

# **Sunset Advisory Commission**



**Texas State Board  
of Barber Examiners**

**Texas Cosmetology  
Commission**

Staff Report  
February 2004

**TEXAS STATE BOARD OF BARBER EXAMINERS  
TEXAS COSMETOLOGY COMMISSION**

**SUNSET STAFF REPORT  
FEBRUARY 2004**

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# SUMMARY

## *Texas State Board of Barber Examiners Texas Cosmetology Commission*

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Over the years, the Legislature has debated whether and how to regulate barbering and cosmetology, currently administered by the Texas State Board of Barber Examiners and the Texas Cosmetology Commission. Sunset staff reports in 1979 and 1991 questioned the need for regulation of these activities at any level. However, the focus of recent discussion has been whether to merge the regulation of these very similar occupations under one agency. This debate continued in the 78th regular session, when the Legislature considered a merger as well as other organizational options. Ultimately, as in earlier legislative sessions, the Legislature did not pass legislation significantly changing the regulation or merging the two agencies.

In light of the Legislature's decision, Sunset staff focused its review on two major areas: how to organize operations to most effectively carry out regulation, and what level of regulation is necessary for public protection. The staff review concluded that the agencies face significant operational problems and need considerable change to effectively regulate the barbering and cosmetology industries.

Most significantly, both agencies have had considerable difficulty effectively enforcing their Acts and administratively operating their agencies. In particular, the State Auditor's Office has found gross fiscal mismanagement at the Cosmetology Commission, a severe finding used when an agency significantly mismanages its responsibilities. The Sunset review concluded that transferring the administration of both agencies' licensing and enforcement functions to the Texas Department of Licensing and Regulation will improve the administration of the regulation, while preserving the independent occupations of barbering and cosmetology.

The review also concluded that the current level of regulation is more burdensome to licensees than necessary to protect the public, leading to several recommendations that reduce the way the State regulates the industries. Staff evaluated the agencies' functions from the viewpoint of the Barbering and Cosmetology Acts' purposes: to protect the health and safety of the public through regulation. The statutes do not speak to the stylistic or aesthetic regulation of the industries, though staff recognizes that consumers expect a licensed barber or cosmetologist to be competent. As a result, the review sought ways to strike a balance between improving State regulation for public protection and the need for confidence in the skills of a licensed barber or cosmetologist. To accommodate both goals, the recommendations seek to remove the State from involvement in aspects of the regulation that inappropriately focus on the quality of services, while keeping requirements necessary to ensure the competency of barbers and cosmetologists.



*Both agencies face significant operational problems, and the State needs to change its regulation of barbering and cosmetology.*

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In writing this report, staff took into account that the industries are closely related and the agencies are colocated, already sharing some administrative functions. After evaluation and analysis, the staff made the same recommendations for both agencies, making a combined report more concise and nonrepetitive. However, not all the problems cited in this report relate to both agencies, and staff tried to clearly delineate between the two agencies if only one agency had specific problems. Additionally, during the review, Sunset staff had great difficulty obtaining reliable information from the Cosmetology Commission, hampering staff's ability to assess the Commission's programs. For example, the Commission had difficulty responding to requests and deadlines in a timely fashion, providing basic information, and providing concrete and accurate data. In contrast, the Barber Board was generally more responsive to Sunset staff requests, even though the Board was without an Executive Director for some of the review period.

A summary of the recommendations in this report is provided in the following material.

## **Issues/Recommendations**

### **Issue 1**

#### ***The Barber Board and the Cosmetology Commission Have Failed to Effectively Carry Out Their Regulatory Duties.***

##### **Key Recommendations**

- Abolish the Texas State Board of Barber Examiners and transfer its functions to the Texas Department of Licensing and Regulation.
- Abolish the Texas Cosmetology Commission and transfer its functions to the Texas Department of Licensing and Regulation.
- Establish advisory committees to assist TDLR with the regulation of barbering and cosmetology.

### **Issue 2**

#### ***The Over-Regulation of Barbering and Cosmetology Does Not Protect the Public and Wastes State Resources.***

##### **Key Recommendations**

- Replace full licensure of barbers and cosmetologists with a certification process.
- Require barber and cosmetology inspection efforts to be risk based, focusing on sanitation violations.
- Eliminate the barber health certificate requirement.
- Eliminate barber and cosmetology student permit requirements.

### Issue 3

#### ***Practical Exams for Prospective Barbers and Cosmetologists are Unnecessary Requirements for Licensure That Do Not Protect the Public.***

##### **Key Recommendation**

- Discontinue use of practical examinations required for licensure of barbers and cosmetologists.

### Issue 4

#### ***Transfer Oversight of Private Barber and Cosmetology Schools to the Texas Workforce Commission to Improve Accountability and Ensure Student Protections.***

##### **Key Recommendation**

- Transfer the regulation of private barber and cosmetology schools to the Texas Workforce Commission.

### Issue 5

#### ***Key Elements of Barber and Cosmetology Licensing and Regulation Do Not Conform to Commonly Applied Licensing Practices.***

##### **Key Recommendations**

- Standardize licensing functions through issuance of provisional licenses and staggering renewals; eliminating notarization requirements; and denying renewal to licensees with outstanding administrative fines.
- Revise enforcement activities by analyzing statistics on violations and complaints; adopting policies for informal settlement conferences; making only final disciplinary orders available to the public; and responding to non-jurisdictional complaints.
- Eliminate statutory language that caps fees for the Barber Board.

## **Fiscal Implication Summary**

This report contains several recommendations that will have a fiscal impact to the State. The fiscal impact of each of the recommendations is summarized below, followed by a five-year summary chart for each of the agencies.

- **Issue 1** – Abolishing the independent policymaking bodies and transferring the agencies' functions to the Texas Department of Licensing and Regulation would result in an annual savings of \$124,508 from the Board and \$418,088 from the Commission. Transferring the functions would also result in a reduction of two and one-half full-time equivalents (FTEs) from the Board and a reduction of seven FTEs from the Commission.
- **Issue 2** – Reducing the level of regulation for both barbers and cosmetologists by replacing full licensure with certification, focusing inspections, and eliminating student permits would have a positive fiscal impact to the State for two years, saving \$168,475 annually related to the Barber Board and \$410,000 annually related to the Cosmetology

Commission by reducing related staff. The recommendations would reduce Board staff by five and one-half and by ten and one half from the Commission. Two years after implementation, the recommendations would reduce barber annual revenue by \$286,525 and cosmetology annual revenue by \$3,369,000.

- **Issue 3** – Discontinuing the use of practical exams for both agencies will result in an annual savings of \$4,700 from the Board and \$125,880 from the Commission, reducing the number of FTEs related to cosmetology by three.
- **Issue 4** – Transferring the regulation of barber and cosmetology schools to the Texas Workforce Commission would result in a net increase in barber revenue of approximately \$30,000 per year, and from \$47,000 to \$70,000 per year for cosmetology. The recommendation would reduce the number of FTEs by one-half from the Board and one from the Commission.

<b>Texas State Board of Barber Examiners</b>					
<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>	<b>Gain to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Net Effect to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	(\$36,525)	\$8,215	\$355,163	\$326,853	-8
2007	(\$36,525)	\$6,200	\$355,163	\$324,838	-8
2008	(\$512,525)	\$8,215	\$376,163	(\$128,147)	-8.5
2009	(\$512,525)	\$6,200	\$376,163	(\$130,162)	-8.5
2010	(\$512,525)	\$8,215	\$376,163	(\$128,147)	-8.5

<b>Texas Cosmetology Commission</b>					
<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>	<b>Gain to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Net Effect to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	(\$39,800)	\$62,940	\$995,877	\$1,019,017	-21
2007	(\$39,800)	\$41,100	\$995,877	\$997,177	-21
2008	(\$3,839,800)	\$62,940	\$1,016,877	(\$2,759,983)	-21.5
2009	(\$3,839,800)	\$41,100	\$1,016,877	(\$2,781,823)	-21.5
2010	(\$3,839,800)	\$62,940	\$1,016,877	(\$2,759,983)	-21.5

# ISSUES

## *The Barber Board and the Cosmetology Commission Have Failed to Effectively Carry Out Their Regulatory Duties.*

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### **Summary**

#### **Key Recommendations**

- Abolish the Texas State Board of Barber Examiners and transfer its functions to the Texas Department of Licensing and Regulation.
- Abolish the Texas Cosmetology Commission and transfer its functions to the Texas Department of Licensing and Regulation.
- Establish advisory committees to assist TDLR with the regulation of barbering and cosmetology.

#### **Key Findings**

- The Legislature has charged the Barber Board and the Cosmetology Commission with regulating barbers and cosmetologists to protect the public.
- The Commission and Board have not effectively carried out their required regulatory duties.
- State audits have identified significant financial problems at both agencies, including the State Auditor's Office finding of gross fiscal mismanagement at the Texas Cosmetology Commission.
- The agencies cannot provide the basic information necessary to ensure effective regulation of cosmetologists and barbers.
- Most other states' barber and cosmetology licensing programs are part of a bigger agency.
- The Legislature has moved toward administrative consolidation of many of its occupational and health-related licensing programs.
- Consolidating both agencies' functions with TDLR will increase administrative effectiveness and efficiency.

#### **Conclusion**

The Legislature has charged the Texas State Board of Barber Examiners and the Texas Cosmetology Commission with regulating barbers and cosmetologists for protection of the public's health. While the Legislature has considered organizational changes in the past, it has consistently decided to maintain the regulation at independent agencies. However, emerging interest in consolidation and new information regarding the efficiency of the agencies argue for a reconsideration of consolidation. The Sunset review evaluated the effectiveness of regulation at the independent agencies and found significant problems with the agencies' licensing and enforcement functions, as well as the agencies' ability to fulfill the basic functions of a state agency. The review concluded that transferring the agencies' functions to the Texas Department of Licensing and Regulation (TDLR) will improve the efficiency and effectiveness of the regulation of the industries. Creating two separate advisory committees at TDLR devoted to giving technical and rulemaking advice would ensure that licensees and the public would continue to have a voice, while improving the current regulation.

## Support

### The Legislature has charged the Barber Board and the Cosmetology Commission with regulating barbers and cosmetologists to protect the public.

  
*Although the health risks are minimal, the public expects that barbers and cosmetologists have had sanitation training to reduce risk.*

- Historically, Texas has regulated barbering and cosmetology based on the theory that the public should be protected from the spread of infections and diseases through barber and cosmetology services. While never reported in Texas, a theoretical possibility exists that a consumer may contract a disease such as hepatitis B or C through the use of a razor or scissors that have been contaminated with another consumer's blood and have not been properly sanitized. Another example of a less serious health-related transmission is the spread of lice or scabies. Although these risks are clearly minimal, the public expects that barbers and cosmetologists have had training in safe sanitation practices to reduce the risks that do exist.
- The Legislature has designated the Texas State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission) as the occupational licensing agencies responsible for regulating barbers and cosmetologists in the state. State law requires all barbers, cosmetologists, barbershops, beauty salons, and schools to be licensed by the agencies. To ensure that licensees comply with the Barber and Cosmetology Acts, the agencies routinely inspect licensees, investigate complaints, and take enforcement action when necessary. The charts, *Barber Board Activity* and *Cosmetology Commission Activity*, show the agencies' recent licensure and enforcement efforts. Though both agencies have statutory authority to pursue a range of administrative sanctions such as license revocation or suspension, the agencies only use their authority to assess monetary fines against violators.

Currently the Barber Board has 13 full-time equivalent positions and operated on

<b>Barber Board Activity FY 2003</b>	
<b>Licensees Regulated*</b>	
Barbers	12,521
Manicurists	480
Barber Technicians	29
Instructors	17
Student Permits	1,461
Shops	5,434
Schools	31
Booth Permits	2,815
<b>Complaints and Inspections</b>	
Complaints from the public	205
Total licensees checked in routine inspections	62,483**
<b>Violations</b>	
Violations issued	391
Administrative fines assessed	\$93,850
Administrative fines collected	\$46,218
<p>*All numbers reflect licensees with current and valid licenses with the Board. The Board also tracks 8,396 licensees whose licenses have been expired for one day up to five years, and considers the licenses active. However, by law, individuals are not allowed to practice without a current license.</p>	
<p>**Includes 19,908 dual shop inspections in which the Board inspects cosmetologists.</p>	

a budget of about \$622,000 in fiscal year 2003. In the same year, the Cosmetology Commission operated with a budget of about \$2.1 million, and had 39 employees.

- The Legislature has repeatedly reaffirmed its decision to continue the regulation of barbers and cosmetologists for health and safety purposes. In the 1978 and 1991 Sunset reviews of both agencies, Sunset staff recommended abolishment of the regulation of both the barber and cosmetology industries, but the Legislature continued the regulation of both occupations.

**The Commission and Board have not effectively carried out their required regulatory duties.**

*Cosmetology Commission*

- The Cosmetology Commission has fallen behind in its responsibility to effectively enforce the Cosmetology Act and rules. The agency has considerable backlogs of annual inspections as well as enforcement actions with no resolution. For example, about 1,500 of its 22,000 licensed salons have not been inspected in over a year, and some have gone as long as seven years without an inspection. Also, the agency has a backlog of about 2,400 unresolved contested case hearings as a result of not taking these hearings to the State Office of Administrative Hearings for two years. This delay has deprived licensees of the ability to contest sanctions, and it has prevented the Commission from resolving enforcement cases and collecting millions of dollars in administrative penalties assessed.
- In its report published in February 2004, the State Auditor’s Office (SAO) found that the Commission’s oversight and management of its enforcement function are inadequate.<sup>1</sup> As a result, SAO found 484 instances in which the Commission incorrectly assessed penalty amounts for violations. Specifically, the Commission did not follow its own rules that specify penalty amounts for certain violations, overcharging some licensees \$25,725 in penalties while undercharging other licensees \$56,600 in penalties.

Additionally, the audit reports that the Commission did not collect \$2.8 million of the \$4.8 million in penalties assessed between 1999 and 2003. SAO concludes that not collecting penalties assessed not only results in a loss of revenue to the State, but also reduces the likelihood that licensees will comply with cosmetology law and rule.

- Lack of adequate written policies for many enforcement functions has created an environment for inconsistent and unfair enforcement action by the Cosmetology Commission. Commission staff indicate that this has led to inconsistent application of violations and sanctions on individuals. Sunset staff review of enforcement files found that lack of

<b>Cosmetology Commission Activity FY 2003</b>	
<b>Licenses Regulated</b>	
Cosmetology Operators	106,329
Cosmetology Specialists*	32,163
Instructors	4,265
Student Permits	22,329
Shops	23,836
Schools	336
Independent Contractors	26,655
<b>Complaints and Inspections</b>	
Complaints from the public	346
Total licensees checked in routine inspections	83,844
<b>Violations</b>	
Violations issued	7,638
Administrative fines assessed	\$1.4 million
Administrative fines collected	\$953,663
*Specialists include manicurists, facial specialists, hairbraiding/hairweaving specialists, shampoo specialists, and wig specialists.	



*The Commission has a backlog of about 2,400 contested case hearings as a result of not taking cases to SOAH for two years.*

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*The Cosmetology Commission's lack of adequate enforcement policies results in potentially inconsistent and unfair enforcement practices.*

adequate inspection policy also allows agency staff to incorrectly apply sanctions, and in some instances potentially violate due process. For example, review of enforcement files found instances in which inspectors pulled licenses before issuing a violation or providing an opportunity for a hearing. Though the Commission has authority to revoke a license as a sanction for violating the Act or rules, it must provide the violator with due process, and go through the notice of violation and hearing process before revoking a license.<sup>2</sup>

The Commission operated without written policies for informal settlement conferences, in which a violator may meet informally with the agency to resolve an enforcement action. The agency suspended informal settlement conferences in December of 2002, due to inconsistent sanction determinations. However, during the review, staff still informally settled some enforcement cases, though it could not provide Sunset staff with a written policy for informal settlement conferences.

The agency also had no procedures for handling non-jurisdictional complaints. The Commission received 103 non-jurisdictional complaints in fiscal year 2003, but it has not responded to any of these since at least January 2003. In each case, the Commission has not informed complainants that their complaint lies outside the agency's jurisdiction. The Commission has recently begun responding to these complaints.

### ***Barber Board***

- The Barber Board's regulatory functions are misdirected and its enforcement actions have little impact. During the review, licensees and Board employees told Sunset staff that the purpose of state regulation of barbers is to promote and protect the barbering industry, though the statutory purpose for regulation is to protect the public's health. The Board shows this attitude in its reluctance to take enforcement actions against violators, reducing the incentive for licensees to comply with law and rule. For example, the Board states that its enforcement efforts focus on compliance through warnings, rather than actually issuing violations or sanctioning offenders. To encourage compliance, inspectors will not write violations for sanitation violations, such as dirty disinfectant, but instead ask the licensee to change the disinfectant. Consequently, in fiscal year 2003, the Board reports inspections of about 62,000 barber licensees and wrote only 391 violations, only three percent (12 violations) of which were for sanitation violations, the main justification for regulation. Instead, the Board's enforcement focused on barbers practicing without a license or with an expired license.

The Board's inspection process appears to be ineffective. While accompanying a Board inspector, Sunset staff observed several violations not noted by the inspector, including dirty combs, failure to post required notices, and failure to attach licensees' photos to licenses. The inspectors do not carry copies of previous inspections, but instead must rely on licensees to keep copies of the previous reports.

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*In 2003, the Barber Board issued only 12 violations related to sanitation despite inspecting 62,000 licensees.*

- The October 2003 State Auditor’s Office report found that the Board does not ensure that its licensing and enforcement functions are effective or efficient.<sup>3</sup> Some of the problems SAO found include mistakenly issuing licenses for time frames longer than the statutory requirement. SAO also found that the Board knew of this problem for a year before the audit began in May 2003, and had not fixed the problem.

The State Auditor also cited enforcement problems, concluding that the Board’s inadequate enforcement efforts reduce the likeliness that licensees will comply with the law. These problems include not ensuring that licensees with unpaid penalties are blocked from renewal as required by rule, not having adequate controls in place to manage inspections, not using a risk-assessment procedure for inspections as directed by two past SAO reports, and not collecting a significant percentage of administrative fines issued.

- The Barber Board also has inappropriate licensing and enforcement policies that create potential conflicts of interest. For example, the four Board members who are licensed barbers create, administer, and grade the practical exam. Though the school owner representatives on the Board do not grade their own students, they still grade students from competing schools, which could be viewed as a conflict of interest. Additionally, the Board requires its inspectors to be licensed barbers with at least three years experience even though the State does not regulate the stylistic practice of barbering. Some of these inspectors also engage in barbering in their own inspection territories when not on state time, resulting in a potential conflict of interest.
- The Board also lacks agency policy for informal settlement conferences, in which the Executive Director informally meets with a violator to discuss a sanction. The agency held 27 informal settlement conferences in fiscal year 2003. The Director has the authority to dismiss, reduce, or retain a fine in a conference, and the lack of policy leaves the Board open to inconsistent or unfair decisions, such as reducing or dismissing fines inappropriately.

**State audits have identified significant financial problems at both agencies, including the State Auditor’s Office finding of gross fiscal mismanagement at the Texas Cosmetology Commission.**

- The State Auditor’s Office published audit reports on internal and financial controls at the Cosmetology Commission in February 2004 and the Barber Board in October 2003, finding significant problems related to financial controls at both agencies. SAO found that the Cosmetology Commission was operating under gross fiscal mismanagement in fiscal years 2002 and 2003, including the misuse of funds. As a result, the Commission put the State’s money at “high risk.” At the Barber Board, SAO found that financial controls were weak, though it identified no significant loss of revenue to the State.

*Cosmetology Commission*

- SAO found severe and pervasive fiscal mismanagement at the Commission in its audit of fiscal years 2002 and 2003.<sup>4</sup> SAO found



*The Barber Board has licensing and enforcement policies that create potential conflicts of interest.*



*The State Auditor’s Office found pervasive fiscal mismanagement at the Cosmetology Commission in fiscal years 2002 and 2003.*



*The Commission's lack of financial controls and inadequate record keeping create an environment that puts State funds at high risk for impropriety.*

that the Commission's lack of controls, inadequate record keeping, and inability to fulfill its financial obligations, create an environment that puts State funds at high risk for impropriety and has allowed misuse of funds in the past. SAO found that the significant problems at the Commission contributed to the agency's budget shortfall at the end of fiscal year 2003. This caused the Commission to place 38 employees on leave without pay and required an emergency deficiency grant to close out the fiscal year. SAO concluded that the Commission's gross fiscal mismanagement requires immediate corrective action to safeguard state funds, as well as a long-term remediation plan.

State law requires state agencies to meet at least four criteria to be found in gross fiscal mismanagement.<sup>5</sup> SAO found multiple instances of all four conditions at the Cosmetology Commission. The chart, *Gross Fiscal Mismanagement at the Cosmetology Commission*, lists the statutory criteria and summarizes SAO's major findings relevant to each condition. See the Overall Conclusion from SAO's report in Appendix E for more detail about SAO's finding of gross fiscal mismanagement.

<b>Gross Fiscal Mismanagement at the Cosmetology Commission</b>	
<b>Gross Fiscal Mismanagement Criteria<sup>6</sup></b>	<b>Evidence at the Commission</b>
Failure to keep adequate fiscal records	<ul style="list-style-type: none"> <li>• Does not reliably generate accurate expenditure and revenue information resulting in \$1.3 million in expenditures that could be in error or missing support</li> <li>• Lacks support for more than \$1.6 million in journal vouchers for fiscal years 2002 and 2003</li> <li>• Missing support documentation and reported inaccurate date in its fiscal year 2002 Annual Financial Report resulting in \$111,203 in understatements and incorrect reporting</li> <li>• Lacks adequate oversight and management of enforcement resulting in incorrect assessment of penalties</li> <li>• Has not implemented key technology controls to protect the integrity of financial data</li> <li>• Does not perform cash reconciliations of its State Treasury balance</li> </ul>
Failure to maintain proper control over assets	<ul style="list-style-type: none"> <li>• Has not collected \$2.8 million in penalties</li> <li>• Inadequate procedure for revenue handling create a high risk of loss and impropriety</li> <li>• Overspent its fiscal year 2002 capital budget by 59 percent</li> <li>• Weak expenditure controls create risks that inappropriate transactions could be processed</li> </ul>
Failure to discharge fiscal obligations in a timely manner	<ul style="list-style-type: none"> <li>• Underpaid DIR for TexasOnline fees and did not make payments on time</li> <li>• Non-compliance with statutory deposit requirements</li> </ul>
Misuse of state funds	<ul style="list-style-type: none"> <li>• Chief Financial Officer circumvented the purchasing process, awarding a \$1,000 contract to a personal associate</li> <li>• May have used capital budget funds for purposes other than intended by the General Appropriations Act of the 77th Legislative Session</li> </ul>

- An SAO Special Investigations Unit (SIU) audit, released in September 2003, found that a temporary employee of the Cosmetology Commission was indicted for forgery after embezzling \$1,091 from the Commission by altering checks and money orders.<sup>7</sup> SIU noted that though the State's loss was greater than \$1,091, SIU was unable to determine the full amount due to lack of information. In its 2004 audit described previously, SAO found that this type of fraud could still happen at the Commission because of its weak financial controls.
- Previous audits have identified similar problems at the agency, and SAO's findings show the Commission has not corrected these problems. In January of 2003, the Comptroller of Public Accounts released a Post Payment Audit of the Cosmetology Commission that assessed the Commission's compliance with applicable state laws and rule regarding state expenditures. This audit found pervasive problems, as highlighted in the textbox, *Post Payment Audit of the Texas Cosmetology Commission*.<sup>8</sup> The Comptroller's Office could not audit some transactions since the Commission lacked documentation. Overall, the Comptroller's analysis of payment or documentation errors for purchases found an error rate of 36.7 percent, as compared to the baseline for state agencies of .77 percent.<sup>9</sup> The audit found an error rate of 3.8 percent for travel transactions, compared to the State's .82 percent baseline.<sup>10</sup>

Though the Commission responded to the Comptroller's audit by saying that it was implementing procedures to prevent such problems from happening again, SAO found similar problems in its audit published a year later. Additionally, as of January 2004, the Comptroller had yet to receive a corrective action plan the Commission was required to submit by February 2003.

### ***Barber Board***

- The SAO report on the Barber Board, released in October 2003, found that the Board's weak financial controls result in missing information such as documentation for journal vouchers.<sup>11</sup> Generally, SAO determined that the Board's financial processes do not ensure that the agency can support its transactions and give a clear picture of the agency's performance, and increases the risk of unauthorized transactions. The textbox, *State Auditor's Office Audit of the Barber Board*, summarizes SAO's findings.

#### ***Post Payment Audit of the Texas Cosmetology Commission***

The Comptroller's audit found the following.

- Instances of invalid payment of benefit replacement pay and overpayment of longevity pay.
- Missing documentation for purchase and travel transactions.
- Improper payment of taxes.
- Missing Governor's approval of training rules.
- Payments past the prompt payment deadline and payments not scheduled.
- Terminated employee retained ability to approve vouchers and expenditures.

#### ***State Auditor's Office Audit of the Barber Board***

The audit found the following.

- Lack of supporting data for all FY 02 journal vouchers and some accounts payable.
- Understated ending fund balance in FY 02 by 78 percent.
- Improperly reporting of fees it collected to set up the TexasOnline project.
- Failure to deposit revenue within three days of receipt, as required by statute.
- Poor organizational planning resulted in a \$39,000 purchase of portable computer hardware that cannot be used due to lack of wireless towers in inspectors' regions.
- Lack of an indirect cost allocation plan for allocation across functions.
- Lack of properly segregated responsibilities for financial reporting, processing funds received, issuing barber school permits, and updating enforcement information.
- Weak technology security, which is insufficient to protect the security of financial data.

**The agencies cannot provide the basic information necessary to ensure effective regulation of cosmetologists and barbers.**

*Cosmetology Commission*

- The Commission has difficulty responding to consumer and licensee concerns, preventing the agency from effectively regulating the occupation. Stakeholders often find it difficult to reach agency staff, and if they do reach somebody, staff has difficulty answering questions. The Commission receives an average of 900 phone calls a day, and agency staff admit that this workload makes it difficult to be responsive to all licensees and members of the public. Licensees also state that they cannot provide meaningful input to the Commission or its staff about program changes or concerns.
- The Commission's inability to provide timely and reliable information prevents the agency from targeting internal problems, as well as preventing oversight agencies from getting a clear picture of the agency's activities. For example, the Commission was unable to provide Sunset staff timely and reliable information about the agency's basic operations, such as summary data regarding yearly expenditures and revenues, and reliable licensing and enforcement numbers. The agency sometimes took over three months to provide standard licensing information such as expenditures for fiscal year 2003. Additionally, Commission staff had difficulty responding to some of Sunset staff requests at all. For example, the agency could not provide fiscal year 2003 revenue data or a breakdown of enforcement violations by category. This standard information should be kept by licensing agencies, and its absence prevents the Commission from targeting compliance problem areas.

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*The Cosmetology Commission could not provide Sunset staff with timely and reliable information about basic operations and could not respond to some requests at all.*

The Commission has had difficulty providing information to other state agencies as well. As discussed previously, the Commission's inability to provide documentation or information prevented both the Office of the Comptroller and the State Auditor's Office from fully assessing the amount of risk to the State's money. Additionally, SAO found that Commission lacks support and documentation for financial information, contributing to the finding of gross fiscal mismanagement at the agency.<sup>12</sup>

*Barber Board*

- For approximately four months during the Sunset review, the Barber Board's phones were not working properly, making it difficult, and sometimes impossible, for Sunset staff to contact the Board. Additionally, the phone problem prevents consumers and licensees from being able to reach the agency with complaints or licensing questions.
- The Board's current categorization of licensees distorts the actual number of licensees currently regulated, making it difficult to achieve a full understanding of the agencies' overall effectiveness. For example, the agency states that it regulates about 18,000 individuals and 11,700 establishments. However, these numbers include individuals whose licenses have expired, which means that they cannot legally practice barbering. The Board only actively regulates about 13,000 individuals

and 8,200 licensees that have current, valid licenses. In fact, the Board did not maintain and could not provide an accurate count of the number of valid licensees regulated by the Board until three months into the Sunset review.

**Most other states’ barber and cosmetology licensing programs are part of a bigger agency.**

- The chart, *State Barber and Cosmetology Regulatory Agencies*, describes how other states structure barber and cosmetology regulatory agencies. Most states regulate barbers and cosmetologists under an umbrella agency, although the organization of such agencies varies. For example, of the 37 states that operate under an umbrella structure, 19 states combine the regulation of barbers and cosmetologists under the umbrella, while 18 regulate barbers and cosmetologists as separate industries under the umbrella structure. Additionally, the responsibilities of the divisions range from an advisory capacity to autonomous rulemaking authority. Fourteen states regulate either barbers or cosmetologists through separate agencies, while two combine the regulations in an independent agency.

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*Thirty-seven states regulate barbering and cosmetology under an umbrella licensing structure.*

<b>State Barber and Cosmetology Regulatory Agencies</b>			
<b>Structure</b>	<b>Profession</b>	<b>Number of States</b>	<b>Examples</b>
Umbrella Agency	Combined barber and cosmetology regulation	19	Illinois, California, New Jersey
	Separate barber and cosmetology regulation	18	Florida, South Carolina, Colorado
Independent Agency	Combined agencies for barbers and cosmetologists	2	New Hampshire, West Virginia
	Separate agencies for barbers and cosmetologists	14	Texas, Louisiana, Ohio

- As a result of its 1999 Sunset review, Colorado’s Legislature abolished its independent Board of Barbers and Cosmetologists and transferred the regulatory functions into its Division of Registrations agency.<sup>13</sup> The Division of Registrations handles the regulation of about 30 professions as a division under the umbrella agency of the Department of Regulatory Agencies.

**The Legislature has moved toward administrative consolidation of many of its occupational and health-related licensing programs.**

- The Legislature created the Texas Department of Licensing and Regulation (TDLR) in 1989 as the State’s occupational licensing agency. The Department currently regulates 22 different occupational licensing programs. The textbox, *Regulatory Programs at TDLR*, lists all of the agency’s programs. The Legislature added three regulatory programs to TDLR in the 78th regular session, signaling the Legislature’s continued interest in consolidation.

- The Texas Department of Health acts as an umbrella licensing agency for health-related professions, including Professional Counselors, Dietitians, Marriage and Family Therapists, Midwives, Perfusionists, and Social Worker Examiners.
- Legislative leadership has charged both the House Committee on Government Reform and the Senate Committee on Government Organization with interim studies evaluating consolidation of smaller agencies by function or type. The House Committee on Licensing and Administrative Procedures is charged with an interim study to identify licenses and duties that could be more effectively handled by TDLR, as well as evaluate cost-savings and policy implications of consolidation.

<b>Regulatory Programs at TDLR</b>
Air Conditioning Contractors
Architectural Barriers
Auctioneers
Boilers
Career Counseling Services
Combative Sports
Court Interpreters
Electricians
Elevators, Escalators
Industrialized Housing and Buildings
Legal Service Contracts
Loss Damage Waivers
Personnel Employment Services
Property Tax Consultants
Service Contract Providers
Staff Leasing Services
Talent Agencies
Temporary Common Worker Employers
Water Well Drillers
Water Well Pump Installers
Weather Modification
Vehicle Protection Product Warrantors

**Consolidating both agencies' functions with TDLR will increase administrative effectiveness and efficiency.**

- TDLR effectively regulates a wide variety of occupational licensing programs and offers an opportunity to improve the current regulation of barbers and cosmetologists. TDLR's functional alignment and dependence on technical advisory committees allow the agency to oversee appropriate and efficient regulation of its programs. The Legislature has also recognized TDLR as the State's model for occupational licensing, continuously adding new programs and relying on the agency's licensing expertise to help with start-up licensing programs. TDLR's ability to efficiently incorporate new programs sets the stage for continued consolidation of smaller licensing agencies.
- TDLR has the existing framework to absorb these agencies and ensure overall effectiveness. The Department oversees 22 different occupational licensing programs and is organized along workflow functions — licensing, compliance, enforcement, and administration and support services — to achieve streamlined processes for each of its programs. The licensing division efficiently processes all of the Department's applicants, and the compliance division handles inspections. TDLR's inspectors are cross-trained to inspect many of the agency's programs and are in six regional offices around the state. Additionally, TDLR has the financial and technological support functions in place to meet both agencies' needs.

  
*TDLR offers an opportunity to improve the current regulation of barbers and cosmetologists.*

- The Commission on Licensing and Regulation, TDLR's policymaking body, is comprised of seven public members appointed by the Governor. The Commission receives assistance from 13 advisory committees, which provide rulemaking and technical advice. Typically, agency staff presents all draft rules to the specialized advisory committees for development and comment. After the advisory committee approves the rules for recommendation to the full Commission, the agency publishes the rules for public comment, and then the Commission votes on them. Also, each advisory committee has a direct liaison with the Commission. Creating two new advisory committees to address barber and cosmetology regulations would ensure that the Commission would receive technical expertise from stakeholders in policy and rulemaking, as well as ensuring public input when proposed changes go to the full Commission.
- TDLR is a proven source for expertise in starting new independent licensing programs and the Legislature has acknowledged the agency as such. For example, the Department helped organize the Texas Geoscientists Board, created by the 76th Legislature, and administered its responsibilities until it was able to function independently. The Legislature has charged TDLR with similarly "incubating" the newly created Texas Residential Construction Commission, created in the 78th regular session. Additionally, the Legislature recognized TDLR's ability to take on new programs by adding three new programs in the last legislative session: Electricians, Legal Service Contracts, and Loss Damage Waivers.



*Separate advisory committees for barbering and cosmetology would ensure TDLR receives technical expertise from the professions.*

## Recommendations

### Change in Statute

#### **1.1 Abolish the Texas State Board of Barber Examiners and transfer its functions to the Texas Department of Licensing and Regulation.**

Under this recommendation, the State Board of Barber Examiners would be abolished as an independent agency, and its regulatory functions would be transferred to TDLR. The Department would administer all testing and regulatory functions for barbers. The recommendation would align all regulatory provisions in the Barber Act with TDLR's enabling statute, to streamline administration. This recommendation would also remove the Sunset provision in the Barber Act, as it would be subject to TDLR's existing Sunset provision.

#### **1.2 Establish a barber advisory committee to assist TDLR with the regulation of barbering.**

This recommendation would create a barber advisory committee at TDLR to advise the Commission on Licensing and Regulation, with the duties described in the textbox, *Recommended Duties of Advisory Committees*. The Commission on Licensing and Regulation, as with all its current advisory committees, would appoint five members to the advisory committee for six-year staggered terms. The membership would include two licensed barbers, one barber school owner, and two barbershop owners. As the committee would be advisory to the all-public Commission, it would not have public members. The presiding officer of the Commission, with approval from the Commission, would appoint one member of the committee as the presiding officer for a two-year term.

### **Recommended Duties of Advisory Committees**

- Recommend rules and standards on technical issues related to the occupations
- Provide advice regarding educational courses and curricula for applicants
- Provide advice regarding examination content
- Educate the Commission on Licensing and Regulation and TDLR staff on issues affecting the industries
- Respond to questions from TDLR's staff and Commission relating to the industries

### **1.3 Abolish the Texas Cosmetology Commission and transfer its functions to the Texas Department of Licensing and Regulation.**

This recommendation would abolish the Cosmetology Commission as an independent agency and transfer its regulatory functions to TDLR. Cosmetologists would continue to be tested and regulated, and TDLR would administer those functions. Under the recommendation, regulatory provisions in the Cosmetology Act would be conformed to TDLR's statutory processes to increase efficiency, however all law specific to the qualifications of cosmetologists would remain. The recommendation would remove the Sunset provision in the Cosmetology Act, since the program would be subject to the Sunset provision that already exists in TDLR's enabling statute.

### **1.4 Establish a cosmetology advisory committee to assist TDLR with the regulation of cosmetology.**

The recommendation would also create a new cosmetology advisory committee at TDLR, to advise the Commission on Licensing and Regulation. The textbox, *Recommended Duties of Advisory Committees*, lists the responsibilities of this new committee. The committee would be composed of five members, including two licensed cosmetologists, one cosmetology school owner, one independent salon owner, and one chain salon owner. As the committee would be advisory to the all-public Commission on Licensing and Regulation, it would not have public members. As with TDLR's current advisory committees, the Commission on Licensing and Regulation would appoint the committee members for six-year staggered terms. The presiding officer of the Commission, with the Commission's approval, would designate one member of the advisory committee as the presiding officer for a two-year term.

## **Impact**

Transferring the functions of the Board and Commission to TDLR would improve the State's regulation of barbers and cosmetologists while keeping current license categories intact. TDLR provides a secure and knowledgeable agency structure to efficiently administer the regulation of barbers and cosmetologists while increasing licensee and consumer responsiveness. TDLR has the tools available to provide effective support services, such as financial reporting and technological support, as well as to efficiently enforce the two respective laws. New advisory committees responsive to the Commission on Licensing and Regulation would capture technical expertise on the occupations and merge that expertise with an effective operating structure at TDLR. The advisory committees would also ensure that stakeholders have opportunities for meaningful input in the creation of rules and regulations affecting the industries. The recommendations will have no impact on license requirements, although other recommendations in this report could affect the regulatory structure of the two occupations.

## Fiscal Implication

These recommendations would result in an estimated savings to the State of \$542,596 and a reduction in 9.5 full-time equivalents (FTEs). Transferring the functions of the Board and the Commission to TDLR will result in savings from reduced administrative costs and FTE positions by taking advantage of the administrative structure of TDLR, and its ability to absorb these programs. The recommendations would remove the need for reimbursement of travel costs currently paid for both agencies' policymaking bodies, also resulting in a savings to the State. Reductions discussed in this fiscal implication are limited to the reductions resulting from administrative benefits from transferring the programs, as they exist, to TDLR. Other issues in this report discuss reductions in program personnel that result from changing the structure of the regulation itself, and those reductions are not included here.

These recommendations would result in a 2.5 FTE reduction for the Barber Board, based on eliminating the accounting and support services positions that TDLR will be able to assume. The reduction of these FTEs would result in an annual savings of about \$119,792 based on the average salaries and fringe benefits for each of the positions. The recommendations would also result in a savings of approximately \$4,716 due to a reduction of travel costs for Board members, based on average travel reimbursements for fiscal year 2003.

The recommendations would result in a seven FTE reduction from the Cosmetology Commission, based on reducing administrative functions that can be assumed by TDLR, such as administrative support and accounting services. This reduction will result in an annual savings of about \$414,038 per year, based on average salaries and benefits. The recommendations will result in a savings of approximately \$4,050 per year in Commission member travel reimbursements, based on the amount of travel reimbursements for fiscal year 2003.

The Barber Board and Cosmetology Commission's current appropriations and FTEs, less the reductions discussed above, would be continued and transferred to the Texas Department of Licensing and Regulation. The state-owned Frank E. Joseph building, which currently houses both the Cosmetology Commission and the Barber Board, would continue to be used for TDLR's administration of these programs.

<b>Texas State Board of Barber Examiners</b>		
<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	\$124,508	-2.5
2007	\$124,508	-2.5
2008	\$124,508	-2.5
2009	\$124,508	-2.5
2010	\$124,508	-2.5

<b>Texas Cosmetology Commission</b>		
<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	\$418,088	-7
2007	\$418,088	-7
2008	\$418,088	-7
2009	\$418,088	-7
2010	\$418,088	-7

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<sup>1</sup> State Auditor's Office, *An Audit Report on Internal Controls and Financial Processes at the Cosmetology Commission*, report no. 04-019 (Austin, Texas, February 2004).

<sup>2</sup> Texas Occupations Code, sec. 1602.407.

<sup>3</sup> State Auditor's Office, *An Audit Report on Internal Controls and Financial Processes at the Board of Barber Examiners*, report no. 04-006 (Austin, Texas, October 2003).

<sup>4</sup> State Auditor's Office, *An Audit Report on Internal Controls and Financial Processes at the Cosmetology Commission*, report no. 04-019 (Austin, Texas, February 2004).

<sup>5</sup> Texas Government Code, sec. 2104.001.

<sup>6</sup> Ibid.

<sup>7</sup> State Auditor's Office, *A Special Investigations Unit Report Regarding the Cosmetology Commission*, report no. 04-002 (Austin, Texas, September 2003).

<sup>8</sup> Office of the Comptroller, *Post Payment Audit of the Texas Cosmetology Commission*, report no. 505-02-01 (Austin, Texas, January 2003).

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> State Auditor's Office, *An Audit Report on Internal Controls and Financial Processes at the Board of Barber Examiners*, report no. 04-006 (Austin, Texas, October 2003).

<sup>12</sup> State Auditor's Office, *An Audit Report on Internal Controls and Financial Processes at the Cosmetology Commission*, report no. 04-019 (Austin, Texas, February 2004), p. 8.

<sup>13</sup> Colorado Department of Regulatory Agencies Office of Policy and Research, *Regulation of the Barber and Cosmetology Occupations in Colorado: State Board of Barbers and Cosmetologists 1999 Sunset Review* (Denver, Colorado, 1999).

### *The Over-Regulation of Barbering and Cosmetology Does Not Protect the Public and Wastes State Resources.*

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## Summary

### Key Recommendations

- Replace full licensure of barbers and cosmetologists with a certification process.
- Require barber and cosmetology inspection efforts to be risk based, focusing on sanitation violations.
- Eliminate the barber health certificate requirement.
- Eliminate barber and cosmetology student permit requirements.

### Key Findings

- The Texas Sunset Act requires an evaluation of less restrictive methods of regulation that could adequately protect the public.
- Full licensure of barbering and cosmetology is an excessive level of regulation that does not enhance public safety.
- The agencies' inspection programs waste agency resources without significantly protecting public health and safety.
- The Barber Board requirement that all licensees obtain a health certificate serves no public protection function.
- Both agencies require all students to have agency-issued permits, which burdens students and agency staff but fails to increase public safety.

### Conclusion

The Texas State Board of Barber Examiners and Texas Cosmetology Commission regulate barbers and cosmetologists in the state, ostensibly to protect the public's health and safety. As directed by the Texas Sunset Act, staff evaluated the agencies to determine whether less regulation would continue to provide adequate public protection. The review showed that these occupations are over-regulated. Staff found that the agencies follow several practices that do not enhance health and safety in Texas, but instead waste the agencies' limited resources. Eliminating the unnecessary practices reduces the over-regulation of the occupations, and allows better targeting of limited resources.

## Support

**The State regulates barbering and cosmetology, in theory, to protect public health by requiring individuals and establishments to be licensed and inspected.**

- The Texas State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission) aim to ensure that their licensees comply with agency law and rules, including safety rules regarding sanitation. Texas law requires the Board and Commission to adopt sanitation rules to prevent the spread of infectious or contagious disease in barbershops, salons, and schools. Examples of sanitation rules include the requirements to immerse implements in disinfectant solution and use a clean towel on each client. The agencies do not have jurisdiction over the quality of haircuts or other services provided by licensees.

  
*Texas law focuses  
Board and  
Commission efforts on  
sanitation, to prevent  
the spread of disease.*

### ***Barber Board - Licensure and Inspection***

- The Board issues nine types of licenses for individuals and establishments, as shown in the textbox *Barber Board Licenses*. The Barber Board issues licenses to about 14,600 practicing individuals and 8,200 establishments. Trainees must have a student permit from the Barber Board to attend barber school and practice under the supervision of a licensed instructor. All licenses must be renewed biennially except the annual school permit and the one-time student permit.

The textbox *Barber Licensee Requirements* lists the qualifications required to become a licensed barber, barber technician, manicurist, or barber instructor. All licensees, including students, must obtain a certificate from a health-care professional certifying that they have no infectious or contagious diseases.

<b>Barber Board Licenses</b>
<b><u>Individuals</u></b> barber barber technician barber instructor manicurist student permit
<b><u>Establishments</u></b> barbershop manicurist shop barber school booth rental

<b>Barber Licensee Requirements</b>
To become licensed by the Barber Board, a person must: <ul style="list-style-type: none"><li>● be at least 16 years old;</li><li>● have at least a 7th grade education;</li><li>● complete between 300 and 1,500 hours of barber school training;</li><li>● pass a written and practical exam; and</li><li>● have a health certificate stating the person is free from contagious disease.</li></ul>

- The Board routinely inspects shops, schools, and individual licensees to ensure compliance with Texas barber law and rules. Board policy suggests monthly inspection of schools, and inspection of shops and individual licensees every three to six months, or at least annually. The agency has a policy to re-inspect repeat violators within a short period

of time. The Board states that its seven inspectors inspected 35,876 individuals and 26,607 establishments in fiscal year 2003, including routine inspections, initial inspections when schools and shops first open, and inspections of dual shops — where both barbers and cosmetologists may practice.

***Cosmetology Commission - Licensure and Inspection***

- The Commission issues 10 different licenses for individuals, eight different establishment licenses, and student permits, as shown in the textbox *Cosmetology Commission Licenses*. The agency has about 216,000 active license holders. To attend cosmetology school and practice on clients, students must obtain a student permit. All licenses renew biennially, except the annual school permit and the one-time student permit.
- The textbox *Cosmetology Licensee Requirements* shows the qualifications necessary to become licensed by the Commission. Beginning September 2004, all Commission licensees must certify that they have completed continuing education requirements before the Commission will renew their licenses.

<b><i>Cosmetology Licensee Requirements</i></b>
<p>To become licensed by the Cosmetology Commission, a person must:</p> <ul style="list-style-type: none"> <li>● be at least 17 years old;</li> <li>● have a high school diploma, G.E.D., or passing grade on a test that measures ability to benefit from training;</li> <li>● complete between 150 and 1,500 hours of cosmetology school training; and</li> <li>● pass a written and practical exam.</li> </ul>

<b><i>Cosmetology Commission Licenses</i></b>
<p><b><u>Individuals</u></b>                      manicurist                      facial specialist                      hairbraiding/hairweaving specialist                      shampoo specialist                      wig specialist                      operator                      student permit                      instructor                      instructor - manicure                      instructor - facial                      instructor - wig</p> <p><b><u>Establishments</u></b>                      school                      salon                      manicuring salon                      facial/esthetic salon                      facial/manicure salon                      hairweaving/braiding salon                      wig salon                      independent contractor</p>

- The Commission’s inspectors routinely inspect schools, salons, and licensees to ensure they have the required licenses and follow sanitation rules. The Commission does not have a written policy on the frequency of routine inspections, but attempts to inspect salons and individual licensees every year and a half, and inspect schools about three times a year. The Commission also conducts initial inspections of salons and schools to ensure they meet the agency’s minimum requirements. The agency has developed a risk-ranking procedure that attempts to ensure that violators receive a re-inspection within a short period of time. The agency reports inspecting about 29,000 establishments and 55,000 individual licensees in fiscal year 2003.

**The Texas Sunset Act requires an evaluation of less restrictive methods of regulation that could adequately protect the public.**

- The Act requires Sunset to evaluate agencies using several criteria, including whether less restrictive methods of regulation are appropriate. The standard requires that agencies should use the least amount of regulation necessary to protect the public. Past Sunset Commission recommendations have addressed this standard by eliminating exam requirements for certain licensees and deregulating entire programs.


  
*Sunset standards require that agencies should use the least regulation necessary to protect the public.*

- Three categories of occupational regulation exist. Registration provides the lowest level of regulation and generally requires a person to register with a state agency that simply keeps a roster of practitioners. For example, the Texas Department of Licensing and Regulation requires individuals who buy refrigerants to register their names and addresses with the agency. Certification, the next level up, requires a person to meet certain minimum qualifications before working in an occupation. Surveyors-in-Training, for example, must meet education, experience, and exam requirements to become certified to practice by the Texas Board of Professional Land Surveying. Licensing provides the most stringent regulatory approach, requiring licensees to meet minimum qualifications and to renew their licenses on a regular basis. Licensing also generally requires individuals to meet continuing education requirements to renew a license. Currently, the regulation of barbering and cosmetology falls under the licensing category.



*No evidence suggests that the public has been seriously harmed by individuals practicing barbering or cosmetology.*

**Full licensure of barbering and cosmetology is an excessive level of regulation that does not enhance public safety.**

- No evidence exists that the public has been seriously harmed by individuals practicing barbering or cosmetology, despite hundreds of documented cases of unlicensed activity. Even individuals practicing without a license may not pose serious threats. Texas Department of Health (TDH) staff has no knowledge of a Board or Commission licensee passing a blood-borne disease — such as HIV, or hepatitis B or C — from customer to customer via unsanitary tools in Texas, though TDH staff indicates this theoretical risk exists. Diseases such as scabies or lice that could spread from customer to customer cannot be prevented by an occasional inspection and do not pose a serious health risk. In fact, TDH does not list them as “notifiable diseases” that require reporting. In addition, neither the Barber Board nor the Cosmetology Commission has revoked or suspended a license in the past five years, indicating that the occupations have not presented a serious risk to the public.
- States generally use license renewal to ensure continued competency of licensees, but barbering and cosmetology do not require such proof. Medical doctors, for example, must take 24 hours of continuing education each year before renewing their licenses, ensuring that they have up-to-date knowledge in a rapidly changing profession. The Board and Commission, however, do not have to substantially change sanitation rules, and while the aesthetics or style of haircuts may change rapidly, the agencies do not have jurisdiction over this area. Neither agency has significantly updated its sanitation rules in at least seven years. In addition, no evidence exists that license renewal reduces the number of violations of the agencies’ laws, or prevents harm to the public.



*Neither agency has jurisdiction over the aesthetics or style of haircuts or other services.*

**The agencies’ inspection programs waste agency resources without significantly protecting public health and safety.**

***Barber Board***

- The Barber Board states that it spent \$382,000 on enforcement, and inspected more than 62,000 licensees in fiscal year 2003. However, the

Board issued only 391 fines that year, of which just 12, or three percent, related to sanitation. The table *Common Violations Cited by Barber Board Inspectors* shows the three most frequent types of violations. Most of the sanitation violations were for lack of proper equipment or cleanliness. Ninety-three percent of the violations cited licensure issues, most often failure to renew on time.

<b>Common Violations Cited by Barber Board Inspectors – FY 2003</b>	
Expired license or permit	232
Unlicensed activity	133
Sanitation violations	12

- The Board inspects all 31 barber schools every month regardless of whether the agency identified previous violations. Inspectors check that schools follow the agency’s laws and rules, including following sanitation procedures and keeping accurate record of student hours. Monthly inspections, which can take two hours or more, burden students, owners, and inspectors, but seldom result in citations. In fact, the Barber Board issued just three violations for schools in three years, and none cited failure to follow sanitation guidelines.
- Despite two previous State Auditor’s Office (SAO) reports recommending a risk-based approach to inspections, SAO found in October 2003 that the Barber Board still does not inspect licensees based on risk or previous violations.<sup>1</sup> In fact, the agency’s database cannot capture information about licensees who repeatedly violate laws or rules.

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*The Barber Board continues to inspect schools monthly despite finding no sanitation violations in the past three years.*

### ***Cosmetology Commission***

- Like the Barber Board, the Cosmetology Commission issues the majority of its fines for violations that do not affect the safety of the public. The Commission states that it inspected 83,800 licensees in fiscal year 2003 and issued 7,600 violations. While the agency could not provide a detailed breakdown of violations, Sunset staff determined that fewer than half of the violations addressed sanitation. See the table, *Common Violations Identified by Commission Inspectors*, for more detail. However, many violations that fall under the agency’s sanitation rules do not, in fact, pose the risk of spreading disease. In fiscal year 2003, inspectors also issued hundreds of citations to salon and school employees who wore clothing that violated the Commission’s general rules, such as tank tops, and to salons that did not post their business hours. Fining licensees for such violations clearly wastes the agency’s resources while not protecting the public.
- While the Commission has a risk-ranking procedure to ensure that repeat violators receive more frequent inspections, the agency has great difficulty following the policy while it attempts to address a backlog of about 1,500 salons that have not been inspected in more than one year.

<b>Common Violations Identified by Commission Inspectors – FY 2003</b>	
Operating with a license expired more than 30 days but less than 5 years.	1,267
Shop owners may not employ unlicensed persons.	683
Salon or school failed to post required information such as license, laws and rules, or last inspection report.	570
Hospital grade wet disinfectant container not large enough to immerse objects or did not have a cover.	477
Floors were not of hard-finished, washable material, or hair cuttings were not swept after each haircut.	456

**Other licensing agencies conduct more limited inspections than the Barber Board and Cosmetology Commission.**

- Many states do not conduct inspections of barber and cosmetology licensees as frequently as Texas. Colorado's Office of Barber and Cosmetologist Licensing inspects only upon complaint, and Pennsylvania's Bureau of Professional and Occupational Affairs conducts inspections when schools and shops first open to ensure compliance with state law. In Washington, the Cosmetology, Manicurist, Barber and Esthetician Advisory Board inspects only on complaint, or once every two years.
- Other Texas agencies that regulate for public health and safety inspect on a less frequent basis and succeed in protecting the public. The Texas State Board of Pharmacy conducts unannounced inspections of pharmacies every two to two-and-a-half years, while the Texas Department of Health routinely inspects tattoo studios once every three years, or more frequently if inspectors find repeated, flagrant violations. To maximize Texas Funeral Service Commission staff time, the agency bases its inspection program on a risk assessment tool, but ensures that every funeral home receives an inspection at least once every two years.



*Other Texas agencies that regulate for public health and safety successfully inspect on a less frequent basis.*

**The Barber Board requirement that all licensees obtain a health certificate serves no public protection function.**

- Every Barber Board licensee must obtain an annual certificate stating they have no contagious disease, but this requirement does not protect the public for several reasons. The certificates only attempt to confirm that licensees are healthy on the day a doctor examines them and, as TDH indicates, "no physician could really sign this type of statement with a completely straight face, as it would actually require testing for all known infectious diseases — a formidable and very expensive undertaking."<sup>22</sup> Additionally, the requirement makes online license renewal less efficient since a licensee must still mail a paper copy of the certificate to the Board, and a Board employee must enter the information into the computer system.
- The Legislature removed the Cosmetology Commission's health certificate requirement in the 78th regular session, acknowledging that the certificates do not protect the public's health.



*Annual health certificates serve no public health purpose.*

**Both agencies require all students to have agency-issued permits, which burdens students and agency staff but fails to increase public safety.**

- Student permits do little other than raise funds for the State. The Board and Commission maintain that student permits provide proof to agency inspectors and the public that students have been enrolled in school and may provide services. However, the State does not need to know who is in a school at any given time, and students must work under the direct supervision of licensed instructors. Neither agency has ever revoked a student permit, indicating that students do not pose a threat to the public. In addition, Sunset staff research did not reveal any other occupational licensing agency that requires permits for students,



*Student permits do little other than raise funds for the State.*

indicating that the requirement may not be an appropriate role for the State.

- Student permits generate large volumes of paperwork for the agencies in addition to burdening students with an unnecessary fee. The Cosmetology Commission issued 22,329 student permits in 2003, at a cost of \$25 to each student, while the Barber Board issued 1,461 permits at a cost of \$25. The Commission permit fee includes the cost of one exam and one transcript.

## Recommendations

### Change in Statute

#### 2.1 Replace full licensure of barbers and cosmetologists with a certification process.

This recommendation would change the regulatory structure for barber and cosmetology individual licensees from licensure and renewal every two years to one-time certification. Certificate holders would still be required to meet all age, education, curriculum, and exam requirements that apply. Current licensees would switch to certification at their next license renewal date after paying a certification fee. Certificates would be valid indefinitely, unless suspended or revoked by the agencies or their successor. Certificate holders would still be subject to all enforcement authority currently available. Eliminating license renewal for cosmetology licensees would result in the elimination of the new mandatory continuing education requirement.

This recommendation would affect all barber and cosmetology individual licenses, as shown in the textbox, *Affected License Categories*. All shop and salon licenses, and all booth permits and independent contractor licenses would continue to renew on a biennial basis.

The Barber and Cosmetology Acts would need to be modified to remove authority to charge a renewal fee for individual licenses, though authority to charge a renewal fee for booth permits and shop, salon, and independent contractor licenses would remain. Statute would also be modified to add authority to charge a certification fee.

#### **Affected License Categories**

##### **Cosmetology Commission**

operator  
manicurist  
facial specialist  
hairbraiding/hairweaving specialist  
wig specialist  
instructor  
instructor - manicure  
instructor - facial  
instructor - wig

##### **Barber Board**

barber  
manicurist  
barber technician  
barber instructor

#### 2.2 Require barber and cosmetology inspection efforts to be risk based, focusing on sanitation violations.

Instead of the agencies' current programs of routine inspections, this recommendation would focus limited resources on inspection of facilities that require the most attention — those that violate sanitation rules. The risk assessment methodology should include a requirement that each facility receives an inspection at least every two years. Inspections upon complaint, and initial inspections of new schools and salons would continue. The cost of all initial inspections should be included in the new establishment's licensing fee. Many other state agencies use risk assessment tools to guide inspections, so several examples exist on which to model inspection approaches.

### **2.3 Eliminate the barber health certificate requirement.**

This recommendation would eliminate an unnecessary burden for licensees by removing the current requirement that barbers, barber technicians, manicurists, and barber instructors must submit a health certificate upon initial licensure and renewal.

### **2.4 Eliminate barber and cosmetology student permit requirements.**

This recommendation would remove the requirement for barber and cosmetology student permits. Instead, individuals wishing to study barbering or cosmetology would independently enroll in school and complete required course hours currently determined by the agencies. The State's first contact with the student would be when the schools document that the student is eligible to sit for the exam. The cosmetology student permit fee includes the exam fee, so statute would need to be modified to establish authority to charge an exam fee.

## **Impact**

Each of the recommended changes would reduce the unnecessary levels of regulation of barbering and cosmetology that waste agency resources and do not add to protection of the public. Certificate holders would still be required to meet extensive qualifications, ensuring they possess the competency to comply with agency regulations. Consumers would continue to be assured that certificate holders possess the basic skills to provide acceptable service and to follow sanitation guidelines designed to protect public health. Focusing on sanitation violations would help inspectors better address any potential health and safety risks.

Eliminating the health certificate and student permit requirements would also reduce workloads, and allow inspectors to focus on activities that more directly impact public health and safety. Eliminating the health certificate for barbers would also reduce the cost of entry into the barbering profession since a doctor's examination would no longer be required.

## **Fiscal Implication**

These recommendations will have a positive fiscal impact to the State for two years, saving \$168,475 each year for barber regulation and \$410,000 each year for cosmetology regulation. Two years after implementation, the recommendations would reduce barber revenue by \$286,525 and cosmetology annual revenue by \$3,369,000.

The recommendation to replace license renewal with one-time certification would be revenue neutral for the first two years. Licensees would pay a certification fee equivalent to their former renewal fee to cover the administrative cost of issuing the certificates. After two years, all licenses would be converted to certificates, resulting in an annual loss to General Revenue of approximately \$476,000 in barber renewal fees and \$3.8 million in cosmetology renewal fees. Eliminating license renewal for individuals would decrease the workload of licensing staff, thereby reducing staff by one-half full-time equivalent (FTE) position per agency. Half of an average FTE position's salary and benefits costs the State about \$21,000. This FTE reduction would begin in 2008, after replacement of all licenses with certificates.

Eliminating student permits and the associated \$25 fee would reduce barber revenue by \$36,525. For cosmetology, however, students would continue paying a \$25 fee for exams to cover the cost of administering the exams. Eliminating student permits would also decrease workload, but the amount is not significant.

Better targeting inspections would reduce the number of inspectors each agency employs. Eliminating the lengthy school inspections as discussed in Issue 4 would save a significant amount of inspectors' time, also reducing the number of inspectors. Inspectors at the Texas Department of Licensing and Regulation can each conduct 1,500 inspections annually that are similar in scope to barber and cosmetology inspections. The Board currently employs seven inspectors to inspect 5,400 facilities while the Commission employs 18 inspectors to inspect 24,000 facilities. Inspection of facilities would occur approximately once every two years under this recommendation, resulting in the elimination of five Barber Board inspectors, saving \$205,000 in salaries and benefits, and ten Commission inspectors, saving \$410,000. An average inspector's annual salary and benefits costs the State about \$41,000.

In fiscal year 2003, the Board collected \$46,200 in administrative penalties while the Commission collected \$953,600. A portion of these penalties come from license renewal violations — about \$4,000 for the Barber Board, and the Cosmetology Commission could not provide the information — and these revenues would be reduced under the recommendations. However, focusing the inspection programs on violators, rather than routine inspections that often reveal no misbehavior, could potentially increase administrative penalty collection.

<b>Texas State Board of Barber Examiners</b>				
<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Net Effect to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	(\$36,525)	\$205,000	\$168,475	-5
2007	(\$36,525)	\$205,000	\$168,475	-5
2008	(\$512,525)	\$226,000	(\$286,525)	-5.5
2009	(\$512,525)	\$226,000	(\$286,525)	-5.5
2010	(\$512,525)	\$226,000	(\$286,525)	-5.5

<b>Texas Cosmetology Commission</b>				
<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Net Effect to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	\$0	\$410,000	\$410,000	-10
2007	\$0	\$410,000	\$410,000	-10
2008	(\$3,800,000)	\$431,000	(\$3,369,000)	-10.5
2009	(\$3,800,000)	\$431,000	(\$3,369,000)	-10.5
2010	(\$3,800,000)	\$431,000	(\$3,369,000)	-10.5

<sup>1</sup> State Auditor's Office, *An Audit Report on Internal Controls and Financial Processes at the Board of Barber Examiners*, report no. 04-006 (Austin, Texas, October 2003), p. 1.

<sup>2</sup> Letter from Texas Department of Health, Associate Commission for Disease Control and Prevention to Douglas Beran, Executive Director, Texas State Board of Barber Examiners, July 19, 2002.



### *Practical Exams for Prospective Barbers and Cosmetologists are Unnecessary Requirements for Licensure That Do Not Protect the Public.*

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#### **Summary**

##### **Key Recommendation**

- Discontinue use of practical examinations required for licensure of barbers and cosmetologists.

##### **Key Findings**

- To obtain a barber or cosmetologist license, the agencies require applicants to complete extensive training hours followed by passage of written and practical exams.
- Practical exams pose unnecessary barriers to licensure that provide no health and safety benefits to the public.

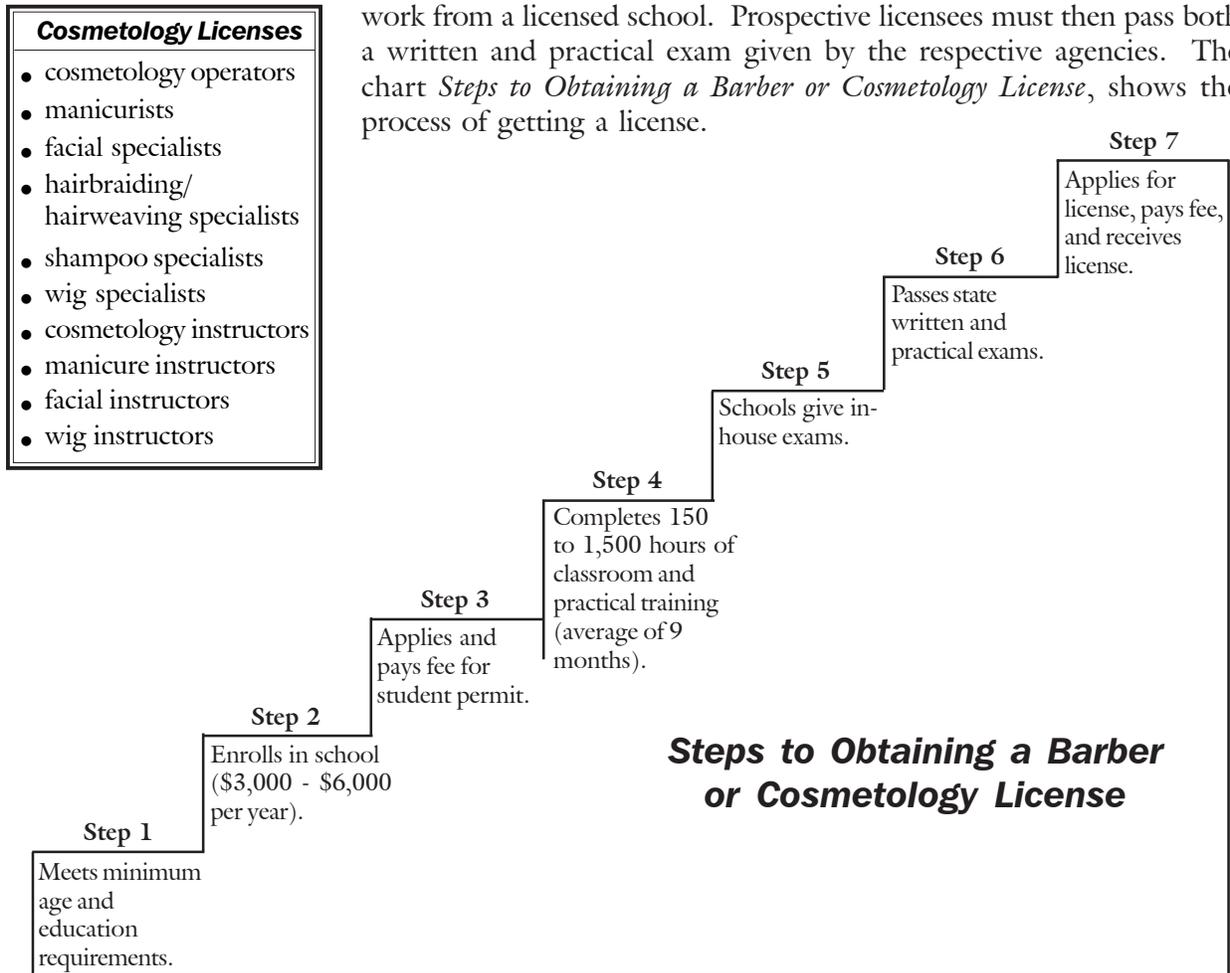
##### **Conclusion**

Among other extensive requirements for licensure, the Texas State Board of Barber Examiners and the Texas Cosmetology Commission require passage of a practical exam which is both unnecessary to ensure compliance with sanitation requirements and burdensome for the applicant. The Sunset review evaluated the practical exam process as well as the agencies' other requirements for licensure, and found that the exam tests applicants on aspects of the barber and cosmetology occupations that aren't regulated by the state for public protection. The review also found that the practical exam is expensive and burdensome for applicants. Further, the agencies' other requirements for licensure already ensure that licensees have the ability to comply with applicable law and give acceptable service to consumers. The review concluded that requiring discontinuance of the practical exams would remove an unnecessary barrier to entry, while at the same time preserving the ability to ensure licensees are competent.

## Support

To obtain a barber or cosmetologist license, the agencies require applicants to complete extensive training hours followed by passage of written and practical exams.

- The Texas State Board of Barber Examiners (Board) has four license categories: barbers, manicurists, barber technicians, and barber instructors. The Texas Cosmetology Commission (Commission) issues 10 different licenses, as shown in the textbox, *Cosmetology Licenses*. To be licensed, all prospective barbers and cosmetologists must meet certain age and education requirements, as well as complete specified course work from a licensed school. Prospective licensees must then pass both a written and practical exam given by the respective agencies. The chart *Steps to Obtaining a Barber or Cosmetology License*, shows the process of getting a license.



- The Board's different license categories require students to complete specified hours of course work to qualify to take the state exams. The chart, *Required Course Hours for Barber Students*, shows how many hours students must complete in each of the categories. The Board specifies the hours and content of barber instruction, and rules require that students split the hours between classroom theory and practical experience providing services to human clients. The Commission also specifies requisite hours and curriculum for students to complete before becoming eligible to take the exams. Like barber students, cosmetology students must complete both classroom

<b>Required Course Hours for Barber Students</b>	
<b>License Category</b>	<b>Requirement</b>
Barber	1,500 hours
Manicurist	600 hours
Barber Technician	300 hours
Barber Instructor	valid barber license and 5 years experience

theory and practical hours to graduate. The chart, *Required Course Hours for Cosmetology Students*, shows the number of course hours required for each license category.

- Once students have completed the appropriate curriculum, they qualify to sit for the state written and practical exams. The Barber Board prescribes the content of both the written and the practical barber exams, and gives them to prospective licensees once a month in Austin. A national testing service validates the content of the written exam and grades it. The written exam tests students on barber laws and rules, sanitation guidelines, use of chemicals, technique, and basic biology.

<b>Required Course Hours for Cosmetology Students</b>	
<b>License Category</b>	<b>Requirement</b>
Operator	1,500 hours
Manicurist	600 hours
Facial Specialist	600 hours
Hairbraiding Hairweaving Specialist	300 hours
Wig Specialist	300 hours
Shampoo Specialist	150 hours
Cosmetology Instructor	valid Operator license and 750 additional hours
Manicure Instructor	valid Manicurist license and 750 additional hours
Facial Instructor	valid Facial Specialist license and 750 additional hours
Wig Instructor	valid Wig Specialist license and 750 additional hours

Four Board members, who also have barber licenses, proctor and grade the practical exam. Two of the Board members also own schools. Those Board members do not grade their own students, but they grade their competitors' students. The practical exam, which takes about 90 minutes, tests students on a taper cut, a shave with a straight edge razor, and a shampoo/blow-dry. Students must bring a live model on which to perform the test, and pay for that model's expenses. All students must receive a passing grade of at least 70 percent on both exams to become licensed.

- The Cosmetology Commission offers both the practical and written exams to eligible students five days a week in Austin. A national testing service develops and grades the written exam, which covers subjects relating to technique, basic biology, use of chemicals, and sanitation procedures.

The Commission develops the content of the practical exam, and Commission staff proctor and grade the exam. The practical exam takes about five hours to complete, and tests the quality of skills as shown in the textbox, *Cosmetology Operator Practical Exam Content*. Students must bring all their supplies to the exam, and typically bring a mannequin head for the hairstyling portions of the exam. Other parts of the exam require that the student work on a live model. Students must make a passing grade of at least 70 on both written and practical tests to become licensed.

<b>Cosmetology Operator Practical Exam Content</b>
<ul style="list-style-type: none"> <li>● scientific hair brushing</li> <li>● hair tint</li> <li>● shampoo</li> <li>● 90-degree, 45-degree, or 0-degree cut</li> <li>● wet set</li> <li>● bleach retouch</li> <li>● chemical relaxer</li> <li>● manicure</li> <li>● facial</li> <li>● blow-dry</li> <li>● curling iron style</li> </ul>

**Practical exams pose unnecessary barriers to licensure that provide no health and safety benefits to the public.**

- The agencies presently test applicants for the quality of a haircut, style, or shave — skills not subject to state regulation. The Board and Commission regulate hygiene, not the actual stylistic practice of barbering and cosmetology. Regulation exists solely for the protection of the health and safety of the public, and the Acts and rules only govern the licensing and sanitation requirements for individuals and facilities. Neither agency has any jurisdiction over the quality or aesthetics of the services that licensees provide; these consumer issues appropriately fall outside of the State’s regulation. For example, the agencies cannot take enforcement action against licensees who provide low-quality service, such as a poor haircut.

However, both agencies’ practical exams test students on the quality of barber and cosmetology services, such as the closeness of a shave, or the style of the hair. The agencies test and grade examinees on their capability of providing quality services in a specific time frame, which requires a judgment of practice clearly outside the jurisdiction of the agencies.

- The only aspects of the practical exams relating to health and safety are the sanitation of instruments used in the test. However, the barber practical test requires that students bring their instruments pre-sanitized, so examiners do not actually test the ability of students to correctly sanitize their implements. The cosmetologist practical exam requires students to bring antibacterial-gel sanitizer and disinfectant solutions, but these play a minimal part in the practical exam. Additionally, both written exams already test students on their knowledge and understanding of day-to-day sanitation procedures under the agencies’ jurisdiction, such as the proper storage and frequency of sanitation of scissors or razors.

The cosmetology practical exam also tests applicants on chemical applications to ensure the proper usage and length of time a chemical should remain on hair. However, applicants use mock chemicals on mannequin heads on this portion of the exam. This requirement offers no real-world application, and the written exam already tests applicants on use of chemicals.

- While the agencies do not regulate the ability of a barber or cosmetologist to give good service, paying consumers expect that licensees are competent. However, other licensing requirements, apart from the practical exam, test the applicant’s competency. For example, the Board’s and Commission’s current curriculum requirements ensure students can perform the basic functions of a barber or cosmetologist before becoming eligible to sit for the exam. The required course work that students must complete before sitting for the exam, which ranges from 150 hours to 1,500 hours, gives students ample practical experience by working on human clients under the supervision of a licensed barber or cosmetologist. Additionally, the required written exams already cover technique, chemical use, and sanitation procedures.



*Neither agency has jurisdiction over the aesthetic quality of services that licensees provide, yet test for those aesthetic qualities.*



*The required course work and practical training, as well as the written exam, ensure that applicants are competent.*

- The expense for an applicant to take the practical exam places an unnecessary burden on the applicant since other licensing requirements, such as required course hours and the written exam, already ensure the applicant's ability to comply with sanitation requirements and give acceptable service. For example, all barber and cosmetologist applicants must take the exam in Austin and bring a live model, paying for that model's expenses. While this requirement may present less difficulty for an applicant from Austin, applicants from other areas of the state, such as El Paso or the Panhandle, incur significant travel and lodging expenses — all to show abilities not subject to state regulation.

  
*Applicants incur significant travel and lodging expenses to show abilities not subject to state regulation.*

## Recommendation

### Change in Statute

#### **3.1 Discontinue use of practical examinations required for licensure of barbers and cosmetologists.**

This recommendation would remove the requirement and authority for barber and cosmetology practical exams. Barber and cosmetology students would continue to be required to meet all applicable age, education, and course work requirements before being eligible to sit for the written exam. The requirement for students to pass the written exam before being licensed would continue. This change would apply to all categories of licenses that require exams.

### Impact

Under this recommendation, barber and cosmetologist applicants would no longer be subject to practical exam requirements. This change can occur without affecting the health and safety of the public, as applicants must already prove their ability to comply with sanitation requirements through other licensing requirements. Since the State does not currently regulate the stylistic practice of barbering or cosmetology, only the sanitation aspect of the occupations, repealing the requirement for the practical exam, while keeping the written exam requirement, would allow the agencies to ensure that licensees are capable of complying with the State's sanitation requirements. Because students must complete extensive course work, including practical experience, before qualifying to take the exam, consumers would continue to be assured that licensed barbers and cosmetologists are qualified.

Removing the requirement would also have the added benefit of reducing the burden and money students must expend to become licensed, since they will not have to travel to Austin with a live model to take the practical exam. Since only the written exam would be required, the agencies, or their successor agency, would have the ability to give the standard written exam in locations around the state, which would be more convenient for students.

### Fiscal Implication

This recommendation will have a positive fiscal impact to the State. Since Barber Board members currently proctor and grade the barber practical exam once a month, discontinuing the exam will reduce the amount of travel expenses for proctors. The four licensed barber Board members travel to Austin every month to give the practical exam, however about every other month they also stay for a Board meeting. Based on a estimated travel cost of \$786 for all four Board members each

month for six months when they only come to give the exam, this recommendation would have a savings of approximately \$4,700 per year.

The Cosmetology Commission currently has four employees that give the written exam, and monitor and grade the practical exam five days a week. Discontinuing the cosmetology practical exam would significantly reduce the workload for the examination division, since the employees spend most of their time proctoring the practical exam. The reduction would be equivalent to three full time equivalent (FTE) positions. The examination division would still have responsibility for the written exam and associated duties, equivalent to the workload of one FTE. Reducing three FTEs would save approximately \$125,880, based on an average salary and benefits of \$41,960 per FTE.

This recommendation would have no significant impact on revenue collected from exam fees from either agency. Applicants would continue to pay an exam fee for the written exam, appropriately adjusted, since administrative costs would still result from giving the written exam.

<b>Texas State Board of Barber Examiners</b>	
<b>Fiscal Year</b>	<b>Saving to the General Revenue Fund</b>
2006	\$4,700
2007	\$4,700
2008	\$4,700
2009	\$4,700
2010	\$4,700

<b>Texas Cosmetology Commission</b>		
<b>Fiscal Year</b>	<b>Savings to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	\$125,880	-3
2007	\$125,880	-3
2008	\$125,880	-3
2009	\$125,880	-3
2010	\$125,880	-3

## *Transfer Oversight of Private Barber and Cosmetology Schools to the Texas Workforce Commission to Improve Accountability and Ensure Student Protections.*

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### **Summary**

#### **Key Recommendation**

- Transfer the regulation of private barber and cosmetology schools to the Texas Workforce Commission.

#### **Key Findings**

- The Texas Workforce Commission regulates most vocational schools in the state.
- The Texas Education Agency and the Texas Higher Education Coordinating Board also oversee certain cosmetology training programs.
- The Barber Board and Cosmetology Commission do not effectively oversee schools to ensure quality training and employment.
- Lack of financial oversight of schools places barber and cosmetology students at risk of monetary losses and incomplete education.
- The Texas Workforce Commission is better situated to effectively regulate private barber and cosmetology schools, and provide students with consumer protections.

#### **Conclusion**

The Texas State Board of Barber Examiners and the Texas Cosmetology Commission regulate barber and cosmetology schools in Texas. The Sunset review evaluated this oversight, focusing on student protections and regulatory efficiency, and compared this to Texas' standard of regulation for career schools and vocational programs. The review found that the Barber Board and the Cosmetology Commission have not adequately met statutory responsibilities for oversight of barber and cosmetology schools, have not held schools accountable for providing required performance information, and have not used available tools to improve low performing schools to help students get the best quality training and job placement efforts possible. The review concluded that transferring the regulation of barber and cosmetology schools to the Texas Workforce Commission would provide higher levels of protection for students attending these schools, provide more consistent regulation, and eliminate unnecessary regulation carried out by the Barber Board and Cosmetology Commission.

## Support

### The Barber Board and the Cosmetology Commission oversee barber and cosmetology schools.

- The Texas State Board of Barber Examiners (Board) and Texas Cosmetology Commission (Commission) regulate 367 barber and cosmetology schools training approximately 23,790 students annually for entry into the barbering and cosmetology professions. The chart, *Texas Barber and Cosmetology Schools*, shows the different types of schools regulated by the agencies. The State regulates schools to ensure that schools provide training resulting in job placement, and do not defraud students of their tuition or course hours. While in school, students gain course hours in both classroom instruction and practical application. Students gain practical experience by providing supervised services to the public. After completing course hours, students must pass the agencies' practical and written exams to be licensed.

<b>Texas Barber and Cosmetology Schools FY 2003</b>			
<b>Regulating Agency</b>	<b>Type of School</b>	<b>Number of Schools</b>	<b>Number of Students</b>
Barber Board	Private Barber Schools	31	1,461
Cosmetology Commission	Private Cosmetology Schools	137	22,329
Cosmetology Commission	Junior Colleges	49	
Cosmetology Commission	High Schools	150	
<b>Total</b>		<b>367</b>	<b>23,790</b>

- To meet the goals of regulation, the agencies conduct oversight activities as summarized in the chart, *Oversight of Barber and Cosmetology Schools*. To be licensed, schools must be financially viable and meet requirements for curriculum content, course hours, student-teacher ratios, facility size, and equipment. The Board and Commission inspect all schools before issuing a license, which must be renewed annually.

<b>Oversight of Barber and Cosmetology Schools</b>	
<b>Oversight</b>	<b>Agency Activities</b>
Licensing	<ul style="list-style-type: none"> <li>● Review and approve financial viability</li> <li>● Approve curriculum and course hours</li> <li>● Issue school and instructor licenses</li> <li>● Issue student permits</li> <li>● Inspect schools before opening</li> </ul>
Enforcement	<ul style="list-style-type: none"> <li>● Routine inspections for unlicensed activities, sanitation requirements, and tracking student hours</li> <li>● Investigation of complaints by students and the public</li> <li>● Issue sanctions as needed</li> </ul>

After issuing licenses, the Barber Board inspects schools at least monthly, and the Commission typically inspects cosmetology schools about every four months. When inspecting schools, agency staff check facility standards, sanitary practices, student permits, facility permits, and student activities.

- Statutes require the agencies to collect information on school performance, such as job placement rates showing the percentage of graduating students placed in jobs by the schools, and employment rates showing the overall percentage of graduating students employed. As discussed later in this issue, the agencies do not adequately perform these activities. The agencies also compile licensing exam pass rate data. For fiscal year 2003, barber schools had an 89.3 percent average exam pass rate, and cosmetology schools an average pass rate of 60.1 percent. Statutes also authorize the agencies to conduct peer reviews of individual schools to address problems such as inadequate instruction or curriculum, low exam pass rates, or low employment rates. The agencies do not presently use the peer review authority.
- Until fiscal year 2003, both agencies had Tuition Protection Accounts to reimburse students if a private school closed and students could not be placed in another school. However, currently these accounts are inactive, and the agencies cannot access funds to reimburse students if a school closes. The schools each paid a fee to fund these accounts which have a cap of \$25,000 for the Board, and \$200,000 for the Commission.
- The Commission has different regulatory requirements for high school and junior college cosmetology programs. These programs are not required to submit proof of financial viability, or report job placement or employment rate information to the Commission. In addition, the Commission is not authorized to conduct peer reviews of these programs.

**The Texas Workforce Commission regulates most vocational schools in the state.**

- The Texas Workforce Commission (TWC) Career Schools Division oversees most career schools in Texas, with 400 schools teaching more than 95,000 students. The agency regulates different types of career schools including technical, legal, automotive, arts, and culinary schools. Some of these schools prepare students for licensure by other state agencies. For example, the Texas Department of Licensing and Regulation licenses auctioneers and TWC regulates auctioneer schools, as well as schools training nurse aides licensed by the Department of Health. Schools exempted from TWC regulation include schools regulated under other agency's statutes, such as barber and cosmetology schools, massage schools, and officer training academies; and high schools, community colleges, and junior colleges.
- When applying for TWC licensure, schools provide financial statements reviewed by a Certified Public Accountant, and verification that curriculum and instructors meet the requirements of any occupational licensing agency. Before issuing a license, TWC inspects a school for compliance with minimum standards. After opening, schools must report job placement and employment rate data to TWC.
- The agency enforces requirements by conducting annual inspections, investigating complaints from students and the public, reviewing employment rates, and issuing administrative fines when required. In addition, the agency can issue cease-and-desist orders against unlicensed



*The Texas Workforce  
Commission oversees  
more than 400  
private career schools  
in Texas.*

schools. If a school has low employment outcomes, inadequate curriculum, or other problems, TWC develops an corrective action plan to address these performance concerns.

**The Texas Education Agency and the Texas Higher Education Coordinating Board also oversee certain cosmetology training programs.**

- The Texas Education Agency (TEA) and the Texas Higher Education Coordinating Board (Coordinating Board) oversee career programs in high schools and junior colleges, including cosmetology training courses. These agencies oversee the programs to ensure they meet state educational and funding performance requirements, such as employment rates and occupational licensing exam pass rates. The chart, *Oversight of Cosmetology Training in High Schools and Junior Colleges*, summarizes the key aspects of TEA and Coordinating Board oversight of these programs.

<b>Oversight of Cosmetology Training in High Schools and Junior Colleges</b>		
<b>Oversight Activities</b>	<b>Texas Education Agency (High Schools)</b>	<b>Texas Higher Education Coordinating Board (Junior Colleges)</b>
Program Approval	Adopt Cosmetology Commission curriculum and approval as a TEA Texas Essential Knowledge and Skills course.	Adopt Cosmetology Commission curriculum and approval as a Coordinating Board workforce development course.
Program Evaluations	Annual local school district evaluations.	Desk reviews and on-site evaluations at least every four years or as needed.
Student Enrollment	Require Cosmetology Commission student permit and enrolled in high school.	Require Cosmetology Commission student permit and enrolled in junior college.
Federal Reporting	Employment rates, occupational licensing rates, and skills proficiencies rates.	Employment rates, occupational licensing rates, and completion rates.
Instructor Qualifications	Licensed by Cosmetology Commission and State Board for Educator Certification Trade and Industrial Education certification.	Licensed by Cosmetology Commission and hold an associate's degree.

**The Barber Board and Cosmetology Commission do not effectively oversee schools to ensure quality training and employment.**

- The Board and Commission do not use information required to be reported under state law to improve the quality of schools and ensure that students get jobs for which they are paying to be trained. For example, while Board statutes require that schools provide the agency with job placement reports and employment rates, Board staff indicates it has never collected this information to evaluate if schools provide students with accurate information on employment rates, and if students get jobs after graduating.

While the Commission does collect quarterly job placement information, the agency does not use this information for any purpose. Sunset staff reviewed Commission job placement reports and found that much of this information is difficult to verify, and was incomplete. For example, many reports did not provide the date a graduate found employment, and in some cases listed students who had not yet passed the licensing exams.

- The agencies have not established policies defining standards schools must meet, such as reasonable efforts to place students in jobs or minimum employment rates. As a result, the agencies cannot provide information on the percentage of students that get a job, and lack the ability to target oversight effort towards improving low quality schools. In addition, the agencies do not use available evaluation tools, such as the peer review process, to help improve schools having problems with inadequate instruction or employment rates.
- While the agencies do collect information on license exam pass rates, the agencies do not use this information to evaluate specific schools that may have problems with their students passing the exams. In addition, exam pass rates alone are not a sufficient indicator of school performance, because they do not measure student outcomes as employment rates do.
- In contrast, other state agencies have performance standards serving as “flags” to indicate if schools have problems needing correction. For example, TWC requires career schools to maintain a 60 percent state required employment rate. TEA requires high school programs to maintain a federally mandated 76 percent employment or continuing post-secondary education rate. The Coordinating Board requires post-secondary programs to maintain a federally mandated 90 percent job placement rate. As a result of having clear standards in place, these other agencies are able to evaluate, and intervene, if a school fails to provide quality training and job placement.

**Lack of financial oversight of schools places barber and cosmetology students at risk of monetary losses and incomplete education.**

- Both agencies lack policies requiring specific documentation of financial viability from schools to assist in evaluating if a school will be able to remain open and fulfill its commitments to train students. Sunset staff analysis of financial statements submitted to the agencies showed a wide variation in this documentation. For example, barber school balance sheets are not reviewed by a certified accountant, making it difficult to determine if these statements are accurate. Some cosmetology school financial documents are reviewed by certified accountants, however, others lack such review, and consist of only a personal credit application form, or a single typed sheet listing assets and liabilities. Data provided by the agency shows that over fiscal years 2001-03, an average of one private cosmetology school closed each month in Texas. The agencies’ lax review of a school’s financial stability may contribute to these closures.



*Lax oversight of barber and cosmetology schools is placing students at risk of losing their tuition or not completing their training.*

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*Ten private  
cosmetology schools  
and two barber schools  
closed in fiscal year  
2003.*

Also, the schools provide evidence of financial viability only when applying for a license, and not on renewal, which deprives the agencies of a mechanism to review a school's financial condition on a regular basis, and potentially address problems before a school closure.

- Currently, neither agency has access to tuition protection accounts, resulting in placing students at risk of losing their tuition if a school closes. In fiscal year 2003, 10 private cosmetology schools and two barber schools closed. Cosmetology students attending these schools received \$26,397 in reimbursements from the Commission's tuition protection account, while barber students have not requested these reimbursements because other schools have taken these students in. Because the agencies do not currently have tuition protection funds available to reimburse tuition for students, the agencies could not provide this needed student protection should schools close in fiscal years 2004-05.

**The agencies misdirect their inspection and oversight efforts, resulting in unnecessary work that does not provide clear benefits to students or the agencies.**

- The Board and Commission spend significant resources conducting inspection activities that do not focus on health or safety issues. Inspectors can take from several hours to a full day to inspect schools, checking mostly paperwork such as student permits, monthly progress reports, and if students are clocking in and out of classes. As a result, Commission data show that 80 percent of all cosmetology school violations are for issues such as lacking a student permit, or not wearing the proper uniform, and not for health and safety issues. Further, the Commission does not target inspection efforts, and spends half of its time inspecting high school and junior college cosmetology programs even though 73 percent of all violations occur in private cosmetology schools. In addition, the Barber Board continues to inspect all 31 barber schools once a month, despite only finding three violations in three years.
- Both agencies conduct school-related administrative activities that are not appropriate functions for the State. Agency staff contend with large amounts of school-related paperwork that keeps them from focusing on more important functions, such as fair and timely enforcement or analysis of school performance. For example, the Barber Board retains old student transcripts from 35 years ago, and the Commission retains transcripts from 13 years back. The Barber Board alone has more than 245,000 old student records.<sup>1</sup> The Commission prints almost 6,000 transcripts a year that it provides to schools. The agencies also collect over 770 student progress reports each year tracking almost 24,000 students, assign student file numbers, enroll students in classes, and track student course hours. All of these labor intensive activities are not typically carried out by agencies regulating career schools, such as TWC.

**The Texas Workforce Commission is better situated to effectively regulate private barber and cosmetology schools, and provide students with consumer protections.**

- The Texas Workforce Commission’s oversight encompasses most private career schools in the state, and its policies and procedures set high standards for regulation lacking at the Barber Board and Cosmetology Commission. The chart, *Comparison of TWC Career School Oversight*, summarizes TWC’s oversight of schools compared to the current approaches of the Barber Board and Cosmetology Commission.

<b>Comparison of TWC Career School Oversight</b>			
<b>Oversight Activities</b>	<b>Agency</b>		
	<b>Workforce Commission</b>	<b>Barber Board</b>	<b>Cosmetology Commission</b>
Require schools to meet standards for job placement efforts and employment rates.	Yes	No	No
Require schools to submit student employment information using an Internet-based reporting system.	Yes	No	No
Place low performing schools on improvement plans to correct problems.	Yes	No	No
Issue cease-and-desist orders to close unlicensed schools and protect students from fraud.	Yes	No	No
Require school financial documents to be reviewed by a CPA, and continuing review of these documents by the agency.	Yes	No	No

The Workforce Commission is better able to assess the performance of schools it regulates, compared to the Barber Board and Cosmetology Commission. For example, TWC-regulated schools placed almost 80 percent of all graduates in jobs they were trained for, while the Barber Board and Cosmetology Commission are unable to provide this information. The Workforce Commission places schools that do not maintain a 60 percent minimum employment rate on improvement plans detailing needed changes, while the Barber Board and Cosmetology Commission have never used this available tool.

The Workforce Commission also provides a definition of job placement rates, which requires schools to make significant efforts to assist students in finding jobs, while the Barber Board and Cosmetology Commission lack such policies. In addition, TWC specifies contents of schools’ financial balance sheets, requires they be reviewed by a certified accountant, and reviews these documents annually before renewing a school’s license. In contrast, the Barber Board and Commission lack this more comprehensive financial review of the schools they regulate.

- As a result of TWC’s last Sunset review in 2002, the Legislature granted the agency cease-and-desist authority to immediately close unlicensed schools. Both the Barber Board and Cosmetology Commission lack this authority, resulting in the potential for unlicensed schools to defraud students. For example, one barber school operated unlicensed for a

  
*TWC’s higher standards of oversight provide students with better protections from shoddy schools.*



*TWC administers a  
\$1 million tuition  
protection fund.*

year with 10 outstanding violations before the Barber Board sought an injunction through the Attorney General's office. During this case, Barber Board staff stated "...students are begging for justice...it looks like we do not have the capacity to carry out the general rules and policies mandated by the State of Texas..."<sup>22</sup> While not a frequent occurrence, in this case students lost more than \$10,000 in tuition, and their course hours. Ultimately, city officials closed this school for violations of local sanitation codes.

- This year, TWC will implement the Learner Outcome Tracking System (LOTS), an Internet-based reporting system to collect employment rate information from career schools. The agency will use LOTS to monitor student outcomes, and to provide schools with summary reports on employment rates, and in the future, licensing exam pass rates. As a result, career schools will have improved information on student outcomes, and these schools can provide students with more accurate information when making decisions on which school to attend.
- The Texas Workforce Commission also administers the Career School or College Tuition Trust Account, capped at \$1 million, which provides tuition protections to students if a school they are attending closes. All schools regulated by TWC pay a fee into the account, and may access funds when required. As a result of having an active tuition protection account, TWC is able to reimburse students attending schools that close, if needed.

## **Recommendation**

### **Change in Statute**

#### **4.1 Transfer the regulation of private barber and cosmetology schools to the Texas Workforce Commission.**

Under this recommendation, the Barber Board and Cosmetology Commission would no longer license the educational aspects of barber or cosmetology schools. Instead, the regulation of approximately 168 private barber and cosmetology schools would transfer to the Workforce Commission, and be subject to the same agency oversight activities as other career schools licensed by TWC. Since TWC statutes already exempt high school and junior college training programs, the regulation of cosmetology programs at these schools would not fall under TWC regulation, but instead would be preserved at the Texas Education Agency and the Texas Higher Education Coordinating Board. To ensure that TWC appropriately integrates currently operating barber and cosmetology schools, the statute should provide that TWC consider licenses for existing schools as renewals.

Under this recommendation, requirements for barbering and cosmetology curricula, course hours, and facility requirements would be retained. As TWC requires of other schools, barber and cosmetology schools would have to certify to TWC that they meet these requirements when applying to TWC for licensure.

Under this recommendation, since schools allow students to perform services on the public as part of their training, schools must maintain a barbershop or salon permit issued by the appropriate licensing agency, as required under current law. This permit would not be a license to operate a school, which would be granted by TWC. Any school applying for a license from TWC would have

to certify that it holds a barbershop or salon permit, and TWC would be authorized to revoke the license of a school which does not maintain this permit. The Barber Board and Cosmetology Commission, or their successor agency, would only inspect these schools for barbershop and salon health and safety requirements, as they would for any other facility that provides services to the public.

The Workforce Commission would not maintain student transcripts, student progress reports, or conduct other student-related administrative tasks currently carried out by the Barber Board and Cosmetology Commission. Rather, schools would assume these functions as required under TWC regulation.

## Impact

Transferring the regulation of private barber and cosmetology schools to TWC would enhance the effectiveness of oversight of these schools and better protect students by placing the schools under higher regulatory standards already at TWC, and eliminating unproductive oversight activities carried out by the Barber Board and Cosmetology Commission. The chart, *Benefits of TWC Oversight of Barber and Cosmetology Schools*, summarizes the benefits of this recommendation.

### **Benefits of TWC Oversight of Barber and Cosmetology Schools**

- Improve training leading to employment by holding schools accountable for meeting performance standards.
- Place more students in jobs by requiring schools to make more meaningful efforts at job placement.
- Ensure students do not lose tuition payments by having schools participate in a viable tuition protection account.
- Improve the ability of students to complete their training quickly by reducing the risks of schools closing and disrupting their training.
- Protect students from being defrauded by unlicensed schools by issuing cease-and-desist orders.
- Provide students with more accurate information on a school's employment outcomes.

## Fiscal Implication

Transferring regulation of barber and cosmetology schools to TWC would result in a positive fiscal impact to General Revenue, based on projected fee revenues, and from eliminating one full-time equivalent (FTE) from the Cosmetology Commission and one-half FTE from the Barber Board.

Currently barber schools pay a \$1,000 initial license fee with a \$300 renewal, while cosmetology schools pay \$700 initially and \$200 for renewals. The Workforce Commission's license fees vary, as shown in the textbox, *TWC Career School Licensing Fees*. For initial licensure at TWC, the 168 private barber and cosmetology schools currently licensed would pay an renewal fee of no more than \$500, and would not be required to pay the initial licensing fee of \$3,000. Paying this renewal fee would result in an annual net gain to General Revenue of \$47,300 over the current renewal fees paid to both agencies. High schools and junior colleges would no longer pay for license renewals to the Commission, resulting in a loss to General Revenue of \$39,800 annually.

### **TWC Career School Licensing Fees**

TWC has a two-tiered licensing fee structure based on the amount of annual tuition revenues a school receives, as follows.

- Large schools that receive more than \$100,000 a year in tuition pay \$3,000 for the first year and an annual renewal of up to \$500.
- Small schools that receive less than \$100,000 a year in tuition pay one fee of \$1,001 over three years: \$501 the first year, and \$250 for the second and third year, which includes annual renewals. On the fourth year, schools pay \$501 for the next renewal.

Requiring any barber or cosmetology school, including junior colleges and high schools, that serve the public to have a barbershop or salon permit previously included as part of their school license

would result in a gain to General Revenue funds of \$23,855 every two years, starting in fiscal year 2006, based on the current number of schools paying the current \$65 permit fee every two years.

Currently, licensing functions relating to these schools are carried out by one FTE at the Barber Board and three FTEs at the Cosmetology Commission. Because the Board and Commission, or their successor agency, would no longer conduct various student-related administrative activities, one-half FTE at the Board and one FTE at the Commission currently conducting these activities would no longer be needed. Based on an average salary and benefits of \$41,909 per employee, eliminating a total of 1.5 FTEs would result in annual savings to General Revenue of \$41,909 from the Cosmetology Commission, and \$20,955 from the Barber Board.

The Texas Workforce Commission would receive authority for 2.5 FTEs to carry out licensing functions needed due to placing more schools under the agency's regulation. The positions transferred to TWC would be required to review license applications, issue licenses, inspect schools, place schools on corrective action plans, and conduct school closures. The Workforce Commission currently has 10 FTEs overseeing career schools, and the agency should be authorized to hire these additional 2.5 FTEs through the appropriations process. Any staff transferred to or hired by TWC would be funded by fees barber and cosmetology schools would pay to the agency. Upon transfer of these schools to TWC, the agency would assess a fee on each school, to be determined by the agency, to provide additional revenues for the Career School or College Tuition Trust Account to cover the costs of any reimbursements required for students attending schools that close. The total fee charged to each school is expected to be the equivalent of approximately \$10 per student attending the school.

<b>Texas State Board of Barber Examiners</b>				
<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Net Effect to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	\$8,215	\$20,955	\$29,170	-0.5
2007	\$6,200	\$20,955	\$27,155	-0.5
2008	\$8,215	\$20,955	\$29,170	-0.5
2009	\$6,200	\$20,955	\$27,155	-0.5
2010	\$8,215	\$20,955	\$29,170	-0.5

<b>Texas Cosmetology Commission</b>					
<b>Fiscal Year</b>	<b>Loss to the General Revenue Fund</b>	<b>Gain to the General Revenue Fund</b>	<b>Savings to the General Revenue Fund</b>	<b>Net Effect to the General Revenue Fund</b>	<b>Change in Number of FTEs From FY 2005</b>
2006	(\$39,800)	\$62,940	\$41,909	\$65,049	-1
2007	(\$39,800)	\$41,100	\$41,909	\$43,209	-1
2008	(\$39,800)	\$62,940	\$41,909	\$65,049	-1
2009	(\$39,800)	\$41,100	\$41,909	\$43,209	-1
2010	(\$39,800)	\$62,940	\$41,909	\$65,049	-1

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<sup>1</sup> Texas State Board of Barber Examiners, *Self-Evaluation Report*, submitted to the Sunset Advisory Commission (September 2003), p. 33.

<sup>2</sup> Memorandum from Texas State Board of Barber Examiners staff to the agency Executive Director, October 29, 1998.



## *Key Elements of Barber and Cosmetology Licensing and Regulation Do Not Conform to Commonly Applied Licensing Practices.*

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### **Summary**

#### **Key Recommendations**

- Standardize licensing functions through issuance of provisional licenses and staggering renewals; eliminating notarization requirements; and denying renewal to licensees with outstanding administrative fines.
- Revise enforcement activities by analyzing statistics on violations and complaints; adopting policies for informal settlement conferences; making only final disciplinary orders available to the public; and responding to non-jurisdictional complaints.
- Eliminate statutory language that caps fees for the Barber Board.

#### **Key Findings**

- Licensing provisions of the agencies' statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and the agencies' ability to protect consumers.
- Nonstandard enforcement provisions of the agencies' statutes could reduce the agencies' effectiveness in providing licensees fair treatment, and protecting consumers.
- Setting fee caps in statute reduces the Barber Board's administrative efficiency and flexibility to adapt to changing circumstances.

#### **Conclusion**

Various licensing and enforcement processes in the Barbering and Cosmetology Acts do not match model licensing standards developed by Sunset staff from experience gained through more than 80 occupational licensing reviews over the last 25 years. The Sunset review compared the agencies' statutes, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified the recommendations needed to bring the regulation in line with model standards and increase the ability to serve the public and increase efficiency of operations.

## Support

**Regulating occupations, such as barbering and cosmetology, requires common activities that the Sunset Commission has observed and documented over more than 25 years of reviews.**

- The Texas State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission) regulate barbers and cosmetologists to protect the health and safety of the public. To provide this protection, the agencies perform several standard licensing and enforcement activities. The Board currently licenses about 14,600 practicing individuals and 8,200 barbershops, schools, and booth rentals. The Commission licenses approximately 165,000 individuals, as well as 24,300 beauty salons and schools. The agencies enforce the Barber Act and the Cosmetology Act by conducting routine inspections, investigating complaints against licensees, and taking disciplinary action when necessary.
- The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 80 licensing agency reviews.
- Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where the agencies' statutes and rules differ from these model standards, and describes the potential benefits of bringing the statutes and rules into conformity with standard practices.

**Licensing provisions of the agencies' statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and the agencies' ability to protect consumers.**

### *Barber Board*

- *Provisional license.* License applicants who hold a current license in another state should be allowed to practice in Texas while their credentials are being processed. Provisional licenses can be issued only if the individuals meet certain requirements such as having training or experience equivalent to Texas requirements, or passing a recognized examination. The Barber Board does not have authority to issue a provisional license, which prevents qualified licensees from earning an income. Authorizing the Board to issue provisional barber licenses would ensure that qualified individuals who have applied for a Texas license would be able to practice while waiting for their application to be evaluated.
- *License renewal dates.* Dates for license renewals should be scheduled to avoid unmanageable workloads during specified times when these license renewals come due. A staggered renewal system leads to greater staff efficiency and more timely processing of renewals, thereby improving agency service to licensees. Although the Legislature has



*The Barber Board  
does not have  
authority to issue  
provisional licenses.*

given the Barber Board authority to set staggered renewal dates in rule, some Board statutes require specific renewal dates, such as requiring barbershop permits to be renewed on July 1st of each odd numbered year, and instructor permits on November 1st of each year. Removing Board statutes that require specific renewal dates would achieve a more even workload for agency staff and be more convenient for licensees.

***Barber Board and Cosmetology Commission***

- ***Licensure application.*** Licensure processes should not overburden applicants or unreasonably restrict entry into practice. Currently, the Board and Commission require applicants to notarize applications to ensure the accuracy of information. See the textbox, *Applications Requiring Notarization*, for descriptions of the types of applications that must be notarized for each agency. These notarization requirements are unnecessary because applicants must provide photo identification when taking examinations or applying for licenses, and state law already prohibits a person from knowingly making a false entry in a government record.<sup>1</sup>
- ***Compliance history.*** Before renewing a license, a licensing agency should be aware of any compliance issues that a licensee might have and the licensee’s efforts to resolve those problems. Existing compliance issues should be in the process of resolution or appropriately addressed before the agency renews a license. While both the Board and Commission routinely refuse to renew licensees which have outstanding administrative penalties, neither agency has clear statutory authority to take such action. Making this authority explicit will help the agencies ensure that licensees are in good standing before renewing their licenses.

<b>Applications Requiring Notarization</b>
<b>Cosmetology Commission</b> <ul style="list-style-type: none"> <li>● All cosmetology licenses</li> <li>● Student permit</li> <li>● Reciprocal license</li> </ul>
<b>Barber Board</b> <ul style="list-style-type: none"> <li>● All barber licenses</li> <li>● Reciprocal license</li> <li>● License renewal</li> <li>● Student permit</li> <li>● Examination</li> <li>● School license</li> <li>● Health certificate</li> <li>● Student progress reports</li> </ul>

**Nonstandard enforcement provisions of the agencies’ statutes could reduce the agencies’ effectiveness in providing fair treatment to licensees and in protecting consumers.**

***Cosmetology Commission***

- ***Complaint filing.*** Legislative enactments have established that the public should have easy access to an agency’s enforcement process through reasonable complaint filing procedures. The public, the agency, or a licensee should be able to file a written complaint on a simple, standard agency form provided on a Web site, through e-mail, or through regular mail. The form should request enough information to start an investigation, but not be so detailed or technical as to discourage complaints.

While in practice the agency accepts unnotarized complaints, Commission rules require complaints to be notarized. Eliminating this notarization requirement would increase the public’s ability to file complaints and also allow the Commission to receive complaints in ways other than writing, such as over the Internet, a practice that makes complaint filing more convenient for consumers.

- ***Public information on enforcement actions.*** Agencies should make all final enforcement information, such as final disciplinary orders and

sanctions, available to the public. Making this information available helps to protect consumers and ensures procedural fairness to all licensees. While the Commission does provide final enforcement information to the public, the agency also provides information regarding ongoing enforcement proceedings. However, the Attorney General has held that information related to anticipated disciplinary action against a licensee is exempted from public disclosure.<sup>2</sup> Making only final disciplinary orders available to the public would help protect licensees' due process rights by keeping confidential information on enforcement proceedings that have not been fully investigated and resolved.

### *Barber Board and Cosmetology Commission*

- ***Complaint response.*** A licensing agency should have a process to track and respond to non-jurisdictional complaints to have a full picture of the public's problems and concerns in these regulatory areas. Both agencies frequently receive non-jurisdictional complaints against barbers and cosmetologists, including complaints about quality of service. However, the agencies inadequately document these complaints and often fail to close the complaint with a letter to the complainant. Improved tracking and responding to non-jurisdictional complaints would increase administrative efficiency and help the public achieve understanding of the agencies' actions.
- ***Complaint and violation trend analysis.*** Licensing agencies should analyze the sources and types of violations and complaints to identify problem areas and trends. Identifying such trends can help the agency to manage its resources more effectively, leading to greater protection of consumers. Additionally, the agency can use such information to create educational materials for licensees about common violations of statutes and rules. Neither the Board nor the Commission have a method for performing this trend analysis, hindering their ability to provide better customer service to both licensees and consumers. A formal system to analyze the sources and types of violations and complaints would lead to better enforcement and increased administrative efficiency.
- ***Complaint and violation statistics.*** Agencies should compile detailed statistics about complaints and violations by licensees. Agencies should document how they resolve these each year, and should report this information annually to their policymaking bodies. Tracking complaints and violations would allow the agencies to promptly and consistently enforce and resolve these issues. Both agencies provide their policymaking bodies with limited information about violations and complaints, which does not include resolution times, outcome of cases, or the number and type of outstanding complaints and violations at the end of the year.
- ***Informal settlement conference guidelines.*** Agencies should use methods other than hearings to resolve complaints, as formal hearings often require significant time and expense. Structured informal settlement conferences (ISCs) allow agencies to explore resolution prior to the full hearing process at the State Office of Administrative Hearings. When

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*The agencies inadequately document non-jurisdictional complaints and often fail to ever respond to the complaint.*

an agency uses informal settlement conferences, the agency's policymaking body should approve each informal agreement. Both the Commission and the Board currently use ISCs to mediate resolution prior to the formal hearing, but neither agency had written policies guiding the conferences in fiscal year 2003. Requiring the agencies' policymaking bodies to adopt formal structures for ISCs would ensure consistency and fairness when negotiating settlements.

  
*Neither agency had  
written policies  
guiding informal  
settlement conferences  
in fiscal year 2003.*

**Setting fee caps in statute reduces the Barber Board's administrative efficiency and flexibility to adapt to changing circumstances.**

*Barber Board*

- *Flexible fees.* The Legislature has established a practice in many programs of eliminating capped fee amounts in statute and allowing agencies to set fees by rule. This allows for greater administrative flexibility and is consistent with a provision in the General Appropriations Act that requires agencies to set fee amounts necessary to recover the cost of regulation. Limiting agency expenditures through the appropriations process discourages agencies from setting fees too high. The public has the opportunity to comment on proposed fees since the agency sets them in rule. Contrary to this approach, while the Board has authorization to set fees by rule, thirty of the Board's fees are still capped by statute, limiting the Board's flexibility to set fees as needs change. For a list of fees actually charged, and their statutory fee caps, see Appendix F.

## **Recommendations**

### **Licensing**

#### **Change in Statute**

##### **5.1 Authorize provisional barber licenses.**

This recommendation would ensure that persons applying for a Texas barbering license who hold a current license from another state would be able to practice while waiting for evaluation of their application. The Barber Act would authorize issuance of a provisional license to an applicant who holds a license substantially equivalent to current requirements, or has passed a reorganized examination. The provisional license would be valid until approval or denial of the application, which must be completed within 180 days.

##### **5.2 Remove specific license renewal dates in the Barber Act.**

This recommendation would ensure that specific statutory provisions relating to renewal dates do not conflict with the current authority to stagger license renewals. Conforming these statutes will result in greater administrative efficiency and provide more convenient service to licensees.

##### **5.3 Authorize denial of license renewals based on outstanding administrative fines.**

This recommendation would provide for clear statutory authority to deny barber and cosmetology license renewals against licensees who do not pay their administrative fines. Making this authority

explicit will help ensure fair treatment to all license holders, and ensure licensees have good standing before renewing their licenses.

## **Management Action**

### **5.4 Eliminate notarization requirements for individuals applying for examinations or licensure.**

This recommendation would remove requirements to notarize barber and cosmetology applications and would direct acceptance of applications that are not notarized. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these applications.

## **Enforcement**

### **Change in Statute**

#### **5.5 Require development of a method for violation and complaint trend analysis.**

This recommendation would require development of methods for analyzing the sources and types of barber and cosmetology complaints and violations. The agencies, or successor agency, should categorize complaints and violations by types, such as late renewals, late fee payments, unsanitary practices, and others. The agencies, or successor agency, would conduct analysis of complaints and violations looking for trends which need attention, or where technical assistance may help reduce the number of complaints or violations. Developing a method to analyze complaints will provide improved information regarding the nature of complaints, leading to stronger enforcement and greater administrative efficiency.

#### **5.6 Require compilation of detailed statistics on violations and complaints and report annually.**

This recommendation would provide a broader picture of the public's problems with barbering and cosmetology by requiring compilation of detailed violation and complaint statistics. These statistics should include:

- the average time to close a complaint or violation from the time the agencies receive the complaint, or write a violation, until resolution of the complaint or violation by final order or sanction;
- the origin, reason, and basis for the complaint or violation;
- the outcome of the complaints or violations including the number dismissed, the reason for dismissal, and the number resulting in disciplinary action;
- the number of non-jurisdictional complaints; and
- the number and type of all open cases at year's end.

#### **5.7 Require adoption of guidelines for informal settlement conferences.**

This recommendation would ensure development and adoption of guidelines for barber and cosmetology informal settlement conferences. The guidelines would ensure more fair and consistent treatment of licensees when negotiating the disposition of enforcement actions.

## Management Action

### **5.8 Direct the Commission to remove the requirement that complaints filed with the Commission be notarized.**

The Commission, or its successor agency, should accept unnotarized complaints, which would make filing a complaint more convenient for the public.

### **5.9 Direct the Commission to establish a policy for making only final enforcement information available to the public.**

This recommendation would require the Commission, or its successor agency, to establish a policy for making information about only final enforcement actions available to the public. This policy would protect licensees by ensuring that the public does not have access to information about ongoing, and potentially groundless enforcement proceedings.

### **5.10 Direct the Board and Commission to develop a method for responding to and documenting non-jurisdictional complaints.**

This recommendation would direct the agencies, or their successor agency, to follow through with non-jurisdictional complaints by sending the complainant a letter closing the complaint, and require the agencies to document their actions when responding to non-jurisdictional complaints. This policy would increase the agencies' administrative efficiency and ensure that the agencies adequately address concerns raised by the public.

## Administration

### Change in Statute

#### **5.11 Eliminate fee caps in the Barber Act.**

The recommendation would give flexibility to set barber fees at the level necessary to recover program costs as conditions change. The Legislature would maintain control by setting spending levels in the General Appropriations Act.

## Impact

The application of these recommendations would result in efficiency and consistency from fairer processes for licensees, additional protection of consumers, and standardization of agency procedures. The chart, *Benefits of Recommendations*, summarizes the recommendations and their benefits.

## Fiscal Implication

These recommendations will not have a significant fiscal impact to the State. The recommendations are procedural improvements that should not require additional resources, and some administrative savings from increased efficiencies may occur. The cost of providing provisional licenses would be recovered through fees paid by license applicants. The cost of any database modifications required for compiling statistics on violations and complaints would be recovered through fees paid by licensees.

<b>Benefits of Recommendations</b>				
<b>Recommendations</b>	<b>Efficiency of Operations</b>	<b>Administrative Flexibility</b>	<b>Fairness to Licensee</b>	<b>Public Protection</b>
<b>Licensing</b>				
5.1 Authorize provisional barber licenses.	✓	✓	✓	
5.2 Remove specific license renewal dates in the Barber Act.	✓	✓	✓	
5.3 Authorize denial of license renewals based on outstanding administrative fines.			✓	✓
5.4 Eliminate notarization requirements for applications.	✓	✓	✓	
<b>Enforcement</b>				
5.5 Develop a method for violation and complaint trend analysis.	✓			✓
5.6 Compile detailed statistics on violations and complaints and report annually to their policymaking bodies.	✓			✓
5.7 Adopt guidelines for informal settlement conferences.	✓		✓	
5.8 Direct the Commission to remove the requirement that complaints filed with the Commission be notarized.	✓		✓	
5.9 Direct the Commission to establish a policy for making only final enforcement information available to the public.	✓		✓	✓
5.10 Direct the Board and Commission to develop a method for responding to and documenting non-jurisdictional complaints.	✓			✓
<b>Administration</b>				
5.11 Eliminate fee caps set in barber statute.	✓	✓		

<sup>1</sup> Texas Penal Code, sec. 37.10.

<sup>2</sup> Tex. Att'y Gen. ORD-588 (1991).

## **ACROSS-THE-BOARD RECOMMENDATIONS**

**Texas State Board of Barber Examiners**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.



<b>Texas Cosmetology Commission</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Update	3. Require unbiased appointments to the agency's policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.



## **AGENCY INFORMATION**

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# Agency Information

## Barber Board

### Agency at a Glance

The Texas State Board of Barber Examiners (Board) regulates barbers to protect the health and safety of the public. Regulation of barbers began in 1921, when persons owning or operating barbershops were required to register with the Texas State Board of Health. In 1929, the Legislature expanded the regulation, creating the Texas State Board of Barber Examiners, and establishing licensure for barbers, barbershops, and schools.

The Board's main functions include:

- licensing barbers, manicurists, barber technicians, and barber instructors, and permitting barber schools, barbershops, manicurist shops, and booth rentals;
- administering the state written and practical barbering exams;
- conducting routine inspections and investigating complaints against barbers, barbershops and barber schools; and
- enforcing the Barber Act and taking disciplinary action when necessary.



*Texas has regulated  
barbers since 1921.*

### Key Facts

- **Funding.** In fiscal year 2003, the Board operated with about a \$622,000 budget. All costs are covered by fees collected by the agency.
- **Staffing.** The Board currently has 13 full-time equivalent positions.
- **Licensing.** The Board regulates about 14,600 barbers, manicurists, technicians, students, and instructors, 30 barber schools, about 5,400 shops, and 2,800 booth rentals.
- **Enforcement.** The Board performs routine inspections and investigates consumer complaints, taking enforcement actions when necessary. In fiscal year 2003, the Board reported inspecting about 26,600 entities and 35,900 individuals. The Board received 205 complaints. The Board issued 391 sanctions for barber-related violations.

### Organization

#### Policy Body

The Texas State Board of Barber Examiners consists of seven members, appointed by the Governor. Three are public members; two are licensed barbers practicing for at least five years — one representing a county with a population of 25,000 or less, one barber school owner, and one

barbershop owner that must also be a licensed barber practicing for at least five years. The chart, *Texas State Board of Barber Examiners*, identifies current Board members.

<b>Texas State Board of Barber Examiners</b>			
<b>Member</b>	<b>City</b>	<b>Qualification</b>	<b>Term Expiration</b>
William H. Kuykendall, J.D., Chair	Austin	Public Member	2005
Wayne Moore, Vice Chair	Garland	Barber-Large County	2003
Ronald Brown	Austin	Barber School Owner	2007
Janis Wiggins	Kingsland	Barber-Small County	2003
Juana C. "Janie" Garza	Mercedes	Barbershop Owner	2007
Vacant	NA	Public Member	NA
Vacant	NA	Public Member	NA

In addition to rulemaking, policymaking, and agency oversight responsibilities, the Board also prescribes curricula for barber schools and prescribes the content of the Board's written and practical exams. Board members who are also licensed barbers administer and grade the practical

examination given once a month, and as needed, inspect new barber schools for licensure. The Board typically meets quarterly, and met six times in fiscal year 2003.

### Staff

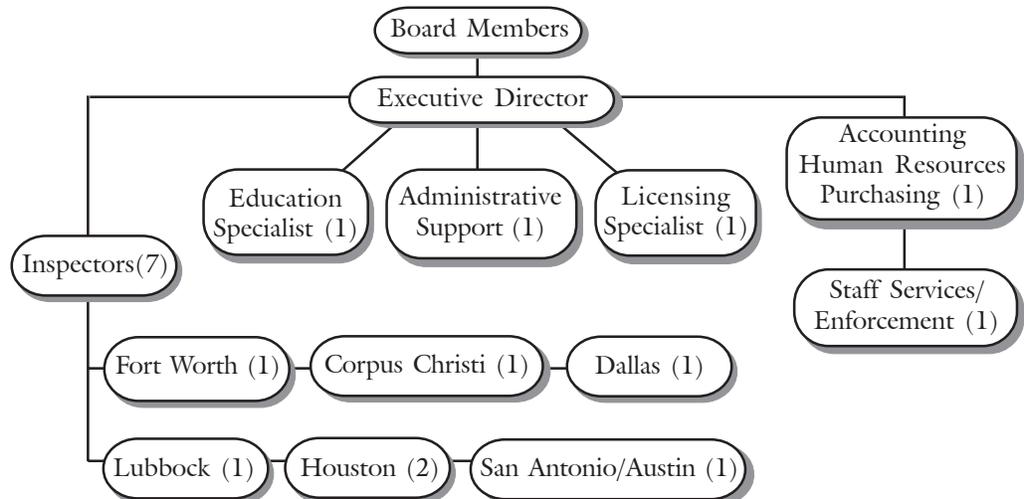
The Board is allocated 13 full-time equivalent positions, 12 of which are currently filled. The *Texas State Board of Barber Examiners Organizational Chart* depicts the agency's structure and the number of staff in each division. The Board has five employees in its Austin headquarters, and has seven inspectors in the field. Inspectors cover six regions: Dallas, Fort Worth, Corpus Christi, Lubbock, Houston, and San Antonio/Austin.

The Executive Director manages the day-to-day operations of the agency. Generally, staff administers exams; processes licenses, renewals, and fees; and performs inspections and investigates complaints.

Appendix A compares the agency's workforce composition to the minority civilian labor force. Generally, the agency does not meet civilian labor force guidelines for most job categories, which is common for small agencies.

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*The Board has five employees in Austin and seven inspectors in the field.*

### **Texas State Board of Barber Examiners Organizational Chart**



# Funding

## Revenues

In fiscal year 2003, the regulation of barbers generated total revenue of about \$1 million through various fees and assessments. As a licensing agency, the Board covers its administrative costs through licensing and renewal fees, and through appropriated receipts, such as the sale of law books to licensees. Revenue generated through these fees totaled \$981,802 in fiscal year 2003. The agency also assesses and collects administrative penalties and user fees for the Texas Online system, which are deposited into the General Revenue Fund and are not used to cover the agency's operating costs. In fiscal year 2003, the Board collected \$46,218 in administrative penalties and \$32,637 in Texas Online fees.

## Expenditures

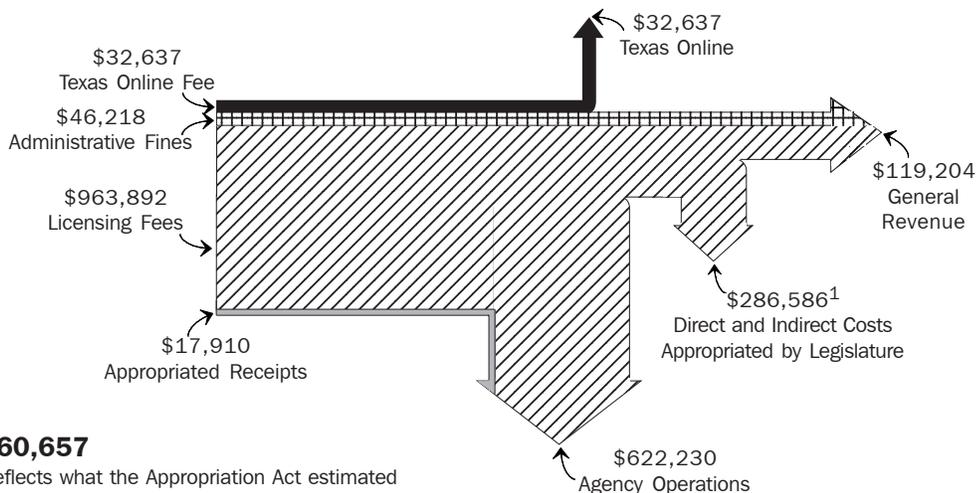
In fiscal year 2003, the Board spent \$622,230 on two functions: licensing and enforcement. Of this amount, \$240,313, or 39 percent, was spent on licensing while \$381,917, or 61 percent, was spent on enforcement. In addition to the Board's operating expenses, the Legislature has directed it and other licensing agencies funded by fees to also cover direct and indirect costs appropriated to other agencies that provide support services to the Board. Examples of these costs are employee benefits paid by the Employee Retirement System and the services provided by the Office of the State Comptroller. In fiscal year 2003, the Legislature estimated that the agency would spend \$286,586 for these costs.

The chart, *Flow of Agency Revenues and Expenditures*, shows the overall impact of these revenues and expenditures on the General Revenue Fund. After taking into account the agency's operating expenditures and direct and indirect costs incurred by other agencies, \$119,204 went into the General Revenue Fund in fiscal year 2003 to be used for other state purposes.

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*In fiscal year 2003,  
the Board collected  
more than \$1 million  
in various fees.*

**Flow of Agency Revenues and Expenditures  
FY 2003**



**Total: \$1,060,657**

<sup>1</sup> This number reflects what the Appropriation Act estimated for FY 03 direct and direct costs, not actual expenditures.

Appendix B describes the Board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2000 to 2003. The Board uses HUBs in the categories of commodities and other services. While the Board has fallen behind the goal in other services, it surpassed the goal for commodities in fiscal year 2003.

## Agency Operations

To regulate barbers and facilities in Texas, the Board performs two core functions: licensing and enforcement.

### Licensing and Examination

The Board issues licenses for barbers, manicurists, barber technicians, and barber instructors who satisfy Board requirements. The Board regulates 12,521 active barbers, its largest licensing category.

The Board also issues permits for barbershops, dual shops that employ both barbers and cosmetologists, manicurist shops, barber schools, and booths rented from barbershop or manicurist shop owners. The chart,

<b>Barber Board Regulation - FY 03</b>		
<b>Individuals</b>		
<b>License</b>	<b>Number</b>	<b>Fee</b>
Barbers	12,521	\$80
Manicurists	480	\$30
Barber technicians	29	\$80
Barber instructors	167	\$70
Student Permits	1,461	\$25
<b>Facilities</b>		
<b>Permits</b>	<b>Number</b>	<b>Fee</b>
Barber Schools	31	\$1,000 Initial \$300 Renewal
Barbershops	3,028	\$60
Dual shops	2,229	\$60
Manicurist shops	177	\$50
Barber booth rental	2,764	\$50
Manicurist booth rental	175	\$50

*Barber Board Regulation*, shows the current number of licensees and the fee per category. All licenses are renewed biennially, except the annual school permit and the one-time student permit.

To become a barber in Texas, a person must be at least 16 years old, have a 7th grade education, and have a health certificate stating that the person is free from any contagious diseases. Prospective barbers must also complete 1,500 hours of training in a barber school, consisting of 800 hours of practical experience and 700 hours of theory. Finally, a person must pass both a written and practical exam to become a barber. The practical exam tests barbering basics such as taper cuts, shaving with a straight razor, and facials; while the written exam covers the Board's laws and rules, sanitation guidelines, use of chemicals, and other aspects of barbering. The Board offers both exams once every month.

The Board uses a similar licensure process for its other licensees, though manicurists must take 600 hours of classes and barber technicians, 300. Barber instructors must also have five years of experience as licensed barbers. All of the Board's licensees must pass both written and practical exams. The textbox, *Services Provided by Licensees*, describes the services licensees may perform.

Requirements for the Board's barbershop, booth rental, and school permits vary. Barbershops must either be owned by a licensed barber, or have the name of a licensed barber on the permit along with the non-licensee owner.

The shops must also meet the Board's sanitation requirements. Barbers must have one year of experience barbering before they can apply for a barbershop permit.

The Board issues booth rental permits to licensed manicurists and barbers. Booth rental permit holders rent space from a barbershop or manicurist shop owner, and are considered self-employed for tax purposes.

To qualify for a Board permit, a school must meet sanitation and equipment requirements, and show that it is financially sound. The Board also prescribes and approves schools' curricula, monitors student progress, maintains student records, and conducts monthly inspections of every school. The Board does not require school owners to be barbers, but schools must be under the direct supervision of a barber who has at least five years of barbering experience.

Each school is required to contribute to the Barber Schools Tuition Protection Account. At the time of the account's inception in 2001, every school was required to pay \$930 into the fund. The Legislature established the account to refund tuition to students in case a school closes before the students can complete their courses. In fiscal year 2003, the account contained approximately \$25,000. No refunds have ever been requested from the account.

### Enforcement

The agency administratively enforces the Barber Law and Board rules by performing routine inspections, investigating complaints, and taking enforcement action against violators if necessary.

The Board routinely inspects barbershops, combined barber and cosmetology shops (dual shops), barber schools, and individual licensees to ensure proper licensure and adherence to health and safety regulations. See the textbox, *Inspections of Dual Shops*, for more information on how the Board coordinates with the Texas Cosmetology Commission on enforcement activities for dual shops. Board policy suggests monthly inspection of schools, and inspection of shops and individual licensees every three to six months, or at least annually. The Board reports conducting 26,607 barbershop inspections, dual shop, school, and booth rental inspections and checked 35,876 barbers and cosmetologists in fiscal year 2003.

<b>Services Provided by Licensees</b>
<p><b>A barber may:</b></p> <ul style="list-style-type: none"> <li>● shave, trim, style, or color beards or mustaches;</li> <li>● trim, shape, or cut sideburns;</li> <li>● cut, color, style, weave, or arrange hair;</li> <li>● cleanse or massage the scalp, face, neck, arms, or shoulders;</li> <li>● trim, polish, and color nails;</li> <li>● provide manicures and pedicures; and</li> <li>● service a wig, toupee, or hairpiece.</li> </ul>
<p><b>A manicurist may:</b></p> <ul style="list-style-type: none"> <li>● cut, trim, and polish a person's finger or toenails; and</li> <li>● massage, cleanse, treat, or beautify a person's hands.</li> </ul>
<p><b>A barber technician may:</b></p> <ul style="list-style-type: none"> <li>● give massages;</li> <li>● administer facial treatments;</li> <li>● apply makeup; and</li> <li>● assist a barber with sterilizing equipment and shampooing.</li> </ul>

### **Inspections of Dual Shops**

Dual shops employ both barbers and cosmetologists and must have permits from both the Board and the Texas Cosmetology Commission. The Board licenses 5,434 barber shops, of which 2,229 are dual shops.

Since 1983, the Legislature has required the Board to conduct routine inspections of dual shops and cosmetologists who work in those shops, on behalf of the Cosmetology Commission. Board inspectors can write violations based on Commission rules and regulations. The Board forwards these violations to the Commission for enforcement and has no involvement in the resolution of these cases. In fiscal year 2003, the Board conducted 5,313 dual shop inspections and checked 14,595 cosmetologists, resulting in 181 violations and \$67,050 in fines.

<b>Complaint Activity - FY 03</b>	
Received	205
Pending from Previous Year	3
Resolved	199
Average Resolution Time	29 days

The Board also investigates complaints against licensees. Once the Board receives a complaint, it sends an inspector to investigate, who closes the complaint by writing a violation if applicable, or determining the complaint is non-jurisdictional. Consumer complaints regarding the quality of a haircut are not within the agency's jurisdiction. The chart, *Complaint Activity*, shows the number and resolution of complaints filed with the Board.

Board inspectors issue violations for infractions discovered in routine inspections and complaint investigations. The chart, *Violation Data*, provides a breakdown of the 391 violations issued in fiscal year 2003. Of those violations, 60 percent were for an expired license or permit.

<b>Violation Data - FY 03</b>	
Expired License or Permit	232
Unlicensed Person, Shop, or Practice	118
No Booth Permit	15
Sanitation	12
Other	11
Barber School	3
<b>Total</b>	<b>391</b>

If a violation is found, the individual has three options to pursue during the enforcement process: pay the associated fine, meet with the Executive Director for an informal settlement conference, or request a contested case hearing conducted by the State Office of Administrative Hearings (SOAH). In a settlement conference the Executive Director can reduce, dismiss, or retain the fine. A licensee has 20 days to respond to a notice of violation or the case is automatically set for a hearing with SOAH. In fiscal year 2003, 302 of 391 cases went to SOAH. The Board may prevent renewal of a license for non-payment of fines. As a result of violations written, the Board assessed \$93,850 in fines, and collected \$46,218 during fiscal year 2003.

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*In fiscal year 2003, the Board assessed \$93,850 in fines, and collected \$46,218.*

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# Agency Information

## Cosmetology Commission

### Agency at a Glance

The Texas Cosmetology Commission (Commission) regulates cosmetologists to protect the health and safety of the public. Regulation of cosmetologists began in 1935, when the Legislature created the State Board of Hairdressers and Cosmetologists. In 1971, the Legislature replaced this Board with the Texas Cosmetology Commission.

To accomplish its mission, the Commission licenses cosmetology operators and other specialists, cosmetology instructors, schools, and salons, and regulates their activities through enforcement. The Commission's main functions include:

- licensing cosmetology operators, instructors, independent contractors, manicurists, and other specialists, as well as issuing permits to schools and salons;
- administering written and practical exams for prospective licensees;
- conducting inspections and investigating complaints against individual licensees, schools, and shops; and
- enforcing the Cosmetology Act and Commission rules, and taking disciplinary action when necessary.

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*Texas has regulated  
cosmetologists since 1935.*

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### Key Facts

- **Funding.** In fiscal year 2003, the Commission operated with a budget of about \$2.1 million. The agency covers all costs with licensing fees.
- **Staffing.** The Commission currently has 43 full-time equivalent positions.
- **Licensing.** The Commission regulates about 165,000 operators, specialists, instructors, and students, 340 schools, and about 24,000 salons.
- **Enforcement.** The Commission performs routine inspections, investigates consumer complaints, and takes enforcement actions when necessary. In fiscal year 2003, the Commission reports it inspected about 29,000 facilities and 55,000 individuals, and received 449 complaints. The Commission issued 7,638 sanctions for cosmetology-related violations.

## Organization

### Policy Body

The Commission consists of six members appointed by the Governor, and the associate commissioner for occupational education and technology of

the Texas Education Agency, who serves as a voting ex officio member. Of the six appointed members, two represent the public, two hold cosmetology operator licenses, one holds a salon license, and one holds a cosmetology school license. The chart, *Texas Cosmetology Commission*, identifies current Commission members. The Governor appoints a member of the Commission to serve as chair.

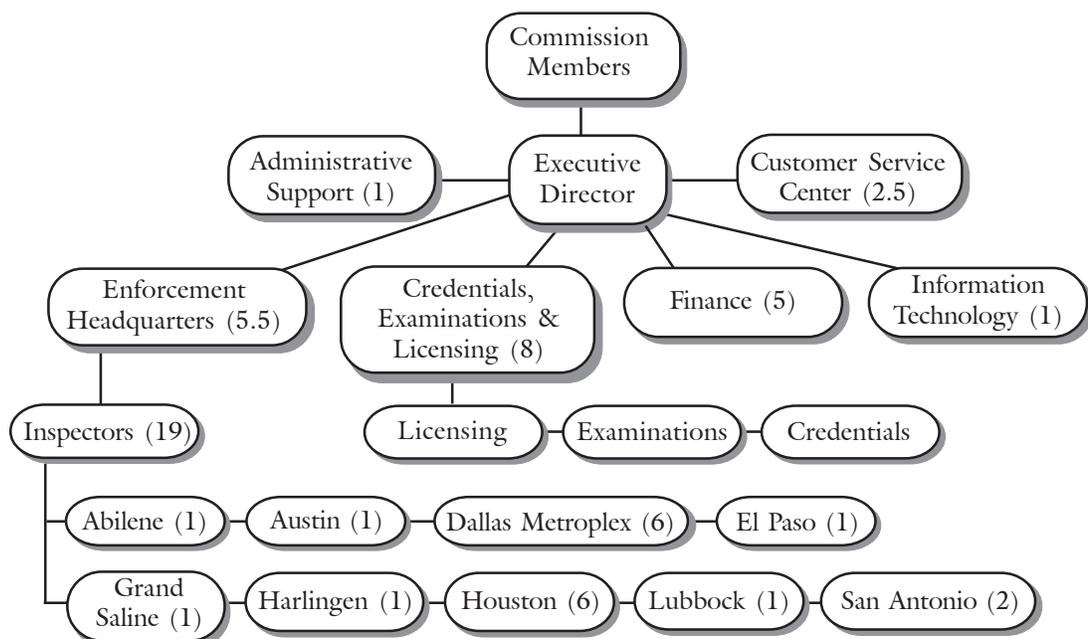
Texas Cosmetology Commission			
Member	City	Qualification	Term Expiration
Helen Quiram, Chair	Waco	Public Member	2005
Esther Camacho	Austin	Ex Officio Member	N/A
Leif Christiansen	Spring	Salon Owner	2003
Heliana Kiessling	Friendswood	Cosmetology Operator	2003
Philip Lapp	Weatherford	Public Member	2007
Lucinda Sandoval	Edinburg	School Owner	2007
Elida Zapata	Lubbock	Cosmetology Operator	2005

In addition to adopting general rules to enforce cosmetology law, the Commission prescribes the minimum curriculum for cosmetology schools, and establishes sanitation rules to prevent the spread of infectious diseases. The Commission met three times in 2003.

### Staff

The Legislature allocates the Commission 43 full-time equivalent positions, 38 of which the agency currently has filled. The *Texas Cosmetology Commission Organizational Chart* shows the agency's structure and the number of staff in each division. The Commission has 24 staff at its headquarters in Austin, and has 19 inspectors in the field. Inspectors cover nine regions across the state.

**Texas Cosmetology Commission  
Organizational Chart**



The Executive Director manages the day-to-day operations of the agency. Generally, staff processes licenses, renewals, and fees; performs inspections; and investigates complaints.

Appendix C compares the agency's workforce composition to the minority civilian labor force. The agency exceeded statewide goals for the administration job category, but has had mixed results meeting goals for other categories.

## Funding

All of the funding figures discussed in this section are approximate, based on the best information available to Sunset staff. The agency was unable to provide consistent or verifiable revenue data.

### Revenues

In fiscal year 2003, the regulation of cosmetologists generated total revenue of about \$9.1 million through various fees and assessments. As a licensing agency, the Commission covers its administrative costs through licensing and renewal fees, and through appropriated receipts, such as the sale of law books to licensees. Revenue generated through these fees totaled \$8,113,456 in fiscal year 2003. The agency also assesses and collects administrative penalties which it deposits into the General Revenue Fund but does not use to cover the agency's operating costs. In fiscal year 2003, the Commission collected \$953,663 in administrative penalties. Also in fiscal year 2003, the Commission collected \$26,370 for deposit into a dedicated General Revenue account for the Private Beauty Culture School Tuition Protection Account. Additionally, the Commission received a \$47,000 emergency deficiency grant in fiscal year 2003, to cover a budget shortfall at the end of the fiscal year.

### Expenditures

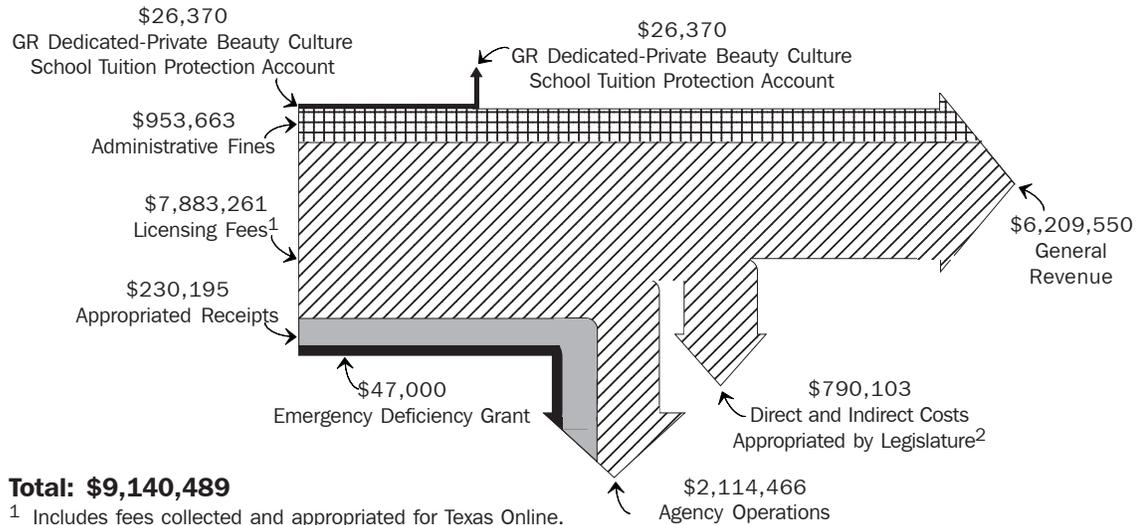
In fiscal year 2003, the Commission spent \$2,114,466 on two functions: licensing and enforcement. Of this amount, the agency spent \$676,063, or 32 percent, on licensing and \$1,052,630, or 68 percent, on enforcement. In addition to the Commission's operating expenses, the Legislature has directed it and other fee-funded licensing agencies to also cover direct and indirect costs appropriated to other agencies that provide support services to the Commission. Employee benefits paid by the Employee Retirement System and services provided by the Office of the State Comptroller provide examples of these costs. In fiscal year 2003, the Legislature appropriated \$790,103 for these costs.

The chart, *Flow of Agency Revenues and Expenditures*, shows the overall impact of these revenues and expenditures on the General Revenue Fund. After taking into account the agency's operating expenditures, direct and indirect costs incurred by other agencies, and the deficiency grant, \$6,209,550 went into the General Revenue Fund in fiscal year 2003 to be used for other state purposes.

  
*The Commission  
spent \$2.1 million on  
licensing and  
enforcement in fiscal  
year 2003.*

Appendix D describes the Commission's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2000 to 2003. The Commission uses HUBs in the categories of commodities and other services. While the Commission has fallen behind the goal in other services, it surpassed the goal for commodities in fiscal year 2003.

### **Flow of Agency Revenues and Expenditures FY 2003**



**Total: \$9,140,489**

<sup>1</sup> Includes fees collected and appropriated for Texas Online.

<sup>2</sup> This number reflects Appropriations Act estimates for FY 2003 direct and indirect costs, not actual expenditures.

## Agency Operations

To regulate cosmetologists and facilities in Texas, the Commission performs two core functions: licensing and enforcement.

### Licensing and Examination

The Commission issues 10 different licenses for individuals, eight different establishment licenses, and student permits as shown in the textbox, *Cosmetology Commission Licenses*. Cosmetology operators receive training in all aspects of cosmetology including manicure and facial skills. An independent contractor license allows a Commission licensee to rent space in a salon to perform cosmetology services. Licenses must be renewed biennially except the annual school license and the one-time student permit, which allows students to practice under the supervision of licensed instructors.

To become a cosmetology operator in Texas, a person must be at least 17 years old, have completed 1,500 hours of cosmetology school, and have a high school diploma, G.E.D., or passing grade on a test that measures ability to benefit from training. Prospective operators must also pass both a written and practical exam. The agency's other licenses for individuals have similar requirements, though facial specialists and manicurists must have 600 hours of instruction. All Commission licensees must meet

★  
*The Commission issues 10 different individual licenses, eight establishment licenses, and student permits.*

continuing education requirements beginning September 2004. The textbox *Services Provided by Cosmetology Operators* describes the services these licensees may perform.

The Commission administers both written and practical exams daily in its Austin headquarters. The agency develops and administers its own practical exams, but began administering national written exams in April 2003. The practical exam for prospective operators includes hair shampooing, cutting, and tinting, as well as a manicure and a facial. The written exam covers all aspects of cosmetology and includes sanitation and basic anatomy.

Requirements for the Commission's school and salon licenses vary. The Commission issues licenses to private cosmetology schools, and to cosmetology programs at junior colleges and public schools. Schools must show financial soundness, and meet minimum requirements regarding floor space, equipment, and sanitation before the Commission issues a license. The Commission also prescribes curricula and the teacher-student ratio for schools. Salons must also meet minimum requirements regarding floor space, equipment, and sanitation to obtain a Commission license.

Each private cosmetology school contributes to the Private Beauty Culture School Tuition Protection Account. At the fund's inception, schools paid \$200 until the account reached its cap. The Legislature established the account to refund tuition to students who attend schools that close before students complete their studies. In fiscal year 2003, the account contained approximately \$165,000, and the agency refunded about \$20,000 in that same year. The money in the account is no longer available to the agency, and will be swept by the Office of the Comptroller this year.

<b>Cosmetology Commission Licenses - FY 03</b>		
<b>Individuals</b>		
<b>License</b>	<b>Number</b>	<b>Fee</b>
Operator	106,329	\$53
Manicurist	26,864	\$53
Facial specialist	4,822	\$53
Hairbraiding/ hairweaving specialist	148	\$53
Shampoo specialist	294	\$53
Wig specialist	35	\$53
Instructor	4,209	\$53
Instructor-manicure	24	\$53
Instructor - facial	24	\$53
Instructor - wig	8	\$53
Student permit	22,329	\$25
<b>Facilities</b>		
<b>Permits</b>	<b>Number</b>	<b>Fee</b>
School	336	\$200
Salon	19,394	\$65
Manicure salon	2,401	\$65
Facial/esthetic salon	269	\$65
Facial/manicure salon	1,690	\$65
Hairweaving/ hairbraiding salon	49	\$65
Wig salon	33	\$65
Independent Contractor	26,655	\$65
<b>Total Active Licensees</b>		<b>215,913</b>

<b>Services Provided by Cosmetology Operators</b>
A cosmetology operator may practice all aspects of cosmetology, including:
<ul style="list-style-type: none"> <li>● cleansing, coloring, weaving, braiding, or cutting hair;</li> <li>● servicing wigs;</li> <li>● coloring, styling, or trimming mustaches or beards;</li> <li>● administering facial treatments;</li> <li>● removing excess hair from a person's body using depilatories or tweezers;</li> <li>● cutting, polishing, or cleansing a person's nails; and</li> <li>● massaging or treating a person's hands or feet.</li> </ul>

## Enforcement

The agency administratively enforces Cosmetology law and Commission rules by performing routine inspections, investigating complaints, and taking enforcement action against violators if necessary.

The Commission routinely inspects salons, schools, and individual licensees to ensure proper licensure and adherence to health and safety regulations, such as using correct sanitation procedures for instruments, having clean towels, and providing proper ventilation. For cosmetology schools, inspectors also verify student attendance and ensure that students have permits. The Texas State Board of Barber Examiners (Board) has responsibility for routine inspections of dual shops where both cosmetologists and barbers provide services. However, the Commission may conduct follow-up inspections of these shops based on information provided by the Board. For more information on dual shop inspections, see the Agency Information section for the Board on page 63.

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*The Commission routinely inspects salons, schools, and individual licensees.*

The Commission has 19 inspectors who reported inspecting 28,925 establishments and 54,919 individual licensees in 2003. The Commission attempts to conduct inspections of salons and individual licensees every year and a half, and inspects schools approximately three times a year. The Commission attempts to follow up with facilities that have violations within one to two months, to ensure that the problems cited in previous visits have been corrected.

The Commission also sends inspectors to investigate complaints against licensees. The Commission may close a complaint by issuing a violation if

<b>Complaint Activity - FY 03</b>	
Received	346
Pending from Previous Year	14
Resolved	221

applicable, or determining that the agency does not have jurisdiction in the matter. For example, the agency does not have jurisdiction over the quality of hairstyles. See the chart, *Complaint Activity*, for details.

In FY 2003, the Commission issued 7,638 violations as a result of both routine inspections and complaint investigations. The chart *Violation Data* shows the categories of violations. The agency could not provide a more detailed breakdown.

<b>Violation Data - FY 03</b>	
<b>Category</b>	<b>Number</b>
Occupations Code, Chapter 1602 Cosmetology Act	2,858
Texas Administrative Code, Chapter 83 - Sanitary Rules	1,637
Texas Administrative Code Chapter 89 - General Rules	3,143
<b>Total</b>	<b>7,638</b>

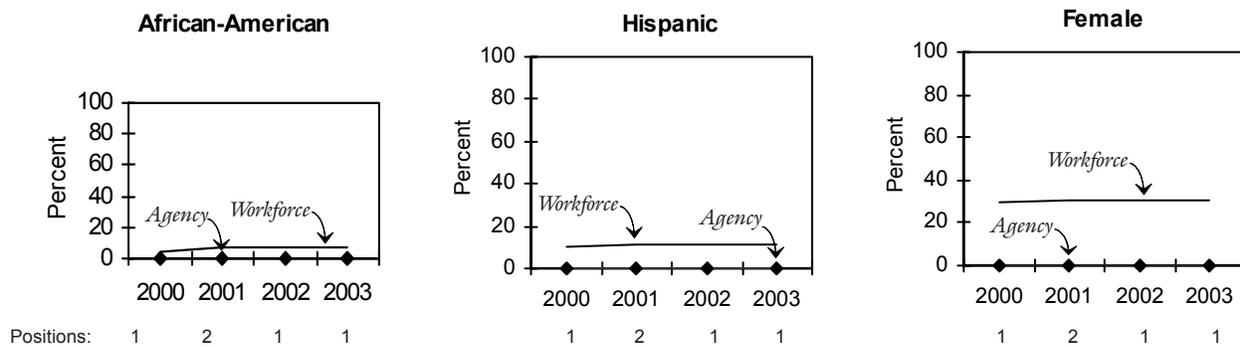
An individual who receives a violation has three options during the enforcement process: pay the associated fine, meet with the Executive Director for an informal settlement conference, or attend a hearing conducted by the State Office of Administrative Hearings (SOAH). In a settlement conference, the Executive Director can reduce, dismiss, or retain the fine. An individual has 20 days to respond to a notice of violation, or the Commission automatically sets the case for a hearing with SOAH. However, the agency conducted no SOAH hearings in fiscal year 2003. The Commission assessed \$1.4 million in fines and collected \$953,663 in fines during fiscal year 2003.

# APPENDICES

## Texas State Board of Barber Examiners Equal Employment Opportunity Statistics 2000 to 2003

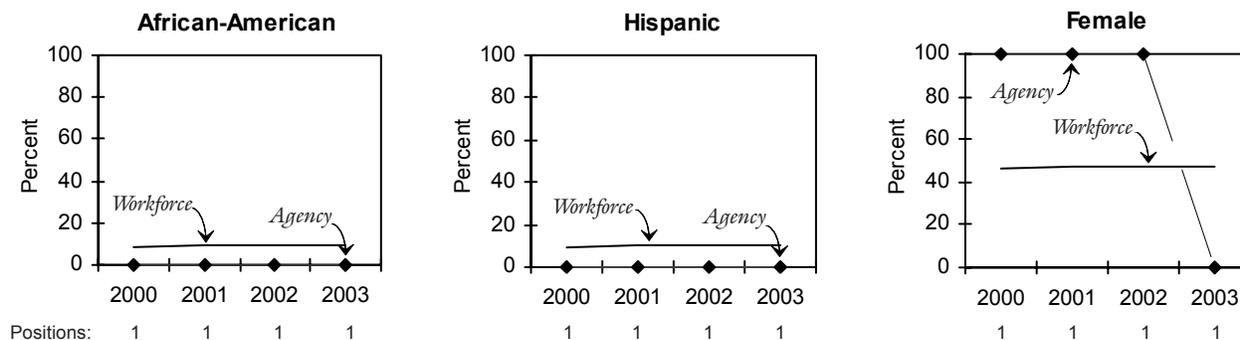
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas State Board of Barber Examiners employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the solid lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond-dashed lines represent the agency's actual employment percentages in each job category from 2000 to 2003.

### Administration



The Board fell short of the state goals for African-Americans, Hispanics, and females each year.

### Professional

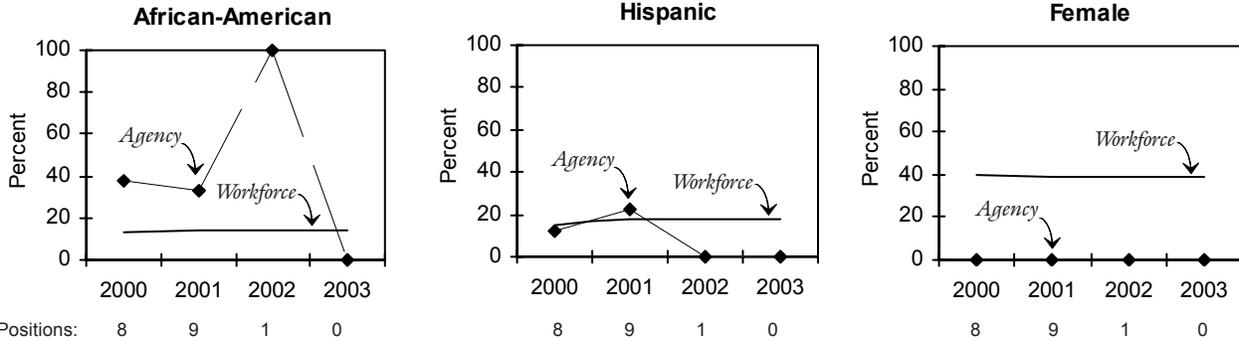


While the Board generally exceeded the goal for female employment, it fell short of the goals for Hispanic and African-American employment during this period.

# Appendix A

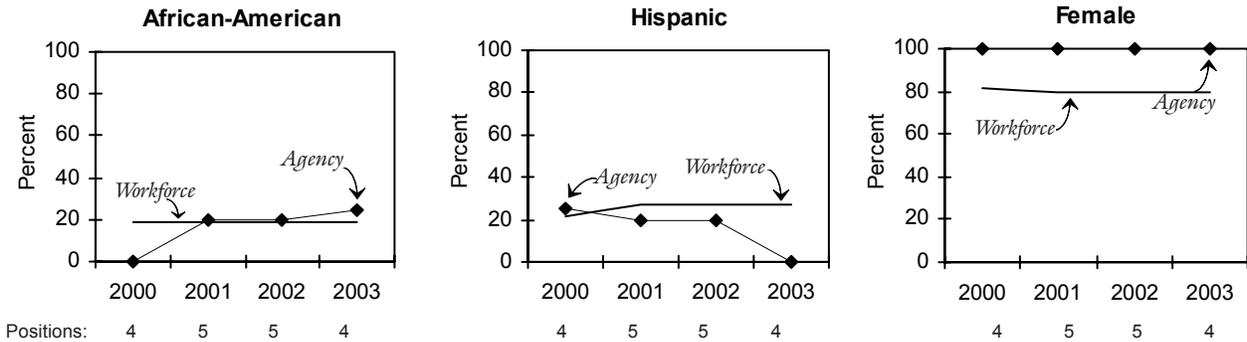
## Texas State Board of Barber Examiners Equal Employment Opportunity Statistics

### Technical



The Board generally exceeded the state goal for African-American employment, but generally fell short of the goals for Hispanic and African-American employment. The Board has reclassified inspectors to its Skilled Craft category, explaining the drop in the total number of Technical employees in years 2002 and 2003.

### Administrative Support

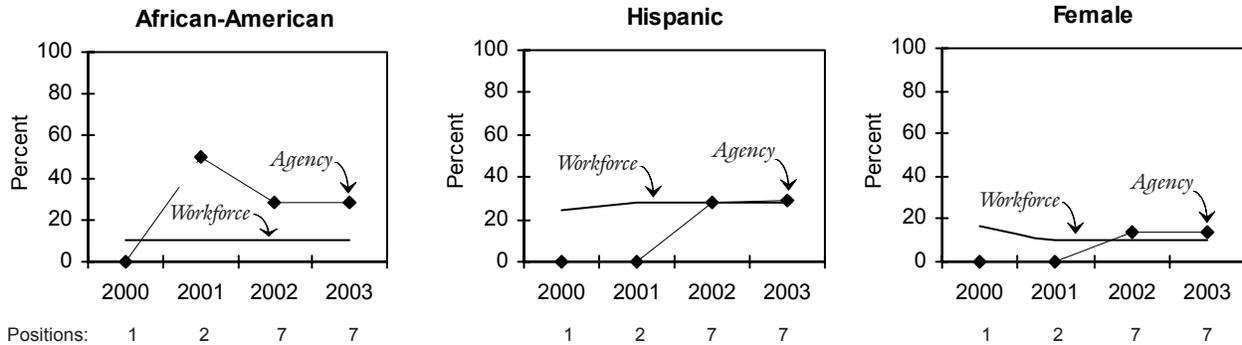


The Board generally exceeded the state goal for African-American and female employment, but generally fell short of the goals for Hispanic employment.

# Appendix A

## Texas State Board of Barber Examiners Equal Employment Opportunity Statistics

### Skilled Craft



In years 2002 and 2003, the Board met or exceeded state goals for African-American, Hispanic, and female employment.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501. The Texas Human Rights Commission (HRC) has been the agency responsible for collecting and distributing EEO data. During the 2003 Session, the Legislature passed HB 2933 transferring the functions of HRC to a new civil rights division within the Texas Workforce Commission (TWC). The legislation is to take effect upon certification of the TWC civil rights division by the appropriate federal agency; no specific date has yet been established.

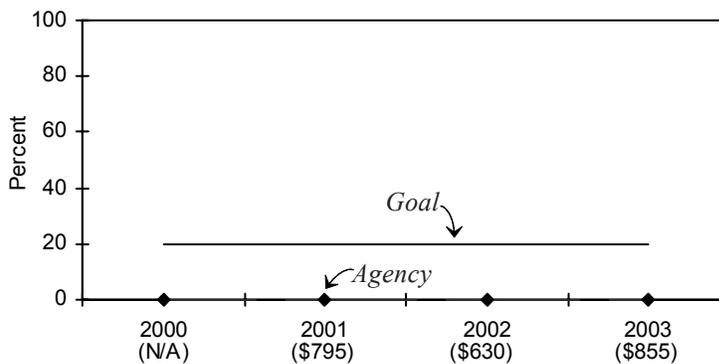


**Texas State Board of Barber Examiners  
Historically Underutilized Businesses Statistics  
2000 to 2003**

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup> The review of the Texas State Board of Barber Examiners revealed that the agency is not fully complying with state requirements concerning HUB purchasing. Specifically, the agency has not adopted HUB rules as required, but has adopted a HUB-use plan in policy.

The following material shows trend information for the Texas State Board of Barber Examiners use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond-dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 2000 to 2003. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency fell short of all statewide goals in all categories, except for commodity spending in 2003.

**Professional Services**

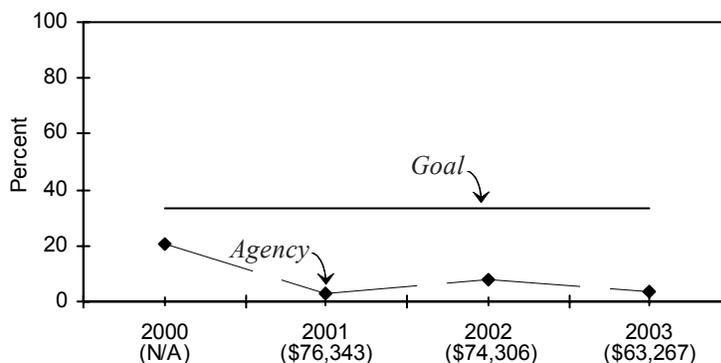


The Board does not use HUBs for any of its expenditures in this category. The agency was unable to provide the total amount spent in this category for 2000.

## Appendix B

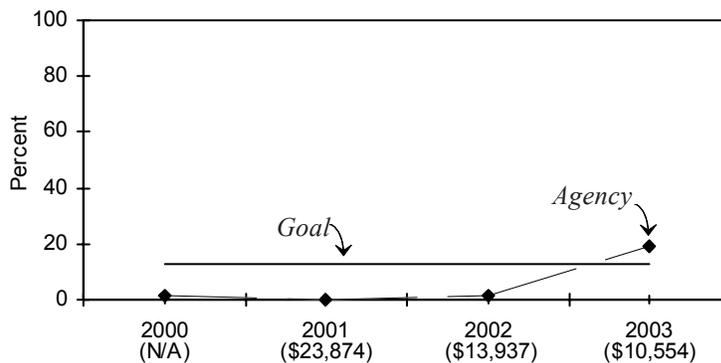
### Texas State Board of Barber Examiners Historically Underutilized Businesses Statistics

#### Other Services



The Board fell well below the statewide goal in other services. The agency was unable to provide the total amount spent in this category for 2000.

#### Commodities



The Board surpassed the goal in commodities spending in 2003, but fell below the statewide goal in all other years. The agency was unable to provide the total amount spent in this category for 2000.

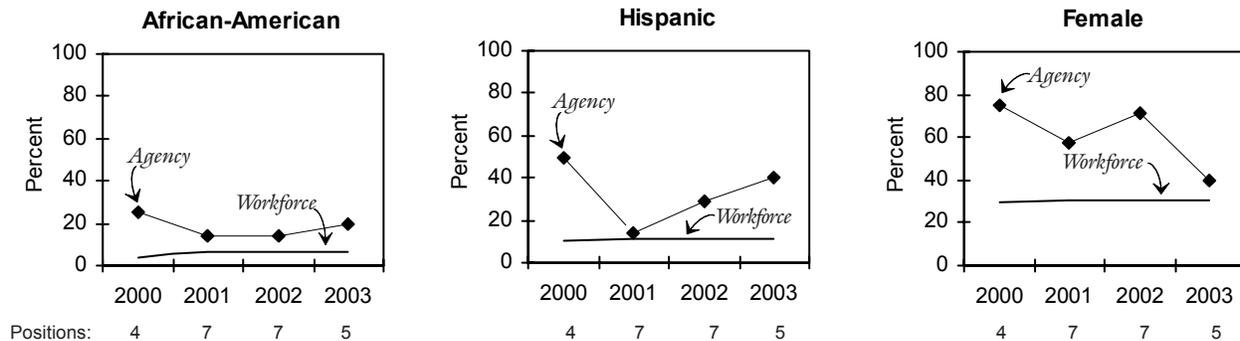
<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.

## Texas Cosmetology Commission Equal Employment Opportunity Statistics 2000 to 2003

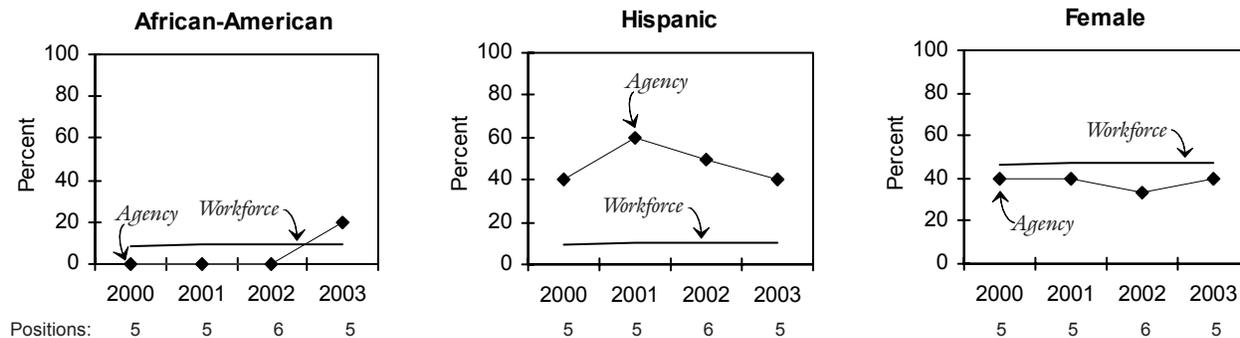
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Cosmetology Commission employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the solid lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond-dashed lines represent the agency's actual employment percentages in each job category from 2000 to 2003.

### Administration



The Commission exceeded goals in all three groups.

### Professional

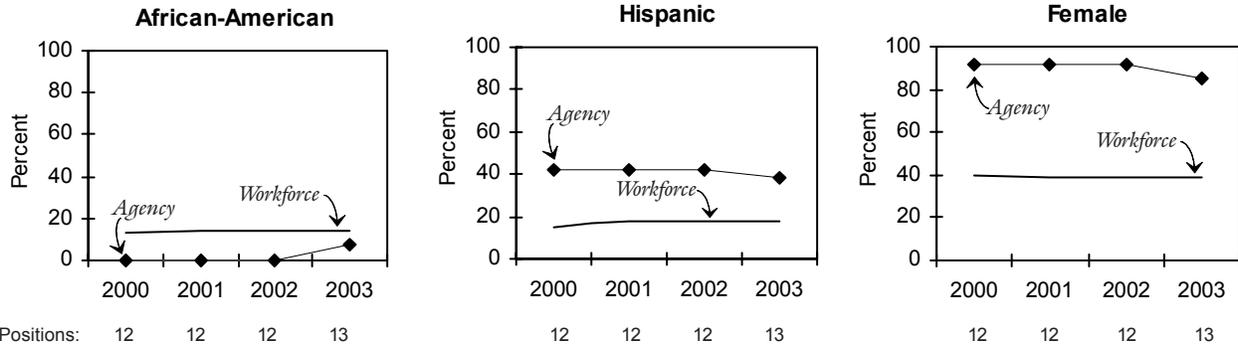


The agency exceeded the goal for Hispanic employment, but generally fell short of goals for females and African-Americans.

# Appendix C

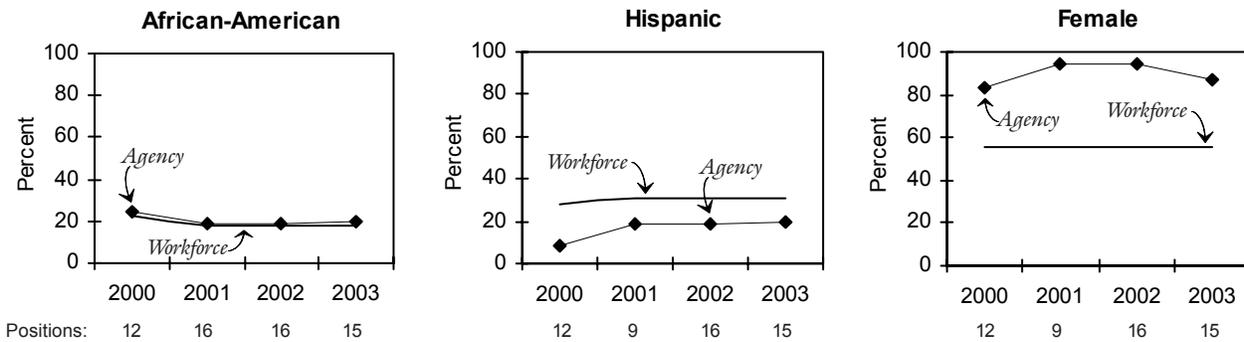
## Texas Cosmetology Commission Equal Employment Opportunity Statistics

### Technical



The agency exceeded the civilian labor force percentages for Hispanic and female employment, but fell short of the goals for African-Americans.

### Para-Professionals

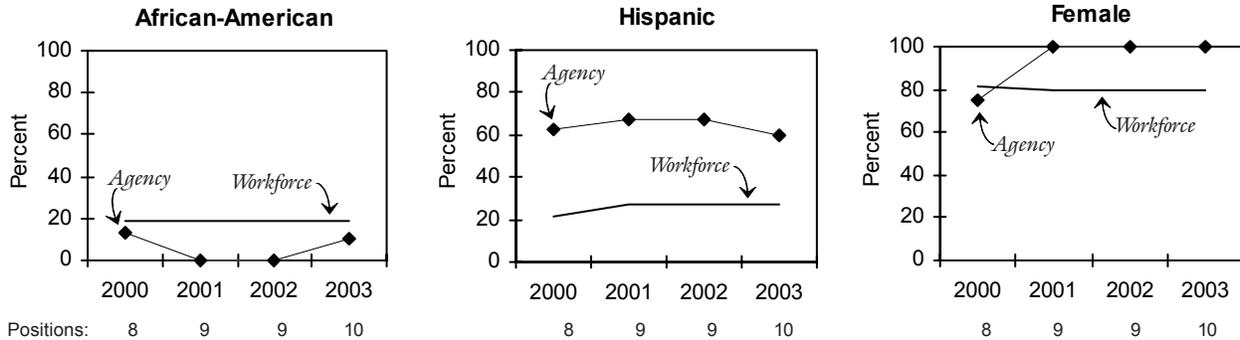


The Commission met or exceeded goals for African-American and female employment, but fell short of goals for Hispanics in this job category.

# Appendix C

## Texas Cosmetology Commission Equal Employment Opportunity Statistics

### Administrative Support



The agency fell short of goals for African-Americans, but generally exceeded goals for Hispanic and female employment.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501. The Texas Human Rights Commission (HRC) has been the agency responsible for collecting and distributing EEO data. During the 2003 Session, the Legislature passed HB 2933 transferring the functions of HRC to a new civil rights division within the Texas Workforce Commission (TWC). The legislation is to take effect upon certification of the TWC civil rights division by the appropriate federal agency; no specific date has yet been established.

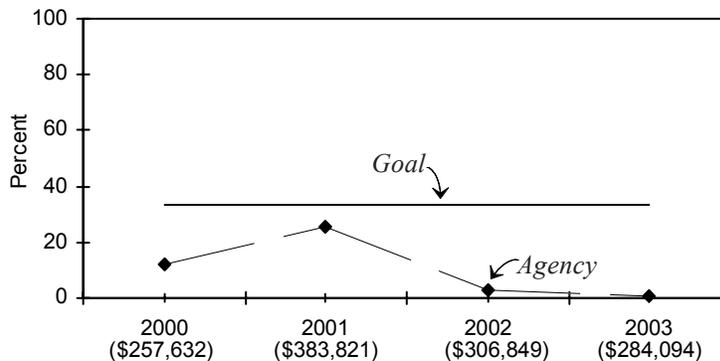


**Texas Cosmetology Commission  
Historically Underutilized Businesses Statistics  
2000 to 2003**

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup> The review of the Texas Cosmetology Commission revealed that the agency is not fully complying with state requirements concerning HUB purchasing. Specifically, the agency has not adopted HUB rules.

The following material shows trend information for the Texas Cosmetology Commission use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond-dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 2000 to 2003. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. While the agency has fallen short of the State's goal for other services, it has met or exceeded the goal for commodities.

**Other Services**

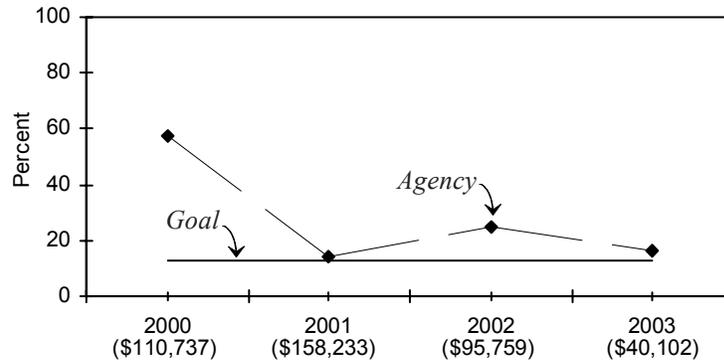


The Commission fell well below the statewide goal in other services.

## Appendix D

### Texas Cosmetology Commission Historically Underutilized Businesses Statistics

#### Commodities



The Commission met or exceeded the State's goal in this category.

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<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.

An Audit Report on

## Internal Controls and Financial Processes at the Cosmetology Commission

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SAO Report No. 04-019  
February 2004

### Overall Conclusion

There was gross fiscal mismanagement at the Cosmetology Commission (Commission) during fiscal years 2002 and 2003. During that time, the Commission significantly mismanaged its fiscal responsibilities and exposed state funds to the risk of loss and abuse. It did not maintain proper control over assets, did not discharge fiscal obligations in a timely manner, misused state funds, and did not keep adequate fiscal records. Most significantly, the Commission has not collected \$2.8 million of the \$4.8 million in penalties it assessed from September 1999 through June 2003 and has not followed statutory and regulatory requirements for the collection of administrative penalties. Control weaknesses in the Commission's financial operations could lead to future errors and violations of laws and regulations. In addition, the Commission had a budget shortfall at the end of fiscal year 2003 that caused it to place 38 employees (85 percent of its 44.5 full-time equivalent positions) on leave without pay and to receive an emergency deficiency grant from the Governor's Office.

#### Background Information

Texas Government Code, Section 2104.001, specifies four criteria that define gross fiscal mismanagement:

- Failure to maintain proper control over assets
- Failure to discharge fiscal obligations in a timely manner
- Misuse of state funds
- Failure to keep adequate fiscal records

The Commission has serious weaknesses in all four of these areas, which shows that there was gross fiscal mismanagement at the Commission during fiscal years 2002 and 2003. See Chapter 1 for additional detail.

The Commission had two executive directors during the time period that we audited. Throughout our audit, the Commission had difficulty locating records and providing explanations for issues we identified. The current executive director was hired in July 2002 and has begun to take steps to address our findings. These steps include beginning to draft financial policies and procedures, as well as resuming administrative hearings to collect unpaid penalties. We have not audited the new procedures the Commission has developed and therefore cannot assure that they are adequate. Fully correcting the Commission's gross fiscal mismanagement will require both immediate action to correct certain deficiencies and the implementation of a long-term financial remediation plan.

### Key Points

#### The Commission has not maintained proper control over assets.

- The Commission does not follow statutorily required procedures and has not collected at least \$2.8 million (58 percent) of the \$4.8 million in administrative penalties it assessed from September 1999 through June 2003 for violations of cosmetology laws and regulations. This reduces the incentive for cosmetologists to comply with laws and regulations.
- The Commission's procedures for handling revenue place state funds at a high risk of loss or impropriety. In 2003, the State Auditor's Office Special Investigations Unit reported



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This audit was conducted in accordance with Texas Government Code, Sections 321.0131 and 321.0133.

For more information regarding this report, please contact Sandra Vice, Audit Manager, at (512) 936-9500.

# Appendix E

*An Audit Report on  
Internal Controls and Financial Processes at the Cosmetology Commission  
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that a former temporary employee of the Commission had been indicted for the alleged theft of more than \$1,000 in revenues. The control weaknesses we identified could allow this kind of impropriety to occur again.

- The Commission was not able to demonstrate compliance with its authorized capital budget for construction of buildings and facilities in fiscal year 2002. Our analysis indicated that the Commission overspent its capital budget for this item by \$19,699 (59.3 percent).
- Control weaknesses in the Commission's expenditure processes could allow inappropriate transactions to be processed. For example, a single employee has the ability to add data for new employees, revise salaries, and generate state warrants. This creates a risk that the employee could create fictitious employees and generate payments to them. Although we found no instances of such payments, this increases the risk that inaccurate or inappropriate activity could occur without detection.

## **The Commission has not discharged fiscal obligations in a timely manner.**

- The Commission underpaid TexasOnline subscription fees and did not make payments for these subscription fees in a timely manner.
- The Commission did not deposit 23.5 percent of revenue deposits we tested within three business days as required by the Texas Government Code.
- The Commission's failure to collect administrative penalties shows that it is not managing its finances in a timely way.

## **The Commission misused state funds.**

- The Commission's former Chief Financial Officer circumvented the Commission's purchasing process to award a \$1,000 contract to a personal associate. The Commission is currently pursuing recovery of these funds with the assistance of the Office of the Attorney General.
- As discussed above, our analysis indicated that the Commission overspent its capital budget for construction of buildings and facilities in fiscal year 2002 and used funds for a purpose other than those allowed by the General Appropriations Act (77th Legislature).
- As discussed above, the Commission has control weaknesses over revenue collection that place state funds at a high risk of loss and impropriety.

## **The Commission has not maintained adequate fiscal records.**

- Throughout our audit, missing or inadequate documentation made it difficult for the Commission to provide information in response to our requests.
- The Commission does not reconcile the cash balance in its State Treasury account to identify errors or discrepancies. Without proper and timely reconciliations, errors or misappropriation of funds could go undetected. Reconciliations are also an important part of ensuring that management has accurate information for managing the budget. This is particularly important because the Commission experienced a budget shortfall at the end of fiscal year 2003.

# Appendix E

*An Audit Report on  
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- We found errors in or missing supporting documentation for 63.7 percent of the expenditures we randomly sampled. Based on that, we estimate that nearly \$1.3 million of the Commission's expenditures from September 2001 through May 2003 could be in error or missing adequate support.
- The Commission could not locate any supporting documentation for journal vouchers that resulted in accounting entries totaling more than \$1.6 million. It also lacked approval documentation for 83 percent of the journal vouchers for which it had partial supporting documentation.
- The Commission's fiscal year 2002 Annual Financial Report contained significant errors, and the Commission lacked documentation to support certain items in that report. These errors resulted in understatements totaling \$111,203. In addition, the Commission did not report accounts receivable in the Annual Financial Report. As discussed above, because the Commission is not collecting all administrative penalties, the total amount of accounts receivable could have been \$1,923,600 or higher.
- The Commission does not consistently assess administrative penalties in compliance with its own regulations. The result of these errors is that the Commission overcharged licensees \$25,725 for some offenses and undercharged licensees \$56,600 for other offenses.
- Weaknesses in the Commission's information technology controls have resulted in lost financial information and could allow the entry of duplicate inspection and violation reports.

## ***Summary of Management's Response and Auditor Follow-up Comments***

The Commission generally agrees with our findings and recommendations. However, we have provided specific follow-up comments in Appendix 2 to further clarify the Commission's responses. Our follow-up comments note that, in 2002, we recommended to the Commission that it request an audit. In addition, we reiterate that it is the Commission's responsibility (not the responsibility of the Office of the Attorney General) to schedule administrative hearings. Our follow-up comments also reinforce our contention that failure to collect administrative penalties reduces the incentive to comply with laws and regulations. We also note that the Commission was not able to show us documentation that clearly demonstrates that it did not exceed its capital budget for construction of buildings and facilities.

## ***Summary of Information Technology Review***

We reviewed selected application controls over the Commission's licensing and enforcement system. We found that the Commission lost financial information when its server crashed because it did not test to ensure that backups were working properly prior to upgrading its server. Furthermore, because the Commission did not update a table in its licensing and enforcement system when it changed its schedule of administrative penalties set in the Texas Administrative Code, it charged the incorrect amount for certain administrative penalties from September 1999 through June 2003.

# Appendix E

An Audit Report on  
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set in the Texas Administrative Code, it charged the incorrect amount for certain administrative penalties from September 1999 through June 2003.

## Summary of Objective, Scope, and Methodology

Our objective was to determine whether the Commission's processes and operations ensure that it is meeting statutory responsibilities, safeguarding resources, and complying with applicable laws and regulations. To accomplish that objective, we:

- Determined whether the Commission's operational processes are effective and efficient.
- Determined whether the Commission is complying with applicable laws and regulations.
- Determined whether the Commission's financial processes ensure accurate, complete, and reliable financial information.

Our audit covered licensing, enforcement, and financial processes from fiscal years 2000 to 2003. Testing of transactions focused on fiscal years 2002 and 2003 and included licenses, revenues, expenditures, and journal vouchers. We also tested compliance with laws and regulations.

The audit methodology consisted of collecting information and documentation, performing selected tests and other procedures, analyzing and evaluating the results of the tests, and conducting interviews with the Commission's management and staff.

Recent SAO Work		
Number	Product Name	Release Date
04-002	A Special Investigations Unit Report Regarding the Cosmetology Commission	September 2003
00-023	2000 Small Agency Management Control Audit	March 2000

**Texas State Board of Barber Examiners  
Fee Chart**

Fee Type	Fee Category	Current Fee	Statutory Cap
Individual License or Permit	Barber License	\$80	\$100
	Barber License by Endorsement	\$80	\$100
	Barber - Renewal	\$80	\$100
	Manicurist License - Application	\$0	\$10
	Manicurist License	\$30	\$30
	Manicurist - Renewal	\$30	\$100
	Barber Technician Application	\$0	\$10
	Barber Technician License	\$80	\$100
	Barber Technician - Renewal	\$80	\$100
	Barber Teacher License	\$70	\$100
	Barber Teacher - Renewal	\$70	\$100
	Student Permit	\$25	\$25
	Duplicate License & Certificate	\$10	\$10
	Late Renewal	\$30	\$30
	Renewals for Member of Armed Forces	\$10	\$10
Shops & Booths	Barber Shop/Dual Shop Permit	\$60	\$70
	Barber Shop/Dual Shop - Renewal	\$60	\$70
	Manicurist Specialty Shop Permit	\$50	\$50
	Manicurist Specialty Shop - Renewal	\$50	\$50
	Duplicate Permit	\$10	\$10
	Late Renewal	\$30	\$30
Schools	Barber School Certification	\$1,000	\$1,000
	Barber School Renewal	\$300	\$300
	Barber School Re-inspection	\$500	\$500
Examinations	Barber Technician Examination	\$40	\$50
	Teacher Examination	\$70	\$100
	Old Texan Examination	\$75	\$100



## Staff Review Activities

The Sunset staff engaged in the following activities during the reviews of the Texas State Board of Barber Examiners (Board) and the Texas Cosmetology Commission (Commission).

- Worked extensively with Board and Commission staff.
- Attended Board and Commission meetings, reviewed audiotapes and minutes of Board and Commission meetings, and interviewed Board and Commission members.
- Met with in person, or interviewed over the phone, staff from the Texas Department of Licensing and Regulation, Texas Department of Health, Texas Workforce Commission, Texas Education Agency, Texas Higher Education Coordinating Board, Comptroller of Public Accounts, Legislative Budget Board, and the State Auditor's Office.
- Conducted interviews and solicited written comments from state and local interest groups.
- Conducted interviews with barber and cosmetology school owners and other licensees.
- Attended a continuing education seminar for cosmetology instructors.
- Observed Commission and Board enforcement case hearings at the State Office of Administrative Hearings.
- Observed administration of barber and cosmetology operator practical exams.
- Observed inspections conducted by Board and Commission inspectors.
- Reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature on barbering and cosmetology issues.
- Researched the functions of barbering and cosmetology regulatory agencies in other states.
- Performed background and comparative research using the Internet.



**SUNSET REVIEW OF THE  
TEXAS STATE BOARD OF BARBER EXAMINERS  
AND  
TEXAS COSMETOLOGY COMMISSION**

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