 state agencies and advisory committees are scheduled for review or automatic termination at biennial intervals from 1979 to 1989. To assist the legislature in its decision to continue or abolish an agency, the Act provides for a Sunset Advisory Commission composed of four members of the Senate appointed by the Lieutenant Governor and four members of the House of Representatives appointed by the Speaker. The Sunset Advisory Commission is responsible for recommending to the legislature whether the agencies under review and their functions should be abolished or continued in some form.

The process of arriving at commission recommendations moves through three distinct phases beginning with an agency self-evaluation report to the commission. The second phase involves the preparation of an evaluation report by the Legislative Budget Board program evaluation staff. The final phase involves a public hearing at which the information contained in the reports and testimony by the public is considered.

Through this process, in December of 1978 the Sunset Commission delivered its initial report on 25 agencies to the Sixty-sixth Legislature. Action taken by the legislature on this first set of agencies marked the completion of the first sunset cycle.

The results relating to the incorporation of the sunset review into the existing legislative process during the first cycle were positive. The members of the Sunset Advisory Commission introduced legislation on virtually all the agencies

under review. The legislature also took positive steps by creating a separate House committee which dealt solely with legislation relating to Sunset agencies and by adjusting the appropriations process to provide for changes in agency responsibilities.

Substantive action by the legislature regarding Sunset agencies was positive also in that unnecessary agencies were abolished and the remaining agencies were made more responsive to the public. Of the 25 agencies reviewed under this first cycle, nine were abolished, 12 were modified and continued, four agencies were combined and one new agency was created when existing agency functions were separated. Modifications made to the agencies that were continued closely tracked the recommendations made by the Sunset Advisory Commission.

This report to the Sixty-seventh Legislature contains the Sunset Advisory Commission's recommendations concerning the 28 existing agencies under review in this second Sunset cycle. As with the Commission's recommendations to the prior legislature, the report is intended to serve as a starting point for legislative deliberations on this second set of agencies. In developing recommendations on these agencies, the Commission held 17 scheduled meetings from September 1979 through December 1980.

The majority of the agencies under review in this second sunset cycle are occupational licensing agencies with similar processes and purposes. Given the similarity of the operations of these agencies, the Sunset Advisory Commission developed several overall approaches to be generally applied to such agencies in regard to this type of state regulation. These approaches address common problems found in these agencies during the course of review which can be generally categorized as a lack of public representation on the various boards or commissions, the lack of responsiveness to complaints by the public, the imposition of unnecessary requirements for obtaining a license, the use of rule-making authority to reduce the competitive aspects of advertising and competitive bidding, and the avoidance of legislative review of expenditures through the appropriations process. The recommended approaches to these overall problems are incorporated in the text of the material in the report and are set out and briefly explained below:

1. Require the legislative review of agency expenditures through the appropriations process.

Various licensing agencies are not subject to legislative control through the appropriations process of the state. This lack of fiscal control by the legislature severely weakens the accountability of those agencies to the legislature and, ultimately, the public at large. By bringing these "independent" agencies within the appropriations process, the legislature and the public could be assured of: 1) full accountability for all state funds on a uniform basis for all agencies, 2) periodic review by the Governor's Budget Office, the LBB, and the Legislature, and 3) increased efficiency of state operation through implementation of uniform budgeting, accounting, reporting, and personnel policies.

2. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.

The rules of licensing agencies can be used to restrict competition by limiting advertising and competitive bidding by licensees. Such a restriction limits public access to information regarding professional services and hampers the consumer's efforts to shop for "a best buy". Elimination of these rules or statutes restores a degree of free competition to the regulated area to the benefit of the consumer.

3. Require public membership on boards and commissions.

Several of the licensing agencies do not have public members on their boards. The primary purpose of a licensing agency is to protect the health, welfare and safety of the public. However, boards made up solely from members of the regulated profession may not respond adequately to broad public interests because of the conflicting business interests of board members. This potential conflict can be addressed by giving the general public a direct voice in the regulatory process through representation on the board.

4. Require specific provisions relating to conflicts of interest.

Because of the nature of occupational regulation, licensing agencies often develop close ties with professional trade organizations which may not be in the general interest of the public. To help insure that the public benefit is addressed by these agencies, conflict-of-interest provisions are necessary to keep the regulated profession and the regulating agency at arm's length.

5. 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.

Apparent conflicts of interest resulting from the dual performance of agency and lobby related activities by board members and board counsel are prohibited by this guideline.

6. Provide for notification and information to the public concerning board activities.

The sunset review has shown that the public is often unaware of the regulatory activities of licensing agencies. Consequently, the effectiveness of licensing agencies in serving the general public may be limited. To help ensure public access to the services of licensing agencies steps should be taken to provide information on their services to the general public.

7. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.

This provision ensures the timely reporting of examination results. The timely notification is important to those persons whose future plans are contingent on their examination scores.

8. Provide an analysis, on request, to individuals failing the examination.

This provision insures that examinees are informed of the reasons for examination failure. Such knowledge serves to protect the examinee from arbitrary restrictions, as well as protecting the public by insuring that deficiencies are adequately addressed and corrected before reexamination.

9. Require files to be maintained on complaints.

The sunset review process has shown that complete and adequate complaint files are not maintained by some agencies. This situation has increased the time involved in resolving complaints and limited the agencies' ability to protect the consuming public. The suggested approach would serve to lessen the problem by ensuring that, at a minimum, files be developed and maintained on all complaints.

10. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.

This provision insures that all parties to a complaint are made aware of the status of the complaint and are provided with current information regarding the substance of the complaint as well as agency policies and procedures pertaining to complaint investigation and resolution.

11. Require standard time frames for licensees who are delinquent in renewal of licenses.

Variations occur among licensing agencies in requirements concerning the number of days a license renewal may be delinquent before penalties are brought into effect. This provision is aimed at insuring comparable treatment for all licensees, regardless of their regulated profession.

12. Provide for licensing by endorsement rather than reciprocity.

In a reciprocal licensing agreement, Texas and another state agree to allow a licensee to change states and receive a new license without the need to retake a licensing examination. In contrast, a policy of licensure by endorsement provides for the licensing of any out-of-state applicant by Texas without examination if the applicant is licensed by a state which possesses

licensing requirements substantially equivalent to, or more stringent than, Texas' requirements. The endorsement policy protects the public interest, imposes uniform requirements on all applicants, and spares the already-licensed practitioner the cost and time required in "re-taking" an examination previously passed in another state.

13. Authorize agencies to set fees.

In the case of many licensing agencies, various licensing fees are fixed in the agency's statute. With the passage of time, these fixed fees often do not continue to generate sufficient revenues to make the agency "self-supporting" or to provide a realistic contribution to the overall financing of agency operations. This provision would permit agencies to set reasonable fees, thereby providing agencies with the flexibility to keep revenues in line with the changing cost of operations.

14. Per diem to be set by legislative appropriation.

The per diem rate to be paid to the board members of many licensing agencies is set in the individual statutes for the agencies. With the passage of time, these fixed rates can become obsolete or unrealistic with respect to the changing cost of living, the responsibilities of the board members, or the per diem rates paid to board members of other agencies. This approach provides a ready means for consistently considering board member per diem rates and making necessary adjustments.

15. Authorize agencies to use a full range of penalties.

As a general principle, an agency's range of penalties should be able to conform to the seriousness of the offenses presented to it. However, in many cases, licensing agencies are not given a sufficient range of penalties. This provision is intended to insure that appropriate sanctions for offenses are available to an agency.

16. Authorize the staggered renewal of licenses.

This type of provision encourages the periodic renewal of licenses rather than requiring the renewal of all licenses at one particular time each year. The staggering procedure improves the efficient utilization of agency personnel by establishing a uniform workload throughout the year and eliminating backlogs in licensing efforts and the need for seasonal employees.

17. Require licensing disqualifications to be 1) easily determined, and 2) currently existing conditions.

The statutes of many licensing agencies contain licensing disqualifiers which are vague and hard to define (such as the requirement that licensees be of "good moral character"). In

addition, many provisions can permanently disqualify a person for licensure even though the disqualifying condition (such as drug addiction) is corrected. This across-the-board approach has been applied on a case-by-case basis in an effort to eliminate such vague and inequitable disqualifying provisions.

18. Specification of grounds for removal of a board member.

Several of the preceding across-the-board provisions set out appointment requirements for board members (e.g., conflict-of-interest requirements). This provision specifies directly that it is grounds for removal of a board member if these requirements are not met. In addition, the provision clarifies that if grounds for removal exist, the board's actions taken during the existence of these grounds are still valid.

19. Specification of board hearing requirements.

The statutes of varying licensing agencies contain board hearing provisions which parallel or were suspended by the provisions enacted in the Administrative Procedure and Texas Register Act. This across-the-board approach is a "clean-up" provision which directly specifies that a person refused licensure or sanctioned by a board is entitled to a hearing before the board, and that such proceedings are governed by the Administrative Procedure Act.

Overall Summary of Sunset Commission Action

The Sunset Advisory Commission reviewed twenty-eight existing agencies and recommended that one agency be abolished, four agencies be abolished and their functions combined with another agency, and twenty agencies be continued with modifications to their current operations. On three agencies, the commission made no recommendations.

These actions of the Sunset Commission are shown in the material that follows.

AGENCY REVIEWS

ADJUTANT GENERAL'S DEPARTMENT

BACKGROUND

Historical Perspective

The tradition of maintaining a local militia for the common defense in Texas dates back to the 1830's, when volunteers organized to win the state's independence from Mexico. In order to coordinate the actions of these volunteer forces, the Adjutant General's Department was established under the Republic of Texas in 1840.

In 1846, one year after Texas was admitted as the twenty-eighth state, the department was established in state government to execute the constitutional responsibilities of the governor as commander in chief of the state's military forces. By this action, Texas followed the precedent set by other states under the powers given them by Article I, Section 8 of the U. S. Constitution. The constitution reserves to the states "the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress."

In 1903, action taken by the Federal Government in the National Militia Act redefined the nature of the state militia and laid the groundwork for these forces as we know them today. Under terms of this Act, the various state military organizations became known as the "National Guard", organized along the lines of the regular army. The Federal Government became responsible for arming the guard, as well as contributing to their support and training. In addition, the President was granted the authority to call forth the guard into federal service. In this manner, the Act created for the national guard and the Adjutant General's Department a dual responsibility of providing: 1) a trained and organized state militia to function in the protection of life and property, and the preservation of law and order within the state; and 2) trained military units for federal active duty in time of war or national emergency.

In response to the Congressional action redefining the state's militia, the Twenty-ninth Texas Legislature in 1905 passed legislation to provide for the organization and discipline of the Texas National Guard under the command of an adjutant general, appointed by the governor for a two-year term. Subordinate only to the governor in matters pertaining to the state's military forces, the legislation stated that the adjutant general shall perform, as near as possible, such duties as pertain to the chief of staff and the military secretary of the United States Army. These duties and the dual federal-state functions of the department have remained unchanged.

Since the reorganization of the state militia into national guard units, the structure of the state's military forces has undergone one significant change. Following the call to federal active service of the Texas National Guard during World War II, the Texas Legislature enlarged the state militia by creating the Texas Defense Guard. Redesignated the Texas State Guard in 1943, this body was charged with replacing the national guard insofar as its state functions were concerned during times of federal service.

While the Texas State Guard was disbanded and given reserve status following the return of the Texas National Guard after World War II, it was recreated as an active unit by the Texas Legislature in 1965 and has continued in existence since that date. This reactivation was taken after a Texas National Guard unit was called to active service, leaving behind an unguarded armory containing state equipment. This situation underlined the continuing need for a ready force to supplement or replace national guard personnel.

In the seventy-five years of its existence, the Texas National Guard has answered a federal call to duty on five different occasions. In addition, the guard has frequently provided a state service in the form of disaster assistance and support to civil authorities -- 120 times since 1949. The agency carries out its duty of command and administration of the state's military forces with a staff of 215 full-time state employees and close to 2,000 federal employees located throughout the state. During the 1978-79 biennium, the department expended \$6,988,169 in support of its various programs. Eighty-eight percent of these funds came from the General Revenue Fund while the remaining twelve percent were from federal funds. In addition to funds expended through the department, the Federal Government contributed approximately \$185.9 million during the 1978-79 biennium in support of the Texas National Guard.

Comparative Analysis

In order to determine the pattern of laws and regulations utilized within the United States for the purpose of administering state military forces, a survey of the fifty states was conducted.

Federal law establishes the position of adjutant general in each of the fifty states. In all states, the governor is commander in chief of state military forces, while the adjutant general is charged with the administration and command of these forces. Every state provides state funds for the support of its respective Department of Military Affairs or Adjutant General and, in each state, military forces perform state as well as federal functions. State functions performed by state military forces include disaster relief, law enforcement, civil defense, rescue, community health, and forestry functions. State funds appropriated in support of these state military functions range from approximately \$500,000 in the states of Nevada and Virginia to \$14,000,000 appropriated by the State of New York. In Texas, \$3,534,456 in state funds has been appropriated to the Adjutant General's Department for the 1980 fiscal year. In addition to state appropriations, thirty-two states, including Texas, collect fees for armory rental. In Iowa, additional funds are generated through the rental of armory grounds to farmers.

All states surveyed employ state-funded personnel for the purpose of administering state military forces. The number of personnel employed ranges from 319 in California to 20 in West Virginia. In Texas, the Adjutant General's Department is staffed by 215 state employees.

Of the fifty states surveyed, nine states possess an active state guard or militia, as does Texas. In eighteen additional states, a state guard or militia is authorized by state law but has not been funded.

In the area of military facilities, final responsibility for the construction of armories rests with the Adjutant General's Department or with the state Department of Military Affairs in all states except Texas. In Texas, construction responsibility rests with the National Guard Armory Board. The function of facility maintenance is performed by the Adjutant General's Department in all but six states, including Texas. In five of these states, including Texas, maintenance functions are fully or partially the responsibility of a National Guard Armory Board.

All states surveyed indicated the necessity of performing the basic administrative and management functions related to the maintenance of a state military force.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates, and the objectives of the agency and the manner in which these objectives have been achieved.

The evaluation of the Adjutant General's Department indicated that the agency has been successful in meeting its major program objectives. Operations of the agency are generally conducted in an efficient and effective manner; however, several areas of concern were identified through the review. In the area of financing, purchases made from agency's special funds are not conducted through the State Purchasing and General Services Commission. In addition, these funds, which total approximately \$20,000, are not kept in the State Treasury, but are maintained in local bank accounts. In order to provide for legislative control and to comply with general state purchasing procedures, the agency's special funds should be placed in the Treasury and expenditures from these funds should be conducted through the State Purchasing and General Services Commission. As a final concern in the area of financing, fees collected by the department for rental of visitor quarters at Camp Mabry are not clearly authorized by statute. Such authorization should be given if this procedure is to be continued.

The agency has made efforts to ensure that federal functions are performed by federal personnel and funds. Although many federal activities previously performed by the state have been assumed by the Federal Government in recent years, the state still provides mail and printing services to various federal offices without any reimbursement for the labor involved. The agency should take steps to negotiate a federal reimbursement contract for these services.

The agency has achieved significant savings and has reduced staff size by contracting for garbage and air conditioning services at Camp Mabry. An analysis of the janitorial requirements at the camp indicated that current costs of \$172,000 could be significantly reduced through contracting with private firms.

With regard to personnel procedures, one state employee currently performs tasks on behalf of the National Guard Association, a private promotional organization. The activities of the department and the association should be clearly distinguished and state personnel should not perform association functions. The

review also indicated that the department requires membership in the guard as a condition for employment for administrative and support positions, thereby potentially excluding capable individuals from employment. Guard membership should not be required unless it clearly relates to the performance of the job tasks.

With the use of state and federal resources, the Army and Air National Guard programs have been successful in providing trained units for national defense and to support state civil authorities. The Texas State Guard, supported through state funds alone, receives specialized training in traffic control, crowd control, property protection, light rescue, and first aid to accomplish its objective of replacing or supplementing the national guard in times of federal active duty. The review indicated a close relationship between the Texas State Guard and a private lobby group, the Texas State Guard Association. Advertisements for the association, currently published and distributed at state expense by the state guard program, should be discontinued and agency operations should be clearly distinguished from those of private associations.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of alternative methods of performing agency functions; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

The Adjutant General's Department possesses primary responsibility for the performance of military-related functions. However, the responsibility for national guard facility construction and maintenance is shared with the National Guard Armory Board. Consolidation of facility construction and maintenance activities under the Adjutant General's Department through an interagency contract could eliminate functional duplication and provide potential savings. This approach to consolidation would continue the bonding mechanism used in the past to fund armory construction and renovation.

With respect to the agency's functions, no feasible alternatives were identified to the use of trained military forces to carry out guard responsibilities. In addition, the elimination of the agency could result in the state's loss of federal funds for military operations.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees, the extent to which the agency complies with the Open Records Act and the Open Meetings Act, and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals. Agency operations should be structured in a manner that is fair and impartial to all

interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as through agency compliance with statutes relating to open meetings and open records.

The department has complied with statutory requirements regarding conflict of interest and open records. Open meeting requirements do not apply to the agency, which does not hold meetings within the meaning of the Open Meetings Act. The only charge of discrimination filed against the department was resolved in 1979.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions, and the extent to which public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

Only two rules have been adopted by the agency during the last four years. These rules have been adopted in compliance with general state law. The agency has informed the public of its activities through pamphlets, news releases, and public presentations. It has been the policy of the state to administer and direct state military forces solely through the adjutant general, rather than through a governing board or commission; therefore, the question of public membership is not applicable to this agency.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public and the nature of statutory changes recommended by the agency. In the period covering the last three legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to substantive adopted changes.

Although the basic functions of the Adjutant General's Department have not changed since its establishment, the military statutes of the state have undergone many revisions. In the area of administration, revisions which continue to be of primary importance in the agency's current operation include those authorizing the adjutant general to lease buildings and property from the National Guard Armory Board and to accept funds from any legal source. With respect to changes related to the agency's substantive military function, of principal note were statutory provisions creating the Texas State Guard as a continuing part of the state's active guard forces.

An analysis of legislation unsuccessfully introduced indicates that these bills covered a wide variety of topics. Among other things, legislation would have restored the guard's immunity from criminal liability for legitimate military acts, held officers or enlisted men financially accountable for negligent damage of public property, and provided penalties for guard members who fail to report for official functions.

NEED FOR AGENCY FUNCTIONS AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for the state to provide trained and organized military units. The review identified no feasible alternative to performing this function through an independent military agency. The review also determined that armory construction and maintenance functions currently performed by the National Guard Armory Board could be assumed by the Adjutant General's Department.

SUNSET COMMISSION RECOMMENDATIONS

- Maintain the department with internal changes.
 - a. Small special funds of the agency should be maintained in the State Treasury. Purchases made from these funds should be conducted through the State Purchasing and General Services Commission.
 - b. A means should be provided through which the department could be authorized to contract for and be responsible for the construction, maintenance and operation of national guard facilities.
 - c. The possibility of negotiating a federal reimbursement contract for state printing and mail services supplied to federal offices should be reviewed.
 - d. The collection of billeting fees should be clearly authorized in statute.
 - e. Janitorial services at Camp Mabry should be supplied by contract.
 - f. State employees of the department should not provide services for the National Guard Association.
 - g. The Texas State Guard program should not publish or distribute advertisements for the Texas State Guard Association at state expense.
 - h. Military membership should not be required as a condition for employment unless it exists as a clear prerequisite to performance of job tasks.

TEXAS AERONAUTICS COMMISSION

BACKGROUND

Historical Perspective

The Texas Aeronautics Commission was established by the Forty-ninth Legislature in 1945. The agency's establishment can be directly attributed to the growth of civil aviation as a viable mode of public transportation.

Prior to World War II, travel by commercial airline was not widespread due to its high cost and limited development. However, the original obstacles to the development of an air transportation system were eliminated as a result of two major war-related developments. During the war, advances in aviation technology resulted in larger and faster aircraft. These developments lowered commercial airline operating expenses, thereby leading to fares more easily affordable by the general public. In addition, a basis for a national air transportation system was provided at the end of World War II when over 600 airports built for military transportation and more than \$25 billion worth of surplus aviation equipment and supplies were made available to the private sector for use.

In an effort to foster and maintain this foundation for a modern air transportation system, the federal government began consideration of legislation for airport development. In general, legislation proposed in Congress embodied the concept of federal aid for airport development contingent upon some form of state participation or action. In anticipation of the Federal Airport Act, which was finally passed in 1946, and in response to the growth in aviation as a form of transportation, all but 11 states had established some type of agency to promote or regulate aviation by the end of 1944. Texas joined those states with aviation agencies in 1945 through the creation of the Texas Aeronautics Commission.

Through its enabling legislation, the commission was directed to encourage, foster, and assist in the development of aeronautics within the state and to encourage and assist in the establishment of airports and air navigational facilities. The original act prohibited the commission from promulgating rules or regulations which would impose restrictions on aviation and from issuing certificates of public convenience and necessity to air carriers. In response to these legislatively mandated responsibilities, the commission developed programs to promote aviation services through the sponsorship of aviation clinics and the distribution of aviation publications and films.

The commission's powers were expanded in 1961 when Texas became the nineteenth state to enact legislation regulating intrastate air carriers. The agency was authorized to issue certificates of public convenience and necessity to intrastate carriers and to regulate the economic and safety aspects of their operation. Regulation of intrastate air carriers, who were largely exempted from regulation by the federal Civil Aeronautics Board, was sought by the carriers themselves. The carriers hoped to benefit from the regulation of carrier entry into markets and the resulting stable pattern of service. In addition, certification by

the state carried with it the expressed approval of a carrier's fiscal position and served as an indication to lending institutions of the economic viability of company operations. Communities and airports throughout the state also anticipated benefits from a stable system of carrier service based upon the state's determination of public need rather than the airlines' profit-making approach.

The pattern of state regulation provided for in 1961 remained virtually unchanged until the passage of the Airline Deregulation Act of 1978. This act preempted state regulation of the rates, routes and services of various categories of air carriers. All carriers certificated by the TAC in 1978 fell into the deregulated group. As a result of the federal act, TAC rules were modified and the certification criterion of public convenience and necessity was removed. In addition, the policy of regulating service to individual communities, rather than the routes of carriers, was adopted by the commission.

The TAC was given the authority to provide financial assistance for airport development when it was created in 1945. However, the state did not implement this portion of the act until the Fifty-eighth Legislature appropriated \$200,000 for airport development grants to local communities in 1963. The grant program was initiated to help communities finance the high cost of airport construction and maintenance. Since 1970, state grant funds have also been used by communities to match federal funds for airport development. From the inception of the program, the commission has participated in over 450 airport construction, navigation, and maintenance projects in 208 communities. These projects include the development of 71 new airports in communities previously without access to air transportation.

Currently, the operations of the commission are directed through a six-member policy body appointed by the governor and confirmed by the senate. In fiscal year 1979, the agency carried out its duties with a staff of 40 budgeted positions. During the 1978-79 biennium, the commission expended \$4,573,595 in support of its various programs. Approximately 65 percent of these funds were from the General Revenue Fund, 30 percent from the Aircraft Fuel Tax Fund No. 150 and the remaining five percent from federal funds.

Comparative Analysis

In order to determine the pattern of the promotion and regulation of aeronautics within the United States, a survey of the 50 states was conducted.

Of the 50 states surveyed, only Colorado and Nevada have not assigned aeronautic functions to a specific agency. Responsibility for aeronautics in 33 states is assigned to a division of the state Department of Transportation. Twelve states, including Texas, have established independent aeronautics agencies. In 35 states, as in Texas, the board or individual with policy-making responsibility for agency operation is appointed by the governor. In 17 states, as in Texas, the governor's appointments must be confirmed by the legislature.

The agency with responsibility for aeronautics receives appropriated general tax revenue in 30 states, as does the Texas Aeronautics Commission. Fees collected by the agencies serve as a source of revenue in 26 states, not including

Texas. Aeronautics agencies in 43 states, including Texas, disburse state airport grants. All state aviation agencies provide technical assistance in airport site selection, planning, financing, and operation. Twenty-nine states provide public education services, as does Texas.

With regard to regulatory activities, seven states indicate that they regulate either scheduled or unscheduled carriers. In Texas, scheduled air carriers are regulated. In eight states, not including Texas, air freight carriers are regulated. In Texas, as in 26 other states, consumer complaints are investigated by the agency. In 16 states, including Texas, disciplinary hearings are conducted by the agency.

States which possess aeronautics agencies indicate that the agencies perform the basic functions of promotion, airport facility development, and regulation.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The evaluation of the Texas Aeronautics Commission indicated that the agency has been successful in meeting its major programmatic goals. Operations of the agency are generally conducted in an efficient and effective manner; however, several areas of concern were identified through the review. In the area of fiscal management, access to cash and warrants on hand was not adequately controlled during the period of the review. Fees collected by the agency for pilot instructor certification clinics are not authorized by statute and no fees have been collected by the agency for agency publications containing general aviation information. In addition, application fees collected to defray the costs of air carrier regulation have not been increased since 1961.

In the area of air carrier regulation, the TAC has been successful in fostering an effective and stable air transportation system. However, under present agency procedures, activities of the air carrier surveillance and enforcement activity are inadequately documented, and the commission has not adopted rules providing for the safety and inspection of intrastate carriers.

Although consumer complaints are handled in an efficient manner, confusion over the TAC's regulatory jurisdiction could be reduced by requiring carriers to inform the public that they are regulated by the TAC. In addition, carriers should be required to notify passengers of baggage liability limitations and that carrier rules and tariffs are available for inspection. Review of the agency's research and development activity indicated that information generated through the agency's planning processes has not been used to direct agency operations or to secure federal funds, and has consequently been of little benefit to the agency or to the general public.

In the area of airport facility development, the \$100,000 ceiling currently placed on airport development grants by the General Appropriations Act creates a major obstacle to the effective funding and administration of new airport construction. If the \$100,000 ceiling was raised to \$300,000, the legislature could insure that grants are broadly distributed by prioritizing projects so that first priority is given to safety-related projects, second priority to maintenance of existing facilities, third priority to expansion of existing facilities, and fourth priority to new construction.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Transportation-related functions, similar to those of the TAC, are performed by several state agencies. Although the functions of the TAC could be consolidated with those of an existing agency, no benefits in terms of increased efficiency or effectiveness could be anticipated to result because of the highly specialized aeronautic responsibilities of the TAC. The regulatory approach adopted by the commission, while relatively unrestrictive, has been successful in promoting and directing the development of an extensive system of intrastate air carrier service. No alternative regulatory approaches, including deregulation, would appear to result in additional benefit to the public.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals. In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation.

The commission has complied with statutory requirements regarding conflict of interest, open meetings, and open records. Two charges of discrimination have been filed against the agency, one of which is still pending investigation.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

The agency has encouraged public participation in its rule-making activities through several means: notifications to the public through the Texas Register in compliance with general state law, notification of interested parties, and publication of proposed substantive rules in the TAC Bulletin. Despite commission efforts, representatives of the general public have not presented testimony regarding proposed rule changes.

The agency has made an effort to inform the general public of its operations through public meetings and through the distribution of periodicals and printed brochures. In addition, the point of view of the general public is represented on the commission through its current membership.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates, and the nature of statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to only adopted changes.

Since its passage in 1945, the enabling legislation of the Texas Aeronautics Commission has been amended several times. Two of these amendments significantly expanded the original authority of the agency. In 1961, the commission was granted the power to authorize the operation of intrastate air carriers through certificates of public convenience and necessity and to exercise regulatory authority over economic and safety aspects of such carrier operations. In 1965, the act was amended to establish a grant and loan program for airport development in the state. Other amendments to the TAC's enabling legislation have generally altered various aspects of the agency's certification and grant programs.

Apart from such successful legislation, four bills were unsuccessfully introduced in the Sixty-fourth Legislature in 1975. Three of these bills would have modified the specific regulatory authority of the TAC, while the fourth bill would have merged the TAC and other transportation agencies into a new Department of Natural Resources and Transportation.

The agency made no suggestions concerning modifications to its statute in its self-evaluation report.

NEED TO REGULATE AND ALTERNATIVES

The review indicated that there is a continuing need for the functions of the commission. The experiences of other states, which have deregulated intrastate air carriers, indicate that regulation is probably beneficial to the maintenance of a stable and inexpensive air transportation system. Increases in the number of Texans relying on aviation as a means of transportation create a continuing need for a state airport grant program to help communities maintain and develop local airports and to provide assistance to communities in matching available federal grants. Public requests for technical and advisory services provided by the commission have also increased with the growth of aviation. It therefore appears that the original need for commission functions still exists, and that there are no practical alternatives to the performance of the agency's functions. Although agency functions could be consolidated with other agencies, no benefits would result from consolidation.

SUNSET COMMISSION RECOMMENDATION

- Maintain the commission with internal changes.
 - a. The planning process under the research and development activity should not be continued unless planning requirements are imposed by the Federal Government.
 - b. Surveillance and enforcement activities relating to air carriers should be documented.
 - c. The collection of fees for educational services should be clearly authorized.
 - d. Fees should be collected for agency publications which do not serve a direct safety function.
 - e. Application fees for air carrier certification and amendments to certificates should be increased.
 - f. Cash and warrants on hand should be secured by locking the cabinet in which they are kept and supervising access to the key.

- g. The commission's statute should be amended to prioritize projects funded so that first priority is given to safety-related projects, second priority to the maintenance of existing facilities, third priority to the expansion of existing facilities, and fourth priority to new construction; and the \$100,000 ceiling on airport aid grants established in the appropriations act of the Sixty-sixth Legislature should be raised to \$300,000.
- h. Carriers should be required to notify passengers of luggage liability limitations and other basic operating procedures, to inform the public that carrier tariffs and regulations are available for inspection, and to notify the public that carriers are regulated by the TAC.
- i. The commission shall adopt rules providing for the safety and inspection of air carriers subject to the requirements of the act.

TEXAS AMUSEMENT MACHINE COMMISSION

BACKGROUND

Historical Perspective

The Texas Amusement Machine Commission is the state agency responsible for taxation and regulation of music, skill, and pleasure coin-operated machines, designated as "amusement machines." Created by the Sixty-second Legislature (1971) as the Texas Vending Commission, its name was changed in 1973 to more accurately describe its jurisdiction. A review of the state's involvement with the coin-operated machine industry is helpful in understanding current regulation of amusement machines.

Initial state involvement in the area of coin-operated machines began in 1936. In that year, the Forty-fourth Legislature passed several tax laws, one of which dealt with coin-operated machines. The Comptroller of Public Accounts was designated to collect an annual occupation tax levied on coin-operated music, skill, pleasure, and merchandise machines. Coin-operated service machines such as pay telephones and cigarette machines were exempted from taxation. During the next thirty years, the state's involvement with coin-operated machines was limited to collection of the occupation tax. Only one change occurred to the tax law during this period, an exemption for coin-operated merchandise vending machines was authorized by the Fifty-seventh Legislature in 1961.

In 1968, in response to a number of incidents of violence, allegations of coercion and threats of force being used on locations using vending machines, and related illegal activities, a special legislative committee was created to investigate the vending machine industry. At the conclusion of its investigation, this committee recommended that the state expand its activity with regard to vending machines beyond application of the occupation tax to include regulation of persons involved in sale and lease of machines. As a result of this investigation, legislation was passed by the Sixty-first Legislature in 1969 which was designed to provide comprehensive regulation of music, skill, and pleasure coin-operated machines and businesses dealing with these machines. Enforcement responsibility for this regulation was placed with the Comptroller of Public Accounts. The key regulatory provisions were: 1) persons engaged in the business of leasing and selling coin-operated music, skill, or pleasure machines were required to be licensed; 2) a person required to obtain an on-premise alcoholic beverage license was prohibited from obtaining a vending license; 3) contracts between vendors and location owners for the placement of machines ("location agreements") or for extensions of credit were required to be filed with the state; and 4) an owner of a machine could not pay more than fifty percent of the revenue from such machine to the lessee.

Shortly after its passage, the new law was interpreted by the attorney general to prohibit all tavern owners from owning coin-operated amusement machines, Attorney General Opinion, No. M-449 (1969). This decision angered those tavern owners wanting to own coin-operated machines, intensified the animosity between some tavern owners and vendors, and created an attitude of

non-cooperation among many of the parties. This situation caused difficulty for the Comptroller of Public Accounts in enforcing the regulatory act, and pointed to a need for a broad-based policy-making body able to direct all of its effort to regulating the coin-operated machine industry. In response to this need, the Sixty-second Legislature, in 1971, created the Texas Vending Commission with a composition of three industry members, three non-industry public members, and three ex-officio members: the attorney general, the Consumer Credit Commissioner, and the director of the Department of Public Safety. All responsibilities of the Comptroller of Public Accounts regarding coin-operated machines were transferred to the new commission. Finally, in 1972, the Texas Supreme Court concluded that the attorney general had improperly construed the law to prohibit persons with an on-premise alcoholic beverage license from owning their own machines. This decision removed a major objection to the regulatory act.

In 1973, Texas courts declared one part of the commission's law unconstitutional which resulted in the entire regulatory section of the law being declared null and void because of a non-severability clause contained in the article. This left the commission with only taxing authority. The Sixty-third Legislature in 1973, changed the name of the Texas Vending Commission to Texas Amusement Machine Commission, but passed no legislation to fill the void in regulation created by the court decision. Investigations were initiated by House and Senate committees after the Sixty-third session in response to the continuing need to address the problems and practices that were alleged to be occurring in the industry.

Recommendations of these committees were incorporated in the commission's present legislation which was enacted by the Sixty-fourth Legislature in 1975. This legislation reinstated the regulation of the coin-operated machine industry while dealing with problems found through committee investigations. The commission's composition was modified by removing the three industry members, while retaining the public and ex-officio members. Included as elements of the new legislation were provisions that: 1) allowed tavern owners to own coin-operated machines; 2) required all coin-operated machine businesses to obtain an annual license in one of three categories: general business, repair, or import; 3) required all other machine owners to obtain an annual registration certificate; 4) removed requirements for submission of agreements and credit extensions between vendors and location owners; and 5) maintained requirements for the 50/50 split of machine revenues.

The present six-member commission employs a staff of twenty-four full-time office and field personnel to carry out its taxing, licensing, and enforcement responsibilities with respect to approximately 1,500 licensees and 3,500 registration certificate holders owning in excess of 105,000 coin-operated amusement machines. Revenues generated through agency activities totaled more than \$1.8 million for 1979 with expenses totaling \$493,587 for the same period.

Comparative Analysis

To determine the pattern of regulation of the amusement machine industry, a survey of the fifty states was conducted to determine how this has been addressed in other states.

The need to regulate the amusement machine industry is currently expressed through statewide control imposed by twenty-eight of the fifty states surveyed. Control in twenty-one states is limited to taxation on machine revenue or on

machines themselves. Industry regulation is currently imposed by seven states, including Texas. All but one of these states impose licensing requirements on those engaged in the amusement machine business in addition to taxation. Regulation in addition to licensing and taxation is imposed by three states, including Texas, which regulates the division of revenue produced by amusement machines. One state prohibits loans from machine owners to tavern owners; Texas regulates such loans through interest rate control and record-keeping requirements related to loans. One other state prohibits machine owners from leaving machine keys on location. Texas requires instruments to be placed on each machine to record machine income if keys are left on location.

From the standpoint of organizational patterns, only Texas utilizes an independent board or commission. The governor appoints the board members, with appointees confirmed by the legislature. Membership is confined to persons who are not members of the regulated occupation. Texas also has an advisory board composed of industry representatives chosen by its commission.

In twenty-seven states, the function is carried out through a section which operates as a part of a larger substantive agency -- twenty-four states using a tax collection agency, one state using a division of its Attorney General's Office, one state using a division of its Department of Public Safety, and one state using a Department of Weights and Measures. Enforcement activities in three states, including Texas, involve investigation of complaints regarding amusement machines from consumers and licensees. Twenty-four states provide for enforcement activities related to compliance with taxation requirements. In Texas, the agency also conducts investigations for compliance with taxation requirements.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Texas Amusement Machine Commission is a six-member board consisting of three members appointed by the governor with the advice and consent of the senate, who are not connected with the amusement machine industry, and three ex officio members. The ex officio members have voting rights and include the Director of the Department of Public Safety, the Consumer Credit Commissioner, and the Attorney General, or their representatives.

The commission is directed by statute to tax and regulate the coin-operated amusement machine industry. The agency is funded by legislative appropriations out of the General Revenue Fund. All revenue collected by the commission is deposited into one of three funds. Twenty-five thousand dollars is deposited in the General Revenue Fund with one-fourth of the remaining revenue credited to the Available School Fund and three-fourths to the Omnibus Tax Clearance Fund.

With regard to agency administration, the commission generally meets the objective of efficient management. However, two concerns were identified in the review. First, the law provides for an inconsistent policy regarding fee payments.

License fees are required to be made by cashier's check or money order. Other fees authorized by statute do not have to be paid in this manner. Two problems have resulted from this situation. First, returned "hot" checks for fee payments cause delays in application processing and extra costs for the agency and the State Treasurer. Second, the inconsistent fee policy affects the agency's ability to comply with its statute. The agency has chosen to accept personal checks for all fee payments to avoid the difficulties associated with return of license fees not made by cashier's check or money order as required by statute. A commission policy requiring that all payments be made in the form of a cashier's check or money order would address these problems.

The second concern with administration relates to the fee charged for registration certificates. The \$10 registration fee is considerably exceeded by the cost (approximately \$50) of related administrative and enforcement efforts. An increase in the fee charged for registration would more nearly equate the revenue produced by fees with agency costs related to registration certificates.

A review of the licensing activity of the commission indicates that the agency generally ensures that applicants have met requirements for the issuance of licenses, registration certificates, and tax permits. However, two areas of concern related to the licensing activity were identified during the review and deal with licensing requirements and the renewal process. The first area of concern with licensing requirements relates to mandatory refusal of licensure to an applicant convicted of a felony. The Sunset Commission determined that the agency should have the flexibility to determine if a license should be denied on the basis of a felony conviction.

The second area of concern with licensing deals with the agency's annual renewal procedures. Current renewal procedures are deficient due to the lack of penalties authorized for delinquent renewals of licenses or registration certificates. Authorization of penalties would provide the agency with a mechanism to use in reducing the number of late renewals. In addition, the agency has available an enforcement mechanism which can be used to help discourage late renewals. The agency has the authority to seal machines for non-payment of the annual occupation tax. Occupation tax permits cannot be issued by the agency until a machine owner has applied for a license or registration certificate. The agency should change procedures to keep machines sealed until the renewal fees were received by the central office, thus causing a loss of revenue to the owners of the machines during the sealed period. This loss of revenue would create an incentive to pay tax and renewal fees when due.

The second particular concern regarding annual renewal procedures relates to the time required to process renewals for licenses, registration certificates, and applications for occupation tax permits. The processing time normally requires two months. Three contributing factors were identified relating to this backlog condition. First, information on renewal applications requires more examination than most renewal forms. Second, improper application is often encountered, particularly among renewals of registration certificates. The agency has had only limited success in dealing with these two factors. The third contributing factor is the agency's lack of renewal processing time. The deadline for renewal submission is December 31. Processing of these renewals is required to be completed by January 1st, one day after the submission deadline. In order to improve the renewal process, the submission deadline should be changed to provide the agency

with more processing time between the submission deadline and the effective date of renewals.

Two concerns were identified with regard to enforcement activities of the agency. The first concern is that a more thorough documentation of substantive complaints is needed to provide a complete basis for holding hearings and making findings of fact, in cases which could lead to referral to the Attorney General for revocation or other penalties. The second area of concern involves penalties specified in the law. Certain typographical errors in Section 26, Article 13.17, V.T.C.S. along with the wording of this section have prevented application of appropriate penalties for certain violations. Two changes in this section are needed to correct this situation. First, the penalty for violation of the section related to the use of coercion, threat or intimidation in an attempt to secure a machine location should be designated as a third-degree felony. Second, provisions of the Act should be renumbered and changed so that any person who violates provisions regarding extensions of credit is guilty of a Class C misdemeanor as was originally intended.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives found in other states as well as Texas was conducted to determine the potential for combining regulation of the coin-operated amusement machine industry with the functions of another agency. Currently, twenty-six states provide for taxation of coin-operated amusement machines, either through taxation of the revenues produced by the machines or by the placement of a tax on the machines themselves. Six of these states provide further control through the regulation of the amusement machine industry. Only Texas has a separate agency to tax and regulate coin-operated amusement machines; the other states have consolidated amusement machines within an agency with other substantive responsibility. Four state agencies were considered as being able to handle the functions of the Amusement Machine Commission; the Attorney General's Office, the Department of Public Safety, the Alcoholic Beverage Commission, and the Comptroller of Public Accounts.

Analysis of the Attorney General's Office and the Department of Public Safety indicates that neither performs functions which closely enough resemble those of the Amusement Machine Commission.

The Alcoholic Beverage Commission performs similar functions to that of the Amusement Machine Commission such as: 1) processing license applications and renewals; 2) issuing permits; 3) performing audits to assure compliance with agency regulations; and 4) holding hearings for enforcement purposes. Since both agencies direct enforcement efforts toward many of the same establishments a higher degree of efficiency would exist if they were combined using the Alcoholic

Beverage Commission's network of field offices.

Analysis reveals that consolidation with the Comptroller of Public Accounts would best satisfy the requirements for consolidation. This agency has the functional areas necessary to perform the taxation and regulatory aspects of the coin machine law, a responsibility it had prior to 1971 when the Texas Vending Commission was created. Cost reductions were originally estimated to be \$100,000 the first year with annual savings of \$350,000 thereafter. Subsequent cost estimates submitted by the Comptroller indicated no cost savings from this transfer.

In addition to the three types of organizational structures listed above, there are a number of functional methods that could be used to provide varying degrees of control to the coin-operated amusement machine industry. These functional alternatives include regulation, taxation, and no state control with local authorities responsible for taxation and control. Other states, in some form, use all of these alternatives in some degree.

Twenty-two states have no state control, leaving taxation and regulation of amusement machines to local authorities. Taxation of machines is the only control in a majority of these states. Fifteen states tax revenue generated by amusement machines. Many states combine this form of taxation with that found in Texas, a tax on the machines themselves. Five states license those engaged in the amusement machine business and tax the machines.

All functional alternatives were analyzed to determine if they offered at least the same degree of protection as the current control in Texas and if they would be less restrictive than the present system. With respect to the functional alternatives identified, analysis indicates that none of the options presently used by other states offer the same degree of protection while imposing a lesser degree of restrictiveness. However, of the less restrictive methods of amusement machine control used by other states, taxation of machines either by local or state authorities is found most frequently.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

Review of agency procedures indicate that the commission is in compliance with the requirements relating to conflict of interest, the Open Meetings Act, and the Open Records Act. With respect to open records, agency procedures have been developed for formal requests for information, in order to comply with confidentiality requirements in its enabling legislation and also to answer requests for material that is not specifically declared confidential. With respect to employment practices, the commission has completed an affirmative action plan and has not received any formal complaints concerning its employment practices.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in operations compatible with the objectives of the agency.

The agency has encouraged public participation in its rule-making activities through compliance with requirements of the Administrative Procedures Act. The agency has made an effort to inform the public and its licensees as to its operations and rule changes by conducting public seminars and distributing without charge the coin-machine law and agency rules of procedures. In addition, the point of view of the general public is represented on the commission through its current composition.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and the statutory changes recommended by the agency for the improvement of the regulatory function performed.

The agency's enabling legislation has been amended three times since the inception of the Texas Vending Commission in 1971. Its name was changed in 1973 to the Texas Amusement Machine Commission and in 1975 Senate Bill No. 869 completely reorganized the agency to address problems that had been identified by legislative investigations and court decisions. The commission was made subject to the Texas Sunset Act in 1977.

Three unsuccessful bills have been proposed to modify the commission's statute during the last three legislative sessions. Two of the proposals would have abolished the Amusement Machine Commission and transferred its duties to the Comptroller of Public Accounts while the third proposal would have prorated by month taxes paid on amusement machines.

The Amusement Machine Commission requested three legislative changes in its self-evaluation report: 1) to provide penalties for delinquent license renewals; 2) to correct typographical errors; and 3) to require that salesmen of coin-operated machines meet residency requirements, post bonds, and obtain licenses.

NEED TO REGULATE

The review indicates a continuing need for state regulation of the amusement machine industry. The review further indicates that the Comptroller of Public Accounts presents the best alternative for consolidating amusement machine regulation. The review concluded that a number of improvements should be made to the operation of the commission if it is re-created by the Legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the commission with internal changes.
 - a. Amend the statute to require that all fee payments be made by cashier's check or money order.
 - b. Amend the statute to increase registration fees to an amount adequate to defray cost of regulation.
 - c. Amend the statute to allow discretion regarding denial of licensure for a felony conviction.
 - d. Amend the statute to provide a penalty for late renewal of licenses and registration certificates.
 - e. Adopt a policy requiring amusement machines to remain sealed for non-payment of occupation taxes during the renewal period until proper payment is received by the agency.
 - f. Amend the statute to allow processing time between the submission deadline for renewal applications and the effective date of renewals.
 - g. Restructure agency complaint files to provide thorough documentation of substantive complaints for referral to the Attorney General
 - h. Amend the statute by rewording, Section 26 to provide proper penalties for violations outlined in that section.

NATIONAL GUARD ARMORY BOARD

BACKGROUND

Historical Perspective

Prior to the creation of the National Guard Armory Board in 1935, facilities available for use by the National Guard were secured primarily through rental contracts executed by the Adjutant General's Department and through public donations. Records from this period indicate that armory rentals were not controlled in an efficient manner.

In anticipation of the appropriation of approximately \$6,000,000 for the building of armories through the Federal Emergency Work Relief Program and to provide for the efficient control of armory rentals, the Forty-third Legislature established the National Guard Armory Board in 1935. The board was responsible for the construction, rental, control, maintenance, and operation of all National Guard armories in Texas and was required to cooperate with authorities of the Federal Government.

While this basis for cooperation existed in statute, in the first years of agency operation no federal funds were made available to aid the state in armory construction. In addition, though the legislature granted the board the authority to issue and sell bonds in 1937, this authority was not put to immediate use by the agency for funding armory construction. Instead, necessary training facilities were rented by the board or made available by communities at no charge to the state.

The use of this method as a primary means of providing training facilities in Texas was replaced by a construction program in the years following the passage of the National Defense Facilities Act of 1950. Under this legislation, up to 75 percent of the total cost of constructing new armories was made available to the state through the Army National Guard Armory Construction Program. The development of this program was stimulated by a three-fold growth in National Guard strength in the ten-year period from 1940 to 1950, the resultant need for additional training facilities to support this expanded force, and the general inadequacy of the facilities available in Texas and the rest of the nation.

From 1953, when Texas entered this construction program, to 1978, a total of 136 armories were built in cooperation with the Federal Government. State funds required to match the 75 percent federal contributions were obtained through bonds issued by the board in 1953, 1958, 1963, and 1973. These bonds provided a total of \$7,363,886 for armory construction.

Upon completion of the major portion of the board's construction program in 1978, emphasis was shifted to modernization and renovation of armories. Many of these armories were 20 to 25 years old. The armory rehabilitation program was undertaken for the purposes of repairing structural damage to armories, decreasing energy consumption, standardizing armory fixtures, and bringing the armories into compliance with current safety codes. To finance a program of armory renovation, and to refund outstanding bonded indebtedness, revenue bonds in the amount of \$16,180,000 were issued by the board in 1979.

Under current law, the board is composed of the two senior officers of the Texas Army National Guard and the senior officer of the Texas Air National Guard. Board members, who serve six-year terms, must be active members of the National Guard. The board oversees a staff of 73 employees. In the 1978-1979 biennium, the board expended \$5,460,164 in support of its programs. Approximately 35 percent of these funds were from the General Revenue Fund, 37 percent from federal reimbursements and 28 percent from funds maintained by trustee or received through rentals and leases. The board manages approximately 400 buildings and 15,000 acres of land which serve as training sites for the 20,000 members of the Texas National Guard.

Comparative Analysis

To determine the organizational pattern through which National Guard facilities are constructed, maintained, and operated within the United States, a survey of the 50 states was conducted.

The need to perform the basic functions of National Guard facility construction, maintenance, and operation is recognized by all states. From the standpoint of organizational patterns, in 46 states the staff of the Adjutant General's Department has the responsibility for the planning and construction of armories. In Texas, Indiana, Iowa, and Vermont, these functions are partially shared with a National Guard Armory Board. Texas is the only state which assigns final responsibility for armory construction to a National Guard Armory Board. In all states except six, including Texas, the Adjutant General's Department is responsible for the maintenance and operation of armories. In Texas, as in New Mexico, West Virginia, Pennsylvania, and Indiana, armories are maintained and operated by the National Guard Armory Board. Armories in Rhode Island are maintained and operated by the state Department of Public Buildings. Eleven states, including Texas, indicate that the construction and renovation of armories may be funded through the sale of bonds. In Texas and Minnesota bonds issued for armory construction or maintenance are serviced through the proceeds of armory rentals. Forty-three states, including Texas, provide legislative appropriations for armory construction and maintenance. Rents for the use of armories are collected in 30 states, as in Texas. In two states, South Dakota and North Carolina, school districts and local municipalities contribute to the cost of armory construction.

Forty-three states indicate that state armories are generally in need of renovation. Renovation needs identified include roofing, electrical, insulation, plumbing, and energy conservation improvements. Thirty-four states indicate there exists a need for additional state armories, as in Texas, and in 21 states new armories are under construction.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the

promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The evaluation of the National Guard Armory Board indicated that the agency has been successful in achieving its objective of providing training facilities for the Texas National Guard. Although operations of the agency are generally conducted in an efficient and effective manner, several areas of concern were identified through the review. In the area of agency administration, the agency has engaged in lease/purchase agreements which do not provide for the recovery of the full market value of the property being sold, and the agency has not selected bond trustees on the basis of competitive bids. Agency policies do not encourage the long-term rental of armories by units of state and local government and, therefore, armory facilities are not fully utilized.

With regard to armory construction and maintenance, current armory rehabilitation plans, which call for the replacement of working armory fixtures with standard new fixtures, do not appear to provide for the cost-effective rehabilitation of the facilities. The board has not developed criteria and procedures for the review of state-funded modifications to basic armory construction standards.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several Sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies. An assessment is made of alternative methods of performing agency functions and the impact of agency abolishment is reviewed in terms of federal intervention and the loss of federal funds.

Extensive duplication of administration, maintenance, and construction functions performed by the National Guard Armory Board and the Adjutant General's Department could be eliminated, and identifiable savings achieved, through the consolidation of agency activities. If the authority of the Armory Board to issue bonds is to be continued, consolidation should be achieved by requiring the Armory Board to contract with the Adjutant General's Department for the performance of its construction and maintenance functions. The policy of requiring legislative approval of construction and major renovation projects prior to the issuance of bonds for these purposes would provide control over the bonded indebtedness incurred by the Armory Board.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

The performance of an agency's statutory functions should be undertaken in a manner that is fair and impartial to all interests. The degree to which this objective has been met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, and through agency compliance with statutes relating to conflicts of interest, open meetings, and open records.

The agency has complied with statutory requirements regarding conflict of interest, open meetings, and open records. One charge of discrimination is pending investigation by the federal Equal Employment Opportunity Office.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it serves and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members of the board.

The agency has not complied with provisions of the Administrative Procedure and Texas Register Act intended to foster public participation in agency activities, and no steps have been taken by the agency to inform the public of its operating procedures. The public has not been involved in agency decision-making. To help ensure that the viewpoints of the general public are represented in agency deliberations, public members should be added to the board.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered concern an identification of statutory changes to determine who such changes were derived to benefit, and whether any modifications have been recommended by the agency for the improvement of functions performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

The agency's enabling legislation has been amended ten times since its original enactment in 1935. In general, these amendments have established and broadened the board's bonding authority, modified the number of board members and membership criteria, and expanded the board's authority in the area of property management. With the exception of legislation, enacted in 1979, which broadened the board's authority to issue refunding bonds, no attempts to amend the National Guard Armory Board Act were made during the past four legislative

sessions. No changes to the agency's enabling legislation were suggested in its self-evaluation report to the Sunset Advisory Commission.

NEED FOR AGENCY FUNCTIONS AND ALTERNATIVES

The review indicates that there is a continuing need for an agency separate from the Adjutant General's Department to issue bonds for armory construction and renovation as long as the state chooses to use this method of financing. Review of agency functions, other than the bonding function, indicates that these functions could be consolidated within the Adjutant General's Department. The alternative of consolidation would eliminate extensive duplication of agency administration, construction, and maintenance functions. If the legislature wishes to continue the bonding authority of the Armory Board, consolidation could be achieved by requiring the Armory Board to contract with the Adjutant General's Department for the performance of its construction and maintenance functions.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.

This approach would maintain an independent board to perform armory construction, maintenance, and operation functions. The review indicated that the following changes should be implemented if agency functions are to be properly carried out:

- a. Rules setting forth the nature of agency procedures should be adopted by the board.
- b. Board size should be increased to six members, and three board members should be representatives of the general public who are not associated with the national guard.
- c. Armory lease/purchase agreements should be reviewed and renegotiated where appropriate to ensure that the state receives full market value for property sold.
- d. Policies which provide for the long-term rental of armories by units of state and local government should be adopted by the agency and such rentals should be encouraged when compatible with national guard training requirements.
- e. Armory rehabilitation plans, which call for the replacement of working armory fixtures with new fixtures, should be analyzed to identify the most efficient method of armory rehabilitation.
- f. Criteria and procedures for the review of state-funded modifications to standard armory specifications should be adopted by the board to ensure that such modifications are necessary and appropriate.
- g. The policy of requiring formal legislative approval of armory construction and renovation projects prior to the issuance of bonds for the projects should be adopted.
- h. Competitive bidding on deposit of funds should be mandated.

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

BACKGROUND

Historical Perspective

The practice of chiropractic originates from a theory developed by Daniel David Palmer in the late 1800's. Palmer's theory was basically that misalignments of the vertebrae, called subluxations, were the primary cause of disease and illness. Modern chiropractic has updated Palmer's theory to accept some basic scientific premises regarding the roles of bacteria and virus as contributing factors in illness. Today, chiropractic emphasizes that mechanical disturbances of the nervous system are directly related to lowering the body's resistance to bacteria and virus and that chiropractic treatment can restore health to the neurological and structural systems of the body.

Regulation of chiropractic in Texas was first attempted in 1943. In response to an increasing demand for the use of chiropractic by the public and the need to protect the public from unqualified practitioners, the legislature enacted legislation creating the Board of Chiropractic Examiners. In defining the regulation of chiropractic, a constraint was placed on legislative efforts due to a constitutional provision regarding the practice of medicine. Article XVI, Section 31 of the Texas Constitution allows the legislature to prescribe the qualifications of medical practitioners and to punish persons for malpractice, but prohibits giving preference to any particular "school of medicine." The legislation enacted in 1943 defined chiropractic as treatment of the "spinal column and its connecting tissues." This legislation was ruled unconstitutional in 1944. The courts determined that the definition of chiropractic placed it within the scope of the practice of medicine and placed less stringent licensure requirements of chiropractic than on medical doctors, in violation of the Constitution.

Seeking to meet the original needs of the first chiropractic licensure act and to define and distinguish chiropractic from the practice of medicine, the legislature enacted a new practice act in 1949. The new definition of chiropractic included persons:

"who shall employ objective or subjective means without the use of drugs, surgery, x-ray therapy or radium therapy, for the purpose of ascertaining the alignment of the vertebrae of the human spine, and the practice of adjusting the vertebrae to correct any subluxation or misalignment thereof, and charge therefor, directly or indirectly, money or other compensation..."

This definition limited chiropractic to treatment of the spine, clearly removing it from the practice of medicine.

The practice of chiropractic has remained relatively unchanged over the years. Certain methods of diagnosis and treatment have become more widely accepted and used. Diagnostic methods commonly used include x-ray and labora-

tory tests. Methods of treatment often include such techniques as nutritional counseling, and the use of supportive devices (including diathermy, ultrasonics, infrared, muscle stimulators, vibrators, hydrotherapy, traction and other devices) in addition to manipulation of the spine by hand.

Regulation of chiropractic in Texas is carried out through a nine-member board appointed by the governor with the advice and consent of the senate. The board is composed entirely of practicing chiropractors. Day-to-day operations of the board are supervised by a half-time executive secretary who also serves as the agency investigator. In addition, the board employs a full-time administrative technician. Agency operations include regulation of 1,340 licensees and are funded by fees collected through the examination and licensure activities. All fees collected are deposited in the State Treasury. Since the creation of the board, a statutory provision has been in effect which requires that year-end balances in excess of \$20,000 be transferred to general revenue. In fiscal year 1979, the board collected \$58,892 in revenues and expended \$58,718.

Comparative Analysis

To determine the pattern of regulation of the practice of chiropractic within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of chiropractic is currently recognized through licensing requirements imposed by all fifty states. From the standpoint of organizational patterns nineteen states, including Texas, meet this expressed need through an independent board or commission. In the remaining thirty-one states, chiropractic practice is regulated by a board or commission associated with a central state agency possessing regulatory authority over multiple professions. In five of the thirty-one states, the board or commission charged with the regulation of medical doctors also regulates the practice of chiropractic. Boards in six states, not including Texas, indicate that they perform advisory functions only. Board members are appointed by the governor in forty-four states, as in Texas. In nineteen states, including Texas, the governor's appointments must be approved by the legislature. Lay, or public, members serve on boards in twenty-four states. The Texas board is composed entirely of chiropractors. In twenty-nine states, agency activities are solely supported through fees collected by the agency.

In the areas of licensing and enforcement, forty-seven states, including Texas, require licensees to be graduates of accredited chiropractic colleges. Thirty-four states rely on the Council of Chiropractic Education to perform this accrediting function, as does Texas. Forty-two states, including Texas, require some form of continuing education for chiropractors. Chiropractors in thirty-four states, including Texas, are allowed to practice nutritional counseling. In two states, North Dakota and Oregon, chiropractors are allowed to perform surgery. Thirty-six states, including Texas, allow chiropractors to perform laboratory tests, and all states except Washington allow chiropractors to conduct x-rays.

States which regulate the practice of chiropractic indicate the necessity of performing the basic regulatory functions of administration, review of applicant qualifications, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Chiropractic Examiners is a nine-member board appointed by the governor with the advice and consent of the senate for six-year overlapping terms. The board is authorized by statute to regulate the practice of chiropractic.

The operations of the board can be categorized in three activities: administration, licensing and enforcement. With regard to administration, the board meets its objective of efficient management in several respects. However, improvements could be made in four areas. First, analysis of board revenues and expenditures indicates that, by fiscal year 1983, fees will be insufficient to meet expenditure needs. Fees charged by the board are the only source of operating funds for the agency. However, a review of licensing boards of similar size and type in Texas indicated that fees charged by the Chiropractic Examiners Board are generally below average. To alleviate funding difficulties, fees should be increased in order to fund the agency's programs. The review of the fee structure also revealed no statutory authority to charge a fee for a replacement license. The board customarily does this at present and the statute should be modified to allow this charge. The board should also be authorized to charge a fee for issuance of initial license. Finally, the board should be authorized to discontinue the fee for waiver of written exam, but should begin to charge a fee for verification of basic science courses, under its present statutory authority.

Additionally, in the area of funding, management letters from the State Auditor have cited board expenditures for meals and lodging as excessive. A review of the 1979 expenditures indicated that the board has been effective in reducing expenditures in this area. The third area of concern regards the agency's accounting procedures. Management letters from the State Auditor identified numerous problems in the agency's accounting systems. Some of the items cited have been effectively addressed by the board. However, several difficulties still exist. The agency is currently taking steps to correct the following: posting of journals and ledgers; and reconciling agency cash balances and appropriated balances with monthly comptroller statements. The agency should take steps to correct these problems immediately. An additional concern in the area of accounting procedures involves the processing of receipts. Checks, money orders and cashiers checks are routinely kept in an unlocked front office desk drawer. While no losses due to this procedure were noted, efforts should be made to increase security and discontinue this practice. Fees pending final disposition should be held in a suspense fund in the State Treasury.

Deficiencies in the accounting systems led to a review of staffing patterns, job descriptions and personnel policies of the agency. Agency staff consists of one full-time administrative technician and a half-time executive secretary/investigator. Additionally, a bookkeeper is hired from time to time on a part-time basis. Analysis indicated that the board's accounting needs require the employment

of a permanent staff person skilled in bookkeeping. In addition the small staff size has hampered compliance with the general appropriations bill requirement that all state offices remain open to the public from 8:00 a.m. to 5:00 p.m. on regular working days. The board should make an effort to see that at least one staff member is in the office at required times.

With regard to the agency's licensing activity, the review indicated that the process generally functions smoothly. However, several concerns were identified. First, the board's examination includes an oral practical portion for all applicants, although statutory authority only exists for a practical/oral examination of applicants who have taken the national board exam. Analysis of the examination process indicated that the oral examination is an appropriate screening device for this profession and that all applicants should be required to take the oral examination. Therefore, the statute should be amended to provide this authority. All other aspects of the examination were found to be well-designed and appropriately administered with due consideration to establishment of an exam and grading process which is fair, objective and consistent.

The second concern in the licensing activity regards the statutory framework developed for this agency concerning grounds for refusal to allow an individual to sit for an examination. Requirements that applicants be United States citizens have been held unconstitutional by the courts and should be removed from the statute. Several of the statutory licensure prerequisites require the board to act essentially as a court of competent jurisdiction in determining the legal status of an individual and requires the board to define and apply terms which may have no legal basis. These statutory provisions dealing with grounds for disqualification should be modified to require the board to base its judgement on a decision of a competent authority on the basis of a current condition.

Also in the area of licensure, prerequisites during fiscal years 1977 and 1978, due to a misinterpretation of its statute, the board licensed approximately forty applicants without the required basic science certification. However, the board has required these applicants to complete the requirements for basic science certification and has instituted procedures to ensure that these requirements are complied with in the future.

The third concern regarding the licensing process involves continuing education requirements for renewal. The statute requires evidence of two days of continuing education annually as a condition for license renewal. The board reviews courses upon application of the course sponsor, but has no systematic, comprehensive mechanism for notifying licensees of the status of courses. Analysis indicated that this is an appropriate board function and the statute should be amended to require approval of courses and notification of licensees of the approved courses on an annual basis. Additionally, in the area of continuing education, the board has made changes in the required hours and types of courses but has failed to notify the licensees of such changes, thereby creating a potential for noncompliance by licensees.

Reinstatement provisions was another area of concern in the licensure process. The provision that an inactive license may only be reinstated after completion of one week of refresher work for each year that the license is inactive hampers the board's flexibility and is unusual among licensing boards. A more

appropriate approach should be instituted which would give the board some discretion in its requirements for reinstatement.

A final concern regards the lack of reciprocity or endorsement provisions. Standards upon which to base endorsement are available to the board through national board exam scores, education records, and performance as a licensee in other states. Therefore an endorsement process should be instituted under present statutory authority.

Evaluation of the board's enforcement efforts suggested several areas which could be improved without undue hardship to the board. Analysis of the complaint process indicates that enforcement efforts have been hampered by board policy regarding complaint initiation and by inadequate complaint tracking and documentation. Current board practice requires that a sworn complaint be filed before initiation of an investigation. This policy places an undue burden on complainants and should be discontinued. Verification of complaint receipt and disposition was not possible because of incomplete, and inaccessible records. Agency staff have indicated that they plan to institute a more effective tracking system to ensure that all complaints receive attention.

In addition, board policy has not been developed regarding areas of chiropractic practice not expressly defined by statute. As a result, comprehensive guidelines are not available to licensees or the public as to acceptable procedures and practices. These areas should include the use of x-rays, physical and nutritional therapy, and supportive measures. Promulgation of board rules in these areas should be instituted in order to set out clearly acceptable practices and those which are considered violation of the Act.

Finally, statutory provisions relating to grounds for disciplinary action are, in some instances, confusing and vague. The statute should be restructured to provide clear, and objective standards which are related to the practice of chiropractic.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives in other states was conducted to determine the potential for combining chiropractic regulation with the functions of another agency. All states currently regulate the practice of chiropractic, with thirty-one having consolidated regulation within another agency. Of these, sixteen states use a department of occupational licensing. While Texas has no "umbrella" licensing agency, other agencies exist in Texas that are used in other states for chiropractic regulation. These are the State Board of Medical Examiners and the Department of Health.

Of the two agencies mentioned above, the Department of Health appears to be the most reasonable alternative for consolidation. The Department of Health is experienced in the area of licensing administration, and currently provides support services for other licensing agencies of similar size. Benefits from consolidation could also result from the use of the department's regional offices for investigation of chiropractic-related complaints as well as the availability of computer and other support services from experienced personnel.

With regard to regulatory alternatives, all states presently license chiropractors. While not currently used in other states, alternative methods of regulation of chiropractors, which can be considered due to their use by other occupational groups, include certification and registration. Certification would continue the requirement that applicants exhibit a minimum level of competency prior to licensure. Registration would only require that a person desiring to practice chiropractic register with a designated state agency. Neither certification nor registration involve an enforcement mechanism to assure continued competence. While both certification and registration are less restrictive forms of regulation than licensure, neither provides as much public protection as the present licensing system. Therefore, neither is a desirable alternative to continuation of the present method of regulation.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

Board members and the executive secretary have complied with conflict-of-interest reporting procedures. However, conditions currently exist which have the potential of placing board membership in conflict of interests because board members hold leadership in chiropractic associations and because the executive secretary's relative sits on the board. The executive secretary of the board is in violation of Article V, Section 4 of the Appropriations Act by serving as both a registered lobbyist and a salaried state employee. Board meetings have not been conducted within the requirements of the Open Meetings Act. Meetings have improperly been closed to the public and final decisions have been made in closed meetings. The executive secretary has assured future compliance with the Open Meetings Act. No difficulties have been noted in the agency's compliance with the Open Records Act. However, no problems were noted with agency employment policies.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

The board has not complied with public notification requirements. Additionally, public participation in the policy processes of the board has been minimal. The board's efforts to inform the public through speaking engagements and other public information efforts has been primarily directed to licensees. To help ensure that the public's point of view is properly represented, three public members should be placed on the board replacing present members as their terms expire.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

The agency's first enabling legislation was passed in 1943. In 1944 the statute was held unconstitutional by the Texas Court of Criminal Appeals. The second enabling statute was passed in 1949. Since then, the agency's statute has been amended five times. Generally, these bills increased education requirements, modified basic science qualifications, and added provisions for continuing education requirements for license renewals and Sunset review. Other bills added requirements for reinstatement of a license, and increased the board's enforcement authority. Legislation approved in 1957 and 1971 added causes for action against licensees related to advertising and solicitation and fraudulent use of chiropractic degree or license. Proposed legislation involved transfer of the board's functions to the Department of Health in 1979.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of the chiropractic profession. The review identified the organizational alternative of performing the regulation through the

Department of Health. The review concluded that a number of improvements should be made to the operations of the independent board if it is recreated by the Legislature.

SUNSET COMMISSION RECOMMENDATIONS

- Maintain the board with internal changes.
 - a. Fees should be increased in a manner that needed expenditures can be maintained and an initial license fee should be added to the fee structure;
 - b. A permanent staff person skilled in bookkeeping procedures should be employed;
 - c. The statute should be amended to permit oral examination of all applicants, with proper attention to continued use of a consistent, fair and objective exam and grading process;
 - d. Provisions related to denial of license and disciplinary actions should be restructured to include only clear objective standards related to the practice of chiropractic;
 - e. The statute should be amended to allow approval of continuing education courses and require notification of all licensees of these courses on an annual basis;
 - f. The agency should comply with general provisions of the general appropriations act in the employment of personnel; and
 - g. Three public members should be added to the board, replacing current members as their terms expire.

CIVIL AIR PATROL COMMISSION

BACKGROUND

Historical Perspective

The Civil Air Patrol Commission was established in 1971 by the Sixty-second Legislature. The establishment of the commission was integrally related to the development of a patriotic non-profit organization in the state, the Texas Wing of Civil Air Patrol, Inc. The history of CAP, Inc. extends back to the early days of World War II.

In 1941 the Civil Air Patrol was established under the United States Office of Civil Defense for the purpose of enlisting and training volunteer civilian pilots to aid in national defense. In recognition of its wartime contributions to civil defense the Civil Air Patrol, Inc. was established as a patriotic organization and non-profit civilian corporation in 1946, with wings of the organization in each state. In 1948, CAP, Inc. was made an auxiliary to the United States Air Force with the purpose of providing assistance in the event of local or national emergencies.

While CAP, Inc. conducts a number of programs to achieve its purposes, perhaps the most notable activity is the maintenance of an emergency service capability to meet the requests of the Air Force for search and rescue and disaster relief missions. Under the National Search and Rescue Plan the United States Air Force serves as search and rescue coordinator for the inland region of the United States. As a civilian auxiliary of the Air Force, the Civil Air Patrol, Inc. has been the primary force in performing search and rescue missions both in the United States and in Texas since 1948. In Texas these missions are initiated by the Governor's Division of Disaster Emergency Services, which requests search and rescue assistance from the Air Force Rescue Coordination Center at Scott Air Force Base, Illinois, when overdue planes are reported. The Air Force, in turn, authorizes the Texas Wing, Civil Air Patrol, Inc. to fly the search and rescue missions. In calendar year 1978, 1,222 hours were flown in search and rescue missions by the Texas Wing, CAP, Inc., resulting in the location of 15 downed aircraft.

Since its creation as a non-profit corporation, the Texas Wing of CAP, Inc., as well as other wings across the nation, have been funded primarily through members' dues, revenue generated through the lease of CAP, Inc. equipment to trainees, and federal and private reimbursements for necessary expenses. CAP members are reimbursed by the Air Force and Red Cross for the costs of fuel, lubricants and necessary telephone calls resulting from assigned missions. In addition to federal and private reimbursements, 35 states, not including Texas, appropriate funds for the support of their CAP, Inc. state wings.

The establishment of the Civil Air Patrol Commission in 1971 reflected the legislature's recognition of the need to support the Civil Air Patrol in its performance of an important state function. According to the current executive director of the agency, because there was a constitutional question involved in appropriating state money directly to a private organization such as CAP, Inc., the

commission was needed in case the state wished to support the Texas Wing with public funds.

Among the original statutory purposes of the commission were improving and promoting the voluntary deployment of the Texas Civil Air Patrol and promoting adequate financing for the operations of the Patrol. In 1977, the enabling legislation of the commission was amended to "allow for assistance to private aviators, including partial reimbursement for funds expended, in meeting the actual costs of aircraft operation requested by the Governor or his designee." Although the amendment grants the commission the authority to reimburse volunteers, no funds have ever been appropriated to the commission for this or any other purpose.

Because the Civil Air Patrol Commission has never been funded by the legislature, commission activities have been very limited. The commission's statute requires the Governor's Division of Disaster Emergency Services to provide administrative services to the agency. Two staff members from this division devote approximately ten percent of their time to commission business. Only two commission meetings have been held since 1975. These meetings were held for the primary purpose of preparing the agency's budget request. Since its establishment, the commission has never possessed a staff of its own, owned property in its name or received or disbursed any state or federal funds.

Comparative Analysis

In terms of organizational patterns, private non-profit branches or "wings" of the Civil Air Patrol, Inc. have been established in all states including Texas. However, Texas is the only state which has created a Civil Air Patrol Commission as a separate state agency for the purposes of 1) advising the Governor's Division of Disaster Emergency Services on the deployment of voluntarily offered aviation resources in search and rescue operations and disaster related planning, training, and operations and 2) providing assistance to private aviators in meeting the actual costs of aircraft operation requested by the governor or his designee. In most states, these functions are performed by the agency responsible for providing disaster and emergency services.

Constitutional prohibitions in 25 states prevent the making of grants or loans directly to private individuals or corporations such as the Civil Air Patrol, Inc. Many of the states without such prohibitions have determined that although CAP, Inc. is a private organization, its members provide a necessary state service for which state funds can be expended. Since members of the private organizations are only partially compensated for their services, 35 states directly appropriate funds or authorize general support for their wings of the Civil Air Patrol, Inc. These states and the amounts appropriated are indicated in the following exhibit.

**STATE SUPPORT OF CIVIL AIR PATROL, INC.
(Fiscal Year 1979)**

<u>WING</u>	<u>AMOUNT</u>	<u>WING</u>	<u>AMOUNT</u>
Alabama	\$ 35,000	Nevada	\$ 30,000
Alaska	321,700	New Hampshire	22,896
Arizona	55,000	New Mexico	41,600
Arkansas	54,000	New York	80,000
Colorado	55,848	North Carolina	56,699
Connecticut	10,000	North Dakota	28,350
Florida	50,000	Pennsylvania	35,000
Georgia	25,000	Puerto Rico	30,000
Hawaii	75,000	Rhode Island	10,500
Illinois	92,500	South Carolina	77,650
Kansas	4,000	South Dakota	19,500
Kentucky	15,000	Tennessee	37,400
Louisiana	64,255	Utah	66,300
Maine	5,000	Vermont	5,000
Michigan	50,000	Virginia	30,000
Minnesota	32,500	West Virginia	89,000
Mississippi	20,000	Wyoming	2,500
Nebraska	25,000		

Texas has not chosen to provide direct appropriations either to its wing of the Civil Air Patrol, Inc. or to the State Civil Air Patrol Commission. Provisions of Article 3, Sec. 51 of the Texas Constitution stating that "the legislature shall have no power to make any grant or authorize the making of any grant of public moneys to any individual, association of individuals, municipal or other corporation whatsoever;" may prevent the state from appropriating funds directly to the private organization and the legislature, as a matter of policy, has never chosen to make funds available through the state agency, although there appears to be no constitutional barrier to this approach.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The evaluation of the activities of the Civil Air Patrol Commission under the elements of this section indicates that due to lack of funding no assessment can be made of the efficiency of operations. In the area of achievement of objectives, lack of funding prevents any assessment of actual accomplishments, but even in the developmental areas the commission has developed no plan of action. In the one

area that documentation exists, it appears that the commission has not properly construed the definition of what constitutes reimburseable costs to private aviators in meeting actual costs of aircraft operation.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Alternatives to the state policy of using private volunteers for the performance of search and rescue operations would result in increased costs to the state. If the state continues to rely on private volunteers for the performance of this state function, the CAP Commission mechanism for providing state assistance to private aviators should be continued. The mechanism for assisting private volunteer aviators could be transferred to the Governor's Division of Disaster Emergency Services. Administrative duplication could then be eliminated through abolishment of the Civil Air Patrol Commission.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

The commission has complied with state conflict-of-interest provisions with the apparent exception of one instance in 1974. In this instance, it appears that commissioners who were also members of CAP, Inc. should have disqualified themselves from voting on a resolution to expend specific funds solely through the CAP, Inc. The commission has complied with the Open Meetings, Open Records, and Administrative Procedure and Texas Register Acts.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in its activities and decisions can be judged on the basis of the availability of information concerning agency rules and operations, the efforts made by the agency to involve the public in its operations, and the existence of public members on the commission.

The general public's point of view is represented by the composition of the commission which consists entirely of public members. Aside from this public representation, limited agency resources and activity have resulted in little effort by the Civil Air Patrol Commission to involve and educate the general public on commission functions.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

In the history of the commission only two bills modifying the agency have been submitted to the legislature. While a bill introduced in 1973 primarily benefitting CAP, Inc. failed to pass the legislature, legislation introduced in 1977 was signed into law. This bill gave the commission the clear authority to provide partial reimbursement to private aviators flying search and rescue and disaster-related missions.

NEED FOR AGENCY FUNCTIONS AND ALTERNATIVES

The evaluation of the agency's function indicates there is a need to continue a mechanism for providing assistance to private aviators performing search and rescue operations. Even though state funds have never been provided for this purpose, the continuation of a state mechanism is necessary to ensure that sufficient resources could be made available by the state to fund its search and rescue responsibilities. The review determined that there is no need to maintain an independent agency for this activity and that the assistance function could be performed by the Governor's Division of Disaster Emergency Services.

SUNSET COMMISSION RECOMMENDATION

Abolish the Civil Air Patrol Commission and transfer the authority to provide assistance to private aviators in meeting the actual costs of aircraft operations, requested by the governor or his designee, to the Governor's Division of Disaster Emergency Services.

This approach would eliminate an inactive agency and place the authority to provide assistance to private aviators involved in search and rescue and disaster related missions within the agency responsible for coordinating such state activities.

TEXAS STATE BOARD OF DENTAL EXAMINERS

BACKGROUND

Historical Perspective

Regulation of dentistry in the United States first occurred in 1841, when Alabama passed a dental licensing act. By 1900, thirty-seven states had enacted similar laws. In Texas, a law regulating the practice of dentistry was passed in 1889, designating district judges as the registering authority. A panel of three dentists was appointed by each judge to examine prospective licensees in the respective district.

In response to the need for better protection of the public, the Twenty-fifth Legislature (1897) passed legislation which created the State Board of Dental Examiners and required all persons wishing to practice dentistry in Texas to be examined and licensed. In 1935, the board was given limited rulemaking authority and was charged with the enforcement of the Act. As the practice of modern dentistry evolved, use of support personnel, such as dental hygienists, dental assistants and dental laboratories and technicians has expanded. The board's regulatory authority has been broadened to encompass virtually every aspect of the delivery of dental care through general rulemaking authority granted in 1951 and further broadened in 1971.

Dental hygienists and dental assistants are employed by and supervised by dentists in the dentist's office. Functions of dental hygienists are limited by board rule and include cleaning teeth, taking x-rays, and performing certain other specified acts, most of which must be performed under the direct or general supervision of a dentist. Although dental assistants are not statutorily required to be licensed, board rule extends to the activities and level of supervision of assistants. Permissible activities include taking x-rays, giving chairside assistance to the dentist, and providing a limited amount of direct patient care.

In 1951, the State Board of Dental Examiners was charged with the responsibility of regulating hygienists through licensure. In 1977, the Sixty-fifth Legislature passed Senate Bill No. 779 creating the Dental Hygiene Advisory Committee to advise the board on matters concerning dental hygienists. The six-member advisory committee is composed entirely of licensed dental hygienists, appointed by the State Board of Dental Examiners to serve one-year terms. In addition to their advisory duties, the committee members assist in the administration of the dental hygiene exam.

Unlike hygienists, dental laboratory technicians do not necessarily work in the dental office setting. However, dental lab personnel are prohibited from direct patient contact. Technicians make, adjust and repair prosthetic or orthodontic dental appliances or dentures on the basis of a written work order from a dentist. Dental laboratories and dental laboratory technicians were first regulated in Texas in 1973. The Act provided for the registration of dental laboratories and technicians and created the Dental Laboratory Advisory Board to advise the State Board of Dental Examiners on matters concerning dental laboratories and dental lab technicians. The six-member advisory board is appointed by the State Board of

Dental Examiners for six-year terms. The advisory board is composed of four dental lab owners or managers and two lab technicians. Dentists may not serve on the advisory board.

In 1971, State Board of Dental Examiners membership was increased from six to the current nine members, all of whom must be licensed dentists. Board members serve six-year terms and must have resided and practiced in Texas for five years prior to appointment. Faculty members of a dental college or dental division of a medical college, or dentists with financial interests in any dental college are not eligible for board appointment. Board duties consist primarily of administering dental and dental hygiene examinations and enforcement of the provisions of the Act which deal with dentists and others involved in the delivery of dental care.

The board employs a staff of eleven full-time employees and two part-time employees and seasonal help as needed. Currently, the board has three vacant staff positions. At present, 6,836 dentists and 3,272 hygienists are licensed by the board. Additionally, 607 dental laboratories and 1,680 dental laboratory technicians are registered with the board. Board operations are funded entirely from fees collected. All fees are deposited in the Dental Registration Fund No. 086 in the State Treasury. In fiscal year 1979, the board collected \$574,560 in revenues and expended \$514,307. Fiscal year 1979, expenditures included \$15,394 for Dental Laboratory Advisory Board activities and \$10,125 for Dental Hygiene Advisory Committee activities.

Comparative Analysis

To determine the pattern of regulation of the occupations of dentistry and dental hygiene within the United States, a survey of the fifty states was conducted.

The need to regulate dentists and dental hygienists is currently recognized through licensing requirements imposed by all fifty states. From the standpoint of organizational patterns, twenty-two states, including Texas, meet this expressed need through an independent board or commission. In nineteen states, the regulation of dentists and dental hygienists is carried out through a board associated with a state agency charged with multiple regulatory functions. Board members are appointed by the chief executive in forty-one states.

Licensing boards composed entirely of dentists administer dentistry laws in thirty-nine states, including Texas. In ten states, the regulation of dentistry is achieved through a board consisting of dentists, other professionals, and public members. Dental hygienists are members of licensing boards in three states. Boards in thirty-nine states, including Texas, are supported at least partially by the fees they collect. Unlike Texas, twenty-six states received appropriations from general revenue.

In forty-two states, including Texas, dental boards conduct investigations in response to consumer complaints. Complaint inquiries are conducted by an investigative unit of a centralized agency in eight states.

In nineteen states, licensure by some form of endorsement or reciprocity is authorized for dentists. Texas has statutory authority to permit endorsement, but does not do so. Thirty-eight states, not including Texas, permit licensure by endorsement or reciprocity for dental hygienists.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Texas State Board of Dental Examiners is a nine-member board appointed by the governor for six-year overlapping terms. The board is directed by statute to regulate every aspect of dentistry, including the licensure of dentists and dental hygienists and the registration of dental laboratories and technicians.

Board operations can be categorized in three activities: administration, licensing, and enforcement. The review of board activities indicated that agency administration is generally conducted in an efficient and effective manner. However, improvements could be made in several areas. The first of these centers on the management of agency funds. The agency has had to seek emergency appropriations on three occasions during the years under review, primarily because of the need for additional funds for board member expenses. Review of agency expenditures indicated the need for: 1) budgetary procedures and expenditure policies to preclude the necessity for emergency appropriations for travel; 2) a re-evaluation of telephone use; and 3) a limitation on board per diem to actual meeting days with provision for representation of the board at other meetings when necessary. In addition, the efficient processing of vouchers has been hindered by a statutory provision requiring both the president and secretary-treasurer to sign all vouchers. This requirement should be modified to allow the board to delegate this function. With regard to record-keeping, although during the review it was noted that no compensatory time records were kept by the agency for employees, procedures have been instituted to correct this problem.

Review of the activities and function of the Dental Hygiene Advisory Committee indicated a need for more adequate representation of this occupation in the decision-making processes of the board. This can best be achieved through board membership thereby eliminating the need for an advisory committee.

Board operations in the area of licensing generally function smoothly; however, several areas amenable to improvement were noted. First, review of the board's fee structure showed that the board does not have statutory authorization to charge a fee for duplicate licenses although it customarily does so. The Act should be amended to authorize the board to charge such a fee.

The board's examination process was evaluated in terms of examination procedures to determine if adequate safeguards are in place to prevent bias and

subjectivity. The results of this evaluation indicated that dental examination procedures could be improved by a more effective blind-grading system and by discontinuing the practice of using dental students as proctors and assistants during the exam. In addition, it was found that there is unnecessary duplication between parts of the foreign student qualifying exam and the regular state exam.

Another concern in the licensing activity regards the statutory framework developed for this agency concerning grounds for refusal to allow an individual to sit for an examination. Requirements that applicants be United States citizens have been held unconstitutional by the courts and should be removed from the statute. Several of the statutory licensure prerequisites require the board to act essentially as a court of competent jurisdiction in determining the legal status of an individual and require the board to define and apply terms which may have no legal basis. These statutory provisions dealing with grounds for disqualification should be modified to require the board to base its judgment on a decision of a competent authority on the basis of a current condition.

An evaluation was made of the board's policies with regard to the functions performed by dental hygienists and the relationship of the hygienist and dentist in terms of requisite supervision for permissible functions. The review indicated that dental hygienists are capable of performing a broader range of procedures than are currently permitted in Texas. However, analysis suggests that requisite education, a method of determining and certifying competency and the degree of supervision necessary to ensure public protection in the performance of such functions by hygienists can best be determined by board rule with consultation from members of the professions involved, as is currently provided for in statute.

Finally, an assessment of the need for registration of dental laboratories and technicians indicated that adequate public protection can be achieved by only requiring a one-time registration with provision made for notification of address and name changes. Also, the level of regulation necessary for laboratories and technicians does not appear to justify continuation of the Dental Laboratory Advisory Board.

In the area of enforcement, complaint procedures appear adequate, and complaint files are well-maintained. In addition, the agency has instituted a notification process for parties involved in complaints. However, the effectiveness of several other aspects of enforcement can be improved.

While the Act authorizes local peer review committees, it does not provide for a reporting mechanism to the board. The addition to the statute of an authorization for such reporting would serve to increase regulatory effectiveness. The statute and board rules both contain prohibitions related to advertising. These prohibitions are inconsistent with the Sunset Commission's across-the-board recommendations regarding advertising and should be amended to prohibit only false, deceptive, and misleading advertisement.

Another concern relates to the range of penalties that the board is authorized to impose on licensees. Although it does not have specific statutory authority to do so, the board does issue reprimands and probate suspended licenses. To provide flexibility in the imposition of disciplinary sanctions, the statute should be amended to allow reprimands and probation.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives indicated that all fifty states regulate the practice of dentistry, with twenty operating through agencies with multiple functions. Eight states use a department of health for regulating the profession.

The review indicated that of the consolidation alternatives used by other states, the Department of Health is an option available in Texas. Advantages include the availability of a regional enforcement network and board composition representing dentistry, the public and other professions. However, no cost savings would be expected.

With regard to regulatory alternatives, the review indicated that licensure is the most effective method of regulating dentists and dental hygienists. Regulation of dental labs and technicians in Texas and other states is by registration. Other alternatives reviewed for regulating dental laboratories and technicians revealed that Texas and all other states, except Maine and Oregon, require that laboratory work be done on a prescription basis. Texas and all other states, except three, prohibit sale of dentures directly to patients by technicians. The present form of regulation in Texas provides needed public protection and should be continued. Regarding dental assistants, certification would provide needed assurance of competence in care provided to patients while maintaining flexibility in the dentist's training of those support personnel and therefore provides more public protection. Certification of dental assistants is, however, more restrictive than the present form of regulation.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

Board members have complied with conflict-of-interest reporting procedures. However, the executive director is beneficiary of a trust established by the trade association, after his having been employed by the association for many years. Specific conflict-of-interest provisions should be enacted to maintain the separation of the board and staff of the regulatory agency and the association.

Some board meetings have not been conducted within the requirements of the Open Meetings Act. Specific instances were noted when meetings were conducted without proper notice to the public and improperly closed to the public. Further, final decisions have been made in closed sessions, and in disciplinary proceedings, the board asks a defendant to waive the right to be present for the decision on his case. Finally, the board utilizes conference calls and mail voting for decision-making. These practices should all be discontinued. No difficulties were noted with respect to compliance with the Open Records Act or employment policies.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rule-making and decision-making processes of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the availability of information concerning rules and agency operations, and the existence of public members on the board.

While the board has complied with public notification requirements, public participation in the policy processes of the board has been minimal. The board's use of emergency rule-making procedures has acted as a deterrent to public participation in the rule-making process. The exercise of the emergency rule procedure should be limited to situations where there is a clear public peril. To help ensure that the public's point of view is properly represented, public members should be placed on the board in addition to the nine dentist members.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

Since the enactment of the board's enabling legislation in 1897, the Act and relevant penal code provisions have been amended thirty-five times. Generally, these amendments have expanded the board's purview to include dental hygienists, dental technicians and laboratories, and dental assistants; added to the board's enforcement powers; delineated the practice of dentistry; and increased licensure requirements. In the last four legislative sessions, the legislature considered, but did not adopt, legislation dealing with denturism, dental technology, the practice and regulation of dentistry and the establishment of Health Maintenance Organizations for the provision of dental care.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of the dental care professions. The review identified the organizational alternative of performing the regulation through the Department of Health although no cost savings would result from this combination. The review determined that the degree of regulation in the area of dental laboratories and dental technicians could be lessened without harm to the public and the Dental Laboratory Advisory Board could be abolished without decreasing the effectiveness of regulatory efforts in this area. The review concluded that a number of improvements should be made to the operation of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. Adopt budgeting procedures and expenditure policies which will preclude the need for emergency appropriations for travel.
 - b. Investigate alternatives to reduce telephone expense.
 - c. Limit payment of per diem to days of board meetings and other meetings when the board designates a member(s) as its representative.
 - d. Modify statute to allow the board to delegate the responsibility for signing vouchers.
 - e. Modify the statute to authorize a fee for duplicate licenses.
 - f. Modify statute to require one-time registration of laboratories and technicians; maintain only the current practice restrictions in both statute and rules; and abolish the Dental Laboratory Advisory Board.
 - g. Consider modifications of the examination procedures for dentists to improve the blind grading system of the clinical portions.

- h. Consider modifications to exam procedures to prohibit dental students from participating in the examinations as proctors or assistants.
- i. Modify the exam procedures so that graduates of foreign schools will not have to repeat identical parts of the test found in both the qualifying exam and the regular exam.
- j. Modify licensure prerequisites and grounds for disciplinary action to include only those to which the board can apply a clear objective standard.
- k. Establish a Peer Review reporting mechanism to the board.
- l. Remove all advertising restrictions from the statute and rules except those which prohibit false, misleading or deceptive advertisements.
- m. Discontinue board practice of asking respondent's permission to consider and act on his case at the convenience of the board; notify all parties to a complaint of the time and place of disciplinary deliberations and actions if these are held on other than the day of the hearing.
- n. Discontinue voting by mail and by conference call.
- o. Modify statute to include specific conflict-of-interests provisions.
- p. Limit use of emergency posting of rule changes and other actions to those matters constituting serious public peril.
- q. Modify composition of board by adding three members; one licensed dental hygienist and two public members; abolish the Dental Hygiene Advisory Committee.
- r. Abolish rules in conflict with changes in the Act.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

BACKGROUND

Historical Perspective

Prior to the creation of the Board of Registration for Professional Engineers in 1937, the practice of engineering in Texas was not regulated by the state. Although the need to protect the public health, safety and welfare through the regulation of engineering had been addressed by other states as early as 1907, recognition of the need in Texas was a more gradual process.

In the years preceding the board's creation, the perceived need for state regulation grew with the changing nature of engineering. In early periods of the nation's history, engineering tasks and skills required to support a largely rural society were comparatively simple and offered little potential for public harm. However, this simplicity changed as the nation underwent rapid industrialization and urbanization during the first decades of the Twentieth Century. These fundamental changes in American society were dependent on an increasingly complex engineering technology and the widespread availability of sophisticated engineering services.

As the nation and the state became increasingly dependent on complex engineering skills, the potential for public harm resulting from the use of engineering services also grew. The complexity of the occupation presented a greater opportunity for serious error in its practice; additionally, the widespread demand for such services increased the probability of such errors occurring. This increased potential for serious public harm was clearly underscored in Texas by the explosion and collapse of the New London School in 1937. This disaster resulted from faulty engineering practice and killed 295 students and teachers.

In response to this disaster, in 1937, the Forty-fifth Legislature established the Board of Registration for Professional Engineers. In general, the act establishing the board made it unlawful for a person either to use a title giving the impression that he is a professional engineer, or to practice the profession of engineering, without being registered with the agency or exempted by the act. Among other less significant exceptions, exempted under the act were persons erecting private dwellings and any employee of a registered engineer provided that employee was not in responsible charge of engineering design or supervision. In the area of enforcement, the board was given the authority to revoke an engineer's certificate of registration on the basis of fraud or deceit in obtaining the certificate, or gross negligence or incompetence in the practice of professional engineering.

The original scope of the board's authority was significantly altered in 1965 by the Fifty-ninth Legislature and has remained essentially unchanged since that date. Along with other amendments that year, the legislature extended the categories of persons exempted from the act's certification requirements. One of

the most significant of these exemptions was extended to employees of private industry. This exemption was sought primarily by industry, who viewed the earlier certification requirement as unnecessarily restrictive. In addition, the board's enforcement authority was strengthened through provisions which 1) made it easier for the board to get an injunction against a person practicing professional engineering without a certificate, and which 2) provided for suspension, as well as revocation, of a certificate for any violation of the act rather than the more limited grounds previously laid out. These changes in enforcement authority were provided as a result of board difficulties in obtaining compliance with the act through its earlier remedies.

The six-member board heading the agency is composed entirely of registered engineers appointed to overlapping six-year terms by the governor with the advice and consent of the senate. This board oversees a staff of 23 full-time employees. At present, 34,957 engineers representing 19 engineering disciplines are registered with the board. Operations of the agency are supported entirely from fees collected by the agency and appropriated for its use from the Professional Engineers Fund No. 56 in the State Treasury. In fiscal year 1979, the board collected \$854,979 in fees and other charges and expended \$593,473, not including building costs.

Comparative Analysis

To determine the pattern of regulation of the occupation of engineers within the United States, a survey of the 50 states was conducted.

The need to regulate the occupation of engineering is currently expressed through licensing requirements imposed by all of the 50 states. From the standpoint of organizational patterns, 30 states, including Texas, meet this expressed need through an independent board or commission. In 20 states, boards regulating the practice of engineering are associated with an umbrella administrative agency. Representatives of the general public serve on boards regulating the practice of engineering in nine states. In Texas, as in seven other states, the board regulating the practice of engineering has no responsibility for the regulation of other professions.

Surveyors and engineers are jointly regulated by the same state board in 29 states. Regulation of engineers, surveyors and architects is performed by a single state board in eight states. Architects and engineers are regulated by one board in two states. Engineering, along with other professions, is regulated by a registration board for technical occupations in three states.

In order to regulate the practice of engineering, 33 states, including Texas, have adopted rules of professional conduct. Professional practice is further regulated through the requirement, imposed by 45 states, including Texas, that an engineer's seal be placed on plans, drawings, specifications and designs prepared by the engineer. Texas imposes restrictions on the use of the title engineer as do 30 other states. All fifty states surveyed restrict the use of the title of professional engineer.

States which regulate the occupation of engineering indicate the necessity of performing the basic regulatory functions of administration, review of applicant qualifications, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Registration for Professional Engineers is composed of six registered engineers appointed to six-year overlapping terms by the governor with the advice and consent of the senate. The board is directed by statute to regulate the practice of engineering through the licensure of all qualified applicants and the enforcement of statutory provisions.

The operations of the board can be broken down into three activities; administration, licensing, and enforcement. With regard to administration, the board generally meets the objective of efficient management. In the licensing activity, the objective of ensuring a minimum level of competency has been effectively addressed. One concern, however, was noted regarding the lack of specific statutory authority to charge a fee for the examination for record purposes. The review indicated that this service should be continued and that the board should be authorized to collect a fee for the examination for record purposes. In the area of enforcement, board efforts toward achieving compliance with regard to unlicensed practice are effectively carried out. However, the review indicated that the area of complaints against registered engineers has been hampered by two statutory conditions: a provision which prevents any enforcement action concerning a registered engineer unless a sworn complaint has been filed by a Texas resident; and, the limited range of sanctions the board is empowered to impose. These conditions could be addressed through a modification of the statute to: 1) provide that a sworn complaint be required only in order to initiate formal hearing proceedings, authorize the board to file such complaints, and provide that complaints could be filed by any reliable person, regardless of state residency; and 2) provide the board with the authority to issue formal and informal reprimands.

Additional enforcement concerns were raised regarding board rules which restrict advertising and prohibit competitive bidding. Current board policy with regard to advertising restrictions are consistent with the approach recommended by the Sunset Commission and recent court decisions. This restriction, however, should be made statutory to ensure continued compliance so that any change in this policy would have to be preceded by proper legislative consideration. With regard to competitive bidding, the present prohibition should be removed as it appears to be a restraint of trade which contradicts the general principles of free competition embodied in federal antitrust law.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several Sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Currently, state regulation of the engineering, architecture, and surveying professions is provided through three separate regulatory boards: the Board of Registration for Professional Engineers, the Board of Architectural Examiners, and the Board of Land Surveying. Because of the similarity of the regulatory functions performed and the interrelated nature of the professions, a potential for consolidation exists.

A majority of other states (29) have consolidated the regulation of engineers and surveyors in one board. In Texas, such a consolidation could result in lower administrative costs and, as a result, the possible reduction of license renewal fees.

Licensure of engineers is the method of regulation employed by all 50 states. The use of this regulatory approach by all states indicates that less restrictive forms of regulation are generally considered to provide an inadequate level of public protection against incompetent engineering services.

While there is presently no specific federal legislation which attempts to certify the competency of engineers, certain federally funded projects do require that engineering services be provided by engineers licensed in this state. Federal funds could be lost if the state eliminated its licensing requirement for engineers.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

The board generally complies with the requirements set forth in the Conflict of Interest statute, the Open Meetings Act and the Open Records Act. With respect to formal requests for information, the board has either supplied the material or asked for a determination from the Attorney General as to the public or private nature of the information. With regard to employment practices, the agency is currently in the process of updating its Affirmative Action Plan and developing a written employee grievance procedure. The agency has not received any formal complaints concerning its employment practices.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rule-making and decision-making processes of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the availability of information concerning rules and agency operations, and the existence of public members on the board.

While the board has complied with public notification requirements, public participation in the policy processes of the board has been minimal. The board's efforts to inform the public through speaking engagements and other public information efforts has been primarily directed to registrants or potential registrants. To help ensure that the public's point of view is properly represented, three public members should be placed on the board in addition to the six registered engineer board members.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

Since the enactment of the board's enabling legislation in 1937, the Act has been significantly amended five times. Generally, these amendments clarified the activities regulated by the Act, added new exemptions to the coverage of the Act, increased the enforcement powers of the board, gave the board the authority to set the amount and stagger the collection of renewal fees, and made the teaching of engineering subject to the provisions of the Act. In the last four legislative sessions, no other attempts to amend the Engineering Practice Act have been made. However, the agency has recommended a statutory change which would require a professional engineer to supervise the construction of certain private structures.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates that there is a continuing need for state regulation of the practice of engineering. The review identified the organizational alternative of consolidating the regulation of surveyors and professional engineers under a single board; however, it was determined that the current method of regulation is satisfactory. The review concluded that a number of improvements should be made to the operation of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. Provide for the additional appointment of at least three members of the general public who would participate in all board matters except the review of applications for licensure;
 - b. Provide statutory authority which allows the board to charge a fee for examinations for record purposes;
 - c. Amend the statute to remove provisions requiring the board to have a sworn complaint before investigating charges against a licensee, and to remove the state residency requirement for persons filing complaints;
 - d. Provide for the imposition of intermediate penalties specifically authorizing the board to issue formal and informal reprimands; and
 - e. Include a provision in the Act which prevents the board from adopting rules restricting advertising and competitive bidding except to prohibit false, misleading, or deceptive practices.

TEXAS BOARD OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING AIDS

BACKGROUND

Historical Perspective

Although hearing aid devices had been marketed prior to 1930, widespread use of the devices did not occur until the late 1940's and early 1950's when technological developments in the electrical circuitry of hearing aids made possible the production of devices which had a smaller, more practical design.

Regulation of the hearing aid industry parallels the technological advances in the device itself. Beginning in 1944, the Federal Trade Commission (FTC) promulgated rules related to hearing aid manufacturers. Consumer protection became a greater aspect of the FTC's regulation in 1965. At that time, the FTC and the Council of State Governments proposed a model state statute for the purpose of regulating hearing aid fitting and dispensing.

Regulation of the industry by states began in 1959 and in Texas in 1969. Prior to the licensing act, control of the industry rested with the manufacturers, the FTC and the Federal Drug Administration. The state, in 1969, recognized a need to protect the public against unscrupulous dealers by enacting legislation which in general, required licensure of anyone measuring human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids and established the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids for the purpose of enforcing the statute.

Initially licensees were primarily persons established in business at the time the licensing act was created and who were qualified in the field through practical experience. With the growth of audiology as a formal field of study, more persons with this background have become licensed. Of the 418 persons currently licensed to fit and dispense hearing aids, 64 are trained audiologists.

The regulation of the fitting and dispensing of hearing aids is accomplished through a nine-member board appointed by the governor. Six members must be licensees. The three remaining members must include a member of the public with no financial interest in the hearing aid industry, a practicing otolaryngologist licensed by the State Board of Medical Examiners, and a practicing audiologist. Primary board functions include the administration and enforcement of the Act, and licensure of hearing aid fitters and dispensers through examination and license renewal.

Board operations were originally funded from fees held in a special fund. In fiscal year 1979, the special fund was abolished and the funding source was changed to general revenue in order to resolve funding difficulties. In fiscal year 1979, the board collected \$49,690 in revenues and expended \$51,669.

Comparative Analysis

To determine the pattern of regulation of the fitting and dispensing of hearing aids within the United States, a survey of the fifty states was conducted to determine how this has been addressed in other states.

The need to regulate hearing aid fitters and dispensers is currently expressed through licensing requirements imposed by forty-four of the fifty states surveyed. An additional four states regulate the sale of hearing aids but not the occupation. From the standpoint of organizational patterns, eight states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. Seventeen states possess boards with only advisory duties. In nineteen states, the function is carried out through a governmental department charged with other administrative and regulatory functions.

In those states which utilize independent boards and commissions, two require that appointees be confirmed by the legislature; and no state limits membership to persons who are licensed members of the occupation. In Texas, members are appointed by the governor and membership includes one public member, one audiologist, one physician, and six licensees. Eighteen percent (18%) of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the regulatory body, regardless of organizational form, was totally supported by appropriations from general revenues. Eighteen states indicated that these bodies were solely supported by fees and charges of the agency.

Forty-two of the state boards which regulate the fitting and dispensing of hearing aids issue temporary permits prior to licensure. In thirty-seven states, licensees are required to renew their licenses annually. Texas licenses for a one-year period. Enforcement activities in forty-four states involve investigation of complaints from consumers and licensees. Hearings are conducted by the regulatory agency in all states. In Texas, hearings are conducted by the agency.

States which regulate the fitting and dispensing of hearing aids indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Examiners in the Fitting and Dispensing of Hearing Aids is a nine-member board appointed by the governor with the advice and consent of the senate for six-year terms. The board is directed by statute to regulate the practice of hearing aid fitting and dispensing.

Board operations can be categorized in three activities: administration, licensing, and enforcement. With regard to administration, the agency meets the objective of efficient management in many respects. However, the board has been unable to accomplish fully its objective due to several funding problems. The agency's expenditures have exceeded revenues for the past three fiscal years and are projected to do so again after fiscal year 1981. Funding difficulties could be minimized by increasing statutory limits for fees in order to give the board greater flexibility, and by increasing the examination fee to a level which would cover exam costs. Cash flow problems have resulted from statutory provisions which require license renewal on January 1, an extended grace period and no late renewal penalty. A penalty for late renewal and a shorter grace period consistent with other agencies would encourage more timely remittal of annual renewals. Finally, the board has made a practice of prorating fees without the statutory authority to do so. The authority to prorate fees should be added to the board's statute if such practices are to be continued.

The review identified four areas of concern regarding the licensing activity. The first concern relates to the administration of the examination. Further, statutory limits on the agency's fee schedule prevent the board from making adjustments in fees which would enable revenues to cover expenditures. The statutory fee provisions should be modified to allow the board flexibility in setting fees which would cover expenditures. Although many aspects of the examination are well designed, the review showed that some practices within the exam administration process could bias results and lead to inconsistent application of testing procedures. Among these practices, which should be discontinued, are full board review of applications and inconsistent use of the standardized format. In addition, the board should utilize a written format whenever possible and conduct the examination in a more appropriate location. Use of blind grading and multiple grading of subjective parts of the exam could add to the objectivity and standardization of application of the exam process. The board presently has no mechanism for counseling applicants who fail the exam as to the reasons for their failure and requires those who fail to retake all parts of the exam for licensure. As part of its modification of the exam process, the board should institute a mechanism for counseling applicants and review its policy which requires the entire exam to be retaken. The second concern involves prerequisites for licensure. While desirable in general prohibitions against, gross immorality, incompetence by reason of negligence, insanity and habitual drunkenness or drug addiction are ambiguous and may place an unfair burden on applicants. These prerequisites, which do not provide the board with an objective standard, should be eliminated from the Act. The third concern involves statutory exemptions. Some of the exemptions in the Act do not appear consistent with the public protection aspect of the statute. While it is reasonable to assume that physicians and persons involved in academic institutions are qualified to fit and dispense hearing aids, other exemptions do not serve the purpose of protecting the public. Exemptions for non-profit organizations and physician employees should be removed to ensure greater public protection. Finally, the board has no guidelines regarding the type or nature

of education or supervision received by temporary training permittees. Since there are no prerequisites for permittees and no guidelines for their supervisors, it is possible for a trainee to fit and dispense hearing aids for up to a year without proof of competence. Establishing guidelines for governing trainee programs and responsibilities of their sponsors could provide a more substantial framework by which to assure better service and protection to the public.

Four concerns were identified with regard to the agency's enforcement activities. First, the underlying causes of complaints are rarely addressed. While consumers have received monetary satisfaction in some cases, the overriding concerns of incompetence or inappropriate sales are overlooked. Allowing sanctions for incompetent practice would give the board greater flexibility in determining and dealing with the underlying causes of consumer dissatisfaction. Second, some of the other statutory grounds for revocation or suspension of a license, such as gross immorality, insanity and drunkenness, are ambiguous and difficult to verify objectively and, therefore, not acceptable grounds for disciplinary action. Greater clarity and relevance regarding grounds for revocation and suspension would give the board practiceable directives. Other statutory grounds for disciplinary actions related to advertising should be eliminated and a general prohibition against false and misleading advertising should be instituted. Third, there is a lack of regulation in the area of test equipment calibration. While the Department of Health regulates this area to a limited degree, board regulation could reinforce and further delineate procedures for calibration and in turn help ensure the accuracy of hearing evaluations. Finally, contractual requirements for the sale of hearing aids are not adequate for consumer protection. A hearing aid user typically requires an adjustment period where the performance of his hearing aid can clearly be judged as beneficial or useless. Mandatory trial periods and "right to cancel" provisions could provide greater protection for the hard-of-hearing public.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives indicated that 48 states, including Texas, provide regulation in fitting and dispensing hearing aids, with 40 operating through agencies with multiple functions. Eighteen of these states use some variation of consolidation within a department of health.

The Department of Health appears to be the most feasible alternative for consolidation in Texas. The department is responsible for the registration and regulation of all persons involved in the operation of human hearing testing devices. Department personnel have expertise in audiometric testing, calibration, audiology and the fitting of hearing aids. Benefits could be derived from the use of the department's regional offices for complaint investigation as well as other support personnel and services.

The review of regulatory alternatives showed that two states have chosen to provide no regulation in the fitting and dispensing of hearing aids, deferring all regulatory responsibility to the FTC and/or FDA. Other alternatives from the review of other states included regulation of the sales of hearing aids, with the additional requirement of a medical examination before the purchase of an aid. Certification and registration were also reviewed for feasibility and benefit. Of these alternatives, all are less restrictive, but only the regulation of the sale of hearing aids provides a means by which the need for a hearing aid could be determined. However, this alternative would not assure competence of fitters and would increase the cost to consumers.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

The board has complied with the filing requirements related to conflict of interest provisions. One board member holds office in a state hearing aid association which provides the possibility of conflicts between goals of the regulating body and the persons regulated. While the board has complied with the Open Records Act, it has held executive sessions for purposes not allowed in the Open Meetings Act. Steps have been taken to ensure future compliance.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the board.

The board has observed general statutes related to notice of rule changes, and board meetings. A requirement to give additional notice of meetings in newspapers has not been observed and is no longer needed. The board presently has one general public member, providing some assurance that the public's viewpoint is represented in decisions and actions of the board.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

In conclusion, major changes to the act, since enactment, include more stringent provisions for licensee conduct, authorization for a staggered renewal process and inclusion of the board under the Sunset Act. Proposed, but unsuccessful legislation would have made major regulatory changes by: 1) placing the board under the Department of Health; and, 2) requiring a prescription for the dispensing of new hearing aids.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of the hearing aid fitting and dispensing profession. The review identified the organizational alternative of performing the regulation through the Department of Health. Additionally, the review identified the alternative of regulating the sale of hearing aid devices which could result in increased costs to the public. The review concluded that a number of improvements should be made to the operations of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. The examination fee should be increased and the board should be provided with flexibility in setting fees, subject to a statutory limit;
 - b. The collection of fees for late renewal penalties should be clearly authorized;
 - c. A standard timeframe for renewals should be provided on renewals;
 - d. The examination should be modified to provide greater standardization and objectivity;

- e. Counseling should be provided on request for applicants who fail the exam;
- f. Applicants who fail should be permitted to retake only the parts which they previously failed;
- g. Licensure prerequisites and grounds for disciplinary action should be modified to include only those to which the board can apply a clear objective standard;
- h. Exemptions should be modified to include only employees of colleges and universities who do not sell hearing aids and physicians;
- i. Guidelines should be established for training and practice of temporary training permit holders and their sponsors;
- j. Regulations should be established regarding the calibration of testing equipment; and
- k. A 30-day trial period should be required, the terms of which must be explained to the buyer at the time of any hearing aid sale.

BOARD OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

BACKGROUND

Historical Perspective

Although public law enforcement agencies maintain basic legal authority for crime control, private security services, through involvement in the area of crime prevention, have historically provided a commercial source for supplemental protective services. Prior to the establishment of public police departments in the 1850's, security was primarily provided through private sources. The emergence of public police agencies, however, had little effect on the need for private security because of the increasing incidence of crime and the general inability of the public police to prevent all crime.

Urbanization and industrial growth during the first half of this century intensified security concerns. Significant emphasis was placed on security for national defense contractors during World War II. Following the war, the use of the security services expanded to other segments of the private sector as well.

The growth of the security service industry was accompanied by a growing desire to more closely regulate its activities. Factors such as the quasi-police function of private security and the nature of services provided contributed to the perceived need for greater regulation. In the early years, general state law provided limited regulation of the industry in Texas. In 1893, the legislature established residency requirements for armed guards. Additionally, in 1933, provisions requiring general detective agencies to demonstrate stable financial status were instituted. These initial state efforts, however, were often supplemented through regulation by local units of government.

Historically, local regulatory efforts sought to establish a mechanism for control over the persons involved in private security, their interaction with public police, the activities undertaken, and the use of handguns. Local regulation, in this instance, was frequently an inadequate response to the public's need for protection and resulted in the development of inconsistent standards and restrictions across the state.

The need for a comprehensive and uniform approach to the regulation of private security activities was addressed by the Sixty-first Legislature through the creation of the Board of Private Detectives, Private Investigators, Private Patrolmen and Private Guard Watchmen in 1969. (The agency's name was changed to the Board of Private Investigators and Private Security Agencies in 1971.) In general, the Act establishing the board made it unlawful for any person or firm to offer security services without being licensed by the board or exempted by the Act. The apparent intent of the licensing law was to establish firm control over the manner in which security services are offered, the persons authorized to engage in the business, and the financial integrity of security service providers. This intent was addressed through statutory provisions which: 1) imposed an organizational framework upon the industry by requiring the licensure of companies according to the scope of services offered and conditioned upon the qualifications of manage-

ment personnel for each service offered; 2) restricted entry into the field of persons with unfavorable criminal histories; and 3) required surety bond and insurance coverage for licensees so that compensation for recoverable damages would be available.

The original scope of the board's authority was significantly altered in 1971 and again in 1975. Regulation of private security was expanded by the Sixty-second Legislature in 1971 to include armored cars, courier, guard dog, and alarm companies. The inclusion of these services within the scope of the Act was in an effort to regulate all aspects of the security industry. The Sixty-fourth Legislature, in 1975, authorized the board to issue handgun commissions to qualified security officers and removed the local authority to grant commissions. This change was in response to the lack of control and uniformity which resulted from the various local practices governing the issuance of handgun permits.

The eight-member board directing the agency is composed of three industry representatives, two public members, one local law enforcement representative, and two ex officio members (the Attorney General and the director of the Department of Public Safety or their representatives). With the exception of the ex officio members, all members are appointed to overlapping six-year terms by the governor with the advice and consent of the senate. This board oversees a staff of 21 full-time employees. At present, the board regulates 1,499 companies, 4,921 registrants, and 13,887 commissioned security officers. Operations of the board are supported by legislative appropriations from the general revenue fund. In fiscal year 1979, the board collected \$472,765 in fees and other charges and expended \$499,900 as reported in the Comptroller's Annual Financial Report.

Comparative Analysis

To determine the pattern of regulation of the services provided to the public in the areas of private investigation and private security within the United States, a survey of the fifty states was conducted.

The need to regulate private investigation and private security services is currently expressed through statewide licensing and registration requirements imposed by thirty-four of the fifty states surveyed. From the standpoint of organizational patterns, three states, including Texas, meet this expressed need through an independent board or commission. In seven states, the regulation is accomplished through an umbrella administrative agency. Sixteen states have selected the state Department of Public Safety to administer the regulation of private investigative and security services. Substantive agencies such as the Office of the Attorney General and the Office of the Secretary of State are utilized to perform the regulation in eight states.

Of those states which regulate on a statewide basis, thirteen states use a method of regulation which licenses either companies or individuals involved in the investigations or security industry. Twenty-one states, including Texas, employ a more comprehensive form of regulation which requires the licensure of companies and the registration of certain employees of those companies. Also, the scope of regulation varies a great deal throughout the thirty-four states which regulate statewide. Although all thirty-four states, including Texas, regulate private

investigators, thirty-one states regulate guard and patrol companies. While eight states, including Texas, have determined the need to regulate armored car companies, Texas and ten other states regulate companies which offer guard dog services. Only six states, including Texas, have implemented regulation of burglar alarm and courier services. In sixteen states, Texas included, state weapons permits are issued to provide a uniform statewide control of the use of handguns.

Fifteen of the state agencies which regulate private investigators and private security services administer an examination, as does Texas, to the person qualifying for the license and twenty-five states place experience requirements on this person. Criminal history checks are performed by thirty-three states, including Texas, as a routine part of the licensing process.

States which regulate private investigators and private security services generally indicated the necessity of performing the basic regulatory functions of administration, review of applicant qualifications, license issuance and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Private Investigators and Private Security Agencies is composed of eight members, two of whom are ex officio members while the remaining six are appointed to six-year overlapping terms by the governor with the advice and consent of the senate. The board is directed to regulate the security services field through its licensure and enforcement functions.

The operations of the board can be divided into three activities; administration, licensing, and enforcement. Although the objective of efficient management has been achieved in general, the board has experienced difficulties in past years concerning excessive travel expenditures and inadequate cash receipts control. Internal corrective measures which address these areas have been instituted. The board has also experienced difficulty in balancing expenditures with fee amounts collected. Statutory authorization to charge fees for two services presently provided at no charge would assist the board in balancing revenues and expenditures.

With regard to the licensing activity, the review indicated that established procedures are effective in ensuring that statutory requirements have been satisfied. However, four concerns were identified in this area. Review of licensing procedures showed that considerable administrative time is spent processing reapplications of recently terminated registrants, and commissioned security officers. This workload could be reduced by extending the time during which the

Department of Public Safety continues to notify the agency of changes in criminal status of recently terminated security employees. Analysis of licensing requirements indicates that the board's discretionary authority with regard to waivers of felony convictions presents a potential for arbitrary decisions. Removal of this authority along with a modification in statutory licensing requirements to eliminate the prohibition against certain misdemeanor convictions would assure consistent licensing standards and also reduce time required for board deliberations. With regard to delinquency and reinstatement fees, a concern was raised by their amount which is excessive in comparison to similar penalties in other licensing agencies. Retention of fees but at a lower level would continue to encourage compliance with renewal requirements while providing treatment comparable to other agencies for board licensees. Review of handgun commission requirements indicated that the presently authorized issuance of temporary commissions prior to approval from local law enforcement officials has created a means of circumventing the safeguards provided by the commissioning process. Removal of board authority to issue temporary commissions would remove the mechanism for unqualified persons to be temporarily authorized to carry handguns.

In the area of enforcement, the board utilizes efficient investigative and hearings processes for receiving and disposing of complaints. Although board procedures effectively address the enforcement needs of the agency, three concerns were identified. At present, the board probates suspensions despite the absence of specific statutory authority. However, the review indicated that board authority should be expanded to include this sanction. Additionally, the board lacks adequate injunctive relief to prevent unauthorized practice. In order to more effectively enforce statutory provisions, the board should be authorized to enjoin unauthorized activities without proving the usual legal requirements for injunctive relief. Finally, the review indicated that current restrictions do not adequately prevent the unauthorized wearing of handguns by commissioned security officers, and should be modified to prohibit the wearing of handguns except when on actual duty or when traveling directly to or from a place of assignment.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives found in other states was conducted to determine the potential for combining the regulation of private investigative and private security services with the functions of another agency. Thirty-three other states regulate such services on a statewide basis. While sixteen of these states utilize the Department of Public Safety to administer the regulatory functions, only three states, including Texas, perform the regulation through an independent board. Agencies in other states which have administered the regulatory operations include the Attorney General, the Secretary of State and "umbrella" licensing agencies.

If the present level of regulation is maintained in Texas, the independent board is the best form of organizational structure, and consolidation with another agency would appear to impede the effectiveness of the operation. However, should the scope of regulation be substantially reduced, a consolidation of the licensing and enforcement functions with the Department of Public Safety would produce the best structure for regulation of these activities. With DPS supervising the licensing and enforcement functions, the Texas Commission on Law Enforcement Officers Standards and Education could assume the certification of schools and instructors for the training of commissioned security officers.

With regard to regulatory activities, sixteen other states have provided for no statewide regulation. The thirty-four states, including Texas, which do regulate statewide, impose a licensing scheme that generally provides for the licensing of companies through the qualifying of certain employees. Also, the scope of regulation in other states varies substantially, ranging from the regulation of only private investigators and security guards to a breadth of regulation which also includes armored car services, courier services, burglar alarm services, and guard dog services.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

Although the board generally complies with the statutory requirements outlined in the Conflict-of-Interest statute, the Open Meetings Act, and the Open Records Act, review of agency activities identified two instances in which open meeting requirements were not fully met - a telephone poll of board members and inadequate notice procedures for a committee of the board. Procedures to prevent reoccurrence of such actions have been adopted. Also, in one situation, the board deviated from acceptable open records procedure when information deemed public by the Attorney General was released only after litigation. In the area of employment practices, three charges of discrimination have been filed against the agency, one of which has been dismissed.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

Although the board has complied with the necessary public notification and hearing requirements, participation by the general public in the rulemaking and policy processes of the board has been minimal. Board efforts to inform the public of agency operations have been limited to the distribution of three publications which are primarily directed toward licensees. Additionally, a consumer information bulletin is being developed for distribution to Better Business Bureaus throughout the state. However, the general public's point of view has been represented through the presence of two board members who are appointed from the general public.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

Since enactment of the board's enabling statute in 1969, the Act has been amended several times. Among the more significant amendments were provisions which: extended the regulation to include armored car, courier, guard dog, and alarm companies; authorized the board to issue handgun commissions to qualified security officers; and transferred the regulation of fire and smoke detectors to the State Fire Marshal. Several other bills affecting the operations of the board have been unsuccessfully submitted. In general, these proposals sought changes in the scope of regulation, board composition and authority, and licensee restrictions. Additionally, the agency, through the self-evaluation report, has recommended changes which would significantly increase the present level of regulation.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of the private security industry. The review identified regulatory and organizational alternatives which would reduce the scope of regulation and perform the regulation through the Department of Public Safety; however, the present level and method of regulation was determined to be appropriate. The review concluded that a number of improvements should be made to the operation of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. Amend the statute to authorize the collection of reasonable fees to cover the costs for issuing letters of authority to the security department of private businesses and letters of approval to training schools and instructors.
 - b. Extend the period of time that criminal history information is maintained with regard to terminated employees of licensed companies.
 - c. Amend the statute to remove board discretion with regard to the issuance of a license, registration, or commission to an individual convicted of a felony and to remove the requirement prohibiting the licensure of persons convicted of a misdemeanor more than seven years prior to the time of application.
 - d. Amend the statute to reduce the amount of license reinstatement and renewal delinquency fees.
 - e. Amend the statute to remove provisions which authorize the issuance of temporary handgun commissions prior to approval by local enforcement officials.
 - f. Amend the statute to authorize board use of probated license suspensions.
 - g. Amend the statute to provide effective use of injunctions against unauthorized practice.
 - h. Amend the statute to restrict the wearing of handguns by commissioned security officers to periods of duty only or when traveling directly to or from the place of assignment.

STATE BOARD OF LIBRARY EXAMINERS

BACKGROUND

Historical Perspective

The State of Texas has provided for a system of libraries since 1874 when the legislature authorized incorporated cities to establish free libraries and to appropriate part of the revenues of the city or town to manage and support the library. The increasing demand of citizens in rural areas for free public library service prompted the legislature to authorize the establishment and support of county libraries in 1915. This action was intended to assist in the spread of public education throughout the state, therefore, enhancing the public's general welfare.

The State Board of Library Examiners was established in 1917 in response to the need for experienced librarians to help organize, classify, catalogue and buy books, install charging systems, help raise funds for annual maintenance and train local employees in library techniques. Prior to the establishment of the board, county librarians were selected from the names of one or more persons submitted to the County Commissioner's Court by the library board of the county.

Although early records concerning the board's activities are incomplete, it appears that county librarians were certified at least as early as 1920 and 1921. However, there were never more than 20 certified county librarians prior to 1938 with the total number growing to 89 in 1944.

Until the passage of legislation creating the State Library System, the State Board of Library Examiners was the only agency responsible for regulating the qualifications of professional librarians. The regulatory authority extended only to those librarians working in county libraries and municipal libraries receiving county funds. With the enactment, in 1969, of the Library System Act, the Texas State Library and Archives Commission became actively involved in adopting criteria for library personnel. Through the Systems Act, the State Library was authorized to adopt criteria for membership in the Texas State Library System. Since then rules and regulations have been adopted by the commission which specify the same educational requirements for professional librarians as the Board of Library Examiners and establish minimum professional staffing requirements for all system members.

The State Board of Library Examiners currently operates much as it did when it was first organized. The board, consisting of three appointed members and two ex-officio members establishes certification requirements for persons employed in county libraries and municipal libraries receiving county funds. There are currently 424 librarians certified by the board.

During the 1978-79 biennium, \$1,132 in General Revenue Funds was budgeted through the Administration Program of the Texas State Library and Archives Commission for administering the board's certification program. The State Library and Archives Commission also supplied the assistance of one employee for approximately 60 hours per year. No revenues were generated by fees during this period.

Comparative Analysis

The last published report concerning the certification of public librarians in the United States prepared by the American Library Association indicates that twenty-two states have mandatory certification statutes. However, statutes in four of these states are not implemented. In many of these states, certification statutes apply only to head librarians or librarians in professional positions requiring a masters degree. Texas is only one of five states whose certification statute applies only to heads of county libraries. Three states have permissive certification statutes which sanction non-compulsory certification plans in effect. In eight of these states there are voluntary certification programs, generally sponsored by a state library association. In states with no voluntary or statutory certification plans, minimum professional requirements are often tied to the distribution of public funds or through civil service regulations.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The evaluation of the Board of Library Examiners revealed that the activities of the board are administered in an efficient manner, involving minimal costs. The statute governing the board leaves almost complete latitude to the board in determining what means will best achieve the objective of assuring that libraries receiving county funds are directed by well qualified librarians. The board currently utilizes minimum educational and experience standards to determine competency as a librarian. These standards for permanent certification appear to place unnecessary emphasis on formal education requirements which may only be obtained through three accredited programs in Austin and Denton. Graduates of masters level library science programs at two public universities and one private college do not qualify for permanent certification under the board's current rules and regulations. While the Board of Library Examiners does acknowledge complaints, there is no formal enforcement program authorized or in effect.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

The Board of Library Examiners represents one of the more restrictive regulatory alternatives found in the states in that they implement a scheme involving certification of individuals. As generally applied, this regulation statutorily restricts employment as a head librarian in a county library through certification based on fulfillment of educational requirements. Although the board does not have the authority to revoke certification or enforce statutory prohibitions, it does require renewals for temporary certificates based on continuing education requirements. There are, however, alternatives to this regulatory policy which would offer a less restrictive, though not necessarily weaker method of achieving the objective of assuring qualified librarians. These alternatives include transferring the function to the Library and Archives Commission or abolishing the function and permitting regulatory supervision through the State Library System.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

The Board of Library Examiners appears to be in general compliance with the provisions of general statutes governing state agency operations. Exceptions include the failure to file affidavits concerning financial interests and the mail voting process which might not comply with the Open Meetings Act.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

Despite the fact that procedures for advance notification of meetings appear to fulfill statutory requirements, other special efforts to increase the board's visibility among members of the general public have been limited. Public involvement in the area of rulemaking and other activities of the board could be significantly improved if there were public members on the board.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

There has been only one change to the board's original enabling legislation and this change was not substantive in terms of its responsibilities. No suggestions have been made by the board in its self-evaluation report for improving its statutory responsibilities.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates a continuing need for state regulation. Transferring the function to the Library and Archives Commission was identified as an alternative to licensing through an independent board. The review also indicated that standards for permanent certification appear unnecessarily restrictive.

SUNSET COMMISSION RECOMMENDATIONS

- Abolish the board and transfer its certification functions to the Library and Archives Commission.
- Establish less restrictive educational requirements for permanent certification as a county librarian.

TEXAS STATE BOARD OF MEDICAL EXAMINERS

BACKGROUND

Historical Perspective

The regulation of the medical profession has a long history in both the United States and Texas. While various controls had been placed on American physicians as early as 1639, the first medical licensing examinations were not given until 1760 in New York City. The history of licensing in Texas began almost 80 years later in 1837 while Texas was still a republic. This effort was short-lived, ending in 1848 when Texas became a state. However, 25 years later Texas was credited with ushering in the period of "modern" regulation with the passage of the first modern medical practice act in 1873.

A review of available literature shows that there were at least two major conditions leading up to the modern era of regulation that began with the Texas act. First, between 1820 and 1870, medical schools proliferated in the United States as a result of the medical demands of a rapidly growing country and the availability of students. Many of these institutions, as well as their students and graduates, were not of top quality. Second, various sects and cults practiced their own questionable versions of "non-regular" medicine with virtually no controls placed on them in many states.

These conditions stimulated strong reactions from the increasingly powerful practitioners of "regular" or established medicine. First-rate medical schools and medical societies and groups such as the American Medical Association began to push for higher standards of entry into the profession by the 1870s. This reaction appears to have stemmed from several factors. Practitioners of regular medicine, which had made large scientific strides as a result of European research in the mid 1800s, were alarmed at the potential for public harm inherent in the practice of medicine by incompetent or unskilled individuals. In addition, the skilled practitioners were concerned with their public image as well as with the more practical economic problems resulting from the large number of medical school graduates pushing down the income of physicians.

As a result of such pressures, Texas undertook regulation of the medical profession in 1873. Regulation, however, was carried out by boards in each county of the state rather than by a single state board. While the organizational framework for regulation changed several times in the next thirty years, in 1907 the state changed over to the approach still in use today with the establishment of the Board of Medical Examiners as the sole agency regulating the medical profession. The board was given the authority to test and license applicants, while the authority to suspend or revoke a license was given to the district courts.

Since 1907 the authority of the board has been modified many times. The most significant changes relating to the scope of board authority have occurred in the area of enforcement. In 1953 the power to revoke, suspend, or cancel a license was extended from the judicial system to the agency. In recent years the agency's range of disciplinary powers was again broadened with the passage of legislation in

1977. Board disciplinary action authorized by this legislation included the issuance of public or private reprimands and the requiring of a set period of education or supervised practice. Over time, the grounds for taking such disciplinary action have become more numerous as well as more specific. These changes in authority have been taken to help protect the public in a period where medical technology and skills have become increasingly sophisticated.

The current board is composed of twelve members appointed by the governor and confirmed by the senate for six-year terms. For fiscal year 1980, the agency has a total of forty-two budgeted positions and operates with a budgeted amount of approximately \$1.3 million. Slightly over half of this amount is appropriated to the agency out of the Medical Registration Fund in the State Treasury. The remaining amount is maintained by the board outside the Treasury in local bank accounts and is not subject to the state appropriations process.

Comparative Analysis

To determine the pattern of the regulation of the practice of medicine within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of physicians is currently recognized through licensing requirements imposed by all fifty states. From the standpoint of organization patterns, twenty-two states, including Texas, utilize an independent Board of Medical Examiners, to regulate the practice of medicine. In twenty-eight states, the regulation of medical doctors is carried out through a board associated with a state agency charged with multiple regulatory functions. Responsibility for the regulation of medicine rests with a board associated with a state health department in nine states. In fifteen states, osteopaths are regulated by an independent board composed entirely of osteopaths.

Board members are appointed by the chief executive in forty-two states, as in Texas, and confirmed by the legislature in twenty states. Boards in twenty-six states indicate that they are funded through general revenue appropriations. The Texas board is not funded through general revenue appropriations. In seven states, including Texas, the administrative head of the agency is required to be a physician.

Licensing boards composed entirely of medical doctors administer regulatory activities in seven states. In thirty states, as in Texas, the regulation of physicians is achieved through a board composed of medical doctors and other physicians or health professionals. Public members serve on the board of thirty states, not including Texas. Boards in thirty-eight states indicate that they regulate more than one profession.

Board of medical examiners conduct investigations in response to consumer complaints in thirty-nine states, as in Texas. In all states but eight, the board has the responsibility of conducting disciplinary hearings. Thirty states utilize non-adversarial administrative hearings to resolve certain disciplinary matters, as does Texas. Twenty-one states, not including Texas, require continuing medical education prior to relicensing physicians. All boards of medical examiners

surveyed indicate the need to perform the basic regulatory functions of administration, testing, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The State Board of Medical Examiners is a twelve-member board appointed by the governor with the advice and consent of the senate for six-year overlapping terms. The board is directed by statute to regulate the practice of medicine.

Board operations can be categorized into three activities: administration, licensing, and enforcement. With regard to administration, functions are carried out in a generally acceptable manner, although four concerns have been identified.

The first concern relates to the board's current funding structure. Nearly half (46.7%) of the board's fiscal 1980 operating budget is held outside the State Treasury. To ensure that the management of this agency adheres to general standards established for efficient and accountable state operations, all funds utilized by the medical board should be placed in the State Treasury and be subject to the appropriations process.

A second concern relates to the range of activities for which board members claim per diem. Particular concern is raised by the fact that board members claim "preparation" for board and board committee meetings (135 days in fiscal year 1979). Per diem claims should only be allowed for actual attendance at board or board committee meetings or for association or medical school liaison meetings when the members are officially representing the board.

A third concern involves the statutory requirement that the president and secretary-treasurer of the board must sign all disbursements of the board. This is a cumbersome requirement and does not add to funds accountability. This requirement should be modified to require only the secretary-treasurer's or board designee's signature.

A fourth concern relates to cash (currency) control procedures. During the review, unattended currency was observed on the receptionist's desk with visitors in the reception area. Steps should be taken to avoid such occurrences in the future.

With regard to licensing, the board's procedures can be broken down into three general areas: examination, reciprocity, and registration (renewal). Although the licensing functions operate in a generally efficient manner, five areas do exist where improvements can be made.

First, the board's statute, the Medical Practice Act, presents general problems in organization. The fee structure is confusing, exam language is

outdated, two sections duplicate other sections of the Act and the grounds for applicant or licensee disqualification need revision. As the statute is modified during the next legislative session, these areas of confusion or duplication should be corrected.

Second, the requirement that the board verify applicant transcripts for specific "Basic Science" background areas is no longer necessary and presents unreasonable barriers to licensure for certain applicants. Only four states (other than Texas) still require some Basic Science review for applicants and seven have eliminated the requirement since 1970. Basic Science knowledge is tested through the national "FLEX" examination and the requirement should be eliminated. Funds transferred to the board (\$127,867) from the abolished Board of Basic Sciences for the Basic Science review function should be transferred to the General Revenue Fund.

Third, the board's renewal delinquency procedures are burdensome and costly. Current certified mail notice requirements should be eliminated and the following standard delinquency process should be put in place: 1) the renewal of licenses expired for more than ninety days would require payment of an increased fee, and 2) the renewal of licenses expired for more than two years in certain situations would require reexamination or other requirements as determined by the board. The board's current reinstatement process would be required in either situation.

Fourth, rules relating to physician assistants (PAs) should be modified to increase public notice of their activities and make consistent for all PAs educational and competency testing requirements. These modifications would require: 1) that physicians utilizing physician assistants develop and maintain written descriptions of the types of services delivered by these individuals, with such descriptions available to the public and board investigators upon request; and 2) that any physician assistant utilized by a board licensee must have certain education or equivalent experience qualifications and have passed the national certification exam for physician assistants.

The review of agency enforcement activities indicates that the board has devoted considerable time and personnel in pursuit of illegal practitioners of medicine. The board receives approximately 1,000 complaints a year and the investigation division is active in pursuing and resolving complaints received. However, concerns have been encountered in the following general areas: complaint processing (3); intra-office and hearing procedures (3); and the scope of the board's enforcement authority (1).

Complaint Processing

First, the board does not notify parties of complaints on a regular basis. The agency should implement a notification procedure (at least every three months) for those involved in complaints handled by the board, unless such notification would jeopardize an on-going investigation.

Second, the complaint receipt and processing operations are conducted manually. Automation through data processing assistance could greatly enhance the accountability and general management of the investigation division.

Third, it is unclear what records of the board are confidential. Language should be added to the board's statute which specifically identifies what information held by the board is confidential.

Intra Office and Hearing Procedures

First, no written procedural guidelines have been developed for the execution of the division's general duties. These include: 1) complaint processing; 2) reinstatement applications; 3) physician assistant permits; and 4) malpractice and peer review report processing. Additionally, training materials for board investigators consist of general instructions on report writing, voucher processing, etc. Improvements in investigator training can be gained through the development of written training materials including: 1) a general synopsis of attorney general opinions and case law regarding the practice of medicine in Texas; 2) guidelines concerning acceptable interview procedures and techniques and cautionary materials on general law enforcement problems (e.g., entrapment, rights violations, etc.); and 3) guidelines on the sufficiency of evidence for filing cases and procedures needed to secure drugs purchased through undercover work. Development of written guidelines for all of the above areas would improve new employee training and provide reference materials to ensure consistent treatment of all items and persons handled by the division.

Second, procedures used for the board's "Administrative Sanction Hearings" should be developed into board rules and regulations to comply with the Administrative Procedures Act. Written notice to those requested to attend such hearings should include the general areas of concern (complaints or allegations) for which the person is being summoned.

Third, board rules developed concerning the District Review Committees do not fully address the purpose, general activities, conduct of hearings, or the committees' scope of authority. The current rules should be modified to address the above areas.

Scope of Board's Enforcement Authority

The board has made recommendations on the need for additional enforcement powers. Four of these appear to have significant merit. The board should be able to discipline physicians:

- 1) who have been disciplined by regulatory boards in other states;
- 2) who have violated a federal as well as state law;
- 3) who have prescribed, administered or dispensed drugs in a manner not consistent with public health and welfare; and
- 4) who have persistently and flagrantly overcharged or over-treated patients.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of the consolidation alternatives in other states was conducted to determine the potential for combining the regulation of physicians with the functions of another agency. In Texas, the Department of Health offers the most reasonable consolidation alternative. The objectives of the Department of Health are compatible with those of the Board of Medical Examiners; however, as presently structured, the department does not appear capable of assuming the board's broad regulatory functions and no savings could be expected to result from the consolidation of agency activities.

The review indicated that a continuing need exists for the regulation of the practice of medicine and that this need can best be met through the licensing of physicians. The federal funding of numerous health and medical programs could be lost should the state choose to no longer regulate the practice of medicine.

With regard to regulatory alternatives, many states have adopted the requirement that physicians participate in continuing medical education programs. These requirements, which promote the continued competence of physicians, do not appear to significantly increase the restrictiveness of state regulation for the majority of physicians and could be considered as an alternative to current licensing requirements.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

The board has not fully complied with filing requirements related to conflict-of-interest provisions, although that discrepancy is being corrected. Provisions

concerning conflicts of interest should be incorporated in the agency's statute. Currently, several board members serve as officers in professional associations of the regulated industry and counsel to the board is a registered lobbyist for several health related groups -- actions which would be prohibited under the adopted approaches.

The board has improved its compliance with the Open Meetings Act. Although three executive sessions since February 1979 have been held without proper notification as to the purposes, the board has indicated corrective action is being taken to ensure full compliance. The board has complied with the provisions of its statute and of the Open Records Act relating to freedom of information. An Affirmative Action Plan and grievance procedures are in place.

PUBLIC PARTICIPATION

The review under this section covers the sunset criteria which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the board.

The board has complied with the general public notification requirements. Efforts to inform the public of its responsibilities and activities could be improved by consolidating the licensee directory, the Medical Practice Act, board rules and regulations, and the duties and functions of the board; listing licensees geographically as well as alphabetically; and distributing the directory and newsletter to public libraries. Additionally, the composition of the board should be modified to include three public members.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

The board's enabling legislation has been amended twenty-eight times since 1907 when the state adopted the single board regulatory approach still in use today. Major changes include establishing board procedures, modifying the fee structure and board compensation, increasing licensure requirements for reciprocity applicants as well as other applicants, and expanding the board's enforcement activities. In the last four legislative sessions, unsuccessful legislation was introduced to further modify licensure requirements, to change board composition and activities, to regulate health maintenance organizations, to exempt acupuncture from the practice of medicine, and to create a Joint Practice Committee.

The agency recommended thirty-six modifications to its statutes in its self-evaluation report. Substantive changes include allowing the board to set fees, giving the board the ability to fine, expanding the board's licensing and enforcement authority, and deleting the requirement that the board verify an applicant's completion of basic science coursework required for licensure.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of the practice of medicine. The review identified no real alternative to licensing through an independent board but determined that a number of improvements should be made to the operations of the independent board if it is recreated by the legislature. The review also identified an additional protection that has been required by other states in the form of mandatory continuing education for licensees.

SUNSET COMMISSION RECOMMENDATION

- The commission made no recommendation concerning this agency.

THE FLEET ADMIRAL CHESTER W. NIMITZ MEMORIAL NAVAL MUSEUM COMMISSION

BACKGROUND

Historical Perspective

The Fleet Admiral Chester W. Nimitz Memorial Naval Museum, like most museums, results from the conviction that a particular environment or group of artifacts have important lessons to teach. On December 12, 1963, a group of Fredericksburg citizens, concerned that little was being done to memorialize Fleet Admiral Chester W. Nimitz, a native son, formed the Nimitz Memorial Shrine and conceived the idea of restoring the Nimitz Hotel to its former appearance and converting it into a center to honor the Admiral. On February 5, 1964 the name was officially changed to the Fleet Admiral Chester W. Nimitz Museum, Inc. The original goals of the corporation were as follows:

- 1) To raise a minimum of \$1 million dollars in Fredericksburg, the State of Texas and the United States of America;
- 2) To secure these funds to purchase and restore the famed and historic Nimitz Hotel Building to its original "ship shape";
- 3) To place in the museum items of historical interest relating to the life and career of Fleet Admiral Chester W. Nimitz, and his illustrious grandfather who founded the hotel in 1852;
- 4) To place in the museum items of historical interest relating to the achievements of all the servicemen and women of the United States, including the Commander-in-Chief, President Lyndon B. Johnson, who is also a native of Gillespie County;
- 5) To create a museum of great magnitude and scope, of interest to people of all nations; and
- 6) To establish a foundation for the maintenance and perpetuation of the museum and its contents as a memorial shrine for all people to visit and cherish.

Operated first by a volunteer staff and later by a salaried director, the local committee realized after several years that a successful development was beyond their means. In 1969, the Sixty-first Legislature established the Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission to administer the Chester W. Nimitz Memorial Naval Museum in Fredericksburg and commemorate the memory of the era of supreme U.S. naval power and the men and women who made it possible. The commission is composed of nine members appointed by the governor with the advice and consent of the senate and employs an executive director and six full-time employees to carry out the provisions of the Act.

Commission activities are supported by general revenue appropriations, admission fees and private gifts, grants and donations. In 1979, appropriations to the commission were \$99,510 and admission fees amounted to \$11,832. All commission funds are deposited in the State Treasury.

Comparative Analysis

To determine the pattern of museum administration within the United States, a survey of the 50 states was conducted.

The administration of publicly owned museums is currently performed by 47 states, including Texas. Three states, Georgia, Hawaii, and New Hampshire, do not administer or fund public museums.

From the standpoint of organizational patterns, 16 states perform the function of museum administration through a state historical society or commission, five states through the State Department of Education, and the remaining states through various agencies including the Department of State, Department of Conservation, and Department of Natural Resources. In four states, museums are administered by non-profit, public corporations receiving state assistance. In Texas, as in six other states, more than one agency is responsible for museum administration. In three states, including Texas, independent decentralized governing boards have been established for the administration of a museum or museums.

Museums in 19 states, including Texas, commemorate the accomplishments of individual public figures. Commemorative museums in each of these states receive general revenue appropriations. Thirteen of these states, including Texas, also collect an admission fee to finance the cost of museum administration. Of the 19 states with museums dedicated to individual public figures, museums in eight states are governed by policy-making boards. Board members in six of these states undertake fund raising activities on behalf of their museums, and board members in two states with commemorative museums, North Dakota and Texas, also serve on private foundations associated with the museums.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints regarding agency operations.

The review of the operations of the agency indicated that since its creation, a great deal of time and effort on the part of the public and private individuals has gone into the development and shaping of the museum. Methods used to secure materials and permanent exhibits for display have been both economical and inventive and have worked to the advantage of the state. Shifts in state policy concerning operations of state museums in general and the Nimitz Museum in particular have caused difficulties in determining the proper role and scope of a museum of this nature. These shifts in policy have placed financial strains upon the operation of the museum which have been difficult to overcome.

During the review, several areas were identified where agency procedures and practices could be further improved. The evaluation of the commission's activities centered on the controls established by the agency to ensure that

appropriated funds were utilized in an efficient manner. Review of commission policies and procedures regarding acquisition, maintenance and management of the agency's property indicate that the commission's emphasis on property acquisition prior to 1977 resulted in the legislature prohibiting further physical plant expansion after August 31, 1977.

Any further expansion, in accordance with the current master plan should be undertaken only after authorization or funding by the legislature. The review also showed that the agency's policy of accepting all donated items resulted in increased costs to the state in terms of storage, conservation, and maintenance. Deficiencies noted in the property management area included the lack of documentation transferring ownership of donated property, the absence of an orderly system of storage and documentation of the location of objects, and inadequate maintenance of displays, especially those at the Center's Pacific History Walk. Verification of records concerning the agency's investment in fixed assets indicated that the agency has inappropriately entered items on loan from the U.S. Department of Defense onto the state property inventory.

Review of the cash flow process revealed no problems in the handling of and accounting for admission revenues. However, the review showed that the utilization of these revenues has not been in accordance with rider provisions contained in the General Appropriations Act passed by the Sixty-fifth and Sixty-sixth Legislature.

The review also showed that although the commission is authorized by statute to accept all gifts and donations, the commission's financial statements reflected no income from these sources before 1979. During this period, some members of the commission also served as directors of the foundation and in fund raising efforts no distinction was made between these two roles. While the efforts of the foundation are commendable and the tax exempt status of the foundation would encourage donors who wished to assist the commission's efforts, some formal effort should have been made during this period by individuals holding dual membership on the commission and the foundation to make donors aware of the choice that existed between the foundation and the commission.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of alternative methods of performing the function; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Only two other states operate a museum through an independent commission. The Nimitz Center is the only museum in Texas operated in this manner. Texas and other states operate museums and historic structures through state universities and historical commissions. The Texas Parks and Wildlife Department is also similar in function to departments of natural resources which operate museums in other states. In Texas, the Parks and Wildlife Department appears the best choice

as an agency capable of operating the Nimitz Center. This choice is based on the agency's administrative structure and funding mechanism as well as its experience in operating facilities similar to the Nimitz Center.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

Several issues have been raised concerning the commission's compliance with conflict of interest provisions contained in Article 6252-9b, V.A.C.S. The nature of the relationship between the Fleet Admiral Chester W. Nimitz Naval Museum Commission and the Admiral Nimitz Foundation does not appear to be consistent with a recent attorney general's opinion concerning transactions between public entities and private nonprofit foundations created for the public entity's benefit. It was determined that there is no contractual arrangement between the Nimitz Commission and the foundation. Instead an executive committee consisting of a member of the commission and a member of the foundation has been formally empowered by each organization to act in its behalf. A contractual agreement would be particularly appropriate since officers and employees of the commission, as part of their regular duties, have provided services to the foundation in the absence of any contract or compensation for these services.

The commission has also not fully complied with the public notification requirements concerning full commission meetings or meetings of the executive committee of the commission.

The agency's original affirmative action plan expired in 1974 and the agency has not implemented any formal or information guidelines in this area since the expiration of the original plan.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members of the board.

The review indicated that no rule changes have occurred since the original rules were adopted.

While the members of the commission are all public members, some members also serve as members of the Nimitz Foundation and this dual role should be prohibited to prevent an appearance of any of conflict of interest. Public notification requirements for meetings of the commission and its committees have not been observed and public attendance at these meetings is minimal. In other areas, efforts to inform the public concerning the Admiral Nimitz Center are shared by the commission and the Admiral Nimitz Foundation and have served to inform the public of the activities of the commission.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public and statutory changes recommended by the agency for the improvement of the function performed.

After the enactment of the commission's enabling legislation in 1969, the Act has been amended only once. This amendment gave the commission the power of eminent domain within the City of Fredericksburg effective until January 1, 1976. Additionally two bills were introduced but not passed. These bills would have abolished the commission. One would have transferred its functions to the Parks and Wildlife Department; the other would have transferred its functions to the Texas Historical Commission. The commission has recommended in a resolution that it be abolished and the administration of the museum be transferred to the Texas Parks and Wildlife Department.

NEED TO CONTINUE THE FUNCTION AND ALTERNATIVES

The evaluation of the performance of the agency indicates that there is a need to continue the function. The review identified the Texas Parks and Wildlife Department as an organizational alternative to administering the museum through an independent commission. The review indicated that the department has had experience in developing and maintaining historic sites and structures and in operating museums.

SUNSET COMMISSION RECOMMENDATION

- The functions of the Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission should be transferred to the Texas Parks and Wildlife Department.

TEXAS STATE BOARD OF NURSE EXAMINERS

BACKGROUND

Historical Perspective

The need to protect the public health, safety and welfare through the regulation of professional nursing is inextricably bound up in the growth and development of hospitals since 1900 and the technological advances in medical science which have required nurses to take increasing responsibilities, perform more highly skilled tasks and make a greater number of critical judgements based on a body of scientific knowledge. Nursing now includes not only "traditional" nursing functions--providing supportive and restorative care, and executing the medical regimen under a physician's direction; but also health counseling and teaching, case finding and referral, and collaboration in implementing the total health care system. Nurses, as direct patient care providers, are authorized to perform functions such as administration of medications and treatments prescribed by a physician that can involve serious risks to patient health and safety. The highly technical procedures now included in hospital care make special skills and training particularly necessary to perform competently the functions delegated to nurses. Today nurses often practice under a physician's "standing orders" or in other settings without direct supervision and in these situations nurses have primary responsibility for patient care and as such make many independent judgements which may have serious consequences.

Recognition of the need for regulation of professional nursing first occurred in 1903 when New Jersey, New York, North Carolina and Virginia first licensed professional nurses. Most state licensure laws were enacted between 1905 and 1917. The first regulation of professional nursing in Texas was enacted in 1909. This regulation was in the form of a title act. The Texas Board of Nurse Examiners was created with the authority to examine applicants, and issue and revoke licenses.

The original scope of the board's authority has been significantly altered since 1909. The role of professional nursing now includes responsibility for functions that were once considered medical rather than nursing functions. Generally, statutory changes related to licensure and educational accreditation occurred first. In 1923, the board's revocation authority was removed. Significant increases in the board's enforcement powers including revocation authority have been enacted since 1967. However, an exemption was added to the statute in 1969 excluding any act done under the control or at the instruction of one licensed by the Texas State Board of Medical Examiners which effectively limits the jurisdiction of the board over the practice of professional nursing. The result is a relatively permissive form of regulation of professional nursing.

Despite the fact that substantive changes in the statutes governing the practice of professional nursing have occurred in the last decade, the traditional definition of nursing which is contained in the Texas statutes does not adequately reflect the significant changes which have occurred in health care delivery and the present scope of nursing practice nor does it recognize the overlap which exists

between the medical and nursing professions. As a result there are many areas in the state's health care system where the provision of health and medical services by nurses and physicians is in violation of current Texas laws.

The six-member board administering the agency is composed entirely of registered nurses appointed to staggered terms of two to six years by the Governor. The board employs a staff of 20 full-time employees. Currently 82,840 nurses are registered by the board. Operations of the agency are supported entirely from fees collected by the agency. Although agency funds are currently deposited in accounts outside the State Treasury, a requirement was enacted in 1979 that all funds be deposited to the "Professional Nurse Registration Fund" in the State Treasury to be expended as specified in the General Appropriations Act effective September 1, 1981. In fiscal year 1979, the board collected \$648,011 in fees and other charges and expended \$598,450.

Comparative Analysis

To determine the pattern of regulation of registered nurses within the United States a survey of the fifty states was conducted.

The need to regulate registered nurses is currently recognized through licensing requirements imposed by all fifty states. In six states, including Texas, the regulation of registered nurses is performed by a board solely responsible for registered nurses. In the remaining states, the regulation of registered nurses is carried out by a board responsible for both registered nurses and licensed vocational nurses. Board members are appointed by the chief executive in forty-three states.

Licensing boards composed entirely of registered nurses administer nursing laws in thirteen states, including Texas. Licensed vocational nurses are included as board members in thirty-four states. In twenty-three states, the regulation of registered nurses is achieved through a board consisting of nurses as well as public members. While fees are collected by all fifty boards, funding patterns vary across the states. Boards in forty-one states, including Texas, are supported by the fees they collect. In two states, not including Texas, nursing boards have advisory functions only.

In all states except Virginia nursing boards conduct investigations in response to consumer complaints. In all states except Iowa, Missouri and West Virginia, nursing boards have responsibility for conducting disciplinary hearings.

In all states, except Virginia, licensure by some form of endorsement or reciprocity is authorized.

All nursing boards surveyed indicate the need to perform the basic regulatory functions of administration, licensing and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Nurse Examiners is composed of six registered nurses appointed for six-year overlapping terms by the governor. The board is directed by the statute to regulate the practice of professional nursing through accreditation of educational programs for nurses, licensure of all qualified applicants, and the enforcement of statutory provisions.

The operations of the board can be broken down into four activities: administration, licensing, accreditation and enforcement. The review of board activities indicated that the administration of this agency is generally conducted in an efficient and effective manner.

Review of the licensing process indicates that it functions in a timely and efficient manner; however, the statutes should be amended to permit the board to implement a staggered renewal process on a biennial basis. The statutes should also be amended to provide a standard delinquency period of thirty days with penalties for late renewal which will encourage prompt and timely renewals of licenses. Review of the licensing examination indicates that it is neither overly restrictive nor overly permissive, however the examination process should be decentralized to ensure greater equity in the costs incurred by individual applicants writing the exam. Analysis of the candidates writing the exam between 1973 and 1978 indicate that seventy-seven percent of the applicants must travel more than 100 miles to take the exam in Austin. The exam should be administered in other cities, even if an increase in the exam fee is required to cover the cost. The review also indicated that deletion of statutory references to a specific minimum passing grade is needed provide the board with sufficient flexibility to respond appropriately to anticipated changes in the scoring of the State Board Test Pool Examination.

There are currently no statutory restrictions or supervision requirements required for nurses practicing under a temporary permit prior to taking the examination and receiving the test results. To be consistent with the intent of a practice act and to ensure a greater degree of protection to the public, graduates working under a temporary permit should be required to be supervised by a registered nurse.

Currently, the board does not have the authority to require that nurses who have not been actively employed in professional nursing meet any additional requirements to ensure continued competency. The fact that all areas of health care, including nursing, are currently experiencing rapid technological changes suggests that protection to the public would be enhanced by amending the statute to permit the board to establish requirements for nurses seeking to reactivate their licenses.

Whenever licensing statutes regulate the practice of a profession, individuals who hold themselves out to the public as qualified should be clearly and readily identified. Therefore the current statutes should be amended to require that a licensee should be clearly identified by appropriate insignia or other means as a "Registered Nurse" when providing services to the public.

Review of the board's accreditation activities indicate that the board has established reasonable standards for nursing education programs and a mechanism to enforce these standards effectively.

In the area of enforcement, the workload is substantial and continues to grow. Agency complaint procedures are adequate and complaint files properly maintained. However, the agency should implement the across-the-board recommendations of the Sunset Commission with regard to keeping all parties informed as to the status of a complaint.

Another area of concern relates to the statutory grounds for refusal to allow an individual to sit for an examination and the grounds for removal of a license. Several of the statutory grounds are ambiguous, difficult to verify and require the board to apply its subjective judgment, rather than a clear, objective standard. To correct this situation, the grounds for disqualification should be restructured so that they are clear, related to the practice of professional nursing and stated in terms of a currently existing condition.

A last concern relates to the range of penalties the board is authorized to impose on licensees. A 1979 amendment provided the board with the authority to probate any order revoking, cancelling, or suspending a license. To provide consistency in the types of disciplinary penalties available to regulatory boards, the statutes regulating professional nursing should be amended to permit the board to probate only suspensions.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives in other states was conducted to determine the potential for combining the regulation of professional nurses with the functions of another agency. All states regulate the practice of professional nursing, with twenty-eight states combining the regulation of professional nursing within other agencies. Of these, eleven states use a department of occupational

licensing. In forty-four states, professional and vocational nurses are regulated by the same board. While Texas has no "umbrella" licensing agency, agencies used in other states for the regulation of professional nursing do exist in Texas. These include the Department of Health, the Texas Education Agency, the Coordinating Board, and the Board of Vocational Nurse Examiners.

With regard to regulatory alternatives, all states currently regulate professional nurses through the licensure of individuals. While not currently used in other states to regulate nursing, alternative methods of regulation commonly used by other occupational groups include certification and registration. Regulation through certification would require applicants to exhibit a minimum level of competence prior to examination. Registration would only require that a person desiring to practice professional nursing to register with a designated state agency. Neither certification nor registration would involve an enforcement mechanism to assure continued competency. A third regulatory alternative, institutional licensure, is not fully developed or proven and it does not address the regulation of nurses practicing outside a hospital or other institutional setting. While all of these alternatives are less restrictive forms of regulation than the licensure of individuals, none provide as much public protection as the present licensing system. Therefore, none of these are presently a desirable alternative to continuation of the present method of regulation.

With regard to the loss of federal funds or other federal constraints, it was determined that federal laws dealing with health insurance for the aged and disabled and grants to states for medical assistance programs refer to or require the use of registered professional nurses. However, since all states license professional nurses, no instance was identified where federal funds were lost due to the absence of licensure and regulation of nurses.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

The board generally complies with the requirements set forth in the Conflict of Interest statute; the Open Meetings Act and the Open Records Act. The agency currently operates under an updated Affirmative Action Plan and written formal grievance procedures. The agency has not received any formal complaints concerning its employment practices.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it serves and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

The Board of Nurse Examiners has made efforts to educate the public and its licensees about its operations through publication of its statutes, rules and regulations, licensee rosters and newsletters as well as by conducting orientation seminars statewide. However, the board's ability to successfully represent the general public could be improved by including public members on the board.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

Since the enactment of the board's enabling legislation in 1909, the statutes governing professional nursing have been amended eighteen times. Generally, these amendments have attempted to define the practice of professional nursing, expanded the board's regulation of educational programs, made the statute concerning exemptions more permissive, provided the board with general rule-making authority, extended the enforcement powers of the board, increased and extended the fee structure, and placed revenues from fees in the State Treasury.

In addition, eleven bills were introduced but not enacted during the last four legislative sessions. These bills included proposals to regulate lay midwives, nurse midwives, nurse practitioners and physician's assistants, to allow nurse practitioners and physician's assistants to dispense and administer medications, to require continuing education as a condition for licensure renewal and to include public membership on the Board of Nurse Examiners.

The Board of Nurse Examiners recommends several statutory changes in its self-evaluation report. Among these are the following: 1) the authority to study and implement continuing education requirements; 2) specific authority to certify specialty groups of registered nurses; 3) the authority to receive criminal records

from law enforcement agencies; and 4) the repeal of the clause that exempts application of the law to those acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of this agency indicates that there is a continuing need for state regulation of professional nurses. The review identified an organizational alternative of combining the regulation of professional nursing and vocational nursing although no cost savings could be anticipated from this combination. The review concluded that a number of improvements could be made to the operation of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. Provide for the appointment of public members to the board. This would provide a nine-member board, six licensees and three public members.
 - b. Authorize staggered biennial license renewal.
 - c. Provide for license renewals with a late renewal penalty within 30 days after license expiration.
 - d. Decentralize the examination process to permit the licensure examination to be given in locations outside of Austin.
 - e. Statutory references to a specific minimum passing grade on the licensure exam should be deleted.
 - f. Modify licensure prerequisites and grounds for disciplinary action to include only those to which the board can apply a clear objective standard.
 - g. Amend the statute to permit the board to probate only suspensions.
 - h. Require that licensees wishing to reactivate their licenses must meet continuing education requirements established by the board.
 - i. Amend the statute to require that new graduates holding temporary permits be supervised by an R.N.
 - j. Require all parties to a formal complaint be periodically notified in writing as to the status of the complaint.
 - k. Amend the statute to require that a licensee clearly be identified through insignia or other means when providing services.

BOARD OF TUBERCULOSIS NURSES EXAMINERS

BACKGROUND

Historical Perspective

The State of Texas assumed responsibility for the care of tuberculosis patients in 1909, when the legislature provided for the creation of two sanatoriums. The sanatorium at Carlsbad was established in 1912 and became known as the McKnight State TB Hospital. The second site at Fort Clark was never developed as a tuberculosis sanatorium.

Administrative responsibility for the hospitals was originally vested in the Anti-Tuberculosis Commission, but was transferred to the Board of Control in 1920. In 1948, the Board of Hospitals and Special Schools (now the Department of Mental Health and Mental Retardation) was given responsibility for these facilities. At the recommendation of the Committee on Eradication of Tuberculosis in Texas, the remaining tuberculosis hospitals were transferred to the State Board of Health in 1965.

Staffing for the tuberculosis hospitals was problematic in the early years and in most cases, doctors working in the facilities had been patients. Nurses were difficult to recruit due to the general fear of tuberculosis, the geographic isolation of the facilities and the reportedly low pay scale. These difficulties led to the establishment of a separate training school for nurses at the site of the sanatorium at Carlsbad to provide an adequate supply of nursing personnel. The school, established in 1917 became known as the State Tuberculosis Sanatorium School of Nursing which provided a two-year training program for stable patients interested in becoming Tuberculosis Nurses. When the school closed in August of 1961, it had graduated some 501 persons. Another school at the East Texas Tuberculosis Hospital graduated over 100 persons during its operation from 1952 to 1959.

The Board of Tuberculosis Nurses Examiners was established during a special session of the Fifty-first Legislature in 1950. The establishment of the board came a year before the requirement that vocational nurses be licensed and at a time when tuberculosis nurses felt that only legal status in the nursing profession would protect their jobs at the tuberculosis hospitals.

Of the 501 graduates of the Sanatorium School of Nursing, 303 have become Registered Tuberculosis Nurses (RTNs). Fifty-nine of those 303 remain active registrants of the board, and only seven are currently employed at the remaining two Chest Hospitals.

The board, composed of three Registered Tuberculosis Nurses, has never employed a staff. The board has not met since 1974 and presently has no revenue source. Remaining fund balances total \$18.05. The board's only activity is the annual issuance of re-registration certificates to 59 licensees for which no fee is charged.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

Both the administrative and enforcement functions of the Board of Tuberculosis Nurse Examiners have involved negligible activity in achieving the agency's basic objective. The board's achievement of the licensing objective is questioned because of the large number of grandfathered registrants and because graduates of a similar training program were practicing without registration.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

For the following reasons, there appears to be no need to continue a specialty category of licensing for nurses who serve tuberculosis patients:

1. There is no training facility for potential applicants; and
2. There are other trained personnel who are willing to serve tuberculosis patients.

However, consideration should be given to those few individuals who are currently employed on the basis of their TB Nurse registration.

There appears to be no reason to continue the TB Nurse category as a specialty requiring licensure. However, consideration should be given to providing continued credentials to the persons who are presently employed using the TB Nurse registration. This can be done either by continuing the regulatory function under another board or through abolition of the function and interpretation of state job classification requirements to require experience rather than licensure as the basis for continued employment.

NEED TO REGULATE AND ALTERNATIVES

The review indicates that there is no continuing need for the Board of Tuberculosis Nurses Examiners. Only a few licensees continue to practice under this licensure and they can effectively be regulated through their work setting.

SUNSET COMMISSION RECOMMENDATION

- Abolish board of TB Nurses Examiners and eliminate licensing status of remaining licensees.

State job classifications could be modified to allow experience rather than licensure to suffice for continued employment. Three are currently state employees at San Antonio Chest Hospital. At least ten are employed at private, local or federal facilities. Although there was initial concern regarding the need to protect those persons employed by the state, further investigation revealed none were employed in jobs that would be endangered if licensure were discontinued. As a result, no changes are required in current job classifications.

TEXAS BOARD OF VOCATIONAL NURSE EXAMINERS

BACKGROUND

Historical Perspective

The vocational nurse's early role in nursing was confined primarily to the care of the chronically ill, the aged, and the mildly ill patient in private homes and mental institutions. Training was generally acquired on the job. The few training programs available were not associated with hospitals and gave only a few weeks of training which emphasized primarily household duties and cooking.

The need to protect the public health, safety and welfare through the regulation of practical/vocational nursing became most evident after 1940 when the shortage of professional nurses caused by World War II resulted in increasing numbers of practical nurses with little formal nursing education assuming responsibility for tasks formerly performed by registered professional nurses. With increased hospital costs and limited numbers of hospital personnel, the practical nurse has had to assume more duties than ever before. The practice of practical/vocational nursing now includes a wide range of activities--from providing direct patient care in relatively stable nursing situations, to performing nursing functions in semi-complex situations such as hospital recovery and labor rooms to more complex situations such as intensive or coronary care units and emergency rooms; to promoting and carrying out preventive measures in community health facilities such as well-baby clinics, and out-patient clinics and services.

Recognition of the need for regulation of practical/vocational nursing first occurred in Florida in 1913; however, most state legislation was passed between 1943 and 1953. Prior to the creation of the Board of Vocational Nurse Examiners in 1951, the practice of practical/vocational nursing was not regulated in Texas. Since the creation of the board, regulation has been accomplished through a permissive licensing act which prohibits the use of the title "Licensed Vocational Nurse" or "L.V.N." without a license from the board.

The primary responsibilities of the first board were to hold examinations for qualified applicants for licensure (at least twice a year) and to accredit vocational nursing schools. In addition, the board was granted the authority to revoke a license for gross incompetence, dishonesty, intemperate use of drugs or alcohol, insanity, or conviction of a felony involving moral turpitude. Exempted from the board's regulation were gratuitous nursing by friends or family members, R.N.'s, TB nurses, and persons employed by hospitals as maids, porters, or orderlies. In 1957 the Fifty-fifth Legislature granted the board the power to suspend a license and changed the composition of the board to increase the representation of vocational nurses.

The nine-member Board of Vocational Nurse Examiners is appointed by the governor to staggered six-year terms. Membership of the board presently consists of six licensed vocational nurses, one registered nurse, one physician, and one

hospital administrator. The board employs a staff of fifteen full-time employees. Currently 59,389 vocational nurses are licensed by the board. Operations of the agency are supported entirely from fees collected by the agency and appropriated for its use from the Vocational Nurse Examiners Fund No. 266 in the State Treasury. In fiscal year 1979, the board collected \$420,790 in fees and other charges and expended \$362,132.

Comparative Analysis

To determine the pattern of regulation of the occupation of vocational nursing within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of vocational nursing is currently recognized through licensing requirements imposed by all fifty states. In six states, as in Texas, regulation is carried out by a board solely responsible for the regulation of vocational nurses. Boards in Illinois and Vermont serve in an advisory capacity. The remaining states regulate the practice of vocational and registered nurses through one board.

In twenty-five states, the regulation of vocational nursing is achieved through a board possessing public members. The boards in the remaining states include members of other professions. Fees collected by forty-one states totally support the agency's operations.

Thirty-seven state boards indicate that they have the responsibility of investigating consumer complaints. Boards have the responsibility for conducting disciplinary hearings in all states but three. Forty-nine states indicate that they license out-of-state applicants through a policy of endorsement, as does Texas.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Vocational Nurse Examiners is a nine-member board appointed by the governor with the advice and consent of the senate for six-year terms. The board is authorized by statute to regulate those persons holding themselves out to the public as licensed vocational nurses, or L.V.N.s.

Board operations can be categorized in four activities: administration, licensing, enforcement, and accreditation. With regard to administration, the review of the board's operations shows that the administrative activities of the board could be more efficient. A study done by the Systems/Administrative Services Division of the State Auditor's Office, resulted in recommendations that: 1) the board institute a system of staggered, biennial license renewal; 2) purchase computer services from the State Purchasing and General Services Commission;

and 3) microfilm permanent files. The latter two are estimated to cost the agency \$136,000 over the next five years. The agency is in the process of implementing these recommendations.

Other problems noted during the review were the utilization of board members as proctors for the examination. This procedure is not cost-effective and should be discontinued. In addition, it was noted that the board scheduled a regular meeting on the day before and on the day after the exam. This practice should also be discontinued as it places an unusually heavy burden on agency staff to not only make preparations for the administration of the exam, but also for board meetings.

Finally, analysis of the present fee structure revealed that there is no statutory authorization for charging fees for temporary permits, name changes, duplicate licenses, and verification of licensees to other states. Since a considerable amount of staff time and effort is involved, authorization of a reasonable charge related to the cost for these services would allow the board to recover this expense.

With respect to licensing, the review indicated that only two states, including Texas, do not regulate the practice of vocational nursing. The board is only authorized to regulate those nurses who identify themselves as licensed vocational nurses. This type of regulation allows persons to practice outside the jurisdiction of the Act. The statute should be amended to define and provide for the regulation of the practice of vocational nursing.

Another problem with the licensing activities of the agency centers around the issuance of temporary permits. The review indicated the need to amend the statute to require that holders of temporary permits who are recent graduates of a vocational nurse training program be supervised by a licensed vocational nurse or a registered nurse. In addition, although the agency issues temporary permits to foreign nurses and reciprocity applicants, the statute does not specifically authorize this practice and it should be discontinued. In the case of reciprocity applicants, temporary permits are issued because the board reviews requests for reciprocity only twice a year. This review should be delegated to the staff and a permanent license issued once all licensure requirements have been met. In the case of foreign nurses, high failure rates on the exam in the past indicate that the public would be better protected if they were required to pass the exam before being allowed to practice.

With regard to other licensing activities, the statute should be modified to provide for an "inactive" status for those nurses who no longer wish to practice. This would provide a mechanism for the board to establish certain educational requirements, such as a "refresher" course, prior to reinstatement.

During the review, a concern was noted regarding the licensure prerequisites contained in the statute. Several of these are ambiguous, difficult to verify, and require the board to apply subjective judgment rather than a clear, objective standard. A related concern involves the practice of the board to review certain licensure applications on the day before the exam to determine the eligibility of the applicant to take the exam. Clearer and less ambiguous licensure prerequisites would allow the board to delegate more of these determinations to the staff. The

staff could review these applications at an earlier date than the board is currently doing, thus providing for more adequate notification to the applicant regarding his eligibility to take the examination.

A final concern regarding the board's licensing activities is that the examination is given in only one location in the state--Austin. Given the number of people that must travel to Austin from outside the general area and increasing travel costs, the examination should be administered at various locations throughout the state to provide for easier access at a more equitable cost.

Review of the agency's enforcement activities indicated that the agency is generally active in pursuing complaints. However, the review revealed several areas that hamper the effectiveness of enforcement activities. The first area relates to the increasing number of complaints that must be heard by the board. Because of the heavy caseload, the agency should be authorized to seek permission to retain outside legal counsel in addition to the legal assistance provided by the Attorney General.

Also in the area of complaints, a concern arose regarding the agency's notification procedures. The agency should provide a standard mechanism whereby all parties concerned are periodically informed as to the status of a complaint.

A second area relates to the range of sanctions the board may impose for violations of the Act. A review of the statute shows that the board is only authorized to suspend or revoke a license. During the period of review, however, the board also issued reprimands and probated license suspensions. Since situations do arise where the use of these sanctions is appropriate, the statute should be modified to authorize the board to impose these. In addition, to bring the statute in line with those of other professions, it should be modified to provide for: 1) penalties for unauthorized practice; 2) appeals to board decisions be subject to the substantial evidence rule; and 3) authority for the board to issue subpoenas.

A further area of concern in regard to the enforcement process is the practice of the board of having the staff present to it complaints for the purpose of determining whether a hearing is warranted or not. This is done without notification to all the parties involved in the case as provided by Article 6252-13a, Section 17, V.A.C.S. This practice should be discontinued and such determinations delegated to the staff.

A final area of concern relates to the grounds for revocation or suspension of a license. A review of the board's authority indicates that the statute requires the board to act essentially as a court of competent jurisdiction and apply terms of vague definition. The statute should be restructured so that more objective standards are used.

The review of the accreditation process shows that it generally functions efficiently and effectively. However, the annual inspection of vocational nurse training programs as currently required by statute is unnecessary and costly. The statute should be modified to provide for board discretion regarding the frequency of these inspection visits.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives in other states was conducted to determine the potential for combining the regulation of vocational nurses with the functions of another agency. All states regulate the practice of vocational nursing, with twenty-eight states combining the regulation of vocational nursing within other agencies. Of these, eleven states use a department of occupational licensing. In forty-four states, professional and vocational nurses are regulated by the same board. While Texas has no "umbrella" licensing agency, agencies used in other states for the regulation of vocational nursing do exist in Texas. These include the Department of Health, the Texas Education Agency, and the Board of Nurse Examiners.

With regard to regulatory alternatives, all states currently regulate vocational nurses through the licensure of individuals. While not currently used in other states to regulate nursing, alternative methods of regulation commonly used by other occupational groups include certification and registration. Regulation through certification would require applicants to exhibit a minimum level of competence prior to examination. Registration would only require that a person desiring to practice vocational nursing register with a designated state agency. Neither certification nor registration would involve an enforcement mechanism to assure continued competency. A third regulatory alternative, institutional licensure, is not fully developed or proven and it does not address the regulation of nurses practicing outside a hospital or other institutional setting. While all of these alternatives are less restrictive forms of regulation than the licensure of individuals, none provide as much public protection as the present licensing system. Therefore, none of these are presently a desirable alternative to continuation of the present method of regulation.

With regard to the loss of federal funds or other federal constraints, it was determined that federal laws dealing with health insurance for the aged and disabled and grants to states for medical assistance programs refer to or require the use of licensed vocational nurses. However, since all states license vocational nurses, no instance was identified where federal funds were lost due to the absence of licensure and regulation of nurses.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency

complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

The board generally complies with the requirements set forth in general conflict-of-interest statutes, the Open Meetings Act and the Open Records Act. However, one board member holds a leadership position in one of the professional associations. The statute should be amended to prohibit board members from serving in leadership positions in professional associations to avoid the possibility of conflicts between the goals of the regulating body and the persons regulated. With regard to equal employment practices, the board has an updated Affirmative Action Plan and has never received a formal complaint concerning its employment practices.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

While the board has complied with public notification requirements, public participation in the policy process has been minimal. The board's efforts to inform the public through publication of its statute, rules, and newsletter have been primarily directed at licensees, employers of licensees, and the educational institutions. However, the board's ability to successfully represent the general public could be improved by including public members on the board.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the

agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

Since the enactment of the board's enabling legislation in 1951, the Act has been amended nine times. Generally, these amendments changed the composition of the board, gave the board the authority to increase fees and stagger the collection of renewal fees, allowed the board to accept for the examination applicants trained in schools accredited by similar boards of other states, and increased the enforcement powers of the board. In addition, several bills failing enactment were introduced in the last four legislative sessions. Proposals were made to extend regulation by the board to include nurse's aides, nurse technicians, nurse assistants, and orderlies. Other proposals would have put the board under an umbrella agency and included public members on the board. In its self-evaluation report, the board recommends that several changes be made to the statute some of which include shorter terms of office for certain board members, increased board member per diem, biennial license renewal, misdemeanor charges for persons practicing without a valid license, and the authority to receive criminal records from law enforcement agencies.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of persons holding themselves out to the public as licensed vocational nurses. Furthermore, the review indicated the need to define the practice and, therefore, regulate all practitioners of vocational nursing. The review also identified the organizational alternative of performing the regulation through a restructured board which would regulate both professional nurses and vocational nurses although no cost savings would result from this combination. The review concluded that a number of improvements should be made to the operation of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATIONS

- Maintain the board with internal changes.
 - a. Add two public members to the board replacing one L.V.N. and the hospital administrator as their terms expire. The board would be composed of five L.V.N.'s, one R.N., one physician, and two public members.
 - b. Amend the statute to prohibit L.V.N. board members from serving in leadership positions in state or national professional associations.
 - c. Amend the statute to provide for an executive administrator who is responsible to the board for all agency activities.

- d. Amend the statute to provide for staggered biennial renewal of licenses.
- e. Amend the statute to authorize the collection of reasonable fees to cover the costs of issuing temporary permits & duplicate licenses, for filing name changes, and for verification of licensees to other states.
- f. Discontinue the use of board members as proctors in the administration of the national exam.
- g. Licensure prerequisites and grounds for disciplinary action should be modified to include those to which the board can apply a clear objective standard.
- h. The board should delegate additional responsibility in the review of exam applications to the staff. Board review of staff decisions should be only upon appeal by the aggrieved party.
- i. Amend the statute to provide an "inactive" status for LVN's who are not actively or actually engaged in the profession. Prior to re-activation of the license, the person should be required to meet certain educational requirements as specified by the board.
- j. Amend the statute to require that holders of temporary permits be supervised by an R.N. or L.V.N.
- k. Reciprocity applicants should be issued permanent licenses once they have met all requirements for licensure.
- l. Amend the statute to provide for the regulation of the practice of vocational/practical nursing.
- m. Amend the statute to provide for misdemeanor charges and penalties for unauthorized practice.
- n. A mechanism should be established for the purpose of periodically informing all parties involved as to the status of a complaint.
- o. Procedures should be initiated to permit the staff to make the determinations concerning the need for disciplinary hearings.
- p. Amend the statute to authorize the board to issue reprimands and probate license suspensions.
- q. Amend the statute to authorize the board to issue subpoenas.
- r. Amend the statute to provide that all appeals prosecuted under the act be subject to the substantial evidence rule.
- s. Amend the statute to provide for board discretion regarding frequency of accreditation/inspection visits of training programs.

- t. Provide for the voluntary surrender of a license without the need for a formal hearing.
- u. The board should be permitted to seek authorization to retain legal counsel in addition to legal assistance provided by the Attorney General.
- v. The national exam should be administered at various locations outside of Austin.
- w. Amend the statute to require that a licensee clearly be identified through insignia or other means when providing services.

TEXAS OPTOMETRY BOARD

BACKGROUND

Historical Perspective

Regulation of optometry began in the United States in 1901, with all states and the District of Columbia having enacted such laws by 1924. Texas became one of the last states to undertake regulation of this group, with the establishment of the Texas Board of Examiners in Optometry in 1921.

The reasons underlying the establishment of the board stem from the evolution of optometry as an occupation. Throughout the early nineteenth century, optometrists (then called refracting opticians) relied on correcting vision problems by selling prefabricated spectacles in a variety of ways, including door-to-door peddling and general merchandise stores. This practice offered little potential for harm to the public health. Over time, however, advances in physiological optics and the science of refraction allowed individuals to fabricate lenses to correct vision problems based on the specific needs of individual patients. The correction of individual vision disorders through the use of these newly developed scientific techniques required a degree of skill that could best be obtained through specific educational curricula in courses relating to the practice of optometry. Without such skill the potential for harm to the welfare of the patient was increased due to the greater probability of improper visual correction.

This increased potential for public harm created a concern that only qualified individuals be allowed to practice optometry. In addition, there was increased public dissatisfaction with the quality of service rendered by sellers of prefabricated spectacles. In response to these conditions the Thirty-seventh Legislature, in 1921, established the Texas State Board of Examiners in Optometry.

The enabling statute of the agency required all persons who practiced optometry to obtain and display a license and prohibited optometrists from dispensing drugs of any kind. In response to the problems with door-to-door peddlers, the law also required that each person who was fitted with spectacles be presented with a bill of sale that included the name and address of the optometrist.

The original statute regulating optometry was repealed in 1969 with the passage of a bill that substantially altered the structure of optometric regulation in Texas. This bill was intended to strike a balance between two separate groups of optometrists: the "professional" and "commercial" practitioners. The distinction between these groups arises over the fact that a "professional" optometrist not only practices optometry under his own name, but dispenses optical goods under his own name as well. A "commercial" optometrist, on the other hand, generally locates his optometry practice adjacent to a trade or corporate name opticianry. Over time, these distinct approaches came to represent widely differing views in the relationship between the practice of optometry and the dispensing of optical goods. Prior to 1967, each of these groups struggled for control of the board in order to promote its own position.

Specific provisions included in the law passed in 1969 were aimed at incorporating both approaches into the law and balancing the interests of the two opposing groups. These provisions provided that 1) at least four members of the six-member board be associated with the "professional" optometrists; 2) the board be given procedural rule-making authority only; 3) the separation between an optometrist and a trade name dispensing opticianry be complete and total; and 4) specific conditions be placed on the advertising done by trade name dispensing opticianries. In addition, many of the board's rules that were adopted under the original legislation passed in 1921 were incorporated into the law enacted in 1969.

The six-member board is composed entirely of licensed optometrists appointed to overlapping six-year terms by the governor with the advice and consent of the senate. The board has a full-time executive secretary and one part-time employee; it has no classified positions. Operations of the board are supported entirely from fees collected and appropriated for its use from the Optometry Fund No. 34 in the State Treasury. Ten dollars of each license renewal fee is deposited in the Trust and Suspense fund (Fund No. 900). Revenues from this fund are used by the University of Houston College of Optometry for items such as scholarships and additions to the optometry library. In fiscal year 1979, the board collected \$78,230 and its operating expenses were \$79,580.

Comparative Analysis

To determine the pattern of regulation of the occupation of optometry within the United States a survey of the fifty states was conducted.

The need to regulate the occupation of optometry is currently recognized through licensing requirements imposed by all fifty states. From the standpoint of organizational patterns, seventeen states, including Texas, meet this expressed need through an independent board or commission. In the remaining states, the regulation of optometrists is carried out through a board associated with a state agency charged with multiple regulatory functions. Board members are appointed by the chief executive in forty-six states.

Licensing boards composed entirely of optometrists administer optometry laws in twenty-three states, including Texas. In twenty-six states, the regulation of optometry is achieved through a board consisting of optometrists as well as public members. While fees are collected by all fifty boards, funding patterns vary across the states. Boards in thirty-nine states, including Texas, are supported at least partially by the fees they collect. About half of the boards, including Texas, are funded through the legislative appropriations process. Unlike Texas, nineteen of the optometry boards receive general revenue funds. In seven states, not including Texas, optometry boards have advisory functions only.

In thirty-six states, including Texas, optometry boards conduct investigations in response to consumer complaints. Complaint inquiries are conducted by an investigative unit of a centralized regulatory agency in ten states. Peer reviews are held in two states and one state, Florida, maintains a toll-free consumer complaint number. In all states except Vermont, optometry boards have responsibility for conducting disciplinary hearings.

In thirty-two states, not including Texas, licensure by some form of endorsement or reciprocity is authorized. Applicants for licensure through such methods are required to pass state-administered clinical exams in some states.

All optometry boards surveyed indicate the need to perform the basic regulatory functions of administration, testing, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Texas Optometry Board consists of six members appointed by the governor with the advice and consent of the senate for six-year terms. The board is directed by statute to regulate optometrists through the licensure of qualified applicants and the enforcement of provisions of the Act.

Board operations can be divided into three activities: administration, licensing, and enforcement. With respect to administration, the board generally meets the objective of efficient management. However, two concerns were identified in the review. First, the board has a savings account in a bank outside the State Treasury and the appropriations process. The account should be eliminated and balances transferred to the board's fund in the State Treasury, thereby subjecting such funds to the standard controls of the state which are applied through the appropriations process. This approach is consistent with the across-the-board recommendation of the Sunset Commission. Second, the executive secretary of the board is not reimbursed for actual travel expenses while on official state business. However, the review indicated that the executive secretary performs the duties of the executive head of a state agency, and that other executive heads generally receive reimbursement for actual travel expenses on official state business. To be consistent with these other positions, the board's statute should be changed to authorize actual travel reimbursement for the agency's executive secretary.

With regard to the licensing activity, several areas could be improved. First, the statutory requirement that licensees be United States citizens is unconstitutional in light of past Supreme Court decisions. This requirement should therefore be removed from the Act.

Review of the board's statutory authority concerning grounds for refusal to allow an individual to sit for an examination and grounds for removal of a license after issuance indicated that the statute erroneously requires the board to act essentially as a court of competent jurisdiction and apply terms of vague definition. The statute should be restructured so that disqualification provisions meet a two-part test: 1) the grounds should be clear and related to the practice of the profession, and 2) the condition stated by the expressed disqualifier should be

currently existing before a license can be denied or some other action taken. Examples of conditions set out in the statute which may not meet these tests are provisions relating to good moral character, gross immorality, a felony or misdemeanor which involves moral turpitude, habitual drunkenness, and addiction to certain drugs or becoming insane.

Also in the area of licensing, the board is not authorized to recognize an optometrist's license from any other state as grounds for waiving any licensing requirement in Texas. Lack of this authority causes restrictive costs and delays for qualified licensees from other states who must currently obtain a Texas license in the same manner as all other unlicensed persons. The board should be given authority to accept licenses from other states as grounds for waiving certain Texas licensing requirements if standards in other states are determined by the board to be substantially equivalent to, or more stringent than, Texas' requirements. This approach is consistent with the Sunset Commission's "endorsement" recommendation for application in agencies under review.

With regard to duplicate license fees, the present fee of \$2.50 produces substantially less revenue than costs of issuing this type of license. In order to be consistent with the state's general funding approach in this area, the duplicate license fee should be increased so that revenues from the fee pay for the cost of issuance of duplicate licenses. In addition, the board's statute should be amended to allow it to charge necessary and reasonable fees to cover the amount of its legislative appropriations.

As a final concern in the area of licensing, candidates are admitted to the written portion of the board's examination by a check of names, with no photographic identification being required. This system unnecessarily increases the possibility for a person other than the candidate to sit for an examination. Thus, a procedure should be developed that enables the agency to match a candidate's name to some type of appropriate identification bearing his photograph.

With respect to the enforcement activity, the review indicated that the board is generally active in pursuing complaints. However, the review revealed several areas of concern that hamper the effectiveness of enforcement activities.

The first concern relates to the general structure of the investigations process. Under this process each board member is delegated a substantial amount of authority to initiate random investigations and to act on complaints made by consumers in specific areas of the state. The result is an inconsistent exercise of the board's enforcement authority from one area of the state to another. Procedures should be implemented by the board which authorize administrative staff to initiate investigations; and which provide for a systematic and consistent investigations approach.

The second concern relates to the board's rule-making authority. In order to prevent the four-member board majority from abusing their advantage, the board was not given substantive rule-making authority when the current law was passed in 1969. Authority to implement substantive rules permits an agency to clarify legislative intent of various provisions of its statute as well as to provide members of the general public an opportunity to comment on the potential impact of a proposed rule.

As a result of safeguards that have been or could be implemented, the potential abuse by the present board majority could be diminished. First, the passage of the Administrative Procedure Act ensures that interested parties be given the opportunity to testify on the impact of proposed rules. Second, the review of rules by legislative committees is a potential safeguard against abuse. Finally, the addition of public members to the board would diminish the potential of domination by any one group. The implementation of these safeguards would appear to justify granting substantive rule-making authority to the board provided that a majority of each of the three groups represented must approve all substantive rules.

The third enforcement concern relates to the board's use of informal and formal reprimands without specific statutory authority. A Supreme Court of Texas decision and an Attorney General's Opinion hold an administrative agency has only such powers as are expressly granted and absence of expressed authority indicates legislative intent that a specific enforcement sanction is not an alternative available for use by a board or agency. The review showed situations arise in which use of reprimands is appropriate. Board enforcement powers should therefore be increased by statute to authorize issuance of formal and informal reprimands.

The fourth concern relates to the provision in the statute requiring dispensing opticians who advertise price to obtain an Advertising Permit from the board and to make periodic reports to the board concerning their sales activities. Although this provision does not prohibit price advertising, it imposes potentially burdensome requirements that could deter dispensing opticianries from engaging in price advertising. This provision is considerably more restrictive than the Sunset Commission's approach on advertising which prohibits only false, misleading, or deceptive advertising.

The final concern in the area of enforcement relates to the provision in the Act that prohibits price advertising by optometrists. This provision was declared to be an unconstitutional violation of commercial free speech by a United States District Court in 1977. Thus, it should be removed from the Act and replaced by language which prohibits only false and misleading advertising. The language would also prohibit the board from placing restrictions on trade name advertising.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

With respect to consolidation alternatives, the review showed that, of the fifty states which license optometrists, thirty-three consolidate such regulation in agencies having other functional responsibilities. Almost half of these states use a department of occupational licensing. While Texas has no such department, the

state does have other agencies which are used in various states for the regulation of optometrists. These are the Department of Health, the Texas Education Agency, and the Office of the Secretary of State.

Of these alternatives, the Department of Health is the most reasonable alternative for consolidation. Both the department and the board carry out health-related functions and are involved in regulatory activities. Benefits could also result from the use of the department's regional offices for enforcement functions, the availability of computer and informational services, and savings in board expenditures for travel and per diem.

With regard to regulatory alternatives, all states regulate optometrists through a licensing approach generally similar to that used in Texas. However, the methods of certification and registration are frequently used to regulate other occupations. While less restrictive than licensing, these two options provide less protection to the public than the current system and therefore do not constitute suitable alternatives.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals. In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation.

The board is in general compliance with the statutory requirements relating to conflict of interest, open meetings and open records. With respect to the board's employment policies, the board does not have an affirmative action plan or a formal grievance procedure. This policy is consistent with other boards and agencies that have very small staffs.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability

of information concerning rules and agency operations, and the existence of public members on the board.

The board has complied with the public participation requirements in general state law. However, beyond this, public involvement in these processes has been limited. Lack of public involvement in board deliberations and policymaking is hampered because the board's statute does not provide for public members and to a lesser extent by the fact that the board does not have substantive rulemaking authority.

In order to increase public involvement in optometry regulation in Texas there are two potentially viable alternatives. The first approach would clarify the conditions that were part of the compromise legislation passed in 1969. This would call for a nine-member board, three of which would be "professional" optometrists affiliated with the Texas Optometric Association, three "commercial" optometrists affiliated with the Texas Association of Optometrists, and three public members.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

The board's enabling legislation has been amended several times since its adoption in 1921. Between 1921 and 1969, major changes to the original bill increased fees, deleted the reciprocity provision, gave the board injunctive and subpoena powers and exempted physicians from the Act. In 1969, the original bill was repealed and new enabling legislation passed that made several significant changes in the agency's operations. Of particular significance were modifications that 1) restricted the board so that at least four of its six members be members of the Texas Optometric Association and 2) prohibited the board from making substantive rules. Important changes since 1969 include requiring continuing education as a condition for license renewal and subjecting the board to the provisions of the Texas Sunset Act.

Several bills that relate to the board's operation were introduced but did not pass during the previous three legislative sessions. These bills included provisions that would have permitted licensure by reciprocity, broadened the exemption clause, and made general housecleaning changes. Separate bills that would have either expanded or restricted the practice of optometry were also introduced. A final proposal would have altered the composition of the board and would have changed the procedure for adopting board interpretations.

In its self-evaluation report, the agency made no recommendation as to changes in its enabling statute.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of the optometry profession. The review identified the organizational alternative of performing the regulation through the Department of Health although limited cost savings would result from this alternative. The review concluded that a number of improvements should be made to the operation of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATIONS

- Continue the board and its functions with modifications.
 - a. Modify the composition of the board to explicitly provide for three members from the Texas Optometric Association, three members from the Texas Association of Optometrists, and three members from the general public. The chairmanship of the board would rotate every two years among the three groups represented;
 - b. Eliminate the old operating fund maintained by the board outside the State Treasury and transfer its contents to the board's current operating fund;
 - c. Amend the statute to authorize the agency's top executive position to receive actual travel reimbursement;
 - d. Remove the statutory requirement for applicants to be citizens of the United States;
 - e. Restructure the statute so that grounds for an applicant disqualification for examination or removal of license are: 1) easily determined and 2) are currently existing conditions;
 - f. Amend the statute to authorize the board to adopt a system of endorsement for out-of-state licensees;
 - g. Amend the statute to authorize the board to set reasonable and necessary fees;
 - h. Develop a process so that names of persons taking the licensing examination are matched against an appropriate type of identification bearing a photograph;
 - i. Develop an investigations process which reduces the independent authority of separate board members and provides for a systematic and consistent approach to agency investigations;

- j. Amend the board's statute to provide for substantive rulemaking authority; subject to the approval of a majority of each of the three groups represented;
- k. Authorize the board to impose formal and informal reprimands;
- l. Remove the restrictive advertising provisions regarding price advertising by opticians and replace this language with the Sunset Commission's approach which prohibits false or misleading advertising; and
- m. Remove the statutory language which prohibits price advertising by optometrists, including restrictions on trade name advertising.

TEXAS STATE BOARD OF PHARMACY

BACKGROUND

Historical Perspective

Historically, the beginnings of pharmacy -- the therapeutical use of drugs -- can be traced to extremely ancient origins. In early times, pharmacy was generally combined with the practice of medicine. However, as medical knowledge increased, the role of the physician became more specialized and the need for specialists in pharmacy grew correspondingly.

Although regulation of the practice of pharmacy was imposed as early as 1870 in other states, no statewide restrictions existed in Texas until 1889. This lack of regulation posed a significant harm to the public resulting from the improper preparation of prescriptions. The initial effort to regulate pharmacy practice, as provided by the Twenty-first Legislature in 1889, restricted the preparation of prescriptions, compounding of medicines and operation of a pharmacy to qualified pharmacists. Boards of pharmaceutical examiners were established in each judicial district, the members of which were appointed by the presiding judge of the district. Each district board was responsible for determining the qualifications of persons to practice pharmacy within its boundaries.

Because of the development of inconsistent standards through this decentralized approach, the Thirtieth Legislature in 1907 supplanted the district board system through the creation of the State Board of Pharmacy to evaluate the qualifications of applicants as pharmacists and pharmacy assistants on a statewide basis. In general, the Act establishing the board made it unlawful for a person to compound or dispense drugs without being registered by the board or exempted by the Act. Significant among the exceptions to the Act were exemptions for: 1) registered practitioners of medicine and dentistry (later expanded to include podiatrists and veterinarians); 2) persons practicing pharmacy in towns of 1,000 inhabitants or less; and 3) the sale of patent medicines in unbroken packages.

The original scope of the board's authority has been significantly affected by subsequent legislative amendments. Major changes to the Act have eliminated licensure status for assistant pharmacists, required the licensure of pharmacies and drug manufacturers, and expanded board enforcement authority.

In addition to the Texas Pharmacy Act, the practice of pharmacy is also regulated by other state and federal statutes with regard to the safety, effectiveness, and proper control and distribution of prescription drugs. As a result, pharmaceutical practice is within the jurisdiction, to varying degrees, of several governmental agencies, including: the federal Food and Drug Administration; the federal Drug Enforcement Administration; the Texas Department of Health; the Texas Department of Public Safety; as well as the Texas State Board of Pharmacy.

The State Board of Pharmacy is composed of six registered pharmacists appointed to overlapping six-year terms by the governor. This board oversees a staff of eighteen full-time employees. At present, the board regulates 11,717 pharmacists, 4,078 pharmacies, and 58 drug manufacturers. The agency operates outside the State Treasury and is supported entirely from revenues generated through its licensing and enforcement activities. In fiscal year 1979, the board collected \$776,057 and expended \$627,140.

Comparative Analysis

To determine the pattern of regulation of the occupation of pharmacy within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of pharmacy is currently recognized through licensing requirements imposed by all fifty states. From the standpoint of organizational patterns, thirty-three states, including Texas, meet this expressed need through an independent board or commission. In the remaining states, the regulation of pharmacists is carried out through a board associated with a state agency charged with multiple regulatory functions. In five states, pharmacy boards have advisory functions only.

Board members are appointed by the chief executive in forty-six states. Licensing boards composed entirely of pharmacists administer pharmacy laws in thirty-one states, including Texas. In nineteen states, the regulation of pharmacy is achieved through a board consisting of public members as well as pharmacists.

While fees are collected by all fifty boards, funding patterns vary across the states. Boards in twenty-six states, including Texas, are supported, at least partially, by the fees they collect. Forty-one of the boards, not including Texas, are funded through the legislative appropriations process. Boards in eleven states, like Texas, maintain accounts outside of state treasuries. Unlike Texas, twenty-seven of the pharmacy boards receive general revenue funds.

In all but four states, a national examination is used to determine competency for licensure; this exam is used by Texas. In forty-seven states, including Texas, licensing by some form of reciprocity is also authorized. In all fifty states, pharmacy boards have responsibility for conducting disciplinary hearings.

All pharmacy boards surveyed indicate the need to perform the basic regulatory functions of administration, testing, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Texas State Board of Pharmacy is composed of six registered pharmacists appointed to a six-year overlapping terms by the governor with the advice and consent of the senate. The board is mandated by statute to regulate the practice of pharmacy through the licensure of all qualified pharmacists, pharmacies, and drug manufacturers and the enforcement of statutory provisions.

Operations of the board can be broken down into three activities: administration, licensing, and enforcement. With regard to administration, the board generally meets the objective of effective and efficient management. However, four concerns were identified in the review of the administration activity. The first concern results from the fact that the agency is currently authorized to maintain its funds outside the Treasury and its expenditures are therefore not subject to the appropriations process. Because the agency is not in the appropriations process, it is not subject to standard practices and controls for efficient and accountable management developed by the legislature for most state agencies. Examples of agency activities which would be subject to greater control in the appropriative process include the purchasing or leasing of automobiles, the hiring of outside legal counsel, and the determining of total amounts available to board members for travel and per diem. To ensure that future agency operations adhere to the state's general standards for efficient management, the board should be included in the appropriations process.

A second concern relates to the fixed statutory limits on the agency's fee structure. To eliminate the need for legislative adjustment of maximum fees allowable on a continual basis and to give the board the flexibility to adjust its fee structure to cover the cost of its operations as its requirements change, the Act should be amended to authorize the board to set reasonable and necessary fees. The third concern relates to the unnecessary annual reporting requirements currently imposed upon the board. These reporting requirements should be modified to correspond with the general provisions of the appropriation act so that the board's annual report will be consistent with annual reports prepared by most other state agencies.

A final administrative concern involves a statutory provision which requires that all board members be engaged in the practice of retail pharmacy. As this qualification restricts nearly one-third of the current licensees from membership, it should be deleted from the statute.

The review identified three aspects of the licensing activity that could be improved. First, the board presently has no authority to determine eligibility for intern supervisors, other than the statutory licensure requirement. To provide additional assurances that pharmacist-interns are exposed to proper practice and procedures, the statute should be amended to authorize the board to establish reasonable guidelines for the approval of intern supervisors.

Second, grounds for refusal to allow an individual to sit for the examination and grounds for removal of a license once issued should meet a two-part test. Grounds should be clear and related to the practice of the profession and should be stated in terms of a currently existing condition rather than an absolute condition which exists throughout the lifetime of the individual. Some of the grounds in the Act do not meet this test. The statute should be restructured so that such provisions comply with the criteria.

Finally, the current statute authorizes a grace period for the renewal of pharmacist licenses which in effect allows the continued practice of pharmacy under an expired license. Because this provision does not encourage timely license renewals and does not recognize the need to redetermine competence when a licensee has not practiced for a substantial period of time, the Act should be amended to provide for: 1) the automatic suspension of expired licenses; 2) a standard penalty for reinstatement of expired licenses; and 3) competency requirements for the reinstatement of licenses expired for more than two years.

Two concerns were identified with regard to the enforcement activities of the agency. The first concern relates to a potential conflict of interest which may result from making available to the agency revenues generated through the imposition of disciplinary fines. To remove the potential conflict of interest and eliminate the basis for the criticism that fines may be imposed to generate agency revenue, the statute should be modified to provide that all funds generated through disciplinary fines imposed by the board be deposited in the General Revenue Fund and not be available for board use.

A second enforcement concern involves the board's limited enforcement authority in certain areas. This enforcement authority could be enhanced through the authorization to probate suspensions; the authorization to take disciplinary action against licensees for violations of the Pharmacy Act, board rules, the Controlled Substances Act, and the Dangerous Drug Act; the authorization to inspect licensed facilities; the authorization to receive criminal history information; and the authorization to summarily suspend a license.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of agencies regulating the practice of pharmacy in other states was conducted to determine the potential for combining the regulation of pharmacy in Texas with the functions of another agency. All states regulate the practice of pharmacy, with independent boards performing the regulatory functions in thirty-three states. The remaining seventeen states accomplish regulation through boards attached to an "umbrella" type agency or an agency with other substantive responsibilities. Review of Texas agencies with related functions indicated that no advantage would result from consolidation of the Board of Pharmacy with another agency. However, in one regulatory area - that of drug manufacturing - licensing responsibility is currently vested in both the Board of Pharmacy and the Department of Health. Sole responsibility for licensure of drug manufacturers would most appropriately be placed with the Department of Health.

With regard to regulatory alternatives, all fifty states regulate the practice of pharmacy through the licensure of pharmacists and retail pharmacies. Thirty-six of these states also regulate hospital drug dispensing facilities for inpatient care. Analysis of regulatory alternatives revealed no practical alternative to the licensure of pharmacists but identified one alternative with regard to the licensure of pharmacies. An adequate level of public protection could be provided in a manner less restrictive than the present statute allows through separate licenses based on the type of pharmacy to be regulated. Review of pharmacy settings in Texas indicated the need for four classes of license: a) Community Pharmacy; b) Nuclear Pharmacy; c) Institutional Pharmacy; and d) Clinic Pharmacy. Such an approach to the regulation of pharmacy would allow the board, through limited rule-making authority, the flexibility to determine and establish procedures most appropriate for the different types of facilities.

With regard to federal constraints, the review indicated that although no federal statutes address the certification of pharmacists, several federal programs, such as Medicaid, require pharmaceutical services to be provided by a licensed pharmacist and pharmacy.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

Although the board generally complies with the requirements outlined in the conflict-of-interest statute, the Open Meetings Act, and the Open Records Act, a review of agency documents and activities indicates that statutory requirements were not fully met in two instances. First, two board members had not filed the requisite financial disclosure affidavits with the Secretary of State's Office. Also, board procedures which allow certain portions of formal hearings to be closed to the public do not conform to the requirements of the Open Meetings Act. However, the review identified a need to exempt board deliberations relative to licensee disciplinary actions from the Open Meetings Act. In addition, it was determined that board active investigative files should be exempted from the Open Records Act. In the area of employment practices, no formal complaints have been filed against the agency.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

Although the board has complied with the necessary notification and hearing requirements, participation by the general public in the rule-making process of the board has been minimal. Board efforts to inform the public of agency operations have been limited to the distribution of two publications. To help ensure that the public's point of view is properly represented, the board's composition should include one-third public members who could replace current pharmacist members as their terms expire.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

Regulation of the practice of pharmacy in Texas has been substantially modified three times since passage of initial regulatory legislation in 1889. However, the Texas Pharmacy Act has been amended sixteen times since its last major restructuring in 1943. Generally these legislative enactments have broadened the definition of those activities constituting the practice of pharmacy, enlarged the number of entities required to be licensed, increased licensure requirements and fees, and augmented board enforcement authority.

During the last four legislative sessions, forty bills to amend the Pharmacy Act have been unsuccessfully introduced. The most frequent subject of this proposed legislation has been generic drug substitution. In addition, several bills have been introduced with regard to price advertising for, dispensing of, and restricting access to prescription drugs.

The Board of Pharmacy recommends several statutory changes in its self-evaluation report. Among these are the following: 1) registering pharmacist interns; 2) regulating pharmacy support personnel; 3) licensing drug wholesalers; 4) commissioning investigative staff as peace officers; and 5) granting the board search, seizure, and embargo powers. An additional recommendation would modify the definition of a practitioner so that prescriptions from out-of-state practitioners could be legally filled by pharmacists in this state.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of the practice of pharmacy. The review identified no real alternative to licensing through an independent board but determined that a number improvements should be made to the operations of the independent board if it is recreated by the legislature. The review also identified a need to provide for the licensure of facilities using four classes of licenses.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board and modify statutory authority to provide for the issuance of four classes of facility licenses.
 - a. Class A permit for a community (retail) pharmacy.
 - b. Class B permit for a nuclear pharmacy.
 - c. Class C permit for an institutional (hospital) pharmacy, restricting the authority of the board to adopt rules which would limit the use of supportive personnel.
 - d. Class D permit for a clinic, directing the board to adopt rules which allow persons other than pharmacists to perform pharmaceutical acts under the supervision of a registered pharmacist.
 - e. The following structural and substantive changes should also be made:
 - 1) Amend the statute to place agency funds in the State Treasury and include the agency in the appropriations process.
 - 2) Amend the statute to provide for the appointment of at least two public members on the board.
 - 3) Amend the statute to remove the requirement that all board members be engaged in retail pharmacy practice so that any licensee practicing pharmacy will be eligible.

- 4) Amend the statute to modify requirements for the board's annual report to delete unnecessary provisions.
- 5) Amend the statute to authorize the board to establish and collect necessary and reasonable fees for the administration of the Pharmacy Act.
- 6) Amend the statute to authorize the board to establish standards for intern supervisors (preceptors).
- 7) Amend the statute to include license renewal requirements which:
 - a. provide for the automatic suspension of expired pharmacist licenses;
 - b. establish a standard penalty for the reinstatement of expired pharmacist licenses; and
 - c. establish competency requirements for the reinstatement of pharmacist licenses expired for more than two years.
- 8) Modify the statute so that grounds for disqualifying an applicant from sitting for an examination and grounds for removal of a license are: 1) easily determined and 2) currently existing conditions.
- 9) Amend the statute to provide that all revenues generated from fines imposed by the board be deposited to the credit of the General Revenue Fund.
- 10) Amend the statute to provide greater enforcement authority in the following areas:
 - a. authority to probate license suspension;
 - b. authority to apply sanctions against a licensee for a violation of the Pharmacy Act, board rules and regulations, the Controlled Substances Act or the Dangerous Drug Act;
 - c. authority to inspect all licensed facilities with regard to storage, equipment, sanitary conditions and security;
 - d. authority to inspect the records of all licensed facilities with regard to prescriptions and prescription drug

invoices and inventories, but not with regard to financial, sales or pricing data;

- e. authority to receive criminal history information relating to licensees and applicants for licensure; and
 - f. authority to suspend a license on an emergency basis prior to holding a hearing.
- 11) Amend the statute to remove the board's concurrent authority to license drug manufacturers thereby providing the Department of Health with sole licensing authority.
 - 12) Modify the definition of practitioner so that licensed pharmacists may dispense prescription drugs and devices pursuant to a prescription written by certain practitioners licensed in other states.
 - 13) Exempt board deliberations relative to licensee disciplinary actions from the Open Meetings Act.
 - 14) Exempt board active investigative files from the Open Records Act.

TEXAS STATE BOARD OF PHYSICAL THERAPY EXAMINERS

BACKGROUND

Historical Perspective

The Texas Board of Physical Therapy Examiners was established by the legislature in 1971 to regulate physical therapists and physical therapist assistants. The reasons underlying initiation of state regulation stem from the development of physical therapy as a profession and conditions in Texas at the time of creation of the board.

Physical therapy developed in the United States as a recognized profession, largely as a result of two world wars and two of the nation's worst infantile paralysis epidemics. The second series of polio epidemics resulted in nearly 58,000 cases in 1952. These circumstances thus created a sharply increased demand for physical therapists and a need for improved techniques of therapy.

With the increased demand for skilled therapists, many persons who lacked appropriate training began to hold themselves out as physical therapists. Finally, as a result of increasing uncertainty about identifying persons who were properly qualified to provide services and treatment, a trend developed in the United States in the middle 1940s toward the licensure of physical therapists. At the end of the 1960s, all states except Texas had adopted regulation and licensure of physical therapists.

Toward the end of the 1960s, circumstances developing in Texas stimulated an interest in licensing physical therapists in the state. Interviews with agency representatives indicated that, since Texas was the only state which did not require licensure, unqualified therapists began to avoid the licensing process in other states by coming to Texas to practice. In addition, there had been an increasing number of complaints from consumers relating to unqualified practitioners. Such complaints were often made to physicians who referred patients for therapy. Finally, an increasing number of persons were practicing without a physician's referral, an act which constitutes the unlicensed practice of medicine. Existing enforcement capacity in this area was seen to need additional emphasis.

As a result of these concerns, the Texas Board of Physical Therapy Examiners was created in 1971 to ensure the availability of qualified persons to practice this technical occupation. The board consists of nine members who are licensed physical therapists. Board members must be Texas residents and physical therapist practitioners for five years immediately preceding appointment. Board members are appointed by the governor to overlapping six-year terms with the advice and consent of the senate. At present the board regulates 1,990 physical therapists and 207 physical therapist assistants.

The board currently operates with a staff of two full-time positions and one part-time contract employee. The board is supported entirely from the General Revenue Fund. The board received appropriations of \$56,972 in fiscal year 1980 to carry out its operations.

Comparative Analysis

To determine the pattern of regulation of the occupation of physical therapy within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of physical therapy is currently recognized through licensing requirements imposed by all fifty states. From the standpoint of organizational patterns, nine states, including Texas, meet this expressed need through an independent board or commission. For the remaining states, the regulation of physical therapists is carried out through a larger, medically-related board or state agency charged with multiple regulatory functions. Board members are appointed by the chief executive in thirty-six states.

Licensing boards composed entirely of physical therapists administer physical therapy laws in thirteen states, including Texas. In seventeen states, the regulation of physical therapists is achieved through a board consisting of physical therapists as well as public members. While fees are collected by all fifty boards, funding patterns vary across the states. Boards in thirty states, not including Texas, are supported at least partially by the fees they collect. Boards in forty states, including Texas, are funded through the legislative appropriation process. Like Texas, thirty-one of the physical therapy boards receive general revenue funds. In twenty states, not including Texas, physical therapy boards have advisory functions only.

In thirty-two states, including Texas, physical therapy boards conduct investigations in response to consumer complaints. Complaint investigations are conducted by an investigative unit of a centralized regulatory agency in twelve states. In two states, complaint investigations are conducted by the physical therapy board in conjunction with a larger regulatory body. In thirty-six states, including Texas, physical therapy boards have responsibility for conducting disciplinary hearings.

In forty-six states, including Texas, licensure by some form of endorsement or reciprocity is authorized.

All physical therapy boards surveyed indicate the need to perform the basic regulatory functions of administration, testing, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Texas Board of Physical Therapy Examiners consists of nine members appointed by the governor for six-year terms with the advice and consent of the senate. The board is directed by statute to regulate physical therapists and physical therapist assistants through the licensure of qualified applicants and the enforcement of provisions of the Act.

Board operations can be divided into three activities: administration, licensing, and enforcement. With regard to administration, the agency has had some funds management problems in the past. It has received two emergency appropriations from the Governor's Office and its functions were temporarily administered by the Health Department in fiscal year 1977. However, since fiscal year 1978, the board has stayed within its legislative appropriation. Two concerns were noted with the agency's administration. Revenue and expenditure projections indicate that the board will spend more than it will collect from fees beginning in fiscal year 1981. As a result, the board's statute should be amended to allow it to charge the necessary and reasonable fees to cover the amount of its legislative appropriations. The second concern with agency administration relates to the amount the board pays proctors for its licensing examination. The review indicated that the board's proctor expenses were significantly higher than proctor expenses paid by other health licensing agencies. Consequently, the board's expenditures for proctors should be reduced to a level that is comparable to other health licensing agencies.

With regard to the licensing activity, three areas could be improved. First, grounds for refusal to allow an individual to sit for the examination and grounds for removal of a license once issued should meet a two-part test. Grounds should be clear and related to the practice of the profession and should be stated in terms of a currently existing condition rather than an absolute condition which exists throughout the lifetime of the individual. Some of the grounds in the Act do not meet this test. The statute should be restructured so that such provisions comply with the criteria.

Second, the statutory provision regarding delinquent license renewals should be amended so that: 1) the renewal of licenses expired for not more than 90 days would require payment of the required renewal fee and one-half the examination fee; 2) the renewal of licenses expired for longer than 90 days but less than two years would require payment of all unpaid renewal fees and the examination fee, and 3) the renewal of licenses expired for more than two years would require reexamination and compliance for more than two years would require re-examination and compliance with requirements and procedures for obtaining an original license. The Act currently permits renewal of a license within a five-year period on payment of a \$50 restoration fee and \$2 for each year the license was expired without renewal.

Finally, the Act permits issuance of temporary licenses prior to examination to individuals who have qualified for examination and to individuals who have passed the national examination in another state and are waiting for the scores to be reported to the board. Temporary licenses permit practice by individuals who have not exhibited competence. The Act should be amended to permit individuals who receive temporary licenses to practice only under the supervision of a licensed physical therapist. In addition, the agency should be given the specific statutory authority to permit the use of a temporary license for up to one year if necessary.

With regard to enforcement, the review identified four concerns. First, the board has established fees in its rules and adopted other rules that are not authorized by the Act. The board should take steps to review and, where

necessary, restructure its rules with assistance from the Attorney General's Office so that all rules are authorized and comply with statutes.

Second, the Act at present does not provide authority for the board to issue informal and formal reprimands. The statute should be amended to provide this authority so that an appropriate range of sanctions is available to the board.

Third, review of board actions in district court by trial de novo should be removed from the statute. Trial de novo requires all testimony and evidence to be presented anew in district court. The procedure could hinder the disposition of appeals. The "substantial evidence" rule provided in the Administrative Procedures Act should be applied on appeals.

Finally, the Act and rules should be amended to conform to the Sunset Advisory Commission approach to allow advertising practices which are not deceptive or misleading. Current provisions in the Act prohibit advertising.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of the consolidation alternatives found in other states was conducted to determine the potential for combining the regulation of physical therapists and physical therapist assistants with the functions of another agency. Forty states regulate the process through an agency charged with multiple responsibilities. These agencies include "umbrella" licensing agencies, state departments of health, and state medical boards. Among these alternatives, the Department of Health appears to be the most reasonable alternative for consolidation. Both the department and the board perform health-related functions and are involved in regulatory activities. In addition, there is historical precedent for this approach since the board was placed under the administrative control of the Department of Health in fiscal year 1977 for a period of seven months.

The review concluded that there is a potential for public harm if physical therapists were not regulated. Physical therapists are trained to establish and modify patient rehabilitation treatment programs. In addition, they are professionally responsible for treatments administered by personnel working under their supervision. However, since physical therapist assistants must practice under the supervision of a physical therapist who remains professionally responsible for all aspects of the treatment program and since assistants are not permitted to alter treatment programs established by the physical therapist, there is no need to continue regulating them.

With respect to regulatory alternatives, certification of physical therapists would provide a less restrictive method of maintaining a level of public protection similar to that provided under the current licensing scheme. While the certification method has no enforcement component, the agency receives only a small number of complaints and the enforcement efforts undertaken by the board have been minimal due to the low level of funding.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

The board is in general compliance with the statutory requirements relating to conflict of interest, open meetings and open records. However, in one instance, rules adopted by the board were not published as adopted rules in accordance with state requirements. With respect to the board's employment policies, the board does not have an affirmative action plan or a formal grievance procedure. This policy is consistent with other boards and agencies with small staffs.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

The board has complied with the public participation requirements found in general state law. However, public input into board deliberations has been

minimal. To help ensure that the public's point of view is properly represented, three public members should be placed on the board replacing present members as their terms expire.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

The board's enabling legislation has been amended three times since its adoption in 1971. Authority to stagger the renewal of licenses was given to the board in 1973. In 1975, various licensing fees were increased and injunctive authority was provided. The board was made subject to Sunset Act provisions in 1977.

Five bills were unsuccessfully proposed in the last four legislative sessions. Two bills would have transferred the board's functions to the Health Department and continued the board with advisory duties only. Two bills would have placed the board or its functions in a central department of regulatory agencies. The fifth bill would have created a board consisting of representatives of two associations and physical therapists not affiliated with any professional association, reduced qualifications for board membership and licensure and removed the board's enforcement authority for practicing physical therapy other than upon the referral of a licensed physician, dentist or chiropractor.

The board recommended major modifications of the Act in its self-evaluation report. Recommended modifications included: a nine-member board consisting of six physical therapists and three consumer representatives; establishment of a fee for a second examination; a requirement for continuing education or a specified amount of direct patient care for license renewal; modification or removal of some grounds for the board to deny, suspend or revoke a license; and clarification or revision of certain definitions and exemptions.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of physical therapists. The review identified the organizational alternative of performing the regulation through the Department of Health although no cost savings would result from this combination. The review also identified the alternative of reducing the scope of regulation of the physical therapy profession by eliminating the regulation of physical therapist

assistants and/or requiring a one-time only certification of physical therapists. The review concluded that a number of improvements should be made to the operation of the independent board if the board is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- The commission made no recommendation concerning this agency.

BOARD OF PLUMBING EXAMINERS

BACKGROUND

Historical Perspective

The Texas State Board of Plumbing Examiners was established in 1947 by the Fiftieth Legislature. However, the state's involvement in the regulation of plumbing began in 1897 -- 50 years prior to the board's establishment. The reasons underlying creation of the board can be identified by briefly tracing these early regulatory efforts.

Initial state involvement in the area of plumbing at the end of the nineteenth century was stimulated by the settlement and growth of towns and cities across the state. The growth of these urban concentrations increased the potential for public harm resulting from contaminated water supplies or unsanitary sewage disposal brought about through improper plumbing practices. Responding to this public concern, in 1897 the Twentieth Legislature enacted legislation that directed each city to: 1) pass ordinances regulating plumbing practices, 2) create a board to examine and license plumbers, and 3) provide for plumbing inspections. Penalties were established for practicing without a license. Throughout the 50 years that this law was in effect, its provisions remained essentially unchanged except for one significant modification in 1925. This change exempted cities with a population under 5,000 from the requirements of the act.

In operating under this first law, two areas of difficulty relating to the local nature of the regulation became apparent over time. First, licensing requirements varied greatly among cities. As a result, the state had little assurance that the licensing efforts of any individual city would effectively screen out plumbers with inadequate knowledge of safe plumbing practices. Second, licenses were valid only in the issuing jurisdiction, severely limiting the ability of licensed plumbers to freely practice their trade.

The lack of mobility of plumbers created a significant problem immediately following World War II. In that period, various areas of the state were experiencing an unprecedented demand for new housing and, thus, plumbing services. However, home builders were hampered in their efforts to secure additional and necessary plumbing services due to local licensing restrictions.

In 1947, the Fiftieth Legislature responded to these problems by repealing the local licensing law and passing a state licensing law to be administered by a new agency, the State Board of Plumbing Examiners. The act directed the board to examine and license qualified plumbers and plumbing inspectors, thus removing these functions from city jurisdiction. The board was also given the authority to revoke licenses, with penal provisions established for offenses under the act. In addition, any city with a population of 5,000 or more was directed to establish a plumbing ordinance and require permits and inspections for plumbing. Since its enactment in 1947, this uniform licensing law has been modified only slightly.

The regulatory activities of the agency are carried out under the policy direction of a six-member board composed of two licensed plumbers and four non-plumbers chosen from occupations relating to building construction and sanitation. The board employs a staff of 18 full-time employees to carry out its regulatory responsibilities with respect to its licensee population of approximately 18,000 plumbers and 800 plumbing inspectors.

It should be noted that the board operates outside the State Treasury and is supported exclusively on revenues generated through its licensing activities. In calendar year 1978, the board expended \$486,631 in carrying out its responsibilities and collected \$565,973 in fees and other revenues.

Comparative Analysis

To determine the pattern of regulation of plumbers within the United States, a survey of the 50 states was conducted to determine how this has been addressed in other states.

The need to regulate plumbers is currently expressed through statewide licensing requirements imposed by 30 of the 50 states surveyed. From the standpoint of organizational patterns, 6 states, including Texas, meet this expressed need through state agencies regulating only plumbers. In 12 states, the function is carried out through governmental departments charged with the regulation of multiple occupations. In another 12 states, plumbers are regulated by a board of a section which operates as part of a larger substantive agency such as a Department of Health or a Department of Labor.

In those states which utilize boards and commissions, the chief executive appoints board members in 20 states, and 7 of these states require that appointees be confirmed by the legislature. Membership in all but four states includes both persons who are licensed members of the occupation and persons who are not. In Texas, board members are appointed by the Governor, confirmed by the legislature, and membership is predominately persons who are not licensed members of the occupation. Sixty-three percent of the states, as does Texas, utilize governing bodies with the responsibility of policy-making as distinguished from a strictly advisory role.

A majority of the states, including Texas, indicate that the regulatory body, regardless of organizational form, is totally supported by fees collected. Eleven states indicate that these bodies are not solely supported by fees and charges of the agency.

Twenty-six of the state boards which regulate plumbers administer a licensing examination which in 15 states, as in Texas, includes a practical portion. In 20 states, licensees are required to renew their licenses annually. Texas licenses for a one-year period. Enforcement activities in 21 states involve investigation of complaints from consumers and those engaged in the occupation of plumbing. Disciplinary hearings are conducted by the regulatory agency in 23 states. In Texas, the agency is authorized to conduct disciplinary hearings.

States which regulate plumbers generally indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Plumbing Examiners is a six-member body appointed by the governor with the advice and consent of the Senate for six-year terms. The board is directed by statute to regulate city plumbing inspectors and all persons who engage in plumbing as a primary occupation in cities of over 5,000 population.

The operations of the board can be most easily described, as they relate to three activities: administration, licensing, and enforcement. With regard to administration, the agency meets the objective of efficient management in many respects. However, three concerns were identified in the review. First, the continued use of the manual system presently used for license renewal and roster preparation causes inefficiencies and time delays. A review of this system by the Auditor's Office could help identify alternative systems to eliminate the inefficiencies caused by the agency's present procedures. A second concern noted is that the agency has accumulated end-of-year fund balances approaching one-half million dollars, in conflict with the agency's statute and a related Attorney General's opinion. A statutory provision requiring that excess agency funds be transferred to the general revenue fund would prevent this practice.

A third area of concern results from the fact that the agency is currently authorized to maintain its funds outside the Treasury and its expenditures are therefore not subject to the appropriations process. Because the agency is not in the appropriations process, it is not subject to, nor has it consistently followed, standard practices and controls for efficient and accountable management developed by the legislature for most state agencies. Examples of the board's deviation from these standard practices include the following: expenditure of funds without full documentation, one instance of a major capital purchase without competitive bids, and investment of funds on the basis of an agreement by a local bank to provide favorable interest rates and services. To ensure that future agency operations adhere to the state's general standards for efficient management, the board should be included in the appropriations process. This action would be consistent with the Sunset Commission's across-the-board recommendation for agencies under review.

Review of the licensing activity indicated that although the board generally meets the objective of ensuring minimum competency of plumbers and plumbing inspectors through an efficient licensing process, improvements could be made in several areas. The first area noted is that, while the agency has had a backlog of applicants waiting to take the licensing examination, there exists no penalty for persons not appearing as scheduled. Making the examination fee non-refundable to persons not appearing would encourage better attendance and assist in reducing the current backlog.

Analysis of the agency's schedule of maximum fees authorized by statute indicated that present limits for both the journeyman's examination and license fees are inadequate by comparison with journeyman fees in other states, master fees in Texas, and the actual costs of services by the agency. An increase of the statutory limits for journeyman examination and license fees would address these differences by more appropriately allocating the costs of agency services to those persons receiving them. Also with regard to fees, it was noted that the agency is not authorized to charge for the costs incurred in issuing duplicate licenses. A statutory provision for duplicate license fees would allow the board to recover the costs of issuance.

The review identified three areas of concern regarding requirements for licensure. First, no rules or clear guidelines have been developed by the board with regard to hardship waivers from the experience required for a master's license. Compliance with requirements of the Administrative Procedures Act relating to the adoption of rules and the indexing of interpretations for agency procedures would clarify board policies, thereby giving applicants for hardship waivers a better understanding of agency expectations. Second, the statutory requirement that an applicant be of "good moral character" has become largely a subjective determination which the agency has declined to use in recent years. Agency access to criminal history records, the main basis for earlier character determinations, has been foreclosed with the development of the state policy protecting the privacy of individual's records. Deletion of the licensing requirement for good moral character would remove the agency's responsibility to make a subjective character determination on the basis of limited information. Third, the agency has no authority to recognize a plumber's license from another state as proof of competency for licensure in Texas. Licensees from other states must pass the board examination to qualify for licensure as all other unlicensed persons. Authorizing the board to waive licensing requirements for licensees from states with equally demanding standards would provide the board with flexibility in this regard.

Two concerns were identified with regard to enforcement activities of the agency. The first concern relates to the board's use of its revocation powers and the corresponding structure of its enforcement process. The revocation process has not proven to be a useful means of enforcement as a result of two factors. First, the agency's statutory cause for revocation based on incompetence provides a difficult standard to apply. Second, the agency has developed a policy which requires that a city must formally request a revocation hearing before the board will consider revoking a license. This narrow approach related to the revocation process has essentially eliminated its use for enforcement and inhibited the investigation of complaints. A statutory change to clarify incompetence as a grounds for revocation, and to specify that the agency may proceed on its own initiative into a formal hearing would provide the agency with a means for more effective enforcement. The review also indicated that the board does not have the range of penalties available to various other agencies for enforcement, and thus is unable to apply a penalty suited to the circumstances of a particular violation. The agency's statute should be modified to provide the agency with penalties other than revocation, such as suspensions and reprimands, used by other licensing agencies for enforcement.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives found in other states as well as Texas was conducted to determine the potential for combining plumbing regulation with the functions of another agency. Twenty-nine other states provide state regulation, with 24 having consolidated plumbing regulation within other agencies. Fully half of these states use a department of occupational licensing. While Texas has no "umbrella" licensing agency, agencies exist in Texas that are used in other states for plumber regulation. These are the Department of Health and the Department of Labor and Standards. A final agency which can be considered as a consolidation option is the Texas Department of Water Resources. This department provides administrative services to other regulatory boards related to protection of water resources, indicating a possibility for consolidation.

Of these alternatives, the Department of Health appears to be the most reasonable alternative for consolidation. The department is involved in related substantive areas dealing with protection of the public water supply and water treatment systems. In addition, this agency is experienced in the area of licensing administration. Benefits from consolidation could also result from the use of the department's regional offices for plumber-related complaints and the availability of computer services from experienced personnel.

With regard to regulatory alternatives, a number of states have chosen to provide no state regulation of plumbers, with any regulatory responsibility being left to local authorities. Other alternatives seen from the review of other states are the use of a state plumbing code and the licensing of plumbing contractors. While not currently used to regulate the practice of plumbing in other states, the methods of certification and registration can also be considered as possible options due to their common use with respect to other occupational groups.

Of these alternatives, certification appears to be the most reasonable regulatory alternative. Public protection would be maintained through the continued testing of competence by a one-time certifying examination. While the certification method would not include an enforcement component, minimal emphasis is currently placed on this activity through the present system. In addition, certification would be less restrictive than the present licensing method in that plumbers would not be required to renew their licenses annually. Elimination of the annual licensing function could also result in the additional benefit of providing necessary regulation at a substantially reduced cost.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

The board members and the administrator have complied with conflict-of-interest reporting requirements. However, with regard to open meetings, statutory procedures established for closed sessions have not been properly followed in board meetings in that, technically, the board should have taken final action in an open meeting on subjects discussed in a closed meeting. The agency has indicated a willingness to comply fully in future meetings. With regard to equal employment practices, the board has an updated Affirmative Action Plan on file and has never had a formal employment-related complaint filed against it.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The board has made an effort to educate the public and its licensees as to its operations by publishing its statute and rules, by making available films describing agency operations, and by conducting seminars and conferences throughout the state. However, the board's ability to successfully represent the points of view of licensed plumbing inspectors and the general public could be improved through the placement of representatives from these two groups on the board.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

The agency's enabling legislation has been amended four times since the inception of the board in 1947. In general, these bills were aimed at staggering renewal of licenses, modifying the penalty for doing plumbing work without a license, exempting residential water treatment installations from licensing requirements and making the board subject to the Texas Sunset Act. Legislation was also enacted in 1979 which exempted licensed irrigation installers from plumber

licensing requirements. In addition, several bills failing enactment were introduced in the last three legislative sessions. During each session, unsuccessful proposals were made to increase the licensing requirements of the Act. These bills included proposals to require statewide plumber licensing, to require the supervision of licensed master plumbers in all new habitable construction, and to require licensing of plumbers in all counties over a designated size. Another unsuccessful proposal would have put the board within a Department of Occupational Regulation. In its self-evaluation report, the agency recommends that its statute be amended to require licensed plumbers in all areas using a public water supply regardless of their size or composition.

NEED TO REGULATE

The review indicated that there is a continuing need for public protection through the regulation of plumbers. The review identified the most feasible alternative to the current organizational structure would be performance of the regulation by the Department of Health. The review concluded a number of improvements should be made to the operations of the board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. Investigate automated processing of licensing and roster functions.
 - b. Cause excess fund amounts over a prescribed limit to revert to General Revenue.
 - c. Place agency funds in the Treasury and include the agency in the appropriations process.
 - d. Make the licensing exam fee non-refundable.
 - e. Increase journeyman exam and license fees.
 - f. Establish a fee for duplicate licenses.
 - g. Develop rules establishing guidelines for hardship waivers.
 - i. Authorize the agency to accept licenses from other states on an endorsement basis as grounds for licensure.
 - j. Clarify the agency's revocation authority.
 - k. Restructure complaint files to provide all necessary documentation to support revocation proceedings.
 - l. Provide a range of penalties to be used by the agency to encourage compliance with the licensing act.
 - m. Modify board composition to include a plumbing inspector and representatives of the general public.

TEXAS STATE BOARD OF PODIATRY EXAMINERS

BACKGROUND

Historical Perspective

In Texas, regulation of podiatry (originally called chiropody) as a profession began in 1923 with the enactment of legislation establishing a regulatory board under the jurisdiction of the State Board of Medical Examiners. This placement was consistent with the State Board of Medical Examiners' mandate to regulate all branches of the practice of medicine, and implicitly recognized the medical nature of podiatry. The most often expressed rationale for requiring licensure of podiatrists was the need for protection of the public's health, safety, and welfare. Legislation passed in 1939 transferred responsibility for regulation of podiatrists to an independent Board of Chiropody Examiners.

The practice of podiatry was initially limited to the diagnosis, medical and surgical treatment of ailments of the human foot and practitioners were prohibited from amputating the human foot or toes, and were limited to the use of local anesthetics. All applicants for podiatric licensure were required to have at least one year of instruction in, and be graduates of, a reputable school of chiropody.

Over time, the scope of podiatry practice has expanded with a corresponding development in both educational preparation and licensing requirements. By the early fifties, entrance into a podiatry college required two years of college and entailed a four-year course of study. During the same period, the statutory definition of podiatric practice became more permissive by a removal of the stricture against amputation of the toes and by allowing the administration and prescription of drugs, including narcotics.

Extensive nationwide evaluation of podiatric education in the late sixties led to efforts to improve and upgrade the quality of podiatric education in the five colleges of podiatry (New York, California, Pennsylvania, Illinois, and Ohio). As a result, all five colleges developed and occupied new or remodeled facilities, increased the number of full-time faculty and broadened the clinical curricula in general medicine. Additionally, the number of residency programs were increased significantly. By 1978, entrance requirements had been raised to include completion of 90 semester hours of acceptable undergraduate work and minimum acceptable score on the Medical College Admission Test (MCAT) (the same test used by medical and osteopathic colleges). A student in one of the five schools currently receives two years of training devoted to the basic sciences and two additional years of training concentrated on the surgical and clinical treatment of foot deformities, injuries, and diseases. Additional experience in patient care is obtained by approximately 50 percent of podiatric graduates through residency programs.

These developments in podiatric education led to recognition of the expanded role of podiatry in medicine by the Federal Government, private and public insurance companies, and by other professional organizations. Podiatrists may now receive reimbursement for patient care from Medicaid-Medicare programs, private health-insurance groups and workman's compensation. Federal support has also

been extended to podiatric students under the Health Professions Educational Assistance Act of 1963. Finally, the American Medical Association, the American College of Surgeons, and the Joint Commission on the Accreditation of Hospitals have recognized the right of podiatrists to be granted hospital practice privileges within the scope of their competencies, and have formulated criteria for hospital practice by podiatrists. According to a study by the Department of Health, Education, and Welfare published in August 1978, about three-fourths of all foot-related care in the United States is provided by podiatrists. Data show that podiatrists handle about nine times as many soft tissue complaints, and about three times as many static foot deformities as do medical physicians.

Regulation of podiatry in Texas is carried out through an independent board composed of six licensee members appointed by the governor. The board's essential functions consist of the administration and enforcement of the Act, and of the licensing of podiatrists through examination and license renewal. Currently 471 podiatrists are licensed to practice in Texas and 176 of these reside out-of-state.

Operations of the board are supported entirely from fees collected and interest received from time deposits. All board funds are maintained outside the state treasury. In fiscal year 1979, the board collected an estimated \$21,709 in revenues and expended \$17,811 for its operations. The board does not employ any full-time staff.

Comparative Analysis

To determine the pattern of regulation of the occupation of podiatry within the United States a survey of the 50 states was conducted.

The need to regulate the occupation of podiatry is currently recognized through licensing requirements imposed by all 50 states. From the standpoint of organizational patterns, 16 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In five states the practice of podiatry is regulated by an independent Board of Medical Examiners. In 24 states the regulation of podiatrists is carried out through a board associated with a state agency charged with multiple regulatory functions.

Licensing boards composed entirely of podiatrists administer podiatry laws in 22 states including Texas. In 16 states, the regulation of podiatry is achieved through a board composed of podiatrists as well as practitioners of other healing arts. Thirteen state boards possess public members.

Responsibility for accrediting educational programs is assigned to 25 of the state agencies regulating podiatry including Texas. In nine other states the accreditation function is performed by the American Podiatry Association. Licensees are required to renew their licenses annually in 36 states including Texas. Ten states, not including Texas, require some form of continuing education prior to annual license renewal. In 24 states the regulatory agency is granted the authority to set the scope of the professional examination, with 42 states accepting the examination of the National Board of Podiatry Examiners. In the remaining states requiring examination, the scope of the examination is established by law.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Podiatry Examiners is a six-member board appointed by the governor with the advice and consent of the senate for six-year overlapping terms. The board is directed by statute to regulate the practice of podiatry.

Board operations can be categorized in three activities: administration, licensing, and enforcement. With regard to administration, the agency meets the objective of efficient management in several respects. However, the review identified three concerns. The first area of concern relates to the agency's records management. Management letters from the State Auditor's Office cited the agency's accounting and budgeting systems as problem areas. The board has instituted procedures in an effort to correct these conditions. Agency difficulties in the area of accounting and budgeting systems are largely a result of a second concern noted in the review. Board funds are being held outside the State Treasury and are not subject to the appropriations process. Consequently, the board is not held accountable for compliance with provisions which contribute to efficient and effective management procedures. If board funds were placed in the State Treasury the legislature would have better fiscal control over the agency. Such a change in control of the board's funds would require additional personnel and increased operating funds. However, better accounting and budgeting systems could be achieved. The third area of concern relates to the agency's fee structure. Fees charged by the board are the only source of operating funds for the agency. If fees remain at current levels, revenues cannot be expected to match board expenditures. A review of fee structures of podiatry boards in other states indicated that the Texas board is below average in the categories they are authorized to collect. In addition, other states are authorized to collect fees in categories which are not included in the board's fee structure. Furthermore, licensing boards of similar size and type in Texas charge fees that are generally higher than those of the Board of Podiatry Examiners. If the board's fee structure were increased to a level comparable to that of other states as well as other Texas licensing boards, increased revenue would approximate \$26,500 per fiscal year.

With regard to the agency's licensing activity, three problem areas were identified. The first concern relates to the examination process. The examination is made up of both oral and written portions. All applicants are identified clearly as to name and background throughout the exam. In addition, the board practice of giving the oral portion of the examination before the grades on the written portion are determined, introduces the possibility of bias entering into the final decision. The oral portion of the examination should be discontinued in order to avoid the possibility of using it inappropriately as a screening mechanism. With regard to the written portion of the exam, it should be noted that the board does not utilize a question bank or analysis of individual questions for clarity and validity. Instead, each board member is assigned the composition, administration and grading of a

portion of the written exam. Additionally, where essay type questions are utilized, grading by more than one examiner without identifying the applicant could provide a more objective approach. Further, review indicated that use of the national board examination represents an alternative to the current process, which could alleviate the problems discussed above. The board should review the national exam to determine whether all or part of the examination can be used adequately and appropriately as a qualifier for applicants. With regard to another aspect of the examination, no procedure exists for providing counseling on request for those applicants failing the examination. Such a practice would provide a method through which individuals could assess and correct deficiencies prior to reexamination.

The second area of concern relates to licensure prerequisites specified by statute. Several of the statutory licensure prerequisites are ambiguous, difficult to verify and require the board to apply its subjective judgment, rather than a clear, objective standard. The final concern regarding the licensing activity, relates to the lack of reciprocity or endorsement provisions. As a manpower shortage area for foot-care practitioners, Texas could benefit from the use of reciprocity or endorsement as a method of licensing podiatrists. Standards on which to base endorsement are available to the board through national board exam scores, education records, and performance as a licensee in other states. Therefore, an endorsement system should be instituted.

Review of the agency's enforcement activity, indicates that enforcement activities are very limited. This is due primarily to the agency's small budget. The location and size of the agency have created a relative lack of visibility of the board and have hindered the filing of complaints by the general public. In addition, many of the grounds for revocation or suspension are based on criteria which are ambiguous and difficult to verify. In general, these should be replaced with more objective standards for disciplinary action.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives in other states was conducted to determine the potential for combining podiatry regulation with the function of another agency. All states regulate the practice of podiatry, with 37 having consolidated podiatry regulation within other agencies. Of these, 16 states use a department of occupational licensing. While Texas has no "umbrella" licensing agency, other agencies exist in Texas that are used in other states for podiatry regulation. These are the State Board of Medical Examiners and the Department of Health.

Of these alternatives, the State Board of Medical Examiners appears to be the most reasonable alternative for consolidation. The Board of Medical Examiners is charged with regulation of medical doctors through licensing and enforcement processes. This agency has a full staff, experienced in licensing administration and in enforcement procedures.

With regard to regulatory alternatives, all states presently license podiatrists. While not currently in use in other states, alternative methods of regulation of podiatrists, which can be considered due to their common use by other occupational groups, include certification and registration. Certification would continue the requirement that applicants exhibit a minimum level of competence prior to examination. Registration would only require that a person desiring to practice podiatry register with a designated state agency. Neither certification nor registration involve an enforcement mechanism to assure continued competence. While both certification and registration are less restrictive forms of regulation than licensure, neither provides as much public protection as the present licensing system. Therefore, neither is a desirable alternative to continuation of the present method of regulation.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict-of-interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts-of-interest, open meetings, and open records.

The review indicated that the board is in compliance with all conflict-of-interest disclosure requirements. Problems with the board's compliance with open meeting requirements include a board meeting which was not posted in a timely fashion and closed meetings in which decisions were made concerning complaints. These violations have been pointed out to the agency and future compliance has been assured. Finally, the board is in compliance with the Open Records Act.

PUBLIC PARTICIPATION

The review under this section covers the sunset criteria which call for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the board.

With regard to meetings to discuss possible rule changes, the agency has adhered to notification requirements set out in general state law. However, involvement of the public in the proposed modifications has been absent. To help insure that the public's point of view is properly represented, public members could be placed on the board, which is currently composed entirely of experienced licensees.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

The enabling legislation of the Texas State Board of Podiatry Examiners has been amended eight times since its creation in 1923. In 1939, a major revision made the State Board of Podiatry Examiners an independent agency with board membership composed totally of licensees. Amendments to the Act also increased licensure prerequisites and expanded the board's enforcement powers. In addition to the successful amendments to the board's enabling statute, five amendments have been unsuccessfully proposed in the last four legislative sessions. Proposed amendments supported by the board have dealt primarily with fee and board member per diem increases and increased regulatory authority for the board. One proposal, opposed by the board, would have required deposit of board funds in the State Treasury.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of podiatry. The review identified the organizational alternative of performing the regulation through the State Board of Medical Examiners. The review determined that regulation could be enhanced by the establishment of an identifiable state office for the board. The review concluded that a number of improvements should be made to the operation of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. Provision should be made for the appointment of public members to the board;
 - b. The statute should be amended to require the deposit of board funds in the State Treasury;
 - c. The statute should be amended to authorize fee increases and an initial license fee;
 - d. The use of the oral examination should be discontinued; a written examination process which would be consistent, objective and fair in application should be established; and the National Board of Podiatry Examiners exam should be reviewed as an alternative to the board's written examination;
 - e. The statute should be amended to allow endorsement as a method of licensure;
 - f. An identifiable state office should be established in Austin;
 - g. A mechanism should be established to track and document complaints received by the board and notify parties to complaints of actions taken;
 - h. Statutory grounds for disciplinary action should be modified to include only those which are clear and relevant to the practice of podiatry.

BOARD OF POLYGRAPH EXAMINERS

BACKGROUND

The development of the polygraph instrument or "lie detector" in the 1920's and its continued evolution have greatly enhanced efforts to detect deception. Fundamentally, the use of the polygraph as an instrument to detect deception or verify truth of statements is based on the theory that the act of lying causes measureable and automatic physiological reactions. Generally, a polygraph will simultaneously record the bodily changes which occur in a person's cardio-vascular, respiratory, and perspiration patterns. The interpretation of these recordings indicates whether or not a person has responded to questions truthfully.

In regard to the validity or reliability of polygraph results, independent laboratory studies have found the polygraph technique when employed by qualified examiners to be from 76 percent to 95 percent accurate in controlled situations. The accuracy of any given polygraph examination, however, is dependent upon several factors, the most significant of which are the qualifications and experience of the examiner.

In recent years, new instruments designed to verify truth of statements have been developed. These instruments, known as a voice stress analyzers or psychological stress evaluators (PSE), are designed to detect deception through the identification of stress as indicated through analysis of changes in the voice. An independent study commissioned by the Department of Army, however, found the voice-stress method to be only 32 percent accurate. The reliability of the voice-stress method appears to be less acceptable when compared to the 76 to 95 percent accuracy rating of the polygraph technique. The use of voice-stress analyzers in Texas to detect deception is illegal because the devices fail to meet the minimum instrumentation requirements established by the Polygraph Examiners Act. As a result, the use of lie detection equipment in Texas is limited to the more conventional polygraph machines.

Initially, polygraph results were used primarily as a tool to aid criminal investigations conducted by law enforcement agencies and officials. Even though the polygraph continues to play a significant role in many criminal investigations today, its use in criminal prosecution has been restricted by numerous court decisions.

Use of the polygraph technique in industrial and commercial settings has grown dramatically, nationwide, since World War II. Definitive statistical data on the volume of polygraph usage in business and industry is not available; however, estimates indicates as many as two million polygraph tests may have been administered nationwide in 1978. A recent survey conducted by Wichita State University researchers indicates that 20 percent of the nation's major corporations and 50 percent of the retail companies surveyed use the polygraph in personnel-related areas.

The impetus for large-scale business and industrial utilization of the polygraph developed from employer attempts to reduce loss due to employee theft. Estimates of the cost to business attributable to internal theft range from \$4 billion to \$7 billion annually.

The environment in which the polygraph was used in Texas changed markedly during the early 1960's. When the polygraph was the almost exclusive province of law enforcement agencies, there appeared to be little public concern for the validity or use of polygraph. However, as its use by business and industry began to increase, the reliability of the results and methods of use began to receive greater attention.

Increasing commercial utilization of the polygraph technique in Texas served to amplify some of the problems generally associated with polygraph examinations, such as invasion of privacy, validity of polygraph results, and the qualifications of examiners.

Recognizing the increasing use of the polygraph and its potential for abuse, the Fifty-ninth Legislature established the Board of Polygraph Examiners in 1965 to license polygraph examiners and regulate the profession. Legislation was enacted, based on a model statute promulgated by the American Polygraph Association, to protect the public from unqualified examiners and inadequate polygraph equipment. The Texas Supreme Court, however, declared the Act unconstitutional in 1969 because of insufficiency of caption. The Sixty-first Legislature subsequently reenacted the legislation in 1969 with few modifications.

The Polygraph Examiners Act established the Board of Polygraph Examiners in the Law Enforcement Training Division of the Engineering Extension Service of the Texas A&M University System. The board is composed of six licensed polygraph examiners appointed by the governor with the advice and consent of the senate and employs one part-time administrator to assist in carrying out the provisions of the Act.

Operations of the board are supported entirely from fees collected. Accounting and other fiscal services are performed by the A&M Engineering Extension Service for which it receives 10 percent of the board's gross revenues. In fiscal year 1979, the board collected \$18,174 in fees and expended \$16,888.

Comparative Analysis

To determine the pattern of regulation of the occupation of polygraph examiners within the United States, a survey of the 50 states was conducted.

The need to regulate the occupation of polygraph examiners is currently expressed through licensing requirements imposed by 24 of the 50 states surveyed. From the standpoint of organizational patterns, four states, not including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 18 states, the function of regulating polygraph examiners is carried out through a governmental department charged with other administrative and regulatory functions. In nine states, polygraph examiners are regulated by the State Department of Public Safety.

Of those states which utilize independent boards and commissions, all four require that appointees be confirmed by the legislature and membership in two states is limited to persons who are licensed members of the occupation. In Texas, members of the Polygraph Examiners Board established in the Engineering Extension Service, Texas A&M University System, are appointed by the governor and confirmed by the senate. Board membership is limited to persons who are licensed members of the occupation. Twenty-six percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states licensing polygraph examiners, not including Texas, indicate that the regulatory body, regardless of organizational form, was totally supported by appropriations from general tax revenues. Six states indicated that these bodies were solely supported by fees and charges of the agency. In all states but Kentucky, licensees are required to renew their licenses annually. Texas licenses for a one year period. Enforcement activities in 19 states involve investigation of complaints from consumers and those engaged in the occupation of polygraph examiners. Hearings are conducted by the regulatory agency in 21 states. In Texas, hearings are conducted by the agency.

States which regulate the occupation of polygraph examiners indicate the necessity of performing the basic functions of administration, testing, license issuance and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Polygraph Examiners has met with limited success in its efforts to efficiently and effectively regulate polygraphy. In the area of administration, the board does not operate as efficiently as it might due to its organizational structure. That structure has contributed to inadequate complaint records and problems with funds management involving the untimely disposition of cash receipts and funds being maintained outside the State Treasury in violation of statutory provisions. With respect to the licensing activity, achievement of the objective of ensuring minimum competency has been hindered by the lack of rules which clearly define the types of experience which can be substituted for the college degree requirement, and by testing procedures which do not provide adequate examination security. Additionally, the statutory basis for the intern examination fee charged by the board is questionable. With regard to the enforcement activity, achievement of the compliance objective has been hampered by inadequate complaint procedures and a judicial review provision that essentially nullifies board action in revocation and suspension proceedings.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

The Board of Polygraph Examiners currently implements a relatively restrictive regulatory alternative involving the licensure of individuals who use instrumentation to attempt to detect deception or verify truth of statements. Both experience in other states and the existence of similar functions in other Texas agencies, indicate that other organizational approaches which have been tested in other states could be implemented in Texas with little difficulty to improve the current organizational framework. Other states have also developed other less restrictive patterns of regulation which could be used by Texas.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict-of-interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interest, open meetings, and open records.

In conclusion, though financial disclosure affidavits have apparently not been filed in two applicable cases, the board appears to substantially comply with the Conflicts of Interest statute, the Open Meetings Act, and the Open Records Act, all designed to ensure the fair and impartial operation of an agency.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members of the board.

With regard to meetings to discuss possible rule changes, the agency has adhered to notification requirements set out in general state law. However, involvement of the public in the proposed modifications has been minimal. In addition, proposed changes benefitting the general public have usually been rejected. To help ensure that the public's point of view is properly represented, public members could be placed on the board, currently composed entirely of experienced licensees.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

In conclusion, after the reenactment of the board's enabling legislation in 1969, the Act has been amended only twice to authorize a staggered renewal process and to bring the board under the Sunset Act. Additionally, three unsuccessful bills were introduced in 1975 and 1977. These bills would have prohibited employers from requiring a polygraph examination as a condition of employment. Finally, the current Act specifies that an applicant for licensure must have earned a college degree from an institution accredited by the American Association of Collegiate Registrars and Admissions Officers if the degree is to count towards meeting licensing requirements; however, that body has refused to perform the accrediting function. As a result, there is a need to amend this provision of the law so that it is consistent with current circumstances.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates that there is a continuing need for state regulation of polygraph examiners. The review identified an organizational alternative of performing the regulation through the Department of Public Safety although no cost savings would result from this combination. Although an additional regulatory alternative was identified which would prohibit the use of polygraph in employment-related matters and transfer the licensing function to the Department of Public Safety, it was determined that the current approach to regulation provided the appropriate level of public protection. The review concluded that a number of improvements should be made to the operation of the independent board if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. Consolidation of administrative support services under the Department of Public Safety;
 - b. Clarification of statutory provisions relating to: a) examination fees; b) designating the organization to accredit colleges and universities for licensure purposes; and c) investigative experience requirements;
 - c. Establishment of provisions which ensure the confidentiality of polygraph examination results not related to law enforcement activities;
 - d. Provide for the appointment of at least two members of the general public on the board; and
 - e. Modification of the method of judicial review from trial de novo to the substantial evidence rule.

TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

BACKGROUND

Historical Perspective

Psychology is the scientific study of the behavior of man and other animals and the application of that knowledge to explore and help solve human problems. The modern practice of psychology includes testing, teaching, research, industrial psychology, and general counseling or clinical mental health therapies.

The State Board of Examiners of Psychologists was established in 1969 to regulate persons engaged in the practice of psychology. The reasons underlying the creation of the board can be seen through the evolution of psychology as a profession.

Prior to World War II, psychology was not a wide spread or well-established profession. The practice of psychology was generally in the nature of research. In addition, with regard to the clinical practice of psychology, psychologists generally worked under the supervision or direction of psychiatrists. However, as a result of the war, the nature of the practice of psychology changed substantially. Many veterans returned home with severe emotional problems, thereby requiring psychotherapeutic assistance. Such demand could not be met by the limited number of psychiatrists available and, as a result, psychologists were called upon to provide direct counseling and diagnostic services. These services lead to the establishment of psychologists providing direct services to the public. This trend was met with concern by the medical profession, which was unsure of the level of ability and training of persons practicing psychology. Such concern stemmed from the critical nature of applied psychology to a persons' well being and the resultant danger to the public.

In recognition of such concerns, efforts were made to identify and establish the competency of psychologists. In 1946, the American Psychological Association established a voluntary testing system to award successful applicants a "diploma" in selected fields of psychology. In addition, states began to establish minimum competency levels through licensure, with a majority of the states initiating such regulation between 1950 and 1970.

As a result of the same concerns that stimulated the licensing effort in other states, Texas, in 1969, joined the forty-seven other states that currently provide regulation of psychologists.

Currently, the board is composed of six licensed psychologists who regulate approximately 3,000 licensees (both masters level and doctoral level). The administrative functions of the board are carried out with a staff of two and a half employees. For fiscal year 1980, the board was appropriated \$88,051 from the psychologist licensing fund to carry out its operations.

Comparative Analysis

To determine the pattern of regulation of the occupation of psychology within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of psychology is currently recognized through licensing requirements imposed by forty-eight states. From the standpoint of organizational patterns, eighteen states, including Texas, meet this expressed need through an independent board or commission. In thirty states, the regulation of psychologists is carried out through a board associated with a state agency charged with multiple regulatory functions. Board members are appointed by the chief executive in forty-six states.

Licensing boards composed entirely of psychologists administer psychology laws in twenty-one states, including Texas. In twenty states, the regulation of psychology is achieved through a board consisting of psychologists as well as public members. Masters level psychologists are included on seven state boards. While fees are collected by all forty-eight boards, funding patterns vary across the states. Boards in thirty-four states, including Texas, are supported at least partially by the fees they collect. Unlike Texas, twenty of the psychology boards receive general revenue funds. In fourteen states, not including Texas, psychology boards have advisory functions only.

In thirty-seven states including Texas, psychology boards conduct investigations in response to consumer complaints. Complaint inquiries are conducted by an investigative unit of a centralized agency in eleven states. In forty states, including Texas, psychology boards have responsibility for conducting disciplinary hearings.

In thirty-nine states, including Texas, licensure by some form of endorsement or reciprocity is authorized.

All psychology boards surveyed indicate the need to perform the basic regulatory functions of administration, testing, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Examiners of Psychologists is a six-member board appointed by the governor with the advice and consent of the senate for six-year overlapping terms. The board is directed by statute to regulate the practice of psychology.

Board operations can be categorized in three activities: administration, licensing, and enforcement. With regard to administration, the agency meets the objectives of efficient management in several respects. However, the review identified two concerns.

The first concern relates to the board's procedures for purchasing the doctoral examination. Currently, this activity is not budgeted in the agency's funding structure and exam fees collected are not deposited in the board's fund in the treasury. The state auditor has recommended that the practice of merely holding exam fees be stopped and proper budgeting and fund expenditure procedures be implemented. Further, future board funding requests to the legislature should include the examination activity.

The second administrative concern also relates to the doctoral examination. The board lacks specific statutory authority to charge an examination fee. The doctoral examination is an integral part of the licensing process and the statute should provide for an examination fee.

The board's licensing activity can be divided into three categories: certification and licensure of psychologists, Health Service Provider designation of psychologists, and certification of psychological associates. While the review showed that the board generally functions in an efficient manner, several aspects of the licensing activity could be improved. The first area of concern relates to the board's establishment of a separate process and fee requirement not provided for in the Act, to obtain the Health Service Provider designation. The Health Service Provider designation identifies those psychologists providing direct, preventive, assessment and therapeutic intervention services. The board's authority to issue and renew this designation is questionable, however, and should be specifically authorized by statute. Secondly, review of the board's statutory authority concerning grounds for refusal to allow an individual to sit for an examination indicates that the statute erroneously requires the board to act essentially as a court of competent jurisdiction and apply terms of vague definition. The statute should be restructured so that disqualification provisions meet a two-part test: 1) the grounds should be clear and related to the practice of the profession, and 2) the condition stated by the expressed disqualification should be currently existing before a license can be denied or some other action taken. Examples of conditions set out in the statute which may not meet these tests are provisions relating to good moral character, felony conviction, addiction to drugs, etc.

Third, an interview is required by board rule of applicants for certification on the basis of the diploma awarded by the American Board of Professional Psychology or on the basis of endorsement. The board rule mandating the interview is restrictive and should be eliminated, leaving authority to conduct interviews as needed to gather specific information directly related to a person's application.

Fourth, the review indicated an apparent lack of awareness by licensees of board rules and regulations, and laws in Texas pertaining to the professional practice of psychology. The board should develop, and use in conjunction with the national exams, an objective written test which covers the laws, rules and regulations concerning the practice of psychology in Texas.

Fifth, licensed psychologists are required by board rule to renew their certification annually, as well as their license. The board rules should be amended to allow for annual renewal of certificates for persons in exempt agencies, but discontinue requiring annual certification of licensed psychologists.

The final concern in the area of licensing deals with the delinquency time frame allowed of certificates and licenses. The present system of penalty allows what amounts to a ten-month delinquency period during which time licensees are permitted to continue practicing. The board's delinquency period is excessive in comparison with other licensing agencies and should be reduced to a ninety-day period, after which time increased penalties would be imposed.

With respect to the enforcement activity the review indicated that the board has established a complaint policy which adequately addresses the need of the board. However, the review revealed one area of concern that hampers the effectiveness of the board's enforcement activities.

The review indicated that, in the past, the board has not made a sufficient effort to keep parties to complaints notified of the status of the complaint. Almost half of those responding to a questionnaire sent to those who had filed a complaint indicated they were not kept sufficiently informed regarding its processing. The agency should follow the practice set out in the across-the-board recommendation of the Sunset Commission regarding notification of parties to complaints.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of consolidation alternatives in other states was conducted to determine the potential for combining the regulation of psychologists with the function of another agency. Of the forty-eight states that regulate psychologists, thirty states have consolidated this regulation within other agencies. One-half of these states use a department of occupational licensing. While Texas has no "umbrella" licensing agency, other agencies do exist in Texas that are used in various states for the regulation of psychologists. These are the Department of Health and the Secretary of State's Office.

Of these alternatives, the Department of Health is the most reasonable alternative for consolidation. The department has the capacity to perform administration, examination, and licensing functions. In addition, benefits could result from the use of the department's regional offices for enforcement activities.

In examining the need to regulate psychologists in Texas, the review indicated that continued public protection through state regulation is warranted. With regard to the regulatory alternatives concerning psychologists, the review indicated that all states regulating psychologists utilize the licensing approach. Other alternatives such as certification and registration are frequently used to regulate other occupations. While less restrictive than licensing, these two options provide less protection to the public than the current system and therefore do not constitute suitable alternatives for Texas.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees, the extent to which the agency complies with the Open Records Act and the Open Meetings Act, and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

The agency has complied with statutory requirements regarding conflict of interest and open records. However, certain board meetings have not been conducted within the requirements of the Open Meetings Act. Meetings have been improperly closed to the public and final decisions have been made in closed meetings. Agency staff indicate that steps will be taken to ensure future compliance with the Open Meetings Act. The board has never received a formal complaint on employment practices.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the board.

The board has complied with general public notification requirements and makes efforts to inform the public of its responsibilities and activities. These efforts, however, have resulted in minimal public input and the board has requested that public members be added to its makeup. It appears that at least three public members should be added to the board and modification of the licensee representation should be made to include one psychological associate and five psychologists.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were

calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

The agency's enabling legislation has been amended four times since the inception of the board in 1969. In general, these bills have been aimed at modifications of board member terms, staggering of license renewals, increasing the board's abilities to regulate the practice of psychology, and making the board subject to the Texas Sunset Act. Legislation was also enacted in 1977 which allowed fees for services rendered by licensed psychologists to be reimbursed through individual or group insurance policies. In addition, several bills failing enactment were introduced in the last three legislative sessions. During each session, bills were introduced which proposed a transfer of board operations to another existing or proposed agency. One bill dealt with the insurance issue discussed above, and another bill would have added public members to many regulatory boards (two would have been added to the psychology board). In its self-evaluation report, the board has made several recommendations for modifications of its statutes. These changes generally relate to the addition of public and psychological associate members, deletion of certain fees and per diem amounts currently specified by statute and modification or deletion of certain licensure application requirements.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of the practice of psychology. The review identified alternatives of modified regulation (direct mental health and diagnostic services only) and transfer of the board to the Texas Department of Health. The final recommendation, however, would maintain the board as an independent agency with its current scope of regulation and make several improvements in its operation if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the commission with internal changes.
 - a. Current procedures used by the agency to pay the Professional Examination Service for the national examination given to doctoral level applicants should be modified so that such payments are authorized through the appropriations process.
 - b. Doctoral examination fees charged by the board should be statutorily authorized.
 - c. The "Health Service Provider" designation for psychologists that is made available through the board should be specifically authorized by statute.
 - d. Board rules should be amended so that persons holding both a certification and a license from the board are required to renew only their license on an ongoing annual basis.

- e. Mandatory interviews for applicants holding out-of-state licenses and "diplomates" of the American Board of Professional Psychology should be eliminated.
- f. The statute should be restructured so that grounds for disqualifying an applicant from sitting for an examination and grounds for removal of a license are: 1) easily determined and 2) are currently existing conditions.
- g. The board should develop and use in conjunction with the national exams an objective written test which covers the laws and rules regulating psychology in Texas.
- h. The statute should be amended so that the delinquency period for renewals conforms to the standard Sunset Commission approach.
- i. The board should take the necessary steps to ensure that procedures used in its enforcement hearings are in compliance with the Open Meetings Act.
- j. The statute should be amended to require that parties to a complaint received by the board be informed every three months concerning the status of the complaint until its resolution.
- k. The composition of the board should be modified to consist of three public members, one psychological associate, and five psychologists.

REAL ESTATE RESEARCH CENTER

BACKGROUND

Historical Perspective

The Texas Real Estate Research Center was created to upgrade real estate services available in the state. Since 1971, the Center has been involved in a range of research and educational activities such as 1) providing seminars and continuing education courses to real estate practitioners; 2) conducting research; 3) publishing reports and periodicals; and 4) assisting in the development of real estate courses for state junior colleges and universities. A review of events preceding the creation of the Center is helpful in explaining the needs which the Center has sought to address.

Economic conditions in the late 1960's led to increased recognition of the importance of real estate. Housing and land began to be purchased more frequently for investment purposes when the growth of other investments such as the stock market slowed. Real estate investments were also increasingly perceived as a hedge against accelerating inflation. Population shifts to Texas further increased the demand for real estate. The resulting demand for real estate services led the number of real estate practitioners to almost double during this period.

The nature of the real estate industry was also changing during this time. In response to changing housing needs and investment demands, new emphasis was placed on commercial development, recreational land development and multi-family housing such as condominiums and duplexes. Increased knowledge in real estate management and finance were required by all those involved in real estate transactions.

In response to the changing shape of real estate in Texas, members of the industry realized that increasing amounts of information and a new level of expertise within the industry were necessary to provide adequate service. Responding to these needs, the legislature enacted two major proposals during the 1970's. The Sixty-second Legislature, in 1971, created the Texas Real Estate Research Center which provided a new mechanism in the state for real estate research and assistance with real estate education.

The Sixty-fourth Legislature, in 1975, enacted a plan for increasing education requirements for persons initially obtaining a real estate license. Together these legislative acts were meant to provide increased information about real estate, through both higher basic standards and a means to increase the general knowledge within the real estate industry.

To accomplish the research and educational objectives intended for the Texas Real Estate Research Center, its enabling legislation placed it within the College of Agriculture at Texas A&M University. This provided an organizational frame-

work giving the Center access to academic personnel, outreach and other services. As part of the Texas A&M system, the Center could contract with faculty members of all disciplines within the university. Also, the Center could utilize programs and services such as the Texas A&M Agricultural Extension Service for disseminating information.

While the Center's enabling legislation placed final responsibility for its budget and staffing with the board of directors of Texas A&M University, an advisory committee was also created. Composed of real estate licensees and members of the general public, the committee was mandated to review and approve proposals relating to staffing, general policies, and priority ranking of research and educational studies. The advisory committee was required to review and approve a proposed budget for the Center prior to final action by the A&M board of directors. Additionally, all results, reports, and findings from research were required to be approved by the advisory committee before publishing.

Current operations of the Center are funded primarily from portions of real estate license renewal fees - \$15 of each broker fee and \$7.50 of each salesman fee. Revenues from this source totaled \$1,200,000 in 1979 with an additional \$166,671.27 derived from the sale of publications, fees for courses and seminars, and interest on fund balances. The Center presently employs a staff of thirty-one persons working full-time for the Center, five university faculty working part-time, and sixteen graduate assistants and students. Salaries and wages comprised forty-nine percent of the Center's total expenditures of \$1,119,383.62 during the last fiscal year. Center funds are maintained outside the Treasury by Texas A&M University with \$975,000 in unexpended revenues retained by A&M to the credit of the Center on August 31, 1979.

Comparative Analysis

To determine the pattern of real estate research centers within the United States, a survey of the fifty states was conducted to determine how this has been addressed in other states.

The need for real estate research is currently expressed through research centers in eleven of the fifty states surveyed. From the standpoint of organizational patterns, ten states meet this expressed need through a center associated with a state university. Eight states possess centers which are a part of or attached to a business school within a state university.

In those states with real estate research centers, ten have centers which consist of faculty members, while in two states, Kentucky and Texas, non-faculty staff share responsibility for a portion of the center's activity. In Texas the research center personnel consists mainly of non-faculty staff. Of those states with research centers, eight states have research priorities established by a policy-making body as in Texas. In six states, as in Texas, these boards consist of both industry representatives and public members.

A majority of the states indicated that their research centers were supported solely by private sources of funding related to the real estate industry. Three states, including Texas, indicated that their research centers were supported at least in part by real estate licensee fees and charges.

Three of the states with real estate research centers contract with other individuals or organizations for some of their research. In five states, centers also perform contract work for other entities. The Texas center both contracts some of its research to others and performs contract work for others. In eight states, research center activities also include publication of research findings but in many cases this is limited to academic journals. The Texas center distributes a periodical based on its research to all licensed real estate brokers.

Texas is the only state that is involved in the development of professorships or chairs of real estate at state universities. In four states, center personnel conduct continuing education for individuals engaged in the practice of real estate. In Texas, continuing education is conducted by the center.

In general, other states which have created real estate research centers perform the basic functions of administration and research while some of these states also provide, at least in some form, the services of communication and education to the real estate industry.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints regarding agency operations.

The Real Estate Research Center is directed by statute to conduct research in all areas of real estate, publish and disseminate the findings and results, and provide assistance for real estate teaching programs at colleges and universities.

A nine-member advisory committee, appointed by the governor without senate confirmation, provides policy guidance to the Center on budgetary matters and research priorities. Six committee members are representatives of the real estate industry, while three members represent the general public. The Center's enabling statute places the Center within the Texas A&M University System and provides for the System's board of directors to develop the Center's budget and staffing patterns. The Center is primarily supported by portions of licensee fees collected from licensees of the Real Estate Commission. All funds are maintained outside the treasury by the fiscal office of Texas A&M University.

With regard to agency administration, the Center generally meets the objective of efficient management. However, two concerns were identified in the review. The first concern relates to the payment for the services of the advisory committee. The Center's enabling statute does not authorize the payment of travel and per diem for members of the advisory committee. The Center has provided compensation to committee members in the form of a professional service fee amounting to \$250 per meeting. Statutory authorization for the Center to pay travel and per diem to committee members would allow equal compensation for services provided plus reimbursement for expenses incurred.

The second area of concern relates to the budget process of the Center, with two particular concerns noted during the review. First, the advisory committee has the responsibility to review and approve the Center's budget including the authority to reduce expenditures. The committee does not have parallel authority to reduce the Center's income from real estate licensee fees. This authority would allow the advisory committee to provide only the revenue necessary to operate within the approved budget. The second particular concern with the budget process relates to the fact that the Center is not subject to the appropriations process and thus there is no direct link between funding and planned performance. To provide legislative consideration similar to that provided for other components of the Texas A&M University System, the Center should be included in the appropriations process as a component of the Texas A&M University System.

With regard to research, the Center has generally been responsive to the research needs of the real estate industry. However, two concerns were identified with regard to the process of evaluating and selecting external research projects for funding. First, the Center has not clearly identified areas where external research projects would be most beneficial in complementing the staff's research expertise. This has meant that the Center has had to evaluate research proposals more subjectively than if they could compare proposals to specific research objectives. Establishing specific project objectives would provide a basis for evaluating research proposals based on their potential to satisfy research needs. The second area of concern relates to the internal procedures used to evaluate proposals. The Center staff does not consistently use procedures which have been developed for making decisions regarding the funding of external research projects. Consistent use of these procedures would help assure consistent application of review criteria.

A review of the communication division of the Center indicates that research findings and information about the Center are prepared and disseminated for real estate practitioners and the general public. One concern was noted in the review relating to the approval process for publication of research reports. By statute, research reports must have the written approval of the advisory committee prior to publication. Two problems were identified with the procedure established for approval of publications. First, the Center will proceed with publication of articles distributed to committee members, even if the staff does not receive a written reply, a procedure technically in conflict with statutory requirements. Second, a negative reply can prevent the publication of a report or result in changes prior to publication that are not considered by the whole committee. These problems could be addressed by requiring written approval of at least one advisory committee member prior to publishing any materials and by providing for full committee consideration of any reports that have received negative comments by a committee member.

A review of the Center's education division indicates that the primary need for which this division was developed has been achieved, and therefore there is no continuing need for the Center's involvement in the development of education programs. The ability of education programs to continue without the Center's support was also evaluated. Programs begun in junior and senior colleges can continue without assistance, while other functions presently performed by the Center, could be assumed by trade associations. Thus, the present educational role of the Center could be modified by removing its statutory mandates in this area

without disabling the strong program of real estate education which presently exists in Texas.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of alternative methods of performing the function; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Organizational structures used to provide real estate research in other states were reviewed in order to determine alternatives with potential for use in Texas. Currently, there are ten other states which provide real estate research through a research center. Four of these states provide dissemination of research findings along with providing some form of educational assistance, while the other six are involved in research and dissemination only. Sixteen states provide real estate research through the establishment of research chairs at a state university. The remaining states allow real estate research to be conducted within the usual research structure of state universities. Analysis of these organizational alternatives indicates that if the current level of service is to be maintained in Texas, then a real estate research center is most effective. Should the desired level of service be lower than that currently provided, then alternative university structures become feasible.

If designated funding for real estate research is continued in Texas, an alternative exists which would be to abolish the Center and continue designated state funding of real estate research through the Coordinating Board. The Coordinating Board could develop guidelines for administering research grants to academic institutions throughout the state, instead of funding research largely at one university. Additionally, through interagency contract, the Coordinating Board could use the capabilities of the Texas Agricultural Extension Service to disseminate research information.

The funding alternative predominate in other states is to provide no special funding for real estate research. Eliminating the Center's special source of funds would require real estate research to compete for funding with other university research programs. A transition period of reduced levels of designated state funding could provide Texas A&M University with sufficient time to identify other funding sources. The Bureau of Business Research at the University of Texas provides an example of a specially funded program which has recently been merged with a university's organized research structure. This approach would reduce state license fees, but it would also shift the Center's responsibility from being a statewide research center to one that is responsible mainly to those organizations providing its funding.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria

covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

Because of uncertainty regarding the responsibility of the Center with respect to conflict-of-interest provisions, the Center's director and most advisory committee members have not filed financial reports related to conflict-of-interest provisions. The Center has indicated that it will comply with reporting requirements. Adding a provision to the Center's statute that advisory committee members are subject to conflict-of-interest provisions would be consistent with the accountability required of other policy making bodies and with Sunset Commission recommendations regarding conflict of interest.

The agency has complied with statutory requirements regarding open meetings and open records. As part of the Texas A&M University System, the Center operates under an affirmative action plan updated by the university in 1978. No formal employee-related complaints have been filed against the Center.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The Center involves the public in its operations primarily through providing research directed toward the general public. The Center also distributes pamphlets describing its operations, enabling statute, and available publications. These pamphlets, as well as most other publications, are provided free of charge upon request. Regarding advisory committee members, the public's viewpoint could be more clearly represented if public members on the committee were restricted to persons without financial interest in the practice of real estate. Also, confirmation by the senate of appointments to the advisory committee would provide a mechanism for ensuring that appointees are qualified to serve on the advisory committee.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

One legislative change has affected the Center's operations since its creation in 1971. In 1975, Senate Bill No. 344 raised the maximum fees for real estate broker and salesman licenses, increasing the amount of each designated for support

of the Center. No other attempts to pass legislation affecting the Center's operations have been made and the Center did not recommend any changes in its self-evaluation report.

NEED TO CONTINUE THE FUNCTION AND ALTERNATIVES

The review indicates that there is a continuing need for real estate research. The review also identified that a feasible alternative to the present system would be to discontinue designated state funding for the Center allowing Texas A&M University to continue real estate research contingent on other sources of funding. The review concluded that a number of improvements should be made to the operations of the Center if it is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the center with internal changes.
 - a. Amend the statute to authorize payment of per diem and travel expenses to advisory committee members.
 - b. Amend the statute which dedicates the portion of real estate license fees to Texas A&M University so that the advisory committee would have the authority to reduce the amounts transferred.
 - c. Include the Center in the appropriations process as a component of the Texas A&M University System.
 - d. Establish specific objectives for research grants and fund projects on their ability to meet these objectives.
 - e. Provide consistent documentation to support decisions regarding the funding of research grant projects.
 - f. Modify the procedure for advisory committee approval of Center publications.
 - g. Amend the statute to modify the educational functions of the Center shifting emphasis from assisting real estate teaching programs to educating the general public in home buying and other real estate transactions.
 - h. Make the advisory committee subject to conflict of interest statutes.
 - i. Provide for senate confirmation of advisory committee appointees.
 - j. Clarify that public members of the advisory board are to have no financial interests in the practice of real estate.

TEXAS STATE BOARD OF EXAMINERS IN SOCIAL PSYCHOTHERAPY

BACKGROUND

Historical Perspective

The term social psychotherapy in statutory law is unique to Texas. Social psychotherapists, along with other groups, utilize the technique of psychotherapy to treat mental or emotional disorders by a variety of psychological means such as counseling or group therapy. The objective of psychotherapy is to allow a client to alleviate mental stress or to develop coping strategies.

Although general areas of psychotherapy are discernable, distinct boundaries for its practitioners are difficult to establish. Services, including psychotherapy, may be provided by doctors, psychologists, psychiatrists, social workers, lawyers, nurses, social psychotherapists, and other groups.

Psychiatrists, particularly Sigmund Freud and his followers, were the first practitioners to attempt scientifically to treat mental disorders. They utilized medical models, and provided treatment of mental disorders that could be traced to physical or hereditary problems.

The field of psychotherapy was greatly expanded by the development of behavioral psychology in the early 1900's. This group emphasized the importance of environmental and learning experiences, thereby opening the mental health field to practitioners other than medical doctors. This expansion was speeded by World War II when many veterans returned with severe emotional problems. The limited numbers of available psychiatrists necessitated the use of psychologists, nurses, clergy, social workers and others. Each of these groups has continued to provide psychotherapy, with slight differences in emphasized techniques evident from group to group.

The increase in use of psychotherapy and the number of groups, both licensed and unlicensed, providing such service compounds the difficulty in determining "danger" to the public from incompetent delivery of psychotherapeutic services. The first specific attempts in Texas at licensing psychotherapeutic practitioners was in 1959, when legislation was introduced to regulate psychologists. The first attempt, in 1973, to regulate social psychotherapists was directed at clinical social workers, (House Bill No. 1536, Sixty-third Legislature) and was unsuccessful.

In 1975, social psychotherapists were regulated by H.B. 247, Sixty-fourth Legislature as a compromise in attempts to regulate clinical social workers. The Act attempted to identify and license those persons who have completed a specific sequence of training, demonstrated competence (through testing) in practical application of those methods, and wish to practice as social psychotherapists.

Approximately 825 persons initially were licensed as social psychotherapists through a grandfather clause. Fifty-nine persons have been licensed through examinations since the agency was created. As of February 1980, there were 742 licensed psychotherapists.

Comparative Analysis

A review of licensing activities of the fifty states showed that Texas is alone in regulating social psychotherapists. While several states do regulate psychotherapists, the activities of these occupations did not represent the same kind of activity regulated by Texas.

Those states regulating clinical social workers were found to be much closer to the type of activity regulated by Texas. Although the practice of social psychotherapy and clinical social work are not precisely equivalent, it is felt that the statutory definitions of the two occupations are sufficiently similar to warrant further review of the organizational patterns established for their regulation.

The need to regulate clinical social workers (or social psychotherapy in Texas) is currently expressed through statewide licensing requirements imposed by eleven of the fifty states surveyed. From the standpoint of organizational patterns, seven states meet this expressed need through governmental departments charged with the regulation of multiple occupations. In another three states, including Texas, the occupation is regulated by a board which operates as part of a larger substantive agency such as the Department of Health. In only one state is the regulation of clinical social work carried out by an independent board.

In those states which utilize boards and commissions, the chief executive appoints board members in ten states and five of these states require that appointees be confirmed by the legislature. Membership in all but three states includes both persons who are licensed members of the occupation and persons who are not. In Texas, board members are appointed by the governor, confirmed by the legislature, and membership is limited to licensees. Nine of the eleven states, including Texas, utilize governing bodies with the responsibility of policy-making as distinguished from a strictly advisory role.

A majority of the states, including Texas, indicate that the regulatory body is totally supported by fees collected. Three states indicate that these bodies are not solely supported by fees and charges of the agency.

In six states, licenses are renewed every two years. One state renews every three years and four states, including Texas, renew annually. Enforcement activities in all states involve investigation of complaints from consumers and those engaged in the occupation of clinical social work or social psychotherapy. Disciplinary hearings are conducted by the regulatory agency in nine states. In Texas, the agency is authorized to conduct disciplinary hearings. All but one state requires passage of a board examination prior to licensure.

States which regulate clinical social work generally indicate the necessity of performing the basic functions of administration, testing, license issuance and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Board of Examiners for Social Psychotherapists is composed of six licensed social psychotherapists appointed by the governor with the advice and consent of the Senate for six-year terms. The board is directed by statute to regulate all persons claiming to be a "social psychotherapist" or using the letters "S. P." as a means of professional identification.

The operation of the board can be broken down into three activities; administration, licensing, and enforcement. With regard to administration, several concerns were identified in the review. First, the Texas Department of Health's treatment of the board in an advisory capacity does not comply with legislative intent. Second, the lack of accurate operating data is a hindrance to proper management and to a determination of effectiveness. Third, the board lacks the authority to employ staff. The statute should be modified to give the board this privilege to help ensure good management and proper accountability. The last area of concern in the general area of administration deals with the modification of the statute to authorize the present non-statutory fee schedule of the board.

Review of the licensing activity indicated that the board has established a screening process to ensure minimum competency based on a review of graduate academic training, post graduate experience, and examination. There were five concerns identified in licensing activities. First, the board's screening process for the appropriateness of course content equivalent to those of accredited social work programs hinders new board member's decision-making capacity, and lends itself to subjectivity. This situation would be eliminated with the development of an inventory of appropriate course titles listed by school. Second, the statutory qualification for post graduate supervisors poses limitations to an applicant's choice of supervisor. The Act and rules should be modified to allow for a less restrictive approach. Third, two factors have delayed the notification of examination results to examinees: the grading of the exam and the requirement of board approval on exam scores. The board has acted recently to implement procedures that should eliminate the delay due to grading, but sufficient time has not passed to verify improvement. The board should develop procedures to notify examinees of exam results pending their approval by the board. Fourth, 94 percent of licensees renew by the August 31 deadline creating a heavy workload during this period. Periodic renewals should be initiated to improve efficient utilization of board personnel by establishing a uniform workload year round. Fifth, the delinquency period of six months is excessive in comparison with regulatory boards of similar size and should be shortened.

Two concerns were identified with regard to enforcement activities of the board. The first concern relates to the need for the development of written rules and procedures for the handling of complaints to increase board efficiency and protection to the public. The final area of concern dealt with the difficulty the potential consumers have in identifying licensees and the resulting hindrance this creates to the board's enforcement powers. A statutory change which would require "social" psychotherapists to be known as "licensed" psychotherapists could help eliminate consumer confusion.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

A review of other state approaches to the regulation of social psychotherapy has been conducted to determine the potential for combining its regulation with the functions of another agency. Since, no state regulates "social psychotherapy" except Texas, the approach taken centered on a review of states regulating "clinical social workers" because the activities of this occupation most closely parallel those of social psychotherapists.

The review indicated that one state regulates clinical social work through an independent board and that seven of the ten states regulating clinical social work do so through a department of occupational licensing or umbrella licensing agency. Two of the states regulate the occupation within a larger agency with additional substantive responsibilities. This latter approach is that taken already in Texas, as the social psychotherapy board is currently administratively attached to the Texas Department of Health. The other option of consolidation with a department of occupational regulation is not viable as such an agency does not exist in Texas. The independent board approach would not provide the benefits currently experienced by the board within the Health Department structure.

One other administrative alternative has been considered which would merge the agency with an existing board licensing psychologists. In general, merger with the Board of Psychology Examiners does not appear to offer demonstrable benefit to the public. The merger would remove the Social Psychotherapy Board from the Health Department, thereby reducing benefits gained through its general support system (accounting, personnel sharing, etc.). The merger would also increase general confusion relating to distinctions between psychologists and social psychotherapists. Although minimal public notice is achieved through the regulatory title of "social psychotherapy", at least public notice of dissimilarity between the two occupations is provided. This dissimilarity is primarily related to the differing educational and experiential backgrounds required for licensure.

A number of regulatory alternatives have been considered. These alternatives range from no regulation to expansion of regulation to include all persons practicing "psychotherapy".

This last alternative would generally include at least those persons known as social workers, marriage and family counselors, psychologists as well as social psychotherapists. The pursuit of this alternative does not appear warranted due to the following reasons. It is clearly a more restrictive alternative through its requirement to regulate two presently unregulated occupations in Texas, social workers and marriage and family counselors. Only three states have chosen to regulate all of these occupations and only one of these regulates clinical social work in a fashion similar to the regulation of social psychotherapy in Texas. Finally, such a drastic increase of state regulatory power should only be made if clear and compelling public dangers can be foreseen due to the lack of such extensive regulation. The assessment of general public danger raises questions of the need to continue the current regulation of social psychotherapists without providing justification for the addition of two occupations currently unregulated by the state.

A number of regulatory alternative including reduced regulation and no regulation at all, have been reviewed. Reduced regulation, such as registration, might provide public protection in consonance with current regulatory activities. No regulatory of social psychotherapists has been seriously considered due to difficulties in isolating the harm arising from the incompetent practice of "social psychotherapy." Neither of these alternatives, however, has been adopted.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict-of-interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interest, open meetings, and open records.

The board generally complies with required employment practices and policies and with the requirements set forth in the conflict-of-interest statute, the Open Meetings Act and the Open Records Act. Two areas of operation, however, should be corrected. The board should discontinue the use of executive sessions to hear complaints filed against its licensees unless, in the opinion of the Health Department's Legal Division, such use is appropriate. Additionally, the board should take steps to remove the confidential status of college transcripts held in applicant and licensee files.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

The board has complied with public participation requirements, however, public participation in the policy processes of the board has been minimal. It would appear that deletion of outdated statutory requirements for newspaper publication of meeting notices is justified and that increased efforts to develop general information materials should be pursued. Further, to help ensure that the public's point of view is properly represented, public members should be placed on the board which is currently composed entirely of licensed social psychotherapists.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

In the history of the board the only amendment to the Act was the Sunset Act (Senate Bill No. 54, Sixty-fifth session). In the self evaluation report, the board has recommended six amendments that range from rule-making authority to the expansion of its regulatory control.

NEED TO REGULATE AND ALTERNATIVES

The evaluation of the Texas State Board of Examiners in Social Psychotherapy indicates there is a continuing need to regulate the occupation of social psychotherapy if modifications are made to its current operations. The review identified continuation of the current organizational alternative as being most appropriate, but determined that the relationship between the board and the Health Department should be clarified. Additionally, a number of improvements in board operations and in identification of licensed social psychotherapists should be made if the board is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- The commission made no recommendation concerning this agency.

VETERANS AFFAIRS COMMISSION

BACKGROUND

Historical Perspective

From its early history Texas recognized the need to provide benefits for veterans and their dependents. Prior to World War I Texas provided direct benefits to certain veterans and dependents of the War of Independence and the Civil War in the form of grants of land and pensions.

After World War I the overall responsibility for providing direct benefits to veterans shifted to the Federal Government. The United States Veterans Bureau was created as the federal agency responsible for providing compensation, hospitalization, insurance and other benefits to veterans. As an adjudicatory agency, it and its successor, the Veterans Administration, determine veterans' benefits based on the presentation of claims.

With the expansion of the federal role in veterans' benefits, Texas' approach changed to a role of assisting veterans in the preparation of claims. In 1927 the legislature created a State Service Office to aid Texas veterans of World War I in obtaining benefits from the United States Veterans Bureau. The law cited, as a need for the creation of the agency pending claims, claims disallowed and new claims filed at the rate of 1,000 per year. The law also indicated that many Texas veterans and their dependents did not know their rights and were not able to present their claims properly. The responsibilities of the State Service Office were expanded in 1937 to provide services to Texas veterans or dependents of veterans of any war or peacetime enlistment.

With the termination of World War II, there were major changes both in benefits and numbers of veterans receiving these benefits. In meeting this new demand and to insure that veterans had proper access to information concerning federal benefits, the legislature, in 1943, created an additional administrative structure, in the form of the office of Veterans County Service Office, to serve returning veterans. County commissioners' courts were authorized to maintain and operate the offices with county funds. The county offices were made responsible for aiding county residents and dependents who served in the United States armed forces during any war or peacetime enlistment in preparing claims for benefits against the United States.

In 1947, the state structure was modified to better serve the expanded population of Texas veterans. In that year the State Service Office was abolished and was replaced by the present Veterans Affairs Commission.

The two-tiered system created by Texas to provide claims representation and counseling and other services has moved through several evolutionary cycles since World War II. Major additions to United States Veterans Administration benefits for veterans, beginning with the Servicemen's Readjustment Act of 1944 (the GI Bill of Rights) and a series of other federal benefits enacted since, have significantly increased the activities of the Veterans Affairs Commission and veterans county service offices in assisting Texas veterans. After the initial rise

of veterans claims from World War II and the Korean War, activities of the veterans county service offices began to diminish in the late 1950's. With the expansion of services provided through additional field offices, the state structure was able to service most of the claims adequately. Additionally other state agencies such as the Veterans Land Board and Texas Education Agency were given responsibilities in the provision of benefits to veterans.

Currently the commission, composed of five members appointed by the Governor, has the following statutory responsibilities:

To assist veterans and their dependents in presentation of claims for benefits.

To compile laws enacted for the benefit of veterans and their dependents and members of the armed forces.

To cooperate with all governmental and private agencies securing services or benefits to veterans and their dependents.

To investigate abuses or exploitation of veterans and their dependents.

To coordinate the services of state agencies with services affecting veterans and their dependents.

To cooperate with and assist in training of county service officers.

Services provided under these statutory directives include assistance to veterans, their dependents and survivors to develop documentation and prepare claims for benefits; counsel on available benefits, employment and reemployment rights; itinerant contact services; counseling and representation before military discharge review boards; guidance and assistance in the training of veterans county service officers; liaison with veterans' service organizations; cooperation with state and federal agencies with responsibilities on veterans and information on 29 benefits available from the Veterans Administration ranging from automobiles for certain disabled veterans to war orphans' and widows' educational assistance. Another significant service provided by the Veterans Affairs Commission is to follow Texas veterans' claims until a decision is made by the Veterans Administration and, if necessary, to file an appeal of a decision.

To meet these responsibilities the commission currently is appropriated \$1,220,807 for fiscal 1980 and \$1,278,458 for fiscal 1981 from the general revenue fund and provides services from a central office and 22 field offices with 75 personnel. The field units are two regional offices; 10 offices at Veterans Administration hospitals; two at military hospitals; three at Veterans Administration outpatient clinics, one at a military base and four at non-federal locations.

Comparative Analysis

Forty-seven of the 50 states that were surveyed operate programs designed to assist veterans in obtaining VA benefits. Twenty-eight of the states, including

Texas, meet this need through an independent agency. The remaining states administer the veterans affairs function through an agency charged with multiple responsibilities, usually the state social services agency or the adjutant general's office.

Forty-two of the states, including Texas, that have a board or commission require all board members to be veterans. Only four states require public members while two states have legislators on the board. In 10 states the veterans affairs responsibilities are agency operated; that is, there is no board or commission. Commission members are appointed by the governor in 28 of the states. In approximately one-fourth of the states, including Texas, the governor appoints commission members subject to legislative consent. The size of state veterans affairs commissions ranges from three to 15 members. The most frequent commission sizes are seven-member boards and five-member boards. Texas has a five-member board.

Based on the results of the survey, the overall priority ranking of functions performed by state veterans affairs agencies are as follows:

<u>Priority Rank of Other States</u>	<u>Texas' Priority Rank</u>	<u>Function</u>
1	4	Cooperating with governmental and private agencies in obtaining benefits and services for veterans and their dependents.
2	1	Claims representation for benefits for veterans and their dependents.
3	2	Assists in training county veterans service officers.
4	5	Provide information on veterans educational training and retraining facilities.
5	6	Provides information on veterans employment and reemployment services.
6	3	Provides other information on benefits for veterans and their dependents.

Other major functions listed by state veterans affairs agencies but not ranked by priority included: (1) administration of nursing homes and hospitals, (2) other educational benefits, (3) bonuses to veterans and their dependents.

Twenty-eight veterans affairs boards or commissions, including Texas, are policymaking only. Approximately one-fifth perform both policymaking and administrative functions. The remaining boards or commissions are advisory only.

Thirty-seven states, including Texas, indicated that the state approval agency for veterans education responsibility was the duty of another state agency. This function is most frequently administered through a state department of education.

Most state agencies' field offices are located in non-federally furnished office space. However, in Texas, many of the field offices are in federal installations. A substantial majority of the respondents, including Texas, indicated that their functions were decentralized. Thirty-seven of the state veterans affairs agencies, including Texas, require that the executive director be a veteran. A large majority of the states also require that the assistant directors and the veteran service officers be veterans. Texas and a few other states require that all male employees be veterans.

Forty-two state veterans affairs agencies are at least partially financed by state general revenue. Just over half of these agencies, including Texas, are funded totally out of the state's general revenue fund. Approximately one-third of the state agencies receive some form of special state funding and just over one-fifth of the agencies are partially funded by federal sources.

Overall the basic organizational structure of the Texas Veterans Affairs Commission is consistent with the majority of other state veterans affairs agencies. The only instances where Texas does not follow the norm is with the appointment methods of board members and the location of the agency office space.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints regarding agency operations.

The efficiency of the commission's administration function was reviewed in terms of the control systems established to assure that the agency's funds and personnel were utilized in an appropriate manner. The review showed that general accounting procedures are adequate to account for agency expenditures. However, the budgetary process does not separate items of cost within each field office. The agency's monthly activity report which contains data such as the number of claims filed is generally well constructed. However, work load data have not been compiled for several other activity measures such as the monetary award that result from the claims filed.

A more complete budgetary and information system would enable the agency to tie the performance of its field offices to the costs of maintaining them. This practice could result in the reduction of some agency personnel.

Some of the agency's employment requirements are of questionable constitutionality. However, the agency is not contemplating changing them. Personnel

from two field offices serve a substantial number of non-Texas veterans.

The review also noted that, despite the agency's lack of control over the 225 county service officers, the agency has had a fair amount of success in encouraging the CSOS to attend its training sessions. The training sessions are efficiently run and well constructed. If the agency would collect data that measures the competence of the CSOs, it could structure its training to address these weaknesses. This should result in the agency achieving its objective which is assuring a minimum level of competence for both state and county service officers.

The claims representation and counseling services program constitutes the major effort of the commission.

The bulk of the claims filed in Texas are filed through two of four major groups. The state and federal Veterans Administration handle the majority of the claims through their regional office network.

Commission representation and counseling services are provided through a central office, two regional offices and field offices located at 12 federal hospitals, three Veterans Administration outpatient clinics, an Air Force base and four non-federal locations.

On-site review of commission field offices indicated that general procedures relating to basic files, personnel and property management were pursued in a satisfactory manner.

The review developed several areas in which improvements to current operations could be made. New admissions are screened at one commission field office at a Veterans Administration hospital to determine patients that should be seen, but at a commission field office at another Veterans Administration hospital, all new patients are seen without screening. Staff routinely leave cards at bedside of veterans who are not in their rooms when the commission representative arrives for an interview at another commission field hospital office. At several commission field offices, staff do not routinely ask veterans on wards if another service representative has seen them. A notation is entered on commission files at two commission field offices that a VA representative has seen a veteran on wards.

Appropriate commission personnel should review these practices to determine their application to other field offices.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of alternative methods of performing the function, and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Most states, including Texas, administer the veterans affairs function through an independent agency. The majority of the rest of the states perform the function through either the social services agency or a military affairs-related agency. Consolidating the agency with DHR is not feasible since the agencies serve different target populations. Consolidating the Veterans Affairs Commission with the Adjutant General's Department would not produce significant benefits because the agencies perform entirely different functions. The Veterans Land Board is not equipped with an adequate administrative structure to perform statewide counseling activities.

With respect to alternative methods for delivering services, the state subsidizing counties is the most feasible. Adoption of this proposal could reduce the cost to the state and increase the level and quality of services provided. Allocating state personnel to areas where there is no county or federal service office would not prove cost effective. Finally, abolishing the agency would save the state over one million dollars annually; however, the level of service would be reduced and the state would likely experience a substantial loss of benefits to veterans who are residents of the state.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

The Veterans Affairs Commission has complied with the Ethics and Financial Disclosure Act and the Open Meetings and Open Records Acts. The agency is operating under an approved Affirmative Action Plan and is making visible progress toward employing more minorities, especially in professional positions. However, females represent only a small part of the professional work force due to accreditation procedures. Although the VAC has a formal grievance procedure, no grievances have been filed.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its decisions as opposed to participation solely by those it serves and the extent to which the public participation has resulted in operations compatible with the objectives of the agency.

The degree to which the agency has involved the public in the decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the availability of information concerning agency operations, special efforts made by the agency to involve the public in its operations, and the existence of public members on the board.

The commission is responsible in the enabling legislation for informing veterans and their dependents and other specified groups of veterans benefits. The commission is also charged by the statute with assisting in the training of county service officers. Commission activities are focused on veterans, veteran service officers and related groups but to a limited extent the commission also seeks to inform and involve the public. The commission complies with statutory requirements in general laws for public notice of its meetings, and notifies interested organizations of meetings but makes little effort to inform the general public. The enabling legislation does not provide for public members on the commission. Public involvement in activities of the commission could be increased by providing for public members on the commission.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the general public rather than to a population served by the agency and statutory changes recommended by the agency for the improvement of the agency's operations.

In conclusion, three amendments to the commission's enabling legislation have been enacted. These amendments increased commission members' per diem for meetings from \$10 to \$25, removed maximum salary limits for the executive director and the two assistant directors, and made the commission subject to the Texas Sunset Act. Two types of changes have been unsuccessfully proposed during the commission's history. The first would have transferred the commission's responsibilities to County Veterans Service Offices. Other unsuccessful proposals sought to authorize the commission to construct, maintain and operate a veterans nursing home in El Paso County with state and federal funding. The commission recommended in its self-evaluation report the removal of the provision attaching the State Approval Agency for Veterans Education to the commission for administration only, providing a structure consistent with the current division of responsibilities.

NEED TO REGULATE AND ALTERNATIVES

The review indicates that there is a continuing need for the state to provide the functions performed by this agency. The review identified the organizational alternative of performing this service through the Department of Human Resources. An additional method for providing this service could take the form of the state contracting with counties to perform claims representation and counseling services. Under this alternative, the level of services would decrease.

SUNSET COMMISSION RECOMMENDATION

- Maintain the commission with internal changes.
 - a. Expand the commission's membership to six, with at least four members having been honorably discharged or honorably released from active military service. Require that at least one member be classified as a disabled veteran by the Veterans Administration.
 - b. Investigate the appropriateness of implementing a budgeting and reporting system which would provide the capability to perform cost-benefit analyses by office in budgetary and staffing decisions;
 - c. Modify the statutory provisions and policies placing requirements on male employees by removing those provisions and policies;
 - d. Remove employment criteria whose constitutionality have been questioned by the State Auditor;
 - e. Provide for separate telephone listings for field offices;
 - f. Eliminate the wording in the commission's statutes which deals with agency responsibilities as the State Approval Agency for Veterans Education;
 - g. Carefully review current processes to determine whether duplication of effort between state service officers and Veterans Administration service representatives exists and to take steps to eliminate any documented areas.

TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

BACKGROUND

Historical Perspective

The State Board of Veterinary Medical Examiners was first established in 1911 to regulate the practice of veterinarians. The history leading to the state regulation of this profession appears to be based largely on economic conditions associated with the cattle industry around the turn of this century.

About 1900 the cattle industry of this state was experiencing significant economic harm as a result of Texas Fever. This disease, which could not be effectively controlled for many years, had caused devastating losses of cattle. In addition, as a result of the Texas Fever problem, Oklahoma had instituted a prohibition on the importation of Texas cattle across its borders unless such livestock had been inspected by qualified individuals. Oklahoma took this action by enacting a statute which restricted the interstate transportation of livestock from Texas.

In the early 1900s the serious economic problems associated with Texas Fever in cattle herds were largely solved as a result of work performed in Texas through research and practical experiments conducted by several veterinarians who were trained and licensed in other states. These veterinarians identified the cause of Texas Fever and helped to develop effective immunization procedures against the disease. The success of these trained veterinarians in helping to restore the economic health of this major Texas industry underscored the need for formally trained and qualified veterinarians to deal with livestock problems.

In an effort to secure the previously demonstrated benefits resulting from the practice of qualified veterinarians, Texas began to license such professionals in 1911 in order to ensure the competent practice of veterinary medicine. The agency empowered to carry out this licensing program was the State Board of Veterinary Medical Examiners.

Since 1911 the statute regulating veterinarians has been modified on several occasions. The Act, adopted in 1911 was repealed and a restructured Act was enacted in 1919. The Act approved in 1919 was repealed and a restructured Act, the present statute, was adopted in 1953. While various changes in the law are significant, the current scope of the board's regulatory authority under its statute is similar in many respects to its original design.

Currently, the board is composed of six veterinarians appointed by the governor to overlapping six-year terms. The board has a staff of four employees -- an executive secretary, an administrative assistant, an investigator and a secretary. One or two part-time employees work during peak periods. At present the board regulates 3,460 licensees.

Operations of the board are supported entirely from fees collected by the board and appropriated for its use by the legislature from Veterinary Fund No. 35 in the State Treasury. In fiscal year 1979 the board collected \$123,635 and expended \$132,910. The appropriation from the Veterinary Fund is \$161,733 for fiscal year 1980.

Comparative Analysis

To determine the pattern of regulation of the occupation of veterinarian within the United States, a survey of the fifty states was conducted.

The need to regulate the occupation of veterinarian is currently recognized through licensing requirements imposed by fifty states. From the standpoint of organizational patterns, eighteen states, including Texas, meet this expressed need through an independent board or commission. In thirty-two states, the regulation of veterinarians is carried out through a board associated with a state agency charged with multiple regulatory functions. Board members are appointed by the chief executive in forty-six states.

Licensing boards composed entirely of licensed practitioners administer veterinary laws in thirty states, including Texas. In twenty states, the regulation of veterinarians is achieved through a board possessing public members. Animal health technicians serve on the board in two states. While fees are collected by all fifty boards, funding patterns vary across the states. Boards in thirty-six states, including Texas, are supported at least partially by the fees they collect. Unlike Texas, seventeen of the veterinarian boards are funded through the appropriation of general revenue funds. In seven states, not including Texas, veterinary boards perform only advisory functions .

In Texas, as in forty-three other states, veterinary boards conduct investigations in response to consumer complaints. In all states but one, veterinary boards have responsibility for conducting disciplinary hearings. Twenty-two state boards indicate that they regulate more than one occupation. Thirteen veterinary boards license animal health technicians. Animal health technicians are not licensed in Texas. Continuing education is a condition for relicensure in twenty-three states, not including Texas.

All veterinary boards surveyed indicate the need to perform the basic regulatory functions of administration, testing, licensing, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Texas State Board of Veterinary Medical Examiners consists of six members appointed by the governor for six-year overlapping terms. The board is directed by statute to regulate veterinarians through the licensure of qualified applicants and the enforcement of the provisions of the Act.

Board operations can be divided into three activities: administration, licensing, and enforcement. With respect to administration, it was projected that by fiscal year 1985, agency expenditures will exceed revenues by almost \$50,000. As a result, the board's statute should be amended to allow it to charge necessary and reasonable fees to cover the amount of its legislative appropriations.

With regard to the licensing activity, several aspects should be improved. First, grounds for refusal to allow an individual to sit for the examination and grounds for removal of a license once issued should meet a two-part test. Grounds should be clear and related to the practice of the profession, and should be stated in terms of a currently existing condition rather than an absolute condition which exists throughout the lifetime of an individual. Some of the grounds in the Act do not meet this test. The statute should be restructured so that such provisions comply with the criteria.

Second, the statutory requirement that licensees be United States citizens is unconstitutional in light of attorney general opinions and past Supreme Court decisions. This requirement should therefore be removed from the Act.

Third, candidates for licensure are admitted to the examination room without having to show proper identification. This system unnecessarily increases the possibility for a person other than the candidate to sit for an examination. Thus, a procedure should be developed that enables the agency to match a candidate's name to some type of appropriate identification.

Fourth, in limited circumstances, the board uses a reciprocal licensing procedure for out-of-state applicants. The Sunset Commission has recommended an across-the-board basis that an "endorsement" rather than a reciprocal agreement approach be used. The standard sunset language concerning the less restrictive endorsement procedure should be incorporated in the agency's statute. This approach gives the board the authority to accept licenses from other states as grounds for waiving certain Texas licensing requirements without a reciprocal agreement if standards in other states are determined by the board to be substantially equivalent to, or more stringent than, Texas' requirements.

Fifth, an oral interview is required for all applicants holding out-of-state licenses who are seeking licensure in Texas. The questions asked during these interviews are not always related directly to the practice of veterinary medicine or requirements for licensure. As a result, procedures and guidelines should be established for use in interviewing applicants holding out-of-state licenses.

Sixth, the board charges a small fee for late license renewal and there is no uniform method for ensuring continued competence of those licensees who do not renew over an extended period of time. As a means of discouraging late renewals the statutory provision regarding delinquent license renewals should be amended so that: 1) the renewal of licenses expired for not more than 90 days would require payment of the required renewal fee and one half the examination fee; 2) the

renewal of licenses expired for longer than 90 days but less than two years would require payment of all unpaid renewal fees and the examination fee, and 3) the renewal of licenses expired for two years or longer would require reexamination and compliance with requirements and procedures for obtaining an original license.

With regard to enforcement, the review identified five concerns. First, the board currently does not have specific statutory authority to require licensed veterinarians to maintain records, subject to board inspection, on certain types of controlled substances that are used in the practice of veterinary medicine. Thus, it is difficult for the board to ensure that veterinarians do not prescribe drugs for uses other than the proper treatment of animals. In order to help control the prescribing of drugs for improper uses, the board should be given statutory authority to require its licensees to maintain records, subject to board inspection, on the purchase, dispensing, administering, and balance on hand of certain drugs.

Second, the board has adopted a rule that permits full-time students of an accredited college of veterinary medicine on a college extern or preceptor program to perform all aspects of veterinary medicine under the direct visual supervision of a licensed veterinarian. This rule appears to conflict with the statutory provision that permits only licensed individuals to practice veterinary medicine. The statute should be amended to exempt students of an accredited college of veterinary medicine involved in an extern or preceptor program from the licensing requirements of the Act.

The third area of concern under enforcement relates to the fact that, although the current board policy which essentially prohibits false and misleading advertising is consistent with the approach recommended by the Sunset Commission and recent court decisions, the policy is established in rule and is therefore potentially subject to change without proper legislative consideration. As a result, the board's policy regarding advertising should be made statutory.

Fourth, review of board actions in district court by trial de novo should be removed from the statute. Trial de novo requires all testimony and evidence to be presented anew in court. This procedure could hinder the disposition of appeals. The "substantial evidence" rule provided in the Administrative Procedures Act should be applied on appeals.

Finally, the board currently does not have specific statutory authority to probate suspension of licenses. In the absence of explicit authority, a Texas Supreme Court decision and an attorney general's opinion have shown that such a sanction cannot be applied by an administrative agency. The review showed that situations arise where the probating of suspensions is appropriate. Board enforcement powers should therefore be increased by statute to authorize the probating of suspensions.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

With regard to consolidation alternatives, the review showed that, among the fifty states which license veterinarians, thirty-two carry out regulation through a board associated with a state agency charged with multiple regulatory functions. Veterinarians are regulated through occupational licensing agencies, departments of health, departments of agriculture, and livestock sanitary boards. While Texas has no occupational licensing agency, the state does have other agencies which are used in various states for the regulation of veterinarians. These are the Department of Agriculture, Department of Health and Animal Health Commission.

Among these alternatives, the Animal Health Commission is the most reasonable alternative for consolidation. Both the commission and the board carry out animal health-related functions. The commission has area offices and inspectors over the state to perform enforcement functions. The commission has information services available, is acquiring computer capability and performs permitting and licensing duties. Its focus is on control and eradication of animal diseases.

The review concluded that there is a continued need for state regulation of veterinarians. Such regulation is performed through licensing in all fifty states. With regard to regulatory alternatives to licensing, the methods of certification and registration are frequently used to regulate other occupations. While they are less restrictive than licensing, these two options provide less protection to the public than the present system and therefore do not constitute suitable alternatives for Texas.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public, the agency's operations should be structured in a manner that is fair and impartial to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflicts of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interests, open meetings, and open records.

The agency has complied with statutory requirements regarding conflict of interest. However, the Sunset Commission's standard approaches regarding conflicts of interest and compliance with the Open Meetings Act and the Administrative Procedure and Texas Register Act should be incorporated in the agency's statute. With respect to open records, the agency has established procedures to deal with certain requests for information. With respect to employment practices, the agency has submitted an affirmative action plan and has received no formal complaints concerning its employment practices.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The extent to which the agency has involved the public in agency rules and decisions can be judged on the basis of agency compliance with statutory provisions regarding public participation, the nature of rule changes adopted, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

The board has complied with the public participation requirements found in general state law. However, public input in board activities has been minimal. To help ensure that the public's point of view is properly represented, public members should be placed on the board.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed. In the period covering the last four legislative sessions, the review focused on both proposed and adopted changes in the law. Prior to that period, the staff review was limited to adopted changes only.

The board's current enabling legislation has been modified and restructured several times since its adoption in 1953. Major changes include periodic restructuring of the fee schedule; an increase in grounds for revocation or suspension of a license or refusal to issue a license; expansion of the scope of authority to promulgate board rules of professional conduct; modification and clarification of venue for appeals from orders of the board, and increases in the level of funds remaining in the Veterinary Fund at the end of a fiscal year that shall revert to the General Revenue Fund.

No bills affecting the present Act were introduced unsuccessfully in the last four legislative sessions.

In its self-evaluation report, the board recommended two modifications of the Act to require licensees to maintain a record-keeping system for controlled substances subject to inspection by law enforcement agencies and the board's representatives, and to authorize the board to probate an order of revocation or suspension of a license.

NEED TO REGULATE

The evaluation of the performance of the agency indicates there is a continuing need for state regulation of veterinarians. The review identified the organizational alternative of performing the regulation through the Animal Health Commission although no cost savings would result from this combination. The review concluded that a number of improvements should be made to the operation of the independent board if the board is recreated by the legislature.

SUNSET COMMISSION RECOMMENDATION

- Maintain the board with internal changes.
 - a. Amend the statute to authorize the board to set reasonable and necessary fees.
 - b. Restructure the statute so that grounds for an applicant disqualification for examination or removal of license are: 1) easily determined and 2) currently existing conditions.
 - c. Remove the unconstitutional statutory requirement for applicants to be citizens of the United States.
 - d. Develop a process so that names of persons taking the licensing examination are matched against an appropriate type of identification bearing a photograph.
 - e. Modify the reciprocal licensing provisions of the statute to authorize the board to adopt a system of endorsement for out-of-state licensees.
 - f. The board should establish guidelines and procedures for conducting interviews with applicants holding out of state licenses.
 - g. Amend the statutory provision regarding delinquent license renewals so that: 1) the renewal of licenses expired for not more than 90 days would require payment of the required renewal fee and one-half of the examination fee; 2) the renewal of licenses

expired for longer than 90 days but less than two years would require payment of unpaid renewal fees and the examination fee; and 3) the renewal of licenses expired for two years or longer would require reexamination and compliance with requirements and procedures for obtaining an original license.

- h. Amend the statute to authorize the board to require licensed veterinarians to maintain records, subject to inspection by representatives of the board, regarding the purchasing, dispensing, administering and balance on hand of certain controlled substances.
- i. Provide the board with clear statutory authority to exempt persons, in an intern program at an accredited college of veterinary medicine, from the practice of veterinary medicine.
- j. Modify the statute so that only advertising that is false, misleading or deceptive is prohibited, following the principle established in the board's Rules of Professional Conduct.
- k. Amend the statute to require that appeals from board enforcement proceedings be conducted according to the "substantial evidence" approach laid out in the Administrative Procedures Act rather than on the current "trial de novo" basis.
- l. Amend the statute to authorize the board to probate suspensions.
- m. Amend the statute to include specific conflict-of-interest provisions recommended by the Sunset Commission on an across-the-board basis.
- n. Amend the statute to include the Sunset Commission's across-the-board provision requiring that agencies comply with the Open Meetings Act and the Administrative Procedures and Texas Register Act.
- o. Modify the composition of the board to include four veterinarians and two public members.

TEXAS WATER WELL DRILLERS BOARD

BACKGROUND

Historical Perspective

The state's current involvement with water well drillers began in 1913 with the creation of the Texas Board of Water Engineers. Though given no regulatory control over the drilling of water wells, the agency requested copies of logs related to completed water wells. These logs, which recorded the locations of water tables and underground formations encountered during drilling, provided most of the agency's early data on groundwater in the state.

Due to the voluntary nature of the activity, very few logs were actually acquired in the first 40 years of the Texas Board of Water Engineer's existence. The drought of the 1950's, however, underscored the need to collect more complete groundwater information to aid in the protection of water resources. To assist in this effort, the board recommended to the legislature in 1955-56 that the agency be furnished with a driller's log of every well drilled for any purpose except domestic and livestock water supply. The board commented further, "it may be that some form of drillers' license law would be necessary to accomplish that purpose."

In response to the need to protect and identify ground water resources, the Fifty-seventh Legislature (1961) passed legislation which: 1) created the Water Well Drillers Board as an advisory body to the Board of Water Engineers, and 2) required that water well drillers be registered annually and submit logs within 60 days of completion of any water well. Authority to enforce the regulatory provisions of the act was vested solely in the Board of Water Engineers.

In 1965, the legislature determined that the basic public need of protecting the groundwater, as well as other problems associated with water well drilling, required further legislative attention. Such attention was necessary for the following reasons: first, research completed in the early 1960's indicated that improper water and oil drilling techniques were a continuing threat to groundwater quality; second, the problem of drillers from other jurisdictions practicing improper techniques in Texas was drawing increasing consumer concern; third, water well logs were often not submitted, and those received were frequently inadequate; and finally, many drillers were dissatisfied with their limited role in the regulation of their industry.

The approach taken by the legislature to help resolve these concerns was to repeal the advisory board registration law, which offered no protection for either groundwater or the consumer since no minimum standards were required. In its place, the Fifty-ninth Legislature established the Board of Water Well Drillers and authorized it to establish minimum driller qualifications, develop standards of conduct, and provide for licensing examinations and hearings. The Act also established an organizational arrangement enabling the regulatory board to have its administrative functions performed by the Water Commission (the Commission was the successor to the Board of Water Engineers).

Although the 1965 law has been amended six times since its passage, the basic structure of the board has not changed in the 14 years since it was established as an independent board. Administrative functions originally performed by the Water Commission and by its successor, the Water Development Board, are now performed by the Department of Water Resources. At the present time the board, composed of six licensee members and two ex-officio members, regulates the activities of over 1100 water well drillers within the state.

During the 1978-79 biennium, board assistance from the Department of Water Resources included three full-time positions and other staff on a part-time basis as necessary. For the same period expenses of approximately \$135,000 were incurred by the Department of Water Resources and \$11,000 by the Water Well Drillers Board itself in administering the Water Well Drillers Act. Total revenues generated by fees during this period totaled \$62,900.

Comparative Analysis

To determine the pattern of regulation of water well drilling within the United States, a survey of the 50 states was conducted to determine how this has been addressed in other states.

The need to regulate water well drilling is currently expressed through licensing requirements imposed by 37 of the 50 states surveyed. From the standpoint of organizational patterns, 16 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. Eight states possess boards with only advisory duties. In 21 states, the function is carried out through a governmental department charged with other administrative and regulatory functions.

In those states which utilize independent boards and commissions, 19 require that appointees be confirmed by the legislature; and membership in 13 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the legislature and membership is limited to persons who are licensed members of the occupation. Thirty-six percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the regulatory body, regardless of organizational form, was totally supported by appropriations from general tax revenues. Fourteen states indicated that these bodies were solely supported by fees and charges of the agency.

Eleven of the state boards which regulate water well drilling require experience prior to licensure. In all states but two, licensees are required to renew their licenses annually. Texas licenses for a one-year period. Enforcement activities in 16 states involve investigation of complaints from consumers and others engaged in water well drilling. Hearings are conducted by the regulatory agency in 16 states. In Texas, hearings are conducted by the agency.

States which regulate water well drilling indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement.

REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The Water Well Drillers Board consists of six drillers appointed by the governor with the advice and consent of the Senate, and two ex officio members from the Department of Water Resources and the State Department of Health. The board is directed by statute to license all persons who engage in the drilling of water wells for compensation. The act also requires the submission of water well logs by drillers and the plugging of wells with injurious water.

As provided for in statute, administrative services for the board are performed by the Department of Water Resources. The staff currently assigned to the board consists of a geologist, an investigator, and one secretary. While most administrative costs are borne by the Department, board per diem and travel is appropriated directly to the board from the general revenue fund.

The operations of the board can be broken down into three activities: administration, licensing, and enforcement. With regard to administration, the agency generally meets the objective of efficient management. However, three concerns were identified in the review. First, the Department of Water Resources exercises direct control over the allocation of most administrative resources available to the board. The involvement of a second agency in this manner presents an additional and complicating step in implementing administrative changes in a timely fashion. Second, the agency's statutory fee structure falls significantly short of bringing in revenues sufficient to cover the cost of operation. Third, approximately one-fifth of annual license renewal applications are submitted late in the one-year grace period following the renewal deadline. Because of this large number of late renewals, an excessive amount of the staff's limited time is diverted from other activities to provide special processing and to insure that drillers with expired licenses have actually ceased drilling as required by statute.

In the licensing activity, the agency has addressed the objective of screening applicants to insure a minimum level of driller competency. The review showed, however, that the examination process does not appear to function as an effective screen, accounting for the disqualification of only two to five percent of first-time examinees. In contrast, the board's two-year experience requirement coupled with other less significant qualifications accounts for the elimination of another 15 to 18 percent of applicants. Given the less restrictive nature of the examination as a screening device, the balance between the examination and experience requirements should be reviewed to provide a more effective means of determining competence.

In the area of enforcement, the board is authorized by statute to develop and enforce standards of conduct for water well drillers. The development of well structured standards could appreciably strengthen the board's effectiveness in

dealing with consumer-related complaints by providing a clear and direct basis of authority which is apparently lacking in that area.

ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

In conclusion, there are several agencies in Texas besides the Water Well Drillers Board which regulate the activity of water well drilling. The Department of Health regulates drilling of public supply wells; underground water conservation districts and some counties place requirements on drilling; and the Department of Water Resources regulates drilling in the area of undesirable groundwater. Many other states have placed regulation of water well drilling in agencies with other similar functions. In Texas, combination with either the Department of Water Resources or the Department of Health would produce benefits. Alternative regulatory methods used by other states to protect groundwater include application of drilling standards, water well permitting systems, and regulation limited to public supply wells.

COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict-of-interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In conclusion, the board has not fully complied with the filing requirements related to conflict of interest provisions. Steps have been taken to insure compliance. Board members hold office in state and national water well associations which provides the possibility of conflicts between goals of the regulating body and the persons regulated. The board has complied with the Open Meetings Act with one exception, failure to provide proper notice for an emergency meeting held, and has complied with provisions of the Open Records Act. The staff of the board operates under the personnel policies of the Department of Water Resources. The staff is not operating under an Affirmative Action Plan at this time since the new agency has not yet submitted such a plan for review.

PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

In conclusion, the board could be more effective in involving and educating the public as to its operations by making available descriptive information on agency operations. In addition, public involvement in the area of rulemaking and other activities of the agency could be significantly improved by amending current statutes to provide for public membership on the board.

STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

In conclusion, only two major legislative changes have been enacted since the board was established in 1965. Amendments in 1969 repealed the bonding requirement and broadened rule-making authority. Criminal penalties for violations of the Act were changed to civil penalties in 1971. One bill, introduced in 1979, would have made several major changes in regulation, including abolishing the board, had it been enacted. The board has recommended in its self-evaluation report that it be given jurisdiction over plugging abandoned wells. This would significantly increase their role in regulation of water well drilling.

NEED TO REGULATE AND ALTERNATIVES

Analysis of the state's efforts to protect groundwater in Texas indicates that the need for regulation continues to exist. The review indicated that the most feasible alternative to the present agency structure would be combination with the Department of Water Resources. The review concluded that a number of improvements should be made to the regulation of water well drilling regardless of organizational structure.

SUNSET COMMISSION RECOMMENDATION

- Abolish the Texas Water Well Drillers Board and transfer the regulatory functions to the Department of Water Resources.

- a. Amend the statute to provide for an advisory board to consist of present driller members of the Water Well Drillers Board and three public members;
- b. Increase the agency's fee schedule so that revenues generated are sufficient to cover costs of administering the Act;
- c. Establish penalties for late renewal of licenses;
- d. Promulgate rules establishing standards of conduct for water well drilling.

APPENDIX

**MEETING DATES
OF THE
SUNSET ADVISORY COMMISSION**

The Sunset Advisory Commission met 17 times between September 1979 and December 1980 to hear staff reports, take public testimony, and develop recommendations on the 28 agencies scheduled for sunset termination in September 1981. Meeting dates of the commission were as follows:

September 25, 1979	June 20, 1980
November 16, 1979	August 28, 1980
February 21, 1980	August 29, 1980
February 22, 1980	September 19, 1980
April 17, 1980	October 2, 1980
April 18, 1980	November 7, 1980
May 22, 1980	November 21, 1980
May 23, 1980	December 15, 1980
June 19, 1980	

PUBLIC TESTIMONY

PUBLIC TESTIMONY

The Sunset Commission held nine public meetings for the purpose of taking public testimony concerning the agencies under review. Summaries of this testimony are presented below. References to particular recommendations within this material refer to the staff reports which may not correspond to the final recommendations made by the Commission.

ADJUTANT GENERAL'S DEPARTMENT

- Continue the Adjutant General's Department with internal changes.

Testimony presented by the Adjutant General supported this alternative. Addressing specific staff recommendations, he stated that the department possesses the authority to contract for janitorial services at Camp Mabry, and that the issue of association advertising in Texas State Guard publications was a minor problem. In regard to the requirement of military membership as a condition for employment, the Adjutant General stated that the department does not require military membership for state employees.

AERONAUTICS COMMISSION

- Continue the Texas Aeronautics Commission with internal administrative changes.

Testimony presented by the chairman of the commission, director of the commission, and the commission's chief engineer supported this alternative. Testimony stressed the unique nature of the agency as well as its contribution to airport development and air carrier service in Texas. Testimony supported the staff recommendations with two exceptions. With regard to airport grants, the director of the agency stated that first priority should be given to funding grant requests for maintenance-related projects instead of safety-related projects. He also stated that fees collected by the Air Carrier Regulation Program were sufficient and should not be increased.

The general counsel of Rio Airlines spoke in favor of continuing the commission. He praised the commission's staff for their assistance and knowledge of carrier operations. Additional testimony was presented by five airport managers and one airport consultant. This testimony supported the continuation of the commission. However, four of the individuals testifying urged that the commission be given the authority to provide airport development funds to privately-owned airports.

The director spoke against charging for agency publications, saying that the administrative cost would outweigh the benefits. His testimony also stressed the need to eliminate the \$100,000 airport aid restriction, in support of the

staff recommendation. With regard to other areas, he stated that the agency is looking into alternative sources of revenue for the airport construction and improvement program and is researching statutory restrictions on providing assistance to privately owned airports. In addition, the director stated that the commission is willing to accept responsibility for the Aircraft Pooling Board if given more money and staff. He also discussed a commuter air safety program which would supplement, but not duplicate, the work of the Federal Aviation Administration.

AMUSEMENT MACHINE COMMISSION, TEXAS

- Continue the Amusement Machine Commission with internal changes.

Testimony by the chairman of the Amusement Machine Commission indicated that the commission supported continuation of the agency and was in agreement with all internal modifications recommended in the staff report except the recommendation to require a cashier check or money order, rather than a check, for all fee payments.

Various licensees testified in favor of retaining the commission, saying that it had eliminated abuses within the industry.

- Abolish the commission.

Other witnesses testified against the commission on the basis that regulation was not needed and that licensing requirements kept people out of the business unnecessarily.

ARMORY BOARD, NATIONAL GUARD

- Continue the board and its functions with modifications.

Testimony of Wade Meek, Director of the National Guard Armory Board, and of the board's attorney, Mary Jo Carroll, indicated that the present system of funding armory construction and maintenance works well and the elimination of the board would remove an available source of state revenue. Hobby McCall, bond attorney for the board, presented testimony regarding the board's outstanding indebtedness and recent bond sale. Testimony presented by Della Garcia dealt with perceived weaknesses in the agency's equal employment policies.

- Continue the National Guard Armory Board but require that the board contract with other state agencies for the performance of armory construction, maintenance, and operation functions.

John B. Garrett, chairman of the board, testified that the consolidation of Armory Board functions with the Adjutant General's Department would increase the cost of armory operation. The Adjutant General of Texas, Willie Scott, testified that his department did not wish to assume responsibility for the functions of the Armory Board.

CHIROPRACTIC EXAMINERS, BOARD OF

- Continue the Texas Board of Chiropractic Examiners and its functions with modifications.

Testimony presented by the president of the board indicated that the board supported this approach except for the recommendation to decrease the number of chiropractors on the board. The board supported public membership in addition to the current number of chiropractors on the board.

Testimony from a representative of Common Cause indicated concern for the following: 1) an absence of public membership on the board; 2) conflicts of interest on the part of the board members and staff; and 3) red tape in the complaint process.

Additional testimony from an attorney indicated a concern that the board's regulation had allowed an expansion of the practice of chiropractic beyond the intent of the Act.

CIVIL AIR PATROL, TEXAS COMMISSION FOR

- Continue the commission as a separate agency.

Testimony presented by one member of the Civil Air Patrol Commission expressed support for the continuation of an independent body to provide state assistance to private aviators in performing search and rescue functions. Additional testimony presented by a representative of the Texas Wing, Civil Air Patrol, Inc. also expressed support for this approach. Both witnesses recommended state funding for financial support of aerial search and rescue operations performed by private aviators.

- Abolish the commission and transfer functions to the Governor's Division of Disaster Emergency Services.

Testimony presented by the Chairman of the Civil Air Patrol Commission supported this approach with the provision of financial support for aerial search and rescue. Speaking as the State Coordinator of Disaster Emergency Services, the Chairman also stated that the Governor's Division of Disaster Emergency Services supported this approach.

DENTAL EXAMINERS, STATE BOARD OF

- Continue the Board of Dental Examiners with internal changes.

Testimony presented by the President of the State Board of Dental Examiners indicated that the board supports this approach. The board took no formal action to support or disagree with the individual recommendations under this approach. However, comments made by the board president were his

personal understanding of the consensus of the board to support recommendations a, b, d, e, m, n, and p. It was the understood consensus of the board that recommendations to control travel expenditures and telephone expenses and to modify procedures for signing vouchers were changes with which they agreed. Recommendations dealing with open meeting practices in disciplinary hearings, voting procedures, and emergency posting of meetings were supported by the president of the board.

The board was in disagreement with recommendations c, f, g, h, i, j, k, l, o, and q. The board felt that per diem had not been abused but that strict management would be applied to those expenditures. Opposition was voiced regarding the recommendation to register labs and technicians on a one-time only basis and to abolish the Dental Laboratory Advisory Board. The board maintained that revenues from current lab registration was necessary for the board's enforcement efforts. Additionally, the board felt that the advisory board had not had sufficient time to operate as intended by its 1973 enabling statute. Recommendations regarding the examination and exam procedures were also opposed. The board president contended that the logistics of the examination prevent blind grading and make the use of host school students as proctors and assistants a necessity. The assistant dean of the University of Texas dental branch in Houston commented on the exam procedures and was in agreement with the board's position. Testimony by the board president and immediate past president expressed opposition to the recommendation regarding examination of foreign applicants. Board member opposition was based on their opinion that a foreign applicant must show competency before coming into contact with a live patient. Another point of opposition by the board involved the recommendation to apply a two-part standard to all grounds for refusal to examine an applicant and grounds for disciplinary actions. This position was based on the premise that neither reciprocity nor endorsement provide adequate safeguards for protecting the public from incompetent practitioners. On behalf of the board, opposition to placing public members on peer review committees was expressed by the director of the peer review process of the Texas Dental Association. This opposition was based on the view that such membership dilutes peer pressure and overall contribution to the process is limited because of inadequate knowledge of dentistry. Comments regarding the recommendation on advertising rules were limited because the board is enjoined from enforcing those rules as a result of a pending law suit. The president of the board commented that they are not enforcing any of their advertising rules pending the resolution of that case. The president of the board indicated that the board had been unaware of circumstances resulting in the recommendation on conflict of interest provisions and deferred comment to the executive director of the board. A final recommendation to modify board composition and abolish the Dental Hygiene Advisory Committee was opposed by the board. The board president's opposition regarding public membership and placing one dental hygienist on the board was based on his opinion that limited knowledge of dentistry would prevent constructive contribution from these members. His opposition to abolishing the advisory committee involved the need for assistance in administering the dental hygiene exam.

Two oral surgeons, who were not members of the board, testified with the board and in favor of board efforts. One surgeon supported current methods

of examination and the other surgeon lauded the board for its successful efforts to control administration of the various forms of anesthesia through its rule-making authority.

A representative of the Grey Panthers testified in support of recommendations 1.k., 1.l. and 1.q. of the staff report. By removing advertising restrictions, adding public members to the local peer review committees and the board, problems of high cost of dental services and limited access to dental services could be alleviated.

Testimony on behalf of Consumers Union supported staff recommendations 1.k., 1.l., and 1.q. also. In addition, Consumers Union recommended modifications of business practices regulation, use of reciprocity or endorsement, expanded use of dental auxiliaries, and a public information campaign.

A representative of Common Cause testified in support of the recommendations in the staff report. Particular mention was made supporting the recommendations regarding public members on local review committees 1.k. and the board 1.q., advertising 1.l., grading of exams 1.g., emergency posting of rules in compliance with the Open Meetings Act 1.m. and 1.n. and conflict of interest 1.o..

A private citizen who has been involved in consumer oriented activities in the federal government testified in support of recommendation 1.l. noting that the present advertising prohibitions restrict information to consumers and permit costs of dental services to increase.

A dentist who has served as president of the national, state and local dental societies testified in general support of the board.

Two representatives of Denture Centers of America described the difficulties they had had with the board, particularly in the area of advertising. They also testified as to their concern that the board's activities had restricted the development of alternative forms of dental care delivery. In addition, they stated that present regulation of dental care inherently contains a conflict of interest and suggested methods to resolve the conflicts.

Two board members of the Dental Laboratory Advisory Board testified separately to express their opinions on the topics under discussion. One of the members expressed opposition to abolishment of the Dental Laboratory Advisory Board. He also indicated that the Dental Laboratory Advisory Board should be given concurrent rule-making authority with the Board of Dental Examiners over dental laboratories and technicians. The second board member stated that the staff report contained numerous errors.

The director of the Texas Title XIX Dental Program testified as to the support and assistance given to the program by the board.

The president of the Texas Dental Hygiene Association and the attorney representing the association presented separate testimony. The president of the association expressed agreement with changing board composition to

include a dental hygienist and public members. She testified against abolishment of the Dental Hygiene Advisory Committee because of the expertise provided by the committee in the examination of hygienists. She suggested that the effectiveness of the committee could be increased by the authorization of examination authority for the committee. The attorney for the association supported the president's position and also recommended expanded functions for dental hygienists. In addition, he expressed his support of the board.

Representatives of the Texas Dental Assistants Association testified that many assistants are required to perform illegal dental procedures. Consequently, they recommended state regulation of dental assistants.

Two dental hygienists testified separately to express their personal opinions on regulation of dental hygienists. They expressed the view that alternative forms of practice for hygienists could provide increased dental care.

The president of the Dental Laboratory Association testified that they were not opposed to registration of labs and technicians for identification purposes but that further regulation was unnecessary. He indicated that simply requiring a prescription for lab work is an effective method of public protection. He expressed opposition to the regulation of labs by their only legal customers -- dentists.

A group of individuals from the Texas Denturists Association testified as to the ability of denturists to provide low cost dentures to the public.

A representative of the National Board of Denturist Examiners outlined the development of education programs for denturists. He also discussed a recent Federal Trade Commission report which recommended denturism. He recommended establishment of a joint dental-denturist board to license denturists.

An attorney, representing the Texas Denturists Association discussed the legal implications of current statutory restrictions against denturism. He indicated that such restrictions were unconstitutional.

- Abolish the board and transfer its functions to the Department of Health.

The representative of Common Cause testified that this alternative could provide more responsive regulation of dentistry.

ENGINEERS, BOARD OF REGISTRATION FOR PROFESSIONAL

- Continue the board and its functions with modifications.

Testimony presented by the Chairman of the Board of Registration for Professional Engineers indicated that the board supported this approach. The board did, however, oppose the adoption of several internal changes outlined under this alternative. The modifications objected to are 1b, 1c, and 1e. In

general, objections to these modifications were based upon the board's belief that the present system of regulation is adequate.

A representative of the Texas Society of Professional Engineers also voiced support for this approach. However, the society strongly favored the adoption of modifications 1c and 1d because of limited board enforcement authority with regard to registered engineers. The society recommended that the Commission not adopt modifications 1b and 1e.

A spokesman for the Consulting Engineers Council testified against the adoption of modification 1e. Remarks were based upon the Council's view that competitive bidding for engineering services would not be in the best interest of the public.

Additional testimony provided by an independent consulting engineer expressed support for the continuation of the present board.

- Consolidate the regulation of engineers and surveyors under a single board.

The Board of Registration for Professional Engineers, the Board of Land Surveying, the Texas Society of Professional Engineers, and the Texas Association of Land Surveyors objected to this approach. In general, the opposition was based on the opinion that the consolidation of the boards would not result in economic or regulatory benefits, given the substantial number of licensees under the Board of Land Surveying.

HEARING AIDS, BOARD OF EXAMINERS IN THE FITTING AND DISPENSING OF

- Continue the Board of Examiners in the Fitting and Dispensing of Hearing Aids and its functions with modifications.

Testimony presented by the chairman of the board indicated that the board supported this approach as well as the other modifications outlined in Alternative 1.

A representative of the Texas Hearing Aid Association also voiced support for this approach. Additionally THAA favored mandatory continued education and public awareness.

Testimony presented by a representative of a business which tests hearing favored upgrading current educational requirements to the level of a masters degree in audiology and improving the licensing examination. Additional testimony by a representative of the Texas Speech, Language, and Hearing Association expressed support for improving procedures for testing and equipment used in testing hearing.

One consumer's testimony indicated that the board's enforcement activity had been inadequate in dealing with sales made in nursing homes. Board

members and staff testified that such abuses are not widespread, but that board investigations had been thorough in such cases.

- Abolish the board and consolidate with the Department of Health.

The Board of Examiners in the Fitting and Dispensing of Hearing Aids and the Texas Hearing Aid Association objected to this approach. An opposing view was presented by a representative of the Texas Speech, Language and Hearing Association supporting this alternative. The support for this alternative was based on the staff expertise of the Department of Health in the areas of audiological testing and calibration of testing equipment.

- Replace the present licensing method with an approach which regulates the sale of hearing aid devices through the requirement of a recommendation from a physician or audiologist.

The Board of Examiners in the Fitting and Dispensing of Hearing Aids and the Texas Hearing Aid Association objected to this approach. This position was based on the existence of such safeguards under current FDA regulations.

INVESTIGATORS AND PRIVATE SECURITY AGENCIES, BOARD OF PRIVATE

- Continue the board with internal changes.

Testimony was presented by eleven persons and two members of the board in support of this alternative. The public testimony included statements from licensees and spokesmen for the American Society for Industrial Security, Associated Security Services and Investigators of the State of Texas, and the Texas Alarm and Signal Association.

In general, the testimony presented was directed toward maintaining the current scope of regulation, with particular reference to private investigation and burglar alarm companies. Statements made in support of this position indicated that state regulation would continue to upgrade and maintain the professional image of the industry, provide for more effective control and maintain a uniform level of regulation.

LIBRARY EXAMINERS, STATE BOARD OF

- Continue the certification process.

Testimony from ex-officio members of the Board of Library Examiners and from representatives of several groups of librarians, including the directors of major resource centers, the Central Texas Library System, and the Executive Committee of the Texas Library Association favored continuation of the certification function to regulate county librarians.

- Continue the board in its present form.

The Board of Library Examiners, represented by Dr. Dorman Winfrey, State Librarian and Harold Billings, Director of the University of Texas General Libraries and an ex-officio member of the board, endorsed the first alternative presented in the staff report which called for the continuation of the board in its current form. The board expressed concern that library services in communities of less than 25,000 would suffer irreparable harm if county librarian certification were no longer in force since many of these libraries do not belong to the State Library System. The staff report indicates that if certification were eliminated, fifty-six libraries which employ approximately 47 FTE librarians would no longer be subject to any form of regulation.

Representatives of several groups of librarians, including the directors of major resource centers, the Central Texas Library System, and the Executive Committee of the Texas Library Association endorsed the second alternative which called for the abolition of the Board of Library Examiners and the transfer of the certification function to the State Library and Archives Commission. Several individuals expressed the opinion that an advisory board should also be created to advise the Library and Archives Commission concerning credentials for county librarians. Upon questioning, Dr. Winfrey indicated that the function could be assumed by the Library and Archives Commission.

- Should graduation from an A.L.A.-accredited library be required for employment as head librarian in a county library.

The department heads of library science programs at East Texas State University and Sam Houston State University as well as other individuals expressed concern about the requirement that a "professional librarian" hold a masters degree from an American Library Association (ALA) accredited library school. Section 2.11 of the rules and regulations for the State Library System requires libraries serving more than 25,000 persons to employ at least one professional librarian. The staff report to the Sunset Commission considered a similar requirement currently used by the Board of Library Examiners to determine eligibility for permanent certification and found it to be unduly restrictive since only three graduate library science programs in the state are accredited by the ALA. Testimony indicated that graduates of unaccredited state-funded programs faced difficulties in being hired and promoted and earned lower salaries than librarians with a masters degree from an ALA-accredited program.

MEDICAL EXAMINERS, TEXAS STATE BOARD OF

- Maintain the board with internal changes

Testimony presented by the chairman of the Board of Medical Examiners indicated that the board supported this approach. However, four internal changes were directly opposed; b. (state treasury), c. (conflicts of interest), d. (per diem limitation) and e. (executive director). These were generally

opposed due to the board's feelings that things were working well in these areas and no change was needed. The board agreed (with modification suggested) with nine other internal changes which include; a. (board membership), h. (statute clean up), i. (disqualifiers), k. (delinquent-renewals), l. (rules for physician assistants), m. (mandatory reporting), o. (increased disciplinary powers), s. (complaint system automation), t. (public information). The board agreed completely with the seven remaining internal changes (f, g, i, n, p, q, r) and indicated that action had been taken to implement those not requiring statutory modification. The board proposed a board composition made up of thirteen physicians (with no distinction between M.D.s and D.O.s) and two public members who had no attachments to the health care field.

A number of representatives of the Texas Medical Association testified and expressed full concurrence with maintaining the board and the following internal changes (f, g, h, j, k, n, o, p, q, r). They also agreed in principle with changes d. (per diem limitation), i. (disqualifiers), s. (complaint system automation), and t. (public information), but felt that further elaboration or additional resources would be needed to implement these changes. The association expressed concern with recommendations concerning additional rules for physician assistants (l), and felt that fines imposed on physicians for disciplinary action (o,2) would be insignificant and of little utility. Direct opposition was registered against recommendations concerning mandatory reporting (m), conflicts of interest (c), changing the secretary-treasurer's duties (e), and putting all board funds in the State Treasury (b). The association proposed a board structure of twelve physicians and three public members with no distinction between D.O.s and M.D.s and restrictions on the activities of public members. The association also asked that the Sunset Commission consider additions to board disciplinary powers which would allow the board to discipline physicians for "persistent and flagrant over charging or over treating of patients by physicians."

Representatives of the Texas Osteopathic Medical Association (TOMA) supported the staff recommendations with one exception. Generally, they felt that board membership should include at least three D.O.s due to their "general practice" orientations which is in keeping with state needs for general and family practitioners and the apparent willingness of D.O.s to locate in less densely populated areas.

A number of persons representing ACORN and low-income persons supported continuation of the board but encouraged the board to set licensing requirements which would provide greater access to medical care by all persons. Suggestions included requiring physicians to practice in rural areas and requiring physicians to participate in Medicaid or Medicare programs.

Regarding board composition, a representative of Retired Federal Employees recommended that consumers have equal representation on the board if it is to be continued. The president of the Texas Academy of Physician Assistants strongly supported the staff's recommended board structure. A representative of the Gray Panthers of Austin felt public members to be essential. The executive director of Common Cause and a representative of Consumer's

Union supported the staff recommendation as long as women and minorities were appropriately considered for appointment. Additionally, both representatives felt that public members should be appointed to the board's District Review Committees. Representatives of the Texas Nurses Association also supported public membership to "provide for and increase input of consumers' viewpoint and representation."

Other issues which were brought forth by persons agreeing with continuation of the board include:

- 1) greater utilization of physician extenders;
- 2) requiring geriatric medicine to be taught in Texas medical schools;
- 3) increased public information concerning board activities;
- 4) devising a better structure for board receipt of consumer grievances and complaints;
- 5) requiring the board to notify complainants of investigation progress every month rather than every six months;
- 6) making sure that no statutory provisions inhibit physician advertising;
- 7) the establishment of a grievance procedure for the Board of Medical Examiners similar to that of the State Bar with public representation on the grievance committees; and
- 8) exemption of closed board meetings to determine disciplinary action from the Open Meetings Act.

Three persons opposed continuation of the board to ensure the existence and development of unorthodox medical disciplines and a person's freedom of choice in pursuing health care remedies. Of these three, two physicians suggested that the state should not license the "diagnosis and treatment" in any Medical Practice Act.

- Require continuing medical education (CME) as a condition for licensure renewal.

Representatives of the board and the TMA opposed this alternative feeling that it is not a workable approach to improving health care delivery. Additionally, the groups felt that those states which require CME had not been able to show that it is an effective method of improving physician competency.

Representatives of TOMA and the Gray Panthers of Austin supported the alternative of requiring CME for continued licensure as physicians in Texas.

**NIMITZ MEMORIAL NAVAL MUSEUM COMMISSION,
FLEET ADMIRAL CHESTER W.**

- Abolish the commission and transfer the administration of the museum to Texas Parks and Wildlife Department.

The Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission represented by William A. Wareing endorsed the alternative which abolishes the commission and transfers its functions to the Texas Parks and Wildlife Department. Mr. Wareing referred to a resolution adopted by the commission on February 1, 1980 expressing this desire. Mr. Wareing also requested that an appropriation be included in the enabling legislation to complete the reconstruction of the Steamboat Hotel.

Gordon E. Sauer, representing the Admiral Nimitz Foundation, stated that the staff recommendations concerning internal changes had either been carried out or were in the process of being implemented. Mr. Sauer made reference to \$227,979 which had been raised by the Foundation in the past three years, \$200,000 of which had been spent directly on the reconstruction project.

Other testimony presented also favored the alternative which abolishes the commission and transfers its functions to the Texas Parks and Wildlife Department.

NURSE EXAMINERS, BOARD OF

- Continue the board and its functions with modifications.

Testimony by the president of the Board of Nurse Examiners indicated that the board supports this alternative. With the exception of recommendation m., the board also supported all of the specific modifications outlined under this alternative. The board expressed reservations concerning a possible decrease in the number of registered nurse members in order to accommodate public members (recommendation a) and the increased costs and logistical difficulties in decentralizing the examination process (recommendation d). Testimony by the board president also indicated that some board members felt that the board should retain the flexibility to probate revocations (recommendation f). The president indicated that the board could not support recommendation m. without further study to determine what a nurse needs to be able to assume these responsibilities.

Representatives of the Texas Nurses Association testified in support of all of the modifications listed under this alternative. The association did, however, express concerns that public membership be clearly defined and urged that a majority of the board members should be registered nurses (recommendation a). TNA strongly supported recommendations k. and l. and testified that recommendation l. provided a mechanism for recognizing the role of the advanced nurse practitioner in primary health care. The association's testimony indicated that while joint promulgation of rules and regulations had

proved difficult to utilize in regulating advanced nurse practitioners in other states because of the reluctance of all of the groups involved to participate, it was, nevertheless, a fair and equitable way to make such decisions. TNA also supported the concept behind recommendation m., and the limitations which would be placed on the type of drugs that could be prescribed. TNA testified that the joint board concept advanced in this recommendation could provide adequate guidance if all boards involved would participate.

A representative of the Texas Hospital Association testified in support of this alternative but opposed or suggested modifications in recommendations a., c., h., i., j., k., l., m., and o. The association suggested the following composition for the Board of Nurse Examiners: five registered nurses with two representing hospital nursing services, two public members, one hospital administrator and one physician. THA also recommended four year terms with no consecutive reappointments for board members. The association recommended adoption of a ten day grace period for late license renewal and proposed a \$75.00 fee for renewal after that period (recommendation c). In response to recommendation h. concerning continuing education requirements for licensees wishing to reactivate their licenses, the association testified that the employing agency should remain responsible for ensuring that a registered nurse has adequate current skills and experience. THA testified that it continues to oppose mandatory licensure recommended in modification i. because it would have a devastating effect on health care delivery in Texas due to the shortage of registered nurses. THA also opposed adoption of recommendation j. to require new graduates holding a temporary license to be supervised by a registered nurse since the employing agency should make the determination as to what functions the permit holder is competent to perform. The association testified that certification in a specialty area should rest with a professional body responsible for establishing the related professional standards, rather than with the Board of Nurse Examiners (recommendation k.). THA also strongly opposed recommendations l. and m. and urged that the Sunset Advisory Commission defer action pending the outcome of various interim study committees. The association opposes adoption of recommendation o. to require additional identification for licensees when providing services because the current statutory identification requirements are considered adequate.

Representatives of the Texas Medical Association testified that fundamental policy questions were raised by recommendations i., r., l., and m., which TMA believed to be inappropriate for the sunset review process since taken together these recommendations would substantially alter the system by which health care is delivered in Texas by greatly expanding the role of the registered nurse. The TMA representatives pointed out that several senate and house committees were dealing with aspects of these issues and suggested that the commission is only charged with the question of the need for regulation.

Specific objections to recommendation i. concerning mandatory licensure were as follows: 1) it did not address any potential effect on the nurse shortage situation or any potential remedial effects of recommendation o.; 2) it ignored the fact that public protection is provided through the regulation

of the supervising physician; and 3) it did not assess any potential remedial effects from the rules and regulations recently adopted by the Board of Medical Examiners.

TMA opposed recommendation k. and stated that the function of the state should be basic licensure with recognition of specialty practice reserved to the professional organizations. TMA representatives stated that this approach has been used successfully in medicine thus it would be appropriate for nurses. TMA also strongly opposed recommendations l. and m. Texas Medical Association representatives testified that TMA recognized that there was another role for the nurse: that of performing delegated medical acts. However, TMA supports the authority of the Board of Medical Examiners to decide what medical acts can be delegated to registered nurses, physician's assistants, and others; what should be the proper level of supervision exercised and which tasks should not be delegated. The association's representatives did cite three areas where statutory changes would be beneficial: 1) clear statutory authority to permit persons to render medical assistance in case of an emergency or medical disaster situation; 2) specific statutory authority to permit physician delegation of authority to persons acting under the supervision of a physician; and 3) clarity in the statutes to ensure that individuals acting under the supervision of a physician may administer or distribute drugs to the physician's patients under certain circumstances which have been ordered by the physician from legally possessed drugs for the immediate needs of such patients.

A representative of the Texas Pharmaceutical Association testified in opposition to recommendation m. under this alternative. TPA's position is that to allow possession is to create a problem with respect to accountability. The representative testified in favor of the four license concept proposed by the staff report on the Board of Pharmacy. Under this recommendation, licensed clinics could possess drugs and would have individuals operating out of it who would have both medical and pharmaceutical supervision. The association sees this approach as the best way to address in some measure the fact that medicine, pharmacy and nursing are changing.

The clerk for the Ad Hoc Committee on Standardized Medical Procedures testified concerning the results of that committee's work. He reported the committee voted to amend the Nurse Practice Act to provide statutory authority for advanced nurse practitioners and to define an advanced nurse practitioner as a registered nurse with additional preparation and skills in physical diagnosis, psychosocial assessment, and management of health illness needs, and who has been prepared in a program conforming to standards promulgated by the Board of Nurse Examiners. It appeared to be a consensus of a majority of the committee members that advanced nurse practitioners could provide quality care, maintain patient health and safety, and increase the availability of health care in Texas with adequate supervision. The testimony also indicated that it was the committee's opinion that there would be an advantage to encouraging advanced training for nurses and then utilizing more extensively those nurses who have received additional training. The committee clerk reported that the committee chose to stay with the basic concept of whether or not to support nurse practitioners and not get into specifics of how they would be regulated and the amount of supervision that would be required. He reported that the committee also accepted

without opposition a proposal that a study be conducted by the Coordinating Board to determine the need for and location of future nurse practitioner programs. The testimony indicated that these votes were final votes and that the committee would meet once more to approve language contained in the final report and proposed legislation.

A representative of the Gray Panthers testified in support of staff recommendations included under this alternative, especially recommendations k. and l. Problems of older citizens identified by the representative in the testimony presented include 1) the lack of health care; 2) lack of access to health care; 3) the high cost of health care; 4) the maldistribution of health manpower; and 5) the underutilization of health manpower. The organization supported recommendations k. and l. because implementation would provide health care to a larger number of people who are unable to buy high cost health care and the greater use of advanced nurse practitioners would increase the alternatives available to people seeking preventative health care rather than treatment of illness. The organization also testified in support of public members on the board (recommendation a.) because it would promote accountability and prevent conflicts of interest between the regulator and the regulated.

Several nurse practitioners, including two faculty members of the nurse practitioner program at the University of Texas Health Science Center at Dallas testified in support of recommendation k. which would permit the Board of Nurse Examiners to regulate the practice of nurse practitioners. These individuals testified that nurse practitioner programs need to be accredited to ensure high quality education that is consistent with other nurse practitioner programs and the common practice of nurse practitioners. The testimony indicated that certified nurse practitioners need the Nursing Board to govern their practice legally, protect the consumer, and act as a liaison with the Board of Medical Examiners.

Nurses from the Baptist Memorial Hospital System in San Antonio testified in support of this alternative with the exception of recommendations a. and j. and concurred with the testimony presented by various nurse practitioners in support of recommendations k., l., and m.

A representative of the Houston Area Directors of Nurses testified in support of individual boards and expressed opposition to recommendations a., e., i., and l. and expressed concern about the lack of specificity in recommendation h.

- Abolish the board and transfer its current regulatory functions to a restructured board which would regulate both professional nurses and vocational nurses.

There was no testimony presented in support of this alternative, however, both the Texas Hospital Association and the Texas Medical Association did present testimony concerning the composition of the board in the event the commission did vote to adopt this alternative. The Texas Hospital Association proposed a twelve-member board consisting of five registered nurses, two representing hospital nursing services; three licensed vocational nurses,

two from a hospital setting; two public members; one hospital administrator and one physician. THA also recommended four year terms with no consecutive reappointment and that board members representing nursing education programs should not duplicate the type of program they represent. The Texas Medical Association testified that if this alternative were chosen, the board should be equally divided between registered nurses, licensed vocational nurses, and citizen members.

OPTOMETRY BOARD, TEXAS

- Continue the Texas Optometry Board and its functions with modifications.

Testimony by the Chairman of the Texas Optometry Board indicated the board supports this alternative. With respect to specific modifications outlined under this alternative, the board unanimously adopted recommendations l., c., i., and k.

A majority of the board also supported several other approaches outlined under this alternative. By a vote of four to two, the board supported that part of recommendation l. a. which called for a board composed of three public members, four members of the Texas Optometric Association and two members of the Texas Association of Optometrists. A majority (four) also supported restoration of the board's substantive rulemaking authority (recommendation l.j.) given the board membership outlined above. A majority (four) also favored placing public members on the board.

The board opposed a number of the suggested modifications. By a three to one vote, with two abstentions, the board opposed the endorsement concept (recommendation l. f.). Testimony by the board chairman, expressing a personal view, indicated that endorsement would weaken the practice of optometry in Texas because persons unable to establish a stable practice elsewhere might come into Texas. The board by a five to one vote also opposed recommendation l. l., which would remove from the statute a section restricting advertising by dispensing opticians. Testimony suggested that removal of the restrictions would result in an increase in deceptive advertising.

Apart from specific recommendations outlined under this alternative, the board suggested that certain fees and per diem be increased. As outlined by the testimony the board supports raising the examination fee from \$35 to \$50, the second examination fee from \$12.50 to \$35, the duplicate license fee from \$2.50 to \$15 and per diem for board members from \$25 to \$50.

Two board members testified separately to express their personal opinions on the topics under discussion. One of the members indicated his strong opposition to the restoration of substantive rulemaking authority to the board. He testified that, given the current structure of the board where one association group controls, such rulemaking authority would be subject to abuse. He said no association group should control the board.

A second board member, also expressing personal views, recommended limiting service on the board to two consecutive terms and appointment of an

entire new board if the board is restructured.

Officials in the Texas Association of Optometrists testified in favor of a board composed of three members from the Texas Association of Optometrists, three members from the Texas Optometric Association and three public members. They were opposed to the board having substantive rulemaking authority.

A member of the Texas Optometric Association testified in favor of public members being added to the board. He also answered a number of questions regarding TOA membership classifications.

A Federal Trade Commission attorney briefly summarized the findings of a recent FTC study on the price and quality of optometric services. In addition, he testified in support of public members on the board and licensing by endorsement. He also favored the restoration of substantive rulemaking authority only if public members are placed on the board.

An Austin attorney, representing the Contact Lens Society of Texas and the Certified Ophthalmic Dispensers Association of Texas, testified that the Texas Optometry Act uses the term "dispensing optician" numerous times but does not define it. As a result, he recommended that the Sunset Advisory Commission consider a definition of a dispensing optician and possible certification of dispensing opticians by the Texas Department of Health.

- Transfer the functions currently performed by the Texas Optometry Board to the Department of Health.

The board voted five to one against this alternative. In explaining the board's opposition to this alternative, the board chairman stressed the importance of maintaining a board with a high level of expertise in the field of optometry. He also indicated that the board of the agency is available to the public, and that this availability could be reduced in an agency of the size and complexity of the Department of Health. There were no witnesses at the hearing that supported this alternative.

PHARMACY, STATE BOARD OF

- Continue the board and its functions with modifications.

Three registered pharmacists testified in favor of the continuation of the board. Although all of the pharmacists who testified indicated support of the board's function to certify competence of pharmacists, two pharmacists raised a concern with regard to further expansion of the board's enforcement authority, indicating that such authority should be limited to minor violations of the Act.

Representatives of the federal Drug Enforcement Administration and the Texas Department of Public Safety expressed support for the board's regulation of the practice of pharmacy, especially with regard to the board's participation in the coordinated effort to reduce diversion of controlled substances by pharmacists.

- Continue the board and modify its statutory authority to provide four classes of facility licenses.

The executive director of the Board of Pharmacy presented testimony for the board in general support of this alternative. The board endorsed the four permit concept and all of the modifications contained in alternative one except for those related to the inclusion of board funds in the State Treasury and the placement of public members on the board (a and b). Additional recommendations suggested by the board include statutory authority to allow the board to close meetings in certain deliberations, authority to register pharmacy interns, limited peace officer status for board investigators, exemption of board investigative records from the Open Records Act, and increasing the limit on maximum fines from \$250 to \$1,000 per count.

A spokesman for the Texas Pharmaceutical Association testified in favor of the four permit concept. TPA also supported modifications proposed in alternative one except for a & b. Other recommendations offered by TPA include a limitation of the number of terms for board members, development of a basic definition in the Pharmacy Act for prescriptions, requirement that the Executive Director of the board be a registered pharmacist, and authority for product selection by pharmacists.

A representative of Planned Parenthood expressed opposition to the licensing of clinics providing a narrow range of pre-packaged medication. According to the testimony, the implementation of the four permit system would increase costs associated with the delivery of health care through clinic-type facilities and its not necessary to adequately protect the public.

Testimony presented on behalf of Common Cause generally endorsed recommendations in alternative two, particularly those relating to the appointment of public members and the placement of funds in the State Treasury. Special concern with the board's need to fully comply with the Open Meetings Act was expressed. The testimony also recommended that the commission use the Model Pharmacy Act as the basis for legislation proposed to re-establish the board.

A member of the Gray Panthers testified in support of the four permit concept and also stated that the public should be made more aware of the board's complaint procedures.

A representative of the Texas Nurse Association expressed support for alternative two. Testimony indicated that this alternative would provide a more flexible and safe approach to the delivery of health care.

The president of the Texas Society of Hospital Pharmacists spoke in favor of the four permit concept. Testimony was also presented which specifically supported the appointment of public members, the inclusion of board funds in the State Treasury, and the expansion of pharmacist board member eligibility to include all registered pharmacists.

PHYSICAL THERAPY EXAMINERS, BOARD OF

- Continue the board and its functions with modifications.

Testimony presented by a board member of the Texas State Board of Physical Therapy Examiners indicated that the board supported this approach. The board did, however, oppose the internal changes 1d and 1e that were recommended in the staff report. The concern with 1d centered around the board's contention that the recommendation was less strict than the present provision regarding delinquent renewals. While the board supported the intent of 1e, they were concerned with the enforceability of this provision.

Four other individuals, all of which were either licensed physical therapists or physical assistants, expressed support for the continuation of the present board and the present level of regulation.

- Reduce the current scope of regulation.

Eliminate the regulation of physical therapists.

The Coordinator of the Physical Therapist Assistant Program at Houston Community College supported the continuation of licensure for assistants. She indicated that there is a large demand for graduates of physical therapist assistant programs.

The president of the Texas Physical Therapy Association supported the continued licensure of assistants. She also supported the addition of public members to the board.

A rehabilitation consultant of the Office of Health Standards and Quality: Health Care Financing Administration of the Department of Health and Human Services spoke in favor of continued licensure for assistants. He expressed the concern that it would be difficult for health care facilities to substantiate the proper qualifications of physical therapist assistants as defined under Medicare regulations. He also stated that the absence of licensure for assistants would make it more difficult to meet the supervision requirements set forth in the Medicare regulations.

A licensed physical therapist who operated an office-based practice supported the continued licensure of assistants. He stated that in his form of practice, the availability of licensed assistants helped to reduce costs to the patient.

- Require a one-time only certification of physical therapists.

A spokesman for the Austin Independent School District gave a brief overview of how physical therapy was administered to handicapped children who were attending public schools. She supported continuation of licensure requirement by stating that school districts in the state would have a difficult time determining qualified physical therapists.

PLUMBING EXAMINERS, STATE BOARD OF

- Continue the Board of Plumbing Examiners and its functions with modifications.

Testimony of the chairman and vice-chairman of the board favored continuation of the board as it presently exists, but indicated a willingness to accept changes recommended by the Sunset Commission.

Testimony from representatives of associations related to plumbing in all cases recommended continuation of a separate board rather than merger with another state agency. Modifications of board functions identified in the staff report were generally supported by these witnesses. Particular support was given for providing the board with increased enforcement authority and for allowing reciprocity with other states contingent upon their having equivalent licensing requirements and examinations.

Additional testimony was presented supporting several changes to present plumbing regulation not addressed in the staff report. A former board member recommended eliminating the exemption of the present law for cities of under 5,000 population so that all plumbing connected to public water supplies would be regulated. A spokesman for the plumbers association recommended: 1) a separate "contractor" license; 2) licensure of sewer clean-out companies and solar installers; 3) a minimum state plumbing code, expandable by cities and exempting single family systems; 4) a state system of enforcement connected to local inspection procedures, and 5) state insurance requirements for plumbing contractors. Other witnesses representing mechanical contractors and a plumber's local also indicated support for state performance bonding of contractors to ensure financial responsibility.

The board's administrator also discussed several items with regard to the staff report: 1) that the Attorney General has never directly ruled on the agency's accumulation of fund balances and that reference in the staff report was to dictum from an Attorney General's ruling on a related subject; 2) that the agency has organized its examination procedures to allow twice the number of examiners than the facilities were originally designed for; 3) that the agency has picked up licenses of persons found to have falsified application information; 4) that twenty-four automobile dealers were called in an attempt to replace a wrecked vehicle; and 5) that the agency has in past years kept license fees below maximum amounts in order to avoid building large fund balances.

PODIATRY EXAMINERS, TEXAS BOARD OF

- Continue the Texas State Board of Podiatry Examiners and its functions with modifications.

Testimony presented by the secretary of the board was in favor of a continuation of the board as it presently exists with the possible addition of public members. Opposition was expressed to an increase in board size,

inclusion in the appropriations process, and merger with another state agency.

- Abolish the board and transfer its functions to the State Board of Medical Examiners.

Testimony from a trade association representative indicated opposition to consolidation with the State Board of Medical Examiners because of the possibility that podiatry would be lost within the general practice of medicine and downgraded as a profession.

POLYGRAPH EXAMINERS, BOARD OF

- Continue the Polygraph Board as a separate agency, with the consolidation of administrative support services within DPS.

Testimony presented by the Chairman of the Board of Polygraph Examiners indicated that the board supported this approach as well as the other modifications outlined in Alternative 1. The Chairman also said that the Director of the Department of Public Safety had expressed tentative approval of the consolidation of administrative support services under DPS.

Additional testimony by a representative of a business which uses polygraph testing expressed support for the continuation of an independent board to regulate polygraph examiners.

- Use of the Polygraph in a commercial setting.

Under this topic, a representative of Texas Civil Liberties Union and a psychology professor from the University of Texas presented testimony in which they advocated prohibiting the use of polygraph testing in employment situations. This position was based upon the personal nature of pre-employment polygraph testing and the lack of scientific evidence which would indicate the validity of such tests. Also, an individual representing herself testified against the use of the polygraph in a commercial setting on the basis of a personal experience.

An opposing view was presented by a representative of the Texas Retailers Association, which emphasized the industry's desire to continue using the polygraph in employment matters. The testimony indicated that there was a vital need for polygraph screening of employees because of internal theft which is thought to account for sixty percent of an estimated statewide inventory loss of \$650 million in the last year.

PSYCHOLOGISTS, BOARD OF EXAMINERS OF

- Continue the board with internal changes.

Testimony presented by the Chairman of the Board of Examiners of Psychologists indicated that the board supported this approach. The board did, however, oppose the adoption of two internal changes outlined under this

alternative. The changes opposed are 1e, and 1j. The board felt that it should continue its practice of interviewing all reciprocity and "dilomate" applicants (1e). The interview would be supplanted by an objective jurisprudence exam once developed. The board also felt that the statute should not be changed to a "title" rather than "practice" act as it is currently (1j). The board felt that all persons practicing any aspect of psychology should come under the purview of the board. Additionally, the board proposed a board composition (1e) of 6 psychologists, 1 psychological associate and 2 public members so as not to diminish the ability of the board to meet the workload appropriately handled by doctoral level psychologists. If psychological associates are de-regulated, the board proposes a composition of 6 psychologists and three public members.

Representation of the Texas Psychological Association generally agreed with this alternative with particular support for internal changes dealing with public and psychological associate board membership and the jurisprudence examination. Objections were made however, to internal change 1j (title rather than practice act approach) as "the enforcement power of the state is needed to insure protection of the public."

Three persons representing the general interests of "program evaluation" testified in strong support of the statute modification making the act a "title" rather than a "practice" act. Generally, this change was supported due to the reported board's past attempts to enforce a practice act and its resulting regulation of areas outside its purview; i.e., program evaluation. Other arguments touched on the difficulty of defining the practice of psychology and concomitant concerns relating to the cost of effectively enforcing a practice act. One person recommended a specific statutory exemption for program evaluators if the title act change could not be effected.

- Continue regulation of psychology, but modify the scope of the board's regulatory authority to include any doctoral level psychologists providing direct mental health or diagnostic services.

Representatives of the board strongly urged that this approach not be adopted due to its "inherent difficulties." It was felt that this approach would disenfranchise persons in the fields of educational and industrial/organizational psychology.

Representatives of the Texas Psychological Association offered strong opposition to the deregulation of psychological associates. In general, it was felt that regulation ensures greater service availability and that high practitioner standards are maintained.

One of the persons with a background in program evaluation feels this alternative is appropriate if the act is not made a title act.

- Transfer the functions currently performed by the Texas State Board of Psychologists to the Department of Health.

Both the board and the Texas Psychological Association opposed this alternative due to the "poor track record" of a licensing agency already in the

Health Department and the old adage "if it ain't broke, don't fix it." The board did indicate that a small umbrella licensing agency would be a preferable alternative to this approach.

REAL ESTATE RESEARCH CENTER

- Continue the Real Estate Research Center with internal changes.

The director of the Real Estate Research Center testified that the Center has successfully operated in its current form and that the Center's research is directed more to the general public than the real estate industry. He was unable to provide any indication of the position of the Center's advisory committee or the Board of Regents of Texas A&M regarding recommendations made by the staff as they had not met to discuss those recommendations prior to the hearing.

The chairman of the Center's advisory committee addressed several of the recommendations in the staff report regarding the advisory committee but stressed she was not speaking for the committee. She felt that the advisory committee's role in the review of materials for publication added substance and focus to the work of the Center on behalf of the general public thus seeing no need to change this process. She was in agreement with requiring that advisory committee members comply with conflict of interest statutes and receive per diem travel expenses, that the senate confirm committee appointees, and that financial interests of public members on the committee be clarified. A public member of the advisory committee also testified in favor of continuing the Center. He was particularly concerned with a staff recommendation that specific objectives be established for research grants, and that projects be funded on their ability to meet those objectives. He felt that this recommendation might limit the scope of the Center's research.

Opposing views were presented by the Director of Consumers Union's Southwest Regional Office. She stated that Consumer's Union believes the Center has not been operating in a manner that serves in the best interest of the public. She stated further that its resources have been used primarily to serve the interests of the real estate industry and if continued, the Center should be given two specific legislative mandate to serve the public interest with an advisory committee composed of a majority of public members.

SOCIAL PSYCHOTHERAPY, BOARD OF EXAMINERS IN

- Abolish the board and discontinue regulation of social psychotherapy.

Representatives of the Texas Psychotherapy Association, the Board of Social Psychotherapy Examiners, the Dallas Group Psychotherapy Society, consumers, and licensees objected to this approach. In general, the opposition was based on the opinion that state licensure of social psychotherapists is an appropriate means of identifying competent therapists for the public.

- Continue regulation of social psychotherapy under a modified regulatory method known as registration.

NO TESTIMONY WAS PRESENTED
ON THIS ALTERNATIVE

- Continue the board and its functions with modifications.

Testimony by Senator Brooks indicated that he supported this approach. Senator Brooks spoke mainly on the historical and current need for licensing and did not address specific internal changes outlined under this alternative.

TUBERCULOSIS NURSES EXAMINERS, BOARD OF

No public testimony was offered regarding the Board of Tuberculosis Nurses Examiners. However, written responses to the staff report have been received from two board members (the president and secretary-treasurer) and fifteen members of the Tuberculosis Nurses Association. Their responses to the staff report alternatives are summarized below:

- Maintain the board.

All respondents indicate a preference for this alternative.

- Abolish the board and transfer regulation of remaining licensees to the Board of Vocational Nurse Examiners.

The president of the Board specifically objected to this alternative on the grounds that it would be too difficult for another board to be fair, interested and informed on the activities of TB nurses. The other respondents did not address this alternative.

- Abolish the board and modify state job classifications to allow the licensees' continued employment.

All respondents indicated that this alternative would be preferred if the board is abolished.

VETERANS AFFAIRS COMMISSION

- Maintain the commission with internal changes.

Testimony by the Veterans Affairs Commission chairman and vice chairman supported continuation of the agency and opposed public members on the VAC but concurred with some other staff report recommendations. The commission sees no reason to increase VAC membership to nine because of added costs.

County service officers from 45 counties attended the hearing and strongly supported continuation of the VAC. They stressed the value of training, publications, assistance in claims processing, expertise of VAC staff. The CSO testimony was coordinated by Albert Brandesky, president, County

Service Officers Association.

Veterans service organizations (the American Legion, Veterans of Foreign Wars, Disabled American Veterans and AMVETS) strongly advocated continuation and strengthening of the VAC. All said the VAC performs a service that is not otherwise performed. Some said their service organizations do not have facilities to provide veterans services to the extent that the VAC does.

Ted Myatt, Veterans Administration regional director, Houston region, urged continuation of the VAC. Myatt told the SAC: "The bottom line to me is whether you want to reduce services to Texas veterans." Myatt said in his opinion there is no significant overlapping between functions of VAC veterans service officers and Veterans Administration benefits counselors. He said VAC service goes much further.

Individual veterans, veterans' widows, wives and mothers testified on specific cases of assistance by VAC staff and commended the VAC.

VETERINARY MEDICAL EXAMINERS, BOARD OF

- Continue the State Board of Veterinary Medical Examiners and its functions with modifications.

The board, represented by its chairman, endorsed this alternative together with the recommendations contained in the staff report concerning internal changes. While the board did not object to the inclusion of public members, it felt that a board composed of six licensees and three public members would be unwieldy and expensive. Instead, the board indicated a preference for keeping the board's size at six members and reducing the proposed number of public members to less than three.

A representative of the Texas Veterinary Medical Association also testified in favor of this alternative. He did, however, express concern with several of the recommended internal changes. First, he did not feel that the board should be given the power to set necessary and reasonable fees (recommendation 1.a.). Second, he objected to the recommendation relating to the Sunset Commission's across the board approach regarding conflict-of-interest provisions for board members (recommendation 1. m.). Finally, he objected to the inclusion of public members on the board (recommendation 1. o.).

- Transfer the functions currently performed by the State Board of Veterinary Medical Examiners to the Texas Animal Health Commission.

The board was opposed to this alternative for basically two reasons. First, it contends that the functions of the Animal Health Commission are totally unrelated to the regulation of the veterinary profession. Second, it feels that no efficiency benefits would be gained from the adoption of this alternative.

This alternative was also opposed by the TVMA representative. He also claimed that the Animal Health Commission had no expertise in the regulation of the profession.

VOCATIONAL NURSE EXAMINERS, BOARD OF

- Continue the Texas Board of Vocational Nurse Examiners and its functions with modifications.

The board, represented by one of its members, unanimously endorsed this alternative together with the recommendations contained in the staff report concerning internal changes. While the board did not object to the inclusion of public members, it did recommend a board composition of six LVNs and three consumers, with the latter members to include one public, non-health related consumer, and a doctor and hospital administrator representing the health-care related consumers.

Two former board members testified in favor of this alternative. One former board member voiced some concerns regarding five recommendations for internal change. He raised concern about recommendation 1.a. in regard to the definition of a public member. As the hospital administrator on the board, he considered himself a public member. He suggested a composition of five LVNs, one physician, one hospital administrator, one RN, and one public member. He voiced opposition to: recommendation 1.b. concerning the prohibition on board members from holding office in the professional association; recommendation 1.f. concerning the use of board members as proctors for the exam; recommendation 1.i. concerning the definition of the practice; and recommendation 1.o. concerning the use of the board's staff in making the preliminary determination regarding the need for disciplinary hearings.

The second former board member and past president of the board supported this alternative with the composition of the board being six LVNs and the remaining positions filled by public and semi-public members. He supported the remaining recommendations listed under this alternative.

A representative of the Licensed Vocational Nurses Association of Texas (LVNA) and the Texas League of Vocational Nurses (TLVN) voiced support for this alternative. He asked for the continued existence of an independent board because of the difference in philosophy of the leadership of the RNs and LVNs and their roles in the future. He expressed opposition to recommendation 1.i. which would define the practice of vocational nursing. With regard to board composition, he requested that a majority of LVNs on the board be maintained.

A representative of the Texas Association of Vocational Nurse Educators testified in favor of this alternative. The association also supported public membership and suggested that the RN on the board be involved in vocational nursing education. In addition, it was suggested that in making appointments to the board, population size of the area from which the board member originates be considered. The association supported all the remaining recommendations under this alternative.

The representative from Del Mar College, the Coastal Bend Health Science Consortium, and the Texas Association of Post-Secondary Occupational Education Administrators also expressed support for this alternative. He specifically concurred with the staff recommendations concerning staggered

renewals (1.d.), regionalization of the exam (1.v.), and implementation of two- or three-year accreditation cycles (1.s.)

The Texas Hospital Association representative expressed support for this alternative. The association also expressed agreement with the following recommendations with stipulations:

- a) concerning public members, if the board composition includes five LVNs (two from a hospital setting), one public member, one hospital administrator, one RN, and one physician.
- b) concerning an "inactive" status for licensees, if the requirements for reactivation are consistent and reasonable.
- c) concerning the supervision of holders of temporary permits, if permanent licenses are issued instead of temporary permits.
- d) concerning board discretion regarding the frequency of accreditation visits to training programs, if interim reports from the schools are required.
- e) concerning voluntary surrender of a license, if this action is brought up at the next board meeting and made part of the minutes.

A representative from Baptist Hospital in San Antonio expressed support for this alternative and all the recommendations except 1.j. concerning the supervision of holders of temporary permits by an RN or LVN.

- Transfer the board's current regulatory functions to a restructured board which would regulate both professional nurses and vocational nurses.

The Board of Vocational Nurse Examiners was strongly opposed to this alternative for three reasons. The first and primary reason was that each board was designed to regulate the education, registration, and practice of different types of health care providers. Second, the amount of time required of board members to prepare for and attend board meetings would be too demanding. Third, a consolidated board would not be as cost effective as the two separate boards are currently.

A former board member also opposed this alternative and specifically expressed concern regarding the proposed composition. His concern was that one licensed occupation (RNs) would attempt to dominate the other (LVNs).

LVNA and TLVN testified against this alternative. It was pointed out that the LVNs enjoy a good relationship with the legislature, doctors, and hospitals, while the RNs have continually experienced conflict with these groups. Consolidation of the two boards would embroil LVNs in the controversy surrounding RNs. In addition, if the boards were combined, the rule-making and enforcement functions would be jeopardized by the differences of opinion between the LVNs and RNs on the board.

Representatives of other groups also opposed this alternative. If the boards were combined, however, the following compositions were offered: 1) three RNs, three LVNs, and three public members; 2) five RNs (two from a hospital setting), three LVNs (two from a hospital setting), two public members, one hospital administrator, and one physician. A further recommendation was that board members serve four-year terms with no consecutive reappointment.

WATER WELL DRILLERS, TEXAS BOARD OF

- Continue the Water Well Drillers Board with administrative support from the Department of Water Resources.

Testimony presented by the Chairman of the Water Well Drillers Board indicated that the board supports this alternative. He stressed that the presence of drillers on the board provides expertise not otherwise available and that present regulation also makes drillers' well logs available to the public. He pointed out that the board has attempted to make the licensing exam better, but that experience rather than the exam is the main test of a driller's ability. A second board member indicated that the board had already begun acting on recommendations accompanying this alternative and that the board favors financial self-sufficiency. He also pointed out that consumers with complaints benefit from the experience of board members who are water well drillers.

The president of the Texas Water Well Association, speaking in favor of continued regulation by the board, proposed regulatory changes including strengthening the examination process, increasing licensing fees, shortening the grace period for renewals, and developing a manual of standards and procedures. He also suggested a three-tiered licensing structure for the industry. A spokesman for the Texas Water Conservation Association indicated support for continuing the board with the addition of citizen members but not giving ex officio members voting privileges. He supported increasing present fee amounts and providing stronger enforcement authority, but suggested that a board independent of the Department of Water Resources might be more efficient. A representative of the High Plains Underground Water Conservation District, a water well driller, and one other citizen spoke in favor of retaining the Water Well Drillers Board.

Opposing views were presented by one water well driller and another citizen who testified against retaining the board because other laws provide consumer protection and current market mechanisms are sufficient to ensure competency.

TABULAR SUMMARY OF SUNSET ACTION

ACTION ON SUNSET AGENCIES

Agency	Final Action	Date Created
1. Board of Tuberculosis Nurses	Abolish	1950
2. State Board of Library Examiners	Abolish and transfer functions	1917
3. Civil Air Patrol Commission	Abolish and transfer functions	1971
4. Board of Polygraph Examiners	Continue	1965
5. Water Well Drillers Board	Abolish and transfer functions	1961
6. Board of Plumbing Examiners	Continue	1947
7. Board of Registration for Professional Engineers	Continue	1937
8. Aeronautics Commission	Continue	1945
9. Veterans Affairs Commission	Continue	1947
10. Fleet Admiral Chester W. Nimitz Memorial Naval Museum Commission	Abolish and transfer functions	1969
11. Board of Podiatry Examiners	Continue	1923
12. Board of Chiropractic Examiners	Continue	1949
13. Board of Examiners of Social Psychotherapy	No Recommendations	1975
14. Board of Examiners in the Fitting and Dispensing of Hearing Aids	Continue	1969
15. Board of Private Investigators and Private Security Agencies	Continue	1969
16. Optometry Board	Continue	1921
17. Adjutant General's Department	Continue	1905
18. Amusement Machine Commission	Continue	1971
19. National Guard Armory Board	Continue	1935
20. Board of Dental Examiners	Continue	1897
21. Board of Physical Therapy Examiners	No Recommendations	1971
22. Board of Examiners of Psychologists	Continue	1969
23. Real Estate Research Center	Continue	1971
24. Board of Nurse Examiners	Continue	1909
25. Board of Vocational Nurse Examiners	Continue	1951
26. Board of Medical Examiners	No Recommendations	1873
27. Board of Pharmacy	Continue	1907
28. Board of Veterinary Medical Examiners	Continue	1911

AGENCY	SAC <u>Across-the-Board Approaches</u>																		
	Inclusion in Appropriations Process	Restrictive Advertising and Competitive Bidding Rules	Public Membership	Conflict of Interest--Trade Association	Conflict of Interest--Registered Lobbyist	Public Notification and Information	Examination Results	Examination Analysis	Complaint Files	Complaint Notification	Delinquent License Renewal	Licensure by Endorsement	Fee-setting Authority	Per Diem of Board Members	Range of Penalties	Staggered Renewal	Licensure Disqualification	Removal of Board Members	Hearing Procedures
17. Optometry Board	X	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	X	Yes	Yes	Yes
18. Pharmacy Board	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
19. Physical Therapy Examiners	X	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	X	Yes	Yes	Yes	X	Yes	Yes	Yes
20. Plumbing Examiners	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	X	Yes	Yes
21. Podiatry Examiners	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	X	Yes	Yes
22. Polygraph Examiners	X	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	X	Yes	Yes
23. Psychologists	X	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	X	Yes	Yes	Yes	Yes	Yes	Yes
24. Psychotherapy Examiners	X	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes							
25. Real Estate Research Center																			
26. Water Well Drillers Board	X	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes
27. Veterans Affairs Commission	X	N/A	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Yes	N/A	N/A	N/A	N/A	N/A
28. Veterinary Medical Examiners	X	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	X	Yes	Yes	Yes

KEY

Yes - Across-the-Board Provision Included in Draft

No - Across-the-Board Provision Not Included in Draft

N/A - Provision not appropriate for this agency

X - Provision contained in current statute

**DISCLOSURE INFORMATION FROM MEMBERS
OF THE
SUNSET ADVISORY COMMISSION**



ED HOWARD
STATE SENATOR

P. O. BOX 12068
AUSTIN, TEXAS 78711

P. O. BOX 5695
TEXARKANA, TEXAS 75501

December 15, 1980

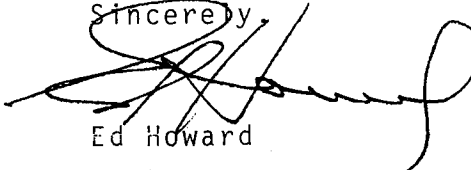
COMMITTEES:
VICE-CHAIRMAN:
ADMINISTRATION
MEMBER:
STATE AFFAIRS
ECONOMIC DEVELOPMENT
SUB-COMMITTEE ON NOMINATIONS
SUB-COMMITTEE ON RULES

Mr. Bill Wells
Staff Director
Sunset Advisory Commission
2nd Floor, Reagan Building
Austin, Texas

SUBJECT: Sunset Commission Rule 10: Public Statement
of connections to Agencies.

Dear Mr. Wells:

This statement is made in accordance with Rule 10 of
the Sunset Advisory Commission rules. Within the
provisions of that rule, I have had no contact with
any agency investigated other than that contact called
for by my capacity as a State Senator.

Sincerely,

Ed Howard

EH:nc

RECEIVED
DEC 17 1980
LEGISLATIVE BUDGET OFFICE
PROGRAM EVALUATION



LLOYD DOGGETT
STATE SENATOR
DISTRICT 14
P. O. Box 12068
Austin 78711
512/475-3731

The Senate of
The State of Texas
Austin 1871

Staff:
SOCORRO CHAPA
DARRYLL GRUBBS
VIRGINIA SMITH
SALLY WATKINS
NANCY WILLIAMS

Committees:
JURISPRUDENCE
HUMAN RESOURCES
STATE AFFAIRS

December 16, 1980

Mr. Bill Wells, Staff Director
Sunset Commission
P. O. Box 13066, Room #203
Capitol Station
Austin, Texas 78711

Dear Bill:

My connection with all agencies currently under Sunset review has been related solely to communications as a State Senator. I have not served as a representative, counsel, consultant, officer or employee of any of the agencies currently under Sunset review.

A handwritten signature in cursive script that reads "Lloyd Doggett".

Lloyd Doggett



The State of Texas House of Representatives

Bennie Bock II

State Representative, District 38
Caldwell / Comal / Guadalupe

Committees

Chairman, Environmental Affairs
Calendars
Ways & Means

December 22, 1980

Mr. Bill Wells
Sunset Commission
Reagan Building, Second Floor

Dear Mr. Wells:

Regarding Sunset Commission Rule X, I have had no personal contact, other than legislative, with any of the agencies reviewed by the Sunset Commission.

Sincerely,


Bennie Bock II

BB/hsr



*State of Texas
House of Representatives*

Bill Ceverha

P.O. Box 2910
Austin, Texas 78769
(512) 475-5951

December 15, 1980

300 Promenade Bank Tower
Richardson, Texas 75080
(214) 234-2322

Mr. Bill Wells
Staff Director
Sunset Advisory Commission
203 John H. Reagan Building
Austin, Texas

Dear Mr. Wells:

The undersigned has had no contact of a non-legislative manner with any of the agencies reviewed by the Sunset Advisory Commission this biennium.

Sincerely,

A handwritten signature in cursive script that reads "Bill Ceverha".

Bill Ceverha

BC/cu



State of Texas
House of Representatives
Austin

ALBERT (AL) BROWN
DISTRICT 57-C
P.O. Box 2910
Austin, Texas 78769

December 16, 1980

COMMITTEES:
CONSTITUTIONAL AMENDMENTS
Chairman
CALENDARS COMMITTEE
STATE AFFAIRS
Military and Veterans
Affairs Subcommittee
Chairman

6009 Rittiman Plaza
San Antonio, Texas 78218

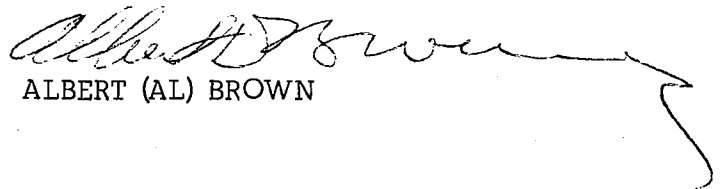
MEMO TO: BILL WELLS
FROM: AL BROWN
SUBJECT: SUNSET COMMISSION RULE 10
PUBLIC STATEMENT OF CONNECTIONS
WITH AGENCIES

Dear Mr. Wells:

This statement is made in accordance with Rule 10
of the Sunset Advisory Commission rules .

Within the provisions of that rule, I have had no
contact with any agency investigated other than that contact
called for by my capacity as a State Representative .

Sincerely,


ALBERT (AL) BROWN

December 22, 1980

MEMORANDUM

TO: Bill Wells
FROM: Representative Charles Evans
RE: SUNSET COMMISSION RULE 10

Regarding Sunset Commission Rule 10, I have had no personal contact, other than legislative, with any of the agencies reviewed by the Sunset Commission.

December 22, 1980

MEMORANDUM

TO: Bill Wells
FROM: Senator A. R. Schwartz
RE: SUNSET COMMISSION RULE 10

Regarding Sunset Commission Rule 10, I have had no personal contact, other than legislative, with any of the agencies reviewed by the Sunset Commission.

December 22, 1980

MEMORANDUM

TO: Bill Wells
FROM: Senator O. H. Harris
RE: SUNSET COMMISSION RULE 10

Regarding Sunset Commission Rule 10, I have had no personal contact, other than legislative, with any of the agencies reviewed by the Sunset Commission.

DISSENTING STATEMENTS

DOCTORS, NURSES, AND BAD MEDICINE FOR PUBLIC HEALTH IN TEXAS

A Minority Report Concerning the Sunset Commission Review of the State Board of Medical Examiners and the State Board of Nurse Examiners

PRINCIPLES

The Sunset process has revealed that some state licensing agencies are too often unresponsive to public needs. Instead, this segment of state government seems to consider a primary responsibility to be protecting the interests of the trade association whose members they are charged with regulating. As a modest step to encourage these state agencies to recognize their broader duty to all Texans, the Sunset Commission adopted certain principles for new enabling legislation for those agencies continued after the 1979 review and those to be considered in the 1981 Session:

1. For the first time each state board must include at least a minority of members who have no direct economic interest in matters within the agency's jurisdiction. Similarly, a minority of public members are to be included at each stage in any hearing process which considers complaints of the public against those being regulated. The professionals licensed are afforded majority representation on each board, but during board members terms of office they are subject to conflict of interest provisions restricting concurrent service as a trade association officer or director. General counsel for state agencies are also prohibited from serving as registered lobbyists.

2. Complaints and inquiries to the state agency must be systematically

maintained and those citizens who have a complaint pending must be periodically advised of its status.

3. To ensure good fiscal management, each state agency must place all its operating funds in the State Treasury.

4. Strict compliance with the Open Meetings and Open Records Acts must be observed, and when in doubt, the public's right to know should be observed.

5. The public interest is not served by unreasonably restrictive rules that deny information about professional services, such as their price. Regulations can and should be narrowly drawn to cover only that advertising which is false, misleading or deceptive.

Unfortunately, a number of agencies have resisted the addition of some or all of these Sunset principles to their new statutes. Trade associations having an interest in an agency have likewise been resistant to changes that might diminish association influence over the regulatory policies of the agency. Much of the opposition, however, by both agencies and trade associations, has simply been to doing anything in a different way. For example, the Sunset Commission has been told how public members on an agency's board or grievance committee would simply not be able to comprehend the technical nature of the agency's duties. State agencies have argued how much better they can handle their funds without the legislative oversight provided through the appropriations process and the deposit of funds in the State Treasury. Trade association lobbyists have claimed that any advertising by members of their profession would not be in good taste, regardless of whether it could benefit consumers by adding a little competition.

For the most part, both the Sunset Commission and the Legislature have responded admirably to this resistance to change by agencies and affected trade associations. They have applied the Sunset principles appropriately and have added public members to boards and grievance committees; they have required agencies to deposit their funds in the State Treasury, and have prohibited agencies from imposing advertising restrictions on licensees beyond those which are necessary to prevent deception. During the last session, no agency escaped without the adoption of most of the major Sunset principles.

HEALTH CARE IN TEXAS

Texas has some of the finest health care facilities in the world and some of the best health care professionals as well. Unfortunately, the delivery and availability of these services is not the best. Large portions of the state have no physicians, and 185 of 254 Texas counties have been designated as "medically underserved." In many urban areas, where large numbers of physicians concentrate, the cost of care, which is high and soaring ever higher, works to deny access to necessary health care just as surely as if no doctor were available.

In an effort to counteract this lack of balance, taxpayers are each year called upon for millions of tax dollars for medical education and incentive programs to encourage new doctors to move to rural areas, or to improve the delivery of health care in urban settings. These programs have had limited effectiveness. Another approach is to permit nurses to provide certain types of primary health

care services within the limits of their training, and to encourage competition through the dissemination of more public information concerning the cost and quality of health care.

Not unlike the Texas Senate Ad Hoc Committee on Rural Health Care in 1978, and the Senate Ad Hoc Committee on Standardized Medical Procedures in 1980, the report of the Sunset staff recommended an expanded role for the nursing profession in Texas (see excerpts in Appendix A hereto).

TMA - GOVERNMENT INTERFERENCE IS WONDERFUL
IF IT'S OUR GOVERNMENT INTERFERENCE

The state leadership of the Texas Medical Association (TMA) is well known both for its shrill attacks on government interference and its opposition to efforts to address the problem of soaring health care costs. The latter has included opposition to making accessible lower cost generic prescriptions, opposition to health maintenance organizations, and opposition to planning to avoid costly duplication of health care services.

During the Sunset review of the Board of Medical Examiners the TMA has once again rejected efforts to improve the delivery of health care services in Texas. It has ironically done it this time, by demanding that government intrusion in the health care system be continued.

The State Board of Medical Examiners has traditionally been viewed as just the

governmental arm of the TMA. The Board has functioned to further TMA domination of all aspects of health care, particularly with regard to denying a more realistic role for the nursing profession.

In this year's Sunset review, TMA initially succeeded in securing the votes to reject all Sunset staff recommendations that an appropriate role for the nursing profession be defined. TMA insisted that its state board continue to intrude in the health care system to deny the public access to other qualified health care professionals.

Next TMA succeeded in having a number of other Sunset principles rejected for "its" agency:

1. Public participation in the disciplinary process was blocked. Just as a minority of nonlawyers were added to State Bar grievance committees, a minority of nonphysicians were proposed for inclusion on physician Peer Review Committees. That was thwarted.
2. Limitation on the power of the State Board of Medical Examiners to interfere with the advertising of professional services that are not false, misleading or deceptive. This was omitted.
3. Mandatory reporting to the Board of legitimate malpractice complaints against physicians from district committees across the State. Unlike a number of states where one state agency is kept aware of the full extent of physician negligence, Texas has no such system (this problem is described in the attached Appendix B.) That was rejected.
4. Complete conflict of interest provisions for both the Board's legal counsel and physician members similar to those applied to professionals on other

health care boards (see Appendix B.) This was not included.

REPRESENTATION FOR TMA ONLY

While most Sunset concern has been directed toward the nonrepresentation of the public in regulatory agencies, Sunset has also sought to ensure that all those who were affected by state regulation had meaningful participation in that process. Once again TMA has rejected this approach for anyone but itself.

Traditionally three of the twelve positions on the State Board of Medical Examiners have been occupied by members of the Texas Osteopathic Medical Association. While osteopaths are licensed by the Board of Medical Examiners and take the same qualifying examination for their medical licenses as do TMA member physicians, they have a distinctly separate approach to treatment. Governor Clements recently reduced traditional osteopathic representation on the Board by replacing a retiring member who belonged to TOMA with one from TMA. During the Sunset process TMA effectively overcame efforts to designate statutorily any Board positions for osteopathic physicians. This suggests the eventual goal of TMA is to control all professional positions on the Board to the exclusion of TOMA. Not surprisingly, TOMA members fear selective enforcement and other policy steps by a State Board wholly controlled by TMA.

TMA - ALL OR NOTHING

TMA was successful on almost every vote the Sunset Commission took regarding the recommendations of the Sunset staff. Among the few exceptions were the adoption, over TMA objection, of a requirement that Board funds be placed in the State Treasury, and the requirement that the Open Records Act apply to this Board in the same manner as all other agencies.

Despite its high (perhaps 95 percent) success rate, TMA decided to reject the very draft it had such a big hand in fashioning. Therefore, the very Sunset Commission members who consistently supported TMA demands altering staff recommendations voted to reject the entire bill. Apparently TMA considered it most advantageous to have only their own one bill up for legislative consideration, with no Sunset bill recommendation available for comparison.

Because I believe the Sunset staff did an admirable job of reviewing the State Board of Medical Examiners, Appendix B includes a summary of staff recommendations that should be considered by all legislators.

In a time of growing citizen concern about excessive government interference in the free enterprise system, the Commission's review of regulatory agencies has presented numerous examples of just such interference. In none is it perhaps as clear, however, as in the regulation of the practice of medicine. The Board of Medical Examiners (composed solely of physicians), in consort with the Texas Medical Association, has worked to make physician domination of the entire

health care delivery system absolute. Noted free enterprise economist Milton Friedman recently observed, "For decades it (the American Medical Association) kept down the number of physicians, kept up the costs of medical care, and prevented competition with physicians by people outside the profession." Today, he correctly points out, "government bureaucrats" working on behalf of the profession, are helping assure the continuation of that monopoly. Through the Sunset Commission's yielding to Texas Medical Association influence the interests of the citizens of Texas have been betrayed, through the very process that was intended to expose and reform the past practices of governmental agencies that chose to forget why they were created and who they were created to protect.

APPENDIX A

1) Recommendations of the staff of the Sunset Commission (the Program Evaluation Section of the Legislative Budget Board) following a performance audit of the Board of Nurse Examiners. The Texas Medical Association was successful in obtaining Commission rejection of the following recommendations.

Alternatives

If the legislature determines that the regulatory function and/or board should be continued, the following alternatives should be considered:

- i) the statutory provision which exempts individuals performing acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners, should be modified (page 20);
- j) amend the statute to require that new graduates holding temporary permits be supervised by an R.N. (page 19);
- k) provide statutory authority for the board to recognize and regulate areas of specialty practice within the scope of the practice of professional nursing and authorize fees for specialty certification and renewals to the current fee structure (page 23);
- l) amend the statutes regulating the practice of professional nursing to permit professional nurses to perform acts which otherwise would constitute the practice of medicine, but which are recognized by the nursing and medical professions as proper to be performed by a professional nurse when performed in accordance with rules and regulations jointly promulgated by the Board of Nurse Examiners and the Board of Medical Examiners (page 23);
- m) permit professional nurses with advanced education and training certified by the Board of Nurse Examiners to possess, prescribe, dispense and administer prescription medications contained in a formulary of prescription medications jointly developed and promulgated by the Board of Nurse Examiners, the Board of Medical Examiners and the Board of Pharmacy (page 23);

2) Page references are to the Staff Report, May 22, 1980, available from the Legislative Budget Office, and excerpts of which follow:

(pp 20-23)

Texas currently has a permissive nurse practice act which exempts individuals performing "acts done under the control or supervision or at the instruction of one licensed by the Texas State Board of Medical Examiners. The review indicates that this exemption allows unlicensed foreign nurses and other personnel who cannot pass the State Board Examination to work in hospitals in Texas using titles such as "graduate nurse," "staff nurse," and "head nurse" which tend to imply to the public that they are licensed. This exemption negates any protection afforded the public by the regulation of nurses and is inconsistent with the intent of a practice act. In addition, a recent study of conditions associated with registered nurse employment in Texas indicated that both active and inactive nurses cite the lack of mandatory licensure as contributing to job dissatisfaction and compromising patient care. This exemption should be modified to apply only to employees of licensed physicians. In order to avoid any economic dislocations, this modification should be implemented over a five-year period with the assistance of a joint advisory committee consisting of physicians, registered nurses and hospital administrators.

Whenever licensing statutes regulate the practice of a profession, individuals who hold themselves out to the public as qualified for licensure should be clearly and readily identified as licensed practitioners. The current statute regulating the practice of professional nurses should not only limit the use of the title "R.N." or "Registered Nurse" to individuals licensed by the Board of Nurse Examiners, but it should also require that a licensee be clearly identified by appropriate insignia or other means as a "Registered Nurse" when providing nursing services to the public.

Currently, the Board of Nurse Examiners issues only one license: registration for professional nurses. In the past decade, however, the role of the professional nurse has changed and one result has been the emergence of the nurse practitioner. An advanced nurse practitioner may be defined as a currently licensed registered nurse who has completed a post-basic or advanced educational program which prepares a person for practice in an expanded role to provide primary health care. Since the "traditional" definition of nursing neither reflects the present scope of professional nursing education and practice nor recognizes the overlap which exists between the medical and nursing professions, thirty-two states have modified their nurse practice acts to incorporate the nurse practitioner concept. This generally requires either redefining the practice of nursing as defined in the state's practice act or amending the traditional definition of professional nursing to permit professional nurses to perform specific medical functions under less direct physician supervision. In contrast to a majority of states, Texas has not added an additional acts amendment or totally redefined the statutes regulating professional nursing to expressly recognize the "expanded role" of the nurse practitioner. The Texas Board of Nurse Examiners is one of three states which must rely on the board's general rulemaking authority to issue regulations to govern the practice of nurse practitioners. The rules and regulations concerning advanced nurse practitioners (388.06.00) most recently adopted in March, 1980 are now in litigation as a result of suits filed by the Texas Medical Association and the Texas Hospital Association alleging that the Board of Nurse Examiners has no "expressed or implied" authority to "create or regulate specialty practice such as advanced nurse practitioners."

Another issue associated with the statutory recognition of advanced nurse practitioners concerns the use of protocols and standing orders as a device through which a physician can supervise professional nurses performing medical functions

delegated by a physician. Protocols may be defined as written policies, instructions, orders, rules or regulations or procedures prepared jointly by physicians and nurses for the treatment of non-life threatening or chronic health conditions and for emergency care. These protocols delineate under what set of conditions and circumstances health care should be instituted and the type of action or procedures to be initiated. The health care delivery system in Texas has historically and traditionally functioned with physicians and nurses providing health and medical care utilizing standing orders. However, the legality of these activities was questioned in 1978 in Attorney General Opinion H-1295 which stated that a determination of whether a nurse may legally initiate written protocols and standing orders is dependent upon whether the protocol covers a nursing or medical function, whether the medical function is one which may be delegated, and whether adequate supervision is provided. The opinion also states that the common practice of a nurse providing medications to patients through protocols and general standing orders is illegal. This opinion has placed many nurses who operate under protocols and standing orders in a quandry as to the legality of their activities.

In addition, because current statutes prohibit nurse practitioners from providing non-complex medical care under protocols and standing orders without the physician physically present, 185 counties in Texas designated by HEW as medically underserved have been unable to qualify for reimbursement as provided for under the Rural Health Clinic Services Act, PL 95-210. This law was designed to increase the availability and accessibility of primary health care and services to residents of rural areas with shortages of medical services and health manpower. Where state laws do not prohibit such delivery, clinics eligible for certification as "rural health clinics" could be staffed by a physician assistant and/or nurse practitioner who would provide non-complex medical care to patients using protocols and standing orders written jointly by the physician assistant and/or nurse

practitioner and the physician. The minimum supervision required by federal regulations specifies that the physician be present at least once every two weeks. As a result of the statutory restrictions in Texas, applications for "rural health clinics" have been denied certification due to the lack of continuous on-site physician supervision. As of November 1979, only three of these clinics were in service in Texas. Texas statutes should be amended to authorize nurses to perform additional functions operating under standing orders and protocols in order to 1) protect physicians and nurses providing that health care; 2) increase access to health care, especially in rural areas; and 3) decrease the overall cost of health care.

APPENDIX B

Recommendations of the staff of the Sunset Commission (the Program Evaluation Section of the Legislative Budget Board) following a performance audit of the State Board of Medical Examiners.

Page references are to the Staff Report, June 19, 1980, available from the Legislative Budget Office.

Staff Findings Concerning Need for Mandatory Reporting

(pp 38-39)

A second major area of concern relates to the board's authority to receive reports on disciplinary actions against physicians taken by medical peer review committees and medical societies. Currently, under Sections 2.02 and 2.03, Article 4590i, V.A.C.S., such bodies may report to the board if they have knowledge relating to a physician that "reasonably raises a question with respect to his or her competency" (Section 2.02 relating to Peer Review Committees), or if formal disciplinary action is taken against a member relating to "professional ethics, medical incompetency, moral turpitude, or drug or alcohol abuse" (Section 2.03 relating to a medical society). Through this permissive reporting system, the board has received eighteen reports (eight from medical societies, nine from hospitals and one from a physician) and two have been used to aid in suspension or revocation hearings held by the board.

This system provides potential for a number of improvements in the enforce-

ment activities of the board. However, the permissive nature of the reporting system is inadequate as other entities involved in the "regulation" of medicine are not required to report all disciplinary actions taken against physicians to the board which has the general authority to prohibit the incompetent or dangerous practice of medicine. Further, the nature of the reports received thus far indicate that these bodies do receive information and take actions that address areas of concern to the board. For example, one of the reports utilized by the board to suspend a license related to a physician's "excessive, addictive use of medication and the development of a manic depressive psychosis complicated by drug abuse." Although certain reports relate to matters which the board cannot pursue (such as certain types of advertising), efforts to increase the reporting of incidents such as the one above by the several hundred hospitals, nursing homes, health care facilities and one hundred plus county medical societies in the state should be taken.

Staff Findings Concerning Conflict of Interest

(pp 49-50)

Board members, as appointed state officers, are subject to statutory standards of conduct and of conflict-of-interest provisions (Article 6252-9a and 9b, V.A.C.S.). Review indicates that six board members have not complied with conflict-of-interest provisions which require the filing of an affidavit by every appointed board member who has a substantial interest in a business subject to regulatory agency action. The board has been informed concerning this discrepancy and has indicated corrective action will be taken.

The Sunset Commission has adopted a number of across-the-board approaches to help minimize possible conflicts of interest in agency operations. One of these approaches prohibits board members from being officers in a professional association of the regulated profession. The review indicated that a number of such ties exist in the case of this agency. A second approach would prohibit a person registered as a lobbyist from acting as a general counsel to the board. The agency currently retains the services of a counsel who is registered with the Office of the Secretary of State as a lobbyist for several groups, four of which relate to the practice of medicine. As in the case of other agencies under review, the Sunset Commission's across-the-board provisions concerning conflicts of interest should be incorporated in the agency's statute.

Complete Sunset Staff Recommendations for New Enabling Legislation for the Board of Medical Examiners

Alternatives

If the legislature determines that the regulatory function and/or board should be continued, the following alternatives should be considered:

1. MAINTAIN THE BOARD WITH INTERNAL CHANGES.

- a) modify the statute to provide for the following board composition (page 53):
 - 1) 9 Medical Doctors (MDs)
 - 2) 3 Public Members
 - 3) 2 Osteopaths (DOs)
 - 4) 1 Physician Assistant (PA)
- b) modify the statute to require that all funds utilized by the board be placed in the State Treasury (page 18);

- c) modify the statute to require specific provisions relating to conflicts of interest relating to (page 49):
 - 1) board members and
 - 2) board legal counsel;
- d) limit the per diem claims made by board members to those related to actual board or board committee meetings, association and medical school liaison meetings when representing the board in an official capacity (page 20);
- e) modify the statute to eliminate the requirement that the board's secretary-treasurer act as the agency's chief administrative officer and provide for a full-time executive director (page 17);
- f) modify the statute to require only the secretary-treasurer's (or board designee's) signature on vouchers prepared by the board (page 21);
- g) modify cash control procedures to insure security of all currency received by the board (page 22);
- h) modify the board's statute to:
 - 1) allow the board to establish necessary and reasonable fees, with such fees being set in rule (when all board funds are placed in the State Treasury) (page 25);
 - 2) update the language of the statute to reflect current requirements of licensees regarding examinations (Art. 4503 V.A.C.S.) (page 26); and
 - 3) delete repeat sections added to the Act through Penal Code transfers (page 27);
- i) modify the statute so that grounds for disqualifying an applicant from sitting for an examination and grounds for removal of a license are: 1) easily determined and 2) currently existing conditions (page 27);
- j) modify the statute to eliminate the board's Basic Science verification requirement and transfer remaining funds of the Basic Science Board designated for the medical board to the General Revenue Fund (page 28);

- k) amend the statutory provision regarding delinquent license renewals so that: 1) the renewal of licenses expired for more than 90 days would require payment of the examination fee, and 2) the renewal of licenses expired for more than two years would require re-examination or continuing education as determined by the board. The board's current reinstatement procedures would be required at each point (page 29);

- l) modify board rules relating to physician assistants to require: 1) that physicians utilizing physician assistant's develop and maintain written descriptions of the types of services delivered by these individuals, with such descriptions available to the public and board investigators upon request; and 2) that any physician assistant utilized by a board licensee must have certain educational qualifications or equivalent experience and have passed the national certification exam for physician assistants (page 29);

- m) modify the statute (Sections 2.03 and 2.02, Art. 4590i, V.A.C.S.) to mandate reporting of disciplinary actions or knowledge of physician incompetency by professional medical societies and peer review committees respectively (page 38);

- n) adopt formal board rules and regulations relating to the purpose, general activities, conduct of hearings and scope of authority of the board's District Review Committees (page 36);

- o) modify the statute to provide for increased board authority to discipline physicians (page 37):
 - 1) who have been disciplined by regulatory boards in other states and
 - 2) through the imposition of fines for violations of the Act;

- p) develop internal written procedures for all activities of the Investigation Division to include (page 33):
 - 1) complaint processing;
 - 2) physician assistant permits;
 - 3) malpractice and peer review reporting; and
 - 4) investigator training materials;

- q) modify board activities relating to Administrative Sanction Hearings to (page 35):
 - 1) adopt formal board rules and regulations regarding the purpose, conduct and possible consequences of such hearings; and
 - 2) provide licensees requested to attend the hearings with written notification of the general complaints or allegations against them;
- r. modify the statute to require that parties to complaints received by the board be informed every six months concerning the status of the complaint until its resolution unless such notification would jeopardize an ongoing investigation (page 32);
- s) automate complaint receipt, filing and maintenance procedures through interagency contract services (page 33);
- t) modify board directory to include (page 52):
 - 1) an alphabetical and geographical listing of licensees;
 - 2) a summary description of board duties;
 - 3) the Medical Practice Act and related statutes; and
 - 4) the board's rules and regulations.

This directory or separate publications including the above and the board's newsletter should be available upon request and distributed to all public libraries.