

The logo for the Texas Sunset Advisory Commission is a semi-circular emblem. It features a thick black outer border and a white inner border. The center of the emblem is a solid black semi-circle containing the words "Texas", "Sunset", "Advisory", and "Commission" stacked vertically in a white, bold, serif font.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

**Texas State Board
of Public Accountancy**

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



Texas State Board of Public Accountancy

January 1990

Table of Contents

	<u>PAGE</u>
Background	Creation and Powers 1
	Policy-making Body 2
	Funding and Organization 2
	Programs and Functions 5
Results of Review	Overall Approach to Review 11
	Assessment of Need to Regulate
	Issue 1 - Continue regulation 15
	Assessment of Organizational Alternatives
	Issue 2 - Maintain current agency status 17
	Recommendations if Agency is Continued
	Summary 19
	Policy-making Body
	Issue 3 - Require one-third public members on the board 21
	Issue 4 - Require the governor to designate the chair 23
	Overall Administration (No recommendations)
	Programs
	Issue 5 - Remove age and citizenship requirements for licensure 25
Issue 6 - Remove the requirement for five years of college study 27	
Issue 7 - Change annual renewal of individual licenses to biennial renewal 31	

Table of Contents

Results of Review

(cont.)

	<u>PAGE</u>
Issue 8 - Require improved complaint tracking system	33
Issue 9 - Authorize use of administrative penalties	37
Issue 10 - Require public member representation on enforcement committees	39
Issue 11 - Require disciplinary actions to be open to the public	43

Across-the-Board Recommendations

47

Appendix

Exhibit A - CPA Exam Performance by Texas schools	49
Exhibit B - Impact of 150-hour Requirement on Exam Applicants in Florida	51
Exhibit C - Impact of 150-hour Requirement on Passing Rate of Exam Candidates in Florida	53
Exhibit D - Average Number of Months for Complaint Resolution	55
Exhibit E - Average Number of Months for Complaint Resolution of CE Violations Only	55
Exhibit F - Enforcement Demand and Capability of Selected Regulatory Agencies	57

BACKGROUND

Creation and Powers

The Texas State Board of Public Accountancy was created by the legislature in 1915 to examine, certify and regulate public accountants in Texas. The purpose was to establish a recognizable class of accountants that the public could rely on as being competent. The original law was a title act that prohibited anyone from falsely claiming to be a certified public accountant, but it did not limit the practice of public accountancy to persons certified by the board.

In 1945 the law was changed substantially. For the first time the practice of public accounting was restricted to persons holding permits from the board. The act defined the practice of public accountancy as services involving the auditing of financial records or preparing or attesting to the fair representation of financial accounting statements. The act also strengthened the requirements for certification and grandfathered in almost 3,500 "non-certified" public accountants who could not meet the new certification requirements.

The board's enforcement powers were expanded in 1961 to include subpoena powers and the authority to refuse permits, revoke certificates and suspend permits. The board also received the right to seek court injunctions against persons accused of unauthorized practice.

The courts have upheld and defined the board's powers in pursuing nonlicensees who present themselves to the public as being certified. In 1974, the court upheld the constitutionality of the Accountancy Act in prohibiting an unlicensed individual from holding out to the public as an accountant in Fulcher v. Texas State Board of Public Accountancy (515 S.W. 2d 950, 1974). In 1978, the Texas Supreme Court refused an appeal from a second Fulcher case (571 S.W. 2d 366, 1978). Both cases provide the board with case law on which to base its authority in regulating the unauthorized practice of accountancy.

In 1989, the board's duties were expanded by the 71st Legislature. The board's regulation of the practice of public accountancy was broadened beyond audit and attest work. The definition of the practice of public accountancy now includes management advisory services and tax services, when they are provided by a licensed CPA. The statute was also amended to require all licensees to complete 120 hours of continuing education every three years. Finally, the board was directed by law to implement a program to review the work product of licensees for compliance with appropriate technical accounting standards. These changes have moved the board into a more proactive role of helping to ensure the continued competence of its licensees, rather than simply responding to complaints after problems have arisen.

Policy-making Body

The Texas State Board of Public Accountancy is made up of 15 members who are appointed by the governor and confirmed by the senate. Twelve of the members must be certified public accountants, nine of whom must be in public practice at the time of appointment. The other three members represent the interests of the public on the board.

Board members are appointed for six-year staggered terms. The board elects its own officers, including the chairman, each year. The board's duties include:

- administering the national CPA examination to candidates in Texas;
- certifying and licensing individual CPAs;
- registering CPA firms;
- investigating complaints against persons practicing without a license;
- adopting rules of professional conduct for licensees;
- taking disciplinary actions against licensees for violations of the statute and board rules;
- monitoring compliance with continuing education requirements; and
- reviewing the work products of CPAs and CPA firms to ensure compliance with appropriate accounting standards.

The board uses a committee structure to assist in the performance of these duties. The committees generally include two to five board members and a number of professional CPAs appointed for their expertise in a relevant area. All committee members are appointed by the chairman of the board. The committees do not have binding authority but make recommendations to the full board for consideration and approval. The board currently has 13 formal standing committees in areas such as examinations, licensing, continuing education, quality review, long-range planning and enforcement.

The board held nine formal meetings and the board's committees met an average of five times each during fiscal year 1989. Between the board and committee meetings, members commit a significant amount of time to the functions of the board. For example, members spent an average of 34 days on board activities in fiscal year 1988. Board members are entitled to \$30 per diem and reimbursement for actual and necessary expenses incurred while conducting board business.

Funding and Organization

In fiscal year 1989, the board was appropriated \$3.2 million to support its activities. All of the board's funds are deposited in Special Fund 470 in the state treasury. Revenues are generated from fees that the agency is statutorily authorized to charge for examinations and licensing of CPAs.

Exhibits 1 and 2 show the board's revenues by source and expenditures by program for fiscal year 1989. Expenditures exceeded revenues during this period due to a one-time purchase of a new \$322,000 agency computer system.

Exhibit 1
Revenues by Source
Fiscal Year 1989

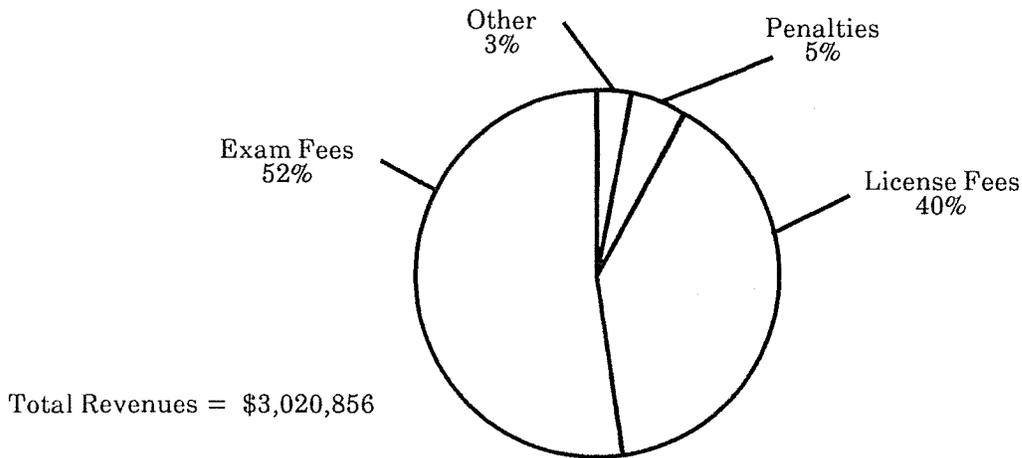


Exhibit 2
Expenditures by Program
Fiscal Year 1989

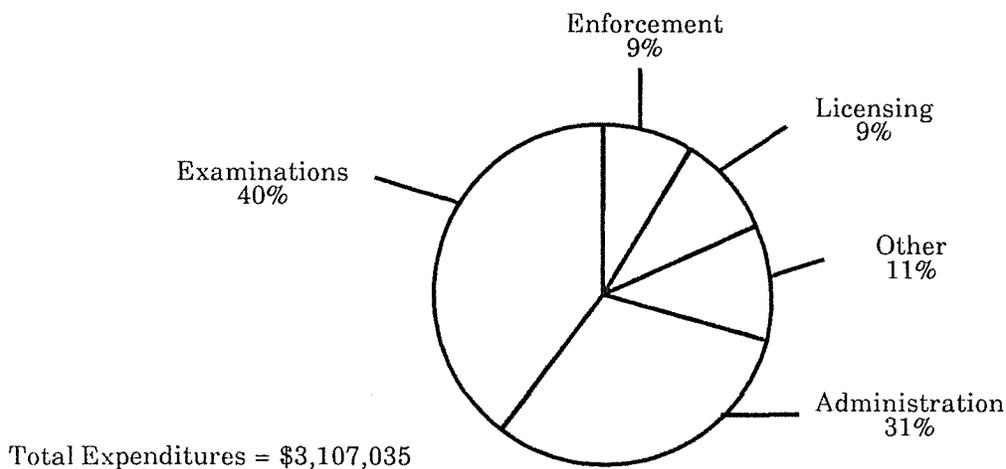
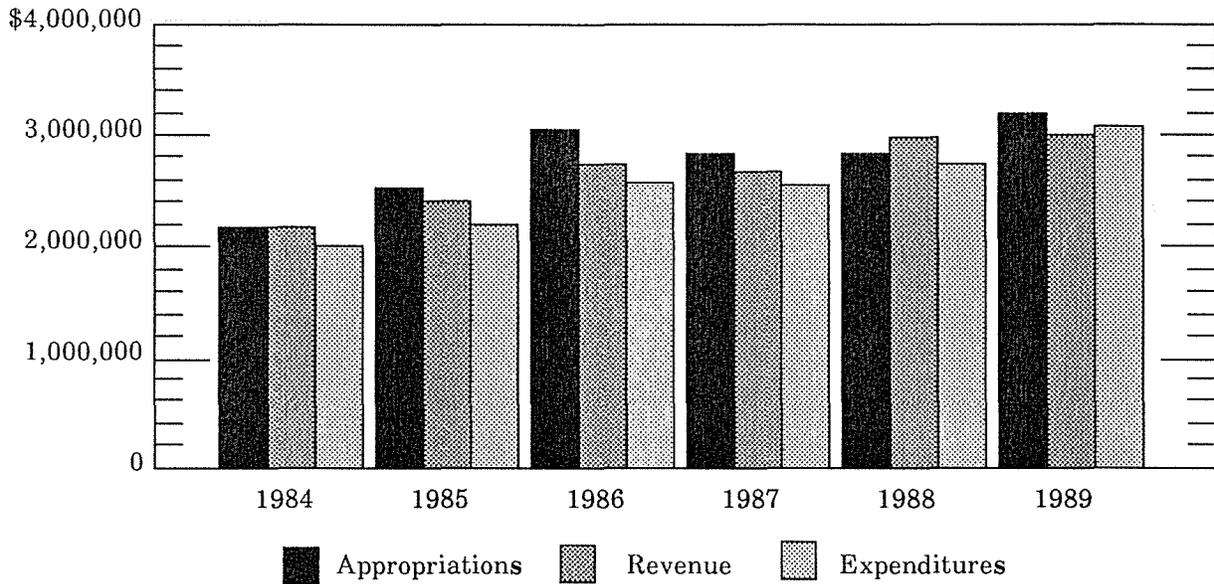


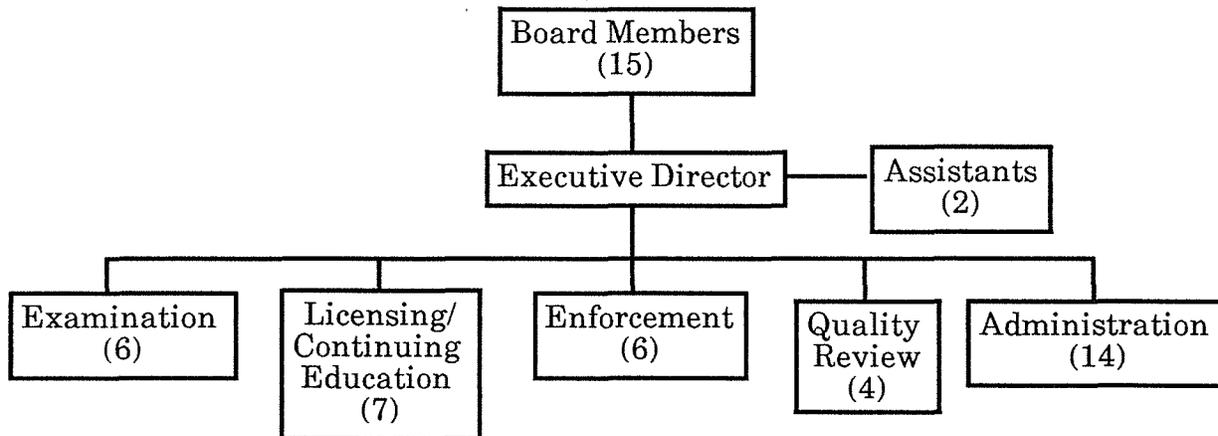
Exhibit 3 summarizes the agency's appropriations, revenues and expenditures for the last six years.

Exhibit 3
Appropriations, Revenues and Expenditures
 Fiscal Years 1984 - 1989



The board has a staff of 40 full-time employees, all located in the Austin office. Temporary employees are hired during peak workloads, such as the yearly license renewal period. Exhibit 4 gives a detailed breakdown of the agency by division.

Exhibit 4
Texas State Board of Public Accountancy
Organization Chart *



* as of 12-13-89

Programs and Functions

Examinations

Twice a year, the Texas State Board of Public Accountancy administers the Uniform CPA Exam, a national examination prepared and graded by the American Institute of Certified Public Accountants (AICPA). In Texas, exam candidates must apply to the board and meet the board's requirements before they are allowed to sit for the exam.

The staff verifies each candidate's college transcripts, checks references and conducts a criminal background check before approving the candidate's application to sit for the exam. All candidates must have a bachelor's degree, either in accounting or in a related field, with at least 30 hours of accounting courses. In fiscal year 1989, the staff received 19,990 applications and approved 16,678 candidates to sit for the exam.

The exams are conducted twice a year at rented sites in six cities -- Austin, El Paso, Fort Worth, Houston, Lubbock and San Antonio. The exam is administered over a two-and-a-half-day period. Since exam security is a major concern, candidates must present picture identification to enter the exam site and volunteer proctors monitor the testing to prevent cheating.

The exam is given in five parts: audit, law, theory and two practice parts. Candidates who fail more than three parts of the exam must take the entire exam again to receive any credit. Candidates who pass two or more parts of the exam are given credit for those parts and may sit again for the parts they failed. Candidates who pass two parts before September 1, 1989 have five years to complete the remaining parts. After this date, candidates must complete the exam within three years. In Texas, as in other states, exam failure rates are high (see Exhibit 5). About 75 percent of the candidates will fail all or part of the national exam, a rate that has remained fairly constant over the years. The board is responsible for notifying Texas candidates of their test scores after AICPA has graded the exams.

Exhibit 5

Texas and U.S. Pass Rates for CPA Exam*

First-time Candidates	1987		1988	
	May	November	May	November
Percent who pass all sections taken:				
Texas	20.8	27.7	21.1	26.5
U.S.	19.9	21.0	20.6	21.8
Percent who fail all sections taken:				
Texas	54.4	48.6	53.7	47.6
U.S.	52.1	51.1	50.8	49.5

*Data obtained from the National Association of State Boards of Accountancy, Inc.

Exhibit 5
Texas and U.S. Pass Rates for CPA Exam*
(Cont.)

Repeat Candidates	1987		1988	
	May	November	May	November
Percent who pass all sections taken:				
Texas	27.5	25.9	29.1	27.4
U.S.	28.7	27.6	29.6	27.2
Percent who fail all sections taken:				
Texas	50.0	51.0	49.4	50.7
U.S.	45.3	44.4	44.6	44.8

*Data obtained from the National Association of State Boards of Accountancy, Inc.

Certification, Licensing and Continuing Education

Applicants who have met the educational requirements to take the CPA exam and have successfully completed the exam must also meet the following requirements for certification:

- be a U.S. citizen or meet certain state residency requirements;
- be at least 18 years of age;
- be of good moral character; and
- have at least two years experience under a CPA's supervision.

The board conducts two swearing-in ceremonies per year for all candidates who have successfully met the requirements for certification. In fiscal year 1989, 2,893 new CPAs were sworn in. Once certified, all CPAs must maintain a license to practice by paying an annual fee of \$26. In fiscal year 1989, the board licensed more than 43,000 persons to practice public accountancy in Texas.

Partnerships and corporations that engage in public accounting as part of their business must also register with the board. Only firms that are registered with the board may use the phrase "certified public accountant" or the acronym "CPA" in connection with their firm's name. In fiscal year 1989, a total of 2,139 partnerships and corporations were registered with the board. An additional 6,390 sole proprietorships were also registered with the board in fiscal year 1989.

The licensing staff also processes applications for reciprocal licensure from CPAs moving to Texas from other states. To qualify for reciprocity, applicants must have passed the national CPA exam and either met all current requirements for licensure or met the requirements in place in Texas on the date they passed the exam. Applicants for reciprocal licensing must also meet Texas' continuing education requirements for three years prior to their application. Alternately, applicants with at least four years of experience as a CPA in another state within the 10 years

preceding application can apply for reciprocal licensure, provided they meet any additional requirements specified in board rules. In fiscal year 1989, 168 reciprocal licenses were issued by the board.

Licenses are required by statute to complete 120 hours of continuing education every three years, with a minimum of 20 hours per year. They must report their completed continuing education hours on the annual license renewal applications. The continuing education courses must be provided by board-approved sponsors and are required by statute to "contribute directly to the professional competence of the licensee."

To qualify as a continuing education course sponsor, organizations and companies must file an application with the board each year. Course sponsors are responsible for the content and applicability of continuing education classes, but the board maintains the right to reject inappropriate courses. Course sponsors are required to keep records of course descriptions and attendance. The staff also keeps records of each licensee's reported hours of continuing education and conducts spotchecks with course sponsors to verify licensees' attendance. In fiscal year 1989, 4,231 continuing education sponsors were registered with the board.

Complaints

Complaints against a CPA who is licensed by the Texas State Board of Public Accountancy may be filed by anyone, including representatives of other state and federal agencies and the board itself. All complaints must be in writing. The board can also initiate or receive complaints against persons allegedly practicing public accountancy without a license in Texas. The board refers these cases to the district court of the county where the nonlicensee lives or works so the court may issue an injunction to prohibit that person from practicing public accountancy without a license.

The board has received an average of 1,882 complaints each year for the last three fiscal years. During that time an average of 823 complaints were dismissed each year and an average of 472 complaints were pursued through informal conferences or formal hearings each year.

Enforcement

The board resolves complaints through both informal conferences and formal hearings. The board attempts to resolve most of the complaints at the informal conference level since the procedure is less costly and less time-consuming than the formal hearing process. Complaints that cannot be resolved informally are pursued through the formal hearing process. If a case is also being pursued in court, the board may wait for the court's decision before resolving the complaint administratively.

The board has two committees that conduct informal conferences to resolve complaints with licensees. One committee focuses on technical violations and the other handles behavioral violations, such as fraud or misconduct. The statute provides a full range of disciplinary sanctions including suspending, revoking or refusing to renew a license; reprimanding, censuring or probating a licensee; requiring the disciplined licensee to pay the administrative costs of the enforcement proceedings; and limiting the scope of a licensee's practice.

Exhibits 6 and 7 show the number of sanctions issued by type for fiscal years 1986 - 1989. Continuing education violations were separated from other types of complaints due to the comparatively large number and less serious nature of CE violations.

Exhibit 6

**Board Sanctions by Type
For Violations Other Than Continuing Education
Fiscal Years 1986 - 1989**

Board Actions	1986	1987	1988	1989
Revocations	5	2	32	9
Suspensions	1	1	5	9
Public Reprimands	0	1	1	6
Private Reprimands	19	31	60	20
Voluntary Compliance	114	59	84	52
Other*	190	58	150	54
Dismissals	45	64	233	112
TOTAL	373	216	565	262

* "Other" includes a variety of board actions, including dismissed and withdrawn complaints.

Exhibit 7

**Board Sanctions by Type
For Continuing Education Violations Only
Fiscal Years 1986 - 1989**

Board Actions	1986	1987	1988	1989
Revocations	-	-	-	-
Suspensions	5	10	21	20
Public Reprimands	-	-	-	-
Private Reprimands	-	446	170	29
Voluntary Compliance	545	908	884	-
Other*	12	-	33	421
Dismissals	-	-	76	1
TOTAL	562	1,364	1,184	471

* "Other" includes a variety of board actions, including dismissed and withdrawn complaints.

Quality Review Program

The concept of state boards actively seeking out and reviewing the reports of CPAs, rather than just responding to complaints, is relatively new. The board began considering a quality review program in 1987, and the board's statute was amended in 1989 to require quality reviews of licensees' work product. The legislature also approved the hiring of a new staff investigator and appropriated \$315,822 to the board for fiscal year 1990 to finance the quality review program. The board is in the process of developing procedures to implement the program, which by law must be in place by January 1, 1992.

Administration

The day-to-day operations of the agency are supported by 17 administrative staff members within its executive, administrative, accounting and data processing branches. The executive branch, which consists of the executive director and two assistants, oversees the agency's operations and coordinates board meetings and functions. The administrative branch, with five employees, processes the mail, ensures that checks for licensing and exam fees are properly deposited, maintains personnel records, and handles purchasing, office telecommunications and rental agreements.

The accounting division, comprised of two employees, maintains the board's financial records and prepares the board's annual budget. The data processing division has seven employees who provide computer services for the entire agency. The division is in the process of installing a new computer system that will provide greater storage capacity and improved analysis of the records of the more than 43,000 CPAs licensed by the board.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

Prior Sunset Review

The Texas State Board of Public Accountancy (TSBPA) was previously reviewed by the Sunset Commission in 1979. As part of the current review, the staff examined the previous staff report, the recommendations adopted by the Sunset Commission, and the resulting statutory changes made to the Public Accountancy Act in 1979.

The previous staff report on the TSBPA determined that there was a public need for the regulation of public accountancy and recommended that the functions of the agency be continued. The staff also suggested consideration of the following operational changes:

- placing agency funds in the state treasury, subject to appropriation by the legislature;
- implementing a central file for complaints and reducing the time interval for resolving more serious complaints and complaints requiring a hearing; and
- notifying complainants as to the disposition of their complaints.

The Sunset Commission concurred with the staff's findings and recommended that the agency be continued and that its funds be placed in the treasury. The commission also recommended the following:

- adding to the board three public members and two licensed CPAs not engaged in the practice of public accountancy;
- adding conflict of interest provisions against a board member, agency employee, or close relatives of such persons from being an officer, employee, or paid consultant of a public accountancy trade association;
- removing the board's authority to issue rules restricting competitive bidding and advertising by licensees except as necessary to define false, misleading and deceptive advertising practices;
- removing the requirement that licensees approve proposed rules before their adoption by the board; and
- modifying board procedures to include the option of staggered renewal of licenses.

Legislation enacted by the 66th Legislature to reauthorize the TSBPA included all of the Sunset Commission's recommendations. The bill also specified that the agency is subject to the Open Meetings Act and the Administrative Procedure and Texas Register Act. Finally, the bill required all licensees to post a sign containing information for directing complaints to the board.

Most of the changes made as a result of the 1979 sunset review are still in effect today. However, some modifications have been made to the changes implemented in 1979 as part of the sunset review, including the following:

- composition of the board was changed during the 71st session in 1989 to increase the number of certified public accountants on the board from nine to 12, leaving the number of public members at three;
- requirements for periodic notice to complainants on the status of their complaint was changed during the 71st session in 1989 from quarterly notice to notice when there is a change in the status of the complaint;
- requirements for licensees to post a sign notifying consumers that complaints could be directed to the board were changed during the 67th session in 1981 to be permissive, and were removed from statute altogether during the 71st session in 1989; and
- statutory language concerning competitive bidding by licensees was changed during the 71st session in 1989 to discourage a licensee from offering auditing services for less than the direct cost.

Approach to Current Review

The current sunset review of the Texas State Board of Public Accountancy covered all aspects of the agency's activities. In accordance with the Sunset Act, the review focused on an assessment of: 1) whether there is a continuing public need for the regulation of public accountancy in Texas; 2) whether there are alternative organizational approaches for carrying out the board's functions more effectively; and 3) whether changes could be made to improve the efficiency and effectiveness of the board if it is continued in its present structure.

A number of activities were undertaken by the sunset staff to assess the need for regulation of public accountancy and to gain a better understanding of the board's current approach to this area of regulation in Texas. These activities included:

- interviews with the executive director and various staff of the agency;
- observation of several board meetings, committee meetings, and both formal and informal disciplinary hearings;
- review of various agency documents and records, legislative and budget documents, and literature concerning the regulation of public accountancy;
- review of the staff recommendations and statutory changes made as a result of the previous sunset review conducted in 1978;
- comparison of Texas' approach to the regulation of public accountancy with that of other states;
- phone interviews with officials from the Securities and Exchange Commission and the Federal Trade Commission; and

- meetings with various interest groups and individuals affected by the activities of the agency.

The results of the review are addressed in the three following sections: 1) Assessment of Need to Regulate; 2) Assessment of Organizational Alternatives; and 3) Changes Recommended if the Agency is Continued.

Assessment of Need to Regulate

ISSUE 1: The state should continue the regulation of the occupation of public accountancy.

BACKGROUND

Government regulation of an occupation is not justified unless three conditions are met. First, the unlicensed practice of the occupation should pose a serious risk to the public's health, safety or economic well-being. Second, the benefits to the public should clearly outweigh any potential effects, such as a decrease in the availability of practitioners. Finally, the duties of the occupation should be of a complexity that consumers cannot properly evaluate the appropriateness of the service and the qualifications of the practitioners.

To assess whether the above conditions exist to an extent that would justify the agency's continuation, the 1979 staff report prepared for the Sunset Commission was reviewed and the board's current functions were evaluated. The 1979 sunset staff review of the Texas State Board of Public Accountancy concluded that:

- ▶ The regulation of public accountancy should be continued because the public relies on qualified CPAs to audit and attest to the accuracy of financial statements. The absence of such regulation could result in serious economic harm to businesses, government institutions and public investors.
- ▶ Texas' approach to the regulation of public accountancy was not overly restrictive in comparison with other states.
- ▶ The potential for consolidation was minimal because the functions of the board require both professional and technical expertise and there were no agencies with overlapping programs or populations.

The current evaluation of the need to continue regulation of public accountancy in Texas determined that:

- ▶ The basic conditions on which the need for regulation was based in 1979 are still present today. Continued regulation is warranted to protect the public from the economic harm that might result from incompetent or substandard public accounting work and the rendering of unreliable opinions on financial statements.
- ▶ The practice of public accountancy is too technical for the consumer to make a sound, qualitative evaluation of the services offered by competing public accountants. Regulation assures the consumer of the competence of persons engaged in the practice of public accountancy. The public relies on qualified CPAs to determine whether financial statements issued by businesses and government entities fairly represent their financial position.

- ▶ All 50 states regulate the occupation of public accountancy. Texas' approach is generally consistent with other states' requirements. Licensees must meet minimum educational and experience qualifications and pass the national CPA examination to be eligible to practice and must complete continuing education to maintain their licensure.
- ▶ The regulation of public accountants by the state fits into a broader national framework.
 - The federal Securities and Exchange Commission requires financial statements of public companies to be audited by independent accountants who are licensed to practice by individual state boards of accountancy.
 - Many of the standards and procedures used by public accountants are developed by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board. These are non-governmental standard-setting bodies whose pronouncements are recognized by federal and state authorities and enforced by the individual state boards of accountancy and other regulatory agencies.

Based on these factors, the review concluded that there is a continuing need to regulate public accountants in Texas.

RECOMMENDATION

- **The state should continue the regulation of the occupation of public accountancy.**

Continuing the regulation of public accountancy would provide assurance to the public of the competence of certified public accountants to perform financial services that require a high level of technical accounting skills.

FISCAL IMPACT

If the regulation of public accountants is continued using the existing board structure, the board's annual appropriation of approximately \$2.9 million would need to be continued. Since the board's expenditures are fully supported by fees collected from licensees, there would be no fiscal impact to general revenue.

Assessment of Organizational Alternatives

ORGANIZATIONAL ALTERNATIVES

ISSUE 2: The Texas State Board of Public Accountancy should be continued as a separate agency.

BACKGROUND

During each review, sunset staff members routinely examine the potential benefits of transferring the agency's duties and functions to other state agencies. Combining the activities of different agencies can have several benefits, such as eliminating the duplication of agency activities, reducing state expenditures, and increasing the amount and quality of services provided to consumers and members of the profession being regulated.

TSBPA is a free-standing agency that regulates a highly technical profession. Anyone wishing to practice public accountancy must meet a variety of requirements, including earning a bachelor's degree, passing a national certification examination, and working under the supervision of a licensed CPA for two years. In this respect, the board's regulatory role is similar to that of independent agencies that regulate professions requiring high levels of education and expertise, such as the Texas State Bar and the Texas Medical Examiners Board.

An assessment of existing agencies that offer a potential for transfer indicated that the Texas Department of Licensing and Regulation (TDLR) would be the most logical alternative. TDLR is an umbrella regulatory agency that licenses many businesses and occupations in the state.

A review of the impact and benefits of transferring all or part of the agency's functions to TDLR indicated the following:

- ▶ Transferring the board's functions to TDLR would not be an effective alternative to the current structure for many reasons, including the following:
 - TSBPA administers a two-and-a-half-day national certification examination to candidates in six cities across the state twice a year, coordinates the grading of the exam with a national board, and notifies test candidates of their grades. In 1989, nearly 20,000 exam applications were handled by board staff. This workload could not easily be assumed by existing TDLR staff.
 - The board receives an average of nearly 2,000 complaints a year. Many of these complaints involve violations of technical accounting standards. The board has established enforcement committees with a majority of members who belong to the accounting profession or are experts in accounting fields to handle complicated issues. TDLR would have to have access to the same level of expertise to resolve these complaints.

RECOMMENDATION

- **The Texas State Board of Public Accountancy should be continued as a separate agency.**

The programs and functions assigned to TSBPA are appropriately placed in the agency as it is currently structured. No significant benefits would be achieved by transferring any duties or activities to another agency.

FISCAL IMPACT

No fiscal impact is expected to result from this recommendation since the fees collected by the board regularly exceed its expenditures.

Recommendations if Agency is Continued

Summary of Recommendations

The recommendations that follow are consistent with and go beyond the scope of the findings and recommendations that resulted from the sunset process 12 years ago. The recommendation that the regulation of public accountants be continued by an independent agency is consistent with the last review. Certain concerns identified 12 years ago about the board's complaint process still exist and recommendations are made to address these concerns. Improvements in the board's overall operation and in the methods the state uses to oversee entry into the accounting profession are also identified.

Policy-making Body

As a standard part of the sunset review, the agency's policy-making body was examined. The review concluded that the board's composition should be modified to require five of its 15 members to represent the public. Additionally, the review concluded that the governor should designate the chair of the board to promote accountability of the board to the governor.

Overall Administration

The review of the administrative operations of the board did not indicate that changes were needed to improve the current activities carried out through this function.

Programs

Licensing

The review of this area focused on the qualifications persons must have to become certified public accountants and the licensing procedures used by the agency.

First, the requirements that a person be at least 18 years of age and a U.S. citizen are not practical qualifications and should be removed from statute. Second, the requirement of a minimum of 150 hours of college education for certification is unnecessarily restrictive and should be removed. Although a few states have such a requirement, implementing the requirement in Texas may significantly reduce entry into the accounting profession, based on the experience of other states and the limited number of Texas colleges and universities able to provide the additional hours. Maintaining current requirements that persons obtain a bachelor's degree in accounting and pass the national CPA exam appear sufficient to ensure initial competence. The passing rates on the exam for graduates of Texas schools is shown in appendix Exhibit A.

One other change is recommended to streamline the agency's licensing procedures. The current annual license renewal should be changed to a biennial renewal process to reduce agency workload and administrative costs.

Enforcement

The review of this area focused on the agency's overall ability to manage its large complaint workload. Although improvements in complaint handling have been made since the sunset review 12 years ago, the agency's process to receive complaints, act on them in a timely manner and then document its action needs improvement. The agency's enforcement efforts are also poorly funded in comparison to other regulatory agencies. Recommendations are made to improve the agency's complaint tracking and data systems.

In addition, the review concluded that the agency's range of enforcement sanctions is inadequate. The agency does not have the ability to impose administrative penalties. This is a common disciplinary tool and should be added to the agency's enforcement program.

Finally, the review identified two areas where the agency's enforcement efforts need greater public access. A significant number of the board's enforcement actions have resulted in private reprimands. Although these reprimands become final orders of the board, the public does not have access to the identity of the disciplined CPA or the basic problem the board is addressing. Additionally, the board uses enforcement committees to do much of its complaint review work through informal conferences. Although this process is useful, public members of the board are not always represented on the enforcement committees. To address these two concerns, it is recommended that all final orders of the board be open and available to the public and that at least one public member of the board be appointed to each of the board's enforcement committees.

The recommendations made in this section of the report will result in an estimated annual cost savings of \$17,700 to the board. Issue Six, deleting the increased educational requirements for CPAs, could result in an annual savings to the state of approximately \$1.7 million for not having to provide additional college courses beginning in 1997.

ISSUE 3: The statutory composition of the board should be changed so that one-third of its members are public members.

BACKGROUND

From 1915 to 1979, the Texas State Board of Public Accountancy was composed solely of members of the accounting profession. In 1979, the legislature broke with this longstanding tradition by adopting a sunset recommendation to add three public members to the nine-member board. The resulting 12-member board was intended to ensure representation of the public's interest as well as that of the profession.

The ratio of professional and public members remained in place until 1989, when three more professional members were added to the board in an effort to reduce individual board members' workloads. This increased the number of professional accounting members from nine to 12, but left the number of public members at three. As a result, direct representation of the public was reduced to one-fifth of the board's total membership.

A key objective of the sunset process is to provide the public with greater input in state government. One of the most common methods used is to require that public members be included on all boards and commissions. The purpose of the board of accountancy is to regulate the profession to protect the public's interest. In general, the public and consumer groups are not involved in the activities of the board, while the interests of the profession on any issue are strongly represented. Therefore, it is important to provide an adequate number of public members to effectively represent the public's perspective on issues concerning the regulation of public accountancy in Texas.

A comparison of the board's ratio of public members with that of other Texas licensing boards and other state accountancy boards showed that:

- ▶ A trend toward including at least one-third public membership on state licensing boards has been established in Texas.
 - Sixty percent of Texas licensing boards have at least one-third public membership, including the Architectural Examiners Board, the Engineers Professional Registration Board, the Optometry Board, and the Board of Veterinary Medical Examiners.
 - The Sunset Commission has generally recommended that the ratio of public members to professional members be one-third or greater.
- ▶ Many other state accountancy boards have more than one-fifth public membership.
 - Seven states, including California, Connecticut and New Jersey, require one-third public membership on their boards of accountancy.

- Another seven states require one-fourth public membership on their accountancy boards.
- ▶ The board's public members have taken an active role and have been effective in fulfilling their duties. A survey of current and former public members of the board showed that they have served on enforcement, examination, long-range planning and continuing education committees. Some public members have been selected to chair committees. Most public members surveyed did not feel that the issues facing the board were too technical for a layman to comprehend.

PROBLEM

The board's composition does not provide one-third public representation. The one-third level of public representation is present on many licensing boards in Texas and helps ensure that the public's perspective, not just the profession's interests, is adequately reflected in the activities and decisions of the board.

RECOMMENDATION

- **The statute of the Texas State Board of Public Accountancy should be changed so that five of the 15 members of the board are public members. The other 10 members will continue to be CPAs and eight of the CPA members will be required to be in public practice at the time of their appointment.**

Designating five public members will establish the level of public membership present in the majority of licensing boards in the state and help ensure that the board's actions reflect the interests of the public and not just those of the profession. Requiring eight of the 10 CPAs to be in public practice simply continues the current requirement for the majority of CPAs on the board to be actively practicing public accountancy. If adopted, this recommendation should be phased in so that it does not impact current members.

FISCAL IMPACT

No fiscal impact will result from this recommendation.

ISSUE 4: The statute should require the governor to designate the chairman of the board.

BACKGROUND

The chairman of the board is currently elected by the members of the board and serves as chair for one year. The Sunset Commission has routinely recommended that the governor appoint the chair to improve the board's accountability to the governor. The governor selects the chair of 42 other state agencies, including the Texas State Board of Insurance, Texas State Board of Education, Texas Department of Health, Texas Alcoholic Beverage Commission and the Texas State Highway Commission. Most agencies reviewed by the Sunset Commission for the 71st Legislature had this provision in statute. Where it was not in statute, the provision was added as a result of sunset action.

PROBLEM

The election of the chairman by board members each year does not provide the best method of ensuring a continuity of policy between the board and the governor.

RECOMMENDATION

- **The statute should be changed so the governor designates the chair of the Texas State Board of Public Accountancy.**

The person appointed as chair will continue to serve in that position at the pleasure of the governor. This change will promote accountability of the board to the governor.

FISCAL IMPACT

No fiscal impact would result from this recommendation.

ISSUE 5: The minimum age and U.S. citizenship requirements for certification should be removed from the statute.**BACKGROUND**

Anyone who applies for certification with the Texas State Board of Public Accountancy must meet minimum qualifications that are outlined in statute. Key qualifications include passing the national exam and meeting the experience requirements. The statute also requires that a candidate be at least 18 years old and a U.S. citizen. Candidates who are not U.S. citizens must have lived in Texas 90 days or be a legal resident of Texas for six months before applying to take the CPA exam.

A review of state and national practice and policy regarding age and citizenship requirements indicated the following:

- ▶ The provisions are used infrequently. The board has not denied anyone certification based on the minimum age requirement in at least 20 years and denies an average of four to six certification applications each year because of an applicant's citizenship status.
- ▶ The legitimacy of U.S. citizenship requirements for professional licensure has been challenged in numerous state and federal courts, including Texas. The courts have declared these requirements unconstitutional and discriminatory, with one exception, known as "the political function exception." This exemption is sparingly applied only to occupations with "broad discretionary power over the formulation or execution of public policies importantly affecting the citizen population" (Bernal v. Fainter, 467 U.S. 216, 1984).
 - The U.S. Supreme Court has struck down a variety of citizenship requirements in other states, including requirements for licensed attorneys, notaries public, engineers, pharmacists, dentists and physicians.
 - The courts have applied the political function exemption to very few occupations, including police officers, probation officers and public schoolteachers. It is doubtful that the accounting profession would qualify for the exemption because the medical and legal professions do not.
 - The federal courts have also struck down state laws that tie citizenship status to professional ability, including a New York statute that required physicians to be U.S. citizens (Surmeli v. State of New York, 412 F.Supp. 394, 1976). This reasoning could easily apply to the accounting profession as well.

- ▶ Most states appear to have acknowledged the legal risk of having citizenship requirements for professional occupations. According to a 1987 National Association of State Boards of Accountancy publication, only four states -- Alabama, North Carolina, Texas and West Virginia -- include U.S. citizenship in their requirements for licensure as a certified public accountant.
- ▶ The board's statute has residency provisions that are also questionable. The statute requires applicants for certification who are not U.S. citizens to meet certain state residency requirements. Although this requirement has not been legally challenged, the courts' arguments against U.S. citizenship requirements could be extended in this case, because the residency requirement applies only to noncitizens. It would then be discriminatory and unconstitutional to have special, separate state residency requirements for noncitizens.

PROBLEM

The statutory requirement that candidates for certification be at least 18 years old is unnecessary and obsolete. The statutory requirement for U.S. citizenship is potentially unconstitutional and discriminatory against noncitizens who could otherwise qualify for licensure.

RECOMMENDATION

- **The minimum age and U.S. citizenship requirements for certification by the Texas State Board of Public Accountancy should be removed from statute.**

Deleting the minimum age requirement will remove unnecessary and burdensome language from the statute. Removing the U.S. citizenship requirement from statute will remove provisions that serve no purpose other than to place additional burdens on noncitizens who want to become licensed CPAs in Texas. Removing this requirement will also eliminate the potential for it being challenged in court on the grounds of discrimination and unconstitutionality.

FISCAL IMPACT

No fiscal impact will result from this recommendation.

ISSUE 6: The statute should be amended to remove provisions requiring five years of college study as part of the minimum educational requirements for becoming a CPA in Texas.

BACKGROUND

A number of changes were made during the 71st session to increase the educational requirements for becoming a CPA in Texas. Prior to September 1, 1989, a person could become a CPA in Texas with a high school degree and two years of college accounting, in addition to six years of work experience and successful completion of the national CPA examination. Now all CPA candidates must have at least a four-year bachelor's degree with a minimum of 30 hours in accounting, in addition to two years of work experience and successful completion of the CPA examination.

These educational requirements are scheduled to become even more stringent in 1997 when all CPA candidates will be required to complete up to 30 additional hours of college credit beyond what is currently required for a bachelor's degree. The total number of hours of college credit will have to equal at least 150 hours, or five years of college study. The required number of accounting hours will increase from 30 to 42. Most students will have to complete an additional year of college, including a minimum of 12 more hours in accounting, to meet these requirements. Candidates will still be required to obtain two years of work experience and successfully complete the CPA examination before being eligible for certification.

These changes were made largely in response to the American Institute of Certified Public Accountants' (AICPA) initiative to increase educational requirements nationwide. The institute is a national voluntary association of professional CPAs. For over thirty years, the AICPA has been pursuing making postgraduate study in accounting and business administration a requirement for the CPA certificate. The current position of the AICPA, as stated in its educational policy guidelines, is that at least 150 hours of college study are required to obtain the common body of knowledge needed to begin work as a certified public accountant. In contrast to the requirements adopted in Texas, the AICPA recommends that the work experience be dropped for those who meet the 150-hour requirement.

While many within the accounting profession support additional education requirements, there has also been significant opposition nationwide. Progress on the implementation of the requirement has been slow. Only three states have implemented 150-hour requirements, while five other states, including Texas, have provisions that go into effect between 1993 and 2000.

A review of other states' educational requirements and research on the impact of and need for more stringent educational requirements determined the following:

- ▶ The purpose of licensing public accountants in Texas, as in other states, is to protect the public from unqualified practitioners. Any restrictions on entry into the profession must be carefully scrutinized to ensure that they are the most appropriate means available to protect the public and that they provide a fair balance between the needs of the profession and those of the public. Once restrictions are placed in law, they become an inflexible standard that must be met to gain entry into the profession.
- ▶ Obtaining certification as a CPA in Texas is already a difficult and lengthy process.
 - To be certified, a person must have at least a bachelor's degree with 30 hours in accounting and 20 hours in business administration. He must also pass all four parts of the national CPA exam and have at least two years of experience working in public practice under the supervision of a CPA.
 - The CPA exam itself is an extremely difficult professional exam. The pass rate for first-time candidates in Texas in 1988 was 23.8 percent. More than 50 percent of the first-time candidates in Texas in 1988 failed all four parts of the examination. This pass rate is much lower than that of other professional examinations.
- ▶ A survey of other states indicated that Texas' increasing educational requirements are more restrictive than most other states.
 - Six states allow candidates with no college education.
 - Eight states require some college coursework, but do not require a bachelor's degree.
 - Twenty-eight states require a bachelor's degree.
 - Eight states have adopted requirements for a total of 150 hours. Hawaii, Florida and Utah currently require 150 hours and five other states, including Texas, will put the requirement into effect between 1993 and 2000.
 - Of the eight states with a 150-hour requirement, Texas' overall provisions for certification are among the most stringent. Four of these states have lowered or dropped their work experience requirements in combination with the increased educational requirements and most do not statutorily require an additional number of accounting hours.

- ▶ States that have adopted the 150-hour requirement have experienced difficulties.
 - Hawaii has considered eliminating the 150-hour requirement. A sunset report indicated that the additional costs, hardship to CPA candidates, and recruitment and manpower shortages for CPA firms were not justified by any clear benefit to the public.
 - Florida has experienced a significant reduction in both the number of first-time candidates applying to take the exam and the overall number of candidates passing the exam with adoption of the 150-hour requirement in 1984, even though there was a five-year lead-in period.

Appendix Exhibit B shows that the number of first-time exam applicants in Florida jumped to 3,657 just prior to the change in 1984, then dropped to 54 the first year it was implemented. The number has only risen back to 812 after five years.

Appendix Exhibit C shows that the total number of Florida exam candidates passing did not drop off as dramatically as first-time applicants due to the large number of repeat candidates passing the exam. However, the number passing has dropped from a high of 1,422 in 1983 to only 684 in 1988.

- ▶ Using professional licensing laws to make changes that significantly affect the structure and length of college degree programs bypasses the education system's normal procedures for evaluating such changes and may result in additional costs or a reduction in the number of schools able to fully prepare students for careers in certified public accounting.
 - The Higher Education Coordinating Board and individual college and university administrations are responsible for determining which programs should be expanded to include a fifth year of study or graduate courses. Currently only seven of the 40 Texas schools with accounting programs offer courses beyond the standard four-year bachelor's degree.
 - The additional educational requirements may increase costs to the state. The cost to the state to fund public universities for a minimum of 12 additional accounting hours for approximately 3,000 students is estimated at \$1.7 million per year. If funding is not available, many of these schools will no longer be able to fully train students to become CPAs.
- ▶ The additional education requirements will result in increased costs to the student and may decrease the availability of CPAs in Texas.
 - The estimated costs to students for an additional year of college can range from approximately \$4,000 to \$15,000 depending on the school. A number of students will not be eligible to take advanced courses due to the more stringent academic requirements for graduate programs. Students will also have to postpone full-time employment in their profession for a year at a cost of \$22,000 to

\$24,000, based on average annual starting salaries nationally for certified public accountants with bachelor's degrees.

- A significant decrease in the numbers of persons sitting for the CPA examination and eventually becoming certified may occur when these provisions go into effect in Texas in 1997. Based on 1988 exam figures, 92 percent of all first-time candidates for the CPA exam, or approximately 3,000 students a year, would be affected by the higher educational requirements.

PROBLEM

Requiring additional accounting and business hours beyond what is currently required for a bachelor's degree will result in a significant number of problems for accounting students and schools. These additional requirements will restrict entry into the accounting profession and very likely result in significant reductions in the number of persons entering the profession in Texas. Texas' requirements will become more restrictive than those of most other states.

The primary benefit of the additional course work will be to further increase a person's academic knowledge of accounting. The CPA examination already acts as a significant barrier to persons entering the field who do not possess the necessary accounting skills. If a person can pass the exam without having to meet these additional educational requirements, it is not clear why the state should require him to do so.

RECOMMENDATION

- **The statute should be amended to remove the provisions requiring students to complete 150 hours of education as part of the minimum requirements for becoming a CPA in Texas.**

Removing the requirements for 150 hours of study will ensure that prospective CPAs in Texas are not restricted from entry into the profession simply because they cannot afford to complete an additional year of college or postpone full-time employment. The current combination of a bachelor's degree in accounting, two years of work experience and the CPA examination will continue to protect the public against unqualified practitioners.

Colleges and universities that decide to implement a five-year program in accounting will be free to develop such programs, setting what they believe to be an appropriate number of additional accounting and business course hours. Students who can afford to continue their education will be free to do so. However, all CPA candidates would not have to complete five years of college before they could even be considered for certification in Texas.

FISCAL IMPACT

Reducing the educational requirements will have no fiscal impact on the board. The overall increase in costs to the state for providing additional courses that will be avoided after 1997 due to the elimination of the 150-hour requirement is estimated at approximately \$1.7 million per year.

ISSUE 7: The statute should be amended to require the renewal of individual CPA licenses and reporting of continuing education hours on a two-year cycle to reduce staff workload and expense.

BACKGROUND

The statute provides for the annual renewal of individual CPA licenses, with all licenses expiring on December 31 each year. The board has statutory authority to stagger its license renewals but has never implemented a staggered renewal system because of conflicts with other peak workloads tied to giving the CPA examination twice a year. The statute also requires the board's 43,000 licensees to complete at least 120 hours of continuing education every three years, with a minimum of 20 hours each year. The board has by rule required licensees to report their continuing education hours with their license renewal on an annual basis.

Many state boards of accountancy renew licenses once every two years to reduce staff workload and expense. These boards also require the completion of continuing education hours within the two-year renewal period so that the two activities can be handled together to further reduce costs. A review of the Texas State Board of Public Accountancy's activities and evaluation of the impact of two-year license renewal and continuing education reporting in Texas resulted in the following findings:

- ▶ Renewing more than 43,000 licenses each year is a major task for the licensing staff and significantly increases the workload for the mailroom and data processing staff. From October to January, from two to six temporary workers must be employed to assist the regular staff in processing the huge volume of mail involved in renewing these licenses. The cost for the temporary staff averages \$8,500 per year.
- ▶ Verifying continuing education hours is also labor intensive. The staff checks and records the number of continuing education hours completed by each of more than 43,000 licensees each year. This is to ensure that licensees are meeting the 20-hour minimum of continuing education required each year. This process requires the full-time work of three employees for approximately four to five months each year.
- ▶ The extension of license renewals beyond an annual basis is not an unusual or unique approach. Two-year license renewal and the completion of continuing education hours within the two-year renewal period is recommended in the Model Accountancy Bill prepared by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy for consistency among the states. Twenty-six state boards of accountancy renew licenses on a two-year basis and tie their continuing education hours to the renewal period. Of the five states with the largest number of CPA licensees,

Texas, which has the largest number of licenses in the nation, is the only one that still requires the renewal of all individual CPA licenses on an annual basis.

PROBLEM

The annual renewal of licenses and reporting of continuing education hours results in unnecessary costs and an extremely heavy workload for the staff since an alternative method exists that could easily reduce both.

RECOMMENDATION

- **The statute should be amended to require the renewal of individual CPA licenses and reporting of continuing education hours on a two-year basis to reduce staff workload and expense.**

This change would cut the yearly number of licenses that must be renewed and checked for CE compliance in half, from 43,000 licenses to approximately 21,500 licenses. One-half of the licenses could renew and report their CE hours in even years and the other half would follow the same procedure in odd-numbered years. Costs to the licensees would not change because they would pay a renewal fee that is double the annual fee once every two years. The change to biennial license renewal would not affect the agency's funding because revenues would continue to come in at the same rate and the two-year cycle would coincide with the two-year legislative budget cycle. Licensees would still have to complete the equivalent of 40 hours of CE each year, but the statute would require 80 hours of continuing education every two years instead of 120 hours every three years. A minimum of 20 hours a year would continue to be required, but the staff would no longer check this each year. Certified public accountants would meet the requirements without the board staff having to check their progress on an annual basis. If the continuing education requirements have not been met, the license simply will not be renewed at the end of the two-year renewal period.

FISCAL IMPACT

It is estimated that switching to a biennial renewal system would result in cost savings of approximately \$17,700 per year from the reduction in expenses for temporary help, postage and printing.

ISSUE 8: The board should be directed to improve its complaint tracking system and to seek additional enforcement funds.

BACKGROUND

The Texas State Board of Public Accountancy is responsible by law for enforcing the provisions of the Public Accountancy Act to protect the public from CPAs who are not qualified to practice. This involves the oversight of more than 43,000 CPAs licensed to practice public accountancy in Texas. The board is responsible for responding to complaints concerning its licensees and is given a range of sanctions to ensure licensees' compliance with the law, including the authority to suspend or revoke a CPA's license to practice.

One of the key measures for evaluating the effectiveness of an agency's enforcement process is the time interval required for it to resolve complaints. To effectively evaluate the length of time required in resolving complaints, the complaints need to be categorized by the type of violation alleged and the method of resolution.

The board keeps overall data on the number of complaints it resolves each year, but it does not routinely categorize and track the timeframe for resolving complaints. This type of information is gathered by most occupational licensing boards for their own management purposes and to justify funding of their enforcement programs.

A review of the board's enforcement activities and funding indicated the following:

- ▶ The number of complaints received by the board has significantly increased over the years from an estimated 375 in 1984 to a high of more than 1,900 in 1988. In fiscal year 1989 the board received more than 1,700 complaints.
 - ▶ Information on complaints requested as part of the sunset review process indicated problems in the board's ability to accurately track its resolution of complaints. Data on how complaints were resolved and the time required to resolve complaints was not readily available and could not easily be compiled.
 - ▶ The need for collecting this type of information has been brought to the board's attention previously.
- As part of the 1978 sunset review it was recommended that the board develop a central file for complaints, implement a monthly status report on complaints to the board, and reduce the time interval required for resolving complaints.

- Since 1988, the appropriations act has required occupational licensing agencies to provide a statistical analysis of disciplinary activities in their annual fiscal reports. A review of the board's annual reports for 1988 and 1989 revealed that the board has not provided this information.
- ▶ As part of the sunset review, an estimate was made of the average number of months required for the board to resolve complaints.
 - One of the first problems encountered was the need to separate more minor cases, such as continuing education (CE) violations, from more substantive violations. The timeframe for the combined actions was just over one year; however, this is due to the fact that a significant number of CE complaints were resolved in less than 3 months.
 - As shown in appendix Exhibits C and D, in 1989 the most serious cases that resulted in revocations took an average of 32.4 months to resolve. A number of these cases involved CPAs who continued to practice for more than three years with a complaint of embezzlement pending against them for which their license was eventually revoked.
 - The board's complaint process does not include goals to assist the board in evaluating its performance in this area. Other regulatory agencies have complaint timeframes set in statute or have developed enforcement goals on their own.
- ▶ The board has also developed a significant backlog of cases over the last several years. In fiscal years 1985 through 1989 an average of more than 1200 cases have been carried forward at the end of each year into the next fiscal year. The backlog further delays the quick resolution of newly received complaints.
- ▶ In a limited comparison to five other regulatory agencies in Texas, the board appears to receive a high number of complaints and a low level of funding to deal with enforcement actions.
 - As shown in appendix Exhibit E, the board received 1913 complaints in 1988, the highest number of complaints compared to the five other agencies. In addition, only 10.6 percent of the board's budget was devoted to enforcement. This was the lowest percentage of funds devoted to enforcement by any of the agencies examined.
 - This chart depicts figures for 1988 but the board's standing in relation to other regulatory enforcement demands and capabilities has continued through the current 1990-91 budget cycle.
- ▶ The board has requested additional funds for enforcement over the years. A review of previous budget requests indicated that the requests for additional funds for enforcement were not funded by the legislature. Part of the problem is the board's lack of data to substantiate its need for additional funding in this area.

PROBLEM

The board does not routinely categorize and track the timeframe for resolving complaints. This type of information is gathered and maintained by other occupational licensing boards for their own management purposes and to justify funding of their enforcement programs.

The lack of an appropriate system for tracking its resolution of complaints has hamstrung the board's efforts to get additional funding in the area of enforcement. Without sufficient funding to respond to complaints the board cannot fulfill its statutory responsibility to protect the public from unqualified practitioners.

RECOMMENDATION

- The board should:
 - be directed by statute to develop a complaint tracking system that categorizes complaints by the type of complaint, the method of resolution and the length of time required to resolve each complaint; and
 - as a management improvement, set specific goals and timeframes for complaint action that will result in more timely resolution of complaints and seek increased appropriations to reach these goals.

The development of a complaint tracking system would ensure that the board has access to basic statistical information on its resolution of complaints. This is an important management tool for keeping up with the significant number of complaints being handled by the board each year. It would also provide the basic data needed for the board to justify the need for additional funding to reduce its backlog of cases and to resolve complaints in a more timely fashion. The system should at a minimum provide a statistical analysis of the number of complaints received, the number of complaints resolved and how they were resolved, the categories and number of complaints received within a category, and the average length of time that was required to resolve each category of complaints.

FISCAL IMPACT

Although the development of a tracking system will require additional staff effort, it is anticipated that this can be accomplished within the board's existing resources.

ISSUE 9: The board should be statutorily authorized to use administrative penalties as an additional tool for ensuring licensees' compliance with the statute and related board rules.

BACKGROUND

The Texas State Board of Public Accountancy has a range of sanctions to ensure licensees' compliance with the statute and board rules. These include the authority to suspend or revoke a license; refuse to renew a license; limit a licensee's scope of practice; reprimand, censure or place a licensee on probation; and impose on a licensee the direct administrative costs related to enforcement actions. The board is not authorized to levy administrative penalties.

Regulatory agencies need a full range of enforcement powers to ensure compliance with the statutory provisions and board rules. A review of the use of administrative penalties in Texas and other states indicated the following:

- ▶ Many Texas regulatory agencies have a range of sanctions that include levying administrative penalties. Sunset reviews of regulatory agencies have frequently recommended additional enforcement powers if the current structure lacked certain powers needed to ensure compliance. For example, the Texas Department of Licensing and Regulation's authority to assess administrative penalties was expanded to cover a number of its regulatory programs last session as part of the sunset legislation.
- ▶ Twenty-eight state boards of accountancy indicated that they have the authority to fine practitioners for statutory violations, according to a survey conducted by the President's Council on Integrity and Efficiency in 1988. And in June 1989, the Colorado State Board of Accountancy sunset review recommended that the board have authority to fine CPAs up to \$1,000 per offense for initial violations of the law and up to \$2,000 per offense for repeated violations.
- ▶ The model public accountancy bill prepared by the American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy includes a provision that gives boards the authority to impose administrative fines for first offenses up to \$1,000.

PROBLEM

The board does not have the authority to assess administrative penalties. This enforcement tool has proven beneficial to other agencies in enforcing their regulatory acts.

RECOMMENDATION

- **The statute should be changed to authorize the board to assess administrative penalties up to \$1,000 per violation as an additional tool for ensuring compliance with the law.**

This change would provide the board with an additional enforcement tool that can be adjusted, depending on the amount of the fine, to appropriately sanction licensees for a variety of violations. The process for levying an administrative penalty should be set in statute in a manner similar to the process established for the Department of Agriculture last session as part of the sunset legislation. These provisions include specific factors to consider when determining the amount of a penalty and the right of the licensee to an appeal, as well as a requirement for all penalties to be deposited into the general revenue fund.

FISCAL IMPACT

The authority to levy administrative penalties would result in increased revenue to the general revenue fund. The exact amount cannot be estimated at this time due to a lack of information on how often and in what amounts the board would levy such penalties. There may be some fiscal impact on the operations of the accountancy board depending on how these provisions are implemented but it cannot be estimated at this time.

ISSUE 10: The statute should require public member representation on the board's enforcement committees.**BACKGROUND**

The Texas State Board of Public Accountancy uses a committee process to initiate, research and preliminarily decide on complaints received by the board. Since most complaints are in the areas of technical standards or behavioral problems, the board has established a separate committee for each category. Both committees hold informal conferences with licensees to try to reach an agreement on what disciplinary action, if any, should be taken. If an agreement is reached, the committee recommends the disciplinary action to the full board for ratification. If an agreement is not reached, the matter is set for a formal hearing.

As a rule, state agencies do not open informal conferences to the public since most boards and commissions ratify informal disciplinary agreements and release all final disciplinary actions to the public. Informal conferences provide a quick and effective way for TSBPA and other agencies to deal with complaints. Since TSBPA routinely accepts a significant number of agreements that are reached informally, it is important that the structure of the committees handling these complaints ensures that the public's interests are represented.

A review of current board practices and policies regarding its enforcement committees showed that:

- ▶ The board does not routinely appoint public members to its enforcement committees. Since the addition of public members to the board in 1980, only three public members have been appointed to the behavioral enforcement committee and no public members have served on the technical standards enforcement committee. A recent survey of current and former public board members showed, however, that those who served on the behavioral enforcement committees believed they provided a valuable consumer perspective on enforcement actions.
- ▶ A large majority of complaints are handled informally by the enforcement committees. The board does not keep records of the number of informal conferences held or the number of complaints resolved through the process. However, using the number of private reprimands issued during the past four fiscal years, it can be estimated that a minimum average of 194 complaints are resolved in informal conferences each year, compared to a yearly average of 17 complaints resolved through formal hearings.

- ▶ Public members do not have to possess technical accounting expertise in order to be valuable and contributing committee members.
 - Accounting expertise is not necessary to determine the validity of many complaints that are resolved in informal conferences. Complaints at this level often involve simple, clear-cut violations, such as failure to return financial papers to a client or improper filing of a client's tax returns. Public members are as equally qualified to make effective decisions in these types of cases as board members who are licensed CPAs.
 - In complaints that do require technical expertise, such as violations of specific accounting rules, committee members have access to a number of resources to assist them in making informed decisions. Each committee has several experts in various technical accounting fields who serve as committee members. In addition, both committees are supported by the agency's enforcement division, which has two attorneys on staff who can research legal issues and advise committee members.
- ▶ Other state agencies require public members on their grievance and enforcement committees. For example:
 - The Texas State Bar's statute requires one-third public membership on all of its grievance committees.
 - The Texas State Board of Medical Examiners' statute requires at least one public member on all board committees, including disciplinary committees.

PROBLEM

Informal conferences are closed to the public and public members are not generally appointed to the enforcement committees that conduct them. As a result, the public is often excluded from providing input to a process in which many complaints to the board are resolved. The public has a legitimate interest in ensuring that the board's disciplinary actions are consistent and appropriate. While there are valid reasons for informal conferences to be closed, it is equally important that these proceedings provide for public input and accountability.

RECOMMENDATION

- The statute should require at least one public board member to be appointed to each of the board's enforcement committees.

The bulk of most board complaints are resolved by the board through its enforcement committees. Requiring at least one public member to be appointed to these committees will help ensure that the disciplinary actions being negotiated by the committees are balanced and represent both the public's and the profession's interests.

FISCAL IMPACT

No fiscal impact is expected as a result of this recommendation.

ISSUE 11: The statute should require all final orders containing disciplinary actions taken by the board against its licensees to be open to the public.

BACKGROUND

Many licensing statutes have general provisions that specifically protect the confidentiality of information concerning their licensees. Since the boards collect a great deal of background information on their licensees and receive numerous complaints -- some valid, some invalid -- about their licensees, these general statutory provisions protect against improper release of information. In practice, the boards generally release information about a licensee only when authorized by the licensee or when the board has taken enforcement action against the licensee.

The Texas State Board of Public Accountancy's statute makes confidential "all information received or gathered by the board concerning a disciplinary proceeding against a licensee ... prior to a public hearing." The statute further provides that the information on proceedings prior to a public hearing can be released only upon written authorization of the licensee involved.

A majority of the board's complaints are handled prior to a formal public hearing in informal disciplinary proceedings, which are held by the board's two enforcement committees. Final disciplinary orders resulting from the informal proceedings are generally closed unless the licensee agrees to make them public.

A review of the practices of TSBPA and other state licensing agencies in dealing with the release of final disciplinary actions showed that:

- ▶ Availability of disciplinary actions taken by the board is important. The information contained in the board's final orders enables the public and other licensees to be aware of problems in the profession being regulated as well as in the performance of individual members of the profession. The privacy of the board's licensees needs to be considered, but the need for public awareness of problems in the profession outweighs that consideration when a disciplinary problem has been recognized and officially acted on by the board.
- ▶ The board has developed a dual policy regarding the release of information concerning its disciplinary actions. Decisions reached through informal proceedings and resulting in private reprimands, censures, admonishments and other private sanctions are not open to the public. These decisions are ratified by the board, but unlike the board's other disciplinary decisions, the public has no access to information about the case, including the identity of the licensee, the nature of the complaint or the board's disciplinary actions.

- ▶ The board already releases some public and private disciplinary actions by printing them in its quarterly newsletter or elsewhere.
 - The case summaries of public reprimands and license revocations and suspensions printed in the newsletter usually include the name of the licensee and a description of the violation that resulted in the disciplinary action. Some disciplinary actions that result in private sanctions are summarized in the newsletter but do not contain the identity of the licensee.
 - In addition, the board regularly publishes all license revocations in the Wall Street Journal.
- ▶ Many state boards, such as the Texas State Pharmacy Board, the Texas Board of Medical Examiners and the Texas Structural Pest Control Board, routinely release all final orders containing disciplinary actions against licensees, including agreements reached in informal conferences.
- ▶ The board's confidential final orders contain the same general information as other licensing boards' final orders that are open to the public. This includes the alleged and verified violations against a licensee, the licensee's identity, the board's recommended disciplinary sanctions and the board's final disciplinary actions. As a rule, the orders do not include actual board investigative files, which can contain confidential information such as the identity of an informant or complainant.

PROBLEM

The Texas State Board of Public Accountancy's statute unnecessarily restricts the public's access to information on disciplinary actions taken against licensed CPAs. Other regulatory boards routinely release information of this nature.

RECOMMENDATION

- **The statute should be modified to require all final orders containing disciplinary actions against licensees taken by the Texas State Board of Public Accountancy to be open to the public, and available upon request.**

Requiring the board to make all final orders containing disciplinary actions against licensees open and available upon request would ensure public access to information about the qualifications and professional history of CPAs. The material to be disclosed would include any disciplinary action taken through private reprimands, censures or admonishments that have previously been kept confidential. The identity of the person who filed the complaint and the board's investigative files would not be available to the public. By making all final orders open to the public, the board would be improving public access to disciplinary actions taken against a licensee, while keeping the investigative files closed.

FISCAL IMPACT

The number of inquiries received by the staff may increase slightly, but no fiscal impact on the agency is expected.

Across-the-Board Recommendations

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

Texas State Board of Public Accountancy

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

*Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

Texas State Board of Public Accountancy
(cont.)

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

*Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language

APPENDIX

Exhibit A

Exam Performance of First-Time Candidates Without Advanced Degrees
Percent Passing All Exam Sections Taken and Total Number Sitting

TEXAS COLLEGES AND UNIVERSITIES								
	May 1987		November 1987		May 1988		November 1988	
Private:								
Abilene Christian University	7.1%	(14)	27.3%	(11)	14.3%	(28)	17.4%	(23)
Baylor University	24.5	(110)	38.2	(68)	34.1	(91)	40.0	(50)
Hardin-Simmons University	0.0	(9)	*	*	0.0	(12)	0.0	(9)
Houston Baptist University	11.8	(17)	14.3	(14)	15.4	(13)	*	*
Mary Hardin-Baylor College	30.0	(10)	0.0	(7)	28.6	(7)	*	*
Howard Payne College	0.0	(5)	*	*	*	*	*	*
Incarnate Word College	*	*	*	*	0.0	(6)	*	*
McMurray College	0.0	(6)	*	*	0.0	(5)	*	*
Our Lady of the Lake University	0.0	(6)	*	*	0.0	(5)	*	*
Southern Methodist University	33.3	(24)	31.8	(22)	6.1	(33)	39.1	(23)
Southwestern University	12.5	(16)	25.0	(8)	20.0	(10)	0.0	(5)
St. Edward's University	33.3	(9)	40.0	(5)	0.0	(8)	*	*
St. Mary's University	20.0	(15)	20.0	(15)	5.6	(18)	0.0	(11)
St. Thomas University	15.4	(13)	30.0	(10)	28.6	(14)	15.4	(13)
Texas Christian University	25.0	(24)	25.0	(16)	11.1	(18)	28.6	(21)
Texas Lutheran College	11.1	(9)	14.3	(7)	0.0	(12)	0.0	(6)
Texas Wesleyan College	0.0	(10)	0.0	(8)	11.1	(9)	33.3	(9)
Trinity University	10.5	(19)	33.3	(12)	15.0	(20)	41.7	(12)
Public Schools:								
Angelo State University	5.0%	(20)	15.4%	(13)	13.0%	(23)	18.8%	(16)
Corpus Christi State University***	33.3	(9)	40.0	(5)	7.1	(28)	24.0	(25)
East Texas State University	19.0	(21)	10.0	(10)	11.1	(18)	18.8	(16)
Lamar University	11.5	(52)	20.5	(44)	5.3	(38)	8.0	(25)
Midwestern State University	22.2	(18)	0.0	(16)	15.8	(19)	7.1	(14)
North Texas State University	10.0	(40)	33.3	(33)	13.2	(38)	13.6	(22)

*Fewer than five candidates.

**Data obtained from the National Association of State Boards of Accountancy.

***Formerly Texas A&I Corpus Christi.

(cont.)

Exhibit A

**Exam Performance of First-Time Candidates Without Advanced Degrees
Percent Passing All Exam Sections Taken and Total Number Sitting**

TEXAS COLLEGES AND UNIVERSITIES								
	May 1987		November 1987		May 1988		November 1988	
Public: (Cont.)								
Pan American University	0.0	(17)	28.6	(14)	25.0	(12)	12.5	(16)
Prairie View A&M	*	*	*	*	0.0	(5)	*	*
Sam Houston State University	19.5	(41)	13.3	(30)	20.8	(53)	33.3	(30)
Southwest Texas State University	9.4	(96)	22.4	(67)	11.7	(94)	13.3	(60)
Stephen F. Austin University	3.8	(52)	22.7	(44)	2.6	(39)	14.6	(41)
Sul Ross State University	*	*	*	*	0.0	(6)	*	*
Tarleton State University	0.0	(9)	*	*	0.0	(7)	*	*
Texas A&I - Kingsville	33.3	(15)	20.0	(10)	0.0	(15)	16.7	(12)
Texas A&M University	17.1	(146)	24.6	(114)	17.0	(159)	26.9	(134)
Texas Southern University	0.0	(16)	0.0	(8)	6.7	(15)	16.7	(6)
Texas Tech University	8.8	(102)	15.2	(79)	16.7	(102)	19.8	(86)
Texas Woman's University	*	*	*	*	0.0	(7)	20.0	(5)
University of Central Texas ***	*	*	*	*	16.7	(6)	*	*
University of Houston	27.3	(143)	22.2	(108)	17.6	(119)	23.2	(95)
University of Houston - Clear Lake	4.3	(23)	13.6	(22)	13.6	(44)	23.3	(30)
University of Houston - Downtown	*	*	*	*	23.5	(17)	21.7	(23)
University of Houston - Victoria	28.6	(7)	36.4	(11)	35.7	(14)	30.0	(10)
University of Texas - Arlington	24.7	(89)	41.2	(68)	34.9	(109)	38.6	(88)
University of Texas - Austin	26.2	(267)	30.1	(163)	27.4	(219)	36.9	(122)
University of Texas - Dallas	22.0	(59)	37.3	(51)	27.9	(61)	24.2	(33)
University of Texas - El Paso	20.0	(30)	12.9	(31)	14.3	(35)	14.8	(27)
University of Texas - Permian Basin	6.7	(15)	18.8	(16)	17.6	(17)	25.0	(12)
University of Texas - San Antonio	8.0	(75)	27.0	(63)	16.9	(77)	21.4	(70)
University of Texas - Tyler	25.0	(20)	*	*	*	*	*	*
West Texas State University	7.0	(43)	30.8	(26)	12.5	(24)	33.3	(21)
NATIONAL AVERAGES	18.6	(21,316)	20.0	(21,336)	19.6	(22,064)	20.8	(22,664)

* Fewer than five candidates.

**Data obtained from the National Association of State Boards of Accountancy.

***Formerly Texas A&I Corpus Christi.

Exhibit B
Number of First-time CPA Exam Applicants in Florida: 1980-1989
Impact of 1984 150-hour Requirement

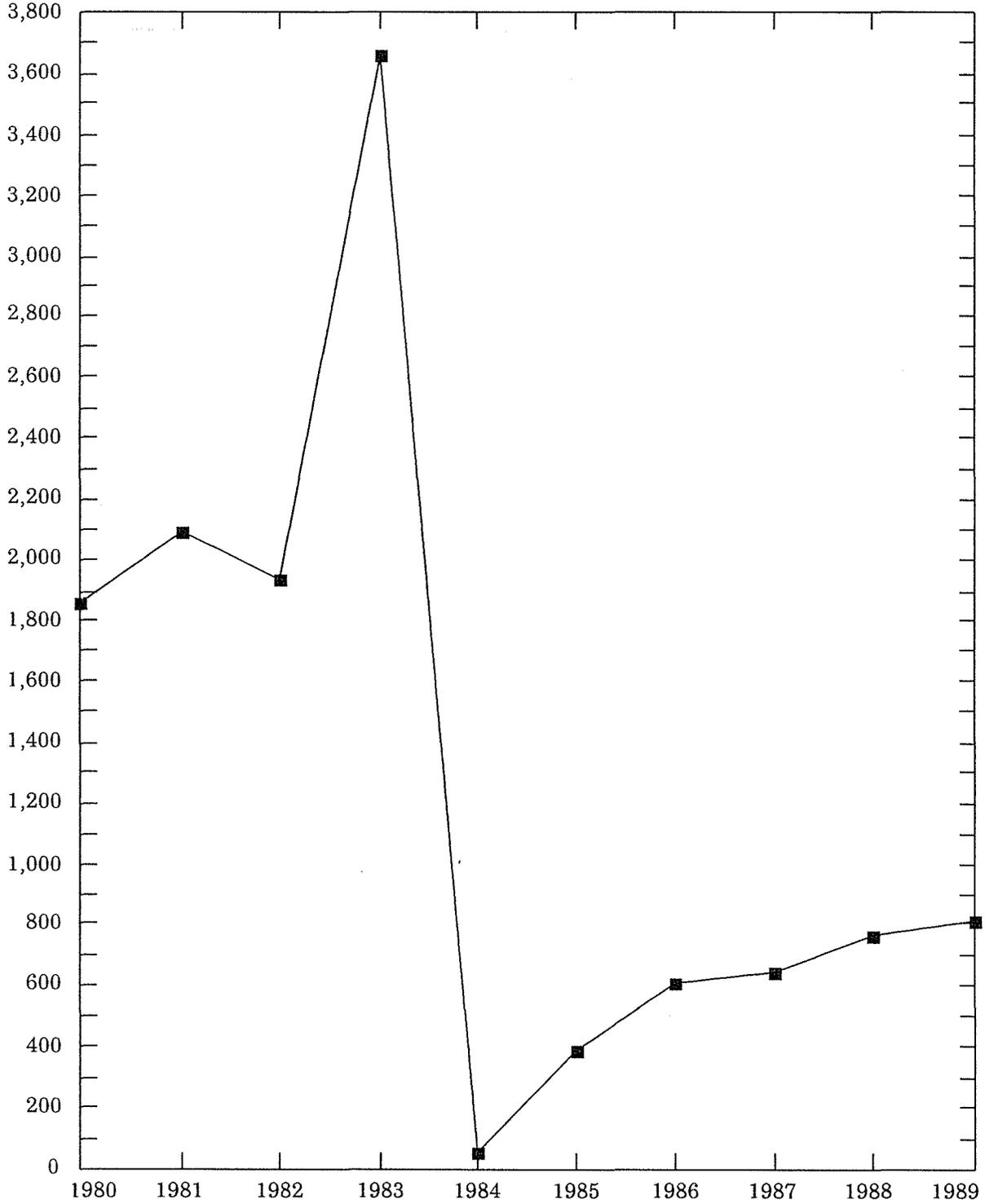
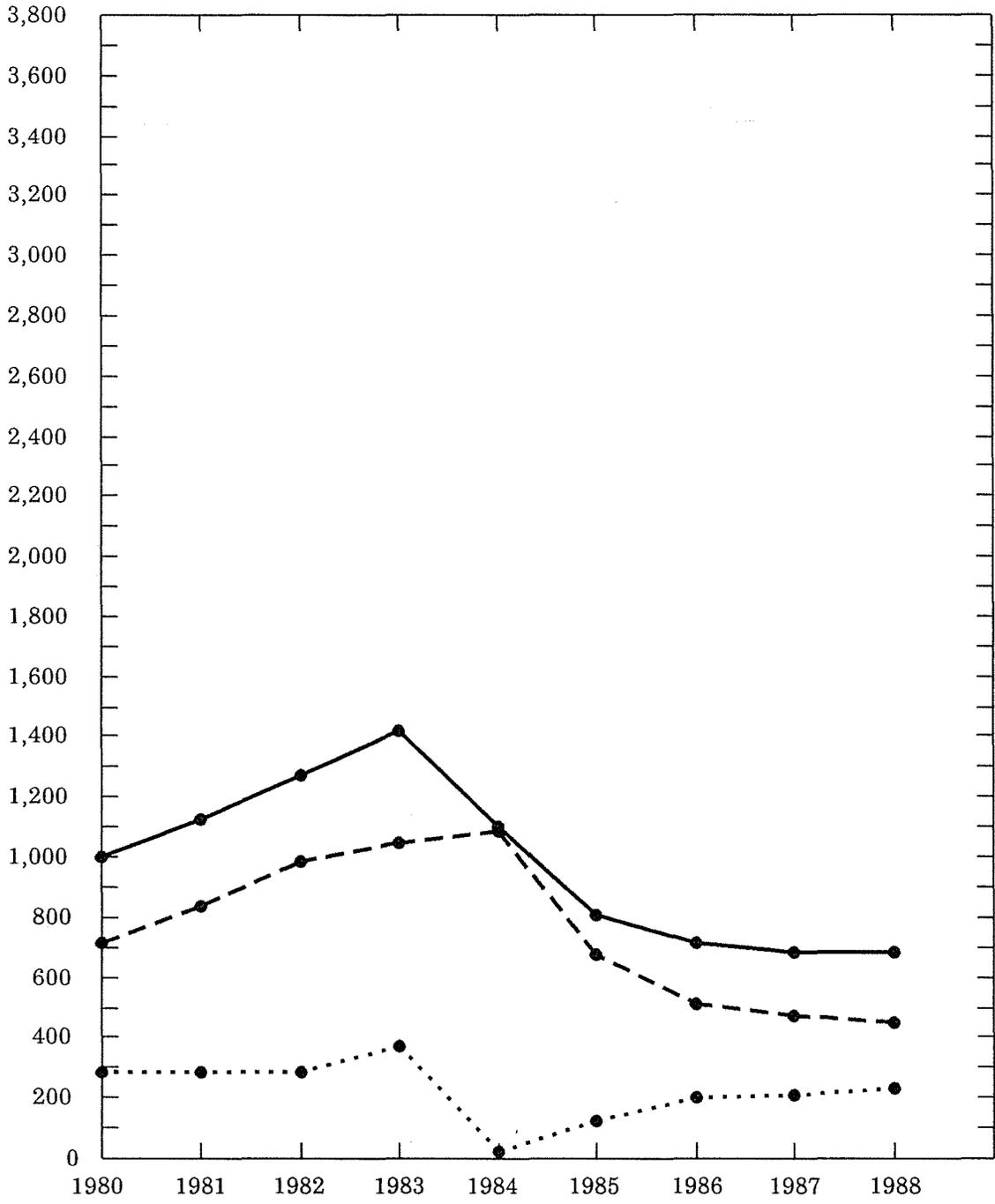


Exhibit C
Number of Candidates Passing the CPA Exam in Florida: 1980-1988
Impact of 1984 150-Hour Requirement



Total passing exam —————
 Repeat candidates passing exam - - - - -
 First-time candidates passing exam

Exhibit D

**Average Number of Months for Complaint Resolution
Violations Other Than Continuing Education
Fiscal Years 1986 - 1989**

Board Actions	1986	1987	1988	1989
Revocations	16.8	20.5	24.1	32.4
Suspensions	10.0	25.0	33.2	21.7
Public Reprimands	-	15.0	33.0	10.1
Private Reprimands	15.2	12.8	15.7	27.4
Voluntary Compliance	5.9	5.7	3.4	3.6
Other*	32.8	20.5	50.1	19.1
Dismissals	11.2	12.0	5.9	9.6

* "Other" includes a variety of board actions, including dismissed and withdrawn complaints.

Exhibit E

**Average Number of Months for Complaint Resolution
Continuing Education Violations Only
Fiscal Years 1986-1989**

Board Actions	1986	1987	1988	1989
Revocations	-	-	-	-
Suspensions	1.8	3.0	2.1	7.0
Public Reprimands	-	-	-	-
Private Reprimands	-	3.6	2.9	5.4
Voluntary Compliance	1.2	3.3	3.5	-
Other*	1.0	-	3.5	4.2
Dismissals	-	-	2.7	17.0

* "Other" includes a variety of board actions, including dismissed and withdrawn complaints.

Exhibit F
**Enforcement Demand and Capability for
 Selected Regulatory Agencies
 Fiscal Year 1988**

Regulatory Boards	Complaints*	Complaints per 100 licenses*	Enforcement Appropriation	Percent of Total Appropriation	Appropriation Per Complaint
Board of Accountancy	1,913	4.21	\$258,330	10.6%	\$135
Board of Barber Examiners	450	2.07	\$274,879	57.4%	\$611
Board of Medical Examiners	1,167	2.72	\$1,201,043	38.4%	\$1,029
Board of Registration for Professional Engineers	110	.26	\$167,164	19.6%	\$1,520
Real Estate Commission	1,486	.89	\$869,778	30.0%	\$585
Structural Pest Control Board	800	6.13	\$337,281	61.1%	\$422

* Data obtained from the Legislative Budget Board Performance Report to the 71st Legislature.

Texas State Board of Public Accountancy

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