

BOARD OF BARBER EXAMINERS

Staff Report

to the

Sunset Advisory Commission

April 20, 1978

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INTRODUCTION

This report is submitted pursuant to Section 1.06, Subsection (3) of the Texas Sunset Act and contains a review of the operations of the State Board of Barber Examiners. Termination of the State Board of Barber Examiners has been scheduled for September 1, 1979 unless it is continued by law.

The material contained in the report is divided into three major sections: Background, Review of Operations and Conclusions. The Background section contains a brief history of legislative intent and a discussion of the original need for the State Board of Barber Examiners. The Review of Operations section contains a review of the operation of the agency, and uses the self-evaluation report submitted by the agency as the basis of review unless noted. The information contained in the self-evaluation report was verified, and additional data were obtained through interviews and review of agency files and other data sources. The Conclusions section summarizes the import of material developed in the individual criteria, from the standpoint of whether or not Sunset criteria are being met, and develops approaches relative to these findings.

This report is designed to provide an objective view of agency operations, based on the evaluation techniques utilized to date. Together with pertinent information obtained from public hearings, a factual base for the final recommendations to the Legislature will be provided.

BACKGROUND

HISTORICAL DEVELOPMENT

Barbering and its regulation have been in existence many centuries. As early as medieval times, barbers were involved in jurisdictional disputes between surgeons and barber-surgeons. The surgical aspects of barbering practices were eliminated by 1800 in Europe.

The barber-surgeon heritage crossed to America prior to that date. Even though surgical aspects are no longer a part of barbering in the United States, the red and white striped pole identifies barber shops today.

The first instance of barber regulation in the United States occurred in the State of Oregon in 1889. By the 1970's, every state except Alabama had enacted legislation regulating barbers.

In Texas, the Legislature created a Board of Barber Examiners in 1907. **However, that legislation was declared unconstitutional on a number** of grounds, including discrimination. (It exempted certain persons--those working their way through state schools or universities by barbering, or persons serving as barbers in towns of 1,000 or less--from regulation.)

The next attempt at regulation occurred in 1921 when the Thirty-seventh Legislature enacted a law requiring persons "owning, operating, or managing barber shops or beauty parlors" to register with the Texas State Board of Health. This law required barbers and hairdressers to keep barber shops and beauty parlors thoroughly clean and to sterilize all tools, equipment and instruments prior to usage on customers. Although the registration provisions were placed with the Health Department, and the sanitation provisions were mandatory, no enforcement mechanisms were provided. Thus, the legislation was little more than a registration law.

This legislation also made the first statutory distinction between barber shops and beauty parlors. Haircutting, shaving and trimming beards and shampooing or massaging the face for a fee was done in barber shops; while hairdressing, manicuring, massaging the skin, shampooing, and washing the scalp for pay was done in beauty parlors.

Some eight years later, in 1929, the Forty-first Legislature, First Called Session, further defined the practice of barbering when it created the Board of Barber Examiners. The registration of beauty shops remained with the Health Department until 1935 when the practices of hairdressing and cosmetology were further defined and the State Board of Hairdressers and Cosmetologists was established.

The Barber Law provided several new provisions. These included: licensing of barbers and assistant barbers, with yearly renewals on November 1; regulations affecting barbers, assistant barbers, shops and schools; rule-making authority, with those portions relating to sanitation subject to Health Department approval; and penalty provisions including fines ranging from \$25 to \$200.

Administration

The law enacted in 1929 provided for a **Board** consisting of three members, appointed by the Governor, who were practical barbers and had been barbering in the state for at least five years before appointment. Initially, members served three-year terms, but this was changed to six-year terms in 1951. In 1975, the number of Board members was increased to six and Senate confirmation of Board members became mandatory. At that time, the structure of the Board was modified to include two licensed barber shop owners, two licensed barbers who did not own shops, and two licensed owners of barber schools or colleges. All Board members except school representatives must now have five years experience in the **practice of barbering**.

Compensation of Board members was originally limited to per diem of \$10 and actual expenses when engaged in official Board duties. This was modified in 1961 so that members' per diem is set through the general appropriations act.

The Board is responsible for electing a president from its members and selecting a secretary (executive director) and other employees deemed necessary to carry out the provisions of the Barber Law. The Board is required to maintain an office in Austin, Texas; to adopt rules and regulations for the transaction of business; and to adopt a common seal for the authentication of its orders, certificates, and records.

The staff of the agency originally consisted of an executive secretary. The Forty-first Legislature, Second Called Session, made some revisions in the law to make it acceptable to the Governor and also allowed the agency to hire "necessary staff." One revision of the law in 1945 specifically added five persons to the inspection staff. The staff peaked in 1937 with 20 persons. Currently, the staff consists of five office personnel and 10 inspectors who operate in the field and office outside of Austin.

Responsibilities

The 1929 legislation provided for licensure of barbers and assistant barbers. Those provisions have been expanded and made more explicit over the years. Current legislation provides for licensure or certification of barbers, manicurists, wig specialists, wig instructors, barber college instructors, barber technicians, barber shops, wig salons, wig schools and barber colleges.

The original requirements for a barber's license were good moral character, 18 years of age, and a satisfactory examination. Under the present statute, an applicant is required to be at least 16½ years old and successfully pass written and

practical examinations.

The Board's responsibilities relating to schools, colleges, and shops have undergone numerous changes over the years. The 1929 legislation required the Board to prescribe sanitary requirements for barber shops and barber schools, subject to the approval of the State Board of Health. Additionally, no school was to be approved unless applicants were required to have graduated from the seventh grade and then receive a 1000-hour course of instruction including the following subjects: "Scientific fundamentals of barbering, hygienic bacteriology, histology of the hair, skin, and nails, muscles and nerves, structure of the head, face, and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands and nails, massaging and manipulating the muscles of the scalp, face, or neck, hair cutting, shaving, and arranging, dressing, coloring, bleaching, and tinting of the hair."

Those portions of the 1929 law may be contrasted to relevant portions of the present law. The provisions regarding establishment of sanitary rules and regulations were modified by the Forty-first Legislature, Second Called Session, in 1929 when that power was transferred to the Health Department. Those rules and regulations are to be forwarded to each barber, school or licensee, and copies are to be posted in barber shops and schools, according to present legislation. With the exception of the sanitary rule-making authority of the Health Department, the Board has authority to make and enforce necessary rules and regulations, and to conduct inspections as necessary. The Board may also institute legal actions and enjoin violations of its act.

The barber school provisions have been modified so that graduation requires 1,500 hours of a course of instruction to be determined by the Board. In addition to the subjects required in 1929, other subjects have been added, including

administering facial treatments, hair weaving, and servicing wigs.

The requirements that schools must meet have also expanded and been made more specific. Specific equipment, teacher to student ratios, identification of school premises, teacher qualifications, registration of ownership, detailed drawings of the physical layout and other requirements are set out in the present statute.

The definition of who is included under the provisions of the Barber Law has undergone numerous changes. However, the result is that under present statutes, a barber is one who holds himself or herself out to do barbering, while a cosmetologist is one who holds himself or herself out to do cosmetology, even though both may essentially perform the same functions.

Funding

The enabling legislation permitted the Board to collect fees to cover the operating expenses incurred by the Board. Since the Board is intended to be self-supporting, the fees are deposited into Fund 40, rather than into the General Revenue Fund. The balances in Fund 40, which have never been excessive, determine the budgetary constraints for the agency.

Due to the fluctuations in the number of barbers over the years, the fee structure has been modified more frequently than any other aspect of the Barber Law. The recent decline in the number in the industry and other inflationary factors have led to a fee structure that is currently set at the highest rates in the history of the law.

No provisions in the Barber Law exist to transfer any excess funds that exist into the General Revenue Fund. This may be contrasted with the Cosmetologists Commission, where excess fees generated by the agency are placed in the General Revenue Fund. Authorized expenditure levels of the State Board of Barber Examiners are \$317,320 for FY 78 and \$318,363 for FY 79.

COMPARATIVE ANALYSIS

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

The need to regulate the occupation of barbers is currently expressed through licensing requirements imposed by 50 of the 50 states surveyed. From the standpoint of organizational patterns, 42 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. In 30 states, the function is carried out through a governmental department charged with the regulation of multiple occupations.

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

A majority of the states, including Texas, indicate that the revenue sources of the regulatory body, regardless of organizational form, were derived from fees collected. Only 3 of 50 states indicated that these bodies were not solely supported by fees and charges of the agency.

Two of the states regulating the occupation of barbers administer national examinations. The other states develop and administer their own exam. Texas does not use a national examination. The examination is required only once in 50 of the states, including Texas. In 31 states, licensees are required to renew their

licenses annually. Texas licenses for a two-year period. Enforcement activities in 45 states, including Texas, involve investigation of complaints from consumers and others engaged in the occupation of barbering. Hearings are conducted inside the regulating agency in 35 states. In Texas, hearings are conducted by the Board.

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

REVIEW OF OPERATIONS

Criterion 1

The efficiency with which the agency or advisory committee operates.

The review under this criterion centered on financial data and other records of the agency. This information was analyzed to determine if funds available to the agency had been utilized in a reasonable manner to achieve the purposes for which the agency was created and to determine if areas existed in which greater efficiency of operations could be achieved.

The Board of Barber Examiners is responsible for licensing and regulation of barbers in Texas. All income of the Board is deposited in the State Treasury in the Barber Examiners Fund (No. 40). **The Legislature** makes appropriations to finance operations of the Board from this fund.

Board Members

The Board consists of six members, appointed by the Governor and confirmed by the Legislature, who serve six-year terms. It is comprised of two licensed barbers, two licensed barber shop owners, and two barber school owners. The attendance record of these persons or their predecessors, where applicable,¹ is presented in Exhibit I-1. Over this period, shop representatives had the best attendance record, while barber representatives had the lowest attendance rate. Given the relatively large number of Board meetings, the overall attendance record, approximating 90 percent, appears to be adequate.

¹The Board was expanded from three to six members in 1975.

EXHIBIT I-1

Board Members Attendance
Fiscal Years 1975-1977
State Board of Barber Examiners

Current Board Members	Term of Office	Attendance at Meetings		
		1975* (13)	1976 (17)	1977 (15)
Rene' Garza <u>Shop Representative</u>	June 19, 1975 to May 19, 1981	2	15	14
W. C. Newby <u>Barber Representative</u>	May 19, 1973 to May 19, 1979	13	13	11
Victor G. Salazar <u>Barber Representative</u>	October 21, 1975 to May 19, 1979	-	15	14
Dean D. Stanton <u>School Representative</u>	October 21, 1975 to May 19, 1981	-	15	15
Helen Spears <u>School Representative</u>	February 1, 1978 to May 19, 1983	-	-	-
Remolo Picciandra <u>Shop Representative</u>	February 1, 1978 to May 19, 1983	-	-	-
<hr/>				
<u>Past Members</u>				
Thomas Hullum** <u>Shop Representative</u>	May 19, 1971 to May 19, 1977	13	17	14
H. M. Lynn D'Lynn** <u>School Representative</u>	October 21, 1975 to May 19, 1977	-	14	13
Roy Fowler <u>Shop Representative</u>	May 19, 1969 to May 19, 1975	11	-	-

*Law required only three Board members before September 1975.

**Served until new appointments were made in February 1978.

The expenditures of Board members for fiscal year 1977 are presented in Exhibit I-2. Only one school representative, no longer on the Board, had per diem and lodging and meal expenses that exceeded 25 percent of the Board average.

The total expenditure figure of Board members was high compared to other licensing agencies. Perhaps as a result, the appropriation for Board member's per diem and travel was cut from \$59,540 in fiscal year 1977 to \$28,380 in fiscal year 1978. The number of planned Board meetings dropped by 20 percent as well. A new rider was also inserted in the General Appropriations Act for 1978-79 that prohibited payment of Board member travel or per diem for field investigations. Board costs were also reduced by giving nine fewer examinations in fiscal year 1978 than in fiscal year 1977.

EXHIBIT I-2

State Board of Barber Examiners
Board Member Expenses, Fiscal Year 1977

Members	Mileage	Per Diem	Lodging and Meals	Total
Rene' Garza	\$ 3,446	\$ 5,550	\$ 1,733	\$ 10,729
W. C. Newby	2,896	3,480	1,179	7,555
Victor Salazar	3,076	5,400	1,447	9,923
Dean Stanton	3,006	4,830	1,722	9,558
H. M. Lynn D'Lynn	1,940	5,820	2,573	10,333
Thomas Hullum	<u>2,840</u>	<u>5,250</u>	<u>1,282</u>	<u>9,372</u>
Total	<u>\$ 17,204</u>	<u>\$ 30,330</u>	<u>\$ 9,936</u>	<u>\$ 57,470</u>

Administration

The Board is administered by a staff consisting of an executive director, four clerical personnel, and 10 inspectors located in the field. The staff appears to be conscientious, and is making progress toward improved agency performance.

In order to accomplish the overall program objectives of the agency, the staff is responsible for performing a variety of specific and interrelated tasks which can be grouped under the following general categories:

1. Inspections
2. Examination procedures
3. Licensing procedures
4. Records maintenance
5. Accounting responsibilities
6. General support activities

Inspections

The Board of Barber Examiners has 10 inspectors to review its 10 state districts. On the average, schools and shops are inspected between two and three times a year.

Currently, no systematized mechanism exists to ensure that shops are inspected, that they are inspected with recommended frequency, or that past violators are inspected with sufficient frequency to prevent further abuses. Given the size and the types of management information generated by the agency, only computerization could be expected to provide the type of management data necessary for effective utilization of inspection staff, without generating excessive costs.

Examination Procedures

Examinations are given by Board members with the assistance of the

executive secretary in locations throughout the state. In past years, a large number of exams have been given: 17 in FY 75, 20 in FY 76, and 21 in FY 77. In FY 78, only 12 exams are planned. The reduction is designed to help reduce the cost of Board travel and per diem.

The number of those taking the Board's exams has continued to decline from 2,087 in FY 69 to 915 in FY 77. Analysis of the pass-fail ratio indicates that overall the failure rate is declining, although the highest failure rate in the nine years analyzed was in FY 74, and the lowest in 1977. For other figures, please refer to Exhibit I-3.

Licensing Procedures

The Board of Barber Examiners may issue licenses for wig specialists, wig instructors, barbers, barber technicians, teachers, and manicurists, and also may license barber shops, schools, wig salons, wig schools and issue temporary permits. Exhibit I-4 provides a five-year perspective of licenses issued by the Board.¹

The licenses issued reflect a decrease in the number of barber shops in the state. A steady decline has occurred from 7,011 in FY 73 to 6,058 in FY 77, or approximately 14 percent.

Legislation passed in 1975 provided for biennial registration by the Board, and biennial licensure has been implemented. However, the two-year workload has not been evenly divided. The Board currently licenses approximately 30 percent of its target population in even-numbered years, and approximately 70 percent in odd-numbered years. (Although the split is very similar to that in the Texas Cosmetology Commission, the similarity is only coincidental.)

¹No wig-related licenses have yet been issued by the Board.

EXHIBIT I-3

An Analysis of Examinations Given and
Applicants who Passed/Failed
Board of Barber Examiners

	<u>Manicurist</u>	<u>Barbers</u>	<u>Teachers</u>	<u>Technicians</u>	<u>Total</u>
<u>1969</u>					
Appeared		2,041	36	10	2,087
Passed		1,358	3	9	1,370
Failed		683	33	1	717
% Failed		33.5%	91.6%	10.0%	34.5%
<u>1970</u>					
Appeared		1,771	35	15	1,821
Passed		1,204	9	14	1,227
Failed		567	26	1	594
% Failed		32.0%	74.3%	6.7%	32.6%
<u>1971</u>					
Appeared		22,026	39	15	2,080
Passed		1,489	6	14	1,509
Failed		537	33	1	571
% Failed		26.5%	84.6%	6.7%	27.5%
<u>1972</u>					
Appeared		1,592	50	31	1,673
Passed		1,112	10	25	1,147
Failed		480	40	6	526
% Failed		30.2%	80.0%	19.4%	31.4%
<u>1973</u>					
Appeared		1,249	22	13	1,284
Passed		847	6	10	863
Failed		421	16	3	440
% Failed		23.8%	72.7%	23.0%	32.8%
<u>1974</u>					
Appeared		1,086	26	25	1,137
Passed		703	5	19	727
Failed		383	21	6	410
% Failed		35.3%	80.8%	24.0%	36.1%
<u>1975</u>					
Appeared		1,100	21	42	1,163
Passed		779	6	38	823
Failed		321	15	4	340
% Failed		29.2%	71.4%	9.5%	29.2%

(Continued)

EXHIBIT I-3

An Analysis of Examinations Given and
Applicants who Passed/Failed
Board of Barber Examiners
(continued)

	<u>Manicurist</u>	<u>Barbers</u>	<u>Teachers</u>	<u>Technicians</u>	<u>Total</u>
<u>1976</u>					
Appeared	1	1,069	32	73	1,175
Passed	1	807	11	69	888
Failed	0	262	21	4	287
% Failed		24.5%	65.6%	5.5%	24.4%
<u>1977</u>					
Appeared	8	840	29	38	915
Passed	8	666	11	36	721
Failed	0	174	18	2	194
% Failed	0	20.7%	62.1%	5.2%	21.2%

EXHIBIT I-4

A Comparison of the Number of Licenses Enforced (A)
State Board of Barber Examiners

<u>Type of License</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
Barber Licenses	18,860	17,537	18,485	17,475	17,561
Barber Shop Permits	7,011	6,647	6,422	6,247	6,058
Manicurist	-	-	-	89	139
Teacher Certificates	107	109	127	114	105
Barber Technician Licenses	75	69	102	171	175
School	18	45	50	28	39
Temporary Permits	<u>20</u>	<u>15</u>	<u>27</u>	<u>21</u>	<u>25</u>
Total	<u>26,091</u>	<u>24,422</u>	<u>25,213</u>	<u>24,145</u>	<u>24,102</u>

NOTE A: These numbers are approximate. The decline in shop permits attributable in part to the creation of a rapid number of partnerships due to inflation and high energy costs.

This split in workload results from original statutory requirements that barbers and barber technicians renew on or before November 1 of odd-numbered years, while the shop permits expire on July 1 of odd-numbered years. Thus, most of the workload falls within a small time frame. As a result, the Board hires temporary staff, with approximately \$5,000 appropriated for 1978. New provisions were added to the Barber law to resolve this problem by allowing staggered renewal dates, but due to the difficulties of manually converting to a new system, implementation of new procedures has yet to occur.

Records Maintenance

A significant portion of the Board's administrative responsibilities involve record maintenance activities. Records are maintained on applicants, examinees, licensees, renewals, Board meetings, and financial activities of the Board.

The agency's system of records maintenance is logically arranged and appropriate for an agency of this size. Files are maintained for five years after closing (last action). Then they are transferred to the state archives. The agency has just begun its first destruction of files, including those files which have been inactive for at least 25 years. Records are being maintained of the person's name, file number, last known address and license number, and any other significant data from those destroyed files. Since the files are maintained for five years in an inactive status, and since the records are not microfilmed or computerized, a significant portion of the agency's space is used for filing.

Accounting Responsibilities

The Board's accounting function is handled primarily by an Accounting Clerk III. The agency's accounting procedures are comparable to other agencies of similar size and function. The State Auditor's staff indicated that the Board's

bookkeeping functions are handled in accordance with accepted accounting principles, and that the Board's staff has been vigorous in efforts to ensure that proper procedures are maintained. Although some initial confusion resulted from misinterpretation of Attorney General Opinion H-818, dated May 7, 1976, regarding shop permit fees, corrected procedures were adopted in 1977.

General Support Activities

The staff is responsible for miscellaneous support functions including correspondence, purchasing, and recording minutes of Board meetings. Analysis indicated that these operations are orderly and comparable with other agencies of similar size and scope.

Financial Position

A detailed presentation of Board expenditures as a total percent of expenditures for fiscal year 1977 is made in Exhibit I-5. As expected, personnel costs are the largest component of agency costs. Board member travel and per diem was higher than would have been expected, but as discussed previously, appropriated levels for FY 78 and later were lowered considerably. Otherwise, the expenditure pattern is comparable to agencies of similar size and function.

Unit Cost

Unit cost figures for the agency are not truly comparable over a five or ten-year period due to the recent change to biennial registration and the asymmetric workload in those two years. However, in order to provide a perspective, the 1977 unit cost figures for the Texas Cosmetology Commission and the Board of Barber Examiners are presented in Exhibit I-6.

EXHIBIT I-5

State Board of Barber Examiners
Expenditures for Fiscal Year 1977

	<u>Amount</u>	<u>Percent</u>
<u>Personnel Costs</u>		
Salaries	\$ 192,513	55
State Contribution-Insurance	<u>3,585</u>	<u>1</u>
	196,098	56
 <u>Board Expenses</u>		
Per Diem	30,330	9
Travel	<u>27,140</u>	<u>7</u>
	57,470	16
 <u>Operating Expenses</u>		
Travel	51,408	15
Interagency Services	26,400	8
Printing and Office Supplies	1,732	-
Postage	3,468	1
Telephone and Telegraph	3,245	1
Rent Expense		
Office	6,696	2
Barber College (to conduct exam)	1,126	-
Machine	192	-
Other	<u>5,076</u>	<u>1</u>
	<u>99,343</u>	<u>28</u>
TOTAL	<u>\$ 352,911</u>	<u>\$100</u>

EXHIBIT I-6

Cost Per Licensee - Fiscal Year 1977

Agency	No. Licenses Biennial ¹	FY '77	Total Expenditures	Unit Cost Biennial ²	FY '77
Texas Cosmetology Commission	100,248	67,060	\$ 896,906	\$17.90	\$13.37
Board of Barber Examiners	25,262	7,252	\$ 352,911	\$27.94	\$48.66

¹Estimated.

²Calculated by dividing expenditures by one-half of biennial total number of licenses in order to obtain an annual average.

These figures show unit cost based on a true 1977 basis, which is biased by uneven workload. Also, unit costs are presented by calculating a unit cost based on one-half (the 1977 portion) of the biennial total number of licenses. The adjusted figures show unit costs approximating \$18 for the Cosmetology Commission and \$28 for the Board of Barber Examiners. (The raw figures show even greater splits, from approximately \$13 to \$49.) The figures may suggest that economies of scale are available in licensing agencies such as these two. This could be viewed as evidence for merger of the two agencies.

Projected Revenues and Expenditures

Summaries and projections of revenues and expenditures of the Board of Barber Examiners for fiscal years 1968-1983 are presented in Exhibit I-7. Due to the uncertainties of and limited experience with biennial registration, the projections are less solid than with other agencies. However, they do indicate that the

agency will continue to be self-supporting through 1983, given the present fee structure. The fee structure on which these projected revenues are based is shown in Exhibit I-8.

Summary

The Board of Barber Examiners adequately performs its functions; however, improved efficiency could result from a number of changes. The first involves staggering license renewals. Currently, shop permits expire July 1 and barbers must renew prior to November 1 of odd-numbered years. However, the Board also has authority to stagger renewals within the year, which has not been implemented due to problems with manual conversion. This places an uneven workload on the agency staff, requires the hiring of part-time staff at additional cost, and increases license turnaround time. It also may place a burden on shop owners who must pay biennial registration fees for a shop of \$25 and for a barber's license of \$35 within five months of the 24-month licensing period.

Additional administrative improvements could also be achieved if the agency effectively utilized computer technology in other areas. The current volume of files maintained could be reduced, and the inspection process could be better managed to ensure management objectives are actually implemented.

Comparison of unit costs of the Texas Cosmetology Commission and the Board of Barber Examiners suggests that economies of scale exist, and that the state could benefit if the two agencies were merged.

EXHIBIT I-7

An Analysis of Revenues, Expenditures and Projections
Barber Examiners Fund (A)

Fiscal Year	Revenues			Total	Expenditures	Fund Balance
	Licenses and Fees	Service Chg. to Fund (Rents)	Other			
1968	\$203,675	\$ (16,847)	\$6,952	\$193,780	\$215,930	\$178,052
1969	201,415	(17,918)	4,940	188,437	229,037	137,452
1970	199,879	(17,537)	(108)	182,234	230,151	89,535
1971	198,208	(17,480)	599	181,327	235,558	35,304
1972	194,084	(738)	-0-	193,346	221,053	7,597
1973	176,684	(1,350)	1,272	176,606	182,081	2,122
1974	533,585(B)	(29,696)	14	503,903	237,607	268,418
1975	71,716	(30,696)	-0-	41,020	261,110	48,328
1976	616,880	(33,195)	-0-	583,685	311,964	320,049
1977	266,173(C)	(33,096)	-0-	233,077	352,911	234,970
<u>Projections</u>						
1978	592,765	(26,400)	-0-	566,365	341,363	459,972
1979	203,295	(26,400)	-0-	176,895	352,969	283,898
1980	657,918	(26,400)	-0-	631,518	361,440	553,976
1981	206,751	(26,400)	-0-	180,351	383,126	351,201
1982	669,103	(26,400)	-0-	642,703	392,773	601,131
1983	210,266	(26,400)	-0-	183,866	416,339	368,658

- (A) From the Comptroller's Annual Reports except for 1977 expenditures.
 (B) Fees were increased effective 8-27-73, the effort of which was to triple revenues.
 (C) Included is approximately \$122,725 in Revenue Applicable to fiscal 1976. Language in Senate Bill No. 86, Sixty-fourth Legislature, Regular Session. Later interpreted by Attorney General Opinion No. H-818 dated May 7, 1976 resulted in the assessment of an additional \$12.50 from shop permittees collected in fiscal year 1977.

EXHIBIT I-8

Summary of Rates of Licenses and Fees
 State Board of Barber Examiners
 as of Fiscal Years 1976 and 1977

	<u>Amount</u>
<u>Examination Fees:</u>	
Registered Class A Barber	\$10.00
Teachers	35.00
Old Texans	35.00
Manicurists	5.00
Wig Specialist	5.00
Wig Instructor	5.00
<u>Initial Licenses:</u>	
Registered Class A	25.00
Barber Technician	25.00
Teacher	35.00
Manicurist	15.00
Wig Specialist	15.00
Wig Instructor	35.00
<u>Renewals: every two years</u>	
Registered Class A	35.00
Teacher	35.00
Barber Technician	35.00
<u>Reinstatements:</u>	
Registered Class A	35.00
Barber Technician	35.00
<u>Shop Permits:</u>	
Temporary (Initial)	25.00
Renewal - every two years	25.00
Wig Salon	25.00
<u>Barber Shop Licenses:</u>	
Initial	500.00
Renewal	150.00
Wig School	100.00
Temporary Permit to Demonstrate Hair Styles	10.00
Duplicate Certificates	5.00

Criterion 2

An identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved and any activities of the agency in addition to those granted by statute and the authority for these activities.

The review under this criterion centered on an identification of the agency's statutory objectives as they related to the perceived need and the extent to which agency methods used can reasonably be expected to achieve those objectives. Statutes were reviewed to determine if objectives described in the self-evaluation report presented an accurate reflection of statutory duties. Agency viewpoints were sought to provide additional clarification; and appropriate files were reviewed to collect and verify selected data presented under this criterion.

The Board of Barber Examiners was originally created in 1907. In 1929, the Board was re-established and has continued to the present date. The barbers of Texas, recognizing the need for standardized rules and regulations governing the sanitary conditions of barber shops, requested this legislation and subsequent amendments for the purpose of protecting the health of the public using their facilities.

Under Article 8407a V.A.C.S., the State Board of Barber Examiners is currently mandated to perform the following functions:

1) To make and enforce all rules and regulations necessary for the performance of its duties;¹

¹This power is subject only to authority granted by the act to the Health Department to promulgate reasonable rules and regulations as to sanitation.

- 2) To establish standards of conduct and ethics for all persons licensed or practicing under the provisions of the act;
- 3) To regulate the practice and teaching of barbering;
- 4) To ensure strict compliance with and enforcement of the act;
- 5) To inspect barber shops, barber schools, or any place where any of its licensees are practicing or performing by authority of any license of the act; and
- 6) To maintain appropriate records of its actions and provide an annual report to the governor of its activities.

These statutory mandates are reflected in the Board's stated objectives, which also explicitly includes protection of the public health and welfare. "The objective of the Board is to see that the public is properly protected in all contacts with barbers and barber shops and to see that high standards are maintained in barber schools to insure that new barbers are trained in all aspects of the sanitary laws."

These objectives are carried out through the functions of administration; registration, licensing, and testing; and inspection. These areas of operation present the framework for review of the objectives of the agency.

Administration

Under Section 26 of Article 8407a, V.A.C.S., the Board is authorized to employ an executive secretary and staff necessary to administer and enforce provisions of the act. The administrative staff is responsible for achieving a number of the agency's objectives. These include making and enforcing necessary rules, establishing standards of conduct and ethics, and maintaining appropriate records of its actions.

A review of agency operations indicates that the agency adequately performs the general function of administration. However, the specific objectives stated above are achieved with varying success.

The Board makes and enforces rules necessary for operation of the agency. Rule-making activities are fairly infrequent, averaging once or twice a year, which may not be unusual for an agency that has been in existence for almost 50 years.

Establishing standards of conduct and ethics is not addressed directly by the Board. Under the curriculum set by the Board, the schools do touch upon accepted business practices, which in a broad sense may be construed as standards of conduct and ethics.

Finally, the objective of maintaining appropriate records of its actions is adequately addressed. Board records are maintained in a consistent and orderly fashion. Filing is processed daily and index files are updated monthly. The records are maintained in accordance with the State Record Management Program. The Board makes timely deposits of monies received into the State Board of Barber Examiners Fund (No. 40). During the peak season, those deposits are made at least twice a week. Those transactions are handled in accordance with generally accepted accounting principles. Various reports, such as those to the Governor or Legislative Budget Board, have been filed as required.

Registration, Licensing and Testing

The statutory mandate to regulate the practice and teaching of barbering is reflected in several functions including testing, licensing, and registration which are designed to ensure uniformity.

Testing

The Board of Barber Examiners has given an average of nineteen examinations per year over the last three years. The average number taking the exams over that period has declined from 100 to 75 per month. The exams are given in facilities throughout the state, and are available in several different languages. If

necessary, the applicant is expected to provide a translator for the practical portion of the exam.

The written portion of the exam consists of 50 questions, with three different exams presently being used on a rotating basis. The practical exams are graded by the Board Members and area inspectors help grade the written exam.

The exam success rates generally seem to fall within acceptable ranges. The exception is the teacher examination where an average failure rate of 75.9 percent has existed since 1969. The impact on the number of licensed teachers has been to decrease from 107 to 105 in the period from 1973 to 1977. This rate of decrease approximates two percent while the rate of decrease in barbers over the same period approximates seven percent. These rates may be compared to schools which have increased by 111 percent over the same period (from 18 to 38). Although these figures may suggest restricted entry into the occupation of teaching barbers, they more strongly suggest that the state has an excess capacity of barber schools.

Another area of concern discovered during interviews with licensees is the relevancy of the barber exams. This expressed concern may reflect divisions within the industry itself. "Traditional" barbers maintain that "tapering of the hair is the art of barbering" and this approach apparently is reflected in the barber exam. On the other hand, "progressive" barbers are likely to provide different kinds of haircuts in their professional capacity, and suggest that barber exams test the ability to cut hair in a manner that may not be in keeping with current fashion. Ultimately the market mechanism will provide evidence as to which view is correct.

Licensing

Currently the licensing procedure used by the Board is done manually. Although the Barber Law allows staggered renewal periods, conversion has not

occurred because of the difficulty in converting a manual operation. Using this manual system, license issuance is accomplished within a one to three week time frame if proper materials are received by the Board. The current turnaround time may not be excessive, but improvement can be achieved with data processing support so that the lag time would drop between two and four days.

Interviews with agency staff indicated concern with the present system that does not require renewal of a manicurist's license, and with the possible inequities of having the barber and barber technician renewal rates set at equal levels. While the equal rates may be discriminatory to barber technicians who are likely to earn less than barbers, an incentive is provided to advance to a higher class of license.

Registration

According to Article 8402 V.A.C.S., which was passed in 1921, every person owning, operating or managing a barber shop or beauty parlor is to register with the Department of Health. This statutory provision is not met, the Health Department maintains no such registry, and apparently no ill effects are suffered by the general populace as a result. This provision could be repealed with no noticeable effect.

Inspection

The Board's objective of ensuring strict compliance with, and enforcement of, the act may be achieved through screening all applicants before issuance of a license, and through utilizing authority to revoke or suspend a license or permit for violation of statutory or regulatory provisions.

However, the primary mechanism of ensuring compliance is the inspection function. The Board has authority to inspect in any location where its licensees are providing services under the authority of that license. The inspection function is performed by 10 inspectors who are responsible for different areas of the state. They inspect and investigate all barber facilities in Texas.

In fiscal year 1977, 380 new shop openings or changes in management were investigated. (These were reported as "complaints" in the self-evaluation report.) Thirty-five instances of unlicensed practitioners providing barbering services were investigated and reported. In addition 61,335 individual licensee inspections were performed in 6,500 barber shops and in 38 barber schools. This provided inspections of shops and schools on an average of between two and three times a year.

Inspection activities appear to be adequate, but improved performance could be achieved by proper use of computer technology.

Summary

The Board of Barber Examiners is adequately performing its functions of administration; regulation, licensing and testing; and inspections. It is generally effective in meeting its statutory objectives and mandates, but improvements are possible. A number of improvements could result from proper utilization of computer technology. Additionally, the Board could take steps to ensure that the barber exam tests skills that are in high demand by consumers.

Criterion 3

An assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public.

The review under this criterion centered on analyses of the agency's regulatory functions in terms of 1) changes over time in the restrictive nature of agency functions, as seen in the agency's statutory history; 2) significant effects of this regulation on the public and the industry; and 3) alternative methods of performing the agency's regulatory tasks. These analyses were obtained through the agency's self-evaluation report, literature concerning occupational licensing, and surveys of similar licensing functions in other states.

Historical Development of Regulation

A law establishing the Board of Barber Examiners was passed by the Thirtieth Legislature in 1907. Its objectives were "to regulate the practice of barbering, the registering and licensing of persons to carry on such practice, and to insure the better education of practitioners and to insure better sanitary conditions in barber shops, and to prevent the spread of disease in the State of Texas." However, it was declared unconstitutional in 1909, and a Board of Barber Examiners was not recreated until 20 years later. To help eliminate possible reader confusion, the 1907 law will not be presented in the historical development section, except for the following paragraph.

The Board served two-year terms and consisted of three barbers who had been practicing for at least five years. Examinations were to be given four times a year in different locations throughout the state. Barbers and their apprentices, who were to have served two-year apprenticeships, paid a \$2 licensing fee. Persons violating provisions of the act were subject to fines ranging from \$10 to \$25.

However, exemptions from the law of certain persons, such as students at state schools who were working their way through by barbering, were successfully challenged in the courts, and the law was removed from the statute books in 1909.

As previously mentioned, the first constitutional barber registration law was passed in 1921. The Board of Barber Examiners was reestablished by law in 1929. This law has been modified 10 times in succeeding years by the Legislature (1929, Forty-first Legislature, Second Called Session; 1930, Forty-first Legislature, Fifth Called Session; 1933, Forty-third Legislature; 1945, Forty-ninth Legislature; 1951, Fifty-second Legislature; 1961, Fifty-seventh Legislature; 1967, Sixtieth Legislature; 1973, Sixty-third Legislature; 1975, Sixty-fourth Legislature; 1977, Sixty-fifth Legislature). Developments as a result of these changes are categorized into licensing, enforcement and administration. Exhibit III-1 traces the evolution in these areas since 1921, and brief discussions of each follow.

Licensing

Several factors indicate that entry into the barber industry became more restricted after the passage of House Bill 104 in 1929. This bill required a certificate of registration to enter the occupation of barbering. Upon fee payment, this certificate was acquired by passing the Board examination or submitting evidence that the candidate had practiced barbering at least two years prior to the effective date of the act.

Although approximately 26,500 barbers were in Texas prior to enactment of House Bill 104, after passage approximately 18,000 barbers filed applications for certification while about 8,500 barbers either retired or moved to other states. After enactment of the Texas Barber Law, it was no longer possible to enter the barber industry simply by acquiring barber instruments and going to work.

Licensing provisions have become increasingly specific. The 1929 law licensed barbers and assistant barbers. The 1977 law allows licensure of barbers, barber technicians, instructors, wig instructors, manicurists, and wig specialists.

One indication of the restrictiveness of licensing of barbers was the large number of barbers who decided to move or retire rather than file for certification. Another indicator is that over the last nine years 12.2 percent of the barber technician applicants and 75.9 percent of instructor applicants have failed their exams. In the two years that license requirements for wigs and manicures have been in effect, no one has failed the manicurist's exam and no one has taken the wig exam. This indicates that entry into the occupation of instructor in barber schools may be most restricted by Board of Barber Examiner licensure requirements. A slight decrease in the number of licensed teachers over the last five years may support this view.

A third factor which may lead to restriction of entry into the industry is the number of hours required for graduation from barber school. The 1929 law required 1,000 hours. This requirement was increased to 1,200 hours in 1961, and increased again in 1975 to 1,500 hours. Data are not available to judge accurately the impact of these requirement changes. However, it should be noted that these modifications which one would expect to benefit the barber school industry, were made during relatively less prosperous economic conditions for barbers.

A fourth factor which could lead to restriction of entry is the level of license fees. A review indicates only three fees exceed \$35, which may not be excessive for biennial registrations. The three fees over \$35 are the initial fee of \$500 and renewal fee of \$150 for barber school licenses, and the fee for wig schools of \$100. Since there has been a large increase in the number of schools over the past five years when the initial fee was set at \$500, the license fee apparently has had little

detectable impact on restriction of entry into the industry.

Two other factors which might increase restrictiveness have been relaxed over time. The minimum age was set originally at 18, and lowered to 16 in 1975.

The second factor involves reciprocity provisions with other states. **Reciprocity provisions, or the lack of them**, could be used to restrict entry. The 1929 law contained no reciprocity provisions. These provisions were added in 1933 for barbers, and extended to assistant barbers (since deleted from the law) and barber technicians in 1967. The minimum age for reciprocity provisions was lowered from 18 to 16 1/2 years of age for barbers in 1975.

On balance, the changes in licensing provisions have been only slightly restrictive. Given the economic conditions in the barber industry in recent years, economic theory would have suggested that it would have been in the barbers' self-interest to actively restrict entry into the occupation through licensing provisions, thus effecting an income redistribution toward those holding licenses. Yet the Board of Barber Examiners did not do so.

Enforcement

The Board of Barber Examiners has held the power to revoke or suspend for cause the license of any licensee regulated by the Board since its establishment in 1929. This power has remained its essential enforcement mechanism throughout its history.

Another enforcement mechanism is levying fines. Even though there was no administrative mechanism for enforcement, the 1921 Act made violations punishable by fines between \$10 and \$50, and imprisonment in county jail for 30 to 90 days. Violation of the 1929 Barber Law was made a misdemeanor, punishable by a fine between \$25 and \$200. In 1930, violations of the Act by schools were made punishable by fines of \$25 a day. In 1961 that provision was expanded to include

shops or schools. In 1967 fines were again set between \$25 and \$200 for violations by licensees. Additionally, a fine, not to exceed \$5,000 or two years imprisonment in county jail, was established as the penalty if any Board employee had any direct business dealings except for barbering with barbers, barber shops, or schools.

However, as illustrated by the 1921 law, fines coupled with voluntary compliance generally do not produce consistent enforcement patterns. From its inception, the Board has carried out an inspection activity, employing up to 16 people to perform this function in 1937.

In that year the Board conducted 16,140 barber shop inspections and 34,405 barber inspections. As a result, it held 315 hearings for sanitary violations and ordered 302 suspensions. It also investigated and corrected 51 complaints and secured convictions in 24 instances.

That inspection workload may be contrasted to fiscal year 1977 when 10 field personnel periodically inspected about 6,500 barber shops, 18,500 Class A barbers, and 38 barber schools or colleges while conducting an average of 69,000 inspections. During that time 415 agency complaints were initiated, resulting in 11 legal actions and 63 warnings.

The fines and inspections may be characterized as restrictive. However, those actions are generally viewed as necessary to protect the public health and welfare.

Administration

There have been few changes in administration which would be expected to restrict entry. The Board composition was changed from three to six in 1975, with all members representing the industry. Although this could encourage restriction of entry into the industry, no direct evidence to this effect was discovered.

Alternate Methods

Comparisons with other states indicate that Texas is less restrictive in its licensing provisions than most. Examples follow:

Texas requires a seventh grade equivalency education. Four states have no educational requirements, one state provides for less than a seventh grade education, and 44 have higher requirements than Texas.

Eleven states require no exam. Thirty-nine, including Texas, test proficiency through an exam.

Seven states, including Texas, have no apprenticeship provisions. The remainder have apprenticeships ranging up to 36 months, with 18 months as the median.

Further comparison indicates that Texas is most restrictive in the number of course hours required for graduation from barber school. Even so, Texas' 1,500-hour requirement is the median. Two states have no requirements; 18 require less than 1,500 hours; 21 states, including Texas, require 1,500 hours, and 9 require more than 1,500 hours.

As shown previously, Texas' reciprocity provisions have become less restrictive. Given the licensing aspects discussed above, Texas can only be in a less restrictive position than other states in regard to reciprocity, although quantitative detail is not available.

Alternate methods to administer barber laws exist. All 50 states regulate barbers, with 30 states regulating through an umbrella type agency. Another option is consolidation of barber regulation with the state's cosmetology regulatory agency. In its last legislative session Colorado took steps to combine those agencies. Other states, including Maine and Iowa, have drafted such legislation to be considered in their next legislative session.

Summary

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

Possible alternatives exist to the present administrative structure in Texas, such as an umbrella agency, or combination with the agency regulating cosmetologists.

EXHIBIT III-1

Changes to Laws Regulating the State Board of Barber Examiners*

Year	Licensing	Enforcement	Administration
1921 (37th)	(No board was established, but regulations for the operation of barber and beauty shops were enacted.)	<p><u>Prohibitions</u></p> <ul style="list-style-type: none"> - Use of unsterilized or unsanitized barber utensils, towels, etc. - Employment of persons with communicable disease - Use of any portion of shop as a sleeping compartment <p><u>Penalties</u></p> <ul style="list-style-type: none"> - Violation of act is a misdemeanor; punishable by a fine not less than \$10 nor more than \$50 and/or imprisonment in county jail for period between 30 and 90 days <p><u>Regulation of</u></p> <ul style="list-style-type: none"> - Shops - Persons 	<p><u>Responsibilities - Registration</u></p> <ul style="list-style-type: none"> - Every owner and operator or manager of a barber or beauty shop is required to register name and location of shop with State Board of Health.
1929 (41st, 1st Called)	<p><u>Requirements</u> INDIVIDUALS Barber</p> <ul style="list-style-type: none"> - At least 18 yrs of age - Good moral character and temperate habits - Pass exam <p>Assistant Barber</p>	<p><u>Fees</u></p> <p>BARBER \$10 for exam</p> <p>ASSISTANT BARBER \$10 for exam</p> <p><u>Exemptions</u></p> <ul style="list-style-type: none"> - Persons practicing medicine 	<p><u>Board Responsibilities</u></p> <ul style="list-style-type: none"> - Conduct examinations (written, oral, and practical) at least four times a year - Issue certificates of registration to qualified applicants. - Provide reciprocal certification for persons from states with essentially the same requirements as Texas.

*Does not include 1907 law which was ruled unconstitutional.

EXHIBIT III-I
(continued)

Year	Licensing	Enforcement	Administration
	<ul style="list-style-type: none"> - At least 16½ yrs of age - Good moral character and temperate habits - Graduate of barbering school - Passed exam 	<ul style="list-style-type: none"> - Habitual drunkenness or addiction - Immoral conduct - Violation of certain portions of Barber Law <p><u>Penalties</u></p> <ul style="list-style-type: none"> - Violation of act is a misdemeanor, punishable by a fine of not less than \$25 nor more than \$200 	<ul style="list-style-type: none"> - Power to summon witnesses and books for revocation hearings. - Elect president and hire secretary to staff office in Austin. - Make all reasonable rules and regulations for sanitation of shops, subject to approval of State Board of Health. - Keep records of its proceedings.
	<p><u>SCHOOLS</u></p> <ul style="list-style-type: none"> - Not Board approved unless - 7th grade (equivalent) education - Not less than 1000 hours completed within six months of not more than eight hours in a work day 	<p><u>Regulation of Barbers</u></p> <ul style="list-style-type: none"> - Assistant barbers - Shops 	<p><u>Board Composition</u></p> <ul style="list-style-type: none"> - Three members, serving three-year terms who have been barbering five years <p><u>Compensation</u></p> <ul style="list-style-type: none"> - \$10 per working day
1929 (41st, 2nd called)			<p><u>Responsibilities of Board</u></p> <ul style="list-style-type: none"> - May hire such employees as necessary - Adopt a common seal - Establishes State Board of Barber Examiners Fund - Provide annual report to the Governor - The function of making, establishing, and promulgating reasonable sanitary rules transferred to the State Board of Health

EXHIBIT III-I
(continued)

Year	Licensing	Enforcement	Administration
1930 (41st, 5th called)	<p><u>Requirements</u> INDIVIDUALS</p> <ul style="list-style-type: none"> - Licenses divided into class A - for those who perform full range of services and class B - for those who only bob or cut hair <p>SCHOOLS</p> <ul style="list-style-type: none"> - Set out course of instruction - Changed admission requirements to an ability to read and write the English language 	<p><u>Penalties</u></p> <ul style="list-style-type: none"> - Violation of act by school to be fined by \$25 a day - to be enforced by AG, DA, or County Attorney 	
1933 (43rd)	<p><u>Requirements</u></p> <ul style="list-style-type: none"> - May not retake exam within six months of failing <p><u>Fees</u></p> <ul style="list-style-type: none"> - Renewal (added) \$2 - Late Registration (added) \$5 - Reciprocity \$10 	<p><u>Prohibitions</u></p> <ul style="list-style-type: none"> - Permitting any person in employ to practice without a certificate of registration - Obtaining or attempting to obtain a certificate of registration by fraud - Willfull failure to display a certificate of registration 	<p><u>Responsibilities of Board</u></p> <ul style="list-style-type: none"> - Reciprocity permitted upon payment of fees - By and through Health Department shall inspect barber shops and schools during business hours - Forward copies of sanitary rules and regulations to each barber and school
1945 (49th)	<p><u>Fees</u></p> <ul style="list-style-type: none"> - Renewal \$5 - Late Registration \$10 		<p>*Five inspector positions added to staff</p>
1951 (52nd)	<p><u>Fees</u></p> <ul style="list-style-type: none"> - Renewal \$5 only after 90 days of release from armed services 		<p><u>Board Composition</u></p> <ul style="list-style-type: none"> - Term changed to six years

EXHIBIT III-I
(continued)

Year	Licensing	Enforcement	Administration
1961 (57th)	<u>Requirements</u> <u>SCHOOLS</u> No board approval unless - no less than 1200 hours completed within 7 months for "A" permits - no less than 1000 hours completed within 6 months for "B" permits - shaving may be deleted from required topics if class B students only are taught - Schools meet space and equipment requirements specified in the act - five one-hour periods per week devoted to theory - Teacher certificates required - One teacher per 20 students - Blueprints of space, copy of training program, copy showing lease, ownership, etc. to be provided	<u>Penalties</u> <u>SCHOOLS</u> - Suspension of permit after 20-day delay - \$25 fine per day for violation	<u>Board Compensation</u> - Per diem as set by the General Appropriations Act
	<u>Fees</u> - Teacher exam \$25 - Teacher renewal \$10 - Teacher "grandfather" \$25 - School certificate \$200 - School certificate renewal \$100 - Barber renewal \$8 - Barber B renewal \$5		

EXHIBIT III-1
(continued)

Year	Licensing	Enforcement	Administration
1967 (60th)	<u>Fees</u> - Inspection \$1 - Renewal \$1	<u>Prohibitions</u> <u>INDIVIDUALS</u> - practicing barbering without annual health certificate <u>INSPECTOR OR OTHER BOARD EMPLOYEE</u> - selling barber supplies or any practice except barbering that deals directly with barbers, barber shops or schools <u>Penalties</u> - fine of not less than \$25 nor more than \$200 for licensees - fine of not more than \$5000, or two years in county jail - for Board employees	<u>Board Responsibilities</u> - Extended reciprocity provisions to assist barbers and barber technicians
1973 (63rd)	<u>Registration</u> - Changed to biennial for individuals <u>Fees</u> - Shop Renewal \$7 - Teacher certificate \$25 (biennial registration) - School \$500 - School renewal \$125 - Individual \$25 (biennial) - Late renewal \$30 (biennial) - Exam fee 10 - Registration upon return from armed services \$10 (biennial) - Assistant Barber \$10 - Barber Technician \$10 <u>Renewals</u> - May be variable		

EXHIBIT III-I
(continued)

Year	Licensing	Fees	Enforcement	Administration
1975 (64th)	<p><u>Requirements</u></p> <p><u>MANICURIST</u></p> <ul style="list-style-type: none"> - 16 years of age - 7th grade education or equivalent - Pass exam <p><u>WIG SPECIALIST</u></p> <ul style="list-style-type: none"> - 16 years of age - 7th grade education or equivalent - completed 300 hours of instruction <p><u>WIG INSTRUCTOR</u></p> <ul style="list-style-type: none"> - hold valid wig specialist license - completed 200 hours of advanced wig courses and methods of teaching <p><u>WIG SALON</u></p> <ul style="list-style-type: none"> - meet requirements set by Board <p><u>WIG SCHOOL</u></p> <ul style="list-style-type: none"> - meet requirements set by Board <p><u>BARBER SCHOOL TEACHER</u></p> <ul style="list-style-type: none"> - six month experience teaching 	<p><u>Fees</u></p> <ul style="list-style-type: none"> - Manicurist exam \$5 - Manicurist license \$15 - Wig specialist exam \$5 - Wig specialist license \$15 - Wig instructor exam \$5 - Wig instructor license \$35 - Wig salon (temporary & biennial renewal) \$25 - Wig school \$100 - Barber technician \$35 (biennial) - Barber renewal \$35 (biennial) - Barber late renewal \$35 (biennial) - Teacher exam \$35 - Teacher certificate \$35 (biennial) - School renewal \$150 - Exam for assistant barber or barber technician \$10 - Permit to demonstrate hair styles \$10 	<p><u>Prohibitions</u></p> <ul style="list-style-type: none"> - No barber may provide services in locations under jurisdiction of the Texas Cosmetology Commission - unlicensed practice <p><u>Penalties</u></p> <p>Board Member</p> <ul style="list-style-type: none"> - Removal for cause <p>License</p> <ul style="list-style-type: none"> - Any license may be canceled, suspended, or revoked 	<p><u>Board Responsibilities</u></p> <ul style="list-style-type: none"> - Reciprocity requirement age lowered to 16½ for barbers - Subject only to Health Department sanitary rules, Board shall make and enforce all rules and regulations necessary, and establish standards of conduct and regulate the practice of teaching of barbering - Power to enjoin violations <p><u>Board Composition</u></p> <ul style="list-style-type: none"> - Expanded to six members, composed of two class "A" barbers with five years experience who do not own shops, two licensed shop owners with five years experience, and two persons holding permits for barber school or college.
1977 (65th)				<p><u>Board Responsibilities</u></p> <ul style="list-style-type: none"> - Came under provisions of the Texas Sunset Act

Criterion 4

The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The review of this criterion was directed at evaluating the agency's definition of its target population. The existence of other similar populations was explored and the extent of any overlap and duplication of services offered was analyzed. When applicable, the review also dealt with any efforts to establish coordinative relationships between agencies serving similar target groups and to minimize any duplication of services. This information was collected through discussions with agency personnel, review of statutes and rules, and the identification of other agencies with the potential ability to offer these same services.

Target Populations

Duplication of programs generally occurs when services are directed to similar target populations. Target populations may be similar in several ways: age, disability or in the kind of functions performed. In regard to cosmetologists, the functions performed are similar to those performed by the target population of the licensing agency regulating the activities of barbers. While the functions performed by the two occupations can differ, the general aim is to enhance or improve a person's general appearance through cutting or styling of the hair.

Historically, the two activities were separate and distinct by virtue of the training required to perform the services. Initially cosmetologists worked on women and barbers worked on men. Hair styles were distinct and the training

needed to achieve the desired styles was different. As hair fashions have changed over the years, it has become increasingly more acceptable for men to have longer, styled hair and for women to wear various "natural" hair cuts which do not require the extensive dressing or styling techniques exercised by cosmetologists in the past.

As these fashion changes have occurred, legal distinctions have been imposed which have tended to freeze the historical differences based on the sex of the clients. However, these differences no longer hold true, and attempts to mandate such a distinction by statute have been declared unconstitutional.

Today the implicit distinctions between the performance of the occupations are still based on training and personal preferences of the client. However, as illustrated by the material presented in Exhibit IV-1 the distinction in the types of services that can be performed by either group has narrowed dramatically.

Analysis of the preceding definitions reveals very few substantive differences. The major difference between the abilities of the licensed cosmetologist and the licensed barber is: the cosmetologist can remove superfluous hair with depilatories and tweezers and the barber can shave the face or trim the beard. Although the mechanics involved in accomplishing the above tasks differ, the end results are remarkably similar. In general, the definitions of the two occupations appear to be identical. However, training for the two occupations appears to differ.

Training

The required curricula of barber and cosmetology schools are similar and both require 1500 hours for graduation. 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

EXHIBIT IV-1

Definition of Cosmetology and Barbering

Art. 8451a, V.A.C.S. (Cosmetologists)

Art. 8407a, V.A.C.S. (Barbers)

Sec. 1

(3) "Cosmetology" means the performing or doing, or offering or attempting to do or perform, any, all or any combination of the following acts, services, works, treatments, or undertakings:

(A) arranging, beautifying, bleaching, tinting, cleansing, coloring, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, waving, or otherwise treating the hair as primary services, treatments or undertakings by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services: cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated herein, or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, as such, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner whatsoever;

(B) cleansing, stimulating, or massaging the scalp, face, neck, arms, bust, or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams; beautifying the face, neck, arms, bust, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(C) removing superfluous hair from the body by use of depilatories or tweezers;

(D) cutting, trimming, polishing, tinting, coloring, cleansing or manicuring the nails of any person; or attaching false nails or massaging, cleansing, treating, or beautifying the hands of any person;

Sec. 4. In this Act, unless the context otherwise requires:

(a) "barber" shall mean any person who performs, offers or attempts to perform any act of barbering, professes to do barbering or to be engaged in the practice thereof, or who directly or indirectly or in any manner whatsoever advertises or holds himself out as a barber or as authorized to practice barbering;

(b) "barbering," "practicing barbering," or the "practice of barbering" shall mean the performing or doing, or offering or attempting to do or perform, any, all or any combination of the following acts, services, works, treatments, or undertakings:

(1) arranging, beautifying, coloring, processing, shaving, styling, or trimming the mustache or beard by any means or method;

(2) arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, dyeing, processing, shampooing, shaping, singeing, straightening, styling, tinting, waving, or otherwise treating the hair as primary services, treatments, or undertakings by any means or method, including any bobbing, clipping, cutting, or trimming of the hair as a necessary incident preparatory or ancillary to such primary services,

(3) cutting the hair as a primary service, treatment, or undertaking and not as a necessary incident preparatory or ancillary to those primary services enumerated in Section 4(b) (2), or primarily engaging in the occupation of cutting hair or practicing primarily as a haircutter by cutting hair as a separate and independent service, treatment, or undertaking for which haircut a charge is made, as such, separate and apart from any other service, treatment, or undertaking, directly or indirectly, or in any manner whatsoever;

(4) cleansing, stimulating, or massaging the scalp, face, neck, arms, shoulders, or that part of the body above the shoulders, by means of the hands, devices, apparatuses, or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams;

EXHIBIT IV-1

Definition of Cosmetology and Barbering

Art. 8451a, V.A.C.S. (Cosmetologists)

Art. 8407a, V.A.C.S. (Barbers)

Cont.

Cont.

(E) servicing a wig or artificial hairpiece either on a human head or on a block subsequent to the initial retail sale and servicing by any of the practices enumerated in Paragraph (A) of this subsection;

(F) administering facial treatments;

(G) hair weaving;

(H) shampooing and conditioning hair;

(I) advertising or holding out to the public by any manner whatsoever that any person is a cosmetologist or authorized to practice cosmetology;

(J) advertising or holding out to the public by any manner whatsoever that any location or place of business is a beauty salon;

(K) receiving any fee, salary, compensation, or financial benefit, or the promise of any fee, salary, compensation, or financial benefit, for performing, doing, offering, or attempting to perform or do any act, work, service, or thing, which is any part of the practice of cosmetology as herein defined.

(5) beautifying the face, neck, arms, shoulders, or that part of the body above the shoulders, by the use of cosmetic preparations, antiseptics, tonics, lotions, powders, oils, clays, creams, or appliances;

(6) cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person or attaching false nails;

(7) massaging, cleansing, treating, or beautifying the hands of any person;

(8) administering facial treatments;

(9) hair weaving;

(10) shampooing or conditioning hair;

(11) servicing a wig, toupee, or artificial hairpiece on a human head or on a block, subsequent to the initial retail sale by any of the acts, services, works, treatments, or undertakings enumerated in Section 4(b)

(12) advertising or holding out to the public by any manner whatsoever that any person is a barber or authorized to practice barbering;

(13) advertising or holding out to the public by any manner whatsoever that any location or place of business is a barber shop, barber school, barber college, or barber salon.

chemical hair relaxing are not treated 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 curricula of cosmetology schools. Additionally barber schools require course work in anatomy, physiology, and histology, which are not set out as specific topics in cosmetology schools, although some of this relevant information may be presented under other topics.

Comparisons of curricula of the two types of schools also indicate differing emphasis on certain topics. Cosmetology schools place a heavier emphasis on wigs and hairpieces, hair coloring, and cold waving and chemical hair relaxing than do barber schools, while barber schools emphasize haircutting.

Interviews with graduates of barber and cosmetology schools indicate that, stated simply, barber schools emphasize haircutting while cosmetology schools emphasize beauty culture; however, the basic principles are the same in both schools. Based on interviews, it appears that the actual skills that differentiate between barbering and cosmetology are largely acquired after graduation from school. This on-the-job training may result in specializations which common usage labels barbering or cosmetology.

The factors cited above help account for the seeming paradox of having virtually identical statutory definitions of barbering and cosmetology, while the actual working practices may differ significantly. Nevertheless, it is important to note that although the practices of barbering and cosmetology may differ, they may also be the same. In some "progressive" shops, the services provided customers by barbers and cosmetologists are the same. In order to regulate these occupations, distinguishable by minimal statutory differences, the state maintains two separate agencies.

EXHIBIT IV-2
Comparative Regulatory Functions

Barber Examiners	Cosmetologists	Motor Vehicle Commission	Nursing Home Administrators	Public Accountancy	Structural Pest Control Board	
X	X	X	X		X	establish qualification standards independently
			X			qualification standards suggested by national organization
X	X		X		X	develop written examinations
			X	X		utilize national exams
X	X		X	X	X	process exam applications
X	X		X	X	X	evaluate qualifications for examination
X	X		X			prepare and send candidate ID cards
X	X		X	X	X	collect and process exam fees
						administer exams annually
				X		administer exams semi-annually
X	X		X		X	administer exams on multiple occasions
X	X		X		X	administer multiple exams
			X	X		national exam grading procedure
X	X		X		X	agency exam grading procedure
X	X		X	X	X	record and report grades
X	X		X	X	X	prepare and distribute certificates of registration
*	*	X	*	X	X	process annual license renewal*
X	X	X	X	X	X	collect renewal fees
		X		X	X	mail notification of delinquency
X	X		X	X		reciprocal registration processed independently
						reciprocal registration processed thru national org.
X	X		X	X		collect reciprocal registration fees
X	X	X	X	X	X	receive and investigate complaints
X	X				X	field investigation capability
X	X	X	X	X	X	issue warnings
X	X	X	X	X	X	consult legal counsel reference violations
X	X	X		X	X	invoke injunctive powers
X	X	X	X	X	X	arrange agendas for Board meetings
X	X		X	X	X	administer Board meetings
			X	X		prepare roster
			X	X		distribute roster
	X		X	X		coordinate activities with educational institutions

*Biennial renewal.

Agency Functions

As depicted in Exhibit IV-2, the two agencies, the Texas Cosmetology Commission and the State Board of Barber Examiners, perform the same general functions of examination, licensing and enforcement. The purpose of these activities is to protect the public health and welfare. The workloads of the two agencies differ as do methods utilized to execute their statutory objectives.

In general, the Commission licenses approximately 100,000 persons over the biennium and annually examines 6,000 aspirants and makes yearly inspections of the state's 15,000 cosmetology establishments. Major portions of this phase of the Commission's work are supported through data processing.

The Barber Board licenses approximately 25,000 persons over the biennium, conducts 900 examinations yearly in different locations around the state and inspects the 6,500 licensed establishments while conducting approximately 61,000 inspections per year. Major portions of work to execute these objectives are **accomplished manually.**

Although actual workload and procedures vary for the two agencies, the functions structured to accomplish the regulation of the two occupations are similar. Since the functional execution of regulation of the similar target populations is comparable, potential for consolidation of the agencies appears optimal.

Texas Merger Efforts

Due to previously discussed similarities, past efforts have been made to consolidate the operation of the two agencies. H.B. 1750, introduced during the Sixty-fourth Legislature, would have created the Commission of Cosmetologists and Barbers to regulate the activities of both occupations. H.B. 758, introduced during the Sixty-fifth Legislature would have created a similar single licensing

agency. Neither bill received affirmative committee action during the respective sessions.

Proposals have been made during the Sixty-third and Sixty-fourth sessions (HSR 102 and HSR 99, respectively) to create interim study committees to consider the feasibility of merging the two licensing agencies. Neither resolution has been adopted.

The House State Affairs Committee studied the merger issue following the Sixty-fourth Session and later recommended merger of the agencies. The proposed legislation took the form of H.B. 758 introduced during the Sixty-fifth session. No action was taken on this bill.

Current efforts to distinguish between the two occupations have resulted in the promulgation by the Barber Board of a separation rule requiring the construction of a partition between barbers and cosmetologists working in the same shop. Attorney General Opinion H-1137, issued in March 1978, states that this rule would probably be upheld as a valid exercise of the police power of the state should it be tested in court. Currently, the agencies are conferring on the appropriate height of such a partition.

Merger in Other States

At least two states, Colorado and Oregon, have recently combined the functions of their barber and cosmetology agencies. Except for minor occupational zoning problems in Colorado, both states report that the combination is working effectively. West Virginia has had combined regulation of the two industries since 1934. In West Virginia, different licenses are issued, and differing hours of schooling are required for barber and cosmetology licenses. Barbers receive 1,800 hours of schooling, while cosmetologists receive 2,000, with the extra hours devoted to permanent waving, manicuring, hair structure, tinting and bleaching.

Anything taught in school may be performed on either a man or a woman. Interestingly, officials in West Virginia report no major problems with having beauticians and barbers on the same board. They report that since it has always been that way, it has never become an issue.

Occupational Differences Affecting Merger

Occupational practitioners feel there are differences between barbers and cosmetologists. The differences appear to be derived from differences in training and on-the-job training after graduation from school. The differences in training of the two groups, who by statute can perform almost identical services, appear to need consideration in the event of merger of the two agencies.

Consolidation Potential

As shown in Exhibit IV-1, the functions which may be performed by barbers and cosmetologists are essentially the same. As shown in Exhibit IV-2, the functions performed by the Texas Cosmetology Commission and the Board of Barber Examiners are also essentially the same. One of those functions, inspection, is actually performed in barber and beauty shops, and both agencies inspect for: 1) sanitary conditions, and 2) valid licenses. Thus, theoretically, there is very little to prevent combination of the two agencies.

In Texas, however, barbers and cosmetologists identify themselves separately. A number of factors are likely to contribute to this distinction. One obvious contributing factor is that the licenses are issued by different agencies, and are labeled correspondingly. Other factors may include differences in schooling or experience gained after graduation from school.

A number of areas exist where potential savings could occur if the Board of Barber Examiners and the Texas Cosmetology Commission are merged. Assuming the structure of the resulting single agency would carry out the existing functions

of administration, licensing, examination and enforcement, preliminary estimates show savings could reach \$50,000 for the first year of merger and \$200,000 for each succeeding year.

Summary

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

Should combination be effected, preliminary estimates indicate slightly over \$50,000 could be saved the first year, and approximately \$200,000 in cost reductions could be realized in succeeding years.

Criterion 5

Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates.

The review under this criterion centered on statutory changes which affect the operations of the agency. In the period covering the last three legislative sessions, the review focused on both proposed and adopted changes in the law; prior to that period, the staff review was limited to only adopted changes. In analyzing these changes, the approach was taken that a statutory modification must be of clear benefit to the state's citizens to be considered to be in the interest of the public.

Sixty-third Legislature

In addition to the legislation modifying fees passed by the Sixty-third Legislature, House Simple Resolution (HSR) 102 was considered and referred to committee. That resolution noted the similarity between the required training, standards of sanitation, and basic knowledge for barbering and cosmetology, and then recommended a commission to study the feasibility of merging the barber and cosmetology agencies for the purpose of achieving greater efficiency and effectiveness, and eliminating any unnecessary duplication of effort.

Sixty-fourth Legislature

The legislation passed by the Sixty-fourth Legislature redefined the practices of barbering and cosmetology so that sex distinctions were no longer the basis of jurisdiction between the agencies, and extensively modified the fee structure so the agency could continue despite inflation and a declining population. In addition to this legislation, the following bills and a house simple resolution were introduced but received no committee action:

House Bill 376 would have eliminated sex distinctions between the jurisdiction of the barber and cosmetology agencies. The features of this bill were largely incorporated in the provisions of the legislation that did pass, which also raised fees.

House Bill 1750 proposed creating a Texas State Commission of Cosmetologists and Barbers. The duties of the two agencies would have been transferred to the new agency. The new commission would have been composed of ten persons: one licensed beautician, one licensed barber, five lay persons, one wig person, one school owner, and one ex-officio member from the Texas Education Agency.

House Bill 2133 would have provided more specific grounds for denying, revoking or suspending the license of a cosmetologist or barber. The present language requires conviction of a felony involving moral turpitude or a misdemeanor involving immoral conduct. These vague phrases to be used as possible grounds for removing a person's livelihood would have been replaced by the following:

- 1) secured a license by fraud or deceit;
- 2) violated or conspired to violate the provisions of the Act or rules and regulations issued pursuant to it;
- 3) knowingly used false advertising;
- 4) used the name or trade name of another licensee;
- 5) found by the executive director to be a habitual drinker or addicted to narcotics.

House Simple Resolution 99 was very similar to H.S.R. 102, proposed by the Sixty-third Legislature. The resolution, recommending study of the feasibility of merging the barber and cosmetology agencies, was not passed by the Sixty-fourth Legislature.

Sixty-fifth Legislature

House Bill 758 proposed the creation of a Texas Commission of Cosmetologists and Barbers. Under this bill, the composition would have been changed to a six-member commission composed of two licensed barbers, two licensed cosmetologists, and two public members. That new commission would have assumed the functions of the present barber and cosmetology agencies. However, the bill did not receive committee action.

House Bill 759 related to the dividing and sharing of working areas of barbers and cosmetologists. It would have placed into law a prohibition against either the Board of Barber Examiners or the Texas Cosmetology Commission requiring any sort of physical barrier to separate the working areas of persons licensed by the two separate agencies. Additionally, it would have allowed common waiting areas, restrooms, and storage areas if both types of services had been provided. House Bill 759 passed the House, but failed to pass the Senate.

Exhibit V-1 represents a tabular synopsis of proposed legislative changes discussed above.

Summary

The Board of Barber Examiners favored S.B. 144, Sixty-third Legislature and S.B. 86 and H.B. 376, Sixty-fourth Legislature. Provisions of these laws (redefining the practices of barbering and cosmetology, eliminating sex distinctions from definition of jurisdiction of the two agencies, and modifying fee structures) were enacted into law.¹

¹Although H.B. 376 did not pass, its provisions were incorporated into S.B. 86.

EXHIBIT V-1

Tabular Synopsis of Proposed Legislative Changes

Session	Bill	Proposed Changes	Action
63rd	S.B. 144	Changed the fee structure.	Adopted
	H.S.R. 102	Created an interim committee to study merging the Texas Cosmetology Commission and the Barber Board.	Failed
64th	S.B. 86	Changed fee structures. Added wig specialist, wig instructor, wig salon and wig school to licenses issued. Lowered age requirements to 16 years and education requirement to 7th grade or equivalent. Expanded board to six members composed of two barbers without shops, two shop owners, and two barber school or college permit holders. Other provisions applied to Cosmetology Commission.	Adopted
	H.B. 376	Deleted sex distinctions in definition of differences between the practice of barbering and cosmetology.	Failed
	H.B. 1750	Created Commission of Cosmetologists and Barbers, composed of one licensed beautician, one licensed barber, five lay members, one wig person and one ex-officio member from the Texas Education Agency.	Failed
	H.B. 2133	Specified reasons licenses could be denied, suspended, or revoked. The vague phrase "moral turpitude" was replaced.	Failed
	H.S.R. 99	Created a House interim committee to study merging the Barber Board and the Cosmetology Commission.	Failed
65th	H.B. 758	Created Commission of Cosmetologists and Barbers, composed of two licensed barbers, two licensed cosmetologists, and two public members.	Failed
	H.B. 759	Established that no partition could be required between areas where barbers and cosmetologists services are provided.	Failed

The Board opposed H.S.R. 102, Sixty-third Legislature, H.B. 1750, 2137, and H.S.R. 99, Sixty-fourth Legislature, and H.B. 758 and H.B. 759, Sixty-fifth Legislature. Four of these related to merging the barber and cosmetology agencies, H.B. 2133, Sixty-fourth Legislature related to changing definitions of moral turpitude and H.B. 759, Sixty-fifth Legislature related to prohibitions against requiring physical barriers between barbers' and cosmetologists' services.

Virtually all of the legislation dealt with fee structures or was concerned with clarifying or removing distinctions caused by having two separate agencies serve two target groups which would have been combined if the two agencies were to no longer function independently.

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

Criterion 6

The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The review under this criterion centered on: 1) an identification of the type and frequency of complaints received by the agency, 2) the adequacy of administrative procedures used to process these complaints, and 3) the appropriateness and patterns of actions taken to address the complaints. Information for the review was obtained through interviewing agency staff, examining complaint files, and analyzing data presented in the agency's self-evaluation report.

Agency Inspection Procedures

The State Board of Barber Examiners currently utilizes 10 inspectors stationed throughout the state to enforce the agency's statutes and promulgated rules and regulations. The regional inspection structure is designed to include approximately 6,500 barber shops and 38 barber schools. Under the general supervision of the executive secretary, officed in Austin, the inspectors conduct monthly inspections of each school and are instructed to inspect each shop on a quarterly basis. Current combined inspection figures indicate that facilities are inspected 2-3 times per year.

The majority of the complaints reflected in the agency's self-evaluation report are identified as "agency vs. licensee." These complaints are filed by the agency's inspectors against licensees concerning deficiencies discovered through the regular facility inspection process. These violations can fall under two broad categories:

Individual
display of license
work stand
chair
cabinet
lavatory
wet (or dry) sterilization
instruments
linens

Shop
display of permit
display of rules & regulations
general condition of shop
restroom
ventilation
cuspidors
uniforms

Should the inspection yield three problem areas in the "individual" category above, the shop must be issued a "C" grade under the "general condition of shop" area and the shop owner is sent notice from the Board that the shop is sub-standard. Should three consecutive inspections yield the same problem areas in either category, a violation must be issued.

In addition to the regular inspection/violation process, the agency receives complaints from licensees and the general public. Only 35 complaints were received from licensees in fiscal year 1977, while no complaints were received from the general public.

Complaint Processing

The disposition of complaints received can occur in different ways. Under agency statute, charges may be brought against an individual or shop determined to be in violation of the Texas Barber Law (Article 8407a, V.A.C.S., as amended). If the holder of a certificate of permit has failed to comply with the provisions of the Act, he may be required to appear for a hearing on the violation under Section 22 of the Act, which states:

The hearing shall be held not less than twenty (20) days after notification in writing to the holder of the certificate or permit, specifying the violation or non compliance (sic) alleged. For the purpose of hearing such cases concurrent jurisdiction is vested in the county court of the county where the holder of the certificate or permit resides and in the county court of the county where the violation allegedly occurred.

In these proceedings the agency can be represented by the Attorney General, or by district or county attorneys. The determination must be made regarding any grounds for denial, refusal to renew, suspension or revocation of the certificate or permit. The judge presiding at the hearing reports his finding to the Board which **may, if the finding warrants, deny, suspend or revoke the certificate or permit. A Board decision may be appealed within 20 days in the appropriate district court.**

Hearings are conducted by the Board when complaints have been filed against a barber school. In these instances, a determination must be made concerning violations of the Act which would lead to suspension or revocation of the certificate or permit.

Complaint Analysis

Complaints depicted in the agency's self-evaluation report essentially reflect the number of inspections of new facilities opened or facilities operating under new management. Exhibit VI-1 portrays a breakdown for fiscal year 1977 complaints received or instigated by the Board and the resulting action.

EXHIBIT VI-1

Board of Barber Examiners
FY 1977
Complaint Disposition by Complainant

Complainant	Number	Revocation	Suspension	Court Cases	New Shop Opening	Warnings Issued	No Action Required
Agency (Inspectors)	380				380		
Licensee	35			18		13	4
General Public	0						

Agency action was taken on 415 separate incidents during fiscal year 1977. Of the total, 91.6 percent (380) resulted from inspector reports concerning new shop openings or changes in management, where only routine inspections were required.

Thirty-five (eight percent) complaints were received from licensees, and 18 of these cases resulted in court action against unlicensed individuals improperly engaged in the occupation. Thirteen complaints resulted in warnings being issued due to late license renewals and four cases required no agency action.

Complaint Records

Until September 1977, agency complaint records consisted primarily of inspection reports filed by agency inspectors. Presently, complaint files contain information regarding the source and current status of complaints received, as well as problem areas identified during routine investigations.

Summary

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

Criterion 7

The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The review under this criterion began with a determination of the statutory requirements regarding public participation both in the agency's enabling law and general statutes. The agency's procedures were reviewed to determine compliance with these statutes. The agency files and self-evaluation report were reviewed to determine the nature and extent of public participation and any results which might be attributed to public participation.

Public Participation

The Texas Barber Law does not include any specific requirements related to public participation. The general requirements of the Administrative Procedure and Texas Register Act are the only means utilized to inform the public. Rules outlining the regular meeting dates of the State Board of Barber Examiners have been adopted and published in the Texas Register. The Board fulfills requirements of notifying the Secretary of State prior to a meeting or rule change.

Interviews with agency personnel and review of available documents indicate that, other than the procedures mentioned above, there have been no specific efforts to inform the general public of the agency's purposes and functions. The agency has conducted no seminars, conferences or training sessions which might have been available to the public. The agency distributes no consumer-oriented materials designed to inform the public of its operations.

The Board publishes those reports required by its statutes and the General Appropriations Act. The only publications widely distributed by the Board are the

Texas Barber Law, and Sanitary Rules and Regulations which are provided to licensees.

The agency reports that the general public appears to have very little interest in the operations of the Board and that requests for general information are seldom received.

The agency reports negligible participation by the general public in open meetings held by the Board. Persons licensed by the Board seldom participate unless specifically involved in hearings.

The Board has no advisory bodies through which interest of the general public could be focused and current requirements for Board membership do not provide for representation by the public.

Summary

The Texas Barber Law does not specify public participation requirements. The Board has made little additional effort to encourage participation by non-industry representatives in its activities. However, direct sustained participation by the public in this type of agency is unlikely under usual circumstances.

Criterion 8

The extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

The review under this criterion centered on an identification of agency Equal Employment Opportunity reporting requirements and policies regarding the rights and privacy of individuals. Federal and state statutes were reviewed; agency policies and procedures were documented; and appropriate agency files were inspected to determine the adequacy of records maintained to verify the data presented under this criterion. The Governor's Office of Personnel and Equal Employment Opportunity was consulted. The general procedures regarding personnel actions and protection of the rights and privacy of individuals were examined through interviews and review of files.

Employment Procedures

The procedures adopted by the Board to give notice of job vacancies include recruitment literature consisting of mimeographed notices giving the job title, date of the vacancy, closing date for receiving applications and a copy of the job specifications prepared by the State Auditor's Classification Office. According to the Affirmative Action Plan (AAP), job notices are sent to the Governor's Office of Personnel and Equal Employment Opportunity, to the Texas Employment Commission and to the various locations involved.

The last AAP, filed with the Governor's Office of Personnel and Equal Employment Opportunity on March 1, 1974, is currently being revised. The Affirmative Action Plan of the Board of Barber Examiners covers the necessary elements, including plan development, communication and administration, as well

as recruitment, selection, and limited training of new employees. The objective of the plan, to achieve an ethnic representation that is reflective of the state as a whole, has been achieved. Statewide percentages show that the ethnic representation for blacks and persons having Spanish surnames should be 12.5 percent and 18.4 percent, respectively. The Board of Barber Examiners' ethnic breakdown is 13.3 percent for blacks and 20 percent for persons having Spanish surnames.

Current characteristics of the Board of Barber Examiners' staff follow:

Type of Job	Number	Sex		Ethnic Origin		
		Male	Female	White	Black	Spanish Surname
Executive	1	1		1		
Clerical	4		4	3		1
Inspectors	10	9	1	6	2	2

Achievement of this ethnic distribution has been slow, since the turnover rate of employees of the Board has been less than one-third of the state average over the last three years.

One charge of discrimination has been filed against the agency regarding employment practices. A black male inspector was terminated on October 31, 1973 after refusing reassignment to another geographic area. He received a hearing before the Board regarding his termination on November 5, 1973. He later filed a discrimination complaint against the agency with the San Antonio District Office of the Equal Employment Opportunity Commission on July 14, 1974. The Board's position was upheld, and the complainant appealed to the U.S. Court of Appeals. The case is currently pending.

Privacy of Individuals

No written plan exists to ensure the rights and privacy of individuals. However, interviews indicate that Board personnel have been made aware of

confidential areas of the files through informal procedures. No evidence was found to suggest that any unwarranted invasion of privacy has occurred.

Although portions of the personnel files are confidential, authorized persons are permitted access to their own or other appropriate files. Provisions of Article 6252-17a, V.A.C.S., protecting rights of individuals, appear to be adequately enforced.

Summary

The procedures of the agency in the area of affirmative action are generally adequate for a public agency of its size and scope. Although one charge of discrimination was filed against the agency and later appealed, final action has not been taken. Although no written plan exists to ensure the rights and privacy of individuals, no evidence of violation was found in the course of the review.

Criterion 9

The extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees.

The review under this criterion centered on an identification of documented agency practices and procedures regarding the filing of individual financial statements and affidavits with the Office of the Secretary of State. The provisions of the statute (Article 6252-9b, V.A.C.S.) were reviewed and agency interpretations of the nature and intent of the provisions of the Act were sought. Records maintained by the agency and the Secretary of State under the authority of the legislation concerned with conflict of interest were reviewed to determine the extent of agency compliance with the letter and intent of the Act and to verify the accuracy of the data presented under this criterion. In addition, inquiries were directed to selected areas where conflicts of interest might exist that could not be discerned through review of official documents.

Administrative Procedures

Section 26 of the Texas Barbers Law, Article 8407a, V.A.C.S., stipulates that two Board members are to be licensed shop owners, two are to be holders of barber school or college permits, and two are to be licensed barbers. Section 5(a), Article 6252-9b (Standards of Conduct for State Officers and Employees) requires that every appointed officer having a substantial interest in a business entity which is subject to regulation by a regulatory agency file an affidavit with the Secretary of State disclosing the nature of such interest. Thus, the first four Board members listed above are required to file such an affidavit, and they have done so.

The executive secretary is also required by Section 3 of Article 6252-9b to file a financial statement with the Secretary of State. This financial statement has

been filed, and information contained therein indicates no potential conflicts of interest.

No formal procedures have been adopted by the Board of Barber Examiners to ensure compliance with the provisions of Article 6252-9b. However, a bound copy of that law is maintained by the Board, and its provisions have been met.

In addition to these requirements, Section 27a of the Texas Barber Law states,

(a) No barber inspector or other employee of the State Board of Barber Examiners may sell barber supplies or engage in any other business which deals directly with barbers, barber shops, or barber schools except that he may engage in the practice of barbering.

(b) Violation of this section is a misdemeanor, and upon conviction is punishable by a fine of not more than \$5,000, or by confinement in the county jail for not more than two years, or both.

According to Board personnel interviewed, this section was added to the law after an incident in the 1960's. An inspector was selling barber supplies on a commission to the shops he was inspecting and some barbers felt pressured to buy supplies during his inspections. Apparently as a result, the above penalty provisions were added to the Texas Barber Law, and the inspector was terminated.

Given this background, the Board has interpreted the phrase "or engage in any other business which deals directly with barbers, barber shops, or barber schools" to be a broadening clarification of the prohibition against selling barber supplies. However, the phrase may also be interpreted in a strict sense, prohibiting any other business except barbering, and the Board has not requested an opinion from the Attorney General's Office in this matter.

The Board has no formal mechanisms to ensure compliance by employees with Section 27a or other relevant state laws. However, given the size of the agency, office staff were aware of industry connections of Board employees.

During interviews, Board staff pointed out two instances where, although the Board has taken no action, violations of the law may have occurred if a strict interpretation of Section 27a is made. The first of these involved an inspector who was employed by the Board from March 1974 to May 1975. Prior to his employment that person had owned, and continues to own, a barber college. The second instance involves an inspector, currently employed by the Board, who maintains his own shop.

Summary

Board employees have been extremely candid during staff interviews that were obvious follow-ups to issues that were potentially damaging to their agency. Their openness suggests they feel that no substantive problems exist in the area of conflicts of interest.

However, no formal procedures exist to ensure that conflicts of interest which may have occurred in the past will not occur in the future. Additionally, Section 27a of the Texas Barber Law could be clarified, either through an Attorney General's opinion or through legislative revision, to limit the meaning of its prohibitions and to eliminate its alternate interpretations.

Criterion 10

The extent to which the agency complies with the Open Records Act and the Open Meetings Act.

Examination of elements under this criterion was separated into components dealing with responsibilities for making agency documents available to the public under open records requirements and responsibilities for public notification of proposed agency actions. Under the area of open records, statutes were reviewed in relation to written or unwritten policies used by the agency. Where written policies did not exist, interviews were conducted to determine actual compliance. Materials contained in the self-evaluation report were verified and open records decisions reviewed. Open meetings compliance was verified through review of agency written and unwritten policies to determine if they accurately reflected statutory requirements. Interviews with agency personnel were conducted in instances where written policies were lacking or information contained in minutes of meetings was incomplete or unclear. Records in the Office of the Secretary of State were reviewed on a selected basis to determine compliance with posting and informational requirements.

Open Records

The self-evaluation report states that the only records classified as confidential under the provisions of Article 6252-17a are written exams, certain portions of student records and personnel files. Board files are open to individuals wishing to inspect their own files.

The Board reports that it has never denied a formal legitimate request for information. Thus, no situations have arisen which required the agency to request an Attorney General opinion concerning categories of information which should be classified as confidential.

Open Meetings

The Board of Barber Examiners is required by statute to meet at least four times a year. The Board has met 47 times in the last three completed fiscal years, with 17 meetings in each of the last two years. Almost all of those meetings were in Austin, although meetings were also held in Corpus Christi and San Antonio.

The topics of the meetings vary. Board minutes show most meetings include interviews with reciprocity applicants. Additionally, formal hearings, current business, possible reassignment of inspectors and discussions of Board rules are also topics at Board meetings.

Although the Board has held executive sessions during Board meetings, only one Board meeting during the last three years was closed. That meeting, held on February 21, 1977 was to develop guidelines of Board duties, which were published after that meeting.

In cases where Board meetings include formal hearings, a representative of the Attorney General's Office attends as counsel to the Board and a court reporter is hired. Hearings are conducted in accordance with the Texas Administrative Procedures Act.

Scheduled Board meetings are publicized in advance through the Texas Register Division of the Secretary of State. A review of records indicates that agency notification practices meet or exceed the required seven days advance notice for regular meetings, the requirements for emergency meetings and additions to meeting agendas.

Minutes of Board meetings are filed in the Legislative Reference Library for access by the public. Additionally, copies of these minutes and general correspondence with licensees are also maintained in agency files for convenience and easy access.

The Board of Barber Examiners may issue necessary rules and regulations (except sanitary rules issued by the Health Department). Twenty days prior notice in the Texas Register is required for any proposed rule change. Review of the Register indicates that the required notice has been met or exceeded by the Board of Barber Examiners.

Summary

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

Criterion 11

The impact in terms of federal intervention or loss of federal funds if the agency is abolished.

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

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

CONCLUSIONS

The Board of Barber Examiners was created in 1929 as part of a nation-wide trend toward regulation of the barbering and cosmetology occupations for the purpose of protecting the health and safety of the public. The Board currently operates through revenues generated by charges to licensees and is funded by appropriations from the Barber Examiners Fund (No. 40) in the State Treasury.

The agency performs its functions of administration, licensing, examination, and inspection in an acceptable manner. However, this review of the Board indicated that areas of concern exist within the agency, most of which are related to manual procedures where improvements could be effected through proper utilization of data processing equipment. The primary areas where such assistance could be most beneficial is in license renewals and inspections.

The present statute allows staggered license renewals, but due to the difficulty connected with converting manual operations, this has not been done. As a result, cash flow is unevenly distributed, an approximate 70-30 split in workload exists between the two years of the biennium, seasonal help must be hired in peak periods, and the turnaround time for a license renewal ranges between one and three weeks.

By utilizing electronic data processing procedures similar to those in the Texas Cosmetology Commission, these concerns could be reduced. Licenses could be renewed on a staggered basis. The cash flow and workload would be better balanced, eliminating relatively slack periods as well as the necessity for hiring seasonal help during peak periods. The turnaround time for license renewal could be expected to drop from the current norm of one to three weeks.

Another area of concern involves the area of inspections. Currently, the agency does not have adequate management information to ensure that all shops

and schools are inspected within required time frames, and that problem shops and schools are inspected with sufficient frequency to ensure compliance with applicable rules and statutes. This concern could also be addressed by computerizing the listing of schools and shops, as well as recording suggested inspection intervals, actual inspection data, and schools or shops with past histories of violations. By using this information, the area inspector and executive secretary could better determine if expected performance is actually being achieved.

One unique factor regarding the Board of Barber Examiners is its close association in history, target population, and function with the Texas Cosmetology Commission. From 1921, when the Legislature first required all barbers and hairdressers to keep all barber and beauty shops clean and to register with the Department of Health, there has been a close association between the two groups. The early distinctions in statutory definitions based primarily on sex were subsequently rejected by the courts.

Barbers and cosmetologists in Texas presently identify themselves separately as a result of being licensed by two separate agencies, the different emphasis on training, and later on-the-job specialization. Barbers are commonly identified as specializing in cutting hair, and more traditional barbers emphasize taper cuts; while cosmetologists are commonly identified as experts in beauty culture, and generally develop specializations beyond haircutting, including hair styling, coloration, permanent waving and wiggery.

However, existing law does not recognize the major portions of these distinctions. With minor exceptions, a holder of either a barber's or cosmetologist's license may perform the same functions performed by a licensee of the other agency, and barbers and cosmetologists perform the same services in a number of shops. The identifying characteristic for licensing purposes is whether one holds

oneself out to be a barber or a cosmetologist. After licensure by either agency, the practitioner can expect similar contact with the licensing agency; license renewals and inspections designed to: 1) ensure sanitary conditions are maintained and 2) all work is performed by the holder of a valid license.

If the Legislature determines that the functions of the Board of Barber Examiners should continue, the following organizational and operational changes could be considered to increase the efficiency and effectiveness with which these functions are performed:

THE LEGISLATURE COULD CONSIDER MERGING THE FUNCTIONS OF THE STATE BOARD OF BARBER EXAMINERS WITH THOSE OF THE TEXAS COSMETOLOGY COMMISSION.

It is apparent that the two agencies duplicate the functions of licensing, examination, and enforcement of regulations related to two similar target groups. Merging the agencies could result in significant reduction of state expenditures while maintaining current revenues generated by licensing efforts. More efficient and timely issuance of barber licenses and better management of the inspection process could be achieved through utilization of ADP services already in use by the Cosmetology Commission.

Should the present structure of the agencies be maintained, additional measures could be taken to improve the efficiency and effectiveness of the Board of Barber Examiners. These measures are divided between those requiring legislative action and those which may be achieved through modification of administrative procedures.

THE LEGISLATURE COULD CONSIDER MODIFYING THE LANGUAGE OF THE BARBER'S LAW RELATING TO GROUNDS FOR LICENSE REVOCATION OR SUSPENSION TO INCLUDE "INCOMPETENCY OR NEGLIGENCE" ALONG WITH CURRENT LANGUAGE REGARDING "GROSS MALPRACTICE".

Board records indicate little evidence of consumer complaints. In the cutting of hair, permanent damage is generally not sustained. However, under present statutes, barbers may perform such services as bleaching or coloring which potentially may cause serious or permanent injury if improperly performed. Increased grounds for revocation or suspension of a license would assist the agency in protecting the public's health and safety and would also provide flexibility to address public concerns as the practice of barbering evolves.

THE BOARD OF BARBER EXAMINERS SHOULD REQUEST AN ATTORNEY GENERAL'S OPINION REGARDING THE CORRECT INTERPRETATION OF SECTION 27A OF THE BARBER'S LAW PROHIBITING ANY BOARD EMPLOYEE FROM SELLING BARBER SUPPLIES OR ENGAGING IN ANY OTHER BUSINESS WHICH DEALS DIRECTLY WITH BARBERS, BARBER SHOPS OR BARBER SCHOOLS, EXCEPT FOR THE PRACTICE OF BARBERING.

Due to the background preceding enactment of this section, the Board has interpreted the phrase, "or engaging in any other business" to be a broadening clarification against selling barber supplies. If a strict interpretation were made, at least two instances have occurred where the law was violated. Since the penalty provisions for this section are severe, including fines up to \$5,000 or two years confinement or both, steps should be taken to remove the possibility of misinterpretation.

THE BOARD OF BARBER EXAMINERS COULD USE COMPUTER TECHNOLOGY TO IMPROVE PRESENT PERFORMANCE AND BETTER ACHIEVE ITS OBJECTIVES.

The use of computer technology would allow staggering of renewal dates, which would level distribution of workload between years of the biennium, reduce cash flow problems, eliminate a need for seasonal help, and reduce licensing lag time. Additionally, by proper utilization of a computerized management information system, the inspection process could more effectively achieve its objectives.