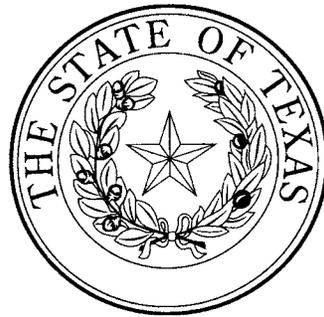

Self-Evaluation Report to the Sunset Advisory Commission



Submitted by the

Texas Funeral Service Commission

September 1999

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Texas Funeral Service Commission

Self-Evaluation Report

The Texas Funeral Service Commission (TFSC) respectfully submits its Self-Evaluation Report (SER) to the Sunset Advisory Commission. TFSC appreciates the help and courtesy extended to the agency by the Sunset staff.

The period over which this SER has been prepared marks a time of extensive change for the TFSC. HB 3516 of the 76th Legislature abolished the existing nine-member commission effective September 1, 1999, and replaced it with a newly constituted six-member commission. In addition, staff turnover in TFSC's 10 full-time equivalent positions has been very high at all levels, leaving the agency with little expertise or historical perspective to draw on in preparing this SER.

Because of the short time in office of the new policy body, TFSC's new Board of Commissioners has not formally approved positions on policy issues or areas for agency improvement, although suggestions for consideration are offered. The new commission may choose to add information to that presented here as it gains experience.

Please note that the commission's earlier enabling statute, Article 4582b, Vernon's Texas Civil Statutes, was repealed by the 76th legislative session and all of the general statutes governing the agency were transferred to the Occupation Code, Subtitle L, Chapter 651. References to parts of TFSC's law use this new citation.

Answers to the questions posed by Sunset follow in the ten sections of this SER.

I. Key Functions, Powers, and Duties

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| <p>A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.</p> |
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Mission of the Texas Funeral Services Commission

The agency's mission can be stated as the following:

The mission of the Texas Funeral Service Commission is to enforce the laws of the State of Texas, and promulgate rules to ensure that every family in Texas is ensured an opportunity to purchase funeral merchandise and services at fair and reasonable prices, and that the deceased are treated with respect and dignity by funeral and embalming establishments.

This mission statement stresses the agency's role to protect the public from unethical or deceptive funeral practices, and from unqualified or unprofessional funeral service personnel. The regulatory functions of the commission also help to protect the health of the public from improper disposition of bodies.

TFSC's functions, powers, and duties

TFSC performs two primary statutory functions typical of this type of agency: licensing and enforcement.

Through its *licensing function*, TFSC is charged with ensuring that well qualified professionals are licensed to serve the public. By state statute, the agency licenses:

- Funeral directors (Occupation Code, Chapter 651, Subtitle L, Subchapter F);
- Embalmers (Occupation Code, Chapter 651, Subtitle L, Subchapter F);
- Funeral establishments (Occupation Code, Chapter 651, Subtitle L, Subchapter H); and
- Commercial embalming establishments (Occupation Code, Chapter 651, Subtitle L, Subchapter H)

Through its *enforcement function*, TFSC is charged with ensuring that violations of the laws and regulations within the agency's jurisdiction are aggressively and fairly prosecuted. The agency's statute provides that TFSC may assess administrative penalties as well as reprimand, revoke, suspend, probate the suspension, or impose any combination of these sanctions against licensed individuals or establishments (Occupation Code, Chapter 651, Subtitle L, Subchapter K).

B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?

Yes, the agency's enabling statute (Occupation Code, Chapter 651) reflects TFSC's consumer protection mission and its licensing and enforcement functions.

C. Please explain why these functions are needed. Are any of these functions required by federal law?

The regulatory functions carried out by the TFSC are not required by federal law. As discussed below, however, the Federal Trade Commission (FTC) does enforce its own rule regulating funeral service practices in the United States.

In the last 20 years, arguments have been presented that both support and oppose the TFSC's need to regulate the funeral service industry in Texas.

Supporting arguments

In 1982, the FTC proposed a rule to regulate the funeral service industry in the United States. That rule was subsequently adopted in 1984 and is still in effect in its current form (16 CFR Part 453). The FTC justified the need for the rule in the Federal Register in September 1982. The FTC's major points, which apply equally well to state regulation, follow:

- A funeral is an expensive consumer purchase. For many consumers it is the third largest expense they will ever make, after a home and a car. (In 1996, an average funeral cost more than \$4,000.) There will be approximately 145,000 deaths in Texas in 1999 (as per statistics from the Comptroller's office).

- The consumer is placed in the position of handling this major financial transaction at a time when the ability to make careful, informed choices is reduced because of the emotional strain of losing a loved one.
- Most consumers who deal with funeral directors have no experience in the decisions to be made. Close to 50 percent of all consumers have never arranged a funeral, while another 25 percent have done so only once.
- The consumer often has to make decisions on this important financial transaction under short time constraints. The deceased must be removed from the place of death and taken to a funeral home within hours of death. Other decisions concerning funeral arrangements must generally be made within 24 to 48 additional hours of death.

In addition to these concerns, most consumers are unaware that the deceased does not have to be embalmed before burial or cremation.

These factors place the consumer in a position of vulnerability to unscrupulous practices. Regulation protects the emotional and financial well being of the consumer at a time of dire need.

Opposing arguments

TFSC has undergone Sunset review in 1979 and 1991. In both reviews, the report of the Sunset staff recommended against continued regulation of the industry as set out in the agency's statute. The 1991 Sunset Commission did not adopt its staff's recommendation to discontinue regulation. In both prior Sunset reviews, the Legislature ultimately continued regulation of the funeral service industry through the separate agency that still exists today.

Due to improvements in funeral service regulation between 1979 and 1991, the later Sunset review is more pertinent in examining the need to regulate the industry. The 1991 staff report recommended repeal of the agency's statute for reasons that include the following:

- When regulation was initially established in 1903, a public health risk existed from improper disposition of human remains. Sunset staff concluded that this public health risk no longer existed.
- Most of the complaints handled by the agency were not of the type that posed a serious risk to the safety or welfare of the public. Agency-initiated complaints dealt with minor violations such as failure to post information properly or failure to include the agency's address on forms used by the funeral establishment. Consumer complaints typically related to issues that could involve buyers and sellers in any business, such as overcharging or failure to comply with the funeral service contract.
- Actions to resolve complaints at that time were not effective.
- The duties of the embalmer and funeral director were not considered to be so complex that a customer could not assess whether services provided were appropriate.
- Consumers had other ways to recover damages, such as through civil court procedures.
- The federal government also was involved (and continues to be involved) in regulating the funeral industry through the funeral rule enforced by the FTC. This rule covers a wide range of funeral-related practices aimed at protecting the consumer.

D. In general, how do other states carry out similar functions?

In answering this question, TFSC reviewed information provided in the 1998 publication of the International Conference of Funeral Service Examining Boards. This publication, titled *Regulations in Licensing*,

Continuing Education, and Pre-need, compares funeral regulations in all 50 states and the District of Columbia. In addition, some information was gathered through Internet research. No attempt was made to verify this information through in-depth research and clarifying calls to the states; however, this source is a good starting point to see how other states regulate the funeral service industry.

All states regulate the funeral industry through licensing functions with the exception of Colorado, according to the Colorado Funeral Directors Association. In 1983, the Colorado legislature determined that its licensing board was unnecessary and let the agency “sunset.”

States regulate the funeral profession in a variety of organizational settings. From a review of mailing addresses and Internet research, it appears that more than half of the states regulate through a freestanding board like Texas. Other states place the regulation in agencies with multiple programs, such as an occupational licensing agency or a health department. A funeral service licensing board may sometimes continue to exist under the umbrella of an agency with multiple programs.

The review of the state responses shown in the material of the International Conference of Funeral Service Examining Boards indicates that 50 states (including the District of Columbia) require embalmers to meet certain qualifications. In addition, 44 states responded that they license funeral directors, and 49 states said that their funeral homes must also be licensed. In the area of preneed contracts, 42 states responded as regulating preneed. At least 19 of these states use their state funeral board, sometimes combined with other agencies, to administer the preneed program.

E. Describe any major agency functions that are outsourced.

At times in the past, TFSC has used an investigator under contract to supplement its own investigative staff. Before September 1, 1999, Section 651.103 of the agency’s statute provided this authority by allowing TFSC to “employ or contract for the services of one or more persons to investigate complaints... .” HB 3516 of the 76th Legislature amended this section of the law to eliminate this specific contracting authority, effective September 1, 1999.

F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency’s key functions.

The Federal Trade Commission administers the funeral rule, which went into effect in 1984. The FTC revised this rule in 1994. The FTC reports that the funeral rule is once again under review and may be modified. The review process was in its beginning stages in September 1999 and may take several months to complete.

With regard to court cases, as of September 1999, there are three lawsuits pending against the agency:

- *Terry Branson v. Texas Funeral Commission and Charles McNeil, Chairman*—The complainant claims he was not notified of his examination results as required under the agency’s statute.
- *Eliza May v. Texas Funeral Service Commission, et al*—The plaintiff claims that, after reporting violations of the law, she was subject to a campaign of harassment, retaliation, intimidation and abuse, and termination.
- *Cole Reed v. Texas Funeral Service Commission*—The plaintiff claims termination in violation of the Whistleblower Act for contacting the Governor’s office regarding improper investigation of campaign contributions to the Governor’s reelection fund.

G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency. Do not include general state statutes that apply to all agencies, such as the Open Records Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1995 - 1999, or earlier significant Attorney General opinions, that affect the agency's operations.

Texas Funeral Service Commission	
Exhibit 1: Major Statutes and Attorney General Opinions	
Statutes	
Citation/Title	Authority/Impact on Agency
Occupation Code, Subtitle L, Chapter 651, previously Article 4582b, V.A.C.S. (TFSC's enabling statute)	Provides authority to license and regulate funeral directors, embalmers, funeral establishments, and commercial embalming establishments.
Finance Code Chapter 154 (pre-paid funeral services)	Provides the Texas Department on Banking the Authority to regulate pre-paid funeral services. While not responsible for administering the statute, TFSC coordinates with the Department where duties may overlap.
Health and Safety Code Chapter 193 and 195 (death records)	Gives the Department of Health the authority to prescribe the form and contents of death records. TFSC coordinates with the Department of Health in areas of overlapping responsibilities.
Health and Safety Code Chapter 361 (Solid Waste Disposal Act)	Provides for the disposition of solid waste.

Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
Letter Opinion No. 97-058 (June 1997)	TFSC asked whether its Complaint Review Committee (CRC), at that time comprised of two commissioners, the executive director, and the general counsel, is subject to the Open Meetings Act. The opinion concludes that the CRC is subject to the Open Meetings Act when it acts in a supervisory role as a reviewer of investigations into alleged violations of the Act. However, the CRC is not subject to the Open Meetings Act when it exercises its advisory function as a participant in informal conferences in cases awaiting a hearing.
Letter Opinion No. 98-014 (February 1998)	The TFSC's statute at that time required that funeral establishments have embalming preparation rooms. The opinion pointed out that the TFSC could not by rule exempt a funeral establishment from this provision, even if the funeral establishment did not provide embalming services. (In 1999, HB 3516 modified this requirement.)
Letter Opinion No. 98-042 (May 1998)	The TFSC asked whether the Commission by rule could allow an embalmer or a funeral director to supervise a provisional licensee by being present on the premises rather than being in the room where a training activity was occurring. The opinion concluded that supervision required the embalmer's or funeral director's presence in the same room.
Letter Opinion No. 98-108 (November 1998)	The TFSC asked whether it could adopt a rule prescribing reciprocal licensing requirements for embalmers or funeral directors coming from other states where licensing requirements were not substantially equivalent to those of Texas. The opinion pointed out that the Commission's statute allowed reciprocal licensing only when the other state's requirements were substantially equivalent. The TFSC, therefore, could not adopt a rule contrary to the statute. (In 1999, HB 3516 modified requirements related to reciprocal licensing.)

Attorney General Opinions

Opinion No. JC-0059 (June 1999)

This opinion, requested by the Chair of the Texas Senate's Committee on Criminal Justice, deals with a variety of issues affecting areas where the TFSC can take enforcement action. Major questions asked and conclusions reached follow:

- *Can two or more separate, licensed funeral establishments use a common funeral establishment as their designated embalming facility?*

The opinion concludes that the statute requires each funeral establishment to have an on-site embalming room. Funeral establishments may not satisfy this requirement by designating an off-site embalming facility as its embalming room. The opinion pointed out, however, that the funeral establishment does not have to use its on-site embalming room and may have embalming performed elsewhere. The opinion also noted that HB 3516, effective September 1, 1999, would authorize exemptions to the requirement of an on-site embalming room under certain circumstances.

- *Can funeral establishments contract for the services of an embalmer as an independent contractor rather than an employee?*

The opinion concludes that a licensed embalmer may work as an independent contractor for a funeral establishment without having to be its employee.

- *Can an embalmer who is an independent contractor using a particular home's embalming facility perform embalming services for other funeral homes at that site?*

The opinion states that a licensed embalmer may work as an independent contractor for a funeral home either on its premises or in the embalming room of another licensed funeral establishment.

Attorney General Opinions	
	<ul style="list-style-type: none"> <p>• <i>If TFSC's statute does not explicitly require an embalmer operating as an independent contractor to obtain a commercial embalmers license, must the TFSC make such a requirement in rule?</i></p> <p>The opinion concludes that the statute does not provide for the licensing of commercial embalmers but commercial embalming establishments. The statute further requires that embalming must be performed by a licensed embalmer. Since an embalmer is not required to obtain a commercial embalmers license, the commission may not adopt such a rule. In addition, the commission lacks authority to discipline a licensed embalmer for performing embalming services without a special "commercial embalmer's license," because that licensing requirement does not exist in the statute.</p> <p>• <i>Can the commission require a funeral establishment to disclose that a body may be embalmed at another facility when permission to embalm is given orally rather than in writing?</i></p> <p>The opinion states that, when permission to embalm is oral, no disclosure is required as to embalming location.</p> <p>• <i>When embalming is performed by an independent contractor, must the contractor obtain written permission to embalm from the consumer?</i></p> <p>The opinion concludes that neither the statute nor the rules require such permission; permission to embalm given to the funeral home is sufficient.</p> <p>• <i>When embalming is performed by an independent contractor, must the contractor make price disclosures to the customer?</i></p> <p>The opinion concludes that an embalmer who has no contractual relationship with the customer is not required to make price disclosures to the customer. In addition, the funeral establishment is not required to disclose to the customer the price charged to the funeral establishment by the embalmer.</p>

Attorney General Opinions	
	<ul style="list-style-type: none"> • <i>Is TFSC prohibited from hiring as an investigator a person who does not meet the requirements set out in the statute? Can a person hired as an inspector perform the duties of an investigator if the person does not meet the requirements for an investigator?</i> <p>The opinion concludes that a person hired as an in-house investigator must meet one of the three statutory qualifications: 1) hold a current license as a private investigator in this state; 2) have been previously licensed under state or federal law as a private investigator; or 3) have been previously employed by a local, state, or federal law enforcement agency as an investigator.</p> <p>The opinion also points out that HB 3516, effective September 1, 1999, deletes investigator qualifications.</p>

H. Please fill in the following chart:

Texas Funeral Service Commission			
Exhibit 2: Agency Contacts			
	Name	Address	Telephone Number Fax Number E-mail Address
Agency Head	Mr. Mike Regan, Acting Administrator (at time of this report)	510 South Congress Suite 206 Austin, Tx 78704-1716	Phone: (512) 936-2472 Fax: (512) 479-5064 No e-mail at TFSC
Agency's Sunset Liaison	Mr. Mike Regan, Acting Administrator (at time of this report)	510 South Congress Suite 206 Austin, Tx 78704-1716	Phone: (512) 936-2472 Fax: (512) 479-5064 No e-mail at TFSC

Mr. Mike Regan, Associate Deputy Comptroller of the Office of the Comptroller, is acting as the agency's administrator until the new commission appoints a full-time executive director. In addition, other staff of the Comptroller's office have been assisting TFSC in its day-to-day operations.

Mr. Regan's appointment resulted from an administrative void that needed to be filled temporarily. The commission was operating with acting executive directors at the end of fiscal 1999 and needed to hire a permanent administrator. On July 9, 1999, the full commission met and placed in motion a job posting for this position. The commission by design decided to leave the choice of the new executive director to the new commission, which was to be appointed after September 1st. In the interim, the commission named Mr. Ed Matsis, Senior Investigator, to be the acting director. Mr. Matsis resigned, however, several weeks before the new commission could be appointed.

Mr. Charles McNeil (chair of TFSC until September 1, 1999) approached the Governor's office for assistance in filling the administrative vacancy until the new commission could be appointed and choose its own executive director. On behalf of Mr. McNeil, the Governor's office asked the Comptroller's office about whether that agency could loan staff assistance, and the Comptroller's office agreed. Then, in an August 18th letter, Mr. McNeil officially requested assistance from Comptroller Rylander "during the period of transition as the provisions of HB 3516, 76th Legislature, R.S., 1999, are implemented." Mr. Regan and other staff of the Comptroller's office began helping TFSC shortly thereafter.

II. History and Major Events

Provide a timeline discussion of the agency's history, briefly describing the key events in the development of the agency, including:

- the date the agency was established;
- the original purpose and responsibilities of the agency;
- major changes in responsibilities or statutory authority;
- agency/policymaking body name and composition changes;
- the impact of state/federal legislation, mandates, and funding;
- the impact of significant state/federal litigation that specifically affects the agency's operations; and
- key organizational events and areas of change and impact on the agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

Year	Event
1903	The State Board of Embalming was established to license and regulate embalmers. The focus of the law was containment of contagious diseases that impacted public health.
1938	The law was amended to include funeral directors in its licensing requirements.
1958	The name of the agency changed to the "State Board of Morticians."
1977	The first Sunset review of the agency began. The Sunset Commission recommended that the agency be abolished and its responsibilities placed within the Texas Department of Health.
1979	Sunset legislation was enacted to continue the agency after much legislative debate. The legislation expanded the board to nine members consisting of five professionals and four consumers. Its authority to protect the public was also expanded.
1984	The Federal Trade Commission promulgated the "funeral rule," which contains key consumer protection provisions that the funeral industry must follow. One of the rule's key requirements, for example, is that funeral homes must give consumers a copy of an itemized general price list at the beginning of any discussion about funeral arrangements. These rules apply in a state unless the state applies for and receives an exemption from the FTC, reflecting that state law provides equal or greater protection. (Texas has no such exemption.)
1987	The agency initiated and backed legislation that renamed it the "Texas Funeral Service Commission." Its enforcement authority was expanded to include administrative penalties.
1989	The second Sunset review of the agency began. Sunset staff recommended abolishment of the agency and termination of specific regulation for the funeral industry. However, the Sunset Commission itself recommended that the consumer protection function of the agency was still needed and that the Texas Funeral Service Commission should be continued to carry out regulatory functions. The Sunset Commission also recommended many additional provisions to strengthen regulation of the industry and the effectiveness of the agency.

- 1991** The Legislature enacted Sunset legislation continuing the Texas Funeral Service Commission and implementing many of the recommendations of the Sunset Commission. Some of the key provisions included in SB 284 of the 72nd Legislature follow:
- changing the composition of the 9-member board to include a majority of five public members;
 - requiring an independent hearings officer to hear and rule on all disciplinary cases and make recommendations to the commission;
 - prohibiting commissioner participation in informal hearings to avoid the appearance of bias;
 - making entry to the profession less restrictive by decreasing the number of cases required of provisional licensees from 60 to 40;
 - changing the requirement for annual funeral home inspections to biennial inspections to accommodate agency workload;
 - requiring memorandums of understanding between the Department of Banking, the Board of Insurance, and the TFSC to better coordinate pre-need funeral sales; and between TFSC and the Department of Health on issues related to vital statistics;
 - eliminating the practical examination requirement for embalmer applicants;
 - authorizing the board to require continuing education courses for licensees; and
 - deleting the authority of the commission to approve mortuary schools and shifting that responsibility to the Texas Education Agency or the Texas Higher Education Coordinating Board.
- 1993** The Legislature further adjusted TFSC’s statute in HB 466. Among other things, this bill:
- changed the name of the apprenticeship program to the “provisional license program;”
 - specified that two commissioners may participate in any informal conference relating to a case that awaits a hearing;
 - raised the passing grade to obtain a license to practice embalming or to become a funeral director from 70 to 75, and gave the commission the authority to require an applicant to appear before it for approval of the application;
 - adjusted the number of cases that a provisional licensee must complete from a minimum of 40 to a minimum of 60 for obtaining the funeral director license or the embalmer license;
 - changed the funeral home inspection requirement from biennial inspections to annual inspections;
 - made use of a hearings officer optional at the discretion of the commission; and
 - made various changes in the penalty provisions of the law.
- 1995** HB 1483, 74th Legislature, required that a school or college of mortuary science cannot use a dead human body for educational or instructional purposes without written consent.
- 1997** HB 1672, 75th Legislature, modified the disclosure language on notices that must be printed on a funeral establishment’s retail price list or on the written memorandum that itemizes the cost of funeral services or merchandise selected by a customer.
- 1999** HB 3516, 76th Legislature, made a number of substantive changes in the organization and operation of the TFSC (outlined in more depth in Exhibit 17). Some of the major changes

include: reducing the policy-making body from nine members to six members and requiring that the presiding officer and assistant presiding officer be public members; eliminating the authority of the agency to employ an in-house general counsel or to contract for the services of an investigator; eliminating specific conditions that a person must meet to be employed as an in-house investigator; and giving the agency the authority to exempt a funeral establishment from having an embalming room under certain circumstances.

III. Policymaking Structure

A. Please complete the following chart:

Texas Funeral Service Commission				
Exhibit 3: Policymaking Body				
Member Name	Term/ Appointment Dates/ Appointing Officer	Qualification	Address	Telephone Number/ Fax Number/ E-mail Address
Harry M. Whittington	Term: To expire 2/1/2001; Appointment date: 9/3/1999; Appointing officer: Gov. George W. Bush	Public member	807 Brazos, Ste. 1010 Austin, Tx	Phone: (512) 476-5313 Fax: (512) 476-2760
Frank W. Maresh	Term: To expire 2/1/2001; Appointment date: 9/3/1999; Appointing officer: Gov. George W. Bush	Public member	111 Congress, Ste. 1100; Austin, Tx 78701	Phone: (512) 320-5201 Fax: (512) 320-5100
John Q. Taylor King, Ph.D.	Term: To expire 2/1/2003; Appointment date: 9/3/1999; Appointing officer: Gov. George W. Bush	Professional member (holds funeral director and embalmer licenses)	2400 Givens Avenue Austin, Tx 78722-2105	Phone: (512) 476-9128 Fax: (512) 473-8260
Martha J. Rhymes	Term: To expire 2/1/2003; Appointment date: 9/3/1999; Appointing officer: Gov. George W. Bush	Public member	2105 E. Old Highway 80 White Oak, Tx. 75693	Phone: (903) 759-9055 Fax: (903) 297-8617
Dorothy L. Grasty	Term: To expire 2/1/2005; Appointment date: 9/3/1999; Appointing officer: Gov. George W. Bush	Public member	4614 Willow Bend Arlington, Tx. 76017	Phone: (817) 572-3125 Fax: (817) 572-4564
Jim C. Wright	Term: To expire 2/1/2005; Appointment date: 9/3/1999; Appointing officer: Gov. George W. Bush	Professional member (holds funeral director and embalmer licenses)	P.O. Box 509 Wheeler, Tx. 79096	Phone: (806) 826-5214 Fax: (806) 826-3073

B. How is the chair of the policymaking body appointed?

TFSC's statute requires that the Governor appoint the presiding officer of the commission. The commission elects an assistant presiding officer to serve for a period of one year. HB 3516, effective September 1, 1999, requires that both the presiding officer and the assistant presiding officer be public members.

C. Describe the primary role and responsibilities of the policymaking body.

The responsibilities of TFSC's policy-making body are typical of the responsibilities exercised by the policy-making bodies of other licensing agencies. The agency's Board of Commissioners decides policy for the agency within statutory requirements. The board oversees the administrative operations of the agency and hires and fires the executive director. The board also takes final action on complaints and sanctions against licensees.

D. List any special circumstances or unique features about the policymaking body or its responsibilities.

Until September 1, 1999, the board was composed of nine members, five of whom were public members and four of whom were professional members holding credentials as either a funeral director or embalmer. HB 3516 of the 76th Legislature restructured the board to consist of six members, four of whom are public members and two of whom are professional members holding the dual credentials of licensed embalmer *and* licensed funeral director. As before, the governor appoints the presiding officer and the board elects the assisting presiding officer. However, the old law allowed public or professional members to serve in these positions, while HB 3516 mandates that these offices be filled by public members.

E. In general, how often does the policymaking body meet? How many times did it meet in FY 1998? in FY 1999?

TFSC's policy-making body met three times in 1998 and four times in 1999. According to its statute, the commission was required to meet at least two times a year in those years. HB 3516 changed this provision to require the commission to meet at least once each calendar quarter, effective September 1, 1999.

F. What type of training do the agency's policymaking body members receive?

In the past, the agency has provided new members with an orientation session that explains the purpose of the agency and the separate responsibilities of the staff and the board. The orientation also briefs members on the agency's statute and rules. In addition, the orientation covers the role of different agency staff positions.

The Office of the Attorney General also offers an annual training session that can be attended by members of the commission. This session informs members of their responsibilities under various state statutes such as the Open Meetings Act, the Open Records Act, and ethics laws.

G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.

The agency's statute contains the Sunset across-the-board language that requires the commission "to develop and implement policies that clearly define the responsibilities of the commission and the staff of the commission."

TFSC's bylaws define the duties of the Board of Commissioners and the executive director. The Board of Commissioners "retains authority for approval of commission policies, budget, new or expanded programs, salaries and compensation, and capital expenditure... ." The bylaws further clarify that "the executive director serves at the pleasure of the Board of Commissioners and is responsible for the effective operation and management of the Commission."

H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.

TFSC's statute authorizes the commission to appoint committees from among its members to consider and make recommendations on matters referred to them.

TFSC's bylaws describe a number of committees comprised primarily of members from the Board of Commissioners. The bylaws require the presiding officer of the commission to establish committees as necessary, and to designate the chair of each committee. The presiding officer of the commission sits on all committees as an ex officio member.

Before September 1999, the chair of the commission appointed the committees shown in the table below. The chair of the newly constituted commission has indicated that this committee structure will be reconsidered.

Texas Funeral Service Commission			
Exhibit 4: Subcommittees and Advisory Committees Prior to September 1999			
Name of Subcommittee or Advisory Committee	Size/Composition/ How members are appointed	Purpose/Duties	Legal Basis for Committee
Personnel, Policies, and Employee Grievance Committee	At least three commissioners appointed by the presiding officer of the commission. (Defined in Article 4.1A of agency bylaws.)	To ensure compliance with guidelines in the agency's personnel manual.	Occupation Code, Subchapter D, Section 651.151
Finance Review Committee	At least three commissioners appointed by the presiding officer of the commission. (Defined in Article 4.1B of agency bylaws.)	To oversee and review financial reports and financial operations of the agency. To ensure that all reports required by statute are submitted on a timely basis.	Occupation Code, Subchapter D, Section 651.151
Rules Committee	At least two commissioners appointed by the presiding officer of the commission. (Defined in Article 4.1C of agency bylaws.)	To determine the rules that might be necessary to administer the enabling statute.	Occupation Code, Chapter 651, Subchapter D, Section 651.151
Complaint Review Committee	At least three commissioners appointed by the presiding officer of the commission. Recommended, but not imperative, that the chair of the committee be a professional member with extensive experience in funeral service and be an individual with either a funeral directing or embalming license. Committee may call upon executive director and legal counsel for assistance. (Defined in Article 4.1D of agency bylaws.)	To review complaints submitted to the commission, and to ensure that complaints are properly investigated and receive suitable administrative actions.	Occupation Code, Chapter 651, Subchapter D, Section 651.151

Texas Funeral Service Commission			
Exhibit 4: Subcommittees and Advisory Committees Prior to September 1999			
Education and Evaluation Committee	At least two commissioners appointed by the presiding officer of the commission, preferably with the chair of the committee being a professional member with extensive experience in funeral services. (Defined in Article 4.1E of agency bylaws.)	To review and develop policies and procedures on the agency's examining procedures and continuing education. To ensure that oral and written licensing exams be given two times a year.	Occupation Code, Chapter 651, Subchapter D, Section 651.151
Reciprocal Licensure Committee	No size specified in agency bylaws. Committee appointed by the presiding officer of the commission. (Defined in Article 4.1F of agency bylaws.)	To review applications for reciprocal licensure.	Occupation Code, Chapter 651, Subchapter D, Section 651.151
Ad-hoc Committees	No size specified in agency bylaws. Ad-hoc committees appointed by the presiding officer of the commission. (Defined in Article 4.1F of agency bylaws.)	To deal with special issues as the need might arise.	Occupation Code, Chapter 651, Subchapter D, Section 651.151

I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?

The TFSC's statute incorporates the Sunset across-the-board provision requiring the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission.

The agency's bylaws further define ways of obtaining public input. Article V directs the commission to provide policy guidance in maintaining appropriate channels for citizens to make recommendations and comment on agency services, and to solicit input from staff and other groups affected by an issue under consideration.

In practice, the agency gives the public the opportunity to address the commission at each commission meeting. This opportunity is institutionalized as a separate agenda item for board meetings. The agency also responds to written inquiries from the public. In addition, commission or staff members meet with members of the public who have concerns or desire more information.

IV. Funding

A. Describe the agency's process for determining budgetary needs and priorities.

In the past, the agency's appropriations process has started with the executive director working with staff to identify budget needs and previous levels of funding for the agency. Staff recommendations on appropriations to be requested are presented before the commission's Finance Review Committee, composed of at least three commission members. The recommended appropriations request, as modified by the Finance Review Committee, is brought to the full commission for its review and modification. After final approval by the commission, the request is submitted to the budget offices of the Legislature and Governor.

B. Show the agency's sources of revenue. Please include all local, state, and federal sources.

Texas Funeral Service Commission	
Exhibit 5: Sources of Revenue — Fiscal Year 1998 (Actual)	
Source	Amount
General Revenue – Appropriations	\$571,336.18
Sale of Publications	\$10,317.20
Licenses, Fees, & Permits	\$4.16
Other	\$100.00
TOTAL	\$581,757.54

C. If you receive funds from multiple federal programs, show the types of federal funding sources.

The agency receives no federal funds.

Texas Funeral Service Commission				
Exhibit 6: Federal Funds — Fiscal Year 1998 (Actual)				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
N/A				
TOTAL				

D. Show the agency's expenditures by strategy.

Texas Funeral Service Commission	
Exhibit 7: Expenditures by Strategy — Fiscal Year 1998 (Actual)	
Goal/Strategy	Amount
Goal A: Competent Licensees	Goal A: Total \$165,446.31
Licensing Requirements	\$165,446.31
Goal B: Enforce Standards	Goal B: Total \$346,590.24
Inspections	\$250,608.85
Rule Compliance	\$ 95,981.39
GRAND TOTAL:	\$512,036.55

E. Show the agency's expenditures and FTEs by program.

Texas Funeral Service Commission					
Exhibit 8: Expenditures and FTEs by Program — Fiscal Year 1998 (Actual)					
Program	Budgeted FTEs, FY 1998	Actual FTEs as of August 31, 1998	Federal Funds Expended	State Funds Expended	Total Actual Expenditures
Licensing	2.7	2.7	N/A	\$165,446.31	\$165,446.31
Inspections/Investigations	5.5	4.5	N/A	\$250,608.85	\$250,608.85
Rule Compliance	1.8	1.8	N/A	\$ 95,981.39	\$ 95,981.39
TOTAL	10.0	9.0	N/A	\$512,036.55	\$512,036.55

F. If applicable, please provide information on fees collected by the agency.
--

According to available information, the agency used the following fee structure in fiscal 1998.

Texas Funeral Service Commission				
Exhibit 9: Fee Revenue and Statutory Fee Levels — Fiscal Year 1998*				
Description/ Program/ Statutory Citation	Current Fee*	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited
Fun. Dir. or Emb.-New Licenses/ Licensing/ Occupation Code, Chapter 651	Prorated	N/A	\$120,700	General Revenue
Fun. Dir. or Emb.-Renewals/ Licensing/ Occupation Code, Chapter 651	\$70	2,157	\$150,970	General Revenue
Duplicate License/ Licensing/ Occupation Code, Chapter 651	\$15	53	\$795	General Revenue
Reciprocity/ Licensing/ Occupation Code, Chapter 651	\$100	46	\$4,675	General Revenue
Establishment Renewal/ Licensing/ Occupation Code, Chapter 651	\$250	1,538	\$384,515	General Revenue
New Establishment/ Licensing/ Occupation Code, Chapter 651	\$350	64	\$22,600	General Revenue
Estab. Late Renewal Penalty/ Licensing/ Occupation Code, Chapter 651	\$250	131	\$32,750	General Revenue
Re-inspection Fee/ Inspections/ Occupation Code, Chapter 651	\$250	9	\$2,250	General Revenue
Provisional F.D. or Emb. License/ Licensing/ Occupation Code, Chapter 651	\$30	248	\$7,440	General Revenue
Provis. F.D. or Emb. Renewal Licensing/ Occupation Code, Chapter 651	\$30	167	\$5,008	General Revenue
Continued Education Course/ Licensing/ Occupation Code, Chapter 651	\$50	227	\$11,350	General Revenue

Texas Funeral Service Commission				
Exhibit 9: Fee Revenue and Statutory Fee Levels — Fiscal Year 1998*				
Continued Ed. Certificate/ Licensing/ Occupation Code, Chapter 651	\$15	97	\$1,460	General Revenue
Administrative Penalties/ Rule Compliance/ Occupation Code, Chapter 651	\$100- \$5000 per violation	N/A	\$82,850	General Revenue
Other Fees Licensing Occupation Code, Chapter 651§	Varies	N/A	\$43,066	General Revenue
Total			\$870,429	General Revenue

* The agency is authorized by statute to set licensing fees at a level reasonable and necessary for the administration of the act.

G. Please fill in the following chart.

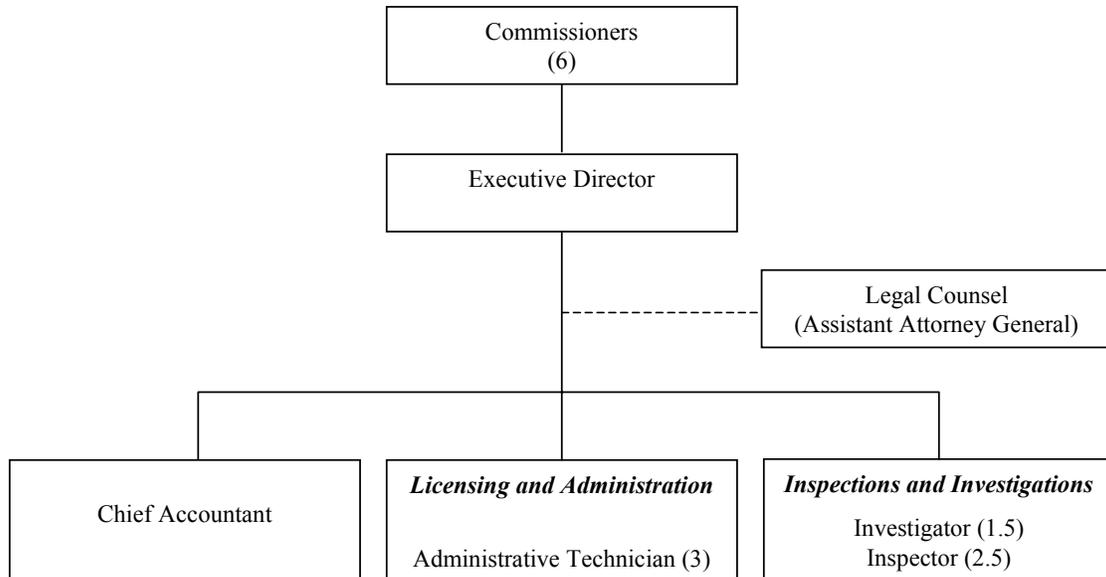
Texas Funeral Service Commission				
Exhibit 10: Purchases from HUBs				
FISCAL YEAR 1996				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	N/A	N/A	N/A	11.9%
Building Construction	N/A	N/A	N/A	26.1%
Special Trade	\$31	\$0	0%	57.2%
Professional Services	\$4,699	\$0	0%	20.0%
Other Services	\$40,064	\$29,409	73.4%	33.0%
Commodities	\$49,114	\$26,693	54.3%	12.6%
TOTAL	\$93,908	\$56,102	59.7%	
FISCAL YEAR 1997				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	N/A	N/A	N/A	11.9%
Building Construction	N/A	N/A	N/A	26.1%
Special Trade	\$385	\$0	0%	57.2%
Professional Services	\$21,838	\$0	0%	20.0%
Other Services	\$45,005	\$6,875	15.2%	33.0%
Commodities	\$9,341	\$3,791	40.5%	12.6%
TOTAL	\$76,569	\$10,666	13.9%	
FISCAL YEAR 1998				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	N/A	N/A	N/A	11.9%
Building Construction	N/A	N/A	N/A	26.1%
Special Trade	\$50	\$0	0%	57.2%
Professional Services	\$6,095	\$0	0%	20.0%
Other Services	\$67,297	\$5,474	8.13%	33.0%
Commodities	\$16,563	\$2,288	13.8%	12.6%
TOTAL	\$90,005	\$7,762	8.6%	

H. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?

The agency's strategic plan briefly addresses TFSC's use of HUBs. The plan says that the "Commission will increase its effort in helping the state of Texas meet its goal of increased purchases from historically underutilized businesses whenever business opportunities exist." Staff with historical perspective are not available to explain how the agency addressed performance shortfalls in the past.

V. Organization

The agency operates with the following organization chart as of September 1, 1999:



A. Please fill in the chart below. If applicable, list field or regional offices.

Texas Funeral Service Commission			
Exhibit 11: FTEs by Location — Fiscal Year 1998			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 1998	Number of Actual FTEs as of August 31, 1998
Central Headquarters (no regional offices)	Austin	10.0	9.0
TOTAL		10.0	9.0

B. What was the agency’s FTE cap for FY 1998?

TFSC’s FTE cap for fiscal 1998 is 10.0 FTEs.

C. How many temporary or contract employees did the agency have as of August 31, 1998?

TFSC had two temporary or contract employees as of August 31, 1998. The agency also had two temporary or contract employees as of August 31, 1999.

D. Please fill in the chart below.

Please note that the position information provided below represents hiring transactions occurring throughout the fiscal year indicated and not at one point in time. EEO statistics for the entire fiscal year are reported in this way by the Texas Commission on Human Rights in its *Minority Hiring Practices Report*. Data below is obtained from this report.

Texas Funeral Service Commission							
Exhibit 12: Equal Employment Opportunity Statistics							
FISCAL YEAR 1996							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	3		5%	67%	8%	67%	26%
Professional	5	20%	7%	20%	7%	60%	44%
Technical	4		13%	25%	14%		41%
Protective Services			13%		18%		15%
Para-Professionals	1	100%	25%		30%	100%	55%
Administrative Support	2		16%	50%	17%	100%	84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%

Texas Funeral Service Commission							
Exhibit 12: Equal Employment Opportunity Statistics (cont.)							
FISCAL YEAR 1997							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	1		5%	100%	8%	100%	26%
Professional	6	33%	7%	17%	7%	50%	44%
Technical	5		13%	20%	14%		41%
Protective Services			13%		18%		15%
Para-Professionals	2	50%	25%		30%	100%	55%
Administrative Support	1		16%	100%	17%	100%	84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%
FISCAL YEAR 1998							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	1		5%	100%	8%	100%	26%
Professional	4	50%	7%		7%	50%	44%
Technical	3		13%	33%	14%		41%
Protective Services			13%		18%		15%
Para-Professionals	4	25%	25%		30%	25%	55%
Administrative Support	2		16%	100%	17%	100%	84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%

E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?

The agency's statute requires TFSC to prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity. The agency has adopted a policy statement in its *Policies and Procedures Manual* (Policy HRS-01-03). The policy states that:

The Commission will not discriminate on the basis of age, race, color, national origin, religion, sex, disability or political affiliation, in the admission or access to, or treatment of, or employment in its programs or activities, or for participation in the discrimination complaint process. All practices of the Commission will comply fully with non-discrimination provisions of all state and federal laws.

Another policy in TFSC's *Policies and Procedures Manual* establishes an affirmative action plan for the agency (Policy HRS-01-02). The plan requires EEO, non-discrimination, and affirmative action information to be updated and distributed to staff as necessary. This information is to be discussed with existing staff "as frequently as possible" in scheduled meetings. In addition, all staff are supposed to attend a supervisory workshop on EEO concepts each year. The plan further states that applicant information should clearly indicate TFSC's commitment to EEO, and discussion of affirmative action is to be included in all new employee orientation sessions.

VI. Guide to Agency Programs

Funeral Service Regulatory Program

For purposes of this section, the agency operates one “program,” which includes the entire regulatory effort of TFSC. This “funeral service regulatory program” operates with two primary functions: licensing and enforcement. Where appropriate, descriptions below will be broken down into these two functions.

A. Please complete the following chart.

Texas Funeral Service Commission	
Exhibit 13: Program Information — Fiscal Year 1998	
Name of Program	Funeral Services Regulatory Program
Location/Division	Headquarters
Contact Name	Executive director
Number of Budgeted FTEs, FY 1998	10.0
Number of Actual FTEs as of August 31, 1998	9.0

B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.

The two key functions performed by this program, licensing and enforcement, are described below separately.

Licensing

TFSC issues licenses to embalmers, funeral directors, and funeral establishments. TFSC’s statute authorizes the agency to set fees for these licenses, as shown in Exhibit 9. In fiscal 1998, fees collected amounted to \$870,429; the agency’s expenditures for that year totaled \$512,037. The agency operated this function with 2.7 budgeted FTEs in fiscal 1998.

Individual licenses for funeral directors and embalmers

Individuals wishing to be licensed as funeral directors or embalmers must first obtain a provisional license and serve an apprenticeship. After the provisional stage is completed, individuals can apply to TFSC to receive an embalmers license, a funeral directors license, or a dual funeral director and embalmer license. As of September 1999, 36 embalmers held the separate embalmers license, 447 funeral directors held the separate funeral directors license, and 3,674 individuals held the dual funeral director and embalmer license.

To be licensed as a funeral director or embalmer, a person must:

- be 18 years of age or older;
- have graduated from an accredited high school or passed the G.E.D.;
- have graduated from an accredited college of mortuary science;

- pass a written national exam with a grade of 75;
- pass a written exam developed by TFSC on local and state laws relating to vital statistics and the preparation and transportation of dead human bodies;
- pass on oral exam given before one or more board members; and
- have served as a provisional licensee for at least one year under the personal supervision of a licensed funeral director or embalmer.

There are three stages in the licensing of funeral directors and embalmers: the provisional license, the initial license, and the renewed license (please see flow chart on next page).

The **provisional license stage** provides the licensee the opportunity to practice funeral directing or embalming skills under licensed supervision before becoming fully licensed. As of September 1999, 34 persons held the provisional license for embalmers, and 83 held the provisional license for funeral directors.

By statute, a person cannot apply for a provisional license before finishing mortuary school. After receiving an applicant's forms, fees, and other required information, TFSC issues the provisional license.

The provisional license period is a minimum of 12 and a maximum of 24 consecutive months under normal circumstances. The statute requires that, during this period, the licensee must work on a minimum of 60 cases. The commission is required to define by rule the standards for a case and the minimum number of *complete* cases that the licensee must complete. The commission rules define this number as ten. The statute requires the licensee to make a case report to the agency each month outlining progress toward fulfilling the case requirement. The agency's staff checks these reports to verify that information has been correctly submitted and calls the licensee if questions arise.

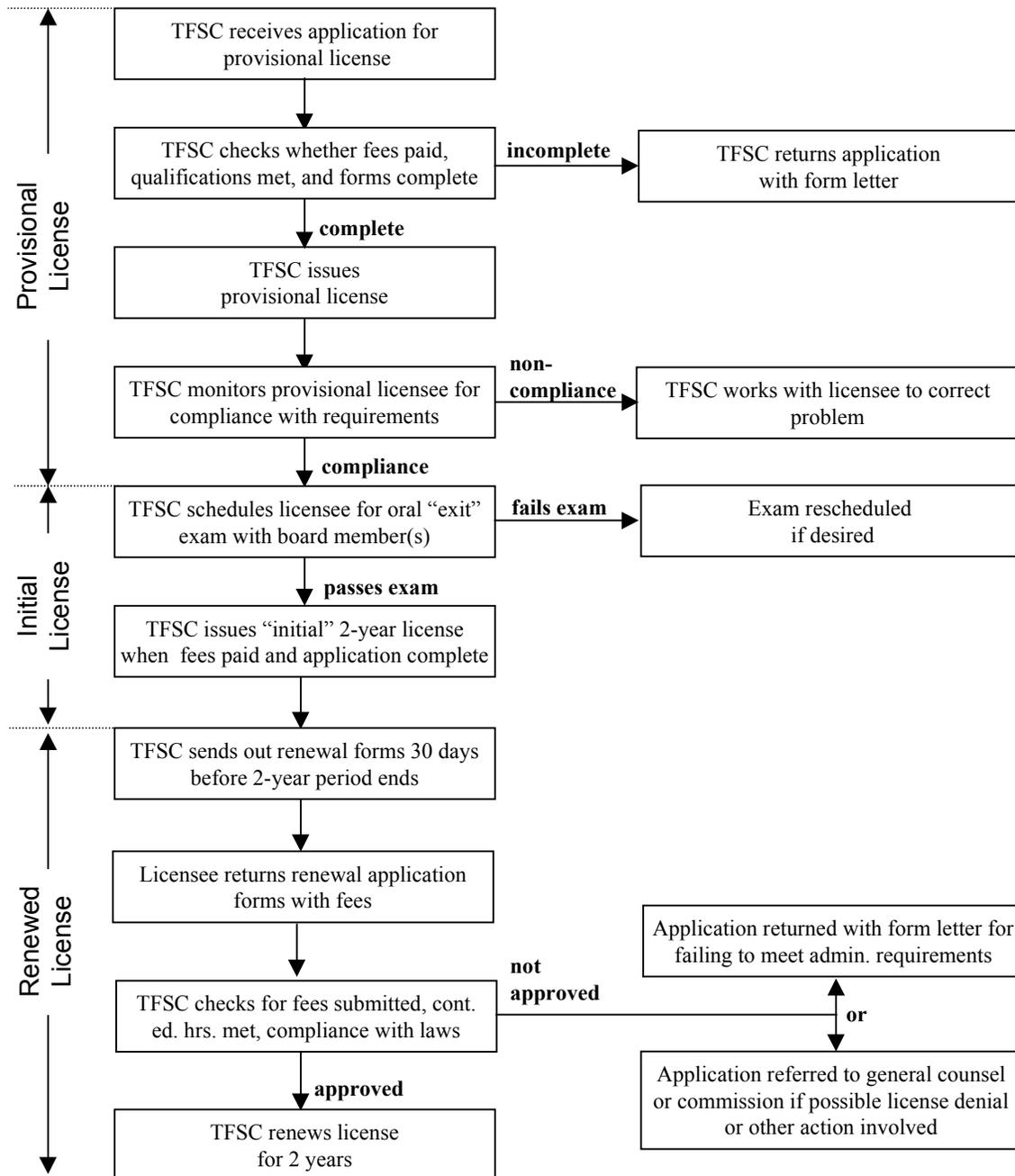
TFSC's rules require the provisional licensee to appear before at least one commission member for an oral exit interview after completing the required number of cases. The purpose of this interview is to test the licensee's proficiency as a funeral director or embalmer. The commission uses a standard set of questions during this exit test.

The licensee moves to the **initial license stage** after successfully completing the provisional period. The licensee submits the necessary forms and fees to the TFSC, which checks the application package for completeness. If all forms are in order, the applicant is issued an initial license, which is in effect for a two-year period.

The **renewed license stage** is the final phase in the license cycle. The agency sends out renewal materials to the licensee 30 days before license expiration dates. Renewal of licenses occurs in May and November. The licensee completes the renewal information and returns it to the agency. TFSC checks the renewal application for completeness, for payment of the required fees, and for compliance with continuing education requirements. The agency also reviews the licensee's record of compliance with TFSC's statute and rules, as well as any felony conviction record. The license is then renewed for another two year period after TFSC's approval.

If, however, TFSC finds problems with the renewal, the application may be returned with an explanatory letter; if legal issues, such as the individual's compliance with the agency's law, arise, the case may be forwarded to legal counsel or the commission. The Office of the Attorney General acts as TFSC's legal counsel in these and other legal matters.

Licensing Cycle for Funeral Directors and Embalmers



Please note: this chart represents a high-level overview of the individual licensing process and does not depict all possibilities that could exist in the process.

After the first license renewal, TFSC's rules require the licensee to complete continuing education classes in the next two-year period of the license. The rules require 14 hours of continuing education in 1999, and 16 hours in 2000. TFSC reviews course offerings of providers to determine their acceptability for meeting continuing education requirements. The agency then audits course completions of licensees to ensure the courses are on the approved list.

The embalmers and funeral directors licenses go through this expiration and renewal process every two years until the licensee fails to meet qualifications, decides to retire, or goes into inactive status.

Individuals from other states can follow a **reciprocal licensing process** to be licensed as a funeral director or embalmer. The agency's statute permits licensing by reciprocity. Before September 1, 1999, TFSC's statute *authorized* the agency to waive licensing requirements for applicants with valid licenses from other states having "substantially equivalent" licensing requirements. Amendments to the statute *require* the agency to waive requirements in this situation beginning September 1. In addition, the statute authorizes the agency to waive requirements under certain circumstances if the other state's system is not substantially equivalent.

As of September 1999, the statutory provisions require that an applicant for reciprocal licensure:

- cannot have been convicted in the last ten years of a misdemeanor involving moral turpitude or a felony;
- pass a written exam of not more than 50 questions on applicable state laws and commission rules, which the commission shall administer at regularly scheduled meetings;
- hold a license in good standing from the other state;
- have practiced for one year in the other state if requirements were substantially similar, or five years if those requirements were not substantially similar; and
- have graduated from an accredited college of mortuary science.

Funeral establishment licenses

TFSC issues two licenses for funeral establishments: one for funeral homes that offer a full range of funeral services and one for commercial embalming establishments. Commercial embalming establishments work as subcontractors to provide embalming services for licensed funeral homes. As of September 1999, 1,256 establishments were licensed as funeral homes and 40 were licensed as commercial embalming establishments.

Full service funeral homes are required to meet a variety of requirements related to their physical plant and operations before being licensed. To list some of the major statutory requirements, funeral homes must have:

- facilities to conduct services;
- a physical plant that meets health, building, and fire safety standards; that is located at a fixed place; and that is not located on tax-exempt property or a cemetery;
- at least one hearse;
- an embalming room, except in certain circumstances; and
- a display room containing sufficient merchandise to permit reasonable selection.

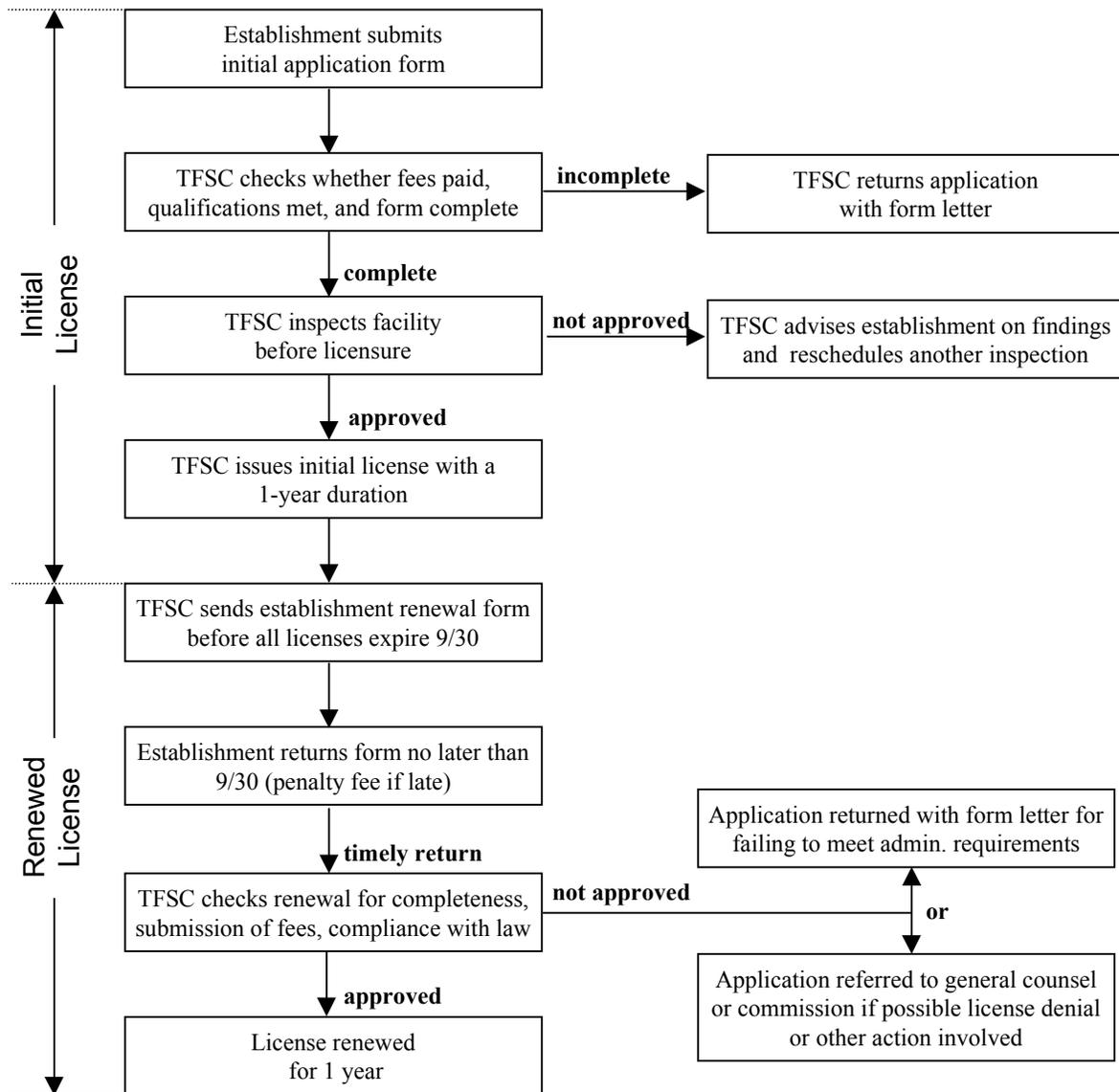
Commercial embalming establishments are not required to have facilities to conduct services or a display room, since these establishments do not serve the public directly.

The process for receiving a funeral establishment license begins with submission of an application with fees (please see flow chart on next page). The agency reviews the application to determine if requirements are met.

If not, the application is returned with a form letter explaining the deficiency. If the application is in order, then TFSC schedules an inspection of the facility. Facilities that pass inspection receive the required license; facilities failing the inspection are advised as to their deficiencies and are scheduled for another inspection.

The statute sets all establishment licenses to expire on September 30. Several weeks before the September 30 deadline, the agency sends renewal forms to all establishments, who then return the form with the necessary renewal fee. Similar to the process used for embalmer and funeral director renewals, TFSC checks the renewal application for completeness and for payment of the required renewal fee. The agency also checks the inspection and complaint history of the establishment. If TFSC notes problems of a minor nature, forms are returned with a form letter. More substantial issues involving the establishment's compliance history are referred to the agency's general counsel or the commission for disposition. When the agency determines that forms are in order, fees paid, and compliance requirements met, then the funeral establishment is issued a renewed license for a one-year period.

Licensing Cycle for Funeral Establishments



Please note: this chart represents a high-level overview of the establishment licensing process and does not depict all possibilities that could exist in the process.

Enforcement

The agency enforces its statute through inspections and investigations. In fiscal 1998, the agency budgeted 7.3 FTEs to this function.

Inspections

TFSC inspects new funeral establishments before they are licensed. In fiscal 1999, TFSC inspected 54 new funeral establishments. TFSC is also required by statute to accomplish the much bigger task of inspecting licensed funeral establishments annually. In fiscal 1999, the agency inspected 96 percent of the 1,296 licensed funeral establishments. As of September 1999, 2.5 FTEs are devoted to this activity.

The statute says that inspections will cover TFSC's statute as well as requirements related to death records and waste disposal (Chapters 193 and 361, Health and Safety Code). The statute further mandates that, before conducting an inspection, the agency's inspector is to review prior inspection reports when they exist. At the time of the inspection, the staff member is required to determine whether previously identified problems have been corrected. Agency rules further indicate that funeral establishments will not be granted their annual license renewal until the annual inspection has occurred, unless lack of the required inspection is the fault of TFSC.

The process for annual inspections begins with TFSC identifying establishments to be inspected and, as the statute requires, checking the prior inspection record of these locations (please see flowchart on next page). The inspector travels to the location to make the inspection without notifying the funeral establishment of the visit. The funeral establishment is required by rule to be open at all times for agency inspection. If the business is closed, TFSC schedules another inspection and may charge the establishment a \$250 penalty.

After arriving at the funeral establishment, the inspector identifies himself or herself, requests that a representative of the establishment come along on the walk-through, and begins the inspection of the facility. The inspector uses a three-page checklist for the inspection that includes the various statutory and rule requirements that the facility must meet. Included on the form is a space to itemize prior violations and to indicate whether these problems have been corrected. The inspection typically takes from 45 minutes to several hours.

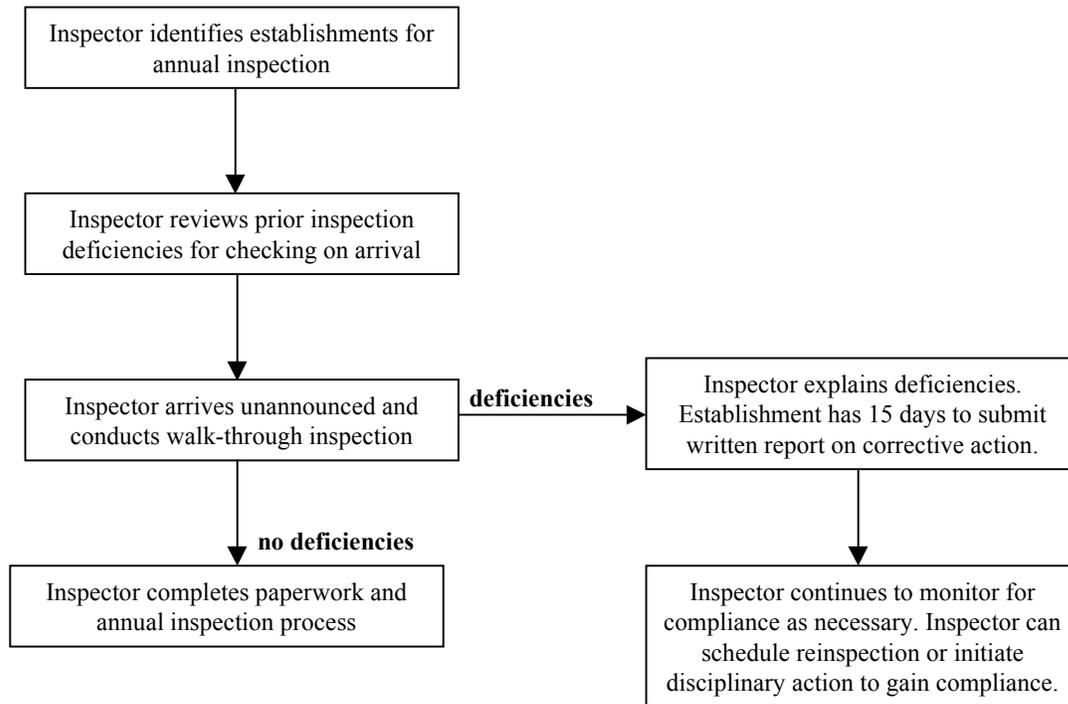
At the end of the inspection, the inspector explains the exceptions noted to the establishment's representative and leaves a copy of the inspection checklist with that person. The inspector explains that the establishment has 15 days to submit a report noting how deficiencies will be addressed.

The agency at times schedules a re-inspection for more flagrant violators. Similar to a regular annual inspection, re-inspections are unannounced. In fiscal 1999, TFSC re-inspected five facilities. If TFSC is not satisfied with an establishment's compliance, the agency is authorized to bring enforcement action against that business.

Investigations and complaints

TFSC investigates complaints against its licensees as one of its activities to protect the public. These complaints can be initiated by agency staff, or can be initiated by consumers. In fiscal 1998, the agency received 175 consumer complaints and completed action on 110 complaints. In fiscal 1999, the agency received 184 consumer complaints and completed action on 70 complaints. The reason for the reduced number of complaints completed in fiscal 1999 can be traced to staff vacancies and instability in the agency in fiscal 1999. As of September 1999, 1.5 FTEs are assigned to the investigation activity.

Annual Inspection Process



Please note: this chart represents a high-level overview of the inspection process and does not depict all possibilities that could exist in the process.

By statute, the agency has a range of sanctions that it can impose on violators. TFSC may impose an administrative penalty ranging from \$100 to \$5,000 per violation; or reprimand, revoke, suspend, probate the suspension of a license, or impose any combination of these sanctions. In fiscal 1998, the agency sanctioned 28 licensees.

The agency enforces its own statute, and is also authorized to take action against individuals who have violated provisions in other laws related to preneed funerals or vital statistics requirements. This authority stems from Sunset recommendations enacted into law in 1991 that required improved coordination among agencies with responsibilities related to the funeral industry.

As required in 1991, TFSC, the Department of Banking (DOB), and the Texas Department of Insurance (TDI) have entered into a joint memorandum of understanding (MOU) coordinating the activities of these agencies on preneed funeral contracts. The DOB issues permits and performs other regulatory duties for preneed contracts; TDI regulates insurance carriers who issue insurance policies that consumers purchase to pay for preneed contracts at the time of death. The Texas Department of Health and TFSC have also signed an MOU required in 1991 that outlines responsibilities to enforce vital statistics information such as death records.

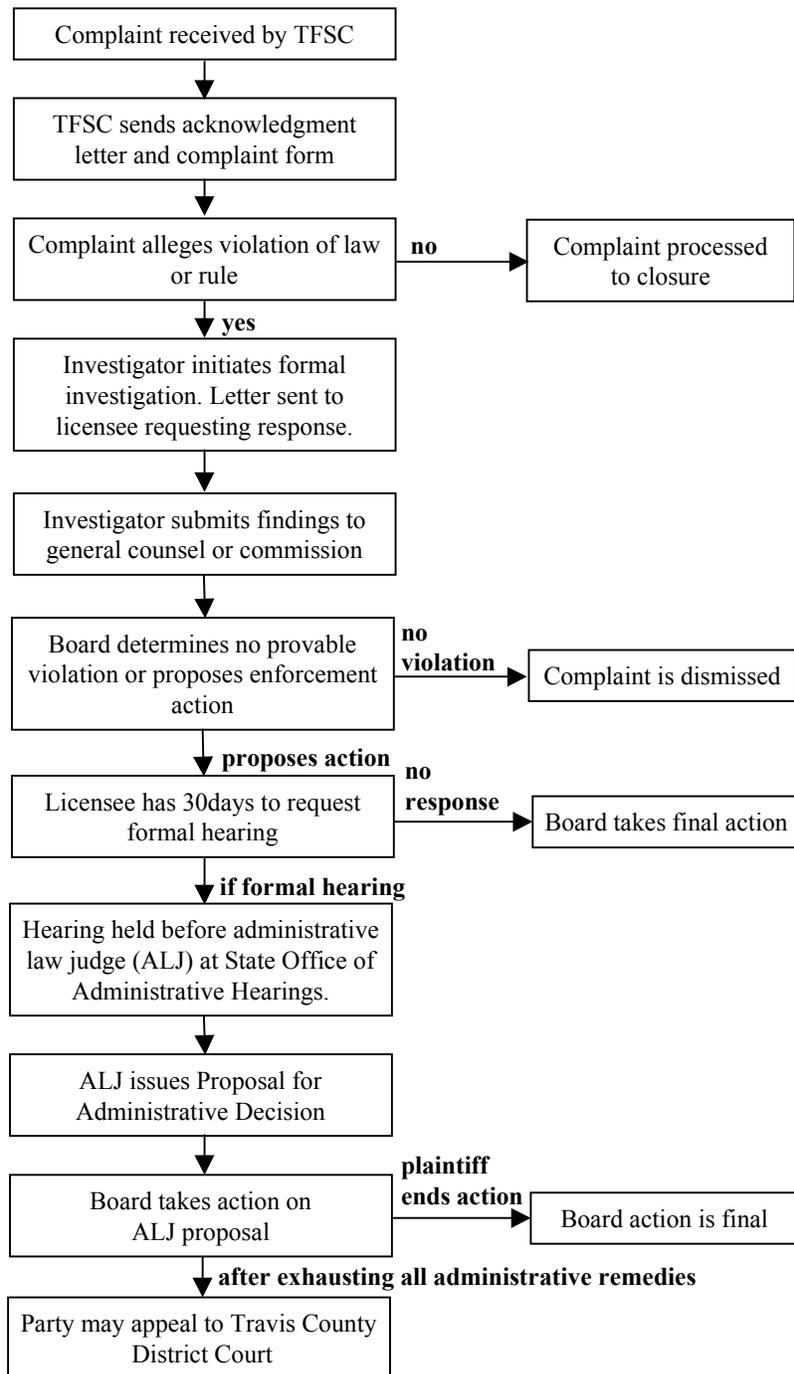
Currently, the typical complaint process begins when the agency receives a complaint from a consumer (please see flowchart on next page). TFSC acknowledges receipt of the complaint in writing and sends the complainant a complaint form to fill out. Once returned, TFSC determines whether the complaint alleges a violation over which it has jurisdiction. If not, the complaint is sent to another agency with responsibility. If TFSC has jurisdiction, the agency initiates a formal investigation and sends a letter to the licensee requesting a response. The investigator makes telephone calls or in-person visits to determine the facts of the complaint, and then submits findings to the agency's general counsel (now an assistant attorney general), who can either ask for more information or move the complaint on to the next stage.

Procedures used after this point will vary before and after September 1999, when the new Board of Commissioners took office. At this point, the new process has not been established.

The procedure before September 1999 depended in part on use of the Complaint Review Committee (CRC). The CRC was a three-member committee of the board that reviewed investigative reports, held informal settlement conferences, and made recommendations to the full commission on a complaint's disposition. The new chair of the commission announced in the restructured board's first meeting on September 10, 1999, that the current commission is not assigning duties to committees but instead plans to act on all matters directly as a board.

In general, the statute gives a person 30 days to respond after a sanction is proposed. The accused may request a hearing, which is held before an administrative law judge of the State Office of Administrative Hearings. After the administrative law judge rules on the case, the agency's board has the option of final approval, or, in limited circumstances, modification of the ruling. After board action, a licensee could request a rehearing or, if the rehearing were denied by the board, the licensee could file an appeal in the State District Court of Travis County.

Investigation Process



Please note: this chart represents a high-level overview of the investigation process and does not depict all possibilities that could exist in the process.

C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.

The regulation of embalmers began in 1903 with the creation of the State Board of Embalming, the predecessor agency to the Texas Funeral Service Commission. The agency regulated only embalmers until 1938 when funeral directors were added to its regulatory oversight. At the time of the agency's creation, its main focus was to protect the public health from improper embalming practices.

The agency's statutory requirements are set out in Chapter 651 of the Occupation Code. The agency has adopted rules of practice and procedure, as well as specific substantive rules pursuant to its statute at Title 22, Chapters 201 and 203 of the Texas Administrative Code. (These rules can be found on-line at <http://www.sos.state.tx.us/tac/>.)

The agency's statute, as described before, sets up a detailed structure and set of requirements for the licensing and regulation of funeral directors, embalmers, funeral homes, and commercial embalming establishments.

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?

At the time of the agency's creation in 1903, the intent of the law was focused more toward protecting the public health from improper practices associated with the disposition of bodies. The agency's role has changed to where its focus today is to protect the public from deceptive or unqualified embalmers or funeral directors.

The circumstances that have caused concern and resulted in the regulation of the funeral industry will likely continue. At the time of a family member's death, consumers are faced with making quick decisions on matters with which they have little experience and that are very costly. These decisions must be made at a time of emotional vulnerability for the consumer. Regulation is designed to ensure that consumers receive appropriate service and that providers do not take advantage of customers in this time of vulnerability. The Legislature has determined in both 1979 and 1991 that the regulation of the funeral service industry should be continued.

E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.

The program serves Texas' consumers of at-need need funeral services. No personal qualifications are required to take advantage of the agency's enforcement process. If a consumer has a complaint, however, the complaint must allege a violation of the agency's statute or rules.

Licensees could also be considered agency "customers." In fiscal 1999, TFSC issued 447 individual funeral director licenses, 36 individual embalmer licenses, 3,674 dual licenses for funeral director and embalmer, and 1,296 funeral establishment licenses. Detailed qualifications to hold these licenses exist in law and rules, and are summarized under Question B above.

F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.

This description, along with flowcharts, is included in Question B above.

G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

Before an inspection or investigation, the agency's staff may coordinate with local county or city health officials to obtain any information they might have on the performance of a funeral establishment. No memorandums of understanding (MOUs), interagency agreements, or interagency contracts exist with local agencies. TFSC does operate under two MOUs with state agencies, however, and these are discussed below in Question K.

H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

Please see Exhibit 5 in the section on funding for a breakdown of the agency's method of finance. The agency receives no federal grants, and operates under no funding formulas or funding conventions.

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

TFSC operates on a small appropriation and staff, given its licensing and enforcement responsibilities. For example, the agency currently has 2.5 FTEs to inspect more than 1,250 funeral establishments annually and conduct re-inspections as necessary; 1.5 FTEs must investigate all complaints, which are estimated to total 175 in fiscal 2000.

In fiscal 1998, the agency targeted 140 complaints for completion and actually finished 110. In that same fiscal year, the agency operated with a performance target of 94 days to finish complaints, and its actual performance was 181 days. In fiscal 1999, the agency targeted 145 complaints for resolution. Through the third quarter, the agency had actually resolved only 30. While the time to complete complaints was targeted at 99 days, the actual time through the third quarter was almost 296 days. A large part of the difficulty in fiscal 1999 has been the turnover and instability in staff. However, the agency's resources must stretch to perform its licensing and enforcement responsibilities.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

No other agency provides services that are identical to those of TFSC. However, the Department of Banking (DOB) is also involved in regulation of the funeral industry through its prepaid funeral contract program.

Funeral goods and services are marketed in two different ways. First, funeral services and merchandise are sold at the time of a person's death, which is often referred to as an "at need" arrangement. Second, they can be arranged in advance of death through a "preneed" contract with a funeral establishment, insurance company, or other entity. TFSC's statute regulates at-need services, and the DOB's program regulates the preneed funeral service market.

The two regulatory programs have various similarities and differences in how they are performed. The DOB licenses its preneed providers for one year, just as TFSC licenses funeral establishments for an annual period. To be relicensed, preneed providers must demonstrate fiscal soundness and general fitness, pay an annual fee, and submit an annual report to the DOB. TFSC's funeral establishment licensees also pay a renewal fee and their file is checked for any enforcement issues; however, these at-need providers do not submit an annual report.

The DOB conducts an annual on-site examination of its prepaid contract sellers. TFSC also is required to make an annual on-site inspection of each funeral establishment before issuing a new or renewed license. The DOB's examination samples preneed contracts and judges the provider's compliance with applicable laws. TFSC's inspection concentrates largely on the sufficiency of the funeral establishment's physical plant, proper disclosure of information to consumers, and general compliance with its statute. The DOB's self-evaluation report to the Sunset Commission says that seven field examiners work from offices located in Austin, Houston, Lubbock, and Dallas, although this staff also performs other functions not related to preneed. TFSC staffs the inspection function with 2.5 FTEs located in the agency's Austin headquarters. If DOB examiners find compliance or other problems, the agency schedules a follow-up examination in three months. TFSC also can schedule follow-up inspections, although no standard time period has been established for the follow-up.

Enforcement powers of the agencies' programs differ. The DOB's self-evaluation report says that the DOB can hold administrative hearings and assess administrative penalties, but that fines cannot be assessed if the problem is corrected within 30 days after notifying the licensee of the violation. TFSC has a range of sanctions, including administrative hearings and administrative penalties, but without the 30-day grace period. TFSC's statute also provides that TFSC may reprimand, revoke, suspend, probate the suspension, or impose any combination of these sanctions against licensed individuals or establishments.

The DOB's self-evaluation report notes that there are 446 prepaid funeral licensees. TFSC regulates 1,296 funeral establishments at the end of fiscal 1999.

K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.

Regulation of the funeral industry is fragmented, as seen from the discussion above. TFSC is part of two joint memorandums of understanding, which were developed as a result of requirements in Sunset legislation enacted in 1991.

The *first MOU* is between TFSC, the Department of Banking, and the Texas Department of Insurance (TDI). The primary reason for this MOU is to coordinate possible overlap related to at-need and preneed funeral arrangements. As covered above, TFSC takes primary regulatory responsibility for at-need services, while DOB regulates the preneed market. TDI is party to the MOU because that agency regulates providers of insurance policies that are often used to fund prepaid funeral contracts.

The goal of the MOU is to:

...develop an efficient and cost-effective way to ensure that the three agencies can readily exchange information and that there is effective and easy access by each of the three agencies to the information and data held by the other agencies relating to complaints and information regarding licensees in the prepaid funeral services area. (Texas Administrative Code, Title 22, Chapter 201, Section 201.15)

To accomplish this goal, the MOU lays out procedures to be used in investigating complaints, in sharing information among the agencies on complaints and investigations, and in referring complaints to the appropriate agency.

The *second MOU* is between TFSC and the Texas Department of Health (TDH). Under Chapters 193 and 195 of the Health and Safety Code, TDH has responsibility for administering death records in the state. TFSC's licensees are often the responsible party for filling out death certificates in the way prescribed by law and TDH. The MOU clarifies that TFSC has authority to inspect funeral establishments for violation of the vital statistics requirements (Texas Administrative Code, Title 25, Chapter 181, Section 181.27). The MOU also establishes guidelines for referring complaints to the appropriate agency.

L. Please provide any additional information needed to gain a preliminary understanding of the program.

A new Board of Commissioners took office at the time this SER was being written. Some of the procedures that are described here may have changed under this new board by the time of the on-site Sunset review of TFSC.

M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Why the regulation is needed

Several reasons can be cited for regulating this industry. A review of comparative licensing information provided by the International Conference of Funeral Service Examining Boards indicates that all but one state, Colorado, regulate the funeral industry. Funerals are expensive; as pointed out by the Federal Trade Commission in 1982, a funeral is the third largest expense many consumers will ever make, after a home and a car. The consumer must arrange for this big expense at a time when emotional factors of bereavement make it difficult to make careful, informed choices. In addition, consumers are often not very familiar with making funeral arrangements since the need occurs infrequently. Decisions must be made quickly, allowing little time to become familiar with the transaction. These conditions make consumers easy prey for unscrupulous funeral service providers.

These factors gave rise to regulation. Their continuing presence, as well as the ongoing custom of funerals in our society, is unlikely to change.

The scope of, and procedures for, inspections or audits of regulated entities

Please see the detailed description above under Question B.

Summarizing from Question B, TFSC inspects new funeral establishments before they are licensed, and is also required by statute to inspect licensed funeral establishments annually.

The process for annual inspections begins with TFSC identifying establishments to be inspected and checking the prior inspection record of these locations. The inspector travels to the location to make the inspection without notifying the funeral establishment of the visit.

After arriving at the funeral establishment, the inspector identifies himself or herself, requests that a representative of the establishment come along on the walk-through, and begins the inspection of the facility. The inspector uses a three-page checklist for the inspection that includes the various statutory and rule requirements that the facility must meet. Included on the form is a space to itemize prior violations and to indicate whether these problems have been corrected. The inspection typically takes from 45 minutes to several hours.

At the end of the inspection, the inspector explains the exceptions noted to the establishment's representative and leaves a copy of the inspection checklist with that person. The inspector explains that the establishment has 15 days to submit a report noting how deficiencies will be addressed.

Follow-up activities conducted when non-compliance is identified

The agency is authorized to conduct follow-up after inspections, but no standard procedure for follow-up, such as re-inspection after some length of time, is currently followed. Inspectors may check back to see if violations have been corrected.

Sanctions available to the agency to ensure compliance

TFSC may assess administrative penalties, reprimand, revoke, suspend, probate the suspension, or impose any combination of these sanctions against licensed individuals or establishments.

Procedures for handling consumer/public complaints against regulated entities

Please see the detailed description above under Question B.

Currently, the typical complaint process begins when the agency receives a complaint from a consumer. TFSC acknowledges receipt of the complaint in writing and sends the complainant a complaint form to fill out. Once returned, TFSC determines whether the complaint alleges a violation over which it has jurisdiction. If not, the complaint is sent to another agency with responsibility. If TFSC has jurisdiction, the agency initiates a formal investigation and sends a letter to the licensee requesting a response. The investigator makes telephone calls or in-person visits to determine the facts of the complaint.

Procedures used after this point will vary before and after September 1999, when the new Board of Commissioners took office. At this point, the new process has not been established. The old process depended in part on the use of the Complaint Review Committee composed of three board members. The new chair of the commission announced in the restructured board's first meeting on September 10, 1999, that the current commission is not assigning duties to committees but instead plans to act on all matters directly as a board.

In general, the statute gives a person 30 days to respond after a sanction is proposed. The accused may request a hearing, which is held before an administrative law judge of the State Office of Administrative Hearings.

After the administrative law judge rules on the case, the agency's board has the option of final approval, or, in limited circumstances, modification of the ruling. After board action, a licensee could request a rehearing or, if the rehearing were denied by the board, the licensee could file an appeal in the State District Court of Travis County.

N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.

Texas Funeral Service Commission		
Enforcement Program		
Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998		
	FY 1997	FY 1998
Number of complaints received	174	175
Number of complaints resolved	280	110
Number of complaints dropped/found to be without merit	76	44
Number of sanctions	125	28
Number of complaints pending from prior years	172	56
Average time period for resolution of a complaint	230 days	180 days
Number of entities inspected or audited by the agency	1,216	1,170
Total number of entities regulated by the agency	1,228	1,261

VII. Agency Performance Evaluation

A. What are the agency's most significant accomplishments?

The agency has gone through difficult times in fiscal 1999. Still, several accomplishments are worth noting:

- The agency has increased the number of continuing education hours required of its licensees. In 1997, licensees were required to complete ten hours of approved continuing education. Since then, the requirement has increased by two hours annually. In 2000, licensees are required to complete 16 hours of continuing education.
- The agency has worked with a small staff to accomplish its regulatory mission and to meet the administrative reporting and budgeting requirements of the state. When those requirements have not been met, the agency has worked hard to fix the deficiencies. For example, as reported in TFSC's last budget request, in a 1998 management controls audit conducted by the State Auditor's office the agency cleared 24 of the 26 audit findings within 18 months.
- TFSC has suffered from serious staff turnover in fiscal 1999 and resulting problems in completing its work. The agency is now rapidly moving ahead to employ new staff and continue its regulatory mission with the temporary administrative assistance of the Comptroller's office and the leadership of a restructured board.

B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.

Information on this question is limited due to turnover in the staff. At the staff level, reports indicate that staff meetings would be held to discuss agency operations and other problems on an irregular basis, possibly every one to three months. On a board level, the executive director would report on agency performance to the Board of Commissioners on a periodic basis.

The current commission is not assigning duties to committees but instead plans to act on all matters directly as a board. In addition, the process to evaluate agency performance under the new commission and, when selected, its new executive director, may be different than under the previous commission.

C. What are the agency's biggest opportunities for improvement?

Although most of the agency's board members and staff have short tenure with TFSC, several opportunities for improvement can still be suggested for consideration in both administrative and program areas.

Agency administration

- **Additional resources**—The agency operates on an appropriation of about \$500,000 annually and is authorized 10 FTE positions. These resources make it difficult to regulate an industry of almost 1,300 funeral establishments, their funeral directors, and their embalmers scattered throughout the state. Improvements would occur throughout the agency's functions with

greater resources, and with more disclosure to consumers of their rights to have complaints investigated by the Commission.

- **Retention of staff**—TFSC has been unable to retain staff. Most of the agency’s current employees were hired in the summer of 1999. Steps must be taken to ensure staff retention so that valuable experience is not lost.
- **Cross training**—Staff of a small agency must be able to pick up the slack when other employees are not available. Emphasis should be put on training staff to perform several functions.
- **Procedures manuals**—One basic improvement for staff would be to develop procedures manuals that are neither too detailed nor too brief in explaining agency processes. Currently, manuals do exist, but they are overly lengthy and not as useful as they could be.
- **Information systems**—The agency must rely frequently on its own licensing or enforcement staff to keep its network running. Contract help is available, but the agency has a small budget and contract personnel may not always be available when needed. In addition, agency software does not integrate information from licensing and enforcement functions so that complaints can be tracked and basic questions from the public answered without looking through hard files for basic information.

Licensing and enforcement

- **Processing of complaints**—This basic function has been slow because of lack of personnel and instability in the agency in fiscal 1999. It is anticipated that complaint processing will improve as the agency gains staff and experience and the new consumer oriented board goes into operation in fiscal 2000.
- **Follow-up on complaints and inspections**—An important aspect of enforcement is following up on violations to ensure compliance. The agency’s follow-up policy could be better defined to make it more systematic. Time for follow up is also limited, with 1.5 investigators and 2.5 inspectors to investigate about 175 complaints and almost 1,300 funeral establishments annually.
- **Improved communication with licensees**—One way to improve compliance is to educate licensees on requirements of the law and the agency’s expectation that those requirements be met. For example, unlicensed funeral personnel are often employed to pick up bodies immediately after death, although the law requires that “a funeral director or embalmer must direct and personally supervise the pickup of a dead human body on first call” (Occupation Code, Chapter 651, Subchapter I, Section 651.401 (a)). Licensees should be made aware of the requirements of the law and the consequences for non-compliance, and consumers should be better advised of the legal obligations of funeral directors.

D. How does the agency ensure its functions do not duplicate those of other entities?

As explained in previous sections, the agency operates under two joint memorandums of understanding. The first memorandum of understanding deals with prepaid funeral contracts and includes TFSC, the Department of Banking, and the Texas Department of Insurance. The second memorandum of understanding coordinates the operations of the Texas Department of Health and TFSC in enforcing the state’s vital statistics requirements.

E. Are there any other entities that could perform any of the agency’s functions?

In the past, the Texas Department of Health has been suggested as a possibility for performing the agency’s functions. In both prior Sunset reviews, the Sunset staff recommended transferring the agency’s functions to the Texas Department of Health. The Sunset Commission concurred with its staff in the first review in 1979, but did not adopt that staff recommendation in the review that began in 1989. In both Sunset reviews, the Legislature continued licensing and enforcement functions in the separate agency.

F. What process does the agency use to determine customer satisfaction and how does the agency use this information?

At each commission meeting, one agenda item is set aside for licensees and the general public to address the commission. At that time, they can express their opinion of the commission’s operations. In addition, commission members and staff meet with members of the public to hear their complaints.

G. Describe the agency’s process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.

The process for handling complaints has been described in Question B in the section titled “Guide to Agency Programs.” The agency maintains complaint files on each complaint. Typically, parties are informed each 90 days on the status of their complaint. The agency has no separate division or ombudsman for tracking and resolving complaints.

H. Please fill in the following chart. The chart headings may be changed if needed to better reflect the agency’s practices.

Texas Funeral Service Commission		
Exhibit 15: Complaints Against the Agency – Fiscal Years 1997 and 1998		
	FY 1997	FY 1998
Number of complaints received	0	0
Number of complaints resolved	0	0
Number of complaints dropped/found to be without merit	0	0
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	N/A	N/A

I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?

Each open records request is logged in and evaluated to determine whether information requested is protected from disclosure. Certain investigative information, as well as certain information on active court cases, is exempted from disclosure under the law. If questions arise as to whether requested information should be made public, the agency requests advice from the Attorney General's office.

Requests for information that can be made public are assigned to a staff member, who collects the information and drafts a response letter for review by the executive director. After review, the requested information is forwarded to the requesting party.

J. Please fill in the following chart:

Texas Funeral Service Commission		
Exhibit 16: Contacts		
INTEREST GROUPS		
(groups affected by agency actions or that represent others served by or affected by agency actions)		
Group or Association Name/ Contact Person	Address	Telephone Number Fax Number E-mail Address
Commonwealth Institute of Funeral Service Patsy Tamayo	415 Barren Springs Drive Houston, Tx 77090	Phone: (281) 873-0262 Fax: (281) 873-5232 E-mail: egposton@pdq.net
Dallas Institute of Funeral Service Ken Whittaker	3909 South Buckner Blvd. Dallas, Tx 75227	Phone (214) 388-5466 Fax: (214) 388-0316 E-mail: diss@mindspring.com
San Antonio College, Mortuary Dept. Felix or Michelle Gonzales	1300 San Pedro San Antonio, Tx 78212	Phone: (210) 733-2905 Fax: (210) 733-2907 E-mail: fegonzal@accd.edu
Amarillo College, Mortuary Science Dept. Jason Altieri	P.O. Box 447 Amarillo, Tx 79178-0001	Phone: (806) 371-5188 Fax: (806) 345-5571 E-mail: jcaltier@actx.edu
Consumers Union of the U.S., Inc. Rob Schneider	1300 Guadalupe, Ste. 100 Austin, Tx 78701-1643	Phone: (512) 477-4431 Fax: (512) 477-8934 E-mail: schnro@consumer.org
Public Citizen, Inc. Tom "Smitty" Smith	1800 Rio Grande Austin, Tx. 78701	Phone: (512) 477-1155 Fax: (512) 479-8302 E-mail: smitty@greenbuilder.com

Texas Funeral Service Commission		
Exhibit 16: Contacts		
AARP Mary Lee Comer	98 San Jacinto Blvd., Ste. 750 Austin, Tx. 78701	Phone 1: (512) 480-9797 Phone 2: (512) 794-9403 Fax: (512) 480-9799 E-mail: carfaxx@swbell.net
Austin Memorial and Burial Information Society Lamar Hankins	P.O. Box 4382 Austin, Tx. 78765	Phone: (512) 480-0555 Fax: None E-mail: ambis@corridor.net
Gray Panthers Charlotte Flynn	3710 Cedar St. #15 Austin, Tx 78705	Phone: (512) 458-3738 Fax: 458-9727

INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS		
(that serve as an information clearinghouse or regularly interact with the agency)		
Group or Association Name/ Contact Person	Address	Telephone Number Fax Number E-mail Address
Texas Funeral Directors Association Jim Garrison	1513 South Interstate 35 Austin, Tx. 78741	Phone: (512) 442-2304 Fax: (512) 443-3559 E-mail: tfda@io.com
Independent Funeral Directors Association of Texas Chester Cary	P.O. Box 152869 Dallas, Tx. 75315	Phone: (214) 428-4686 Fax: (214) 426-5782
International Conference of Funeral Service Examining Boards, Inc. Dr. Kevin Hatfield	P.O. Drawer E Huntsville, Arkansas 72740	Phone: (501) 738-1915 Fax: (501) 738-1922 E-mail: cfseb@cfseb.org
National Funeral Directors Association Robert Harden	13625 Bishop's Drive Brookfield, WI 53005	Phone: (800) 228-6332 Fax: (414) 789-6977 E-mail: nfda@nfda.org
National Funeral Directors and Morticians Association Sharon Seay	3951 Snapfinger Parkway, Ste. 570 Omega World Center Decatur, Georgia 30035	Phone: (800) 434-0958 Fax: (404) 286-6573 E-mail: nfdma@mindspring.com

LIAISONS AT OTHER STATE AGENCIES		
(with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)		
Agency Name/ Relationship/ Contact Person	Address	Telephone Number Fax Number E-mail Address
Office of the Governor Budget analyst Antoinete Humphrey	Capitol Building P.O. Box 12428 Austin, Tx. 78711	Phone: (512) 463-1778 Fax: (512) 463-1880 E-mail: ahumphrey@governor.state.tx.us
Legislative Budget Board Analyst (budget and performance) Rick Travis	105 W. 15th, Ste. 300 78701 P.O. Box 12666 Austin, Tx 78711-2666	Phone: (512) 463-1200 Fax: (512) 475-2902 E-mail: rick.travis@lbb.state.tx.us
Office of Attorney General Assistant Attorney General Frank Knapp	209 W. 14th St. 78701 P.O. Box 12548 Austin, Tx. 78711-2548	Phone: (512) 475-4195 Fax: (512) 320-0167 E-mail: frank.knapp@oag.state.tx.us
Department of Banking Director, Special Audits & Budget Stephanie Newberg	2601 N. Lamar Austin, Tx. 78705-4294	Phone: (512) 475-1280 Fax: (512) 475-1313 E-mail: stephanie.newberg@banking.state.tx.us
Texas Department of Health Bureau of Vital Statistics Richard Bays	1100 W. 49th St. Austin, Tx. 78756-7111	Phone: (512) 458-7692 Fax: (512) 458-7711 E-mail: bvsweb@tdh.state.tx.us

VIII.76th Legislative Session Chart

Fill in the chart below or attach information if it is already available in an agency-developed format

Texas Funeral Service Commission		
Exhibit 17: 76th Legislative Session Chart		
Legislation Enacted in the 76th Legislative Session		
Bill Number	Author	Summary of Key Provisions/Intent
HB 2255	Swinford (author) Duncan (sponsor)	Modifies requirements related to the merchandise display that funeral establishments must have. Existing language required the display to contain five or more adult caskets. The bill added that two of these caskets must be full-size, and that the least expensive casket be full-size also.

Texas Funeral Service Commission Exhibit 17: 76th Legislative Session Chart		
HB 3516	Marchant (author) Carona (sponsor)	Made numerous changes in the structure and operation of TFSC, including the following: <ul style="list-style-type: none"> • reduced the size of the commission from 9 to 6, with four public members and 2 professional members; • required that professional members be licensed as <i>both</i> an embalmer and a funeral director, rather than <i>either</i> an embalmer or funeral director; • specified that the Governor designate a public member of the commission as its presiding officer, and that commissioners elect a public member to serve as assistant presiding officer; • required that a commissioner with a personal or private interest in a matter pending before the commission cannot vote or participate in an informal conference related to that matter, as also provided in Section 572.058 of the Government Code; • eliminated authority for the agency to employ an in-house general counsel; • changed reciprocity requirements to, among other things, allow the commission to waive certain license requirements for an applicant from another state that does not have license requirements substantially equivalent to those of Texas; • gave the commission authority to exempt a funeral establishment from having an embalming preparation room if, among other things: no embalming would be performed at the funeral home, and the establishment owns another facility within 50 miles where embalming services can be performed; • required, rather than authorized, disciplinary hearings to be held before an administrative law judge employed by the State Office of Administrative Hearings; • eliminated the commission's authority to contract for the services of an investigator; and • eliminated specific licensing or employment requirements that an in-house investigator must meet to be hired by the commission.
SB 440	Moncrief (author) Capelo (sponsor)	Changed the Sunset date for TFSC from 2003 to 2001.
HB 2954	Gray (author) B. Brown (sponsor)	Also changed the Sunset date for TFSC from 2003 to 2001.

Legislation Not Passed in the 76th Legislative Session

Bill Number	Author	Summary of Key Provisions/Intent/Reason the Bill did not Pass

Self-Evaluation Report

HB 502	Tillery (author)	Would have eliminated the authority of TFSC to employ or contract with persons to investigate complaints. The bill was left pending in the House Public Health Committee.
HB 2756	Pitts (author)	Would have abolished the TFSC and transferred the agency's licensing and regulation functions to the Texas Department of Health. The bill also would have created a six-member funeral services advisory committee composed of four public members and two members licensed as both a funeral director and an embalmer. The bill was reported from the House Public Health Committee as substituted; the last action on the bill was its consideration in the House Calendars Committee.
SB 1077	Carona (author)	Companion to HB 3516, which was enacted into law.

IX. Policy Issues

Many of the policy issues that have been raised in the past two Sunset reviews of TFSC have been addressed by the Legislature over the last 20 years. Responding to these issues, the Legislature has required, for example, that the agency's Board of Commissioners have a majority of consumers; that memorandums of understanding exist to coordinate overlapping areas of responsibility among the Texas Department of Health, the Texas Department of Insurance, the Department of Banking, and the TFSC; and that consumer information be disclosed to customers by funeral service establishments. In addition, HB 3516 of the 76th Legislature recently addressed further concerns about the regulation of the funeral industry.

Here, TFSC has identified a few additional policy issues for consideration on a preliminary basis. Discussion covers both arguments for and against the issue. The agency may add to this partial list as its Board of Commissioners gains additional perspective on the industry. Inclusion of a policy issue here *does not indicate a position of the commission* on that issue.

A. Brief Description of Issue

Should the regulation of the at-need funeral industry be combined in the Texas Department of Health?

B. Discussion

The question of organizational consolidation is a standard issue considered by the Sunset Commission. In two prior Sunset reviews, Sunset staff have recommended consolidation of the agency's functions in the Texas Department of Health. With this history, the issue may come up again for consideration.

In support of consolidation, TDH already supports several licensing agencies in the health care field and may have greater administrative resources to deal with state reporting requirements. TDH also has responsibility for some funeral-related activities through its administration of vital statistics laws, and consolidation would help coordinate these functions. Although not a majority, about one-third of the states regulate the funeral industry through an agency having other functions.

In opposition to consolidation, TFSC provides a clear focus on the regulation of the funeral industry as a separate state entity having no other responsibilities. Most states still regulate the industry through a separate agency like the TFSC. The Legislature has never opted for consolidation. Just this last session, the Legislature restructured the agency for improved operation as a freestanding organization, and chose not to enact other proposed legislation that would have moved funeral service regulation to TDH.

A. Brief Description of Issue

Should funeral homes be required to make additional disclosures to consumers and regulators?

B. Discussion

The law already requires funeral homes to make a variety of disclosures to consumers. For example, funeral homes must present to consumers a price list showing the cost of funeral services and merchandise. Questions have been raised as to whether funeral homes also should make other disclosures.

The commission's rules require the funeral home to obtain written authorization from the consumer to embalm/transport a body (Texas Administrative Code, Title 22, Section 203.22). This authorization gives the funeral home permission to embalm at another facility equipped for embalming. Funeral homes are not required to disclose to consumers whether the deceased actually will be embalmed by the funeral home directly responsible for the funeral, or by a contracted embalming service at another location. In addition, although the authorization also gives permission for embalming by provisional licensees, funeral homes are not required to disclose whether a provisional licensee actually will be performing the work. Finally, funeral establishments are not required by law to disclose their ownership to the TFSC.

In support of additional disclosure requirements in law or rule, it could be argued that consumers have a right to know who will actually be doing the embalming of family members, and how experienced that person may be. As a matter of respect, consumers should be told if, and to what location, the body will be transported for embalming. These disclosures would give the consumer more control over the transaction, and ultimately help build greater trust between the funeral director and the bereaved family. Disclosing facility ownership to the TFSC would also be beneficial. TFSC's law requires that the agency cannot issue an establishment license if a partner has been convicted of a felony, held a license that has been suspended or revoked, or violated certain laws and rules. TFSC cannot enforce this requirement effectively without knowing establishment ownership.

In opposition to additional disclosure requirements, it might be argued that funeral homes must already provide a great many disclosures, as well as explanatory information, to consumers. Funeral homes must also meet detailed licensing requirements of the state. Although problems do arise between consumers and funeral homes, serious incidents are relatively rare. The state should not add additional disclosure requirements without careful consideration.

A. Brief Description of Issue

Should additional requirements be adopted pertaining to the transportation of a body to an embalming facility off-site from the funeral home directing the service?

B. Discussion

Currently, the commission's rules require the funeral home to obtain authorization to transport a body (Texas Administrative Code, Title 22, Section 203.22). The rules do not specify conditions that must be met in transporting a body to an embalming facility off-site from the funeral home in charge of the service.

Those arguing for such requirements would point out that the time lag between death and embalming is important because of the rapid degeneration of body tissue. Environmental conditions, such as temperature

and humidity, also affect the condition of the body and the embalming procedure. Health-related concerns can arise from transportation of bodies that might be infected with communicable diseases. These considerations argue for clearly stated transportation standards that funeral establishments are expected to meet.

Persons arguing against this issue might say that, although these considerations are important, few problems seem to have arisen from improper transportation of bodies. TFSC already must enforce many standards with a small staff, and adding to the list of requirements that must be enforced would add to that regulatory burden. Meeting additional requirements, such as a permissible temperature range, could also cause additional equipment expense for funeral homes.

A. Brief Description of Issue

Should continuing education requirements be modified?

B. Discussion

More than 50 percent of the states require some amount of continuing education, according to 1998 information from the International Conference of Funeral Service Licensing Boards. Requirements range from one to 24 hours annually for states having requirements, with the average being about 8 hours. In Texas, the commission by rule requires 14 continuing education hours in 1999 and 16 continuing education hours in 2000.

A national debate has been going on to define an appropriate standard for continuing education hours. Proponents of continuing education argue that a profession should continue to expand its knowledge, and that some minimum number of hours should be required, although that minimum number of hours is unclear. Opponents point out that requiring a large number of continuing education hours is burdensome on small businesses, minorities, and establishments in rural areas of the state that are not close to training sites. Texas is ahead of the average in its requirements.

A. Brief Description of Issue

Should basic educational requirements to qualify for licensure be increased to a baccalaureate degree?

B. Discussion

Although not yet a pressing issue nationally, this issue is beginning to emerge. Currently, it appears that no state requires an undergraduate degree for licensure. Educational requirements vary. States may require simply a high school diploma, graduation from an accredited school of mortuary science, an associates degree, or completion of a certain number of college hours. Texas requires graduation from an accredited mortuary science school.

Persons favoring additional education argue that better educated professionals help to raise standards in the industry and promote public confidence. Persons against requiring additional education think that salaries may not be sufficient to match the expectations of individuals with more education. Higher education would be less affordable to minorities, and mortuary schools would have to make major adjustments in their curriculum or be within a reasonable distance of a four-year liberal arts college.

A. Brief Description of Issue

Should oral exams be eliminated?

B. Discussion

The agency's statute authorizes the commission to interview individuals seeking licensure. The agency's rules require that "each provisional licensee must appear before at least one member of the commission for an oral exit interview in order to demonstrate proficiency related to the duties of a funeral director and/or embalmer" (Texas Administrative Code, Chapter 203, Section 203.6(j)).

Under the old nine-member commission, one or two commission members examined an individual seeking licensure. One of the examining commissioners was usually a professional member, which ensured technical expertise to evaluate answers to a standard list of questions. Examinations were held at scheduled commission meetings, and the number of examinees present could exceed 50.

Circumstances have changed with the new six-member commission. This commission has two instead of four professional members to accommodate any need for expertise in oral exams. These members would be spread thin in trying to be present at every oral exam.

In support of eliminating this part of the licensing process, it could be argued that professional expertise in oral exams is necessary, and that the increased workload on professional members would be unrealistic. Besides, potential licensees must already pass a national board test as well as a test on state laws and regulations, so one more test may not be necessary. Also, some argue that oral exams in general tend to be less objective than carefully constructed written tests.

In support of keeping oral exams, some way possibly could be found to ease the workload on professional members. For instance, public members could be trained or gain experience over time to judge correct answers to specific standard questions. In addition, the oral interview is an important way for the commission to judge first-hand whether an applicant is ready to be licensed.

By the time that the Sunset staff begins its evaluation of TFSC, the new commission may have addressed this issue.

X.Comments

No additional comments are offered at this time.