

SUNSET ADVISORY COMMISSION



FINAL REPORT
to the
GOVERNOR OF TEXAS
and
MEMBERS OF THE SIXTY-SIXTH TEXAS LEGISLATURE

DECEMBER 1978

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

December 1978

STATE OF TEXAS
SUNSET ADVISORY COMMISSION



Bill Meier, Chairman

December 1978

Representative Bennie Bock, II, Vice-Chairman

Sen. Lloyd Doggett
Sen. A. R. (Babe) Schwartz
Sen. W. E. (Pete) Snelson

Rep. Bill Ceverha
Rep. Lee Jackson
Rep. Larice Lalor

The Honorable Dolph Briscoe
Governor of Texas

The Honorable William P. Clements
Governor-elect of Texas

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

Ladies and Gentlemen:

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

I am sure you are aware of the many hours of work on the part of the members of the Senate and House who have labored during the interim to develop the material and information required to systematically and logically evaluate the 26 agencies reviewed for this Sixty-sixth Session of the Legislature.

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

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

Respectfully submitted,


Chairman
Sunset Advisory Commission

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Eules**

**Representative Bennie Bock, II, Vice Chairman
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STAFF OF THE
SUNSET ADVISORY COMMISSION

Paulette Alexander

Patsy Henry

Fred Buckles

Ron Lindsey

John Clemens

Sam Martin

Joanne Click

Robert Morris

Barbara Crimm

Julius Moss

Elyse Dike

Norma Nance

Dorothy Featherling

Don Preston

John Frasch

Karl Spock

Elsa Garcia

Charles Terry

Tim Graves

Alex Underhill

Susan Grotevant

Cindy Unsell

Albert Hawkins

Bill Wells

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INTRODUCTION

INTRODUCTION

Over the past four years, there has been a sustained interest among the states in a new concept in legislative review popularly described as Sunset. Since 1976, more than 25 states have enacted legislation which embodies the primary element of Sunset, the automatic termination of an agency unless continued by specific action of the legislature.

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

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

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

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

In developing recommendations on the 26 agencies set for initial review and termination, the commission held 19 scheduled meetings from October of 1977 through December of 1978.

The majority of the 26 agencies under review were occupational licensing agencies with similar processes and purposes. Given the similarity of the operations of these agencies, the commission developed several overall approaches

in regard to this type of state regulation. These approaches address common problems found in these agencies during the course of review which can be generally categorized as a lack of public representation on the various boards or commissions; the lack of responsiveness to complaints by the public; the imposition of unnecessary requirements for obtaining a license; the use of rule-making authority to reduce the competitive aspects of advertising and competitive bidding; and the avoidance of legislative review of expenditures through the appropriations process.

The recommended approaches to these overall problems are briefly summarized below:

1. Require public membership on boards and commissions.
2. Require specific provisions relating to conflicts of interest.
3. Allow advertising and competitive bidding practices which are not deceptive or misleading.
4. Provide for notification and information to the public concerning board activities.
5. Provide an analysis, on request, to individuals failing the examination.
6. Provide for licensing by endorsement rather than reciprocity.
7. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
8. Require staggered renewals of licenses.
9. Require standard time frames for licensees who are delinquent in renewal of licenses.
10. Require files to be maintained on complaints.

These recommended approaches are incorporated into the text of the material which follows setting out the specific recommendations for each of the agencies reviewed.

AGENCY REVIEWS



TEXAS BOARD OF ARCHITECTURAL EXAMINERS

The Texas Board of Architectural Examiners was created in 1937 for the purpose of protecting the public interest by ensuring that the practice of architecture is conducted in a competent manner by qualified professionals. To accomplish this broad objective, the agency utilizes the basic regulatory tools of licensing and enforcement. Licensing of architects involves initial examination for certification, annual renewal of registration and the reciprocal registration of out-of-state architects. Enforcement procedures are restricted primarily to complaint processing, board hearings of registered architects, and the use of injunctive powers for serious violations by unlicensed individuals.

The board's operations are funded entirely out of the various fees collected from applicants and registrants which are deposited in the State Treasury to the credit of the Architects' Registration Fund. All expenditures from this fund are by legislative appropriation, and disbursements are prohibited from being a charge upon the general revenue fund of the state.

COMPARATIVE ANALYSIS

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

The need to regulate the occupation of architecture is currently expressed through licensing requirements imposed by all 50 states. From the standpoint of organizational patterns, 24 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 26 states, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, 16 require that appointees be confirmed by the legislature; and membership in 36 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the legislature and membership is limited to persons who are licensed members of the occupation. Thirty-eight percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 23 states, indicated that these bodies were not solely supported by fees and charges of the agency.

All 50 of the state boards which regulate the occupation of architecture administer national examinations. In 38 states, licensees are required to renew their licenses annually. Texas licenses for a one-year period. Enforcement activities in all 50 states involve investigation of complaints from consumers and

others engaged in the occupation of architecture. Hearings are conducted inside the regulating agency in 48 states. In Texas, hearings are conducted by the agency.

The Texas Architects Registration Law is a "title" statute which is aimed primarily toward restricting professional use of the word "architect" to licensed individuals. Twelve states, including Texas, employ title statutes for the regulation of architecture. Conversely, 38 states employ "practice" statutes which require a license in order to engage in the practice of architecture.

States which regulate the occupation of architecture indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the Texas Board of Architectural Examiners and are examined in light of specific criteria in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion I - Efficiency

The Texas Board of Architectural Examiners performs its operations in an efficient and comprehensive manner. Administrative responsibilities are clearly defined and procedures are logically and effectively implemented.

The largest component of expenditure is personnel costs which are comparable with those of similar agencies. The unit cost of administration has risen steadily during the past ten years, primarily as a result of inflation and increased personnel cost. While the board's unit cost is higher than that of some larger licensing agencies, the agency offers various services which are not usually provided in other organizations. Moreover, those operations are carried out efficiently. Projections of revenues and expenditures indicate that fund balances may be expected to increase substantially.

While the agency carries out its functions efficiently, a review of its operations in the overall context of information presented indicates certain potential areas for cost savings. A great deal of staff time and operating expense is associated with the processing of annual renewal fees. Savings could be achieved by processing renewals of registration on a biennial rather than annual basis. Currently, 13 other states process renewals on a biennial basis.

Similarly, much staff time and annual expenditures of approximately \$10,000 are devoted to the yearly development of a roster of the state's registered architects. This roster is distributed to all registrants free of charge. The advisability of continuing this function in its present form is questionable, given the costs and time involved. Consideration could therefore be given to achieving cost savings through the modification or discontinuance of the roster procedure.

Criterion 2 - Effectiveness

The Texas Board of Architectural Examiners performs its primary functions by licensing and enforcement. Licensing calls for examination and registration. The examination process requires the establishment of qualifications for applicants and the administration of both a preliminary Qualifying Test for non-degreed applicants, and a Professional Examination for those who comply with all other qualifications. The registration process centers on annual license renewal and reciprocal registration procedures of the National Council of Architectural Registration Boards (NCARB) whose standards and procedures heavily influence the operations of the state architectural licensing board.

Licensing activities of the Texas board are effective in terms of ensuring that registered architects meet an acceptable level of competence. But licensing activities may also have indirectly restricted the supply of registered architects in this state.

Enforcement activities of the board are restricted primarily to complaint processing, hearings regarding registered architects, and use of injunctive powers on alleged violations by unlicensed individuals. Most complaints involve the improper use of the title "architect" by unlicensed individuals.

Enforcement activities of the board are effective to the extent that they tend to ensure a minimum standard of conduct by registered architects. However, the existence of a significant population of unregulated building designers, who practice architecture outside the jurisdiction of the Registration Law, calls to question the effectiveness of that law. By nature of its statutory authority, the board is ineffective in restricting the practice of architecture to qualified persons who have demonstrated their competence by qualifying for licenses.

Criterion 3 - Less Restrictive/Alternative Methods

The result of statutory changes in the Architects' Registration Law has been an increase in the authority and autonomy of the board and the imposition of stiffer requirements on individuals seeking architectural certification. Theoretically, the effect of occupational regulation is a restriction of the supply of practitioners coupled with improvements in the quality of services. These effects are difficult to measure directly and to verify in regard to the situation in Texas.

Evaluation of alternative methods of regulation indicates the possibility for both more restrictive and less restrictive approaches. Most states utilize "practice" statutes which are more restrictive than the "title" statute used in Texas. Limitations of the current statute provide the opportunity for unregistered building designers to practice outside the jurisdiction of the Act. Building designers, however, are subject to other indirect forms of regulation. Broadening of the current law to apply to practice rather than simply title considerations would produce an even more restrictive regulation of the practice of architecture and would require increased funding and staffing of the agency.

The regulation of architecture in this state is directly affected by policies and procedures adopted by the National Council of Architectural Registration Boards (NCARB). Standards for education, internship, examination and continuing education tend to determine the restrictiveness of regulation. In each of these areas, a trend, developed by NCARB and supported strongly by the Texas board, has been established toward increasingly restrictive, centralized regulation of the occupation of architecture. Less restrictive approaches to regulation in these areas would probably involve rejection of suggested national standards.

Criterion 4 - Overlap and Duplication

The agency's target population includes registered architects and potential registered architects, as well as those directly impacted by the operations of the agency. The Board of Architectural Examiners shares a certain degree of similarity in function and nature with the Board of Landscape Architects, Board of Registration for Professional Engineers, and Board of Registration for Public Surveyors. Responsibilities of the board suggest that professional expertise is required under certain circumstances.

Criterion 5 - Statutory Changes

In the period covering the last three legislative sessions, the Texas Board of Architectural Examiners has made recommendations for statutory changes in four instances. Two of the statutory changes recommended by the board and passed by the Sixty-third and Sixty-fourth Legislatures involved modification of language in order to clarify the meaning of the statute and simplify certain administrative responsibilities. One of the changes recommended by the board and rejected by the Sixty-fourth Legislature involved specific statutory limitations upon the size and type of buildings which could be legally designed by non-registrants, thereby establishing specific architectural jurisdiction and expanding the regulatory responsibilities of the agency. One of the changes recommended by the board and rejected by the Sixty-fifth Legislature involved changes in annual registration renewal dates in order to avoid workload congestion periods. This modification, however, was implemented through a change in the board's rules.

Criterion 6 - Complaints

The agency has developed effective procedures for the receipt and disposition of complaints. Most complaints are those registered against unlicensed individuals for the improper use of the word "architect." The board maintains and exercises its authority to censure or revoke the registration of architects found guilty of malpractice or misconduct. Likewise, the board may apply injunctive power to restrain the activities of unlicensed individuals. The agency maintains adequate records of complaints and administers complaint processing in an efficient manner.

Criterion 7 - Public Participation

There has been little effort on behalf of the agency to encourage broad public participation. However, direct participation by the public in this type of agency is unlikely under normal circumstances.

Criterion 8 - Equal Employment

The procedures and record of the agency in the area of affirmative action are generally adequate for a public agency of its size and scope. Although there have been two charges of discrimination filed against the agency, both charges were thoroughly investigated and dismissed by EEOC representatives.

Criterion 9 - Conflict of Interest

No information was obtained during the investigation which would indicate that individual members of the board or employees of the agency have maintained financial or other interests which are in conflict with the purposes and operations of the agency.

Criterion 10 - Open Records/Open Meetings

The Board of Architectural Examiners appears to maintain an adequate system of record-keeping which is open to legitimate inspection, yet which safeguards confidential information. Certain confidential information is collected which is statutorily authorized but which may have little relevance to the basic objectives of the agency and which may be contrary to the spirit of the requirements for rights and privacy of individuals.

Openness of public meetings implies both notification and accessibility. The procedures utilized by the board for advance notification of public meetings fulfill statutory requirements. Many of the board's public meetings, however, may be inaccessible to most members of the public and the regulated profession. Prior notification of rule changes appears to be less than adequate, although adopted changes are appropriately communicated to licensees and candidates.

Criterion 11 - Federal Impact

The licensing of occupations is a function which the federal government has left to the states to initiate. No federal standards were identified which would affect the licensing of architects in the State of Texas if the agency is abolished. Federal funds are not involved in the administration of the Act, as administration costs related to the licensing and regulatory functions of the board are financed through the collection of fees.

CONCLUSIONS AND RECOMMENDATIONS

The review of the Board of Architectural Examiners has indicated that, from the beginning, the Architects' Registration Law has been a "title" statute as

opposed to a "practice" statute. Basically, this means that anyone may legally practice architecture so long as they do not represent themselves by using the title "architect." Analysis of legislative changes since 1937 indicates that there has been a gradual lessening of statutory restrictions upon the operations of the board and a gradual tightening of restrictions upon entry into the occupation of architecture.

The review further shows that the agency is generally efficient in operation. For fiscal year 1978, the agency was supported by a staff of 4.5 full-time equivalent positions and legislative appropriations of approximately \$144,000 from the Architects' Registration Fund. This level of funding supported registration activities for approximately 5,400 statewide architects, administration of 667 examinations, and investigation of 36 alleged violations of the Act. Administrative responsibilities are conducted within reasonable budgetary limitations in a logical manner according to established procedures which are periodically reviewed and updated. The agency is conscientious in its adherence to various statutory requirements and reporting procedures.

The agency is effective in terms of achieving its explicit statutory objectives. Examinations are conducted in an equitable manner to ensure that registered architects meet an acceptable level of competence. Enforcement activities of the board are effective to the extent that they tend to ensure a minimum standard of conduct by registered architects and to prevent unlicensed individuals from improperly using the title "architect." By nature of its statutory authority, however, the board cannot restrict the practice of architecture to qualified persons who have demonstrated their competence by qualifying for licenses.

To address its concerns in the areas outlined above, the commission offers the following recommendations:

THE BOARD OF ARCHITECTURAL EXAMINERS AND THE BOARD OF LANDSCAPE ARCHITECTS SHOULD BE MERGED INTO ONE AGENCY TO BE KNOWN AS THE TEXAS BOARD OF ARCHITECTURAL EXAMINERS. ADDITIONALLY, OTHER STATUTORY CHANGES WHICH SHOULD BE MADE INCLUDE:

- 1) THE MODIFICATION OF BOARD MEMBERSHIP TO INCLUDE FOUR REGISTERED ARCHITECTS, TWO REGISTERED LANDSCAPE ARCHITECTS AND THREE MEMBERS OF THE GENERAL PUBLIC
- 2) THE ADDITION OF CONFLICT OF INTEREST PROVISIONS WHICH APPLY TO BOARD MEMBERS AND EMPLOYEES
- 3) THE ADDITION OF COMPLAINT PROCESSING PROVISIONS TO PROVIDE FOR THE RECORDING OF ALL COMPLAINTS WITH PERIODIC COMPLAINT STATUS REPORTS TO PARTIES INVOLVED

- 4) THE REMOVAL OF BOARD AUTHORITY TO PROMULGATE RULES RESTRICTING COMPETITIVE BIDDING AND ADVERTISING BY LICENSEES, EXCEPT TO THE EXTENT NECESSARY TO DEFINE FALSE, MISLEADING, AND DECEPTIVE ADVERTISING PRACTICES
- 5) THE MODIFICATION OF AGENCY PROCEDURES TO PROVIDE FOR THE STAGGERED RENEWAL OF LICENSES
- 6) THE REMOVAL OF THE REQUIREMENT THAT AFTER JUNE 30, 1980, ALL APPLICANTS FOR ARCHITECTURAL EXAMINATION MUST BE GRADUATES OF A RECOGNIZED SCHOOL OF ARCHITECTURE

STATE BAR OF TEXAS

The State Bar Act was enacted in 1939 by the Forty-sixth Legislature. The Act provides for: 1) a Board of Directors; 2) apportionment of the state into Bar Districts; 3) mandatory membership in the State Bar of all attorneys licensed to practice in Texas; and 4) an annual license or registration fee. The Board of Directors of the State Bar, consisting of 30 members elected from the 17 geographical Bar Districts, has the statutory duty of enforcing the provisions of the State Bar Act. The Board of Directors is assisted by a staff of more than 100 full-time and part-time employees under the administrative direction of an executive director who is appointed by the board and serves at the board's pleasure. The staff of the State Bar of Texas is officed in the Texas Law Center.

COMPARATIVE ANALYSIS

In order to determine the pattern of regulation of the practice of law within the United States a survey of 50 states was conducted. Survey responses indicate that all 50 states regulate the practice of law. From the standpoint of organizational patterns, 31 states, including Texas, require the membership of practicing lawyers in the State Bar. In 11 of the 31 states which require bar membership, the Bar is responsible for both the admission of lawyers to the Bar and lawyer discipline. In 16 states, both admission and disciplinary functions are performed by officers or committees appointed by the Supreme Court.

Of those states which require that lawyers be Bar members, only one requires that Bar directors be appointed by the governor. In two states lay members serve on the State Bar Board of Directors. Of the states which require Bar membership, 20 indicate that they are directly responsible to the Supreme Court of their state.

All of the states surveyed indicate that the revenue of the agency, regardless of its organizational form, is generated from fees collected. Other sources of revenue, with the exception of federal grants, were cited by four of the bars surveyed. The administrative operations, including data processing and personnel, of six state bars were found to be shared with other state agencies. The multi-state national examination is given by 34 of the states surveyed including Texas.

Regulation of the practice of law requires the performance of the basic functions of administration, testing, license issuance and enforcement. These basic functions, as performed by the State Bar of Texas, are examined in light of the criteria specified in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

The State Bar of Texas follows "preferred practices" in the management of its resources in much the same manner as other state agencies which do not come under the appropriations process and which do not have their funds in the State

Treasury. The Bar's payroll, leave and travel policies for officers and employees are substantially in accord with the appropriate provisions of the current General Appropriations Act although the Bar is not subject to the appropriations process. Areas in which the Bar does not follow "preferred practices" occur principally with regard to purchasing and leasing of supplies and equipment. Formal bids were not called for with regard to the following: 1) purchases of office equipment and furniture; 2) depository for funds of the Bar; 3) rental of copying equipment; 4) contracts for "outside printing"; 5) lease for office space; 6) printing materials and supplies; and 7) office supplies.

Areas noted during the examination which apparently have potential for improved performance are: 1) print shop operations, particularly in the area of purchased "outside printing services," and printing press productivity; 2) standards of admission; and 3) legal specialization.

Criterion 2 - Effectiveness

The State Bar of Texas is unlike other regulatory agencies in that the Bar performs only two regulatory functions: 1) enforcement; and 2) licensing. These two regulatory functions are not performed in a manner consistent with that used by other regulatory agencies. Achievement of objectives in the enforcement function could not be determined because of lack of data from the Grievance Committees.

The remaining functions, other than the normal support functions, are dissimilar to those performed by the other state regulatory agencies. Review of 13 major operating areas revealed a high degree of similarity to the programs and activities of professional private associations or societies.

Criterion 3 - Less Restrictive or Alternative Methods

The rules and statutes governing the State Bar provide for the performance of tasks by volunteers in regard to several basic regulatory functions. No standard procedure for the investigation of complaints by volunteer local grievance committees was identified in the agency review, and State Bar staff have indicated that grievances are often resolved through "jaw boning" rather than through formal action. In addition, no standard procedures were identified for the regulation of the unauthorized practice of law or for the investigation of the good moral character and fitness of Bar applicants. The absence of standard procedures for the performance of these basic regulatory functions allows for the selective application of Bar rules and standards at the local level. Virtually all states, with the exception of Texas, have established centralized grievance and investigative committees in order to limit the influence of local bias on regulatory functions. Texas is the only state in which formal grievances must be tried by jury in the absence of a lawyer's agreement to the sanctions suggested by the Bar. In all other states a lawyer is disciplined by his peers.

Limitations placed on the advertising of lawyers by State Bar rules appear to be overly restrictive in light of the experiences of other states. Many states allow electronic media advertising by lawyers with no apparent harm to the public. It is unclear how the advertising of any factual information by a lawyer might endanger

the public welfare. Laws prohibiting fraud and misleading advertising would appear sufficient to protect the public.

The State Bar of Texas is in many ways unique among bars in the United States. While State Bar rules which provide for the local control of the practice of law may be laudable, the discretionary powers granted local volunteer committees appear to allow for the selective application of State Bar Rules.

Criterion 4 - Overlap and Duplication

The members of the State Bar are not subject to regulation by any state agency. They are a self-regulating group, operating under rules promulgated under the authority of the Supreme Court. All rules promulgated by the Supreme Court must be voted on by at least 51 percent of the membership, with a simple majority vote of those voting required for passage.

The autonomy of the Bar is epitomized in a direct quotation from a response of the General Counsel of the Bar to a request for information by a member of the Sunset Advisory Commission. The statement follows:

No discipline can be assessed or imposed upon any member of the State Bar without the agreement of the accused attorney except by action of a trial court in the county of the accused attorney's residence. Furthermore, no ethical rule can be enacted without the approval and promulgation by the Supreme Court of Texas.

There are no regulatory agencies with programs or populations which overlap the programs and population of the State Bar. Therefore, there seems to be little potential for consolidating the agency with any existing state regulatory agency.

Criterion 5 - Statutory Changes

The Bar has taken an active role in recommending a variety of legislation as well as taking a position on legislation it has not recommended, but which affects its activities. In recent sessions, the Bar has opposed efforts to make entry into the profession less restrictive and these efforts have been defeated. In addition, legislation proposed to make the Bar more accountable for its revenues has also been opposed by the Bar and defeated.

Criterion 6 - Complaints

Although detailed procedures have been developed and published in a Manual for Grievance Committees for the receipt, hearing and resolution of complaints received by either the State Bar, Austin office or the local autonomous Bar District Grievance Committees, these guidelines are only advisory and the procedures and records of local grievance committees are not mandated to be disclosed to the State Bar of Texas.

A determination of the types and frequency of complaints received by the local grievance committees against attorneys could not be made since complaints

resulting in private reprimands or dismissals often remain in the private record of the local committees.

The specific investigatory expertise of grievance committee members has a direct bearing on the disposition of complaints received against attorneys residing in the Bar District served, since each member must conduct the initial determination of the validity of complaint issues against other local attorneys residing in the particular district. Thus, a single member of the Bar must make a decision concerning a complaint against a fellow professional, even though both individuals are licensed to engage in the practice of law in what may often be a small geographical and professional atmosphere.

During the review, only an estimated number of complaints filed against practicing attorneys in the state were reported by the State Bar in its self-evaluation report to the Sunset Advisory Commission. Therefore, no definite identification of specific problem areas under this criterion could be made because the data are not received by the Office of the General Counsel on a regular and timely basis. Furthermore, even in light of the clearly defined, written grievance procedures which have been mandated by policy of the State Bar Board of Directors and developed and provided by the General Counsel for use by the 40 local Bar District Grievance Committees, absolute statements regarding the nature and manner of performance of the complaint disposition function by such a fragmented and decentralized system could not be made.

Criterion 7 - Public Participation

The agency has not encouraged participation by the public in its rule-making process. Public participation is limited both by the absence of provisions for public participation in the rule-making procedure established by the Supreme Court and the contention of the General Counsel's Office that the State Bar is not subject to the Administrative Procedures Act.

Criterion 8 - Equal Employment/Privacy

The review disclosed that the Bar has filed both an Affirmative Action Plan and entered into an EEOC Conciliation Agreement to comply with federal and state requirements concerning equal employment opportunity. Steps were being taken during the review to develop a personnel manual, employee grievance procedures and specific position description statements for use by current employees, potential job applicants and the concerned public.

Criterion 9 - Conflict of Interest

A "state agency" is defined by Article 6252-9b, Section 2, V.A.C.S., as "any department, commission, board, office or other agency that: 1) is in the executive branch of state government; 2) has authority that is not limited to a geographical portion of the state; and 3) was created by the constitution or a statute of this state" (emphasis added).

According to the self-evaluation report and interviews with the Secretary of State's Office, by definition, Article 6252-9b does not apply to the State Bar. Thus, the Board of Directors and the executive director of the State Bar are not required to file individual financial statements or affidavits with the Secretary of State. There is no provision in the State Bar's rules which requires of board members or employees written disclosure of any interest, financial or otherwise, or any business transaction or professional activity which would be in conflict with the discharge of their official duties.

Criterion 10 - Open Records/Open Meetings

The Bar is not subject to the provisions of the Open Records Act and the Open Meetings Act. Generally, the meetings are limited to six or seven meetings per year, with regular monthly meetings of the State Bar Executive Committee and the members of the Supreme Court.

Criterion 11 - Federal Impact

The regulation of the practice of law, with the exception of practice before federal courts, is a task which the federal government has left to the states to perform. No federal standards govern the regulatory activities of the agency. Consequently, no federal intervention would be anticipated to result from the abolition of the State Bar. The Bar presently administers federal grants totaling approximately \$1,200,000 at the request of the Governor's Office. Were the agency to be abolished, alternative methods for administering the grant programs would be required.

CONCLUSIONS AND RECOMMENDATIONS

The review of the State Bar indicated that funds for support of the agency's activities are derived from membership fees, grants, gifts, and donations, all of which are placed in local accounts and are not currently subject to appropriation by the legislature. The Bar also is not subject to the legislative guidelines concerning uses or audit of funds, open meetings, open records, conflicts of interest or contracting and purchasing procedures required of other state agencies.

Of the array of standard regulatory powers generally exercised by a state licensing agency, the Bar actually exercises only the responsibilities for determining the character of lawyers wishing to be licensed, development of rules, and a limited role in the disciplinary process. The actual work involved in determining fitness of character is largely carried out by local committees as is the bulk of the discipline process.

Most of the effort of the Bar is directed to over 20 different programs which include the Texas Lawyers Credit Union, State Bar Book Store, Texlex (a legal research operation), the Clients' Security Fund, Texas Bar Foundation, Texas Center for the Judiciary, Insurance Trust, Criminal Defense Lawyer project, Texas Legal Protection Plan, Governmental Affairs, and the Center for Correctional Services. Revenues and expenditures for the operation of these programs totaled

\$5.2 million and \$4.7 million, respectively, for the fiscal year ending May 31, 1977. It is estimated that by 1982, the annual revenues of the Bar may approximate \$11 million.

The review of the Bar's funds management indicates that it generally operates in accordance with standard practices, although it can and does deviate from the uses of state funds required of state agencies which are under the legislative appropriation process. Areas in which the Bar does not use standard practices deal with purchasing and leasing of supplies and equipment. These areas and others noted would be corrected for the most part if the agency's funds were subject to the usual restrictions contained in the General Appropriations Act.

As stated previously, the Bar performs only two functions which are typical of the customary regulatory agency. These enforcement and licensing related functions are not performed in the customary manner. No quantitative data is held by the Bar concerning enforcement that allows for meaningful analysis. All data of this type, if retained at all, exists with the local grievance committees. Due to the lack of data, no assessment can be made of the achievements relating to discipline. This situation will continue as there is no requirement in the law or the Bar's rules which requires regular reporting of data concerning local committees' hearing of grievances. Further, the staff of the Bar has no authority nor has it sought any to undertake any type of review of the actual practices that exist within the 40 grievance committees.

While the Bar does not have final authority over the rules under which it operates, it does propose rules for promulgation by the Supreme Court. In reviewing the effects of the current rules, it was noted that several rules seemed to contain a greater degree of restrictiveness than those found in other states. Texas is the only state in which a referendum of Bar members is required in order to promulgate or amend a rule regulating the practice of law. Disciplinary rules concerning advertising also appear to restrict the practice of law in a manner inconsistent with the public welfare. Information regarding what lawyers charge is clearly important for private economic decisions by those in need of legal services. Unlimited factual advertising through press or media could reduce the cost of legal services to the consumer. Where harm from certain forms of advertising can be clearly documented, these forms could be prohibited rather than imposing a complete ban on lawyer advertising.

Rules concerning grievance procedures appear to provide artificial barriers to full public scrutiny in that all proceedings of the committees are closed to the public. No public members are appointed to the committees in Texas, although approximately 20 other states use this avenue for public participation. The local grievance committee system of lawyer discipline used in Texas is unique among the states. No other state relies so extensively on volunteer participation. Grievance procedures in virtually all other states have been centralized in order to remove local bias and to provide a standard approach which can be reviewed for its consistency of application.

The other major objective of the Bar can generally be stated as advancement of the profession. The bulk of program expenditures are directed toward those

activities which have as their purpose the advancement of the profession, the protection of the interests of its members and representation of the profession. Other agencies reviewed conducted these activities outside the state framework. For example, the medical, real estate and accounting organizations all perform similar professional activities outside the state framework. Membership in these voluntary organizations reflects a high degree of participation on the part of licensees.

Any assessment of the achievements relating to the advancement of the profession are difficult if not impossible to quantify. The difficulty of assessment raises serious questions as to the appropriateness of utilizing the authority of the state for the purposes of their support. While size and diversity may be considered a measure with which to gauge effort, it is no substitute for quantifiable goals and objectives.

To address its concerns with respect to this agency, the commission makes the following recommendations:

- 1) THE GOVERNING BODY OF THE STATE BAR SHOULD BE COMPOSED OF 15 MEMBERS, 11 OF WHOM ARE APPOINTED BY THE CHIEF JUSTICE OF THE SUPREME COURT AND FOUR OF WHOM ARE APPOINTED BY THE CHIEF JUDGE OF THE COURT OF CRIMINAL APPEALS.
- 2) FIVE MEMBERS OF THE STATE BAR BOARD SHOULD BE REPRESENTATIVES OF THE GENERAL PUBLIC, THREE OF WHOM SHOULD BE APPOINTED BY THE CHIEF JUSTICE OF THE SUPREME COURT AND TWO OF WHOM SHOULD BE APPOINTED BY THE CHIEF JUDGE OF THE COURT OF CRIMINAL APPEALS.
- 3) NO MEMBER OR EMPLOYEE OF THE BOARD SHOULD BE AN OFFICER, EMPLOYEE, OR PAID CONSULTANT OF A PROFESSIONAL ASSOCIATION ACTIVE IN THE LEGAL PROFESSION, OR BE CLOSELY RELATED TO SUCH A PERSON.
- 4) CORPORATE AUTHORITY SHOULD BE GRANTED THE BAR ONLY TO THE EXTENT NECESSARY TO ADMINISTER AND MANAGE THE TEXAS LAW CENTER.
- 5) THE SUPREME COURT SHOULD BE PROHIBITED FROM PROMULGATING RULES FOR THE PROFESSIONAL CONDUCT OF ATTORNEYS THAT RESTRICT COMPETITIVE BIDDING OR ADVERTISING, EXCEPT TO PROHIBIT FALSE, MISLEADING, OR DECEPTIVE TRADE PRACTICES BY LICENSEES.

- 6) FEES AND OTHER REVENUES SHOULD BE DEPOSITED IN THE STATE TREASURY IN A SPECIAL STATE BAR FUND AND APPROPRIATED BY THE STATE LEGISLATURE.
- 7) THE STATE BAR BOARD SHOULD BE SUBJECT TO THE PROVISIONS OF THE ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT.
- 8) THE STATE BAR BOARD MAY ADOPT AND CARRY OUT PROGRAMS IN AREAS OF VOLUNTARY SPECIALIZATION, CONTINUING EDUCATION AND COMPETENCY.
- 9) THE STATE BAR BOARD SHOULD PROMULGATE AND IMPLEMENT RULES GOVERNING THE OPERATING PROCEDURES AND REPORTING PRACTICES OF DISTRICT GRIEVANCE COMMITTEES.
- 10) MEMBERS OF GRIEVANCE COMMITTEES SHOULD BE APPOINTED BY THE CHAIRMAN OF THE STATE BAR BOARD AND ONE-THIRD OF SUCH MEMBERS SHOULD BE APPOINTED FROM THE GENERAL PUBLIC.
- 11) PROVISION SHOULD BE MADE TO PERMIT THE APPEAL OF GRIEVANCE COMMITTEE DECISIONS TO THE STATE BAR BOARD UNDER RULES ADOPTED BY THE BOARD FOR THIS PURPOSE.

STATE BOARD OF BARBER EXAMINERS

The Board of Barber Examiners was created in 1929 to regulate the occupation of barbering for the purpose of protecting the health and safety of the public. The board and its staff perform the functions of administration, examination, licensing and inspection to regulate the many facets of the barber industry in Texas.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the occupation of barbers within the United States, a survey of the 50 states was conducted to determine how this has been addressed in other states. The need to regulate the occupation of barbers is currently expressed through licensing requirements imposed by 50 of the 50 states surveyed. From the standpoint of organizational patterns, 42 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 30 states, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, 12 require that appointees be confirmed by the legislature; and membership in 31 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the legislature and membership is limited to persons who are licensed members of the occupation. Eighty-eight percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only three of 50 states indicated that these bodies were not solely supported by fees and charges of the agency.

Two of the states regulating the occupation of barbers administer national examinations. The other states develop and administer their own exam. Texas does not use a national examination. The examination is required only once in 50 of the states, including Texas. In 31 states, licensees are required to renew their licenses annually. Texas licenses for a two-year period. Enforcement activities in 45 states, including Texas, involve investigation of complaints from consumers and others engaged in the occupation of barbering. Hearings are conducted inside the regulating agency in 35 states. In Texas, hearings are conducted by the board.

States which regulate the occupation of barbers indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of barbers and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

In general, the Barber Board performs its functions adequately. However, a number of concerns have been encountered relating to the lack of data processing capability to accomplish the administration of regulatory duties of some 25,000 licensees. Areas of concern include: one-time rather than staggered renewal of licenses; lack of systematic use of information gathered through facility inspections; and manual maintenance of current and historical data related to the agency's licensees.

The agency's financial position appears sound. Personnel costs are the largest component of agency costs and the overall expenditure pattern is comparable to agencies of similar size and function. Projections of agency revenues and expenditures indicate the agency will continue to be self-supporting through 1983, given the present fee structure.

Finally, the review indicates that regulatory functions accomplished by the agency are similar to those performed more efficiently by the Texas Cosmetology Commission. Merger or consolidation of the regulation of barbers and cosmetologists appears to warrant close consideration.

Criterion 2 - Effectiveness

The agency is generally effective in meeting its statutory objectives and mandates, but improvements are possible. Turnaround time for license issuance is slow (1 to 3 weeks) and inspections of licensed facilities occurs, on the average, 2 to 3 times per year. Fees collected are accounted for and deposited in accordance with generally accepted accounting principles and examinations are currently administered on a monthly basis. As mentioned previously, a number of improvements could result from proper utilization of computer technology.

Criterion 3 - Less Restrictive or Alternative Methods

On balance, the licensing provisions of the Texas Board of Barber Examiners are only slightly restrictive. This position is remarkable given the economic incentives to restrict entry into the occupation. That impression is reinforced when Texas' practices and requirements are compared to those of other states, which uniformly have more restrictive requirements.

Possible alternatives to the present administrative structure in Texas do exist. These alternatives include one-time certification of individuals, inclusion of agency functions in an umbrella agency or consolidation with the agency regulating cosmetologists.

Criterion 4 - Overlap and Duplication

The basic principles of barbering and cosmetology are similar. However, differing emphases during school and later during on-the-job training may lead to

specialization of functions so that practices in barber or beauty shops may be quite different. The legal parameters of the occupations are essentially the same; the agencies involved perform similar functions; and the actual inspections performed in barber and beauty shops have the same objectives of protecting the public health by ensuring that licensed personnel are working in sanitary shops. Additionally, in some beauty and barber shops, identical services are provided. Theoretically, no real barriers to merging the agencies exist. Other states are beginning to combine regulation of these two occupations, and West Virginia has had combined regulation since its agency was created in 1934. Costs savings should accrue to the state should merger of the Barber Board and Cosmetology Commission be effected.

Criterion 5 - Statutory Changes

In general, the board has been active in recommending and taking positions on legislative changes which would affect agency operations. A large number of resolutions and bills have been introduced during the last three sessions relating to the topic of merger or consolidation of barber and cosmetology regulation. The board has consistently opposed such efforts. Major legislation, S.B. 86, Sixty-fourth Legislature, providing for modification of agency fee structures and changes to the definitions of barbering and cosmetology was favored by the board.

None of the proposed legislative changes were clearly in the public interest, although merger of the agencies might have yielded economies of scale and simplified governmental processes, which would, if properly structured, have been in the public interest.

Criterion 6 - Complaints

The workload of agency inspectors indicates that adequate efforts are being made to enforce the agency's statutes and rules and regulations. During the review, it was determined that the majority of the complaints processed by the agency in fiscal year 1977 concerned the inspection of new facilities and facilities operating under new management. Current strategies, however, have been developed to trace complaint processing from inception to disposition of those complaints instigated by agency inspectors and those received from persons outside the agency. No complaints were received from the general public in fiscal year 1977. Authority to act on public complaints related to barber negligence or incompetence appears warranted.

Criterion 7 - Public Participation

The Texas Barber Law does not specify public participation requirements. The board has made little additional effort to encourage participation by non-industry representatives in its activities and there are no public members on the board. However, direct sustained participation by the public in this type of agency is unlikely under usual circumstances.

Criterion 8 - Equal Employment/Privacy

The procedures of the agency in the area of affirmative action are generally adequate for a public agency of its size and scope. Although one charge of

discrimination was filed against the agency and later appealed, final action has not been taken. Although no written plan exists to ensure the rights and privacy of individuals, no evidence of violation was found in the course of the review.

Criterion 9 - Conflict of Interest

Interviews with agency staff indicate that no substantive problems exist in the area of conflicts of interest. However, no formal procedures exist to ensure that conflicts of interest which may have occurred in the past will not occur in the future. Modification of certain provisions of the barber statute may be warranted to avoid problems in the future.

Criterion 10 - Open Records/Open Meetings

The Board of Barber Examiners appears to be in compliance with the Open Records Act and the Open Meetings Act.

Criterion 11 - Federal Impact

The licensing of occupations is a function which the federal government has left to the states to initiate. No federal standards were identified which would affect the licensing of barbers in the State of Texas if the agency is abolished.

Federal funds are not involved in the administration of the Act as administration costs related to the licensing and regulatory functions of the board are financed through the collection of fees. Federal funding relative to the financing of tuition costs of students in barber schools or curriculums would not be affected if the agency were abolished and the function discontinued.

CONCLUSIONS AND RECOMMENDATIONS

The review of the State Board of Barber Examiners has centered on the general areas of administration, examination, licensing and enforcement to assess the result of the exercise of these regulatory powers on the objectives conceived under the statute. Should the legislature choose not to abolish the agency, the evaluation has revealed several areas where modification of current practices is warranted.

As noted throughout the report, it is clear that the agency is similar in history, target population and function to the Texas Cosmetology Commission. Attempts to reduce the apparent duplication of costs and efforts related to regulation of two similar groups have led to consideration of merger of the agencies.

Considering the Barber Board separately, agency operations are conducted in a satisfactory manner. It is evident, however, that utilization of data processing equipment could greatly improve agency performance.

In relation to licensing, the agency has developed a workable manual issuance and renewal system to renew shop licenses (approximately 6,000) in July of odd-

numbered years and barber certificates (approximately 17,500) in November of odd-numbered years. Although the agency has statutory authority to stagger the renewal system, it has deemed manual conversion too difficult. Current practices require the hiring of seasonal help and a turnaround time for license renewal of one to three weeks.

The function of the renewal is two-fold: 1) collect fees to sustain agency operations; and 2) protect the public health by predicating license renewal upon the licensee's acquisition of a "health certificate" signifying that the licensee is free from any contagious disease.

During the staff review and subsequent Sunset Commission discussion a less costly and less restrictive alternative to the renewal system has been encountered. One-time certification, contingent upon passing an examination, would provide assurance that an individual is competent to practice barbering. Under this system, no renewal of the certificate would be required. The certification process would greatly reduce the workload of the board, thereby reducing funding requirements. General health concerns can be better addressed through regular inspections of the facilities where barbers work. The acquisition of a health certificate every two years may provide assurance that the individual is free from contagious disease one day out of the two-year period, but offers little systematic assistance in reaching the goal of protecting the public health.

Although concerns have been encountered in the agency's ability to respond to public complaints relating to licensee incompetence or negligence, the overall enforcement function of the agency operates in a satisfactory manner. Inspections of the agency's 6,500 licensed locations occur two to three times per year with some 400 sanitation complaints processed in FY 1977. The purpose of the inspections is based on the protection of the public health and current procedures do appear to minimize possible health hazards present in barbering establishments. The "protection of the public health," however, is a mandate of another state agency, the Texas Board of Health. Original statutes regulating both barbering and cosmetology created close relationships between the Board of Health and the agencies regulating these occupations. Currently, the Board of Health promulgates the sanitation rules and regulations enforced by the Barber Board. It does appear that the focus of public health protection resides with the Board of Health and administration of health-related statute provisions could be better accomplished through its agency structure.

In addition to barber shops, the Barber Board also regulates the conduct of private barber schools and colleges. There are approximately 40 such schools in the state. A large number of statutory provisions are devoted to the regulation of these schools in current barber statutes. During the course of the review and subsequent Sunset Commission discussion, an alternative to the Barber Board regulation of private barber schools has been encountered. Another state agency, the Texas Education Agency (TEA) currently regulates proprietary schools in the state. The assumption of the regulation of the barber schools by the TEA appears warranted. This modification would continue to protect the interests of those individuals attending barber schools and help assure the objective administration of any statutory provisions relating to these private entities. Corollary modifications should be made relating to the Barber Board composition to substitute public

members for the two school representatives currently serving on the board. Additionally, the board should no longer be required to determine educational levels of applicants for certification, other than completion of the seventh grade, prior to taking the exam.

A final concern relates to the continued regulation of certain peripheral occupations related to barbering. These occupations include: manicurists, barber technicians and wig specialists (no wig-related licenses have yet been issued by the Barber Board). The number of the licensees in these occupations make up less than one percent of the individuals licensed to practice any phase of barbering. It is felt that regulatory efforts should be prioritized to impact the general haircutter or barber, not the occupation ancillary to the practice of barbering.

The foregoing suggests that substantial structural and functional changes in regulating the occupation of barbering are needed. To address these changes, the commission makes the following recommendations:

THE STATE BOARD OF BARBER EXAMINERS SHOULD BE MAINTAINED. HOWEVER, THE REGULATION OF BARBERS SHOULD BE MODIFIED AS FOLLOWS:

- 1) PERSONS PRACTICING OR ENTERING THE PRACTICE OF BARBERING SHOULD BE REQUIRED TO OBTAIN A CERTIFICATE, VALID INDEFINITELY
- 2) FUNCTIONS RELATING TO THE REGULATION OF BARBER SHOPS SHOULD BE TRANSFERRED TO THE TEXAS BOARD OF HEALTH
- 3) THE COMMISSION SHOULD NO LONGER REGULATE THE FOLLOWING:
 - a) PRIVATE BARBER SCHOOLS
 - b) BARBER INSTRUCTORS
 - c) MANICURISTS
 - d) WIG SPECIALISTS
- 4) THE COMPOSITION OF THE COMMISSION SHOULD BE MODIFIED TO REFLECT ONLY THE REGULATED PORTIONS OF BARBERING AND SHOULD INCLUDE ONE-THIRD PUBLIC MEMBERSHIP
- 5) THE DIVISION OF PROPRIETARY SCHOOLS AND VETERANS EDUCATION OF THE TEXAS EDUCATION AGENCY SHOULD ASSUME THE RESPONSIBILITY OF REGULATION OF PRIVATE BARBER SCHOOLS
- 6) ADDITIONALLY, BARBERING STATUTE MODIFICATIONS SHOULD INCLUDE:

- a) DELETION OF BARBER SCHOOL HOUR PRE-REQUISITES TO TAKE CERTIFICATION EXAM
 - b) REPLACEMENT OF RECIPROCAL LICENSURE WITH CERTIFICATION BY ENDORSEMENT
 - c) REVISION OF COMPLAINT PROCESSING PROCEDURES TO ALLOW COMPLAINT TRACKING AND COMPLAINANT NOTIFICATION
 - d) OMISSION OF ALL PROVISIONS WHICH HAVE THE EFFECT OF RESTRICTING ADVERTISING AND COMPETITIVE BIDDING
 - e) ADDITION OF CONFLICT OF INTEREST PROVISIONS WHICH APPLY TO COMMISSION AND BOARD OF HEALTH MEMBERS AND EMPLOYEES WHO ADMINISTER OR ENFORCE THE ACT
 - f) ADDITION OF LANGUAGE RELATING TO BARBER INCOMPETENCE OR NEGLIGENCE AS GROUNDS FOR SUSPENSION OR REVOCATION OF CERTIFICATE
- 7) FUTURE FUNCTIONS OF THE BARBER BOARD SHOULD BE IMPROVED THROUGH THE USE OF COMPUTER TECHNOLOGY

BATTLESHIP TEXAS COMMISSION

The Battleship Texas is the oldest battleship in the United States and the only American-built battleship of its kind in existence. Upon retirement from the U.S. Navy fleet, the State of Texas accepted the responsibility for preserving the ship as a memorial and museum. The Battleship Texas Commission was created in 1947 (Article 6145-2, V.A.C.S.) and is responsible for the preservation and operations of the ship which is berthed near the San Jacinto Battleground. These operations have been financed primarily from admission fees and ship store sales. The ship has been operated as a museum and has been open to the public since April 21, 1948.

COMPARATIVE ANALYSIS

To determine the pattern of supervision of retired U.S. Navy ships in the United States, a survey was conducted of nine facilities to determine how supervision is carried out by other states. Three, including the Battleship Texas Commission, function under independent boards or commissions whose members are appointed by the state's chief executive. One facility is owned by a city and another is owned by an individual. Three facilities are owned by corporations and one operation is supervised by a governmental department charged with multiple functions.

A majority of the states, including Texas, indicate that the revenue source for the facility, regardless of organizational arrangement, is obtained from admission fees collected. Only two states reported that their ships are not primarily supported by admission fees.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

The review indicates that overall the resources allocated for operation of the ship are used in an efficient manner and that the number of paid admissions is significantly higher for the Texas than for comparable facilities. However, the review did reveal several problems which impact the efficiency of operations. In the area of admission fees which provide the major revenues for the Battleship Texas Commission, there is a serious flaw in the procedures used to ensure that all funds received are actually recorded. While it is reasonably simple to account for tickets sold, there is no method currently used to guarantee that the number of actual tickets accounted for corresponds to the number of persons who paid admission fees and boarded the ship. Additionally, the agency makes weekly deposits of revenues which reduces the amount that could be earned in interest and increases the chances of losses by robbery or theft.

The agency operates under statutory requirements that revert ending balances in excess of \$300,000 to the State Treasury.

To date only limited amounts have been reverted but if recent trends in revenues and operating expenditures continue, roughly a half million dollars over this limit will be generated in the next five years. In light of the fact that the commission has no long term plan for major renovation projects, the pressures to preserve these revenues for use could force ill-timed and unnecessary expenditure of funds.

While not a major concern, the review indicates that the commission's policies and practices regarding reimbursement for mileage deviated from general state practice in that the commission provides a lump sum which is not based on documented mileage. Records and policies regarding sick leave and vacations for employees working at the ship also deviated substantially from those required of other state agencies. The records are informal and personnel policies and actions, such as the granting of sick leave and eligibility for paid vacation, are left up to the Captain's subjective judgment. Employees are not required to prepare time reports of any kind.

Criterion 2 - Effectiveness

The objectives pursued by the commission appear to be consistent with the commission's statutory mandates. The activities that the agency has undertaken in order to achieve the objectives appear reasonable. However, certain problems are apparent in relation to objectives of promotion and preservation. Promotion receives significantly less emphasis than the objectives of administration and preservation. Opinions from many administrators responsible for operations similar to the Battleship indicate that the major factor in the success of this type of agency is the proper use of promotional materials and advertising. Strengthening of efforts in the area of administration and promotion could result in more funds being generated which would enhance the agency's preservation efforts. At present, the ship is being maintained but major improvements need to be made to prevent serious deterioration in the future.

Criterion 3 - Less Restrictive or Alternative

Since the Battleship Texas Commission performs no regulatory functions and was not established for the purpose of protecting the public, this criterion was not considered applicable to the Battleship Texas Commission and was not included as an element of the review.

Criterion 4 - Overlap and Duplication

No actual duplication of services has been found, although the target populations of the Battleship Texas Commission and the San Jacinto State Park do overlap. The Parks and Wildlife Department provides some services to the commission at no charge. There are at least two other state agencies which provide some services similar to those provided by the Battleship Texas Commission: the Parks and Wildlife Department and the Texas Historical Commission.

Criterion 5 - Statutory Changes

The statutory changes regarding the agency cannot be judged to have clear public benefits. These changes are generally designed to allow the commission more flexibility in its operations and, to a degree, increase the agency's ability to achieve its objectives.

Criterion 6 - Complaints

The agency's documents indicate that no complaints have been filed. Any complaints which might be received would relate to the manner in which the Battleship Texas is operated and its availability to the public. Since no complaints of this nature have been discovered, no judgment can be made regarding the agency's handling of complaints. One complaint was filed with the department of the Navy regarding the ship's condition in 1971. Follow-up on this complaint was made by that department.

Criterion 7 - Public Participation

The enabling statutes require public participation in policy-making matters of the Battleship Texas Commission through the appointment of two public members of the commission. The other members of the commission are appointed from specific organizations which have interests in preservation of historical artifacts and information. The chairman of the commission is one of the general public appointees. Through the efforts of the commission, the chairman, and the staff of the commission, numerous donations of materials and services have been secured in support of the agency's preservation objectives.

Criterion 8 - Equal Employment/Privacy

The Battleship Texas Commission does not, according to the self-evaluation report submitted by the agency, have an affirmative action plan. The report does contain a general statement that "employees are hired without regard to race, creed or color." No reports have been filed with the Governor's Office of Personnel and Equal Employment Opportunity since 1974.

Criterion 9 - Conflict of Interest

A member of the Battleship Texas Commission is required to file affidavits with the Secretary of State if he "has, acquires or divests himself of a substantial interest in a business entity which is subject to regulation by a regulatory agency, or owns substantial interest in a business entity doing business with any state agency." Four of the nine members of the commission have filed affidavits indicating their interests in businesses regulated by the state or their involvement in businesses dealing with state agencies. The Captain of the Ship, as "executive head of a state agency," is required to file a financial statement with the Secretary of State. The Captain reports that he has not filed a financial statement.

Criterion 10 - Open Records/Open Meetings

It appears from the review that the Battleship Texas Commission has complied with the provisions of the Open Records Act. However, the commission has not complied with provisions of the Open Meetings Act.

Criterion 11 - Federal Impact

The Battleship Texas Commission is subject to federal regulation in two ways. First, the state is under obligation to the U.S. Navy to maintain the ship according to standards established by the U.S. Navy. Second, the Battleship Texas is eligible for federal grants because it is listed in the National Register of Historic Places. These grants are administered through the Texas Historical Commission. These responsibilities of the Battleship Texas Commission could be carried out under other organizational structures without jeopardizing federal funds or creating conflicts with the U.S. Navy regarding maintenance of the ship.

CONCLUSIONS AND RECOMMENDATIONS

This review has centered on three major components of the commission's operations of the Battleship Texas as a museum. First, the review of administrative aspects of the commission's activities indicated several weaknesses in the commission's accounting and cash flow practices and personnel policies. It was also noted that the agency's funds are maintained outside the Treasury and are not subject to legislative appropriation. Second, in the area of preservation of the ship, it was noted that major efforts were initiated by the commission in 1955 and in 1971. However, it appears that little long-range planning and scheduling of major repairs and restorations have taken place. Further, funding available to the commission for these purposes has frequently not been utilized. Third, it appears that emphasis on promotional activities is increasing but has been less than optimal in previous years. The concerns enumerated are addressed in the following recommendation:

ALL REVENUES COLLECTED BY THE BATTLESHIP TEXAS COMMISSION SHOULD BE PLACED IN THE STATE TREASURY. IN ADDITION, A SPECIAL FUND SHOULD BE ESTABLISHED IN THE STATE TREASURY WHEREBY EXCESS REVENUES ABOVE THE OPERATING COSTS OF THE COMMISSION WOULD BE DESIGNATED FOR MAJOR SHIP REPAIRS ONLY.

BURIAL ASSOCIATION RATE BOARD

In 1939, the Forty-sixth Legislature authorized the Board of Insurance to supervise burial associations and to administer the laws regulating this area of insurance. To assist in this task, in 1947 the Fiftieth Legislature created the Burial Association Rate Board. The board is charged with gathering data to be used in the determination of rates, and with developing a schedule of adequate minimum and maximum rates which could be charged by burial associations. Because of the nature of the Rate Board and its use of personnel of the Board of Insurance, the agency has no staff of its own. Due to the limited operations of this agency, findings are presented below as a unit rather than on a criterion-by-criterion basis.

REVIEW OF OPERATIONS

The review of the Burial Association Rate Board revealed pertinent findings which can be grouped into three categories: 1) action of the board; 2) characteristics of the burial associations; and 3) regulatory role of the State Board of Insurance.

With respect to action of the Rate Board, when the board was created in 1947 there was a compelling need to establish adequate schedules for burial insurance premiums since, in most cases, rates were not sufficient to cover policy requirements. Within a month after its creation, the agency had promulgated rates for new burial association policies. In addition, the Rate Board developed reserve tables for burial associations which have been adequate for use with other types of insurance. However, it was not until 1964, seventeen years after it was created, that the Rate Board addressed the crucial question of rates for policies written before 1947, many of which were inadequate to accumulate the necessary funds to pay claims. The last action of the board took place in 1964, at which time it adopted a resolution aimed at assuring actuarial solvency of burial associations by 1975.

Relating to characteristics of burial associations, the number of associations has been decreasing since the year that the Rate Board was created. This decrease has been due in part to the limitation of burial association policies to no more than \$150 deliverable in services and merchandise. In 1947, there were 424 burial associations in Texas; by 1964 this number had dropped to 218; and only 55 burial associations were still active in 1978. Furthermore, because the Fifty-seventh Legislature prohibited the formation of any new burial associations, this number can only grow smaller.

With regard to the regulatory role of the State Board of Insurance, burial associations are regulated much as other types of insurance. Burial association assessments and financial statements are made annually to the Board of Insurance, rate changes for burial associations must be filed with and approved by that agency, and the Board of Insurance also verifies burial association annual reports through financial audits. However, the Burial Association Rate Board sets minimum and maximum rates within which each burial association's premiums must be established before being granted rate approval by the Board of Insurance.

CONCLUSIONS AND RECOMMENDATIONS

From the foregoing, the commission concludes that the Burial Association Rate Board is no longer needed, since all necessary regulation, including rate setting, can be carried out by the State Board of Insurance. Therefore, the following recommendation is offered:

**THE BURIAL ASSOCIATION RATE BOARD SHOULD BE ABOLISHED
AND ITS FUNCTIONS TRANSFERRED TO THE STATE BOARD OF
INSURANCE.**

TEXAS COSMETOLOGY COMMISSION

Since 1953, the cosmetology industry in Texas has been regulated by a state licensing agency. Originally, the State Board of Hairdressers and Cosmetologists administered licensing statutes requiring minimal education, cosmetology training, examination, licensure and regular renewal of licenses. Since 1971, the Texas Cosmetology Commission has operated as the licensing agency and currently regulates approximately 100,000 persons and establishments through 18 different types of licenses. The need for regulation has primarily been based on the protection of the public health and welfare.

COMPARATIVE ANALYSIS

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

The need to regulate the occupation of cosmetology is currently expressed through licensing requirements imposed by all of the 50 states surveyed. From the standpoint of organizational patterns, 19 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 31 states the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, 13 require that appointees be confirmed by the legislature; and membership in 27 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the legislature and membership is not limited to persons who are licensed members of the occupation. Eighty-eight percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 2 of 50 states indicated that these bodies were not solely supported by fees and charges of the agency.

Twenty-six of the states regulating the occupation of cosmetology administer national examinations. The other states develop and administer their own exam. Texas does not use a national examination. The examination is required only once in 50 of the states, including Texas. In 31 states, licensees are required to renew their licenses annually. Texas licenses for a two-year period. Enforcement activities in 45 states, including Texas, involve investigation of complaints from consumers and others engaged in the occupation of cosmetology. Hearings are conducted inside the regulating agency in 39 states. In Texas, hearings are conducted by the commission.

States which regulate the occupation of cosmetology indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of cosmetology and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

The Texas Cosmetology Commission performs its operations in an efficient manner and has consistently generated more revenue than expenditures since its creation, effecting considerable savings over appropriated levels in recent years. However, projections indicate the agency may not be self-supporting by the 1982-83 biennium given the present fee structure.

Two areas of concern relate to the effects of an uneven biennial renewal process and lack of productive use of data collected concerning the beauty schools and colleges. Recent agency efforts should ameliorate these concerns.

Finally, the review indicates that regulatory functions accomplished by the agency are similar to those performed by the Board of Barber Examiners. Merger or consolidation of the regulation of barbers and cosmetologists appears to warrant close consideration.

Criterion 2 - Effectiveness

The agency appears to effectively meet its statutory mandates and objectives. Examinations are conducted daily for 40-50 applicants; per exam turnaround time for license issuance is minimal; and inspections of licensed facilities occur five to six times per year. Although duties of the commissioners are accomplished with few yearly meetings, the composition of the commission appears to favor the beauty school industry.

Criterion 3 - Less Restrictive or Alternative Methods

In comparison with other states, Texas appears less restrictive than most. Although the number of required school hours has increased, this change has been made primarily for the purposes of reciprocity. Only three other states set lower educational levels for entry than Texas. In general, the educational avenues of the state system offer adequate flexibility and do not appear to unduly restrict entry into the occupation.

Possible alternatives to the present administrative structure in Texas do exist. These include substitution of an apprenticeship for school hours, transfer of agency functions to an umbrella agency or consolidation with the agency regulating barbers.

Criterion 4 - Overlap and Duplication

The basic principles of barbering and cosmetology are similar. However, differing emphasis during school and later during on-the-job training may lead to specialization of functions so that practices in barber and beauty shops may be quite different. The legal parameters of the occupations are essentially the same; the agencies involved perform similar functions; and the actual inspections performed in barber and beauty shops have the same objectives of protecting the public health by ensuring that licensed personnel are working in sanitary shops. Additionally, in some beauty and barber shops, identical services are provided. Theoretically, no real barriers to merging the agencies exist. Other states are beginning to combine regulation of these two occupations, and West Virginia has had combined regulation since its agency was created in 1934. Cost savings should accrue to the state should merger of the Barber Board and Cosmetology Commission be effected.

Criterion 5 - Statutory Changes

In general, it appears that the commission has strongly advocated passage of legislation only once. During the Sixty-fourth Legislature, it is clear from agency records that the commission took an active role in the passage of a bill (H.B. 255 or S.B. 86) which would protect the cosmetologists' ability to cut hair. General trends indicate that the commission is most amenable to industry proposals and resistant to proposals which might restrict a cosmetologist's ability to make an adequate living.

It is also clear that during the last four sessions a good deal of legislative attention has been given the relationship between barbers and cosmetologists. (Of 22 proposals made, 10 have dealt with this relationship.) Generally, the legislation proposed has attempted to accomplish one of two things: 1) make a final and definite distinction between the barbers and cosmetologists, or 2) merge the two licensing agencies, thereby creating one target population and a more economical and efficient method of licensing the similar groups. One such distinction was held unconstitutional and the last definition in this direction is rather circular in that "barbers" are licensed by the Board of Barber Examiners and "cosmetologists" are licensed by the Cosmetology Commission. There is little additional decisive information available from the current statutes.

Aside from the prospect that merger of the agencies might be more economical and therefore in the public interest, only one bill appears to have been of potential benefit to the public. House Bill 1966, introduced during the Sixty-fourth Legislature, would have required that the commission establish the public need for additional school facilities before their licensure could be effected. This bill did not pass and seems to have received little consideration by the commission.

Criterion 6 - Complaints

The workload of the inspectors indicates that adequate efforts are being made to enforce the agency's statutes and rules and regulations. However, agency

records do not allow adequate tracing from inception to disposition of complaints or inquiries filed by persons other than inspectors. Attempts have recently been made to rectify the documentation problems encountered in the review of the agency's complaint processing system.

An area of concern exists in the agency's ability to respond to public complaints relating to services received in cosmetology establishments. Of the estimated 50-75 public complaints received in FY 1977, nine were referred to the Attorney General's office and action on those complaints cannot be adequately documented.

Although the judicious handling of public complaints can be difficult, a considerable number of public inquiries or complaints are received each year. The general nature of these complaints relates to negligent or incompetent services rendered in cosmetology establishments. Currently, the agency has no authority for action in such cases.

Criterion 7 - Public Participation

The agency feels the general public has shown "a distinct disinterest" in the operations of the commission. It is likely that members of the public know little of the commission unless they must resort to use of its complaint procedures. It is evident that little general public input is achieved through current procedures used to publicize hearings or meetings. These procedures appear to comply with applicable laws and any increase in activity in this area could result in additional expense to the commission.

Public interests can be represented through the public members of the commission. However, the attendance record of the two public members does create concern that this is being accomplished.

Criterion 8 - Equal Employment/Privacy

Review of agency operations in relation to affirmative action and equal opportunity employment indicates the agency is performing adequately in this area. The only area of concern is the over-utilization of males in the administrative area. Although no written plan exists to ensure the rights and privacy of individuals, no evidence of violation was found in the course of the review.

Criterion 9 - Conflict of Interest

Review of agency activities in relation to applicable conflict of interest statutes reveals that the commission is in compliance. However, certain areas of concern do remain.

In relation to administrative practices in effect to insure agency compliance with Section 10, Article 8451a, V.A.C.S., the following concerns are evident. Material provided employees, while related to the conflict of interest issue has not been updated. Employee application procedures do not insure adequate screening

of persons with possible industry attachment. Membership by employees in industry associations is allowed even though a strict interpretation of Section 10, Article 8451a, V.A.C.S. appears to prohibit such affiliation.

The above administrative concerns are currently under review by the executive director and steps have been taken to improve the employee application system.

Criterion 10 - Open Records/Open Meetings

Commission activities in regard to Open Records appear to be adequate. The withholding of private school rosters, however, does not appear to be under the definition of confidential materials in Article 6252-17a, V.A.C.S.

Although little public interest is generated by the procedures followed by the commission to publicize its meetings, such procedures do comply with applicable statutes.

Criterion 11 - Federal Impact

The licensing of occupations is a function which the federal government has left to the states to initiate. Although the rulings of the Food and Drug Administration can impact the cosmetics industry, no federal standards have been identified which would affect the licensing of cosmetologists in the State of Texas if the agency is abolished or reorganized.

Federal funds are not involved in the administration of the Act as administration costs related to the licensing and regulatory function of the commission are financed through the state appropriations acts.

CONCLUSIONS AND RECOMMENDATIONS

The review of the Texas Cosmetology Commission has centered on the general areas of administration, examination, licensing, and enforcement to assess the result of the exercise of these regulatory powers on the objectives conceived under the statute. Should the legislature choose not to abolish the agency, the evaluation has revealed several areas where modification of current practices is warranted.

As noted throughout the report, it is clear that the agency is similar in history, target population and function to the Board of Barber Examiners. Attempts to reduce the apparent duplication of costs and efforts related to regulation of two similar groups have led to consideration of merger of the agencies.

Considering the Cosmetology Commission separately, agency operations are conducted in an efficient and effective manner. Certain administrative concerns relating to fluctuations of revenue generation during the biennial renewal period, lack of public complaint response and tracking, and employee affiliation with the cosmetology industry have been addressed by the agency.

In relation to licensing, the agency has developed an efficient, computer assisted process to collect fees and issue licenses to the commission's 80,000 individual licensees on a staggered biennial basis. The function of the renewal is two-fold: 1) collect fees to sustain agency operations; and 2) protect the public health by predicating license renewal upon the licensee's acquisition of a "health certificate" signifying that the licensee is free from any contagious disease.

During the staff review and subsequent Sunset Commission discussion, a less costly and less restrictive alternative to the renewal system was developed. One-time certification, contingent upon passing an examination, would provide assurance that an individual is competent to practice cosmetology. Under this system, no renewal of the certificate would be required. The certification process would greatly reduce the workload of the commission, thereby reducing funding requirements. General health concerns can be better addressed through regular inspections of the facilities where cosmetologists work. The acquisition of a health certificate every two years may provide assurance that the individual is free from contagious disease one day out of the two-year period, but offers little systematic assistance in reaching the goal of protecting the public health.

Although concerns have been encountered in the agency's ability to respond to public complaints relating to licensee incompetence or negligence, the overall enforcement function of the agency operates in a satisfactory manner. Inspections of the agency's 15,000 licensed locations occur five to six times per year and some 1,200 - 1,400 sanitation violations are processed each year. The purpose of the inspections is based on the protection of the public health and current procedures do appear to minimize possible health hazards present in cosmetology establishments. The "protection of the public health", however, is a mandate of another state agency, the Texas Board of Health. Original statutes regulating both barbering and cosmetology created close relationships between the Board of Health and the agencies regulating these occupations. Until 1971, the Board of Health promulgated the sanitation regulations enforced by the agency regulating cosmetologists. It does appear that the focus of public health protection resides with the Board of Health and administration of health-related statute provisions could be better accomplished through its agency structure.

A number of concerns have been encountered relating to the apparent agency favoritism of private beauty school operations through administrative procedures and commission composition. Additionally, considerable agency staff time is expended in gathering information regarding the schools. Although agency procedures have been improved to receive and store this information, the material appears to be of little utility. It should also be noted that another agency currently regulates proprietary schools in the state. The transfer of the regulation of the cosmetology schools to the Division of Proprietary Schools and Veterans Education of the Texas Education Agency appears warranted. This transfer, not dependent on statutory authorization, should protect the interests of those individuals attending private cosmetology schools and reduce the workload of the Texas Cosmetology Commission. Public cosmetology schools can continue to operate under the direction of the various districts in which they are located. The membership of the commission should be modified to reflect the deletion of this aspect of cosmetology from the commission's purview. The commission should no longer be required to determine applicant educational levels, other than completion of the seventh grade, prior to taking the exam.

A final concern relates to the continued regulation of certain peripheral occupations related to cosmetology. These occupations include: wig specialists, manicurists, hairweavers, shampooists, facial specialists, etc. The number of licensees in these occupations make up less than three percent of the individuals licensed to practice any phase of cosmetology. It is felt that regulatory efforts should be prioritized to impact the general haircutter or hairstylist, not the occupations ancillary to the practice of cosmetology.

The foregoing suggests that substantial structural and functional changes in regulating the occupation of cosmetology are needed. To address these changes, the commission makes the following recommendations:

THE TEXAS COSMETOLOGY COMMISSION SHOULD BE MAINTAINED. HOWEVER, THE REGULATION OF COSMETOLOGISTS SHOULD BE MODIFIED AS FOLLOWS:

- 1) PERSONS PRACTICING OR ENTERING THE PRACTICE OF COSMETOLOGY SHOULD BE REQUIRED TO OBTAIN A CERTIFICATE WHICH WOULD BE VALID UNTIL REVOKED
- 2) FUNCTIONS RELATING TO THE REGULATION OF COSMETOLOGY SHOPS AND WIG SALONS SHOULD BE TRANSFERRED TO THE TEXAS BOARD OF HEALTH
- 3) THE COMMISSION SHOULD NO LONGER REGULATE THE FOLLOWING:
 - a) PRIVATE OR PUBLIC COSMETOLOGY OR WIG SCHOOLS
 - b) COSMETOLOGY OR WIG INSTRUCTORS
 - c) MANICURISTS
 - d) WIG SPECIALISTS
 - e) SPECIALTY OCCUPATIONS
 - f) SPECIALTY SALONS
- 4) THE COMPOSITION OF THE COMMISSION SHOULD BE MODIFIED TO REFLECT ONLY THE REGULATED PORTIONS OF COSMETOLOGY AND SHOULD INCLUDE ONE-THIRD PUBLIC MEMBERSHIP
- 5) THE DIVISION OF PROPRIETARY SCHOOLS AND VETERANS EDUCATION OF THE TEXAS EDUCATION AGENCY SHOULD ASSUME THE RESPONSIBILITY OF REGULATION OF PRIVATE COSMETOLOGY AND WIG SCHOOLS

- 6) ADDITIONALLY, COSMETOLOGY STATUTE MODIFICATIONS SHOULD INCLUDE:
- a) DELETION OF COSMETOLOGY SCHOOL HOUR PREREQUISITES TO TAKE CERTIFICATION EXAM
 - b) REPLACEMENT OF RECIPROCAL LICENSURE WITH CERTIFICATION BY ENDORSEMENT
 - c) REVISION OF COMPLAINT PROCESSING PROCEDURES TO ALLOW COMPLAINT TRACKING AND COMPLAINANT NOTIFICATION
 - d) OMISSION OF ALL PROVISIONS WHICH HAVE THE EFFECT OF RESTRICTING ADVERTISING AND COMPETITIVE BIDDING
 - e) ADDITION OF CONFLICT OF INTEREST PROVISIONS WHICH APPLY TO COMMISSION AND BOARD OF HEALTH MEMBERS AND EMPLOYEES WHO ADMINISTER OR ENFORCE THE ACT
 - f) ADDITION OF LANGUAGE RELATING TO COSMETOLOGIST INCOMPETENCE OR NEGLIGENCE AS GROUNDS FOR SUSPENSION OR REVOCATION OF CERTIFICATE

BOARD OF COUNTY AND DISTRICT ROAD INDEBTEDNESS

The Board of County and District Road Indebtedness (BCDRI) was created in 1932 by the Forty-second Legislature, Third Called Session. The agency was originally established for the primary purpose of extending state aid to liquidate certain road indebtedness incurred by counties and road districts for state-designated highways. While all eligible debt was repaid in 1977, the BCDRI continues to perform two functions added to its operations over its 46-year life span. First, the board serves as paying agent for various county and road district bond issues. Second, the agency oversees the distribution of an annual \$7.3 million state grant to counties for the construction and improvement of county "lateral" roads. Funds for all BCDRI operations have historically been provided from the agency's statutory allocation of up to one quarter of the state gasoline tax.

Because of the limited and mechanical operations of the agency, most of the evaluation criteria set out in the Sunset Act cannot be reasonably applied to the board. As a result, the review centered only on Criteria 1, 2, and 4. Findings under these criteria are presented below.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

Both the paying agent and lateral road grant functions performed by the board are generally carried out efficiently. Procedural steps are simple and straightforward, proper accounting techniques are used, and funds are distributed in a timely manner. It was noted, however, that county expenditure reports under the lateral road grant program are checked only for completeness and arithmetical accuracy, with no steps being taken to verify that amounts have been accounted for properly and audited by the county.

A second concern centered on the agency's method of financing. All operations of the board have historically been financed from the constitutional County and Road District Highway Fund. Since fiscal year 1976, it is estimated that some \$200,000 in unused interest is annually accruing to the fund. Previously, interest dollars were used largely to support the administrative expenses of the agency. However, such expenditures were eliminated by the transfer of all remaining staff functions to existing personnel of the Treasury Department at the beginning of the 1976-77 biennium.

Criterion 2 - Effectiveness

Over time, the BCDRI has operated in three areas: 1) repayment of counties' eligible bonded indebtedness; 2) the lateral road grant program; and 3) paying agent for county obligations. With respect to the repayment function, all board objectives in this area were accomplished in 1977 with the final payment of the state's share of eligible county indebtedness.

The review of the lateral road grant program indicated that the \$7.3 million annually distributed among counties is an arbitrary amount allocated on the basis of county area, lateral road mileage, and rural population. While the \$7.3 million figure is arbitrarily determined, the establishment of this fixed level of county road support represents a shift in the methods chosen by the state to support local transportation needs. By setting a constant grant amount, a growing position of gasoline tax revenues were freed up for the development of the farm-to-market system. This road network has helped to ease the burden on county transportation systems through the state assumption of county roads.

Looking at the formula for distribution of lateral road funds, it was seen that formula factors are similar to those used by the state and federal governments to allocate funds under various programs. It was noted, however, that the factors and their weights, established in 1951, discriminate against urban counties in favor of rural areas. Given the growing transportation and financing problems in urban counties today, this rural emphasis merits reconsideration.

The review of the board's paying agent service indicated that the Treasury Department is statutorily authorized to perform this same function. In handling its county obligations, the department charges a commission set out in law; on the other hand, the BCDRI has traditionally performed its paying agent function free of charge. Considering the state policy followed by the Treasury Department, future continuance of free fiscal agent services by the board would appear to be questionable.

Criterion 4 - Overlap, Duplication, and Consolidation

The review under this criterion showed that current operations of the three-member board are limited and largely mechanical in nature, suggesting that such functions could be assumed by an administrative official such as the State Treasurer. Additionally, staff operations were transferred to the Treasury Department in 1976, making further consideration of administrative consolidation unnecessary.

CONCLUSIONS AND RECOMMENDATIONS

Through the review, it was seen that the operation to reimburse counties for eligible highway debt ended in fiscal year 1977 with the last payment for all assumed obligations. While the board performs a mechanical paying agent function through staff of the Treasury Department, the only remaining substantive effort currently carried out by the agency is the \$7.3 million annual grant program for county lateral roads.

The present features of this final program were set by the legislature in 1951. Today, this annual road grant to counties provides limited assistance for county roads which "have been and will continue to be beneficial" to the state as a whole. Moreover, the old formula used to distribute these funds allocates grant dollars inequitably among rural and urban counties.

Based on the foregoing, the commission makes the following recommendation:

THE BOARD OF COUNTY AND DISTRICT ROAD INDEBTEDNESS AND ITS LATERAL ROAD GRANT PROGRAM SHOULD BE ABOLISHED. IN PLACE OF THE ROAD GRANT PROGRAM, THE LEGISLATURE SHOULD AMEND THE LAW RELATING TO MOTOR VEHICLE REGISTRATION FEES TO ALLOW COUNTIES TO RETAIN UP TO \$300,000, PLUS ONE PERCENT THEREAFTER, OF REVENUES COLLECTED. COUNTIES IN WHICH THIS INCREASE IN THE REGISTRATION FEE RETENTION LIMIT WOULD NOT COMPENSATE FOR LATERAL ROAD GRANT LOSSES SHOULD BE HELD HARMLESS BY THE STATE.

GOOD NEIGHBOR COMMISSION

The Good Neighbor Commission originated in 1943 as a non-statutory unit organized by Governor Coke Stevenson in response to pressures arising from widespread discrimination against Mexican agricultural workers in Texas. In 1945, the Forty-ninth Legislature established the Good Neighbor Commission of Texas as a statutory agency with the responsibility "to devise and put into effect methods by which inter-American understanding and goodwill may be promoted and inter-American relations advanced."

This broad legislative mandate remains unchanged to this date and serves as the cornerstone of the GNC's current operations; however, the nature of the activities emphasized within this mandate have been altered over time. During the early years of its existence, the GNC was primarily concerned with the alleviation of discrimination against Mexicans in Texas. As the issue of discrimination began to diminish, the commission's focus began to shift into the broader areas of cultural affairs and international relations.

In 1965, the Fifty-ninth Legislature expanded the agency's statutory mandate to include the responsibility "to coordinate the work of federal, state and local governmental units toward the improvement of travel and living conditions of migrant laborers in Texas." GNC activities in regard to migrant affairs continued until 1977 when rider language added to the agency's appropriation bill curtailed funds for this purpose.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

The efficiency of GNC operations can be examined in two areas: administration and funding. In the area of administration, the agency's nine-member commission generally restricts its activities to policy-making and overview considerations, properly leaving day-to-day administrative tasks to the executive director.

The administrative responsibilities overseen by the executive director cover areas which include: 1) the general office operations of records maintenance, report preparation, and accounting; and 2) the agency's three functional programs of Executive and International Affairs, Pan American Student Forum, and Migrant Affairs. With regard to general office operations, the agency's filing system and basic accounting procedures for audited funds function adequately. However, the agency has not fully complied with its statutory requirement for submission of a detailed annual report to the governor and the legislature.

Concerning the three program areas of the commission, efficiency evaluation is constrained by the unique and unstructured nature of many of the agency's functions. Apart from this consideration, most processes associated with agency operations appeared to function satisfactorily. In compliance with legislative

directives through appropriation riders, the agency has undertaken no work in the migrant area since the end of fiscal year 1977. Additionally, funds managed by the GNC on behalf of the Pan American Student Forum are not subject to state audit and have not been reviewed on a set schedule. In this regard, an independent 1977 examination of PASF fund-handling indicated inadequate records maintenance procedures and a lack of internal controls over receipts and deposits. To date, there has been only partial implementation of the recommendations of this examination.

In the area of funding, the GNC has received funding from four different sources during the past ten years: 1) state general revenue fund, 2) federal revenue sharing allocations, 3) Good Neighbor Commission Fund, and 4) federal manpower allocations available under CETA. Historically, the general revenue fund has served as the commission's primary funding source, with other funds playing only a minor role in agency operations. Of particular note is the agency's use of CETA manpower funds. Since 1976, these funds have been made available to the commission for opening and operating field offices in Laredo and Brownsville. The funding of these offices has not been continuous, suggesting operational inefficiencies in this area.

Analysis of PASF funding patterns indicates that primary revenues are derived from membership dues, convention registration fees, and donations. Major categories of expenditures for PASF are the annual convention, publication of the Pan Am Times newspaper, scholarships and various humanitarian projects. Definitive figures on PASF funding were not readily available during the period of the investigation. These difficulties may be attributed to inadequate accounting procedures and multiple personnel involved in records maintenance during the history of the organization.

Criterion 2 - Effectiveness

In response to its dual mandate to promote inter-American goodwill and to coordinate services for migrant laborers, the Good Neighbor Commission has developed operations which are defined within three broad program areas: 1) Executive and International Affairs; 2) Pan American Student Forum; and 3) Migrant Affairs.

In regard to the Executive and International Affairs program area, the GNC carries out a loosely structured assortment of liaison activities which can be generally classified according to representational and technical assistance efforts. The representational activities include official state representation, promotional tasks and informal liaison functions. In its representational efforts, the agency works closely with the International Good Neighbor Council, an organization of Mexican and Texan citizens originally established on the initiative of the GNC. Technical assistance activities include data collection, translation services, and limited institutional coordination activities.

The review indicated that the GNC has made a continuing effort to promote inter-American understanding and goodwill. However, a problem in the effective

allocation of resources within this area may exist due to the breadth of the commission's promotional mandate. Given this breadth and the limitations on agency resources, a situation is created in which liaison priorities cannot be sharply focused and addressed. As a result, the potential exists for the allocation of resources to comparatively minor areas.

The Good Neighbor Commission functions as the sponsoring agency for the Pan American Student Forum, a statewide organization composed primarily of high school students interested in Latin-American and Spanish language studies. The GNC is responsible for central administration of PASF records and funds, as well as handling of scholarships, publishing a club newspaper, and organizing the annual PASF convention. The review suggested that the activities of the Pan American Student Forum would intrinsically promote inter-cultural relations. Yet, there was little indication of progress toward one of the program's stated aims of preparing individuals for service in the fields of international business or governmental relations. Additionally, although the GNC has undertaken activities to increase PASF enrollment, the evaluation indicated that the ratio of members to total statewide Spanish enrollment compares unfavorably to equivalent ratios for other selected secondary educational clubs for which the state provides formal support and assistance through the Texas Education Agency.

The Good Neighbor Commission was involved in the area of Migrant Affairs from 1965 until 1977. During the period of active involvement, the agency carried out interagency consultation, general research and limited technical assistance activities. The agency has acted primarily in an advisory capacity and has never been a direct provider of services to migrants. The review of operations has indicated that the Good Neighbor Commission's coordinative efforts have been effective to the extent of facilitating the exchange of information among agencies providing services to migrants. However, the agency has been ineffective in coordinating migrant services in the sense of directing activities toward a common goal.

Criterion 3 - Less Restrictive or Alternative Methods

Of the 15 states surveyed, only the four states of Arizona, New Mexico, California, and Michigan assign the task of maintaining liaison with bordering countries to a specific office or agency. This task is performed through the Office of the Governor or Lieutenant Governor in Arizona, California, and Michigan, with New Mexico using the state's economic development agency. With the exception of California, the liaison function is staffed with only one person; in the case of Michigan, this employee is paid by the United States State Department. Only one state, California, appropriates state funds for its liaison operation.

In the area of coordination for migrant affairs, Florida and Michigan reported the existence of state agencies involved in coordination activities. The Migrant Labor Program within Florida's Department of Community Affairs provides no direct services to migrant and seasonal farm workers, but coordinates all state activities which serve this group. In Michigan, the Department of Social Services

was designated as the state's single coordinating agency for migrant services in 1976.

Criterion 4 - Overlap and Duplication

In looking at the three program areas of the Good Neighbor Commission from the standpoint of overlap and duplication, it was noted that the Office of the Governor and the Secretary of State can perform liaison duties that are functionally similar to those carried out by the commission. Additionally, the commission's work relative to the Pan American Student Forum is roughly parallel to the formal involvement of the Texas Education Agency in other secondary-level youth clubs. Finally, the Good Neighbor Commission and the Governor's Office of Migrant Affairs are both delegated coordinating responsibilities in the area of migrant affairs.

With regard to consolidation of GNC's operations with those of other agencies, it appeared that commission activities undertaken in the area of Executive and International Affairs could be appropriately transferred to the Office of the Governor or his appointee, the Secretary of State. In addition, administrative operations with regard to the Pan American Student Forum would appear to fit logically within the overall education responsibilities of the Texas Education Agency. In the area of migrant affairs, the Sixty-fifth Legislature has dealt with the issue of GNC overlap with the Governor's Office of Migrant Affairs by restricting funds available to the Good Neighbor Commission for migrant operations.

Criterion 5 - Statutory Changes

Since its establishment in 1945, certain administrative restrictions upon the operation of the Good Neighbor Commission have lessened, while the agency's legislative mandate has been progressively broadened. The most significant administrative changes occurred in 1971 with the removal of the restriction allowing only Texas-based meetings and the addition of permissive language providing that money donated to the Good Neighbor Commission of Texas Fund could be held outside the State Treasury and utilized at the discretion of the commission. In the area of Inter-American Affairs, very little has changed from the agency's broad original legislative mandate to promote inter-American understanding and goodwill. The Good Neighbor Commission's involvement in migrant affairs began in 1965 with its absorption of all powers and duties of the Texas Council on Migrant Labor, and was extended in 1971 with the authority to develop specific migrant-related programs in coordination with other agencies. This additional authority was effectively restricted by a rider in the Appropriations Act for the 1978-79 biennium.

Criterion 6 - Complaints

The Good Neighbor Commission is not directly involved in the handling of complaints. Files reviewed indicated that only four complaints had been received by the agency in the last three fiscal years. These complaints did not concern the operations of the GNC and appear to have been handled satisfactorily.

Criterion 7 - Public Participation

The Good Neighbor Commission has not promulgated agency rules pursuant to the Administrative Procedure and Texas Register Act. Therefore, no judgment can be made regarding public participation in the area of rule-making. However, in examining the more general topic concerning the agency's encouragement of public involvement in its meetings, the review indicated that the GNC goes beyond the notification requirements set up in the Open Meetings Act. To further public attendance at its meetings, the commission makes use of the media, its own publications, and letters of invitation to regional officials and private organizations.

Criterion 8 - Equal Employment

The procedures and records of the agency in the area of affirmative action are generally adequate for a public agency of its size and scope. There have been no charges of discrimination filed against the agency. Although male and female employees tend to gravitate toward professional and clerical positions, respectively, staffing patterns are generally balanced in terms of gender and ethnic representation. The agency displays a history of high personnel turnover, particularly at the administrative levels.

Criterion 9 - Conflict of Interest

Under Article 6252-9b, V.A.C.S., the executive director of the GNC is required to file a financial statement with the Secretary of State; additionally, a commissioner of that agency must file a disclosure affidavit if he has a substantial interest in a state-regulated business. In the review of the financial statement and affidavit documents on file, no problem with respect to conformity with the conflict-of-interest provisions was apparent.

Criterion 10 - Open Records/Open Meetings

The Good Neighbor Commission appears to maintain a system of record-keeping which is in compliance with the Open Records Act. The agency also complies with its specific statutory requirement regarding meeting location, as well as the more general requirements for public notification under the Open Meetings Act. In addition, the agency undertakes additional selective notification procedures for public meetings.

Criterion 11 - Federal Impact

Since 1976, the Good Neighbor Commission has been granted federal CETA funds from the manpower offices of Cameron and Webb Counties. These funds have been used by the GNC for the operation of its field offices in Brownsville and Laredo. Abolishment of the agency would have no effect upon the amount of manpower funds flowing into these counties from the federal government. Additionally, the state's receipt of other federal funds is not contingent on the existence of the GNC.

CONCLUSIONS AND RECOMMENDATIONS

In response to its dual mandate to promote inter-American goodwill and to coordinate services for migrant laborers, the Good Neighbor Commission has developed operations which are defined within three broad program areas: 1) Executive and International Affairs; 2) Pan American Student Forum; and 3) Migrant Affairs.

The agency's actual impact in the area of international relations is difficult to assess, given the breadth of the legislative mandate and the consequent lack of explicit direction provided the agency in setting its objectives. The evaluation has suggested that the limited resources of the GNC may not be effectively allocated toward defined priorities which are in line with the agency's capabilities.

In regard to the agency's activities concerning the Pan American Student Forum, the review of operations indicated that there are inadequate records maintenance procedures and a lack of internal controls over the receipt and deposit of PASF revenues. While the general activities of the Pan American Student Forum can be assumed to intrinsically promote inter-cultural understanding, the effectiveness of GNC sponsorship may be questionable in terms of assisting in the goals of the Forum.

The review of operations has indicated that, during the agency's period of active involvement in migrant affairs from 1965 until 1977, the GNC's coordinative efforts were effective to the extent of facilitating the exchange of information among agencies involved in migrant-related programs. However, little evidence exists to indicate that the agency has directed efforts by these agencies to a common goal.

The Sunset Commission considered several alternative approaches to this agency. However, none of these approaches received a majority vote required under the Sunset Act (three votes on the part of the Senate members and three votes on the part of the House members), resulting in no affirmative recommendation by the commission.

BOARD OF LANDSCAPE ARCHITECTS

The Board of Landscape Architects was created in 1969 for the purpose of licensing and regulating landscape architects. The law was amended in 1973 to include landscape irrigators under the regulatory authority of the board.

COMPARATIVE ANALYSIS

To determine a pattern of regulation of the occupations of landscape architecture and landscape irrigation within the United States a survey of the 50 states was conducted. The need to regulate the occupation of landscape architecture is currently expressed in licensing requirements imposed by 35 of the 50 states surveyed. From the standpoint of organizational patterns, 15 states, including Texas, meet this expressed need with an independent board or commission whose members are appointed by the chief executive. In 20 states, the function is carried out in a governmental department charged with the regulation of multiple occupations.

In those states which use independent boards and commissions, eight require confirmation of appointees by the legislature. Membership in 28 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the Senate and membership is limited to persons who are licensed members of the occupation. Forty-three percent of the states, as does Texas, use independent governing bodies and limit the responsibilities of the membership to that of policy making as distinguished from the role of fulltime administrators.

A majority of the states, including Texas, report that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 16 of 35 states reported that these bodies were not solely supported by fees and charges of the agency.

Thirty-two of the states regulating the occupation of landscape architecture administer national examinations. The other states develop and administer their own examination. Texas uses a national examination. The examination is required only once in 35 states, including Texas. In 23 states, licensees are required to renew their licenses annually. Texas licenses for a one-year period. Enforcement activities in 31 states, including Texas, center on investigation of complaints from consumers and others engaged in the occupation of landscape architecture. Hearings are conducted inside the regulating agency in 29 states. In Texas hearings are conducted by the agency.

Since landscape irrigators are licensed in only five states, this analysis was limited to a discussion of the landscape architecture licensing procedures of other state boards.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

Approximately 702 landscape architects were licensed between fiscal years 1970 and 1977. Only one candidate was licensed by local examination. The number of landscape architects licensed under the "grandfather" provision of the Act was 386. Seven years of experience or a degree in landscape architecture is required, in addition to minimum passing scores on the Uniform National Examination (UNE).

Although 477 candidates were examined, only 179, or 38 percent passed and were licensed. A determination of the number of individuals qualifying by possessing degrees in landscape architecture could not be determined for any one fiscal year. The agency does not compile data on the characteristics of registrants.

The board administers a local examination to register landscape irrigator candidates. Of the 268 candidates licensed since the first examination held in June 1974, 180 candidates, or 67 percent attained scores qualifying them for the certificate of registration required to engage in the landscape irrigator occupation. Prior to March 1974, 312 candidates, or 74 percent, were licensed under the landscape irrigator "grandfather" provision in the Act.

Although total revenues received have increased from \$31,250 to \$54,023, or 72.9 percent, expenditures have increased from \$16,745 to \$50,263, an increase of 200.2 percent. The net result of this analysis suggests that since 1969 the board has collected revenues of approximately \$362,045 and expended \$243,071, or 67 percent, of these revenues to administer the licensing provisions of the Act.

Criterion 2 - Effectiveness

The administrative procedures and policies developed by the board have fulfilled the requirements of the Act on examination and registration of individuals seeking certification to engage in the landscape architecture and landscape irrigator occupations. The Uniform National Examination is used by the board to equalize the national licensing standards and those used by Texas. The UNE is prepared and distributed by the Council of Landscape Architectural Registration Boards (CLARB), an organization of state boards and individuals who seek coordination of approaches used to license landscape architects in the United States. However, over 60 percent of the landscape architect licensees have not been required to take this examination under grandfather provisions.

The examination used by the board to determine the competence of landscape irrigator candidates is a local examination. There are no education or experience requirements for landscape irrigator candidates.

Among the 507 landscape architect candidates examined by the board, 179, or 35 percent have passed. Eighty-eight, or 33 percent, of landscape irrigator candidates failed the examination.

An average of 63 landscape architect candidates have been examined each fiscal year. This average is 54 for landscape irrigator candidates.

Certificates of license and registration expire on August 31 each year. Registered persons may remain delinquent for one year, but Attorney General Opinion H-664 ruled that they are in violation of Article 249c if they are engaged in the occupations during this delinquent renewal period.

Criterion 3 - Less Restrictive or Alternative Methods

The review of the statutory history and rule-making authority exercised by the board reveals some increase in restrictiveness. A major change in the structure and powers of the board resulted from 1973 amendments to the Act which added the licensure of landscape irrigators to the statutory authority of the board. Although the board administers an examination to perform this licensing function, the absence of specific education and experience requirements casts serious doubt on the effectiveness of current procedures which are closely aligned to industry publications. While no data are available which relate to the effectiveness of the landscape irrigation licensing function, such licensing has apparently contributed to increased costs to the public for these services.

Although the Act cites seven years experience or a degree in landscape architecture as requirements for qualification to sit for the examination, only one candidate has qualified for licensure under the experience option. Additionally, the Act currently permits the failing landscape architecture candidate to retake the Uniform National Examination once at no cost. The board, however, must purchase the examination from the Council of Landscape Architectural Registration Boards, and it is estimated that approximately \$5,500 in examination costs have been absorbed due to the failure rate on the examination for landscape architect candidates.

Although the Act permits the board to fine persons in violation of the statutes regulating these occupational groups, no fines have been collected and no licenses have been revoked during the history of the board. Since no standard procedures for the investigation of complaints against licensees could be identified, it appears that the board's regulatory powers have not proven useful.

Criterion 4 - Overlap and Duplication

The administrative functions, duties and responsibilities of the Board of Landscape Architects closely approximate those of the Board of Registration for Professional Engineers, the Board of Registration for Public Surveyors and the Board of Architectural Examiners. The basic examination, licensing and enforcement functions are performed for both occupational populations, but specific qualifications for the licensure of landscape irrigation candidates have not been developed.

Therefore, although the regulatory responsibilities of the board substantially parallel those of other state regulatory agencies, serious questions were raised

during the review regarding the potential for consolidation of agency administrative functions with those of other agencies. Consolidation of the landscape architect licensing functions with similar procedures used by other agencies regulating individuals exempted from the Act may be appropriate, given the small regulated population. The total absence of state licensing requirements for landscape irrigators strongly suggests that the independent licensure of this population may be unnecessary.

Criterion 5 - Statutory Changes

The only legislation passed by the legislature was Senate Bill 237, Acts of the Sixty-third Legislature, 1973, amending sections of Article 249c, V.A.C.S. This amendment added to the board three landscape irrigators who were charged with establishing licensing standards for the registration of landscape irrigators. The net change resulted in increased revenues and expanded regulatory duties for the board. The protection of the water supply is the basic need cited by the agency for registering landscape irrigators. Although Senate Bill 237 established no experience or education requirements for entry into the occupation, the board was given the power to examine candidates to determine a reasonable level of competence.

Criterion 6 - Complaints

The agency has developed procedures for receiving and resolving complaints. Most of the complaints processed were registered against unlicensed individuals using the title landscape architect or landscape irrigator. Considerable staff time is devoted to inspection of advertising media to identify unlicensed individuals engaged in the occupations.

Only three complaints were registered by the agency against licensees during the three fiscal years covered by the review and the board has never exercised its authority to revoke or suspend the registration of a licensee. There was no record of complaints from the public and the complaints recorded were lodged against unlicensed individuals by licensees of the board. Whether this is a result of a lack of public dissatisfaction with services provided by those engaged in the regulated occupations or a lack of public knowledge concerning board responsibilities could not be determined.

Criterion 7 - Public Participation

There has been little public concern for, or participation in, the activities of the board and there are no public members on the board. The agency has consistently given adequate public notice of scheduled board meetings. Although written policies regarding public participation were not on file at the agency, there was no indication of inappropriate board activity during the review under this criterion.

The agency routinely responds to requests for information, but these requests are generally limited to inquiries concerning information about the regulated occupations, licensing requirements or reciprocity procedures.

Criterion 8 - Equal Employment/Privacy

The review indicated that no affirmative action or rights and privacy complaints have been received, but no written board policies were on file at the agency.

Criterion 9 - Conflict of Interest

Although the agency does not enforce a formal set of rules governing potential conflicts of interest, administrative procedures do satisfy reasonable requirements given the small number of agency staff. However, there was no indication that copies of Article 6252-9b, V.A.C.S., Standards of Conduct of State Officers and Employees, are on file at the agency or that they have been discussed with the agency staff. Since all board members must be licensed by the board, five are involved in ownership or partial ownership of a business offering landscape architectural or landscape irrigation services. One landscape irrigator board member, however, is licensed by the only irrigation equipment and supply manufacturer in Texas. This manufacturer provides, at cost, Turf Irrigation Manual, one of the six booklets on the suggested list of publications recommended by the board as examination study material. The agency informs the applicant that local distributors may be contacted for further information concerning where these publications may be purchased.

The agency does not conduct periodic reviews of compliance with the conflict of interest requirements contained in Article 6252-9b, V.A.C.S., but during interviews with agency staff it was determined that no staff persons have had any apparent connections with the regulated occupations.

Criterion 10 - Open Records/Open Meetings

The agency had no written policies regarding open meetings or open records, but the internal procedures used by the staff appear to satisfy the intent of applicable laws. All information on file at the agency is considered available to the public except the individual examination and qualification records of licensees. There was no record of the agency refusing public access to information requested during the period covered by the review.

Criterion 11 - Federal Impact

The licensing of occupations is a function which the federal government has left to the states to initiate. No federal standards were identified which would affect the licensing of landscape architects and landscape irrigators in Texas if the agency is abolished.

Federal funds are not involved in the administration of the Act, as administration costs related to the licensing and regulatory functions of the board are financed through the collection of fees.

CONCLUSIONS AND RECOMMENDATIONS

The review contained in this report has centered on the areas of licensing, enforcement and administration to assess the result of the exercise of the regulatory powers of the board on the objectives which were originally conceived under the statute. For purposes of presentation, the conclusions contained in this section will be structured to separately discuss issues relating to the licensing, enforcement and administration objectives for each occupation.

Licensing

The achievement of the landscape irrigator's goal of "protecting the potable water supply" is accomplished through the basic functions of licensing, enforcement and administration.

Under the licensing function the board attempts, through examination and testing, to provide qualified individuals in sufficient amount to meet public demand for services. In this regard, when the board began its regulation in 1973, 312 landscape irrigators were licensed under the grandfather clause contained in the legislation. During these four years the board has licensed approximately 36 landscape irrigators per year through examination. At this rate, it will take the board four years to reach the numerical level of 312 licensed under the grandfather clause. An additional four years will be needed to exceed this number by 50 percent. A total of eight years to produce a numerical level of practitioners which significantly exceeds the group holding a license under the grandfather provisions seems to cast doubt on the attainment of one of the board's basic objectives. This uncertainty could be offset by the qualifications of individuals being licensed through examination. However, there are no experience or educational requirements for landscape irrigators at the present time. This factor, coupled with the small growth in persons seeking to be licensed, would lead to a conclusion that even if the length of time to produce licensees in sufficient numbers is not unreasonable, there is no real assurance that the numbers of licensees produced will be qualified in the usual sense of experience or education.

Even if an individual is licensed through examination, to achieve the overall goal of protecting the potable water supply, the licensee must proceed through another occupational group. A series of Attorney General's opinions in 1975 and 1977 dealing with responsibilities of licensed plumbers and licensed landscape irrigators stated that a licensed plumber must make all connections to the water supply. This seriously undercuts the objective because each situation must be decided on the particular facts, and thus all occupational activity becomes conditioned upon the approval of a licensed plumber.

The achievement of the objective of licensing qualified landscape architects who have demonstrated the required competencies is accomplished through the examination of the candidate's theoretical and practical landscape architectural expertise. Under this aspect of the licensing function, the board attempts, through examination and testing, to provide qualified landscape architects in sufficient numbers to meet the public demand for landscape architecture services. In this

regard, the 179 landscape architects licensed by the board through the examination process comprise only 36 percent of the total number of landscape architects licensed in the eight years of regulatory activity conducted by the board.

Of the 390 candidates registered by August 31, 1970, 386 were licensed under the grandfather clause contained in the legislation. The board has licensed approximately 22 landscape architects per year through examination and only one individual has been licensed under the seven-year experience provision contained in the legislation. At this rate, it will take the board nine years for the number of candidates licensed by examination to reach the numerical level of 386 licensed under the grandfather clause. An additional eight years will be needed to exceed this number of 50 percent. A total of 17 years to produce a numerical level of practitioners which significantly exceeds the number of landscape architects licensed under the grandfather provisions seems to cast doubt on the attainment of one of the board's basic objectives.

Thus, the small growth in the number of persons seeking to be licensed annually, when coupled with the fact that 64 percent of the landscape architects licensed were licensed under the grandfather clause leads to further discussion of the board's approach to achieve the licensing objective. There are no national standards set by the Council of Landscape Architectural Registration Boards which must be met before the candidate can take the Uniform National Examination which is administered by the agency. The qualification standards requiring that candidates have a degree or seven years experience under a licensed landscape architect are state standards contained in the Act. These standards are increased further, however, by the board's requirement that the candidate pass the UNE, which is said to be the national uniform qualification standard for reciprocity.

Given the low average of 11 reciprocal licenses issued by the board per year, the fact that 64 percent of the landscape architects licensed were licensed under the grandfather clause and the 64 percent failure rate on the examination, the correspondence between annual reciprocity activity and the failure rate for the UNE is unclear. The agency states that most failing candidates fail the subjective design portion of the UNE which is graded by the board and invited proctors.

This analysis suggests that the board's examination procedures do not provide an alternative to the UNE, a state licensing standard which has not been met by 64 percent of the licensed landscape architects in the state. This factor, coupled with the small growth in persons seeking to be licensed, would lead to a conclusion that the agency's examination and registration procedures may be considered restrictive.

Enforcement

The achievement of the goal of "protecting the public" by enforcing the provisions of the Act is accomplished through the enforcement function.

Under the enforcement function the board attempts, through clerical activities performed by the staff, to annually renew licenses and process complaints.

The Act provides that certificates of registration expire August 31 each year, but failure to renew annually as required does not deprive the licensee of the right of renewal for one year. If the renewal is not effected during the one year the license can be delinquent, it may then be revoked.

The unnecessary complications produced by the one-year delinquency period hamper the effectiveness of the enforcement objective. Enforcement efforts are hampered further by the necessity of carrying these functions out with essentially a clerical staff. Specific violation and penalty powers enumerated in the Act have not been exercised by the board. Although 127 letters were written in terms of violations identified in fiscal year 1976, the effects of these letters could not be determined because the agency keeps no statistical information on complaints processed.

Administration

To carry out this function, the board employs the usual kinds of administrative techniques to process payroll, accumulate management information, issue licenses, process renewals and maintain registrant files. In this regard, as touched on above, most of the files and the kinds of information collected can have a definite effect on the determination of the success or failure of both the licensing and enforcement functions, particularly with regard to enforcement. This becomes apparent since the management system in terms of information produced has serious deficiencies. The agency is unable to clearly identify delinquent licensees through its present record keeping process. Basic counts of landscape architect and landscape irrigator licenses issued as a result of violation letters written are not compiled. Both of these deficiencies impact the kind and quality of enforcement applied by the agency. A review of the agency's filing system indicated certain deficiencies with regard to organization and accessibility. For example, delinquent files are not kept under a separate category from the files of current and active registrants, and adequate records are not maintained of delinquent notices sent to individual licensees. As a result, there is a lack of timely certificate status determination which suggests that documentation concerning enforcement activities is inadequate. A review of agency clerical procedures revealed the lack of adequate documentation outlining filing and records maintenance procedures. The need for such documentation as reference material and as an aid in verifying agency records is evident. Even more important, however, is the need for delineation of clearly defined areas of staff responsibility.

In dealing with these expressed concerns, the commission developed the following recommendations for consideration concerning the regulation of landscape architects. The recommendations do not address regulation of landscape irrigators as the commission was unable to develop positive recommendations concerning the need for regulation of this occupational group. If this group is to be continued under a state regulatory framework, additional legislation would be necessary.

To address its concerns with respect to landscape architects, the commission offers the following recommendations:

THE BOARD OF ARCHITECTURAL EXAMINERS AND THE BOARD OF LANDSCAPE ARCHITECTS SHOULD BE MERGED INTO ONE AGENCY TO BE KNOWN AS THE TEXAS BOARD OF ARCHITECTURAL EXAMINERS. ADDITIONALLY, OTHER STATUTORY CHANGES WHICH SHOULD BE MADE INCLUDE:

- 1) THE MODIFICATION OF BOARD MEMBERSHIP TO INCLUDE FOUR REGISTERED ARCHITECTS, TWO REGISTERED LANDSCAPE ARCHITECTS AND THREE MEMBERS OF THE GENERAL PUBLIC
- 2) THE ADDITION OF CONFLICT OF INTEREST PROVISIONS WHICH APPLY TO BOARD MEMBERS AND EMPLOYEES
- 3) THE ADDITION OF COMPLAINT PROCESSING PROVISIONS TO PROVIDE FOR THE RECORDING OF ALL COMPLAINTS WITH PERIODIC COMPLAINT STATUS REPORTS TO PARTIES INVOLVED
- 4) THE REMOVAL OF BOARD AUTHORITY TO PROMULGATE RULES RESTRICTING COMPETITIVE BIDDING AND ADVERTISING BY LICENSEES, EXCEPT TO THE EXTENT NECESSARY TO DEFINE FALSE, MISLEADING, AND DECEPTIVE ADVERTISING PRACTICES
- 5) THE MODIFICATION OF AGENCY PROCEDURES TO PROVIDE FOR THE STAGGERED RENEWAL OF LICENSES
- 6) THE REMOVAL OF THE REQUIREMENT THAT AFTER JUNE 30, 1980, ALL APPLICANTS FOR ARCHITECTURAL EXAMINATION MUST BE GRADUATES OF A RECOGNIZED SCHOOL OF ARCHITECTURE

BOARD OF LAW EXAMINERS

The Board of Law Examiners was created in 1919 to pass upon the eligibility of all candidates seeking licensure to practice law in Texas and to examine eligible candidates. The board is composed of nine members appointed by the Supreme Court, all of whom are required to meet those qualifications required of Supreme Court judges. The Supreme Court prescribes the necessary personal qualifications of applicants seeking to study law and determines pursuant to its rules the fitness of applicants seeking to be examined and licensed as attorneys.

COMPARATIVE ANALYSIS

In order to determine the pattern of regulation of lawyers within the United States, a survey of 50 states was conducted. All states surveyed regulate admission to the practice of law, as does Texas through its Board of Law Examiners. In 11 of the states surveyed, admission to the practice of law is regulated by officers or committees of the State Bar. The remaining 39 states regulate admission to legal practice through committees appointed by their respective State Supreme Courts. The national multi-state exam is used by 34 states including Texas.

The majority of the agencies which regulate admission to legal practice possess policy making authority; however, policies must often be approved by the State Supreme Court or Bar. In three states, board members who regulate the practice of law are appointed by the governor. No state requires that appointees be confirmed by the legislature. Only three states allow public members to sit on the boards.

All of the states surveyed except four indicate that they operate off the fees collected from persons seeking admission. These fees are supplemented by additional revenue in 16 states. The administrative services, including data processing and personnel, of 21 states which regulate admission to the practice of law are shared to some degree with other state agencies.

The regulation of the practice of law requires the performance of the basic regulatory functions of administration, testing, license issuance and enforcement. The regulatory functions performed by the Texas Board of Law Examiners are reviewed in light of the criteria specified in the Texas Sunset Act in the following material.

Criterion 1 - Efficiency

The Board of Law Examiners has operated within the limits imposed by state statute and the rules promulgated by the Supreme Court. Fees collected have been used for the purposes specified in the rules and the law, with more than 70 percent of all fees collected being paid to the board members as compensation for their services during the three-year period of 1975 through 1977. Data supplied by the

secretary of the Board of Law Examiners indicates that the estimated hours spent by each board member in the discharge of his duties averages 750 hours per year. Payments made to the members of the board (\$25.98 per hour in 1977) exceeded the average hourly rate of pay to judges on the Supreme Court of Texas which averaged \$22.79 per hour based upon 1977 fiscal year data. Members of most other examiner boards serve voluntarily. Texas board members were paid over \$20,000 each during 1977.

Funds of the board are maintained in an Austin bank and no excessive balances accumulate because all remaining funds, after payments of expenses, are used to compensate board members.

Criterion 2 - Effectiveness

Review of the stated objectives of the Board of Law Examiners and its operations indicates accord with the intent of the statutes in determining the eligibility of applicants for the Bar examination, and in the examination of such applicants.

An acceptable degree of effectiveness is achieved by the board in that it offers the examination more than once annually, and at least once each year in each city which has a law school. Both of these operational decisions benefit the person who desires to take the Bar examination.

There is one area of the board's operations which is extremely time consuming and costly and differs substantially from most other state agencies which administer examinations for licenses to practice a profession or occupation. This area concerns the necessity for conducting two investigations of "good moral character and fitness" of each candidate for entry into the profession of law. The conducting of only one such investigation would improve the effectiveness of the board's staff functions and eliminate the backlog and delays that are now occurring in the processing of declarations of intent to study law.

Criterion 3 - Less Restrictive/Alternative Methods

The statutory prohibition against the admission of a convicted felon to the Bar in Texas poses a significant restriction on entry into the profession. All other states, except Florida, allow the practice of law by felons that are considered to be rehabilitated. The requirement that immigrant attorneys must have practiced law for seven years prior to coming to Texas acts to restrict immigration of lawyers who often have qualifications equal to or superior to lawyers already practicing in Texas. Such restrictions do not appear to benefit the public. In addition, by requiring that all lawyers from states which do not have a reciprocal agreement with Texas take the exam, the rules create varying requirements for admission to the practice of law in Texas. A policy of endorsement that provides for the case-by-case determination of whether an examination should be required would be a less restrictive alternative.

The investigation of the moral character and fitness of applicants was found to require excessive and often irrelevant information from students. Information gathered by the board has a questionable relationship to the applicant's fitness to practice law. In addition, fees charged for the investigation are extremely high (\$75.00) when compared to those levied by other states.

Criterion 4 - Overlap and Duplication

The Board of Law Examiners determines the eligibility for examination and examines a group of persons who are not under the jurisdiction of any other state agency. Both professional and technical expertise appear to be required in the performance of the duties of the board and staff. In this review, no agencies were identified with overlapping programs or populations; therefore, there seems to be little potential for consolidating the Board of Law Examiners with any other state agency.

Criterion 5 - Statutory Changes

Of the six bills introduced in the last three sessions, four (H.B. 287, 340, 395, and S.B. 512) proposed reduced eligibility requirements to take the State Bar examination and, therefore, would appear to have been of clear benefit to the public. Of these only one, H.B. 340, passed.

During the Sixty-fifth Legislative Session, the Board of Law Examiners and the State Bar jointly recommended an increase in the board membership from five lawyers to nine, as well as an increase in the Bar exam fee. The result was the passage of H.B. 1304 which amended Article 304 and Article 310. As reported in the board's self-evaluation report, the reason for the increase in the number of board members was to assist in the administration of the exam. The increase in fees, according to the report, was to compensate board members more adequately and to cover increased expenses due to more meetings and travel to the cities where the exam is given.

Criterion 6 - Complaints

The secretary to the board states that little public concern for the activities of the board has been expressed. Additionally, the review indicated that the board has adopted procedures for the timely disposition and resolution of inquiries concerning board procedures and Bar admissions requirements.

The procedures used in the processing of complaints appear to be in accord with the duties and responsibilities placed upon the board. However, the limited availability of records concerning the extent of complaint activity which occurred during the period covered in the review did not permit an analysis of the time required to finally dispose of complaint issues.

Criterion 7 - Public Participation

The agency is governed by rules promulgated by the Supreme Court. No rules may be promulgated by the Board of Law Examiners. The board has taken no action which would involve the public in the rule-making process of the Supreme Court and no public notices of board meetings or rule changes are published by the board. Therefore, the public has had no input into board policies and little opportunity to attend board meetings. There is no requirement for public membership on the board.

Criterion 8 - Equal Employment/Privacy

The review disclosed that the staff of the Board of Law Examiners, as employees of the Supreme Court of Texas, are in compliance with federal and state requirements concerning equal employment opportunity and the rights and privacy of individuals.

Criterion 9 - Conflict of Interest

According to Article 6252-9b, V.A.C.S., a "state agency" is defined as "any department, commission, board, office or other agency that: 1) is in the executive branch of state government; 2) has authority that is not limited to a geographical portion of the state; and 3) was created by the constitution or a statute of this state" (emphasis added). The Board of Law Examiners, acting under the supervision of the Supreme Court of Texas, is thus exempted from the provisions of Article 6252-9b. The board, however, is composed of lawyers and, therefore, subject to the Code of Professional Responsibility of the State Bar which provides similar safeguards as Article 6252-9b.

Criterion 10 - Open Records/Open Meetings

The Board of Law Examiners is not subject to the provisions of the Open Records Act and the Open Meetings Act. Generally, meetings are limited to four or five meetings per year; two meetings for conducting examinations for admission of candidates to the Bar, one meeting with members of the Supreme Court, and one meeting with the deans of Texas law schools, with special meetings being called rather infrequently.

Criterion 11 - Federal Impact

The agency's administrative costs are paid by fees collected and deposited in local banks and by funds appropriated to the Supreme Court by the legislature. The agency receives no federal funds and no loss of federal funds would be anticipated if the agency were abolished.

CONCLUSIONS AND RECOMMENDATIONS

The review indicated that the board's operations are funded from state appropriations for personnel and office expense of the board's staff. The expenses incurred in holding examinations are paid from the examination fee of \$75. Any

remaining balances from these fees are divided equally among the five board members as compensation for their services. For the 1977 period, this amounted to a little more than \$20,000 per member.

The objectives of the Board of Law Examiners are the determination of the candidates' eligibility as to age, residence, citizenship and education and the administration of the tests, which consists of standardized portions and board-prepared portions. The review indicated that the board has operated within the guidelines established by statute and Supreme Court rule. Financial resources for office staff are used efficiently, although the conduct of two separate investigations places an unnecessary burden upon these resources when one investigation would suffice. It should be noted that Texas is the only state which requires two investigations of moral character and fitness for individuals applying for Bar membership.

In addition to the burdensome nature of two character investigations, other concerns also exist with respect to this fitness check. Unlike any other state, in Texas 17 local admissions committees conduct these character inquiries; however, these committees employ no standard policies or written procedures in carrying out this task. Moreover, investigation forms must necessarily include questions concerning an applicant's criminal record and any judicial determination of mental illness. However, some questions currently included in investigation forms appear to have no relationship to moral character or fitness and to require excessively detailed responses. Specifically, questions relating to the status of an applicant's marriage or divorce and the applicant's history of emotional counseling constitute unnecessary invasions of privacy. The investigation questionnaire should be revised so that juvenile records and records expunged by court order are excluded.

While educational requirements necessary for examination have increased, they do not seem to have unduly restricted entry into the field and applicants for examination have also increased. Results derived from pass/fail rates do not indicate a pattern of restrictiveness. In the one instance where a significant imbalance was disclosed by the pass/fail rate, the board took steps to attempt to determine and correct the causes. The board has developed limited procedures to assist those individuals who fail the examination in determining the causes for failure. However, review only takes place after the individual has failed the examination twice and the review disqualifies the candidate from sitting for the examination during the examination session at which such review is given. The present review procedure does not appear to benefit the examinee or the public. Other areas covered in the review concerning restrictions on entry into the field of law indicated that all other states except Texas and Florida allow the practice of law by felons that are considered to be rehabilitated, and that Texas restrictions concerning immigrant lawyers appeared unduly stringent.

Under current law, the board is exempted from the statutory requirements concerning open meetings, open records and conflict of interest. Therefore, the public has been excluded from the board's regulatory activities.

To address its concerns with respect to the Board of Law Examiners, the commission makes the following recommendations:

- 1) THE LEGISLATURE SHOULD CONSIDER REQUIRING THE APPOINTMENT OF THREE PUBLIC MEMBERS TO THE BOARD OF LAW EXAMINERS AND TO EACH OF THE LOCAL COMMITTEES ON ADMISSION.
- 2) THE LEGISLATURE SHOULD CONSIDER LIMITING THE COMPENSATION RECEIVED BY BOARD MEMBERS TO AN AMOUNT COMPARABLE TO THAT RECEIVED BY MEMBERS OF OTHER STATE BOARDS WITH SIMILAR RESPONSIBILITIES.
- 3) MEETINGS OF THE BOARD SHOULD BE OPEN AND NOTICE OF SUCH MEETINGS SHOULD BE POSTED.
- 4) CONSIDERATION SHOULD BE GIVEN TO REQUIRING THAT THE BOARD PROVIDE TO AN EXAMINEE, UPON REQUEST, A REVIEW OF THE EXAMINEES' PERFORMANCE ON THE BAR EXAMINATION.
- 5) RESTRICTION CONCERNING PERSONS CONVICTED OF A FELONY SHOULD BE REMOVED TO ALLOW FOR THE LICENSING OF REHABILITATED FELONS.
- 6) RESTRICTIONS CONCERNING IMMIGRANT ATTORNEYS SHOULD BE MODIFIED TO ALLOW FOR THE LICENSING OF IMMIGRANT ATTORNEYS WHO HAVE BEEN LICENSED BY OTHER JURISDICTIONS AND POSSESS QUALIFICATIONS EQUIVALENT TO THOSE REQUIRED OF TEXAS ATTORNEYS.
- 7) ONE INVESTIGATION OF THE MORAL CHARACTER AND FITNESS OF APPLICANTS SHOULD BE CONDUCTED WITHIN DEFINED TIME FRAMES AND IN ACCORDANCE WITH SPECIFIED CRITERIA.
- 8) ALL ASPECTS OF THE INVESTIGATION OF THE MORAL CHARACTER AND FITNESS OF APPLICANTS SHOULD POSSESS A CLEAR AND RATIONAL RELATION TO THE APPLICANT'S PRESENT FITNESS TO PRACTICE LAW.
- 9) FEES CHARGED BY THE BOARD FOR THE INVESTIGATION AND EXAMINATION SHOULD BE DEPOSITED IN THE STATE TREASURY SUBJECT TO LEGISLATIVE APPROPRIATIONS.

STATE BOARD OF MORTICIANS

A bill introduced by a member of the Senate Committee on Public Health in 1903 established the State Board of Embalming, predecessor to the current State Board of Morticians. This law was enacted at a time when states all across the country were regulating occupations that had an impact on public health. The original statute clearly intended to license embalmers only and specifically excluded "any person simply engaged in the furnishing of burial receptacles for the dead."

Thirty-two years later the board's regulatory role was expanded to include the licensing of funeral directors, who possessed no skills directly relating to public health. Medical advancements since 1903 in prevention of contagious diseases had done much to accomplish original health-related objectives of the board and may account for the board's shift in emphasis from protecting public health to controlling the "quality", morality and social acceptability of persons entering the occupation. Today, protecting citizens from uncouth or insensitive embalmers or funeral directors appears to have become the primary focus of board activities.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the occupation of morticians within the United States, a survey of the 50 states was conducted. The need to regulate the occupation of morticians is currently expressed through licensing requirements imposed by all 50 of the states surveyed. From the standpoint of organizational patterns, 23 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 24 states, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, 18 require that appointees be confirmed by the legislature; and membership in 28 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the legislature and membership is limited to persons who are licensed members of the occupation. Fifty-four percent of the states, as does Texas, utilize independent governing bodies responsible for policy-making as distinguished from an administrative role.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 23 of 50 states indicated that these bodies were not solely supported by fees and charges of the agency.

Thirty-one of the states regulating the occupation of morticians administer national examinations. The other states develop and administer their own exam. Texas does not use a national examination. Enforcement activities in 47 states, including Texas, involve some limited investigation of complaints from consumers and others engaged in the occupation of morticians. Hearings are conducted inside the regulating agency in 35 states. In Texas, hearings are conducted by the board.

States which regulate the occupation of morticians indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the State Board of Morticians and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

Because the State Board of Morticians holds its funds outside the State Treasury, it has not been compelled to adopt, and has not adopted of its own accord, record-keeping, purchasing and other administrative procedures that are standard for agencies subject to the state's appropriative process. Those procedures suggested by the State Auditor that have been implemented by the agency have resulted in increased efficiency and accountability. However, many areas for improvement still exist in areas of currently low efficiency.

One area of concern which has been mentioned in State Auditor management letters is the agency's failure to manage working capital and interest-bearing accounts effectively. The auditor determined that a more active program of short-term investments based on careful forecasting of cash requirements would give the board the potential to more than double its return on its funds.

Several other areas of concern developed during the review regarding practices of the State Board which would not be allowed for agencies inside the Treasury. First, the agency is currently bound by a five-year prepaid lease agreement with the Texas Funeral Directors' and Embalmers' Foundation, Inc., (an affiliate of the Texas Funeral Directors' Association) which was not negotiated through the Board of Control; this type of long-term lease and prepayment arrangement is not available to agencies inside the Treasury. Second, the board's monthly contribution to employee health insurance coverage through the Texas Funeral Directors' Association group plan varies by individual case from no contribution up to \$54.15; employees of agencies inside the Treasury receive a standardized \$15 per month contribution. Finally, other problem areas include lack of complete inventory control; failure to utilize economy-of-scale purchasing through the Board of Control; irregular record-keeping concerning employees' leave time and automobile allowances, as well as travel and expense voucher documentation and reimbursement which are not in line with provisions of the Appropriations Act; and lack of management techniques which would streamline administrative and financial procedures. Given these problems, it is apparent that the efficiency of the agency's operations is substandard.

Criterion 2 - Effectiveness

A number of concerns exist in the areas of agency compliance with statutory mandates and its effectiveness in performing the major tasks of administration, examination, licensing and enforcement. The board is mandated by statute to set standards of proficiency for licensees, but such activities are not a measurable part

of board activities. The value of board-administered examinations in screening applicants according to occupational ability and compliance with board standards is questionable, given the extremely high pass rates of approximately 89 to 99 percent on those tests. In addition, review indicates that enforcement (which is discussed in greater detail in Criterion 6) is ineffective from the customers' viewpoint, and board policies and procedures in this area would require extensive modification before public protection goals could be effectively addressed.

Criterion 3 - Less Restrictive or Alternative Methods

In general, restrictions on the actual practice of funeral personnel and establishments following licensure are not extensive. The primary focus of board-enforced restrictions is on the practitioners' character and "professionalism," while the Health Department imposes particular regulations concerning embalming, and disposition and transportation of corpses.

The greater restrictiveness on the industry center around qualifications necessary for entry into the regulated occupations. In this regard, Texas is more restrictive than most other states in requirements concerning applicants' age, apprenticeship length and performance and reciprocity. In the funeral industry, such restrictions on entry significantly benefit the industry to the detriment of the general public. Unlike many other industries, the need for services of morticians is limited by the number of deaths per year and there is no way of increasing overall demand for these services through advertising or other means. For individual firms to maintain their share, and thus their profits from this limited market, it is in their interest to restrict the number of competing businesses. However, such restrictiveness eliminates the positive effects of price competition for the consumer.

Criterion 4 - Overlap, Duplication, and Consolidation

An analysis and review of board activities and functions indicate that the board regulates a group of persons also regulated by the Health Department, since the general functions of licensing, administration, examination and enforcement which are performed by the board are also performed by that agency. Furthermore, the Health Department has primary responsibility for promulgating rules concerning embalming and the disposition and transportation of dead bodies. As a result of the department's experience and general expertise in this area, regulatory operations of the board could be logically transferred to the Health Department.

Criterion 5 - Legislative Changes

Several pieces of legislation beneficial to the public have been passed since 1903. Two pieces of legislation were introduced during the last session which appear to have some benefit for consumers; one was opposed by the Texas Funeral Directors' Association (TFDA) and failed of enactment, and the other passed with TFDA support.

The board's role in initiating and encouraging such legislation is unclear. The board maintains that its function is administrative, and that it has no responsibility

to influence legislative decision-making. However, the close ties with the trade associations would give the board means other than direct involvement through which legislation could be affected.

Criterion 6 - Complaints

Numerous concerns exist with respect to the processing of complaints by the agency. They include: 1) inconsistent and incomplete record-keeping on complaints; 2) lack of a code of ethics for processing complaints against board members; and 3) use of persons with past and present industry ties to investigate complaints.

The greatest concern encountered during the review centers upon the position routinely taken by the board that the primary consumer complaints on price and quality of service are outside board jurisdiction. The board has failed to seek a rule modification to deal with such complaints. Between 1975 and 1977, 40 percent of the complaints received were from consumers, yet only four percent of those were settled by formal sanction. Eighty-eight percent of all complaints acted upon by the board were lodged by its licensees. Thus, major consumer complaints have not been addressed, thereby reducing the effectiveness of the agency in protecting the general public.

Criterion 7 - Public Participation

In terms of public participation, the board: 1) has developed no approaches in addition to those required by statute to encourage public participation in its affairs; 2) has had practically no public attendance or participation in its meetings; 3) has not fully complied with the statutory requirements concerning publication of notice of meetings; and 4) has relied on the Texas Funeral Directors' Association to disseminate material to the public, which does not appear to have produced results. (It has been a common practice for members of the Board of Morticians to serve simultaneously on the board of directors of TFDA and this membership could have been used to further public interest.) In addition, there is no requirement for public membership on the board.

Criterion 8 - Equal Employment Opportunity

The agency has no written Equal Employment Opportunity (EEO) Affirmative Action Plans (AAP), written job descriptions, or written grievance procedures, and does not advertise job openings in newspapers in the state or with the Texas Employment Commission. While the small size of the agency may make implementation of such procedures difficult, plans could be tailored to meet the board's special needs.

Criterion 9 - Conflict of Interest

It appears that numerous opportunities exist for violation of the conflict of interest law by employees and board members. The possibility of such occurrences is increased since: 1) the board is composed entirely of persons in the industry; 2) a close association exists between the Texas Funeral Directors' Association and the

board; and 3) the board has not developed clear conflict-of-interest guidelines for employees or board members.

Criterion 10 - Open Records/Open Meetings

Efforts to comply with general notification, under open meetings requirements, have not been satisfactory. The board has also failed to observe specific statutory requirements in terms of public notification through newspapers and mail. By contrast, the State Board has consistently informed members of the Board of Directors of the Texas Funeral Directors' Association of its meetings and provided it with supporting documentation. These facts can only serve to strengthen the presumption that the public interest is not given proper attention.

In terms of the manner in which meetings are conducted, it is not possible to determine, from available records, whether executive sessions have been properly utilized. Meetings of committees of the board are not documented, nor is there any indication that notification of these kinds of meetings has been attempted.

Criterion 11 - Federal Intervention

Presently the funeral industry is regulated in some fashion by state government in all 50 states. Even though the regulation exists, and perhaps due to the quality of that regulation, in June 1978 the Federal Trade Commission published its final report, which included proposed federal trade regulation rules for the funeral industry. These proposed rules, which are of a comprehensive nature, are the only foreseeable areas of impact from the federal level. Since such rules are not finalized, it cannot be projected whether they will be adopted, and if adopted, in what form and what impact they will have.

CONCLUSIONS AND RECOMMENDATIONS

The review indicated that there are currently approximately 4,058 individuals who hold licenses issued by the State Board of Morticians. Of those, 3,986 hold funeral directors' licenses, 3,085 hold embalmers' licenses, and 3,013 hold both types. Funeral establishment licenses total 1,074. The overall agency budget for 1978 approximates \$190,000, and these funds support a staff of six agency employees. Additionally, agency policies are set by a six-member board, some of whom have served and now serve simultaneous terms as board members of trade associations.

Review of agency performance raises serious doubts as to whether the agency is effectively performing either its original health-related function or its more recently mandated enforcement function in relation to funeral directors. According to medical officials at the National Center for Disease Control and the Texas Department of Health, within the United States embalming has no public health significance. However, embalming is a well established tradition in the U.S. If the licensing of embalmers is continued for other reasons, the function should be located in the Health Department.

The review also indicated enforcement objectives are not being achieved. Enforcement, as broadly construed and as described in writing by the board, would be expected to protect the general public from unscrupulous or unqualified practitioners. However, board procedures, inspections, and actions on complaints do not contribute to the achievement of this fundamental goal.

The current annual establishment inspection, consisting of inspection of the preparation room for sanitary purposes, verification of the number of caskets on display and determination of adequate chapel facilities, is not adequate to check the procedures used in embalming or to determine if standards of proficiency are maintained.

In the area of complaint handling, a totality of statutory prohibitions contained in the Act creates a condition which essentially involves settlement of disputes initiated by licensees. This is apparent from the review of complaint files which indicates that for a three-year period from 1975 through 1977, 88 percent of the complaints acted upon by the board were lodged by licensees. Such action in response to consumer complaints is infrequent, although 40 percent of complaints are from that group. For the same three-year period, only one reprimand and one sanction were issued for consumer-initiated complaints.

Other violations over which the board feels it has jurisdiction are aimed at keeping non-licensed persons from practicing in the industry, an issue of primary concern to licensees. In comparison, the consuming public's complaints evidence more concern over price and quality of service. However, the board has taken the position that these types of problems do not lie within its jurisdiction. Yet, despite the pattern of the public's complaints, the board has not sought modification of its law. Neither has the board acted with a great deal of promptness in transferring such consumer complaints to other agencies having jurisdiction.

From the above review, it can be determined that the agency has failed in meeting objectives of protecting the public from health hazards and improper business practices.

To address its concerns in the areas outlined above, the commission offers the following recommendations:

THE BOARD OF MORTICIANS SHOULD BE ABOLISHED EFFECTIVE SEPTEMBER 1, 1979, AND THE MAJOR ADMINISTRATIVE OPERATIONS OF THE AGENCY TRANSFERRED TO THE HEALTH DEPARTMENT. IN ADDITION, OTHER STATUTORY CHANGES WHICH SHOULD BE MADE INCLUDE:

- 1) CREATION OF AN ADVISORY BOARD COMPOSED OF THREE LICENSED AND REGISTERED PERSONS AND THREE MEMBERS OF THE GENERAL PUBLIC
- 2) ADDITION OF CONFLICT OF INTEREST PROVISIONS WHICH APPLY TO ADVISORY BOARD MEMBERS, AND EMPLOYEES WHO ADMINISTER OR ENFORCE THE ACT

- 3) ELIMINATION OF APPRENTICESHIPS AND LICENSURE FOR FUNERAL DIRECTORS AND SUBSTITUTION OF ONE-TIME REGISTRATION, WHICH IS CONTINGENT UPON PASSING AN EXAMINATION
- 4) ALTERATION OF REQUIREMENTS FOR EMBALMER APPRENTICESHIPS TO REDUCE THEIR DURATION TO ONE YEAR, REDUCE THE NUMBER OF BODIES REQUIRED TO BE EMBALMED TO 25, AND REPLACE CASE REPORTS WITH A ONE-TIME SUMMARY REPORT
- 5) REMOVAL OF ALL REQUIREMENTS RELATING TO AGE, CITIZENSHIP, RESIDENCY, MORAL CHARACTER AND HIGH SCHOOL COMPLETION
- 6) REPLACEMENT OF RECIPROCAL LICENSURE WITH LICENSURE BY ENDORSEMENT
- 7) REVISION OF COMPLAINT PROCESSING PROCEDURES TO PROVIDE STANDARDIZED, OBJECTIVE AND TIMELY INVESTIGATION AND DISPOSITION COMPLAINTS AND TO INFORM CONCERNED PARTIES AS TO THE STATUS OF COMPLAINTS
- 8) OMISSION OF ALL PROVISIONS WHICH HAVE THE EFFECT OF RESTRICTING ADVERTISING OR COMPETITIVE BIDDING
- 9) ELIMINATION OF FUNERAL ESTABLISHMENT LICENSURE, AND ADDITION OF PROVISIONS FOR: A) PROVIDING AN ITEMIZED PRICE LISTS TO CUSTOMERS BEFORE DISCUSSION AND SELECTION OF FUNERAL-RELATED PRODUCTS AND SERVICES, AND B) RETENTION OF SUCH LISTS FOR THREE YEARS
- 10) ADDITION OF PROVISIONS ALLOWING THE HEALTH DEPARTMENT AND ADVERSELY AFFECTED PARTIES TO SUE FUNERAL ESTABLISHMENTS FOR APPROPRIATE INJUNCTIVE RELIEF

TEXAS MOTOR VEHICLE COMMISSION

The Texas Motor Vehicle Commission was created in 1971 to regulate the relationships between automobile dealers and automobile manufacturers. Along with authority for regulating the dealer-manufacturer relationship, the commission's enabling legislation included provisions for consumer protection in the area of warranty repairs provided to the buyers of new automobiles. The agency's funding is provided from license fees paid by dealers and manufacturers to a special fund and appropriated by the legislature. In 1975 the agency's authority was broadened to include motorcycles within the area of regulation.

COMPARATIVE ANALYSIS

To determine the pattern for regulation of the relationship between new motor vehicle dealers and manufacturers throughout the United States, a survey of the 50 states was conducted. The following discussion outlines the manner in which this regulation has been addressed in other states. The need to regulate the dealer-manufacturer relationship is currently expressed through legislation in 38 of the states surveyed. Twenty-three of these states, including Texas, meet this expressed need through a separate regulatory board or commission which administers the licensing effort. Four states have boards composed exclusively of motor vehicle dealers, while 13 states, including Texas, require that dealers constitute a majority of the membership. Board composition in the remaining six states ranges from no dealer members in one state, to dealers representing one-half of the board membership in two states and dealers representing less than a majority in three states.

Thirteen of the states surveyed, including Texas, indicate that the revenue sources for the regulatory body are derived from fees collected. In Texas, licenses are renewed annually. This annual renewal system is used in all but one of the states surveyed. Texas does not administer an examination as a licensing requirement. Only two states require such examination. Enforcement activities in 17 states, including Texas, involve investigation of complaints from consumers regarding new car warranties. Hearings are conducted inside the regulating agency in Texas and 13 other states.

States which regulate new motor vehicle dealers and manufacturers indicate the necessity for performing the basic functions of licensing, enforcement and administration. These basic functions also constitute the primary operating elements of the Texas Motor Vehicle Commission.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

While the Motor Vehicle Commission carries out its functions in a generally efficient manner, the review of its operations suggests that there are several

potential areas for cost savings, most particularly in the areas concerned with implementation of staggered renewals and the automation of various licensing procedures. While there is evidence of certain management controls and procedures to collect information necessary to effect timely management decisions as well as some functional specialization, the small size of this agency dictates that the executive director assume multiple line and staff functions which leaves less time for planning, organizing, directing and controlling--the primary functions of a director or manager.

Review of the revenues and expenditures of the commission as well as the accounting policies employed suggests that consideration of issues associated with Section 2.10 of the statute be resolved before any changes in fee structure are approved by the legislature.

Criterion 2 - Effectiveness

The commission performs two major functions, licensing and enforcement, each of which contains two elements.

The commission's licensing function consists of establishing licensure qualifications and providing a protest mechanism for dealer applicants. The objective of insuring that standards adequate to protect the public are met by licensee applicants has not been fully met because the commission has never established formal standards for licensees. It cannot be determined whether the commission is meeting its objective of protecting licensees from unfair competition without unduly restricting competition. However, it can be noted that the commission has denied only three dealer's licenses out of 53 protests from other dealers during the agency's seven-year existence.

The commission's second major function, enforcement, consists of activity regarding prohibited licensee practices and consumer warranty complaints. The fact that a board whose membership is heavily weighted with dealers has not made one determination against a manufacturer, and that compromise appears to be encouraged by commission procedures, indicates that the objective of insuring fair and adequate remedies against abusive practices by licensees is being met. Concerning the second enforcement element, although the commission provides an effective procedure for resolution of new vehicle warranty complaints, by not notifying new vehicle owners regarding the agency's authority, it limits its ability to determine if the overall objective of providing for compliance with new vehicle warranties is being satisfactorily achieved. It is difficult to determine the scope of actions which might be necessary to enforce statutory provisions concerning prohibitions and warranty satisfaction since the commission initiates no independent activity to determine if alleged or potential violations have occurred.

Criterion 3 - Less Restrictive or Alternative Methods

The Motor Vehicle Commission Code, although relatively new, has become more restrictive in the years since its initial passage. Although most other states do require licensing of dealers, manufacturers, distributors, and representatives,

Texas license fees vary from the norms of other states. Also, the authority given the Motor Vehicle Commission to deny new dealer licenses, if a new dealership is not shown to be in the public interest, is not provided in the majority of other states. Finally, the prohibitions found in the Texas Code are more restrictive, particularly on manufacturers, than in most other states. However, acts which are considered to be violations in many other states are not covered by the Texas Code.

Criterion 4 - Overlap and Duplication

The Motor Vehicle Commission performs many functions common to regulatory agencies in general. In addition, the commission shares its target population with other state administrative agencies such as the Attorney General's Office, the State Comptroller, DPS, and the Highway Department. Other states have placed the regulation of the motor vehicle industry and its related functions in one state agency -- a Department of Motor Vehicles. Thus, the advantages of economies of scale and the benefits of specialization can be utilized more efficiently and effectively.

Criterion 5 - Statutory Changes

While the Motor Vehicle Commission has never recommended any legislative changes, it should be noted that in the past two legislative sessions the statutory changes requested by trade associations have been adopted. These changes have been aimed at offering more protection to the dealer against potential abuses by the manufacturer.

Criterion 6 - Complaints

Consumer complaints to the Motor Vehicle Commission have steadily risen over the past three years. They account for over 90 percent of the total complaints received by the commission. However, the commission has not established formal written procedures to insure that consumer complaints are handled consistently and equitably over time. Nonetheless, almost half of the complaints received are satisfied within a reasonable amount of time. The commission, however, has chosen to apply less severe types of penalties to dealers and manufacturers. In the three fiscal years under consideration, no licenses were suspended or revoked.

It should be noted that the Attorney General's Office also handles consumer complaints. It obtains relatively the same results on total complaints received as the Motor Vehicle Commission on new car complaints. Processing time is approximately the same.

Criterion 7 - Public Participation

The agency's enabling statute includes elements which encourage public participation in that two of the commission members must be selected from the

public at large. The commission has adopted rules which do afford the public some degree of participation in its proceedings.

Criterion 8 - Equal Employment/Privacy

The procedures of the commission in the area of affirmative action are generally adequate for a public agency of its size. The review revealed no evidence suggesting that the agency has infringed upon the personal rights of its employees or the privacy of other individuals.

Criterion 9 - Conflict of Interest

No information was obtained during the review which would indicate that individual members of the board or employees of the agency have maintained financial or other interests which are in conflict with the purposes and operations of the agency.

Criterion 10 - Open Records/Open Meetings

The records of the Motor Vehicle Commission are available to the public in accordance with Open Records provisions. Despite the fact that procedures for advance notification of public meetings appear to fulfill all pertinent statutory requirements, these requirements do not appear to have significantly increased the commission's visibility among members of the general public.

Criterion 11 - Federal Impact

No federal standards were identified which would be affected if the commission were abolished. Federal funds are not involved in the administration of the Motor Vehicle Commission Code as administration costs related to the licensing and regulatory functions of the commission are financed through the collection of fees.

CONCLUSIONS AND RECOMMENDATIONS

The licensing function of the commission involves the issuance of licenses to new motor vehicle dealers, manufacturers, distributors, and their representatives. The underlying goal of this function is to protect the existing new vehicle distribution system and the public interest by applying licensing requirements in a fair and non-restrictive manner. A review of the licensing function showed, however, that the commission has developed no standards other than meeting specific statutory requirements to evaluate manufacturer, distributor, and representative license applications and informal standards, in addition to statutory requirements, for dealer licensure. An applicant for a dealer's license must have already met the manufacturer's standards required for franchising. The manufacturer's standards include such areas as financial ability, vehicle market, management capability, and display and repair facilities. Nevertheless, a potential new dealer must also submit a considerable amount of information to the commission as part of the licensing process. However, because the commission has

not specified standards for the evaluation of dealer license applications independent of the manufacturer's, the commission's requirements tend to be limited to assuring that manufacturer's requirements are fulfilled.

Another element of the licensing function is the protest process. In 1977, 30 percent of the eligible applications were protested. The applicant subject to protest must develop a case to show good cause for the dealership. The burden of proof is on the applicant, and the cost of the procedure can be high both in terms of dollars and time required to gain a commission order approving the application. Of the protested applications received in 1977, the time required for approval ranged from approximately three to eleven months. The average length of time from receipt of an application by the commission to issuance of a final order in the nine cases decided was approximately six months. Given the additional costs which applicants may have to bear to complete the procedures established by the Code and given the infrequency with which the conclusion of the protest procedure results in a denial of a new dealership, a question is raised as to whether this regulatory mechanism is truly effective.

Intervention by the state in the dealer-manufacturer private contractual relationship is justified by auto dealers on grounds that they stand on an unequal footing with the larger manufacturers. The Motor Vehicle Commission accords four auto dealers and two non-dealers the power to determine whether new competitors enter the market. Heavy reliance upon existing auto dealers to determine the rights of auto manufacturers and potential new auto dealers raises both antitrust and constitutional due process problems. The commission's authority is currently being challenged on both grounds in Marty R's AMC, Inc., v. Texas Motor Vehicle Comm'n, A-78-CA-258, a recently filed action in federal district court in Austin.

In California, a similar state agency, only four of whose nine members were auto dealers, was successfully challenged in American Motors v. New Motor Vehicle Board., 138 Cal. Rptr. 594,600 (1977).

"What we hold is that the combination of (1) the mandated dealer-Board members, (2) the lack of any counterbalance in mandated manufacturer members, (3) the nature of the adversaries in all cases (dealers v. manufacturers), and (4) the nature of the controversy in all cases (dispute between dealer and manufacturer) deprives a manufacturer-litigant of procedural due process, because the state does not furnish an impartial tribunal."

* * *

"The evil here lies in the state's insistence that under all circumstances the adjudicatory deck of cards be stacked in favor of car dealers. That evil is not eliminated by stacking the deck 4/9ths of the way rather than all the way.

Insofar as the Board is given the power to adjudicate disputes between dealers and manufacturers, it is invalidly constituted. Its decision herein is a nullity because reached in violation of due process."

In 1977 the California law was amended to exclude auto dealer members of the Board from involvement in dealer/manufacturer protests. This revised statute, which limited the use of state police powers, successfully withstood antitrust and due process challenges in New Motor Vehicle Board v. Orrin W. Fox Co., ___ U.S. ___ (Dec. 5, 1978 - no citation currently available).

Recognizing the potential constitutional due process and anti-trust problems created by entrusting the decision of manufacturer rights to a board composed of 4/6ths auto dealers, the Sunset Commission revised the Texas statute to be in accord with that now constitutionally approved from California. This should assure due process to all litigants before the Texas Motor Vehicle Commission, while reducing the potential for restraints of trade by existing dealers. An additional revision allows all persons an opportunity to participate in proceedings before the commission.

The enforcement function of the commission consists of two activities: enforcement of statutory prohibitions and the resolution of complaints. The purpose behind the prohibitions included in the statute is to protect the public and members of the industry from unfair practices and abuses by licensees. The objective behind the complaint process is to provide licensees and the public with a mechanism to insure that their complaints regarding alleged violations of the Code are resolved fairly and in a timely manner. Many licensees and consumers, however, appear reluctant to follow the complaint process to a hearing, when necessary, because of the time and expense involved. Both licensees and consumer complaints receive, at the conclusion of the commission hearing procedures, only fulfillment of statutory guarantees. The Code does not provide remedies such as the payment of damages or costs by those licensees found in violation of the Code.

A review of the complaint function revealed that the commission resolved complaints equitably and in a timely manner. However, the number of complaints received by the commission does not adequately reflect the size of the population of consumers with warranty repair problems. According to a recent FTC sponsored survey, approximately 30 percent of new motor vehicle purchasers surveyed experienced vehicle defects covered by the warranty, 25 percent of whom were dissatisfied with the service received. Applying these frequencies to the number of new vehicles sold in Texas during 1977 (1,024,980 new vehicle registrations) indicates that as many as 75,000 Texas buyers may have received unsatisfactory warranty service. Compared to the 355 complaints received by the commission during 1977, it could be argued that a sizeable number of warranty complaints exist which do not find their way to the commission.

In regard to its administrative function, the review indicated that the practice of retaining large amounts of earned but unrecognized revenues in the commission's suspense account was at variance with generally accepted accounting principles. This practice directly affects the amounts transferred from the Motor Vehicle Commission Fund to the general revenue fund at the close of each biennium. In addition, although the commission has been given the option of staggering license renewals, this has not been implemented.

Based on review of agency evaluations, staff analyses, and hearing testimony, the commission recommends that the agency be retained with the following statutory changes:

- 1) THE MOTOR VEHICLE COMMISSION SHOULD CONSIST OF NINE MEMBERS, FIVE OF WHOM DO NOT HAVE INDUSTRY FINANCIAL INTERESTS, AND ONLY THE PUBLIC MEMBERS SHOULD BE INVOLVED IN ACTIONS TO DENY NEW DEALERSHIPS.
- 2) CONFLICT OF INTEREST PROVISIONS SHOULD BE ADDED FOR ALL COMMISSION MEMBERS AND AGENCY EMPLOYEES, AND MEMBERS OF THE PUBLIC SHOULD BE ALLOWED TO PARTICIPATE FORMALLY AS PARTIES TO COMMISSION HEARINGS.
- 3) NOTICE OF COMPLAINT PROCEDURES SHOULD BE GIVEN TO ALL BUYERS OF NEW MOTOR VEHICLES, AND HEARINGS SHOULD BE SCHEDULED BY THE AGENCY IF A CUSTOMER COMPLAINT HAS NOT BEEN SATISFACTORILY RESOLVED BY A DEALER WITHIN 30 DAYS.
- 4) NOTICE OF COMPLAINT STATUS SHOULD BE PROVIDED TO ALL PARTIES AT LEAST EVERY 90 DAYS, AND THE AGENCY SHOULD HAVE AUTHORITY TO DISMISS CONSUMER COMPLAINTS AND INDUSTRY PROTESTS OF NEW DEALER APPLICATIONS THAT ARE CLEARLY FILED WITHOUT GOOD CAUSE.
- 5) FUNDS FOR AGENCY OPERATIONS SHOULD BE APPROPRIATED FROM THE GENERAL REVENUE FUND.
- 6) THE AGENCY SHOULD INSTITUTE A PROCEDURE TO STAGGER LICENSE RENEWALS THROUGHOUT THE YEAR.

TEXAS NAVY, INCORPORATED

The Texas Navy, Incorporated is a non-profit corporation which is designated as the official body to conduct the affairs of the Texas Navy (Article 5891.1, V.A.C.S.). The duties of the Texas Navy, Inc. are to assist in the "preservation and promotion of the history of the Texas Navy and of the water resources of this state." A non-profit corporate charter for the Texas Navy, Inc. was issued October 10, 1972. The statute establishing the authority of the Texas Navy, Inc. became effective August 27, 1973. Revenues of the Texas Navy, Inc. are derived through dues and donations and are held in a local bank account. The statute specifies that "no state funds shall be required" by the Texas Navy, Inc. Because of the small size and limited operations of this agency, findings are presented below as a unit rather than on a criterion-by-criterion basis.

REVIEW OF OPERATIONS

The charter of the Texas Navy, Inc. provides for five members of the board of directors. The statute provides for four additional members of the board: two to be appointed by the governor; one by the lieutenant governor; and one by the speaker of the House of Representatives. The by-laws provide for a total of at least 11 members (including the four appointed by the public officials). The by-laws further provide that if the public officials do not make their appointments within 30 days, the other members may elect members to fill the vacancies.

The present 11-member board of directors consists only of members selected through the process established in the by-laws of the corporation. None of the appointments provided for by statute have been made since its enactment, according to the Secretary of State's office. The board functions in the manner of a non-profit corporation's board of directors. Minutes of meetings are not required to be filed with any other state agency, but are on file in the Texas Navy, Inc. office.

The staff of the Texas Navy, Incorporated consists of a Chief of Naval Operations and two secretaries. The C.N.O. serves as the administrator and receives no salary. The present C.N.O. was a member of the original board of directors and has served as the C.N.O. since the time of incorporation. One of the secretaries is a full-time employee of the corporation and the wife of the C.N.O. Her salary is \$2,750 per year. The other secretary is a part-time employee of the corporation and receives a salary of \$794 per year. The staffing pattern has remained unchanged since incorporation.

According to information reported in the corporation's self-evaluation report, the board members and employees are not state officers and employees, and thus not subject to the provisions of Article 6252-9b, Standards of Conduct of State Officers and Employees. The self-evaluation report further indicates that none of its records are considered to be confidential and that the public is not restricted from attending the meetings.

The corporation receives donations and dues from members who have been commissioned and from others interested in the history of the Texas Navy. In addition, during 1974, the corporation received \$135 in interest payments and \$7,500 in grant funds from the Moody Foundation. The following is a summary of total revenues and expenditures since 1975.

<u>Fiscal Year</u>	<u>Revenues</u>	<u>Expenditures</u>
1975	\$ 12,498	\$ 10,432
1976	12,867	13,098
1977	13,907	13,795

In 1977, there were 725 new commissions issued and 413 admirals paid dues. Other revenues are derived from the sale of Christmas cards and other Naval mementos. Each newly commissioned admiral receives a certificate signed by the governor which carries the Official State Seal.

The Texas Navy, Incorporated is not subject to audit by the State Auditor. The only audit requirements are those required under the Texas Non-profit Corporation Act. The corporation is not required to file an inventory of property with the Board of Control nor to file Annual Reports with the governor, Legislative Budget Board or State Auditor.

The funds received by the Texas Navy, Inc. are deposited in a bank account in Galveston. They are totally outside the State Treasury. No state appropriations have ever been made to the Texas Navy, Inc. Therefore, no quantitative performance or work load measures have been developed prior to the self-evaluation and none were reported in the self-evaluation.

CONCLUSIONS AND RECOMMENDATIONS

Although the Texas Navy, Inc., is cited in the statutes, the corporation has no other characteristics unique to state agencies. The agency does not receive state funds and is not subject to the state reporting and auditing requirements. The membership of its board as presently constituted is privately determined. The objectives are similar to those of other historical organizations. Participation in its activities is totally voluntary, based on an individual's interest. The statutory status of the Texas Navy, Inc. does not give it exclusive rights to perform any of the functions set out in the statute or charter. Apparently the only result of statutory authorization of the Texas Navy, Inc. is that the corporation is officially designated to organize the admirals commissioned by the governor and in this regard receives the list of names and addresses of admirals as they are commissioned.

From the foregoing, the commission concludes that this agency does not require statutory status to accomplish its purposes. Therefore, the following recommendation is offered:

THE TEXAS NAVY, INCORPORATED, SHOULD BE ALLOWED TO CONTINUE TO OPERATE AS A NON-PROFIT CORPORATION, BUT ARTICLE 5891.1 SHOULD BE TERMINATED ON SEPTEMBER 1, 1979 PURSUANT TO THE PROVISIONS OF THE TEXAS SUNSET ACT. ANY ARTIFACTS OR HISTORICAL DOCUMENTS WHICH HAVE BEEN COLLECTED BY THE CORPORATION SHOULD BE TRANSFERRED TO THE TEXAS HISTORICAL COMMISSION FOR DISPLAY AND PRESERVATION IN THE GALVESTON AREA.

BOARD OF LICENSURE FOR NURSING HOME ADMINISTRATORS

The Board of Licensure for Nursing Home Administrators was created by the legislature in 1969. The impetus behind creation of this regulatory board stemmed from federal requirements for state participation in Medicaid funding. Consequently, the Nursing Home Administrators Licensure Act embodies much of the language found in the relevant federal regulations, reflecting the basic requirement of an autonomous board with policy-making power. The underlying objectives of the statutory mandate are to provide public protection by ensuring that licensees are competent and well-qualified and by ensuring that licensees comply with relevant standards of conduct.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the occupation of nursing home administrators within the United States, a survey of the 50 states was conducted. The need to regulate the occupation of nursing home administrators is currently expressed through licensing requirements imposed by all of the 50 states surveyed. From the standpoint of organizational patterns 24 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 26 states, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, 11 require that appointees be confirmed by the legislature, and membership in four states is limited to persons who are licensed members of the occupation. In Texas, appointees are not confirmed by the legislature and membership is not limited to persons who are licensed members of the occupation. Forty-eight percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 17 of 50 states indicated that these bodies were not solely supported by fees and charges of the agency.

Forty-eight of the states regulating the occupation of nursing home administrators administer national examinations. The other states develop and administer their own. Texas uses a national examination. The examination is required only once in all of the states, including Texas. In 33 states, licensees are required to renew their licenses annually. Texas licenses for a two-year period. Enforcement activities in all states, including Texas, involve investigation of complaints from consumers and others engaged in the occupation of nursing home administrators. Hearings are conducted inside the regulating agency in 35 states. In Texas, hearings are conducted by the board.

States which regulate the occupation of nursing home administrators indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the Board of Licensure for Nursing Home Administrators and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

Within the general office operations performed by the agency there were two areas in which greater efficiencies could be achieved through strengthening the methods used in records management relative to complaints, implementation of additional cash control mechanisms, utilization of the Board of Control for all purchases and the Attorney General for legal counsel services. It should be noted that the board has chosen to employ private legal counsel rather than making use of the Attorney General's staff.

In relation to the on-site inspection process developed for monitoring the ongoing administrator-in-training internship requirements of licensees, the current use of the executive secretary's limited time for this purpose appears inefficient, particularly in view of the small size of the agency and the need for more attention to enforcement activities relating to complaints.

Funding patterns and allocations were typical of an agency of this size, with the exception of the statutorily created local fund account. Over time this account has caused confusion and needless expenditure of time and effort on the part of the agency and the central accounting authorities of the state. The needs of the agency are not so unusual that a separate fund, exempted from the general restrictions placed on other state funds, is warranted.

Criterion 2 - Effectiveness

The agency has developed educational standards and requirements for applicants for licensure which have raised overall licensee educational levels. It has, however, developed no standards for licensee performance or ethics and has no monitoring or enforcement functions which could be expected to identify potential licensee deficiencies. The statutorily required mechanism to conduct continuing studies of administrators and nursing homes to improve standards and methods of enforcement has not been implemented.

Criterion 3 - Less Restrictive or Alternative Methods

Within the framework of federal requirements, the state has discretionary power to increase restrictive regulation over licensees. Given the importance of the nursing home administrator in terms of safeguarding the health and well-being of nursing home residents, more restrictive measures may well be the best means of protecting the public. However, one area of restrictiveness that, on the surface,

seems to have little justification given the objectives of the agency, is the unrealistically high education requirement in some areas which is coupled with an additional apprenticeship in various fields.

Criterion 4 - Overlap and Duplication

Since, by statute, the Health Department is required to regulate nursing home personnel and the Board of Licensure for Nursing Home Administrators is required to regulate nursing home administrators, both have promulgated rules and regulations for nursing home administrators. One result of this dual mandate is a duplication of regulatory effort. Although both have authority to regulate, the lack of clearly defined responsibilities may result in situations where each agency may hesitate to act on a matter which may be perceived as more "properly" a jurisdictional matter for the other. The degree of duplication and overlap between the Department of Health and the Board of Licensure for Nursing Home Administrators is such that the need for a less fragmented, more holistic, approach is evident. The feasibility of some degree of consolidation is also apparent when consideration is given to already existing Department of Health resources and functions.

Criterion 5 - Statutory Changes

The agency has not been active in recommending or taking a position on legislative changes that directly affect agency operations. Board stance on several bills seems to favor a limitation on additional governmental involvement in, and regulation of, the activities of nursing homes in several areas of operation. The board position on some bills appears to be in opposition to increased licensee or board accountability to the general public. For example, the board has opposed legislation to require annual meetings at nursing homes where residents have an opportunity to state grievances, add a senior citizen to the board, and place board funds in the State Treasury.

Criterion 6 - Complaints

From receipt to final disposition, the complaint processes of the board were often inadequate and inefficient. Moreover, in many instances, complaints were ignored, particularly those pertaining to violation of the regulations of the Department of Health. Several areas where complaint processing could be strengthened include the hiring of a trained investigator, closer scrutiny during the period in which a licensee is on probation and more stringent follow-up on complaints.

Criterion 7 - Public Participation

There has been little effort on behalf of the agency to encourage participation in board activities by members of the general public. It is unclear whether additional requirements for public notification would increase participation by the general public in the operations of an agency of this type.

Criterion 8 - Equal Employment/Privacy

The procedures and records of the agency in the area of affirmative action are generally adequate for a public agency of this size and scope. The development of a plan to process grievances and appeals, and a plan to ensure confidentiality of employee records, would augment current practice.

Criterion 9 - Conflict of Interest

The review indicates that there is compliance with the financial disclosure provisions and that employees are informed of conflict of interest provisions. Formal written policies concerning conflicts of interest relating to employees' outside relationships have not been developed nor have clear guidelines been established in terms of permissible actions on the part of board members in the conduct of official business of the board.

In addition, the close relationship between the board, the national association and trade associations is questionable in terms of presenting to the public an objective arms-length stance from the regulated industry. Many board members were concurrently officers in trade associations, and one member was employed as a consultant to a trade association. The executive director also drew a supplemental salary from a private association.

Criterion 10 - Open Records/Open Meetings

The State Board of Licensure for Nursing Home Administrators appears to maintain an adequate system of record-keeping on licensees which is open to limited inspection by licensees themselves. Public inspection is limited to review of agency rules and publications.

Openness of public meetings implies both notification and accessibility. The procedures utilized by the board for advance notification of public meetings fulfill statutory requirements. Many of the public meetings, however, may be inaccessible to most members of the public and the regulated occupation since no standard channels of public notification other than those required by state statute are used. Notification of rule changes both before and after adoption appears to be adequate.

Criterion 11 - Federal Impact

Federal funds are not involved directly in the administration of the board's Act. However, Title XIX of the Social Security Act makes a state's receipt of federal Medicaid funds dependent on the establishment of a program for licensing and regulating nursing home administrators. Funds channeled to the state under this program can be substantial.

From the above, it is seen that complete abolishment of the board and its regulatory functions would have a detrimental effect on federal funds received

under the Medicaid Program. However, an HEW opinion delivered to Colorado suggests that a range of regulatory options exists that would be acceptable to the federal government.

CONCLUSIONS AND RECOMMENDATIONS

The review contained in this report has centered on the areas of licensing, administration and enforcement to assess the result of the exercise of these powers on the objectives originally conceived under the statute. The evaluation of the Board of Licensure for Nursing Home Administrators' activities revealed several areas which should be improved.

One aspect of the board's licensing function is to develop and impose standards for licensure which include a determination of acceptable levels of education. Inconsistencies found in these minimum standards and the evident need for more stringent educational requirements suggest that consideration could be given to a revision of licensing standards.

To ensure protection of the public interest, regulatory agencies must maintain an independent stance toward the regulated industry or occupation. The administrative activities of the Board of Licensure for Nursing Home Administrators raises serious questions as to the achievement by the board of an appropriate degree of separation. Efforts to separate the board from private associations should be made.

Components of an effective enforcement function include adequate documentation of all phases of the process, a thorough investigation of the charges contained in complaints and, if justified by the facts, an impartial and stringent application of sanctions against offenders. An evaluation of the areas described above indicated the need for a strengthening of enforcement efforts from receipt of a complaint to final disposition.

The foregoing suggests that the licensing, administration, and enforcement objectives related to the functions performed by the board have not been fully met. To address its concerns, the commission makes the following recommendations:

THE BOARD SHOULD BE MAINTAINED. HOWEVER, THE RESPONSIBILITY FOR THE MAJOR ADMINISTRATIVE FUNCTIONS OF THE BOARD SHOULD BE ASSUMED BY THE DEPARTMENT OF HEALTH. IN ADDITION TO THIS MAJOR ORGANIZATIONAL CHANGE, THE FOLLOWING OPERATIONAL MODIFICATIONS ARE ALSO RECOMMENDED:

- 1) ALL FUNDS RECEIVED BY THE BOARD SHOULD BE DEPOSITED IN THE STATE TREASURY TO THE CREDIT OF THE GENERAL REVENUE FUND

- 2) THE BOARD'S COMPOSITION SHOULD BE MODIFIED TO INCLUDE ONE OR MORE CONSUMER REPRESENTATIVES
- 3) THE BOARD SHOULD BE PROHIBITED BY STATUTE FROM EMPLOYING PERSONS WHO ARE ALSO EMPLOYEES OF NURSING HOME ASSOCIATIONS
- 4) WRITTEN PROCEDURES RELATING TO CONFLICTS OF INTEREST, RELEASE OF FILE INFORMATION TO THE PUBLIC, AND COMPLAINT PROCESSING AND INVESTIGATION, SHOULD BE DEVELOPED AND FOLLOWED
- 5) NEWLY IMPLEMENTED COMPLAINT PROCEDURES SHOULD BE MAINTAINED AND EXPANDED
- 6) THE FEASIBILITY OF OBTAINING THE SERVICES OF A TRAINED INVESTIGATOR, ON AN AS-NEEDED BASIS, SHOULD BE EXPLORED

PESTICIDE ADVISORY COMMITTEE

The Pesticide Advisory Committee was created by statute in 1971 to provide scientific-technical expertise to the Commissioner of Agriculture for pesticide use which would best protect property, animal life, and the public health and welfare of the state. Membership of the Committee is composed of the deans of the Departments of Agriculture at Texas A&M University and Texas Tech University, the executive director of the Parks and Wildlife Department, the Commissioner of Health and the Commissioner of Agriculture or their designated representatives. Because of the limited operations of this agency, findings are presented below as a unit rather than on a criterion-by-criterion basis.

REVIEW OF OPERATIONS

Widespread public concern about the entry of pesticidal chemicals into the environment and concomitant food and wildlife contamination, led to the appointment of a scientific advisory panel by Governor Preston Smith. In 1970, this panel recommended the creation of a Pesticide Advisory Committee to help avoid possible problems related to the use of pesticides in the state of Texas.

The Pesticide Advisory Committee made two recommendations to the Commissioner of Agriculture during the period November 1, 1971, to June 4, 1973. Both related to the use of DDT, a pesticide that was the focus of considerable controversy due to its volume of use and claimed harmful side effects.

In 1972 the U.S. Environmental Protection Agency prohibited the use of DDT for all purposes and all states have been required to adopt the federal guidelines for registration and uses of all pesticides. Provision is made in federal regulations allowing states to register pesticides for special local needs. The Pesticide Advisory Committee could have served the Commissioner of Agriculture in this registration process. However, review of records has shown no evidence that the Committee acted in this capacity.

The Committee did not meet from June 1973 until February 1977, a period of more than three years. The concerns of the early seventies have been substantially addressed by the banning of DDT in 1972 and the establishment of stringent controls over pesticides and their uses by the EPA. These factors indicate that the need for the Pesticide Advisory Committee has been fulfilled.

CONCLUSIONS AND RECOMMENDATIONS

From the foregoing, the Commission concludes that the Pesticide Advisory Committee is no longer needed. Should the need for the advisory function of the Committee arise, the Commissioner of Agriculture has general statutory authority to appoint ad hoc committees to review future concerns. Therefore, the following recommendation is offered:

**THE PESTICIDE ADVISORY COMMITTEE SHOULD BE ABOLISHED
EFFECTIVE SEPTEMBER 1, 1979.**

PINK BOLLWORM COMMISSION

The Pink Bollworm Commission was created in 1920 by amendment to the Pink Bollworm Act of 1917. The commission, composed of five members appointed by the governor, is responsible for making recommendations to the governor, concerning the control of the Pink Bollworm pest. Because of the limited operations of this agency, findings are presented below as a unit rather than on a criterion-by-criterion basis.

REVIEW OF OPERATIONS

At the time of the commission's establishment in 1920, the spread of the Pink Bollworm had become a serious threat to cotton producers of the state. To assist in the control of this pest, the Pink Bollworm Commission was empowered by the Act to investigate reported infestations and recommend to the governor that:

- a. it is safe to grow cotton in the specified counties under rules and regulations promulgated by the Commissioner of Agriculture;
- b. it is dangerous to grow cotton in the specified counties and a non-cotton growing zone should be established;
- c. it may be dangerous to allow free movement of contaminated material brought into Texas from infested territories outside the state.
- d. the conditions existing, or likely to exist, on the non-Texas side of the boundary line should be carefully considered, and the evidence concerning such conditions shall be such as to reasonably show that the establishment of a non-cotton zone in the county or counties will effectively protect the cotton industry of Texas against the further spread of infestation; or
- e. a non-cotton zone or a controlled cotton-growing zone should be established in specified geographic areas of the state.

Upon receiving the recommendations of the Pink Bollworm Commission, the governor is required to issue a proclamation designating the area to be quarantined. This allows the Commissioner of Agriculture to issue regulations under the quarantine issued by the governor. Documents indicate that by 1938 the 13 southernmost counties of Texas had been investigated and declared infested. The infestation gradually spread to 119 counties, most of which were included in the regulated area. The last proclamation issued by the governor under the Act was in 1967.

The inactivity of the commission since 1967 can be largely attributed to modified farming practices mandated by the Commissioner of Agriculture in regulated areas of the state. In these areas, cotton is required to be planted and

harvested only at specified dates during the year, thus interrupting the life cycle of the bollworm and providing an effective control method. Non-regulated areas of the state have been controlled through the voluntary application of those farming practices and techniques mandated in regulated parts of the state.

The Pink Bollworm Act also created a three-member Compensation Claim Board to provide compensation to farmers whose fields were ordered destroyed due to infestation. This board was abolished in 1975 by the Sixty-fourth Legislature.

CONCLUSIONS AND RECOMMENDATIONS

From the foregoing, the commission concludes that the activities of the Pink Bollworm Commission resulted in the control of bollworm infestation in most areas where cotton is grown. Control of pink bollworm infestation in these areas is achieved primarily through the establishment of dates for the planting and harvesting of cotton which interrupt the life cycle of the bollworm. In cotton producing areas where the Commissioner of Agriculture has not been given authority under this Act, voluntary compliance has proved successful in the continued efforts to control the bollworm and minimize damage. The virtual inactivity of the commission since 1967 attests to the reduced economic danger from this pest and the final accomplishment of the agency's objectives. Therefore, the following recommendation is offered:

PINK BOLLWORM COMMISSION SHOULD BE ABOLISHED. THOSE PORTIONS OF THE PINK BOLLWORM ACT WHICH AUTHORIZE THE COMMISSIONER OF AGRICULTURE TO TAKE REGULATORY ACTION CONCERNING THIS PEST SHOULD BE CONTINUED UNDER THE AUTHORITY OF THAT DEPARTMENT.

PRIVATE EMPLOYMENT AGENCY REGULATORY BOARD

Regulation of private employment agencies in Texas began with the passage of legislation in 1915. Until 1969, full responsibility for carrying out the provisions of the state's statutes in this regulatory area resided with the Department of Labor and Standards. In 1969, the Texas Private Employment Agency Regulatory Board was created to share regulatory responsibilities with the department. While the department retained major responsibility for day-to-day operations associated with carrying out the provisions of the law, the board assumed a broad policy-making role in the general areas of administration, licensing and enforcement.

COMPARATIVE ANALYSIS

To determine the regulatory pattern associated with private employment agencies within the United States, a survey of the 50 states was conducted. This survey showed that the need to regulate private employment agencies is currently expressed through the licensing requirements imposed by 47 of the 50 states surveyed.

The organizational patterns used in these states indicate that only one state, New Mexico, regulates private employment agencies through an independent board operating with a staff directly under its control. Nineteen states including Texas, have statutory boards or commissions which share responsibility with governmental departments charged with the regulation of several occupations. Of these states, eight have members appointed by the chief executive, with only Texas and Minnesota requiring legislative confirmation of those members. Membership in 11 of these states, including Texas, is limited to persons who are licensed members of the occupation.

Since there is no nationally adopted test in this regulatory area, states such as Texas that require a licensing examination develop and administer their own tests. Currently, less than half the states use either an oral or written testing procedure.

Forty states require annual renewal of licenses. Texas licenses both agencies and operators on an annual basis.

In general, states regulating private employment agencies indicate responsibilities in the areas of testing, regulating fees, promulgating rules, and providing enforcement hearings. These basic functions constitute the primary elements of the operations of the Texas Private Employment Agency Regulatory Board. In the material that follows, these elements are examined in the context of specific criteria set forth in the Texas Sunset Act.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

Two major factors were analyzed regarding efficiency of operation: 1) structure - to determine whether organizational responsibilities are clearly defined so that statutory mandates may be efficiently performed; and 2) cost - to determine the board's major cost elements and whether expenditures have been made in a cost-effective manner.

An unusual relationship exists between the board and the Department of Labor and Standards. Responsibility for regulation is shared, with neither being responsible to the other, but with each being dependent on the other if effective regulation is to occur. The area most seriously affected by the present dual delegation of responsibility is the enforcement of the Private Employment Agency Law. However, administrative functions are also affected. The board employs a half-time secretary to prepare board minutes; to administer and grade examinations and to perform other board-related activities. Other responsibilities which cannot be performed by this limited staff are requested of the department. The performance of such tasks has at times generated much debate between the board and the department.

General revenue appropriations to provide the board activities have been of two types: 1) non-specific appropriations to the Department of Labor and Standards, to provide for administration of the law; and 2) specific appropriation to the board itemized within the appropriation pattern of the Department of Labor and Standards. The cost of enforcement functions provided by the Department of Labor and Standards has been limited by appropriations to amounts less than the income from licensing fees. Review of the board's expenditures showed the major category to be per diem and travel. A cost comparison of the board's per diem and travel expenses to similar costs of other state boards indicated that the board has been relatively conservative in its use of state funds for direct costs associated with meetings.

Criterion 2 - Effectiveness

The objectives of the board are carried out through three major functions: 1) licensing, 2) enforcement, and 3) administration. In performing the licensing function, the board is statutorily required to prepare an examination for persons desiring to become licensed operators. The objective for the examination is to insure that only qualified individuals are approved for entry into the private employment agency industry. The present examination, however, may not be testing a sufficient number subject areas to protect the public from unqualified personnel. For example, the operator's examination focuses primarily on the applicant's knowledge of the laws regulating private employment agencies. By focusing on laws, the examination de-emphasizes the testing of applicants on the general body of knowledge and skills necessary in performing employment services for individuals. In addition, persons working as employment counselors form a large part of the private employment agency personnel that deal with the public on a daily basis and are neither required to take an examination nor hold a license.

In performing the enforcement function, the board is required by statute to hold hearings for license revocation. A general objective underlying the hearings process is to fairly and impartially determine the validity of the complaints brought before the board against agencies or their operators. The procedures used in the present hearings process appear to function satisfactorily, but the severity of the single penalty of revocation authorized appears to be the cause for the relatively low number of hearings.

Along with other general administrative duties, the board has a key responsibility under its statute -- to promulgate a schedule of maximum fees to be charged applicants by private employment agencies.

Eight years ago, the board adopted a maximum fee schedule which applied only to persons with gross earnings of \$8,000 or less, thus excluding large numbers of persons from protection offered by the statute. Only recently has the board extended this coverage to protect individuals with salaries in excess of \$8,000.

Criterion 3 - Less Restrictive or Alternative Methods

The overall trend in changes to the Private Employment Agency Law is that the general public is better protected and employment agencies have been allowed greater freedom in the fees they can charge.

Analysis of the regulatory patterns of other states shows that the form of regulation used by Texas is no more restrictive than that used in the majority of states except that most states which license do not include passing a written examination as a requirement.

Criterion 4 - Overlap and Duplication

While the Private Employment Agency Regulatory Board and the Department of Labor and Standards do share target populations (private employment agencies and operators), the nature of statutorily defined duties and responsibilities regarding these groups are not overlapping or duplicative. However, each agency performs related functions, and an interdependent relationship exists between them, with cooperation required for the successful performance of duties.

Criterion 5 - Statutory Changes

During the last four legislative sessions reviewed, the board was not active in recommending legislative changes which could be identified as being in the public interest. This may be due, in part, to the board's composition of industry representatives which creates a membership in which a full perspective on the public benefit may be lacking.

Criterion 6 - Complaints

All the preliminary aspects of the complaint process involving investigation and initial enforcement responsibilities are carried out by the Department of Labor and Standards. The Private Employment Agency Regulatory Board handles only the final disposition of complaints through the hearings process.

A large number of complaints concerning private employment agencies are made to the Department of Labor and Standards and to the Attorney General's Office. However, the board has held only a small number of hearings since it was created. Thus, very few complaints have received final action by the board.

Criterion 7 - Public Participation

The Private Employment Agency Law does not specify public participation requirements. The board has not made any effort to encourage non-industry representatives to participate in its activities. It has not acted to inform the public of the board's policies and responsibilities concerning the industry it regulates.

Criterion 8 - Equal Employment/Privacy

The board employs one half-time secretary. Interviews with board members and the department personnel indicate that the board does not have any written policies regarding equal employment or privacy of individuals nor has it had any complaints of this nature filed against it.

Criterion 9 - Conflict of Interest

Members of the Private Employment Agency Regulatory Board are required to file conflict of interest affidavits. Through interviews with board members, it has been determined that such affidavits have not been filed with the Secretary of State. These affidavits have not been filed due to the fact that the board was unaware of such requirement.

Criterion 10 - Open Records/Open Meetings

The review under this criterion indicates that the board is in compliance with the provisions of the Open Records Act. In terms of compliance with the Open Meetings Act, the board has complied with the notification requirements contained in that Act but has failed to comply with other provisions. Specifically, the board has not complied with provisions relating to the making of decisions in open meeting.

Criterion 11 - Federal Impact

Federal funds are not involved in the administration of the Private Employment Agency Law and therefore there would be no federal constraints in terms of funding or other sanctions if the board is abolished or modified.

CONCLUSIONS AND RECOMMENDATIONS

One of the board's primary responsibilities is to develop a fee structure to be charged by licensees for the purpose of insuring that fees are fair and equitable in relation to services provided. The board has total flexibility in the use of this authority. The review indicates that leaving this flexibility in the hands of the

board has resulted in only partial regulation of fees and only recently has the board attempted to provide protection to all persons seeking services of its licensees.

The licensing function of the board involves the preparation of an examination for private employment agency operators. The broad goal underlying the examination function is to protect the public through the provision of a qualified and competent body of agency operators. In reviewing elements of the examination, it was determined that the test focuses heavily on the provisions of the law, while questions relating to knowledge necessary in dealing with the public receive relatively less weight. Additionally, the examination is administered only to operators. Agency counselors, who form a large group dealing with the public on a daily basis, are not required to be tested. Finally, operators in business prior to the law's effective date in 1969 have not been required to take the test. These factors would indicate that the testing process has not adequately protected the public.

The enforcement function in its normal setting involves the elements of processing, investigation, review and disposition through hearings to insure that the law is being followed and that penalties attach to violations. In the instance of the board, the normal organizational pattern associated with this function is broken due to the fact that the board controls the hearing process and the other elements are contained within the Department of Labor and Standards. The establishment of the necessary linkage between these processes is, therefore, made more difficult. The large number of "inquiries", the smaller number of complaints actually resulting from these inquiries and the even smaller number of complaints processed to the stage of hearings raises serious doubt as to whether the split process can serve as an effective enforcement mechanism.

In review of the fact that the regulation of fees by the state has produced little result, that the examination of licensees appears to provide little assurance of quality and that enforcement efforts have been slight, the following recommendations are made:

- 1) THE PRIVATE EMPLOYMENT AGENCY REGULATORY BOARD SHOULD BE ABOLISHED.
- 2) PROTECTION OF THE PUBLIC SHOULD BE ACCOMPLISHED THROUGH GENERAL STATUTORY PROVISIONS WITH CIVIL PENALTIES FOR NON-COMPLIANCE.
- 3) BOTH THE PUBLIC AND THE EMPLOYMENT AGENCIES SHOULD BE PROTECTED FROM UNAUTHORIZED DISCLOSURE OF EMPLOYMENT AGENCY FILES.

BOARD OF PUBLIC ACCOUNTANCY

The Texas State Board of Public Accountancy is charged with administration of the Public Accountancy Act of 1945 as amended. The board has authority to promulgate rules of professional conduct, examine applicants for the certificate of certified public accountant, to issue certificates and licenses to practice accounting, and to enforce the regulatory and penalty provisions of the Act.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the occupation of accountancy within the United States, a survey of the 50 states was conducted. The need to regulate the occupation of accountancy is currently expressed through licensing requirements imposed by 50 of the 50 states surveyed. From the standpoint of organizational patterns, 47 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 21 states, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, 10 require that appointees be confirmed by the legislature; and membership in 36 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the Senate and membership is limited to persons who are licensed members of the occupation. Ninety-four percent of the states, including Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 2 of 50 states indicated that these bodies were not solely supported by fees and charges of the agency.

Fifty of the states regulating the occupation of accountancy administer national examinations. Texas uses a national examination. All states require only one examination. In 37 states, including Texas, licensees are required to renew their licenses annually. Enforcement activities in 48 states, including Texas, involve investigation of complaints from consumers and others engaged in the occupation of accountancy. Hearings are conducted by the regulating agency in 42 states. In Texas, hearings are conducted by the board.

States which regulate the occupation of accountancy indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of accountancy and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

The Texas State Board of Public Accountancy has operated within the limits of revenue producing fees provided by statute. The board has moved to collect fees that are fair and equitable for services rendered to "transfer-of-credit" and "foreign registrants" which are comparable to the statutory charges collected from Texas residents. Fees have been set at a level which does not generate large amounts of revenue over expenses and thereby accumulate excessive balances of cash. Such actions of the board benefit candidates for the CPA examination and permit holders by a fee structure which is well below the national average.

The board's payroll, leave and travel policies for employees are substantially in accord with the appropriate provisions of the current General Appropriations Act although the board is not subject to the appropriation process.

Criterion 2 - Effectiveness

The review and examination of the board's stated objectives indicate that they are in accord with the intent of the statutes and that the need for regulation of the practice of public accountancy in Texas is being met.

Review of agency records, reports and statistical data, together with interviews of board members and agency staff, and review of data secured from independent outside sources, indicate that the board is organized to discharge the duties and responsibilities which were placed under the board's jurisdiction by the Public Accountancy Act of 1945, as amended.

Criterion 3 - Less Restrictive or Alternative Methods

The statutory history of the regulation of public accountancy in Texas reveals substantial increases in the requirements to entry. These increases in requirements have centered in two areas: 1) experience requirements and 2) educational requirements. Increases were also noted in requirements for continuance, once licensed, by the addition of: 1) board promulgated Rules of Professional Conduct, and 2) strengthened enforcement sanctions.

Comparisons were made with 49 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands regarding entry requirements. The comparisons revealed that 37 jurisdictions are more restrictive than Texas in that they require a baccalaureate degree and experience as a minimum requirement for entry as compared to Texas' minimum requirement of 60 semester hours college credit and six years experience.

An effort was made to correlate Texas' candidates performance (less than the national average in passes) with the fact that Texas examination requirements are less than those of 37 states. However, data could not be obtained from which such a comparison and correlation could be made.

A comparison of examination fees and licensing or permit fees showed Texas substantially below the average charges for all jurisdictions. It is doubtful that such fees exert any measurable influence on entry into or continuance in the occupation once licensed.

Practice requirements, in the form of Rules of Professional Conduct, were authorized by the Public Accountancy Act of 1945 and the board promulgated such rules for guidance of all permit holders. However, these rules must be approved by licensees and it is doubtful that these actions dictated by these rules would have a detrimental effect on continuance in the profession.

The board has adopted rules which prohibit competitive bidding or advertising. Many consumers of professional services view such rules with distrust, the assumption being that these regulations make professional services more difficult and more costly to obtain. Judicial decisions concerning other types of agencies in the area of advertising indicate that this type of restriction cannot be supported. A federal court decision recently held that anti-competitive bidding rules of the board constituted a restraint of trade.

Texas does not require a continuing education program by statute or by board rule. Since there are 24 states which require continuing education programs (approximately 40 classroom or contact hours per year) for permit holders, it is apparent that Texas is less restrictive in practice requirements than those states.

Enforcement sanctions have been strengthened over the years to include all persons who violate the provisions of the Act instead of being limited in application to CPA's. Penalties have also become more severe in that a jail sentence may now be assessed in conjunction with, or in addition to, the fines provided in the Act.

Only one state, Illinois, regulates public accountancy in a manner which is substantially different from the methods used in Texas and the remaining 48 states, District of Columbia, Guam, Puerto Rico, and the Virgin Islands. The University of Illinois conducts the CPA examinations and issues CPA certificates to successful candidates by use of a University appointed Committee on Accountancy. The enforcement of the Illinois Public Accountancy Act is by use of a Committee on Public Accountancy which is appointed by the Director of the Illinois Department of Registration and Education. Collection of initial and renewal fees of licensees is a staff function of the Department of Registration and Education. The department also prepares a roster, once each biennium, of all licensees.

Criterion 4 - Overlap and Duplication

The Board of Accountancy regulates a group of persons who are not regulated by any other agency. Both professional and technical expertise appear to be required in the performance of selected functions of the board and staff. There are no agencies with overlapping programs or populations; therefore, there seems to be little potential for consolidating the Texas State Board of Public Accountancy with another existing regulatory agency based on overlap or duplicative functions.

Criterion 5 - Statutory Changes

The Texas State Board of Public Accountancy has in recent years neither recommended legislation intended to benefit the public nor legislation designed to benefit the profession of public accountancy. It is not the board's policy to propose legislation, and no public input in statutory changes has been sought for this reason. The board did not propose or take a stand on legislation affecting public accountancy in the Sixty-third, Sixty-fourth and Sixty-fifth Legislatures. It has no legislation under consideration for the Sixty-sixth Legislature in 1979.

In recent sessions, legislation has centered on efforts to establish licensing of public accountants by the Texas State Board of Public Accountancy or to create a new Public Accountants Regulatory Board to license public accountants. These efforts have been supported by the Texas Association of Public Accountants (TAPA). Three bills on this subject were offered and rejected --S.B. 727 and H.B. 1426 by the Sixty-third Legislature, and H.B. 1942 by the Sixty-fifth Legislature.

Criterion 6 - Complaints

The procedures used in processing complaints are in accord with the statutory duties and responsibilities placed upon the board. However, in some instances the time required to finally dispose of complaints involving hearings is excessive. In addition, procedures used to inform complainants of the steps taken to achieve final disposition are not structured so as to supply complete information.

In the area of actions involving injunctive relief, the record system used by the board is not structured so as to provide ready access for review and follow-up action.

Criterion 7 - Public Participation

There has been little effort by the Texas State Board of Public Accountancy to generate public participation in its proceedings, nor is there any statutory requirement that the board do so. The board's membership does not include members of the public which would provide a measure of public participation. Information concerning other similar agencies indicates that the lack of public involvement in agency proceedings is characteristic of agencies of this size.

Criterion 8 - Equal Employment/Privacy

The review disclosed that the board has taken steps to comply with federal and state requirements concerning equal employment opportunity and the rights and privacy of individuals.

Criterion 9 - Conflict of Interest

No information was obtained during the review which would indicate that individual members of the board or employees of the agency have maintained financial or other interests which are in conflict with the purposes and operations

of the Public Accountancy Act of 1945 or Article 6252-9b, V.A.C.S. In the review of agency procedures, the financial statement filed by the executive director, and the affidavits filed by board members, no problems with the conflict of interest provisions were apparent.

Criterion 10 - Open Records/Open Meetings

The board appears to maintain adequate records which are open to public inspection, yet safeguard confidential information. Procedures used to classify information as confidential appear to conform to the provisions of the Open Records Act.

Openness of public meetings implies both notification and accessibility. The procedures utilized by the board for advance notification of public meetings fulfill statutory requirements. However, the board does hold meetings out-of-state which are generally inaccessible to most members of the public and the regulated profession. Notification of the voting on proposed rule changes appears to be adequate.

Criterion 11 - Federal Impact

The Texas State Board of Public Accountancy does not operate under any federal mandate which affects the practice of public accounting in Texas. No federal intervention or loss of federal funds is anticipated if this agency is abolished.

CONCLUSIONS AND RECOMMENDATIONS

The review indicated that the board's operations are required by statute to be financed by the various fees collected from applicants for examination and permit holders (licensees). Funds of the board are maintained outside the State Treasury in a local bank in Austin. Expenditures of the board are prohibited from ever becoming a charge upon the general revenue fund of the state.

An important element of the Act is that it provides no jurisdiction over bookkeepers or tax return preparers except to prohibit their holding themselves out to the public as public accountants by the use of titles or designations which could be confused with CPA or PA. Analysis of legislative changes in the Act since 1945 indicates that increases have occurred in requirements for the CPA examination in the areas of education, experience and fees. However, such increases have not had the effect of slowing the growth in numbers of applicants for examination nor in numbers of applicants who are successful in passing the examination.

The board's use of the standard examination, prepared and graded by the American Institute of Certified Public Accountants, facilitates the granting of reciprocal licenses and the transfer-of-credits among all states. The Boards of Accountancy of the 50 states, District of Columbia, Guam, Puerto Rico, and the

Virgin Islands use the American Institute examination and grading services. It should be noted that the Texas State Board of Public Accountancy is not subject to any control or direction of the American Institute or any other state or national accounting organization.

The review indicates that the board exercises budgetary restraints in its operations. Administrative rules affecting operations parallel those of state agencies which are controlled through the legislative appropriations process to a great extent and the board has demonstrated its desire to implement improved or corrective procedures wherever problems may occur.

The board has administered the provisions of the Act as they affect CPA examinations and issuance and renewal of permits in a satisfactory manner. Enforcement provisions of the Act require the expenditure of considerable time and money by the board. Review of the board's enforcement activities indicates continuous efforts to establish and maintain a high degree of integrity on the part of permit holders and to curtail the illegal practices of unlicensed persons who violate provisions of the Act.

While operations of the agency are generally efficient and effective, several areas of operation could be improved or strengthened. First, the board's processing of complaints and license renewals could be improved. Second, in light of recent court decisions, the agency's enforcement of rules prohibiting competitive bidding and advertising need to be eliminated; additionally, the practice of requiring licensee approval before the adoption of any rule is questionable. Third, the accountability of this agency to the general public is weakened by the absence of public members on the board, the exclusion of the agency from the appropriations process of the state, and the need for strengthened conflict-of-interest provisions.

To address its concerns in these areas, the commission makes the following recommendations:

- 1) THE PRESENT COMPOSITION OF THE BOARD SHOULD BE MODIFIED TO INCLUDE THREE PUBLIC (NON-LICENSEE) MEMBERS AND TWO LICENSED CERTIFIED PUBLIC ACCOUNTANTS WHO ARE NOT ENGAGED IN THE PRACTICE OF PUBLIC ACCOUNTANCY.
- 2) THE BOARD'S STATUTE SHOULD BE AMENDED TO REQUIRE THAT NO MEMBER OR EMPLOYEE OF THE BOARD MAY BE AN OFFICER, EMPLOYEE, OR PAID CONSULTANT OF A TRADE ASSOCIATION IN THE PUBLIC ACCOUNTANCY INDUSTRY OR BE CLOSELY RELATED TO SUCH A PERSON.
- 3) THE BOARD'S AUTHORITY TO PROMULGATE RULES RESTRICTING COMPETITIVE BIDDING AND ADVERTISING BY LICENSEES SHOULD BE REMOVED, EXCEPT TO THE EXTENT NECESSARY TO DEFINE FALSE, MISLEADING, AND DECEPTIVE ADVERTISING PRACTICES. ADDITIONALLY, THE STATUTORY REQUIREMENT THAT LICENSEES APPROVE PROPOSED RULES BEFORE THEIR ADOPTION BY THE BOARD SHOULD BE ELIMINATED.

- 4) THE AGENCY SHOULD MODIFY ITS PROCEDURES TO INCLUDE THE STAGGERED RENEWAL OF LICENSES AND TO IMPROVE CURRENT PROCESSES FOR HANDLING COMPLAINTS.
- 5) ALL FEES AND OTHER RECEIPTS OF THE BOARD SHOULD BE DEPOSITED IN A SPECIAL PUBLIC ACCOUNTANCY FUND IN THE STATE TREASURY AND MADE SUBJECT TO THE APPROPRIATIONS PROCESS OF THE STATE.

BOARD OF REGISTRATION FOR PUBLIC SURVEYORS

Prior to the establishment of the Board of Registration of Public Surveyors in 1955, only three constitutional or statutory provisions addressed the practice of surveying within the State. The Constitution made provision for the office of County Surveyor, but it did not specify any minimum qualifications. In 1919, the Board of Examiners of Licensed State Land Surveyors was created to allow surveyors, whose qualifications were to be determined by examination, to perform the functions of a county surveyor statewide. There are indications that the public came to accept this license as certification of general competence in all phases of surveying. In 1937, engineering surveying came under the jurisdiction of the Board of Registration for Professional Engineers. The Registered Public Surveyor's Act of 1955 was the culmination on the part of Texas surveyors and the newly organized Texas Surveyors Association to enact legislation designed to protect the public by certifying the competence of land surveyors and by recognizing boundary surveying as a unique occupation, separate from related activities such as engineering surveying.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the occupation of surveying within the United States, a survey of the 50 states was conducted. The need to regulate the occupation of surveying is currently expressed through licensing requirements imposed by all of the 50 states. From the standpoint of organizational patterns, five states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 45 states, excluding Texas, the function is carried out through licensing in conjunction with engineers.

In those states which utilize independent boards and commissions, two require that appointees be confirmed by the Legislature; and membership in 36 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the Legislature and membership limited to persons who are licensed members of the occupation. Ten percent of the states, including Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 20 of 43 states indicated that these bodies were not solely supported by fees and charges of the agency.

Forty-five of the states regulating the occupation of surveying administer national examinations. The other states develop and administer their own exam. Texas does not use a national examination. In 29 states, licensees are required to renew their licenses annually. Texas licenses for one year. Enforcement activities in 39 states, including Texas, involve investigation of complaints from consumers

and others engaged in the occupation of surveying. Hearings are conducted inside the regulating agency in 33 states. In Texas, hearings are conducted by the board.

States which regulate the occupation of surveying indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the Board of Public Surveyors and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

The review of this agency in terms of efficiency pointed out several trends and relationships not always readily apparent. Analysis of the board's operating budget showed that salaries and associated personnel costs in an agency this size constitute the largest single expense to this agency. This fact limits the possibility of effecting any significant cost savings.

A comparison of board associated costs with those of another agency indicates that board costs appear high in relationship to the number of licensees regulated.

Analysis of revenues, expenditures, and licensee data indicates that the agency is faced with a declining licensee population and will have to increase fees to maintain its current level of expenditures.

Further analysis indicates that there are significant savings to be achieved by merging the regulation of a smaller agency with a larger one with more cost effective operations. These savings would be proportionately larger in light of projected rising personnel costs.

Evaluation of the board's management of revenues and costs reflects a pattern of untimely decision making. Whether this situation is due to the absence of critical information or the lack of expertise in funds management or other unidentified factors is not known.

Criterion 2 - Effectiveness

The objective of the licensing function is to provide the public with qualified land surveyors. The use of a minimum qualifications and testing procedure has been employed by the board to provide an objective standard with which the incompetent can be distinguished from the competent.

Analysis of this board's licensing activities shows that after 22 years of operation, over half of the currently practicing registered surveyors were licensed without examination. The remaining 47 percent have been subjected to a written examination and until recently an oral examination. In regard to the latter, it appears that it could be used to subjectively screen for personality traits that are

distasteful to board members. A review of the grades of a sample of recent applicants indicates that, when the scores on the oral examination are correlated with the scores on the written examination, the oral exam score was the sole predictor of scores on the written test.

It can be seen that this testing procedure employs no methods to insure that biases gathered from the oral screening do not become accentuated in the grading of the examination. Such biased selection processes render the examination useless as an objective standard to discriminate between competence and incompetence.

Criterion 3 - Less Restrictive or Alternative Methods

The Board of Registration for Public Surveyors has, since its inception, possessed the usual array of discretionary powers associated with occupational regulation. The review indicated that occupational rivalries exist between engineers and surveyors that have resulted in regulation by separate licensing agencies. The one element not evident in this recurring jurisdictional dispute is the apparent lack of effort on the part of boards regulating surveyors and engineers to take steps to resolve the dispute through increased coordination and communication rather than through increased efforts to strengthen artificial occupational divisions that are in reality overlapping or indeterminate.

Criterion 4 - Overlap and Duplication

The responses in the Self-evaluation Report indicate limited recognition of the potential target population that the agency impacts on and the extent of duplication of functional activities presently occurring. It appears that surveyors feel that such duplication is necessary and even essential to preserve the integrity of surveying as an occupation, distinct and separate from engineering. Though this occupational distinction has been preserved in at least 37 states, it is through regulation under a consolidated board representing branches of engineering, surveying and, in some states, architects as well.

Criterion 5 - Statutory Changes

In only three instances could statutory changes to the board's law result in modifications to the clear benefit of the state's citizens. In general, changes enacted point to increased board authority, increased fees, especially those associated with entrance into the occupation, and increasingly restrictive qualification requirements. In some cases, the apparent disuse of these additional powers and the inappropriateness of some of the qualification requirements make the necessity of such changes questionable.

Criterion 6 - Complaints

The agency has developed effective procedures for the receipt and disposition of complaints. Most complaints are those registered against unlicensed individuals. The board maintains and exercises its authority to censure or revoke the registration of surveyors found guilty of malpractice or misconduct. Likewise, the board may apply injunctive power to restrain the activities of unlicensed individuals. The

agency maintains adequate records of complaints and administers complaint processing in an efficient manner.

Criterion 7 - Public Participation

The most significant interaction of the board with the public appears to occur in the disposition of complaints and in any requests for information directed to the board. There are no members of the public on the board. Generally, there is negligible participation by the public in open meetings held by the board, and little participation by licensees unless specifically involved in hearings.

Criterion 8 - Equal Employment/Privacy

The Texas Board of Registration for Public Surveyors has filed an Affirmative Action Plan with the Governor's Equal Employment Opportunity Office. The plan has not been updated since 1974; however, representatives of the Governor's EEO office report that this is characteristic of a small agency with a low rate of personnel turnover. The plan appears to be adequate, given the size and history of the agency's employment patterns.

Criterion 9 - Conflict of Interest

The agency conducts no regular periodic review of compliance with conflict of interest statutes, but the small size of the staff and the negligible turnover rate of full-time personnel suggest that informal administrative arrangements for staff members are adequate under the existing organizational structure. However, formal procedures should be instituted for the orientation of board members as to their duties and responsibilities pertaining to conflict of interest.

Criterion 10 - Open Records/Open Meetings

The Board of Registration for Public Surveyors appears to maintain an adequate system of record-keeping which is open to legitimate inspection, yet which safeguards confidential information. However, the agency should review all pertinent statutes to insure that any procedures used to implement the Open Records Act meet the spirit as well as the letter of the law.

Openness of public meetings implies both notification and accessibility. The procedures utilized by the board for advance notification of public meetings fulfill statutory requirements. Many of the board's public meetings, however, may not be easily accessible to the public and the regulated profession.

Criterion 11 - Federal Impact

There are no federal standards imposed on states with regard to standards or practices concerning surveying; thus, no federal funds are involved in the administration of this Act.

CONCLUSIONS AND RECOMMENDATIONS

This review has centered on the areas of licensing and enforcement to assess the result of the exercise of these powers on the objectives originally conceived under the public surveyors statute. The evaluation of the Board of Registration for Public Surveyors raises serious doubts as to whether the licensing objective defined by the legislature in 1955 has been achieved.

The response of land surveyors to the creation of the board was immediate. During the first year of operation, the board registered 975 individuals and rejected 60 others. Most of these surveyors were registered under Section 6a of the Act which contained the grandfather clause. Though the inclusion of this clause was considered essential to the enactment of the licensing legislation, the effects of this clause are still evident in 1978. Of the 1,328 public surveyors registered in 1977, 53 percent of the currently practicing public surveyors were registered under provisions of the Act which did not require an examination. Thus, 17 years after licensing by examination became mandatory, more than half of the practicing licensees were still not registered by examination. The statutory provision for a licensing examination is based on the premise that it will serve as an objective standard. However, the effectiveness of the examination process has been further diminished by questionable procedures utilized in the design, administration and evaluation of the examination.

The number of new licenses issued since 1960 indicates a net growth in the number of practicing public surveyors of only five percent as compared with a net growth of 35 percent before licensing by examination became mandatory. The loss of membership due to the factor of age will not be offset by the number of new individuals licensed each year. This situation will result in fewer opportunities for aspirants for registration to acquire the minimum experience required by law and in fewer surveyors to serve the needs of a state experiencing rapid economic growth. As indicated earlier, the review of the Board of Registration of Public Surveyors raises doubts that the licensing objective, originally defined by the Legislature in 1955, has or can be achieved given the set of circumstances under which the agency currently operates.

In addition to concerns raised about the achievement of the licensing objective, the review revealed that the information concerning board activities is often highly variable or inaccurate. This absence of accurate and timely management information concerning agency activities effectively precludes optimal management decision-making.

To address its concerns in the areas outlined above, the commission offers the following recommendations:

THE BOARD OF REGISTRATION FOR PUBLIC SURVEYORS AND THE BOARD OF EXAMINERS OF LICENSED STATE LAND SURVEYORS SHOULD BE MERGED INTO ONE AGENCY TO BE KNOWN AS THE TEXAS STATE BOARD OF SURVEYORS. ADDITIONALLY, OTHER STATUTORY CHANGES WHICH SHOULD BE MADE INCLUDE:

- 1) CREATION OF A BOARD CONSISTING OF THE COMMISSIONER OF THE GENERAL LAND OFFICE, THREE PUBLIC SURVEYOR

MEMBERS, TWO STATE LAND SURVEYOR MEMBERS, AND THREE REPRESENTATIVES OF THE GENERAL PUBLIC WITH NO INTEREST IN THE SURVEYING OCCUPATION OTHER THAN AS CONSUMERS

- 2) THE ADDITION OF CONFLICT OF INTEREST PROVISIONS WHICH APPLY TO BOARD MEMBERS AND EMPLOYEES
- 3) THE ADDITION OF STATUTORY PROVISIONS CONCERNING BOARD RECORDS AND REPORTS
- 4) THE DEPOSIT OF ALL FUNDS RELATED TO THE REGULATION OF SURVEYING IN A SPECIAL FUND WITHIN THE STATE TREASURY
- 5) THE ADDITION OF PROVISIONS REQUIRING ALL REGISTERED PUBLIC ENGINEERS ENGAGED IN THE PRACTICE OF SURVEYING TO REGISTER BIENNIALY WITH THE TEXAS STATE BOARD OF SURVEYORS
- 6) THE ELIMINATION OF THE ORAL EXAM
- 7) THE REDUCTION OF THE EXPERIENCE REQUIREMENT TO TWO YEARS IN RESPONSIBLE CHARGE AND THE ELIMINATION OF EDUCATION REQUIREMENTS
- 8) THE ADDITION OF PROVISIONS WHICH REQUIRE ALL WRITTEN CONTRACTS FOR SURVEYING SERVICES TO CONTAIN THE NAME, MAILING ADDRESS, AND TELEPHONE NUMBER OF THE REGULATORY BOARD HAVING JURISDICTION OVER THAT LICENSED INDIVIDUAL
- 9) THE ADDITION OF DISCLOSURE PROVISIONS REQUIRING THAT A FIRM ENGAGED IN THE PRACTICE OF SURVEYING IDENTIFY THOSE REGISTERED OR LICENSED INDIVIDUALS WHO ARE LEGALLY RESPONSIBLE FOR THE FIRM'S ACTIONS
- 10) THE RESTRUCTURING OF THE STATUTORY LANGUAGE CONCERNING THE COMPLAINT AND HEARING PROCESS TO ENSURE DUE PROCESS FOR ALL PARTIES INVOLVED

BOARD OF MANAGERS
OF THE TEXAS STATE RAILROAD

The Board of Managers of the Texas State Railroad was abolished by the Sixty-fifth Legislature.

TEXAS REAL ESTATE COMMISSION

Regulation of the real estate industry in Texas was begun in 1939 under the Real Estate Dealers License Act. Responsibility for this regulation was placed with the Office of the Secretary of State, Securities Division. In 1949, the Texas Real Estate Commission was created as an independent six-member regulatory agency.

All revenues from fees are deposited to one of two special funds in the State Treasury. Agency expenditures are made from one of these funds. The other fund receives the license fee revenues designated for the operation of the Texas Real Estate Research Center at Texas A&M University. The agency maintains a trust account within the Treasury for payment of claims for damages resulting from actions of real estate licensees.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of real estate dealers within the United States, a survey of the 50 states was conducted. The need to regulate real estate dealers is currently expressed through licensing requirements imposed by all of the 50 states. From the standpoint of organizational patterns, 27 states, including Texas, meet this expressed need through an independent board or commission. In 23 states, excluding Texas, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In 23 states, membership on boards and commissions is limited to persons who are licensed members of the occupation. Twenty-seven states include public membership on their boards. In Texas, appointees are confirmed by the legislature, with membership on the commission limited to persons who have been licensed brokers for five years.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were partially derived from fees collected. Nine states, including Texas, indicated that this regulatory activity was supported by fees and charges of the agency.

Thirty-one of the states, regulating real estate dealers, administer national examinations. The other states develop and administer their own exam. Texas does not use a national examination. The examination is required only once in all 50 of the states, including Texas. In 31 states, licensees are required to renew their licenses annually. Texas licenses for one year. Licensees in 12 states, excluding Texas, are required to continue their education after licensing. Enforcement activities in 42 states, including Texas, involve investigation of complaints from consumers and others engaged in the occupation of real estate.

States which regulate the occupation of real estate brokerage indicated the necessity of performing the basic functions of administration, testing, license

issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the Texas Real Estate Commission and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

With regard to commission administration the review found that the commission's primary function dealt with establishing rules and regulations. The statute contains a provision delegating all commission authority to the administrator unless the commission acts positively to reserve the authority to itself. As a result, day-to-day operations and decisions, general staff direction and hearings on complaints are conducted by the administrator.

Generally, records maintained in support of the agency functions were well organized and complete. It was noted, however, that certain accounting records were not current and that information concerning costs and revenues associated with publications sold by the agency were not available.

A review of the processes associated with general office operations indicated deficiencies in the following areas:

1. A cash receipts process which circulates checks throughout the agency while the attached applications are being processed, rather than depositing in a timely manner to the State Treasury;
2. a policy allowing the checks for "filing fees" to be returned if an application cannot be processed to the point of issuing a letter of eligibility for the examination;
3. a recurrent problem with returned checks which could be alleviated by requiring some form of payment other than personal checks (e.g. money orders or cashier's checks);
4. a need to increase the data entry capability, through cooperation with the Board of Control; and
5. the utilization of personnel and equipment in the mail room which would result in the most efficient processing of mail.

Program operations were reviewed according to three basic functional areas: licensing, enforcement and accreditation. Records appeared to be generally well organized and complete within the constraints associated with the substantial backlog of work waiting to be processed. While the processes associated with the enforcement and accreditation functions are relatively simple, it appears that the staff is allowed significant amounts of discretion in the use of time and the actions

taken in these areas. However, no improprieties associated with the administration of these discretionary powers was noted. The processing of applications for original licensure is an extremely cumbersome process generally involving at least three of the agency's major divisions and requiring handling of the paperwork by numerous persons. The heavy workload imposed by this process, together with renewal processing during a three to four month period each year, is likely to prevent the elimination of backlogs. While increased computer capability will alleviate some of the backlog problems, it appears that a leveling of workload associated with license issuance may not be completely corrected without implementing a system of staggered renewals. Another component of the licensing process is examinations. Presently, the scheduling of examinations is done in advance and letters of eligibility are sent to applicants, entitling them to take an examination at any time and place on the schedule within a year after application filing. The result is that no prediction of the need for a particular examination session can be made.

Criterion 2 - Effectiveness

The objectives of the Real Estate Commission focus primarily on two areas, assuring the quality of individuals licensed by the agency and preventing unauthorized real estate activity -- functionally grouped into categories of licensing and enforcement.

A number of requirements for licensure are presently established by law and their historic development has created a varied licensee population. Experience and education prerequisites have caused both significant increases in workload for the agency and major changes external to the agency, particularly in the areas of salesman-broker relationships and educational courses in real estate. Though the effect of these requirements is largely determined by statute, the commission does accredit private schools offering real estate courses, a function which it performs without clearly defined standards. Two requirements for licensure are largely agency-defined, ethical standards and competency. Statutory provisions regarding honesty, trustworthiness, and integrity appear to be well-checked but infrequently applied as a basis for disapproval. The results of appeals to these disapprovals suggest that the applicants receive a fair hearing process. Examinations for competency appear to screen applicants for licensure in a manner which is consistent with the practices of other states. However, the agency has not utilized all resources available to it, such as professional test validation and Real Estate Research Center capability. Nor has it performed non-staff evaluations of the present examination structure, development or administration.

Enforcement functions, besides administration of the Real Estate Recovery Fund, fall into three areas: establishing standards, discovering violations, and administering penalties. Procedures used for interpreting statutory requirements through rules and advisory opinions are generally satisfactory, but the commission could keep individuals better informed of the requirements of its authority. Large numbers of persons who make complaints to the Real Estate Commission find that either the statute does not address their problem or that the agency cannot develop a case adequate for hearing. Routine inspections by enforcement personnel are

limited partly due to work they are required to perform in administering exams. Hearing procedures have been effective in revoking a considerable number of licenses consistent with due process. In addition to revocation of licenses, the agency can through use of the Real Estate Recovery Fund compensate individuals injured by actions of licensees. The review indicates, however, that this fund is limited in its ability to protect the public. Damages caused by non-licensed individuals are not recoverable, and amounts recoverable are limited. Agency practice in protecting the fund reflects a stricter interpretation of the fund's use for reimbursement of damages, than the interpretation of statutory requirements for automatic license revocation.

Criterion 3 - Less Restrictive or Alternative Methods

Although a wide range of alternatives is available to regulate the real estate industry, one of the most restrictive (licensure of individuals) is generally used by a majority of states including Texas. The general form of regulation through licensing, coupled with other restrictions and increased education requirements, have made it more difficult to become a real estate broker or salesperson in Texas than it is in most other states.

Criterion 4 - Overlap and Duplication

While there are some categories of overlap of target populations with other agencies, the overlaps do not appear to be substantial. In the case of approval of educational programs, the function appears to be being accomplished in a fragmented, but complete, manner. Functions of the Real Estate Commission are similar to those of other regulatory agencies. Some similar functions relating to the same target population are also performed by the Real Estate Broker-Lawyer Joint Committee, the Texas Real Estate Research Center, and the Texas Association of Realtors.

Criterion 5 - Statutory Changes

During the past three legislative sessions, there have been 10 proposed changes to Real Estate Commission statutes in addition to the major licensing act revision of 1975 (S.B. 344). Four of these proposals -- providing for staggered licensing, disclosure of latent defects, establishment of the Real Estate Recovery Fund, and public representation on the commission -- have been clearly calculated to benefit the public. The other six proposed changes have not been identified as clearly in the public interest either because they dealt with licensees only or because they offered potential costs as well as benefits to the public. The agency has not testified in favor of any of these 10 proposals. Along with the state's major real estate associations, the commission did support the 1975 revision.

Criterion 6 - Complaints

The complaint process appears to be efficient and well organized. Documentation was found to be lacking only in those instances where the complaints were referred to other agencies or did not contain sufficient information to cause the

staff to open a file. However, there are a large number of complaints received by the agency and disposed of as "no violation," arising from the apparent confusion on the part of the public as to what protections are afforded through the regulatory processes of the Real Estate Commission.

Criterion 7 - Public Participation

Review of the agency's activities regarding general public participation in the development of rules and regulations indicates that little effort has been made to encourage participation by the public; however, direct participation by the public in this type of agency appears unlikely under usual circumstances.

Criterion 8 - Equal Employment/Privacy

Since 1974, when the commission's Affirmative Action Plan was formulated, there has not been a marked improvement in the commission's minority and female employment practices. Implementation of the suggestions contained in the Governor's EEO staff letter (June 27, 1978) would facilitate the attainment of a more balanced employee representation. The agency is aware of this aspect and is making efforts to improve consistent with sound management and personnel practices. Additionally, dissemination of grievance procedure information to employees would improve the employee complaints process.

Criterion 9 - Conflict of Interest

Review of applicable statutes and agency practices, indicates that the Real Estate Commission is aware of and in compliance with laws regarding conflict of interest. Simple routine policies concerning the status of outside employment could be implemented to provide basic documentation necessary for the enforcement of the bulk of conflict of interest situations.

Criterion 10 - Open Records/Open Meetings

The agency appears to be in compliance with the provisions of the Open Records Act. No problems were apparent in maintaining confidentiality of certain files or availability of public information. Agency policy in both areas is clearly defined and understood. The review indicates that the TREC has complied with the notification requirements of the Open Meetings Act.

Criterion 11 - Federal Impact

The Texas Real Estate Commission is not required to operate under federal guidelines for regulating the real estate occupation. However, some portions of the Real Estate License Act are similar to those which appear in federal law. The commission does not receive any federal funds for its programs or activities. Therefore, Texas would not jeopardize its funding relations with the federal government if the functions of the Texas Real Estate Commission were discontinued.

CONCLUSIONS AND RECOMMENDATIONS

Review of the present statutory authority and operations of the Real Estate Commission focused on the areas of licensing and enforcement. With regard to present licensing procedures, the evaluation identified areas for more efficient operation, including original application processing, license renewal, and exam administration. Present agency practice is to accept personal checks and not deposit them until the initial application processing is completed. This practice has required the agency to deal with a considerable number of returned checks as the number of applications has increased in recent years. The rapid increase in the number of licensees has also affected the agency's workload accompanying license renewals which are processed at the end of each calendar year. These months at the year's end have also been when the greatest number of original applications have been received due to changing education requirements. The agency has experienced undesirable delays in renewal and original application processing when problems related to conversion to computer processing have occurred during this critical end of year time-period.

Review of licensure requirements also indicated that the Texas licensing statute is presently more restrictive than most states'. Only two of those states that require both education and experience to receive a broker's license have education requirements higher than Texas, and the Texas requirements are scheduled to increase significantly. Presently only licensed brokers from California are eligible to be licensed in Texas without taking the agency's examination.

Review of the enforcement function showed that not all complaints are recorded by the agency, and that of those for which a file is opened, many are determined not to be statutory violations. It is also noted that only a few claims have been made on the Real Estate Recovery Fund and that full recovery was not possible in all cases due to statutory limits on the fund. It was also determined that many individuals have not been satisfied with the agency's responses to complaints, and that the commission has not played an active role in the hearing process.

In response to the concerns identified from staff reports, hearing testimony, and commission discussions, the commission proposes that the following major recommendations be incorporated in statute:

- 1) THE TEXAS REAL ESTATE COMMISSION SHOULD INSTITUTE A SYSTEM OF STAGGERED RENEWAL OF LICENSES.
- 2) EDUCATIONAL REQUIREMENTS FOR LICENSURE AS A BROKER SHOULD BE LIMITED TO 15 SEMESTER HOURS.
- 3) THE REQUIREMENT THAT AN APPLICANT FOR LICENSURE SECURE A SPONSORING BROKER SHOULD BE ELIMINATED.
- 4) THE ISSUANCE OF BOTH SALESMAN AND BROKER LICENSES, SHOULD BE DISCONTINUED AND ONLY ONE TYPE OF REAL ESTATE LICENSE SHOULD BE ISSUED AFTER 1981.

- 5) CONTRACT FORMS USED BY REAL ESTATE AGENTS SHOULD PROVIDE NOTICE THAT A LICENSEE'S CHARGES ARE NEGOTIABLE AND THAT THE LICENSEE'S MAIN RESPONSIBILITY IS TO THE PERSON PAYING THE FEE. THESE FORMS SHOULD ALSO PROVIDE INFORMATION REGARDING COMPLAINT PROCEDURES AND THE DISCLOSURE OF NATURAL HAZARDS IN COASTAL AREAS.
- 6) COMPLAINT PROCEDURES SHOULD BE REVISED TO PROVIDE FOR THE RECORDING OF ALL COMPLAINTS, AND THE PARTIES TO COMPLAINTS SHOULD BE PERIODICALLY INFORMED OF THE STATUS OF THE COMPLAINT.
- 7) THE LIMITS ON AMOUNTS AVAILABLE FROM THE REAL ESTATE RECOVERY FUND SHOULD BE INCREASED AND ACCESS TO THE FUND SHOULD BE SIMPLIFIED.
- 8) TWO OF THE SIX COMMISSION MEMBERS SHOULD BE REPRESENTATIVES OF THE GENERAL PUBLIC AND CONFLICT OF INTEREST PROVISIONS SHOULD BE ADDED FOR ALL COMMISSION MEMBERS AND AGENCY EMPLOYEES.

BOARD OF EXAMINERS OF LICENSED STATE LAND SURVEYORS

The Board of Examiners of Licensed State Land Surveyors was created in 1919 to provide the citizens of Texas with an increased and qualified number of surveyors who could, on a statewide basis, perform the specialized duties of county surveyors. The need for such persons stemmed from the realization that not all counties had the services of county surveyors and, thus, an alternative was needed to carry out their functions in these areas. Additionally, elected county surveyors, sometimes lacking in necessary training at that time, did not always have the skills necessary to successfully perform the critical surveying function.

Because of the limited size and operations of the agency today, several of the evaluation criteria set out in the Sunset Act cannot be reasonably applied to the board. As a result, the review centered only on Criteria 1 through 5. Findings under these criteria are presented below following the Comparative Analysis.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of surveying similar to that regulated by the Board of Examiners of Licensed State Land Surveyors, a survey of the 50 states was conducted. Despite the fact that 18 other states retained a certain uniqueness by the retention of their public lands upon entry into the Union, regulation of surveys on public lands or surveys which affect original boundaries, regulated as a specialized form of surveying, has not been discovered in any other state in the United States.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

All administrative functions of the Board of Examiners of Licensed State Land Surveyors have historically been performed by employees of the General Land Office. As a result of this arrangement, the administrative costs are largely subsidized by the General Land Office.

An analysis of estimated revenues and expenditures suggests that, since 1919, the board has received revenues of approximately \$3,866 and incurred expenses of \$3,727 in the licensing and regulation of state land surveyors. These funds have been held in local bank accounts outside the State Treasury since the board's creation. Although the board has been required by statute to revert any remaining annual balances to the general revenue fund each year, the review identified no evidence of a fund transfer prior to January 18, 1978. As a result, although the funds received by this board have not been large, a greater measure of accountability and compliance could be achieved if all funds were deposited in the State Treasury.

The review also indicated that the number of state land surveyors licensed, as well as the number of active surveyors, has declined steadily since 1950. Between 1955, when the Board of Registration for Public Surveyors was created, and 1975, only 36 state land surveyors were licensed. While no examinations have been administered by the agency in the last five years due to two vacancies on the board, there are no strong indications that the resumption of examinations will materially affect the decline in the number of active state land surveyors. Since most of the administrative costs of licensing have been assumed by the General Land Office, the only fiscal impact resulting from this minimal activity has been the lack of sufficient funds to reimburse the expenses of every board member.

Criterion 2 - Effectiveness

A statutory review indicated that licensure by examination was not mandatory until 1941. This 20-year delay in requiring a licensure exam appears to have severely limited the effectiveness of the examination process in terms of numbers of surveyors who were subject to this requirement. Review of the agency's files suggests that 60 percent of the surveyors listed as active in 1977 had been licensed since testing was mandatory and only nine percent of those surveyors meet the current requirements which involve testing both as a registered public surveyor and a state land surveyor. There are also clear indications of overlap as high as 90 percent between individuals licensed by the Board of Examiners of Licensed State Land Surveyors and those registered with the Board of Registration for Public Surveyors. Since, after 60 years and the combined efforts of two separate surveyor boards, as many as 50 percent of the total population of regulated surveyors still active were licensed under grandfather provisions, the efforts to meet the objective of selecting qualified applicants on the basis of licensing examination cannot be judged successful.

A review of board minutes indicated that the board had implemented an oral exam preliminary to application for the written test as early as 1957, nearly 20 years before the statutory authorization. Based on a comparison of failure rates, the oral exam, rather than the written examination proved to be the primary selection instrument. The board's interpretation of the statutory provisions for such examinations and the appropriateness of procedural changes seem to indicate a lack of sensitivity to the economic and legal implications involved.

A review of available records revealed only one instance of a license revocation since the board was created. No complaints were received or adjudicated by this board between 1957 and 1977. When, as in this case, the resources of a regulatory agency do not permit active inspection or enforcement efforts, it is difficult to assess the implications of a total absence of complaints over such an extended period. This record of minimal enforcement activity suggests that the option to relocate such powers to achieve more efficient and effective use of the state's resources may be appropriate at this time.

Criterion 3 - Less Restrictive or Alternative Methods

The Board of Examiners of Licensed State Land Surveyors has, since its creation, possessed the traditional array of discretionary powers associated with

occupational regulation. The uniqueness of the regulation of surveying in Texas is not reflected in the degree or character of that regulation, but rather by the fact that boundary surveying is considered a separate and discrete subspecialty of surveying that requires regulation through an independent agency. There is no indication that any of the 50 states which license land surveying, license state land surveyors or surveyors of original boundaries as an occupational specialty separate from other types of surveying practice.

Criterion 4 - Overlap and Duplication

The board's responses contained in the self-evaluation report indicated limited recognition of the duplication that results from the fact that up to 90 percent of all active state land surveyors may also be regulated by the Board of Registration for Public Surveyors. Though the Board of Examiners of Licensed State Land Surveyors and the Board of Registration for Public Surveyors regulate aspects of the same profession, there are no apparent formal or informal mechanisms for cooperation or coordination. The division in regulation that has evolved in Texas appears to have resulted from historical circumstance rather than from justifiable need. The two boards justify their separate existences on the premise that their jurisdictions, in practice, are as separate and distinct as the operations of the corresponding regulation in other states. In light of the similarity of all regulatory functions, the considerable overlap in target populations and the absence of any occupational differentiation in the corollary professional association, the distinction appears to be an unnecessary one.

Criterion 5 - Statutory Changes

In no case noted did the statutory changes proposed or enacted result in statutory modifications to the clear benefit of the state's citizens. A comparison of statutory changes proposed in 1952 provides a new perspective on the relationship between boundary surveying and lot and deed surveying which is currently divided between this agency and the Board of Registration for Public Surveyors. Contrary to the current view of the agency, activities of these two agencies were considered, in 1952, sufficiently similar to propose that all surveying activities be licensed by the Board of Licensed State Land Surveyors.

CONCLUSIONS AND RECOMMENDATIONS

This review has centered on the areas of licensing and enforcement to assess the result of the exercise of these powers on the objectives which were originally conceived under the statute. The evaluation of the Board of Examiners of Licensed State Land Surveyors raises serious doubts as to whether the licensing objective originally defined by the legislature in 1919 has been achieved.

The response to the creation of the board was immediate in terms of numbers licensed: 192 in the first decade of the board's existence; 335 licensed between 1929 and 1939; and 271 licensed between 1939 and 1949. However, the degree of their qualification is open to serious question. Information made available concerning the early years of the board's operation suggests that the licensing

examination was probably not used before 1941, resulting in 56 percent of all the individuals licensed under this Act never being certified by an examination process. The far-reaching consequences of the option to license under the grandfather clause is emphasized by data collected which indicate that 39 percent of the currently practicing licensed state land surveyors are still practicing with a license obtained through the grandfather provision. For a licensing test to be an objective standard that assesses the competency of an individual, it must not only be a valid instrument, but it must also be utilized.

Other events that occurred since the board's creation have also had an effect on the status of surveying in Texas. The most significant effect upon the occupation has been the creation of two additional regulatory agencies having jurisdiction over regulation of various aspects of surveying. In 1937, the Board of Registration for Professional Engineers was created to license and regulate engineers. Individuals licensed by this agency are permitted, by law, to engage in surveying in their practice as a Registered Professional Engineer. In 1955, the Board of Registration for Public Surveyors was created to regulate surveying activities that did not already fall under the Board of Examiners of Licensed State Land Surveyors or the Board of Registration for Professional Engineers. The almost total overlap in the target populations of the two boards regulating surveyors may provide at least a partial answer to the precipitous decline in the number of land surveyors seeking to become licensed land surveyors after 1950. The number of surveyors licensed between 1939 and 1949 totals 271 despite a drop in activity during World War II. Between 1949 and 1959, the number drops to 96 surveyors licensed, with only 21 surveyors licensed by the board since 1959. Not only were there almost no new surveyors licensed between 1957 and 1977, but the board, at various times, was totally inactive for half of this period. Since published estimates placed 75 percent of all surveying activities beyond the jurisdictions of the Boards of Licensed State Land Surveyors and Registered Engineers, the creation of the Board of Registration for Public Surveyors would give strong indications that the presence of another board regulating a significantly greater percentage of surveying activities may now play the predominant role in the regulation of all surveying within the state. The review of the Board of Examiners of Licensed State Land Surveyors raises doubt that the licensing objective originally defined by the legislature in 1919 has or will be achieved soon, given the current operation of the agency.

To address the concerns in the areas outlined above, the commission offers the following recommendations:

THE BOARD OF EXAMINERS OF LICENSED STATE LAND SURVEYORS AND THE BOARD OF REGISTRATION FOR PUBLIC SURVEYORS SHOULD BE MERGED INTO ONE AGENCY TO BE KNOWN AS THE TEXAS STATE BOARD OF SURVEYORS. ADDITIONALLY, OTHER STATUTORY CHANGES WHICH SHOULD BE MADE INCLUDE:

- 1) CREATION OF A BOARD CONSISTING OF THE COMMISSIONER OF THE GENERAL LAND OFFICE, THREE PUBLIC SURVEYOR MEMBERS, TWO STATE LAND SURVEYOR MEMBERS, AND THREE REPRESENTATIVES OF THE

GENERAL PUBLIC WITH NO INTEREST IN THE SURVEYING OCCUPATION OTHER THAN AS CONSUMERS

- 2) THE ADDITION OF CONFLICT OF INTEREST PROVISIONS WHICH APPLY TO BOARD MEMBERS AND EMPLOYEES
- 3) THE ADDITION OF STATUTORY PROVISIONS CONCERNING BOARD RECORDS AND REPORTS
- 4) THE DEPOSIT OF ALL FUNDS RELATED TO THE REGULATION OF SURVEYING IN A SPECIAL FUND WITHIN THE STATE TREASURY
- 5) THE ADDITION OF PROVISIONS REQUIRING ALL REGISTERED PUBLIC ENGINEERS ENGAGED IN THE PRACTICE OF SURVEYING TO REGISTER BIENNIALY WITH THE TEXAS STATE BOARD OF SURVEYORS
- 6) THE ELIMINATION OF THE ORAL EXAM
- 7) THE REDUCTION OF THE EXPERIENCE REQUIREMENT TO TWO YEARS IN RESPONSIBLE CHARGE AND THE ELIMINATION OF EDUCATION REQUIREMENTS
- 8) THE ADDITION OF PROVISIONS WHICH REQUIRE ALL WRITTEN CONTRACTS FOR SURVEYING SERVICES TO CONTAIN THE NAME, MAILING ADDRESS, AND TELEPHONE NUMBER OF THE REGULATORY BOARD HAVING JURISDICTION OVER THAT LICENSED INDIVIDUAL
- 9) THE ADDITION OF DISCLOSURE PROVISIONS REQUIRING THAT A FIRM ENGAGED IN THE PRACTICE OF SURVEYING IDENTIFY THOSE REGISTERED OR LICENSED INDIVIDUALS WHO ARE LEGALLY RESPONSIBLE FOR THE FIRM'S ACTIONS
- 10) THE RESTRUCTURING OF THE STATUTORY LANGUAGE CONCERNING THE COMPLAINT AND HEARING PROCESS TO INSURE DUE PROCESS FOR ALL PARTIES INVOLVED.

TEXAS STONEWALL JACKSON MEMORIAL BOARD

The Texas Stonewall Jackson Memorial Board was created in 1957 (Article 6145-3, V.A.C.S.) for the purpose of memorializing General Stonewall Jackson. The statute specifies that this should be accomplished through a public corporation known as the Stonewall Jackson Memorial, Inc. The board is charged with the responsibilities of establishing and managing the Texas Stonewall Jackson Memorial Fund and using the income derived from the fund to conduct essay contests, and provide prizes, and grant scholarships. The board is composed of three members: the Texas Commissioner of Education, the President of Stonewall Jackson Memorial, Inc. and an appointee of the governor. This agency has never functioned and findings are presented below as a unit rather than on a criterion-by-criterion basis.

REVIEW OF OPERATIONS

On December 31, 1957, the Governor of Texas appointed Sam R. Fisher to serve as a member of the Texas Stonewall Jackson Memorial Board. According to information received from the Secretary of State's Office and the State Bar of Texas, Mr. Fisher died in 1976. No records of his activity as a board member have been found. The Secretary of State has no record of incorporation or selection of a President of the Texas Stonewall Jackson Memorial, Inc. The Texas Commissioner of Education reports finding no evidence that the board ever met.

The statute authorizes the board to receive and accept appropriations and donations in behalf of the Texas Stonewall Jackson Memorial Fund. In reviewing the Comptroller's Annual Reports from 1957 to the present, no record of this fund was found. No record of legislative appropriations was found in reviewing general appropriations acts for all fiscal years since 1957.

CONCLUSION AND RECOMMENDATIONS

No records or evidence have been found indicating that the Texas Stonewall Jackson Memorial Board was ever activated, or that the Texas Stonewall Jackson Memorial Fund was established. None of the educational programs contemplated in the Act were ever initiated and could be initiated under the general powers of the State Board of Education if there was a need to do so. Based on these findings the Commission recommends the following:

THE TEXAS STONEWALL JACKSON MEMORIAL BOARD SHOULD BE
ABOLISHED EFFECTIVE SEPTEMBER 1, 1979.

TEXAS STRUCTURAL PEST CONTROL BOARD

The Texas Structural Pest Control Board was created in 1972 to regulate the pest control industry in anticipation of the enactment of federal legislation regulating pesticide use. The SPCB is one of five state agencies responsible for fulfilling federal requirements regarding pesticide use. The Structural Pest Control Act was significantly modified in 1975 as a result of the Federal Environmental Pesticide Control Act of 1972.

COMPARATIVE ANALYSIS

To determine the pattern of regulation of the structural pest control industry within the United States, a survey of the 50 states was conducted. The need to regulate the structural pest control industry is currently expressed through licensing requirements imposed by all of the 50 states surveyed. From the standpoint of organizational patterns, seven states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In one state, the function is carried out through a governmental department charged with the regulation of multiple occupations.

In those states which utilize independent boards and commissions, three require that appointees be confirmed by the legislature; no states limit membership to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the legislature and membership is not limited to persons who are licensed members of the occupation. Thirty percent of the states, including Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were supported by fees collected. Thirty-six of the 50 states, including Texas, indicated that these bodies were supported by other revenue sources in addition to fees and charges of the agency.

None of the states regulating the structural pest control industry administer national examinations. Each state develops and administers its own examination. The examination is required only once in 45 of the states, including Texas. In 40 states, licensees are required to renew their licenses annually. Texas licenses for one year. Enforcement activities in all 50 states involve investigation of complaints from consumers and others engaged in the structural pest control industry. Hearings are conducted inside the regulating agency in all states. In Texas, hearings are conducted by the Structural Pest Control Board.

States which regulate the structural pest control industry indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement. These basic functions also constitute the primary elements of the operations of the Structural Pest Control Board and are examined in light of specific criteria required in the Texas Sunset Act in the material which follows.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

The efficiency of the Structural Pest Control Board can be examined in two areas: administration and funding. In the area of administration, it was noted that the agency's seven-member board generally restricts its activity to policy-making, promulgation of rules, staff guidance, and monitoring exams and hearings, but leaves the day-to-day administrative tasks to the executive director. The administrative tasks overseen by the executive director include: 1) the general office operations of records maintenance, report preparation and accounting, and 2) the agency's functional programs of licensing and enforcement.

Concerning the program areas of licensing and enforcement, the procedures which have been established are clear; however, there are some opportunities for increased efficiency which should be explored. In the area of the agency's use of computer equipment, extensions to the data maintained on computer files would allow a better means to keep track of the expiration date of licensee insurance forms. The practice of totally disregarding the existing computer files on licensee renewals and manual reconstruction of this information each year to create a new computer file should be reexamined. Staggering of renewal dates is authorized by law but has not been implemented and it appears that an even workload could be achieved if the agency began a staggered renewal process and that this could be incorporated into the agency's computer operations.

In the area of funding, the Structural Pest Control Board receives its operating revenues from fees for licenses and examinations and has received limited federal grant funds. The agency has the flexibility to increase fees up to a stated maximum and this has been reached in only one category. If current trends in licenses and expenditures continue, it is expected that revenues will be more than sufficient to maintain the present level of operations over the next five years. The major items of expenditure for the agency are personnel and travel.

It was noted in the review that telephone expenses could be substantially reduced if the agency were to install a line on the TEX-AN network, rather than utilizing credit card calling to communicate between inspectors and the Austin office.

Criterion 2 - Effectiveness

The licensing activities of the Structural Pest Control Board are directed at both individuals and businesses. The board's licensing of individuals involves all persons who use or supervise the use of pesticides in structural pest control work. Examinations are the basic method for achieving the objective of admitting qualified people into the industry. The review indicates that the examination acts as a screening device, for both individual and business licensees and appears to be constructed to test necessary areas of competency.

The law provides three basic requirements for business licensees. The agency has instituted workable procedures and policies to deal with the requirement that

businesses employ at least one certified applicator and that other employees be registered. The agency, however, has not taken steps to ensure compliance with the law which requires that each business licensee must have \$30,000 in property damage liability insurance. Further, the review could not document actions taken by the board in reviewing insurance policies as to sufficiency, as directed by law.

The law and regulations provide for disciplinary action by the board, injunctions, and civil and criminal penalties for violations of the law and regulations. Enforcement of the licensing requirement is carried out through injunctions against unlicensed individuals who are performing pest control work. Enforcement against licensees is conducted largely through the efforts of agency staff and board action. According to the agency self-evaluation report, all complaints are investigated. Of the violations heard by the board, penalties involved revocations in 29 percent of the cases, suspension in 36 percent of the cases, and lesser penalties in 35 percent of the cases. Most of the revocations were for nonpayment of license fees. The other penalties were for various violations--most frequently operating out of appropriate category, delivering lower quality of work than contracted for and misusing pesticides. The penalties assessed violators appear to be consistent, and no evidence was presented confirming or denying the effectiveness of the penalties assessed in deterring violations.

Criterion 3 - Less Restrictive or Alternative Methods

The statutory history of the SPCB reveals an increase in restrictiveness. This increase is attributed in part to the federal legislation which finally became effective in 1977, after delays by the Environmental Protection Agency. Regulation of the Texas pest control industry is less restrictive than many other states in terms of entrance requirements relating to experience and education. These requirements make the comparison of the restrictiveness of the examination processes suspect. Fees in Texas are generally above the average for other states. The board regulates businesses as well as individuals in a manner similar to about half of the other states. The SPCB has few formal requirements regarding an individual's activity after he is licensed. The board must rely primarily on enforcement activities and other procedures to guarantee that the public is adequately protected following issuance of a license.

Criterion 4 - Overlap and Duplication

The responsibilities for regulation of pesticide use is divided among five state agencies, according to the state plan approved by the Environmental Protection Agency. Under the state plan, the SPCB shares responsibilities for the licensing of pesticide users with the other state plan agencies. In particular, the licensing responsibilities of the Department of Agriculture appear to overlap those of the SPCB in three of the 10 major EPA-established categories. Further overlap occurs between the SPCB functions and the functions of the other three agencies to the extent that each is responsible for licensing commercial applicators in specified categories. While a mechanism for reciprocity exists among the five agencies, the major cooperative efforts appear to rely on informal communications. Overlap and duplication in enforcement activities appears to be limited because of both the

nature and level of enforcement activities undertaken to date. In addition, many types of activities of the SPCB are the same as those performed by other regulatory agencies.

Criterion 5 - Statutory Changes

The major modifications to the structural pest control law were enacted in 1975 and related to licensing and enforcement. The Structural Pest Control Board supported the 1975 amendments.

Criterion 6 - Complaints

The process for responding to complaints is supervised and coordinated by the executive director. Complaints are received by the Austin office and by the inspectors in either written or oral form. Documentation of complaints received and their disposition is not centralized or systematized; therefore, verification of types and numbers of complaints received was not completed. It was noted that files concerning cases heard by the board were fairly complete. The agency's self-evaluation report indicates that incidence of non-action was much higher in complaints initiated by the public. No formal sanctions were issued as a result of a consumer complaint during the last three fiscal years.

Criterion 7 - Public Participation

Review of the agency's activities regarding general public participation in the development of rules and regulations indicates that little effort has been made to encourage participation by the public; however, direct participation by the public in this type of agency is unlikely under usual circumstances.

Criterion 8 - Equal Employment/Privacy

The agency appears to be in substantial compliance with the requirements regarding both equal employment opportunities and the privacy of individual records.

Criterion 9 - Conflict of Interest

Both the executive director and board members have filed the required statements regarding their financial and business interests. In the only case of apparent conflict which was heard by the board, the member involved refrained from participating.

Criterion 10 - Open Records/Open Meetings

The agency appears to be in compliance with the provisions of the Open Records Act, although there is a potential problem regarding maintaining the confidentiality of certain files. The agency appears to have complied with the notification requirements of the Open Meetings Act.

Criterion II - Federal Impact

Regulation of structural pest control operators using restricted-use pesticides is mandated in federal statutes. If the state were to continue to perform the certification function through some organizational arrangement other than the SPCB, actions which would probably be required include: 1) enactment of state legislation placing responsibility for certifying structural pest control applicators with another state agency; and 2) revision of the State Plan. If the state chose not to continue to regulate pest control operators in these categories, the Environmental Protection Agency would probably perform the function. Receipt of federal funds is contingent upon the existence of an EPA-approved state plan. The absence of EPA approval could preclude the qualification of Texas for some federal funds designated for regulating pesticide use.

CONCLUSIONS AND RECOMMENDATIONS

The review indicated that the agency's staff of 11 persons expended \$217,000 in fiscal year 1977, while revenues collected amounted to \$297,000. All fees are deposited in a special fund in the State Treasury, and all expenditures are made from this fund.

Through operations funded by these expenditures, the board issued 3,035 licenses to pesticide applicators and 2,104 to pest control businesses in 1977. Of those licenses, 4,416 were renewals. Each business licensee must designate a licensed certified applicator as the manager, who is responsible for the day-to-day operation of the business. Examinations are administered quarterly in each of five categories. All individuals who hold SPCB applicator licenses have passed an examination; however, there are no experience or education requirements as there are in many states.

In 1973, the board was given statutory authority to stagger license renewals but this authority has not been exercised. If a staggered renewal plan were implemented, it appears that the agency's workload would be smoother and overall efficiency would be increased.

Licenses are processed and licensee listings are printed using the Department of Agriculture's computer facilities. It was noted during the review that increased efficiencies could be achieved by automating additional components of the licensing process and utilizing existing computer files in issuing renewals.

A review of agency expenditures indicates that telephone expenses included payment for a substantial number of credit card calls. It was determined that a savings of about \$1,200 per year could be achieved by utilizing the Tex-An network for many of these calls.

Each business licensee is required by law to maintain \$30,000 in property damage liability insurance at all times and file evidence of the coverage with the board as a prerequisite for licensing. Agency files indicate that many licensees are maintaining only \$25,000 property damage liability insurance coverage, and board regulations imply that the coverage requirement refers to the total of personal property and bodily injury liability insurance. The statutes also require that the

board review insurance coverage as to sufficiency; however, no documentation of such activities was found.

Enforcement activities of the agency include responding to complaints and conducting routine inspections. The agency reports that all complaints are investigated; however, verification of the investigation of complaints was hampered because of the lack of a systematic, centralized file of complaints, investigation results and disposition. Complaints filed with the agency generally involve charges of operating without an appropriate license, failure to meet contract specifications and misuse of pesticides. There are no standard written procedures for conducting routine inspections or for conducting investigations of alleged violations.

The responsibilities of the Department of Agriculture are similar to those of the SPCB in both the target populations served and the functions performed in licensing pesticide users and enforcement of licensing requirements. In carrying out the licensing function, the Department of Agriculture and Texas Agricultural Extension Service have developed a program of training in the use of pesticides and a training manual. These are available through the district offices of the Department of Agriculture. Responsibilities of the SPCB in performing licensing and enforcement functions are also similar to those performed by other regulatory agencies.

The federal law requires that pesticide users be licensed by states. In states which have chosen not to comply, the Environmental Protection Agency has intervened to perform the function and has withheld certain federal funds from the state. Increases in restrictiveness of legislation governing the SPCB generally appear to result from increased federal requirements; however, it was noted that the federal law does not require the issuance of both business licenses and individual (certified applicator) licenses, though both are required by the agency.

The concerns enumerated above lead to the following recommendation:

- 1) THE STRUCTURAL PEST CONTROL BOARD SHOULD BE ABOLISHED PURSUANT TO THE PROVISIONS OF THE TEXAS SUNSET ACT AND THE DUTIES AND RESPONSIBILITIES OF THE BOARD SHOULD BE TRANSFERRED TO THE DEPARTMENT OF AGRICULTURE.
- 2) THE DEPARTMENT SHOULD IMPLEMENT A SYSTEM OF STAGGERED LICENSE RENEWALS AND SHOULD BE CHARGED WITH LICENSING PESTICIDE APPLICATORS ONLY.
- 3) THE REQUIREMENTS FOR INSURANCE COVERAGE SHOULD BE MODIFIED TO REQUIRE \$30,000 IN COVERAGE WHICH WOULD INCLUDE LIABILITY FOR BOTH PROPERTY DAMAGE AND BODILY INJURY.

TEXAS TURNPIKE AUTHORITY

The Texas Turnpike Authority (TTA) was established in 1953 and was authorized to construct, maintain and operate toll facilities for the purpose of facilitating the movement of traffic and encouraging the economic development of the state. In order to address this statutory mandate, the Authority has undertaken responsibility for studying the feasibility of potential toll projects in the state as well as for constructing and managing those projects which are judged practicable.

Turnpike Authority toll projects are initially financed out of proceeds from the sale of turnpike revenue bonds for each particular project. For each project, repayment of bonded indebtedness as well as the costs of maintenance and the agency's operations in relation to the particular project are paid for entirely out of revenues derived from toll fares, related concession revenues and earnings on investments. No general tax funds are available to the Authority from the state.

The concept of toll roads has been used to provide an alternative method for financing needed construction where traditional highway revenues are insufficient or inappropriate. Accordingly, 45 states currently possess statutory authorization to operate toll facilities; 23 of these, including Texas, have been identified as operating independent statewide turnpike authorities.

REVIEW OF OPERATIONS

Criterion 1 - Efficiency

The Texas Turnpike Authority appears to be administered in an efficient manner. Likewise, the toll facilities which have been built and operated by the Authority have been financially successful revenue bond projects.

The Authority is administered by a 12-member Board of Directors responsible for policy direction, and an administrative staff responsible for implementation. Purpose and responsibility for operations are clearly defined within the agency's program structure. State law and the requirements of the trust agreements governing the agency's various operating projects make the Turnpike Authority subject to thorough financial review by the State Auditor as well as by outside independent accounting firms. These requirements, in turn, have helped to insure the development of an efficient system of data processing and internal controls for monitoring and accurately reporting the agency's operations.

Toll collection on the Authority's most recent projects has been simplified by the utilization of automatic toll collection equipment which is leased from a private firm. Traffic control on the Authority's toll projects has been carried out by the Texas Department of Public Safety through an interagency cooperation contract. In general terms, the Turnpike Authority appears to utilize the services of outside consultants to a much greater extent than most other state agencies. Many of these contractual services, however, are requisite to the trust agreements entered into by the Authority in regard to its various projects.

The Turnpike Authority has constructed and operated two toll facilities, the Dallas-Fort Worth Turnpike and the Dallas North Tollway, and has recently sold revenue bonds for the financing of two additional projects, the Mountain Creek Lake Bridge, which is currently under construction, and the Houston Ship Channel Bridge, which is scheduled to begin construction soon. The Dallas-Fort Worth Turnpike was constructed out of proceeds from the sale in 1955 of revenue bonds in the principal amount of \$58,500,000. Bonded indebtedness on the Turnpike was fully retired 17 years ahead of schedule and, in accordance with Senate Bill 194, the Turnpike was transferred as a toll-free highway to the State Department of Highways and Public Transportation on December 31, 1977. The Dallas North Tollway was constructed out of proceeds from the sale in 1965 of revenue bonds in the principal amount of \$33,650,000. Currently, Tollway bonds totaling \$11,690,000 have been retired, placing the repayment of bonded indebtedness on this facility approximately nine years ahead of schedule.

Criterion 2 - Effectiveness

The Texas Turnpike Authority is statutorily authorized and empowered to construct, maintain and operate toll facilities and to issue revenue bonds for these purposes. In pursuit of these objectives, the agency undertakes a variety of interrelated tasks which can be broadly categorized as planning and implementation phases.

The planning process involves a cursory review by Authority personnel, a period of feasibility studies conducted by engineering consultants, and the arrangement of financial matters leading to bond sale. Implicit in this process is the statutory requirement for coordination with the State Department of Highways and Public Transportation (SDHPT). This coordination is effected through the approval of project feasibility studies and route by the SDHPT Commission.

The Authority has carried out planning studies in regard to eight potential projects, four of which have proceeded to the implementation phase. Of the four project studies which were not implemented, two were judged not to be financially feasible. The remaining two projects were initially judged to be feasible and proceeded to the final feasibility study phase. One of these projects, the Trinity Route of the Dallas-Fort Worth Turnpike, was halted by the SDHPT Commission due to lack of immediate need. The other project, the Offatts Bayou Bridge in Galveston, was suspended by the Authority due to withdrawal of political support by a newly elected city council. These instances suggest that there have been certain inadequacies with respect to preliminary coordination with the SDHPT and to the means available to insure continuing local government commitment to Authority projects.

The Authority's implementation phase includes construction and operation, and extends over the entire duration of a project. Construction is carried out by private contractors supervised by a General Consultant which is normally the primary feasibility consultant. The Authority's operational responsibilities include both administrative and field operations directed toward collecting tolls, maintaining facilities, monitoring operations and servicing bonded indebtedness. In general

terms, the Turnpike Authority has been effective in achieving the objectives of timely completion of projects, satisfactory maintenance, increasing vehicular utilization, and long-run financial viability.

Criterion 3 - Less Restrictive/Alternative Methods

The review under this criterion suggests that, although toll facilities have been employed by states since 1800, the major part of the nation's highway network has been constructed through the collection of motor fuel taxes, vehicle registration fees, license fees, and special levy and excise taxes. However, both historically and currently, the funding of transportation facilities through toll revenues plays a small but significant role in both national and international transportation planning.

Historically, the potential for lack of coordination between the state highway department and the toll authority and the loss of economies of scale possible through the joint use of personnel and equipment has been subordinated to the concern of creating a corporate entity which could incur debt for toll facilities which could be justified totally on economic grounds. This organizational strategy is applicable to states such as Texas where state agencies do not generally incur long-term debt for capital expenditures as well as for states where long-term debt issued by state agencies must be carefully managed in order to maintain the highest possible credit rating.

A comparison of legislation associated with toll facilities revealed a great deal of consistency. Toll authorities in most states, including Texas, are corporate quasi-public authorities created and authorized by legislation, functioning outside the normal structure of state and local government and possessing similar legal powers necessary to acquire, finance, construct, and operate revenue-producing facilities which cannot or should not be unilaterally assumed by either the public or private sector. In many instances, the statute governing the Texas Turnpike Authority is relatively strict, with most powers and authority specifically enumerated rather than broadly delegated. The only instance where the Texas statute significantly varied from the norm was in the comparatively large size of its 12-member governing board.

The analysis of statutes, patterns and frequency of organizational utilization, and questionnaire responses indicated no clear or definitive reasons for a state's choice of an independent toll authority over a merged organizational arrangement. These results do indicate that Texas uses the most prevalent form of toll administration.

The potentially higher costs associated with toll collection, toll facility administration, and debt service operation have sometimes been cited as drawbacks to the use of toll-financed, rather than general user-tax financed, facilities. However, toll facilities have been commonly employed where policy makers have determined that the public's interest might be better served by absorbing any increased costs associated with this alternative rather than delay transportation needs considered urgent or essential.

Criterion 4 - Overlap and Duplication

The Texas Turnpike Authority is responsible for planning, constructing, maintaining and operating revenue bond vehicular toll facilities. No other single state agency currently possesses the authorization and expertise required to accomplish this broad range of interrelated functions. However, other state agencies do possess the capability to separately perform certain of these functions.

The potential for consolidation of Turnpike Authority functions within other state agencies is limited by Article III, Section 52b of the Texas Constitution which prohibits the legislature from lending state credit or granting public money for the purposes of constructing, maintaining or operating toll facilities. Thus, under current legislation, functional consolidation can only occur through interagency contractual arrangements between the Turnpike Authority and other state agencies operating similar programs.

The opportunity appears to exist for limited consolidation of certain planning, construction and maintenance functions between the Turnpike Authority and the State Department of Highways and Public Transportation. To a certain extent, this type of consolidation has already taken place and it appears that this degree of contractual consolidation is generally consistent with that carried out by similar agencies in other states.

The Turnpike Authority currently utilizes the services of the Department of Public Safety through interagency contract for the purposes of traffic patrol on its various toll facilities.

The Treasury Department currently assists certain state agencies and political subdivisions by serving in the capacity of fiscal agency in the receipt and disbursement of funds for the payment of maturing bonds and accrued interest. Due to the particular requirements of the bond underwriting groups for Turnpike Authority projects, however, the opportunity for consolidation of this paying agency function in the Treasury Department appears to be significantly limited under present circumstances.

Criterion 5 - Statutory Changes

A review of the statutory history of the Texas Turnpike Authority indicates that the agency's enabling legislation, passed in 1953, was first amended 16 years later in 1969. This amendment authorized, subject to Highway Commission approval, the agency's use of any available revenues from existing turnpike projects to finance feasibility studies of other potential projects around the state. The agency's statute was next amended in 1971 to increase the size of the Board of Directors from 9 to 12 members. Finally, the most recent changes to the Authority's enabling legislation were adopted in 1977 by the Sixty-fifth Legislature. During this legislative session, three bills concerning the agency were introduced, with one compromise bill (S.B. 194) receiving final legislative acceptance. This legislation provided for, among other things: 1) the elimination of tolls on the Dallas-Fort Worth Turnpike no later than the end of 1977; 2) the establishment of a

\$1 million revolving Feasibility Study Fund, to be reimbursed from the proceeds of revenue bonds sold to finance feasible projects; 3) the expenditure of funds by municipalities and counties to pay for feasibility studies for any new turnpike project, with such expenditures to be reimbursed from the sale of revenue bonds associated with the project; and 4) the pooling of projects within the same county. S.B. 194 was endorsed or not opposed by a number of local governments and various associations in the Dallas-Fort Worth area.

Criterion 6 - Complaints

The review under this criterion showed that the Turnpike Authority has not established formal written procedures for the handling of complaints, although a relatively structured informal system is utilized. The bulk of complaints are handled by the Toll Collection Office within the agency. Complaints concerning discourtesy received the most timely disposition, with complaints concerning change errors resulting in the greatest average response time. Since most of the complaints received resulted from operations on the Dallas-Fort Worth Turnpike, the future volume of complaints should be expected to drop substantially in 1978.

Criterion 7 - Public Participation

The review under this criterion has shown that there is consistent attendance at TTA Board meetings by representatives of the media and general public. It should be noted, however, that Witherspoon and Associates has been employed, on a long-term basis, to implement the Authority's public information efforts. The use of such a public relations firm is not consistent with the procedures utilized in state agencies falling within the state appropriations process. Article V, Section 5 of the current Appropriations Act prevents state appropriations from being used by such agencies for the employment of any person who has the title, or duties, of a public relations agent, or press agent, or for paying any public relations firm or agent.

Criterion 8 - Equal Employment

Review of agency operations in relation to affirmative action and equal employment opportunity indicates that the agency has made an effort to address EEO concerns in its employment practices. The services of an outside personnel consultant have been utilized in order to accomplish an equitable reduction of work force following divestiture of the Dallas-Fort Worth Turnpike. Nevertheless, white males appear to be proportionately overrepresented within the agency's work force, particularly at the upper employment categories. Additionally, there are no written internal procedures nor long-range goals detailing agency approaches to EEO concerns.

There have been two charges of discrimination filed against the agency. However, charges were dropped in one instance and investigation indicated that evidence did not support the charges in the other.

Criterion 9 - Conflict of Interest

The board and the staff of the Texas Turnpike Authority are subject to conflict of interest provisions found in both the agency's enabling statute and in Article 6252-9b, V.A.C.S. Looking at the agency's Board of Directors, no established procedure for systematically informing new board members of the specific provisions of both laws could be identified; however, the Office of the Secretary of State does inform new directors of pertinent affidavit filing requirements relating to disclosure of regulated business interests under general law. TTA directors appear to be in general compliance with such requirements.

In reviewing agency conflict of interest procedures relative to its staff, it was noted that the TTA attempts to inform new employees of the substance of both state and agency statutory requirements. This effort is made through inclusion of a conflict of interest section in the Authority's "Personnel Policies and Practices" manual and through provision of a copy of Article 6252-9b, V.A.C.S., to all new staff members. In compliance with the provisions of this article, the engineer-manager of the Authority has filed with the Secretary of State a current financial statement that appears to conform to statutory requirements.

Criterion 10 - Open Records/Open Meetings

The Texas Turnpike Authority appears to maintain a record-keeping system in compliance with the Open Records Act. The agency also appears diligent in fulfilling the statutory requirements concerning public notification under the Open Records Act, and goes beyond the posting requirements of the Act in its notification procedures.

Criterion 11 - Federal Impact

The TTA has never received, nor is currently eligible to receive, federal funds for toll facility construction. Therefore, no loss of federal funds would result from abolition of the agency as presently structured.

CONCLUSIONS AND RECOMMENDATIONS

The review contained in this report has centered upon the Texas Turnpike Authority's development, maintenance and operation of revenue bond vehicular toll facilities. The evaluation has focused upon a broad range of the agency's activities.

Turnpike Authority toll projects are initially financed out of proceeds from the sale of turnpike revenue bonds for each particular project. Amendments to the agency's enabling legislation introduced in 1977 allow any existing toll project to be "pooled" with a new project in the same county, with the resulting combination considered as a single turnpike project for purposes of financing and operation. For each project, repayment of bonded indebtedness as well as the costs of maintenance and the agency's operations in relation to the particular project are paid for

entirely out of revenues derived from toll fares, related concession revenues and earnings on investments. No general tax funds are available to the Authority from the state.

In pursuit of its overall objectives, the Turnpike Authority undertakes a variety of interrelated tasks which can be broadly categorized into planning and implementation phases. The Authority has carried out planning studies in regard to eight potential projects, four of which have proceeded to the implementation phase.

Implicit in the planning process is the statutory requirement for coordination of Turnpike projects with the overall state highway system through approval of feasibility studies and route by the State Highway and Public Transportation Commission. The evaluation has indicated that in certain instances, there may have been inadequacies with respect to preliminary coordination with the State Department of Highways and Public Transportation (SDHPT). In addition, the result of at least one planning project has suggested that there may be inadequate means for insuring continued local government commitment to proposed Authority projects.

The Turnpike Authority's operational responsibilities include both administrative and field operations. The evaluation has indicated that the day-to-day operations of the agency are generally conducted in an efficient and effective manner. State law and the requirements of the trust agreements governing the agency's various operating projects make the Turnpike Authority subject to thorough financial review by the State Auditor as well as by outside independent accounting firms. In general terms, the Turnpike Authority appears to utilize the services of outside consultants to a much greater extent than most other state agencies. Many of these contractual services, however, are requisite to the trust agreements entered into by the Authority in regard to its various projects.

Review of operating projects shows that the Turnpike Authority has accomplished its stated objectives relative to the construction of facilities. In general terms, the Authority has been able to achieve timely project completion, satisfactory road maintenance, increasing vehicular utilization, and long-run financial viability.

The Sunset Commission considered several alternative approaches to this agency. However, none of these approaches received a majority vote required under the Sunset Act (three votes on the part of the Senate members and three votes on the part of the House members), resulting in no affirmative recommendation by the commission.

VEHICLE EQUIPMENT SAFETY COMMISSION

In 1961, a model compact was drafted under the aegis of the Western Governors' Conference and the Council of State Governments as a means of implementing congressional intent and to stimulate the adoption of uniform standards for new and improved automotive safety equipment. The compact provided for a commission, composed of one individual from each member state, to carry out the objectives of: 1) improving highway traffic safety through uniformity of regulations and standards for vehicle equipment; 2) promotion of greater use of new and improved safety equipment on vehicles; and 3) retention of the jurisdiction for enforcement of vehicle regulations at the state level. Annual financing for the commission's activities was provided through a membership assessment apportioned among the member states on the following basis: one-third in equal shares and the remainder in proportion to the number of motor vehicles registered in that state.

The compact was first adopted by the state of New York in 1962 and currently there are 42 member states to the compact. Texas became a member state in 1963 when the Fifty-eighth Legislature created the Texas Vehicle Equipment Safety Commission (Art. 6710K, V.A.C.S.) within the Office of the Governor, to be selected by the Governor to represent the State of Texas on the national Vehicle Equipment Safety Commission. Because of the limited operations of the commission findings are presented below as a unit rather than on a criterion-by-criterion basis.

REVIEW OF OPERATIONS

Participation began shortly after enactment of the enabling legislation. The Governor appointed the Chief of the Inspection and Planning Division of the Department of Public Safety (DPS) to serve as Texas' representative on the commission. Funds in the amount of \$5,840 for two years were allocated from the Department of Public Safety's budget to pay the state's portion for financing the activities of the commission.

The Chief of Inspection and Planning actively participated in the affairs of the commission, and supported its recommendations. He attended all scheduled meetings from 1964 to 1968, and participation continued through 1970. During the period of Texas' active participation from 1964 to 1970, based on the funding formula discussed earlier, Texas ranked third in terms of financial support to the commission, contributing a total of \$28,306 in those years.

During this same period, five recommendations were developed by the commission dealing with new tires, retreaded tires, brake linings, safety glazing materials, and motor vehicle connecting devices and towing methods. Of the twenty-nine member states surveyed, three states, Oklahoma, Maryland and New Jersey, adopted all five recommendations; two states, Illinois and Massachusetts, adopted two; four states, Louisiana, Kentucky, Maine and Montana adopted at least one; and the remaining twenty states, including Texas, adopted none.

All of the recommendations developed by the commission since its inception have been adopted by at least one state. This is of significance to Texas due to the fact that if one state adopts such a safety code, most manufacturers involved in interstate commerce comply in order to avoid having markets closed or having to manufacture two sets of equipment.

Not all member states have maintained active status. Beginning in 1970, Arkansas, Florida, Montana, New Jersey, North Dakota, South Dakota, and Texas withdrew from active participation. (In 1973 Montana, North Dakota and South Dakota became active again.) Two member states have formally withdrawn from the commission through the process of revoking the enabling legislation and notifying member states of that fact.

A review of the states which withdrew from active participation, including Texas, revealed two primary reasons for doing so. The first reason for withdrawal was that some states felt that the purposes of the commission could be achieved through larger organizations in which the states held memberships. The second reason cited was failure by the legislature to appropriate funds for continued participation.

CONCLUSIONS AND RECOMMENDATIONS

The review of the commission has indicated that: 1) none of the Vehicle Equipment Safety Commission recommended safety codes have been enacted into law by Texas; 2) Texas has not actively participated in the commission since 1970; 3) Texas continues to participate in several national organizations with objectives similar to VESC's, often with the same individuals as members; 4) all of VESC recommendations have been adopted by at least one state; 5) manufacturers involved in interstate commerce generally comply with such safety codes, if passed by one state; 6) the size of the National Commission's staff, two permanent positions, raises doubts that it can adequately meet its own objectives; and 7) federal funding to the state will not be adversely affected should Texas elect to formally withdraw from the compact. These findings lead to the following recommendation:

ARTICLE 6710K, V.A.C.S., CREATING THE TEXAS VEHICLE EQUIPMENT SAFETY COMMISSION, SHOULD BE REPEALED, AND TEXAS SHOULD TAKE THE NECESSARY STEPS TO FORMALLY WITHDRAW FROM THE COMPACT BY HAVING THE GOVERNOR SEND A LETTER NOTIFYING THE NATIONAL COMMISSION OF INTENT TO WITHDRAW.

APPENDIX

DISSENTING STATEMENTS

Good Neighbor Commission

Separate Views of Representative Lance Lalor
Concerning the

GOOD NEIGHBOR COMMISSION

By: REP. LALOR

B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the development and maintenance of friendly relations between this state and Latin American countries.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. COMMISSION. The Commission on Inter-American Resources is established.

SECTION 2. MEMBERSHIP. (a) The commission is composed of nine members appointed by the governor with the advice and consent of the senate.

(b) A member of the commission must have expertise in one or more of the following areas: international trade and tourism, industrial development, education and research, diplomacy, or Hispanic culture, law, sociology, economics, or language.

SECTION 3. TERMS. Except for the initial appointees, members of the commission hold office for staggered terms of six years with three members' terms expiring on January 31 of each odd-numbered year. In making the initial appointments, the governor shall designate three members for terms expiring on January 31, 1981, three members for terms expiring on January 31, 1983, and three members for terms expiring on January 31, 1985.

SECTION 4. OFFICERS; MEETINGS; QUORUM. (a) The commission may elect from its membership a chairman and other officers that the commission considers necessary. A member serves as an officer at the will of the commission.

(b) The commission may meet at times and places that the chairman or the commission designates.

(c) Five members constitute a quorum.

SECTION 5. EXPENSES AND PER DIEM. A member of the commission is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the commission and to a per diem of \$50 for each day, not to exceed 10 days in a calendar year, that the member is engaged in performing the functions of the commission.

SECTION 6. EXECUTIVE DIRECTOR; STAFF. (a) The commission shall employ an executive director who is the executive head of the commission and performs its administrative functions. The executive director serves at the will of the commission.

(b) The executive director may employ staff members necessary to carry out the functions of the commission.

SECTION 7. FUNCTIONS. (a) The commission may:

(1) appoint committees from its membership and prescribe their duties;

(2) appoint consultants and committees to the commission and prescribe their duties;

(3) provide information to individuals and governmental entities about the nations of the Western Hemisphere and their citizens and about Texans of Hispanic heritage for the purpose of advancing inter-American understanding and goodwill;

(4) provide language translation services to state agencies and other governmental entities and assist state agencies in disseminating information to the public through bilingual

publications;

(5) sponsor and provide administrative guidance to the Pan American Student Forum and encourage the study and appreciation of the peoples and nations of the Western Hemisphere and the multilingual and multicultural traditions of this state;

(6) assist private, nonprofit organizations whose objectives are the establishment of friendly relations in inter-American affairs; and

(7) gather information, conduct investigations, and perform research relating to inter-American affairs and accept grants for this purpose.

(b) If requested to do so by the governor, the commission may:

(1) gather information about matters of mutual interest to this state and the nations of the Western Hemisphere;

(2) maintain connections with the governors of Mexico and officers of Latin American nations and act as a source of information about state affairs for the consular corps stationed in this state;

(3) research, develop, negotiate, or implement interstate compacts relating to relations between states sharing international borders or experiencing problems related to international borders;

(4) represent the governor at public events, make arrangements for state officers to appear at public events, and receive dignitaries from Latin American countries;

(5) serve as protocol advisor or interpreter at meetings between state officers and officers of Latin American countries;

and

(6) gather information in cooperation with governmental entities and interagency task forces about the relationship between this state and Latin American countries or their citizens.

SECTION 8. RULES. The commission may adopt rules necessary to carry out this Act.

SECTION 9. REPORT. Before December 1 of each even-numbered year, the commission shall file with the governor and the presiding officer of each house of the legislature a written report about the activities of the commission.

SECTION 10. OFFICE. The commission shall establish and maintain its office in Austin, Texas.

SECTION 11. ASSISTANCE. The commission may request the assistance of state agencies and officers in carrying out its functions, and the state agencies and officers shall assist the commission when requested to do so.

SECTION 12. GIFTS. The commission may accept, on behalf of the state, a gift, grant, or donation from any source to be used by the commission in carrying out its functions.

SECTION 13. DISPOSITION OF FUNDS. (a) Except as provided by Subsections (b) and (c) of this section, funds received by the commission shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(b) Funds received by the commission from the Pan American Student Forum, including funds received as part of a Pan American Student Forum scholarship program, shall be deposited with the state treasurer in trust in a special fund to be known as the Pan

American Student Forum fund. The commission shall administer the special fund, without legislative appropriation, to finance activities, including scholarship programs, of the Pan American Student Forum.

(c) Funds donated to the commission for which the donor states in writing that the funds are to be used for hospitality or entertainment purposes shall be deposited with the state treasurer in trust in a special fund to be known as the inter-American resources entertainment fund. The commission shall administer the special fund, without legislative appropriation, for a hospitality or entertainment purpose related to a commission function.

SECTION 14. APPLICATION OF SUNSET ACT. The commission is subject to the Texas Sunset Act (Article 5429k, Vernon's Texas Civil Statutes). Unless the commission is continued in existence as provided by that Act, the commission is abolished and this Act expires effective September 1, 1991.

SECTION 15. EFFECTIVE DATE. This Act takes effect on September 1, 1979.

SECTION 16. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Texas Turnpike Authority

Separate Views of Representatives Bill Ceverha, Lee Jackson, and Lance Lalor
Concerning the

TEXAS TURNPIKE AUTHORITY

By _____

H.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Turnpike Authority.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3A, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3A. The Texas Turnpike Authority is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the Authority is abolished, and this Act expires effective September 1, [~~1979~~] 1991.

SECTION 2. Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6674v, Vernon's Texas Civil Statutes), is amended by adding Sections 16A, 21A, 21B, and 21C to read as follows:

Sec. 16A. PUBLIC HEARINGS. (a) Before the Authority finally approves an engineering design for a Project, the Authority or a designated representative of the Authority shall hold at least one public hearing in the general locality in which the Project is to be located. Persons interested in the Project shall be given an opportunity at the public hearing to testify about the Project and to inspect the plans and designs prepared for the Project.

(b) Not less than 15 days or more than 21 days before the public hearing, the Authority shall furnish a written notice of the public hearing to the governing body of each county, city, or town in which any part of the Project is to be located and shall publish the notice in the general locality in which the Project is to be located in a manner likely to inform the general public of the public hearing.

(c) At least seven days before the public hearing, the Authority shall file with the governing bodies the plans and designs prepared for the Project.

Sec. 21A. TRAVEL EXPENSES. (a) Employees of the Authority are entitled to a per diem and transportation allowance for travel on official business. The rates of reimbursement are as provided in the travel provisions of the General Appropriations Act.

(b) The secretary and treasurer and the executive head of the Authority are entitled to reimbursement for actual and necessary expenses incurred for travel on official business, except that reimbursement for transportation expenses is at the rates provided in the travel provisions of the General Appropriations Act.

Sec. 21B. REPORTS. (a) The Authority shall file with the Governor, the Legislative Reference Library, and the Legislative Budget Board certified copies of the minutes of the Authority's meetings. The Authority similarly shall file copies of any corrections or changes of the minutes. The Authority shall file the copies as soon as possible after the minutes, changes, or corrections are approved by the Authority.

(b) On or before March 1 of each year, the Authority shall file with the governor's budget and planning office, or its successor, and the Legislative Budget Board an itemized budget covering the current calendar year.

(c) On or before March 31 of each year, the Authority shall file with the Governor, the Legislature, and the Legislative Budget Board a report about the Authority's activities during the preceding calendar year. The report shall include information about each Project, including a complete operating and financial statement covering each Project, and shall include an itemized statement about the professional or consulting fees paid by the Authority, including the name of each individual or business entity who received the fees and a description of the purposes for which the fees were paid.

Sec. 21C. CONSULTANTS. The Authority is subject to Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), relating to the use of consultants.

SECTION 3. Section 21, Chapter 410, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 6674v, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. MISCELLANEOUS. Each Turnpike Project when constructed and opened to traffic shall be maintained and kept in good condition and repair by the Authority. Each such project shall also be policed and operated by such force of police, toll-takers and other operating employees as the Authority may in its discretion employ. Within its discretion the Authority may make arrangements with the Department of Public Safety for the services of police officers of that Agency.

All private property damaged or destroyed in carrying out the powers granted by this Act shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this Act.

All counties, cities, villages and other political subdivisions and all public agencies and commissions of the State of Texas, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request, upon such terms and conditions as the proper authorities of such counties, cities, villages, other political subdivisions or public agencies and commissions of the State may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or appropriate to the effectuation of the authorized purposes of the Authority, including highways and other real property already devoted to public use.

An action by the Authority may be evidenced in any legal manner, including a resolution adopted by its Board of Directors.

Any member, agent or employee of the Authority who contracts with the Authority or is interested, either directly or indirectly, in any contract with the Authority or in the sale of any property, either real or personal, to the Authority, shall be punished by a fine of not more than One Thousand Dollars (\$1,000).

Any person who uses any turnpike project and fails or refuses to pay the toll provided therefor, shall be punished by a fine of not more than One Hundred Dollars (\$100) and in addition thereto the Authority shall have a lien upon the vehicle driven by such person for the amount of such toll and may take and retain possession thereof, until the amount of such toll and all charges in connection therewith shall have been paid.

~~[On or before the thirty first day of March in each year the Authority shall make an annual report of its activities for the preceding calendar year to the Governor and to the Legislature. In making such report, each project shall be listed and reported separately. Each such report shall set forth a complete operating and financial statement covering its operations for each project during the year.]~~ The Authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of the Turnpike Project.

SECTION 4. This Act takes effect on September 1, 1979.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Separate Views of Senator Lloyd Doggett Concerning The
TEXAS TURNPIKE AUTHORITY

The Texas Turnpike Authority is one of only two agencies for which the Commission did not make a recommendation. While generally conducting its affairs in a proper manner, the Turnpike Authority is an example of an agency which, having accomplished its original purpose of completing the Dallas-Fort Worth Turnpike, has now sought permanence by expanding into new areas. I agree with the findings of the staff of the Legislative Budget Board, which conducted the audit for our Sunset Commission, that this agency requires additional public accountability.

Though its activities may have had only regional significance in the past, the Authority is likely to have increasing statewide impact as pressures are created by tight state budgets and the continual demands for more costly highway projects. Despite the large portion of the last state budget devoted to highways, Governor Briscoe has already begun calling for the construction of more toll facilities. Hence, Legislators from throughout Texas should seek to ensure that there are adequate public safeguards before, rather than after, this agency begins a project in their community. I would suggest the following guidelines in addressing the Turnpike Authority:

1. END NEEDLESS DUPLICATION OF GOVERNMENTAL FUNCTIONS

The Turnpike Authority was established in 1953 to construct and operate toll facilities. With the Authority's original projects now completed, I see no need for two separate highway-building bureaucracies to continue. Merger of the Authority with the Texas Department of Highways and Public Transportation would ensure one state organization with coordinated planning and, hopefully, public accountability. To accomplish this consolidation an amendment will be necessary to Article III, Section 52b of the Texas Constitution which prohibits the Legislature from lending state credit or granting public money for the purposes of constructing, maintaining or operating toll facilities.

Although such a single transportation agency would be in the best interests of the state, there are additional recommendations that should be adopted if the Turnpike Authority is allowed to continue its separate identity.

2. INCREASE PUBLIC PARTICIPATION IN DECISIONS CONCERNING TOLL PROJECTS

At present the Authority apparently solicits opinions from local governments and Chambers of Commerce on proposed toll facilities, but has no requirements that public hearings or local votes be taken regarding a proposed project. Those most affected by proposed transportation projects should be directly involved in the planning process through public hearings along the proposed route of toll facilities.

Throughout the country the rapid construction of massive highway projects has often had unintended effects on central business districts and existing neighborhoods. I agree with the Sunset staff that hearings should be statutorily mandated in all communities and neighborhoods which will be directly impacted by construction of proposed toll facilities, and that a mechanism should be established for voter approval in communities for which projects are proposed. Moreover, a reasonable means of ensuring agency consideration of the full impact of proposed projects should be adopted.

3. PLACE A REASONABLE LIMIT ON BONDED INDEBTEDNESS THAT MAY BE INCURRED BY TTA

While there is no evidence to show that it has been fiscally irresponsible, the Authority should not have unlimited authority to incur debt in a time of increasing demands for its services. Currently the Authority has a debt totalling \$130 million, which is more than the combined \$90 million paid off from its completed projects. To avoid the financial overextensions currently being faced in other states, a ceiling should be placed upon the bonded indebtedness which the TTA can incur. Given the current debt, a limit of \$150 million should probably be adequate. This would ensure that any additional indebtedness is incurred only after specific approval from the legislature.

In summary, the functions of planning, constructing, and maintaining toll facilities can be performed by the Highway Department. Consolidation of these agencies would utilize economies of scale

eliminating duplicate jobs and services. In addition, even without merger, the public's right to involvement in large scale projects along with fiscal accountability must be assured.

The attached editorials from one close observer of the Authority's past activities, the Dallas Times Herald, are attached for your further consideration.

25.894

OCT 3 1978

DALLAS TIMES-HERALD

Sunset on the turnpike

THE TEXAS TURNPIKE Authority is now under scrutiny by the Sunset Commission established by the legislature to single out unnecessary state agencies or point a finger at those who fail to serve a worthy public function.

It is not a surprise, judging from the Authority's recent actions, that the Sunset finger points to the need for more controls over the agency, which displays many autocratic tendencies.

At least one member of the Sunset Commission, State Sen. Lloyd Doggett, D-Austin, wants to abolish the Turnpike Authority altogether.

Abolishing the Authority, and absorbing its responsibility into the Texas Department of Highways and Public Transportation, is probably the best long-term alternative to having another agency dealing with highway problems.

But the Turnpike Authority, in a fight for its existence, gets strange bedfellows — politicians who like the idea of being able to get a road or bridge built in a hurry. Sometimes, however, these elected officials can be nearsighted because they put their efforts behind a toll project before having exhausted their energy to get a free-access road or bridge under the state system of taxation. Dallas, as one can tell from the number of toll projects built and proposed here, offers fertile political ground for toll project expansion.

A state agency once created, as the Sunset Commission has discovered, is its own best proponent and

a mightily hard lobbyist against its abolition.

Short of trying to abolish the agency, the Sunset staff has come upon several good ideas. The best is the suggested limit on the bond issuance authority. An argument can be advanced that one major problem of our state government is the unlimited bond authority granted to some state agencies and political subdivisions, making possible a huge financial debt and a mockery of the pay-as-you go state constitutional ideal.

The Turnpike Authority, now under its first 10-year review since the enactment of the reform Sunset legislation last year, is an appropriate place to start putting responsibility back into the management of the state's financial affairs.

Another proposed reform idea is to require a local option-referendum before embarking on a toll project. That idea has its merits, too, but is a more difficult suggestion to handle when trying to determine who shall vote on a proposed tollroad which meanders through several cities and counties. Still, the concept of making the Turnpike Authority more responsive to the political system of representative government makes sense. A vote of a city council or commissioners court may be an alternative idea.

The Sunset Commission can definitely find in its staff and member proposals some wise reforms of the Texas Turnpike Authority to put before the legislature.

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DALLAS TIMES-HERALD NOV 26 1978

Briscoe wrong again

IT'S PERHAPS fortunate in a way that most people view lame-duck politicians as personages that are seen but not listened to. The empty echo of Gov. Dolph Briscoe's cry for more toll roads in Texas weakly rode the winds out of Abilene this week.

Briscoe made his comments in installation ceremonies for Sam Waldrop, a new member of the State Highway and Public Transportation Commission.

The governor is placing his tokens in the wrong basket. More toll roads are not what Texas needs and to contemplate seriously such an approach to deal with the problems of growth and transportation in light of present and future realities is to ignore the obvious.

This is not 1955. It is almost 1980 and one has to be near-sighted not to recognize the foolishness of investing time and resources in a proposition that fact and circumstance deem unreasonable.

Texas' growth, like that of other states, has taken place in urban centers where mass transit is the only viable solution to the problems of pollution, traffic snarls and the staggering increase of fuel costs.

There was a time that the construction of expensive toll roads could be justified. That period is

now history. The scarcity of energy resources and a new economic order now rule otherwise.

It is increasingly obvious that if Texas is to meet the needs of her people, greater emphasis must be applied by the state in planning for urban transportation. Three of America's ten largest cities are located in Texas and each is critically affected by the absence of such systems.

What to do? Funds are limited and the state must also maintain and improve the network of highways within its borders.

The obligations are many and the options few. Realistically, the best approach is the hardest one to sell politically — a 1-cent increase in the state gasoline tax. For the truly optimistic, those who keep waiting in anticipation of a hidden treasure to surface unexpectedly, there is the possibility that funds could be forthcoming from the new state tax proposed for exported energy resources.

That's a bit of lagniappe not to be banked on, however. Perhaps the issue of whether Texas ought to have more toll roads need only be viewed in the context of their higher costs on top of the taxes we pay to finance free roads.

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DALLAS TIMES-HERALD

Merging road agencies

STATE SEN. Lloyd Doggett, D-Austin, suggests the legislature merge the Texas Turnpike Authority with the Texas Department of Highways and Public Transportation.

Why, asks the senator, do we need two road agencies?

And, to think about it, he's right. There is no good reason to have two boards, two bureaucracies, and two sets of laws about building roads. There is nothing that the Texas Turnpike Authority does which the state's highway department cannot do.

Sen. Doggett is pressing his view before the newly created Sunset Advisory Commission, the legislative watchdog established to cut the fat out of state government in hundreds of boards and agencies. The

commission is considering new restrictions on the Turnpike Authority, which are fine and needed, but the Austin senator believes abolition of the authority would get the cleanup job thoroughly done.

We hope the Sunset Commission will make a solidly conservative stand and heed Sen. Doggett's advice to merge the Turnpike Authority with the state highway department.

Department of Occupational Licensure

Additional Views of
Senators Lloyd Doggett and A.R. Schwartz and
Representatives Bill Ceverha, Lee Jackson, and Lance Lalor
Concerning More Efficient Agency Operation
Through a Department of Occupational Licensure

Five of the eight Commission members support the important recommendation of our staff for the consolidation of most licensing agencies reviewed into a Texas Department of Occupational Licensure (the so-called "umbrella" proposal). The Sunset staff found that such consolidation could result in a savings of as much as \$2 million annually, achieved through, for example, having fewer high paid agency executive directors, fewer leased offices, less paper work, and less duplication of effort.

We believe the public would get more efficient law enforcement at less cost through the creation of such a department. To the maximum extent possible the boards of agencies consolidated should be left only as departmental advisory committees, with central personnel procedures, and a single complaint handling and rulemaking process. The attached draft of legislation shows how this could be done with a range of choices for current Board participation. Reorganization of the maze of agencies forming the Texas executive branch has never been possible previously. Because of the sunset process we now have our best chance.

To the extent the Legislature considers the regulation of other groups in the future we would further direct the attention of our colleagues to the staff research that follows concerning certification and other alternatives to the creation of separate licensing boards.

TEXAS LEGISLATIVE COUNCIL
Preliminary Draft
(Rough Draft)

By _____

_____ B. No. _____

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the centralized state regulation of occupations covered
3 by the following agencies:

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 ARTICLE 1. DEPARTMENT OF OCCUPATIONAL REGULATION

6 SECTION 1.01. SHORT TITLE. This Act may be cited as the
7 Centralized Occupational Regulation Act.

8 SECTION 1.02. DEFINITIONS. In this Act:

9 (1) "License" includes the whole or part of any agency
10 permit, certificate, approval, registration, or similar form of
11 permission required by law.

12 (2) "Licensing" includes the agency process respecting the
13 granting, denial, renewal, revocation, suspension, annulment,
14 withdrawal, or amendment of a license.

1 SECTION 1.03. DEPARTMENT. The Department of Occupational
2 Regulation is established.

3 SECTION 1.04. COMMISSIONER. (a) The commissioner of
4 occupational regulation is appointed by the governor with the
5 advice and consent of the senate.

6 (b) The commissioner serves at the will of the governor.

7 (c) The commissioner is entitled to compensation as provided
8 by the General Appropriations Act.

9 SECTION 1.05. DUTIES OF THE COMMISSIONER. The commissioner
10 shall administer the functions of the department.

11 SECTION 1.06. STAFF. The commissioner shall employ staff
12 necessary to administer the functions of the department.

13 SECTION 1.07. APPLICATION OF SUNSET ACT. The department is
14 subject to the Texas Sunset Act. Unless the department is
15 continued in existence as provided by that Act, the department is
16 abolished effective September 1, 1985.

17 ARTICLE 2. FUNCTIONS

18 SECTION 2.01. TYPE 1 AGENCY. (a) Except as provided by

1 Subsection (b) of this section, the statutory functions of each
2 agency designated by law as a Type 1 agency are transferred to the
3 department. The executive head and the other personnel employed by
4 the agency and the records and other property in the custody of the
5 agency are transferred to the department.

6 (b) A Type 1 agency has only the functions listed in this
7 subsection. The agency:

8 (1) shall advise the department about the content of
9 examinations administered by the department for licensing in the
10 occupational field covered by the agency and about the dates on
11 which and the locations at which the examinations are administered;

12 (2) shall advise the department about the application of
13 statutory educational requirements for licensing in the
14 occupational field covered by the agency;

15 (3) shall recommend to the department subjects for
16 investigation by the department that are related to the
17 occupational field covered by the agency; and

18 (4) shall provide other assistance to the department that is

1 requested by the department and that relates to the occupational
2 field covered by the agency.

3 SECTION 2.02. TYPE 2 AGENCY. (a) Except as provided in
4 Subsection (b) of this section, the statutory functions of each
5 agency designated by law as a Type 2 agency are transferred to the
6 department. The personnel employed by the agency, except the
7 executive head of the agency, and the records and other property in
8 the custody of the agency are transferred to the department.

9 (b) A Type 2 agency has only the functions listed in this
10 subsection. The agency:

11 (1) may employ an executive head to help the agency perform
12 its functions;

13 (2) shall determine the content of examinations administered
14 by the department for licensing in the occupational field covered
15 by the agency and shall advise the department about the dates on
16 which and the locations at which the examinations are administered;

17 (3) shall determine the application of statutory educational
18 requirements for licensing in the occupational field covered by the

1 agency;

2 (4) shall adopt by rule, if the agency is authorized by law
3 to do so, standards of conduct for persons who are licensed to
4 practice the occupation covered by the agency;

5 (5) shall adopt by rule, if the agency is authorized by law
6 to do so, standards for educational programs that are required for
7 licensing in the occupational field covered by the agency;

8 (6) shall adopt by rule, if the agency is authorized by law
9 to do so, educational or experience requirements for licensing in
10 the occupational field covered by the agency;

11 (7) shall grant, suspend, revoke, or renew licenses, if the
12 agency is authorized by law to do so, in an occupational field
13 covered by the agency;

14 (8) shall recommend to the department subjects for
15 investigation by the department that are related to the
16 occupational field covered by the agency;

17 (9) shall provide other assistance to the department that is
18 requested by the department and that relates to the occupational

field covered by the agency; and

(10) shall adopt rules necessary to administer the agency's functions under this subsection.

(c) the department shall perform the administrative functions necessary for a Type 2 agency to administer its functions under Subsection (b) of this section.

SECTION 2.03. TYPE 3 AGENCY. (a) An agency designated by law as a Type 3 agency has all the functions set forth for a Type II agency in Section 2.02. In addition, a Type III agency may maintain an identifiable staff with capabilities in functional regulatory areas other than administrative services. The board may perform investigations and inspections related to the occupational field regulated under general guidelines established by the department, through board staff, or through cooperative arrangements with the department.

(b) the department shall perform the administrative functions necessary for a Type 3 agency to administer its functions under subsection (a) of this section.

SECTION 2.04. FEES. (a) The fee-collecting function of each Type 1 or Type 2 agency is included in the transfer of functions to the department under this Act. This function of each Type 3 agency is transferred to the department. The department shall allocate, as it considers appropriate, a part of the collected fees for the administration of each Type 1, Type 2, and Type 3 agency and a part for the administration of the department.

1 (b) The part of the fees allocated to an agency shall be
2 deposited in the state treasury to the credit of the agency's
3 special fund or, if a special fund is not established for the
4 agency, to the credit of the general revenue fund. The part of the
5 fees allocated to the department shall be deposited in the state
6 treasury in a special fund to be known as the department of
7 occupational regulation fund and may be used only for the
8 administration of the department's functions.

9 SECTION 2.05. LIST OF LICENSEES. The department shall
10 compile and keep current a list of persons who are licensed by the
11 department under the authority transferred to it from each Type 1
12 or Type 2 agency. The list of licensees is public information.

13 SECTION 2.06. LICENSING INFORMATION. (a) The department
14 shall compile general information about the requirements and
15 procedure for obtaining a license issued by the department under
16 the authority transferred to it from each Type 1 or Type 2 agency.
17 The information is public information.

18 (b) The department shall disseminate the information to the

1 general public in ways that the department considers appropriate.

2 SECTION 2.07. COMPLAINTS. (a) A complaint against a person
3 licensed by the department under the authority transferred to it
4 from each Type 1 or Type 2 agency must be filed with the department
5 on a form prescribed by the department to initiate an investigation
6 of the complained of action.

7 (b) The department shall investigate complaints
8 appropriately filed with it.

9 (c) If the licensed person is licensed by the department
10 under the authority transferred to it from a Type 1 agency and if
11 the department determines that there is reasonable evidence that
12 the person has engaged in an action prohibited by law or by a rule
13 of the department, the department shall conduct a hearing in
14 accordance with the Administrative Procedure and Texas Register
15 Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes),
16 about the person's action. If the department finds that the
17 licensed person has engaged in the prohibited action, the
18 department may take punitive action against the person as provided

1 by law.

2 (d) If the licensed person is licensed by the department
3 under the authority transferred to it from a Type 2 agency and if
4 the department determines that there is reasonable evidence that
5 the person has engaged in an action prohibited by law or by a rule
6 of the department or of the Type 2 agency, the department shall
7 refer the matter to the agency. The agency shall hold a hearing
8 about the person's action in accordance with the Administrative
9 Procedure and Texas Register Act, as amended (Article 6252-13a,
10 Vernon's Texas Civil Statutes). If the agency finds that the
11 licensed person has engaged in the prohibited action, the agency
12 may suspend or revoke the person's license as provided by law.

13 (e) The department may establish regional offices to
14 administer its investigative functions under this section.

15 SECTION 2.08. RULES AND FORMS. The department shall adopt
16 rules and prescribe forms necessary for the department to perform
17 uniformly and efficiently its functions under this Act.

18 ARTICLE 3. DESIGNATION OF AGENCIES BY TYPE

1 SECTION 3.01. Section 3a, Chapter 457, Acts of the 61st
2 Legislature, Regular Session, 1969, as added (Article 249c,
3 Vernon's Texas Civil Statutes), is amended to read as follows:

4 Sec. 3a. APPLICATION OF CENTRALIZED OCCUPATIONAL REGULATION
5 ACT AND SUNSET ACT. The Texas State Board of Landscape Architects
6 is a Type 1 agency for the purposes of the Centralized Occupational
7 Regulation Act. The board has only the functions given to it under
8 that Act. The board is subject to the Texas Sunset Act (Article
9 5429k, Vernon's Texas Civil Statutes); and unless continued in
10 existence as provided by that Act the board is abolished, and this
11 Act expires effective September 1, 1991 [1979].

12 SECTION 3.02. Section 2a, Chapter 478, Acts of the 45th
13 Legislature, Regular Session, 1937, as added (Article 249a,
14 Vernon's Texas Civil Statutes), is amended to read as follows:

15 Sec. 2a. The Board of Architectural Examiners is a Type 2
16 agency for the purposes of the Centralized Occupational Regulation
17 Act. The board has only the functions given to it under that Act.
18 The board is subject to the Texas Sunset Act (Article 5429k,

1 Vernon's Texas Civil Statutes); and unless continued in existence
2 as provided by that Act the board is abolished, and this Act
3 expires effective September 1, 1991 [~~1979~~].

4 SECTION 3.03. Section 4b, Public Accountancy Act of 1945, as
5 added (Article 41a, Vernon's Texas Civil Statutes), is amended to
6 read as follows:

7 Sec. 4b. APPLICATION OF CENTRALIZED OCCUPATIONAL REGULATION
8 ACT AND SUNSET ACT. The Texas State Board of Public Accountancy is
9 a Type 3 agency for the purposes of the Centralized Occupational
10 Regulation Act. The board's functions are limited as provided in
11 that Act. The board is subject to the Texas Sunset Act (Article
12 5429k, Vernon's Texas Civil Statutes); and unless continued in
13 existence as provided by that Act the board is abolished, and this
14 Act expires effective September 1, 1991 [~~1979~~].

15 ARTICLE 4. MISCELLANEOUS PROVISIONS

16 SECTION 4.01. EFFECTIVE DATE. This act takes effect on
17 September 1, 1979.

18 SECTION 4.02. EMERGENCY. The importance of this legislation

1 and the crowded condition of the calendars in both houses create an
2 emergency and an imperative public necessity that the
3 constitutional rule requiring bills to be read on three several
4 days in each house be suspended, and this rule is hereby suspended.

Licensing Issues Summary

In recent years there has been a reexamination of the basic rationale underlying the role of state licensing agencies to determine if the restrictions placed by these agencies on the entry into and practice of regulated occupations are appropriate and meet the current needs of society. The power of the state to impose certain restrictions and safeguards for the protection of the public is not questioned. Restrictions may be legitimately imposed if they bear a reasonable relationship to the public interest and do not violate federal constitutional safeguards. However, other aspects of the rationale underlying the role of state licensing agencies such as exclusive licensee membership on boards and commissions to assure expertise; unlimited flexibility to meet changed conditions in the determination of experience and educational requirements necessary for licensure; few requirements in terms of procedures relating to revocation of licenses so that there would be a simpler remedy than that provided by a court; and minimum control over the revenue generated by fees because the agency is "self-supporting" have produced results that are far different than those originally anticipated. The domination of the boards by members of the licensed profession, while insuring expertise, has given rise to apparent conflicts of interest on the part of board members between their responsibilities as public servants and as members of trade associations. Flexibility in determining qualifications has led to the imposition of excessive or irrelevant personal, education, experiential or financial requirements. The simplicity of the investigation and revocation process has allowed boards to take unreasonable or arbitrary actions in revoking licenses and in responding to complaints by the public. Finally, the lack of fiscal control over agencies which

consider themselves to be "self-supporting" has resulted in poor management practices which have contributed to higher costs to the public and to licensees through increases in fees.

All of these unexpected results have appeared in Texas licensing agencies in varying degrees, clouding the many positive results achieved by these agencies. These factors, as they relate to agencies reviewed under the Sunset Act, are summarized on the following page. To provide a balance between the interests of licensees and the general public, many states have created a central licensing agency as a means of addressing regulatory deficiencies in a consistent overall fashion rather than on a case by case basis. The most flexible of these agencies is one which allows some autonomy to individual boards, but requires uniform adherence to basic policies deemed important by the state. The major choices involved in the establishment of uniform regulatory policies are identified on the following pages.

Most boards do not have public membership, with the exception of the Structural Pest Control Board and Motor Vehicle Commission and Cosmetology Commission.

Most boards (9) do not have specific provisions relating to conflicts of interest of board members. Where these provisions exist, they often relate to industry representation on the board.

Most boards do prohibit false and misleading advertising, but only three of the boards appear to have more extensive prohibitions: Accountancy, the Bar and the Motor Vehicle Commission.

The State Board of Accountancy and the State Bar utilize prohibitions against competitive bidding.

Most agencies do not engage in extensive public notification efforts beyond the minimum requirements required by the Open Meetings Act.

Every agency reviewed required some combination of minimum personal qualifications, especially concerning age, residency, citizenship or good moral character.

With the exception of the State Bar and the Motor Vehicle Commission, all regulatory agencies reviewed required a written exam. Four agencies also employ an oral exam and two agencies require a practical exam.

Approximately half of the agencies reviewed offered counseling to applicants failing the exam when requested.

When written exams consist of segmented parts, applicants usually could retake only those portions they had failed. In most instances, reviewed exams were not designed to allow such a procedure.

Over half of the agencies reviewed required minimum education requirements.

Seven of the statutes reviewed required minimum experience qualifications.

Although the grandfather clauses currently in the statutes no longer apply, a majority of the agencies still have licensees registered under such provisions.

No agency required periodic examination of its licensees beyond the initial examination.

Several of the agencies reviewed considered applicants licensed in other states with equivalent requirements as eligible for licensure.

In most instances, grounds for revocation included offenses dealing with matters outside of professional conduct.

In the statutes studied, the greatest attention is directed to the licensee who is charged with a complaint with little or no language directed at informing the consumer filing a complaint.

While many of the agencies reviewed have the option to implement staggered renewals, only two are required to implement such procedures, and have done so.

A review of the agencies shows that some licensees can practice up to a year on a unexpired license, while other licensees are immediately suspended for delinquent renewals.

Agency	Require public membership on board	Any provisions concerning conflict of interest (board)	Any prohibitions against advertising	Any prohibition against competitive bidding	Mandatory public notification and education	Personal qualifications (age, citizenship, morals)	Oral or written exam	Counseling to applicants failing exam	Must take only parts of exam failed	Minimum education requirements	Minimum experience requirements	Grandfather Clause	Periodic reexamination	Provides for licensing by endorsement	Grounds for revocation dealing only with professional matters	Require all parties to a complaint to be periodically informed in writing	Require staggered renewals	Standard delinquency period
Texas Regulatory Agencies General Licensing Issues																		
Texas State Board of Accountancy	No	No	Yes	Yes	No	Age Citizen Morals	Written	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	Immediate
Texas Structural Pest Control Board	Yes	No	No	No	No	Age Citizen Morals	Written	Yes	Exam Not Segmented	No	No	No	No	No	No	No	No	60 days
Texas Cosmetology Board	Yes	Yes	No	No	No	Age	Written Practical	Yes	No	Yes	No	Yes	No	Yes	No	Yes	Yes	30 days
State Board of Barber Examiners	No	Yes	No	No	No	Age	Written Practical	No	No	No	No	Yes	No	Yes	No	No	No	30 days
Private Employment Agency Board	No	No	No	No	No	Resident Citizen Morals	Written	No	No	No	No	Yes	No	No	Yes	No	No	None Stated
Texas Motor Vehicle Commission	Yes	Yes	Yes	No	Yes	Business Integrity Finances	No	N/A	N/A	No	No	No	No	No	Yes	No	No	Indefinite
Board of Architectural Examiners	No	Yes	No	No	Yes	Age Citizen Morals	Written	No	Yes - Qual. exam No-prof. exam	Will be in 1980	Yes	Yes	No	No	Yes	No	No	90 days
Texas State Board of Landscape Architects	No	No	No	No	No	Age Residency Morals	Written	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	365 days
State Board of Registration for Public Surveyors	No	No	Yes	No	No	Age Citizen Morals	Oral Written	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	No	365 days
Texas Board of Licensure for Nursing Home Administrators	No	No	No	No	No	Age Citizen Morals	Oral Written	No	No	Yes	No	No	No	Yes	No	No	No	90 days
State Board of Morticians	No	Yes	No	No	Yes	Age U.S. Cit. Morals Residency	Oral Written Practical	No	No	Yes	Yes	Yes (Fun. Dir.)	No	Yes	Yes	No	Yes	30-45 days
Real Estate Commission	No	No	No	No	No	Age Cit., Res. Morals	Written	No	No	Yes	No - Sales Yes - Brokers	Yes	No	No	No	No	No	Immediate
Texas State Bar Board of Law Examiners	No	No	Yes	Yes	No	Yes	N.A.	N.A.	N.A.	N.A.	No	N.A.	N.A.	No	No	No	No	90 days
State Licensed Land Surveyors	No	No	No	No	No	Residency Morals	Oral Written	Yes	No	Yes	Yes	Yes	No	No	No	No	No	365 days

Areas Relating to Division
of Responsibility Between a Central Licensing Agency
and Individual Licensing Agencies

I. Administration

A. **Central Support:** The centralized administration will possess the capability to provide the following services to member boards within the Umbrella:

1. Records
2. Office Space
3. Clerical Services
4. Accounting/Purchasing/Payroll
5. Personnel
6. Budgeting
7. Audit
8. Reporting

Comment:

Eighty-eight percent of the 16 Type II Umbrella agencies identified in the staff survey provided general administrative and central support services to member boards. Eight of these umbrella agencies, California, Florida, Maryland, Massachusetts, Michigan, Minnesota, Missouri and Montana provided these functions most consistently. The central services provided by these agencies are listed below in order of incidence of use.

1. Accounting/Purchasing/Payroll (8)
2. Personnel (5)
3. Clerical Services (5)
4. Office Space (5)
5. Budgeting (4)
6. Records (3)
7. Audit (1)
8. Reporting (0)

The number of boards incorporated under an umbrella licensing agency in these states ranges from 10 in Missouri to 31 in Montana with six agencies licensing more than 23 separate occupations.

- II. **General Oversight**
 - A. **Recommend needed statutory changes**
 - 1. The umbrella agency would be required to review and recommend changes.
 - 2. The member boards would be required to review and recommend.
 - B. **Rules and Regulations**
 - 1. The umbrella agency may promulgate or review rules and regulations of member boards.
 - 2. Individual boards issue rules and regulations unilaterally.
 - C. **Standards of Conduct**
 - 1. The central administration will be provided with the capability to establish or review standards of conduct.
 - 2. Boards within the umbrella agency may individually determine appropriate standards of conduct.
 - D. **Requirement Exemption Review**
 - 1. The umbrella agency may issue decisions or review requirement exemption requests.
 - 2. Requirement exemption requests will be subject to the determination of individual boards.
 - E. **General Policy**
 - 1. The umbrella agency may formulate agency-wide policies concerning agency operating procedures.
 - 2. Individual boards develop operating policies.

Comment:

Only five out of the 16 Type II umbrella agencies identified implement general oversight functions and in most instances these activities were confined to recommending legislation and promulgating or reviewing rules and regulations of member boards.

III. Licensing

A. Issuance and Renewal

1. Support functions
 - a. The umbrella agency will have the capability to provide some or all of the clerical and data processing support necessary to issue and renew licenses.
 - b. The member boards will issue and renew all licenses with their own resources.
2. Delinquency Periods
 - a. A standard delinquency period for renewal of licenses should be applied to all licensees.
 - b. Each board may individually determine an appropriate delinquency period for renewal.
3. Fee Collection
 - a. The umbrella agency may possess the capability to receive, record and deposit to member board funds all fees for license and exams.
 - b. Member boards will collect, record and deposit licensing and examination fees.
4. Form Content
 - a. The umbrella agency will have the capability to determine the content and structure of licensing forms used.
 - b. The content and structure of licensing applications and forms will be determined by individual boards

B. Requirements

1. Educational
 - a. The umbrella agency may determine review, or recommend minimum educational or experience requirements for licensure.
 - b. Individual boards will establish or recommend the minimum educational and experience requirements deemed necessary.
2. Reciprocity
 - a. The umbrella administration will have the capacity to determine or renew policies concerning the license applications of individuals licensed in other states.
 - b. Member boards will determine procedures and policies for licensing individuals licensed in other states.

Comment:

Eleven (69 percent) of the Type II agencies provide the clerical support necessary to issue and renew licenses. Eight agencies in this group are also delegated responsibility for the collection and disposition of fees resulting from licensing activities. Almost half of the Type II licensing umbrellas also standardized the format and content of forms associated with occupational licensing as well as the delinquency periods allowed for license renewals. Washington and New York were the only states where Type II agencies indicated that responsibility for the establishment of minimum educational and experience requirements or reciprocity procedures is assumed by the umbrella agency.

IV. Examination

A. Preparation

1. Exam Development

- a. The umbrella agency has the capability to develop or purchase appropriate exam for some or all agencies.
- b. The member boards are allowed to develop or purchase appropriate exam independently.

2. Qualifying Standards

- a. The umbrella agency has the capability to establish or review qualifying standards.
- b. The member boards determine qualifying standards.

B. Administration

1. Time and Location

- a. The umbrella agency has the capability to determine or review examination dates and locations.
- b. The member boards determine examination dates and locations.

2. Grading and Proctoring

- a. The umbrella agency has the capability to grade and proctor some or all exams.
- b. The member boards are allowed to grade and proctor examinations independently.

Comments:

Nine (56 percent) of the 16 states identified as utilizing a Type II umbrella structure have provided for some centralized examination functions. Seven states provide for centralized administration of exams and five states provide exam preparation capabilities. Washington and Hawaii provide the most comprehensive array of centralized examination function. Colorado and Michigan offer only optional exam preparation and administration procedures.

V. Investigation and Enforcement

A. Inspections

1. Staff

- a. The umbrella agency can employ and supervise or review the board's employment and supervision of staff.
- b. The member boards may employ and supervise needed staff.

2. Set procedures and authority

- a. The umbrella agency can determine or review the board's determination of inspection procedures.
- b. The member board's may determine inspection procedures.

B. Complaints

1. Receipt/Referral

- a. The umbrella agency can receive and refer or review the board's complaint receipt and referral system.
- b. The member board's receive and refer complaints.

2. Investigation

- a. The umbrella agency can conduct investigations or review the board's investigations.
- b. The member boards may conduct investigations.

3. Disposition

- a. The umbrella agency can process complaints or review the board's processing of complaints.
- b. The member boards may process complaints.

C. Enforcement

1. Uniform hearings

- a. The umbrella agency can hold enforcement hearings or review hearings held by boards.
- b. The member boards may hold enforcement hearings.

2. Legal Services

- a. The umbrella agency can provide in-house legal services for use by some or all member boards.
- b. The member boards may obtain in-house legal services.

3. Local Offices

- a. The umbrella agency can establish regional offices to carry out certain investigation and enforcement functions.
- b. The member boards may establish regional offices to carry out certain investigation and enforcement functions.

D. Consumer Protection

1. Complaint receipt and referral

- a. The umbrella agency can receive and refer consumer complaints or review the boards' receipt and referral of consumer complaints.
- b. The member boards may receive and refer consumer complaints.

2. Public information

- a. The umbrella agency can provide public information relating to consumer concerns.
- b. The member boards can provide public information relating to consumer concerns.

Comment:

All of the 16 states identified as utilizing a Type II umbrella structure have provided for some centralized enforcement functions. Twelve states (75 percent) have opted for a uniform hearing system and 12 states have also created a centralized complaint processing component. Consumer protection functions are found in four states: California, Maryland, Michigan and Minnesota have a separate legal services branch and only two states, California and Hawaii have central inspection staff functions. California has developed the greatest number of centralized enforcement functions but, as in Florida, the member boards can choose not to utilize the available services.

**MEETING DATES
OF THE
SUNSET ADVISORY COMMISSION**

MEETING DATES
OF THE
SUNSET ADVISORY COMMISSION

The Sunset Advisory Commission met 19 times between October 1977 and December 1978 to hear staff reports, take public testimony, and develop recommendations on the 26 agencies scheduled for sunset termination in September 1979. Meeting dates of the commission were as follows:

October 7, 1977	June 23, 1978
November 3, 1977	August 1, 1978
January 16, 1978	August 2, 1978
February 20, 1978	September 28, 1978
March 23, 1978	September 29, 1978
March 24, 1978	October 26, 1978
April 20, 1978	November 10, 1978
April 21, 1978	December 4, 1978
May 25, 1978	December 15, 1978
May 26, 1978	

TABULAR SUMMARY
OF
SUNSET ACTION

TABULAR SUMMARY OF SUNSET ACTION

Agency	Date of Creation	No. of States Regulating	Staff Findings and Conclusions			Action of Commission			
			Achievement of Objectives	Consolidation Feasible	Administrative Changes Necessary	Abolish	Merge	Modify	No Action
Texas Board of Architectural Examiners	1937	50	Achieved	Yes	Yes			X	
State Bar of Texas	1939	50	Partially Achieved	Yes	Yes			X	
Board of Barber Examiners	1921	50	Partially Achieved	Yes	Yes			X	
Battleship Texas Commission	1947	NA	Partially Achieved	Yes	Yes			X	
Burial Association Rate Board	1947	NA	Partially Achieved	Yes	No		X		
Texas Cosmetology Commission	1971	50	Achieved	Yes	Yes			X	
Board of County and District Road Indebtedness	1932	NA	Achieved	Yes	Yes		X		
Good Neighbor Commission	1945	3	Partially Achieved	Yes	Yes				X
Board of Landscape Architects	1969	35	Partially Achieved	Yes	Yes			X	
Board of Law Examiners	1919	50	Achieved	Yes	Yes				X
Board of Morticians	1903	50	Partially Achieved	Yes	Yes			X	
Motor Vehicle Commission	1971	38	Partially Achieved	Yes	Yes				X
Texas Navy, Inc.	1973	NA	Partially Achieved	Yes	No		X		

TABULAR SUMMARY OF SUNSET ACTION

Agency	Date of Creation	No. of States Regulating	Staff Findings and Conclusions			Action of Commission			
			Achievement of Objectives	Consolidation Feasible	Administrative Changes Necessary	Abolish	Merge	Modify	No Action
Board of Licensure for Nursing Home Administrators	1969	50	Partially Achieved	Yes	Yes			X	
Pesticide Advisory Committee	1971	NA	Achieved	Yes	No		X		
Pink Bollworm Commission	1920	NA	Achieved	Yes	Yes		X		
Texas Private Employment Agency Regulatory Board	1969	47	Partially Achieved	Yes	NA		X		
Texas State Board of Public Accountancy	1915	50	Achieved	Yes	Yes			X	
Board of Registration for Public Surveyors	1955	50	Partially Achieved	Yes	Yes			X	
Board of Managers of the Texas State Railroad	This agency was abolished by the Sixty-fifth Legislature.								
Texas Real Estate Commission	1949	50	Achieved	Yes	Yes				X
Board of Examiners of Licensed State Land Surveyors	1919	1	Partially Achieved	Yes	Yes			X	
Texas Stonewall Jackson Memorial Board	1957	NA	Not Achieved	NA	NA		X		
Texas Structural Pest Control Board	1971	50	Partially Achieved	Yes	Yes			X	
Texas Turnpike Authority	1953	45	Achieved	No	Yes				X
Vehicle Equipment Safety Commission	1963	42	Not Achieved	NA	NA		X		

DISCLOSURE INFORMATION
FROM
MEMBERS OF THE
SUNSET ADVISORY COMMISSION



BILL MEIER
STATE SENATOR
DISTRICT 10
TARRANT COUNTY

The Senate of The State of Texas Austin 78711

COMMITTEES
VICE-CHAIRMAN:
JURISPRUDENCE
MEMBER:
FINANCE
HUMAN RESOURCES
SUB-COMMITTEE ON CONSUMER AFFAIRS
SUB-COMMITTEE ON CRIMINAL MATTERS

January 15, 1979

Mr. Bill Wells
Staff Director
Sunset Advisory Commission
Room 704
Sam Houston Building

SUBJECT: Sunset Commission Rule 10: Public Statement
of connections to Agencies.

Dear Mr. Wells:

This statement is made in accordance with Rule 10 of the Sunset Advisory Commission rules. Within the provisions of that rule, I have had no contact with any agency investigated other than that contact called for by my capacity as a State Senator.

Sincerely yours,

Bill Meier
Senator Bill Meier

BM/jk

JAN 15 1979
LEGISLATIVE SUNSET OFFICE
PROGRAM EVALUATION 207



**The State of Texas
House of Representatives**

RECEIVED
DEC 18 1978

LEGISLATIVE BUDGET OFFICE
PROGRAM EVALUATION

Bennie Bock II
State Representative, District 38
Caldwell / Comal / Guadalupe

Committees
Chairman, Liquor Regulation
State Affairs

December 13, 1978

Mr. Bill Wells
Staff Director
Sunset Advisory Commission
State Capitol
Austin, Texas 78701

Re: Rule 10-Disclosures

Dear Mr. Wells:

(1) As an attorney and a licensed real estate broker (inactive), I may have corresponded in the normal course of business on routine matters with both the State Bar of Texas and the Real Estate Commission in regard to the licenses which I hold from these two agencies of the State; however, I cannot recall representing any individual before any of the agencies up for review in anything other than a legislative capacity.

(2) As a State Representative at least three years prior to the creation of the Sunset Advisory Commission, I certainly have not engaged in, being the representative of, counsel for or consultant to any State Agency.

(3) See Subparagraph (2).

(4) I personally hold the following licenses and permits issued by the State of Texas:

a. combination resident hunting/fishing license No. 310692, issued September 2, 1978, at 11:25 A.M. by the Parks and Wildlife Dept. which expires on August 31, 1979;

b. limited sales tax permit No. 2-450-54-7852-9 which was issued January 1, 1977 by the Comptroller's Office of the State of Texas;

Mr. Bill Wells
Page 2
December 13, 1978

c. membership in the State Bar of Texas which I gained by passing the State Bar Exam and being admitted to practice law in the state in December, 1968, long prior to my service in the Legislature. In connection with this license, I am sure that during the previous years prior to the creation of the Sunset Advisory Commission, my secretaries have on numerous occasions ordered State Bar legal forms, purchased books, stationery-type items and other pamphlets from the State Bar; however, we did not foresee that we would be required to keep a log of each and every contact for ordering stationery we made with the State Bar or any other agency;

d. although inactive several years prior to the creation of the Sunset Commission in this profession, I hold a broker's license issued by the Texas Real Estate Commission No. 129820, which is valid through 1979;

e. as an officer in Seguin Motor Company, Seguin, Texas, I am aware that they hold dealership license from the Texas Motor Vehicle Commission No. B-1071, which expires November 30, 1979. Said dealership also holds a retail permit and limited sales tax permit issued by the Comptroller of the State of Texas, No. 1-74-1364-373-9, effective September, 1977, which is a nonrenewable permit;

f. As a director of New Braunfels Savings and Loan Assn., I am aware that said association has a Texas Savings and Loan Department charter No. 488 to operate a savings and loan institution in the State of Texas;

g. as an advisory director of Guada-Coma Savings and Loan Assn., I am aware that said association has Texas Savings and Loan license No. 512 to operate a savings and loan institution in the State of Texas;

h. I hold Notary Public authority issued by the Secretary of State's office on June 30, 1978, said license to expire June 30, 1980.

Very truly yours,


Bennie Bock

BB/jks



LLOYD DOGGETT
STATE SENATOR
DISTRICT 14
P. O. Box 12068
Austin 78711
512/475-3731

The Senate of
The State of Texas
Austin 78711

RECEIVED
NOV 15 1978

Staff:
LYNN NEEDLES
GAIL ATKINS
ANGELA WEINSTOCK
NANCY WILLIAMS

Committees:
JURISPRUDENCE
HUMAN RESOURCES
STATE AFFAIRS

November 14, 1978

Mr. Bill Wells
Legislative Budget Board
704 Sam Houston Building
Austin, Texas 78711

Dear Bill:

My connection with all agencies currently under Sunset review, except for the State Bar of Texas, has been related solely to communications as a State Senator.

As attorneys in private practice, both my law partner and I are members of the State Bar of Texas. As a Bar member I have appeared for myself at, and corresponded with, many Bar committees and programs. Most recently I participated in the specialization program offered by the Bar and have been notified that I have successfully completed the test and other requirements necessary to be certified as a specialist. I have not served as a representative, counsel, consultant, officer or employee of the Bar.

Sincerely,

A handwritten signature in cursive script that reads "Lloyd Doggett".

Lloyd Doggett

LD:lnl



The Senate of The State of Texas

December 20, 1978

A. R. SCHWARTZ
GALVESTON, BRAZORIA, MATAGORDA, CALHOUN,
ARANSAS AND HARRIS COUNTIES

SENATE COMMITTEES:
Chairman: JURISPRUDENCE
Member: ADMINISTRATION
FINANCE

Chairman: TEXAS COASTAL
and MARINE COUNCIL
Member: SUNSET ADVISORY
COMMISSION

Mr. Bill Wells
Legislative Budget Board
704 Sam Houston Building
Austin, Texas 78711

Dear Bill:

My connection with all agencies currently under Sunset review, except for the Texas Motor Vehicle Commission and the State Bar of Texas, has been related solely to communications as a State Senator.

Since my service on the Sunset Commission I have had occasion to write several letters to the Motor Vehicle Commission. One of those letters was written in reference to a complaint against a new car dealer in Galveston County. The second occasion for contact occurred recently on the Commission's proposal to adopt a new rule relating to advertising by new car dealers and I submitted the written position of my client for the record.

As an attorney in private practice, I am a member of the State Bar of Texas. As a Bar member I am a member of one Bar committee. I have not served as a representative, counsel, consultant, officer or employee of the Bar.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. R. Schwartz".

A. R. Schwartz

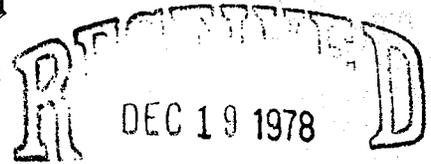
ARS:pr



W. E. (PETE) SNELSON
STATE SENATOR
DISTRICT 25
Office 126-C, Capitol Building
Austin, Texas 78711
512-475-3494

The Senate of
The State of Texas
Austin 78711

December 15, 1978



LEGISLATIVE BUDGET OFFICE
PROGRAM EVALUATION

TO WHOM IT MAY CONCERN:

In compliance with the rules of the Sunset Advisory Commission, this is to report that I have no nonlegislative contact with, or representation of, any agencies under Sunset review. I am not now, or have ever been associated with those agencies or commissions under review by the Sunset Commission during 1977-79.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. E. Snelson".

W. E. Snelson, Member
Sunset Advisory Commission



State of Texas
House of Representatives

Bill Ceverha

P.O. Box 2910
Austin, Texas 78769
(512) 475-5951

December 4, 1978

300 Promenade Bank Tower
Richardson, Texas 75080
(214) 234-2322

To: Bill Wells
Legislative Budget Board
704 Sam Houston Building

From: Bill Ceverha
Member, Sunset Advisory Commission

DEC 5 1978
LEGISLATIVE BUDGET OFFICE
PROGRAM EVALUATION

RE: Contacts with agencies under Sunset Review

In compliance with rules of the Commission, this is to report that I have had no non-legislative contact with, or representation of, any agencies under Sunset review. I am, however, licensed by the Texas Real Estate Commission at the present time, and have been a license of that agency since October of 1977.

A handwritten signature in cursive script, appearing to read "Bill Ceverha".

Bill Ceverha

BC:lm



Lee F. Jackson
Texas House of Representatives

District 33-Q | 111 White Rock North Center
Dallas | Dallas, Texas 75238
(214) 341-6634

Committees: | P.O. Box 2910
Public Education | Austin, Texas 78769
Judiciary | (512) 475-2791

Member: Sunset Advisory Commission

November 15, 1978

Mr. Bill Wells
Director
Program Evaluation Division
P.O. Box 12666
Capitol Station
Austin, Texas 78711

Dear Mr. Wells:

In accordance with the Rules adopted by the Sunset Advisory Commission, I am officially notifying you that I have had no contacts with any agencies of the State of Texas in 1977 or 1978 except in the conduct of my legislative duties. Furthermore, I do not hold any license from the State of Texas other than my drivers license.

Respectfully yours,

A handwritten signature in cursive script that reads "Lee F. Jackson".

Lee F. Jackson

/bfj



Lance Lalor
District 80

State of Texas
House of Representatives

December 20, 1978

Mr. Bill Wells
Sunset Commission Staff
Sam Houston Building
Austin, Texas

Dear Mr. Wells:

In compliance with Rule 10 of the Sunset Commission's rules, I am submitting to you the following public statement:

With respect to the state agencies reviewed during this biennium by the Sunset Commission, I have not, during the period beginning January 1, 1975 and continuing through today,

- (1) represented, appeared, or corresponded on behalf of myself or another person in a proceeding before a state agency on a matter other than legislative business;
- (2) acted as a representative of, counsel for, or consultant to a state agency;
- (3) served as an officer or employee of a state agency; or,
- (4) held a license or permit from a state agency or served as an officer, director, or partner in a business entity which holds a license or permit to engage in business in Texas.

Please let me know if you have any questions about this statement or if I am required to make any additional statement or disclosure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lance Lalor".

Lance Lalor

LL:vg

