

TEXAS COSMETOLOGY COMMISSION

December 1989

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BACKGROUND

Creation and Powers

Comprehensive licensing regulation of hairdressers and cosmetologists began in Texas in 1935 when the 44th Legislature created the State Board of Hairdressers and Cosmetologists and required the licensure of beauty operators, beauty schools, manicurists, instructors and beauty shops. In 1953 the statute was amended to combine and expand the services performed by hairdressers and cosmetologists. The Texas Cosmetology Commission (TCC) was created in 1971 by the 62nd Legislature to replace the State Board of Hairdressers and Cosmetologists.

The Texas Cosmetology Commission regulates the cosmetology industry in Texas by issuing and renewing licenses, providing licensure examinations and investigating complaints related to individuals or establishments. The TCC also inspects beauty salons and beauty culture schools. Unlicensed individuals and establishments are prohibited from practicing cosmetology and are investigated by the agency and reported to civil authorities. Disciplinary and other administrative hearings regarding licensees are conducted as required.

Since 1983, a rider in the appropriations bill has required that an interagency contract be signed between the State Board of Barber Examiners and the Texas Cosmetology Commission for the purpose of implementing a statewide crossover inspection and enforcement program. Under this contract, shops that employ both cosmetologists and barbers are inspected by the State Board of Barber Examiners.

Policy-making Body

The commission is composed of seven members, six of whom are appointed by the governor with the advice and consent of the senate for staggered six-year terms and one serves as an ex-officio member. Two members hold valid operators licenses and have no direct or indirect financial interest in or affiliation with a beauty shop or beauty culture school. One member holds a valid beauty shop license and has no direct or indirect financial interest in or affiliation with a private beauty culture school. One member holds a valid beauty culture school license and has no financial interest in or affiliation with a beauty shop or salon. Two members represent the general public and have no direct or indirect financial interest in or affiliation with any facet of the cosmetology industry in Texas. The Assistant Director for Trade and Industry Education and Vocational Educational Programs of the Texas Education Agency is an ex-officio member.

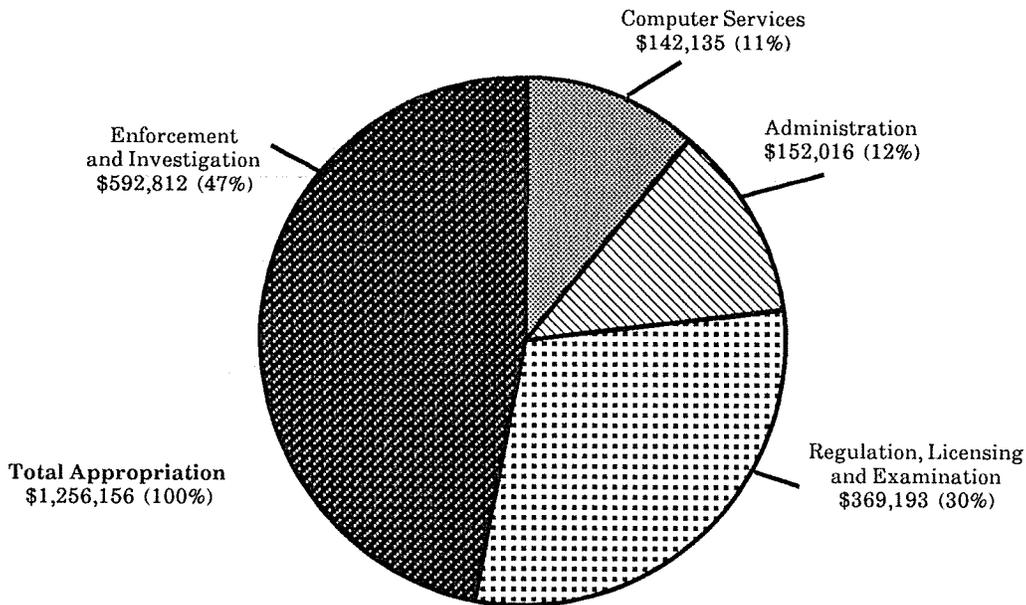
Members must be residents of Texas and have been actively engaged in the area that the person represents for the five years immediately preceding appointment. The TCC elects one of its members to serve as chair for a term of two years. The commission is required to meet at least once each year and generally meets seven times each year. Members are required to attend at least one half of all regularly scheduled meetings or forfeit their membership on the commission.

The duties of the commission are to issue rules consistent with the cosmetology law, prescribe the minimum curricula and hours of subjects to be taught in the beauty culture schools and prescribe the method and content of the examinations administered under the Act. The commission establishes sanitation rules designed to prevent the spread of infectious or contagious diseases, and may establish rules for the continuing educational opportunities for licensees.

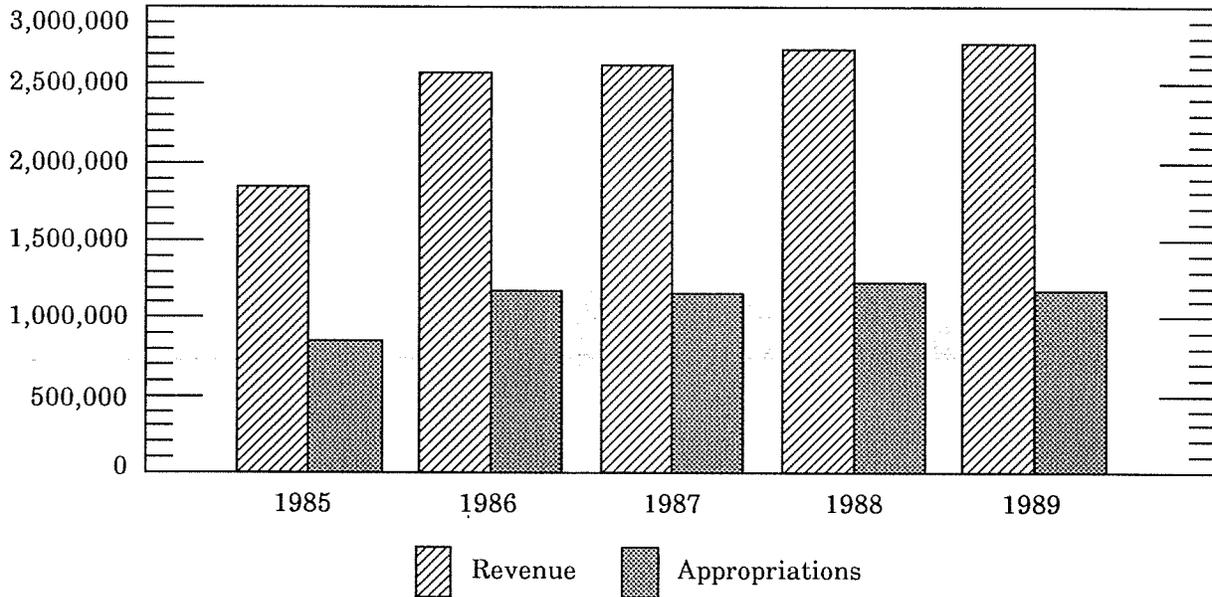
Funding and Organization

The Texas Cosmetology Commission collects licensing and inspection fees which are deposited in the state's General Revenue Fund. In turn, the commission receives its legislative appropriation from general revenue. In fiscal year 1989 the legislature appropriated \$1,256,156 for agency operation. Commission expenditures are divided in four major activities as follows: administration \$152,016; licensing, certification and testing \$369,193; enforcement and investigations \$592,812; and data services \$142,135. Exhibit 1 shows percentages of board activities by expenditure. During the past five years the TCC has generated through licensing fees and penalties considerably more revenue than it has received through appropriations. Exhibit 2 shows agency revenues and appropriations for fiscal years 1985 through 1989.

Exhibit 1
Expenditures by Activity
Fiscal Year 1989



**Exhibit 2
Revenues and Appropriations
Fiscal Years 1985 - 1989**



The TCC is authorized 46 full-time positions. The agency is currently authorized 20 full-time inspectors distributed throughout the state. Twenty-six employees, including five examiners, perform administrative duties at the TCC office in Austin. Exhibit 3 shows the organizational structure of the agency and Exhibit 4 shows inspection regions throughout the state.

Programs and Functions

Administration and Data Services

The commission's administration is responsible for controlling all agency activities and ensuring that proper accounting procedures and internal control policies, as recommended by the State Auditor's Office, are in place. The administration handles all telephone inquiries from licensees, routes all incoming mail on a daily basis, makes timely deposits of all funds received and maintains regular contact with field personnel on policies and procedures.

The agency maintains data services to support the processing of all licenses, including printing and issuing licenses. All information on licensure and enforcement is computerized allowing agency staff to process and renew licenses, certify that new salons and schools meet licensing requirements, coordinate the enforcement division's inspection activities as well as receive student credit hours on a monthly basis.

Exhibit 3 Texas Cosmetology Commission Organizational Chart

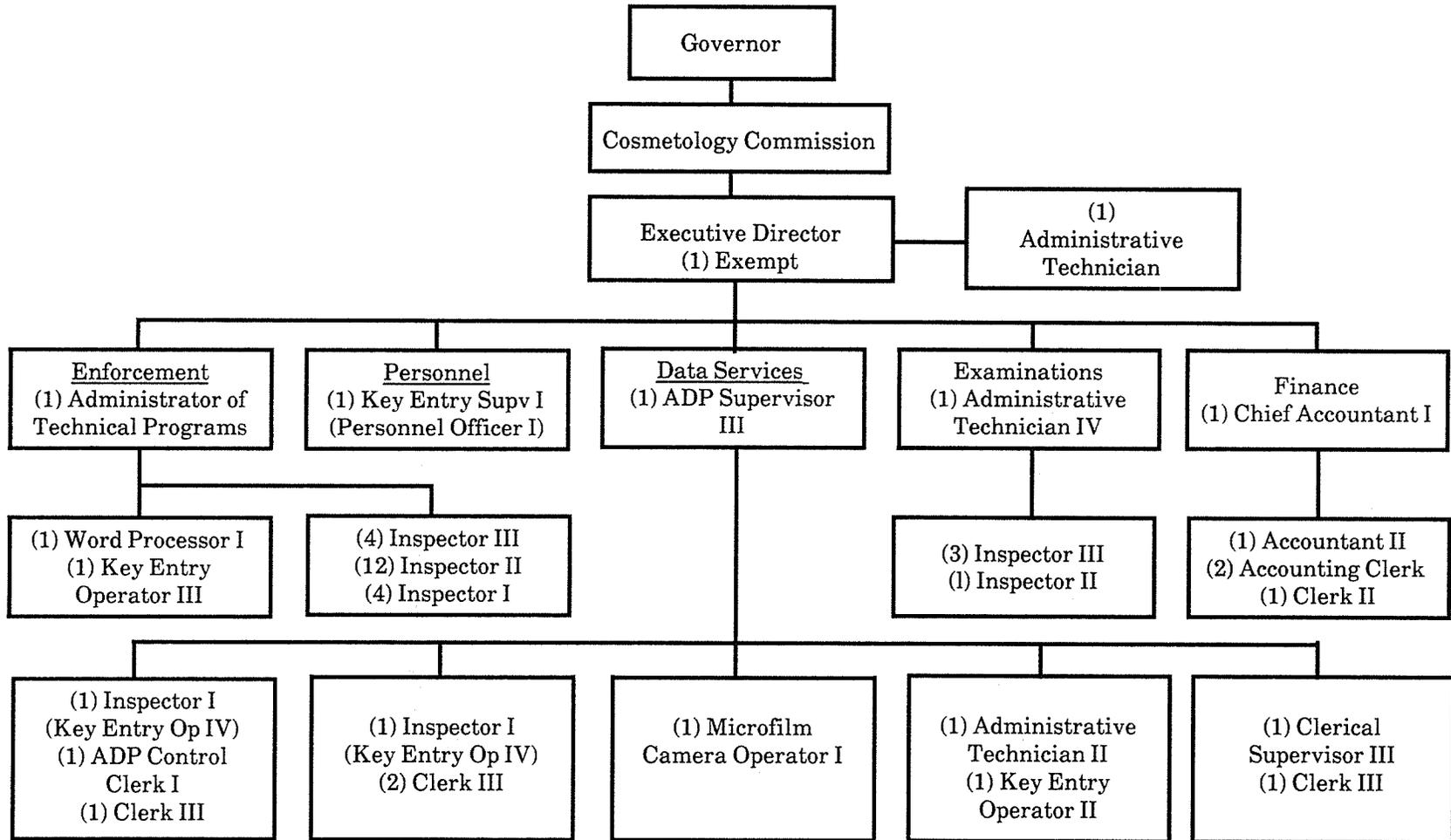
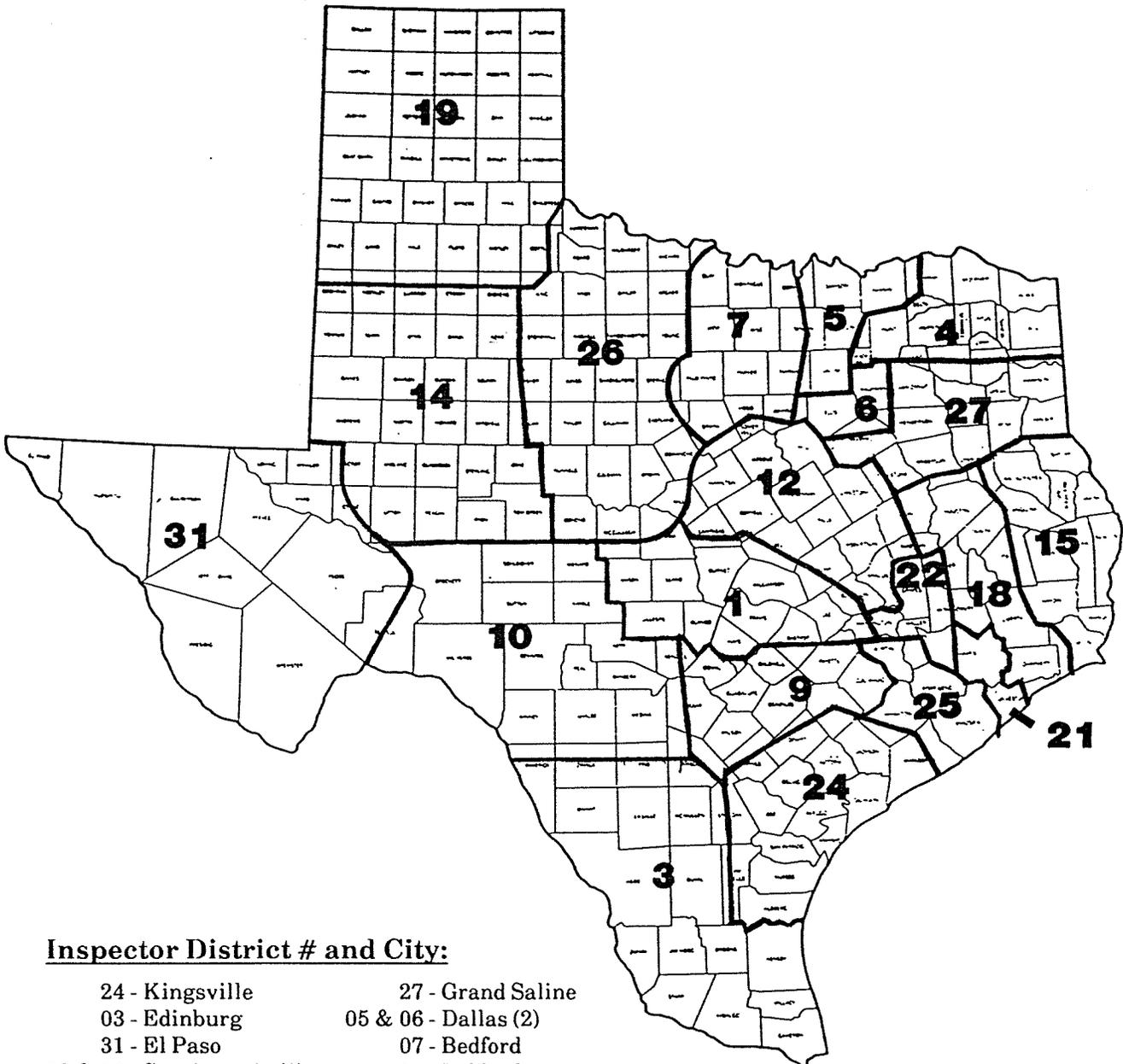


Exhibit 4
Location of Inspections Regions
Fiscal Year 1989



Inspector District # and City:

- | | |
|---------------------------|----------------------|
| 24 - Kingsville | 27 - Grand Saline |
| 03 - Edinburg | 05 & 06 - Dallas (2) |
| 31 - El Paso | 07 - Bedford |
| 09 & 10 - San Antonio (2) | 14 - Lubbock |
| 18 - Baytown | 25 - Eagle Lake |
| 21 & 22 - Houston (2) | 12 - Waco |
| 15 - Orange | 19 - Amarillo |
| 04 - Garland | 01 - Austin |
| 26 - Abilene | |

Licensing

The TCC offers seven types of licenses including operator, instructor, manicurist, facial, shampoo, hairweaving and wig specialist. The TCC licenses over 145,000 individuals, 20,000 shops and 400 schools. Exhibit 5 shows the number of licenses granted by the TCC in fiscal years 1987 through 1989. The licensing, certification and examination division is responsible for processing, printing and microfilming all licenses. The division tests all students applying for licensure and notifies them of their grade. In addition, the division processes new salon applications, certifies those applications for correctness and notifies inspectors of which salons to inspect. The division is also responsible for processing reciprocity applications and transcript requests.

Exhibit 5
Licenses
Granted FY 1987 and FY 1989

License	Fiscal Year 1987	Fiscal Year 1988	Fiscal Year 1989
Operators	47,625	48,215	50,418
Manicurists	2,947	3,190	3,650
Instructors	1,576	1,686	1,910
Shampoo Specialist	175	160	147
Facial Specialist	667	656	683
Hairweaving Specialist	5	10	11
Wig Specialist	46	38	41
Beauty and Specialty Salons	9,696	10,137	10,297
Beauty Schools	225	203	181

Requirements for an operator license include a seventh grade education and 1,500 clock hours of instruction in a private beauty culture school or 1,000 hours of instruction in beauty culture courses and 500 hours of related course work in a public high school. The applicant must be 16 years of age, pass a written and practical examination and pay a \$25 license fee. Individual licenses are issued biennially on a staggered basis with a renewal fee of \$25. A license that has been expired for less than 30 days may be renewed with a \$10 delinquency fee. If the license is expired for more than 30 days, but less than five years it may be renewed after submission of an application and payment of a fee based on the number of years the license has been expired and a \$25 delinquency fee. If a license has been expired for more than five years, the applicant must submit an application, pay an examination fee, pass the examination, and pay a \$50 reinstatement fee.

The licensing examination is developed by a committee consisting of beauty shop and beauty school owners, operators, and cosmetology instructors. The examination is administered and graded by examiners of the agency and the applicant must pay a \$25 fee covering a student permit to attend school, the exam application, one

transcript and the examination. The written test consists of questions covering rules and regulations, style and technique, and health and sanitation. The practical portion of the exam tests the examinee's knowledge of proper health and sanitation procedures as well as their ability to apply chemicals properly (a non-toxic substitute is used), style hair, and perform facials.

The statute authorizes the commission to issue a license to an out-of-state applicant who holds a valid license from another state that has substantially equivalent licensing standards. The applicant must submit an application and pay a \$100 fee plus the applicable license fee. The license enables the applicant to perform the services stated on the license and is subject to the rules and regulations in the cosmetology act.

The TCC also licenses beauty shops and beauty culture schools. An applicant for a beauty shop license must submit an application, meet the requisites for a beauty shop established by the commission, and submit a \$40 salon inspection fee and a \$35 license fee. Beauty shop licenses are renewed biennially on a staggered basis with a renewal fee of \$35. Additional fees are in place for delinquent renewals.

An applicant for a beauty culture school license must submit an application containing a detailed floor plan of the school, furnish a surety bond in the amount of \$5,000, and pay a \$500 license fee and a \$200 inspection fee. An applicant will receive a beauty culture school license if the inspection shows that the cosmetology act and the rules of the commission have been met and the applicant has not committed an act which constitutes a ground for denial of license. Beauty culture school licenses are renewed annually with a renewal fee of \$200. A beauty culture school license which has been expired for 30 days or more may not be renewed. The establishment must go through the full application process and pay the required fees.

Enforcement

The enforcement and investigation division has the responsibility of inspecting cosmetology salons and schools. The purpose of these inspections is to protect consumers by ensuring that licensees and licensed establishments are in compliance with the cosmetology statutes, general rules and regulations, and sanitary rulings of the commission. Inspections are unannounced and performed by inspectors located throughout the state. The commission has 20 authorized inspector positions available. Most shops are inspected twice a year, while schools are inspected three times a year. Inspections include checking the expiration dates of individual licenses and shop licenses, surveying the condition of facilities, and looking at cosmetology equipment and tools to determine if proper sanitary procedures are followed. Inspectors also check the documentation of hours accrued by students. During fiscal year 1989, the division conducted 24,252 salon inspections and 1,397 school inspections.

Upon discovery of a violation, the inspector directs the licensee to have the problem corrected within 10 days. The inspector tries to return to the shop to see that the licensee has complied; however, frequently the inspector checks for compliance during the next regular inspection. Those licensees committing three or more similar violations in a 12 month period or any sufficiently serious offense are reported to the agency for possible revocation or suspension of their license. In fiscal year 1989, 1,120 violations were issued for various offenses. Thirty-seven percent

were issued for licensing infractions, while 13 percent were issued for violations related to sanitizing tools and equipment.

During inspections, if the inspector finds a license that has been expired for more than 30 days or an unlicensed practitioner, a complaint is filed with a Justice of the Peace Court (JP). The court, upon conviction, is required to issue a fine of not less than \$25 nor more than \$200. During fiscal year 1989, the commission inspectors filed 277 cases with the Justice of the Peace Courts for unlicensed practice of cosmetology. The courts dropped almost 50 percent of those cases filed, assessed fines in 45 percent of the cases, and five percent are still pending.

Complaints against an individual, a shop or a school for an alleged violation, can be initiated by consumers, licensees or the agency itself. Complaints originating from licensees or consumers lead to an investigation and the issuance of a violation if warranted. During fiscal year 1989 the agency received 137 public-initiated complaints. Forty four percent of the complaints were against individuals for practicing without a license, keeping pets in salons, or withholding student clock hours in the schools. Thirty one percent were closed by the agency for non-jurisdiction while eighteen percent were complaints unclearly defined and then sent to inspectors for investigation. The remaining seven percent involved allegations that facilities, equipment or implements were unclean.

After the agency discovers a violation, through routine inspections or through public-initiated complaints, it may dismiss it or proceed with disciplinary action through its own hearings process. The general rules and regulations grant the TCC the authority to conduct informal hearings of disciplinary action. The informal hearing is chaired by a board member or a person designated by the board and the commission and licensee work for an equitable solution. The findings of the informal hearings are not final or effective until approved by the full commission. During fiscal year 1989 the agency held four informal hearings in which four licenses were suspended (probation). Additionally, the TCC has the statutory authority to conduct formal hearings to suspend or revoke licenses. Formal hearings require the presence of the full commission and are conducted according to APTRA guidelines. The agency held no formal hearings during fiscal year 1989.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

Prior Sunset Review

As part of the overall review of the Texas Cosmetology Commission, the staff report to the Sunset Advisory Commission prepared in 1979 was reviewed. In addition, the recommendations adopted by the Sunset Commission were examined and compared to the current activities of the agency.

In 1979, the initial sunset review determined that the commission was performing its functions adequately, had been generally effective in meeting statutory objectives and mandates, and was basically self supporting. However, the review concluded that the Texas Cosmetology Commission and the State Board of Barber Examiners duplicated the functions of licensing, examination, and enforcement of regulations related to two similar target groups and that merging the agencies could result in a significant reduction of state expenditures while maintaining the current revenues generated by licensing efforts. More efficient and timely issuance of barber licenses and better management of the inspection process could be achieved through utilization of computer services already in use by the Cosmetology Commission.

Other operational changes recommended by the sunset staff in 1979 included:

- the modification of the statute to prevent the operator representative on the commission from having financial interest in a private beauty culture school;
- the deletion of the statutory requirement for tuition payment prior to the examination of private school students;
- the modification of the statute provisions relating to the grounds for license revocation or suspension to include "incompetency or negligence"; and
- the implementation of a revised staggered renewal system to insure balanced workloads and revenues over the biennial periods.

In 1979, the Sunset Commission did not concur with the staff on the recommendation of merger, but did support the recommendations for the addition of language relating to cosmetologist incompetence or negligence as grounds for suspension or revocation of certificate and for the modification of the statute restricting the operator. The commission also recommended that the biennial renewal system be replaced by a one-time certification, that functions related to the regulation of cosmetology shops and wig salons be transferred to the Texas Board of Health and that the commission should no longer regulate public or private cosmetology or wig schools, cosmetology or wig instructors, manicurists, wig specialists, specialty occupations and specialty salons. The commission also stated that the acquisition of a health certificate can only ensure that an individual is free from contagious disease one day out of a two-year period, but offers little systematic assistance in reaching the goal of protecting the public health. The commission also recommended the following:

- modification of the commission's composition to reflect only the regulated portions of cosmetology and include one-third public membership;
- assumption of the responsibility of regulation of private cosmetology and wig schools by the Texas Education Agency;
- deletion of cosmetology school hour prerequisites to take the certification exam;
- replacement of reciprocal licensure with certification by endorsement;
- revision of complaint processing procedures to allow complaint tracking and complaint notification;
- omission of all provisions which have the effect of restricting advertising and competitive bidding; and
- addition of conflict of interest provisions which apply to commission and board of health members and employees who administer or enforce the Act.

The sunset bill passed by the 66th Legislature did not adopt all of the recommendations made by the Sunset Commission; however, the structure of the board was changed to include two public members, a system of complaint tracking was established, conflict of interest provisions were added and the agency became subject to the Texas Open Meetings law. In addition, other sunset across-the-board provisions were added to the statute. These provisions require standard time frames for licensees who are delinquent in the renewal of licenses, provide for an analysis of the licensing exam to those who fail the exam and specify board hearing requirements among other changes.

Approach to Current Review

As part of the analysis of the agency's effectiveness and efficiency, the sunset review examined both the current operations of the agency and the findings and recommendations of the sunset staff and sunset commission which resulted from the review conducted in 1979.

In accordance with the Sunset Act, the review included an assessment of the need to continue the regulatory functions performed by the agency; whether benefits could be gained by performing the function through another agency; and finally if the function is continued, whether changes are needed to improve the efficiency and effectiveness of the agency.

To make the assessment of these general areas a number of efforts were undertaken. These included:

- review of previous sunset staff recommendations;
- review of documents developed by the agency, legislative reports, other states and books containing background resource material;
- interviews with the agency staff;

- visits to several beauty shops and a beauty culture school in the Austin area with an inspector;
- attendance at a commission meeting;
- interviews with other state agency personnel that interact with the agency;
- phone interviews with other states; and
- meetings with interest groups and individuals affected by the commission.

The results of the assessment of each of these areas is contained in the following material. In addition, the overall impact of the recommendations are summarized in the appendix, Exhibit A.

Assessment of Need to Regulate

ISSUE 1: The Texas Cosmetology Commission should be abolished and the oversight of the beauty culture schools in Texas should be assumed by the Texas Education Agency.

BACKGROUND

In order for the regulation of an occupation through licensure to be justified as a valid state effort, several conditions must be present. First, the unlicensed practice of the occupation should pose a serious risk to the health, safety or welfare of the public. Second, the benefits to the public should clearly outweigh any potential harmful effects, such as a decrease in the availability of practitioners. Finally, the duties of the occupation should be of a complexity that consumers cannot properly evaluate the appropriateness of the service or the qualifications of the practitioners.

To assess whether the above conditions exist to an extent that would justify the agency's continuation, the staff report prepared in 1979 for the Sunset Advisory Commission and the recommendations adopted by the commission were reviewed and the agency's current functions were evaluated.

Each individual category of licensure was evaluated separately and the regulation of beauty salons and schools was also examined to determine the extent to which the public is protected under each operation.

In 1921, the legislature enacted a law requiring persons "owning, operating, or managing barber shops or beauty parlors" to register with the Texas Board of Health. The law set out mandatory sanitation provisions, but no enforcement mechanism was provided. Thus, the legislation was little more than a registration law.

Over time, the focus of the laws regulating cosmetology have expanded beyond the original sanitation provisions. The law now provides for licensure of operators, instructors, manicurists, facialists, hair weavers, wig specialists, salons including specialty salons, and beauty culture schools. A large proportion of the agency's work is making sure that only persons with a valid license are allowed to practice cosmetology.

The sunset review of the agency in 1979 resulted in the Sunset Commission's recommendation that the level of regulation being provided by the Texas Cosmetology Commission could be reduced without subsequent damage to consumers. The commission recommended that licensure be replaced with a one-time certification for cosmetologists that would be valid indefinitely, and the regulation of manicurists, facialists, hair weavers and wig specialists was not needed. Finally, the sunset commission recommended the transfer of responsibility for regulating beauty culture schools to the Texas Education Agency. These recommendations were not adopted by the 66th Legislature.

Neither the agency's functions nor the types of problems handled by the agency have changed significantly since the review in 1979, as the findings below

substantiate. The current evaluation of the need to continue regulating the various cosmetology occupations, salons and schools indicated the following:

- ▶ There is no serious public health reason for the board to regulate operators, manicurists, facialists, hair weavers, shampoo specialists, or wig specialists. The Texas Department of Health reports that there have been no diseases, including the AIDS virus, which have been reported to have been acquired through the practice of cosmetology, although head lice could potentially be spread if proper techniques were not followed for cleaning equipment.
- During the review, complaints for fiscal year 1989 were evaluated. Out of 137 consumer complaints filed, ten of the complaints, or seven percent involved allegations that salons were unclean or that the cosmetologist did not properly clean tools or linens. Such complaints might be considered related to public health, however, it is frequently difficult for the inspectors to ensure correction of the problem and punitive action is not taken against the licensees.
- The Texas Department of Health can deal with such problems under its authority under the Communicable Disease Act.
- The type of violations issued by the agency are not the type that present serious risk to the safety or welfare of the public. The agency inspectors issue most violations for licensing infractions. A total of 1,120 violations were issued in fiscal year 1989. Thirty seven percent were issued for practicing without a license or permit, doing work not allowed under a given license, not displaying a license, or hiring an unlicensed individual. Only 13 percent were issued for violations of regulations that require sanitizing of equipment and tools. The inspectors attempt to verify correction of violations; however, there is a limit to what can be done to ensure compliance. It is difficult to return to the salon to make sure the violation is corrected, so the inspector frequently waits until the next inspection. Since salons are inspected about two times a year, the effectiveness of issuing the violations is limited.
- On occasion, enough violations or a sufficiently serious violation will cause the commission to conduct an informal hearing in an effort to correct a problem situation. In fiscal year 1989, three informal hearings were conducted on violations discovered through routine violations resulting in the suspension (probation) of all three licenses. The violations involved poor condition of a school facility and poor documentation of student hours in the schools. The commission does not have any records of revoking a license. Records were only available for the past two years; the agency expressed uncertainty about revocations before that time, but indicated that there probably were not any licenses revoked.
- Unlike the type of loss a person might incur from the purchase of a faulty automobile or a poorly constructed home, the loss to a consumer from a bad haircut or manicure is considerably more limited.

- ▶ Other avenues exist for consumers to recover damages which result from the wrong doing of a cosmetologist. Anyone injured in any way by another may seek to recover damages through civil court procedures through justice of the peace courts. This method is relatively inexpensive for the injured person. The attorney general is responsible for administering the Deceptive Trade Practices Act which enables the office to investigate and file suit to stop activities which are deceptive. The office can formally pursue any case that it determines affects the public interest and, in some cases, can obtain restitution for the aggrieved person. Such formal action may be unlikely with the type of problems the agency has dealt with however. Staff of the attorney general's office also attempt to informally mediate all complaints they receive and have indicated that this is the action they would take if they received a complaint typical of those the TCC currently handles. The office uses six regional locations to handle over 20,000 various complaints per year.
- ▶ The fact that chemicals are used in the practice of cosmetology does not justify regulation.
 - Although some cosmetologists indicate that the public can be damaged by the wrongful or inexperienced use of chemicals, the same chemicals used by cosmetologists are also available to the public through beauty supply sources. The most common problem resulting from chemical use is skin irritation or scalp burns. A review of the complaints received by the board in 1989 did not identify any cases involving an allegation of damage from chemicals.
 - Some cosmetologists indicated that the chemicals used in salons are more dangerous than those used by the public and therefore need to be regulated. A 1989 Colorado sunset study reported that two major manufacturers that distribute chemicals to salons were contacted and neither said that products labeled "to be used by professionals only" are more dangerous than those sold retail. They reported that while the concentration of chemicals used by cosmetologists could be higher than those used by the general public, the danger is not necessarily higher. However, even if the use of chemicals by cosmetologists posed a danger to the public, other avenues of regulation for chemicals already exist. The U.S. Food and Drug Administration, for example, evaluates consumer complaints, maintains registries of cosmetic formulations, consumer adverse reactions, inspects cosmetic plants and products and takes regulatory action against products and ingredients found to be hazardous.
- ▶ The duties of the operator, manicurist, facialist, hair weaver, shampoo-conditioner specialist and wig specialist are not so complex as to preclude the customer from assessing whether the services provided were appropriate. The majority of complaints that come from consumers involve matters that are simple in nature, such as allegations that a salon is not clean or there is a pet in a salon. Consumers can deal with such problems on their own without having to depend on a regulatory agency.
- ▶ The cosmetology industry has adequate market place incentives for self regulation. If the commission did not regulate the occupation, salons

would still require standards of their employees and could check qualifications by requiring a diploma from a recognized beauty culture school, or observing the person providing cosmetology services. Because salons rely heavily on referrals from other patrons and repeat business, there is motivation to maintain clean salons and qualified staff. Competitive market forces can be relied on to drive unsatisfactory salons out of business.

- ▶ The regulation of beauty culture schools needs to continue in order to protect the students from financial loss or poor training from improperly operated schools. If the commission did not regulate the schools, the regulation would automatically be assumed by the Texas Education Agency, who administer the Texas Proprietary School Act. This Act currently exempts schools which are otherwise regulated and approved under another state law, such as the cosmetology Act. If the Texas Cosmetology Commission were abolished, the schools would not be regulated under the cosmetology Act, therefore the schools would no longer be exempt from the provisions of the proprietary school Act and the Texas Education Agency would assume regulation under that Act.

RECOMMENDATION

- **The Texas Cosmetology Commission should be abolished and if abolished, the oversight of the beauty culture schools in Texas should be assumed by the Texas Education Agency.**

The activities conducted by the commission no longer serve to protect the public from significant danger to their health, safety or welfare. The volume and magnitude of cases that originate from consumers do not justify the full-scale regulation of the cosmetology occupation by a regulatory agency. Other avenues exist to resolve the types of problems that can occur from the practice of cosmetology. The evaluation concluded that the agency could be abolished without adverse affects on the public.

The review determined, however, that if the agency is abolished, the regulation of private beauty culture schools should be assumed by the Texas Education Agency. This would provide a level of oversight similar to that provided to other proprietary schools in the state and furnish additional protections to students. However, it should be noted that schools would pay significantly higher fees to the state under the TEA regulatory structure.

The Texas Department of Health (TDH) currently has general authority to enforce sanitation standards under Chapter 34 of the Health and Safety Code. These provisions authorize TDH to investigate any complaint of unsanitary conditions in any public place of business and to file a complaint in an appropriate court if a violation of law is found. No statutory change would be needed to ensure that the state maintained authority over such sanitation concerns.

FISCAL IMPACT

If the agency is abolished, the need for its annual appropriation (\$1.3 million in 1989) will be eliminated. However there will be a reduction in revenue deposited to the general revenue fund. The agency has typically had more revenue than the amount appropriated for agency operations. In fiscal year 1988, for example, over \$1.5 million in revenue above the agency's appropriation was placed in the fund.

Assessment of Organizational Alternatives

Organizational Alternatives

ISSUE 2: If the agency is not abolished, its functions should be transferred to the Texas Department of Licensing and Regulation (TDLR).

BACKGROUND

The issue of whether licensing services should be centralized is heavily debated. The regulated occupations and their affiliated trade associations usually favor the use of an independent, free-standing commission. They assert that matters related to their occupation require the specialized expertise of one who practices in the field and indicate that centralization could lead to control by persons who know very little about the occupation. Proponents of centralized licensing claim that considerable duplication occurs through the licensure of many professions using free-standing commissions and agencies. Centralization is promoted on the basis that many routine tasks performed in licensing can be done by a single agency at less cost and with greater consistency, making comparisons of data and other management efforts possible. The structure lends itself to the development of uniform policies and procedures, increasing accountability to the public.

Centralization received considerable attention by the legislature in 1988. A Special Committee on the Organization of State Agencies reported to the governor and the 71st Legislature on the possibility of consolidating certain state agencies. The report recommended the consolidation of 12 licensing agencies including Chiropractors, Funeral Service Directors, Hearing Aid Dispensers, Irrigators, Land Surveyors, Nursing Home Administrators, Optometrists, Physical Therapists, Podiatrists, Polygraph Examiners, Structural Pest Control Applicators and Tax Professionals into a centralized licensing agency, TDLR. The report proposed the continuation of separate boards or commissions to set policy and standards and make disciplinary determinations for their respective professions while the consolidated agency would handle all administrative matters and provide staff services to the commission. The committee indicated that cost savings in the area of investigation, legal counsel, accounting, data processing and other staff functions could be expected from consolidation. The staff of the Legislative Budget Commission estimated that a net savings of over \$200,000, or eight percent of the total budgets of the consolidated agencies could be achieved in one biennium. Although the Texas Cosmetology Commission was not listed as one of the 12 agencies to be immediately consolidated into a centralized agency, the committee concluded that the long-term goal should be to consolidate all licensing activities in Texas into a single agency.

Consolidation has also been proposed under alternative structures. For example, the legislature has attempted to merge the Texas Cosmetology Commission and the State Board of Barber Examiners in the past. During the 64th Legislature, in 1975, a bill was introduced to create the Commission of Barbers and Cosmetologists. The effort failed, and the House State Affairs Committee studied the merger issue following the session. The committee recommended merger of the agencies and in 1977 new merger legislation was introduced, but again no

action was taken. The legislature also considered, but did not pass, merger proposals during the 1979 sunset reviews of the two agencies. Since then, merger has been proposed at least twice. In both 1981 and 1985, merger bills were introduced, but were not passed.

State regulatory functions tend to be most effective and efficient when the following conditions are present:

- A blend of experts in the field and persons concerned with the protection of the public set standards for the profession and determine competency;
- The commission's policies are coordinated with other agencies and reflect a statewide regulatory philosophy;
- The commission is effectively monitored by the legislative and executive branches of the government and held accountable for the system used to finance regulatory activities;
- The commission limits its promulgation of rules to those necessary to fulfill the stated legislative purpose without unnecessarily limiting the regulated profession; and
- The commission takes punitive action against its licensees when appropriate.

Centralization is usually proposed as a way to accomplish the criteria outlined above.

Any process of centralization that is adopted should continue to provide the regulated group with a degree of control over three major elements; control of the general educational requirements for licensees; control of the requirements for professional conduct; and control of the means to punish violators. The central agency should have responsibility for activities such as providing space for the administrative activities of the commission, answering inquiries and complaints, collecting fees, performing necessary inspections, processing license renewals and performing other routine duties.

The activities conducted by the Texas Cosmetology Commission were examined to determine if the criteria discussed above are currently being met and if alternative regulatory structures exist which would better facilitate compliance with the criteria. The review indicated the following:

- ▶ The commission's activities do not necessarily reflect a general statewide regulatory policy. The autonomous structure of the commission results in the commission developing rules and policies without the benefit of statewide regulatory guidelines or policy direction from a broader regulatory agency. In contrast, the Texas Department of Licensing and Regulation (TDLR) has the ability, through its Commissioner, to review and approve all proposed rules promulgated by the regulatory commissions attached to the TDLR. This provides the TDLR with the opportunity to achieve consistency and a statewide policy direction for its individual regulatory

commissions. In addition, TDLR also achieves general consistency in rulemaking by having the same attorney assist commissions in rule development. Finally, the centralized structure allows similar deficiencies within separate commissions to be addressed from a broad policy perspective rather than on a case-by-case basis.

- ▶ The TDLR has a structure that provides organizational and fiscal oversight. Hiring of staff, purchasing of major equipment and identification of space needs of all commissions are taken into consideration under TDLR, and the individual commission is accountable for the expenditures it makes. This could result in lower costs and an overall reduction in licensing fees and therefore a savings to the licensees. In addition, a 1979 Sunset Commission staff comparison of costs per license for various independent commissions and centralized licensing agencies indicated that lower costs per license can be achieved with a centralized structure due to the consolidation of mailing, record keeping, enforcement and purchasing activities of commissions.
- ▶ The commission's executive director serves at the pleasure of the commission and is not insulated in situations where complaints involve commission members. In contrast, having an administrative staff hired by the central agency insulates staff from commission influence and helps ensure that a full investigative process takes place with all pertinent findings presented to the commission. TDLR has a structure that provides this separation. TDLR also uses hearing officers to review findings and make recommendations as part of its disciplinary process.
- ▶ The boards which regulate cosmetologists are under a centralized licensing structure in at least 13 other states. Among these states are California, Florida, Wisconsin, Illinois, Idaho, Iowa, and New York. In addition, at least ten other states operate under a merged structure either with a single commission that regulates both cosmetologists and barbers or with separate barber and cosmetology boards attached to the regulatory agency.
- ▶ In Texas, a number of other licensing or regulatory commissions operate under an umbrella agency structure. The Texas Department of Health, for example, provides administrative support services and a level of statewide policy direction through its commission to regulatory commissions such as Athletic Trainers, Professional Counselors, Respiratory Therapists and Dieticians. A survey of members of several commissions attached to TDH indicated that commission members were generally satisfied with the responsiveness of the agency and the ability of the commission to accomplish its goals. In addition, the Industrialized Housing Building Code Council, Boiler Commission and Air Conditioning and Refrigeration Contractors Advisory Commission under the TDLR serve as examples of regulatory structures attached to a centralized agency that are able to regulate their respective occupations without serious difficulty.

RECOMMENDATION

- **If the agency is not abolished, its functions should be transferred to the Texas Department of Licensing and Regulation (TDLR). In addition the statute should provide for:**
 - **the commission to develop and recommend rules to the commissioner;**
 - **the staff of TDLR to investigate and develop enforcement cases and make recommendations to the commission for final action; and**
 - **a maximum one-year phase-in of the transfer.**

The transfer of the agency's functions to TDLR should result in a more standardized approach to licensure, additional fiscal controls and potentially an overall reduction in licensing fees for the licensees.

The transfer would result in the consolidation of administrative services such as mailing, record-keeping, and issuance of licenses. Staff of the Texas Department of Licensing and Regulation would perform inspections through their existing field offices. All rules developed by the cosmetology commission would be forwarded for final approval to the Commissioner of TDLR, as is currently the case with two commissions that are already under TDLR's centralized structure. The commissioner would maintain final disciplinary authority over licensees.

The review recognizes that the TDLR will be able to perform the regulatory functions of the current cosmetology commission with fewer staff than the TCC currently uses. The review determined, however, that it is likely that many of the current employees of the commission could be transferred to the TDLR since the change would be an expansion of their duties. In addition, a one year phase-in period would provide time for coordination of administrative changes, development of rules under the new structure, and informing licensees of the changes. The fees for licensing cosmetologists could be determined and set in such a manner as to fund the regulatory operation.

The computer operations of the agencies, currently done through contract with the State Purchasing and General Services Commission could continue without change until the TDLR determined that it could perform the activities in a more cost-effective and efficient manner and ensure that a smooth transition could take place that would not adversely affect the timeliness of issuing certificates or other computer operations. The one year phase-in period would also assist in this effort.

FISCAL IMPACT

A transfer of the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation (TDLR) will result in approximately \$216,000 per year in administrative savings once the transfer is fully in place. The savings will result from the elimination of eight positions, including salary and benefits. The

TCC is currently planning a new facility to house agency operations with construction due to begin in June 1990. A transfer of agency functions to TDLR would not affect current facility plans. Additional cost savings are expected in the area of computer operations once the TDLR converts the computerized activities of the agency onto its own system. The TDLR has indicated that additional program efficiencies and savings through staff reductions are also eventually possible by implementing a mandatory cross-training program for inspectors. Some one-time only costs would be associated with the transition of certain activities such as computer operations to the central office.

ISSUE 3: If the agency is not transferred to TDLR, the Texas Cosmetology Commission and the State Board of Barber Examiners should be merged into a single agency in order to reduce duplication of costs and efforts. To oversee the regulation of cosmetologists and barbers, a new policy-making body should be established with three cosmetologists, three barbers, and three public members.

BACKGROUND

In Texas, cosmetologists and barbers have served the public as two separate occupations since the 1920's. Through the 1950's, differences between barbering and cosmetology were most evident in the gender of the patron being served by the cosmetologist or barber. There were also fairly significant differences in hairstyling and haircutting techniques. Hairstyles and attitudes have changed considerably in the past 30 years so that today barbers and cosmetologists work on both male and female customers providing similar cuts and styles. Differences between the two occupations still exist in some aspects of barber and cosmetologist training as well as in some services provided in the beauty salons and barber shops. However, cosmetologists basically provide more services in chemical hair waving and relaxing while barbers are trained and provide services in the shaving and trimming of beards and mustaches.

Although the two professions are clearly similar in nature, Texas currently provides for regulation through two independent, free-standing agencies which both perform nearly identical functions. Both agencies establish licensing standards, develop and administer examinations for licensing, collect fees and issue and renew licenses. Both agencies conduct inspections of licensed facilities and provide oversight of their training institutions. Essentially, the regulation provided to the practice of cosmetology and barbering is the same even though a few differences in the practice remain.

Proponents of consolidating licensing functions assert that the many routine tasks performed in a licensing agency can be done at less cost with increased consistency if combined with another similar agency. A consolidated structure is also believed to afford agency management more information and data to develop quality policies and procedures. The consolidation of state agencies has often been considered by the Texas Legislature. The Special Committee on the Organization of State Agencies reported to the governor and the 71st Legislature on the possibility of consolidating 12 licensing agencies into a centralized licensing agency so that all administrative services could be handled by one staff. The committee's proposal provided for separate boards for policy making, but demonstrated the potential for cost savings in the area of investigations, legal counsel, accounting, data processing and other staff functions.

A merger of the Texas Cosmetology Commission and the State Board of Barber Examiners has been considered previously by the legislature for the same reasons. The Sunset Commission staff recommended merger of the two agencies

in 1979. The merger was also proposed in legislation introduced in 1981, as well as in 1985.

The activities of the Texas Cosmetology Commission and the State Board of Barber Examiners were reviewed to determine if a merger of the two agencies would be beneficial. The review indicated the following:

- ▶ The statutes clearly define the scope of practice for cosmetology and barbering by permitting the professional to perform a variety of services that aim to improve the appearance of a patron for compensation. A comparison of the statutes demonstrates that cosmetologists and barbers are allowed to practice in the same manner with two exceptions: only cosmetologists are allowed to remove superfluous hair from the body by the use of depilatories or mechanical tweezers; and only barbers are allowed to shave or trim the beard by any method. All of the other practices allowed by law are the same. See appendix, Exhibit B.
- ▶ The Texas Cosmetology Commission and the State Board of Barber Examiners perform the same functions. The purpose of these regulatory structures is to protect the public health and welfare through oversight of schools, licensing examinations, licensing of practitioners and shops or salons, and enforcement. In examining the work performed by each agency to regulate their respective target populations, it is clear that the state's efforts are duplicative. A comparison of the functions performed at each agency is shown in the appendix, Exhibit C.
- ▶ The required training for cosmetologists and barbers is similar. Both programs require 1500 hours of theoretical and practical training. The general topics of shampooing, hair and scalp treatments, cold wave and chemical hair relaxing, hair coloring, wigs and hairpieces, manicuring, facials, hair styling, and haircutting which are presented in cosmetology schools are also presented in barber schools, although cold wave and chemical hair relaxing are not treated as specifically in barber schools. On the other hand, barber schools teach taper cuts, shaving, and the trimming of beards which are not included in the cosmetology curriculum. Overall, the two types of schools cover the same topics and principles, yet emphasize some different aspects of the curriculum.
- ▶ There are no significant differences in the sanitation and hygiene requirements of the two professions. A review of the sanitary regulations showed that both professions require the posting of sanitary rules, sanitary restroom facilities, clean towels and haircutting capes, a quality facility with equipment, walls, and floors in good condition, and properly functioning wet and dry sterilizers to ensure complete sanitation of all implements. Additional sanitation requirements are set in rule by each agency, but no real differences exist.

- ▶ In the past decade, there has been a trend toward merger of the regulation of barbers and cosmetologists. Currently, ten states have merged boards. These states include Colorado, Connecticut, Delaware, Illinois, New Hampshire, New Jersey, Oregon, Washington, West Virginia, and Wisconsin. Six additional states have recommended merger in the past, including Texas. In the states with merged boards all maintain separate barber and cosmetologist licenses except for Oregon, Utah and Wisconsin.
- ▶ Combined boards in these other states report significant cost savings. They indicated that agency merger reduces the administrative costs of regulating the occupation. Colorado reported that merger provides approximately \$56,000 in savings annually. Oregon reported a reduction in their licensing fees and an approximate savings of \$1 million over the six years since merger. With one agency, one board, and one facility, routine tasks such as mailing, record-keeping, license issuance and renewal, computer services, telecommunications services, and printing services can be done jointly at less overall cost.
- ▶ Texas has attempted to merge the two agencies in the past. During the 64th Legislature, in 1975, a bill was introduced to create the Commission of Cosmetologists and Barbers. The effort failed and the House State Affairs Committee studied the merger issue following the session. The committee recommended merger of the agencies and in the 65th Legislature, in 1977, new merger legislation was introduced, but again no action was taken. The legislature also considered, but did not act on merger during the sunset review of the Texas Cosmetology Commission and State Board of Barber Examiners in 1979. Since then, merger has been proposed at least twice. In 1981 and in 1985 bills were introduced in the Texas House of Representatives but neither achieved passage.
- ▶ Other efforts have been made to consolidate the regulatory activities of the two agencies. In 1981, the 67th Legislature, in a rider to the Appropriations Bill, required an interagency contract between the two agencies to reduce duplication of activities in inspections, enforcement, and examinations. This requirement focused specifically on using the cosmetology facilities for barber examinations. However, without a combined agency, the two separate agencies were unable to come to agreement on appropriate facilities and equipment. The only area in which the two agencies share functions is a statewide crossover inspection program required by the legislature in the 1983. Through an interagency contract the State Board of Barber Examiners conducts inspections in establishments that are dual licensed as barber shops and beauty salons. There were 7,372 dual shop inspections conducted in fiscal year 1989. The crossover inspection program is the only area of formal cooperation between the two agencies.
- ▶ Combining the agencies will result in economies of scale, reduced duplication, and more efficient use of resources and likewise decrease the need for the higher licensing fee charged to barbers. The initial and renewal fee for a cosmetology operator license is \$25. With over 145,000 licensed cosmetologists in Texas, a considerable amount of

money is collected to support agency operations. The initial and renewal fee for a barber class A license is \$60. Because there are only about 21,000 licensed barbers in Texas, it is necessary to assess a higher fee of the barbers to support agency operations.

- ▶ The Texas Cosmetology Commission is currently planning a new building to house agency operations. The land for the new facility has been purchased and the agency is currently working on the blueprints for construction which is scheduled to begin in June 1990. In the past, limited space and equipment have hindered efforts to combine the two agencies. With a new facility, this should no longer be a problem. Plans for the facility include 18,000 square feet and will accommodate about 34 staff members including staff for the SBBE. The new facility will accommodate 80 examinees for each testing session and the opportunity to equip the facility to serve the needs of both agencies will be available. If a shared examination facility cannot be provided, the barber exams can continue to be held at various barber schools in the state. Since there will be expenses associated with the TCC's move to its new facilities in 1991, the transition costs for the TCC would not be an obstacle to merger.

RECOMMENDATION

- **The Texas Cosmetology Commission and the State Board of Barber Examiners should be merged into a single agency in order to reduce duplication of costs and efforts. To oversee the regulation of cosmetologists and barbers, a new policy-making body should be established with three cosmetologists, three barbers, and three public members. In addition, the statute should:**
 - structure board oversight of barbers so that rule-making related to barbering and actions against licensed barbers would only be the responsibility of the three barbers' representatives along with the three public members;
 - structure board oversight of cosmetologists so that when rule-making related to cosmetology and actions against licensed cosmetologists is required, only the three cosmetology representatives and the three public members on the board would participate in the proceedings;
 - provide for hiring of an executive director by the full nine-member board;
 - provide for a maximum one-year transition period for the merger; and
 - continue to provide for separate licenses for barbers and cosmetologists.
-

RECOMMENDATION

The merger of the TCC and the SBBE will reduce the existing duplication that is a result of maintaining two nearly identical regulatory structures. The state will no longer have two separate, free-standing agencies that function in a parallel fashion to regulate two highly similar professions. The combined structure will allow the agencies to share functions such as administering licensing examinations, collection of licensing fees, distribution of licenses and certificates, processing of complaints, field inspections, development and use of work performance information, and preparation and administration of board meetings.

Consolidation of administrative services will permit further conservation of state funds and allow for an overall reduction in licensing fees. Combining the administrations of the two agencies will not adversely affect either profession's ability to preserve their professional identity. Equal representation will be maintained, allowing the barbers and cosmetologists to act on matters specific to their respective professions. The statute will specify that policy making related to barbering be executed by the board members who represent barbers and that policy making related to cosmetology be executed by the board members who represent cosmetologists. Public members of the board will participate equally. In sharing administrative functions and information for policy making about the regulation of each profession, an improved and more standardized approach to licensure should occur.

FISCAL IMPACT

A merger of these two agencies will result in approximately \$187,000 per year in administrative savings once the merger is fully in place. The savings will result from the elimination of five positions, building rent and other duplicative administrative costs. There will be one-time only costs associated with the physical move of personnel and equipment.

Recommendations if Agency is Continued

Summary of Recommendations

The recommendations which follow are consistent with the findings and recommendations that resulted from the sunset process 12 years ago. This report suggests that licensing requirements and regulation of occupations should not be unnecessarily restrictive to individuals seeking to enter the profession and that regulation should be structured so that licensees are treated fairly and equitably. In addition, the review maintains that the purpose of occupational regulation is to protect the health, safety, and welfare of the public.

The recommendation to discontinue regulation of the practice of cosmetology and transfer beauty culture school oversight to the Texas Education Agency is consistent with the last sunset review. The current review also found the danger posed by the practice of cosmetology to public health and safety to be minimal. There have not been any significant changes to the regulation of cosmetologists since the last review. However, the agency has effectively implemented various provisions passed by the 66th Legislature including staggered renewal of licenses, complaint tracking procedures, and requirements of open meetings and open records laws.

Policy-making Body

As a standard part of the sunset review, the agency's policy-making body was examined. The commission currently has two public members as a result of sunset legislation passed 12 years ago. Two members are licensed by the commission as practicing cosmetologists and one member each representing a beauty shop and beauty culture school respectively. The commission also has an ex-officio member from TEA with voting privileges for a total of seven members. Changes to the current commission structure are not recommended in the policy-making section of this report; however, a recommendation to discontinue licensing and inspections of beauty salons would require a change in the commission structure so that the commission would no longer need a designated position for a beauty salon owner. Instead, the governor could appoint cosmetologists to the commission without regard to salon ownership.

Another recommendation which relates to the policy-making body would require the governor to designate the chairman of the commission as is currently the case in other agencies.

Overall Administration

A second area of inquiry relates to the administrative operations of the commission. The review examined whether the commission has adequate authority to set fees to cover the costs of regulating the practice of cosmetology. Licensing and inspection fees are currently set in statute leaving the commission without sufficient flexibility to adjust their fees according to agency operating costs. Therefore, a recommendation to allow the commission to set fees to cover costs of administering the law is included.

Programs

Level of Regulation

A third area of inquiry focused on the level of regulation appropriate for the practice of cosmetology. Currently, a full licensure program is in place with licensing examinations conducted by the commission, issuance and renewal of licenses and an enforcement program with inspection of shops, schools, and individual licensees. The review determined that an initial evaluation of qualifications provides an appropriate level of assurance to the public who may then trust that cosmetologists have completed a quality program of instruction at a beauty culture school and a competency examination. However, the review found that the renewal of licenses and the enforcement efforts of the agency are done at considerable cost and effort without significant benefits. A recommendation to reduce the level of regulation from licensure to a one-time certification is included in the report. In addition, enforcement efforts would be reduced to investigation of complaints filed with the agency.

The review also examined the licensing program to determine if any licensing requirements were unreasonable or exceptionally restrictive. The review identified two areas in which licensing requirements needed to be changed. First, the review recommends that manicurists, facialists, shampoo-conditioner specialists, wig specialists, and hair weaving specialists, who are now subject to full licensure requirements, complete a one-time certification process without an examination. Second, the review recommends that the commission use a national testing service to improve test validation practices and the overall reliability of the examination process. Recommendations addressing the above concerns are presented in the report.

Enforcement

The fourth area of inquiry focused on the the agency's enforcement program. The commission is authorized 20 full-time inspectors to inspect salons, schools, and individual licensees. The review determined that routine inspections of shops provide minimum results. The cost to inspect approximately 20,000 salons two to four times each year could not be justified. The review determined that inspections rarely identify significant health hazards and instead primarily discover expired licenses or unlicensed practioners. The review recommends deregulation of shops as other states have done in recent years. The recommendation addressing the current enforcement program is included in the report.

Regulation of Cosmetology Schools

The fifth area of inquiry focused on the agency's regulation of cosmetology schools. The cosmetology statute requires private beauty schools to have a \$5,000 surety bond to protect students' investment. Because of increasing tuition costs, the \$5,000 surety bond no longer provides adequate protection to students. The review recommends that a statutory tuition protection fund be established to protect students attending private beauty culture schools.

The recommendations contained in this section of the report will result in a net revenue loss of approximately \$669,000. However, in the past two years, the commission reverted approximately \$1.3 million over expenditures into general revenue. Issue five in the report would provide the agency with authority to set fees to cover costs of regulation.

ISSUE 4: The statute should require that the governor designate the chairman of the commission.

BACKGROUND

The chairman of the commission is currently elected by members of the commission and serves as the chair for two years. The Sunset Commission has routinely recommended that the governor appoint the chairman on the basis of improving accountability to the chief executive. Except in unusual circumstances, this provision has been included in the statutes of agencies reviewed as a result of sunset recommendations. The governor selects the chair in many other state agencies, such as the Board of Pardons and Parole, the Texas Department of Mental Health and Mental Retardation, the Texas Air Control Board, the Texas Water Commission, the Texas Department of Corrections and the Texas Department of Human Services. The majority of agencies reviewed for the 71st Legislature had this provision in their statutes. Where it was not in statute, it was added as a result of sunset action.

PROBLEM

The election of the chairman by the commission members each year does not provide the most direct method of ensuring a continuity of policy or accountability to the state's chief executive officer.

RECOMMENDATION

- **The statute should be changed so the governor designates the chair of the Texas Cosmetology Commission.**

The person appointed as chairman would continue in that position at the pleasure of the governor. This would promote accountability between the commission and the governor.

FISCAL IMPACT

No fiscal impact would occur as a result of the recommendation.

ISSUE 5: The commission should be given the statutory flexibility to set fees in amounts to cover the costs of administering the law.

BACKGROUND

The Texas Cosmetology Commission has 29 license and inspection fees set in statute. The fees vary in amount from \$25 for the operator's license to \$500 for the beauty school license. The commission receives its appropriations from the General Revenue Fund where its fee revenue is deposited. Revenues generated from the collection of licensing fees consistently exceed agency operating costs and there is no statutory requirement to balance operating costs against fee revenues. Therefore, the legislature must monitor agency operating costs and adjust fees periodically to ensure that revenues reflect the costs of administering the programs.

Licensing fees in most state licensing agencies generally produce enough revenue to cover the cost of agency operations, but are not so large that they create excessive fund balances. Although fixed statutory fees do allow the legislature direct control over fee rates, an increasing number of governing boards have been authorized to set fees by rule. Usually, this fee setting authority is accompanied by a directive to set the fees at a rate that covers the costs of operating the agency.

Under the present system, the legislature must be advised when fees need to be changed and then must pass a piece of legislation. This system adds an unnecessary periodic burden to the legislative process. Further, when fees are adjusted, subsequent revenues in the short term may substantially exceed agency costs.

A review of the licensing process and its statutory fees indicate the following:

- ▶ The commission is taking in considerably more money than needed to cover the cost of agency operations.
 - From 1979-1989, the number of licensees has increased from about 67,000 to over 145,000, or by about 100 percent. Agency expenditures, on the other hand, have not increased so dramatically, going from about \$1 million to \$1.5 million, or by 50 percent during the same period.
 - Since 1971, the fees in statute affecting individual, shop and school licenses have been changed on few occasions allowing the generation of excessive revenues and creating an unnecessary burden on licensees.
 - During the last six years, the revenue generated from licensing and inspection fees have exceeded funds appropriated for agency operating costs in the following amounts:

FY84 - \$ 776,416	67 %	FY87 - \$ 1,523,915	123 %
FY85 - \$ 697,447	54 %	FY88 - \$ 1,509,249	112 %
FY86 - \$ 1,313,140	94 %	FY89 - \$ 1,643,526	130 %

- ▶ The purpose of regulatory fees is to generally recover the costs to the state of providing the regulation. Section 316.045 of the Government Code requires each state agency that has the authority to set fees aimed at recovering agency costs to review and adjust the fees every biennium. Since the commission does not have authority to adjust their fees, they are not subject to this provision. However, such a requirement would be appropriate for this agency. Fees in excess of regulatory costs place an unfair burden on the particular profession that is providing the excess revenue.

PROBLEM

The fees set in statute for the regulation of cosmetology result in total fee collections far in excess of the funds necessary to operate the agency. This places an unreasonable financial burden on the cosmetology industry. The rigidity of statutory fees prevents the commission from adjusting licensing and other fees to a level necessary to recover agency operating costs without generating excessive revenues.

RECOMMENDATION

- The specific fee levels set in statute should be repealed and the Texas Cosmetology Commission should be authorized to set its fees by rule in amounts reasonable and necessary to cover the costs of the regulation of cosmetologists.

This approach would provide the commission the flexibility to increase or lower licensing fees based on operating costs of the agency. Fees set by the commission would also relieve the legislature of the burden of passing specific legislation to change statutorily set fees. The commission would then be subject to the Government Code provisions requiring the agency to biennially review the appropriateness of fees and to have oversight over adjustments made. Legislative oversight of the commission's fee setting authority would continue as a result of the biennial appropriations process which considers anticipated revenues generated through fees.

FISCAL IMPACT

If fees are set periodically in amounts estimated to recover operating costs, there will be a revenue loss to the General Revenue Fund. Over the last five years the average amount transferred to the General Revenue Fund has been \$1.3 million. However, the legislature can choose to maintain the existing revenues by setting fees in the General Appropriations Act.

ISSUE 6: The current licensure requirements for operators and instructors of cosmetology should be adjusted in statute to require a one-time certification which would include graduation from an approved school and passage of an examination.

BACKGROUND

Occupational regulation generally is done through one of three mechanisms: licensure, certification, or registration. However, many states adopt variations of these mechanisms when setting up professional regulatory programs. Licensing is the most restrictive form of occupational regulation because it prohibits anyone from engaging in the activities of the trade or profession without permission from a licensure board or other governmental agency. For example, people may not cut and style hair for compensation without meeting statutory requirements and obtaining a license from the agency. Under most licensing programs, an applicant must meet certain legal requirements and, once licensed, generally has some restrictions on their operations. There are usually requirements for renewal of the license and for continuing development of the licensee.

Certification, on the other hand, generally grants authority to use a specified title to a person who meets predetermined qualifications, such as a certain level of education and/or passage of an examination. It prohibits people from holding themselves out as being "certified" unless they have met the qualifications and received a certificate. Certification is often used when there is little serious potential to the health and safety of the public, and when the public needs assistance in identifying qualified practitioners.

Finally, registration usually involves only notifying a "registration" agency of one's name and address, one's intention to engage in a particular activity and payment of a fee. There is usually no pre-entry screening such as passage of an exam, and is used when the threat to public health, safety or welfare is minimal.

The Texas Sunset Act requires agencies to be evaluated to ensure that their regulatory structures are set up to benefit the general public rather than the regulated entity and to determine whether less restrictive or alternative methods of regulation are warranted. In general, the evaluation focuses on whether the regulation by the state is provided only at the level necessary to protect the public.

Oversight of the practice of cosmetology was originally set up under a "registration law", requiring persons "owning, operating or managing barber shops or beauty parlors" to register with the Texas Board of Health. The law set out mandatory sanitation provisions but no enforcement mechanism was provided. Over time, the focus of the laws regulating cosmetologists expanded beyond the original sanitation provisions. The law now provides for licensure of operators, manicurists, facialists, wig specialists, hair weavers, shampoo-conditioning specialists, beauty salons and beauty culture schools and a large

proportion of the agency's work involves ensuring that only persons with a valid license practice cosmetology.

The agency's present licensing process requires those wishing to practice as a cosmetologist to be licensed. In Texas, a person must be at least 16 years old, have successfully completed 1500 hours of instruction in a licensed beauty school, pass a written and practical examination, and have a current health certificate indicating that the person is free from infectious or contagious disease. Cosmetologist and instructor licenses must be renewed biennially. Cosmetology instructors must be a licensed cosmetologist, receive 750 hours of additional training and pass a competency examination. The board may refuse to grant a license or may use their sanction authority against a licensee for violations of a series of standards which includes, for example, gross malpractice.

At the end of fiscal year 1989, there were over 145,000 licensed cosmetologists and 4,180 licensed instructors in Texas. Licensees are also subject to inspections at the time the salon in which they are working is inspected. For example, an inspector may check whether the cosmetologist uses liquid and dry sterilizers for combs, brushes or other implements, as well as the condition of the walls, floors, and light fixtures in the salon.

The review of the current structure for the regulation of cosmetologists indicated the following:

- ▶ The sunset review conducted in 1979 determined that the level of regulation being provided by the cosmetologist could be reduced without subsequent damage to consumers. The sunset commission recommended that licensure be replaced with a one-time certification for cosmetologists that would be valid indefinitely, and the regulation of manicurists and wig specialists was not needed. Although these changes were not adopted by the legislature, the conditions and regulatory structure in place at that time are essentially identical to the current situation.
- ▶ The benefits achieved through the current regulatory approach do not warrant a full licensure program.
 - No significant problems with licensed cosmetologists or cosmetology instructors have been identified through the agency's enforcement activity. There have been no individual licenses revoked or suspended in the past two years. Statistics on commission actions are not available prior to the past two years; however, the agency does recall any revocations or suspensions since 1983.
 - A review of the 1,120 violations issued in fiscal year 1989 indicated that 37 percent involved missing or expired licenses, improper display of license or permit, or other violations of license restrictions. Thirteen percent involved failure to sanitize equipment or tools. The remaining violations issued addressed the overall condition of the salons and schools, violation of school reporting requirements, documentation of student hours, personal residence, and other business interests pursued in salons.

- The process of renewing licenses biennially does not provide a significant level of public protection. The license renewal process is essentially a paperwork process requiring a licensee to submit a fee and a health certificate in exchange for a valid license. While renewal may serve a role in keeping unlicensed persons from practicing cosmetology, there is no evidence that requiring renewal reduces the number of violations of agency laws or prevents harm to the public.
- ▶ The requirement for a cosmetologist to submit a health certificate prior to issuance or renewal of a license does not serve to protect the health of the public. When asked to comment on the need for the health certificate requirement in terms of public health protection, staff of the Texas Department of Health responded:

"Neither physical examination nor laboratory analysis can verify that a person is free from all contagious diseases. Nor is there any certainty that a person found to be healthy one day will not acquire disease the next. Consequently, health certificates are meaningless in verifying the present good health of a person. Routine testing of barbers and cosmetologists for specific diseases such as tuberculosis or syphilis is also no longer warranted and is an unnecessary expense."
- ▶ Studies done in other states recommended a reduction in the level of regulation to certification. Colorado's State Auditor, for example, recommended in 1980 that title protection of barbers and cosmetologists replace licensing. This recommendation was not adopted, however. Under the Colorado proposal, practice without a license would be controlled through law enforcement authorities. In 1989 the Colorado sunset review recommended limiting the scope of regulation. That recommendation would have made the practice of cosmetology illegal unless the person first completed a basic course of training at an accredited barber or cosmetology school. The sunset review conducted by Kentucky in 1983 recommended mandatory registration and voluntary certification to replace licensure. Utah's sunset review in 1980 recommended that if the regulation was not done away with completely, certification could be used to identify competency of applicants.
- ▶ Several states have a lesser level of regulation than Texas. Other states, such as Illinois, Delaware, Connecticut, Utah and Washington, maintain a licensure program but removed the major enforcement portion of their regulation--the licensure and inspection of beauty salons.

PROBLEM

Ensuring that cosmetologists and cosmetology instructors have a basic level of training and knowledge may serve to make the public more confident in the abilities of new cosmetologists. However, the additional regulation currently in

place through full licensure is more restrictive than necessary to protect the public. In addition, the steps set out for entry into the profession, such as the requirement for a health certificate are more restrictive than necessary.

RECOMMENDATION

- **The current licensure requirements for operators of cosmetology and cosmetology instructors should be adjusted in statute to require a one-time certification. The certification program would:**
 - require aspirants to meet current requirements relating to age and general education;
 - require aspirants to complete an approved beauty school program;
 - require aspirants to continue to pass an exam;
 - eliminate annual renewal procedures; and
 - eliminate the requirement for submitting a doctor's health certificate in order to receive or renew a license.

This recommendation will have the effect of reducing the current level of regulation of cosmetologists and cosmetology instructors in the state. The level of public protection needed could be afforded by a one-time certification process. As discussed in a previous section, no public health danger exists that warrants the level of oversight currently being provided. The public would continue to be assured that persons practicing cosmetology achieved a basic level of competence by a certification and testing process. However, a recommendation to adjust the examination process by using a national exam and discontinuing the practical component of the exam can be found later in the report. The removal of the health certificate requirement will reduce the costs of entry into the practice, since a doctor's examination would no longer be needed.

FISCAL IMPACT

The agency would see an annual reduction in direct operating costs of \$84,480 from no longer issuing renewals of operator licenses. However, there would be a reduction in annual revenue of about \$1,092,000 from elimination of renewal fees, resulting in a net revenue loss of about \$1,007,000.

ISSUE 7: The statute should be changed to require the use of a national examination and to eliminate the practical examination.

BACKGROUND

Occupational licensing tests have come under increased scrutiny in recent years. Certain professional and legal standards have evolved for exams which are used to assess their fairness and validity. For example licensure examinations should be job-related and based upon an empirically conducted job analysis; they should accurately measure the tasks relevant to the profession and they should have a passing grade established by objective criteria determined prior to the administration of the exam. To incorporate these validation points, a trend among regulatory agencies is to develop either in-house testing expertise, or contract with professional testing services such as the Educational Testing Service or the Professional Testing Corporation (PTC).

Texas does not use any of these independent validation points in its regulation of cosmetologists. The TCC develops its own examinations with the help of a committee comprised of operators, instructors, and salon and school owners from across the state. Examinations are offered five days per week at the TCC building, and administered and graded by in-house examiners. An applicant must pass a 100 question written examination and a practical examination. The written examination covers state laws and regulations, style and technique, and health and sanitation. The practical exam requires the applicant to demonstrate fundamental skills including shampoos, hair styles and cuts, the application of chemicals and facials. Applicants pay a \$25.00 student permit fee which includes the cost of the examination. The agency maintains a bank of 1,000 questions from which 100 are selected each time the test is given.

A review of current examination practices of the agency and other states as well as research regarding testing practices for licensure boards indicated the following:

- ▶ The majority of states use exams developed by either professional testing services (national exams) or state testing divisions. The National-Interstate Council of State Boards of Cosmetology (NIC) offers a licensure examination developed by PTC for operators, teachers, manicurists and estheticians (skin care specialists). The operator examination is currently used in 30 states including all states bordering on Texas, except Arkansas. The majority of states not using the NIC examination use either a test developed by a professional testing service or by state testing divisions. These states include Illinois, New York, Wisconsin, Florida and Michigan.
- ▶ Professionally developed national examinations offer several advantages. Centralized development of the exams allow the input of both cosmetology and examination experts; the examinations form a common ground for reciprocity among states; use of the examinations show the state how well applicants and schools compare with other states; and the examinations

meet validation standards and therefore provide protection for the state agency against legal action.

- ▶ The TCC does not have access to a centralized testing office in the state staffed by exam specialists, nor does it contract with independent exam specialists or testing consultants in the development of its test. The agency indicates that it uses a committee composed of operators, instructors, salon owners and school owners to develop the questions. In addition, the TCC has not used testing expertise in setting the passing score for the exam.
- ▶ The test validation procedures used by professional testing services and state testing divisions surpass those used in Texas. As an example, the Professional Testing Corporation (PTC) designs, develops and grades the examination through a contract with NIC. Content of the exam is provided by a committee comprised of members of state boards and representatives of NIC. Professional Testing Corporation reviews and edits all questions to ensure that they are unbiased, meet standards of quality and accurately measure the competency of exam candidates. The questions are analyzed to determine how difficult they are and how well they distinguish between higher scoring applicants and lower scoring applicants. Other professional test services offer similarly validated tests and services.
- ▶ The agency's current examination procedures have the potential for being legally challenged. Legal action against the TCC could be costly. In Alabama, the NIC test was challenged on the grounds that it was biased. The NIC's attorneys provided evidence that the examination was validated and unbiased. Subsequently, the case was dismissed.
- ▶ Agency interviews showed that the national exam is already utilized to some degree since the TCC currently accepts the results of the national exam for out-of-state licensees.
- ▶ The scoring of the practical examination is based upon subjective criteria. The TCC has attempted to develop formal guidelines with which to rate applicants on the practical examination. Still, one examiner may believe that an applicant has performed sufficiently, while another examiner may feel that the same applicant's performance was inadequate. Therefore, the scoring remains subjective.
- ▶ The practical exam, while addressing health and safety issues, primarily tests stylistic abilities. It is not particularly effective as a means of determining that a person can apply chemicals safely because simulated solutions rather than actual chemicals are used. Florida has recently discontinued the practical examination because the use of substitute chemicals did not provide a realistic measure of the competence of the person applying the chemicals. The elimination of the practical has not affected the ability of Florida licensees to gain licenses in other states.
- ▶ Other means exist to test a person's competency as a cosmetologist. In order to take the exam, applicants are currently required to complete a course of instruction in a private beauty culture school or a public school. These programs of study cover all the functions required of a cosmetologist.

For example, most training programs contain 200 hours of instruction in cold waving and related theory. Finally, the owner of the salon hiring the operator has the ultimate responsibility for ensuring the competency of the operator.

PROBLEM

Validation procedures ensure high quality and unbiased questions. The exam developed by the TCC is not subject to these validation procedures. In addition, the agency has not developed objective criteria for determining the passing score prior to the exam. These deficiencies may result in a legal challenge. The practical portion of the exam is subjective and primarily tests stylistic abilities, not safety matters. Knowledge of health and safety matters relating to application of chemicals and other procedures can be effectively tested on a written exam.

RECOMMENDATION

- **The statute should be changed to require the use of a written national examination for operators and beauty culture school instructors and to eliminate the practical examination.**

Under this approach the state would administer a validated exam which eliminates inadvertent bias. Most national testing services return the grades to the agency in one to two weeks. In addition, use of the national exam would allow persons seeking employment in other states easier access to licensure. Eliminating the practical exam would reduce costs, remove the most subjective portion of the testing process and would relieve the state from evaluating matters of style. The responsibility for ensuring the stylistic competence of practitioners would fall to salon owners and finally, the consumers.

FISCAL IMPACT

The agency currently expends about \$12 per applicant or some \$156,000 per year to fully develop, administer and grade the state examination. This cost includes the practical exam and all costs are recovered through agency fees. There are currently five examiners employed by the agency who proctor the written exam, and grade the practical portion.

In comparison, the cost to the state per written national examination would be about \$5 for operators and \$10 for teacher exams. If the practical portion of the exam is eliminated, the number of examiners could be reduced from five to two, resulting in a savings of \$88,000 in salaries and benefits. The agency would continue to charge fees at a level to recover the purchase and administration of a national exam. The fees would likely remain at their current level or be slightly reduced under this approach.

ISSUE 8: The current state licensure of manicurists, shampoo-conditioner specialists, facialists, hair weavers, and wig specialists should be adjusted to require a one-time certification available upon graduation from an approved school. In addition, inspection of specialty salons should be discontinued.

BACKGROUND

In Texas, there are over 145,000 licensed cosmetologists. Out of the total number of licensees, the vast majority possess an operator license. The operator license permits the cosmetologist to perform a wide variety practices from shampooing, hairstyling, and permanent waving to facial treatments, and manicuring. In receiving services, the public is most likely to encounter a person licensed as an operator. Currently, 88 percent of all licensees possess an operator license. Only nine percent of the total licensed population possess a manicurist license or a specialty license such as wig specialist, facial specialist, hairwaveing specialist, and shampoo-conditioning specialist. The manicurist and specialty licenses were added to the state's regulatory scheme in 1975. Before that time, these additional services could only be provided by a licensed operator. Brief definitions of the specialty licenses are provided below:

- The manicurist attaches false nails or cuts, shapes, and polishes natural nails to improve their appearance. There are 10,770 manicurists licensed by TCC in Texas.
- The hair weaving specialist weaves hair into wigs and into a patron's real hair to fill-in where hair is lacking or where more fullness is desired. There are 31 licensed hair weavers in Texas.
- The wig specialist is trained to style and care for artificial hairpieces and wigs. There are 129 wig specialists licensed by the TCC in Texas.
- The facialist may perform facials, application of facial cosmetics, manipulations, eyetabbing, arches, lash and brow tints, and temporary removal of hair. There are 2,113 licensed facialists in Texas.
- The shampoo-conditioner specialist may shampoo and condition hair, perform scalp manipulations, and shampoo wigs in a licensed beauty salon. There are 581 shampoo-conditioning specialists licensed by the TCC.

The statute requires applicants to complete 150 hours of instruction and pass the required examination to obtain the manicurist license. Manicurists account for seven percent of all licensed cosmetologists. To obtain specialty licenses by commission rule, an individual must complete a cosmetology course of at least 300 hours (except for the shampoo specialist who must complete at least 150 hours) and pass the required examination. For initial licensure and for renewals,

the individual must pay a fee and obtain a health certificate. All specialty licenses combined account for approximately two percent, of the currently licensed cosmetologists.

The manicurist and specialty licenses are frequently used in salons licensed specifically for the purpose of the specialty. Manicurist and specialty salons account for almost five percent of the total number of salons in Texas.

The purpose of the cosmetologist license is, of course, to protect the public from dangers to their health and welfare. A license is warranted when significant harm could result if a practitioner has not been properly trained and does not meet competency requirements. However, the state should not regulate in an overly restrictive manner or when there is minimal risk to the public. The additional cosmetology licensing categories of manicurist and the specialty licenses, involve practices that pose minimal risk to public safety.

In assessing the protection provided to the public by the licensing of manicurist and other specialists, the staff review determined the following:

- ▶ For the past ten years in Texas, there have not been any complaints against a licensed manicurist or specialist or the specialty shops, in which damage to the health and safety of a consumer has been demonstrated. The agency reports that complaints received from consumers are mostly from individuals dissatisfied with the service they receive and not from consumers who have been harmed or damaged. The commission is not charged with ensuring that all salons or licensees deliver satisfactory service; consequently most of these consumer complaints are not under the jurisdiction of the commission.
- ▶ Other states maintain a less restrictive approach to regulating manicurists and other specialty licenses. Thirteen states do not require a license for manicurists. Eight states do not require any licensing for facialists, however an additional 17 states combine this licensing function with operator or manicurist license.
- ▶ As in the case of operators, renewing the specialty licenses biennially does not provide a significant level of protection. The license renewal process is essentially a paperwork process requiring a licensee to submit a fee and a health certificate in exchange for a valid license. While renewal may serve a role in keeping unlicensed persons from practicing, there is no evidence that requiring renewal reduces the number of violations of agency laws or prevents harm to the public.
- ▶ The requirement to obtain a health certificate for initial licensure does not serve to protect the health of the public and is an unnecessary step in the regulatory process. The health department indicated that routine testing does not verify that a person is free from contagious diseases.
- ▶ Although examination of aspiring manicurists and specialists is a logical component of regulation, it does represent another restriction which appears to serve little purpose in identifying persons qualified to provide manicuring and specialty services. The current overall passage

rate for examinees is 98 percent. This high passage rate indicates the exam serves as an ineffective screen and that a requirement to complete the appropriate school program will impart the skills needed to provide manicuring and specialty services.

- ▶ The inspection of the more than 1,000 manicuring and specialty salons provides little information that cannot be easily obtained by the consumer. The fact that shops may be poorly kept is not of substantial interest to the state and, as in the case of beauty salons, the inspection process cannot protect against actual damage to consumers in the unlikely event such damage should ever occur.

PROBLEM

The current approach to the regulation of certain subcategories of cosmetology is overly restrictive. Manicures, facials, hair weaving, wig services, and shampoo-conditioning are practices currently licensed by the state through individual and shop licenses. However, these practices are not sufficiently complex, or threatening to the public to warrant state involvement through licensure, examination and enforcement. In addition, no danger to the public has been demonstrated through consumer complaints to the commission.

RECOMMENDATION

- The current state licensure of manicurists, facialists, shampoo-conditioner specialists, wig specialists and hair weavers should be adjusted to require a one-time certification. The certification program would:
 - require aspirants to meet current requirements relating to age and general education;
 - require completion of an approved training program;
 - eliminate examination requirements;
 - eliminate health certificate requirements;
 - eliminate annual renewal procedures;
 - discontinue inspection of specialty shops; and
 - allow response to consumer complaints through the court system.

Changing these licenses to a one-time certification will reduce the state's current level of regulation of manicurists and specialists. No public health danger exists that warrants the level of current oversight. However, the public would continue to be assured that persons manicuring or performing other specialty services have achieved a basic level of competence through the certification process. Should problems with the activities of manicurists or specialists arise, the consumer could simply discontinue the use of their services or pursue resolution through the court system.

FISCAL IMPACT

The agency would continue to collect a certification fee to cover the cost of administering the one-time certification program. However, eliminating the twice yearly inspections of 953 specialty shops as well as no longer conducting complaint investigations regarding specialty licenses, would reduce the need for at least one inspector, thus saving approximately \$29,000 in salary and travel expenses. The loss of renewal fees will approximate \$72,000 per year.

ISSUE 9: The statutory requirement for the agency to license and inspect beauty salons should be repealed and the specified position for a salon owner on the commission should be removed.

BACKGROUND

As discussed in previous sections of the report, the state is only justified in licensing and enforcing regulatory requirements if, by doing so, the public is protected from serious risk to its health, safety or welfare. To determine if licensing is justified, the potential for serious risk and the agency's ability to eliminate or reduce risk must be examined. If a less restrictive or alternative method of regulation exists, and can offer the desired level of public protection, such an alternative should be considered. Excessively restrictive requirements can have adverse effects, such as decreasing the availability of practitioners or services.

In Texas, a salon license may be issued upon meeting the requisites established by the commission. The applicant must submit a salon inspection fee and demonstrate sufficient floor space requirements and adequate equipment for the practice of cosmetology. There is a \$35 license fee which must be renewed every two years at the same fee. The general reason for the state to issue salon licenses is to ensure that the person or establishment being licensed meets certain minimal qualifications intended to protect the public from harm. Generally, the requirement for salon licenses to be renewed exists so the qualifications can be rechecked. More than \$1.4 million is collected annually in renewal revenue, \$260,624 of which comes from beauty and specialty shop renewals; this revenue helps support the financial costs of enforcing the agency's statute and to fund shop inspections.

The agency's goal is to inspect beauty salons to be inspected every 90 to 120 days for sanitation and sterilization practices, adequate equipment and to ensure that salon licenses and individual licenses are current. The time periods for inspection, however, are not mandated in statute or rule. Rather, the agency has adopted the policy that the salons need to be checked two to four times per year. Over 24,000 inspections were conducted in about 20,000 shops in FY 1989. The inspection generally entails checking the ventilation of the shop, checking general cleanliness, ensuring that liquid and dry sterilizers are in place and that the floor, chairs and other equipment are in good repair. The purpose of the inspection, according to the agency, is to ensure that the public is protected from the spread of disease and that consumers receive services from qualified practitioners.

When a violation is detected, there are several options available for correcting the problem. Usually, the inspector will allow the salon to correct the problem immediately. A record is still kept of the finding, but no further action is taken. If the inspector has tried to resolve a problem over a period of time without success, an informal hearing may be conducted. If an inspector discovers an

expired salon or individual license, the inspector tries to get the licensee to renew immediately. If compliance is not achieved, the inspector will file with a justice of the peace court, since non-licensed practice is a Class C misdemeanor.

Inspections can serve a useful role in protecting the public if they result in violations of a serious nature that are subsequently corrected. To be effective, inspections must be accompanied by some form of enforcement. For example, if violations are serious the agency should have the ability to punish salon owners who violate the statute and ensure that violations do not occur repeatedly.

A review of the process of licensing shops and the overall effects of the salon license and inspection process indicated the following:

- ▶ The inspections rarely identify problems and when they do, they are of a type that do not threaten the public health or welfare. Eighty-eight percent of the inspection grades given in fiscal year 1989, were the highest possible grade of 100 on a scale that includes 100, 90, 80, 70 and below 70 which is considered failing. Only one-tenth of one percent of the grades issued were for failing the inspection. When problems were identified, they related to failure to renew a license and overall condition of the salon rather than any serious health hazard. Of all the salon inspections, only thirteen percent were for failure to sanitize tools and equipment properly.
- ▶ Inspections determine if equipment is there, not how it is used on a continual basis. They do not ascertain that health and safety matters are being followed when they most matter--when a patron is being served. The inspector may be able to verify during the visit that proper practices are followed at that particular point in time, but this does not offer any assurance that such practices are always performed.
- ▶ The inspection process has never resulted in a finding that chemicals were used improperly. Although some cosmetologists indicate that chemicals can damage consumers, the inspection process cannot protect against such damage. Inspectors do not check the chemicals in use in the salons or the methods of applying them.
- ▶ Other states have examined the need for beauty salon inspections. Although many states continue the inspection process, some have modified their approach and others question their value.
 - Hawaii, for example, determined in 1988 that licensing of beauty salons served no useful purpose and now requires one sanitation clearance from the state health department.
 - Washington regulates cosmetologists, but does not regulate salons through licensing or inspections.
 - Other states that do not regulate their salons include Utah, Rhode Island, Minnesota, Illinois, Delaware, and Connecticut.
- ▶ In the absence of the inspection process carried out by the Texas Cosmetology Commission, the Texas Department of Health has general authority to handle complaints related to unsanitary and unhealthy

practices and could respond to health problems in the unlikely event any should arise. The department has statutory authority under Chapter 34 of the Health and Safety Code to investigate complaints that any public business establishment is unsanitary and take action against the business owner.

- ▶ The salon license and inspection process is a costly endeavor. Salon licenses are issued every other year to about 20,000 salons at a unit cost of \$2 per license or \$40,000. This includes the processing of the renewal applications, depositing the revenue and maintaining the statistical records. Twenty inspector positions are authorized to cover approximately 20,000 salons in the state. Over \$496,948 is spent each year for salaries and travel expenses for the inspectors including the time spent by in-house staff reviewing the daily reports of each inspector, filing the inspection reports, preparing statistical information and maintaining certain information in the computer.
- ▶ Other mechanisms exist to achieve the purposes of the inspection process without conducting routine inspections. Two primary purposes of inspections are to identify unlicensed practitioners and ensure that shops are sanitary. Consumers and licensees can continue to file complaints with the state about unsanitary shops and the activity of unlicensed persons without having the state conduct a full-blown inspection program. Instead, the agency can simply respond to complaints and take action against those violating the law.
- ▶ Salon owners currently have input into the regulatory process and provide an owner or management perspective through one designated position on the commission. In addition, licensees are represented through two positions on the commission; however, the statute prohibits these licensees from also holding salon licenses. If shops are no longer licensed or inspected, the statutory requirements for having one salon owner on the commission and prohibiting the two licensee representatives on the commission from having salon licenses are no longer necessary.
- ▶ Routine inspections of schools help to ensure that students receive proper training and credit for their coursework. The commission conducts routine inspections of over 400 beauty schools throughout the state. In fiscal year 1989, approximately 1,400 inspections were performed to check the schools for proper equipment and compliance with regulations. In addition, student clock hours are monitored to ensure that students receive the clock hours they have earned.

PROBLEM

The process of issuing and renewing salon licenses and performing inspections does not result in the identification of any significant problems. The potential effect of the requirements is to limit the number of shops in the state, restrict competition and raise the costs of services to the public without protecting the health of patrons. In addition, the designated position for a licensed salon owner on the commission is no longer necessary. However, there is no reason for licensees who are also salon owners to be prohibited from serving.

RECOMMENDATION

- **The statutory requirement for the agency to license salons should be repealed and the routine inspections of salons should be discontinued.**
 - **Complaints related to unlicensed activity or to the health and safety of consumers should continue to be investigated by the commission.**
 - **Regular inspections of beauty schools should also be continued by the commission.**
- **The structure of the commission should be modified by replacing the specified position for salon owner with a licensed cosmetologist and by removing the restrictions prohibiting licensed cosmetologists on the commission from holding a salon permit.**

As a result of the recommendation, the agency would no longer need to renew salon licenses for the 20,000 shops currently in Texas and over 24,000 inspections per year would be eliminated. Those practicing cosmetology in the salon, however, would still be required to meet the qualifications set out in law for cosmetologists. Limited oversight of salons and the practice of cosmetology will be continued by requiring the commission to investigate and act on complaints received from the public or other licensees. Since the agency had about 137 such complaints in fiscal year 1989, some inspection staff would be needed to continue these investigations, as well as inspections of beauty schools.

Salon owners would no longer have a designated position on the commission. However, salon owners who are licensed cosmetologists would be allowed to hold a licensed cosmetologist position on the commission, if the governor chooses to appoint such a person.

FISCAL IMPACT

Approximately \$40,000 per year in administrative renewal expenses would be avoided as a result of this recommendation, however, the agency revenue from salon renewals is approximately \$260,600 annually, resulting in an overall reduced net revenue of \$220,600.

In addition, the agency would be able to eliminate the expenses associated with conducting over 24,000 inspections per year. This would eliminate the need for 21 inspectors, resulting in annual savings of inspectors' travel expenses, salaries and benefits totaling \$650,000. However, the 137 complaints received per year and the annual inspection of 400 schools will require the continuation of four inspectors at an annual cost of \$136,000. Overall, the net fiscal impact of the recommendation is estimated to be an annual savings of \$293,000.

ISSUE 10: A statutory tuition protection fund should be established through the Texas Cosmetology Commission for students attending private beauty culture schools.

BACKGROUND

The Texas Cosmetology Commission provides oversight for about 400 beauty schools in Texas. Approximately 200 of the schools are private beauty schools with over 10,000 students enrolled. When a student enrolls in a private beauty school a significant investment is made in paying tuition either through personal funds, or student loans and grants. When the law creating the current cosmetology commission was passed in 1971, a tuition protection provision for students was included in order to protect the students' investment. The law requires private beauty schools to have a \$5,000 surety bond to refund any unused portion of the tuition if the school closes or ceases operation before courses of instruction have been completed. In the early 1970's the average cost of tuition ranged from \$300 to \$600 so that the \$5,000 surety bond provided adequate protection to the students. Since then, the situation has changed significantly.

Today, private beauty school tuition ranges from approximately \$4,000 to \$7,000 with each school enrolling 50 to 100 students. It is clear that if a school closes, the required \$5,000 surety bond does not cover refunds for the students. Therefore, if a school closes, there is nothing to assure that students get their money refunded or receive their program of instruction in its entirety.

Measures to protect students enrolled in the over 400 proprietary schools regulated by the Texas Education Agency were taken in the 71st regular session of the legislature. Specifically, provisions for creation of a student tuition protection fund were included in the sunset legislation passed on the Texas Education Agency. The law now requires each proprietary school regulated by TEA, in addition to its annual renewal fee, to submit a fee for deposit in a special fund in the state treasury called the proprietary school tuition protection fund. Schools contribute an amount based on a percentage of their annual renewal fee. Fees are collected until the fund reaches a \$250,000 ceiling and will be collected again when the fund falls below \$200,000. The TEA fund limits claims to \$25,000 for each school closure.

A tuition protection fund affords two options for the students attending school. If a school closes, arrangements can be made for students to attend a different proprietary school. The expense incurred by a school for providing the continued education or teach out, including tuition, would be paid by the fund. If a student cannot be placed in another school, the student's tuition and fees could be directly refunded out of the fund. If another school teaches out displaced students with no significant change in the quality of training, the student is not entitled to a refund.

A review of the need for updated student tuition protection measures determined the following:

- ▶ Beauty school closings have placed a hardship on students who have paid their tuition or need to finish their programs and on schools required to teach out students.
 - In fiscal year 1989, five private beauty schools closed, leaving approximately 400 students who needed to finish their programs or receive tuition refunds. The students were faced with losing money or finding another school to finish their program.
 - Ten beauty schools, upon request by the Texas Cosmetology Commission, enrolled students to complete their programs of instruction without reimbursement.
- ▶ Current law does not effectively protect students attending beauty schools that shut down operations while greater protections exist for students attending other proprietary schools.
 - The statute currently requires private beauty schools to obtain a \$5,000 surety bond to refund student tuition in case the school closes. Since schools charge \$4,000 to \$7,000 for tuition, the required surety bond is inadequate.
 - A tuition protection fund is used elsewhere as a mechanism to safeguard students' investment in school tuition. Students attending schools regulated by TEA are currently protected by such a tuition protection fund which was established by the 71st Legislature. If a school closes, the fund can pay for the expenses related to finishing the students' education elsewhere or may provide for tuition refunds. The fund will be available within two years to over 50,000 students in over 400 proprietary schools in the state. The fund will be generated by contributions made by proprietary schools during the renewal of their certification. Fees for a tuition protection fund are collected until the necessary amount of revenue is received by the fund. Additional fees are to be collected only when it is necessary to re-establish the amount of revenue needed to cover student refunds.
- ▶ Students are unlikely to repay student loans if the training and instruction for which they have paid is not completed. Since 1981, almost 30,000 loans have been issued to students attending beauty schools, totaling over \$70 million. As of November 30, 1989 over 140 beauty schools had students participating in the Texas Guaranteed Student Loan Program. A student attending a school that closes will find it considerably more difficult to complete the training necessary to become licensed and gainfully employed. Without this source of income, the opportunity for the former student to repay the loan is diminished.

PROBLEM

Little protection is available for students attending beauty schools if the school ceases operation before the student completes the course of instruction. The current \$5,000 surety bond required of each school is not sufficient to protect the students who have invested \$4,000 to \$7,000 in tuition. Students may lose their money or other schools have to provide instruction free of charge due to the inadequate student protection measures currently in statute.

RECOMMENDATION

- **The Texas Cosmetology Commission should establish a tuition protection fund for students affected by closings of private beauty culture schools. The fund should be set up as follows:**
 - **A special cosmetology student protection fund should be set up in the state treasury;**
 - **The Texas Cosmetology Commission should collect fees from all licensed private beauty culture schools and manage the special fund;**
 - **The commission should set the fee based on the fund reaching \$100,000 in a three year period;**
 - **No fee would then be charged until the fund falls below \$80,000;**
 - **The maximum fee that could be set by the commission is \$200 per year;**
 - **There should be a limit of \$25,000 in claims against the fund for each school closure.**

A tuition protection fund will safeguard the investment a student makes when choosing to attend a private beauty culture school. If a school closes, the students' tuition and fees would be directly refunded out of the fund unless a student loan is in place, in which case the lender may receive the refund. However, if another school accepts students to teach out their program of instruction, the school would be reimbursed out of the fund for expenses incurred. In this way, students will be assured the opportunity to finish their programs, become licensed and then gainfully employed.

FISCAL IMPACT

No fiscal impact to the state would occur as a result of this recommendation. However, private beauty culture schools would bear the financial burden of up to \$200 annually until the tuition protection account meets its maximum level of \$100,000. Continued contributions to the account may be necessary, but cannot be estimated as it depends on the number of beauty schools that close.

Across the Board Recommendations

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

Texas Cosmetology Commission

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

*Already in law.

Texas Cosmetology Commission
(cont.)

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

*Already in law.

Appendix

Exhibit A

Comparison of Current Practice to Sunset Staff Recommendations

Current Practice

Staff Recommendation

NEED FOR REGULATION	
<p>1. Regulation of cosmetology through an independent state board.</p>	<p>1. Abolish the Texas Cosmetology Commission and deregulate cosmetologists.</p>
ORGANIZATIONAL ALTERNATIVES	
<p>2. Regulation of cosmetologists through an independent state commission.</p> <p>3. Regulation of barbers and cosmetologists through separate agencies and boards. The current structure of the commission is four members representing facets of the beauty industry, two public members, and one ex-officio member representing TEA.</p>	<p>2. Transfer agency functions to the Texas Department of Licensing and Regulation and maintain present structure of the commission.</p> <p>3. Merge the functions and policy-making bodies of the barber board and the cosmetology commission. The merged board would be composed of three barber representatives, three cosmetology representatives and three public members. Maintain separate licensure for the two trades.</p>
CHANGES RECOMMENDED IF AGENCY IS CONTINUED	
<p>4. Election of the chairman by the membership of the commission.</p> <p>5. Most fees are set in statute. Agency collects revenue in excess of annual expenditures.</p> <p>6. Full licensure and testing of cosmetologists and cosmetology instructors including biennial renewal of licenses.</p>	<p>4. Provide for the governor to appoint the chairman of the commission.</p> <p>5. Remove statutory fees and require agency to set a fee structure designed to recover costs of regulation.</p> <p>6. Reduce level of licensure of cosmetologists and instructors to a one-time certification process and retain a competency examination.</p>

Exhibit A

Comparison of Current Practice to Sunset Staff Recommendations
(cont.)

Current Practice

Staff Recommendation

CHANGES RECOMMENDED IF AGENCY IS CONTINUED

7. Agency uses a written examination developed by agency personnel and representatives of the industry. Cosmetologists' stylistic skills are evaluated through a practical examination.

8. Agency currently tests and licenses manicurists, facialists, and shampoo specialists. These licenses are renewed biennially.

9. Beauty salon owners must obtain a state license in order to operate. Salons are generally inspected four times a year.

7. Require use of the written national cosmetology examination and eliminate the practical examination.

8. Reduce level of licensure of manicurists and other specialty licensees to a one-time certification process upon successful completion of an approved training program. No examination or agency enforcement would take place.

9. Eliminate requirements for beauty salon licenses and for routine inspections of salons. The agency would continue to respond to consumer complaints.

Exhibit B
**Scope of Practice
 Overlap and Differences in Barbering and Cosmetology
 As Defined in Law**

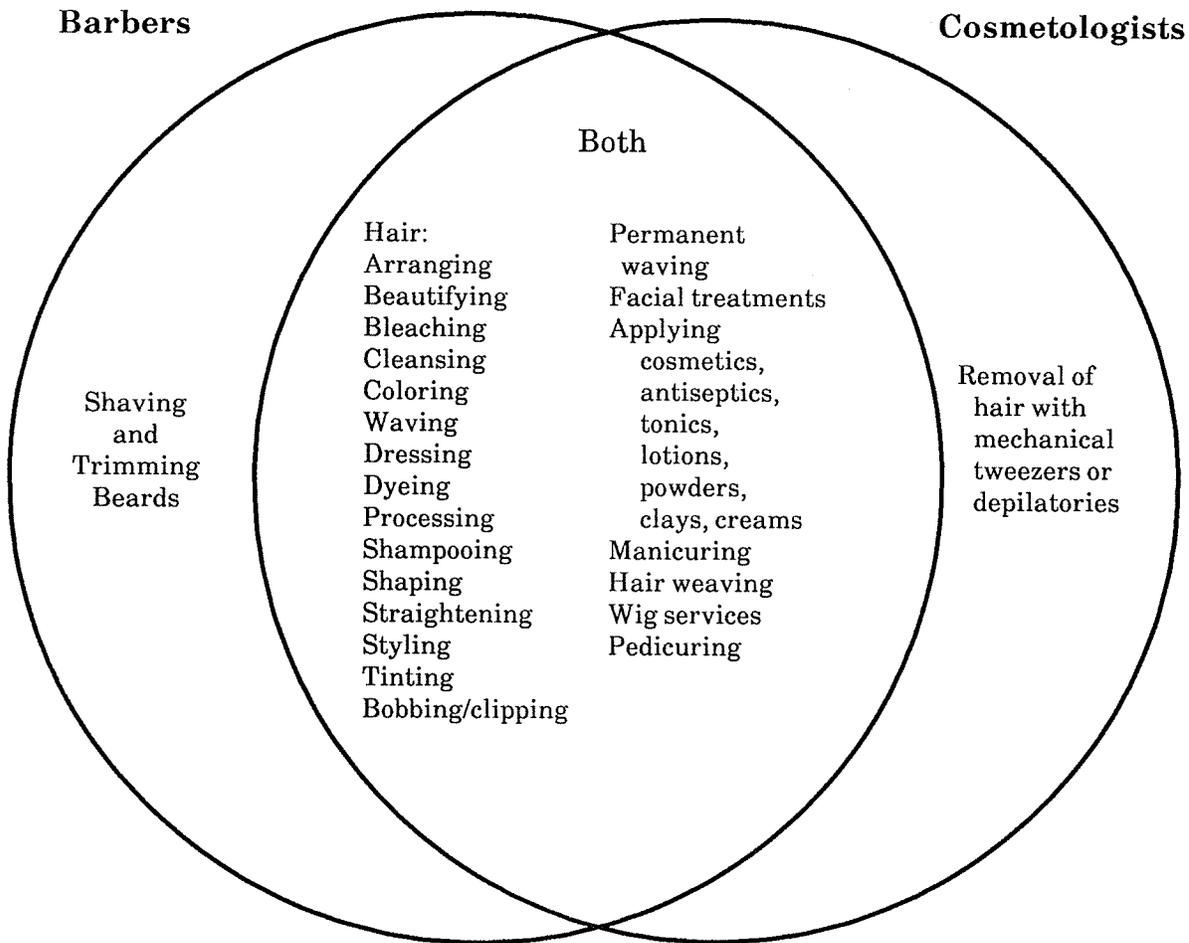




Exhibit C
Similarities in Regulatory Functions
State Board of Barber Examiners and Texas Cosmetology Commission

Function

Establish qualification standards
independently

Develop written and practical exams

Administer exams on multiple occasions

Evaluate qualifications for exam and
process exam applications

Collect and process exam fees

Grading of agency exam

Record and report grades

Process license renewal

Collect fees

Receive and investigate complaints

Field investigations

Issue Violations

Consult legal counsel

Invoke injunctive power

Administer board meetings

Texas Cosmetology Commission

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