

TEXAS PRIVATE EMPLOYMENT AGENCY REGULATORY BOARD

Staff Report
to the
Sunset Advisory Commission
February 20, 1978

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
Background	2
Review of Operations	7
Criterion 1 - Efficiency	7
Criterion 2 - Effectiveness	16
Criterion 3 - Less Restrictive or Alternative	24
Criterion 4 - Overlap and Duplication	27
Criterion 5 - Statutory Changes	30
Criterion 6 - Complaints	35
Criterion 7 - Public Participation	38
Criterion 8 - Equal Employment/Privacy	40
Criterion 9 - Conflict of Interest	41
Criterion 10 - Open Records/Open Meetings	42
Conclusions	44

INTRODUCTION

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

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

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

BACKGROUND

The Texas Private Employment Agency Regulatory Board (the Board) was created by the Private Employment Agency Law (the Law) of 1969. The Law divides the responsibility for regulating private employment agencies (agencies) between the Board and the Commissioner of Labor and Standards.

The private employment agency industry provides the service of bringing job applicants and employees together for a fee. Types of agencies vary widely from general agencies serving a wide variety of clients to specialized agencies which concentrate on the placement of particularly skilled individuals.

The industry has grown rapidly in Texas. According to the U.S. Bureau of the Census, the number of agencies having a payroll increased from 270 to 408 between 1967 and 1972. The rate of growth in the state was higher than that of the nation as a whole during these years, and by 1972 gross receipts for these agencies totalled approximately \$32 million. This number represents some 6.3 percent of total agency receipts nationwide.

To understand the regulation of private employment agencies in Texas, it is helpful to look at this topic in terms of: 1) historical development; 2) provisions of the Law; and 3) regulatory patterns in other states. Each of these areas is reviewed briefly below.

Historical Development of Regulation in Texas

An historical perspective on private employment agency regulation in Texas can be outlined in the following categories: 1) administrative structure to accomplish regulation; 2) focus of the regulation; 3) limits on agency fee charges; and 4) prohibitions on practices within the industry. A discussion of these categories is presented in the following paragraphs.

The location of administrative responsibility has changed only once since the inception of statutory regulation of private employment agencies. The Commis-

sioner of Labor Statistics (now Labor and Standards) was first delegated administrative authority in 1915. The Commissioner retained responsibility for the administration of related industry laws until creation of the Texas Private Employment Agency Regulatory Board in 1969. At that time, the character of the administrative structure changed to reflect a board composed of industry representatives to make most policy decisions. The Board is currently composed of nine agency operators appointed by the Governor.

The focus of the regulation has also changed over the years. Originally, private employment agencies were licensed. In 1923, statutes changed to require licensing of private employment agents. The Private Employment Agency Act of 1949 reverted to licensure of agencies and, currently, the focus of the regulation is reflected in licensure of "operators" who are the only persons who may establish and operate licensed agencies.

Limits on the amount of fees collected by private employment agencies have been regulated since the beginning. The maximum fee allowed by the 1915 statute was \$2.00; in 1923 the employment agent limit was increased to 20 percent of the first month's salary. The 1943 statute raised the maximum chargeable fee to 30 percent of the first month's salary, in 1949 this was raised to 40 percent, and in 1963 the 40 percent maximum charge was restricted to those persons making less than \$750 per month (\$9,000 a year). Currently limits on fees agencies may charge are approximately one percent per \$1,000 of the applicant's first year salary.

Restrictions on practices of the industry have been established to safeguard the interests of the persons using private employment agencies to secure employment. Provisions in 1915 prohibited such practices as referring females to any place kept for immoral purposes. Changes over the years have reflected

increased concern for the interests of the applicants. Such concern is further evidenced in the prohibition of fee splitting, fee payment unless employed, false advertising and misrepresentation of job salary, conditions, etc. The major mechanism for the prevention of such abuse has been and continues to be the threat of license revocation.

In summary, the development of the regulation of private employment agencies in Texas reveals the following patterns:

- 1) Increased industry representation in administration of regulatory statutes;
- 2.) An apparent decision to focus regulation on both the employment agent and the agency;
- 3) Increasing maximum rates which agencies may charge applicants for placement services; and
- 4) Increasing concern for possible industry abuse of the public.

Statutory Provisions of the Texas Law

The statute passed in 1969, under which private employment agencies are presently regulated, created the Private Employment Agency Regulatory Board and gave it authority for certain specific functions, including:

- 1) Preparing an examination which operator applicants must pass for licensure;
- 2) Establishing and promulgating a schedule of permissible maximum rates charged to job applicants by private employment agencies;
- 3) Revoking any license for violation of the regulatory act or for moral turpitude;
- 4) Promulgating procedural rules and regulations;

- 5) Promulgating provisions for temporary operator licenses and for transfer of agency licenses; and
- 6) Preparing and preserving minutes and records of its proceedings and actions.

The same statute specifies certain functions which are the responsibility of the Department of Labor and Standards, including the following:

- 1) Enforcing the provisions of the Law and rules and regulations of the Board;
- 2) Providing forms on which to apply for a license;
- 3) Receiving applications for both licenses;
- 4) Collecting bonds received from agency applicants;
- 5) Depositing license fees in the Treasury, and examination fees in the Board's local bank account;
- 6) Investigating applicants to determine if specified qualifications and requirements are met;
- 7) Scheduling individuals for examinations; and
- 8) Issuing licenses.

In addition to the functions listed above the statute gives both the Board and the Department of Labor and Standards the right to inspect licensees' records during normal business hours. Furthermore, the Board is given subpoena duces tecum power for the records of an agency.

The provisions described above indicate that a unique relationship exists between the Board and the Department of Labor and Standards. Responsibility for regulation is shared, with neither being responsible to the other, but with each being dependent on the other if effective regulation is to occur.

Regulatory Patterns in Other States

To determine the regulatory pattern associated with private employment agencies within the United States, a survey of the 50 states was conducted. This survey showed that the need to regulate private employment agencies is currently expressed through the licensing requirements imposed by 47 of the 50 states surveyed.

A look at the organizational patterns used in these states indicates that only one state, New Mexico, regulates private employment agencies through an independent board operating with a staff directly under its control. Eighteen other states and Texas, however, have statutory boards or commissions which share responsibility with governmental departments charged with the regulation of several occupations. Of these states, eight have members appointed by the chief executive, with only Texas and Minnesota requiring legislative confirmation of those members. Membership in 11 of these states, including Texas, is limited to persons who are licensed members of the occupation.

Since there is no nationally adopted test in this regulatory area, states such as Texas that require a licensing examination develop and administer their own tests. Currently, less than half the states use either an oral or written testing procedure.

Forty states require annual renewal of licenses. Texas licenses both agencies and operators for a one-year period.

In general, states regulating private employment agencies indicate responsibilities in the areas of testing, regulating fees, promulgating rules, and providing enforcement hearings. These basic functions constitute the primary elements of the operations of the Texas Private Employment Agency Regulatory Board. In the material that follows, such elements are examined in the context of specific criteria set forth in the Texas Sunset Act.

REVIEW OF OPERATIONS

Criterion 1

The efficiency with which the agency or advisory committee operates.

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

Areas of analysis

Two major factors were analyzed on efficiency of operation:

- (1) Structure - to determine whether organizational responsibilities are clearly defined so that statutory mandates may be efficiently performed. Specifically, to evaluate the organizational structure: a) within the Board, and b) between the Board and the Department.
- 2) Cost - to determine the Board's major cost elements and whether expenditures have been made in a cost-effective manner.

Organizational analysis

The Board has four major responsibilities defined by statute:

- 1) to hold hearings and revoke licenses in cases of violation of the law or crimes of moral turpitude;
- 2) to prepare examinations for licensure of operators;
- 3) to promulgate rules and regulations consistent with and not enlarging upon the statute; and
- 4) to establish and promulgate a schedule of permissible fees.

Review was conducted to determine if the Board's organizational structure leads to efficient performance of these responsibilities. To perform its various functions

the Board has organized itself into seven permanent committees. Discussion with Board members disclosed that general knowledge of the responsibilities of the committees is obtained from review of minutes of past meetings, conversations with previous chairmen and conversations with other Board members. Because the committee structure has changed periodically and responsibilities are not explicitly identified, responsibility for specific matters is not always clear. A brief description of the Board's current committee structure follows:

Board/Commissioner Liaison Committee - This committee has established systematic procedures to facilitate revocation of licenses in cases of violations of the law. The committee meets prior to regular Board meetings and reviews any complaints with departmental investigations completed since the Board's previous meeting. If the committee feels a complaint should receive further investigation, it is returned to the Department for further action. The committee chairman estimates some five complaints per year are returned to the Department in this manner. However, just as the Board is dependent on the Department to submit complaints initially, the Board has no authority to require the Department to investigate complaints further.

Committee for Operators Licensing Examination Maintenance - Periodically, this committee presents recommendations to the Board on examination matters. For example, preparation and validation of questions and administration of the examination. At the committee's direction the Department staff prepares monthly reports listing the number of applicants and test scores. These are presented at each quarterly Board meeting. However, no other systematic procedures have been developed by the committee to assure that the examination is maintained at maximum quality. The following criterion will discuss more thoroughly the quality of the examination.

Terminology and Definitions Committee - This committee drafts proposed rules and regulations for the Board so that specific recommendations will be complete at Board meetings. Three of the Board's four major statutory responsibilities are delegated to the previously mentioned committees. However, the fourth major responsibility, establishing a schedule of permissible maximum fees, is not the special responsibility of any permanent committee.

Functions of other permanent committees: 1) to represent special areas within the industry, 2) to help to keep industry members informed of Board activity, 3) to coordinate activity with other groups interested in enforcing the law, and 4) to work with the Department to fulfill a joint statutory responsibility to develop and maintain appropriate forms and procedures. Besides the permanent committees, the Board makes frequent use of ad hoc committees for particular issues. Examples of these in the last two years have been committees to develop a definition of "day-to-day management" of an agency and to consider the use of personal surety bonds to meet the agency license bonding requirement.

Other responsibilities, which cannot be performed efficiently with limited administrative staff, are requested of the Department. For example, statutory functions--preparing minutes, completing vouchers, printing examinations and notifying licensees of meetings--are designated as Board responsibilities, but these duties sometimes are performed by Department personnel. The performance of such tasks has at times generated much debate between the Board and the Department.

The area most seriously affected by the present dual delegation of responsibility is the enforcement of the Private Employment Agency Law and the rules and regulations of the Board. This is discussed more thoroughly under Criterion 2.

Cost Analysis

The Board is financed from two sources of funding: general revenue appropriations and income from its local testing fund.

General revenue appropriations to provide for Board activities have been of two types:

- 1) non-specific appropriations to the Department to provide for administration of the law, and
- 2) specific appropriation to the Board itemized within the appropriation pattern of the Department.

Amounts for Board operations in the 1976-1977 biennium were of the first type. Funds were provided from an appropriation for "Employment and Labor Agencies". Amounts for fiscal years 1978 and 1979 were specifically appropriated to the "Texas Private Employment Agency Regulatory Board". Income deposited in the general revenue fund as a result of the law is generated by the \$150 agency license and annual renewal fees and the \$15 operator's license and annual renewal fees.

The local testing fund receives income from three sources:

- 1) The \$25 examination fee set by the law,
- 2) the \$15 charge paid by the public for the examination study material (the price is set by Board regulation), and
- 3) interest earned on funds (\$10,631 in October 1977) kept in the Board's savings account.

Expenditures of examination fee revenue is restricted by the law to expenses of preparing, conducting and grading examinations. The other money in the local testing fund is not so restricted. The following Exhibits I-1 and I-2 show actual revenues generated by the law and Board regulations and expenditures of the Board.

EXHIBIT I-1

Revenues Resulting from Private Employment
Agency Regulation, Fiscal Years 1973-1977

Fiscal Year	Revenue - Fund 1			Revenues - Local Fund			
	\$150 Agency License	\$15 Operator's License	Total General Revenue	\$25 Examination Fees	Sale of Publications	Dep. Int.	Total Local Fund
1973	133,500	17,955	\$151,455	\$7,000	\$170	\$222	\$7,392
1974	156,300	18,855	\$175,155	\$11,450	\$805	\$266	\$12,521
1975	124,200	15,300	\$139,500	\$6,828	\$400	\$458	\$7,686
1976	95,995	16,140	\$112,135	\$8,910	\$367	\$365	\$9,642
1977	211,035	16,350	\$227,385	\$10,608	\$245	**	

**This information not available in department accounting records.

EXHIBIT I-2

Expenditures - Private Employment Agency
Regulatory Board, Fiscal Years, 1974-1977

	General Revenue	Local Fund	Total
1974	*	\$5,723	\$5,723**
1975	\$6,489 (estimated)	\$3,624	\$10,113
1976	\$6,747	\$10,381	\$17,128
1977	\$7,969	\$7,007	\$14,976

* This information not available in agency accounting files.

** Local fund expenditure only.

Although they are not included within this review, the enforcement functions of the law provided by the Department are also financed by general revenue funds. Historically, the Department has provided enforcement of the Labor Agency Law and the Private Employment Agency Law from a common organizational structure. This makes separation of costs for the functions difficult. For informational purposes Exhibit I-3 shows estimated expenditure amounts by the Department for enforcement of the Private Employment Agency Law.

EXHIBIT I-3

Private Employment Agency Enforcement Expenditures
Department of Labor and Standards

Fiscal Year	Estimated Expenditures
1975	\$ 103,351
1976	95,129
1977	112,079

Exhibit I-4 shows more detail on the Board's expenditures in the last fiscal year. Review of these costs showed major expense categories are per diem and travel, personnel costs and interagency contracts. Additional review of these cost elements follows.

EXHIBIT I-4

Expenditures by Categories, Private Employment
Agency Regulatory Board, Fiscal Year 1977

Expenditure Categories	General Revenue	Local Funds	Total	%
<u>Personnel Costs</u>				
Salaries	-	\$4,290.56	\$ 4,290.56	28.7
Benefits	-	<u>390.34</u>	<u>390.34</u>	<u>2.6</u>
Total		<u>\$4,680.90</u>	<u>\$ 4,680.90</u>	<u>31.3</u>
<u>Operating Costs</u>				
Supplies and Materials	-	40.00	40.00	.3
Postage	-	800.00	800.00	5.3
Telephone	\$ 83.17	-	83.17	.6
Other Operating Expense	315.00	180.98	495.98	3.3
Interagency Contract	<u>-</u>	<u>1,305.24</u>	<u>1,305.24</u>	<u>8.7</u>
Total	<u>\$ 398.17</u>	<u>\$2,326.22</u>	<u>\$ 2,724.39</u>	<u>18.2</u>
<u>Board Expenses</u>				
Per Diem	2,625.00	-	2,625.00	17.5
Travel	<u>4,946.71</u>	-	<u>4,946.71</u>	<u>33.0</u>
Total	<u>\$ 7,571.71</u>	<u> </u>	<u>\$ 7,571.71</u>	<u>50.5</u>
GRAND TOTAL	<u>\$ 7,969.88</u>	<u>\$7,007.12</u>	<u>\$14,977.00</u>	<u>100.0</u>

A cost comparison of the Board's per diem and travel expenses to similar costs of other state boards is presented in Exhibit I-5. This data shows the Board has been relatively conservative in its use of state funds for direct costs associated with meetings.

EXHIBIT I-5

BOARD MEMBER COST COMPARISON
FISCAL YEARS 1976-1977

Agency	Fiscal Year	Number of Board Members	Number of Meetings	Per Diem And Travel Expenses	Average Cost Per Member Per Meeting
Board of Architectural Examiners	1976	6	5	\$12,455	\$415
	1977	6	5	\$13,297	\$443
State Board of Morticians	1976	6	11	\$17,418	\$264
	1977	6	16	\$23,236	\$242
Texas Cosmetology Commission	1976	6	8	\$20,286	\$423
	1977	6	5	\$15,658	\$522
Private Employment Agency Regulatory Board	1976	9	4	\$ 6,441	\$179
	1977	9	5	\$ 7,887	\$175

The Board's second largest cost element is personnel expenditures--for a half-time secretary used to prepare board minutes, to administer and grade examinations and to perform other Board-related activities. However, as Exhibit I-4 shows, personnel costs are paid from the local testing fund. This fund, as shown in Exhibit I-1, is composed mostly of revenue from examination fees (the use of which is limited by law to the expense of preparing, administering and grading examinations). The use of this half-time secretary only for administering the examination (one-half day a month) and grading the tests (completed the day of the examination) would represent an inefficient use of examination fees. However, using this position as it has been used, to perform other tasks for the Board, could go beyond restrictions set by the law.

The third largest category of expenses, shown under Operating Costs in Exhibit I-4 is interagency contracts. This category contains costs of printing tests and study materials associated with the examination. The format of the operator's examination has always been that of a 30-35 page booklet containing both test questions and answer blanks. Each booklet has been used once, graded and filed in the operator's license file. This has been inefficient in filing space required and in costs of printing examination booklets. As a result of recommendations presented by testing consultants in 1977, the examination format is being converted in 1978 to that of reusable test booklets and separate answer sheets. Similarly, more than 50 blank pages for "notes" in a 120-page study manual (sent to each applicant for an operator's license) represent potential for savings in printing and postage costs. These examples indicate that the Board could obtain reductions in its operating costs if more attention were centered on efficiency of operations.

In summary, this section has shown:

- 1) the Board has developed a committee structure which facilitates performance of most of its responsibilities;
- 2) division of responsibility between the Board and the Department has caused some difficulty in interaction between the two units;
- 3) use of the Board's local fund appears to have exceeded statutory restrictions; and
- 4) Board members' costs have been held at a low level but operating costs could be decreased.

Criterion 2

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

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

The objectives of the Board are carried out through three major functions: 1) licensing, 2) enforcement, and 3) administration.

Licensing

In performing the licensing function, the Board is statutorily required to prepare an examination for persons desiring to become licensed operators. The objective for the examination is to provide qualified individuals for entry into the private employment agency industry.

Prior to the creation of the Board in 1969, no testing requirement existed in Texas; licenses were required only of the agency and not of the owner or person operating it. The principal licensing change in the 1969 law was the requirement that only a licensed operator could apply for a license to maintain and operate an agency. Since the 1969 change (which grandfathered in all agency operators at that

time), all applicants for operator's licenses have been required to take and pass a written examination.

According to the law, the examination must cover the laws and regulations relating to the operations of a private employment agency, the laws relating to discrimination in employment, and those related to labor legislation. In addition the examination must cover general matters related to the management and operation of a private employment agency. A review of one of the examinations shows the following approximate breakdown of questions by topic: 20 percent dealt with the Private Employment Agency Law; 20 percent dealt with equal employment legislation; 45 percent dealt with labor legislation; and 15 percent dealt with matters related to the operation of an agency.

The operator's examination has been periodically revised, several times by professionals engaged by the Board. Validation of the examination materials was recently completed by a university professor skilled in test construction. The Board uses four different examinations each containing approximately 240 true or false/multiple-choice questions; this reduces the chances of a person re-taking the same examination.

Examination procedures addressed in Board regulations are: 1) that the examination be administered in Austin and graded in the office of the Department of Labor and Standards; 2) that it be given on the first Tuesday of each month; 3) that the passing grade on the examination is a score of 75; and 4) that a fee of \$25.00 be charged to each applicant.

In looking at the broad statutory goal underlying the examination part of the licensing function, a basic objective of the examination process is to protect the general public by insuring the provision of competent and qualified private employment agency personnel. The achievement of this broad objective can be

discussed in terms of: 1) groups exempted from the examination process; 2) general content of the testing instrument; and 3) the pass-fail pattern associated with the test. Each of these three topics is discussed below.

The review of the testing process set up in the private employment agency statute indicated two significant exemptions from examination requirements. First, it was seen that the operators of private employment agencies that were conducting business prior to the effective date of the law in 1969 are exempted from taking the operator's examination. Upon registering with the Department, these operators were automatically issued a license. Thus, operators admitted under this "grandfather" provision have not had to meet the same standards as operators desiring to begin business after 1969.

Second, no examination is required for private employment agency counselors. Counselors form a large part of the private employment agency personnel that deal with the public on a daily basis. In omitting this group, the public is not assured of a minimum level of competence demonstrated through a standard state examination.

A review of the content of the testing instrument for the operator's examination showed that the questions on the test deal mainly with the laws regulating private employment agencies. By focusing on laws, the examination de-emphasizes the testing of applicants on the general body of knowledge and skills necessary in performing employment services for individuals.

A review of the final topic, the pass-fail pattern on the test, showed that prior to February 1976 failure rates for the examination were low. From the beginning of fiscal year 1975 until February 1976, Department records show that 299 applicants took the operator's examination. Of these 286 (or 96 percent) passed while 13 (or 4 percent) failed. After March 1976 and until the end of FY 1977, the

Department indicates that 415 applicants were given the examination. Of these, 275 (or 66 percent) passed the examination while 140 (or 34 percent) failed it. While the Board's periodic revision of the examination to assure validity is commendable, the test appears to have become considerably more difficult.

The pass-fail pattern described above suggests that, prior to 1976 the Board's examination screened out very few applicants for the operator's license. Then, after March 1976 the examination appears to have had a more restrictive effect on some applicants who might have been qualified to operate private employment agencies.

Enforcement

In performing the enforcement function, the Board is required by statute to hold hearings for license revocation. A general objective underlying the hearings process is to fairly and impartially determine the validity of the complaints brought before the Board against agencies or their operators.

The review of the Board's hearing function showed that the Texas Department of Labor and Standards is responsible for the investigation and disposition of all complaints and, where necessary, the initiation of corrective action. If an agency is considered to be acting with disregard to the law, the complaint is forwarded to the central office (Austin) for a determination as to whether a hearing is necessary. If considered necessary, the Board chairman is contacted for a determination of when and where the hearing will take place.

With regard to hearing procedures, according to statute at least 30 days notice by certified or registered mail must be given to a license holder prior to a hearing. The licensee is entitled to be present at the hearing and to be represented by an attorney.

The basic structure for these hearings is provided for through the Administra-

tive Procedures Act and other relevant state statutes. Both the Department's staff attorney and the lawyer assigned to the agency from the Attorney General's Office take part in the hearings process. One of these attorneys represents the Department while the other advises the Board in making its determination.

No inconsistencies were noted in these procedural aspects of the hearing process. Additionally, in looking at its actual application, it was noted that no decisions of the Board have ever been appealed. Even though the hearings process has been employed on only seven occasions, the absence of appeals lends further support to the adequacy of the procedures.

While these procedures appear satisfactory, another concern related directly to the hearing process can be raised. As noted above, there have been only seven hearings actually convened since the creation of the Board in 1969; however, approximately 340 complaints have been investigated by the Department in the last three years alone. A comparison of these figures suggests the possibility that the hearings process has been employed too infrequently.

No one factor could be isolated as the underlying cause for the low number of hearings held. This pattern could be influenced by the existence of only one statutorily authorized penalty: revocation of the license. The severity of such an action may have inhibited initiating hearing procedures. It is also possible that investigation procedures tend to divert complaints away from the hearings process.

Regardless of cause, if the number of hearings held is unreasonably low, then the quality of the overall enforcement effort suffers. Such a condition necessarily results in less protection for the general public.

Administration Fees

Along with other general administrative duties, the Board has a key responsibility under its statute: to promulgate a schedule of maximum fees to be charged applicants by private employment agencies. The objective of this function

is to insure that fees charged by agencies are fair and equitable.

A fee schedule was adopted by the Board on November 22, 1969, stating that fees charged to applicants could not exceed the following percentages, based on annual gross earnings.

MAXIMUM FEE SCHEDULE

	Gross Earnings		Rate
\$0	to	\$4,999.99	4%
\$5,000	to	\$5,999.99	5%
\$6,000	to	\$6,999.99	6%
\$7,000	to	\$7,999.99	7%
\$8,000 and above			- (to be determined by individual contract between applicant and agency.)

This fee schedule remained unchanged until September 1977, when the Board adopted a new schedule of rates by an emergency rule. Fees in the revised schedule extended the 1969 pattern of one percent rate increase per \$1,000 gross annual income, with an open end at \$100,000. The end of the present schedule reads:

MAXIMUM FEE SCHEDULE

	Gross Earnings		Rate
\$98,000	to	\$98,999.99	98%
\$99,000	to	\$99,999.99	99%
\$100,000 and above			- (to be determined by individual contract between applicant and agency.)

The present schedule is likely to be modified again. The Board has stated publicly that it intends to further modify the schedule at its next meeting in March of 1978.

The structure of the rate schedule apparently is affected by two conflicting objectives: 1) to ensure the benefits of free competition are not lost, and 2) to assure the consuming public of protection from unscrupulous practices.

In the type of fee schedule pattern which the Board has used, price competition in the industry theoretically will not be affected since only maximum rates are established, and the agency may set any fee below that maximum rate. The protection to the public would come from limiting excessive fees by use of maximum rates.

There are three situations which can affect the benefits of the type of fee schedule used by the Board: 1) if operating costs in the industry increase to a point that agencies cannot continue to operate under the existing maximum rates, the limit on maximum rates would cause agencies to cease operation, 2) if maximum rates were set unrealistically high, then no benefit to the public would occur, and 3) if a rate is set which extends only to a certain level of gross income, persons whose incomes exceed this level are not protected.

The latter situation occurred when the Board did not regulate the fee for employment services for applicants with gross earnings over \$8,000. No industry figures are presently available on this income distribution. However, a proxy measure is available. Effective household income* in Texas in 1976 showed that

*This measure would be overstated to the extent that families include more than one wage earner, and would be understated to the extent that taxes and other deductibles are withdrawn from the paycheck prior to deposit, and to the extent inflation has increased earnings since December 31, 1976.

only 1,265,516 out of 4,195,400, or 30 percent, had incomes below \$8,000. Thus it may be concluded that the \$8,000 ceiling was not protecting most Texans.

However, the new rule change raises the possibility that current rates are set unrealistically high for persons in upper income brackets. For example, if any applicant earning over \$70,000 per year accepted the maximum rates, at the end of one year at that salary, the person would find his earnings exceeded by his fees to the employment agency and his tax liability. While the example may not occur with any frequency, it does illustrate potentials of the current rate structure.

In summary, an evaluation of the extent to which the Board is fulfilling the objectives of the law shows that:

- 1) The present examination may not be testing a sufficient number of people in enough subject areas to sufficiently protect the public from unqualified or incompetent personnel.
- 2) The procedures used in the present hearings process appear to function satisfactorily; however, the low number of hearings initiated in the past indicates that the overall enforcement level may not be satisfactory.
- 3) The maximum fee schedule promulgated by the Board eight years ago has excluded a large number of people from protection against excessive fees.

Criterion 3

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

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

Historical Development of Regulation

As discussed in the Background section, the first private employment agency law was passed in 1915. Since that time there have been eight laws enacted modifying elements of this regulation. The changes over time may be conveniently categorized into three functional groupings: licensing, enforcement, and administration. Exhibit III-1 traces the development in each of these areas from 1915 to the present.

Historical development of private employment agency regulation in Texas shows several major trends. Although there was a brief period in which authority for civil penalties was provided by statute, the major enforcement mechanism has remained the revocation of licenses. There has been one significant change, however; since 1969 authority for revocation has resided with the Board. Licensing requirements have remained substantially the same over the years with one major exception: the restriction in 1969 of the issuance of operators' licenses only to those passing a written exam, and the issuance of agency licenses only to those

EXHIBIT III-1
CHANGES TO LAWS REGULATING PRIVATE EMPLOYMENT AGENCIES
1915 - 1977

YEAR	LICENSING	SPECIAL FUND:	ENFORCEMENT	ADMINISTRATION
1915	<p><u>REQUIREMENTS:</u></p> <ul style="list-style-type: none"> - \$500 Bond - Keep Register of Applicants <p><u>FEES:</u></p> <ul style="list-style-type: none"> - Initial Fee - \$25 - Annual Renewal - \$25 	<p>Employment Agency Fund</p>	<p><u>PROHIBITIONS:</u></p> <ul style="list-style-type: none"> - Employment for Immoral Purposes - False Information About Job - Inducing Employee From Leaving Job <p><u>REGULATION OF:</u></p> <ul style="list-style-type: none"> - Agencies <p><u>FINES:</u></p> <ul style="list-style-type: none"> - If "Employment for Immoral Purposes" Prohibition Violated - Felony. Fine - Not Less Than \$1000 Nor More Than \$5000 or 2 Years in Penitentiary but Not More Than 10, or Both. - Any Other Violation - Misdemeanor. Fine Not Less Than \$50 Nor More Than \$200. 	<p><u>FEE SCHEDULE:</u></p> <ul style="list-style-type: none"> - Not Greater Than \$2.00
1923	<p><u>REQUIREMENTS:</u></p> <ul style="list-style-type: none"> - \$5000 Bond - One License For Each Office - Good Moral Character - Resident of County 2 Years - U.S. Citizen <p><u>FEES:</u></p> <ul style="list-style-type: none"> - Initial Fee - \$150 - Renewal Fee - \$150 <p><u>EXEMPTIONS:</u></p> <ul style="list-style-type: none"> - Employers Seeking Employees for Themselves at No Charge to Employees - Farmers Securing Labor for Their Own Use - Free Employment Agencies - Teacher Registries - Public Employment Agencies 	<p>- 3/4 of Revenue to Employment Agency Fund - 1/4 of Revenue to School Fund</p>	<p><u>PROHIBITIONS:</u></p> <ul style="list-style-type: none"> - Sending Prospective Employees Without a Written Job Order - Fee Splitting or Offers to Split Fees - Violation of Child Labor and Compulsory School Attendance Laws - Failure to Post License in Spanish and English - Sending Applicants to Employers Engaged in Strikes or Lock-Outs - Misleading Advertising - Charging Fees Before Employment - False Statements by Applicants or Employers - Engaging in Business Without a License - Advertising Without Including the Name and Address of the Agency - The Use of Forms Which Do Not Include the Name and Address of the Agency <p><u>REGULATION OF:</u></p> <ul style="list-style-type: none"> - Agents 	<p><u>FEE SCHEDULE:</u></p> <ul style="list-style-type: none"> - Not Greater Than \$3.00, Except for Agents Who Exclusively Provide Employment for Skilled, Professional or Clerical Positions, Then the Fee is Not to Exceed 20% of the First Months Salary <p><u>RESPONSIBILITIES OF COMMISSIONER:</u></p> <ul style="list-style-type: none"> - Commissioner May Revoke Licenses and Conduct Hearings and Inspections

YEAR	LICENSING	ENFORCEMENT	ADMINISTRATION	
1923		<p><u>FINES:</u></p> <ul style="list-style-type: none"> - Doing Business Without License - Misdemeanor Fine - Not Less Than \$50 Nor More Than \$250 or Imprisonment in County Jail Not to Exceed One Year, or Both - Inducing Employee From Leaving Job - Same as Above - All Other Violations - Misdemeanor. Fine - Not Less Than \$25 Nor More Than \$200 		
1943	<p><u>REQUIREMENTS:</u></p> <ul style="list-style-type: none"> - U.S. Citizen Requirement Removed - Resident of County For 2 Years Requirement Removed <p><u>FEES:</u></p> <ul style="list-style-type: none"> - Initial Fee - Annual Renewal <p><u>EXEMPTIONS:</u></p> <ul style="list-style-type: none"> - Veterans' Organizations or Labor Union - Non-Profit Nurses' Organizations 	<p><u>SPECIAL FUND:</u></p> <p>Revenues to General Fund, Employment Agency Fund Abolished</p>	<p><u>PROHIBITIONS:</u></p> <ul style="list-style-type: none"> - Admission to Premises (Agency) of any Prostitute, Gambler, Intoxicated Person or Person of Bad Character <p><u>REGULATION OF:</u></p> <ul style="list-style-type: none"> - Private Employment and Labor Agencies 	<p><u>FEE SCHEDULE:</u></p> <ul style="list-style-type: none"> - Not Greater Than \$3.00 Except for Agents Who Exclusively Provide Employment for Skilled, Professional or Clerical Positions, Then the Fee is Not to Exceed 30% of the First Month's Salary
1949	<p><u>REQUIREMENTS:</u></p> <ul style="list-style-type: none"> - No Felony Conviction <p><u>FEES:</u></p> <ul style="list-style-type: none"> - Initial Fee - Annual Renewal <p><u>EXEMPTIONS:</u></p> <ul style="list-style-type: none"> - Persons Acting for Members of Own Family - Labor Agents Procuring Common Laborers or Agricultural Workers 	<p><u>SPECIAL FUND:</u></p> <p>Employment Agency Fund Reestablished</p>	<p><u>PROHIBITIONS:</u></p> <ul style="list-style-type: none"> - Requirement to Post License in Spanish and English Removed <p><u>REGULATION OF:</u></p> <ul style="list-style-type: none"> - Agencies. Agency License Permits Licensee to Act as a Private Employment Agent <p><u>FINES:</u></p> <ul style="list-style-type: none"> - Operating a Business Without a License - a Misdemeanor Offense Punishable by Fine Not Less Than \$100 Nor Greater Than \$500 or 6 Months in Jail or Both 	<p><u>FEE SCHEDULE:</u></p> <ul style="list-style-type: none"> - Not to Exceed 40% of First Months Salary

YEAR	LICENSING	ENFORCEMENT	ADMINISTRATION	
1961	<u>FEES:</u> - Initial Fee - Annual Renewal	<u>SPECIAL FUND:</u> Employment Agency Fund Abolished, Revenue to General Fund		
1963			<u>FEE SCHEDULE:</u> - Not to Exceed 40% of First Month's Salary if Salary is Less Than \$750 Per Month. If Salary is Greater Than \$750 a Month, Fee Must be Determined by Applicant and Agency	
1969	<u>REQUIREMENTS:</u> - License Expires August 31 - U.S. Citizen - Resident of Texas for 1 Year - Good Moral Character - Never Convicted of an Offense - Passed Exam. Operators and Agencies in Business Prior to 9/1/69 Grand-fathered <u>FEES:</u> - Initial Fee For: Agency - \$150 Operator - \$ 15 - Exam Fee - \$ 25 <u>EXEMPTIONS:</u> - Temporary or Part-time Help Agencies	<u>SPECIAL FUND:</u> To General Revenue To Local Fund	<u>PROHIBITIONS:</u> - Registration Fees - Fees Higher Than Those Set by Board - Attempt the Discharge of a Person From His Employment - Require Applicants to Subscribe to any Publications or Incidental Services - Refer Persons to Employment Deleterious to Health or Morals - Refer Person to Employment Prohibited by Law - Violation of Any U.S. or State Law <u>REGULATION OF:</u> - Agencies and Operators <u>FINES:</u> - Fines Established for Previous Years Removed - Operating Without a License - Misdemeanor. Fine - Not Less Than \$100 Nor More Than \$500 or Imprisonment of Not More Than 6 Months, or Both. Each Day of Violation Constitutes Separate Offense	<u>FEE SCHEDULE:</u> - Board Authorized to Promulgate a Schedule of Permissible Maximum Fees <u>RESPONSIBILITIES OF COMMISSIONER:</u> - Commissioner Enforces Act and Rules and Regulations of the Board <u>COMPOSITION OF BOARD:</u> 9 Members - 6-Year Term - Must be a U.S. Citizen - Must be an Operator Owning Interest in an Agency for 5 Years Prior to Appointment - No more Than 2 Board Members From Same Senatorial District - No More Than 2 Board Members From Same County - 3 Board Members Must Operate an Agency of Less Than 8 Employees Which is Not a Part of a Multiple Office or Franchise Operation - 3 Board Members Must Operate an

-24c-

YEAR	LICENSING	ENFORCEMENT	ADMINISTRATION
1969			<p><u>COMPOSITION OF BOARD: (Con't)</u> Agency of More Than 8 Employees Which is Not a Part of a Multiple Office or Franchise Operation - 3 Must Operate an Agency of More Than 25 Employees Which is a Single Office Operation or is Either Part of a Multiple Office or a Franchise Operation</p> <p><u>RESPONSIBILITIES OF BOARD:</u> - Exam Prepared by Board. Exam Given at Least Every 60 Days - License Holders Must be Notified of Board Meetings 10 Days Prior to Meeting - License Revocation Hearing - Promulgate Rules and Regulations</p>
1971			<p><u>COMPOSITION OF BOARD:</u> 9-Member Board - 4 Must Operate an Agency Which is Part of a Multiple Office or Franchise Operation - 5 Must Operate an Agency Which is a Single Office Operation</p>
1977	<p><u>EXEMPTIONS:</u> - Management Search Consultants</p>		

with operator's licenses. The overall trend in the restrictiveness of regulation has been divergent. Restrictiveness has increased as the prohibitions on agency conduct have increased over time, while restrictiveness has decreased as fees charged to job applicants have steadily decreased to allow higher prices.

Regulation in Other States

Analysis of the regulatory methods of other states has shown three patterns. The survey conducted indicated that most states regulate private employment agencies and do so in conjunction with a state labor department, which often shares this responsibility with associated boards or commissions. Specifically in 47 of the 50 states, some form of private employment agency regulation exists. In 66% of these states the state labor department assumes responsibility for most administrative functions resulting from this regulation. In other states the administration of regulation is delegated to other licensing agencies or departments with the exception of four states where regulation of private employment agencies has been delegated to local authorities.

Information collected showed that in the 15 states which establish a maximum fee schedule, 79% employ it for the full range of incomes. This fee ceiling can be based on a fixed percentage regardless of income, through graduated percentages according to income, or by percentages determined by some combination of job classification and wage level. The remaining four states, including Texas, regulate fee amounts only for lower income jobs. The maximum fee regulation extends to \$6,000 in Oklahoma, to \$8,000 in Texas and Massachusetts, and to \$12,000 per year in Washington.

In approximately half of the states studied these fee ceilings were established by statute. In the remaining states, including Texas, maximum fee limits are set by regulation.

Examination of the data revealed that most states do not require a written examination as a prerequisite to licensure. In the sample studied, twenty states require no exam while thirteen, including Texas, have made it a prerequisite. Where examinations are employed, manager-operators, owners and in some cases counselors are usually specified as the individuals required to meet this qualification.

This discussion of alternative regulatory methods has shown that:

- 1) at the same time that Texas has increased agency procedural prohibitions to protect the general public, restrictions have decreased on maximum fees which agencies can charge,
- 2) most states regulate private employment agencies in conjunction with a state labor department, with many sharing responsibility with boards or commissions,
- 3) of those states which set maximum fee schedules a majority do so for the full range of incomes, and
- 4) most states which license do not include passing a written examination as a requirement.

Criterion 4

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

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

The Board's target populations are licensed private employment agencies and operators. These entities and individuals are also among the groups regulated by the Department of Labor and Standards.

While these two agencies do share target populations, the nature of statutorily defined duties and responsibilities regarding these groups are not overlapping nor duplicative. Each agency performs unique functions and occasionally cooperates in the performance of duties.

One example of this arrangement is in the administration of examinations and the issuance of licenses. The Board is required by law to prepare the operator's examination. The tasks of administering and grading that test, however, are per-

formed cooperatively by the Department and the Board's secretary. Successful candidates who have fulfilled other necessary requirements for licensure receive licenses and remit fees to the Department.

The Department is also responsible for enforcing the law through inspections and complaint investigations. It is the Board, however, that is charged with holding license revocation hearings in cases where such action is deemed necessary by the Department. Thus, an interdependent relationship exists between the Board and the agency in the accomplishment of their functions.

While the Department is capable of handling many areas of regulation, there are functions in which the occupational expertise of Board members is particularly important. The preparation of the operator's examination is one area in which such specialized expertise could be better used. The present examination places primary emphasis on knowledge of current legislation affecting private employment agencies. If the test remains basically unchanged, the Department could probably assume responsibility for this task. However, if greater emphasis were placed on testing and evaluating applicant's skills in dealing with persons seeking employment, the occupational experiences of persons in the industry would be better utilized.

An area in which practical experience is valuable is in setting fees and promulgating rules and regulations. The perspective of members of the industry can be helpful in evaluating the viability of alternatives under consideration.

One additional area in which industry representation proves helpful is in the hearings process. The specialized knowledge of these persons provides a background which is helpful in understanding and accurately assessing the implications of actions in question.

In summary, the functions involved in regulating private employment agencies have been divided between the Board and the Department. There is no duplication

of services in the present division of functioning.

The Board has indicated its belief that input from the industry is important in carrying out its regulatory function. The expertise of industry representatives suggests that their knowledge proves useful in developing appropriate regulatory standards for the industry.

Criterion 5

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

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

The following section describes all bills which have been introduced during the Sixty-third and Sixty-fifth Legislative sessions as well as the one bill which was adopted by the Sixty-second Legislature related to the regulation of private employment agencies.

Sixty-second Legislature

The Private Employment Agency Law was enacted in 1969, creating the Private Employment Agency Regulatory Board. The law was amended in 1971 by the Sixty-second Legislature. This amendment changed the composition of board membership, by giving more representation to multiple office and franchise agencies. The composition of the Board has not been changed since 1971. Since no committee minutes are available, there is no record of testimony given for or against this amendment.

Sixty-third Legislature

H. B. 1352, proposed during this session, would have altered the organizational

structure of the Board by establishing the Board as an autonomous agency separate from the Department of Labor and Standards. Additionally, the Board membership would have been enlarged to include three public representatives. Representatives of the Texas Private Employment Association and a former chairman of the Board testified in favor of the bill. Although the bill was passed by both Houses, it was later vetoed by the Governor because funds had not been provided for operation of the agency.

Sixty-fourth Legislature

H. B. 125 would have changed the composition of the Board by giving representation to the public and to business interests. The Board's regulatory purview would have been expanded to include the following:

- 1) limiting fees charged to applicants with annual incomes over \$8,000,
- 2) regulation of part-time and temporary help agencies, and
- 3) authorization to prohibit the employment or referral of illegal aliens.

During committee hearings, the Board chairman testified in favor of the bill, while representatives of the Texas Private Employment Association, as well as part-time and temporary help agencies testified against it.

H. B. 925 (S.B. 346), also introduced during this session, was the same as H.B. 1352, which had been vetoed by the Governor during the previous session. The Texas Private Employment Association testified for the bill, and the Board acted as a "resource witness."

Sixty-fifth Legislature

While H. B. 1520 proposed exempting management search consultants from the purview of the Board, in general, legislation relating to regulation of private employment agencies introduced during the Sixty-fifth Legislative session would have increased the regulatory responsibilities of the Board.

For example, H. B. 611 would have created a new licensing category for private employment agency counselors. This bill would also have allowed the Board to inspect the record of an individual or agency upon application for license renewal.

H. B. 1992 would have increased the fees required of private employment agencies and operators.

Although the trend during this session was toward expansion of the Board's regulatory influence, some efforts were made to modify that influence by including consumer representatives on the Board.

Exhibit V-1 presents a tabular synopsis of the proposed legislative changes referred to in the material above.

In the four legislative sessions since the Board's creation, two bills have been enacted which have affected private employment agency regulation. Neither of the two bills dealt specifically with public concerns of a direct nature. One simply changed the balance among types of agencies on the Board, the other narrowed the authority of the Board by exempting one category of agency.

Records of committee testimony show that the Board has not been active in representing the public interest before the Legislature. The Board has testified only once in nine years. During the Sixty-fourth Legislature the Board did act as a witness in favor of H. B. 125, a bill that was opposed by the private employment association. H. B. 125 contained three elements in the public interest: 1) adding public and business representatives to the Board, 2) broadening the state's regulatory authority to include temporary help agencies, and 3) limiting fees charged applicants to eight percent. H.B. 125 failed and a similar bill was introduced in the Sixty-fifth Legislature - the Board did not continue its advocacy

EXHIBIT V-1

Tabular Synopsis of Proposed Legislative Changes

Session	Bill	Proposed Change	Action
62nd	H.B. 1001	Present composition of the Board, 9 industry	Adopted
63rd	H.B. 1352	Composition of Board changed - 9 industry, 3 public; separated Board from Labor and Standards	Vetoed
64th (1975)	H.B. 125	Composition of Board changed - 3 industry, 3 public, 3 business Temporary help agencies regulated. Fees: above \$8,000 per year, no more than 8%; below \$8,000 on graduated schedule, none exceeding 8%	
	H.B. 925	Like 1352 (63rd)	
65th	H.B. 1520	Exempts management search consultants	Adopted
	H.B. 143	Like 125 (65th)	
	H.B. 611	Counselors regulated; Composition of Board changed - 4 industry, 5 public	
	H.B. 1891	Guarantee period increased	
	H.B. 1992	Increased fees	
	H.B. 1279	New Department of Business and Professions	

of this proposal a second time. Nor did the Board support other legislation which would have been in the public interest.

Changing the composition of the Board has been proposed in at least one bill during every Legislature since the Board was created. The effect of having no public members is reflected in the Board's analysis of proposed statutory changes in its self-evaluation report. H.B. 141 (65th) was based on Board regulations except that it increased the time during which only a partial fee is owed if employment is prematurely terminated. This bill was evaluated by the Board as having no benefit to the public. H.B. 125 (64th), which the Board at that time supported, was analyzed by the present Board as having a disadvantage to the public: an unfair restriction on charges. This perspective on changes may indicate why the Board has not been more active in proposed changes to the public's benefit.

In summary this section has shown the following:

- 1) the Board has not been active in recommending Legislative changes clearly in the public interest, and
- 2) the Board's composition of representatives from the industry creates a membership in which a full perspective of the public benefit may be lacking.

Criterion 6

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

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

Complaint Responsibility. All the preliminary aspects of the complaint process, involving investigation and initial enforcement responsibilities are carried out by the Department of Labor and Standards. The Private Employment Regulatory Board handles only the final disposition of complaints through the hearing process.

Complaint Procedures. Generally, when an individual registers a complaint against an employment agency it is initially recorded by the Department of Labor and Standards as an "inquiry". These inquiries are reviewed by the investigative staff for initial determination as to their status. If it is determined by the investigative staff that the inquiry may involve a violation of the laws or regulations, the individual is contacted to begin the formal written complaint process. Forms used to make a written complaint are made available to the individual. Upon receiving a written complaint, the investigative staff requests information from the employment agency and employer concerning the incident in question. The investigator completes the complaint file with recommendations as to the necessity for a hearing. Reviews by supervisors complete the process for

final determination by the Commission of Labor and Standards. At any point, prior to the determination by the Commissioner to refer for a hearing, the investigative staff may effect a settlement between parties.

Complaint Analysis. In this regard, both types and the manner of disposition were reviewed. A random sample, based on 20 percent of the 342 complaints investigated by the Department during the past three years, was performed to provide further detail on the types of complaints received and the disposition of cases by means other than a hearing. Exhibit VI-1 shows complaints by type and disposition.

EXHIBIT VI-1

Types and Dispositions of Complaints

<u>Types</u>		<u>Dispositions</u>	
Misrepresentation	39%	Dismissed	46%
Refunds Made	34%	Invalid	41%
Not Indicated	24%	Not Indicated	<u>13%</u>
Others	<u>3%</u>		
Total	<u>100%</u>	Total	<u>100%</u>

Statistics on the volume of inquiries received by the Department and the Attorney General's Office reflect significant concern by the public regarding private employment agency practices. In fiscal 1977, 434 complaints relating to private employment agencies were received by the Attorney General's Consumer Protection Division and 6,634 inquiries were received by the Department of Labor and Standards. Of the second figure, the Department completed investigations of 119 inquiries which initiated formal complaint procedures.

Hearings

As discussed in earlier materials, the Board has held only seven hearings since it was created in 1969. Penalties from the Board's three hearings of fiscal years 1975-1977 are shown below.

Operator's Licenses Revoked - 2

Agency Licenses Suspended - 2 (2 weeks; 3 days)

Agency Licensee Reprimanded - 1

An analysis of the penalties imposed shows that the less costly operators licenses were revoked in two instances, while the more costly agency license were suspended in two instances.

In summary, review of complaints to the Department and complaint hearings held by the Board shows:

- 1) there is a large number of complaints to the Department and the Attorney General's Office concerning private employment agencies;
- 2) very few complaints have received enforcement hearings by the Board;
and
- 3) the Board has chosen to apply less severe types of penalties in disposing of complaints.

Criterion 7

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

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

The Private Employment Agency Law does not include any specific public participation requirements. The law does contain a requirement for notice of meetings at least 10 days prior to a meeting. However, it applies only to license holders. The only other notice of meetings by the Board is in compliance with requirements of the Administrative Procedures and Texas Register Act. This requires a notice to the Secretary of State prior to a meeting or rule change.

Review of the Board's "Procedures and Regulations" shows the following provisions apply to public participation: 398.01.00.003(d) "Anyone desiring to address the Board shall fill out a registration form on a 3 X 5 card stating the item they wish to speak on as listed on the agenda," and ... 003(e) "Requests for rules shall be in writing to the Chairman who shall provide for the consideration and disposition of the petition in accordance with Section 11 of A.P.T.R.A." The Board's response to questions asked in the self-evaluation report states the Board, in

effect, does not have any publications intended to inform the public of the policies, responsibilities and activities of the Board. The Board responded that it issues two publications: The "Question Manual" and the "Study Manual". However, the Board also stated these manuals are only readily available to those persons preparing for the operator's license examination. The cost of the manuals is included in the \$25 examination fee. The publications are sent automatically to examination registrants. The cost of the "Study Manual" is \$15 if it is requested separately. The "Question Manual" is available only to persons registered for the examination.

The Board did not purchase media advertisements in fiscal years 1975, 1976 and 1977. It did not conduct conferences, seminars or training sessions in these years.

In writing rules and rule changes the agency does not use technical or professional help on a formal or informal basis. The information provided by the Board in its self-evaluation report on proposed rule changes was verified by the staff. Analysis showed that 27 rule changes were proposed in the three years under consideration. Eleven of the 27 proposed changes were adopted. Six changes were proposed by Board members and five by industry representatives. It was also noted in a review of Board minutes for fiscal years 1975, 1976 and 1977 there is no evidence that the public (i.e., non-industry representatives) participated in Board meetings.

In summary, the law does not specify public participation requirements. The Board has not made additional efforts to encourage non-industry representatives to participate in its activities. It has not acted to inform the public of the Board's policies and responsibilities concerning the industry it regulates.

Criterion 8

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

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

The Board employs one half-time Secretary III. Interviews with Board members and the Department personnel indicate that the Board does not have any written policies regarding equal employment or privacy of individuals.

Criterion 9

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

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

Section 3(c) of the Private Employment Agency Law (Article 5221a-6) stipulates that to qualify for appointment as a Board member a person must be an operator owning an interest in a private employment agency in Texas for five years prior to appointment. Article 6252-9b (Standards of Conduct for State Officers and Employees), Section 5(a) requires that every appointed officer having a substantial interest in a business entity which is subject to regulation by a regulatory agency file an affidavit with the Secretary of State disclosing such information. Thus, members of the Private Employment Agency Regulatory Board are required to file such an affidavit. Review of records of the Secretary of State shows that conflict of interest affidavits have not been filed by three Board members. Interviews with Board members indicate that these affidavits have not been filed because members have not always been made aware of these statutory requirements.

Criterion 10

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

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

The self-evaluation report states that the only records classified as confidential under the provisions of Article 6252-17a are the following: 1) operator files, 2) files on complaints under investigation, and 3) files on complaints where hearings are pending. The Department states that a request for information has never been denied, nor have requests been made for Attorney General opinions concerning categories of information which should be classified as confidential.

The posting of notices with the Secretary of State has generally been in compliance with the requirements of the Open Meetings Act. The self-evaluation

report and a review of the minutes of Board meetings indicate that all meetings have been open to the public except the closed executive sessions limited to formal deliberations concerning issues raised during hearings. Board meetings are generally held in Austin, although meetings have been held in Arlington, Lubbock and Houston during the past three fiscal years.

Notification concerning Board meetings is required to be posted in the Texas Register, and the Board is also required by its enabling act to mail notices of proposed meetings to license holders at least ten days prior to each date. The review indicated that the Board has met notification requirements specified in both the Open Meetings Act and the Private Employment Agency Law.

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

In summary, the Board appears to be in compliance with the Open Records Act and the Open Meetings Act.

CONCLUSIONS

Regulation of private employment agencies in Texas began with the passage of legislation in 1915. From that date forward to 1969, full responsibility for carrying out the provisions of the state's statutes in this regulatory area resided with the Department of Labor and Standards. Then, in 1969, the Texas Private Employment Agency Regulatory Board was created to share regulatory responsibilities with the Department. While the Department retained major responsibility for day-to-day operations associated with carrying out the provisions of the law, the Board assumed a broad policy-making role in the general areas of administration, licensing and enforcement.

In regard to its administrative function, the Board has established a schedule of maximum permissible fees that private employment agencies may charge applicants. The purpose behind this fee structure is to insure that fees are fair and equitable in relation to services provided. In reviewing the Board's fee schedule, however, it was seen that the Board has only recently begun to regulate fees for placements where annual earnings exceed \$8,000. This earlier posture left a great many jobs unregulated. With this responsibility left solely to the Board's discretion, the objectives underlying the fee schedule could continue to be only partially addressed.

The licensing function of the Board involves the preparation of an examination for private employment agency operators. The broad goal underlying the examination function is to protect the public through the provision of a qualified and competent body of agency operators. A review of the examination showed, however, that the test focuses heavily on the provisions of the law, while questions relating to knowledge necessary in dealing with the public receive relatively less weight. Additionally, the examination is administered only to operators. Agency counselors, who form a large group dealing with the public on a

daily basis, are not required to be tested. Finally, operators in business prior to the law's effective date in 1969 have not been required to take the test. These circumstances raise a question as to whether the testing process has adequately protected the public.

The enforcement function in its normal setting involves the elements of processing, investigation, review and disposition through hearings to insure that the law is being followed and that penalties attach to violations. In the instance of the Board, the normal organizational pattern associated with this function is broken due to the fact that the Board controls the hearing process and the other elements are contained within the Department of Labor and Standards. The establishment of the necessary linkage between these processes is, therefore, made more difficult. The large number of "inquiries", the smaller number of complaints actually resulting from these inquiries and the even smaller number of complaints processed to the stage of hearings raises serious doubt as to whether the split process can serve as an effective enforcement mechanism.

The foregoing suggests that the administration, licensing, and enforcement objectives related to the functions performed by the Board have not been fully met. However, if the legislature determines that the function should be continued, certain changes relating to the present operation and organization of the Board could be considered to increase the efficiency and effectiveness with which the function is carried out.

**THE LEGISLATURE SHOULD CONSIDER MODIFYING BOARD COM-
POSITION TO INCLUDE THE COMMISSIONER OF LABOR AND
STANDARDS AND REPRESENTATIVES OF THE GENERAL PUBLIC.**

The present composition of the Board is limited to members of the industry. While the functions, which the Board performs, are to protect the interests of both the public and the industry, the review indicates that this has not been clearly reflected. Criterion 5 shows the Board's lack of Legislative involvement in the public interest and Criterion 2 points out that for eight years, the Board left much of the public outside of its maximum fee schedule. The most direct means of ensuring that concerns of the general public be addressed is to provide public membership within the composition of the Board.

An additional area of concern in the composition of the Board is the lack of representation of the Department of Labor and Standard. As discussed previously the hearing process is seldom used despite the large numbers of inquiries and complaints received concerning private employment agencies. Since the Department is integrally involved in the initial enforcement aspect of the Board's operations, the Department's representation on the Board would establish an additional link between the interrelated functions carried out by the Department and the Board. The Commissioner could provide such representation.

THE LEGISLATURE SHOULD CONSIDER REQUIRING THE LICENSURE OF EMPLOYMENT AGENCY COUNSELORS.

As pointed out previously, agency counselors deal with applicants on a day-to-day basis. Unlike private employment agency operators, there is no statutory provision requiring the licensure of these individuals. In exempting this group, the public is not assured of a minimum level of competency demonstrated through a standard state examination. This exemption thus reduces the effectiveness of the examination process in promoting the public interest.

THE EXAMINATION REQUIRED FOR THE LICENSURE OF OPERATORS COULD PLACE GREATER EMPHASIS ON KNOWLEDGE REQUIRED IN DELIVERING EMPLOYMENT SERVICES TO THE PUBLIC.

The Board is presently responsible for preparation of the examination which must be passed in order to receive an operator's license. Criterion 2 describes the elements which are contained in the present examination. As discussed in that section, the examination presently centers on state and federal statutes under which private employment agencies operate. The knowledge required to effectively deliver employment service is not a major part of the examination. Without a more thorough testing of occupational knowledge, the public is not assured of minimum levels of competency.

THE LEGISLATURE SHOULD CONSIDER STATUTORY CHANGES WHICH WOULD REQUIRE THE BOARD TO ESTABLISH A MAXIMUM FEE SCHEDULE COVERING ALL INCOME GROUPS.

The Private Employment Agency Law gives the Board authority to establish a schedule of maximum rates which can be charged to applicants by private employment agencies. Schedules of maximum rates for the first eight years of the Board's existence left unregulated the fees charged to persons with earnings above \$8,000. In this instance, the setting of the cut-off point of the maximum fee schedule at an unreasonably low level, left most users of private employment agencies without protection of the law. Requirements that the fee schedule cover all income groups would prevent the reversal of the policy recently adopted.