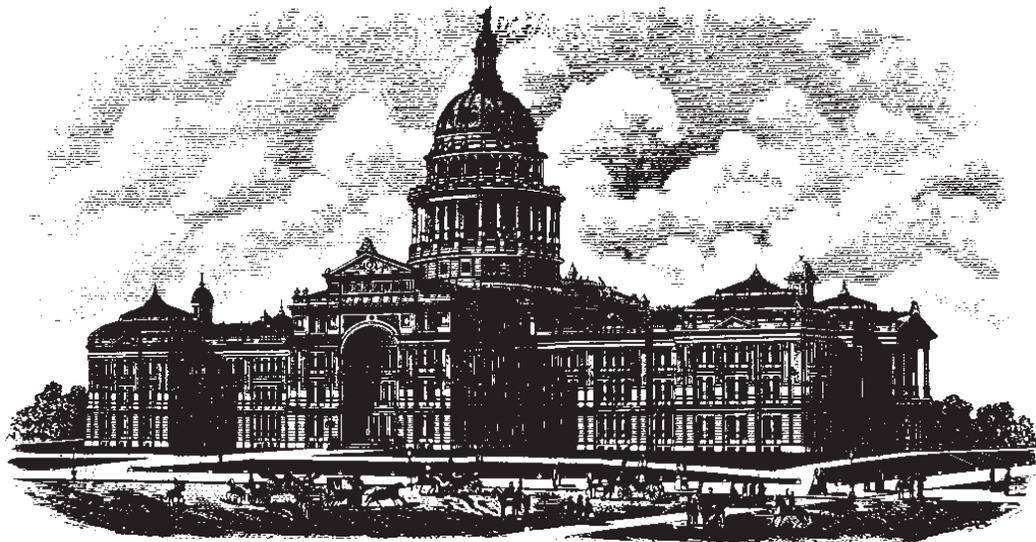


Sunset Advisory Commission



TEXAS STATE CAPITOL BUILDING

E.E. Davis architect

Texas Board of Private Investigators and Private Security Agencies



Staff Report

1998

SUNSET ADVISORY COMMISSION

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**TEXAS BOARD OF PRIVATE INVESTIGATORS
AND PRIVATE SECURITY AGENCIES**

SUNSET STAFF REPORT

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EXECUTIVE SUMMARY

Executive Summary

The Texas Board of Private Investigators and Private Security Agencies was created in 1969 by the Texas Legislature to license businesses and people in the private investigations and security industry and to protect the public from the illegal activities of both licensed and unlicensed operators. Over time the Legislature has expanded the agency's regulatory scope and responsibilities to include armored car companies, alarm system companies, guard dog companies, and courier services. Other amendments to the agency's statutes require it to commission security officers to carry firearms and to perform criminal history checks on all applicants. The Board has the responsibility to establish standards for licensure, commission, and registration, to develop material for minimum required training or competency, to approve schools and instructors to teach relevant courses, and to administer examinations to qualified applicants. In addition, the agency has the duty to enforce the provisions of the Act and Board rules, and to sanction persons who fail to comply with these requirements. During fiscal year 1997, the agency issued 30 types of licenses; licensed, registered, or commissioned approximately 160,000 individuals; and, licensed approximately 4,000 companies.

To carry out its responsibilities, the agency has 40 employees and an annual budget of approximately \$3.1 million. The agency is governed by an eight-member Board, with six members appointed by the Governor, and ex officio members representing the Texas Department of Public Safety and the Office of the Attorney General.

The Sunset review focused on improving accountability and operations of the agency and its Board. The issues in this report address improving effectiveness of the agency's policymaking body, and strengthening and streamlining the agency's licensing and enforcement functions to enhance public safety.

1. Improve Effectiveness of the Board by Changing Its Structure and by Clarifying Its Duties.

The structure of the Board has not adequately changed over the last 30 years to address the vast changes in its own responsibilities and in the private investigation and private security industry. As a result, the Board has experienced problems in its ability to oversee the agency and in performing its policymaking and administrative duties. Strengthening the governing body of the agency

would promote public safety, protect public interests, and improve overall accountability.

Recommendation: Add three public members to the Texas Board of Private Investigators and Private Security Agencies. In addition, add a specific requirement for the Board to provide policy direction to agency management on how the agency will carry out its statutory responsibilities.

2. Change the Agency's Statute to Better Focus Licensing Activities on Protecting Public Safety.

Over time, changes in the agency's statutes have created gaps, duplication, and unnecessary activities in the licensing process. As a result, federal criminal history checks are not being performed for all applicants, and agency resources are being used to administer unnecessary licensing requirements. Strengthening and streamlining activities related to licensing would help protect and promote public safety and maximize use of limited resources.

Recommendation: Require all applicants for registration with the Board to submit to a federal criminal history check, and authorize the Texas Department of Public Safety to establish a pool of all applicants who have been denied registration based on past criminal activities. To streamline the licensing function of the agency, eliminate the requirement for sheriffs and chiefs of police to object to licensure of individuals by filing letters of objection. In addition, allow security guards to more easily move to other security companies by eliminating the requirement for their employers to provide letters of termination before these guards may transfer employment. Finally, allow all individuals registered with the Board to transfer employment without having to resubmit an application for registration.

3. Improve the Administrative Hearing Process Through Transfer to the State Office of Administrative Hearings.

The agency's administrative hearing process lacks the independence that SOAH provides. The current condition creates a potential for ex parte communication between the administrative law judge (ALJ) and the other agency staff responsible for presenting the case. It also creates the perception that the hearing process and the ALJ's decisions are not independent of the agency. Transferring the agency's hearing function to SOAH would improve independence, would provide an equal or better level of quality, and could improve cost effectiveness of the hearing process.

Recommendation: Transfer the agency's administrative hearings to the State Office of Administrative Hearings.

4. Improve Enforcement by Clarifying Legislative Regulatory Requirements and Expectations.

Statutory direction is unclear regarding the agency's authority to enforce its regulatory programs. Specifically, the statutes are not clear regarding the Board's discretion in allowing individuals with criminal histories to work in the private investigations and private security industry. The statute also does not clearly direct the agency's use of administrative penalties as an enforcement tool to achieve compliance with the requirements of the Act and Board rules. This lack of clarity in statute increases the potential that persons with criminal histories who were intended to be excluded may actually be working in this area. The present condition also diminishes the opportunity for the Board and its staff to take consistent and effective enforcement action against violators of the law. Additional guidance is also needed to direct the agency in carrying out its public and customer service duties, particularly regarding access to enforcement information maintained by the agency.

Recommendation: Clarify that the Board has no discretion to allow a person with a criminal history to be licensed to work in the private investigations and private security industry. Also clarify the agency's authority to levy administrative fines and provide the standard criteria for applying these fines. In addition, for better public access and oversight, require the agency to make enforcement information more accessible to the public and consumers.

5. Continue the Texas Board of Private Investigators and Private Security Agencies for four years.

Recommendation: Continue the Texas Board of Private Investigators and Private Security Agencies for four years.

The functions of the agency continue to be needed to ensure public safety. While several agencies currently administer similar programs to the Board's licensing activities, no benefits or savings could be identified to justify such a transfer at this time. Despite ongoing efforts to address identified accountability and management concerns with the agency, a shorter review time frame is needed to allow the Legislature the opportunity to re-visit the agency to evaluate the success of current actions to correct problems.

Fiscal Impact Summary

The recommendations of this report, especially those regarding the agency's licensing and enforcement functions, are intended to enable the agency to better regulate the industry within its existing resources. Other recommendations may have a slight fiscal impact. The recommendation to re-structure the Board would result in an annual cost to the State of approximately \$7,500 — associated with travel expenses for the newly-appointed members. The fiscal impact of transferring the agency's hearing function to SOAH cannot be estimated at this time. However, data provided by SOAH related to past transfers indicates that the State has generally reduced overall hearings costs.

APPROACH AND RESULTS

Approach and Results

Approach

The Texas Board of Private Investigators and Private Security Agencies was created in 1969 to consolidate, standardize, and strengthen the State's oversight of the private investigations and private security industry. Before the agency's creation, this regulatory function was being carried out by a patchwork of hundreds of local law enforcement jurisdictions. Over the years, the industry has grown significantly in size and complexity. The duties and responsibilities of the regulatory body have also expanded considerably to accommodate these changes in the security industry. Whereas, in 1969, the agency regulated fewer than 5,000 individuals and roughly 300 companies, in 1998, the agency regulated approximately 160,000 individuals and 4,000 companies.

Past problems with oversight and management at the agency have heightened the level of legislative interest with the agency and have also led to major changes in how the agency manages itself and performs its regulatory functions. These problems, in large part due an entrenched management structure at the agency, related to suspected fraud and abuse of public assets and to non-compliance with state laws. In an effort to strengthen the agency's accountability, the Legislature put riders in the current Appropriations Act regarding reporting to various oversight agencies, approval for purchasing and contracting, and voucher and warrant training. In addition, the agency's Sunset review date was also moved to 1999 from 2003 as a result of ongoing legislative concerns with the agency.

Recently, the agency has taken steps in addressing legislative concerns and in resolving weaknesses identified by the State Auditor and KPMG Peat Marwick LLP, the agency's independent reviewer. The first step taken by the agency's Board in re-directing the agency efforts was the appointment of a new Executive Director in October 1997. Under new management, among other things, the agency has been able to eliminate a 3,800 case backlog in its Investigations Division, reduce the number of forms used in the licensing process from 68 to 17, and implement new standards for detecting and reporting staff's ethical violations. The State Auditor recently reported favorably on the progress the agency has made under current management to correct control weaknesses identified in earlier audits.

Past problems with oversight and management at the agency have heightened the level of legislative interest with the agency.

The Sunset review focused on improving accountability and operations of the agency and its Board.

In forming an approach to the review, the Sunset staff examined the areas of most concern to the Legislature — those relating to poor oversight and inefficient service delivery. Given that significant resources of the agency and the state have already been used in identifying and improving agency business processes and management controls, the Sunset staff generally directed its efforts away from management issues to possible strengthening or modification of the agency’s enabling statutes.

The Sunset review focused on improving accountability and operations of the agency and its Board. The issues in this report address improving effectiveness of the policymaking body of the agency, and strengthening and streamlining the agency’s licensing and enforcement functions to enhance public safety.

Review Activities

In conducting the review of the Texas Board of Private Investigators and Private Security Agencies, the Sunset staff:

- worked with agency staff;
- attended regular public meetings of the Board, reviewed past minutes of meetings, and met with the Board Chair;
- observed enforcement hearings conducted by the agency’s administrative law judge (ALJ);
- visited agency field offices and observed work of agency’s investigative staff;
- talked with staff of legislative oversight committees, including the Senate State Affairs and House Public Safety Committees;
- reviewed the State Auditor’s reports and met with the State Auditor’s staff;
- reviewed agency documents and reports, statutes, and previous legislation;
- interacted with the staff of the Attorney General’s Office;
- met and solicited input from state and national interest groups about their issues regarding the Board, including the Texas Association of Licensed Investigators, Dallas Police Department, and Associated Security Services and Investigators of the State of Texas;
- met with and interviewed an owner and operator of a private security company and its employees;

- conducted comparative research of organizational structures of agencies in other states with common functions;
- compared the structure of the Board to that of other state policymaking bodies;
- reviewed the 1980 and 1987 Sunset reports on the Board and resulting legislation; and
- talked with the staff of the Legislative Budget Board.

Results

The Sunset review of the Texas Board of Private Investigators and Private Security Agencies started with answering the basic question of whether the functions of the agency continue to be needed. Individuals working in the private investigations and private security industry pose a threat not only to consumers of these services, but also to the welfare of the general public. The very nature of these professions allows individuals to have easy access to private property and sensitive personal information. These individuals, and companies that employ them, guard or monitor Texan's homes, neighborhoods, offices, banks, and other areas in need of protection. As long as these public safety and welfare concerns remain linked with the services provided by this industry, the State will have a continued need to perform this regulatory function to ensure that companies and individuals providing these services are qualified, ethical, responsible, and professional.

While the agency is needed, continuing it for four years would place it back in its regular interval to be reviewed with other comparable regulatory agencies. This shorter review time frame would also allow the Legislature to evaluate the agency's progress in addressing its problems and re-visit any unresolved issues with the agency and its Board.

Once the determination was made to recommend continuing the agency's functions, the review focused on:

- examining the structure of the Board to see whether it was adequate and whether the Board needed more statutory direction in carrying out its duties;
- identifying opportunities for strengthening and streamlining the agency's primary functions, relating to licensing & registration and enforcement; and
- ensuring that individuals in regulated positions are provided a fair and impartial hearing process and maximizing state resources.

Continued need exists to perform this regulatory function to ensure that individuals providing security services are qualified, ethical, responsible, and professional.

Adding public members to the board would address the oversight and policymaking concerns about the Board.

Board structure and duties — Sunset staff examined the Board’s ability to carry out its responsibilities in overseeing the affairs of the agency and setting policy for the State’s regulation of the private investigations and private security industry. Staff found that the structure of the Board has basically remained unchanged since the passage of the Act in 1969, even though significant changes have occurred in the last 30 years in the industry the Board regulates and in its own responsibility. In addition, the agency’s statute has not been updated in recent years to more clearly reflect legislative expectations from policymaking bodies of agencies. As a result, staff noted that the Board has experienced significant problems in overseeing the affairs of the agency and in effectively carrying out its policymaking duties. **Issue 1**, addresses the oversight and policymaking concerns associated with the current Board structure. Specifically, staff recommends expanding the size of the Board by adding three public members to the Board and providing more direct statutory guidance to the Board regarding its oversight duties and responsibilities.

The agency should concentrate on activities that more directly promote public safety.

Strengthening and streamlining agency functions — The Sunset review focused on the appropriateness of the current requirements for licensing to identify unnecessary or duplicative activities or gaps in the process that might interfere with the agency’s goal of ensuring public safety. As detailed in **Issue 2**, staff identified four areas in the agency’s licensing function that needed strengthening or streamlining to enhance public safety. One part of this recommendation would ensure that all persons regulated by the agency would be subject to both the state and federal criminal history checks before they work in the private investigative and private security industry. Specifically, this change would require federal criminal history checks for unarmed security guards who have not been required to obtain such checks before working as guards. The other parts of the recommendation would streamline parts of the agency’s licensing process, allowing the agency’s staff to concentrate more on activities that more directly promote public safety.

Issue 4 includes several recommendations related to the agency’s enforcement activities to promote public safety and to improve the agency’s service and overall accountability. A primary role of a regulatory body also relates to enforcement of all laws and rules that the regulated individuals and companies must meet. Sunset staff evaluated agency’s enforcement function to ensure that the agency has the tools necessary to protect and promote the public interest and that the Board uses these tools appropriately. The agency’s statutes do not clearly authorize the agency to levy administrative fines and do not guide the agency in assessing these fines. This lack of clarity and guidance has created a condition where enforcement actions taken by the

agency and its Board can be inconsistent and unfair. Also, unclear sanctioning authority prevents the agency from taking advantage of a full range of sanctions that are generally available to regulatory bodies to achieve compliance with their requirements. Ensuring that administrative penalty authority is clearly specified in statute would strengthen the agency's overall enforcement effort and enhance agency accountability.

In addition, the review of the agency's enforcement activities revealed that the Board is allowing individuals with criminal backgrounds to work in the private security industry, against the recommendations of its staff and the agency's administrative law judge. Prohibiting the Board from making these decisions would protect public safety by preventing individuals who have demonstrated a tendency to violate state laws from being allowed to work in this high risk area.

Finally, in an effort to assess how effectively the agency was performing its public awareness and customer service role, staff examined the enforcement function to see whether compliance history information was easily accessible to the public and consumers. The agency could enhance its public and customer service role by providing enforcement information on individuals and companies through a more accessible and efficient medium.

Improving the hearing process and maximizing state resources — Sunset staff examined the administrative hearing function at the agency to assure that hearings meet the State's goals of independence, quality, and cost effectiveness. **Issue 3** discusses the advantages of transferring the Administrative Procedures Act (APA) hearings to the State Office of Administrative Hearings (SOAH), including the historical cost savings — as reported by SOAH — resulting from previous transfers.

Recommendations

1. Improve Effectiveness of the Board by Changing Its Structure and by Clarifying Its Duties.
2. Change the Agency's Statute to Better Focus Licensing Activities on Protecting Public Safety.
3. Improve the Administrative Hearing Process Through Transfer to the State Office of Administrative Hearings.
4. Improve Enforcement by Clarifying Legislative Regulatory Requirements and Expectations.
5. Continue the Texas Board of Private Investigators and Private Security Agencies for Four Years.

Strengthening the
agency's enforcement
function would
promote public
safety.

Fiscal Impact

The recommendation to continue the Board would require continuation of its annual appropriation of approximately \$3.1 million. The recommendation to re-structure the Board would result in a small cost, approximately \$7,500, to the State associated with additional board members' travel expenses. The recommendations to streamline licensing functions of the agency and to transfer its hearing function to SOAH would probably provide some savings for the State resulting from improved efficiency of operations. However, a precise estimate of these savings is not available. Any savings resulting from this improved efficiency should be re-allocated to the agency to improve its overall operations.

ISSUES

Issue 1

Improve Effectiveness of the Board by Changing Its Structure and by Clarifying Its Duties.



Background

The Texas Board of Private Investigators and Private Security Agencies is composed of eight members, six of whom are appointed by the Governor with the advice and consent of the Senate, and the remaining two serve in an ex officio capacity. The appointed members of the Board are:

- three members from the general public;
- two members who are licensed under the Act and are engaged as a private investigator or a security service contractor; and
- one member who is licensed under the Act as the owner or operator of a guard company.

The ex officio members are the Director of the Texas Department of Public Safety or a designee, and the Attorney General or a designee. Appointed members serve staggered six-year terms. The Board chairman is designated by the Governor.

As a governing body, the Board is responsible for the effective and efficient administration of the Private Investigators and Private Security Agencies Act (Act). The Board's primary duties include adopting necessary rules and regulations, enforcing sanctions when any provisions of the Act or Board rules are violated, and appointing an executive director for managing agency operations. A majority vote of the members is required for Board decisions to be final.

To carry out Board duties, the Act requires that Board members meet at regular intervals with the dates of these meetings decided by a majority vote of the members. In fiscal year 1997 the Board met five times, and has met six times in fiscal year 1998. All Board meetings in 1998 were held in state facilities in Austin, as required by the General Appropriation Act.

In reviewing the governing body's effectiveness in administering the Act, Sunset staff focused on the Board's ability to carry out its responsibilities in overseeing the affairs of the agency and setting policy for the State's regulation

The Board is responsible for overseeing the administration of the Private Investigators and Private Security Agencies Act.

of the private investigations and private security industry. Staff sought answers to determine whether the Board's structure — composition and size — allows it to effectively carry out all its responsibilities and whether sufficient statutory direction has been provided to the Board to help guide it in performing its duties.

Findings

▼ **The current structure of the Board has not allowed it to effectively perform its responsibilities.**

- ▶ The structure of the Board has basically remained unchanged since the passage of the Act in 1969. Its membership has shifted slightly to reflect changes in the population regulated by the Board, providing for representation by an owner or operator of a licensed guard company. However, changes in the Board's structure have not addressed the vast changes in its own responsibilities and in the private investigations and private security industry over the last 30 years.

The structure of the Board has basically remained unchanged since its creation in 1969.

Over the years, the regulatory duties of the Board have significantly increased in number and complexity in response to the changes in the security industry. When created, the Board issued just five types of licenses basically covering private investigations and private security companies and individuals working for them. In its first full year of operation, the Board's regulations covered less than 5,000 individuals and approximately 300 companies. Since then, the Legislature has given the Board several new licensing responsibilities, so that in 1998, it administers more than 30 different license types for individuals and companies, covering roughly 160,000 individuals and 4,000 companies. The Board's regulatory responsibilities have grown to include armored car services, alarm system sales and installation, courier services, and guard dog services. The Board also oversees the commissioning of security guards to carry firearms.

This dramatic growth in the agency's regulatory responsibilities causes pressure not only on the Board's ability to set policy for the qualifications and conduct of individuals and companies in these areas, but also on its ability to take appropriate enforcement action against those who violate the law or Board rules.

- ▶ Increasing regulatory responsibilities have impeded the Board's ability to make timely updates in Board rules. Sunset staff's review of the Board's rules and the agency's own analysis indicates that rules are outdated and provide insufficient policy direction to the agency, the regulated community, and the public regarding how the agency performs its job. For example, current rules provide little policy guidance to the agency on how the enforcement requirements of the Act will be carried out. Consequently, the public and the regulated community have no way of knowing what these procedures are, if they are consistently applied, or if they are effective in controlling illegal activities.

The Board is planning to repeal all of its existing rules and adopt new ones. This action is the result of a review of its rules under the legislative requirement for all agencies to update their rules. This review indicated that needed revisions were so extensive that a complete redrafting of the Board's rules was necessary.¹

- ▶ The Board has not been able to provide sufficient oversight of the agency. Evidence of these oversight problems drew the attention of the Legislature last session with allegations of improprieties under the previous management and findings by the State Auditor's Office of weak controls by the Board that allowed agency problems to develop. In addition, significant backlogs were identified in the agency's licensing and investigations activities. These factors led to the Legislature imposing controls on the agency, including additional reporting requirements, purchasing and contracting controls, and voucher and warrant training. These problems were also instrumental in the Legislature's action providing for the current Sunset review of the agency.

▼ **The Legislature has structured policymaking bodies of regulatory agencies to provide objective oversight of the agencies and to promote accountability for their actions.**

- ▶ In setting up occupational regulatory agencies, the Legislature has sought to provide governance structures that can guide the agencies' activities. The standard approach to meet these goals has been the establishment of numerous boards and commissions, generally appointed by the Governor, to represent a balance of interests. These boards are usually

The Board has experienced significant problems in effectively carrying out its policymaking duties and in overseeing the affairs of the agency.

comprised of part-time members who are paid only for their travel expenses. Under the Texas Constitution, appointments must be made in multiples of three. Because of these demands, the typical oversight board is fairly large. Of 44 agencies principally responsible for occupational licensing, 36 have oversight boards of nine or more members.

These larger board sizes provide a broader range of viewpoints to help agencies avoid problems that result from narrow decision making by a smaller group. Larger boards can strengthen decision making by providing a well-rounded representation for considering opposing and alternative viewpoints. Larger boards also allow members to specialize on specific areas of agency functions, helping them develop expertise needed to provide policy direction.

The need to specialize is especially important for part-time boards whose members have to accommodate their state agency responsibilities with the demands of their full-time jobs and their private lives.

- ▶ In setting up governing bodies for agencies, the Legislature is also interested in providing accountability for these agencies' actions. Board members are accountable to the public through the appointments power of the Governor and the advice and consent of the Senate. This accountability depends on a board structure that balances the need for expertise with the need for objective decisionmaking by members of the Board.

Expertise is achieved on these boards by providing for membership by persons with knowledge of the occupation or activity being regulated — usually someone licensed by the agency. This direct knowledge with the occupation has been seen as invaluable in establishing the requirements to work in a given field, including the qualifications for entry, standards of conduct, and the need for continuing education. It also helps ensure that agency regulations stay current with recent developments.

Recognizing the inherent conflict of interest in having regulated individuals sitting on boards that develop and implement regulations for their occupation, the Legislature has sought to promote greater objectivity by providing public membership on these boards. Having public members, without

Accountability depends on a board structure that balances the need for expertise with the need for objective decisionmaking.

personal interest in actions of the Board except as consumers of the regulated service, helps promote public confidence that regulatory agencies serve a public purpose, not the regulated profession.

▼ **Strengthening the governing body would promote public safety and improve overall accountability.**

- ▶ The regulation of the private investigations and private security industry would be enhanced by adding members to provide a broader perspective and to help with the Board's workload. Increasing the Board's size would allow members to specialize according to the different activities of the agency. It would also enable the Board to more effectively distribute its workload of overseeing agency operations and making more informed and timely decisions on Board rules and on complaints filed with the agency.
- ▶ Clarifying the Legislature's expectations regarding the Board's duties would also help remedy the problems of inadequate oversight of the agency by the Board. Through the appropriations process last session, the Legislature required the agency to take corrective action to redirect the agency. However, accountability will be further enhanced if the Legislature's expectations regarding the Board's duties are specified clearly in the agency enabling statute.
- ▶ To the extent that improved oversight contributes to better regulation of the private investigations and private security industry, the protection of the people of Texas is also improved. The risk that people working in the private investigations and private security industries pose to individuals and businesses is significant both in terms of dollars and personal safety.

The Board needs
statutory direction as
to its duties and
responsibilities.

Conclusion

The regulatory duties of the Board of Private Investigators and Private Security Agencies have expanded dramatically over the 30 years since its creation. However, the Board's composition has not adequately changed to reflect the different circumstances and its increased responsibilities. As a result, it has experienced problems in its ability to oversee the agency, resulting in legislative action last session imposing specific corrective measures on the agency.

Re-structuring and re-directing the Board would improve its ability to oversee the agency.

The Legislature tries to establish governance structures for agencies that provide adequate oversight and promote accountability. Because most agencies are overseen by boards with part-time members, the Legislature generally structures these boards with enough members to reflect a range of viewpoints and to allow for members to specialize on different aspects of the agency. Providing representation by the public helps ensure a level of objectivity that balances the interests of members from the regulated community.

Increasing the size of the Board and increasing public representation would help improve oversight by providing additional members for dividing the workload and facilitating the development expertise. Board members would be able to provide expertise in a way that maintains objectivity. In addition, clarifying the duties of the Board would also improve accountability by making the Legislature's expectations clear.

Recommendation

Change in Statute

- **Add three public members to the Board of Private Investigators and Private Security Agencies.**
- **Add a specific requirement for the Board to provide policy direction to agency management on how the agency will carry out its statutory responsibilities.**

The first recommendation would expand the size of the Board from eight to 11, including the two ex officio members, which would provide for nine members appointed by the Governor. Six of the members of this restructured Board would be public members. The qualifications for the other three appointed members would remain unchanged.

This change would make the Board comparable in size to most occupational licensing boards and would give its members the improved ability to develop areas of expertise. Boards typically accomplish this objective by establishing subcommittees to focus on particular issues or issue areas. Providing for public members would ensure greater objectivity in the agency's oversight.

This recommendation would also require the Board to adopt rules and to develop policies to guide the agency in the administration of the Act. The rules and policies adopted by the Board must be consistent with the purposes, policies, principles, and standards stated in the Act, and in other applicable state and federal laws, rules, and regulations.

Fiscal Impact

This recommendation would result in a small cost to the State associated with the cost for travel and expenses for the newly-appointed members. Based on the \$2,500 per diem for Board members set in the General Appropriation Act, the total cost of adding three additional members to the Board would be approximately \$7,500 annually.

¹ Letter from Board Executive Director Jay Kimbrough to Governor George Bush, August 5, 1998.

Issue 2

Change the Agency's Statute to Better Focus Licensing Activities on Protecting Public Safety.



Background

The Board of Private Investigators and Private Security Agencies is responsible for assuring that individuals and companies involved in the sensitive area of providing security services to Texas homes and businesses are qualified to perform their duties. To accomplish this goal, the agency performs a dual track licensing process. It licenses companies to engage in a private investigations or private security business,¹ and it registers individuals who perform the services for those businesses.² The agency also issues commissions to individuals who carry a firearm as part of their job for a licensed entity.³ Key public safety concerns are that each company provide liability insurance against harm caused by its employees⁴ and that each company be responsible for its employees' conduct.⁵ In addition, the agency seeks to ensure that employees of those companies have proper training and that employees do not have a prohibitive criminal record.

The agency regulates applicants for licensure to ensure that they have both the character and the ability to do the job. Applicants must first satisfy general statutory requirements that are basically designed to exclude individuals with past criminal history.⁶ The Board may summarily deny applications from persons not meeting these minimum requirements. Applicants meeting these minimum requirements must then go through the Board's license process to ensure that they have the specific skills and ability to do the job for which they are licensed.

In this process, these persons must complete an application, pay the appropriate registration fee, pay the \$25 fee for the Federal Bureau of Investigation (FBI) criminal history check, and submit two sets of fingerprints. Depending on the class of licensure, individuals must also provide a certificate of completion of required training or provide proof that they have the required experience. The Board must then verify this information and conduct the criminal history check through the Texas Department of Public Safety (DPS) and the FBI. The Board generally issues licenses to individuals satisfactorily completing this process; however, it requires further testing of other

The agency is responsible for assuring that individuals and companies providing security services are qualified to perform their duties and do not pose a risk to public safety.

individuals. Managers of guard companies must pass an examination demonstrating knowledge of the law governing these businesses, and armed security guards must pass an examination demonstrating their proficiency with firearms. In addition to the general requirements, companies licensed by the Board must maintain a certificate of proof of liability insurance which must be kept in full force and effect at all times.

As mentioned, all individual applicants for registration with the Board must provide two fingerprint cards, which are submitted to DPS and FBI for a criminal history check. DPS indexes the applicants so that their file is continuously monitored for criminal violations within Texas. Whenever a registrant has a disqualifying arrest, DPS notifies the Board so that it may take proper action, usually to summarily suspend a license or summarily deny an application for a license renewal.

Concurrent with Board's licensing process is a process that allows sheriffs and chiefs of police to play a role in deciding who may participate in the private investigations and private security business. In this process, the Board notifies the sheriff and chief of police of the applicant's city and county of residence, allowing them to object to granting the license or registration by sending a Letter of Objection. The Board may override the objection or grant it, subject to a hearing requested by the applicant or the objecting official. Other than applicants for managers or armed security guards, applicants can begin work before a registration review is conducted and a registration is issued.

The review of the Board's licensing function focused on its relationship with the agency's goal of promoting public safety.

After registrations are issued, the agency monitors registrants in several ways depending on the type of registration. Armed and unarmed security guard may transfer their registration from one company to another. This is a process in which the new company completes an Employee Information Update and pays a fee. This update tells the Board where the employee is now employed and the company now responsible for the employee. Unlike the armed and unarmed security guards, however, other registrants, such as private investigators and alarm system installers, cannot transfer their registration. If these registrants seek to change employers, they must terminate employment and return their identification card to their employer, and the employer must notify the Board of the termination. To begin working for the new employer, the registrant must file a new application for registration with the Board.

The review of the Board's licensing function focused on the appropriateness of current requirements. Sunset staff sought to identify unnecessary or duplicative activities or gaps in the processes that might interfere with the agency's goal of ensuring public safety. The following discussion is broken

into four parts, describing different areas in which Sunset staff has identified problems in the Board's licensing activities, followed by proposed solutions to those problems.

Findings

CRIMINAL HISTORY INFORMATION

▼ **The failure to obtain criminal history information for individual registrants increases the potential that persons with criminal histories may be working in the private security industry.**

- ▶ The agency's statute requires all applicants for registration to submit to a criminal history check, which may be provided by DPS or the FBI. The statute does not require applicants to go through both processes. The Board has adopted a rule to require applicants to receive both state and federal criminal history checks. However, unarmed security guards, who comprise the largest segment of the agency's regulated population, do not routinely receive a federal criminal history check.⁷ Unarmed security guards may voluntarily submit to a federal criminal history check. Without requiring unarmed security guard applicants to submit to this federal check, the agency cannot be sure they meet the minimum requirements in law, which disqualify convicted felons.
- ▶ The agency has indicated that unarmed security guards are not required to receive a federal criminal history check because of the large number of these guards and because of the transient nature of their employment. The agency registered a total of 101,877 security guards in 1997. Although this registration is for four years, these guards change jobs frequently and their pay typically is low. Concerns have been raised to Board members that the \$25 cost of this federal criminal history check would be a hardship on these guards. An additional concern has been raised that FBI checks have taken as long as four months to complete, which is an unacceptable delay in registering these unarmed guards. Other registrants are allowed to work until the FBI check is completed, mitigating the effectiveness of the background check.

Unarmed security guards, who comprise the largest segment of the agency's regulated population, do not routinely receive a federal criminal history check.

Approximately 800 to 1,300 security guards could be expected to have criminal histories that would not have been revealed by the DPS checks.

- ▶ The failure to require unarmed security guards to have FBI criminal history checks increases the potential for individuals with prohibitive criminal records to become licensed to provide security services. Agency data⁸ indicates that three to five percent of all applicants for individual licenses have criminal histories in another state which are not revealed through the DPS check. In 1997, the number of applicants for unarmed security guards was 26,634. Assuming that these individuals have criminal histories in the same proportion as the overall population of licensed individuals, approximately 800 to 1,300 could be expected to have criminal histories that would not have been revealed by the DPS check.
 - ▶ In addition, the agency is unable to keep track of individuals who have been previously denied registration because of criminal history in another state. Because DPS does not maintain a pool of these rejected applicants, the agency must separately process criminal history checks each time an individual applies for a job as an unarmed security guard. The result has been that individuals who have criminal histories have been able to work as unarmed security guards for up to four months while the criminal history check is processed through DPS and the FBI.
- ▼ **Conducting federal criminal history checks on unarmed security guards is consistent with checks performed for other individuals in sensitive jobs and would promote the goal of protecting public safety.**
- ▶ All other applicants registered by the agency, including private investigators, alarm system installers, and security sales people, must submit to federal criminal history checks. In addition, doctors, law enforcement officials, and horse and dog race officials must submit to federal criminal history check before they may work in their profession.
 - ▶ Requiring FBI checks for unarmed guards would eliminate any gaps in public safety and provide complete coverage to better ensure that individuals working in the private security industry do not have criminal histories. The public has a right to expect that persons providing security services in apartment complexes and commercial establishments and at public events, have been qualified by the standards required by law.

- D In addition, by maintaining a pool of rejected applicants, the agency could make immediate checks of all new applicants and reject any applicant previously rejected. The agency and citizens of Texas could be assured that individuals with criminal histories are no longer able to circumvent the process simply by reapplying for registration and taking advantage of the delay in processing these criminal history checks.
- D The time requirements to complete these federal checks is continually improving. In the past, these checks have taken as long as four months to complete. At present, checks are performed within six to eight weeks. The agency hopes to reduce this time to less than four weeks.⁹ Additionally, because of improvements with the system, DPS expects that once it receives a card, the time required to process an FBI check will be reduced to less than 36 hours by January 2000.¹⁰ This rapid turnaround will ensure swift application of the statutory prohibition to licensure of felons.

LETTERS OF OBJECTION

▼ **Allowing local law enforcement to object to individual registrations duplicates the agency's basic function and no longer serves a useful purpose.**

- D By allowing sheriffs and chiefs of police to object to applicants' licensure, the statute establishes a process that largely duplicates the Board's own licensing process. Objections must be based on a statutory disqualification, principally related to the individual's criminal history. Under the previous administration, these objections were routinely upheld, without regard to the grounds for the objection. This process may have served a useful purpose when the agency was created and criminal history information was only available from local law enforcement. However, with the centralization of criminal history information at DPS, and the ease and comprehensiveness of electronic communication, the agency is able to gather and evaluate this information through its own processes.
- D Under the current administration, the agency will consider and uphold an objection that is valid, based on a statutory disqualification. If it denies an objection, the Board notifies

The letters of objection process largely duplicates the Board's own licensing process.

This process for local law enforcement to object to a registration creates a redundancy that diverts the agency's focus.

the objecting official who may appear before the agency and support the reason for their objection. Since this new process has been implemented, the limited data that is available casts doubt on the usefulness of these objections from local law enforcement. The one month (July 1998) for which data is available shows that the agency processed 285 objection letters. Of these, 190 were upheld as valid objections and 95 were denied as non-valid objections. Additionally, of the 190 valid objections, the agency reports that it already knew of the prohibitive offenses through its DPS and FBI criminal history checks. No new information was gained through this process.

- ▶ By duplicating the agency's licensing activities, this process for local law enforcement to object to a registration creates a redundancy that diverts the agency's focus from further promoting public safety. In 1997, the agency processed over 42,000 applications for registration. Each of these applications requires the agency to send two letters of notification, one to the sheriff and one to the chief of police. Objections received must then be processed for verifiable objections. In the first five months of fiscal year 1998, 694 letters were processed.

▼ **Discontinuing local law enforcement objections to the agency's licensing decisions would improve the agency's focus on public safety.**

- ▶ State entities generally have the responsibility to implement their programs as agents of the state without the active involvement of local governments. The requirement of involving local law enforcement in its licensing decisions is a historical artifact that is not typical of other state agencies. For example, the State Bar does not require letters from local law enforcement or prosecutors to help screen its applicants even though similar criminal history concerns exist.
- ▶ Local law enforcement's primary concern that only qualified persons should be allowed to work in the private investigation and security industry is best served by ensuring the agency's ability to adequately screen applicants.

LETTERS OF TERMINATION

▼ **The current process of monitoring the whereabouts of security guards is inefficient, causing unnecessary work for the agency and hardship for the licensees.**

- ▶ Security guards wishing to transfer from one company to another must go through a two-step process. Their new company must send the agency an employee information update and their old company must send a letter of termination. By sending the update, the new company has effectively informed the agency of the guard's change in employment. However, the agency may not receive the required letter of termination from the old company, causing delays in approving the transfer and requiring the agency to investigate the cause of the discrepancy — even though the agency already has the needed update information from the new company. This duplication serves no purpose and causes unnecessary work for the agency. In 1997, the agency processed approximately 35,000 termination letters for security guards, even though it already had the relevant information from the employee update.
- ▶ The agency's effort of matching employee information updates with letters of termination diverts its focus from more important matters. A 1998 audit by Peat Marwick LLP¹¹ has indicated that processing termination letters required more staff time than other comparable processes except individual registrations and the DPS criminal history check. In addition, agency staff could not identify any public safety interest that is served by requiring letters of termination for security guards.¹²

In 1997, the agency processed approximately 35,000 termination letters for security guards, even though it already had the relevant information.

▼ **Streamlining the process for security guards to transfer employment would remove unnecessary barriers to employment in the private security industry and help improve the agency's public safety regulations.**

- ▶ Because licensees must have a letter of termination from their former employer before they may change jobs, they lose some of the ability to control where they work. Other registrants do not have to rely on their former employer's actions to change jobs. These applicants must satisfy a different process which

is discussed below, but they basically control their movement within the industry.

- Other state entities that license both the individual practitioner and business providers do not impose such a cumbersome process on the individual's ability to change jobs. The Texas Real Estate Commission, for example, requires licensed salespersons to file a notice and an appropriate fee with the Commission regarding a change in sponsoring broker. The Commission requests that the salesperson notify the former broker of the change, but this is not a prerequisite to transfer.
- The employee information update contains the information needed to complete an employee transfer. These updates provide sufficient information so that the agency knows where the guard is working. This information enables the agency to ensure that guards continue to work for business that have the required level of financial responsibility. It also enables the agency to locate individuals that may be subject to enforcement action. Significant discrepancies that exist in the guard's file related to past employment should be pursued as an enforcement issue.

TRANSFERABLE REGISTRATIONS

Requiring some individuals to reapply for registration when they wish to change jobs is burdensome on both the individuals and the agency.

- Limiting the ability of some registrants to transfer to another company also places a burden on regulated individuals and adversely affects the agency's ability to do its job.**

 - Unlike security guards who may transfer their registrations from one employer to another, other persons regulated by the Board may not transfer their registrations as they change jobs. To change jobs, they must return their registrations to their employer when they terminate employment and then reapply with the agency for a registration.
 - While the number of registrants who may not transfer their registrations to a new employer is smaller than the number of security guards, this practice still unnecessarily inflates the agency's workload and complicates the licensing process. This practice affects other registrants, such as private investigators and alarm system installers, who numbered about 4,500 in 1997 and who are generally less transient than security guards.

However, requiring these individuals to reapply for registration when they wish to change jobs is burdensome on both the individuals and the agency, and is not related to a public safety purpose.

▼ **Providing greater latitude for individuals to transfer employment would ease the burden on the agency and help improve its regulatory responsibilities.**

- ▶ Security guards, the largest segment regulated by the agency, do not have to return their registration cards to change employers. They may change jobs by satisfying a separate process for informing the agency of the change. However, just as the employee update is sufficient to inform the agency of the employment change for security guards, the same process should work for all other registrants. Requiring these individuals to reapply for registration simply to change jobs creates extra work for the agency without adding any obvious benefit for the public.
- ▶ Other licensing agencies that regulate both individuals and their business employers do not restrict the transferability of individuals' registrations. For example, the Texas Real Estate Commission allows real estate salespersons to change jobs without having to reapply for registration. Similarly, the Texas Department of Agriculture allow commercial pesticide applicators to change jobs without having to reapply for registration.
- ▶ The public safety interest in regulating individuals in the private security industry has less to do with who employs these individuals, but in ensuring that these individuals maintain required qualifications. Problems with an individual's file should be pursued as an enforcement issue. Requiring re-licensing as condition of changing jobs increases workload and does not enhance a public safety objective. Simply requiring an employee information update would satisfy the agency's information needs when a registrant changes jobs. As mentioned above, these updates provide sufficient information for the agency to know where these individuals are working. This information enables the agency to ensure that individuals continue to work for businesses that satisfy financial responsibility requirements. It also enables the

Other licensing agencies that regulate both individuals and their business employers do not restrict the transferability of individuals' registrations.

agency to locate individuals that may be subject to enforcement action.

Conclusion

The Board of Private Investigators and Private Security Agencies regulates the private security and private investigation industry through a dual process of licensing of both individuals and companies in the industry. Individual applicants are reviewed to ensure that they are properly qualified and do not have a criminal record and that they work for a company licensed with the Board. Over time, changes in the agency's statute have created gaps, duplications, and unnecessary workloads in the licensing process that may adversely affect its ability to protect public safety.

The agency's statute requires a criminal history check for all applicants for registration. However, by not requiring federal criminal history checks for unarmed security guard applicants, the agency cannot be certain that it is excluding all security guards with criminal history in another state. As a result, individuals with criminal histories may be working as security guards in Texas.

In addition, the agency is required to follow policies that unnecessarily add to its workload and detract from its public safety mission. The process by which local law enforcement may object to individual registrations served a useful purpose before criminal history information was made readily available. However, with computerized criminal history information available, this process no longer serves a useful purpose and duplicates the agency's basic licensing function. In addition, the separate processes that control individual registrants' ability to change jobs also create unnecessary work for the agency. Requiring registrants to submit to redundant requirements simply to change jobs has inhibited the agency's ability to focus on more important activities to protect the public.

Addressing these issues to eliminate gaps, duplication, and unnecessary activities would enable the agency to redirect its efforts away from administrative processes and more toward public safety concerns.¹³ Streamlining these licensing activities can enhance the Board's ability to efficiently use its resources and concentrate on more important public safety concerns.

Focusing the agency's licensing activities would enable the agency to redirect its efforts away from administrative processes and more toward public safety concerns.

Recommendation

Change in Statute

- **Require all applicants for registration with the Board to submit to state and federal criminal history checks. In addition, authorize DPS to establish a pool of all applicants denied registration based on past criminal activities.**

Requiring all applicants to undergo both state and federal criminal history checks would ensure that each registrant receives a comprehensive criminal history review. Because this requirement is already being imposed on all registrants except unarmed security guards, those registrants would be the only ones affected by this change. Applicants for unarmed security guard would be required to submit two sets of fingerprint cards and the \$25 fee as do other applicants. The fingerprints and the fee are forwarded to the Department of Public Safety which coordinates with the FBI for the federal check. This requirement would reduce the possibility that a person with disqualifying criminal history in another state could move to Texas and work as a security guard.

Allowing DPS to establish a pool of rejected applicants would increase the Board's ability to process applicants in a timely manner. Applicants for registration with the Board can be matched against the pool within minutes rather than the weeks or months the current system requires. This change would help ensure that individuals with criminal histories are not able to work in the industry by taking advantage of the delay in processing these criminal history checks.

- **Eliminate the requirement for sheriffs and chiefs of police to object to licensure of individuals by filing letters of objection.**

Eliminating the requirement for local law enforcement to object to licensing of individuals by the agency would reduce the agency's workload, allowing it to increase its efficiency in processing applications. The improved efficiency would allow the agency to accelerate its process for checking the qualifications of applicants, reducing the time unqualified workers are on the job. For example, the agency's staff would be better able to process the increased criminal history checks received as part of the recommendation to require federal checks for all applicants.

- **Eliminate the requirement for letters of termination from former employers before security guards may transfer employment to another security company.**

- **Allow all individuals registered with the Board to transfer to another employer without having to resubmit an application for registration.**

Eliminating the letter of termination for security guards who wish to transfer their employment and allowing other regulated individuals to transfer their registrations to a new employer without having to reapply for a registration with the Board would streamline the licensing

process and allow the agency to focus on more tasks more directly related to public safety. Instead of requiring individuals to satisfy these redundant requirements to change jobs, the statute should simply require these individuals to have an employee information update submitted to the agency when they change jobs. These updates would ensure the agency that registered individuals are employed by a licensed company that meets insurance responsibility requirements. Additionally, the Board would receive sufficient information about regulated individuals to monitor their qualifications and ability to do their job and to take enforcement action against these individuals if necessary. Providing a single system for transferring registrants would reduce the agency's workload and allow the agency to redirect its resources to more efficient and effective purposes.

Fiscal Impact

These recommendations would not result in a significant impact to the State. The agency would receive an increase in revenue for the FBI checks. Savings realized through increased efficiencies in the licensing division would be redirected toward other agency functions.

¹ See chart "Requirements for Companies' Licenses," p. 7, in Agency Background, for a description of the different types of companies licensed and the requirements for those licenses.

² See chart "Requirements for Individuals' Licenses," p. 8, in Agency Background, for a description of the different types of registrations and requirements.

³ Currently, statute provides that the Board may issue commissions to security guard company and armored car company employees.

⁴ Tex. Rev. Civ. Stat. Ann. art. 4413(29bb) § 40(a).

⁵ Tex. Rev. Civ. Stat. Ann. art. 4413(29bb) § 27.

⁶ See text box "General Statutory Requirements for Licensure" for a more complete description of the general requirements for all applicants for licensure by the Board.

⁷ To be processed, an applicant for noncommissioned security officer need not submit the required \$25 F.B.I. fingerprint processing fee.

⁸ Based on data supplied by Criminal History Division and Licensing Division at agency as well as interviews with agency staff.

⁹ Phone conversation with David Gavin, Criminal Records Division, Texas Department of Public Safety, July 10, 1998.

¹⁰ Ibid.

¹¹ Peat Marwick LLP, *Texas Board of Private Investigators and Private Security Agencies*, Final report, May 8, 1998.

¹² Interview with agency staff including Jay Kimbrough and Larry Shimek.

¹³ See Peat Marwick audit generally; also, "Board of Private Investigators and Private Security Agencies - Small Agency Management Control Audit," State Auditor's Office, December 1995.

Issue 3

Improve the Administrative Hearings Process Through Transfer to the State Office of Administrative Hearings.



Background

The Texas Board of Private Investigators and Private Security Agencies set hearing dates for 3,136 hearings governed by the Administrative Procedure Act (APA) in fiscal year 1997. Because of a change in agency policy to try to resolve contested issues before a hearing, the number of hearings has dropped significantly in fiscal year 1998, with only 551 hearings docketed in the first nine months of the year.¹

The agency conducts hearings on enforcement actions involving licensees and registrants, generally involving appeals of summary suspension and summary denial decisions of the agency. Summary denials and suspensions may result when the agency finds that a licensee or registrant no longer satisfies the minimum statutory licensure, commission, or registration requirements. These actions generally relate to a finding by the agency that individuals have engaged in criminal conduct that disqualifies them from being able to practice under the Act. The agency conducts other hearings on enforcement actions after investigations by the agency's staff have led to a determination that a violation of the Act or Board rules has occurred.

Administrative hearings are conducted in Dallas, Houston, San Antonio, and Austin. The agency's administrative law judge (ALJ) presides at all the hearings. The agency's investigations staff presents the agency's case against alleged violators, and the alleged violators or their attorney present their side of the argument. The cases are conducted like other administrative hearings, similar to non-jury civil trials. Recommendations of the ALJ are then presented to the Board at its next regularly scheduled Board meeting for final action. The Board also serves as an appellate body for those requiring reconsideration of the ALJ's recommendation.

In 1991, the Legislature created the State Office of Administrative Hearings (SOAH) to conduct administrative hearings for state agencies. The Sunset Commission has routinely reviewed administrative hearings conducted by agencies to determine whether this service could be better performed by SOAH. The review focused on whether transferring the agency's APA

The agency conducts hearings on enforcement actions involving licensees and registrants.

hearings to SOAH would increase the independence, quality, and cost effectiveness of the hearings.

Findings

▼ The agency's administrative hearings process lacks the independence that SOAH provides.

- ▶ In enforcement actions against alleged violators of the Act and Board rules, the agency employs both the investigations staff that act as prosecutors and the ALJ who hears the case and makes recommendations for action. This relationship between the ALJ and the agency provides the opportunity for ex parte communication and may create the perception that the hearings process and the ALJ's decisions are not independent of the agency.
- ▶ The perception of independence would improve if APA hearings were conducted by an ALJ employed by SOAH. The ALJ assigned to perform hearings for the agency would be housed with SOAH. Transferring administrative hearings would separate the agency's role as a party in hearings from its responsibility to conduct hearings.

▼ SOAH has the expertise to hold quality administrative hearings.

- ▶ SOAH serves as the central administrative hearings office for the State and hires qualified ALJs. SOAH currently employs 54 ALJs who each receive, on average, more than 73 hours of continuing education and in-house training on hearings and law-related topics every year.² In addition, legislation enacted in 1997 requires that SOAH provide 30 hours of continuing legal education and judicial training within the first year of employment to any new ALJ with less than three years of presiding experience. The agency's ALJ does not receive this amount of training or continuing education.
- ▶ SOAH conducted 18,515 hearings in fiscal year 1997 for about 50 agencies.³ Several public safety and regulatory agencies have their administrative hearings conducted by SOAH. Examples include, the Texas Department of Public Safety's process of administrative license revocations for persons

The agency employs both the investigations staff that act as prosecutors and the ALJ who hears the case and makes recommendations for action.

suspected of driving while intoxicated, and enforcement actions against persons licensed by the Texas Department of Licensing and Regulation.⁴ In addition, SOAH has shown its ability to conduct complex hearings through its work for the Public Utility Commission and its hearings on environmental regulations for the Texas Natural Resource Conservation Commission.

▼ **SOAH would provide better access to regional hearings than the agency.**

- ▶ In 1997, SOAH employed 21 ALJs at nine regional offices in Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, San Antonio, Tyler, and Waco.⁵ The ALJs travel to locations within their region to hold hearings. By hearing cases regionally, SOAH would give affected persons convenient access to the hearings process.
- ▶ The agency's ALJ and program staff are located in Austin and must travel to Dallas, San Antonio, and Houston three or four times each year to hold hearings. While accurate travel cost information is not available for fiscal year 1997, the agency reports total travel cost of approximately \$7,500 through the third quarter of fiscal year 1998. Providing hearings with SOAH would reduce this total cost by eliminating the travel time and expense of the agency's ALJ.

The agency's ALJ and program staff are located in Austin and must travel to Dallas, San Antonio, Houston three or four times each year to hold hearings.

▼ **SOAH claims to have reduced overall hearing cost for most state agencies that have transferred their hearing functions to SOAH.**

- ▶ SOAH has reported that it has been able to reduce the overall hearing costs to the state. SOAH estimates that it saved more than \$727,000 in hearings costs that would have been incurred by 50 state agencies had the hearings been conducted in-house. This savings represents approximately a 39 percent reduction in the cost of hearings.⁶
- ▶ Because the agency and SOAH use different methods for calculating and recording hearing costs, comparable information is not available to show what SOAH's cost would be to conduct the agency's hearings.

Transferring hearings to SOAH would improve the hearing process.

▼ **SOAH has provided state agencies and citizens with a fair and efficient administrative hearings process.**

- ▶ Results from a survey conducted by the Senate State Affairs Committee in 1996 indicated that 43 out of 46 agencies for which SOAH held hearings believed that SOAH was fulfilling its mission as the State's hearing office.⁷
- ▶ Eighty-five percent of the hearing participants surveyed by the Legislative Budget Board for fiscal year 1997 were satisfied with the overall process of SOAH.⁸

Conclusion

The Legislature has clearly expressed its intent to consolidate the hearings functions of state agencies if such a transfer would improve the independence, quality, or cost effectiveness of hearings. The review of the Agency's APA hearings process indicated that SOAH has the ability to conduct the hearings, and that a transfer would provide more independence, would provide an equal level of quality, and could improve the cost effectiveness of the hearings process.

Recommendation

Change in Statute

- **Transfer the Agency's Administrative Procedure Act hearings to the State Office of Administrative Hearings.**

This recommendation would transfer agency's APA hearing function to the State Office of Administrative Hearings. The agency currently employs one Administrative Law Judge and two administrative staff persons. However, since SOAH does not perform various tasks relating to docketing cases, transferring hearing requests to SOAH, providing notices to parties, arranging for court reporters, and providing support during the pendency of a case, these TBPIPSA legal support staff must remain with the agency.

In conducting hearings, SOAH would consider the Board's applicable substantive rules or policies. In this way, the agency would still determine how broader policy matters or recurring issues would be treated by administrative law judges. As with the Board's current hearing process, the agency would have the option of letting SOAH issue proposals for decision to the Board or final decision-making authority could be delegated to each ALJ who hears an appeal. If the Board chooses to make the final decision, it could alter the ALJs proposal

only if the ALJ did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions; the ALJ relied on a prior administrative decision that is incorrect or should be changed; or a technical error in a finding of fact should be changed. The agency must state in writing the specific reason and legal basis for a change.

In 1997, the Legislature, for the first time, appropriated a lump sum to SOAH from the General Revenue Fund to conduct hearings. In addition, some agencies choose to pay SOAH a lump sum based on an estimated case load for the agency. Traditionally though, agencies have paid SOAH an hourly rate to conduct its hearings. If the Legislature transferred the hearings, any of these options could be considered.

Fiscal Impact

Historical data indicates that overall costs related to administrative hearings transferred to SOAH have been reduced by approximately 39 percent. However, the fiscal impact of this transfer of duties cannot be determined because the specific hearings costs for the agency will depend on the payment structure determined by the Legislature, and whether the agency is able to reduce its legal division staff. Any savings would be reallocated within the agency.

¹ This decline in hearings from the previous year represents revision in the procedures of the Investigation Division of the agency. Whereas, in the past, even minor technical violations of Board rules were being handled as full blown cases and were being set for hearings, the current agency procedures allow for resolution of these issues at the program level.

² Information provided by Shelia Bailey Taylor, Chief Administrative Law Judge, the State Office of Administrative Hearings, March 12, 1998.

³ Ibid.

⁴ Information provided by Phyllis L. Johnson, Assistant to Chief Judge, SOAH, July 28, 1998.

⁵ Ibid.

⁶ Memorandum from Sheila Bailey Taylor, Chief Administrative Law Judge, the State Office of Administrative Hearings, April 10, 1998.

⁷ Data derived from Senate State Affairs survey of state agencies regarding SOAH performance, February 28, 1996.

⁸ Summary Assessment of Agency Performance, Fiscal Year 1997, Legislative Budget Board, Page VIII-6.

Issue 4

Improve Enforcement by Clarifying Legislative Regulatory Requirements and Expectations.



Background

To effectively regulate the private investigations and private security industry, the Board must establish minimum standards and qualifications for those working in the industry and it must be able to take action against those who violate these requirements. Through enforcement action against violators, the agency seeks to achieve compliance with its regulations by the licensed community. In this way, the public has assurance that individuals practicing in the regulated area maintain the qualifications and the standards of conduct to safely and effectively perform their responsibilities.

An important aspect of ensuring the public that individuals are qualified to do the job is the requirement in statute that persons may not work in the regulated security services area if they have been convicted of a felony or a misdemeanor involving moral turpitude within seven years of the date of application. To determine if persons have a criminal history that would disqualify them from working in this area, the agency performs criminal history checks on applicants through the Department of Public Safety and the Federal Bureau of Investigations. During the first 11 months of fiscal year 1998, the agency conducted 37,760 criminal history checks through the Texas Department of Public Safety.

The enforcement tools that the agency may use against suspected violators vary according to the circumstances of the case. These tools start with issuing a letter of reprimand, extend to putting a violator on probation, and may result in suspending or revoking the license. The agency, in lieu of suspension, may order a violator to pay a penalty of up to \$200 per day for the duration of the suspension. In addition to these enforcement tools, the agency may deny the renewal of a person's application if it determines the person no longer meets the qualifications for licensure. The agency is also empowered to summarily suspend or deny a license if it finds that the person has failed to satisfy the basic requirements for licensure, generally relating to criminal history. In the case of unlicensed operators, the agency can seek civil penalties in district court in Travis County. Civil penalties may be up to \$1,000 for each time the violation occurs, however the Agency has no autonomy to

Through enforcement, the agency ensures that licensees maintain qualifications and standards of conduct.

pursue this remedy on its own and must go through the Attorney General's Office to initiate a filing of this type.

During the first ten months of fiscal year 1998, the agency issued 70 suspensions, 218 revocations, 3,545 summary denials and suspensions. The agency also collected \$73,550 in fines from licensees who violated a provision of the Act or Board rules. This fine revenue is deposited to the General Revenue Fund and is not available for the agency's use.

In assessing the agency's enforcement activities, Sunset staff sought to determine if the agency had the tools necessary to protect and promote the public interest. The staff also sought to determine if performance information about licensees that is developed through the agency's enforcement efforts has helped satisfy its public awareness and customer service function. Sunset staff focused on three areas regarding the agency's enforcement activities, which are discussed in the following material.

Findings

ENFORCEMENT - CRIMINAL BACKGROUND

▼ **The Board has not consistently followed its staff's recommendations and has allowed individuals with criminal histories to work in the security industry.**

- For persons to be licensed to work in the private investigation or private security industry, they must not have a criminal history, unless they have received a full pardon from the Governor. Based on written notification from a law enforcement agency that an applicant or a licensee has a criminal history, the agency staff either summarily denies the application or suspends the person's license. Summary action by the staff is intended to be automatic, but is subject to a hearing before the agency's administrative law judge and an appeal to the full Board for a final decision.
- The Board has not consistently followed the staff's recommendation for summary action. In the first 10 months of fiscal year 1998, the Board has overturned, on appeal, more than half of the staff's recommendations for summary action. Of 26 cases heard on appeal, the Board has refused to adopt the staff position on 14. In each of these cases, the administrative law judge has upheld the staff's

Board decisions allow persons with criminal histories to work in the private security industry.

recommendation after a hearing. The result of these Board decisions is to allow persons with criminal histories to work in the private investigation or private security industry.

- A separate statute provides discretion to licensing bodies in their consideration of criminal history information in licensing decisions. This statute also provides criteria for licensing bodies to consider in making their determinations and requires them to develop necessary guidelines for applying the law.¹ However, this statute does not clearly apply to the Board. In addition, no guidelines have ever been issued by the Board, as required by the law for its application and use.

▼ **Disqualifying individuals with criminal histories from licensure would enhance public safety.**

- Even if the Board has the legal authority to disregard evidence of criminal history by applicants and licensees, the public has a strong interest in seeing that the Board use this criminal history information to disqualify persons from working in this industry. By establishing minimum licensing requirements that exclude persons with criminal histories, the Legislature also has expressed an interest in minimizing the risk that persons working in the private investigations and private security industry pose to personal property and public safety.
- Individuals working in the security services industry pose a threat not only to consumers of these services, but also to the welfare of the general public. The very nature of these professions allows individuals to have easy access to private property and sensitive personal information. These individuals guard or monitor offices, banks, homes, parking lots, and neighborhoods. Ensuring that individuals who have a history of breaking the law are not allowed to work in these professions would promote public safety.

The public and Legislature have a strong interest in seeing that the Board uses criminal history information to disqualify persons from working in this industry.

PUBLIC ACCESS AND OVERSIGHT

▼ **Enforcement information is not easily accessible to the public and to consumers.**

- The agency collects and maintains enforcement information on the individuals and companies it regulates, as required under

the Act. Information collected through investigative, legal, and criminal history activities indicates how well licensees do their jobs, and becomes the basis for sanctions if they do not comply with agency statutes or Board rules.

- Regulatory information is not easily accessible to the public or consumers. Compliance history of individuals and companies maintained by the agency is available to the general public and consumers of regulated services only through a written request.

▼ **Providing easy access to regulatory information would serve the public and improve the agency's regulations.**

- Improved access to enforcement information can help the public and consumers make better decisions when considering private security services. Making this information available to the public is an important part of the disciplinary process. This information would help assure the consuming public of the professional conduct of the service provider and would enable the public to make informed choices in obtaining services from regulated entities.
- Improving public access to the agency's enforcement information would also help improve regulation. As consumers become more informed in their decision making, poor performers and unlicensed operators would likely be forced out of the market. In addition, once the effects of the agency's enforcement activities are felt in the market, through the actions of consumers, the seriousness of the State's standards and qualifications would be reinforced.

▼ **Other state agencies use toll-free telephone numbers and Internet web sites to allow easy access to disciplinary information of regulated entities.**

- The Texas Board of Medical Examiners uses a toll-free telephone line and an Internet web site to make disciplinary information on medical doctors in the state publicly available. The Board of Chiropractic Examiners uses a toll-free telephone number and is developing a web site that will contain this information. The Board of Nurse Examiners, the Physical Therapists Board, and the Occupational Therapists Board all

Improving public access to the agency's enforcement information would help improve regulation.

use web sites to publish enforcement information. In addition, in 1997, the Legislature required the Department of Human Services to develop an automated tracking system for on-line access to enforcement history.

- ▶ The agency's new management has recently developed an Internet site and is currently using the site to convey agency information on licensing and registration requirements and on other general agency information. Enforcement information on individuals and companies is currently not available on the site. The agency also does not have a toll-free telephone line for its customers and the public.

SANCTION TOOLS

▼ **The statute is not clear on the agency's authority to levy administrative penalties and does not provide sufficient guidance on how to levy these penalties.**

- ▶ The agency's statute authorizes the agency to suspend or revoke the license of a person who violates provisions in the law or Board rules. The statute further allows the agency to provide for a payment of a civil penalty of up to \$200 in lieu of a suspension for the duration of the license suspension. No additional authority is provided to the agency in its statute regarding fines for sanctioning regulated entities. Also, neither the agency statute nor Board rules provide any guidance for assessing these penalties, and for determining the amount of penalties for different types of violations.
- ▶ Under the civil penalty authority in statute, the agency has developed basic procedures for making sanctioning decisions. These procedures serve as basic guidelines for staff in making decisions on settlements and making recommendations for enforcement action to the agency's administrative law judge (ALJ). Before the agency actively pursues enforcement action against suspected violators, it seeks to reach an agreed settlement in which the party fixes the problem and simply pays a fine to the agency. This process occurs at the staff level and does not provide for a hearing or judicial review.

▼ **When given the opportunity, most violators seek to settle their case by paying a fine.**

- ▶ Suspected violators who do not settle are referred to the agency’s hearings process before the agency’s ALJ. In this hearing process, alleged violators are subject to stiffer sanctions, such as revocation of their license. For this reason, most violators, when given the opportunity, seek to settle with the agency by paying a fine.
- ▶ During fiscal year 1997, the agency reported settling 1,270 cases before a hearing, while 1,135 cases were heard in front of an ALJ. The agency collected \$191,856 in fines from these settlements and collected \$20,800 in fines after a hearing was conducted by an ALJ. During the first 11 months of fiscal year 1998, the agency settled 1,339 cases with \$68,500 in settlement payments. Another 331 cases have been heard before an ALJ resulting in \$5,000 in collections. These funds are deposited to the General Revenue Fund and are not available to the agency for its use.

Regulatory actions are not directed by a methodology or process that ensures consistent application of the statutes and Board rules.

▼ **Lack of clarity in statutes can lead to inconsistent application of the Act and Board rules.**

- ▶ Regulatory actions of the agency and the Board are not directed by a methodology or process that ensures consistent application of the statutes and Board rules. While the staff has developed guidelines for settling cases, these guidelines have not been adopted by the Board in a process that ensures public input and public awareness.
- ▶ The statute does not provide clear authority to collect a penalty as part of a settlement. In addition, the statute does not specify how these penalties are to be implemented. The statute does not address important aspects of the process, such as determining an appropriate penalty according to the nature and seriousness of the violation.

▼ **Clarifying the agency’s authority to impose administrative penalties would increase consistency and improve agency’s enforcement decisions.**

- ▶ Other state agencies that assess administrative penalties have clear statutory authority to do so. In addition, these agencies’ statutes typically provide standard procedures to follow in applying these penalties. For example, when assessing

penalties, these agencies must consider such factors as the nature and seriousness of the violation, the history of previous violations, the amount necessary to deter future violations, and the licensee's efforts to correct the violation. These statutory guidelines provide some measure of consistency and fairness in enforcing the law, and they help the agency tailor the penalty to the circumstances of the violation.

- By clarifying the agency's authority to levy administrative penalties, the statute would also improve the agency's enforcement activities. The agency should have the authority to apply administrative penalties within the full range of sanctions available to achieve compliance with its regulations. The statute currently limits these penalties to be applied only in lieu of suspensions. With greater flexibility to assess monetary penalties, the Board and the agency would have an effective enforcement tool to consider before any decision to revoke a license, putting individuals out of work.

Conclusion

The agency regulates an industry that can have a significant impact on the safety and welfare of Texas residents. Effective and efficient enforcement of state laws, rules and regulations is vital to ensure that public interest is protected.

Despite this interest in public safety and the statutory prohibition against a person with a criminal history from working in the security services industry, the Board is allowing individuals with criminal backgrounds to work in this area. Removing the Board's discretionary authority with regards to criminal background requirements would ensure that individuals who have broken state laws do not work in the security services industry.

Enforcement information is not easily accessible to the general public. Requiring that the agency provide regulatory data through an Internet site, or through another type of an automated system, will allow the public and consumers of regulated services to make more informed decisions.

Finally, statutes governing the agency are not clear on the agency's authority to levy administrative fines and to enter into monetary settlements. Lack of clarity in these statutes can lead to inconsistent application of the Act and Board rules. In addition, the agency is not able to take advantage of the full range of sanctions that is available to many other regulatory agencies.

Public interest will be protected by clarifying legislative expectations and agency's enforcement authority.

Ensuring that procedures are clearly specified in statute would strengthen the agency's overall enforcement effort and enhance agency accountability.

Recommendation ---

Change in Statute ---

- **Clarify that the Board has no discretion to allow a person with a criminal history to be licensed to work in the private investigation or private security industry.**

Under this recommendation, no one with a criminal history as specified in the agency's statute would be able to receive a license from the Board unless they have received a pardon from the Governor. The Board would no longer have flexibility under the Private Investigators and Private Security Act or any other law, to allow a person with a disqualifying criminal history to work in this industry.

- **Require the agency to make enforcement information more accessible to the public and consumers.**

This recommendation would require the agency to provide regulatory information on licensed companies and individuals to the public. The agency would determine how best to provide this information, such as through an automated medium like its existing Internet site or through the use of toll-free telephone number. The agency would be required to provide regulatory information in a manner that helps the user easily discern the individual's or the company's performance under the agency's oversight. This information would reveal whether the person or company has been sanctioned by the agency in the past three years, including the nature of the violations committed and the types of sanctions levied by the agency. To enhance these new communications efforts, the information must be meaningful to the general public and not make use of technical jargon or terminology. It must also maintain the confidentiality of information regarding complainant identification. It must also be updated periodically.

- **Clarify the agency's authority to levy administrative fines and provide the standard criteria for applying these fines.**

This recommendation would clearly authorize the agency to apply administrative penalties against suspected violators of the statute and Board rules. It would provide a standard approach for the agency to follow in assessing these penalties against violators. This approach would be similar to that of other regulatory agencies and would ensure that each violator is afforded due process before any monetary fines are imposed. The statutes would contain guidelines that the agency and the Board would use when determining the amount of the penalty. The Board would be authorized to set fines to fit the severity of the violation, considering the history of the violator and the extent the violator may have acted without

knowledge or intent to violate the law. The agency would also be required to establish a standard method for using administrative penalties, including penalty ranges for different types of violations. None of the recommended changes would affect the agency ability to suspend, revoke, or deny a license, or to seek a court order to shut down a company whose operations pose a serious threat to the safety and welfare.

The statute should also be changed to establish a penalty level of \$200 per violation per day of the violation of the statute or the Board's rules. This penalty level would be based on the existing penalty level in statute, but would be connected to the nature and extent of the violation instead of the length of the anticipated suspension. Allowing a range for penalty amount for different violations would allow the agency and the Board to recommend and assess penalties that fit the seriousness of each violation and to deal with repeat offenders.

This change would also broaden the application of these penalties so that they may be used within a range of sanctions available to the agency to achieve compliance by the regulatory community. The agency could assess these penalties according to the seriousness of the violation, and not just in lieu of a license suspension. Penalties could be assessed in lieu of revoking a license, thus not necessarily removing the person's ability to do business.

This administrative penalty process would not eliminate the agency's current settlement process. Under this provision, the agency would continue to try to achieve a settlement with the parties in establishing the level of the penalty. If the parties do not agree, they would be able to pursue the matter through an administrative hearing. While the number of administrative hearings should not increase significantly, another issue in this report addresses the agency's ability to provide the necessary hearings in a timely and accessible manner. Issue 3 recommends transferring the agency's administrative hearings to the State Office of Administrative Hearings.

Fiscal Impact

This recommendation to improve the enforcement functions of the agency by clarifying legislative requirements and expectations will not have a significant fiscal impact on the State. The revenue stream tied to the agency's settlement process will be replaced by the fines collected under the agency's administrative penalty provision. The exact amount of revenue generated or lost through fines cannot be determined as the number of violation and amount of penalties cannot be estimated.

¹ Vernon Texas Civil Statutes, Title 110A Public Offices, Officers, and Employees, Article 6252-13c, *Eligibility of persons with criminal backgrounds for certain occupations, professions, and licenses*, and Article 6252-13d, *Suspension, revocation, or denial of license to persons with criminal backgrounds; guidelines and application of law*.

Issue 5

Continue the Texas Board of Private Investigators and Private Security Agencies for Four Years.



Background

The Texas Board of Private Detectives, Private Investigators, Private Patrolmen, and Private Guards Watchmen was created in 1969 by the Texas Legislature to license businesses and people in the investigations and security industry, and to provide a means of regulating both the licensed and enforcing laws against unlicensed operators. Before 1969, the regulation of these professions was performed locally by county sheriffs and other law enforcement entities. Over time, the Legislature expanded the agency's regulatory responsibilities and in 1971 changed its name to the Texas Board of Private Investigators and Private Security Agencies to reflect its expanded mission.

The agency was created to license and regulate businesses and people in the investigations and security industry.

The Private Investigator and Private Security Agencies Act (Act) prohibits any person or firm from offering security services without being licensed by the Board or exempted by the Act. Through this licensing law, the State controls how security services are offered, who may engage in the private investigations and security business, and how much financial responsibility these security service providers should have. Since its creation, the agency's scope of regulation has expanded to include, armored car companies, alarm system companies, guard dog companies, and courier services. Subsequent amendments to the Act gave the agency authority to commission security officers to carry firearms and to perform FBI fingerprint criminal history checks on all applicants.

The Board has the responsibility to establish standards for licensure, commission, and registration, develop minimum level training or competency materials, approve schools and instructors to teach relevant courses and administer exams to qualified applicants. In addition, the agency has the duty to enforce the provisions of the Act and Board rules and to sanction persons who fail to comply with these requirements.

In a Sunset review, continuation of an agency and its functions depends on certain conditions being met, as required by the Sunset Act. First, a continuing need should exist for the State to provide the functions or services. In addition,

the functions should not duplicate those currently provided by any other agency. Finally, the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the functions or services to another agency. The evaluation of the need to continue the Texas Board of Private Investigators and Private Security Agencies and its current functions led to several findings that are discussed in the following material.

Findings

▼ **The functions of the Texas Board of Private Investigators and Private Security Agencies continue to be needed to ensure public safety.**

By setting and enforcing standards the Board promotes Texans' safety.

- ▶ The State's strategic plan calls for state government "to protect and enhance the health, well-being, and productivity of all Texans". By setting and enforcing standards for licensure, commission, and registration, the Board promotes Texans' safety by ensuring that individuals who are not reputable, competent, or trustworthy do not work in this industry.
- ▶ The Board, through its licensure and registration process, ensures that all applicants possess the necessary credentials, and have the requisite experience to perform their services. The agency sets the minimum level of competency for security officers through establishment of a training course and approval of training schools and instructors. The agency also conducts criminal history checks for all applicants seeking to work in the private investigations and security industry. The agency also ensures the competency of security guards to carry and safely use firearms in the course of their work.

In fiscal year 1997, the Board regulated 24,979 security officer commissioned to carry firearms, 101,877 non-commissioned security officers, 290 training schools for private security officers and 495 instructors. During the year, the agency also performed approximately 40,000 criminal history checks through the Texas Department of Public Safety.

- ▶ The agency enforces the statutes and rules governing the security services industry and takes corrective action when violations of these laws and rules occur. In this way, the agency ensures that regulated persons comply with the requirements to practice in the regulated professions in Texas.

The agency may also summarily suspend a person's registration if it determines the person has engaged in past or current criminal activity. The Agency may also take other actions to ensure compliance with the Act. During the first 10 months of fiscal year 1998, the Board authorized 3,545 summary suspensions and denials, 70 license suspensions, 218 license revocations, and collected \$73,550 in fines. In addition, the agency refers cases involving unlicensed operators to county district attorneys for criminal prosecution, and can also enforce a penalty against these violators. During the first 10 months of fiscal year 1998, the agency referred 15 cases for criminal prosecution.

All but seven states regulate private investigators and private security services at the state level.

▼ **While organizational structures may vary, most states have an entity that regulates some or all aspects of the security services industry.**

- ▶ All but seven states regulate private investigators and security services at the state level. All of Texas neighboring states regulate private investigators and security guards. Arkansas and New Mexico have an organizational structure that most closely resembles Texas. Both states regulate private investigators and security guards through an independent board. In Arizona and Louisiana, responsibility for regulating resides in its Department of Public Safety. In Oklahoma, regulatory responsibility for this area lies with the Oklahoma Council on Law Enforcement Education and Training.
- ▶ Private investigators and security guards are also regulated in California, Florida, New York, Illinois, and Georgia. All but one (Georgia) of these five states regulate through their business licensing agency — similar to the Texas Department of Licensing and Regulation. Georgia's structure is similar to Texas.

▼ **While other Texas state agencies have similar duties and responsibilities, none are currently in the position to assume responsibilities for the Board's functions.**

- ▶ Other agencies have similar duties for setting standards, licensing and enforcement. However, the Board is the only state agency with the expertise to set standards for regulating the private investigations and security industry. Further,

The Board is the only state agency with the expertise to regulate the private investigations and private security industry.

without other regulatory responsibilities, the Board and its staff are able to clearly focus on this industry, providing the level of scrutiny needed to control who guards Texas banks, hospitals, and apartments, and who installs security alarms in Texas houses.

- ▶ The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) establishes minimum competency for peace officers and regulates law enforcement academies and curricula used to instruct these peace officers. However, TCLEOSE's functions relate to *public* law enforcement officials and not the private investigations and private security industries. TCLEOSE's activities would be dwarfed by the size and scope of the Board's activities. TCLEOSE currently oversees approximately 100 academies providing basic peace officer training and has limited training contracts with about 150 local providers, while the Board regulates 290 schools that train private security officers and 495 private security officer training instructors. TCLEOSE licenses 57,200 peace officers, while the Board regulates approximately 154,365 individuals and 4,067 companies involved in the private investigation and security industry.

- ▶ The Texas Department of Licensing and Regulation is the State's general licensing agency that regulates activities ranging from manufactured housing and architectural barriers to professional boxing and talent agencies. However, this agency has little public safety expertise. In addition, because it functions primarily as a licensing agency, it is limited in its ability to enforce the requirements, as needed, on the private investigations and security industry.

- ▶ The Texas Department of Public Safety (DPS) is the State's safety agency, with significant regulatory responsibility, including the licensing of the State's drivers, the licensing of individuals carrying concealed handguns, and the certification of concealed handgun instructors. DPS, however, has assumed considerable additional regulatory programs in recent years, potentially limiting its ability to take on additional responsibility. Since 1995, DPS has taken over motor vehicle emissions testing from the Texas Natural Resource Conservation Commission and motor vehicle carrier safety responsibilities from the Texas Railroad Commission. It has

also been given broad new authority for licensing the carrying of concealed handguns and registering sex offenders.

DPS also has the responsibility for administering the criminal history checks that are integral to the agency's activities of screening applicants for entry to the private security industry. However, this function would not be improved by any consolidation. While similarity of functions between DPS and the agency indicate the need for close coordination between the two agencies, this need is served by having DPS' Executive Director or designee serve as an ex officio member of the agency's Board.

▼ **No substantial benefits or savings would result from transferring the Board's functions to another agency.**

- ▶ Because of the expertise and the workload required to regulate the private investigations and security industry, much of the agency's existing structure would need to be continued wherever the agency's functions are located. Transferring the Board's responsibilities to another agency would not result in increased efficiency and could result in a reduction in the effectiveness of the State's efforts to regulate the security services industry if a comparable level of expertise is not maintained.
- ▶ Because the agency currently pays its own way through fees it collects from licensees, little savings to the State would be expected from shifting this regulatory responsibility to another state agency.

Much of the agency's existing structure would need to be continued wherever the agency's functions are located.

▼ **Although the agency has taken significant action to address past problems, re-examination in four years is necessary.**

- ▶ Because of concern with the way the agency had been run, the Legislature imposed several requirements to improve oversight and accountability of the Board and its staff. The agency is required by rider in the current Appropriations Act to report monthly to the State Auditor; have its purchases reviewed by the General Services Commission; notify the Legislative Budget Board and the Governor's Budget Office about any plans to enter into a contract; and submit to review by the

Sunset Commission in time for 1999 legislative session — four years before its regularly scheduled review.

Under new management, the agency is responding to these legislative directives, initiating changes to address management problems, and improving its business practices. Early evidence suggests that the agency has made progress in righting its course. The State Auditor, in its semi-annual report¹ to the Legislative Audit Committee has reported favorably on the agency's progress. Recent discussions with State Auditor's staff have reinforced earlier conclusions reached by the Auditor's Office.²

- Despite the direction the agency has taken under new management, more time is needed to see if current changes being implemented, and those being planned, have the intended effect of resolving legislative concerns. Because of the interest that has been expressed in this agency, a shorter review period is needed that would give the agency time to build a track record on which a re-evaluation may be based.

A shorter review time frame would give the Legislature the opportunity to re-visit the agency if historic accountability and management concerns persist.

Conclusion

The work performed by the Texas Board of Private Investigators and Private Security Agencies is important to protect public safety in Texas. The risk that people in these regulated positions pose to individuals and businesses is significant both in terms of dollars and safety. As a result, the functions performed by the agency need to be continued to ensure that private investigators and security service contractors meet appropriate and necessary regulatory standards and requirements, and that they comply with the Act and Board rules. Because consolidating the Board with another state agency would not likely increase benefits to the State or significantly reduce costs, and because of the Board's recent efforts to address the problems of previous management, any major restructuring of the agency is premature. Historic accountability and management concerns with the agency are being addressed. However, a shorter review time frame would give the Legislature the opportunity to re-visit the agency if accountability concerns still persist.

Recommendation

Change in Statute

- **Continue the Texas Board of Private Investigators and Private Security Agencies for Four Years.**

This recommendation would continue the Board for four years, putting it back on schedule with its original Sunset date — September 1, 2003. This shorter review frame would allow the State to monitor the progress of the agency and re-visit any concerns that may remain unresolved.

Fiscal Impact

If the Legislature continues the functions of Texas Board of Private Investigators and Private Security Agencies with the current organizational structure, the agency's annual appropriation of about \$3.1 million would continue to be required for the operation of the agency.

¹ State Auditor's Office Report No. 98-032, *TBPIPSA Implementation Status of SAO Recommendations 9/1/97 to 2/28/98*, submitted to Legislative Audit Committee on 2/25/98.

² Discussion with Rachel Cohen of the State Auditor's Office on July 22, 1998.

ACROSS-THE-BOARD RECOMMENDATIONS

Texas Board of Private Investigators and Private Security Agencies	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Update	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Update	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Update	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Update	10. Require information to be maintained on complaints.
Already in Statute	11. Require development of an equal employment opportunity policy.

Texas Board of Private Investigators and Private Security Agencies	
Recommendations	Across-the-Board Provisions
	B. LICENSING
Update	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Update	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Apply	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Apply	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Update	5. Authorize the staggered renewal of licenses.
Update	6. Authorize agencies to use a full range of penalties.
Already in Statute	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Apply	8. Require the policymaking body to adopt a system of continuing education.

BACKGROUND

Background

AGENCY HISTORY

Although public law enforcement agencies have the basic responsibility to control crime, private security services have historically supplemented these efforts, with the principal goal of preventing crime. Urbanization, industrial growth, and other economic and social factors, over time, have contributed to a greater need for these private sector security services. As the number and type of security services expanded, so grew the concern for protecting the public, giving rise to the need for the State to regulate the companies and individuals engaged in this activity.

The Legislature created the Texas Board of Private Investigators and Private Security Agencies in 1969 to provide a uniform, centralized means of regulating and licensing private investigators and security companies in the State. Previously, County Sheriffs, and other law enforcement entities, provided this regulatory control. In addition to regulating businesses and persons involved in these industries, the agency was also required to enforce laws against unlicensed operators.

Since 1969, the regulation of this industry has experienced several changes. The chart, *Texas Board of Private Investigators and Private Security Agencies Key Legislation*, summarizes the significant statutory changes that have occurred to date. The current focus of the agency is to assure citizens and consumers that regulated companies and individuals are qualified, ethical, responsible and professional. The agency also serves as a source of standards of conduct and quality to the industry as a whole.

Past problems with oversight and management at the agency have heightened the level of legislative interest regarding agency operations, and have led to major changes in agency's staffing and key management

Texas Board of Private Investigators and Private Security Agencies - Key Legislation

1969 - The Legislature creates the Texas Board of Private Detectives, Private Investigators, Private Patrolmen and Private Guards Watchmen. The Act requires individuals and firms to be licensed by the Board to offer security services. The regulations are intended to control the way security services are provided, check the qualifications of persons authorized to provide security services, and ensure the financial integrity of the security service providers.

1971 - The Act is expanded to include armored car services, alarm system companies, guard dog companies, and courier services, and the agency's name is changed to the Texas Board of Private Investigators and Private Security Agencies to reflect this broader mission. Regulating these services is intended to promote public safety through oversight of all aspects of the security industry.

1975 - Legislature creates "commissioned security officers" who may carry a firearm under certain conditions. The agency is also given authority to approve training instructors and training schools for the commissioning of security officers.

1983 - Legislature requires the registration of all noncommissioned security officers, alarm installers, alarm salesperson, alarm monitors, security consultants, security salespersons, and guard dog trainers and handlers.

1995 - Legislature allows FBI fingerprint criminal history checks for all applicants and individuals who have been issued a license, registration, and commissions.

processes. The chart, *Recent Events Affecting Agency Operations*, summarizes previous problems at the agency and subsequent changes that have taken place to date.

Recent Events Affecting Agency Operations
Early 1997 - Travis County District Attorney's Public Integrity Unit investigates allegations of travel voucher fraud at the agency.
March 1997 - State Auditor's Office Follow-Up Management Control Audit report finds significant weaknesses and violations of state policy at the agency. Key facts and findings of the report include falsification of vouchers, fabrication of supporting documentation, incurrence of unreasonable expenses, and non-compliance with state purchasing and timely payment statute.
April 1997 - Texas Department of Public Safety officers close the Board's office and seize its records as part of an on-going investigation into possible misuse of public funds by agency management and staff.
April 1997 - The agency's Board, with a 6-2 vote, fires agency Executive Director after lawmakers raise questions about a contract the Executive Director authorized for a public relations consultant.
May 1997 - Legislature moves up the agency's Sunset review date from 2003 to 1999.
June 1997 - Legislature strengthens oversight of the agency by adding riders to the General Appropriations Act imposing greater review and reporting requirements on the agency.
October 1997 - Board appoints new Executive Director.
October 1997 to May - The following changes are made under the new Executive Director: <ul style="list-style-type: none"> ● implements new standards for detecting and reporting ethical violations; ● hires new program administrators for three of the agency's five divisions; ● reduces number of forms used in the licensing process from 68 to 17; ● creates Criminal History Section to better accommodate the processing of criminal history information received from the DPS and the FBI; ● eliminates investigation services backlog of 7,000 rap sheets; ● enters into a contract with KPMG Peat Marwick, LLP for review of operations and information technology needs; and ● elimination of 3,800 backlogged pending investigative cases.

The Board has eight members, with six appointed by the Governor and two ex officio members.

POLICY MAKING BODY

The Texas Board of Private Investigators and Private Security Agencies is composed of eight members, with six appointed by the Governor with the advice and consent of the Senate and two serving as ex officio members. The appointed members of the Board serve staggered six-year terms. The Governor's appointees to the Board include three public members, two persons who are licensed and have practiced as a private investigator or as a security service contractor for at least five years, and one person who is licensed as the owner or operator of a guard company and has engaged in this service for at least five years. The ex officio members are the Director of the Texas Department of Public Safety or a designee, and the Attorney General or a designee. The Governor designates the Board Chairman.

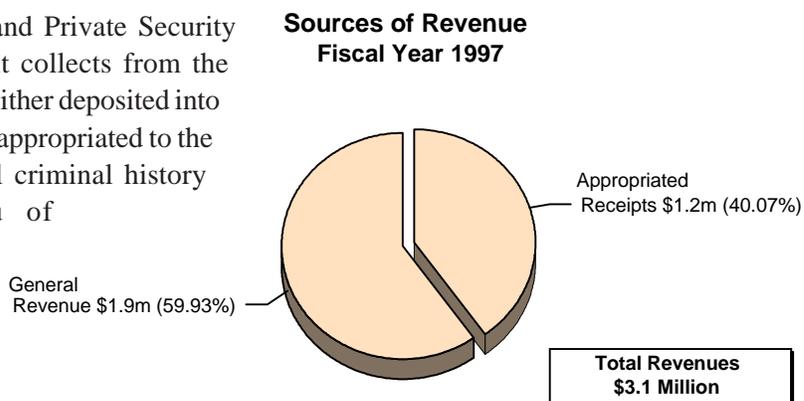
The Board carries out policymaking and governing duties as required for the administration and enforcement of the Act. Key powers and duties of the Board include:

- determining the qualifications of persons licensed, registered, and commissioned under the Act;
- establishing and enforcing standards governing the safety and conduct of persons licensed, registered, and commissioned under the Act;
- investigating and enforcing alleged violations of the Act and any rules and regulations adopted by the Board;
- adopting rules and regulations necessary to carry out the provisions of the Act; and
- appointing the Executive Director of the agency.

FUNDING

Revenue

The Board of Private Investigators and Private Security agencies is fully funded from fees it collects from the regulated community. Fee revenue is either deposited into the General Revenue Fund or directly appropriated to the agency generally to pay for national criminal history checks by the Federal Bureau of Investigation (FBI). In 1997, the agency received total funding of approximately \$3.1 million with \$1.9 million, or 60 percent of its funding, from General Revenue and the remainder coming from Appropriated Receipts, as shown in chart, *Sources of Revenue — Fiscal Year 1997*.



In addition to its General Revenue funding, the agency also received \$1.2 million from Appropriated Receipts. Most of this funding relates to the process for obtaining criminal history records from the FBI.¹ The primary source of this funding is the \$25 fee required to pay for an FBI criminal history check by applicants seeking certification as a commissioned security guard. The Board collects the fee and forwards a portion to the Department of Public Safety, which obtains the records from the FBI. Appropriated Receipts also includes about \$50,000 collected by the Board from sales of Board rules, training materials, and other items.

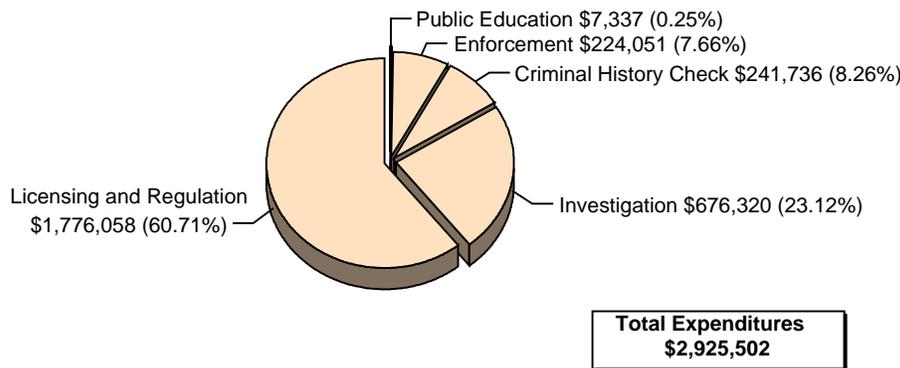
The Board's fee collections exceed the amount needed to fund the agency's operations.

The Board's fee collections exceed the amount needed to fund the agency's operations. In 1997, the Board collected approximately \$5.0 million in fees which are deposited into General Revenue. Appendix A, *Agency Receipts — Fiscal Year 1997*, shows the agency's receipts by sources. By comparison, total funding for the agency in that year was approximately \$3.1 million.

Expenditures

Agency expenditures are divided between the agency's two goals of Licensing and Enforcement and Public and Licensee Education. The Board implements these goals through separate strategies for investigations, enforcement, criminal history check, licensing and registration, and public education. The chart, *Expenditures by Strategy — Fiscal Year 1997*, shows the breakdown

**Expenditures by Strategy
Fiscal Year 1997**



of the agency's total expenditures for each goal and its component strategies. Of these activities, licensing and registration accounts for

60.1 percent of the agency's total expenditures. For the upcoming biennium, the Legislative Budget Board (LBB) has indicated that it intends to eliminate the goal for Public and Licensee Education and include it within the enforcement

strategy.

HUB Expenditures

The agency is unable to provide information regarding HUB expenditures.

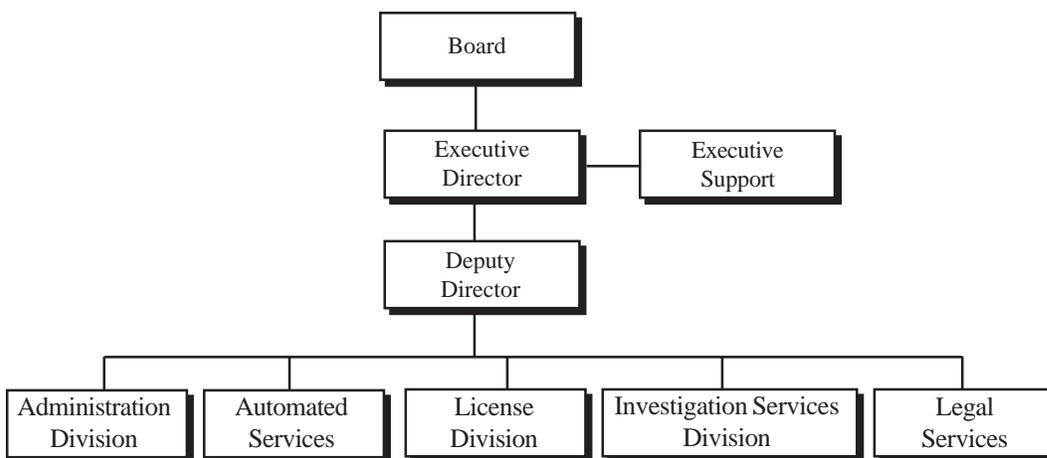
The Legislature has encouraged agencies to increase their use of Historically Underutilized Businesses (HUBs) in purchasing goods and services. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews. However, the agency was unable to provide Sunset staff with information regarding HUB expenditures in 1997. As a result, a comparison of the agency's HUB spending by type of contract compared with the statewide goal for each

ORGANIZATION

spending category is not possible.

The Board currently has 40 employees, with 31 working at the agency's Austin headquarters. The agency has 11 employees working in field offices, with four in San Antonio, three in Houston, three in Arlington, and one in El Paso. Most of the Board's personnel are involved in the issuance and renewal of licenses which is handled at the Austin office. The Austin office also maintains an investigative unit. The regional sites are largely responsible for investigations but also provide some licensing support, such as criminal history follow-up. The Board is beginning to offer a limited amount of testing at the regional sites, but the grading and reporting continues to take place in the Austin office. The organizational structure of the agency's

Texas Board of Private Investigators and Private Security Agencies Organizational Chart



divisions is illustrated in the chart, *Texas Board of Private Investigators and Private Security Agencies Organizational Chart*.

A comparison of the Board's workforce composition to the minority civilian labor force is shown in the chart, *Texas Board of Private Investigators and Private Security Agencies Equal Employment Opportunity Statistics —Fiscal*

Texas Board of Private Investigators and Private Security Agencies Equal Employment Opportunity Statistics Fiscal Year 1997							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	5	0%	5%	20%	8%	20%	26%
Professional	10	20%	7%	10%	7%	10%	44%
Technical	NA						
Protective Services	NA						
Para-Professionals	2	0%	25%	0%	30%	0%	55%
Administrative Support	24	4%	16%	25%	17%	95%	84%
Skilled Craft	NA						
Service/Maintenance	NA						

AGENCY OPERATIONS

Year 1997. The agency's workforce percentages exceed civilian labor force levels of employment in less than half of the applicable agency's job categories.

The agency's primary goal is to control who may provide security services and to take action against those who violate the provisions of the Act.

Agency's functions are directed at protecting the safety of both the citizens of the state and consumers of security services by ensuring the qualifications and financial responsibility of companies and individuals licensed by the agency. To this end, the agency's major goal is to control who may provide security services and to take action against those who violate the provisions of the Act. The agency also pursues a minor goal of promoting public and licensee education. The following discussion provides information on activities carried out by the agency to support these goals.

LICENSING

The Board's licensing activity has two basic parts — licensing and registration and criminal history checks.² Texas law requires any person or company providing investigations or security services in the state to be properly licensed. Through licensing and registration, the Board issues and renews company licenses, individual registrations, and commissions to qualified applicants. These activities occur at two levels. First, individuals must be registered with the Board to demonstrate their suitability to work in the private security area. Second, companies must be licensed by the Board to

demonstrate their financial responsibility to provide security services. Only *registered* individuals, employed by *licensed* companies, may provide private security services in Texas. The Board also licenses schools that provide training in the private security industry.

The requirements for applicants to qualify are established by statute and Board rules. The chart, *Statutory Requirement For All Applicants*, summarizes the general requirements applicable to all persons seeking state’s approval to work in the private investigation or security area.

Statutory Requirements For All Applicants
<ul style="list-style-type: none"> ● be at least 18 years of age; ● not have been convicted in any jurisdiction of any felony; ● not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude within seven years of the date of application; ● not have been declared incompetent by reason of mental defect or disease; ● not be suffering from habitual drunkenness or narcotics addiction or dependence; and ● not have been dishonorably discharged from the armed services of the United States.

In addition to these general requirements, the Board has adopted rules that further detail the requirements for persons to engage in the private investigators and private security business in Texas. The chart, *Requirements for Individuals’ Licenses*, lists the requirements for each class of licensure or registration established by the Board. To be licensed, basically, individuals need to complete an application, pay the appropriate registration fee, pay the \$25 fee for the FBI criminal history check, and submit two sets of fingerprints.

Depending on the class of licensure, individuals must also provide certificate of completion of required training. Level One training is provided through agency produced materials which include an introduction to the Act and Board rules and an introduction to leadership and professional demeanor. More specialized training is required of unarmed and armed guards, including powers and authority of security officers, patrol tactics and observation techniques, and recognizing emergency situations. Finally, armed guards are required to receive the highest level of training including nine hours of firearms training. Armed guards must also pass an examination demonstrating their proficiency with firearms.

Each company providing private investigations, security guard services, security alarm systems, armored car service, courier service with armed guards, or guard dogs must be issued a license by the Board before conducting or offering any services. The statute requires that to own, manage, or be

Only registered
individuals, employed
by licensed
companies, may
provide private
security services in
Texas.

Requirements for Individuals' Licenses	
Licensing Category	Requirement
Non-commissioned security officer registration: Security Consultant Registration:	<ul style="list-style-type: none"> ● An application with all blanks completed ● \$50.00 registration fee ● \$25.00 FBI fingerprint fee ● Two sets of classifiable fingerprints on Board issued fingerprint cards ● Copy of Board Level One training certificate
Security officer commission:	<ul style="list-style-type: none"> ● An application with all blanks completed ● \$40.00 registration fee ● \$25.00 FBI fingerprint fee ● Two sets of classifiable fingerprints on Board issued fingerprint cards ● Copy of Board Level One training certificate ● Copy of Board Level Three training certificate
Alarm Salesperson registration, Alarm Installer registration:	<ul style="list-style-type: none"> ● An application with all blanks completed ● \$25.00 registration fee ● \$25.00 FBI fingerprint fee ● Two sets of classifiable fingerprints on Board issued fingerprint cards
Security Salesperson registration: (excluding alarm sales or installation) Private Investigator registration, Guard Dog Trainer registration, Branch Office Manager registration, Alarm Systems Monitor registration:	<ul style="list-style-type: none"> ● An application with all blanks completed ● \$25.00 registration fee ● \$25.00 FBI fingerprint fee ● Two sets of classifiable fingerprints on Board issued fingerprint cards ● Copy of Board Level One training certificate
Owner, Officer, Partner, Shareholder registration:	<ul style="list-style-type: none"> ● An application with all blanks completed ● \$25.00 registration fee ● \$25.00 FBI fingerprint fee ● Two sets of classifiable fingerprints on Board issued fingerprint cards ● If residing in the State of Texas send police and sheriff's letter
Administrative Security Person:	<ul style="list-style-type: none"> ● An application with all blanks completed ● \$25.00 registration fee ● \$25.00 FBI fingerprint fee ● Two sets of classifiable fingerprints on Board issued fingerprint cards
Manager or Supervisor registration:	<ul style="list-style-type: none"> ● An application with all blanks completed ● \$25.00 registration fee ● \$25.00 FBI fingerprint fee ● Two sets of classifiable fingerprints on Board issued fingerprint cards ● Copy of Board Level One training certificate ● Police and sheriff's letters ● Experience affidavits showing required experience
Instructor registration:	<ul style="list-style-type: none"> ● An application with all blanks completed ● \$100.00 registration fee ● \$25.00 FBI fingerprint fee ● Two sets of classifiable fingerprints on Board issued fingerprint cards ● Copy of Board Level One training certificate ● Police and sheriff's letters ● Documentation of qualifications to instruct

Requirements for Companies' Licenses	
Type Company/Required Fee	Requirement for Company Owners, Managers, and Employees
Class A: Fee \$225.00 Investigations Company ONLY	Completed "Original License Application". Correct license application fee.
Class B: Fee \$225.00 One or more category Guard company Alarm Systems Company Armored Car Company Courier Company Guard Dog Company	Completed registration form to register all owners, officers, partners or shareholders, and managers. \$25,00 registration fee for each owner, officer, partner or shareholder, and manager.
Class C: Fee \$340.00 Investigations + One or more Class B Category	Two sets of classifiable fingerprints on Board issued fingerprint cards for each owner, officer, partner or shareholder and manager.
Training School Approval: Fee \$250.00	\$25.00 FBI fingerprint fee for each.
Private Investigators Continuing Education School: Fee \$250.00	Completed verification of experience to qualify manager for each class and category for which your are applying.
Alarm Continuing Education School: Fee \$250.00	Copy of Board Level One Training Certificate for manager.

employed by a licensed company, a person must satisfy the same general statutory requirements listed in the chart for individuals' licenses. In addition, the Board has established specific requirements for licensing companies and regulating their owners, managers, and employees. These provisions are summarized in the chart, *Requirements for Companies' Licenses*.

Licensed companies must also maintain on file with the Board a certificate of proof of liability insurance which must be kept in full force and effect at all times. If a company's insurance expires or is canceled, their license is immediately suspended. Requiring the liability insurance gives consumers and citizens coming into contact with a licensed company some assurance that damages may be paid in the event of a wrongful or negligent act.

Owners, managers, and employees of private investigations and security companies must also meet the Board's regulatory requirements. Of these, managers of guard companies must meet the most rigorous requirements. These requirements include having two consecutive years experience in the guard company business and completing an examination demonstrating knowledge of the law governing these businesses.

The chart, *Summary of Licenses and Registrations Issued by the Board*,

Applicants undergo
criminal history
checks by submitting
fingerprints to the
Board.

summarizes the various categories of licenses and registration that the agency issues and provides statistical information regarding the number of individuals and companies regulated by the Board in each category.

All applicants undergo criminal history checks by submitting classifiable fingerprints to the Board. The applicant's fingerprints are then sent to the Texas Department of Public Safety and to the Federal Bureau of Investigation

Summary of Licenses and Registrations Issued by the Board (as of September 2, 1997)	
Type of License or Registration	Number
Private Investigations Companies (Branch Offices)	1,237 74 <u>1,331</u>
Security Services Contractors (Branch Offices)	1,452 341 <u>1,793</u>
Combined Private Investigations Companies and Security Services Contractors (Branch Offices)	743 200 <u>943</u>
Businesses Employing Armed Security Personnel	400
Schools Training Private Security Officers	290
Individuals Required to be Approved as: Approved Private Security Officer Training Instructors	495
Alarm Seller's Exemptions	172
Individuals Required to be Commissioned as: Commissioned Security Officers	24,979
Personal Protection Officers	113
Individuals Required to be Registered as: Private Investigators	4,014
Noncommissioned Private Security Officers	101,877
Qualified Managers	771
Supervisors	16
Branch Office Managers	402
Alarm Salespersons	2,562
Alarm System Installers	5,727
Alarm Monitors	4,897
Guard Dog Trainers	157
Security Consultants	335
Security Salespersons	1,905
Administrative Security person Registration Owners, Officers, Partners, Shareholders of Licensed Investigations or Security Services Contractor Company	1,527 4,416
Total Individuals Registered and Commissioned	154,365

where they are classified and the applicant's criminal history is searched. When evidence of criminal history is found, a report is generated by these agencies and sent to the Board for review. If the criminal history is of a prohibitive nature, the application is immediately denied. The applicants may request an administrative hearing to show that they meet the requirements to be issued a license or registration.

ENFORCEMENT

The agency's enforcement activities involve taking action against persons and companies violating the provisions of the Act or Board rules. These actions may either be through the courts, as in the prosecution of unlicensed entities, or through administrative means, as in sanctions taken against licensed companies and registered and commissioned individuals. The agency accomplishes this strategy through its investigative and hearing functions.

Investigations

The Board's investigative staff, located at the Austin headquarters and in four regional locations, is responsible for researching a company's or an individual's compliance with the statute and Board rules. These investigators must gather evidence to support their findings and refer the complaint to the appropriate office for enforcement action. Their workload is generated from leads or referrals from the agency's licensing activity; but also includes leads from the review of DPS and FBI rap sheets, and complaints received from the industry and consumers of regulated services.

Order of Priority

1. unlicensed operators
2. consumer cases
3. firearm violations
4. criminal history cases

The agency tries to complete enforcement action on complaints within 90 days of intake.

The Board's staff categorizes incoming complaints and leads to determine their importance. They typically focus on the type of the alleged violation and whether it was committed by a licensed or unlicensed person. Based on the preliminary information received, they decide whether to assign the complaint to the field for more research, refer it to the Board's legal staff for summary suspension, or take no action on the complaint. Under current agency policy, investigators pursue complaints in an order of priority.

Field investigations of individuals, companies, and company employee records may only occur as they relate to specific complaints or leads. The Board does not currently initiate its own investigations without a lead or a complaint. In these investigations, the agency's staff seeks to ensure that individuals have proper documentation and that companies maintain required records and satisfy other requirements of the Act. Violations that are found

The Board is empowered to summarily suspend or deny a license, commission, or registration for cause.

by the field investigator are documented and submitted to Austin with a recommendation for an administrative or criminal enforcement. Under current agency policy, the licensee is advised of minor, technical violations, providing opportunity to correct them before the agency pursues formal enforcement action. The agency tries to complete enforcement action on complaints within 90 days of intake.

The Board can take action under its own authority against a person or entity it regulates to ensure compliance with the Act and Board rules. These actions generally relate to the status of the person's or entity's license or registration, including reprimand, probation, suspension, revocation, and denial of an application for those seeking a renewal. In addition, the agency may, in lieu of suspension, order violators to pay a penalty of up to \$200/day for the duration of the suspension.

The agency has recently implemented a "Warning Ticket and Notification of Violation" sanction. This procedure allows the field investigator to give a warning and instruct the violator on how to correct the problem. The purpose behind this policy is to reduce the agency work load by not requiring a full written report and possible hearing on a minor technical violations. In addition, the Board is empowered to summarily suspend or deny a license or registration based on written notification from a law enforcement agency that an individual or company fails to satisfy basic statutory requirements. Summary action is basically an automatic action by the Board and typically relates to evidence of criminal activity resulting in disqualification.

Complaints are often settled by agreement between the agency and the respondent regarding corrective action without the need for a hearing. In these agreements, the agency has instituted a policy in which it and the alleged violator enter into a consent order in which the respondent pays a fine of up to \$100. The agency does not keep money collected from these fines, but deposits collections into General Revenue.

In the case of unlicensed operators, the Board can seek civil penalties in district court in Travis County. Penalties may be up to \$1,000 for each time the violation occurs. In addition, several provisions in the Act establish criminal penalties for prohibited actions. For example, knowingly falsifying fingerprint information or repeat offenses of practicing without a license or registration as required by the Act are third degree felonies, which may be prosecuted in Travis County or in the county in which the offense occurred.

Enforcement Information for Fiscal Year 1998 (month ending July 1998)				
Type of Actions	Type of Referral (Complaint or Lead)			
	Unlicensed Operator Cases	Consumer Cases	Firearm Violation Cases	Criminal History Cases
Total Received	303	148	70	6,766 (through end of 3rd Quarter FY 98)
Number Acted Upon	303	148	70	3,545
Number Settled Prior to Hearing (% of settlements involving a fine)	4%	1.5%	0%	n/a
Number Appealed to Administrative Law Judge	0	146	70	Chief of investigations Services Division represents the Agency in applicant requested hearings
Number Sanctioned by ALJ After Hearing	17	15	59	57
Number ALJ Decisions Contested (Appealed to Board)	4	3	2	20
Number of ALJ Decisions Upheld by Board	2	n/a	1	9
Average Time From Intake to Staff Decision	90 days	45 days	90 days	70 days
Average Time From Intake to ALJ Decision	120 days	150 days*	90 days	70 days
Average Time From Intake to Board Decision**	n/a	13 months	7 months	7.5 months

* The average time from intake to ALJ decision on consumer cases is longer than the other three categories due to the fact that it takes longer to schedule these cases for hearing because they require witness testimony. The hearing must be set in a city near the witness to insure the witness' attendance. These consumer cases are held when a hearing can be scheduled at the appropriate location.

** The average time from intake to Board decision is somewhat distorted because some cases may go to as many as three Board meetings before a final decision is made.

Sanction Information for Fiscal Year 1998 (month ending July 1998)		
Type of Sanction	Times Enforced	Total Fine Collected (1997/1998)
Letter of Reprimand	3	1997 - \$199,856 Investigations Settlements
Probation	3	1997 - \$20,800* Collected after a Hearing
Suspension	70	1998 - \$68,550 Investigations Settlements
Revocation	218	1998 - \$5,000 Collected after a Hearing*
Summary Suspension/Denial	3,545	

* The fines collected in fiscal year 1998 are substantially lower than those collected in fiscal year 1997 due to the Agency's Amnesty Program (concluded in January 1998) and the fact that the fines assessed at the July 1998 Board meeting have yet been received.

The charts, *Enforcement Information — Fiscal Year 1998 and Sanction Information — Fiscal Year 1998*, provide more information on enforcement-related activities of the agency. Because of the agency's difficulty in reflecting fiscal year 1997 enforcement-related information, these charts reflect enforcement actions for the last 11 months of 1998 that are available.

HEARINGS

The agency conducts its own hearings with its own administrative law judge (ALJ) with research assistance from its investigations staff. Applicants whose license or registration have been denied or licensees and registrants who have been sanctioned may request a hearing to contest the proposed enforcement action. Persons receiving summary action may also request hearing before the agency's ALJ.

The agency conducts these hearings under the same provisions and rules that govern other administrative hearings. The hearings are governed by the Administrative Procedure Act and are conducted under the Rules of Civil Procedure as they apply in non-jury civil cases. The ALJ receives evidence, testimony, and information and makes recommendations to the Board for final decisions on enforcement actions in these contested cases. Respondents aggrieved by an ALJ's recommendation have a specific right to appeal the matter to the Board.

In 1997, the agency's policy was to docket virtually all complaints for hearing. Because of recent agency efforts to allow violators to resolve technical violations on their own and to settle complaints before going to a hearing, fewer cases have gone to a hearing so far in 1998. The chart, *Enforcement Information — Fiscal Year 1998*, summarizes information for agency hearings for the last 11 months of 1998.

PUBLIC/LICENSEE EDUCATION

The agency provides information to the public and consumers of security-related services regarding the industry's limits of authority, obligations and responsibilities, and the role of the agency. The Board carries out this responsibility through its web site, by replying to inquiries from the general public, consumers and licensees, by requiring licensed companies to post consumer disclosure information at their places of business, and providing regulatory information updates to the regulated community, such as through required training of continuing education.

¹ Tex. H.B.1, 74th Leg. (1995), Article V, General Appropriations Act, the regulated community, such as through required training of continuing education. (Legislation, any revenue collected related to obtaining criminal history records maintained by the Federal Bureau of Investigation are hereby appropriated for the biennium beginning September 1, 1995 for the purpose of implementing the provisions of the Act.) Senate Bill 1542 passed during the session, implementing similar provisions as House Bill 2910, allowing the Board to obtain criminal history records maintained by the FBI.

² HB 1, 75th Legislature (General Appropriations Act).

APPENDIX

APPENDIX A

Agency Receipts Fiscal Year 1997						
Licensure						
	Originals	Amount	Renewals	Amount	Total Number	Total Amount
FBI Fingerprint Check	42,364	\$1,059,100	NA	NA	42,364	\$1,059,100
Class A	159	35,775	849	191,025	1,008	226,800
Class B	180	40,500	1,099	247,275	1,279	287,775
Class C	62	21,080	550	187,000	612	208,080
Consultant	83	4,150	66	3,300	149	7,450
Sellers Exemption	3	75	10	250	13	325
Manager	118	2,950	204	5,100	322	8,050
Alarm Training School	0	0	2	500	2	500
Letter of Authority	23	5,175	259	58,275	282	63,450
Supervisor	3	75	6	150	9	225
School	51	12,750	175	43,750	226	56,500
Instructor	159	15,900	333	33,300	492	49,200
Political Sub-Division	4	900	24	5,400	28	6,300
Alarm Sales	1,598	39,950	186	4,650	1,784	44,600
Alarm Installer (Trained)	2,030	50,750	871	21,775	2,900	72,525
Branch Manager	149	3,725	55	1,375	204	5,100
Branch Office	102	15,300	352	52,800	454	68,100
Security Officer Commission	7,052	282,080	4,594	183,760	11,646	465,840
Alarm System Monitor	2,312	57,800	563	14,075	2,875	71,875
Unarmed Guards	26,634	1,331,700	1,804	90,200	28,438	1,421,900
Security Sales	684	17,100	72	1,800	756	18,900
Administrative Security	477	11,925	161	4,025	638	15,950
Dog Trainer	48	1,200	19	475	67	1,675
Private Investigator	1,175	29,375	525	13,125	1,700	42,500
Partner of Shareholder	768	19,200	1,567	39,150	2,335	58,350
Subtotal	86,238	3,058,535	14,346	1,202,535	100,583	\$4,261,070

APPENDIX A

Agency Receipts Fiscal Year 1997		
Action	Number of Events	Amount
Change in License		
Upgrade A to C	4	\$460
Upgrade B to C	13	1,495
Duplicate Pocket Card	1,113	11,130
Employee Information Update	17,332	259,965
Fingerprint Resubmits	4,671	70,065
FBI Fingerprint Resubmits	273	6,825
Company Name Change	94	7,050
Replacement Managers	121	3,025
Reassignment Ownership	75	11,250
Re-Examination	220	22,000
Reinstatement Company	209	31,350
Subtotal	24,125	\$242,615
Miscellaneous		
Miscellaneous	4,289	160,363
Non-taxable Miscellaneous	338	10,180
Subtotal	4,627	\$170,543
GRAND TOTAL	129,335	\$4,856,228*

*Total amount does not include receipts from Fines and Penalties

**TEXAS BOARD OF PRIVATE INVESTIGATORS
AND PRIVATE SECURITY AGENCIES**

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