

The logo for the Texas Sunset Advisory Commission is a dark blue semi-circle with a white border. Inside the semi-circle, the words "Texas", "Sunset", "Advisory", and "Commission" are stacked vertically in a white, serif font.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

State Board of Barber Examiners

**A Staff Report
to the
Sunset Advisory Commission**

1991

STATE BOARD OF BARBER EXAMINERS

December 1989

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BACKGROUND

Creation and Powers

The barber industry became regulated in 1921, when the 37th Legislature enacted a law requiring persons owning, operating, or managing barber shops or beauty parlors to register with the State Board of Health. This legislation made the first statutory distinction between barber shops and beauty parlors.

The powers of the State Board of Barber Examiners have been changed and modified numerous times. In 1929, the 41st Legislature further defined the practice of barbering when it created the Board of Barber Examiners. In 1961 the board was authorized to examine and license barber school teachers. An amendment in 1967 authorized the board to collect fees and renewal fees for shop permits. In 1975, the statute was again amended and the board was given authority to regulate, examine and license manicurists, wig specialists and wig instructors, and to issue permits for the operation of wig salons and wig schools.

The agency's main responsibilities are to prescribe and maintain standards for persons practicing as barbers, instructors, shop owners or salon owners and to issue permits and licenses to qualified individuals, shops and schools. The board also supervises the course of instruction taken by barbers, instructors and specialists such as manicurists, barber technicians and wig specialists. Complaints related to barbering are investigated and processed by agency staff.

Since 1983, a rider in the appropriations bill has required that an interagency contract be signed between the State Board of Barber Examiners and the Texas Cosmetology Commission for the purpose of implementing a statewide crossover inspection and enforcement program for shops with both licensed cosmetologists and barbers. The State Board of Health (SBH) has the authority to establish sanitary rules and regulations for the conduct of barber shops and barber schools.

Policy-making Body

The board has six members appointed by the governor and confirmed by the senate for staggered six-year terms. Two members must be licensed barbers actively engaged in the practice of barbering during the previous five years and who do not hold a shop permit. One member must hold a shop permit and have been actively engaged in the practice of barbering during the previous five years. One member must hold a permit to operate a barber college or school. The two remaining members are public citizens who are not regulated by the board and have no financial interest in any facet of the barbering industry. The SBBE elects one of its members to serve as president. The statute requires each member to attend at least half of the regularly scheduled meetings or forfeit membership on the board.

The duties of the board are to prescribe and maintain standards for persons practicing as barbers or in specialties; administer licensing examinations; serve as examiners for the barbering practical examination; and conduct hearings and impose sanctions for violations of the agency statute.

Funding and Organization

The board is funded from fee revenues and in fiscal year 1989 the legislature appropriated \$483,092 to the State Board of Barber Examiners from its special fund 040 in the state treasury. Board expenditures are divided into four major activities as follows: administration \$115,100; registration, licensing and testing \$45,482; inspections \$278,718; and computer services \$43,792. Exhibit 1 shows percentages of board activities by expenditure. Licensing fees and penalties have generally generated more revenue than the amount appropriated to the board by the legislature. Revenue which exceeds 33 percent of the following year's appropriation reverts to the General Revenue Fund. Exhibit 2 shows agency expenditures, revenues, and appropriations for fiscal years 1983 through 1989.

Exhibit 1
Board Expenditures by Activities
Fiscal Year 1989

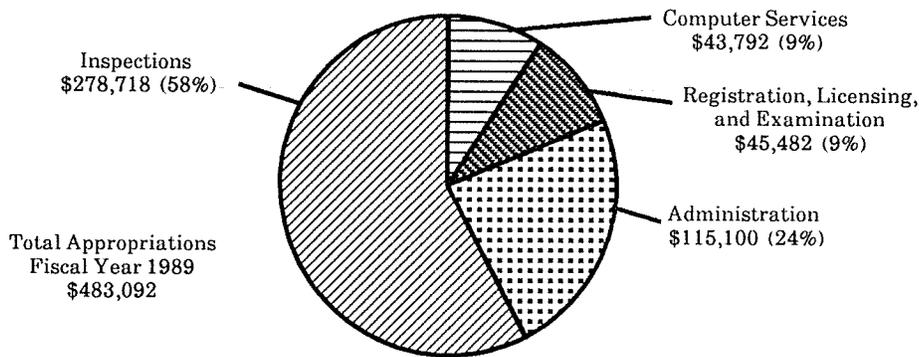
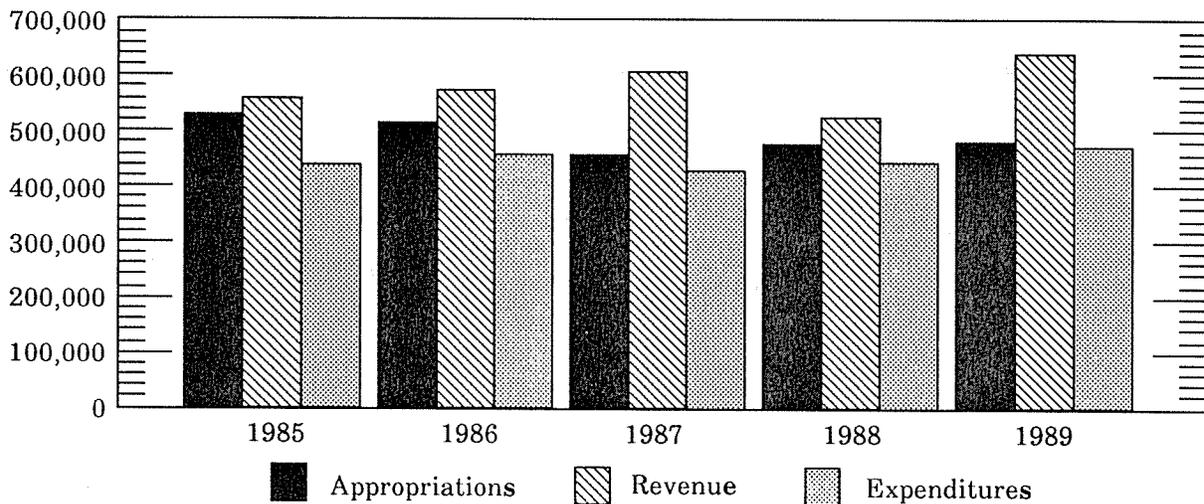


Exhibit 2
Appropriations, Revenue, and Expenditure
Fiscal Years 1985 - 1989



The State Board of Barber Examiners is authorized 15 full-time positions and one part-time position. The agency currently employs nine full-time inspectors and one part-time inspector to perform inspections throughout the state. Six employees perform administrative duties in the state office in Austin, Texas. Exhibit 3 shows the organizational structure of the SBBE and Exhibit 4 shows the location of inspection regions throughout the state.

Exhibit 3
State Board of Barber Examiners
Plan of Organization

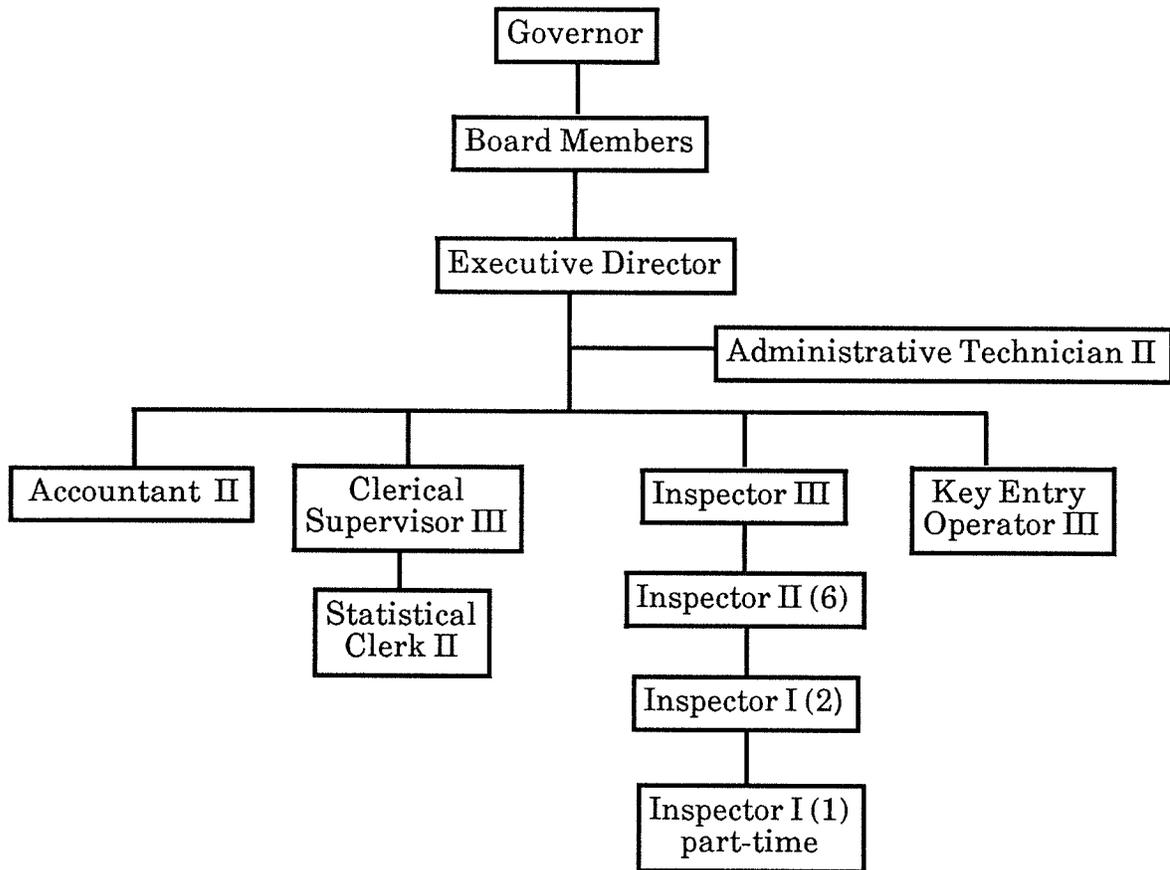
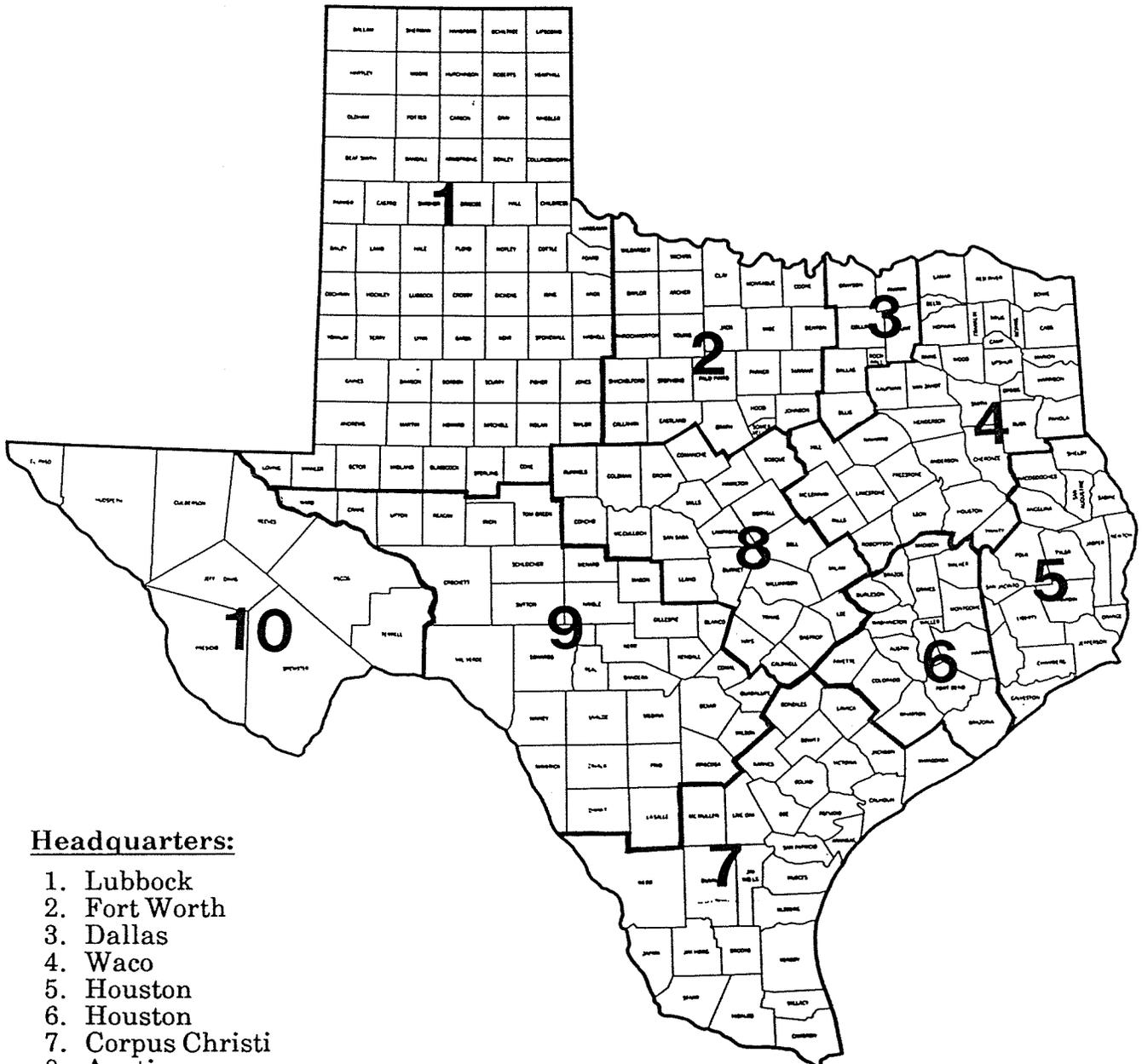


Exhibit 4 Location of Inspections Regions



Headquarters:

- 1. Lubbock
- 2. Fort Worth
- 3. Dallas
- 4. Waco
- 5. Houston
- 6. Houston
- 7. Corpus Christi
- 8. Austin
- 9. San Antonio
- 10. El Paso

Programs and Functions

Licensing

The registration, licensing and testing division is responsible for issuing and renewing certificates of registration (licenses), permits and reciprocal licenses, as well as barber shop and barber school permits. The agency also issues licenses for manicurists, wig specialists, wig instructors, wig salons, and wig schools, and certificates for barber school teachers. The division also registers applicants for the examination and notifies those applicants of their scores. At the end of fiscal year 1989, there were 21,395 licensed barbers, approximately 8,500 permitted shops and 35 permitted barber schools in the state of Texas. Exhibit 5 shows the number of licenses granted by the SBBE during fiscal years 1987 through 1989.

Exhibit 5
Licenses Granted FY 1987 through FY 1989
Distribution of Licenses

License	Fiscal Year 1987	Fiscal Year 1988	Fiscal Year 1989
Barber	*	20,945	21,395
Teacher	*	208	223
Non-Barber	*	584	668
Shop Permit	9,631	7,859	8,597
School Permit	38	39	35

*Agency data unavailable for years prior to 1988; however, there were 21,730 total individual licenses in fiscal year 1987.

In order to be licensed as a class A registered barber an individual must be at least 16 years of age and pass a written and practical examination. Individual licenses are renewed biennially on a staggered basis for a fee of \$60. Licenses expired for more than 30 days, but less than five years may be renewed with a payment of a \$30 late fee for each year or part of a year the fee is late. Licenses expired for more than five years can be renewed upon payment of an examination fee, passing the examination and payment of a license fee of \$50.

The written examination is prepared by the executive director and administered and scored by members of the board and staff inspectors. Applicants pay \$10 to take the written and practical examination. The written examination consists of sections covering style and technique, rules and regulations, and health and sanitation. The practical examination consists of proper sanitation and health procedures, a shampoo, a shave, a tapered haircut and one of the following styling procedures: a mock color retouch; a blow dry hair style; application of three permanent wave rods; a facial massage; or a manicure.

The statute authorizes the board to issue a license, certificate, or permit to an out-of-state applicant who has a corresponding license, certificate, or permit issued by another state and pays a \$90 application fee. The other state must have requirements similar to those prescribed in the statute. The SBBE has reciprocity contracts with 21 states. Out-of-state applicants from states with which Texas does not have a reciprocity contract must attend an interview in Austin and pay a \$90 application fee. The board checks the applicant's age, hours of education, and work experience. If approved, the applicant may receive a temporary work permit which allows the out-of-state applicant to work until the next scheduled examination (approximately 30 days). If the applicant fails to appear for the examination or fails the examination, the work permit may be renewed until the following scheduled examination. If the applicant fails to appear for the second examination, or fails the examination a second time, the work permit may not be renewed and the applicant may no longer work in Texas, but the applicant may continue to take the examination an unlimited number of times.

The board also issues permits for barber shops and barber schools. A new shop owner must submit, within three days of opening, an application to the board along with a \$35 inspection fee. The applicant must hold a class A registered barber license and the shop must meet the minimum health requirements of the Department of Health and the rules and regulations of the board. Each shop pays a biennial renewal fee of \$35 and a \$30 late fee if the shop permit has been expired 30 days or longer.

A barber school must demonstrate that it meets the requirements prescribed in the statute before a permit is issued. The school must be of a specified size and maintain a required student/teacher ratio, have modern restrooms, a hard-surface floor covering, a minimum of 20 barber chairs and equipment, and teach a prescribed curriculum. Schools pay an initial permit fee of \$1,000 and an annual renewal fee of \$300.

Enforcement

The SBBE conducts periodic inspections of shops and schools throughout the state. The purpose of those inspections is to protect the consumer by ensuring that licensees, shops, and schools are in compliance with the Texas barber law. Also, inspections monitor compliance with the sanitation and sterilization rules and regulations established by the Department of Health. Inspections are unannounced and include checking the expiration dates on licenses and permits, and surveying the condition of facilities, barbering equipment and tools. By agency policy, the shops are generally inspected every 90 to 120 days. Both individuals and establishments are graded and the results are sent to the agency. Exhibit 6 shows the number of inspections performed in fiscal years 1987 through 1989.

Exhibit 6
Trends in Agency Inspections

Type	Fiscal Year 1987	Fiscal Year 1988	Fiscal Year 1989
Shop Inspections	22,801	22,434	22,269
School Inspections	342	346	313

Consumers, other licensees and the agency itself may initiate a complaint against an individual, a shop or a school for an alleged violation of the barber law. An investigation is conducted on each documented complaint. Documented complaints are those that are found to be within the agency's jurisdiction to resolve. If a violation is found, the inspector may issue a warning, or correct the problem on the spot and record the violation in the complaint file. There were 76 documented complaints resolved in this manner in fiscal year 1988 and 160 in fiscal year 1989. If a pattern of violations is found, or in the case of unlicensed activity, the case is referred to a justice of the peace court in the county of jurisdiction. The court, upon conviction, is required to issue a fine of not less than \$25 nor more than \$200. There were 233 documented complaints filed in justice of the peace courts in fiscal year 1988 and 186 in fiscal year 1989.

Complaints and Disposition

In some cases, the agency uses an informal resolution process, in which the executive director resolves the complaint by phone or personal visit. Additionally, the board has the authority to conduct formal hearings and, if findings warrant, to apply the following sanctions: deny, suspend, revoke, or refuse to renew the certificate, permit or license. The board held one formal hearing, in 1989, where a school license was suspended for three days. The board has not held any other formal hearings or revoked or suspended any licenses during the past five years.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

Prior Sunset Review

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

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

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

- the use of computer technology to improve performance and better achieve agency objectives;
- the modification of the statute relating to grounds for license revocation or suspension to include "incompetency or negligence" along with current language regarding "gross malpractice"; and
- the request for an attorney general's opinion regarding the interpretation of the statutory language that prohibited any board employee from selling barber supplies or engaging in any other business which deals directly with barbers, barber shops or barber schools.

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

- modification of the board's composition to reflect only the regulated portions of barbering and include one-third public membership;

- assumption of the responsibility of the regulation of private barber schools by the Texas Education Agency;
- deletion of barber school hour prerequisites to take the certification exam;
- replacement of reciprocal licensure with certification by endorsement;
- revision of complaint processing procedures to allow complaint tracking and complaint notification;
- omission of all provisions which have the effect of restricting advertising and competitive bidding; and
- addition of conflict of interest provisions which apply to commission and board of health members and employees who administer or enforce the act.

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

Approach to Current Review

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

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

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

- review of previous sunset staff recommendations;
- review of documents developed by the agency, legislative reports, other states and books containing background resource material;
- interviews with the agency staff;
- visits to several barber shops in the Austin area with an inspector;

- attendance at bi-monthly board meetings;
- interviews with other state agency personnel that interact with the agency;
- phone interviews with other states; and
- meetings with interest groups and individuals affected by the board.

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

Assessment of Need to Regulate

Assessment of Need to Regulate

ISSUE 1: The Board of Barber Examiners should be abolished and the oversight of the barber schools in Texas should be assumed by the Texas Education Agency.

BACKGROUND

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

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

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

The Texas Board of Barber Examiners was created in 1907, but the legislation was declared unconstitutional primarily due to discriminatory language which exempted certain persons from regulation. In 1921, the legislature enacted a law requiring persons "owning, operating, or managing barber shops or beauty parlors" to register with the Texas Board of Health. The law set out mandatory sanitation provisions but no enforcement mechanism was provided. Thus, the legislation was little more than a registration law.

Over time, the focus of the laws regulating barbering have expanded beyond the original sanitation provisions. The law now provides for licensure of barbers, manicurists, wig specialists, wig instructors, barber teachers, barber technicians, barber shops, wig salons, wig schools and barber schools and a large proportion of the agency's work involves ensuring that only persons with a valid current license are allowed to practice barbering.

The sunset review of the agency in 1979 resulted in the sunset commission's recommendation that the level of regulation being provided by the board could be reduced without subsequent damage to consumers. The commission recommended that licensure be replaced with a one-time certification for barbers that would be valid indefinitely, and the regulation of wig specialists, manicurists, and barber instructors was not needed. Finally, the sunset commission recommended the transfer of responsibility for regulating private

barber schools to the Texas Education Agency. These recommendations were not adopted by the 66th Legislature.

Neither the agency's functions nor the types of problems handled by the agency have changed significantly since the review in 1979 as the findings below substantiate. The current evaluation of the need to continue regulating the various barber occupations, shops and schools indicated the following:

- ▶ There is no serious public health reason for the board to regulate barbers, wig specialists or manicurists. The Texas Department of Health reports that there have been no diseases, including the AIDS virus, which have been reported to have been acquired through the practice of barbering, although head lice could potentially be spread if proper techniques were not followed for cleaning equipment.
- During the review, 62 complete complaint records received by the agency were examined for the period from January 1987 through February 1989. Ten of the complaints, or 16 percent, involved allegations that shops were dirty or that the barber did not properly clean tools or linens. Such complaints might be considered related to public health, however, in at least nine of the ten cases, no punitive action against the licensee was taken. In the remaining case, the inspector advised the licensee to close the shop until the problem was corrected. The review also examined all of the 87 cases filed with the justice of the peace courts which were closed between September 1988 and August 1989. Only 13 percent, or 11 cases, involved allegations that a shop was unsanitary. Of these 11 cases, fines resulted in six instances, three cases were dismissed and in the remaining two cases, the disposition could not be determined from an examination of the record.
- Sunset reviews of barber agencies in other states reported that the potential for transmission of disease through barbering is slight. The Colorado sunset agency reported in 1989, for example, that the risk of parasitic infections was not supported statistically in the state. One state, Alabama, has not regulated barbers since 1982. No identifiable sanitation, health or safety problems resulted from the deregulation of the profession in this state. Appendix, Exhibit B lists a number of states in which sunset reviews found that health risks due to barbering were minimal, and the specific findings.
- The Texas Department of Health can deal with sanitation problems in barber shops under its authority under the Communicable Disease Act.
- ▶ The type of complaints and violations handled by the agency are not the type that pose a serious risk to the safety or welfare of the public.
- The problems identified by the agency through the inspection process have been of a limited magnitude. The agency inspectors must generally determine when cases are of a serious enough nature to warrant seeking punitive action in justice of the peace courts. A review of 87 cases filed in justice of the peace courts in fiscal year

1989 found that 70 cases, or 80 percent, of the cases involved expired individual licenses or shop permits or an allegation that a person cut hair in a home rather than a shop. Other cases involved unauthorized use of a barber pole, selling items unrelated to barbering in the shop or sleeping in a barber shop. As mentioned earlier, only 11 cases alleged unclean shops.

- Unlike the type of loss a person might incur from the purchase of a faulty automobile or a poorly constructed home, the loss to a consumer from a bad haircut or manicure is considerably more limited.
- ▶ The actions taken by the agency to resolve its inspection findings or the complaints it receives are minimal and ineffective. The board has not revoked a license since 1984 and has no record of any revocations before that time. For example, of 1,156 shops inspected during September 1989, complaints were filed in only 12, or one percent of these inspections. Eleven of these complaints involved licensing matters and one alleged an unclean shop.
- ▶ Other avenues exist for consumers to recover damages which result from the wrong doing of a barber. Anyone injured in any way by another may seek to recover damages through civil court procedures through justice of the peace courts. This method is relatively inexpensive for the injured person. The attorney general is responsible for administering the Deceptive Trade Practices Act which enables the office to investigate and file suit to stop activities which are deceptive. The office can formally pursue any case that it determines affects the public interest and, in some cases, can obtain restitution for the aggrieved person. Such formal action may be unlikely with the type of problems the agency has dealt with, however. Staff of the attorney general's office also attempt to informally mediate all complaints they receive and have indicated that this is the action they would take if they received a complaint typical of those the barber board currently handles. The office uses six regional locations to handle over 20,000 various complaints per year.
- ▶ The fact that chemicals are used in the practice of barbering does not justify regulation.
- Although some barbers indicate that the public can be damaged by the wrongful or inexperienced use of chemicals, the same chemicals used by barbers are also available to the public through beauty supply sources. The most common problem resulting from chemical use is skin irritation or scalp burns. A review of the complaints received by the board in 1989 did not identify any cases involving an allegation of damage from chemicals. The agency's executive director reported that such cases are generally handled by the consumer through the court systems. A review of the cases filed by the board in justice of the peace courts in fiscal year 1989 also indicated that none of the cases involved alleged damage by chemicals.

- Some barbers indicate that the chemicals used in shops are more dangerous than those used by the public and therefore need to be regulated. A 1989 Colorado sunset study reported that two major manufacturers that distribute chemicals to barber shops were contacted and neither said that products labeled "to be used by professionals only" are more dangerous than those sold retail. They reported that while the concentration of chemicals used by barbers could be higher than those used by the general public, the danger is not necessarily higher. However, even if the use of chemicals by barbers pose a danger to the public, other avenues of regulation for chemicals already exist. The U.S. Food and Drug Administration, for example, evaluates consumer complaints, maintains registries of cosmetic formulations and consumer adverse reactions, inspects cosmetic plants and products and takes regulatory action against products and ingredients found to be hazardous.
- ▶ The duties of the barber, manicurist, wig specialist and barber technician are not so complex as to preclude the customer from assessing whether the services provided were appropriate. The majority of complaints that come from consumers involve matters that are simple in nature, such as allegations that a shop is not clean. Consumers can deal with such problems on their own without having to depend on a regulatory agency.
- ▶ The barber occupation has adequate marketplace incentives for self regulation. If the board did not regulate the occupation, shops would still require standards of their employees and could check qualifications by requiring a diploma from a recognized barber school, or observing the person providing barbering services. Because shops rely heavily on referrals from other patrons and repeat business, there is motivation to maintain clean shops and qualified staff. Competitive market forces can be relied on to drive unsatisfactory shops out of business.
- ▶ The regulation of barber schools needs to continue in order to protect the students from financial loss or poor training from improperly operated schools. If the board did not regulate the schools, the regulation would automatically be assumed by the Texas Education Agency, which administers the Texas Proprietary School Act. This Act currently exempts schools which are otherwise regulated and approved under another state law, such as the Texas barber law. If the State Board of Barber Examiners were abolished, the schools would not be regulated under the barber law, therefore the schools would no longer be exempt from the provisions of the proprietary school act and the Texas Education Agency would assume regulation under that Act.

RECOMMENDATION

- **The Board of Barber Examiners should be abolished and, if abolished, the oversight of the barbers schools in Texas should be assumed by the Texas Education Agency.**

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

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

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

FISCAL IMPACT

There should be no significant fiscal impact to the state as a result of abolishing the agency. While the agency's fee revenue generally exceeds appropriations, the agency, by rider, may retain any balance in the fund except amounts in excess of 33 percent of the following year's appropriations and other fund requirements. In fiscal years 1988 and 1989, the agency's balance did not exceed the 33 percent limit and no funds reverted to the General Revenue Fund. However, over the past five years, the agency's revenues exceeded expenditures by an average of \$132,000.

Assessment of Organizational Alternatives

Organizational Alternatives

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

BACKGROUND

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

Centralization received considerable attention by the legislature in 1988. A Special Committee on the Organization of State Agencies reported to the governor and the 71st Legislature on the possibility of consolidating certain state agencies. The report recommended the consolidation of 12 licensing agencies into a centralized licensing agency. The report proposed the continuation of separate boards or commissions to set policy and standards and make disciplinary determinations for their respective professions while the consolidated agency would handle all administrative matters and provide staff services to the board.

Although the State Board of Barber Examiners was not listed as one of the 12 agencies to be immediately consolidated into a centralized agency, the committee concluded that the long-term goal should be to consolidate all licensing activities in Texas in a single agency. The committee indicated that cost savings in the area of investigation, legal counsel, accounting, data processing and other staff functions could be expected from consolidation. The staff of the Legislative Budget Board estimated that a net savings of over \$200,000, or eight percent of the total budgets of the consolidated agencies could be achieved in one biennium.

Consolidation has also been proposed under alternative structures. For example, the legislature has attempted to merge the two agencies in the past. During the 64th Legislature, in 1975, a bill was introduced to create the Commission of Cosmetologists and Barbers. The effort failed, and the House State Affairs Committee studied the merger issue following the session. The committee recommended merger of the agencies and in 1977 new merger legislation was introduced, but again no action was taken. The legislature also considered, but did not pass, merger proposals during the 1979 sunset reviews of the two

agencies. Since then, merger has been proposed at least twice. In both 1981 and 1985, merger bills were introduced in the house, but neither were passed.

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

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

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

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

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

- ▶ The board's activities do not necessarily reflect a general statewide regulatory policy. The autonomous structure of the board results in the board developing rules and policies without the benefit of statewide regulatory guidelines or policy direction from a broader regulatory agency. In contrast, the Texas Department of Licensing and Regulation (TDLR) has the ability, through its Commissioner, to review and approve all proposed rules promulgated by the regulatory boards attached to the TDLR. This provides the TDLR with the opportunity to achieve consistency and a statewide policy direction for its individual regulatory boards. In addition, TDLR also achieves general consistency in rulemaking by having the same attorney assist boards in rule development. Finally, the centralized structure allows similar

deficiencies within separate boards to be addressed from a broad policy perspective rather than on a case-by-case basis.

- ▶ The TDLR has a structure that provides organizational and fiscal oversight. Hiring of staff, purchasing of major equipment and identification of space needs of all boards are taken into consideration under TDLR, and the individual board is accountable for the expenditures it makes. This could result in lower costs and an overall reduction in licensing fees and therefore a savings to the licensees. In addition, a 1979 Sunset Commission staff comparison of costs per license for various independent boards and centralized licensing agencies indicated that lower costs per license can be achieved with a centralized structure due to the consolidation of mailing, record keeping, enforcement and purchasing activities of boards.
- ▶ The board's executive director serves at the pleasure of the commission and is not insulated in situations where complaints involve board members. In contrast, having an administrative staff hired by the central agency insulates staff from board influence and helps ensure that a full investigative process takes place with all pertinent findings presented to the board. TDLR has a structure that provides this separation. TDLR also uses hearing officers to review findings and make recommendations as part of its disciplinary process.
- ▶ The boards which regulate barbers are under a centralized licensing structure in at least 13 other states. Among these states are California, Florida, Wisconsin, Illinois, Idaho, Iowa, and New York. In addition, at least 10 other states operate under a merged structure either with a single board that regulates both barbers and cosmetologists or with separate barber and cosmetology boards attached to the regulatory agency.
- ▶ In Texas, a number of other licensing or regulatory boards operate under an umbrella agency structure. The Texas Department of Health, for example, provides administrative support services and a level of statewide policy direction through its board to regulatory boards such as Athletic Trainers, Professional Counselors, Respiratory Therapists and Dieticians. A survey of members of several boards attached to TDH indicated that board members were generally satisfied with the responsiveness of the agency and the ability of the board to accomplish its goals. In addition, the Industrialized Housing Building Code Council, Boiler Board and Air Conditioning and Refrigeration Contractors Advisory Board under the TDLR serve as examples of regulatory structures attached to a centralized agency that are able to regulate their respective occupations without serious difficulty.

RECOMMENDATION

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

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

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

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

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

FISCAL IMPACT

A transfer of the Board of Barber Examiners to the Texas Department of Licensing and Regulation (TDLR) will result in approximately \$138,000 per year in administrative savings once the transfer is fully in place. The savings will result from the elimination of four positions, including salary and benefits, and building rent. Additional cost savings are expected in the area of computer operations once the TDLR converts the computerized activities of the agency onto

its own system. The TDLR has indicated that additional program efficiencies and savings through staff reductions are also eventually possible by implementing a mandatory cross-training program for inspectors. Some one-time only costs would be associated with the physical move of SBBE personnel and equipment.

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

BACKGROUND

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

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

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

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

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

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

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

Illinois, New Hampshire, New Jersey, Oregon, Washington, West Virginia, and Wisconsin. Six additional states have recommended merger in the past, including Texas. In the states with merged boards all maintain separate barber and cosmetologist licenses except for Oregon, Utah and Wisconsin.

- ▶ Combined boards in these other states report significant cost savings. They indicated that agency merger reduces the administrative costs of regulating the occupation. Colorado reported that merger provides approximately \$56,000 in savings annually. Oregon reported a reduction in their licensing fees and an approximate savings of \$1 million over the six years since merger. With one agency, one board and one facility, routine tasks such as mailing, record-keeping, license issuance and renewal, computer services, telecommunications services, and printing services can be done jointly at less overall cost.
- ▶ Texas has attempted to merge the two agencies in the past. During the 64th Legislature, in 1975, a bill was introduced to create the Commission of Cosmetologists and Barbers. The effort failed and the House State Affairs Committee studied the merger issue following the session. The committee recommended merger of the agencies and in the 65th Legislature, in 1977, new merger legislation was introduced, but again no action was taken. The legislature also considered, but did not act on merger during the sunset review of the Texas Cosmetology Commission and State Board of Barber Examiners in 1979. Since then, merger has been proposed at least twice. In 1981 and in 1985 bills were introduced in the Texas House of Representatives but neither passed.
- ▶ Other efforts have been made to consolidate the regulatory activities of the two agencies. In 1981, the 67th Legislature, in a rider to the Appropriations Bill, required an interagency contract between the two agencies to reduce duplication of activities in inspections, enforcement, and examinations. This requirement focused specifically on using the cosmetology facilities for barber examinations. However, without a combined agency, the two separate agencies were unable to come to agreement on appropriate facilities and equipment. The only area in which the two agencies share functions is a statewide crossover inspection program required by the legislature in 1983. Through an interagency contract the State Board of Barber Examiners conducts inspections in establishments that are dual licensed as barber shops and beauty salons. There were 7,372 dual shop inspections conducted in fiscal year 1989. The crossover inspection program is the only area of formal cooperation between the two agencies.
- ▶ Combining the agencies will result in economies of scale, reduced duplication, and more efficient use of resources and likewise decrease the need for the higher licensing fee charged to barbers. The initial and renewal fee for a cosmetology operator license is \$25. With over 145,000 licensed cosmetologists in Texas, a considerable amount of money is collected to support agency operations. The initial and renewal fee for a barber class A license is \$60. Because there are only about 22,000 licensed barbers in Texas, it is necessary to assess a higher fee of the barbers to support agency operations.

- ▶ The Texas Cosmetology Commission is currently planning a new building to house agency operations. The land for the new facility has been purchased and the agency is currently working on the blueprints for construction scheduled to begin in June, 1990. Plans for the facility include 18,000 square feet and will accommodate about 34 staff members. The State Board of Barber Examiners have opposed a merger because the TCC's current facilities have been considered inadequate to conduct the practical examination. The new facility will accommodate 80 examinees for each testing session. The current building plans do not provide for barber chairs and outlets at each workstation, but such modifications could be made to accommodate barber exams. Currently, the barber examinations are held at various barber schools in the state, and this practice could be continued if needed. Additional opposition to the merger has been based on the potential expense from the administrative steps necessary to merge. Since there will be expenses associated with the TCC's move to its new facilities in 1991, the transition costs for the TCC would not be an obstacle to merger.

RECOMMENDATION

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

The merger of the TCC and the SBBE will reduce the existing duplication that is a result of maintaining two nearly identical regulatory structures. The state will no longer have two separate, free-standing agencies that function in a parallel fashion to regulate two highly similar professions. The combined structure will

allow the agencies to share functions such as administering licensing examinations, collection of licensing fees, distribution of licenses and certificates, processing of complaints, field inspections, development and use of work performance information, and preparation and administration of board meetings. Consolidation of administrative services will permit further conservation of state funds and allow for an overall reduction in licensing fees.

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

FISCAL IMPACT

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

Recommendations if Agency is Continued

Summary of Recommendations

The recommendations which follow are generally consistent with the findings and recommendations that resulted from the sunset process 12 years ago. They reflect a general conclusion that licensing requirements and regulation of occupations should not be unnecessarily restrictive to those wishing to enter the profession and should be structured in such a way that licensees are treated fairly and equitably and the cost of licensing is not unduly shifted to consumers. Whether the regulation of the barber occupation is continued by the State Board of Barber Examiners or by another agency, the changes recommended are expected to improve the effectiveness and efficiency of the regulation. Although there have not been significant regulatory changes to the barber occupation since the last sunset review, the agency has implemented the provisions which appeared in the sunset bill passed by the 66th Legislature. The agency maintains complete complaint files and processes complaints in a timely manner. The agency also complies with requirements to post timely notification of its meetings in the Texas Register. The nature of complaints also has not changed significantly, with the majority of complaints or violations having to do with persons practicing barbering without a current license.

Policy-making Body

As a standard part of the sunset review, the agency's policy-making body was examined. As a result of sunset legislation passed 12 years ago, the agency currently has two public members on the board. The six member board also has four members representative of occupations or businesses regulated by the agency. The policy-making section of the report does not recommend changes to the current board composition. However, another recommendation that appears later in the report suggests that the issuing and renewing of shop permits and the process of inspecting shops has not identified significant problems and are no longer needed. If the recommendation is adopted and shops are no longer regulated, it would no longer be necessary to statutorily require the representation of a shop owner on the board. Therefore, as part of the recommendation, the designated shop owner position would be removed and the other two licensed barbers on the board would no longer be restricted from being shop owners. Instead, the governor would simply appoint three barbers without regard to whether the barbers owned a shop.

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

Overall Administration

A second area of inquiry included a review of the administrative operations of the agency. The review examined whether the agency had adequate authority to set fees to cover the costs of operating the regulatory program. Because the majority of licensing fees have ceilings set in statute, the potential exists that in future years the legislature would need to reexamine and adjust the ceilings to ensure that revenues reflect the costs of administering the program. This adds an unnecessary

burden to the legislative process. A recommendation to remove the specific statutory ceilings and specific fee amounts from statute and authorize the agency to set fees in amounts adequate to recover agency costs appears later in the report.

Programs

Level of Regulation

A third area of inquiry related to whether the current level of regulation, known as a full licensure program, provided the most appropriate degree of oversight and public protection. The licensure program includes an initial check of a person's qualifications and competence to practice barbering, the periodic renewal of licenses, and an enforcement component that involves inspections of shops and checking that licenses are current. The review found that checking qualifications of barbers and teachers before allowing a person to practice or teach barbering afforded a reasonable level of assurance to the public that the barbers in Texas possess a reasonable level of skills. This preliminary check of qualifications does not require an excessive amount of staff effort and cost to the state in exchange for the benefit it yields. On the other hand, the review determined that the periodic renewal of licenses and the enforcement efforts of the agency are done at considerable effort and cost without resulting in significant findings or punitive actions against licensees. The review determined that the public could be provided the same level of protection it currently receives without the additional state expense of inspecting shops and renewing licenses, as long as a mechanism remained in place for the agency to follow up on any complaints it received from the public or other licensees. A recommendation to reduce the level of regulation from licensure to a one-time certification process appears in the report. As part of the recommendation, it is recommended that health certificates no longer be required of applicants, because the certificates provide no real assurance that a person is free from all contagious disease.

Licensing

A fourth area of inquiry related to the licensing powers and procedures of the agency. The review of this area focused on the necessity and relevance of the current requirements for licensure. The review identified several licensure requirements that are unnecessary or exceptionally restrictive. These include the requirements that manicurists, barber technicians and wig specialists be subject to full educational, exam and other licensure requirements and the requirement that licensees must take a practical exam. The review also found the agency's requirements regarding out-of-state applicants to be unnecessarily restrictive. Currently, if the agency does not have a written reciprocal agreement with another state, the out-of-state applicant must have a personal interview with the board and take the state licensing exam, even if the original state has licensure requirements equal to or greater than those in Texas.

Another licensing requirement is the successful completion of a written exam developed by the agency. The review determined that although Texas' exams have not been challenged, exams in other states have been challenged and that the use of a national testing service would provide additional test validation practices and greater assurance that a valid measure of the applicant's competency is achieved.

Recommendations addressing the above concerns are presented in the report.

Enforcement

A fifth area of inquiry related to the inspection and enforcement powers and procedures of the commission. The review examined the agency's process of inspecting each barber shop every 90 to 120 days to determine if the cost of conducting over 22,000 inspections in about 8,500 shops each year could be justified by the findings and corrective activities taken by the agency. The review determined that problems are rarely identified during inspections, but when they are, they entail such allegations as failure to renew a license or improper use of a barber pole rather than any serious health hazard. The review concluded that shops could be deregulated, as is the case in Hawaii and Washington, without an adverse effect on the public. A recommendation to repeal the requirement for permitting and inspecting shops is included in the report.

Another aspect of enforcement relates to the statutory grounds for denial or revocation of a license. The review identified one ground that is vague and unenforceable. Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit forming drug, if proven, could result in the loss or denial of a license. Applicants currently "prove" they are free from the aforementioned drugs by presenting a doctor's certificate confirming this fact. The language has not been used to deny or revoke a license and can safely be removed from statute without adverse effect. A recommendation to remove the language is presented in the report.

Regulation of Barber Schools

The final area of inquiry relates to the requirements for the permitting of barber schools. The schools are not currently required to obtain a bond which can be used to repay student tuition if the school closes. The review determined that a tuition bond is required of most proprietary schools in the state and that barber schools should also fulfill such a requirement before they can be permitted by the agency.

The recommendations contained in this section of the report will result in a net revenue loss of approximately \$233,000. Issue five in the report would provide the agency with authority to increase fees to meet revenue shortfalls if necessary.

ISSUE 4: The statute should require that the governor designate the president of the board.

BACKGROUND

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

PROBLEM

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

RECOMMENDATION

- The statute should be changed so the governor designates the president of the State Board of Barber Examiners.

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

FISCAL IMPACT

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

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

BACKGROUND

The State Board of Barber Examiners has 29 different fees relating to inspections, exams, permits, licenses or renewals set in statute. Nineteen of these fees are set as ceilings in statute, meaning that the board may not charge a fee in excess of the statutory amount. The remaining 10 fees are flat fees and are either administrative fees charged to applicants before they are approved by the board, delinquency fees for license renewal or an exam fee for barbers and barber technicians. The agency also has statutory direction to prescribe by rules the fees required by its statute in amounts necessary to defray the costs of administering the activities to which the fees relate.

Revenues from these fees are deposited in the agency's special fund and the agency's appropriations come from that fund. A rider in the appropriations pattern for the agency requires that the Comptroller of Public Accounts transfer any balance in the special fund in excess of 33 percent of the following year's appropriations and other fund requirements to the General Revenue Fund. Because there is no specific statutory requirement to balance the agency's revenue against their overall operating costs, and specific ceilings exist in law, the legislature must monitor agency operating costs and adjust fees or fee ceilings periodically to ensure that revenues reflect the costs of administering the programs.

Licensing fees in most state agencies generally produce enough revenue to cover the cost of agency operations, but are not so large that there are excessive fund balances. Although fixed statutory fees do allow the legislature direct control over fee rates, an increasing number of governing boards have been authorized to set fees by rule, either with or without statutory ceilings on the fees. Usually, this fee setting authority is accompanied by a direction that revenues from fees recover the costs of performing the functions of the agency.

Under the present system, the legislature must be advised whenever the fee ceilings or the flat rate fees need to be changed. The legislature then must pass legislation to raise the fee or the ceiling. This system adds an unnecessary periodic burden to the legislative process. Further, when fixed fees are adjusted, subsequent revenues in the short term may substantially exceed agency costs.

A review of the agency's licensing process and its statutory fees indicated the following:

- ▶ In order to make any significant changes in agency revenue, the legislature must take action. For example, a new student enrollment fee of \$25 was approved during the 71st Legislative Session. In addition, another change was made which considerably increases the agency's revenues. The agency was given authority to assess a

delinquency fee of \$30 for each year or part of a year that a certificate or license has been expired. This resulted in the collection of revenues of \$16,710 in penalties during the period of September through mid November 1989. This change could have the effect of the agency accumulating funds in their special fund beyond those needed to operate the agency.

- ▶ The agency has accumulated funds in excess of appropriated amounts which were reverted to the General Revenue Fund. For the biennium including fiscal years 1986 and 1987, for example, \$117,998 reverted to the General Revenue Fund. No funds reverted to general revenue in fiscal years 1988 and 1989, however.
- ▶ A number of the agency's fees are currently set by rule at the statutory ceiling removing the board's leeway to increase fees in the event of increased costs, or decreased revenues. These include the \$1,000 school permit fee, the \$500 school reinspection fee, the \$300 school renewal fee, and the \$30 manicurist license fee. The licensing category having the greatest number of licensees, barbers, has a statutory fee ceiling of \$70, while the board has set the fee at \$60.
- ▶ The purpose of regulatory fees is to generally recover the costs to the state of providing the regulation. Section 316.045 of the Government Code requires each state agency that has authority to set fees aimed at recovering agency costs to review and adjust the fees each biennium. Since the agency only has the authority to set fees within statutory ceilings and in some cases must comply with a series of specific statutory fees, this government code provision has limited applicability to the agency. However, the requirement for the board to examine and adjust fees each biennium to ensure that revenue and expenditures remain in balance would be appropriate for this agency. Fees in excess of regulatory costs place an unfair burden on the particular profession that is providing the excess revenue.

PROBLEM

The fees set in statute, whether specifically or at a ceiling, for the regulation of barbering can result in total fee collections in excess of the funds necessary to operate the agency or in a shortage of funds. This places an unreasonable financial burden on the barbering industry. The current statutory ceilings prevent the board from adjusting the fees to a level necessary to recover agency operating costs in the event of increased expenses and/or a declining number of licensees which would reduce revenues.

RECOMMENDATION

- **The statutory fees and fee ceilings should be repealed and the Board of Barber Examiners should be authorized to set its fees by rule in amounts reasonable and necessary to recover the overall costs of the regulation of barbers.**

This approach would provide the board with increased flexibility to increase or lower fees based on the operating costs of the agency. The current statutory language directing the agency to set certain fees in amounts to defray the cost of the particular activity would be adjusted to require that overall fees and costs be balanced. Fees set by the board would also relieve the legislature of the burden of passing specific legislation to raise the ceilings or change the fee levels when this became necessary. The board would be subject to the Government Code provisions requiring them to biennially review the appropriateness of the fee levels. Legislative oversight of the commission's fee setting authority would continue as a result of the biennial appropriations process which considers anticipated revenues generated through fees.

FISCAL IMPACT

If fees are set periodically in amounts estimated to recover operating costs, it is unlikely that the agency will generate funds significantly in excess of costs which could revert to the General Revenue Fund. Since the agency did not have funds that reverted to general revenue for either fiscal years 1988 or 1989, this recommendation should not have a significant fiscal impact on the state. The legislature can choose to maintain the existing revenues by setting fees in the General Appropriations Act.

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

BACKGROUND

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

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

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

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

The Board of Barber Examiners was originally set up under a "registration law", requiring persons "owning, operating or managing barber shops or beauty parlors" to register with the Texas Board of Health. The law set out mandatory sanitation provisions but no enforcement mechanism was provided. Over time, the focus of the laws regulating barbering expanded beyond the original sanitation provisions. The law now provides for licensure of barbers, manicurists, wig specialists, barber schools and a large proportion of the agency's work involves ensuring that only persons with a valid license practice barbering.

The agency's present licensing process requires those wishing to practice as a barber to apply for a "certificate of registration". Although this terminology refers to two other levels of licensure, the regulation of barbers is a full licensing program and is referred to as a barber license for the purpose of this report. In order to be licensed as a barber in Texas, a person must be at least 16 years old, have successfully completed 1500 hours of instruction in an approved barber school, pass a written and practical examination, and have a current health certificate indicating that the person is free from infectious or contagious disease. Teachers must hold a current barber license and pass a written and practical exam administered by the board. The licenses must be renewed biennially. At the end of fiscal year 1989, there were 21,395 licensed barbers and 223 licensed teachers in Texas. Licensees are also subject to inspections at the time the shop in which they are working is inspected. For example, an inspector may check that the barber's license is current and whether the barber uses liquid and dry sterilizers for tools or the condition of the barbers' chairs in the shop. The board may refuse to grant a license or may use its sanction authority against licensees for violations of a series of standards which include, for example, gross malpractice or habitual drunkenness or drug addiction.

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

- ▶ The sunset review conducted in 1979 determined that the level of regulation being provided by the board could be reduced without subsequent damage to consumers. The sunset commission recommended that licensure be replaced with a one-time certification for barbers that would be valid indefinitely, and the regulation of wig specialists, manicurists and barber instructors was not needed. Although these changes were not adopted by the legislature, the conditions and regulatory structure in place at that time are essentially identical to the current situation.
- ▶ The benefits achieved through the current regulatory approach do not warrant a full licensure program.
 - No significant problems with licensed barbers or teachers have been identified through the agency's enforcement activity. There have been no licenses revoked or suspended in the past five years.
 - A review of 87 agency records on cases filed in justice of the peace courts by the agency in fiscal year 1989 indicated that 80 percent involved missing or expired licenses, unauthorized use of a barber pole, or barbering in the home. Only 11 cases involved an allegation relating to an unsanitary condition. The remaining cases involved sleeping in a barber shop, selling items unrelated to barbering in the shop, and refusing an inspection.
 - The process of renewing licenses biennially does not provide a significant level of public protection. The license renewal process is essentially a paperwork process requiring a licensee to submit a fee and a health certificate in exchange for a valid license. While renewal may serve a role in keeping unlicensed persons from practicing barbering,

there is no evidence that requiring renewal reduces the number of violations of agency laws or prevents harm to the public.

- ▶ The requirement for a barber to submit a health certificate prior to issuance or renewal of a license does not serve to protect the health of the public. When asked to comment on the need for the health certificate requirement in terms of public health protection, staff of the Texas Department of Health responded:

"Neither physical examination nor laboratory analysis can verify that a person is free from all contagious diseases. Nor is there any certainty that a person found to be healthy one day will not acquire disease the next. Consequently, health certificates are meaningless in verifying the present good health of a person. Routine testing of barbers and cosmetologists for specific diseases such as tuberculosis or syphilis is also no longer warranted and is an unnecessary expense."

- ▶ Studies done in other states recommended a reduction in the level of regulation to certification. Colorado's State Auditor, for example, recommended in 1980 that title protection of barbers and cosmetologists replace licensure. This recommendation was not adopted, however. Under the Colorado proposal, practice without a license would be controlled through law enforcement authorities. In 1989, the Colorado sunset review also recommended limiting the scope of regulation. That recommendation would have made the practice of barbering illegal unless the person first completed a basic course of training at an accredited barber or cosmetology school. A sunset review conducted by Kentucky in 1983 recommended mandatory registration and voluntary certification to replace licensure. Utah's sunset review recommended in 1980 that if the regulation was not done away with completely, certification could be used to identify competency of applicants.
- ▶ Several states have a lesser level of regulation than Texas. Alabama, for example, does not regulate barbers at all. Other states, such as Hawaii and Washington, maintain a licensure program but removed the major enforcement portion of their regulation--the licensure and inspection of barber shops.

PROBLEM

Ensuring that barbers and barber teachers have a basic level of training and knowledge may serve to make the public more confident in the abilities of new barbers. However, the additional regulation currently in place through full licensure is more restrictive than necessary to protect the public. In addition, the steps set out for entry into the profession, such as the requirement for a health certificate, are more restrictive than necessary.

RECOMMENDATION

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

This recommendation will have the effect of reducing the current level of regulation of barbers and teachers in the state. The level of public protection needed could be afforded by a one-time certification process. As discussed in a previous section, no public health danger exists that warrants the level of oversight currently being provided. The public would continue to be assured that persons practicing barbering achieved a basic level of competence by a certification and testing process. However, a recommendation to adjust the examination process by using a national exam and discontinuing the practical component of the exam can be found later in the report. The removal of the health certificate requirement will reduce the costs of entry into the practice, since a doctor's examination would no longer be needed. While aspirants will continue to be required to graduate from an approved barber school, recommendations to transfer some of the oversight of barber schools to TEA while maintaining the board's involvement in their curriculum and programs are discussed later in the report.

FISCAL IMPACT

The agency would see a reduction in operating costs of \$20,500 per biennium from no longer issuing renewals of licenses. At the same time, revenues would decrease approximately \$375,000 biennially from the elimination of renewal fees, resulting in a net revenue loss of some \$354,500.

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

BACKGROUND

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

Texas does not use any of these independent validation points in its regulation of barbers. The executive director of the State Board of Barber Examiners (SBBE) develops the agency's licensure examinations. Examinations are offered each month in one of the following Texas cities: Dallas, Houston or Austin. Exams also are offered in the prison units of the Texas Department of Corrections. Board members and inspectors administer and grade the exam. The agency maintains six versions of the student written exam, two versions of the teacher written exam and can provide the exam in several different languages. The written examination contains 50 questions and covers state laws and regulations, style and technique, and health and sanitation. The practical exam requires the applicant to demonstrate fundamental skills including a shampoo, a shave, a tapered haircut and one of the following procedures: a mock color retouch; a blow dry hair style; application of three permanent wave rods; a facial massage; or a manicure. Applicants pay a \$10 student examination fee.

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

- ▶ The majority of states use exams developed by either professional testing services (national exams) or state testing divisions. The National Association of Boards of Barber Examiners of America (NABBEA) offers a licensure examination for barbers and teachers. The Barber/Stylist examination is currently used in 22 states and the District of Columbia. Pennsylvania, New York, New Jersey and Wisconsin use written examinations developed by other professional testing services or state testing divisions.
- ▶ Professionally developed examinations offer several advantages. Centralized development of the exam allows the input of both barbering and examination experts; the examinations form a common ground for

reciprocity among states; use of the examinations show the state how well applicants and schools compare with other states; and the examinations meet validation standards and therefore provide protection for the state agency against legal action.

- ▶ The SBBE does not have access to a centralized testing office in the state staffed by exam specialists, nor does it contract with independent exam specialists or testing consultants in the development of its test. The agency indicates that the executive director exclusively develops the questions for the exam. In addition, the SBBE has not used testing expertise in setting the passing score for the exam.
- ▶ The test validation procedures used by professional testing services and state testing divisions surpass those used in Texas. As an example, the Professional Testing Corporation (PTC) designs, develops and grades an examination through a contract with NABBEA. Content of the exam is provided by a committee comprised of members of state boards and representatives of NABBEA. The Professional Testing Corporation reviews and edits all questions to ensure that they are unbiased, meet standards of quality and accurately measure the competency of exam candidates. The questions are analyzed to determine how difficult they are and how well they separate higher scoring applicants from lower scoring applicants. Other professional testing services offer similarly validated tests and services.
- ▶ The agency's current examination procedures have the potential for being legally challenged. Although the Texas exam has not been challenged, exams in other states have been challenged. The Professional Testing Corporation provides legal support and has successfully defended its exam in other states.
- ▶ Agency interviews showed that the national exam is already utilized to some degree since the SBBE currently accepts the results of the national exam for out-of-state licensees.
- ▶ Because SBBE hasn't developed format guidelines, the scoring of the practical exam is subjective. If the examiners disagree on the adequacy of the applicant's performance, the disagreement is settled by the president of the board.
- ▶ The practical exam, while addressing health and safety issues, primarily tests stylistic abilities. It is not particularly effective as a means of determining that a person can apply chemicals safely because simulated solutions rather than actual chemicals are used. Florida has recently done away with its cosmetology practical examination because the use of substitute chemicals did not provide a realistic measure of the competence of the person applying the chemicals. The elimination of the practical has not affected the ability of Florida licensees to gain licenses in other states.
- ▶ Other means exist to test a person's competency as a barber. In order to take the exam, applicants are currently required to complete a course of instruction in a barber college or school. These programs of study cover

all the functions required of a barber. For example, most training programs contain 800 hours of instruction in hair cutting and 80 hours of instruction in shaving. Finally, the owner of the shop hiring the barber has the ultimate responsibility for ensuring the competency of the operator.

PROBLEM

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

RECOMMENDATION

- The statute should be changed to require the use of a written national examination for barbers and barber school teachers and to eliminate the practical examination.

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

FISCAL IMPACT

The agency currently expends \$9.85 per exam or some \$16,543 per year to fully develop, administer and grade the state examination. This cost includes the practical exam and all costs are recovered through agency fees. The written and practical exams are currently administered and proctored by board members and inspectors. In comparison, the cost to the state per written national examination would be about \$5 to \$6 for barber/stylist and \$10 for teacher exams. The agency would continue to charge fees at a level to recover the purchase and administration of a national exam. The fees are estimated to remain at or near the current level under this approach.

ISSUE 8: The current state licensure of manicurists, barber technicians, and wig specialists and instructors should be adjusted to require a one-time certification available upon graduation from an approved school. In addition, statutory authority for inspection of specialty shops should be removed.

BACKGROUND

In Texas, there are over 22,000 individuals licensed by the barber board. Out of the total number of licensees, the vast majority possess a barber license. The barber license permits the barber to perform a wide variety of practices from shaving the face, haircutting, shampooing, hairstyling, and permanent waving to facial treatments, and manicuring. In receiving services, the public is most likely to encounter a person licensed as a barber. Currently, 96 percent of all licensees possess a barber license. The remaining four percent of the total licensed population possess a manicurist license, teacher's license, barber technician license or a wig specialist license. The manicurist and wig specialty licenses were added to the state's regulatory scheme in 1975. Before that time, these additional services could only be provided by a licensed barber. Brief definitions of the specialty licenses are provided below:

- The manicurist attaches false nails or cuts, shapes, and polishes natural nails to improve their appearance. There are 482 manicurists licensed by the barber board in Texas.
- The wig specialist is trained to style and care for artificial hairpieces and wigs. There are just two wig specialists licensed by the barber board in Texas. No wig instructors are currently licensed by the board.
- The barber technician may shampoo and condition hair, perform scalp manipulations, perform facials and certain other services in a licensed barber shop. There are 184 barber technicians licensed by the barber board.

The statute requires applicants to complete 300 hours of instruction and pass the required examination to obtain the manicurist license. Manicurists account for two percent of all licensed barbers. To obtain a barber technician or wig specialty license by commission rule, an individual must complete a course of at least 300 hours and pass the required examination. For initial licensure and for renewals, the individual must pay a fee and obtain a health certificate. All specialty licenses combined account for approximately three percent of the currently licensed barbers.

The purpose of the barber license is, of course, to protect the public from dangers to their health and welfare. A license is warranted when significant harm could result if a practitioner has not been properly trained and does not meet competency requirements. However, the state should not regulate in an overly restrictive manner or when there is minimal risk to the public. The additional

barber licensing categories of manicurist, barber technician and wig specialist and involve practices that pose minimal risk to public safety.

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

- ▶ Thirteen states do not require a license for manicurists.
- ▶ For the past ten years in Texas, there have not been any complaints against a licensed manicurist or specialist or the specialty shops, in which damage to the health and safety of a consumer has been demonstrated. The agency reports that complaints received from consumers are mostly from individuals dissatisfied with the service they receive and not from consumers who have been harmed or damaged. The commission is not charged with ensuring that all salons or licensees deliver satisfactory service; consequently most of these consumer complaints are not under the jurisdiction of the commission.
- ▶ Renewing the specialty licenses biennially does not provide a significant level of protection. The license renewal process is essentially a paperwork process requiring a licensee to submit a fee and a health certificate in exchange for a valid license. While renewal may serve a role in keeping unlicensed persons from practicing, there is no evidence that requiring renewal reduces the number of violations of agency laws or prevents harm to the public.
- ▶ The requirement to obtain a health certificate for initial licensure does not serve to protect the health of the public and is an unnecessary step in the regulatory process. The health department indicated that routine testing does not verify that a person is free from contagious diseases.
- ▶ Examination of specialty license applicants is unnecessary. Although examination of aspiring manicurists and specialists is a logical component of regulation, it does represent another restriction which appears to serve little purpose in identifying persons qualified to provide manicuring and specialty services. The current overall pass rate for first-time examinees is 98 percent. This high pass rate indicates the exam serves as an ineffective screen and that a requirement to complete the appropriate school program will impart the skills needed to provide manicuring and specialty services.
- ▶ The inspection of specialty shops does not protect against actual damage to consumers. While there are currently only eight individual specialty shops licensed by the barber board, current law would require the licensure and inspection of additional shops if they existed. However, inspection of these types of shops would provide little information that cannot be easily obtained by the consumer. The fact that shops may be poorly kept is not of substantial interest to the state and, as in the case of barber shops, the inspection process cannot protect against actual damage to consumers in the unlikely event such damage should ever occur.

PROBLEM

The current approach to the regulation of certain subcategories of barbering is overly restrictive. Manicures, wig services and training, and barber technician services are practices currently licensed by the state through individual and shop licenses. However, these practices are not sufficiently complex or threatening to the public to warrant state involvement through licensure, examination and enforcement. In addition, no danger to the public has been demonstrated through consumer complaints to the board.

RECOMMENDATION

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

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

FISCAL IMPACT

The agency would continue to collect a certification fee to cover the cost of administering the one-time certification program. Since the agency only has eight specialty shops under its jurisdiction to inspect, there would also be no significant fiscal impact from changing the licensure process to one of certification. The loss of revenue from renewal fees will approximate \$13,000 per biennium.

ISSUE 9: The statutory requirement for the agency to permit and inspect shops should be repealed and the specified position for a shop owner on the board should be removed.

BACKGROUND

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

In Texas, a barber shop permit may only be issued to an applicant who holds a valid barber license and whose shop meets the minimum health standards for barber shops as set out in the agency's rules. Shop permits are renewed every two years by paying a fee not to exceed \$50. The general reason for the state to issue permits is to ensure that the person or establishment being licensed meets certain minimal qualifications intended to protect the public from harm. Generally, the requirement for permits to be renewed exists so the qualifications can be rechecked. In addition, the annual average figure of \$81,000 from shop renewals helps to support the financial costs of enforcing the agency's statute.

Barber shops are inspected every 90 to 120 days for sanitation and sterilization practices, adequate equipment and to ensure that permits and licenses are current. The time periods for inspection, however, are not mandated in statute or rule. Rather, the agency has adopted the policy that the shops need to be checked about four times per year. Over 22,000 inspections were conducted in about 8,500 shops in fiscal year 1989. The inspection generally entails checking the ventilation of the shop, checking general cleanliness, ensuring that liquid and dry sterilizers are in place and that the floor, barber chairs and other equipment are in good repair. The purpose of the inspection, according to the agency, is to ensure that the public is protected from the spread of disease and that consumers receive services from qualified practitioners.

When a violation is detected, there are several options available for correcting the problem. Usually, the inspector will allow the shop to correct the problem immediately. A record is still kept of the finding, but no further action is taken. If the inspector has tried to resolve a problem over a period of time without success, a complaint may be filed in the justice of the peace court in the county in which the shop is located. One violation which is usually filed on without waiting for a pattern is the expired permit or individual license. The board also has authority to revoke a license after providing due notice and a hearing to the person.

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

A review of the process of permitting shops and the overall effects of the permit and inspection process indicated the following:

- ▶ The inspections rarely identify problems and when they do, they are of a type that do not threaten the public health or welfare. Over 99 percent, or 14,100 of 14,243 grades given on inspections made in September of 1989, were the highest possible grade of "A" on a scale that includes "A" through "C". An unsatisfactory shop would receive an overall "C" grade. When problems were identified, they related to failure to renew a license or improper use of a barber pole, rather than any serious health hazard. A sample of 1,000 shop inspections yielded only one inspector complaint of an unsanitary shop.
- ▶ Inspections determine if equipment is there, not how it is used on a continual basis. They do not ascertain that health and safety matters are being followed when they most matter--when a patron is being served. The inspector may be able to verify during the visit that proper practices are followed at that particular point in time, but this does not offer any assurance that such practices are always performed.
- ▶ The inspection process has never resulted in a finding that chemicals were used improperly. Although some barbers indicate that chemicals can damage consumers, the inspection process cannot protect against such damage. Inspectors do not check the chemicals in use in the shops or the methods of applying them.
- ▶ Other states have examined the need for barber shop inspections. Although many states continue the inspection process, some have modified their approach and others question their value.
 - Hawaii, for example, determined in 1986 that inspections served no useful purpose and the legislature removed the agency's inspection authority. The Hawaii board which regulates barbers was contacted to determine if deregulation of the shops has resulted in any adverse effects. The board reports that there have been no adverse effects from this level of deregulation.
 - Washington also has a process of regulating barbers, which does not include shop inspections.
 - A 1979 South Carolina sunset report indicated that inspections serve more to ensure that practitioners' licenses are current and to locate unlicensed persons so that fees can be collected rather than offer any protection to the public.
- ▶ In the absence of the inspection process carried out by the Texas Board of Barber Examiners, the Texas Department of Health has general authority to handle complaints related to unsanitary and unhealthy

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

- ▶ The permit and inspection process is a costly endeavor. Permits are issued every other year to about 8,500 shops at a unit cost of \$3.26 per shop or \$27,710. This includes the process of renewing applications, depositing the revenue and maintaining the statistical records. Nine inspectors are hired to cover approximately 8,500 shops in the state. Over \$280,000 is spent each year for salaries, benefits and travel expenses for the inspectors. In addition, a considerable amount of time is spent by in-house staff reviewing the daily reports of each inspector, filing the inspection reports, preparing statistical information and maintaining certain information in the computer.
- ▶ Other mechanisms exist to achieve the purposes of the inspection process without conducting routine inspections. Two primary purposes of inspections are to identify unlicensed practitioners and ensure that shops are sanitary. Consumers and licensees could continue to file complaints with the state about unsanitary shops and the activity of unlicensed persons without having the state conduct a full-blown inspection program. Instead, the agency could simply respond to complaints and take action against those violating the law.
- ▶ Shop owners currently have input into the regulatory process and provide an owner or management perspective through one designated position on the board. In addition, licensees are represented through two positions on the board; however, the statute prohibits these licensees from also holding shop permits. If shops are no longer permitted or inspected, the statutory requirements for having one shop owner on the board and prohibiting the two licensee representatives on the board from having shop permits are no longer necessary.
- ▶ Routine inspections of schools help to ensure that students receive proper training and credit for their coursework. The commission conducts routine inspections of 35 barber schools throughout the state. In fiscal year 1989, approximately 300 inspections were performed to check the school for proper equipment and compliance with regulations. In addition, student clock hours are monitored to ensure that students receive credit for their hours earned.

PROBLEM

The process of issuing and renewing shop permits and performing inspections do not result in the identification of any significant problems. Also, the requirement that the permit applicant be a licensed barber does not, in and of itself, offer significant protection to the public. In addition, the requirement restricts non-barbers from obtaining a shop permit and simply hiring barbers to perform the services in the shop. The potential effect of the requirements is to limit the number of shops in the state, restrict competition and raise the costs of services to the public without protecting the health of patrons. In addition, the designated

position for a licensed barber shop owner on the board is no longer necessary. However, there is no reason for licensees who are also shop owners to be prohibited from serving.

RECOMMENDATION

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

As a result of the recommendation, the agency would no longer need to renew permits for the 8,500 shops currently in Texas and over 22,000 inspections per year would be eliminated. In addition, any person desiring to operate a barber shop would be able to do so, without meeting specific qualifications. Those practicing barbering in the shop, however, would still be required to meet the qualifications set out in law for barbers. Limited oversight of shop and practice activity will be continued by requiring the board to investigate and act on complaints received from the public or other licensees. Since the agency had about 274 such complaints in fiscal year 1989, some inspection staff would be needed to continue these investigations as well as for the inspection of barber schools.

Shop owners would no longer have a designated position on the board. However, shop owners who are licensed barbers would be allowed to hold a licensed barber position on the board, if the governor chooses to appoint such a person.

FISCAL IMPACT

Approximately \$7,600 per year in administrative renewal expenses would be avoided as a result of this recommendation, however, the average annual agency revenue from shop renewals is approximately \$81,000 per year, resulting in an overall reduced net revenue of \$74,000.

In addition, the agency would be able to eliminate the expenses associated with conducting over 22,000 inspections per year. Seven of the ten inspectors would no longer be needed to perform inspections, however, three inspectors would be retained to inspect schools and to investigate the approximately 375 complaints per year. The net savings in salaries, benefits and travel costs from eliminating the seven positions would approach \$145,000 annually. This figure takes into consideration the loss of about \$74,000 in revenue from shop renewals.

ISSUE 10: Out-of-state applicants for barber certificates should be assessed through the less restrictive process known as "endorsement".

BACKGROUND

Licensing of out-of-state applicants in Texas and other states is generally done under one of two policies. The first policy approach is known as licensing by endorsement. This policy provides for the licensing of any out-of-state applicant without examination if the applicant is licensed by a state which possesses licensing requirements substantially equivalent to, or more stringent than the receiving state. The endorsement policy generally is less restrictive because it spares the already licensed practitioner the cost and time required in retaking an examination previously passed in another state.

The second policy approach allows for licensing by reciprocity. Under this approach, the receiving board may waive any license requirement for an applicant with a valid license from another state with which the receiving state has a reciprocity agreement. The reciprocity approach, in actual practice, means that both states involved in the agreement have substantially equivalent requirements and will issue licenses without examination to current licensees as long as the agreement remains in force.

The Texas statute for the regulation of barbers provides for licensure by reciprocity. The board has reciprocal license agreements with 21 states, primarily based on the standard that the states each require the same number of hours of barber training and the passing of an exam to be licensed. The effect of these agreements is that persons from these states do not have to take the Texas exam or have a personal interview with the board to be licensed.

The board's rules, as of November 1985, establish how it deals with states not having reciprocal agreements with Texas. Out-of-state applicants from states without reciprocal agreements must take an exam to be licensed and have a personal interview with the board. In contrast, the Texas Cosmetology Commission issues licenses without exams or interviews to any out-of-state applicant from a state having requirements substantially equivalent to, or more stringent than Texas.

The board requires two fees for reciprocal licensees, a \$90 reciprocal license application fee, and a fee for a Class A barber certificate of \$60. Applicants from states that do not have reciprocal agreements with Texas must pay an exam fee of \$90, and may obtain a temporary permit for a 30 day period after the interview. The temporary permit may be renewed one time. Upon passing the exam, the person pays a \$60 license fee. In comparison, an in-state applicant pays only a \$10 exam fee, in addition to the license fee.

A review of the board's practices with regard to licensing of out-of-state applicants indicates the following:

- ▶ The personal interview required by the board poses an obstacle to the applicant and does not help to ensure competence in the field. The interview generally consists of advising the applicant of the exam procedures and questioning the applicant as to whether he wishes to obtain a temporary permit immediately. The applicant is required to wait until the board meets for the interview and prohibited from working until the temporary license is granted. This procedure is unduly restrictive and costly to the applicant. In addition, less restrictive alternatives such as verifying information by phone is readily available.
- ▶ The extra steps used to screen applicants from states without reciprocal agreements do not appear to be necessary to protect the public from unqualified barbers.
- ▶ Applicants from other states are often required to take the Texas exam even after having met similar licensing requirements in another state. The review identified 34 states which have educational hour requirements equal to or greater than those required for licensing in Texas. The SBBE has reciprocal agreements with 15 of these states. Yet, applicants from the remaining 19 states must be retested and interviewed to work in Texas because no reciprocal license agreement exists with those states. The agency reports that in six of the ten other states that have greater requirements, those states will not agree to enter into a reciprocal agreement with Texas and will probably not admit Texas licensees without taking an exam. The refusal of another state to admit Texas applicants without screening, however, does not justify Texas restricting applicants as long as applicants meet at least the same requirements as Texas licensees.
- ▶ A review of statistical information on the number of applicants and licensing disposition indicated that 34 persons from states without reciprocal agreements with Texas applied for licensing in fiscal year 1989. Two applications were disapproved before the interview due to incomplete paperwork, no applicants were denied as a result of the interview, 27 applicants were examined and five failed to appear for the exam. During 1989, only one applicant failed the written or practical exam. This data indicates that licensed applicants that have met requirements similar to Texas' are already qualified to practice barbering in the state.
- ▶ At least 23 state boards which regulate barbers admit out-of-state applicants through an endorsement process.
- ▶ The current method of screening applicants in Texas does not take into consideration the probability that the applicant has been practicing barbering in the other state and that if he is in good standing with the original board, he is as likely to be as competent as those already practicing in the state.

PROBLEM

The current process of licensing by reciprocity results in applicants from at least 19 states having to meet a requirement for a personal interview and take an exam when this would not be necessary in most cases under an endorsement policy. This process results in applicants who are similarly trained and qualified not being treated equally when applying to practice in Texas. Also, the personal interview is a subjective process that could lead to a biased treatment of the applicant.

RECOMMENDATION

- The current treatment of out-of-state applicants by the Board of Barber Examiners should be modified to:
 - replace current statutory language requiring reciprocity with language requiring endorsement; and
 - statutorily prohibit the use of personal interviews for out-of-state applicants.

Licensure or certification by endorsement should help to standardize the requirements for practice as a barber and reduce the number of applicants from other states required to take an exam before being licensed. The result should be a fairer and less costly process which still ensures that trained competent barbers from other states could quickly be able to go to work in the state.

FISCAL IMPACT

No significant fiscal effect would result from this recommendation.

ISSUE 11: The statutory language which makes habitual addiction to the use of morphine, cocaine, or other habit-forming drug, or habitual drunkenness a ground for denial or revocation of a license is not clearly defined and should be repealed.

BACKGROUND

One of the primary purposes of licensing laws is to set reasonable standards and requirements for persons practicing an occupation. In order for these requirements to be useful, the language used in law must be clear and must have a substantial relationship to the functions and responsibilities of the occupation being licensed. In essence, the licensee must be able to clearly understand what is expected of him.

The agency's statute sets out a number of requirements with which barbers and other licensees must comply. For example, barbers must immediately wash their hands before providing a service to customers and may not use a towel that has not been laundered since its last use. If an inspector observes a barber performing a service without first washing his hands or using a towel that has not been laundered, action can be taken against the licensee. These requirements leave no question as to what is expected of the licensee.

Most of the requirements set out in the statute for licensees are generally straightforward and have not required further interpretation in rules. When a requirement has needed further clarification, the board has adopted rules to guide both staff and licensees in enforcing the statute. For example, the statutory requirement for schools to have adequate equipment for the students is clarified in rules. The rules state that each student should be given a textbook and lists all of the tools which should be included in the barber's kit provided to the student.

A review of the requirements and board action to define the required or prohibited actions indicated the following:

- ▶ In all cases, except one, the requirements that a licensee must follow or meet are clear on their face or the agency has provided a clear definition in rules.
- ▶ The one provision affecting licensees which is not clear and has not been defined is one which allows the board to deny or not renew a license if a person is habitually drunk, habitually addicted to the use of morphine, cocaine, or other habit forming drugs. The law also requires the applicant to present a doctor's certificate saying the applicant is "free from the use of any kind of morphine, cocaine, or other habit forming drug" and is not a habitual drunkard. The statute specifies that the person must make an affidavit to his doctor that he is free from the above drugs. The presentation of an affidavit does not serve to protect the public because there is no way of verifying its validity.

- ▶ The way the statute is written, the board could deny a license to a person who was on doctor-prescribed medication if the medication were habit forming.
- ▶ The board has never used this language to take action against a licensee. The executive director of the agency indicates that the language is not clear enough to act upon.
- ▶ Section 21 of the statute sets out a series of reasonable bases for revoking a license. These include advertising, practicing or attempting to practice under another business' trade name, advertising by knowingly making false or deceptive statements or obtaining a certificate or license by fraudulent representation among other offenses. These offenses can generally be proven or disproven by a review of evidence.
- ▶ A survey of other states indicates that the number of licensing laws using undefined standards for licensure or vague language pertaining to an offense has decreased in recent years, partially due to the potential for legal action against boards. A study done for the state of Oregon in 1987 indicated the removal of language such as that requiring licensees to be of "good moral character" and similar language from seven licensing laws in a nine-year period.
- ▶ Language such as good moral character was removed from the statutes of agencies previously under sunset review. For example, the Board of Psychologist's statute was amended to ensure that all grounds for disqualification of a person from licensure met a two-part test. First, the grounds should be clear and related to the practice of the profession. Second, the grounds should be stated in terms of a currently existing condition rather than an absolute condition which exists over the lifetime of the individual. The Board of Barber Examiner's statute also made "conviction of a felony involving moral turpitude or a misdemeanor involving immoral conduct" a ground for revocation or denial of a license but this language was removed following the 1978 sunset review primarily because of the difficulty in defining what constituted moral turpitude or immoral conduct.

PROBLEM

The statute is not clear as to what habitual addiction to the use of morphine, cocaine, or other habit forming drug means and the board has not clarified the definition in rules. This could result in misinterpretations or misapplication such as the revocation of a license of a person who was on doctor-prescribed medication that happened to be habit forming. The enforcement of the language could constitute the violation of a person's due process rights on the ground that the violation could not be measured or defined.

RECOMMENDATION

- Statutory language which makes habitual addiction to the use of morphine, cocaine, or other habit-forming drugs a ground for non-issuance or non-renewal of a license should be removed from statute.

All other current grounds for denial or revocation of a license, such as obtaining a certificate or license by fraudulent representation, would not be affected by this change. Removal of the language will protect the board from legal action on the basis that neither statutes, rules nor regulations can define how a person can accurately verify that a person is free from drugs. Without defining under what condition a licensee would be penalized, the potential for arbitrary sanctions for reasons unrelated to the protection of the public exists. The board will still be able to revoke or deny certificates or discipline licensees on the reasonable grounds that remain in statute.

FISCAL IMPACT

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

ISSUE 12: The statute should require barber schools to obtain a bond for use in refunding student tuition if a school goes out of business.

BACKGROUND

The State Board of Barber Examiners provides oversight for the 35 barber schools or colleges currently operating in the state. The average enrollment in these schools is 23 students, and there are about 1,400 students who enter barber schools each year on a statewide basis. When a student enrolls in a barber school, a significant investment is made in paying tuition either through personal funds or student loans and grants. The average tuition for the nine month barber training program is about \$1,500 to \$2,000. The state laws for regulation of barbers and barber schools do not include provisions addressing protections of students' tuition investment if the schools go out of business.

Students attending the over 400 proprietary schools that are regulated by the Texas Education Agency are protected in several ways under the Proprietary School Act. First, the schools must obtain a bond ranging from \$5,000 to \$25,000 depending on the size of the school. The bond may only be used for payment of tuition refunds. The Proprietary School Act also provides for a \$250,000 tuition protection fund composed of funds generated by fees charged to the schools. If a school goes out of business, this fund provides tuition to other schools to finish the students' education or to provide tuition refunds directly to the students. The barber schools are not subject to the provisions of the Proprietary School Act since they are regulated by the State Board of Barber Examiners under their statute.

A review of the financial protections afforded students attending barber schools and other similar schools indicated the following:

- ▶ Students attending barber schools are more at risk of financial loss than students attending proprietary schools regulated by TEA. The statute providing for regulation of barber schools does not furnish any means for students to obtain refunds if a school should go out of business. In comparison, however, the Proprietary School Act requires schools to obtain tuition refund bonds and provides for a tuition protection fund. The fund is composed of revenue generated from fees paid by each proprietary school. If a school closes, the fund can be used to refund unused tuition or to pay the costs of the students finishing their training at another school.
- ▶ Surety bonds are commonly required by the state as a means to protect consumers from various types of financial loss. For example, grain warehouse operators must obtain a \$5,000 surety bond which can be used by farmers to recover losses caused by improper activity by the warehouse operator. In addition, cosmetology schools are required to obtain a \$5,000 bond usable for tuition refunds, although with the current \$4,000 - \$7,000 cost of tuition for these schools the amount of the bond is no longer adequate.

- ▶ Barber school closings can place a hardship on the students attending such schools. In 1989, there were two schools that closed, resulting in 13 students not completing the education they had paid for. These students were faced with losing their money or finding another school willing to finish their program. The agency indicated that at least two of these students did transfer to another school in order to complete their training.
- ▶ Students who receive student loans to pay barber school tuition are less likely to repay such loans if the school goes out of business and the training is not completed. There are currently some 400 barber school students participating in the Texas Guaranteed Student Loan program and about \$923,000 in loans outstanding. If the students do not receive their full training program due to a school closure, they are not eligible to obtain a barber license, and therefore can not practice as a barber. Without this source of income, the opportunity for the former student to repay the loan is diminished.
- ▶ As indicated previously, there are two examples of mechanisms to protect students from financial loss when schools close. These include requiring a security bond for use in tuition refunds or using a tuition protection fund. The limited number of 35 barber schools would make it difficult to generate sufficient revenues to operate a tuition protection fund. In addition, the tuition range of \$1,500 to \$2,000 for barber schools and their average enrollment of 23 students indicate that there is a smaller threat of financial loss than for many schools that participate in the tuition protection fund operated by TEA.

PROBLEM

The barber statute does not provide any protections for students who may lose their tuition if a barber school goes out of business. This can result in financial losses to the students, loan guarantors, or the schools that choose to complete a students training without further payment of tuition.

RECOMMENDATION

- **Barber schools should be statutorily required to obtain a \$10,000 bond for use in refunding any unused portion of tuition if the school closes before the students' training has been completed.**

The bond would be required to be obtained prior to issuance or renewal of a permit to operate a barber school. The \$10,000 amount should be sufficient considering that tuition is often about \$1,500 and the portion of tuition that is unused upon closure is likely to be considerably less than \$1,500. In addition, there have been only 18 students affected by school closures in the past five years. The bonding mechanism would provide future students or loan guarantors affected by school closures with the ability to obtain reimbursements of the unused portions of tuition paid.

FISCAL IMPACT

No fiscal impact to the state would occur as a result of this recommendation. However, the barber schools would have to obtain a \$10,000 bond at a cost of about \$100 per year.

Across the Board Recommendations

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

State Board of Barber Examiners

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

*Already in law.

State Board of Barber Examiners
(cont.)

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

*Already in law.

Appendix

Exhibit A

Comparison of Current Practice to Sunset Staff Recommendations

Current Practice

Staff Recommendation

NEED FOR REGULATION	
<p>1. Regulation of barbers through an independent state board.</p>	<p>1. Abolish the State Board of Barber Examiners and deregulate barbers.</p>
ORGANIZATIONAL ALTERNATIVES	
<p>2. Regulation of barbers through an independent state board.</p> <p>3. Regulation of barbers and cosmetologists through separate agencies and boards. The current structure of the barber board is four members representing facets of the barber industry and two public members.</p>	<p>2. Transfer agency functions to the Texas Department of Licensing and Regulation and maintain present structure of the board.</p> <p>3. Merge the functions and policy-making bodies of the barber board and the cosmetology commission. The merged board would be composed of three barber representatives, three cosmetology representatives and three public members. Maintain separate licensure for the two trades.</p>
CHANGES RECOMMENDED IF AGENCY IS CONTINUED	
<p>4. Election of the chairman by the membership of the board.</p> <p>5. Some fees and fee ceilings are set in statute. Other fees are set in rules.</p> <p>6. Full licensure and testing of barbers and barber school teachers including biennial renewal of licenses.</p> <p>7. Agency uses a written examination developed by the executive director. Barbers' stylistic skills are evaluated through a practical examination.</p>	<p>4. Provide for the governor to appoint the chairman of the board.</p> <p>5. Remove statutory fees and fee ceilings and require agency to set a fee structure designed to recover costs of regulation.</p> <p>6. Reduce level of licensure of barbers and barber school teachers to a one-time certification process and retain a competency examination.</p> <p>7. Require use of the written national barber examination and eliminate the practical examination.</p>

Exhibit A

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

Current Practice

Staff Recommendation

CHANGES RECOMMENDED IF AGENCY IS CONTINUED	
<p>8. Agency currently tests and licenses manicurists, barber technicians, wig specialists and wig instructors. These licenses are renewed biennially.</p> <p>9. Barber shop owners must obtain a state permit in order to operate. Barber shops are generally inspected four times a year.</p> <p>10. Applicants who are already licensed in another state must meet Texas' training requirements and take the exam unless Texas has entered into a reciprocal agreement with the other state.</p> <p>11. The state allows the board to deny or revoke a license for habitual drug or alcohol addiction. These terms are not defined and this ground is not used by the board.</p>	<p>8. Reduce level of licensure of manicurists and other specialty licensees to a one-time certification process upon successful completion of an approved training program. No examination or agency enforcement would take place.</p> <p>9. Eliminate requirements for barber shop permits and for routine inspections of barber shops. The agency would continue to respond to consumer complaints.</p> <p>10. Evaluate licensees from other states on the basis of endorsement. No exam would be required when licensure requirements are substantially equal. Reciprocal agreements would not be required.</p> <p>11. Delete habitual drug or alcohol addiction as a statutory ground for revoking or denying a license.</p>

Exhibit B

Findings from Other Sunset Reports Related to Health Risks

State	Findings
Maryland	Questioned whether the elimination of diseases of the scalp are the direct result of licensing. The only way to control the spread of disease is through sterilization.
Washington	There is a substantial doubt about the public health dangers from barbering.
Connecticut	The need to control disease has diminished.
South Carolina	The original purpose of the board, the protection of public health, is no longer an issue and is now obsolete.
Utah	Ringworm is the most likely health risk, but the probability of communicability through barbering is low.
Virginia	No record of communicable disease being transmitted from barbering.
Arizona	No health and sanitation bases to justify licensure.
Colorado	Question whether lack of serious threat to public health merits mandatory licensure.
California	No outbreaks of serious disease attributable to barbers or cosmetologists anywhere in the U.S. in recent times.
Kansas	Little if any chance of disease being spread in cases of unclean shops or supplies.

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

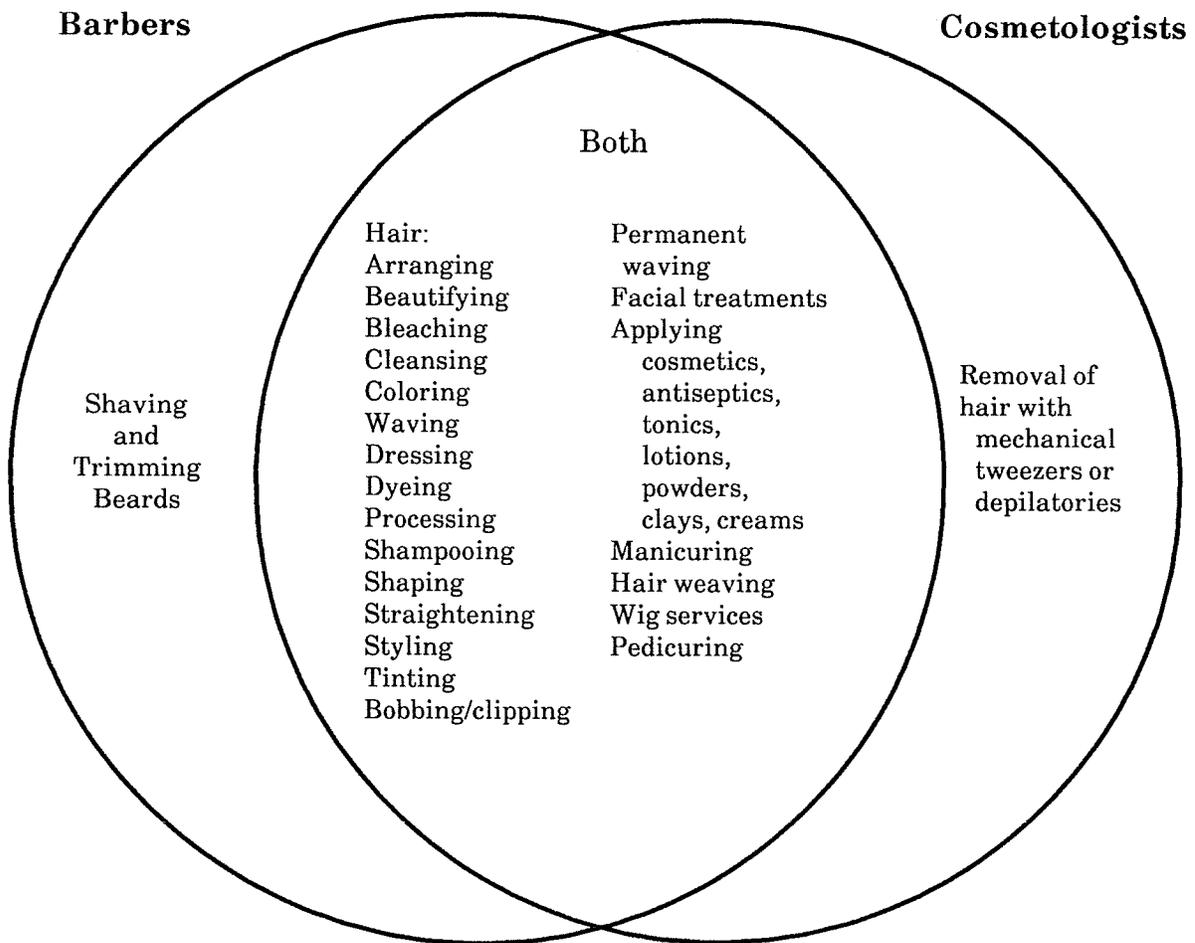


Exhibit D
Similarities in Regulatory Functions
State Board of Barber Examiners and Texas Cosmetology Commission

Function

Establish qualification standards
independently

Develop written and practical exams

Administer exams on multiple occasions

Evaluate qualifications for exam and
process exam applications

Collect and process exam fees

Grading of agency exam

Record and report grades

Process license renewal

Collect fees

Receive and investigate complaints

Field investigations

Issue Violations

Consult legal counsel

Invoke injunctive power

Administer board meetings

State Board of Barber Examiners

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