

TEXAS BOARD OF PRIVATE INVESTIGATORS AND
PRIVATE SECURITY AGENCIES

Staff Report
to the
Sunset Advisory Commission

Legislative Budget Office
Program Evaluation
P. O. Box 13066, Capitol Station
Austin, Texas 78711

April 17, 1980

TABLE OF CONTENTS

	<u>Page</u>
FOREWORD	1
I. SUMMARY AND CONCLUSIONS	2
II. BACKGROUND	8
III. REVIEW OF OPERATIONS	12
IV. ALTERNATIVES AND CONSTRAINTS	29
V. COMPLIANCE	36
VI. PUBLIC PARTICIPATION	40
VII. STATUTORY CHANGES	43

FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Texas Board of Private Investigators and Private Security Agencies, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

I. SUMMARY AND CONCLUSIONS

Historically, the private security community through its involvement and development in the area of crime prevention, has provided a commercial source for protective services which supplement the basic protection afforded through public law enforcement agencies. The expansion of private security services during the first half of this century was stimulated by increasing urbanization and industrial growth as well as the emphasis placed on security during World War II.

The growth of the security service industry was accompanied by a growing desire to more closely regulate its activities. This desire can be partly attributed to the quasi-police function of private security and the nature of the services provided. In response, local regulatory efforts sought to establish control over private security services; however, this method of regulation proved to be an inadequate approach. The need for a comprehensive and uniform approach to the regulation of private security services was addressed by the Sixty-first Legislature through the creation of the Board of Private Investigators and Private Security Agencies in 1969.

The eight-member board, composed of two ex officio and six appointed members, regulates 1,499 companies, 4,921 registrants and 13,887 commissioned security officers through its licensing and enforcement functions. Operations of the board are supported through legislative appropriations from the General Revenue Fund.

Review of board operations reveals that the regulatory activities of the board generally serve to ensure an adequate level of public protection; however, several concerns were noted. Although the administration of board activities is generally conducted in an efficient manner, the review indicated that the board, in the past,

has experienced problems with regard to the control of cash receipts and excessive agency travel expenses. Internal corrective measures have been instituted to address these concerns. The fact that expenditures continue to exceed revenues collected represents a continuing concern.

With regard to the licensing function, several concerns were identified which include: board waiver of the prohibition against felony convictions as a licensure requirement; the increased workload resulting from the premature purging of criminal history information for terminated security employees; excessive renewal delinquency and licensure reinstatement fees; and the issuance of temporary handgun commissions which allows security officers to be armed before approval by local law enforcement officials.

With respect to enforcement activities, three concerns were identified. First, the board probates suspensions without specific statutory authority to do so. Second, the board lacks effective injunctive remedies to prevent unauthorized practice. Third, current safeguards to prevent the unauthorized carrying of handguns by commissioned security officers appear inadequate.

Other concerns identified by the review include: agency failure to provide sufficient notice for meetings of a committee formed by the board; and, in one instance, board refusal to release information deemed public through an Open Records Decision. Procedures designed to provide full compliance with the Open Meetings Act and Open Records Act have been adopted by the agency.

Need to Regulate

As in the case of other regulated activities, regulation of private security should be undertaken by the state only when there is a continuing need to protect

the public health, safety or welfare. Conditions that existed prior to 1969 indicate that regulation was initially imposed in response to the perceived need to ensure that companies involved in the security industry were financially stable and controlled by persons whose background did not indicate tendencies which could pose a risk to consumers of security services.

Analysis of the regulated areas indicates that the degree of regulation in certain areas exceeds the level needed to adequately protect the public's health, safety, and welfare. To better examine the present need for regulation, security services can be divided into three categories: private investigation services, contractual security services which utilize guards, and other contractual security services. The performance of private investigative services do not pose a significant harm to the public due to three factors: 1) private investigators in Texas are not authorized to carry handguns; 2) private investigation companies essentially perform only information-gathering functions; and 3) private investigators do not have any greater authority than an ordinary citizen when conducting investigations. With respect to contractual security services which utilize guards, the need to protect the public continues to exist. The three significant conditions which warrant this determination are: 1) that armed guards are routinely provided in connection with the provision of these services; 2) that the improper use of handguns by security guards endangers the welfare of not only the consumer of security services but members of the general public as well; and 3) that these services, including the use of handguns, are primarily dependent upon the performance of the guard. Where contractual security services involving burglar alarm and guard dog companies are concerned, the need for regulation is reduced to a level not requiring state intervention. Because the provision of these services do

not require handguns and because a product is involved, an adequate level of protection is afforded through other factors. These other factors include restraints imposed by the competitive marketplace and consumer protection statutes which are designed to prevent fraud and deceptive trade practices.

It can be concluded, therefore, that a continuing need exists to protect the public's health, safety, and welfare from unqualified security guard companies; however, no need exists to regulate private investigation, burglar alarm, or guard dog companies.

The need for regulation of private security services can be met through organizational approaches that do not require an independent board. With a reduced scope of regulation, these regulatory functions could be effectively performed, as in most other states, by the state law enforcement agency. Certification of security officer training could also be effectively performed by the state agency with law enforcement training responsibilities.

Alternatives

If the legislature determines that regulatory functions should be continued, the following alternatives could be considered:

1. CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS (page 29).

This approach would maintain an independent board to perform licensing and enforcement activities. The review indicated that the following modifications would result in more effective regulation of the security services industry:

- a) amend the statute to authorize the collection of reasonable fees to cover the costs for issuing letters of authority to the security department of private businesses and letters of approval to training schools and instructors (page 16);

- b) extend the period of time that criminal history information is maintained with regard to terminated employees of licensed companies (page 21);
- c) amend the statute to remove board discretion with regard to the issuance of a license, registration, or commission to an individual convicted of a felony and to remove the requirement prohibiting licensure of persons convicted of a misdemeanor more than seven years prior to the time of application (page 21);
- d) amend the statute to reduce the amount of license reinstatement and renewal delinquency fees (page 22);
- e) amend the statute to remove provisions which authorize the issuance of temporary handgun commissions prior to approval by local enforcement officials (page 22);
- f) amend the statute to authorize board use of probated license suspensions (page 24);
- g) amend the statute to provide effective use of injunctions against unauthorized practice (page 25); and
- h) amend the statute to restrict the wearing of handguns by commissioned security officers to periods of actual duty only (page 25).

2. SIGNIFICANTLY REDUCE THE SCOPE OF REGULATION AND CONTINUE THE BOARD AND ITS FUNCTIONS (page 31).

Under this approach, state regulation of services not requiring armed guards (private investigations, burglar alarm, and guard dog companies) would be eliminated while security guard, armored car, and courier companies would continue to be regulated. This alternative would provide state regulation in areas where an identifiable risk to public safety exists while eliminating regulation in areas where the services provided present little danger to the public. Projections indicate that with moderate fee increases and appropriate reductions in staff, the board could perform the diminished regulatory activities at no expense to the General Revenue Fund. If the legislature adopts this alternative, the substantive changes contained in the preceding alternative should also be made.

3. ABOLISH THE BOARD, SIGNIFICANTLY REDUCE THE SCOPE OF REGULATION, AND TRANSFER THE FUNCTIONS TO THE DEPARTMENT OF PUBLIC SAFETY AND THE TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION (page 30).

This approach would eliminate the Board of Private Investigators and Private Security Agencies, but maintain the reduced level of regulation outlined in Alternative 2. Under this approach, the Department of Public Safety would perform the licensing functions associated with the regulation of security guard, armored car, and courier companies. Certification of armed security officer training courses and instructors would be transferred to TCLEOSE. The review indicated that with a reduced level of state involvement, this approach would most effectively address the need for state regulation. If the legislature adopts this alternative, the substantive changes outlined in Alternative 1 should also be made.

II. BACKGROUND

Historical Perspective

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

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

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

Historically, local regulatory efforts sought to establish a mechanism for control over the persons involved in private security, their interaction with public

police, the activities undertaken, and the use of handguns. Local regulation, in this instance, was frequently an inadequate response to the public's need for protection and resulted in the development of inconsistent standards and restrictions across the state.

The need for a comprehensive and uniform approach to the regulation of private security activities was addressed by the Sixty-first Legislature through the creation of the Board of Private Detectives, Private Investigators, Private Patrolmen and Private Guard Watchmen in 1969. (The agency's name was changed to the Board of Private Investigators and Private Security Agencies in 1971.) In general, the Act establishing the board made it unlawful for any person or firm to offer security services without being licensed by the board or exempted by the Act. The apparent intent of the licensing law was to establish firm control over the manner in which security services are offered, the persons authorized to engage in the business, and the financial integrity of security service providers. This intent was addressed through statutory provisions which: 1) imposed an organizational framework upon the industry by requiring the licensure of companies according to the scope of services offered and conditioned upon the qualifications of management personnel for each service offered; 2) restricted entry into the field of persons with unfavorable criminal histories; and 3) required surety bond and insurance coverage for licensees so that compensation for recoverable damages would be available.

The original scope of the board's authority was significantly altered in 1971 and again in 1975. Regulation of private security was expanded by the Sixty-second Legislature in 1971 to include armored cars, courier, guard dog, and alarm companies. The inclusion of these services within the scope of the Act was in an

effort to regulate all aspects of the security industry. The Sixty-fourth Legislature, in 1975, authorized the board to issue handgun commissions to qualified security officers and removed the local authority to grant commissions. This change was in response to the lack of control and uniformity which resulted from the various local practices governing the issuance of handgun permits.

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

Comparative Analysis

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

The need to regulate private investigation and private security services is currently expressed through statewide licensing and registration requirements imposed by thirty-four of the fifty states surveyed. From the standpoint of organizational patterns, three states, including Texas, meet this expressed need

through an independent board or commission. In seven states, the regulation is accomplished through an umbrella administrative agency. Sixteen states have selected the state Department of Public Safety to administer the regulation of private investigative and security services. Substantive agencies such as the Office of the Attorney General and the Office of the Secretary of State are utilized to perform the regulation in eight states.

Of those states which regulate on a statewide basis, thirteen states use a method of regulation which licenses either companies or individuals involved in the investigations or security industry. Twenty-one states, including Texas, employ a more comprehensive form of regulation which requires the licensure of companies and the registration of certain employees of those companies. Also, the scope of regulation varies a great deal throughout the thirty-four states which regulate statewide. Although all thirty-four states, including Texas, regulate private investigators, thirty-one states regulate guard and patrol companies. While eight states, including Texas, have determined the need to regulate armored car companies, Texas and ten other states regulate companies which offer guard dog services. Only six states, including Texas, have implemented regulation of burglar alarm and courier services. In sixteen states, Texas included, state weapons permits are issued to provide a uniform statewide control of the use of handguns.

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

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

III. REVIEW OF OPERATIONS

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

Organization and Objectives

The legislature, through the enactment of the Private Investigators and Private Security Agencies Act, mandated the Board of Private Investigators and Private Security Agencies to regulate all persons who engage in the business of, or offer services as, private investigation companies or security service contractors. Guard, alarm systems, armored car, courier and guard dog companies comprise the business entities statutorily subject to regulation as security services contractors. Numerous exceptions to the Act's coverage significantly limit the board's authority in certain areas. Among the major exceptions to the Act are exemptions for persons working exclusively in connection with the affairs of a single employer, full-time peace officers who receive compensation for private employment on an individual contractual basis, attorneys-at-law, registered professional engineers, and insurance adjusters or investigators. Other significant exceptions include persons who install alarm devices on their own property, locksmiths, and over-the-counter sales of alarm signal devices.

Board regulation of persons involved in the private investigations and security business is implemented through the licensure of companies, the commissioning of armed security guards, and the registration of individual private investigators, as

well as the owners, partners, officers, shareholders and managers of licensed companies. This regulatory scheme of licensure and registration is designed to ensure 1) that licensed private security and investigation companies are controlled by qualified persons and are financially able to make restitution to persons injured as a result of their services, and 2) that armed security guards are competent and qualified to carry handguns while on duty. Enforcement efforts of the agency are aimed at ensuring the continued qualifications of commissioned security officers and of those persons operating investigations and security companies, licensed under the Act, as well as, preventing violations of the Act.

The Board of Private Investigators and Private Security Agencies consists of eight members, six of whom are appointed by the governor with the advice and consent of the senate for six-year terms and two of whom are ex officio members: the director of the Department of Public Safety and the Attorney General or their designated representatives. The appointed membership of the board is composed of one city or county law enforcement officer; two members who are United States citizens and Texas residents; and three members who are licensed under the Act and who have been engaged as a private investigator or security service contractor for a period of at least five years. Statutorily required duties and powers of the board include determining qualifications of licensees, registrants, and commissioned security officers; promulgating necessary rules and regulations; investigating violations of the Act; establishing and enforcing standards of safety and conduct for those regulated under the Act; and providing for procedures for disciplinary actions.

Staff for the agency currently consists of twenty-one full-time employees. Activities which are routinely performed by the agency staff include: processing

license, registration, and security officer commission applications and renewals; administering and grading examinations; conducting formal disciplinary hearings; investigating violations of the Act; and processing applications and issuing certificates to schools and instructors involved in the training of commissioned security officers.

The board is funded from the General Revenue Fund with the amounts available to the agency for expenditure limited to those specifically appropriated to the board by the legislature. Fees collected by the board are set by statute and deposited in the State Treasury to the credit of the General Revenue Fund.

Evaluation of Agency Activities

As with most other licensing agencies, the operations of the Board of Private Investigators and Private Security Agencies can be broken down into three basic activities: administration, licensing and enforcement. Below, each of these activities were reviewed to determine the degree to which agency objectives have been met. To make this determination, the evaluation focused on whether the board has complied with statutory provisions, whether these provisions facilitate accomplishment of the objectives, whether agency organization, rules, and procedures are structured in a manner that contributes to cost-effective accomplishment of the agency's task, and whether procedures provide for fair and unbiased decision-making.

Administration

The general objective of any administration activity is to provide for the efficient operation of all agency functions. The review of agency activities indicates that the current board administration is generally conducted in an

efficient manner. In light of the complex system of regulation the board is mandated to administer, licensure application and renewal processes are well organized and function efficiently as do the registration and security officer commission processes. Additionally, agency records and reports appear to be carefully prepared and systematically organized. Although the overall board management was found to be generally efficient at the time of review, the agency has encountered several difficulties in its administrative process within the last four fiscal years.

During the 1977 fiscal year, the board experienced a serious problem in maintaining control of cash receipts. This breakdown in control resulted in the embezzlement of at least \$2,300 in cash by a board employee. The State Auditor, in a management letter dated February 8, 1978, attributed the loss of funds to the inadequate cash receiving system utilized by the agency. Since that time, a new cash receiving system, devised with the assistance of the state auditors has been fully implemented and provides necessary safeguards to ensure proper internal control over cash receipts. A review of the cash accounting system currently in use by the board indicates that the procedures used provide sufficient control of funds received by the agency.

Another area in which the administrative operations of the board has been criticized in the past is excessive agency travel expenditures. Board members are authorized by statute to be reimbursed for actual and necessary expenditures incurred while attending official functions of the board. In a 1977 management letter, the State Auditor noted that the travel claims of two board members (not current members) appeared excessive and recommended a procedure for the documentation of claims. The board subsequently adopted a policy which requires

board members to provide receipts for all reimbursable expenses including meals and lodging, when possible. This system, along with a peer review process implemented so that board members can review on a monthly basis all travel vouchers submitted, has significantly reduced the board's travel expense. However, a review of the board's paid travel vouchers indicates that compliance with the board policy concerning meal receipts has been erratic and that tighter control in this area could reduce board expenditures further.

A final concern relating to board administration involves the between total yearly expenditures and the fees collected by the board during the year. As indicated in the chart below (Exhibit III-1) which shows actual yearly agency expenditures and revenue collections for the past four fiscal years along with projections for upcoming years, revenues collected by the agency have in the past and will most likely continue to fall short of agency expenditures unless remedial action is taken.

Exhibit III-1

COMPARISON OF AGENCY EXPENDITURES AND REVENUES*

<u>Year</u>	<u>Collected Revenues</u>	<u>Actual Expenditures</u>
1976	\$ 276,427	\$ 435,355
1977	288,901	476,475
1978	440,122	568,479
1979	472,765	499,900
1980	505,859	549,400
1981	541,269	609,118
1982	579,158	651,596
1983	619,699	697,036
1984	663,078	745,645
1985	709,493	802,194

*The 1976-1979 figures are actual amounts taken from the Comptroller's Annual Report, while the 1980-1981 figures represent budgeted amounts and the 1982-1985 figures are projected amounts.

One method which can be utilized to improve the balance between agency expenditures and revenues is to increase the revenues collected by the agency. The review of the administrative operations indicated that certain certification services are provided by the board at no cost to the recipients of such services. These services include: 1) a letter of authority issued to private businesses who provide their own security using armed guards; 2) certification of commissioned security officer training schools; and 3) certification of training school instructors. Statutory authorization to charge these fees, coupled with the necessary statutory provisions strictly defining the services provided and the conditions under which the fees could be imposed, would provide the agency with an additional source of revenue. Fees should be set at a reasonable amount which approximates the actual cost to the agency for providing the services. The increased fees, along with tighter control of agency expenditures, should allow agency expenditures to match revenues.

Licensing

The objective of the licensing activity of the board is to ensure that the defined security services available to the public are offered by qualified companies and individuals only. To accomplish this objective, the enabling statute (Article 4413-29(bb), V.A.C.S.) has established a complex licensing scheme which 1) directs the issuance of three classes of company licenses, 2) requires the principals and specific employees of licensed companies to be registered, and 3) requires the commissioning of all security guards who carry handguns while on duty. The primary function of this licensing process is to establish and maintain a system of control which precludes entry or continued practice in the regulated areas by

persons deemed unfit for registration under the Act as indicated by criminal history records. For the purpose of analysis, the licensing processes established by this statute can be separated into four distinct procedures: 1) licensure of companies; 2) registration of individuals; 3) commissioning of security officers; and 4) approval of security officer training schools and instructors. These procedures are discussed in greater detail in the text that follows.

As provided by the Act, licenses are issued to companies, based on the nature of services offered, in the three classes indicated below:

Class A License - Investigation companies;

Class B License - Security Services Contractors (includes guard, armored car, burglar alarm, courier, and guard dog companies); and

Class C License - Combined companies which offer investigations and security services.

Exhibit III-2 identifies the numbers of licensed companies and branch offices by class of license.

Exhibit III-2

**NUMBER OF LICENSED COMPANIES AND
BRANCH OFFICE BY CLASS OF LICENSE
(FY 1979)**

<u>Class of License</u>	<u>Number of Licensed Companies</u>	<u>Number of Branch Offices</u>
Class A	201	96
Class B	634	146
Class C	<u>330</u>	<u>96</u>
Total	1,165	338

Licensing standards for the three classes are identical and require that: the company show proof of bond and insurance coverage in amounts specified by

statute; the manager of the company meet statutory qualifications; and all appropriate fees be submitted.

With regard to qualifying the company manager, the Act requires that an applicant not have been convicted of a felony or any crime involving moral turpitude; obtain a letter of approval from the local police and sheriff; have at least two years experience for a Class A license, three of experience for a Class B or C license; and successfully complete an examination administered by the board. A review of the examination process indicates that the board has established adequate procedures for administering the examination which is designed to test familiarity with the Act and board rules. Exhibit III-3 presents examination pass/fail rates for fiscal years 1976-1979.

Exhibit III-3

**LICENSING EXAMINATION PASS/FAIL
RATES, FISCAL YEARS 1976-1979**

<u>Year</u>	<u>Number Examined</u>	<u>Number Passed</u>	<u>Percent Passed</u>	<u>Number Failed</u>	<u>Percent Failed</u>
1976	235	183	77.9%	52	22.1%
1977	314	254	80.9%	60	19.1%
1978	283	243	85.9%	40	14.1%
1979	<u>277</u>	<u>244</u>	<u>88.1%</u>	<u>33</u>	<u>11.9%</u>
Total	1,109	924	83.3%	185	16.7%

The board is also directed by statute to collect certain fees associated with the licensing services provided. Specific fees are established by statute in the amounts indicated in Exhibit III-4.

Exhibit III-4

LICENSING FEES

<u>Types of Fees</u>	<u>Statutory Amount</u>
Class A License (Original and Renewal)	\$150
Class B License (Original and Renewal)	150
Class C License (Original and Renewal)	225
Branch Office License (Original and Renewal)	100
Delinquency	100
Reassignment	100
Reinstatement	100
Upgrade	75
Name Change	50

The second procedure of the licensing activity involves the registration of certain employees of licensed companies. The Act requires that any person employed as a private investigator, manager, or branch office manager be registered with the board. Additionally, an individual with a twenty-five percent or greater financial interest in the company must also be registered. Registration under the Act requires only that an applicant obtain a letter of approval from the local police department and sheriff's office, and that the applicant not have been convicted of any felony or crime involving moral turpitude. Persons who simply hold a financial interest in a company are not required to submit any fees, but original and renewal fees for all other registrants are set at \$15. Exhibit III-5 indicates the number of registrants by type.

Exhibit III-5

**NUMBER OF REGISTRANTS BY TYPE
FISCAL YEAR 1979**

<u>Type of Registration</u>	<u>Number of Registrants</u>
Partners and Shareholders	2,560
Private Investigators	1,989
Managers	188
Branch Managers	175
Supervisors	<u>9</u>
Total	4,921

The third procedure within the licensing activity is the issuance of handgun commissions to qualified security officers. Provisions of the penal code and the board's Act prohibit a security officer from carrying a handgun unless commissioned by the board. Requirements for obtaining a handgun commission provide that an applicant not have been convicted of a felony or crime involving moral turpitude, receive approval from local law enforcement officials, and successfully complete a training course approved by the board. Additionally, handgun commissions can only be issued to uniformed guards of Class B or Class C licensees and the handgun must be worn in plain view. Private investigators cannot be issued a handgun commission. The original registration fee for commissioned security officers is \$15, while the annual renewal fee is set at \$10.

The fourth licensing procedure, approval of training courses and instructors, is closely associated with the issuance of handgun commissions. Statutory provisions require that a security guard, prior to receiving a commission, complete a thirty-hour training course approved by the board under an approved instructor. The board has established specific elements which must be included in approved training courses. In addition to approving training courses, the board also approves instructors, based on evidence of specific qualifications. Letters of approval are issued to qualified courses and instructors at no charge and are valid for a period of five years unless approval is withdrawn.

Basically, the licensing procedures outlined above are adequately performed. The effective use of computer technology has improved the efficiency of both application and renewal processes. With regard to criminal history information, the board, in conjunction with the Department of Public Safety, has established effective procedures to ensure that timely and accurate information is received.

The board, in cooperation with the Law Enforcement Training Division of the Texas A&M Extension Service, has also developed a thorough training manual for commissioned security officers. The review, however, developed concerns regarding some functions of the licensing activity.

One area of concern relates to procedures established to maintain the criminal history information of those groups regulated by the board. In accordance with statutory provisions, the Department of Public Safety notifies the board of any change in the criminal record status of licensees, registrants and commissioned security officers. As also provided by statute, upon termination from a licensed company, individual registrations and commissions are no longer valid, and these individuals must reapply in full in order to re-activate their authority. The review indicated that although the security industry has a high turnover rate, a significant number of persons do return to the industry. Reapplication by these persons results in a significant administrative workload for the board. One method of reducing the administrative process associated with these reapplications, is to continue the DPS notification process for a period following termination of employment. Presently, notification is provided for three months after termination of employment. However, interviews with agency personnel indicate that a large number of persons return to security work within three to six months. The review indicated that continuing the notification process for a period of six months following termination would prevent having to re-establish files for the majority of re-entrants thereby increasing agency efficiency.

The review also identified a concern with regard to board waiver of provisions which prohibit entry into the field by persons convicted of felonies or misdemeanors involving moral turpitude. As a result of an Attorney General's

Opinion (M-884) interpreting conflicting statutory provisions, the board has discretionary authority to issue a license, registration, or commission to a person convicted of a felony or a misdemeanor involving moral turpitude. As a general principle, licensing requirements should be as clearly defined as possible to provide a consistent standard. Although the review indicated that the board's discretionary authority in this area is used prudently, a potential exists for arbitrary or capricious application. Additionally, a substantial amount of board deliberations are devoted to the consideration of waiver requests. Review of the waiver process indicates that informal board policy consistently provides for the waiver of misdemeanor convictions which are more than seven years old. Removal of this discretionary authority and modification of licensure requirements to reflect the board's approach to misdemeanor convictions would increase board efficiency and assure that licensing standards are consistently applied.

Another area of concern involves the amount of the statutorily established delinquency and reinstatement fees. In general, the purpose of such penalties are to encourage timely compliance with licensing requirements. In this case, however, the \$100 penalty (44-66 percent of annual licensing fees) is unduly punitive. A review of other licensing statutes indicates that similar penalties are generally lower. Additionally, other sanctions, such as automatic suspension of licenses, are available to the board to help insure timely renewals. Reducing the current amount of the penalties would make them consistent with those of other agencies while continuing to assure compliance with licensing requirements.

One concern was identified with regard to the handgun commission process. The board, as directed by statute, has developed procedures by which a 60-day temporary security officer commission may be issued. The issuance of such commissions, in general, diminishes the effective regulation of the carrying of

handguns in that this process temporarily circumvents some of the safeguards designed to ensure that only qualified persons are authorized to carry handguns. Interviews with agency personnel revealed that problems have occurred with regard to unqualified persons receiving temporary commissions. To prevent the reoccurrence of such problems, the statutory provision authorizing the issuance of temporary commissions should be removed.

Enforcement

The general objective of the enforcement activity is to protect the public by identifying and, when necessary, taking appropriate action against persons not complying with the provisions of the Act or board rules. The board employs a staff of a six full-time investigators assigned to major metropolitan areas of the state (two in Houston, two in Dallas, one in San Antonio, and one in Austin). Although routine inspections are conducted, enforcement activities are primarily restricted to complaint processing.

Review of board enforcement activities indicate that agency complaint procedures are adequate and that complaint files are properly maintained. Priority status is given to complaints concerning alleged licensee violation and the agency has established a mutually cooperative relationship with law enforcement agencies. The investigation activity and the hearings examining process employed by the board provide efficient methods for reviewing the large number of complaints filed with the agency. Exhibit III-6 shows the disposition of complaints for fiscal years 1976-1979.

Exhibit III-6

**DISPOSITION OF COMPLAINTS
FISCAL YEAR 1976-1979**

<u>Disposition</u>	<u>Year</u>				<u>Total</u>
	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	
License Revoked	40	22	29	30	121
License Suspended	83	102	138	174	497
Warning Issued	0	5	7	12	24
Conciliation Reached	80	51	73	51	255
No Action Required	480	1,667	1,908	833	4,888
Number Pending	<u>4</u>	<u>5</u>	<u>19</u>	<u>146</u>	<u>174</u>
Total	687	1,852	2,174	1,246	5,959

The review indicated that, in general, the enforcement activity functions well, however, three concerns were identified with regard to available sanctions against violators of the Act and the need for additional restrictions.

In the area of enforcement sanctions, current statutory provisions authorize the board to issue reprimands and revoke, suspend, or deny the issuance of a license, commission, or registration. The board currently imposes the sanction of probated suspensions despite the absence of specific statutory authority. Because of the contractual obligations of licensees to provide security services on a regular basis, this sanction can often be a more appropriate response to a substantial number of violations. As a general principle, an agency's range of penalties should be able to conform to the seriousness of the offenses presented to it. Modifications of the statute to authorize the probation of suspensions under conditions imposed by the board would provide a flexible intermediate penalty to more effectively address the enforcement needs of the agency.

A second concern related to enforcement sanctions involves the statutorily established process to enjoin violations of the Act by unlicensed individuals. The agency has indicated that it has experienced difficulties in prosecuting unlicensed practice through the criminal sanctions available. The review indicated that authorizing the board to enjoin Act violations, without the requirement of proving irreparable harm or the lack of other remedies at law, would discourage unauthorized practice. Modification of the board's statute to provide this authority would improve the agency's enforcement capability by making civil remedies more readily available.

A final area of interest with regard to the enforcement activity concerns restrictions on the authority to carry a handgun. Analysis of complaint files revealed that a significant number of the complaints against commissioned security officers involved abuse of commission privileges which allow handguns to be worn to and from work. One method of addressing this problem is to further restrict authority to carry handguns in transit to employment. This can be accomplished by requiring that handguns be inaccessible when a security officer is traveling to and from work, and that handguns may be worn only while the security officer is actually on duty. Adoption of these restrictions would more clearly define the conditions under which handguns may be worn and offers the potential of reducing complaints resulting from abuse of handgun commission limitations.

Summary

The Board of Private Investigators and Private Security Agencies is composed of eight members, two of whom are ex officio members while the remaining six are appointed to six-year overlapping terms by the governor with the advice and

consent of the senate. The board is directed to regulate the security services field through its licensure and enforcement functions.

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

With regard to the licensing activity, the review indicated that established procedures are effective in ensuring that statutory requirements have been satisfied. However, four concerns were identified in this area. Review of licensing procedures showed that considerable administrative time is spent processing reapplications of recently terminated registrants, and commissioned security officers. This workload could be reduced by extending the time during which the Department of Public Safety continues to notify the agency of changes in criminal status of recently terminated security employees. Analysis of licensing requirements indicates that the board's discretionary authority with regard to waivers of felony convictions presents a potential for arbitrary decisions. Removal of this authority along with a modification in statutory licensing requirements to eliminate the prohibition against certain misdemeanor convictions would assure consistent licensing standards and also reduce time required for board deliberations. With regard to delinquency and reinstatement fees, a concern was raised by their amount which is excessive in comparison to similar penalties in other licensing

agencies. Retention of fees but at a lower level would continue to encourage compliance with renewal requirements while providing treatment comparable to other agencies for board licensees. Review of handgun commission requirements indicated that the presently authorized issuance of temporary commissions prior to approval from local law enforcement officials has created a means of circumventing the safeguards provided by the commissioning process. Removal of board authority to issue temporary commissions would remove the mechanism for unqualified persons to be temporarily authorized to carry handguns.

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

IV. ALTERNATIVES AND CONSTRAINTS

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

Consolidation Alternatives

In order to identify consolidation alternatives which have potential application in Texas, organizational patterns of regulation used in other states were surveyed. The review indicated that thirty-three other states regulate private investigators or private security services on a statewide basis. Of the state agencies utilized to administer the statewide regulation in these states, the Department of Public Safety or the State Police has been selected by sixteen states to perform the function. Seven states use an "umbrella" licensing agency to exercise the regulatory authority. The regulation in three states is supervised by the Office of the Attorney General, five states have chosen the Secretary of State to oversee the licensing process, and only two states, other than Texas, have established an independent board to license private investigative and security services.

Apart from the regulatory scheme which employs an occupational licensing "umbrella" agency, all of the organizational structures described above which are responsible for regulation in other states, exist in Texas. Additionally, one other

state agency in Texas can be considered as a possible alternative. The Texas Commission on Law Enforcement Officer Standards and Education currently performs similar functions for public law enforcement units similar to those performed by the Board of Private Investigators and Private Security Agencies for private security forces. These similar functions include training and accreditation services, licensing, commissioning, and regulation.

To determine whether any of these organizational structures would be suitable in Texas, the consolidation alternatives were examined in light of present levels of regulation to ascertain whether the goals and functions of the agencies involved were consistent with those of the Board of Private Investigators and Private Security Agencies. Also, these alternatives were reviewed in terms of potential benefits which would accrue as a result of the consolidation of functions.

This analysis of organizational alternatives available in Texas indicates that the current independent board, as long as the present level of regulation is maintained, best performs the regulation of the security industry and that consolidation attempts would impede the effectiveness of regulation. Because the scope of regulation in Texas is generally defined to include a greater portion of the security industry than most other states which have attempted to regulate the industry, the administrative and enforcement operations are more complex and demand higher staffing levels. The review indicates that the transfer of the current functions to another agency which performs similar functions would not appreciably reduce the personnel or expenditures necessary to administer the present level of regulation. Thus, consolidation efforts would not appear to increase the efficiency or effectiveness of operation at the present level of regulation.

Should the current scope of regulation be substantially reduced, however, another organizational alternative becomes feasible. Identifiable benefits could result from the consolidation of the diminished licensing and enforcement functions of the board with the Department of Public Safety (DPS). First, experience in other states indicates that DPS provides a workable organizational framework for the regulation when such regulation is limited to particular areas of the security industry. Also, DPS has the capability to administer the licensing and renewal activities of the board. The fingerprint and criminal history checks presently utilized by the board in its licensing and enforcement process are already performed by DPS on a contractual basis.

While DPS appears best able to handle a reduced level of licensing and enforcement functions of the board, the certification of commissioned security officer schools and instructors could most efficiently be administered by the Texas Commission on Law Enforcement Officers Standards and Education. This agency, with its experience in the fields of training, accreditation, and certification pertaining to law enforcement activities could adequately perform the certification processes now performed by the board. Such a shift in the responsibility for the training of armed security guards would result in better coordination between the training procedures for public law enforcement and private security services.

Regulatory Alternatives

In addition to the various organizational patterns which have been used to regulate private investigators and private security services, several methods of regulation exist which could be used to protect the public from unqualified private investigators and private security guards. Regulation in other states has been

achieved generally through three methods of regulation. Sixteen states provide no regulation on a statewide basis, leaving any responsibility for regulation to local authorities. Licensure of either companies or individuals in the investigation and security business is a regulatory method utilized by thirteen states. The third, most comprehensive form of regulation is employed by twenty states, including Texas, and requires the licensure of investigation and security companies along with the registration of their employees.

To more completely identify the available regulatory alternatives, an analysis regarding the scope of regulation utilized by those states which regulate the security industry on a statewide basis was made. Of the thirty-three states which regulate the security industry through some method, all thirty-three regulate private investigators. However, unlike Texas, thirty of these thirty-three states allow private investigators to carry handguns in the course of their investigations. Guards and patrols are regulated by thirty-one states, with armored car services and guard dog services regulated by seven and ten states, respectively. Only five states have implemented regulation of burglar alarm services and courier services. State weapon permits are issued in fifteen states with the remaining states leaving the authority to local law enforcement.

Before any of the regulatory alternatives reviewed can be considered as a reasonable alternative to current regulation in Texas, the option should offer an adequate level of public protection and should be less restrictive than the present system. To give a clearer focus to the multiple activities currently regulated in light of possible regulatory alternatives, the scope of regulation has been considered in two separate parts--private investigative services and contractual private security services.

Analysis indicates that relative to private investigative services, the state could adequately protect the public in a less restrictive manner by providing no state regulation for private investigative services. The main factors considered in the development of this conclusion are: 1) all but three other states which license private investigative services also allow private investigators to carry handguns; 2) without handguns, the occupation of private investigations poses no real threat to the public safety; and 3) the current licensing of private investigators only ensures that, in most instances, convicted felons cannot participate in the occupation and that financial resources are available through bonding to those who have been injured by a licensed private investigator. Generally, private investigative services in Texas appear to be information collection services and, thus, the involvement of convicted felons in the occupation does not significantly endanger the public safety. Moreover, because claims against surety bonds generally require litigation and the recovery from required licensee insurance coverage is limited to bodily harm and property damage, the protection to the public is not designed to readily compensate contractual injuries which would most likely result from an improper investigation. It can be concluded that the regulatory alternative of no state regulation for private investigative services provides a sufficient level of public protection.

When focused on the area of contractual private security services, the analysis shows that the present method of regulation--that of licensure of companies and registration of owners and managers--provides an adequate level of public protection but should be limited in scope to the security services which utilize guards for prevention of crime. Under this approach, contractual security services would be defined to include only guards and patrol services, armored car services, and courier services, thereby eliminating alarm services and guard dog

services from the scope of regulation. This alternative underscores the effectiveness of the current licensure process in providing protection to the public from inadequate security services where the quality of such services is entirely dependent upon the individual guards. Additionally, this method of regulation ensures that issuance of security officer commissions is coordinated with the licensing of companies which would require the employment of armed security guards.

The small number of states regulating alarm services and guard dog services indicates that an adequate level of public protection can be achieved without state regulation of burglar alarm and guard dog companies. Where these companies are concerned, other factors such as marketplace competition and consumer protection statutes provide a sufficient safeguard for the consumers of these products and services.

Summary

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

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

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

Of the possible regulatory alternatives, the most reasonable alternative would provide for no statewide regulation of private investigative services and would provide for the licensing of only security services which utilize guards for the prevention of crime.

V. COMPLIANCE

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

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

Conflict of Interest

Board members, as appointed state officers, are subject to statutory standards of conduct and conflict-of-interest provisions (Article 6252-9b, V.A.C.S.). A review of the documents filed with the Office of the Secretary of State indicates that board members and the executive director of the agency have complied with the filing requirements set out in the state's general statute concerning conflict of interest. As provided in the statutory provision that requires board members to refrain from participating in any board matter in which they have a personal or private interest, disclosures entered into the minutes of board meetings indicate that board members routinely disqualify themselves in such instances.

Additionally, Section 4(b) of the Private Investigators and Private Security Agencies Act prohibits the executive director of the agency from holding any financial or business interest in any security services contractor or investigations company. The financial statement filed by the executive director with the Office of the Secretary of State indicates full compliance in this regard.

Open Meetings - Open Records

Generally, regular meetings and activities conducted by the Board of Private Investigators and Private Security Agencies show basic compliance with the requirements of the Texas Open Meetings Act. Board minutes and publications in the Texas Register indicate that the regular board meetings have been preceded by adequate and timely notice to the public. Also, executive or closed sessions appear to be properly announced with the subject of discussion appropriately identified. However, in two instances, board procedure has not fully complied with open meeting requirements. First, interviews with agency personnel disclosed that in one specific situation, a poll of board members was taken by telephone concerning the release of certain investigative reports to the public. Although the action was initially considered appropriate under informal advice from the Attorney General's Office, this vote or poll was a formal board action which should properly have been conducted in an open meeting. The other deviation from strict compliance with open meeting procedures involves the failure of the budget committee of the board to provide adequate notice of meetings as required by statute. The agency has been apprised of the above discrepancies and has indicated that procedures have been adopted to ensure full compliance.

In response to formal requests for information which has not been excepted from disclosure, the agency has, except on one occasion, made the information available to the requestor. This exception occurred when a request for information contained in an investigative report was received by the board. Upon denying the

request, the agency forwarded the information in question to the Attorney General who ruled that the information should be made available to the public. The agency refused to release the information until litigation concerning the matter produced a court order directing its release. As shown in the agency's self-evaluation report, only two types of information continue to be considered confidential by the agency--criminal history records and personnel files.

Employment Policies

The agency is operating under an Affirmative Action Plan which was implemented on March 1, 1974 and routinely updated with the latest revision occurring on August 1, 1978. Within the plan, the agency has adopted a formal grievance procedure for employees and has developed goals relating to minority employment and recruitment.

An analysis of the board's work force at the time of the review indicates that six of the twenty-one full-time agency employees are minorities. Of these six minorities, four are females with two of these holding clerical positions, one serving as executive director, and one employed as an enforcement investigator. Both of the male minorities are enforcement investigators.

Three charges of discrimination have been filed against the agency. According to the agency and the San Antonio Office of Equal Employment Opportunity Commission, the first complaint was filed in 1975 and is still involved in litigation; the second complaint was filed in 1977 and is currently pending before the EEOC; and the third complaint was filed in 1978 and was dismissed due to lack of justification.

Summary

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

VI. PUBLIC PARTICIPATION

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

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

Agency Activities

A review of the extensive rule changes proposed and adopted by the board during the last four fiscal years indicates that procedures used for the adoption of these rules have been in compliance with the public participation requirements found in general state law. Although a variety of opinions and recommendations were presented to the board during public hearings held to consider proposed rule changes, almost all of the testimony came from representatives of the industry regulated by the board. In this rulemaking process, the board experienced only limited public involvement.

Agency efforts to inform the general public and licensees of board functions have been primarily directed toward licensees through the distribution of three publications. These publications are an information pamphlet which contains the provisions of the Private Investigators and Private Security Agencies Act and board

rules (\$2), a commissioned Security Officers Training Manual which was developed by the board to be used in the instruction and training of commissioned security officers (\$8.40), and a quarterly newsletter which is distributed to licensees and law enforcement agencies (no charge). At the time of the review, agency personnel were developing a fact sheet to be distributed to Better Business Bureaus throughout the state in an effort to inform the general public of the scope of the agency's regulatory authority and the process by which consumers may file complaints with the board.

Board Membership

One method of attempting to ensure that the viewpoint of the general public is represented in activities of the board is to require that one or more members of the general public be included within the statutory membership of the board. Recognizing the merit of such public membership, the legislature has provided through the agency's enabling legislation that two of the six appointed board members be representatives of the general public. Thus, the present composition of the board is consistent with the Sunset Commission across-the-board approach which recommends that boards and commissions be composed of at least one-third public members. A review of minutes taken at board meetings indicate that the public members have made a valuable contribution to board activities through suggestions and comments which help identify concerns of the general public.

Summary

Although the board has complied with the necessary public notification and hearing requirements, participation by the general public in the rulemaking and policy processes of the board has been minimal. Board efforts to inform the public

of agency operations have been limited to the distribution of three publications which are primarily directed toward licensees. Additionally, a consumer information bulletin is being developed for distribution to Better Business Bureaus throughout the state. However, the general public's point of view has been represented through the presence of two board members who are appointed from the general public.

VII. STATUTORY CHANGES

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

Past Legislative Action

Article 4413 (29bb), V.T.C.S., which established the Board of Private Investigators and Private Security Agencies in 1969 (originally entitled the Board of Private Detectives, Private Investigators, Private Patrolmen, and Private Guard Watchmen) has been amended in each session of the legislature since its enactment. Among the significant amendments approved during the Sixty-second Session (1971) were provisions which brought armored car services, courier services, guard dog companies and alarm companies under the Act's regulation; exempted peace officers; changed the name of the agency; and authorized city and county agencies to issue special police commissions to employees of companies licensed under the Act.

In 1973, the Sixty-third Legislature removed the licensing requirements for courier companies which do not offer armed guard services.

The Act was significantly revised by the Sixty-fourth Legislature in 1975 to authorize the board to issue handgun commissions to employees of licensed companies and to establish training and other requirements for the issuance of such commissions. The Act was further amended to: remove local authority over licensed companies; more clearly enumerate the powers of the board and grounds for revocation or suspension of a license; and provide for the inclusion of moral turpitude, habitual drunkenness, and dishonorable military discharge as criteria for refusal to license.

The Sixty-fifth Legislature enacted legislation in 1977 which made the agency subject to the provisions of the Sunset Act; exempted over-the-counter sales of alarms from the Act's requirements; specifically included reserve peace officers under the Act; increased the training requirements for commissioned security officers; increased the bonding and insurance requirements for licensees; clarified the experience requirements for managers; and prohibited the reinstatement of a revoked license.

Legislation passed by the Sixty-sixth Legislature (1979) transferred the regulation of fire and smoke protection devices to the State Fire Marshal, deregulated the residential installation of fire and smoke detectors by licensed electricians, increased training requirements for commissioned security officers, and instructed the board to study the feasibility of developing psychological standards for commissioned security officers.

Proposed Legislative Action

A review of the legislation introduced in the last four legislative sessions reveals that 21 bills affecting the board were unsuccessfully submitted. In general,

these proposals sought changes in the scope of regulation, board authority and composition, and licensee restrictions. Exhibit VII-1 displays the unsuccessful legislation by legislative session.

In addition to the proposals presented in Exhibit VII-1, the agency has recommended changes to its statute in the agency self-evaluation report. These recommended changes include: 1) establishing additional enforcement penalties; 2) restricting the employment of commissioned security officers to one company; and 3) expanding board regulatory authority to include unarmed security guards, burglar alarm installers, and all other security-related employees of licensees. The last two proposals would significantly increase the present level of regulation by extending board authority to previously unregulated areas.

Summary

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

PROPOSED LEGISLATION BY LEGISLATIVE SESSION

Sixty-third Legislature (1973)

H.B. 111 -proposed to regulate all employees of licensed companies and authorize the board to issue special police commissions to board employees.

H.B. 655 -would have exempted professional engineers.

Sixty-fourth Legislature (1975)

H.B. 211 - would have allowed board investigators to be commissioned as peace officers.

S.B. 4 -would have exempted the installation of alarms which were certified by Underwriters Laboratories.

S.B. 1026 -proposed to license voice stress analyst and prohibit the use of electronic surveillance devices.

Sixty-fifth Legislature (1977)

H.B. 197 -would have eliminated public liability requirements for private investigation companies.

H.B. 1997 -proposed to establish psychological standards for commissioned security officers.

H.B. 1998 -would have increased training requirements for commissioned security officers.

H.B. 1999 -would have required that security guard uniforms be distinguishable from those of peace officers.

S.B. 581 -would have authorized private investigators to serve documents in civil and probate proceedings.

S.B. 602 -would have exempted alarm companies approved by the Board of Insurance.

S.B. 678 -would have expanded board membership to include representatives of the security departments of private businesses.

Sixty-sixth Legislature (1979)

H.B. 496 -would have restructured board composition and exempted reserve peace officers.

H.B. 917 -would have required that security officer uniforms be distinguishable from those of peace officers.

H.B. 1186 -proposed specific markings on private security uniforms and vehicles.

H.B. 1724 -would have authorized the board to commission its investigators as peace officers.

H.B. 1725 -proposed to exempt reserve peace officers, restructure board composition and regulate electronic surveillance activities.

H.B. 1842 -proposed to regulate unarmed security guards, license training schools and instructors and authorize the board to probate suspensions.

S.B. 989 -proposed the elimination of licensing requirements for fire alarm companies registered with the Board of Insurance.

S.B. 687 -proposed to exempt reserve peace officers.

S.B. 1214 -would have established a recertification process for commissioned security officers.