

**AMUSEMENT MACHINE COMMISSION**

**Staff Report  
to the  
Sunset Advisory Commission**

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## TABLE OF CONTENTS

	<u>Page</u>
FOREWORD . . . . .	1
I. SUMMARY AND CONCLUSIONS . . . . .	2
II. BACKGROUND . . . . .	9
III. REVIEW OF OPERATIONS . . . . .	14
IV. ALTERNATIVES AND CONSTRAINTS . . . . .	31
V. COMPLIANCE . . . . .	38
VI. PUBLIC PARTICIPATION . . . . .	41
VII. STATUTORY CHANGES . . . . .	43

## FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Amusement Machine Commission, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

## I. SUMMARY AND CONCLUSIONS

The state's involvement in the area of coin-operated machines began in 1936 with taxation administered by the Comptroller of Public Accounts. In 1969, in response to allegations of force, violence, and related illegal activities, legislation was passed, based on recommendations of a legislative committee, which provided comprehensive regulation of the coin-operated amusement machine industry. In the same year, the legislation was construed by the Attorney General to prohibit tavern owners from owning amusement machines.

In 1971, the Texas Vending Commission was created to regulate the amusement machine industry. In December of 1972, the Supreme Court ruled that tavern owners could own machines "incidental" to their business. In 1973, Texas courts declared one part of the commission's law unconstitutional which resulted in the entire regulatory section being declared null and void because of a non-severability clause. The legislature, in 1973, changed the name of the Texas Vending Commission to the Texas Amusement Machine Commission. The regulatory portion of the amusement machine law was reinstated and strengthened by Senate Bill No. 869, Acts of the Sixty-fourth Legislature, 1975.

The regulatory activities of the Amusement Machine Commission are carried out under the direction of a six-member board consisting of three members appointed by the governor with the advice and consent of the senate, who are not connected with the amusement machine industry, and three ex officio members. The ex officio members have voting rights and include the director of the Department of Public Safety, the Consumer Credit Commissioner, and the Attorney General, or their representatives.

The commission is directed by statute to tax and regulate the coin-operated amusement machine industry. The agency is funded by legislative appropriations out of the General Revenue Fund. All revenue collected by the agency is divided and deposited into the General Revenue Fund, the Omnibus Tax Clearance Fund and the Available School Fund.

The commission generally meets the objective of efficient management with regard to agency administration. Two concerns were identified in the review of this part of the agency's operation. First, the law provides for an inconsistent policy regarding fee payments. License fees are required to be made by cashier's check or money order, while other fees authorized by statute do not have to be paid in this manner. Two problems have resulted from this situation. First, returned "hot" checks for fee payments cause delays in application processing and extra costs for the agency and the State Treasurer. Second, the inconsistent fee policy affects the agency's ability to comply with its statute. The agency has chosen to accept personal checks for all fee payments to avoid the difficulties associated with the return of license fees not made by cashier's check or money order as required by statute.

The second concern relates to the \$10 fee charged for registration certificates. This fee is considerably exceeded by the costs (approximately \$50) of administrative and enforcement efforts.

A review of the licensing activity of the commission indicates that the agency generally ensures that applicants have met requirements for the issuance of licenses, registration certificates, and tax permits. However, two general areas of concern related to the licensing activity were identified during the review.

The first general concern deals with licensing requirements. The first particular concern with licensing requirements relates to mandatory refusal of licensure to an applicant convicted of a felony. The agency does not have a consistent method to apply this standard since the agency does not have access to criminal history records as a result of federal and state policies limiting access to such information. The second particular concern with licensing requirements relates to a provision in the agency's statutes which states that the agency has the authority to deny issuance or renewal of a license if the applicant is indebted by judgment to the state. The agency contacts the Comptroller of Public Accounts for this information, causing delays in the licensing process for little monetary return to the state.

The second general area of concern with licensing regards the agency's annual renewal procedures. The first particular concern with renewal procedure deals with the lack of penalties authorized for delinquent renewals of licenses or registration certificates. The second particular concern regarding annual renewal procedures relates to the time required to process renewals for licenses, registration certificates, and applications for occupation tax permits. The processing time normally requires two months. Three contributing factors were identified relating to the backlog condition. First, information on renewal applications requires more examination than most renewal forms. Second, improper applications are often encountered, particularly among renewals of registration certificates. The agency has had only limited success in dealing with these two factors. The third contributing factor is the timing of the renewal period. The deadline for renewal submission is December 31. Most renewals are mailed during the Christmas holidays which delays receipt by the agency. Also, holidays for agency personnel during this period further reduces time available for renewal processing, which is required by law to be completed one day after the submission deadline.

Review of agency enforcement efforts indicates extensive planning and organization to carry out the enforcement objective. The agency has been generally successful in obtaining compliance with the statutory requirements of the law. Two concerns were identified with regard to enforcement activities of the agency. The first concern relates to complaint documentation. Investigative reports are not recorded in a thorough and consistent manner as is needed to provide a complete basis for holding hearings and making findings of fact in cases for referral to the Attorney General.

The second area of concern involves penalties specified in the law. Certain typographical errors in the regulatory act along with the wording of this section have prevented application of appropriate penalties for certain violations.

### **Need to Regulate**

As in the case of other regulated activities, regulation of the amusement machine industry should be undertaken only when there is a continuing need to protect the public health, safety, or welfare. Conditions that existed prior to 1969 indicated that the amusement machine industry was subject to violence and coercion uncommon to most businesses. Legislative committees determined that normal market mechanisms of free enterprise and competition were being upset by the use of force and coercion to control the location of coin-operated machines and those engaged in the amusement machine business. The legislature responded to the concern that the amusement machine industry would become dominated by unfair and illegal practices contrary to the best interest of the public.

The state has developed a unique form of regulation to protect the public welfare in direct response to problems identified with the industry. Regulation specifically prohibits threats and coercion to influence the lease and location of

amusement machines, prohibits improper loans to obtain unfair advantage over competitors, and provides for the even split of revenue between vendors and lessees to maintain equal market opportunities for all engaged in the amusement machine business.

Present conditions indicate a continuing need for regulation. Witnesses before legislative committees have testified that regulation has helped stabilize the industry. Instances of alleged violations are less frequent and are responded to quickly by the present regulatory structure. However, there are indications that, without regulation, there would be a return to earlier conditions.

While regulation of amusement machines in Texas does meet a continuing need to protect the public, this need can be adequately met without a separate agency. Review of other states indicates that only Texas has an independent commission responsible for regulation. In most states that regulate amusement machines, the primary tax collection agency also performs regulation of amusement machines. Review of organizational alternatives available in Texas, indicates that the state's primary tax collection official, the Comptroller of Public Accounts, presents the best alternative for consolidating amusement machine regulation. Potential benefits from such consolidation include efficiencies, estimated to produce substantial cost savings, obtained as a result of similar functions currently performed by the Comptroller of Public Accounts.

### **Alternatives**

If the legislature determines that state regulation of the amusement machine industry should be continued, the following alternatives could be considered:



1. CONTINUE THE COMMISSION AND ITS FUNCTIONS WITH MODIFICATIONS.

This approach would maintain an independent commission to perform licensing, taxation, and enforcement activities. The review indicated that the following modifications would result in more effective regulation of the amusement machine industry:

- a) amend the statute to require that all fee payments be made by cashier's check or money order (page 16);
- b) amend the statute to increase registration fees to an amount adequate to defray cost of regulation (page 18 );
- c) amend the statute to remove a provision requiring denial of licensure for a felony conviction (page 19);
- d) amend the statute to remove the provision requiring mandatory denial of licensure for indebtedness by judgment to the state (page 20);
- e) amend the statute to provide a penalty for late renewal of licenses and registration certificates page 21);
- f) adopt a policy requiring amusement machines to remain sealed for non-payment of occupation taxes during the renewal period until proper payment is received by the agency (page 21);
- g) amend the statute to change the renewal period for licenses, registration certificates and occupation tax permits (page 22);
- h) amend the statute to allow processing time between the submission deadline for renewal applications and the effective date of renewals (page 22);
- i) restructure agency complaint files to provide thorough documentation of substantive complaints for referral to the Attorney General (page 24); and

- j) amend the statute by rewording Section 26 to provide proper penalties for violations outlined in that section (page 26).

**2. ABOLISH THE COMMISSION AND TRANSFER ITS CURRENT REGULATORY AND TAXATION FUNCTIONS TO THE COMPTROLLER OF PUBLIC ACCOUNTS (page 33).**

This approach would combine the taxation and regulation of the amusement machine industry into a state agency with compatible goals and functions. The Comptroller of Public Accounts is involved in areas substantively related to the Amusement Machine Commission through its functions dealing with tax collection which include enforcement and audit activities similar to those performed by the commission. Benefits from this merger alternative would result from the Comptroller's present capability to provide the administrative, licensing, and enforcement activities necessary for amusement machine regulation. Cost savings from such a merger have been estimated at \$350,000 annually after a one-year transition period. If the legislature adopts this alternative, the substantive changes contained in the preceding alternative should also be made.

If the legislature determines that regulation of the amusement machine industry should not be continued, the following alternative could be considered:

**3. ABOLISH THE COMMISSION AND LIMIT STATE CONTROL OF THE AMUSEMENT MACHINE INDUSTRY TO TAXATION OF AMUSEMENT MACHINES TO BE PERFORMED BY THE COMPTROLLER OF PUBLIC ACCOUNTS (page 35).**

This approach would be less restrictive than that presently used, but the state would still be capable of identifying machine ownership without regulation. Revenue in excess of \$1.5 million per year from the occupation tax, levied since 1936, would not be lost. The Comptroller of Public Accounts could assume the responsibility as was the case before the creation of the Amusement Machine Commission. This alternative would require modification of the present tax laws.

## II. BACKGROUND

### Historical Perspective

The Texas Amusement Machine Commission is the state agency responsible for taxation and regulation of music, skill, and pleasure coin-operated machines, designated as "amusement machines." Created by the Sixty-second Legislature (1971) as the Texas Vending Commission, its name was changed in 1973 to more accurately describe its jurisdiction. A review of the state's involvement with the coin-operated machine industry is helpful in understanding current regulation of amusement machines.

Initial state involvement in the area of coin-operated machines began in 1936. In that year, the Forty-fourth Legislature passed several tax laws, one of which dealt with coin-operated machines. The Comptroller of Public Accounts was designated to collect an annual occupation tax levied on coin-operated music, skill, pleasure, and merchandise machines. Coin-operated service machines such as pay telephones and cigarette machines were exempted from taxation. During the next thirty years, the state's involvement with coin-operated machines was limited to collection of the occupation tax. Only one change occurred to the tax law during this period, an exemption for coin-operated merchandise vending machines was authorized by the Fifty-seventh Legislature in 1961.

In 1968, in response to a number of incidents of violence, allegations of coercion and threats of force being used on locations using vending machines, and related illegal activities, a special legislative committee was created to investigate the vending machine industry. At the conclusion of its investigation, this committee recommended that the state expand its activity with regard to vending machines beyond application of the occupation tax to include regulation of persons

involved in sale and lease of machines. As a result of this investigation, legislation was passed by the Sixty-first Legislature in 1969 which was designed to provide comprehensive regulation of music, skill, and pleasure coin-operated machines and businesses dealing with these machines. Enforcement responsibility for this regulation was placed with the Comptroller of Public Accounts. The key regulatory provisions were: 1) persons engaged in the business of leasing and selling coin-operated music, skill, or pleasure machines were required to be licensed; 2) a person required to obtain an on-premise alcoholic beverage license was prohibited from obtaining a vending license; 3) contracts between vendors and location owners for the placement of machines ("location agreements") or for extensions of credit were required to be filed with the state; and 4) an owner of a machine could not pay more than fifty percent of the revenue from such machine to the lessee.

Shortly after its passage, the new law was interpreted by the attorney general to prohibit all tavern owners from owning coin-operated amusement machines, Attorney General Opinion, No. M-449 (1969). This decision angered those tavern owners wanting to own coin-operated machines, intensified the animosity between some tavern owners and vendors, and created an attitude of non-cooperation among many of the parties. This situation caused difficulty for the Comptroller of Public Accounts in enforcing the regulatory act, and pointed to a need for a broad-based policy-making body able to direct all of its effort to regulating the coin-operated machine industry. In response to this need, the Sixty-second Legislature, in 1971, created the Texas Vending Commission with a composition of three industry members, three non-industry public members, and three ex-officio members: the attorney general, the Consumer Credit Com-

missioner, and the director of the Department of Public Safety. All responsibilities of the Comptroller of Public Accounts regarding coin-operated machines were transferred to the new commission. Finally, in 1972, the Texas Supreme Court concluded that the attorney general had improperly construed the law to prohibit persons with an on-premise alcoholic beverage license from owning their own machines. This decision removed a major objection to the regulatory act.

In 1973, Texas courts declared one part of the commission's law unconstitutional which resulted in the entire regulatory section of the law being declared null and void because of a non-severability clause contained in the article. This left the commission with only taxing authority. The Sixty-third Legislature in 1973, changed the name of the Texas Vending Commission to Texas Amusement Machine Commission, but passed no legislation to fill the void in regulation created by the court decision. Investigations were initiated by House and Senate committees after the Sixty-third session in response to the continuing need to address the problems and practices that were alleged to be occurring in the industry.

Recommendations of these committees were incorporated in the commission's present legislation which was enacted by the Sixty-fourth Legislature in 1975. This legislation reinstated the regulation of the coin-operated machine industry while dealing with problems found through committee investigations. The commission's composition was modified by removing the three industry members, while retaining the public and ex-officio members. Included as elements of the new legislation were provisions that: 1) allowed tavern owners to own coin-operated machines; 2) required all coin-operated machine businesses to obtain an annual license in one of three categories: general business, repair, or import; 3) required all other machine owners to obtain an annual registration certificate; 4) removed requirements for submission of agreements and credit extensions between

vendors and location owners; and 5) maintained requirements for the 50/50 split of machine revenues.

The present six-member commission employs a staff of twenty-four full-time office and field personnel to carry out its taxing, licensing, and enforcement responsibilities with respect to approximately 1,500 licensees and 3,500 registration certificate holders owning in excess of 105,000 coin-operated amusement machines. Revenues generated through agency activities totaled more than \$1.8 million for 1979 with expenses totaling \$493,587 for the same period.

### **Comparative Analysis**

To determine the pattern of regulation of the amusement machine industry, a survey of the fifty states was conducted to determine how this has been addressed in other states.

The need to regulate the amusement machine industry is currently expressed through statewide control imposed by twenty-eight of the fifty states surveyed. Control in twenty-one states is limited to taxation on machine revenue or on machines themselves. Industry regulation is currently imposed by seven states, including Texas. All but one of these states impose licensing requirements on those engaged in the amusement machine business in addition to taxation. Regulation in addition to licensing and taxation is imposed by three states, including Texas, which regulates the division of revenue produced by amusement machines. One state prohibits loans from machine owners to tavern owners; Texas regulates such loans through interest rate control and record-keeping requirements related to loans. One other state prohibits machine owners from leaving machine keys on location. Texas requires instruments to be placed on each machine to record machine income if keys are left on location.

From the standpoint of organizational patterns, only Texas utilizes an independent board or commission. The governor appoints the board members, with appointees confirmed by the legislature. Membership is confined to persons who are not members of the regulated occupation. Texas also has an advisory board composed of industry representatives chosen by its commission.

In twenty-seven states, the function is carried out through a section which operates as a part of a larger substantive agency -- twenty-four states using a tax collection agency, one state using a division of its Attorney General's Office, one state using a division of its Department of Public Safety, and one state using a Department of Weights and Measures. Enforcement activities in three states, including Texas, involve investigation of complaints regarding amusement machines from consumers and licensees. Twenty-four states provide for enforcement activities related to compliance with taxation requirements. In Texas, the agency also conducts investigations for compliance with taxation requirements.

### **III. REVIEW OF OPERATIONS**

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

#### **Organization and Objectives**

The legislature, through the enactment of Senate Bill No. 869 in 1975, mandated the Texas Amusement Machine Commission to regulate the coin-operated amusement machine industry. The act requires that an annual occupation tax be paid on every coin-operated amusement machine in the state. Exceptions to the taxing requirement include service-related machines such as pay telephones and merchandise vending machines such as beverage dispensing machines. No person is permitted to engage in business to buy, sell, lease, manufacture, repair, or transport any music, skill, or pleasure coin-operated machine without a license issued by the commission. Persons who own and operate coin-operated machines exclusively on their own premises and in connection with their own businesses are exempt from licensing and record-keeping requirements of the law; however, they must register their machines with the commission and obtain a registration certificate. Exemptions to the taxing, licensing, and registration requirements are provided for machines owned for personal use in a private residence and for religious, charitable, educational, and benevolent organizations. Regulation is accomplished through licensing persons who meet statutory requirements, issuing registration certificates to other machine owners, and taking enforcement action to obtain compliance with the law.



The Texas Amusement Machine Commission consists of three members appointed by the governor with the advice and consent of the senate. Other members are three ex-officio members or their respective nominees. The ex-officio members, who have the right to vote, are the director of the Department of Public Safety, the Consumer Credit Commissioner, and the Attorney General. None of the three appointed members are to have ever been connected with the amusement machine industry. The commission is authorized to create an advisory committee of as many as six industry representatives to assist it in the execution of its duties. Statutorily required duties of the commission include prescribing rules and regulations for taxation and licensing, holding hearings related to violations of the act with the findings forwarded to the Attorney General when necessary, and administering the provisions of the coin-operated amusement machine law.

The commission is authorized one exempt position, twenty-two designated classified positions, and one unlimited classified position for accounts examiner by the current general appropriations act. Staff for the commission currently consists of twenty-four full-time employees. Activities performed by the staff in the areas of administration, licensing, and enforcement include processing license and registration certificates, applications and renewals, processing applications for tax permits, auditing records of licensees, and investigating alleged violations of the act.

All receipts collected by the commission from license fees are deposited to the General Revenue Fund in the State Treasury. Twenty-five thousand dollars of the revenue collected by the commission from tax permits is deposited to the General Revenue Fund with one-fourth of the remaining revenue credited to the Available School Fund and three-fourths to the Omnibus Tax Clearance Fund.

Agency funds are appropriated to the commission by the legislature out of the General Revenue Fund.

### **Evaluation of Agency Activities**

The operations of the Texas Amusement Machine Commission can be broken down into three basic activities: administration, licensing, and enforcement. Below, each of these activities were reviewed to determine the degree to which agency objectives have been met. To make this determination, the evaluation focused on whether the commission has complied with statutory provisions, whether these provisions facilitate accomplishment of the agency objectives, whether agency organization, rules, and procedures are structured in a manner that contributes to cost-effective accomplishment of the agency's task, and whether procedures provide for fair and unbiased decision-making.

### **Administration**

The general objective of any administration activity is to provide for efficient operation of all agency functions. The review of these functions indicated that agency administration is generally conducted in an efficient manner. Licensee and accounting records are thorough and well organized. The agency has established adequate procedures for processing mail and handling applications during renewal periods. Because of the agency's small size, the staff is cross-trained in different areas to be capable of providing assistance where necessary. While agency management is generally efficient, two concerns with regard to the current administration procedures were identified in review of this activity.

The first concern relates to the method of payment for license fees, registration certificates, and tax permits. All payments are not required to be

guaranteed. Section 13, Article 13.17, V.T.C.S., states that the annual license fee must be in the form of a cashier's check or money order. Other fees collected by the agency do not have to be paid in this manner. This creates an inconsistent policy regarding fee payments. Two problems are associated with such a policy. First, returned "hot" checks for fee payments cause delays and additional costs in application processing. Although the agency does not receive a large number of returned checks, in each instance they require special procedures involving extra costs for the agency. When notified of a returned check by the State Treasury, the agency must initiate a procedure of tracing the returned check through agency records and files to the individual or business involved. Correspondence must be sent to the party requesting a cashier's check or money order for the outstanding amount and in some cases a visit by the field investigator is necessary. Upon receipt of sufficient payment, proper documentation must be entered on all affected records and files. This process can take up to six weeks and interrupts the processing of other applications. Returned checks cause not only delays for the commission, but also result in extra costs for the Treasury, as each "hot" check must be processed several additional times. The second problem related to the agency policy regarding method of payment relates to the agency's compliance with its enabling statute. Although the annual license fee must be in the form a cashier's check or money order, the annual occupation tax, paid at the same time, does not have to be paid in this manner. Frequently, single personal checks are returned for both license and tax permit fees. To comply with its statute, the agency would in these cases be required to refund that portion of a check remitted for the license application payment, requesting that a cashier's check or money order be returned for the license fee. The agency has elected to accept a personal check for the entire amount owed.

A consistent policy for method of fee payment is necessary to eliminate the problems associated with returned checks, and to allow the agency to comply with its statute. For these reasons the state auditor has recommended that agency policy should require all payments in the form of a cashier's check or money order. Other licensing agencies, the Alcoholic Beverage Commission for example, have instituted policies of accepting only cashier's checks or money orders. Such policies have not caused undue hardship on the affected licensees and have allowed the agencies to concentrate on their authorized duties.

The second area of concern relates to the fee charged for registration certificates. Presently, agency costs associated with registration certificate holders are not being met by the fees charged. By law, persons who own and operate coin-operated amusement machines exclusively on premises occupied by them, and in connection with their business, are exempt from licensing requirements. However, they must register with the commission and are required to pay the annual occupation tax. Most of these registration certificate holders are tavern owners, engaged in a business with a high failure rate. As a result, a large number of machines change ownership each year. New owners, unfamiliar with the requirements of the coin-operated amusement machine law, often submit improper registration and tax permit applications. Considerable time is spent by the central office and field investigators in contacting these machine owners to secure proper information and fees.

The agency charges the fee authorized by statute, but analysis shows that the fee is inadequate. The \$10 fee for registration is far exceeded by the cost (approximately \$50) of related administration and enforcement efforts. An increase in the fee charged for registration is necessary to more nearly equate the revenue produced by fees with the costs of performing the regulation.

## Licensing

The general objective of the licensing activity of the Amusement Machine Commission is to ensure that applicants have met all requirements for the issuance of licenses, registration certificates, and tax permits.

To accomplish this objective, the agency screens license applications for the statutory requirements regarding felony convictions, judgments owed the state, and declaration of coin-machine ownership. Registration applications are also reviewed for eligibility to own machines with a registration certificate. Tax permit applications are processed with both categories of machine ownership. While the licensing function generally operates well in issuing license, registration certificates, and tax permits, two aspects of the current licensing activity should be improved. These two general areas relate to licensing requirements and the renewal process.

The first particular concern with the licensing requirements relates to mandatory refusal of licensure to an applicant convicted of a felony. The coin-machine law states that the commission may not issue a license to an applicant finally convicted of a felony during the proceeding five years, or to an applicant who has been on probation or parole as a result of a felony for the preceding two years. The agency currently asks on the license application if the applicant has ever been convicted of a felony, and relies on the answer given to determine if further inquiry of the applicant regarding previous convictions is required.

As a result of an Open Records Decision in 1976, and related federal regulations, the agency does not have access to Department of Public Safety criminal history records, the primary check for felony convictions. Without this check of an applicant's criminal record, the agency is restricted in its ability to

apply this requirement. This results in the potential for inconsistency in determining eligibility for licensure. One license has been denied because of a previous felony conviction, but others ineligible by this standard could be licensed. The agency should be able to verify felony convictions or the requirement should be removed from the agency's statute.

In recent years, the state has adopted the general policy of refusing access to criminal history information for most licensing agencies to protect the privacy of individuals. This policy has limited the availability of such information except where it is critical for public safety such as to law enforcement agencies. Amusement Machine Commission licensees do not present a danger so critical as to override the state's general policy concerning access to criminal history information. Without this information, there is no consistent basis for determining whether an applicant has a felony conviction and the agency's request that the provision be deleted from the coin-operated machine law should be granted .

The second particular concern with the respect to licensing requirements relates to a provision in the agency's statute which states that the agency has the authority to deny issuance or renewal of a license if the applicant is indebted by judgment to the state. The agency presently contacts the Comptroller's Office for this information regarding every original application, denying issuance of a license until any outstanding debt is paid. This check causes delays in the licensing process for little return to the state. Of the 926 applicants checked between January 1978 and February 1980, only five were found to have an outstanding debt. Payment was actually made by only two applicants for approximately \$500. In addition, the agency estimates that license applications could be processed one week quicker without the indebtedness check. The requirement to check for indebtedness is not

related to the qualifications of an applicant to engage in the amusement machine business. Rather, the purpose of such a check is to provide a mechanism for identifying persons with debts owed the state in order to recover these costs. However, as shown above, this requirement does not achieve this objective successfully. Additionally, review of other agencies' statutes indicates that this requirement is not used by most other licensing agencies as a criteria for licensure. In view of the above, the indebtedness check should be removed from the agency's statute.

In regard to the agency's annual renewal procedures, two particular concerns were noted in review of these procedures: lack of penalties for late renewal and the timing of the renewal process. With regard to the first of these, the agency is not authorized to charge a penalty for delinquent renewal of licenses or registration certificates. Approximately one-third of the persons licensed or registered by the commission do not return their renewal applications on time. The agency must divert time of its field investigators from enforcement activities to assist the central office in dealing with delinquent renewals. Over 2,400 hours of staff time are required annually to deal with these renewals. This compares unfavorably with time and resources other licensing agencies expend performing this function. The agency has requested a statutory amendment to authorize a penalty for late renewals. Authorization of such a fee would provide the agency with a mechanism to use in reducing the number of late renewals presently encountered. This change would be consistent with the Sunset Commission recommendation with regard to standard requirements for delinquent license renewal. Coupled with this change, the agency should use authority already present in the statute to discourage late renewals. The commission can seal coin-operated machines for non-payment of the annual occupation tax. A sealed machine cannot be operated or moved until the

tax is paid along with a \$25 release fee. Occupation tax permits cannot be issued by the agency until a machine owner has applied for a license or registration certificate. The commission has, in the past, made every effort possible to immediately release sealed machines upon payment of the proper fees, even to the point of releasing machines after watching all necessary fees and renewal forms being mailed. A change in procedure which required machines to remain sealed until renewal fees were received by the central office would cause a loss of revenue for the owners of sealed machines. This loss of revenue would create an incentive to pay occupation taxes and renewal fees on time. Interviews with the agency indicated that the use of a penalty for late renewals in conjunction with the sealing of machines would significantly reduce the number of late renewals.

The second particular concern regarding annual renewal procedures relates to the time required to process renewals for licenses, registration certificates, and applications for occupation tax permits. Currently, renewal applications are mailed by the agency the first week in November and are due no later than December 31 for the next calendar year. The time required to process renewal applications and issue licenses, registration certificates, and tax permits normally exceeds two months. In reviewing this backlog condition, three contributing factors were identified. First, the information submitted on the renewal form in accordance with statute requires more examination by agency personnel than is required by most licensing agencies. Information relating to statements of machine ownership, the designation of a recordkeeper for licensees, felony convictions, indebtedness to the state, and extensions of credit by licensees must be checked for each renewal. The second factor contributing to the backlog condition is improper renewal application, particularly with regard to registration



certificate holders who comprise approximately three-fourths of the renewal applications process. The high percentage of improper renewal applications returned by this group (over twenty percent annually) can be attributed to the occupation of these certificate holders. A majority of this group are tavernowners who stay in business less than two years on the average. This results in over twenty percent of the applicants being relatively unfamiliar with the commission and its renewal requirements. The agency has taken steps to deal with the problems related to renewal applications by registration certificate holders with limited success. The third factor contributing to delays in renewal processing is the timing of the renewal period. One aspect of the timing for renewals is that with most renewals being mailed during the Christmas holidays, receipt by the agency is delayed. This results in a substantial initial backlog since renewals mailed on time may arrive as much as two weeks into January. Also holidays during this period reduce the working time available for renewal processing. A second aspect related to timing of the renewal process is that all renewals and tax permits are to be issued on the first of January, one day after the submission deadline. This creates a requirement impossible for the agency to meet.

To address this situation the agency's statute should be modified by changing the renewal period to a time other than the Christmas season to avoid problems related to seasonal factors. Additionally, the agency should be provided processing time between the submission deadline and the effective date of the renewals.

These changes, along with efforts by the agency related to registration certificates, should be made to reduce the backlog presently encountered during the renewal period.

## Enforcement

The general objective of the enforcement activity of the Amusement Machine Commission is to ensure compliance with the coin-operated amusement machine laws by identifying and, when necessary, taking appropriate action against violations of the statutes or board rules. To accomplish this objective, the commission employs a staff of fourteen field investigators divided among twelve enforcement districts. The field investigators work from their homes with their time divided among auditing licensee's records; conducting checks for tax permits, licenses, and registration certificates; and investigating complaints.

Review of agency enforcement efforts indicates extensive planning and organization to carry out the enforcement objective. The agency has been generally successful in obtaining compliance with statutory requirements regarding machine taxation; owner licensure or registration; and the 50/50 split between owners and lessees of revenue from leased machines. With regard to complaints, responses to a questionnaire sent to involved parties indicated satisfaction with the agency's procedures for complaint disposition. While the commission's enforcement activity is generally effective, two concerns were identified with respect to this function.

The first concern relates to the agency's complaint files. Exhibit III-1 indicates that the agency processes numerous complaints each year, most of which are initiated by agency inspections.

Exhibit III-1

**SOURCE AND DISPOSITION OF COMPLAINTS  
(1976-1979)**

Disposition	Source				Total
	Consumer	Licensee	Agency Inspection	Other	
License Revoked		1		1	2
Legal Action		3	1		4
Warning Issued	12	26	6	5	49
Conciliation Reached	60	112	6,228	7	6,407
No Action Required	30	39		1	70
Number Pending		2			2
Referred to Another Agency	<u>16</u>				<u>16</u>
<b>TOTAL</b>	<b>118</b>	<b>183</b>	<b>6,235*</b>	<b>14</b>	<b>6,550</b>

\*This figure includes sealing of machines by investigators for non-payment of the annual occupation tax.

The agency has an established procedure for investigations outlined in one of four field directives for use by the field investigators. This directive applies to any case that might be forwarded to the Attorney General. Unlike most licensing agencies, the commission may not revoke a license for a violation of the law. It must instead investigate allegations, hold hearings, make findings of fact, and refer cases to the Attorney General for possible revocation or other penalties authorized by the coin-operated amusement machine law. Review of complaint files shows that information from investigations is not reported in a complete, consistent manner. While it is understandable that full investigative reports cannot be made on every complaint of a non-substantive nature, more thorough documentation of substantive complaints is needed to provide a complete basis for the ensuing enforcement activity. Compliance with the agency's field directive regarding investigations, particularly with regard to subsequent follow-up activity, would

provide the agency with more complete complaint information. Such documentation would also satisfy the Sunset Commission's concern for all agencies that complaint files be adequately maintained.

The second area of concern in the area of enforcement involves the penalties specified in the law. Penalties for various violations of the Act are outlined in Section 26, Article 13.17, V.T.C.S. Problems with the wording of this section have prevented application of appropriate penalties for certain violations. Two changes in this section would correct this situation. Presently, the law specifies that use of coercion, threats or intimidation to attempt to secure a contract of lease for a coin-operated machine is unlawful; however, no penalty is designated. Violation of this section of the statute should be designated a third-degree felony as is the accompanying section regarding contracts which limit a party's right to secure the use of other coin-operated machines. Also, presently there are two subsections 4. The second 4 should be renumbered 5 and changed so that any person who violates provisions regarding extensions of credit is guilty of a Class C misdemeanor.

### **Summary**

The Texas Amusement Machine Commission is a six-member board consisting of three members appointed by the governor with the advice and consent of the senate, who are not connected with the amusement machine industry, and three ex officio members. The ex officio members have voting rights and include the Director of the Department of Public Safety, the Consumer Credit Commissioner, and the Attorney General, or their representatives.

The commission is directed by statute to tax and regulate the coin-operated amusement machine industry. The agency is funded by legislative appropriations out of the General Revenue Fund. All revenue collected by the commission is

deposited into one of three funds. Twenty-five thousand dollars is deposited in the General Revenue Fund with one-fourth of the remaining revenue credited to the Available School Fund and three-fourths to the Omnibus Tax Clearance Fund.

With regard to agency administration, the commission generally meets the objective of efficient management. However, two concerns were identified in the review. First, the law provides for an inconsistent policy regarding fee payments. License fees are required to be made by cashier's check or money order. Other fees authorized by statute do not have to be paid in this manner. Two problems have resulted from this situation. First, returned "hot" checks for fee payments cause delays in application processing and extra costs for the agency and the State Treasurer. Second, the inconsistent fee policy affects the agency's ability to comply with its statute. The agency has chosen to accept personal checks for all fee payments to avoid the difficulties associated with return of license fees not made by cashier's check or money order as required by statute. A commission policy requiring that all payments be made in the form of a cashier's check or money order would address these problems.

The second concern with administration relates to the fee charged for registration certificates. The \$10 registration fee is considerably exceeded by the cost (approximately \$50) of related administrative and enforcement efforts. An increase in the fee charged for registration would more nearly equate the revenue produced by fees with agency costs related to registration certificates.

A review of the licensing activity of the commission indicates that the agency generally ensures that applicants have met requirements for the issuance of licenses, registration certificates, and tax permits. However, two areas of concern related to the licensing activity were identified during the review and deal with

licensing requirements and the renewal process. The first particular concern with licensing requirements relates to mandatory refusal of licensure to an applicant convicted of a felony. Since the agency does not have access to criminal history records as a result of federal and state policies limiting access to such information, the agency does not have a consistent method to apply this standard. Deletion of the licensing requirement regarding felony convictions would remove the potential for inconsistent standards caused by the limited information which can be secured on the license application.

A second particular concern with licensing requirements relates to a provision in the agency's statutes which state that the agency has the authority to deny issuance or renewal of a license if the applicant is indebted by judgment to the state. The agency contacts the Comptroller of Public Accounts for this information, causing delays in the licensing process for little monetary return to the state. Removing the indebtedness check from the agency's statute, would eliminate a requirement not found in most other licensing agencies, and one which has produced little in terms of results.

The second area of concern with licensing deals with the agency's annual renewal procedures. Current renewal procedures are deficient due to the lack of penalties authorized for delinquent renewals of licenses or registration certificates. Authorization of penalties would provide the agency with a mechanism to use in reducing the number of late renewals. In addition, the agency has available an enforcement mechanism which can be used to help discourage late renewals. The agency has the authority to seal machines for non-payment of the annual occupation tax. Occupation tax permits cannot be issued by the agency until a machine owner has applied for a license or registration certificate. The agency should change procedures to keep machines sealed until the renewal fees were

received by the central office, thus causing a loss of revenue to the owners of the machines during the sealed period. This loss of revenue would create an incentive to pay tax and renewal fees when due.

The second particular concern regarding annual renewal procedures relates to the time required to process renewals for licenses, registration certificates, and applications for occupation tax permits. The processing time normally requires two months. Three contributing factors were identified relating to this backlog condition. First, information on renewal applications requires more examination than most renewal forms. Second, improper application is often encountered, particularly among renewals of registration certificates. The agency has had only limited success in dealing with these two factors. The third contributing factor is the timing of the renewal period. The deadline for renewal submission is December 31. Most renewals are mailed during the Christmas holidays which delays receipt by the agency. Holidays for agency personnel during this period reduce time available for renewal processing, which is required by law to be completed one day after the submission deadline. The statute should be modified to change the renewal period to a time other than the Christmas season. An additional statutory change should be made to provide the agency with processing time between the submission deadline and the effective date of renewals.

Two concerns were identified with regard to enforcement activities of the agency. The first concern is that a more thorough documentation of substantive complaints is needed to provide a complete basis for holding hearings and making findings of fact, in cases which could lead to referral to the Attorney General for revocation or other penalties. The second area of concern involves penalties specified in the law. Certain typographical errors in Section 26, Article 13.17, V.T.C.S. along with the wording of this section have prevented application of

appropriate penalties for certain violations. Two changes in this section are needed to correct this situation. First, the penalty for violation of the section related to the use of coercion, threat or intimidation in an attempt to secure a machine location should be designated as a third-degree felony. Second, provisions of the Act should be renumbered and changed so that any person who violates provisions regarding extensions of credit is guilty of a Class C misdemeanor as was originally intended.



#### **IV. ALTERNATIVES AND CONSTRAINTS**

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

##### **Consolidation Alternatives**

Organizational structures in other states were reviewed in order to identify consolidation alternatives with potential for use in Texas. The review indicated that there are twenty-six other states that provide for taxation of coin-operated amusement machines, either through taxation of the revenue produced by the machines or by placement of a tax on the machines themselves. Of these states, six have chosen to provide further control through regulation of the amusement machine industry. Regardless of the extent of control, all twenty-six states have chosen to consolidate their activities related to amusement machines within an agency with other substantive responsibilities. Twenty-four states use a tax collection agency, one state uses a division of its Attorney General's Office, and one state uses a division of its Department of Public Safety.

All of the consolidation alternatives identified in other states, a tax collection agency - the Comptroller of Public Accounts, an Attorney General's Office, and a Department of Public Safety are available for consideration in Texas. In addition, one other agency can be considered as a possible alternative. The

Texas Alcoholic Beverage Commission presently performs regulation of the alcoholic beverage industry in a manner similar to that provided for the amusement machine industry.

To determine the feasibility of these options, each agency was reviewed to determine whether its goals and functions were reasonably compatible with those of the Amusement Machine Commission. In addition, possible alternatives were considered from the standpoint of whether consolidation of functions would result in identifiable benefits. Analysis of the organizational alternatives available in Texas indicates that the Attorney General's Office and the Department of Public Safety do not perform functions which closely enough resemble those of the Amusement Machine Commission to offer reasonable consolidation potential. Review of the Comptroller of Public Accounts and the Alcoholic Beverage Commission indicate that both would satisfy the requirements of closely related operations with identifiable benefits from consolidation.

The Alcoholic Beverage Commission would provide consolidation benefits derived, in part, from the agency's structure. Its present organization which performs regulation of the liquor industry through administrative, enforcement, and auditing divisions could assume regulatory responsibility for amusement machine regulation as well. The potential for savings also exists because the agency presently performs many functions similar to the Amusement Machine Commission such as: 1) processing license applications and renewals; 2) issuing permits; 3) performing audits to assure compliance with agency regulations; and 4) holding hearings for enforcement purposes. In addition, since many of the same establishments are subject to enforcement efforts by both agencies, the potential for increased efficiency exists by providing both regulatory functions from the

Alcoholic Beverage Commission's network of field offices. Finally, although similar numbers of licensing and enforcement personnel would be required by either agency, reduction of three administrative positions and commission member per diem and travel would directly result from combination of the two regulatory responsibilities.

Analysis of organizational alternatives to an independent commission indicates that consolidation with the Comptroller of Public Accounts also offers several benefits. This agency has all of the on-going functional areas necessary to perform the taxation and regulatory aspects of the coin-operated amusement machine law. In addition, because the Comptroller of Public Accounts was responsible for this regulation until responsibility was transferred to the newly formed Texas Vending Commission in 1971, the agency could draw from its previous experience. Benefits associated with this alternative are in many ways similar to those related to consolidation with the Alcoholic Beverage Commission. The Comptroller of Public Accounts is also involved in tax collection with a network of enforcement and audit offices to assist in regulatory functions. However, as a result of the size staff available within the Comptroller of Public Accounts, estimates of savings to result from this alternative are substantially more than those identified with the Alcoholic Beverage Commission. Based on a fiscal note prepared for proposed merger legislation in the Sixty-sixth Legislative Session, cost reductions would be approximately \$100,000 in the first year after inclusion of initial start-up costs. Savings thereafter would approach \$350,000 annually. These estimated savings indicate that the Comptroller of Public Accounts would be the organizational alternative best able to provide identifiable benefits resulting from closely related responsibilities.

### **Functional Alternatives**

In addition to the various organizational structures available to regulate the amusement machine industry, a number of functional methods could be used to provide varying degrees over control on the amusement machine industry. These functional alternatives include regulation, taxation, and no state control with local authorities responsible for taxation or regulation. All of these alternatives are presently employed, in some form, by other states.

Twenty-two states have chosen not to provide state control of amusement machines leaving taxation or regulation to the discretion of local authorities. In a majority of these states, control is limited to taxation. Another functional alternative, found in fifteen states, is taxation of revenue produced by amusement machines. A majority of these states combine this form of taxation with that found in Texas - a tax on the machines themselves. The third functional alternative is actual regulation of the industry, found in five other states. Regulation involves licensing those engaged in the amusement machine business, and taxation of machines. One state places additional restriction on the industry through prohibition of loans from owners of amusement machines to persons engaged in the sale of alcoholic beverages.

Each of these functional alternatives was considered to determine if it presented a reasonable alternative to the current method of control in Texas. Each alternative was evaluated to determine if it offered at least the same degree of protection as the current method, and whether it would be less restrictive than the present system.

With respect to the functional alternatives identified, analysis indicates that none of the options offer the same degree of protection within the industry, and

are less restrictive. The regulatory alternative related to the prohibition of loans between machine owners and tavern owners would clearly address one area of potential abuse in the industry, but would also create an additional restriction on a financial source currently available to tavern owners. Reducing state control to taxation only, would leave the industry free of licensing and regulatory requirements, but would again create the potential for the types of abuses which were alleged to have occurred prior to state regulation. Use of such a method, however, would make Texas consistent with the predominate form of amusement machine control used by other states.

Another alternative would be for the state to provide regulatory control at the discretion of local authorities. However, because most cities and counties do not presently use their authority to levy amusement machine license fees and occupation taxes, it can be assumed that many local jurisdictions would not exercise optional regulatory control on the amusement machine industry. Also, even if state legislation required local regulatory control, the decentralized nature of the industry would prevent effective regulation by most cities and counties.

### Summary

A review of consolidation alternatives found in other states as well as Texas was conducted to determine the potential for combining regulation of the coin-operated amusement machine industry with the functions of another agency. Currently, twenty-six states provide for taxation of coin-operated amusement machines, either through taxation of the revenues produced by the machines or by the placement of a tax on the machines themselves. Six of these states provide further control through the regulation of the amusement machine industry. Only Texas has a separate agency to tax and regulate coin-operated amusement

machines; the other states have consolidated amusement machines within an agency with other substantive responsibility. Four state agencies were considered as being able to handle the functions of the Amusement Machine Commission; the Attorney General's Office, the Department of Public Safety, the Alcoholic Beverage Commission, and the Comptroller of Public Accounts.

Analysis of the Attorney General's Office and the Department of Public Safety indicates that neither performs functions which closely enough resemble those of the Amusement Machine Commission.

The Alcoholic Beverage Commission performs similar functions to that of the Amusement Machine Commission such as: 1) processing license applications and renewals; 2) issuing permits; 3) performing audits to assure compliance with agency regulations; and 4) holding hearings for enforcement purposes. Since both agencies direct enforcement efforts toward many of the same establishments a higher degree of efficiency would exist if they were combined using the Alcoholic Beverage Commission's network of field offices.

Analysis reveals that consolidation with the Comptroller of Public Accounts would best satisfy the requirements for consolidation. This agency has the functional areas necessary to perform the taxation and regulatory aspects of the coin machine law, a responsibility it had prior to 1971 when the Texas Vending Commission was created. Cost reductions are estimated to be \$100,000 the first year with annual savings of \$350,000 thereafter.

In addition to the three types of organizational structures listed above, there are a number of functional methods that could be used to provide varying degrees of control to the coin-operated amusement machine industry. These functional alternatives include regulation, taxation, and no state control with local authorities

responsible for taxation and control. Other states, in some form, use all of these alternatives in some degree.

Twenty-two states have no state control, leaving taxation and regulation of amusement machines to local authorities. Taxation of machines is the only control in a majority of these states. Fifteen states tax revenue generated by amusement machines. Many states combine this form of taxation with that found in Texas, a tax on the machines themselves. Five states license those engaged in the amusement machine business and tax the machines.

All functional alternatives were analyzed to determine if they offered at least the same degree of protection as the current control in Texas and if they would be less restrictive than the present system. With respect to the functional alternatives identified, analysis indicates that none of the options presently used by other states offer the same degree of protection while imposing a lesser degree of restrictiveness. However, of the less restrictive methods of amusement machine control used by other states, taxation of machines either by local or state authorities is found most frequently.

## **V. COMPLIANCE**

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

In its efforts to protect the public through licensing and enforcement, the agency's operation should be structured in a manner that is fair and impartial to all interests. The degree to which the objective is met can be partially judged on the basis of potential conflicts of interests in the agency organization and operation, as well as agency compliance with statutes relating to conflicts of interest, open meetings, and open records.

### **Conflict of Interest**

Commission members, as appointed officers of a major state agency, are subject to statutory standards of conduct, conflict of interest, and financial statement reporting provisions (Article 6252-9b, V.A.C.S.). A review of documents filed with the Office of the Secretary of State indicates that all commission members and the executive director of the agency have filed financial statements as required by the state's general statute dealing with conflict of interest. The agency's statute requires that no commission member shall be or have ever been an "owner" or "operator" of any coin-operated amusement machine. A review of financial statements submitted shows no conflict of interest or financial connections with the coin-operated amusement machine industry.



### **Open Meetings - Open Records**

Meetings and activities of the Amusement Machine Commission have been conducted in compliance with the requirements of the Texas Open Meetings Act and the Texas Open Records Act. As evidenced by the commission's minutes and publications in the Texas Register, commission meetings have been preceded by adequate and timely notice to the public and proper procedure has been followed with regard to executive sessions.

With respect to the Open Records Act, the Amusement Machine Commission in compliance with Section 12 (7) of its enabling statute considers information on licensee applications to be confidential, with the exception of statements relating to machine ownership. This information regarding ownership is made available to the public, at cost, upon request. The agency maintains separate files on all coin-operated movie machines which provide a readily available source of many pornography locations throughout the state. The commission complies with its authorization under Section 4, Article 13.17 to "disclose confidential information to appropriate officials" by releasing information to state and local law enforcement authorities upon proper request. The only other agency records held as confidential are employee evaluations. Agency personnel are aware of the confidential nature of some of their files and follow agency policy which requires that all requests for information be directed to one of three individuals who have been designated to give information to the public.

### **Employment Policies**

During the review it was noted that the agency had not submitted an affirmative action plan. Interviews with the agency and the Governor's Office disclosed that two portions of the plan, the agency policy statement and the agency

grievance procedure, had been submitted. The rest of the plan was submitted to the Governor's Office during the review after the agency was informed about the filing requirements related to employment plans. The agency has never received a formal complaint in the area of employment practices.

An analysis of the commission's work force at the time of review indicates that out of 17 persons in the professional category, four (23%) were female, three (18%) were Hispanics, and one (6%) was black, while nine (53%) were white males.

### Summary

Review of agency procedures indicate that the commission is in compliance with the requirements relating to conflict of interest, the Open Meetings Act, and the Open Records Act. With respect to open records, agency procedures have been developed for formal requests for information, in order to comply with confidentiality requirements in its enabling legislation and also to answer requests for material that is not specifically declared confidential. With respect to employment practices, the commission has completed an affirmative action plan and has not received any formal complaints concerning its employment practices.

## VI. PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in operations compatible with the objectives of the agency.

The degree to which the agency has involved the public in the decisions of the agency can be judged on the basis of agency compliance with statutory provisions regarding public participation, the availability of information concerning rules and agency operations, and the existence of public members on the commission.

### Agency Activities

Review of agency records indicates that the commission has adopted three rule changes in the last four years. The rule changes dealt with the placement of tax permits on amusement machines, the definition of what constitutes a separate machine for taxing purposes, and the exclusion of federal post exchanges from taxation by the commission due to Attorney General's Opinion No. H-1307 (1978). The adoption of these rules has been in compliance with public participation requirements found in the Administrative Procedures Act. In addition, the agency conducted information seminars in eight cities around the state for those affected by the changes relating to tax permits. The commission publishes and distributes free of charge copies of the laws relating to coin-operated amusement machines and agency rules of procedure to licensees, new applicants, and to the general public on request.

### **Public Membership**

The viewpoint of the general public is represented in the activities of the commission as all members may be considered representatives of the general public. By statute, none of the three appointed members may be or have ever been associated through ownership or leasing arrangements with the coin-operated amusement machine business. The three other voting members of the commission, all ex-officio, are the director of the Department of Public Safety, the Commissioner of Consumer Credit, and the Attorney General, or a representative of each. The industry input into the activities of the commission is accomplished through an advisory committee composed of industry representatives who serve at the pleasure of the commission.

### **Summary**

The agency has encouraged public participation in its rule-making activities through compliance with requirements of the Administrative Procedures Act. The agency has made an effort to inform the public and its licensees as to its operations and rule changes by conducting public seminars and distributing without charge the coin-machine law and agency rules of procedures. In addition, the point of view of the general public is represented on the commission through its current composition.

## VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purpose of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and the statutory changes recommended by the agency for the improvement of the regulatory function performed.

### Past Legislative Action

Enabling legislation for the regulation of coin-operated amusement machines has changed four times since its passage in 1969. The legislation passed by the Sixty-first Legislature in 1969, was designed to provide comprehensive regulation of the music, skill, or pleasure coin-operated machine industry. Responsibility for this regulation was placed with the Comptroller of Public Accounts. The key provisions were: 1) persons engaged in businesses of leasing and selling coin-operated music, skill, or pleasure machines were required to be licensed; 2) persons required to obtain an on-premise alcoholic beverage license were prohibited from obtaining a vending license; and 3) owners of machines could not pay more than fifty percent of the revenue from such machines to lessees.

In 1971, the Sixty-second Legislature adopted the first change to this regulatory structure by creating the Texas Vending Commission which was given the regulatory and tax collecting responsibilities for the coin-operated amusement machine industry that had been performed by the comptroller's office. This legislation (Senate Bill No. 268) included three members of the amusement machine industry on the nine-member commission. In 1973, Senate Bill No. 710,

Sixty-third Legislature, changed the agency's name to the Texas Amusement Machine Commission.

In 1975, Senate Bill No. 869, Sixty-fourth Legislature reorganized the commission by removing those commission members who represented the amusement machine industry. Other provisions of this bill included: 1) allowing ownership of coin-operated amusement machines by tavern owners; 2) requiring coin-operated machine businesses to secure licenses in one of three categories (general business, repair or import); 3) requiring a registration certificate for all other machine owners; and 4) maintaining regulation of the 50/50 split of machine revenues. The Texas Sunset Act (Senate Bill No. 64) of the Sixty-fifth Legislature, 1977, provided for the abolition of the commission unless recreated by the legislature.

### **Proposed Legislative Action**

In addition to the adopted legislation discussed above, three legislative proposals were introduced during the past three sessions which would have affected the agency. Two proposals, Senate Bill No. 986 in the Sixty-fourth Legislature (1975) and House Bill No. 1470 in the Sixty-sixth Legislature (1979) would have abolished the Amusement Machine Commission and transferred its duties to the Comptroller's Office. Senate Bill No. 1230 in the Sixty-fifth Legislature (1977) would have prorated on a monthly basis taxes paid on amusement machines.

The commission has proposed no legislation in the past three legislative sessions but recommends three modifications of its law in its self-evaluation report. Penalties for delinquent renewals of licenses and registration certificates are recommended since no such provisions exist in the current law. The commission also recommends that Section 26, Article 13.17, V.T.C.S., be reworded

and renumbered to correct unintentional errors in the legislation. Finally the commission recommends that stronger safeguards be established for consumers with regard to salesmen of coin-operated machines. They suggest that salesmen of coin-operated machines be required to meet residency requirements, post bonds, and obtain licenses.

### **Summary**

The agency's enabling legislation has been amended three times since the inception of the Texas Vending Commission in 1971. Its name was changed in 1973 to the Texas Amusement Machine Commission and in 1975 Senate Bill No. 869 completely reorganized the agency to address problems that had been identified by legislative investigations and court decisions. The commission was made subject to the Texas Sunset Act in 1977.

Three unsuccessful bills have been proposed to modify the commission's statute during the last three legislative sessions. Two of the proposals would have abolished the Amusement Machine Commission and transferred its duties to the Comptroller of Public Accounts while the third proposal would have prorated by month taxes paid on amusement machines.

The Amusement Machine Commission requested three legislative changes in its self-evaluation report: 1) to provide penalties for delinquent license renewals; 2) to correct typographical errors; and 3) to require that salesmen of coin-operated machines meet residency requirements, post bonds, and obtain licenses.