

TEXAS STATE BOARD OF PLUMBING EXAMINERS

Staff Report
to the
Sunset Advisory Commission

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February 21, 1980

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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 Texas State Board of Plumbing Examiners, 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, Other 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 Other 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 regulation of plumbing began in 1897 with the enactment of legislation requiring local plumbing codes, inspections, and licensing in all towns. This legislation was intended to protect the public from the increasingly serious and widespread health problems that could arise from the use of improper plumbing practices. This increasing danger to the public resulted from the linkage of increasing numbers of individual water and sewer connections in the rapidly growing urban areas of the state.

With the passage of time, problems became apparent in the local nature of this regulatory approach. Mobility of plumbers was limited, since requirements varied from city to city. In addition, there was little assurance that any individual jurisdiction would provide at least a minimum level of protection against plumber incompetency. Thus, in 1947 the Fiftieth Legislature responded to these problems by repealing the local licensing elements of the law and passing a state licensing law to be administered by a new agency, the State Board of Plumbing Examiners. Apart from the regulation of plumbers, this act also directed any city with a population of 5,000 or more to establish a plumbing ordinance, and to require permits and inspections for all plumbing work.

The regulatory activities of the Board of Plumbing Examiners are carried out under the policy direction of a six-member board composed of two licensed plumbers and four non-plumbers chosen from occupations relating to building construction and sanitation. Board activities include examining and licensing qualified plumbers and plumbing inspectors. The board is also granted the authority to hold hearings and to revoke licenses.

The board operates outside the State Treasury and is therefore not subject to

the appropriations process. The agency is supported exclusively from revenues generated through its licensing activities relative to approximately 19,000 plumbers and 900 plumbing inspectors.

Review of board operation's reveals that the regulatory activities of the board generally serve to ensure an adequate level of public protection. In the area of administration, licensee and accounting records are generally thorough and well organized, and licenses are renewed without major backlogs. Three concerns, however, were noted with regard to administration. First, the agency uses a manual system for carrying out its various licensing procedures such as license renewal and roster preparation. Given the agency's 20,000 licensees, the cost in both dollars and time to use this manual system is high when compared to the costs associated with the use of an automated system. The second area of concern relates to the agency's fund balances. The agency maintains large fund balances even though this practice is in conflict with its enabling statute and an attorney general's opinion. The third concern results from the fact that the agency is currently authorized to maintain its funds outside the treasury and is therefore not included in the appropriations process of the state. As a result, the agency is not required to, and does not, consistently follow standards for efficient and accountable management applied to agencies included in the appropriations process. Examples of areas where these standards have not been consistently followed include agency practices regarding voucher approvals, bidding procedures, and funds investment.

With respect to the licensing function, the review indicated that, while generally insuring a minimum level of licensee competency, there are several aspects of the licensing activity which could be improved. First, testing facilities

are underutilized, even though there is a backlog of approximately one month in persons scheduled to take the examination. Review shows that underutilization results from the failure of five to ten percent of scheduled examinees to appear. Second, the fee structure mandated by statute for both the journeyman examination and license are low when compared with the costs of the services provided. Third, unlike many other licensing agencies, the board's enabling statute does not authorize a fee for the issuance of duplicate licenses, therefore, the burden for bearing this cost falls broadly across the licensee group rather than on the persons requiring this specialized service. Fourth, the board has developed no written policies or procedures to explain the process it has set up to determine whether a claimed hardship is sufficient to waive the experience prerequisite for the master plumber examination. Lack of such procedures may have contributed to the relatively high number of persons refused hardship waivers in the past. Fifth, the board's statute requires that licensees be of "good moral character." This determination has become increasingly difficult and subjective in recent years as a result of the state policy limiting access to the state's criminal history records. Due to the difficulties involved in determining good moral character, the agency has requested that the provision be removed from its statute. Finally, the board is not authorized to accept a plumber's license from another state as proof of competency for licensure in Texas. Licensees from other states regardless of experience must take and pass the board examination to qualify for licensure.

In the area of enforcement, the review indicated two concerns. First, the board's use of its revocation authority has been completely unused during the past 20 years. This situation has resulted from the vague statutory grounds for revocation and from the requirement that a formal request be made by a city before revocation proceedings can be initiated. The absence of revocation as a

workable enforcement tool is reflected in the nature of the complaint records maintained by the agency. Compared to the files of other licensing agencies with revocation power, the board's records are incomplete and generally lack sufficient information to support a revocation hearing. Second, the review indicated that the board is authorized the use of two penalties: revocation and a class C misdemeanor. With only these two remedies of opposite extremes available for agency use, no appropriate penalty can be applied to a wide range of violations.

Apart from the concerns relating to agency operations and procedures identified above, a final concern can be identified with respect to the composition of the agency's board. While the agency's statute calls for representation of plumbers as well as specialized users of plumbing services on the board, no direct representation is provided for the general public or city plumbing inspectors.

Need to Regulate

As in the case of other regulated activities, regulation of plumbers should be undertaken by the state only when there is a continuing need to protect the public health, safety, or welfare. Conditions that existed prior to 1897 indicated that public harm could result from improper plumbing practices. In response to the need to protect the public, legislation was passed requiring cities to regulate plumbing through licensing of plumbers and inspections of plumbing work. Over time, it became apparent that the local nature of the regulation was not adequately addressing problems related to plumbing. A uniform level of competency for plumbers across the state was necessary to better protect the public health. In response, the legislature provided for licensing by the state, with inspection of plumbing work to be continued by local jurisdictions.

Present conditions indicate that the need to protect the public has grown still larger over time with the increased number of people interconnected through water

and sewer systems. This growth has increased the potential harm which can result from improper plumbing practices. It can be concluded, therefore, that regulation to ensure both adequate plumbing and a minimum level of competency for those engaged in plumbing is necessary to protect the public health.

If state competency testing of plumbers through the present licensing method or other regulatory forms were eliminated, local jurisdictions would again assume all responsibility for ensuring plumber competency. Problems similar to those present prior to the board's establishment in 1947 would probably result from this approach. With no uniform competency standard, there would be little assurance that the testing efforts of any individual city would effectively screen out plumbers with inadequate knowledge of safe plumbing practices. Another problem would be the reduced ability of plumbers to freely practice their trade resulting from varying requirements and restrictions imposed by different cities.

The need for state plumbing regulation can be met through means other than the current state licensure process with its annual renewal approach. Although this process provides an adequate means of regulation, other state regulatory options are available that can provide the present level of protection to the public with less restrictiveness to plumbers. Moreover, necessary regulation for plumbers could be reasonably provided not only through the current independent board arrangement but also through a consolidated organizational approach. Although several other states besides Texas have created agencies with the exclusive purpose of regulating plumbers, most states have placed responsibility for such regulation in agencies with other responsibilities, such as an "umbrella" department of occupational licensing or a department of health.

Alternatives

If the legislature determines that the state's current regulatory method and/or the board should be continued, the following alternatives could be considered:

1. CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS.

This approach would maintain an independent board to perform licensing and enforcement activities. The review indicated that the following modifications would result in more effective regulation of the plumbing occupation:

- a) investigate the possible use of an automated system for licensing and roster functions (page 16);
- b) amend the statute to cause excess funds over a prescribed limit to revert to the General Revenue Fund (page 18);
- c) amend the statute to place agency funds in the Treasury, thereby making the agency subject to the state's appropriations process (page 18);
- d) establish a policy for non-refundable examination fees (page 21);
- e) amend the statute so that journeyman examination and licensing fees are increased to better cover costs (page 22);
- f) provide statutory authority which allows the board to charge a fee for issuance of duplicate licenses (page 23)
- g) develop rules establishing guidelines for hardship waivers related to experience requirements for the the master's examination (page 23);
- h) amend the statute to remove the licensing qualification of "good moral character" (page 24);
- i) amend the statute to authorize the agency to accept licenses from other states on an endorsement basis as grounds for licensure (page 25);
- j) amend the statute to clarify the agency's revocation authority (page 27);

k) restructure agency complaint files to provide all necessary documentation to support revocation proceedings (page 28);

l) amend the statute to provide a range of penalties to be used by the agency to encourage compliance with the licensing act (page 29);

m) amend the statute to modify the board composition to include a plumbing inspector and two representatives of the general public (page 44).

2. ABOLISH THE BOARD AND TRANSFER ITS CURRENT REGULATORY FUNCTIONS TO THE DEPARTMENT OF HEALTH.

This approach would combine the regulation of plumbers into a state agency having generally compatible goals and functions. The department is involved in areas substantively related to the Board of Plumbing Examiners through its functions dealing with protection of public water supplies and wastewater treatment systems. In addition, the Department of Health performs regulatory functions similar to those carried out by the board.

A number of benefits could be derived through this merger alternative. The Department's regional offices could be used to respond promptly to complaints and other enforcement responsibilities. The Department's support services staff with full-time responsibility for public health education could efficiently assume the training and information services presently provided by the Board of Plumbing Examiners' field representatives. Finally, data processing services available within the Department could be used to improve the present procedures used for licensing plumbers.

Regardless of organizational arrangement, the following method of regulation could be considered as an alternative to the present system:

3. REPLACE THE PRESENT LICENSING METHOD AND ITS ANNUAL RENEWAL PROCESS WITH AN APPROACH WHICH REQUIRES ONE-TIME CERTIFICATION OF COMPETENCY.

In comparison to the present licensing system, the certification approach provides a similar level of public protection through a less restrictive regulatory method. The public would continue to be protected through state competency testing of plumbers and plumbing inspectors, and current experience require-

ments could be maintained. While no state enforcement activities are included in the one-time certification approach, the enforcement operations of the board are of a different nature than those of other licensing agencies. The present system of local permits and inspections would continue to be the state's principle method of assuring the adequacy of plumbing work.

Various benefits result from use of a one-time certification process. This method is less restrictive than the current licensing process in that plumbers and city plumbing inspectors would not be required to renew their licenses each year. In addition, the state's cost for the regulation of plumbers would be reduced since staff and materials currently required to perform annual renewal functions would not be needed.

II. BACKGROUND

Historical Perspective

The Texas State Board of Plumbing Examiners was established in 1947 by the Fiftieth Legislature. However, the state's involvement in the regulation of plumbing began in 1897 -- 50 years prior to the board's establishment. The reasons underlying creation of the board can be identified by briefly tracing these early regulatory efforts.

Initial state involvement in the area of plumbing at the end of the nineteenth century was stimulated by the settlement and growth of towns and cities across the state. The growth of these urban concentrations increased the potential for public harm resulting from contaminated water supplies or unsanitary sewage disposal brought about through improper plumbing practices. Responding to this public concern, in 1897 the Twentieth Legislature enacted legislation that directed each city to: 1) pass ordinances regulating plumbing practices, 2) create a board to examine and license plumbers, and 3) provide for plumbing inspections. Penalties were established for practicing without a license. Throughout the 50 years that this law was in effect, its provisions remained essentially unchanged except for one significant modification in 1925. This change exempted cities with a population under 5,000 from the requirements of the act.

In operating under this first law, two areas of difficulty relating to the local nature of the regulation became apparent over time. First, licensing requirements varied greatly among cities. As a result, the state had little assurance that the licensing efforts of any individual city would effectively screen out plumbers with inadequate knowledge of safe plumbing practices. Second, licenses were valid only

in the issuing jurisdiction, severely limiting the ability of licensed plumbers to freely practice their trade.

The lack of mobility of plumbers created a significant problem immediately following World War II. In that period, various areas of the state were experiencing an unprecedented demand for new housing and, thus, plumbing services. However, home builders were hampered in their efforts to secure additional and necessary plumbing services due to local licensing restrictions.

In 1947, the Fiftieth Legislature responded to these problems by repealing the local licensing law and passing a state licensing law to be administered by a new agency, the State Board of Plumbing Examiners. The act directed the board to examine and license qualified plumbers and plumbing inspectors, thus removing these functions from city jurisdiction. The board was also given the authority to revoke licenses, with penal provisions established for offenses under the act. In addition, any city with a population of 5,000 or more was directed to establish a plumbing ordinance and require permits and inspections for plumbing. Since its enactment in 1947, this uniform licensing law has been modified only slightly.

The regulatory activities of the agency are carried out under the policy direction of a six-member board composed of two licensed plumbers and four non-plumbers chosen from occupations relating to building construction and sanitation. The board employs a staff of 18 full-time employees to carry out its regulatory responsibilities with respect to its licensee population of approximately 18,000 plumbers and 800 plumbing inspectors.

It should be noted that the board operates outside the State Treasury and is supported exclusively on revenues generated through its licensing activities. In calendar year 1978, the board expended \$486,631 in carrying out its responsibilities and collected \$565,973 in fees and other revenues.

Comparative Analysis

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

The need to regulate plumbers is currently expressed through statewide licensing requirements imposed by 30 of the 50 states surveyed. From the standpoint of organizational patterns, 6 states, including Texas, meet this expressed need through state agencies regulating only plumbers. In 12 states, the function is carried out through governmental departments charged with the regulation of multiple occupations. In another 12 states, plumbers are regulated by a board of a section which operates as part of a larger substantive agency such as a Department of Health or a Department of Labor.

In those states which utilize boards and commissions, the chief executive appoints board members in 20 states, and 7 of these states require that appointees be confirmed by the legislature. Membership in all but four states includes both persons who are licensed members of the occupation and persons who are not. In Texas, board members are appointed by the Governor, confirmed by the legislature, and membership is predominately persons who are not licensed members of the occupation. Sixty-three percent of the states, as does Texas, utilize governing bodies with the responsibility of policy-making as distinguished from a strictly advisory role.

A majority of the states, including Texas, indicate that the regulatory body, regardless of organizational form, is totally supported by fees collected. Eleven states indicate that these bodies are not solely supported by fees and charges of the agency.

Twenty-six of the state boards which regulate plumbers administer a licensing examination which in 15 states, as in Texas, includes a practical portion. In 20 states, licensees are required to renew their licenses annually. Texas licenses for a one-year period. Enforcement activities in 21 states involve investigation of complaints from consumers and those engaged in the occupation of plumbing. Disciplinary hearings are conducted by the regulatory agency in 23 states. In Texas, the agency is authorized to conduct disciplinary hearings.

States which regulate plumbers generally indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement.

III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes 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 the Plumbing License Law, mandated the Board of Plumbing Examiners to regulate all persons who engage in plumbing as a primary occupation and any person acting in the capacity of a city plumbing inspector. Major exceptions to the licensing requirements include exemptions for: 1) plumbing work done by homeowners; 2) plumbing work done outside the city limits; and 3) within any city with a population of less than 5,000 unless required by city ordinance. Additionally, the Act requires every city with a population of 5,000 or more to adopt an ordinance which establishes a plumbing code and requires permits and inspections for plumbing work. The regulation mandated by statute is accomplished through the licensure of qualified plumbers, and through agency enforcement efforts directed at obtaining compliance with the requirements of the law.

The Board of Plumbing Examiners is a six-member body appointed by the governor with the advise and consent of the senate for six-year terms. To be qualified for appointment to the board, a person must be a citizen of the state. The board composition must include two plumbers, one with ten years practical

experience as a master plumber, and the other with five years practical experience as a journeyman plumber; a licensed architect; a licensed sanitary engineer; and two building contractors with five years experience in specified fields. Statutorily required duties of the board include prescribing and enforcing rules and regulations for examination and licensing, issuance of licenses, and holding hearings for revocation of a license.

Staff for the board consists of an administration and 17 full-time employees. Agency personnel carry out the following major activities: give examinations for the journeyman, master, or city plumbing inspector licenses; issue new licenses and process renewals; perform license compliance checks; conduct training and information sessions; and prepare a roster of licensed plumbers.

The board is funded exclusively through fees collected under the provisions of the Act. Fee maximums are set by statute and include those for examinations, licenses, and renewals. These funds are not required to be placed in the State Treasury, and the agency does not receive funds for operation through legislative appropriations. Statutory provisions require that if any funds remain in excess of expenses at the year's end, fees be reduced to bring income more in line with expenses.

Evaluation of Agency Activities

As with most other licensing agencies, the operations of the Board of Plumbing Examiners can be broken down into three basic activities: administration, licensing, and enforcement. Below, each of these activities was reviewed to determine the degree to which agency objectives have been met. To make this determination, the evaluation focused on whether the board has complied with statutory provisions, whether these provisions facilitate accomplishment of the

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 the efficient operation of all agency functions. The review of these activities indicated that licensee and accounting records are generally thorough and well organized. Additionally, licenses are renewed without major backlogs and, as a result of recent procedural changes, all receipts are promptly endorsed and recorded. While agency management is generally efficient, three aspects of the current process could be improved.

The first area concerns the manual system presently used for license renewal and roster preparation. In order for the agency to send renewal forms to licensees, the name and address of each licensee must be individually typed by agency personnel. As shown in Exhibit III-1, however, the number of licensees has continued to grow and with it the personnel time required to type mailing labels for all plumbers and plumbing inspectors has increased.

Exhibit III-1
NUMBER OF LICENSES ISSUED

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
By Examination	1,368	1,757	1,893	2,284
By Renewal	<u>16,133</u>	<u>16,260</u>	<u>16,944</u>	<u>17,673</u>
TOTAL	17,501	18,017	18,837	19,957
Percent Increase		3%	5%	6%

With the present renewal volume, the cost involved in preparing the licensee mail-out totals approximately \$2,000 for an estimated two personnel months of staff time. This cost compares unfavorably with the estimated expense of \$200 required to perform the same work with an automated system.

Another area which could be improved deals with the preparation of the licensee roster. The board is directed by statute to send to each city the names and addresses of its resident plumber licensees. The agency fulfills this requirement by preparing an annual roster of all licensees, listed both alphabetically and by city. In recent years roster preparation, which occurs immediately after the license renewal period, has required at least two months of work. This period is required to alphabetize and type licensee names, sort these names by city, and then retype the names. By comparison an agency using data processing equipment can obtain licensee lists arranged both alphabetically and by city in a matter of hours.

The costs, both in dollars and time, for an agency with a large number of licensees such as the Board of Plumbing Examiners to use labor intensive, manual licensing procedures is high. For this reason, licensing agencies with similar numbers of licensees have changed or are in the process of changing from manual to automated processing of their licensing-related functions. A preliminary analysis of alternatives to the board's present procedures for licensing and roster functions indicates that mechanization would be of potential benefit to the agency. This analysis indicates the opportunity to reduce the agency's cash flow for temporary personnel (\$15,000 in 1979) that is required for license renewals. In addition, personnel time required to prepare renewal mail-outs and licensee rosters could be greatly reduced. The agency should fully investigate the benefits available to it from automated processing by requesting a review of its present licensing procedures by the Auditor's Systems/Administrative Services Division.

The second area of concern relates to the agency's fund balances. End of year fund balances have increased from \$268,000 in 1976 to \$450,000 in 1979. This practice is in conflict with the agency's enabling statute and an attorney general's opinion. The agency's statute reads in part that "if the funds remaining in the hands of the board at the end of any calendar year are in excess of the expenses of the board, the board shall reduce the license and other fees." An attorney general's opinion issued in 1951 stated that "the Legislature contemplated that the Board should never accumulate a large balance of funds." Attorney General Opinion, No. V-1150 (1951). The agency clearly should not be continuing to maintain large financial reserves. The accumulation of excess fund balances could be prevented by a statutory mechanism used with other agencies which automatically reverts excess agency funds to the general revenue fund.

A third area of concern relating to the general area of agency administration results from the fact that the agency is currently authorized to maintain its funds outside the Treasury and its expenditures are therefore not subject to the appropriations process. Because the agency is not in the appropriations process, it is not subject to the standard practices and controls developed by the legislature for most state agencies. Such controls include comptroller voucher approval, General Services and Purchasing Commission bidding procedures, and investment of funds by the treasurer. These controls have been adopted as standard procedures for most agencies to assure administrative efficiency and accountability.

Although overall practices conform to those of agencies operating within legislative appropriations, three areas were noted in which board practices do not meet the standard procedures specified for agencies in the appropriations process. With regard to expenditure of funds, the board does not consistently require proof

of expenditures. In one category, board expenses, the agency has spent over \$5,000 during the past three years for expenses (mainly meals) without full documentation. With regard to purchasing practices, the agency failed in one instance to use competitive bidding procedures. When one of the agency's five automobiles was wrecked in 1978, the replacement vehicle was purchased without competitive bids. Interviews with agency personnel concerning this instance showed that calls were made to a number of automobile dealers asking about a replacement vehicle, but because it was at the close of a model year, only one dealer was able to find a vehicle similar to the one which was wrecked. With regard to investment of funds, the agency has not determined most favorable interest rates through any type of comparative bidding process. The agency has instead received a commitment from a local bank that agency funds kept in that bank will earn one-eighth percent above the going rate for certificates of deposits of \$100,000 or over. In addition, the bank has agreed to provide checking and other services at no charge to the agency. Confirmation of this arrangement has recently been provided in writing from the bank.

To ensure that the management of this agency adheres to general standards established for efficient and accountable state operations, the Board of Plumbing Examiners should be included in the appropriations process. This approach is consistent with the Sunset Commission's position that provisions requiring agency inclusion in the appropriations process be recommended on an across-the-board basis.

Licensing

The general objective of the licensing activity of the Board of Plumbing Examiners is to ensure the minimum competency of plumbers and city plumbing inspectors through an efficient licensing process. To accomplish this purpose, the

board is directed by statute to administer an examination to applicants for licensure. In addition, the board is authorized to establish by rule other qualifications for applicants. The most significant of these additional requirements deals with the experience required of an applicant before approval to take the examination for a journeyman or master plumber's license. By board rule, an applicant for the journeyman's examination must have had at least three years of experience working at the trade, and an applicant for the master's examination must have held a journeyman's license for one year.

The review of the licensing process indicates that agency examinations are adequately designed to test the basic level of competency of applicants, and that procedures designed for administering the test are satisfactory. The pass/fail rates shown in Exhibit III-2 also indicate that the test is neither overly restrictive nor overly permissive.

Exhibit III-2

LICENSING EXAMINATION PASS/FAIL RATES

CALENDAR YEARS 1976-1979

<u>Type of License</u>	<u>Year</u>	<u>Total Examined</u>	<u>Number Passed</u>	<u>Percent Passed</u>	<u>Number Failed</u>	<u>Percent Failed</u>
Journeyman	1976	1,137	909	80%	228	20%
	1977	1,419	1,062	75%	357	25%
	1978	1,558	1,164	75%	394	25%
	1979	<u>1,900</u>	<u>1,460</u>	<u>77%</u>	<u>440</u>	<u>23%</u>
	Total	6,014	4,595	77%	1,419	24%
Master	1976	544	472	87%	72	13%
	1977	679	590	87%	89	13%
	1978	780	680	87%	100	13%
	1979	<u>816</u>	<u>722</u>	<u>88%</u>	<u>94</u>	<u>12%</u>
	Total	2,819	2,464	87%	355	13%
Inspector	1976	95	81	85%	14	15%
	1977	123	104	85%	19	15%
	1978	123	103	84%	20	16%
	1979	<u>108</u>	<u>98</u>	<u>91%</u>	<u>10</u>	<u>9%</u>
	Total	449	386	86%	63	14%

The review also indicated that the agency has not abused its authority by establishing other qualifications for licensure which are unreasonably restrictive. Analysis shows that agency experience requirements of three years for a journeyman's license and one additional year for a master's license are less restrictive than experience requirements in most other states that license plumbers. Responses to a licensee questionnaire also indicate that most plumbers believe the experience requirements of the board to be appropriate.

While the licensing function generally operates well in ensuring a minimum acceptable level of licensee competency, there are several aspects of the licensing activity which could be improved. These aspects relate to use of the examination center facilities, statutory fees charged by the agency, procedures for considering hardship waivers, and the statutory requirement of "good moral character" for licensure.

With respect to use of the examination center, the waiting time for persons to take the exam has generally exceeded one month. In reviewing this backlog condition, it was noted that the examination is normally given each weekday and that testing facilities are generally scheduled to capacity. However, five to ten percent of scheduled examinees fail to appear, which results in an under-utilization of exam center resources.

One factor contributing to the examinee "no-show" rate is the board's policy concerning these applicants. An applicant who fails to appear for an examination, is contacted by the board and given the option of rescheduling the examination time or receiving a refund of his examination fee. This practice is not common among other licensing agencies in that most examination fees are non-refundable.

To encourage greater attendance in the examination process, the agency should institute a no-refund policy consistent with that of other state agencies. Increased use of the examination center would make the licensing process more efficient by reducing the current examinee backlog.

Review of the agency's fees indicated that separate charges are made for the examination and for licensing, and that the maximum statutory amounts vary between licensee groups as follows:

	<u>Journeyman</u>	<u>Master</u>	<u>Inspector</u>
Examination Fee	\$5.00	\$50.00	\$5.00
Licensee Fee	5.00	50.00	5.00

Analysis of this fee structure indicated that, although the agency has in recent years charged maximum fees, the maximum fee amounts for both the journeyman's examination and license are inadequate. The present maximum \$5.00 fee for the journeyman's examination is far exceeded by the cost (approximately \$80) of its administration. Analysis also revealed that all but two states charge more than Texas for journeyman examinations which include practical work, with fees ranging from \$10 to \$50. Furthermore, although the expenses of giving the journeyman and the master examination are comparable, the journeyman fee is one-tenth the amount of the \$50 master examination fee.

A similar situation exists with respect to license fees. While renewal costs are essentially the same for master and journeyman plumbers and enforcement efforts directly affect three journeymen for every master plumber, a master's license costs ten times as much as a journeyman's license. No other state has as great a difference between licensing fees as Texas, and only five have journeyman

license fees as low as Texas. An increase in journeyman license fees would more nearly equate the revenue produced by fees with the costs of providing licensing services, and at the same time decrease the imbalance between the journeyman and master license fees.

Another concern with respect to the board's fee structure relates to the cost of issuing duplicate licenses. The present statute does not authorize a fee for issuance of licenses to replace those lost or destroyed. Therefore, the agency, although incurring expenses involved in the issuance of duplicate licenses (142 licenses in 1979), makes no charge for this service. Most other licensing agencies are required by statute to charge a fee for issuing duplicates. Authorization of a reasonable charge related to the cost of issuing a duplicate license would allow the board to also recover this expense in a manner consistent with that of other state agencies.

While the agency's experience requirements were found to be generally reasonable, one concern was noted regarding exceptions to these requirements. The board has established the policy of waiving the experience requirement to take the master's examination in cases where undue hardship would result. Review of board minutes indicates that the board spends a large portion of its meeting time considering applications for waivers, half of which are denied by the board. One factor contributing to this high denial rate is the absence of any written rules or policies to serve as guidelines for persons applying for these hardship waivers.

The Administrative Procedures Act requires that agencies establish clear guidelines for such procedures by adopting rules of practice, then indexing and making available interpretations and decisions related to the rules. Adoption of rules and explanatory information with regard to hardship waivers would clarify

board criteria for applicants and save board meeting time considering unacceptable requests.

Another concern in the area of licensing relates to the statutory requirement that licensees be of "good moral character." Review of the application of this requirement indicates that the agency has had difficulty making this type of character determination. Since an interpretation of the Open Records Act in 1976, the agency has not had access to Department of Public Safety criminal history records, one of the primary mechanisms it had been using to indicate an applicant's moral character. Without this check on an applicant's past criminal history, the agency has been left with largely subjective criteria for determining moral character, and no license has been denied on the basis of moral character in recent years. The agency has therefore asked to have this provision removed.

Generally, the basis for license denial should be as clearly defined as possible to provide a consistent standard for denial. Without such a standard, the potential exists for an arbitrary or capricious use of the power to deny a person's right to practice in a given occupation. Presently, the agency can make character determinations only from the applicant's statement as to previous felony convictions and any information offered by persons verifying an applicant's experience. Without access to official criminal history records, such information taken alone does not provide the agency with a clear and consistent basis for license denial.

It is also reasonable that the agency not be permitted access to official criminal history information. In recent years, the state has adopted the policy of refusing such access to protect the privacy of individuals. In general, exceptions to this policy are permitted only in cases where practice of an occupation by a person with a criminal history could be a clear and direct threat to life. For example,

such an exception is clearly warranted and is granted for screening law enforcement and security guard applicants who will carry firearms on a day-to-day basis. The practice of plumbing by persons with criminal records does not present such a grave threat to life that it is necessary to override the state's general policy concerning the confidentiality of criminal history information.

In view of the above, a clear and consistent basis for determining good moral character cannot be readily developed and applied. In such a case, the agency should not be required to make this subjective determination. The provision concerning good moral character should therefore be deleted from the agency's statute.

A final concern with regard to the agency's licensing requirements involves the acceptance of plumbers' licenses from other states. The Act does not give the board the authority to recognize a plumber's license from any other state as grounds for licensure in Texas. Plumbers licensed by other states must obtain a license in the same manner as all other unlicensed persons. The lack of any kind of authority in this area causes restrictive costs and delays for qualified licensees from other states. In addition, most other Texas licensing agencies are authorized in some fashion to accept licensees from other states whose standards for licensure provide a satisfactory level of public protection. In this regard, the board has noted that several states have licensing requirements which adequately determine competency.

The board should be given the authority to accept licenses from other states as grounds for licensure in Texas. However, such recognition should be extended only where the licensing standards of other states are determined by the agency to provide an adequate level of protection to the public. This type of approach is consistent with the "endorsement" recommendation developed by the Sunset Commission for application in agencies under review.

Enforcement

The general objective of the enforcement activity of the Board of Plumbing Examiners is to protect the public health by identifying and, when necessary, taking appropriate action against those not in compliance with the Act. To accomplish this objective, the board employs a staff of four field representatives who spend an estimated 25 percent of their time performing training and public information functions, with the remaining 75 percent directed to enforcement activities.

With regard to the training and public information functions performed by the field representatives, the agency presently complies with all requests for information and training sessions. These sessions on such topics as the hazards of improper plumbing and the importance of plumber licensing are requested by cities, associations, and schools throughout the state. As another service to local areas, the agency has also developed and maintains a model plumbing code tailored to small towns to help them meet the requirement that all towns with population over 5,000 adopt a plumbing code.

Requirements for local plumbing codes and inspection of plumbing by local officials support the state's plumber licensing requirements to ensure the installation of adequate plumbing. All plumbing installations and modifications in cities over 5,000 must be authorized by permits and approved by local inspectors. In most cases, these local permitting systems involve multiple inspections by city personnel to ensure that each stage of a plumbing job is adequately performed.

Review of the board's efforts to ensure that persons performing plumbing work have met state licensing requirements indicates that the agency attempts to check job sites in every city over 5,000 population at least once each year. This process involves checking to determine if persons performing work on job sites are licensed appropriately. If agency field personnel determine that a person is

working illegally without a license, they encourage the person to comply with state law. However, the agency does not engage in follow-up activities to ensure licensing compliance.

Apart from licensing checks, a final area of enforcement involvement concerns complaints. The agency generally contacts all parties in regard to the 30-40 complaints per year it receives, and it has had some success in helping resolve problems informally between plumbers and plumbing inspectors, as well as complaints from consumers about plumbers.

Agency efforts in providing training and public information, in conducting license checks, and in checking on complaints are commendable. However, two concerns were identified with respect to the agency's general enforcement function.

The first concern relates to the board's use of its revocation powers and the corresponding structure of its enforcement process. As most state licensing agencies, the board has the authority to revoke a license. This authority may be invoked on three grounds: obtaining a license through error or fraud, being shown to be incompetent, or willfully violating municipal rules or ordinances related to plumbing. The purpose behind the revocation power is to provide a solution of last resort to protect the public from incompetent or unscrupulous practitioners.

Review of the board's enforcement operations shows that the power to convene a revocation hearing or revoke a license on any of the three grounds has not been used in the past 20 years. Furthermore, while sufficient information does not exist to judge whether revocation proceedings should have been initiated in the past, agency records and responses to a questionnaire survey of complainants showed that alleged plumber competency has been a source complaints.

Given the above indications, policies and circumstances surrounding the use of the board's revocation authority were analyzed to see whether the public has

been protected as intended through the revocation provision. In this regard, the review indicated that the revocation process, as developed by the board, is not a useful means of enforcement. This situation appears to result from two factors. First, the agency has determined that one of its primary statutory grounds for revocation, incompetence, is inadequate. As pointed out by the agency, incompetency is hard to prove in the courts. Second, the agency has developed as a policy that, before initiating a proceeding to determine whether revocation is in order, the revocation hearing must be formally requested by a city in cases involving either incompetency or violations of city ordinances. This practice of initiating a proceeding on the narrow basis of receiving complaints from a city is contrary to the approach of most other licensing agencies, which generally initiate hearings on the basis of justifiable complaints from responsible parties or on their own investigation.

The effect of eliminating revocation as a practical enforcement tool can be seen through the general enforcement activities of the agency. Since revocation is not a possibility, investigation of complaints is described by the agency as a minor process in which it has no authority. In addition, files relating to complaints are not well structured and reflect the decision that the revocation process cannot be reasonably used.

The result of this approach taken by the agency is that the statutory purpose reflected in the revocation provision cannot be fulfilled, since the revocation penalty is not generally available to protect the public from incompetent or unscrupulous plumbers. Furthermore, because it is unlikely that a complaint will lead to revocation, proper attention to the investigation and resolution of complaints related to revocation areas does not occur.

To provide the agency with better grounds for revocation, incompetency should be clarified in statute to provide the agency with sufficient grounds to

pursue performance-related complaints to a meaningful conclusion. In addition, the agency policy of initiating a formal proceeding only on the basis of a request from a city should be eliminated, with the agency being given clear authority to initiate a hearing on complaints which satisfy requirements in general use by other licensing agencies.

To support the change recommended in this process, the agency should follow the practice of most other licensing agencies and the across-the-board recommendations of the Sunset Commission with regard to complaint files. Thus, a file should be maintained on any complaint, and information kept in the file should be adequate to provide proper support documentation for a revocation hearing if determined necessary.

The second general area of concern involves the range of penalties available to the board. Aside from revocation, the only other penalty is a class C misdemeanor for violation of the Act. It can be stated as a general principle that an agency should be able to apply penalties which correspond to the seriousness of an offense. While other licensing agencies are authorized to apply a variety of penalties including reprimands, suspensions and injunctions, the Board of Plumbing Examiners has direct access only to removal of a person's right to practice an occupation. Review of the types of complaints made against licensees shows that problems occur for which an enforcement action other than revocation or misdemeanor prosecution would be appropriate. Rather than use its statutory enforcement powers, agency practice has been to seek voluntary compliance with the requirements of the licensing law. Modification of the Act to authorize several penalties would allow the agency to apply a penalty suited to the circumstances of a particular violation.

Summary

The Board of Plumbing Examiners is a six-member body appointed by the governor with the advice and consent of the Senate for six-year terms. The board is directed by statute to regulate city plumbing inspectors and all persons who engage in plumbing as a primary occupation in cities of over 5,000 population.

The operations of the board can be most easily described, as they relate to three activities: administration, licensing, and enforcement. With regard to administration, the agency meets the objective of efficient management in many respects. However, three concerns were identified in the review. First, the continued use of the manual system presently used for license renewal and roster preparation causes inefficiencies and time delays. A review of this system by the Auditor's Office could help identify alternative systems to eliminate the inefficiencies caused by the agency's present procedures. A second concern noted is that the agency has accumulated end-of-year fund balances approaching one-half million dollars, in conflict with the agency's statute and a related Attorney General's opinion. A statutory provision requiring that excess agency funds be transferred to the general revenue fund would prevent this practice.

A third area of concern results from the fact that the agency is currently authorized to maintain its funds outside the Treasury and its expenditures are therefore not subject to the appropriations process. Because the agency is not in the appropriations process, it is not subject to, nor has it consistently followed, standard practices and controls for efficient and accountable management developed by the legislature for most state agencies. Examples of the board's deviation from these standard practices include the following: expenditure of funds without full documentation, one instance of a major capital purchase without competitive bids, and investment of funds on the basis of an agreement by a local bank to provide favorable interest rates and services. To ensure that future agency

operations adhere to the state's general standards for efficient management, the board should be included in the appropriations process. This action would be consistent with the Sunset Commission's across-the-board recommendation for agencies under review.

Review of the licensing activity indicated that although the board generally meets the objective of ensuring minimum competency of plumbers and plumbing inspectors through an efficient licensing process, improvements could be made in several areas. The first area noted is that, while the agency has had a backlog of applicants waiting to take the licensing examination, there exists no penalty for persons not appearing as scheduled. Making the examination fee non-refundable to persons not appearing would encourage better attendance and assist in reducing the current backlog.

Analysis of the agency's schedule of maximum fees authorized by statute indicated that present limits for both the journeyman's examination and license fees are inadequate by comparison with journeyman fees in other states, master fees in Texas, and the actual costs of services by the agency. An increase of the statutory limits for journeyman examination and license fees would address these differences by more appropriately allocating the costs of agency services to those persons receiving them. Also with regard to fees, it was noted that the agency is not authorized to charge for the costs incurred in issuing duplicate licenses. A statutory provision for duplicate license fees would allow the board to recover the costs of issuance.

The review identified three areas of concern regarding requirements for licensure. First, no rules or clear guidelines have been developed by the board with regard to hardship waivers from the experience required for a master's license. Compliance with requirements of the Administrative Procedures Act relating to

the adoption of rules and the indexing of interpretations for agency procedures would clarify board policies, thereby giving applicants for hardship waivers a better understanding of agency expectations. Second, the statutory requirement that an applicant be of "good moral character" has become largely a subjective determination which the agency has declined to use in recent years. Agency access to criminal history records, the main basis for earlier character determinations, has been foreclosed with the development of the state policy protecting the privacy of individual's records. Deletion of the licensing requirement for good moral character would remove the agency's responsibility to make a subjective character determination on the basis of limited information. Third, the agency has no authority to recognize a plumber's license from another state as proof of competency for licensure in Texas. Licensees from other states must pass the board examination to qualify for licensure as all other unlicensed persons. Authorizing the board to waive licensing requirements for licensees from states with equally demanding standards would provide the board with flexibility in this regard.

Two concerns were identified with regard to enforcement activities of the agency. The first concern relates to the board's use of its revocation powers and the corresponding structure of its enforcement process. The revocation process has not proven to be a useful means of enforcement as a result of two factors. First, the agency's statutory cause for revocation based on incompetence provides a difficult standard to apply. Second, the agency has developed a policy which requires that a city must formally request a revocation hearing before the board will consider revoking a license. This narrow approach related to the revocation process has essentially eliminated its use for enforcement and inhibited the investigation of complaints. A statutory change to clarify incompetence as a grounds for revocation, and to specify that the agency may proceed on its own

initiative into a formal hearing would provide the agency with a means for more effective enforcement. The review also indicated that the board does not have the range of penalties available to various other agencies for enforcement, and thus is unable to apply a penalty suited to the circumstances of a particular violation. The agency's statute should be modified to provide the agency with penalties other than revocation, such as suspensions and reprimands, used by other licensing agencies for enforcement.

IV. OTHER ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes 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 29 other states that provide state regulation of plumbers. Of these states, 24 consolidated such regulation with agencies having other regulatory responsibilities. Twelve of these 24 states use an "umbrella" department of occupational licensing. The other 12 states have chosen to consolidate the regulation of plumbers within an agency with other substantive responsibilities. Of these, seven use a Department of Health, three use a Department of Labor, and two states use a Department of Commerce.

Of the consolidation alternatives identified in other states, neither a Department of Occupational Licensing nor a Department of Commerce is a feasible option for Texas since these organizational forms do not exist in this state. The state does, however, have a Department of Health, as well as a Department of Labor and Standards which performs some of the labor-related functions that are found in the other states' labor agencies.

In addition to the Department of Labor and Standards and the Department of

Health, one other agency can be considered as a possible alternative. The Texas Department of Water Resources presently provides administrative services to other regulatory boards and could provide similar services with regard to plumbers.

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 Board of Plumbing Examiners. In addition, possible alternatives were considered from the standpoint of whether consolidation of functions would result in identifiable benefits.

This analysis of the organizational alternatives available in Texas indicates that the Department of Health best satisfies the requirements of closely related operations with identifiable benefits resulting from consolidation. The Department of Health is involved in the regulation of public water supplies and waste water treatment systems. Additionally, it is involved in licensing functions for water treatment systems personnel as well as other groups. Benefits to be derived from combining plumber regulation with the Department of Health can be seen through a review of the functions performed by the agency. First, the department has a network of regional offices which would provide a mechanism for handling plumber-related complaints and enforcement responsibilities. Second, the department has a data processing division which could provide computer services necessary for plumbing regulation. Finally, the department has a supporting services division which provides services similar to the training and information services presently made available by the Board of Plumbing Examiners.

Regulatory Alternatives

In addition to the various types of organizational structures used to regulate plumbers, there are a number of regulatory methods that could be used to protect

the public from incompetent plumbers. Of these regulatory alternatives, three are presently employed by other states. Fourteen states provide no regulation by the state, leaving any regulatory responsibility to local authorities. Another regulatory method, used by 31 states, is the adoption of a statewide plumbing code. A plumbing code can be used with or without other regulatory methods such as state licensing. Three states utilize a third method of regulation which requires only that plumbing contractors be licensed. These contractors are then held directly responsible by the state for the provision of competent plumbing services instead of the individual plumber.

While not currently used to regulate the practice of plumbing, in any state, two additional regulatory methods are commonly used with respect to other occupational groups. These methods should therefore be considered as possible alternatives for the regulation of plumbers. The first of these general methods is certification. Under this option, the ability to practice plumbing or act as a plumbing inspector would be contingent on an applicant taking and passing a one-time "certifying" examination. The second general method is registration. Under this option, any person wishing to work as a plumber or a city plumbing inspector would be required to be "registered" with the state, without regard to qualifications.

Before any of the regulatory alternatives reviewed can be considered as a reasonable alternative to current regulation in Texas, the option should offer at least the same degree of public protection as the current method. In addition, the alternative should be less restrictive than the present system.

With respect to the regulatory alternatives identified above, analysis indicates that the adoption of a statewide code alone or in conjunction with other

regulation offers increased public protection but would also be more restrictive than the state's current regulatory process. On the other hand, the alternatives of no state licensing with local regulation, licensing of contractors, and registration are less restrictive than the current regulation, but each of these options offers less public protection than currently provided.

Certification is the only remaining alternative which would meet the requirements for consideration. In the area of public protection, the level of competency provided by the current licensing method would still be tested by a required certifying examination. Additionally, while no enforcement activity is attached to certification, the present regulatory method was structured and has operated with minimal emphasis in this area. With regard to restrictiveness, certification would be significantly less restrictive to the plumber than the present licensing form. Currently, plumbers must continue to renew their licenses annually for as long as they practice the occupation. Certification would eliminate the responsibility of plumbers to pay annual renewal fees and to supply the board with any updated information that may be required. An additional benefit of certification would be the reduced cost to the state. Without the need to maintain a staff for annual license renewal, public protection comparable to that now provided could be made available at a much reduced cost.

Summary

A review of consolidation alternatives found in other states as well as Texas was conducted to determine the potential for combining plumbing regulation with the functions of another agency. Twenty-nine other states provide state regulation, with 24 having consolidated plumbing regulation within other agencies. Fully half of these states use a department of occupational licensing. While Texas has no

"umbrella" licensing agency, agencies exist in Texas that are used in other states for plumber regulation. These are the Department of Health and the Department of Labor and Standards. A final agency which can be considered as a consolidation option is the Texas Department of Water Resources. This department provides administrative services to other regulatory boards related to protection of water resources, indicating a possibility for consolidation.

Of these alternatives, the Department of Health appears to be the most reasonable alternative for consolidation. The department is involved in related substantive areas dealing with protection of the public water supply and water treatment systems. In addition, this agency is experienced in the area of licensing administration. Benefits from consolidation could also result from the use of the department's regional offices for plumber-related complaints and the availability of computer services from experienced personnel.

With regard to regulatory alternatives, a number of states have chosen to provide no state regulation of plumbers, with any regulatory responsibility being left to local authorities. Other alternatives seen from the review of other states are the use of a state plumbing code and the licensing of plumbing contractors. While not currently used to regulate the practice of plumbing in other states, the methods of certification and registration can also be considered as possible options due to their common use with respect to other occupational groups.

Of these alternatives, certification appears to be the most reasonable regulatory alternative. Public protection would be maintained through the continued testing of competence by a one-time certifying examination. While the certification method would not include an enforcement component, minimal emphasis is currently placed on this activity through the present system. In addition, certification would be less restrictive than the present licensing method

in that plumbers would not be required to renew their licenses annually. Elimination of the annual licensing function could also result in the additional benefit of providing necessary regulation at a substantially reduced cost.

V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes 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 operations should be structured in a manner that is fair and compatible to all interests. The degree to which this objective is met can be partially judged on the basis of potential conflict of interest in agency organization and operation, as well as agency compliance with statutes relating to conflicts of interest, open meetings, and open records.

Conflict of Interest

Board members, as appointed state officers, are subject to statutory standards of conduct and conflict-of-interest provisions (Article 6252-9b., V.A.C.S.). The board is composed of two plumbers, a licensed architect, a licensed sanitary engineer, and two building contractors.

A review of the documents filed with the Office of the Secretary of State indicates that both the board members and the administrator of the agency have complied with filing requirements set out in the state's general statutes dealing with conflict of interest.

Open Meetings - Open Records

As evidenced by publications in the Texas Register, board meetings have been preceded by adequate and timely notice to the public. However, the board technically has not followed procedures for closed meetings outlined in Article 6252-17, V.A.C.S. The Act requires that the presiding officer must announce that a closed meeting will be held and must identify the section of the Act authorizing such a meeting. The Act also states that any final action on subjects discussed in a closed meeting be made in an open meeting.

The board chairman has in the past announced closed sessions and the subject matter to be discussed. He has not cited the section of the Act authorizing a closed session, nor has the board taken final action in an open meeting. The administrator has been informed of the proper procedures and has indicated the agency's willingness to comply with statutory requirements.

Only two types of records, examination questions and personnel records, are considered confidential by the board. Because both classes of information are exempt from public disclosure under Section 3 of the Open Records Act, the agency action in asserting the confidential nature is statutorily authorized.

There have been no formal requests to the board for information under the Open Records Act.

Employment Policies

The Board of Plumbing Examiners submitted an Affirmative Action Plan in 1974 and updated this plan in 1979. The board currently has a written formal grievance procedure, and has never received a formal complaint in the case of employment practices.

An analysis of the board's work force at the time of review indicates that four of the eighteen full-time positions are held by minorities. Of the four minorities, one female is employed in a clerical position, two males are employed as Plumbing Examiners and one male is employed as an Assistant Plumbing Examiner. Job openings are posted with the Texas Employment Commission and in some cases, employees have been asked to refer acquaintances to positions that are open.

Summary

The board members and the administrator have complied with conflict-of-interest reporting requirements. However, with regard to open meetings, statutory procedures established for closed sessions have not been properly followed in board meetings in that, technically, the board should have taken final action in an open meeting on subjects discussed in a closed meeting. The agency has indicated a willingness to comply fully in future meetings. With regard to equal employment practices, the board has an updated Affirmative Action Plan on file and has never had a formal employment-related complaint filed against it.

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

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

Agency Activities

In looking at agency efforts to involve the public in its rule changes, the review indicated that no such changes have been considered by the board since Administrative Procedures Act of 1975 became effective; therefore, the question of public involvement in rule changes cannot be applied to board operations in recent years. With respect to the agency's general efforts to inform the public and its licensees as to its operations, the review showed that the Plumbing License Law of 1947, existing rules of the board, and an alphabetical listing of all licensed plumber within the state are made available to the public through a roster of licensees which is published by the agency on a yearly basis. The board also conducts training seminars and information sessions throughout the state. Most of these sessions provide training for small town plumbing inspectors and inform members of the construction trade as to the operation of the board. In addition,

the board circulates 16 different films to the general public on a request basis. These films explain the plumbing examination process, the dangers of cross connections, the importance of plumbing codes, and other plumbing-related matters. In 1979 these films were loaned out a total of 138 times to in-state groups and seen by over 5,000 viewers.

Board Membership

One method of attempting to ensure that the viewpoint of the general public is represented in activities of the board or commission is to require that one or more members of the general public be included within the statutory membership of the board or commission. Although the composition of the membership of the Board of Plumbing Examiners reflects the majority of trades which utilize the services of plumbers in that the members must include an architect, two builders and a sanitary engineer, there are no general public members on the board. The addition of public members to the board would help ensure that concerns of the general public are identified and acted upon by the agency.

Another concern with groups represented on the board lies with representation of categories of persons licensed by the board. While master and journeymen plumbers are included in board membership, plumbing inspectors which are also licensed have no representation on the board. Many of the training courses and field inspection activities are directed toward this group and it would seem appropriate to provide representation of these licensees in the policy-making operations of the agency.

Summary

The board has made an effort to educate the public and its licensees as to its operations by publishing its statute and rules, by making available films describing agency operations, and by conducting seminars and conferences throughout the state. However, the board's ability to successfully represent the points of view of licensed plumbing inspectors and the general public could be improved through the placement of representatives from these two groups on the board.

VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes 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 statutory changes recommended by the agency for the improvement of the regulatory function performed.

Past Legislative Action

The enabling legislation of the Board of Plumbing Examiners has been amended four times since its enactment in 1947. In 1973 the board was given the authority to stagger the renewal of licenses (Senate Bill No. 831, Sixty-third Legislature) and in 1975 an offense under the Act was defined as a Class C misdemeanor to conform with revisions to the Texas Penal Code (House Bill No. 1886, Sixty-fourth Legislature). In 1977 personnel involved in the installation and servicing of residential water treatment installations were specifically exempted from the licensing requirements of the Act (Senate Bill No. 147, Sixty-fifth Legislature). In that same year the board was made subject to the provisions of the Texas Sunset Act (Senate Bill No. 54, Sixty-fifth Legislature).

Finally, in 1979 the Sixty-sixth Legislature provided for an additional exemption to plumber licensing requirements without directly amending the Plumbing License Law of 1947. Senate Bill No. 259, the Texas Board of Irrigators Act, provided that licensed irrigation installers as well as licensed plumbers could make connections to public water systems.

Proposed Legislative Action

Apart from the successful legislation mentioned above, several other bills concerning the board's operations were unsuccessfully proposed in the past three legislative sessions. Two such bills, House Bill No. 1965 and Senate Bill No. 612, were introduced in the Sixty-fourth Legislature in 1975. House Bill No. 1965 would have deleted exceptions to the licensing law for plumbing work done outside of municipalities as well as in towns of less than 5,000. In effect this change would have required statewide licensing of all persons engaged in plumbing as an occupation. Senate Bill No. 612 would have provided a licensing exemption to persons involved in the installation and servicing of residential water treatment facilities.

With respect to bills unsuccessfully introduced in the Sixty-fifth legislative session in 1977, House Bill No. 1642 would have authorized master plumbers to install sprinkler systems, while House Bill No. 766 would have required a master plumber to supervise work done on the original construction of a habitable structure.

In the Sixty-sixth legislative session of 1979, two unsuccessful efforts were made to amend the plumber's law. Senate Bill No. 164 was passed by the legislature but vetoed by the governor. Senate Bill No. 164 and its companion House Bill No. 580, would have required that plumbers be licensed to work anywhere in a county of over 100,000 inhabitants. Further, the legislation would have made the unauthorized practice of plumbing or the hiring of an unlicensed plumber a Class C misdemeanor in non-exempted areas, and would have given state or city plumbing inspectors the authority to issue citations for such violations. Finally, Senate Bill No. 816 would have placed the Board of Plumbing Examiners within a Department of Occupational Regulation.

The agency's self-evaluation report indicates that no statutory changes have been recommended by the board during the last three legislative sessions. However, in that same report the board recommended that licensed plumbers be required in any area using a public water supply regardless of the area's size or composition.

Summary

The agency's enabling legislation has been amended four times since the inception of the board in 1947. In general, these bills were aimed at staggering renewal of licenses, modifying the penalty for doing plumbing work without a license, exempting residential water treatment installations from licensing requirements and making the board subject to the Texas Sunset Act. Legislation was also enacted in 1979 which exempted licensed irrigation installers from plumber licensing requirements. In addition, several bills failing enactment were introduced in the last three legislative sessions. During each session, unsuccessful proposals were made to increase the licensing requirements of the Act. These bills included proposals to require statewide plumber licensing, to require the supervision of licensed master plumbers in all new habitable construction, and to require licensing of plumbers in all counties over a designated size. Another unsuccessful proposal would have put the board within a Department of Occupational Regulation. In its self-evaluation report, the agency recommends that its statute be amended to require licensed plumbers in all areas using a public water supply regardless of their size or composition.