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## AICPA Sunset Handbook: A Guide to the Sunset Review Process

American Institute of Certified Public Accountants (AICPA)

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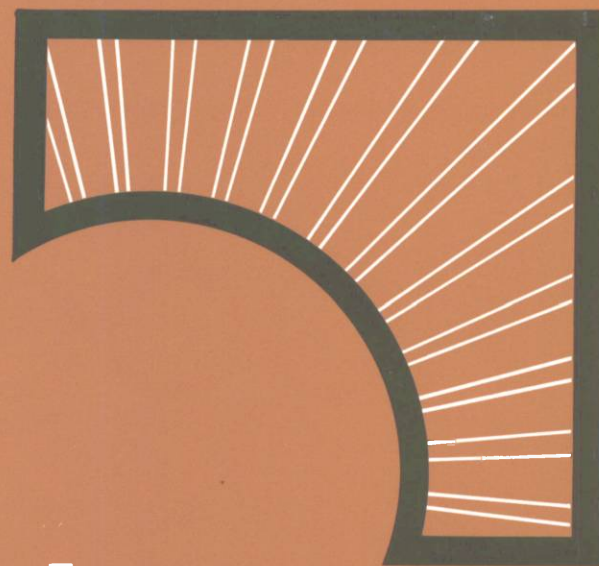
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SUNSET HANDBOOK



AICPA  
**Sunset  
Handbook**

A Guide  
to the  
Sunset Review  
Process

AICPA

American Institute of Certified Public Accountants

# **Sunset Handbook**

**State Legislation Committee  
American Institute of Certified Public Accountants**

This publication was prepared by the State Legislation Committee of the American Institute of Certified Public Accountants. It is aimed principally at the profession in those states where sunset laws have been enacted and where state boards of accountancy are scheduled for sunset review. Since these sunset laws, and the accountancy laws to which they apply, vary widely from state to state, the committee's comments have necessarily been general in nature, and no legal advice on a specific set of circumstances has been offered. Should the profession in a particular state require such advice, the committee suggests that the assistance of legal counsel be sought.

The AICPA State Legislation Committee would like to take this opportunity to express its acknowledgement and appreciation to the following people who contributed information and material to the *Sunset Handbook*.

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# Introduction

The word sunset has acquired another meaning when it refers to a new type of legislation that mandates the automatic termination of state agencies unless they are affirmatively reestablished by statute. This *Sunset Handbook* provides information to assist the accounting profession in preparing for the relatively recent development of sunset laws and the effect of these laws on state boards of accountancy.

Sunset legislation has been considered in every state legislature since the Colorado Legislature passed the first sunset law in 1976. In view of the significant impact that sunset could have on the accounting profession, the AICPA State Legislation Committee took an early and active interest in this legislative trend.

The State Legislation Committee formulated the following policy statement on sunset, which was later approved by the AICPA Board of Directors:

The AICPA Board of Directors believes that improved accountability in government is essential to serve the public interest. The Board supports actions by legislatures that place increased emphasis on periodically reviewing government program performance and achievement.

The Board further believes that the advice of the accounting profession should be provided to legislatures in the development of programs, which seek to evaluate the several agencies, through the use of financial and program analysis.

This action was followed by a white paper explaining sunset that was approved by the committee at its June, 1977, meeting. In November, 1977, the State Legislation Committee created a sunset task force to study the potential ramifications sunset could have on the accounting profession and to recommend responses that would be appropriate for the profession to make. At their first meeting in December, 1977, the sunset task force members concluded that in view of the nature of the sunset review process, the profession, probably through its state CPA societies, would become involved in the evaluation process of a state's accountancy board and accountancy laws. The sunset task force decided to develop a sunset manual in order to prevent duplication of effort and to assist the profession in preparing for sunset reviews. The task force members agreed that the handbook should contain data which would be pertinent to the review process, general information regarding public accountancy, and answers to frequently asked questions. Therefore, since no two sunset laws are identical, this manual is general in nature. It does contain, however, specific information that is universal within the accounting profession.

The *Sunset Handbook* should be used as a reference manual and not as a definitive source of information. Those sections of the handbook that answer specific questions or include case histories of sunset reviews are meant to serve as a guide. The answers, where appropriate, should be adapted to fit individual states' needs.

The information presented is believed accurate and as complete as is reasonably possible; but because sunset is a new concept, we anticipate that updating will be required. The handbook's looseleaf format will permit updating as new or revised material becomes available. If you wish to keep your *Sunset Handbook* current, please fill in and return the revision coupon in the supplemental information section.

The state legislation staff would appreciate any additional information you may collect on sunset.

The AICPA's State Legislation Committee and staff are available on request to the accounting profession for consultation during a sunset review.







# 1

## What Is Sunset?

Sunset is an action-forcing mechanism designed to periodically evaluate the effectiveness and efficiency of agencies and programs. A sunset law establishes a timetable for the termination of government agencies or programs unless the legislature takes affirmative action to reestablish the entity. Not all sunset laws are alike. The differences between them are of degree rather than substance—for example, the number and type of agencies to be evaluated, the length of time for which an agency is renewed, and the methodology and comprehensiveness of the evaluation process.

Colorado and Alabama were the first two states to pass a sunset law. Colorado's sunset law, which provides for the evaluation of only a selected number of regulatory agencies and commissions, dramatically differs from Alabama's law, which requires almost every state agency and program to be reviewed. Furthermore, Alabama's sunset review process is not as extensive as the requirements of the Colorado law. The number of years for which an entity may be renewed is also different.

Sunset adds a new dimension to existing legislative and executive mechanisms that seek to increase government accountability. One of these mechanisms is the legislative oversight function. The objective of oversight is to restructure or terminate those entities which either are not operating as well as they should or are no longer needed. Theoretically, the legislature evaluates the effectiveness and efficiency of agencies and programs during the appropriation process to determine if funding should be continued. All too often, however, such legislative evaluations result in incremental budgeting.

Another device that legislators have increasingly used in the past few years to make government more accountable is the inclusion of a limited-life provision in legislation that creates the agency or program. The law has to be reenacted in order for the entity to continue after its termination date. The difference between a limited-life provision and a sunset law is that the latter requires that a review be undertaken. This is an important distinction, since it shifts the burden of proof of the need for the agency or program from the legislature to the entity itself.

Executive branch review may take many forms. A governor, in certain cases, can terminate a program or agency by executive order, by refusing to appoint personnel, or by failing to appropriate money for its continuation. These "accountability" tools are rarely used however.

Sunset is a 1970s response to big government. In many respects, zero-base budgeting is similar to sunset since either may result in terminating or restructuring an agency. Whereas sunset is a legislative instrument, zero-base budgeting is a tool used by the executive branch. These two concepts complement each other, and they can be more effective when used together to form a coherent evaluation system.

## **Arguments in Support of the Sunset Concept**

One must look at the problem sunset attempts to solve—the lack of governmental credibility—to understand its popularity with public interest groups, the general public, and public officials. Government's loss of credibility during the past few years has been a serious problem. Sunset proponents anticipate that government will become more accountable if ineffective or inefficient agencies are eliminated or restructured. They believe that, although sunset is not a panacea, it will help to restore the public's confidence in government.

## **Arguments in Opposition to Sunset**

Sunset has not been without its detractors. Opponents of sunset mention certain aspects which could negate any positive results. Both supporters and opponents of sunset conclude that it will not save a substantial amount of money. In fact, a sunset law may cost more to implement than any savings that may result from the termination or alteration of agencies and programs. A second argument, and one with which sunset supporters are also concerned, is that during the review process political considerations may take precedence over the agency's merits or lack thereof.

As with many innovative concepts, sunset is a product of the state legislatures. Even though sunset was only introduced in 1975, every state legislature, as well as the United States Senate, has seen at least one sunset bill introduced. The speed with which sunset has spread across the country is truly amazing, and it is a concept that may have profound effects on the accounting profession.



# 2

## Potential Effects of Sunset

Will sunset affect the accounting profession? There is no easy or simple answer to this question. In some states the sunset review will result in minimal change to the accountancy law or to the board, other reviews may have major effects on the accounting profession.

The objective of a sunset review is to answer the following two questions: (1) Is regulation necessary? and (2) What is the best entity to administer accountancy statutes and regulations? Needless to say, the first question should be satisfactorily answered before the second question can be considered. Not only will the board's necessity have to be justified, but its effectiveness and efficiency in fulfilling the objectives of the accountancy laws will be evaluated in the review process.

Positive as well as negative effects may result from a sunset review. A major detrimental effect would be the weakening of the laws regulating accountants. The cornerstone of the accounting profession is the regulation of accountants qualified to perform the attest function. The review process will give additional class advocates the opportunity to propose the licensure of different classifications of accountants. Furthermore, attempts might be initiated to amend the accountancy law to lower or to eliminate the admission requirements for a CPA license. The alteration of statutes so as to lower the present high standards for licensure and to allow the regulation of more than one class of accountants would not be in the public interest.

Another potential consequence of a sunset review, and one that would have major ramifications throughout the country, is the termination of a board of accountancy. What is the likelihood that a board will be terminated? This is a difficult question to answer in view of the fact that no two boards' performance records are identical and that the political factors that decide a board's fate will be different in each state. The factors that will influence whether a board is reestablished are the efficiency of the board in fulfilling its responsibilities, the board's effectiveness in promoting the legislative intent, and the political mood for abolishing regulatory agencies in general and the board of accountancy specifically.

A sunset review is a two-way street. It will also give CPAs and other individuals concerned with maintaining the professional standards of the accounting profession an opportunity to promote amendments to improve the present accountancy law. The review process will take on added importance if the accounting profession has been unsuccessful in changing the law through the regular legislative process. Some of the changes of the accountancy law that may result from the sunset review are enactment of mandatory continuing professional education, passage of regulatory dying class legislation, updating educational and experience requirements, and improving the board of accountancy's operations.

Another positive effect that may originate from a sunset review would be increased public awareness of what the accounting profession encompasses. George Anderson, chairman of the

AICPA State Legislation Committee, noted, "In most states where an evaluation review will occur, the board of accountancy, the state CPA society, public officials, individual accountants, and the general public will have an opportunity to testify during the review process. This input from a variety of sources should result in a better accountancy law and an increased awareness among the general public of the duties and functions of CPAs."

In sections 4 and 5, information will be presented on how to prepare for a sunset review.



# 3

## Five Case Histories

In this section, five case histories of the sunset review process are included as examples for use by the accounting profession in other states. Alabama, Montana, New Mexico, Tennessee, and Texas are the first states that have undergone the process of evaluating the board of accountancy and the accountancy law. The following information will be included in this section: the legislative auditor's self-evaluation questions, the initial legislative performance report, the board's response to the review questions, the society's response, samples of testimony by individual CPAs during the review hearings, and the recommendations or results of the sunset review. Because the requirements for the sunset review process vary from state to state, not all of the above categories will be represented in each state. The responses by the individual state societies and boards of accountancy will vary in length and comprehensiveness, which is also due to the different sunset requirements.

This information, especially the responses from the state societies, should be of great assistance to the accounting profession in preparing for a sunset review. It should be remembered when reviewing this material that unique political considerations were responsible for the scope of the review and the ensuing responses by the profession.





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AMERICAN INSTITUTE OF  
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March 3, 1978

Mr. Francis H. Krauss  
State Legislation Committee  
American Institute of Certified Public Accountants  
1211 Avenue of the Americas  
New York, New York 10036

Dear Frank:

This is in response to your request regarding the Sunset Committee.

I have contacted other members of the State Board of Public Accountancy in Alabama and am unable to find any member who is not going to attend our State Society meeting. Therefore, I am going to list below some of the details relating to the Sunset hearing which our State Board had in 1977:

The Legislature had a committee to make an inspection of the State Board's records with particular emphasis on its financial condition. This inspection was made several days in advance of the scheduled hearing by the Legislative Committee. At the hearing most of the questions centered around the expenditures that were being made by the State Board as well as its sources of revenue. In order to conserve expenses, we have combined facilities for our State Board and State Society. We do, however, have one secretary who primarily spends her time with State Board activities but the supervision of both the State Society and the State Board falls within the framework of our Executive Secretary. There were a number of questions centering around the interactivity, principally payment of expenditures to the State Society, with the State Board. The Legislators doing the questioning with two exceptions were novices in the financial area. Therefore, many of their questions were juvenile. The hearing lasted for approximately one and one-half hours and at the end of that time the meeting was adjourned without any comment by the Legislators as to what their plans would be. However, one of the most knowledgeable of the Legislators who happens to be a Senator from the County in which I live came outside and talked to us and indicated that we should not be concerned.

Mr. Francis H. Krauss

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He assured us there would be no problems. In Alabama, the Legislature provides that unless the Legislature acts to terminate an agency, then it will continue. No such action has been taken by the Legislature. Therefore, as far as we have been able to determine, there has been no attempt to terminate any agencies in Alabama other than certain agencies which are no longer active.

Frank, I am sending you a couple of newspaper clippings which have appeared in our local papers recently which indicates the general feeling about the Sunset Law. There are various attempts to either change the law so that it would be more effective by terminating an agency unless a positive vote is made to continue it or to do away with the Sunset Law altogether. The Legislature is now in session but at this moment I do not have any further information.

If you have any further questions about the Sunset hearing or the action pending in the House of Representatives, please give me a call.

With best personal regards, I am

Yours very sincerely,

L. PAUL KASSOUF & CO., P. A.



Certified Public Accountant

LPK:ss

cc: Mr. William M. Crane

# Imperfect Sunset Law still does

By Frank Bruer

Staff Writer

**MONTGOMERY**—Did the Alabama Legislature really have the nerve to abolish the West Alabama Environmental Improvement Authority?

It did indeed, along with 27 other agencies under its Sunset Law, which requires review every four years of all state or state-funded agencies to see whether they should be continued or terminated.

"We tried every town in West Alabama and couldn't find anyone who knew what it was," explained state Sen. L. D. Owen of Bay Minette in recommending that the agency sent to that Great Sunset in the Sky.

But Alabama's two-year-old Sunset Law may be headed for the sunset itself.

The law has come under intense fire this year in the Alabama Legislature.

**Rep. Hartwell Lutz** of Huntsville has introduced a bill in the House of Representatives to repeal the law and says he thinks there are enough votes in that chamber to do so.

Sen. Bingham Edwards of Decatur labels it a monster. He claims it destroys the legislative process in both houses since nothing else can be taken up until all the Sunset resolutions are acted upon.

Sen. John Teague says it was supposed to be a cure-all for bureaucracy but instead is a joke.

Sen. George McMillan of Birmingham, who pushed the Sunset bill through the legislature in 1976, thinks it can be cured by amendments and has a bill in the Senate to do that.

If the Alabama Legislature does repeal the law it will reverse a soaring trend now sweeping across the nation.

Alabama was the third state in the nation to pass a Sunset Law. Now 24 states have some form of Sunset Law requiring periodic review of state agencies.

However, there is a major difference in this state's law and the others.

All of the others provide for automatic Sunsetting of an agency unless the legislature votes to continue it.

That was the way the Alabama bill originally was written but the House of Representatives turned the Senate version around and said an agency would be continued unless both houses voted to terminate it.

One major effect of that was to make it virtually impossible to abolish but the most totally inconsequential agency. Even if one house does vote to terminate an agency, the other must agree or the agency will stay alive. McMillan's bill would turn that around the way the other states do.

## Montgomery Pipeline



The Sunset Laws are the idea of the so-called people's lobbying group, Common Cause. The purpose was to get a handle on the mushrooming bureaucracy that is sweeping both state and federal government.

Some political observers claim legislatures already have the power to Sunset an agency, either by simply repealing the law that created it or by not budgeting it.

But the political facts of life are that once an agency gets in the state budget it seldom if ever is removed. And once a law creates a department or board or commission it never is repealed because of the pressure groups that descend on the Capitol.

Last year, the Legislature reviewed 18 agencies and abolished one. This year it reviewed 279 during a 10-day period and terminated 28. Five others which the Sunset Review Committee had recommended for termination.

None was a major department or agency although the Sunset Review Committee had recommended termination of the Department of Youth Services and Department of Court Managements. The full legislature reversed the committee on both of those, along with three others recommended for termination.

Under the Alabama law, an 11-member committee composed of 11 members of the House and Senate and one from the governor's office hold hearings on each agency. It is a time-consuming job.

It makes recommendations to the full Legislature whether an agency or department should be continued or abolished. The whole Legislature must make the final decision.

The idea is good, theoretically, Lutz said last week. But it is one of those things that looks good on paper but doesn't work.

However, supporters of the law claim it does a lot of good even if it doesn't thin out the hundreds of agencies which have been created over a period of years.

They say it let's them know we are looking at them and causes the agencies to look at their own internal workings. Along with the hearings are special performance audits of the agencies by the State Department of Examiners of Public Accounts.

# some good

During the hearings a number of irregularities, conflicts of interest, evidences of poor management and bad accounting were turned up by the special audits.

A sizeable number of department or agency heads actually thanked the committee, claiming they learned some things about themselves they didn't know before.

Although the present law has some distinct problems, it can bring Alabama something it hasn't had in years when combined with a new zero-based budget concept—accountability of state government to the taxpayers who have to pick up the tab.

It could serve as both a microscope for the Legislature and a mirror for the agency—both of which would tend to make the agency spruce up a bit.

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Birmingham, Alabama  
February 27, 1978



REPORT OF TASK FORCE  
SUNSET AUDIT  
MONTANA STATE BOARD OF ACCOUNTANCY

Introduction

Montana Senate Bill No. 162, Section 82-4604, charges the Legislative Audit Committee with the responsibility for review of agencies scheduled for termination by Section 82-4603. This review must include a performance audit of the agency and an examination of sufficient magnitude to provide answers to six essential questions. The common denominator in these six questions is the public, the public interest, and public protection.

In the review of the Montana Board of Accountancy, it would seem appropriate to define first the public for whose protection an accountancy act or law is intended.

The public concerned would include the following who utilize or rely upon Licensed and/or Certified Public Accountants engaged in public practice.

1. Individuals, corporations, and other business entities who rely upon PA's and CPA's for financial advice in every day business matters.
2. Individuals, corporations and other business entities who have audited and unaudited financial statements prepared to obtain the necessary credit and investment for the orderly and sound development of their business.
3. Financial institutions such as banks, savings and loans, insurance companies and any and all institutions and/or individuals who rely upon these financial statements in providing financing to commercial enterprises.
4. Investors who rely upon certified financial statements as required by the Securities and Exchange Commission to arrive at investment decisions.
5. Government agencies who utilize the services in the discharge of their responsibilities and accountability to the public of their stewardship. These users include the full spectrum of agencies from the federal level on through the states, counties, cities, towns and lesser subdivisions thereof.
6. Not for profit institutions such as charitable organizations, educational institutions and others who utilize the services in assuring the contributor and others that the resources entrusted to the organization are being properly utilized in the discharge of the asserted goals and objectives.

7. Last, but not least, are the human resources, the young people who aspire to a career in the profession of public accounting and who rely upon the profession for employment and opportunity upon the completion of their education.

It might be well at this point to consider the history of accountancy in Montana from 1909, when the first accountancy act was passed, to 1969 when the current law was enacted. The history of accountancy in Montana fairly well parallels the history nationwide. The first act was sponsored by a group of Eastern accountants in Montana examining the records of a business enterprise whose financing was in large part tied to financial institutions and public ownership outside the state. There were few, if any, schools of accountancy; there was no national or state professional organization such as the American Institute and Montana Society of CPA's. There were no Code of Ethics, no licensing bodies, no universal criteria by which the public could judge basic qualifications of the profession. There were no governmental bodies such as a Board of Accountancy, Securities and Exchange Commission, Legislative Audit Department or Insurance Commission to police the infant profession of accountancy.

These men, foreigners to Montana, recognized the future demands and knew that the profession needed to be policed for the good of the public and for the orderly growth of a profession which was essential to the development and growth of the free enterprise system.

Between 1909 and 1938 most professional public accountants were products of Local Business Schools, Business Administration majors from Colleges and Universities and Correspondence Schools; all of whom developed their expertise by "on the job training". By 1934, less than 50 certificates had been issued, with but a few of these qualifying by examination. The demand was not great for public accountants and our law, as it then existed, inhibited those who aspired because it required experience under a C.P.A. in order to qualify, and those in practice seldom hired full time staff.

Again, forward looking Montana practitioners realized that future demands for professional accountants would arise and our law was changed, eliminating the experience requirement. By the time of World War II, some 105 certificates had been issued. Uniform examination and grading of C.P.A. Candidates throughout the nation had become a reality and the Securities Exchange Commission had come into existence to better protect the public.

After World War II commerce and industry expanded at a tremendous rate, geographical boundaries were breached and the demands for professional accountants outstripped the supply. Departments of Accountancy within College and University Schools of Business were established at an extremely rapid pace. The complexities of business and commerce and its demands for investors knew no political or geographical boundaries, and the common body of knowledge of accountancy expanded to keep abreast with the complexities and financial

demands. Government also proliferated to keep up with these complexities. More and more the public interest was at stake as the stewardship of more and more organizations had to be reported, monitored and put on a scale to be weighed and judged by those who had a vital interest in that stewardship of the responsible parties.

Montana again kept pace, establishing excellent college and university departments to convey this greatly expanded body of knowledge of accountancy. These departments grew until they have become the largest and most in demand departments on the campuses. The following table illustrates the growth from the 14 original certificates issued in 1909 to the present:

	<u>Certificates Issued</u>	<u>Percent of Total Issued through 1977</u>
1909	14	
1910-1920	25	
1921-1930	7	
1931-1940	<u>50</u>	
First 30 years	<u>96</u>	8.3%
1941-1950	81	
1951-1960	138	
1961-1970	<u>267</u>	
Second 30 years	<u>486</u>	<u>42.0%</u>
First 60 years	582	<u>50.3%</u>
1970 to date (1977)	<u>574</u>	<u>49.7%</u>
First 67 years	<u>1156</u>	<u>100%</u>

This rapid growth in the ranks of professional accountants was not only something Montana was experiencing, it was a national phenomenon. Montana Schools, with their excellent accounting departments, were turning out more trained young people than the local demand. Montana's Accountancy law was becoming obsolete because it did not require a college education. By 1969, when our current law was enacted, more than three-fourths of our sister states and jurisdictions required both a degree and experience for certification and/or licensing.



Again, the profession led the way in attempting to better protect the public. It cooperated with the legislature to author and enact an updated accountancy law that kept pace with the majority of the nation's state accountancy laws. Keeping Montana abreast of the nation was a major factor for proposing and working a change in the law. A major motivating factor was that the common body of accounting knowledge had grown so rapidly and so broad and technical that a college degree was the necessary background and foundation to equip an aspirant to cope with the demands of the public and the users of financial statements. A minimum of experience was included as a requirement in the law in order to give assurance to the public that those holding themselves out as professional accountants possessed exposure to the practice of accountancy. By raising the entry level requirements to that of the majority of other states, young, successful aspirants could go anywhere and be qualified as entry level professionals. Another motivation was to bring under state law those non-certified public accountants who were practicing accountancy and exercising the attest function but without regulation.

The 1969 law had some basic ideas built into it.

1. There was no restriction placed upon who could apply and sit for the examination.
2. An entry way was provided for those who might not be able to obtain a degree since the Board was given the discretion to determine what an equivalent education would be.
3. Because of the diversity of businesses in Montana and the general, but prevailing need for broadly educated people, the educational standards were established as a college degree -- not a more restrictive degree in accountancy.
4. Because of the geographical expanses and often sparse population of the state, the law was structured with a minimum requirement of experience, but sufficient to protect the public from the novice.
5. In order to assure that all the people interested in the profession, even those who left the state or migrated in, were on a par, every effort was made to achieve uniform entry level and practice standards.

The main motivating force in proposing and passing the 1969 accountancy act was to bring Montana up to a par with other jurisdictions. At that time, Montana had the lowest requirements to obtain a certificate. This state of affairs was patently unfair to candidates obtaining Montana certificates who then found they did not qualify for reciprocity because they had not met higher standards required in our sister jurisdictions. Another motivating force in the proposal of the change was the need to bring under the jurisdiction

of the state, all of those individuals actually practicing the attest function. Since the only area of public accounting which is subject to regulation is the performance of the attest function, it seemed only proper to blanket in all individuals who could hold themselves out as public accountants.

### The Profession of Accounting

Webster's New Collegiate Dictionary defines a profession as "a calling requiring specialized knowledge and often long and intensive academic preparation." In order to become qualified as a CPA, education and experience are necessary to acquire the needed body of knowledge and skill. Common characteristics that accountancy and other professions share are:

1. Providing essential services to the public.
2. A set of ethical principles emphasizing self-subordination.
3. Devotion to the public welfare, honesty, and probity.
4. Requirements for admission established by law.
5. Disciplinary measures for those violating ethical standards.
6. A body of specialized knowledge acquired through extensive formal education.

The accounting profession is indeed a profession and should be treated as such. An elementary test that separates professions from occupations is the potential harm an unqualified "professional" can do to an unsuspecting public. An often used example is if a barber cuts your hair unsatisfactorily, no irreparable harm is done; however, if a doctor makes a mistake, it can be fatal. It is generally recognized that due to the importance of sound financial decision making and reliance of third parties on work performed by CPA's, the profession should be regulated.

The deregulation of the practice of public accountancy constitutes a clear danger to the public. Accounting is a highly complex field. A layman does not understand the intricacies of how to perform audits and other accounting skills. Without regulation, unqualified practitioners would be able to practice. Governments, corporations, small businessmen, banks, and other financial institutions, investors, and the general public rely on CPA's judgment and professional opinion. A CPA's ability and competence are highly regarded. This is evident by the public and private sectors' trust in CPA's concerning financial statements.

The necessity of licensing professions is well established. The public demands it and state legislatures have assented to the

public's wish by establishing requirements to enter a profession. Courts have ruled that regulation is one of the police powers that a state enjoys. In Graebner v. Industrial Commission, the court ruled that the legislature has the constitutional responsibility of establishing qualifications for a license and may allow a board to decide whether an applicant meets those qualifications. The public needs, and benefits, from an assurance of competency.

### Licensing is the Most Appropriate Form of Regulation

The present system of licensing accountants in Montana is the most appropriate form of regulation. Identical or similar means are used in the other forty-nine states, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. The Montana accountancy law assures that only those candidates who meet the necessary qualifications can be licensed. The Montana State Board of Public Accountancy does its duty of licensing only qualified applicants.

### Which Entity Could be the Most Effective Licensing Accountants

The rationale behind a State Board of Public Accountancy is quite simple. In Montana, as in fifty-three other jurisdictions, the legislature decided that the most effective way to regulate a profession is through a board whose members have the expertise of that particular profession and therefore are able to make complex and technical decisions. The Board does much more than simply issue certificates and administer the Uniform CPA Examination. Its functions include evaluating experience, evaluating the candidate's education, assuring the quality of the examination, reconsidering exam grades, revoking licenses because of substandard practice, administering the standards of practice review for licensure, setting and enforcing standards of performance and conduct, determining eligibility for reciprocity, and functioning as a tribunal in cases involving judging of alternate standards. Obviously, these are functions which call for more than routine clerical or administrative abilities. The purpose of regulation is to protect the public interest. In order for a board that deals with highly technical matters to fulfill this purpose, the board members must be able to make intelligent decisions. This is why professional involvement is necessary.

A professional with practical experience has a solid basis for judging another's qualifications for practice. Also, practical experience and technical expertise helps in finding and dealing with substandard work. A board should have the professional and technical resources to develop and administer programs to prevent substandard work and to make sure practitioners provide quality services and to deal with those who do not. Accountants that are licensed by a professional board provide valuable assurance to investors and credit grantors that the financial information they receive is indeed trustworthy and accurate.

The State Board of Public Accountancy, to a greater degree than any of the present alternatives, provides that proof of professionalism. It is highly unlikely that a bureaucracy will have the technical knowhow and resources to judge and enforce standards. One of the inherent problems plaguing bureaucracies is red-tape, lack of responsiveness, and a division of responsibility. It is questionable whether the public will be better served if accountancy is buried in a bureaucracy.

The choice is having an independent board comprised of knowledgeable professionals or having a state entity assume the state board's responsibilities. We can see no positive consequences if the latter occurs. The public will not be better served. As it has already been pointed out, appreciable harm could result if non-professionals try to rule on complicated, technical matters. Since present members serve for only a nominal fee, the cost in regulating the accounting profession will rise dramatically since higher salaries will have to be paid.

### Criteria for Termination

The purpose of Sunset is to terminate non-effective or non-functioning agencies and programs and to improve, where necessary, those agencies and programs that are worthwhile. Ample evidence can be shown that the Montana State Board of Public Accountancy has been effective and that it has performed useful and vital functions which has served the public's interest. Evidence can also be shown that the need for a Board such as the present one is very great in order to protect the public in the future.

### Sunset Audit Criteria

Montana Senate Bill No. 162 sets forth six areas of examination to be addressed in the review of an agency. This section of this report will address itself to each of these areas, setting forth a rationale and answer to the question posed.

Query: Would the absence of regulation significantly harm or endanger the public health, safety or welfare?

Answer: Due to the extensive growth of industry and commerce within the State of Montana, the Pacific Northwest, the Rocky Mountains, the United States and the World, the practice of Accountancy has become more and more complex over the years. Consequently, there is a lack of wide public understanding of all of the functions and qualifications that should be expected from the members of the profession of public accountancy. The existence of this condition makes it clear that supervision by some regulatory authority is in the best interest of the public.

The reliance by the using public upon the attest function of public accountants is inherent in the basic structure of our present and indicated future economy. Any decrease in the continued confidence in the attest function could be detrimental and harmful to the economy and hence to the public.

Probably the best indication for the need of regulation of the profession has been brought out in the Metcalf Committee hearings. The results and conclusions of those hearings seemed to leave little doubt as to not only the continued need but an increased need for regulation of the profession. The testimony and resultant committee report emphasize the harm that would and could occur to the public welfare if the accounting profession is not properly regulated in the future. Certainly the emphasis in the hearings and the report is upon the need for better and more meaningful regulation of the attest function in order to better protect the investing public from substandard work. The increased reliance upon public accountants in performing the attest function in the governmental area also was brought out by this report. Again, the need for the public to be assured that such individuals are subject to close scrutiny by the police power of the State is of importance in the protection of the public interest.

Query: Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety or welfare?

Answer: As stated above, some of the characteristics of a profession include requirements for admission established by law, and disciplinary measures for those violating ethical standards. Strength of authority for the public interest and protection must emanate from the highest effective level which is the sovereign State of Montana. There is no other body which has the universal influence necessary to monitor all licensed persons practicing the attest function.

If we accept the proposition that performing the attest function properly is in the public interest and that, therefore, the practice of public accountancy belongs in a profession, it naturally follows that the police power of the State must be utilized to properly regulate the individuals in that profession.

The utilization of the State's police power through regulation and licensing acts as a deterrent to the practitioner who would perform substandard and incompetent work. The threat of action which can be taken

by the State Board in the suspension of a license to practice or other punitive action weighs heavily upon the individual who might otherwise be careless or slipshod in the work he performs. The abolishing of the State Board would definitely open the gates to substandard work. The fact that four stop signs are installed on a particular dangerous intersection and the incidence of accidents is greatly decreased does not indicate that the signs should be removed.

Query: Is there another less restrictive method of regulation available which could adequately protect the public?

Answer: Re: Suggested Alternative - "Certification of CPA's (and LPS's) directly by the Society(s)"

To take this approach, effective legislation would be necessary to charge a body or a number of bodies such as the Montana Society of CPA's and the Montana Society of PA's with the responsibility to endow them with the powers to proscribe the requirements for entry into the profession (certification and licensing). In addition, such legislation to be effective would of necessity have to mandate continuing membership in those societies for practitioners who continue to hold themselves out as "certified" or "licensed" PA's or the State would have to retain those powers to itself in order to protect the public during the years subsequent to original certification and/or licensing.

The State Societies of CPA's and PA's, as presently structured, are basically for the sole benefit or betterment of their members and not necessarily for the protection and concern of the public. They exercise public protection and concern only by peer pressures which aids and abetts the regulatory body. There is no mandatory requirement nor could there be mandatory membership in these organizations without additional legislation.

This alternative does not appear to be feasible as it would seem to dictate the imposition of another level of control.

Uniformity of education to ready oneself for entry into the profession by aspirants is largely dictated by the uniform examination process and the contract between the AICPA and the 50 state boards of accountancy. The AICPA who prepares and grades the uniform examination would be reluctant to contract with less than the sovereign states themselves, or some authoritative body thereof. Public confidence in the uniform examination

as to the level entry competency of aspirants is great and should not be allowed to erode.

Because of this quite extensive confidence, practitioners know their acceptance will be nationwide, thus allowing them free movement as the forces of supply and demand dictate.

A function which the government is responsible for should be performed and controlled by the government and not by a private organization. A regulatory body should maintain some distance from the profession it regulates.

Answer: Re: "Simpler Statutory regulations concerning the attest function and arrangements so CPA's (PA's) could be tested and certified".

This implies that present statutes and regulations are overly complicated. This is not necessarily the case. Even if statutes and regulations were simplified, you will still need a component of state government to make rulings. If you had yet another entity to give the tests and certify qualified applicants, it would only confuse and complicate matters without creating a benefit. It will also make government more unresponsive since responsibility would be divided, where as now, the state board has sole responsibility.

The basic regulations applying to the attest function are few in number being: (1) Independence; (2) Adequate Supervision; (3) Adequate evidence; and (4) Standards of reporting. These have developed and have been refined over a lengthy period of time and are the result of the demands of the using public as evidenced by past and recent court cases, S.E.C. Regulations, etc.

Industry and Commerce today know no political or geographical boundaries, hence uniformity of the attest function needs to be universal in its concept and universal application so users (the public), no matter where domiciled, can be assured of adequate and consistent protection.

At the present time, our law with its rules and regulations are in accord with the public's expectations. To attempt to further reduce this distillation of the essence of the attest function would, of necessity, erode its basic structure.

Again, the dignity of the sovereign state with its powers or regulations in concert with all of its sister states provides uniform credence nationwide.

The arrangements for testing and certification are also the result of an evolution over the years and the time tested and best methods developed with a free exchange of ideas among some 50 state boards and territories using the uniform examination and grading service. If the provider of this uniform service would contract with the University system or the professional society, they, the University or society, would still have to be endowed by statute and given the authority to issue rules and regulations and to police these rules and regulations along with the power to tax to finance such functions and activities.

Answer: Re: "Approximately the same situation as now except no powers of the Board except for testing and reciprocity".

This would assume that there would be no regulation of the profession once entry has been gained. Apparently, no continuing licensing would be provided for. The theory here would have to be that anyone who was capable of gaining entry to the profession had conclusively demonstrated that he was entitled to practice for the rest of his life without further testing or regulation.

Such an assumption, of course, is completely falacious. Some form of continuing licensing and regulation of practice must be maintained or the profession will deteriorate. Man is just not that idealistic in his makeup. If such a procedure were followed, then the public would have recourse only through the courts for redress of any wrongs done by a member of the profession. It is a well-known and documented fact that such form of corrective action is exceedingly slow and costly.

The Board, in order to be effective in its function of licensing, testing, granting reciprocity, etc., must have the power to also regulate the standards of the individual practitioners. Without such powers, the Board would be completely ineffective and its job performed by a highly paid bureaucrat.

Answer: Re: "The Status Quo".

Without repeating previously mentioned arguments for the regulation of accountants and for the continuation of the State Board of Public Accountancy, let it suffice to say that there are other functions of regulation other than testing and granting reciprocity that are equally important in protecting the public interest. Also, the accounting profession is not static. It is constantly changing. Who knows if next year new regulations will have to be created or old ones discarded?



The functions and duties of the Board of Accountancy under the Montana Accountancy Act have been developed over the years as dictated by public and business needs and protection, particularly as related to the attest function. No wheels have been reinvented, rather the best methods developed nationwide have been incorporated in developing minimum and universal standards. The Board is the most efficient and effective vehicle available for the protection of the public.

We believe that there could be greater participation by the public through expansion of the Board to include public members. However, we do not believe this is making it less restrictive. The best way to insure the continuing effort of the members to improve the quality of the product is a monitoring of that product and a penalty if it fails to meet that standard.

The general "consumer public" of financial information, and more specifically the readers of reports of financial results, are not universally equipped to judge the quality of the underlying professional attest work. Hence, some ongoing regulation is essential. The profession has recognized its responsibility to provide continuing education programs. Further, each CPA and LPA is encouraged to have 40 hours per year of C.P.E. and to voluntarily report it. A good share of them are doing that. As in any group of people, there are those who must have a "club as well as a carrot" and it is this group that must be policed through government regulation to protect the public financial welfare.

Board members serve at minimal compensation as a service to the public. In addition, the State Society of CPA's does a great deal of the research and leg work as a backup to the Board because of the lack of qualified personnel in the Department of Occupational Licensing. If this had to be done by the departmental employees or by a "Super Board", the cost would be magnified greatly.

However, this protection perhaps would be enhanced by the addition of:

- (1) A requirement in the law of continuing education as an annual relicensing prerequisite, thus providing the public with some assurance that the practitioner is keeping up with the ever present expanding body of knowledge in their professional area.

(2) Increasing the size of the Board, by law, to provide for a sufficient number to handle all of the duties charged to the Board. For example, we suggest a nine (9) member Board consisting of seven (7) professional members (C.P.A.'s & L.P.A.'s) and two (2) lay members.

(3) Elimination of the residency requirement for a reciprocal certificate as a C.P.A. or L.P.A. as long as the foreigner coming into the state meets the qualifications in all other respects. This would allow a free flow of qualified professionals as supply and demand might dictate. (Other states are now extending this privilege to qualifying Montana C.P.A.'s when they, as foreign practitioners, go into other jurisdictions).

(4) A formal "Job Description" should be written, setting forth in detail the charges and responsibilities of a member of the Montana Board of Accountancy with acknowledgement in writing from appointees as to their acceptance of appointment, charges and responsibilities.

(5) New responsibilities should be assumed by the profession and the State Board of Accountancy in order to assure more meaningful regulation of the profession in the future.

Outlined below are suggestions as to how the regulation by the State Board could be improved and expanded to the betterment of the profession and protection of the public interest:

A. The Comparative Responsibilities of the Organized Profession and the State Board of Accountancy.

The organized profession has an obligation to assist the State Board of Accountancy in fulfilling its responsibilities to protect and serve the public interest. It is well recognized that the primary role of a regulatory agency is to expertly represent the public in overseeing, assisting and directing the maintenance of high technical and ethical standards within the profession. The state CPA Society must be able to assure the board that its members meet the high standards which the public deserves. It also must be willing to assist the Board in disciplining recalcitrant members, and non-members who may practice in the state. The State Board of Accountancy should work more closely with the Montana Society of CPA's and utilize their Quality Review and Professional Standards Review Committees. For example, it may be established that the Montana Society Professional Standards Review Committee be required to turn over a listing of complaints to the State Board of Accountancy.

The State Board of Accountancy could then decide whether violations were significant enough to follow up with direct action. The State Board would not need to set up its own review if liaison could be developed with the Montana Society of CPA's and LPA's in this area.

B. The Function of the State Board of Accountancy in the Disciplinary Process.

Although the State Board of Accountancy must respond to and even encourage the general public to file complaints of misconduct and/or substandard work, such "passive enforcement" is not enough to effectively serve the public. A licensee who, for example, performs a substandard audit which does not cause financial loss to third parties, should still be held to account for the quality of his work. Auditors are licensed to protect the public "against the consequences of ignorance and incapacity as well as of deception and fraud." It is not enough to only punish licensees who have harmed the public, it is also necessary to protect the public from being harmed in the first place.

The Board of Accountancy should take positive action to assure that those who are licensed can, and do, provide services which meet professional standards. Licensees who are incapable of providing adequate services, or for some other reason perform substandard work or commit unethical acts, need to be dealt with in an appropriate manner.

C. A Program for Effective Disciplinary Action

The most serious threat posed to the public by incompetent or unethical licensees is the failure to prepare financial reports and opinions in accordance with Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS). These technical standards are highly complex and thus cannot be readily understood by most non-licensees. Instances of substandard work by an auditor are usually discovered after a major financial decline, bankruptcy, embezzlement, etc. The Board can, however, in some situations, protect the public by identifying those who continue to perform substandard work.

It is proposed that a program of positive enforcement be initiated by the Board. This program should consist of two main enforcement procedures. The first procedure would be to have the Board, with the assistance of paid and volunteer investigators, perform periodic reviews of financial statements filed with government agencies; review audits of local governmental units and charitable organizations; and examine intra-state securities filings, etc. The second procedure would involve periodic quality reviews of public accounting firms.

These reviews can be performed by other public accounting firms which will then report their findings to the board for evaluation.

Discoveries of substandard work or weaknesses uncovered during quality reviews will require the Board to take corrective and/or disciplinary action to assure that future services performed by the licensee will meet required professional standards. Undoubtedly, this program of positive enforcement will provide a greater degree of protection to the public.

D. The Cost of a Positive Enforcement Program.

The cost of employing experienced licensees who are qualified to review the investigator's reports would be prohibitively high. Fortunately, there are qualified members of the public accounting profession who are willing to serve the public through membership on the State Board. In addition, other licensees with diversified technical and managerial experience may be willing to offer their services as investigators on a voluntary basis. However, it will be necessary for the Board to retain some paid investigators. Based upon the costs of similar programs in other states, we believe that this program can be supported by a reasonable increase in fees paid by all licensees.

Quality reviews should be paid for by the reviewed public accounting firm. There is every reason to believe that the professional societies will be of great assistance to the Board in organizing these reviews.

Answer: Re: "Increased State Involvement which would regulate the entire accounting profession and would not allow anybody to practice accounting or bookkeeping without a license.

The only addition to the present state involvement would be the addition of regulation of the bookkeeping function. All CPA's and LPA's now, to a greater or lesser degree, practice bookkeeping while bookkeepers in strict definition seldom practice accounting. Our present law does protect the public by virtue of its restrictive use of the title of "Accountant", thus preventing bookkeepers who have not evidenced their account proficiency by education, examination and experience from holding themselves out as "Accountants".

To regulate public bookkeeping would be costly, cumbersome and hardly worth the costs involved. The problems of determining qualifications necessary and then the testing

process would be extensive and probably inhibiting as far as public bookkeeping is concerned.

To regulate all bookkeeping, public and private, would be an insurmountable process.

This proposal would result in needless regulation. The Model Accountancy Bill says it best: "There is no such compelling need for licensing and regulation of persons offering recordkeeping and elementary accounting services performed at the instance of, and for the benefit of, employers and clients. Nor is licensing required in connection with the preparation of tax returns because of regulatory and disciplinary authority presently possessed by the Internal Revenue Service and other taxing authorities. In short, the public interest would not be served by licensing bookkeepers who perform elementary accounting services and tax returns. Only accountants who perform the attest function; that is, the expression of opinions on financial statements and other information upon which third parties rely, should be licensed. Courts have consistently held that bookkeeping and similar elementary accounting services do not involve sufficient public interest to restrict it to licensed persons only.

Query: "Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and if so, to what degree?"

Answer: Direct regulation by the Board does not adversely affect the cost of operating a public accounting office. The annual licensing fee of \$25 is not a restrictive amount and has no bearing on the cost of services made available to the public.

If there was no regulation nor entry requirements to the profession, the cost of services would not change significantly, assuming the public continued to seek providers of service who were educated, qualified and competent.

Public demand over the years has given rise to the need for independence, competency and standards of Professional Performance, which in turn authored the rules and regulations governing the profession now administered by the Board of Accountancy under the Montana Accountancy Act. The public has already accepted these additional costs in achieving their demanded results and has been absorbing such costs over the years.

Cost of examination and licensing are negligible in the overall costs of a practicing unit and do not materially increase cost to the public for services. In a practice unit (firm) with a budget of a total of 44,000 man hours in this current year, projecting gross dollars of \$550,000

in fees, the \$300.00 in license fees for the 12 Certified Public Accountants on the staff out of a total of 20 persons in the office is a small insignificant cost which the clients have to pay when spread over the \$500,000.00 in expected fees. Even if the firm's other four candidates are successful in becoming certified, the additional \$100.00 in annual license fees will not cause any change in the firm's fee structure.

Query: "Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?"

Answer: Definitely not, as the cost of regulation at present is insignificant. A lack or absence of regulation governing the practice of accountancy in Montana would cause Montana users of the services to go outside the State to engage "Regulated Professionals" because of lack of evidence of qualification (less than state issued certificates or licenses) as their source of financing might dry up.

While it is true that many Montana businesses do not take advantage of the whole of the attest function when financing, the grantors of credit give extensive credibility to the certified or licensed practitioner as they are fully aware of their qualifications and the process by which they were qualified by the State. They are fully aware of the recourse they have should damages occur as a result of reliance on the practitioner.

The harm to the public in the absence of regulation cannot be determined in a monetary figure. The public might absorb substantial financial loss if misled by a poor financial statement presentation. The increase in cost cannot be determined, but if the public seeks educated, qualified and competent people, the cost, with or without regulation, will be the same.

The regulation by the Board and the licensing fee are not placing a financial burden on the public. The Board provides the public with a method to seek recourse for sub-standard work. The cost of the Board's operation is covered in its entirety by the licensing fee and, therefore, does not place any financial burden on the public. The legal system is also available to the public, but could result in a costly process.

Regulation of the profession by the Board effectively results in less cost to the public through licensing fees than the public would sustain if misled by a poor financial statement presentation. Investors and credit grantors

constantly use financial statements for investment and lending decisions. The Securities Exchange Commission is an example of a governmental agency protecting the public interest when using auditors' services.

Query: "Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?"

Answer: As stated repeatedly, we believe there would be a very real public harm if the quality of financial information deteriorates as we believe it would without regulation. There is the new climate of bidding and advertising now allowed or required of the profession. While within reasonable bounds, this can serve the public by preventing a "restraint of trade", it also poses some real dangers. Audit performance and quality cannot be tested by consumers like a new car or a new house. It more nearly parallels an operation by a surgeon, where you see a nice neat scar but must rely on the professional opinion of the doctor that what he has done inside was correct. We rely on the regulation of the medical profession to assure that he has the requisite skill, training and current knowledge.

With several well known cases of substandard reporting of performance, even with regulation, one would tend to believe that the occurrence of harm to the public would be much greater without regulation.

As ours is a profession that exists only because the public has confidence in the independence, objectivity and compliance by which we apply our skills, any deterioration in that confidence would cause a lessening of reliance upon financial information and consequently have adverse economic effects.

Query: "Are all facets of the regulatory process designed solely for the purpose of and have as their primary effect the protection of the public?"

Answer: Yes, inasmuch as all of the rules and regulations were developed as a result of the user's (the public's) demands for knowledge (general qualifications) of the practitioner he engages, assurance that there is a consistent competency at least at entry level and a set of standards of performance to be expected,

Many rules and regulations were the reactive result of detrimental incidences and activities, i.e.: Tenants Case - McKesson Robbins Case.

In the main, the entire thrust of the current law and all preceding laws has been to protect the public.

There has been a conscious and proven effort to encourage the best qualified young people to join the profession and to provide ongoing education for all members to furnish the highest quality of public accounting.

The profession has underwritten coaching courses, spent countless hours with high school career sessions, supported with time and money the accounting schools, etc., to assure an ever increasing quality of professionalism.

This would all be pointless if there was not a licensing or regulation of the professional to monitor and control those who could label themselves as public accountants.

### General Comments

The State issued Certificate and License is the practicing Public Accountant's most valuable asset. It tells the public a great deal; it carries with it a strong implication and distinction. Consequently, it is a jealously guarded asset and most accountants exert great effort to avoid transgressions that might cause the State to rescind the Certificate or revoke the license. They subscribe to and observe the rules and regulations promulgated by the Board of Accountancy as a result of the using public's demands. Very seldom, as a result of this awareness of consequences, will there be a need for the full exercise of the State's Police Power. All practitioners know of its availability and consequences. Mere knowledge insures compliance with the rules and regulations in almost every instance. An obvious lack of complaints from the public is a marked endorsement of the effectiveness of the law, the Board and Rules and Regulations.

True, there are transgressions of intent as well as omission. Damages are often overlooked and complaints not filed. Those who are damaged must assess the extent of such damages and will bring charges only if in their opinion, it is worth their while, their effort and the expense involved. We know banks often overlook substandard or error-filled reporting because of "adverse publicity" and because they utilize an economic tool to punish the transgressor for they can exert and influence business "to the worthy" and "lack thereof" to the culprit.

Many of the principal public users of the practitioners services, business and financial institutions are seldom sufficiently informed to know good accounting reporting from inadequate accounting reporting or from downright poor reporting.

There have been instances of shoddy or substandard performances in audits under governmental contracts. These have not been reported to the Board of Accountancy since the "economic tool" was utilized - these transgressors are ignored when additional contracts are offered.

Unless a practitioner or firm has permission from a client to release that client's financial statements for review, the practitioner or firm's quality cannot be judged. Likewise, unless a client gives



permission to its bank to reveal its financial statements, a review cannot be made by the Board of Accountancy or a Society's Review Committee. But now that audits are being made by public practitioners of governmental units, cities, towns, counties, state agencies, these reports are public property and as such are being subjected to review by a Society Review Committee. Where there might be a lack of accounting expertise to evaluate quality within the political subdivision itself, the Review Committee can evaluate and report to the Board of Accountancy on the quality and standards observed.

Peer pressure coupled with knowledge of the State's Police Power plus prideful capable practitioners actually exercising constant "public education effort" is slowly but surely educating the users to what is poor, better and best in accounting reporting.

Peer pressure is exerted by voluntary continuing professional education subscribed to by a goodly number of Montana practitioners. Peer pressure is exerted by voluntary cooperation with practice review procedures being utilized within firms themselves, by exposure to outside review and by voluntary submission of reports for professional examination.

### Conclusion

Submitted herewith are various items which we feel will be of aid to the Legislative Auditor in the preparation of his report. This material bears out the continued need for regulation of the profession by an agency of the State which possesses the necessary expertise to properly assure the public of maximum protection.

Although the State Board of Accountancy has not been extremely active in the area of discovery and punishment of substandard reporting, it is felt this is a result of the times. In the past, the feeling of most people has been to "solve their own problems" rather than consult a regulatory agency. This situation is changing, and if the public is properly educated as to its prerogatives, the State Board will no doubt find increased complaints being filed. It has proven extremely difficult to convince users of financial statements or of public accountants' services that they should make complaints to proper authorities. This reluctance must be overcome if the public and the profession are to be better served.

This is not only true in Montana but has been the case in most sparsely populated states. There is a definite reluctance to report substandard work because of close personal relationships. Unless the case is extremely flagrant, the problem is usually solved by changing accountants.

The State Board of Accounting in Montana has been an extremely hard working board. Many hours of dedicated service have been

expended by conscientious individuals in an attempt to assure the public that qualified individuals are being admitted to the profession. With the appointment of proper qualified individuals, the Board should continue on and evolve into an agency which will strengthen the protection of the public in the future.



NEW MEXICO

SUNSET AGENCY RECOMMENDATIONS

Report of the:  
Legislative Finance Committee

December 1977

INTRODUCTION

Pursuant to Laws 1977, Chapter 259, the following examining and licensing boards are to cease to exist on July 1, 1978, unless the legislature takes positive action to continue them.

State board of examiners for architects	State board of public accountancy
State board of barber examiners	Real estate commission
State collection agency board	State board of podiatry
State board of cosmetologists	State board of psychologists examiners
Dry cleaning board	Polygraphy Board
State board of embalmers and funeral directors	State board of hearing-aid dealers and fitters
State board of registration for professional engineers and land surveyors	State board of nursing home administrators
Construction industries commission <sup>1</sup>	Employment agency board
	Massage board
	Mobile housing commission

Under the law, the legislative finance committee was directed to hold public hearings, to receive testimony and to make recommendations to the 1978 legislature relative to termination or continuation of each agency. The law required the LFC to take into account the following issues in formulating its recommendations:

(1) the extent to which the agency has permitted qualified applicants to serve the public;

(2) the extent to which the agency has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures and practices and by budgetary, resources and personnel matters;

(3) the extent to which the agency has recommended statutory changes to the legislature which would benefit the public as opposed to the persons it regulates;

<sup>1</sup>Includes electrical, mechanical and general construction board.

## Examining and Licensing Boards--Page 2

(4) the extent to which persons regulated by the agency have exercised control over the policies and actions of the agency and the extent to which the agency requires the persons it regulates to report to it concerning the impact of rules and decisions of the agency regarding improved service, economy of service and availability of service;

(5) the extent to which persons regulated by the agency have been required to assess problems in their industry which affect the public;

(6) the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;

(7) the efficiency with which formal public complaints filed with agency concerning persons subject to regulation have been processed to completion by the agency; and

(8) the extent to which changes are necessary in the enabling laws of the agency to adequately comply with the above factors.

In order to comply with the requirements of the law, in August 1977, the committee sent a questionnaire to each agency affected by the Sunset Law. The questionnaire sought data relative to the following: statutory authority, board or commission composition and operation, rules and regulations relative to industry oversight functions, history and staff of the board, financial affairs, direct services provided in areas of licensing, testing and consumer and industry protection and suggestions relative to statutory or operational changes deemed appropriate. Responses were assimilated into a comprehensive report on each agency. This information provided the background for hearings conducted for each agency on September 21 and 22. Because of the lack of citizen attendance at those hearings, another hearing was conducted on November 30, 1977, for the purpose of obtaining citizen input concerning operation of these agencies. Prior to this hearing, an attempt was made to advertise to encourage citizen input. Attendance at this hearing was approximately 100 persons.

On the basis of analysis of the information compiled from the questionnaire and obtained from the hearings, the committee submits this report to the 1978 legislature as required by law. The report is organized as follows: Part I--Overall Issues Relative to Impacted Agencies; Part--II General Alternatives and Recommendation Summary; and Part III--Individual Reports on each Board.

## Examining and Licensing Boards--Page 3

This report does not concern itself with continued existence or termination of the construction industries commission or the mobile housing commission. The committee has received considerable information relative to these agencies and is still in the process of making a determination as to its recommendation relative to the future of these agencies.

Since the law does not require the LFC to submit legislation, it is recommended that the governor consider this matter and submit necessary legislation incorporating these recommendations to the session, along with the appropriate message.

## PART I--OVERALL ISSUES RELATIVE TO IMPACTED AGENCIES

In the past, there has been considerable discussion relative to the advisability of continuing the examining and licensing boards in their present form. Since most of the agencies involved in this sunset effort are examining and licensing boards, a summary of the issues follows.

New Mexico's oldest examining and licensing board, the state board of pharmacy, was created in 1889 and is now funded with a general fund appropriation while its generated fees are deposited in the state general fund. Presently, there are some 25 examining and licensing boards which have been created to cover both professional and occupational practitioners and all but the board of pharmacy retain assessed fees for operational expenses.

The expressed purpose for creating examining and licensing boards is to protect the public health or safety. The purpose is to be achieved by requiring that an applicant wishing to enter a profession or occupation be qualified and fit to practice.

Through the years, several allegations have been made concerning boards. It has been alleged that boards protect practitioners rather than the public; that boards could create a monopoly-type service; that boards restrict free enterprise; that boards restrain competition in setting fees and prices; that boards cooperate generally with the practitioners as opposed to the public; and that such boards may restrict interstate commerce. In the past, it has been stated that some boards do not consider themselves state agencies. Reportedly, some believed the license fees collected "belong to them" rather than representing public funds.

Periodically, proposals have been made to consolidate administrative functions. Apparently, some boards construed the proposals to include taking substantive board functions away from the board and have consequently objected to such efforts.

## Examining and Licensing Boards--Page 4

Administrative functions are considered to be those of purchasing, revenue and expenditure accounting, recordkeeping and filing, budget preparation, employee supervision, license renewal and mailing, license issuance, general correspondence and other similar activity.

In a 1972 legislative finance study of the boards' operations, it became apparent that both substantive and administrative functions were being performed. In some instances, board employees were performing them while in other cases, board members were. The 1972 study revealed that 94 percent of those responding to a survey (18 of 24 responded) favored some consolidation of administrative function. In addition, the 1972 study indicated that several states (17) do have a department of licensure to handle administrative functions. As a result of the 1972 study, the committee endorsed the concept of a centralized department of licensure. A bill was introduced during the 1972 legislature to place certain "housekeeping functions" of the various examining and licensing boards under a secretary appointed by the governor. The bill failed to pass and similar bill has not been proposed since. However, justification for such a measure may still be valid. Creation of such a department is one option open relative to agencies covered by the Sunset Law.

While the state has a Uniform Licensing Act which applies to examining and licensing boards, this act concerns primarily the rights of an individual relative to obtaining and keeping a license. Thus, there are numerous instances where the boards are not uniform. For instance, the boards differ with respect to fees charged, board composition, licensure procedures, etc.

With this history, it is logical that these examining and licensing boards were included in the sunset legislation. It is with this background in mind that the following options are presented for legislative consideration.

## PART II--GENERAL ALTERNATIVES AND RECOMMENDATION SUMMARY

Three general alternatives with various modifications exist for each agency impacted by the sunset legislation. These are listed as follows:

1. Create a central department of licensure with a central administrative staff to serve the individual boards.

- A. Create a central department of licensure with one overall board and staff supported with advisory boards in selected areas (e.g. embalmers, accountancy).



## Examining and Licensing Boards--Page 5

B. Create a central department of licensure with one overall board and staff with no advisory boards.

If the concept of a central department is adopted, the question then becomes what powers the central board and staff would have in each case (e.g. powers relative to barbers versus medical doctors) and how license revocation and renewal would be handled. If the legislature approves the central department, it is suggested that the individual boards be continued for another year and that the legislative finance committee be directed in a memorial to develop the mechanism, facility alternatives and bill drafts to accomplish the central department by July 1979.

2. Retain the board in its present form.

A. If this is done, lay membership might be increased to one member or to a majority in an effort to encourage the board to protect the public rather than the practitioners.

B. If the board is retained, there might be some consideration given to eliminating frequent license renewals unless these are tied to continuing education requirements.

3. Abolish the board and its functions, leaving industry regulation to the free enterprise system. Under this option, consumer protection functions could be handled via citizen complaints to the consumer protection division of the attorney general's office.

In addition to these alternatives, there are others that relate specifically to individual boards. These alternatives are summarized in the reports on each board under Part III.

Listed in the following are recommendations of the committee concerning these boards. The justification for each recommendation is contained in the individual reports in Part III.

With regard to each of the boards, the committee is suggesting for continuance the following general recommendations apply:

1. Lay membership should be increased and made mandatory.

2. Revisions should be made in the law to assure that these boards do not restrict competition necessary to the free enterprise system. Further, these revisions should stress the boards' functions relative to consumer protection. In this regard, the committee recommends that all powers concerning price setting for services be taken away from the boards.

## Examining and Licensing Boards--Page 6

3. The laws recreating these boards should require full-time staff coverage during regular working hours. Further, all the offices for these boards should be located in a single city.

4. If a board requires practical examinations and/or establishment inspections, these should be conducted by a professional staff member who does not engage in the business involved in the test or inspection.

5. Attorney fees assessed by the attorney general's office for these boards shall be at a rate not to exceed \$20 per hour. Attorney services shall be billed only if the service was requested by the board. The attorney general's office shall not assess any other charges to these boards.

It is recommended that the following boards continue to exist.

State board of examiners  
for architects  
State board of registration  
for professional engineers  
and land surveyors  
State board of barber  
examiners  
State board of podiatry

State board of cosmetologists  
State board of embalmers and  
funeral directors  
State board of public accountancy  
Real estate commission  
State board of psychologist  
examiners

Dry Cleaning Board. Abolish the board and its functions, leaving regulation to the free enterprise system. Citizen complaints could be filed with the consumer protection division of the attorney general's office.

Polygraphy Board. Abolish the board and give the attorney general's office the responsibility for licensing polygraphers.

Board of Hearing-Aid Dealers and Fitters. Abolish the board and its functions, leaving regulation of the industry to the free enterprise system and to the consumer protection division of the attorney general's office which could handle complaints.

Board of Nursing Home Administrators. Abolish the board and give the health and social services department, or its successor agency, the responsibility for licensing nursing home administrators.

Employment Agency Board. Abolish the board and its functions, allowing the free enterprise system and the consumer protection division of the attorney general's office to regulate the industry.

## Examining and Licensing Boards--Page 7

Massage Board. Abolish the board and its functions. Give the environmental improvement agency of the health and environment department the responsibility for inspecting these establishments if they are not inspected by city departments.

Collection Agency Board. This board was abolished by Laws 1977, Chapter 306.

## Part III--Individual Reports on Each Board

Contained in the following are financial and general information relative to each board. In addition, the various alternatives for termination or continuation of each board are noted. The reports are in code number order.

EXAMINING AND LICENSING BOARDS  
BOARD OF PUBLIC ACCOUNTANCY

INCOME TABLE

Source of Funds	65th FY	66th FY	67th FY, 1978-79		
	1976-77 Actual	1977-78 Budget	Agency Estimate	LFC Recomm.	Percent Change
Other St. Funds					
Licenses	\$ 14.7	\$ 15.5	\$ 16.1	\$ 16.1	3.9
Exams	19.8	23.6	23.8	23.8	(.8)
Penalties	.2	.1	.1	.1	--
Sales	.2	.2	.2	.2	--
<b>Total</b>	<b>\$ 34.9</b>	<b>\$ 39.4</b>	<b>\$ 40.2</b>	<b>\$ 40.2</b>	<b>2.0</b>
Ending Balance	\$ 4.5	\$ 4.5	\$ 4.7	\$ 4.7	

EXPENDITURE BY DECISION UNIT

Agency Decision Rank Unit	65th FY	66th FY	67th FY, 1978-79		
	1976-77 Actual	1977-78 Budget	Agency Estimate	LFC Recomm.	Percent Change
Base Budget	\$ 34.1	\$ 39.4	\$ 40.0		
<b>Total</b>	<b>\$ 34.1</b>	<b>\$ 39.4</b>	<b>\$ 40.0</b>	<b>See Recommendation</b>	
FTE Employees	-0-	-0-	-0-		

EXPENDITURE BY OBJECT

Category	65th FY	66th FY	67th FY, 1978-79		
	1976-77 Actual	1977-78 Budget	Agency Estimate	LFC Recomm.	Percent Change
Supls. & Mtrls.	\$ 2.0	\$ 1.4	\$ 2.0		
Contr. Services	27.9	31.5	31.4		
Other Op. Costs	4.2	6.5	6.6		
<b>Total</b>	<b>\$ 34.1</b>	<b>\$ 39.4</b>	<b>\$ 40.0</b>	<b>See Recommendation</b>	

SUMMARY OF RECOMMENDATIONS

The board of public accountancy issues licenses to certified public accountants and registered public accountants on the basis of results on national tests. In addition, candidates for a license must pass an ethics exam concerning professional conduct. The 1977 legislature passed a requirement for continuing education (Senate Bill 465).

EEL--Board of Public Accountancy--Page 9

It is recommended that the board be retained.

#### AVAILABLE ALTERNATIVES

There are three alternatives available relative to each board impacted by the Sunset Law. These are detailed in Part II of this report and are summarized as follows:

1. Make the board a part of a central department of licensure;
2. Retain the board in its present form; and
3. Abolish the board and its function.

In addition to the above, there are the following options relative to this board:

1. Since national tests are used for licensing, abolish the board, specify use of national tests and national grading in law and give the state auditor the administrative responsibility for issuing licenses.

- A. Give the state auditor this responsibility, but retain the board as an advisory committee to the state auditor.

#### GENERAL INFORMATION

Created in 1947, the board's purpose is to license persons practicing public accountancy as either certified or registered public accountants. Issuance of a license depends on scores on national exams.

The board is composed of five members appointed by the governor for three-year terms. Members must be engaged in the practice of public accountancy at the time of appointment. Presently, three members of the board are CPA's, while the other two members are RPA's. In the 65th fiscal year, the board met three times.

In the 65th fiscal year, the board issued 806 CPA and 152 RPA licenses. During that year, 427 individuals took the CPA exam and 63, or 15 percent, passed. In that same year, 33 persons took the RPA exam and two, or six percent, passed.

Fees are charged in the amounts shown in the following categories:

## E&amp;L--Board of Public Accountancy--Page 10

Exam fee	\$40.00
License renewal	12.50
Registration of corporations and partnerships	10.00 to \$15.00
Reciprocal license	37.50
Penalties and fines	2.50

Revenue from fees is used to secure, administer and grade the exams, in addition to providing funds for the board's meetings. The board has no staff.

During the 64th fiscal year, the board had six complaints. During the 65th fiscal year, it dealt with nine complaints. In those two years, all but one complaint concerned improper use of the word "accountant" in connection with advertising. The other complaint related to an audit report that was incorrect. After review, the board determined the report was correct and closed the case.

**BUDGET**

It is recommended that the board expend its funds in order to comply with the overall recommendations made in this report.



NEW MEXICO

Item  
Number      Information Requested

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1)      General Information

- A.    Name of board or commission.
- B.    Agency code number.
- C.    Address and phone number.
- D.    Office hours.
- E.    Director or executive secretary.
- F.    Name, position and professional qualifications of person compiling information.

2)      Statutory Authority

Include copies of compiled statutes or session laws not yet compiled that relate to your board or commission.

3)      Board or Commission

- A.    Board member names, date of appointment and expiration date.
- B.    Statutory provisions relative to appointment of members (e.g. professional qualifications, etc).
- C.    Professional qualifications of each board member and place and type of employment.
- D.    Number of board or commission meetings 64th, 65th, 66th and fiscal years through August 1, 1977.
- E.    Matters routinely brought to board or commission for action in 65th fiscal year.
- F.    Special items brought to board or commission for action in 65th fiscal year.

4)      Rules and Regulations

- A.    If rules and regulations are not extremely voluminous, include copy of each, note statutory citation giving board or commission authority for each, note date each adopted and explain situations that would or could exist without each rule and regulation.
- B.    If rules and regulations are voluminous, provide subject categorization, along with brief explanation of each category, applicable statutory authority for each category, number of rules and regulations in each category and situations that would or could exist without each category of rules or regulations. Provide explanation that will give LFC an idea of the dates rules and regulations were adopted.



Item Number	Information Requested
5)	<p data-bbox="308 372 438 404"><u>History</u></p> <p data-bbox="308 414 1396 649">A. When board or commission created and for what purpose.            B. Original scope of authority, along with brief explanation of changes in scope. Please date such changes.            C. Explain major programs from creation to present.            D. Explain and date major changes in the level of paid staff.</p>
6)	<p data-bbox="308 680 397 712"><u>Staff</u></p> <p data-bbox="308 734 1469 925">A. Note type and number of paid staff and indicate whether each position is part time or full time.            B. Explain consequences, in terms of the public interest, if each category of paid staff were no longer funded or were significantly reduced.</p>
7)	<p data-bbox="308 957 673 989"><u>Fiscal Considerations</u></p> <p data-bbox="308 1010 1453 1891">A. Total expenditures for 64th and 65th fiscal year and budgeted for 66th fiscal year.            B. Fees:                1. Current fee schedule.                2. Detail of all fee schedules for a historical period for which data is available.                3. Date and basis for last fee increase relative to each fee charged.                4. Detail service received by person paying fee.                5. Gross collections by each fee for 64th and 65th fiscal years.            C. Cash and fund balance June 30, 1976, and June 30, 1977.            D. If board or commission has revenue other than fee income, explain each source and indicate revenue for 64th and 65th fiscal years for each.            E. If board or commission money is not handled by state treasurer or DFA, provide name of banks used and balance of each account as of August 1, 1977. Detail amounts of all investments.            F. If board or commission fee revenue does not cover expenses, why have fees not been increased?</p>

Item Number	Information Requested
8)	<p data-bbox="322 372 586 404"><u>Direct Services</u></p> <p data-bbox="322 414 561 446">A. Licenses:</p> <ol data-bbox="404 468 1437 798" style="list-style-type: none"> <li data-bbox="404 468 1437 563">1. New Mexico licenses issued by category of license type for the first time to an individual 64th and 65th fiscal years.</li> <li data-bbox="404 585 1437 659">2. Renewal licenses by category of license type issued 64th and 65th fiscal years.</li> <li data-bbox="404 670 1437 744">3. Number of licenses denied 64th and 65th fiscal years. Categorize reason and number for each denial.</li> <li data-bbox="404 755 1148 798">4. Explain interstate license agreements.</li> </ol> <p data-bbox="322 819 545 851">B. Testing:</p> <ol data-bbox="404 861 1362 1021" style="list-style-type: none"> <li data-bbox="404 861 1362 936">1. Number of tests administered by type 64th and 65th fiscal years.</li> <li data-bbox="404 946 1362 1021">2. Number passing and failing tests by type 64th and 65th fiscal years.</li> </ol> <p data-bbox="322 1032 627 1064">C. Board Action:</p> <ol data-bbox="404 1085 1412 1191" style="list-style-type: none"> <li data-bbox="404 1085 1412 1191">1. Detail for 65th fiscal year formal board action taken relative to individuals regulated by board (e.g. disciplinary action, etc.).</li> </ol>
9)	<p data-bbox="313 1223 652 1255"><u>Consumer Protection</u></p> <ol data-bbox="313 1276 1486 1798" style="list-style-type: none"> <li data-bbox="313 1276 1486 1415">A. Has agency received complaints that it is either too lenient or too restrictive in terms of its allowing persons to obtain license? If yes, explain how agency answers these complaints.</li> <li data-bbox="313 1425 1486 1564">B. In the past five years, list all statutory changes the agency has proposed in the interest of consumer protection. Explain how each is, indeed, related to consumer rather than industry protection.</li> <li data-bbox="313 1574 1486 1691">C. What specific activities has the agency implemented to encourage public participation relative to rules and decisions as opposed to participation by those persons being regulated?</li> <li data-bbox="313 1702 1486 1798">D. Note for the 64th and 65th fiscal years date and type of each complaint filed regarding persons regulated and date and explanation of complaint resolution.</li> </ol>
10)	<p data-bbox="305 1830 768 1862"><u>Input from those Regulated</u></p> <ol data-bbox="305 1883 1536 1979" style="list-style-type: none"> <li data-bbox="305 1883 1536 1979">A. Explain how and in what form input is allowed from those persons being regulated regarding rules and decisions of board or commission.</li> </ol>

Item  
Number      Information Requested

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B.    What procedures are utilized to secure the following from those persons being regulated:

    --impact of rules and decisions of agency regarding improved service, economy of service and availability of service.

C.    In the past three years, detail efforts and procedures used to assess problems in industry being regulated.

    Detail specific changes instituted as the result of such.

11)      Obstacles to Progressive Operations

A.    Are changes in laws governing agency necessary to provide better consumer protection or industry input? If so, explain why and note type of change needed.

B.    Is funding pattern fair to industry providing revenues and adequate to finance agency operations?

C.    In the opinion of the agency or significant number of those in the industry being regulated, is there a need for change in procedures, rules or regulations? If so, please explain.

DMc/dlv

LIMITED PROGRAM EVALUATION  
DEPARTMENT OF INSURANCE  
DIVISION OF REGULATORY BOARDS  
BOARD OF ACCOUNTANCY AND  
ADMINISTRATIVE COMMITTEE TO THE BOARD OF ACCOUNTANCY

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LIMITED PROGRAM EVALUATION  
DEPARTMENT OF INSURANCE  
DIVISION OF REGULATORY BOARDS  
BOARD OF ACCOUNTANCY AND THE  
ADMINISTRATIVE COMMITTEE TO THE BOARD OF ACCOUNTANCY  
NOVEMBER 1977

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INTRODUCTION

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LIMITED PROGRAM EVALUATION  
BOARD OF ACCOUNTANCY AND THE  
ADMINISTRATIVE COMMITTEE TO THE BOARD OF ACCOUNTANCY  
NOVEMBER 1977

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE EVALUATIONS

All governmental entities have been scheduled to terminate within a six year period beginning June 30, 1980 pursuant to the Tennessee Governmental Entity Review Law, Public Acts of 1977, Chapter 452. This law is commonly referred to as the Sunset Law. Prior to scheduled termination dates, a legislative evaluation committee, composed of the House Government Operations Committee and the Senate Special Committee on Governmental Entities, will review each entity to determine whether it should be continued, restructured or abolished. The Comptroller of the Treasury is required to perform limited program evaluations of each entity to aid the review of the evaluation committee.

OBJECTIVES OF THE EVALUATION

In conducting the review of governmental entities, the evaluation committee is required to take into consideration the following factors:

1. The extent to which regulatory entities have permitted qualified applicants to serve the public;
2. The extent to which the affirmative action requirements of state and federal statutes have been complied with by the governmental entity or the industry which it regulates;
3. The extent to which the governmental entity has recommended statutory changes to the General Assembly which would benefit the public as opposed to those persons it regulates;
4. The extent to which the governmental entity has required the persons it regulated to report to it concerning the impact of its rules and

- decisions on the public with respect to improvement, economy, and availability of service;
5. The extent to which persons regulated by the governmental entity have been required to assess problems in the professions or vocations which affect the public;
  6. The extent to which the governmental entity has encouraged public participation in its rules and decision making, as opposed to participation solely by the persons it regulates;
  7. The degree of efficiency with which formal public complaints concerning those persons regulated by the governmental entity have been processed to completion or forwarded to appropriate officials for completion;
  8. The extent to which the governmental entity has considered alternative methods by which other jurisdictions have attempted to achieve the same or similar program goals;
  9. The extent to which the governmental entity has considered the results of published and unpublished studies of various alternative methods of accomplishing the objectives of the entity;
  10. The extent to which the absence of regulation would endanger the public health, safety, or welfare;
  11. The extent to which regulation directly or indirectly increases the costs of goods or services to the public;
  12. The extent to which the regulatory process is designed to protect and promote the public interest and the degree to which that process has attained those objectives;
  13. The extent to which the governmental entity has operated in the public interest, and the extent to which its operations have been

impeded or enhanced by existing statutory procedures, practices of the department to which it is attached for administrative purposes, or any other relevant circumstances, including budgetary, resource, and personnel matters which have affected its performance with respect to its public purpose; and

14. The extent to which changes are necessary in the enabling statutes to adequately comply with Subsections 1 through 13 of this Section.

Since the purpose of the limited program evaluation is to aid the evaluation committee, the primary objective was to address each factor to be considered by the committee.

The secondary objective was to determine the issues involved in licensing of accountants, both CPA's and PA's. An attempt was made to gather all the pertinent facts available relating to the issues; and any other information which would aid the legislative evaluation committee in its review of the Board of Accountancy and the Administrative Committee to the Board of Accountancy.

#### SCOPE AND METHODOLOGY OF THE EVALUATIONS

The operations and activities of both the Board of Accountancy and the Administrative Committee to the Board of Accountancy were reviewed for the period July 1, 1974 through June 30, 1977. This report is based on the following:

- Examination of minutes and other records;
- Questionnaires distributed to 460 CPA's, 137 state banks, 384 PA's, and 246 other businesses selected from sales tax files and a list of all manufacturers in Tennessee;
- Questionnaires completed and returned by the Board and the Administrative Committee;
- Examination of resource materials and publications concerning licensing of accountants;
- Interviews with employees, members and former members of the Board and Administrative Committee, and representatives of other interested groups and organizations;
- Observation of Board and Administrative Committee meetings

## ORGANIZATION OF THE REPORT

This report consists of two separate but related evaluations. The two evaluations were consolidated into one report because the issue at hand involved the state's licensing of accountants. The Board of Accountancy is primarily engaged in licensing Certified Public Accountants (CPA) while the Administrative Committee to the Board of Accountancy is responsible for licensing Public Accountants (PA).

The "Analysis and Evaluation of Accountancy Legislation," pages 9 through 20, pertains to both the Board of Accountancy and the Administrative Committee to the Board. Otherwise, the report is divided into two sections, the "Analysis and Evaluation of the Board of Accountancy," pages 22 through 45, and the "Analysis and Evaluation of the Administrative Committee to the Board of Accountancy," pages 47 through 66. It should be noted that certain sections of analysis and evaluation apply to both the Board and the Administrative Committee.



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ANALYSIS AND EVALUATION  
OF ACCOUNTANCY LEGISLATION

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## History and Background

The first legislation regulating the practice of accountancy in the U. S. was passed by the state of New York in 1896. By 1925 all states had some form of accountancy legislation. In 1913, Tennessee became the twenty-fourth state to enact a law to regulate and license accountants. The 1913 accountancy law required that accountants who represented themselves to be Public Accountants (PA) or Certified Public Accountants (CPA) be examined and licensed by the Board of Accountancy. There was no restriction on others in public practice, and no attempt was made by the state to restrict the practice of public accountancy to those licensed by the state. The first law dealt only with the use of the titles PA and CPA.

In 1926, the first law was repealed and a new one passed. Unlike the previous law, the new legislation attempted to restrict entry into the profession to only those licensed by the State Board. This law for the first time gave the Board the authority to issued certificates and licenses to CPA's and PA's. In 1932, in the case of Campbell v. McIntyre 165 Tenn. 47 (1932), the Tennessee Supreme Court ruled that the section of the act which prohibited those other than PA's and CPA's from practicing public accounting was null and void. The court said in part:

The statutory provisions restricting the occupation of accounting to persons examined and approved by a State Board is unconstitutional, such provisions being an unreasonable and arbitrary restriction upon the right of legal contract.

The restrictive clause, in the opinion of the court, was designed to protect the interests of the certified accountant rather than the public.

Although the court had ruled that restrictive clause of the 1926 act was unconstitutional, no changes were enacted until 1939. The 1939 act was little more than a restatement of the previous law without the restrictive clause.

For sixteen years the accountancy law remained unchanged, with the exception of the legislative amendments which allowed U. S. servicemen to forego

renewal fees, and the codification of the act. In 1955, the current accountancy law was passed. It contained thirteen (13) sections which represented new provisions, expansions of authority, clarifications of legislative intent or modifications of previous laws. The most substantial changes involved the addition of an Administrative Committee to investigate complaints about public accountants, and to pass on the qualifications of applicants for licenses to practice as public accountants.

Prior to 1955 public accountants were licensed by the county clerks of the counties in which they practiced. There were no tests or other requirements for a license. Contrary to the 1932 Supreme Court ruling, the restrictive provision of the 1925 law was again re-instated. The other major change was the raising of the educational requirements for CPA's from a high school diploma to two years of college study with a concentration in accounting. Since 1955 the only major change has been the change in the education requirement for a CPA from two years of college to a college degree with a major in accounting or its equivalent.<sup>1</sup>

In 1957, the current law was challenged by a public accountant, Mr. Davis, who alleged that the requirement that he annually procure a license from the state was unconstitutional, arbitrary, unreasonable, and not within the police powers of the state. The court ruled in Davis v. Allen 43 Tenn. 279 (1959), that the licensing of public accountants was within the police power of the state. The court noted that as an attribute of sovereignty, the state could legislate for the protection of the people against fraud, deception, or certain consequences of ignorance. The state may also prescribe the degree of skill and/or learning required of persons in professions which affect the general public's health, safety, or welfare. The court also noted that the profession of accountancy was complex and varied, involving many areas including

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<sup>1</sup>Walker, W. H. The Development of the CPA Profession in Tennessee. University of Missouri - Columbia, Dissertation, 1968.



various tax laws, unfair trade practices, stock exchange regulations, and other reports required by governmental agencies.

In 1964 the State Board of Accountancy filed suit against the Bookkeepers Business Service Co. of Chattanooga alleging the illegal practice of public accounting. The Tennessee Court of Appeals held that Bookkeepers Business Service, a company providing bookkeeping services and setting up bookkeeping systems for small businesses, was not engaged in the unauthorized practice of accountancy. The court construed the definition of public accounting to include;<sup>2</sup>

only those persons who, in holding themselves out to the public as skilled in the knowledge, science, and practice of accounting and as qualified and ready to render professional accounting services, represent themselves to be either a public accountant or a certified public accountant and perform the work of an accountant for more than one employer are practicing public accounting and must be licensed.

The Court of Appeals noted that previous Court decisions:<sup>3</sup>

consistently have held that legislation that prohibits noncertified accountants from practicing the profession of accountancy is invalid as it infringes upon rights of contract in matters of purely private concern bearing no perceptible relation to the general or public welfare. And, in so doing, the Court's have indicated that bookkeeping and similar technical services—as contrasted with auditing and expressing opinions on financial statements—do not involve a sufficient public interest to permit legislative interference with the normal right of an individual to deal with anyone he chooses, so long as the person rendering the services does not assume a title or designation which might be confused with the 'public accountant' or 'certified public accountant', or which might indicate to the public that he is licensed in either capacity.

Courts, legislatures, and the Treasury Department agreed that "Certified Public Accountant" is a professional designation, and that its restriction to qualified persons is in the public interest. On the other hand, the courts and the Treasury Department have also indicated that they disapprove the granting to anyone the exclusive rights to perform bookkeeping services or prepare federal income tax returns.

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<sup>2</sup>State Board of Accountancy v. Bookkeepers Business Service Tennessee Court of Appeals, February 1964.

<sup>3</sup>Ibid.

In accord with the above considerations, it appears that the traditional function of the certified public accountant—the preparation and expression of opinion on financial statements and auditing, on which third parties may rely—is the only function endowed with sufficient public interest to justify legal restriction to certified public accountants and licensed public accountants.<sup>4</sup> In Tennessee, both CPA's and PA's can perform the attest function.

The accountancy law provides for the regulation of both certified public accountants and public accountants. The Board directly regulates the actions of certified public accountants, and must approve the actions of the Administrative Committee in regard to public accountants. The act sets out the functions that may be performed by a certified public accountant and a public accountant as follows:

Certified Public Accountants:

1. Auditing
2. Devising and installing accounting systems.
3. Make examinations or investigations on matters pertaining to accounting or auditing.
4. Compile tax returns
5. Advise taxpayers as to their rights and liabilities under Federal or State tax statutes as entail or are based on accounting procedures.
6. Represent taxpayers before governmental departments of the State or U. S. in matters pertaining to taxes.
7. Prepare financial statements, schedules, reports, and exhibits for publication, credit purposes, or for use in courts of law and equity, or for other purposes.
8. Anything that a Public Accountant can do.

Public Accountants

1. Auditing
2. Devising and installing accounting systems.

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<sup>4</sup>Witschey. "CPA's and Non-certified Practioners", The Journal of Accountancy, December 1960 in State v. Bookkeepers Business Service Co.

3. Recording and presentation of financial information or data.
4. Compile tax returns.
5. Preparing financial statements, schedules, reports, and exhibits for publication, credit purposes, use in courts of law and equity, and for other purposes.

Although the law sets out these functions as being permitted to CPA's and PA's respectively, the Bookkeepers Business Service case, discussed previously, makes it clear that only the auditing, or attest, function—the expression of an independent opinion on financial statements—is imbued with sufficient public interest to justify regulation by legislation. Despite these court cases the restrictive provisions remain in the law. Federal regulations require that financial statements filed on publicly held corporations with the Securities and Exchange Commission (SEC) be audited by a CPA or PA, and their fairness be attested to. The Internal Revenue Service (IRS) requires that any persons representing clients before them, be either a lawyer, a CPA or an enrolled agent. Public accountants and other persons desiring such status must take the enrolled agents exam conducted by the IRS.

The Comptroller General of the U. S. has established a policy for the General Accounting Office which limits practitioner qualifications to audit federal programs to all certified public accountants and to those public accountants who were licensed as of December 31, 1975. Two reasons were given for the establishment of this requirement. First, there are no uniform requirements for public accountants—the exams, experience, and education requirements vary widely. Second, the Comptroller reasoned that governmental financial statements include many complex and highly complicated financial transactions that require the highest type of skills in order to audit and express an opinion. The Comptroller felt that the criteria used to measure competence for CPA's were more reliable than those used for PA's.

## Summary of the Current Law

The State Board of Accountancy is created by Tennessee Code Annotated (TCA) 62-119 and is charged with the administration of the accountancy laws of the state (TCA 62-119 to 62-145). The Board consists of seven (7) members, two (2) CPA's from each grand division of the state, and one attorney member. The CPA's are appointed by the Governor for three year terms from a list submitted by the Tennessee Society of Certified Public Accountants.

The Board's functions are:

1. Administer the accountancy act and rules and regulations.
2. Determine the qualifications (educational and experience) for CPA candidates.
3. Conduct written examinations of candidates.
4. Adopt and enforce rules of professional conduct.
5. Collect examination and renewal fees from applicants, and issue certificates and renewals.
6. Issue reciprocal licenses.
7. Revoke or suspend certificates for violations of the accountancy law, after a hearing.
8. Appoint an Administrative Committee to investigate complaints, hold hearings, pass on the qualifications of public accountants, subject to the approval of the Board.
9. Maintain a roster of all CPA's and PA's to be published annually.

The Board appoints an Administrative Committee of six public accountants from a list submitted by the Tennessee Association of Public Accountants. Two members are selected from each grand division of the state to serve three year terms.

The functions of the Administrative Committee are:

1. To receive and investigate complaints and initiate and conduct investigations or hearings, with or without complaint, of any violation of the accountancy law by public accountants.
2. To pass on the qualification for licenses to practice as public accountants.

3. To set fees for examinations to practice as public accountants, subject to the approval of the Board.
4. To adopt rules of procedure which are to be approved by the Board.
5. To prepare an examination for public accountants, cause it to be graded, and certify the results to the Board.
6. The Administrative Committee shall make recommendations and forward its report to the Board on any matter on which it is authorized to act.

A full copy of the law is included in the Appendix on page 68

### Types of Licensure of Accountants

There are two fundamental types of licensure for accountants. Tennessee has what is known as a regulatory accountancy law. Tennessee licenses, restricts the use of titles, and limits the attest function to both CPA's and PA's. There are five localities that are permissive states, that is, they license and regulate only the use of the title "CPA," but do not restrict the rendering of any particular services to those certified.

In Tennessee there are three classes of accountants. The first, CPA's represents the highest recognized level of competence and knowledge of accounting services to the public. The second, public accountants, have lower qualifying standards, but are still allowed to use the only legally regulated function of accountants—the attest function. The third class is the unlicensed practitioners which are performing bookkeeping, tax and related services. This latter class cannot utilize the attest function, but may not be prohibited from providing other accounting type services.

A question currently much debated is whether it is necessary to continue to license two classes of accountants (CPA's and PA's) which are authorized to render the same service—ie. the attest function. As shown in Exhibit 1, page 17, thirty-one (31)

states, Guam, Puerto Rico, and the Virgin Islands have gone to what is known as a dying-class licensing arrangement, where public accountants in practice on a certain date continue to practice, but no new public accountants are licensed. Fifteen (15) states (including Tennessee) license public accountants on a continual basis, with eleven (11) of those states (including Tennessee) allowing the PA to perform the attest function. This issue is covered in more detail in Part IV of the report.



EXHIBIT I

SUMMARY OF LAWS REGULATING THE PRACTICE OF PUBLIC ACCOUNTING

I. All states license Certified Public Accountants.

II. PERMISSIVE (5)

Only Certified Public Accountants are licensed and only the use of the title Certified Public Accountant is regulated.

Delaware	Minnesota
District of Columbia	Wyoming
Kansas	

III. DYING CLASS (34)

Only CPAs are licensed on a continuing basis; generally Public Accountants in practice on the effective date of law are licensed or registered.

Alabama	Nebraska
Arkansas	Nevada
California	New Jersey
Colorado	New York
Connecticut	North Carolina**
Florida	North Dakota
Hawaii	Pennsylvania
Idaho	Rhode Island
Illinois	Texas
Kentucky	Utah
Louisiana	Virginia
Maine	Washington
Maryland	West Virginia
Massachusetts	Wisconsin
Michigan	Guam
Mississippi	Puerto Rico
Missouri	Virgin Islands

IV. CONTINUAL LICENSING OF PASs (15)

Law provides for continuing licensing or registering of Public Accountants or Accounting Practitioners under requirements lower than those applicable to Certified Public Accountants.

Alaska	Ohio
Arizona	Oklahoma
Georgia	Oregon
Indiana*	South Carolina*
Iowa*	South Dakota
Montana	Tennessee
New Hampshire*	Vermont
New Mexico	

\*Cannot perform attest function

\*\*Attest function is not restricted



## Rationale for the Licensure of Accountants

Accountancy laws regulating the issuance of CPA certificates have been enacted in all fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Each of these laws sets forth education, experience, examination and other requirements for a certificate, and also establish a Board of Accountancy to interpret, administer, and enforce the law. As previously mentioned, fifteen states continuously license PA's.

All state laws have at least one thing in common: they are designed to set apart those who have met certain requirements for a license to practice, and to restrict the use of the title CPA or PA to those who have so qualified.

The following Declaration of Policy exemplifies the common purpose for regulatory accountancy laws:<sup>5</sup>

It is the policy of this State, and the purpose of this Act, to promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public or private. The public interest requires that persons attesting as experts in accountancy to the reliability or fairness of presentation of such information be qualified in fact to do so; that a public authority competent to prescribe and assess the qualification of public accountants be established; and that the attestation of financial information by persons professing expertise in accountancy be reserved to persons who demonstrate their ability and fitness to observe and apply the standards of the accounting profession.

Although a similar proclamation is not set out in the Tennessee law, the above argument is a commonly heard one. Since the enactment of Tennessee's first accountancy law in 1913, the profession and the practice of accounting has grown more complex in its nature and scope. Both governmental bodies and private industry rely on the work of CPA's or PA's in the normal course of their business. For example, the Securities and Exchange Commission requires that the financial statements of publicly

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\*Laws of Hawaii, Act 156, approved May 22, 1973, Chapter 44, Section 403-1

held companies, and private individuals also rely on the expertise of CPA's and PA's to reach decisions on loans and investments. Certain reports filed with the State of Tennessee also require a CPA or PA's signature.

It can be argued that state licensure of accountants protects the public in several ways. First, the expert in accounting is identified for the public. Second, the public is protected from incompetent, dishonest, and fraudulent practitioners. Third, Tennessee corporations which are publicly held can be audited by CPA's or PA's to assure the accuracy for their stockholders. Fourth, because of the predominance of interstate commerce in the U. S. it is necessary that there be a designation of financial competence (CPA) which is recognized nationwide.

The arguments against the licensure of accountants by the state are, first that licensure by the state restricts entry into the profession and acts to keep down the supply of accountants. It might be argued that this would act to raise the prices of services. Second, the regulation by the state acts to restrict the rights of contract between private individuals. That is, certain services must be performed by those licensed by the state and no one else.

A mail survey conducted of state banks, manufacturers, and small business revealed the following (129 responses):

<u>QUESTION</u>	<u>YES</u>	<u>NO</u>	<u>NO OPINION</u>
Do you feel that CPA's should be licensed by the state?	89.9%	9.3%	.8%
Do you feel that PA's should be licensed by the state?	80.6%	17.1%	2.3%
Is there a difference in your mind between the services offered by a PA and those of a CPA?	75.2%	20.9%	3.9%
Do you feel more confident in the level of service provided by an accountant because he has a license from the State?	82.9%	17.1%	0%
Do you feel accountants other than CPA's should be licensed by the state?	67.4%	28.7%	3.9%
Do you feel it is the governments responsibility to protect the public from unethical practices of accountants?	72.9%	24.0%	3.1%

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ANALYSIS AND EVALUATION  
OF THE  
BOARD OF ACCOUNTANCY

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## Organization and Staffing

The Tennessee Board of Accountancy consists of six CPA members and one attorney as shown in Exhibit 2, page 23. They select six PA's, from a list submitted by the Tennessee Society of Public Accountants, to form an Administrative Committee to regulate public accountants. Of the fifteen states that license PA's on a continuing basis, seven have a similar committee to regulate PA's. Many states have a single board which regulates both CPA's and PA's, some state boards consist of only CPA's, and some have combinations of CPA, attorney and public members. (See Exhibit 3, page 24.) A survey of CPA's revealed that 63.6% of those expressing an opinion did not feel that both a Board and an Administrative Committee were necessary. Of the Public accountants surveyed, 49.1% did not feel that both entities were necessary. Of the banks, manufacturers, and other businesses surveyed 88.7% did not feel both were necessary.

In recent years there has been a growing trend among Boards of Accountancy to include public representatives on the board. This has resulted from criticism that licensing boards are made up only of representatives of the accountancy profession. As shown in Exhibit 3 there are currently sixteen states with public representation (other than attorneys) on the board, and six states, including Tennessee, who have attorney members.

The Board of Accountancy is in favor of including public members on the board with the following proviso. First, that they not constitute a majority, and; second, that they be people knowledgeable about the accounting profession, for example, bankers or businessmen.

A mail survey of CPA's indicated that 34.4% of the 259 CPA's responding were in favor of public members being included on the Board of Accountancy. A survey of accounting users indicated that 74.8% of those responding favored including public members as part of the Board.

# ORGANIZATION CHART

## BOARD OF ACCOUNTANCY AND ADMINISTRATIVE COMMITTEE

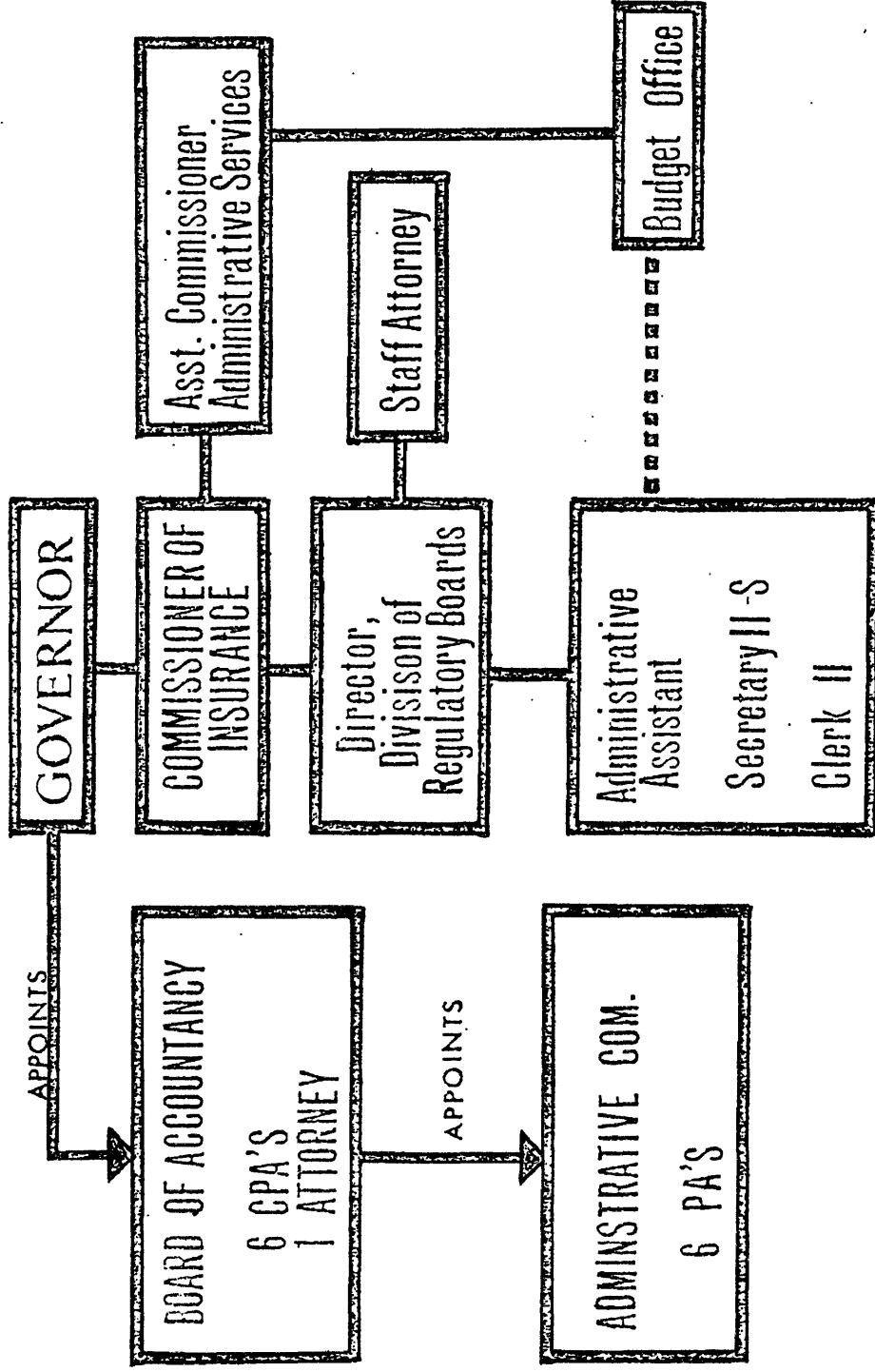


EXHIBIT 3  
MEMBERSHIP OF STATE BOARDS OF ACCOUNTANCY  
PROFESSIONAL DESIGNATION

STATES	CPAs	PAs	ATTORNEYS	PUBLIC	OTHER
Alabama	5	2			
Alaska	3	2			
Arizona	4			1	
Arkansas	4	1		1	
California	4	2		3	
Colorado	4			1	
Connecticut	3				
Delaware	4		1		
Dist. of Col.	3				
Florida	5				
Georgia	6 (G)	1			
Hawaii	5	2			
Idaho	5				
Illinois	4 (C) 4 (D)	1 (A)	1 (A)		
Indiana	3	2			
Iowa	5			2	
Kansas	5				
Kentucky	5				
Louisiana	5				
Maine	3	3		1	
Maryland	4 (E)		1 (B)		
Massachusetts	3	1		1	
Michigan	4		1	1	
Minnesota	5			2	
Mississippi	3				
Missouri	5				
Montana	3	2			

STATES	CPAs	PAs	ATTORNEYS PUBLIC	OTHER
Nebraska	5	2		
Nevada	5*	2		
New Hampshire	3	2		
New Jersey	5 -			1 Govt. 1 Admin.
New Mexico	3	2		
New York	15	5		2
North Carolina	4			
North Dakota	4	1		
Ohio	5			
Oklahoma	5			
Oregon	5			
Pennsylvania	6	2		1 Commissioner of 1 Prof. & Occup. Affairs
Puerto Rico	5			
Rhode Island	3			
South Carolina	5	4		
South Dakota	3	1		1 State Auditor 1 General
Tennessee	6		1	
Texas	5	4 (A)		
Utah	4	1 (A)		
Vermont	2	2		1
Virginia	5		1	(A) 1 Educator
Virgin Islands	3			
Washington	3	2		
West Virginia	3	3		
Wisconsin	5			
Wyoming	4 (F)			1
Guam	4			

\* April 1, 1978 - 6 CPAs and 1 PA

(A) May be a CPA

(B) May not be a CPA

(C) Licensing Board

(D) Examining Board

(E) One Member must be an educator

(F) Three CPAs in public practice; 1 CPA not in public practice

(G) One Member may be a lay member



There has been dissatisfaction expressed by members of the board over the current length of their terms (three years). The feeling is that, because they meet only four times per year, by the time they learn the job their terms are up. A comparison of board terms in other states reveals:

<u>Term</u>	<u>Number of States</u>
Three years	23
Four years	10
Five years	11
Six years	2
Unknown	4

The staff to the Board is composed of an Administrative Assistant, a Secretary II-S, and a Clerk II. The staff to the Board handles all of the processing for the examinations and the issuance of certificates, all Board correspondence, and the renewals of certificates. They also prepare a roster of all CPA's and PA's each year.

Until July 1, 1977 the administrative staff spent a large amount of time processing fees received by the Board; however, this task, as well as the ordering of supplies and the keeping of revenue expenditure journals, has now been taken over by a centralized budget office in the Division of Regulatory Boards. The staff also spent a large part of their time on mailings to applicants, typing pocket license renewal cards, and sending out notices for exams and renewals. These functions are scheduled to be handled by computer beginning in December 1977, and beginning in 1978 the roster will be printed from computer records. This will simplify the administrative tasks of the staff, but will not eliminate all of the manual work now necessary to administer the law.

The administrative staff has done an adequate job in conducting the normal business of the Board; however, there are several improvements which could be made. One of the difficulties is a lack of proper management controls used by the Board.

There are no activity reports of use to management prepared by the staff to the Board or the Division of Regulatory Board, or the division director. There are no written procedures for the activities of the staff nor is any sort of statistical data kept on the number of licensees, number passing the exam, complaints, etc.

The accountancy law Section 62-121, TCA, requires that the office of the Board be under the supervision of a Secretary of the Board, who may or may not be a member of the Board, but must be a CPA with an original Tennessee certificate. When the previous part-time Secretary of the Board resigned in 1976, a search was made for a new Secretary. No CPA's could be found who were interested in the job, so a non-CPA was hired as an Administrative Assistant.

Neither the Board nor the director of the Division of Regulatory Boards provide adequate direction to the staff responsible for office management. The inadequate direction of the staff to the Board has at least indirectly had the effects of:

1. Making it difficult for Board members to keep up with new developments in the licensure of accountants.
2. Poor internal management controls over
  - a. complaints
  - b. correspondence files
  - c. other office records
3. Lack of management reports on activities and the degree of success in meeting goals and objectives.

#### Licensing and Regulatory Activities

One of the major functions of the Board of accountancy is to determine the eligibility of applicants for a CPA certificate. The key component of that determination is the successful performance of the applicant on the Uniform CPA examination, which is prepared and graded by the Board of Examiners of the AICPA. Before the applicant can take the examination he must meet certain statutory

requirements. The eligibility requirements set out in the law to take the CPA examination are that the applicant: 1. Must be U. S. Citizen and a resident of the state, or have a business within; 2. Must be over eighteen years of age and of good moral character; 3. Must be a graduate of a university with a degree in accounting, or what the Board determines to be the equivalent.

The statutory requirements in the fifty states vary considerably. As shown below five states require that an applicant must be a U. S. citizen, nineteen states, like Tennessee, require that the applicant must be a citizen or intend to become one, and twenty-six states have no citizenship requirement.

<u>Requirement</u>	<u>Number of States</u>
Must be a U. S. citizen	5
Intend to become citizen	19
No requirement	26

Recent court cases have held that the citizenship requirements for state licensure are unconstitutional as denying equal protection under the law. As a result of these cases, the trend among the states who have not been directly affected, (like Tennessee), has been to drop the citizenship requirement. In Tennessee the citizenship requirement has not restricted entry to a large degree; however, there have been at least five inquiries about the exam from foreign citizens in the last three years.

Forty-five states, including Tennessee, require either that the applicant for the exam must be a resident of the state or have a business within the state. As shown below, experience requirements also vary widely. Only three states require that the experience requirements be met before the applicant can sit for the exam; however, the rest of the states require it to be met prior to issuance of a certificate. The number of years experience required is generally dependent on the applicant's educational background. For example, a state could require one year experience with a college degree (the minimum), and two years without a degree (the maximum).

EXPERIENCE REQUIREMENT

<u>Minimum Years Experience Required:**</u>	<u>Number of States</u>
0	11
1 (includes one which requires 1 1/2)	27*
2	14
3	1
 <u>Maximum years experience:**</u>	
0 (3 required experience for permit to practice)	4
1	7
2	14*
3	6
4	11
5	3
6	6
9	1
10	1

\*Includes Tennessee

\*\*Includes Puerto Rico, Washington D. C., and Virgin Islands

Tennessee requires no experience to sit for the exam, but two years of public accounting experience to get a certificate (or one year with a Masters degree). The education requirement for taking the exam in Tennessee is graduation from college with a major in accounting or its equivalent. As shown below, the majority of states require a college degree.

EDUCATION REQUIREMENT

<u>Requirement</u>	<u>Number of States</u>
College degree or higher required	40* states
Two years of college required	5
No college education required	9

\*Includes Tennessee

The Board meets before each examination to consider all first-time applicants for the exam. The Board considers each of the above requirements and

approves or disapproves the applicant. If the applicant is approved he must then take the examination and pass all four parts (Auditing, Accounting Theory, Accounting Practice, and Business Law) with a score of 75 or above. If an applicant passes any two parts or Accounting Practice he is given provisional credit, and has three years in which to pass the other parts.

An examination of the Tennessee scores on the November 1975 and May 1977 examinations reveals that only 5.1% of all those sitting for the first-time passed all four parts, 5.58% passed only the Practice section 8.54 passed two parts of the exam, and 3.45% passed three parts on their first try. Statistics available for the November 1976 exam indicated the following first-time pass rates in these states:<sup>6</sup>

Colorado	17%	Oklahoma	12%
Illinois	14%	Wisconsin	32%

The pass rate for all candidates sitting for the exam, first-time and repeaters, is higher as reflected in the chart below.

EXHIBIT 4

NUMBER SITTING AND PASS RATES  
FOR THE MAY 1977 AND NOVEMBER 1976  
CPA EXAM

	NOVEMBER 1976				MAY 1977			
	<u>Audit</u>	<u>Theory</u>	<u>Practice</u>	<u>Law</u>	<u>Audit</u>	<u>Theory</u>	<u>Practice</u>	<u>Law</u>
Number Sitting	876	826	831	833	733	666	614	697
Number Passing	150	165	221	188	158	123	120	136
Number Receiving Credit	140	152	221	156	143	109	120	104
% Passing	17.1	19.9	26.6	22.6	21.5	18.5	19.3	19.5
% Receiving Credit	16.0	18.4	26.6	18.7	19.5	16.4	19.3	14.9

The attitude of the Board of Accountancy is that the Uniform CPA test is one of the major criteria for the issuance of a certificate; however, it is only the

sampling of an applicants accounting knowledge and must be supported by accounting education and actual experience.

In the last three (3) years the Board has issued 735 original certificates to Tennesseans, and 129 reciprocal certificates to out-of-state CPA's.

As of July 1, 1976 the total number of CPA's certified by the Tennessee Board stood as follows:

-- Total # CPA's certified	3133
-- Total # CPA's living in Tennessee	2282
-- Total Out-of-State CPA's with reciprocal certificates	851
-- Total # CPA's in Public Practice	1367
-- Total # CPA's in Private Practice	1766

Between July 1976 and July 1977, 253 original and 31 reciprocal CPA licenses were issued bringing the total licensed CPA's to over 3,400 as of July 1977. As can be seen in the above chart, there are a significant number of CPA's in Tennessee that are not in public practice. Many work in private industry or in government. Currently all CPA's are required to have two years experience in public accounting to get a certificate, whether or not they plan to practice public accounting. Forty-six states have a similar type of experience requirement in public accounting, although in some states it is a lesser requirement for those not practicing. Four states have separated the CPA certificate from a "Permit to Practice," and have more stringent experience requirements for the latter. This allows those accountants who prefer to work for private industry or government to get certificates, but excludes them from public practice until experience requirements have been met.

Tennessee does not currently require the registration of accounting firms or professional accounting corporations. However, thirty other states do have requirements for the registration of corporate accounting firms. All states allow

accounting to be conducted by professional corporations. The rationale for the registration of firms is to hold them as a firm or corporate body subject to the accountancy laws of the state, thus protecting the public from the practices and policies of unscrupulous firms.

### Complaints and Enforcement

One of the major functions of the Board is to handle all complaints which are received. Tennessee Code Annotated 62-138 states in part that the board of accountancy may revoke or suspend any certificate or license if the holder shall:

1. be convicted of any felony;
2. be declared by a court to have committed fraud;
3. be declared to be insane or other wise incompetent; or
4. be held by the board to be guilty of any unprofessional conduct, dishonesty, malpractice, or any act which renders him unfit to be a CPA or PA, provided he has first had a full hearing before the board.

A review of the minutes of the meetings for the last three (3) years revealed that there have been nineteen (19) complaints considered by the Board since August of 1974. Nine (9) of these complaints were resolved by writing letters to the person involved, and ten (10) were referred to the Attorney General or the attorney for the Division of Regulatory Boards. Most of the complaints dealt with some form of violation of the Rules of Professional Conduct, usually the advertising rule. Five hearings were held on disciplinary matters and three certificates revoked or surrendered in the last three years.

The staff of the Board does not engage in any systematic attempt to discover violations of the law. For example, there is no check of phone books to determine if non-licensed accountants are holding themselves out to the public as PA's or CPA's. The staff to the Board does not check to see if CPA's or PA's who fail to renew their licenses continue to practice accountancy. Technically such accountants would be falsely holding themselves out to the public until their licenses are renewed. There is also no coordination between the Board and other government departments in discovering violations of the law.

In the course of the normal work of the Division of State Audit during the past year, two CPA's and ten PA's were found to have attested to the accuracy and fairness of the presentation of financial statements who, either were not currently registered with the Board, or were never registered. Of the two CPA's one had not paid his registration fee since 1970, and the other, although he signed his name as a CPA, has never been registered or issued a certificate by the Board. Five of the persons signing as public accountants were found to never have been registered with the Board; three had licenses but had not paid their registration fees at the time of signing the financial statements, but have since paid their fees; and two had licenses at one time but had not paid registration fees since 1970 and 1975 respectively. This is prima facie evidence that enforcement of the accountancy law has been lax.

The enforcement of the law has been hampered by the lack of access of the Board to an investigator to follow up on complaints, or to initiate investigations of possible abuses by accountants. This has forced the Board members to do their own investigative work in the limited amount of time they have available to devote to Board business. According to the Board, the attorney to the Division of Regulatory Boards has not been able to devote adequate attention to the needs of the Board, either in the area of complaints, or in normal interpretive work. According to both the Board and the attorney, a heavy workload and a lack of secretarial staff are the main causes of the inadequate attention. Effective action in response to complaints requires both Board initiative as well as sufficient legal support.

#### Rules and Regulations

Another of the Board's functions is to adopt rules and regulations governing their conduct, and prescribe rules of professional conduct for the profession. The Board has established these rules and they have been approved and filed with the Secretary of State. Any violation of the Rules of Professional Conduct by a member



of the profession is considered a violation of the accountancy statute TCA section 62-137. Violators of the Rules of Professional Conduct are subject to the penalty of not having their license renewed. The following Rules of Professional Conduct are of particular interest. A copy of the Rules and Regulations and Code of Professional Conduct are included in Appendix 3.

### Advertising

The advertising restrictions Appendix 3, page 89, of the Tennessee Board consist of: prohibitions on the publishing of what are know as 'cards'; certain restrictions as to the way CPA's and PA's can list their names in directories, and on their office doors and windows; and the prohibition of any advertisement of professional attainment or services. As the law now stands it is possible to be reprimanded for having a story in the newspaper about a CPA or PA.

The rationale behind this restriction is that the CPA or PA is an independent consultant on third party financial statements and he should not be directly or indirectly soliciting business. However, the recent Supreme Court ruling in Bates v. Arizona Bar has lead some observers to suggest that the same test applied to lawyers is applicable to accountants, namely, that advertising is allowable if it is not fraudulent or misleading. The board's attitude in regard to it's advertising rule is to "wait and see what they are forced to change."

There appears to be no protection of the public interest involved in the restriction of advertising which is tasteful and not misleading. The only apparent effect is to make it more difficult for new CPA's to establish practices, and for the public to gain access to the services of CPA's.

In the survey of CPA's, 32.4% indicated the advertising restrictions of the Board should be relaxed, 52.5% felt they should not be, and 15.1% expressed no opinion. Of the public accountants surveyed, 27.8% agreed that advertising restrictions be relaxed, 43.8% disagreed and 28.4% expressed no opinion.

### Competitive Bidding

Tennessee also has a rule, Appendix 3, page 92, prohibiting licensed accountants from competitively bidding on jobs, except as required by state and federal law. A licensed accountant can quote hourly rates, but in no way can he give an estimate of the total cost. According to the Board's rules, competitive bidding is considered a form of solicitation and unprofessional. Because of this rule the public cannot receive an accurate reflection of the total cost to be incurred by engaging an accountant. The rationale behind the prohibition is that the accountant must maintain an independent role in auditing and should not be constrained by any fixed price established through bids from completing all the procedures necessary to state an opinion on the fairness of presentation. The AICPA Rules of Professional Conduct, which most states have adopted with minor modifications, contained a similar provision regarding competitive bidding. However, as the result of a 1973 U. S. District Court decision the provisions were deleted from their code.

### Offers of Employment and Encroachment

The Rules of Professional Conduct Appendix 3, page 91, also prohibit the CPA or PA from offering employment directly or indirectly to an employee of another CPA or PA, without first informing such accountant. A CPA or PA is also prohibited from directly or indirectly encroaching on the practice of another PA or CPA.

As a reflection of the changing legal environment and the public interest these rules have been deleted from the AICPA's new proposal for a Model Professional Code of Conduct. It might be argued that even if the gentlemanly thing would be to not encroach, or offer employment to a staff member of another CPA, it is not the state's role to enforce such rules of etiquette.

### Ethics Examination

Although an ethics examination is not currently a part of Tennessee's requirements for a license, it is being seriously considered by the Board. The Board

has passed a resolution favoring the requirement of an ethics exam. The National Association of State Boards of Accountancy (NASBA) and the AICPA have both endorsed the idea of requiring applicants for certificate to pass an examination on professional ethics. The ethics examination is based on the AICPA Code of Professional Ethics and is designed to test applicants' knowledge of what is considered ethical practice—practices which will and will not interfere with an auditor's independence. Currently, thirty-four states require some sort of ethics exam. Thirty states require the exam as a prerequisite for the issuance of the certificate, and four states require the successful completion before the taking of the CPA exam. The ethics examination in twenty-eight states is open book, four states have closed book exams, and two states, New Hampshire and New Jersey, have verbal examinations.

The survey of CPA's revealed that 82.1% agreed that an ethics exam should be required for licensure. Of the PA's surveyed, 29.8% agreed, 32.7% disagreed, and 37.5% expressed no opinion.

#### Continuing Professional Education

Continuing professional education (CPE) requirements are a growing trend among State Boards of Accountancy. In the past five years twenty-four states have adopted compulsory CPE into law as a prerequisite for license renewal (See Exhibit 5, page 40). The past practice of most licensing boards, the Tennessee Board of Accountancy included, has been to closely scrutinize initial entry into the profession. However, after initial qualification no provisions have been included in the law to assure that practitioners maintain a minimum level of competence. This has resulted in a philosophy of "once licensed always licensed".

Accountants are significantly affected by changes in federal and state laws and in accounting principles. In order for an accountant to perform high quality work it is necessary that he keep abreast of the changes in applicable laws and methods. An example of the fast changing pace of accounting standards are the Statements on Auditing Standards (SAS's) issued by the AICPA. Since December 1974, twenty SAS's have been issued. Another indication is the issuance of the Financial Accounting Standards Board of fourteen Statements on Financial Accounting Standards since December 1973. In addition, the Congress of the U. S. passed a major tax law in 1976 and revisions in 1977 which greatly effect the practices of accountants and their clients.

Although not directly comparable to Tennessee, the Kentucky Society of CPA's conducted a survey of CPA's in 1973 which indicated that "Far too many (41.5% of the 159 respondents) Kentucky CPA's admitted to not having kept abreast of current developments in the profession since entering it."<sup>7</sup>

Currently no effective way exists to insure that CPA's maintain the initial level of competence that they demonstrate to receive their certificate. The rationale behind requiring CPE of all professionals is that they will keep up with the changes in the profession. Of course a great number of professionals attend continuing education courses now voluntarily. The Tennessee Society of CPA's has adopted a voluntary CPE program for it's members. However, the statistics they have gathered indicate that only 25% of the members participated in the program (or reported it to the Society). The Tennessee Society is on record as being in favor of a mandatory CPE program. The National Association of State Boards of Accountancy and the AICPA are also on record as supporting CPE.

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<sup>7</sup>Ohio CPA. Volume 32, No. 1, Winter 1973, Page 6.

The Tennessee State Board recognized the problems of insuring continued competence in 1973 when they passed a resolution to adopt by rule a CPE program. The program would have required that each CPA complete 120 hours of continuing education in a three year period in order to have their license renewed. The Attorney General did not approve the rule, stating that it was not within the Board's powers to adopt it, rather that the legislation would have to be changed to give them that authority. A petition was filed with the Board in January 1977, under the provisions of the APA to adopt a rule on continuing education. The Board referred the petition to the Attorney General.

The arguments against CPE are that it places an undue burden on a CPA to be forced to attend CPE courses. It is also argued that the fact that someone attends a CPE course does not necessarily mean that he learns anything.

The survey of CPE's revealed that 68% of those responding favored the adoption of continuing professional education requirements as a prerequisite to license renewal. Almost 45% of public accountants surveyed favored CPE. Significantly, over 71% of the banks and other businesses surveyed felt CPE should be required.

Other alternatives to insure continued competence include reexamination and periodic workpaper review. Reexamination is an unpopular alternative among CPA's. Most feel they should not be forced to re-take the exam after years of practicing accounting. Currently no states require periodic reexamination for license renewal. Our survey of CPA's revealed only 11.3% were in favor of periodic reexamination to insure continued competence. Of the PA's surveyed 18.7% felt they should be reexamined, and 64.1% of banks and businesses responding thought accountants should be reexamined periodically. Another alternative is to periodically examine audit workpapers (documentation) to insure that accountants expressing opinions on audits have followed generally accepted accounting principles and auditing standards. Florida currently examines some audit workpapers as a part of its

enforcement of the accountancy law. However, there are no states that periodically review workpapers to assess competence. The survey of CPA's revealed that 26.3% of CPA's agreed that audit workpapers should be periodically reviewed by the Board to insure compliance with accounting standards.

EXHIBIT 5

STATES ENACTING

CONTINUING EDUCATION LEGISLATION

AS OF AUGUST 1977

<u>State</u>	<u>Legislation Enacted</u>
Alabama	August 1973
Alaska	June 1976
California	August 1972
Colorado	April 1973
Florida	May 1973
Georgia	March 1977
Hawaii	April 1973
Iowa	May 1974
Kansas	April 1973
Maryland	April 1976
Michigan	May 1976
Minnesota	June 1976
Nebraska	April 1971
Nevada	April 1973
New Mexico	April 1977
North Dakota	March 1975
Ohio	September 1974
Oregon	June 1975
Pennsylvania	December 1976
South Carolina	August 1974
South Dakota	March 1973
Vermont	April 1975
Washington	April 1973
Wyoming	March 1975

SOURCE: AICPA

## SUMMARY OF ANALYSIS

1. All states license CPA's.
2. The courts have said that only the attest function of accountants can be regulated using the police power of the state.
3. There are different requirements for CPA and PA licenses.
4. Both CPA's and PA's may perform the attest function in Tennessee.
5. The SEC, GAO, and IRS recognize the designation CPA as indicating accounting expertise.
6. The GAO and IRS (for tax work) do not recognize the PA designation unless additional qualifications are met.
7. Citizenship requirements as prerequisites to licensure have been found unconstitutional.
8. The AICPA Uniform CPA Exam is the major criterion for CPA licensing.
9. Tennessee does not register or license accounting firms or corporations.
10. Policing of the profession under the accountancy law has been lax, hampered by legal and budget constraints.
11. There is no systematic effort by the Board to discover violations of the law.
12. The services of the attorney to the Division of Regulatory Boards has been unsatisfactory in the past.
13. There is a growing trend for public members to be included on accountancy boards nationwide. Tennessee has an attorney member on the Board.
14. The Board and the Administrative Committee have acted as separate organizations with little coordination.
15. Poor management controls are used by the Board office.
16. Advertising regulations have been held to be overly restrictive by the U. S. Supreme Court.
17. Rules of Professional Conduct on competitive bidding, offers of employment, and encroachment are changing nationwide.
18. An Ethics exam has been considered by the Tennessee Board. Thirty-four states have adopted an ethics examination.
19. The accountancy law does not insure continued competence in any manner.
20. Twenty-four state laws require continuing education courses to be completed before licenses are renewed.



## FACTORS ADDRESSED IN SUNSET LAW

### FACTOR:

The extent to which the Board of Accountancy has permitted qualified applicants to serve the public.

### COMMENT:

There was no evidence to suggest the Board was overly restrictive in its examination of qualified applicants

### FACTOR:

The extent to which the affirmative action requirements of state and federal statutes have been complied with by the Board and the accountancy profession.

### COMMENT:

The staff to the Board is included in the affirmative action plan the Department of Insurance. Court decisions have determined that the affirmative action provisions of federal law are not applicable to the issuance of licenses by States.

### FACTOR:

The extent to which the Board has required accountants to report to it concerning the impact of its rules and decisions on the public with respect to improvement, economy, and availability of service.

### COMMENT:

The Board has not required any reporting by accountants. Input is received on rules and decisions from the Tennessee Society of CPA's and from informal contacts.

### FACTOR:

The extent to which the Board of Accountancy has recommended statutory changes to the General Assembly which would benefit the public instead of those regulated.

### COMMENT:

The only changes the Board has recommended in the statute during the evaluation period were fee increases necessary to cover rising costs.

### FACTOR:

The extent to which persons regulated by the Board have been required to assess problems in the profession which affect the public.

COMMENT:

The Board has not required the profession to assess problems.

FACTOR:

The extent to which the Board has encouraged public participation in its rules and decision-making, as opposed to participation by the persons it regulates.

COMMENT:

The Board has not sought input from the public on its rules and decisions. Input has come from other accountants.

FACTOR:

The degree of efficiency with which formal public complaints concerning accountants have been processed to completion.

COMMENT:

The Board has, for reasons not totally within its control, been lax in its enforcement activities.

FACTOR:

The extent to which the Board has considered alternative methods by which other jurisdictions have attempted to achieve the same or similar program goals.

COMMENT:

The Board members individually have considered alternative methods of other jurisdictions. The Board has not systematically considered alternative methods. The Board has several changes under advisement, but none have been adopted to date.

FACTOR:

The extent to which the Board has considered the results of published and unpublished studies of various alternative methods of accomplishing the objectives of the Board.

COMMENT:

See answer above.

FACTOR:

The extent to which the absence of regulation would endanger the public health, safety, or welfare.

COMMENT:

See Rationale for Licensure Page 18

FACTOR:

The extent to which regulation directly or indirectly increases the costs of goods and services to the public.

COMMENT:

Restrictive advertising and other regulations plus difficult entrance requirements tend to promote higher costs to the public.

FACTOR:

The extent to which the regulatory process is designed to protect and promote the public interest and the degree to which that process has attained those objectives.

COMMENT:

Six of the seven board members are practicing CPAs. Also, certain rules of professional conduct appear to be more in the interest of the licensee than the public.

FACTOR:

The extent to which the Board has operated in the public interest, and the extent to which its operations have been impeded or enhanced by existing statutory procedures, practices of the department it's attached to, or other circumstances including budgetary, resource, and personnel matters which have affected its performance with respect to its public purpose.

COMMENT:

The board has considered several issues that are in the interest of the public such as ethics examination, review of audit workpapers, and has established a code of professional conduct. Some sections of the code, such as "contingent fees," are in the public interest, other sections such as advertising and encroachment are more in the interest of licensed accountants. Lack of investigative resources, as well as scarcity of legal services, have impeded effective enforcement. Currently no effective means of assuring continued competence after being licensed exists. Also, the current statutes are much broader in their definition of the practice of public accounting than case law interpretation of functions which can be regulated in the public interest.

FACTOR:

The extent to which changes are necessary in enabling statutes to adequately comply with the above factors.

COMMENT:

See "Analysis of Accountancy Legislation" page 9. The enabling statutes are in need of revision to improve both effectiveness and efficiency of accounting regulation.

## Alternatives for Legislative Action

The following alternatives are broad and not inclusive of all possibilities.

### Alternative 1

#### Continue in Present Form

This alternative would leave the Board unmodified despite the problems identified in the evaluation report. The Board would continue to operate under the old 1955 law.

### Alternative 2

#### Termination

This alternative would do away with the Board of Accountancy and the state licensure of CPA's and PA's. The effects of termination would likely be: (1) loss of consumer confidence in the quality of accounting services rendered; (2) The public could not readily identify experts in accounting services; (3) Some question as to whether any Federal programs could be audited, or statements could be filed with the SEC on Tennessee corporations by Tennessee accountants and (4) loss of standardization and consistency in the reporting of financial transactions.

### Alternative 3

#### Restructure

There are many alternative ways to restructure the Board and its functions. The major ways to restructure include: (1) Writing a new updated law; or (2) amending the old law. Any restructuring proposal should include consideration of the following:

1. Changing Board and Administrative Committee organization.
2. Continuing Professional Education
3. The Code of Professional Conduct, including advertisement, encroachment, offers of employment, etc.
4. Ethics examination
5. Stricter enforcement of the law
6. Public Members on Board
7. Qualifications for the certificate - i.e. Citizenship, Residency, Experience, Education
8. Registration of accounting firms and corporations
9. Revision of outdated language of the current law
10. A clearer definition of the practice of public accounting.



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ANALYSIS AND EVALUATION  
OF THE  
ADMINISTRATIVE COMMITTEE TO THE BOARD OF ACCOUNTANCY

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## Organization and Staffing

In 1955, a new accountancy law was passed creating the Administrative Committee to the Board of Accountancy. The Administrative Committee's functions are: (1) to prepare and grade the public accountant (PA) examination; (2) to pass upon the qualifications of PA candidates; and (3) to conduct hearings and investigations on any matters concerning public accountants. The Administrative Committee is composed of two PA's appointed by the Board from each of the three grand divisions of the state. The Tennessee Association of Public Accountants (TAPA) compiles a list of PA's from its membership to aid the board in its selection process. Approximately 90% of the committee members appointed are selected from the TAPA list. However, TAPA membership includes only a third of the licensed public accountants in Tennessee.

As shown in Exhibit 6, Page 49, seven of the fifteen states, including Tennessee, that continuously license PA's have designated a committee to regulate Public Accountants. All of the remaining states, except for Georgia, have PA membership on the Board of Accountancy. The term of committee membership in Tennessee is three years.

There are two structural problems that affect the committee adversely. First, according to the Tennessee Code Annotated, Section 62-125, the committee shall make recommendations to the board on complaints, hearings, investigations, or any other matters involving public accountants. The Board may then accept, alter, or reject the committee's recommendations prior to taking action on the matter. The Board has not given the Administrative Committee the statutorily mandated supervision, and the Committee has been content to operate independently of the Board. Communication between the Board and committee has been confusing. As a result, there has been little cooperation between them.

EXHIBIT 6

Board Composition and Terms in States that Continuously License  
Public Accountants

<u>States that Continuously License PA's</u>	<u>Board Composition</u>	<u>Board Terms</u>
1. Alaska	Board - 3 CPA's and 2 PA's	3 years
2. Arizona	Board 4 CPA's and 1 Public Member Administrative Committee - 4 PA's	5 years 5 years
3. Georgia	Board - 4 CPA's and 1 Attorney	4 years
4. Indiana	Board - 3 CPA's and 2 PA's . . . until 1979;* Administrative Committee - 2 PA's on the Board plus 3 additional PA's	3 years 3 years
5. Iowa	Board - 5 CPA's and 2 Public Member Committee - 3 Accounting Practitioners	3 years 3 years
6. Montana	Board - 3 CPA's and 2 PA's	6 years
7. New Hampshire	Board - 3 CPA's and 2 PA's	3 years
8. Ohio	Board - 5 CPA's Administrative Committee - 5 PA's	5 years 5 years
9. New Mexico	Board - 3 CPA's and 2 PA's	3 years
10. Oklahoma	Board - 5 CPA's Advisory Committee - 5 PA's	5 years 5 years
11. Oregon	Board - 5 CPA's Administrative Committee - 3 to 5 PA's	Unknown 1 year
12. South Carolina	Board - 5 CPA's and 4 PA's	3 years
13. South Dakota	Board - 3 CPA's and 1 PA and 1 State Auditor	4 years
14. Tennessee	Board - 6 CPA's and 1 Attorney Administrative Committee - 6 PA's	3 years 3 years
15. Vermont	Board - 2 CPA's and 2 PA's	3 years

\*Indiana Board Composition after 1979:

From 1979 to 1984 Board = 3 CPA's, 1 PA, and 1 PA or 1 Accounting Practitioner (AP)

After 1984 - 4 CPA's and 1 PA or 1 AP; the Administrative Committee expires in 1979

3 years



The Administrative Committee uses the staff of the Board for the issuance of PA certificates, correspondence, PA complaints, maintaining applicant files, and the renewals of certificates. The administrative staff is performing competently. However, there are several problems that are evident. First, the staff has no systematic way of filing correspondence. The Committee's and the Board's correspondence are combined into one file. Second, there is no complaint file for the Administrative Committee or the Board.

Other issues relating to the organization and staffing of both the Board and the Administrative Committee are discussed on page 22. These issues include public members on the Board and Committee the length of terms, and the staff to the Board and Committee.

#### Licensing and Regulatory Activities

The Administrative Committee was mandated by the TCA, 62-125 to "pass upon the qualifications" of public accounting applicants, and to set the fees for licenses within statutory limits. The 1955 accountancy law established five requirements that an applicant must meet in order to become a licensed public accountant: (1) United States citizenship; (2) state residency; (3) minimum educational requirements; (4) age requirements; and (5) A 75% average score on the PA exam.

As of July 1977, there were 951 licensed public accountants in Tennessee. According to July 1, 1976, roster there were 863 PA's licensed in Tennessee as residents, and 39 licensed PA's living in other states. The number of candidates passing the exam has varied from twenty-one candidates passing in 1975, to forty-nine candidates passing in 1976.

## Citizenship Requirements

A person applying to sit for the public accountant's exam must be a citizen of the United States. In contrast, a person applying for a CPA certificate in Tennessee must only have the intent of becoming a citizen of the United States. There is no discernible reason for this discrepancy between the requirements. As a result of recent court cases, many states are omitting the citizenship requirement. As shown in the table below, nine of the fifteen states which continue to license or register public accountants do not require U. S. citizenship. Three of the fifteen states, Tennessee, Georgia, and New Mexico, require U. S. citizenship. Montana, Oregon, and South Dakota, have conditional statutes which require either that a PA applicant be a citizen, or that he intends to become one.

### STATES WITH CONTINUOUS PA LICENSING U. S. CITIZENSHIP REQUIREMENTS

#### STATES THAT HAVE U. S. CITIZENSHIP REQUIREMENTS

Georgia  
Montana\*  
New Mexico  
Oregon\*  
South Dakota\*  
Tennessee

#### STATES THAT DO NOT REQUIRE U. S. CITIZENSHIP

Alaska  
Arizona  
Indiana  
Iowa  
New Hampshire  
Ohio  
Oklahoma  
South Carolina  
Vermont

\*Intent required

## Residency Requirements

Aside from being a U. S. citizen, PA applicants must either be a resident, have a business in, or be employed in the State of Tennessee. As shown below, in the states that license public accountants, eleven out of the fifteen, including Tennessee,

have conditional residency requirements. Oregon, Georgia, and Arizona, have non-conditional residency requirements and therefore, all PA's must reside in each state. Indiana is the only state out of the fifteen which does not have a residency provision.

States That Have Continuous PA Licensing:

State Residency Requirements

<u>Non-Conditional State Residency</u>	<u>Conditional Residency: Resident, or Business in, or Employed in State</u>	<u>No Residency Required</u>
Arizona Georgia Oregon	Alaska Iowa Montana New Hampshire Ohio New Mexico Oklahoma South Carolina South Dakota Tennessee Vermont	Indiana

All public accountants who had practiced in Tennessee for three years or more on March 18, 1955, and who were of good moral character and had completed a high school education or equivalent, were "grandfathered" in as licensed PA's. The present educational requirements for public accountants are: (1) graduation from a four year college with an accounting degree; or (2) graduation from a junior college or completion of a two year course of study in accounting or the equivalent; or (3) the board may waive the educational requirement upon the successful completion of a special written exam.

As shown below, of the other fourteen states that license PA's, six states require high school degrees, one requires a high school degree with two years of public accounting experience, and one state requires two years of college study in accounting. Six states require a baccalaureate degree.

Educational Requirements of States that  
have Continuous PA Licensing

<u>High School</u>	<u>High School with Experience</u>	<u>2 yrs of college</u>	<u>2 yr. college or 4 yr. college</u>	<u>Baccalaureate Degree</u>
Alaska Georgia Indiana New Mexico Oklahoma Vermont	Oregon	New Hampshire	Tennessee	Iowa Montana Arizona Ohio South Carolina South Dakota

The minimum age requirement in Tennessee for public accounting applicants is eighteen. A study of the fifteen states that license public accountants revealed: a. eleven states have set minimum age requirements, (the average age requirement being 18.7 years) b. the remaining four states have not established age requirements. The recent trend in states is the establishment of the eighteen-year-old age requirement.

Public Accountant Examination

Tennessee, New Mexico, and Vermont, are the only states that use the National Society of Public Accountants' (NSPA) examination for the licensing of public accountants. The NSPA exam covers five (5) sections which include; (1) Theory of accounts, (2) Practical accounting, (3) Auditing, (4) Commercial law, and (5) Taxation. Tennessee Public Accountant candidates are required to obtain a total examination average of 75%. Consequently, it is possible for a candidate to average 80% on four section (Theory of accounts, Practical Accounting, Commercial law, Taxation), and 55% on the fifth section (Auditing), and still pass the overall test. This allows the hypothetical candidate, now a public accountant without any PA experience, to perform the attest function in Tennessee. The conditional credit process displays further evidence of leniency. For example, a candidate who passes two sections of the

exam with a grade of 75% or more, will receive two conditional credits. Once the applicant has established conditional credits, he (she) may combine the averages of one exam with another in order to obtain a 75% average.

The following table shows the number of candidates sitting for the PA exam and the resulting number of PA licenses issued during the recent past.

<u>NUMBER SITTING FOR FOR PA EXAM</u>		<u>NUMBER OF PA LICENSES ISSUED</u>		
<u>EXAM DATE</u>		<u>DATE</u>		<u>PASS RATE</u>
6/75	68	8/75	16	23.5%
12/75	70	1/76	20	28.5
6/76	62	8/76	29	46.7
12/76	35	1/77	7	20.0
6/77	49	8/77	13	26.5
284 Candidates		85 Total		30.0% Total

Forty-eight candidates are scheduled to sit for the PA exam in December.

As shown below, eleven states give PA examinations other than the NSPA exam. Eight of these states require the PA to take and pass one or more parts of the CPA exam. Three states design and administer their own tests for PA's, and one state, Ohio, does not require a test to be licensed as a PA if the applicant has a college degree.

#### EXHIBIT 6

#### EXAMINATIONS FOR PA's

<u>States:</u>	<u>Type of Examination:</u>
1. Alaska	Special State Board test
2. Arizona	Practice - CPA exam
3. Georgia	Special State Board test
4. Indiana	Theory - CPA exam
5. Iowa	Theory and Practice - CPA exam
6. Montana	Practice and Theory or Auditing (CPA exam) or Treasury Card
7. New Hampshire	Practice and Auditing - CPA exam
8. New Mexico	NSPA exam
9. Ohio	No exam
10. Oklahoma	Practice and Auditing - CPA exam

<u>States:</u>	<u>Type of Examination:</u>
11. Oregon	Practice - CPA exam
12. South Carolina	Two parts of CPA exam or baccalaureate
13. South Dakota	Special Board test
14. Tennessee	NSPA exam
15. Vermont	NSPA exam

On September 10, 1976, at the request of the Board, the Administrative Committee and the Board met to discuss the possibility of requiring PA candidates to take the CPA exam but with different requirements to pass. At the Board meeting, the Administrative Committee presented a memo to the Board stating that the committee was authorized under TCA, Section 62-134, to prepare and grade the examinations of the PA candidates. The Administrative Committee was not in favor of using the CPA exam for PA applicants. According to one Administrative Committee member, the committee was apprehensive because the effect of taking the CPA exam would cause PA's to become a "Dying Class."

#### Experience Requirements

The rationale for the experience requirement is to insure that public accountants and CPA's can perform the attest function and other accounting practices competently for the public. It is apparent that in accountancy, as in many skilled professions, experience and knowledge complement each other.

Experience is required for CPA certificates to practice in 92% of all states. Experience is required for PA licenses in ten of the fifteen states that continuously license PA's. However, there is no experience necessary for PA's in Tennessee. As shown below, four other states that license public accountants do not require work experience. The remaining ten states which license public accountants have experience provisions in their laws. It should be noted that only three states, Tennessee, South Dakota, and Ohio allow public accountants to express opinions on financial statements without previous work experience.

WORK EXPERIENCE REQUIREMENTS  
IN STATES WHICH LICENSE PA'S

<u>State</u>	<u>Work Experience</u>	<u>Attest Function</u>
1. Alaska	4 years - PA firm	yes
2. Arizona	2 years - CPA firm or 4 years PA	yes
3. Georgia	1 year - CPA or PA firm	yes
4. Indiana	3 years - PA firm	no
5. Iowa	2 years - PA firm or U.S. Gov't	no
6. Montana	1 year - PA firm	yes
7. New Mexico	3 years - CPA or PA firm	yes
8. Ohio	No Experience	yes
9. Oklahoma	3 years - PA firm	yes
10. Oregon	2 years - PA firm	yes
11. South Carolina	No Experience	no
12. South Dakota	No Experience	yes
13. Tennessee	No Experience	yes
14. Vermont	1 year - PA firm	yes
15. New Hampshire	No Experience	no

Exhibit 7, page 57, summarizes the licensing requirements among the fifteen states that continuously license public accountants.

State accountancy regulation has developed into three distinct forms or categories. In the "dying class" category, thirty-one states have enacted legislation that discontinued the licensing of public accountants. The only licensed and regulated accounting professionals in these states are certified public accountants.

Kansas, Delaware, Minnesota, Wyoming, and the District of Columbia are classified as "permissive states." The permissive states are distinguished from the dying class states in that they have never licensed PA's. The accountancy law in these states regulate the title "CPA" and the authority to set rules and standards for conferring that title.

The last classification of accountancy laws is the "regulated state", of which Tennessee is an example. In total, fifteen states are classified as "regulated" because they continuously license public accountants as well as CPA's. Eleven of the regulated states allow their PA's the right to perform the attest function. The attest

SCHEDULE OF LICENSING REQUIREMENTS IN  
STATES THAT CONTINUOUSLY LICENSE PAs

	<u>Education</u>	<u>Public Accountant Experience</u>	<u>Exam</u>	<u>Attest Function</u>	<u>Ethics Exam</u>	<u>Continuing Education</u>	<u>Board Composition</u>	<u>Board Terms</u>	<u>Age of Applicant</u>	<u>U.S. Citizen</u>	<u>State Residency</u>
Alaska	High School	4 yrs.-PA	Board	Yes	Yes	Yes	3 CPAs-2 PAs	3 yrs.	19	No	Yes, or business or employee
Arizona	Bachelor's Degree	2 yrs.-CPA or 4 yrs.-PA	Practice-CPA Exam	Yes	Yes	No	Board-4 CPAs, 1 Lay Advisory-4 PAs Committee	5 yrs.	No Req.	No	Yes
Georgia	High School	1 yr.-CPA or 1 yr.-PA	Board	Yes	No	Yes	4 CPAs, 1 Attorney	4 yrs.	No	Yes	Yes
Indiana	High School	3 yrs.-PA	Theory-CPA Exam	No	Yes	No	(Board) 3 CPAs, 2 PAs until 1979 (Adv. Committee) Bd. 2 PAs 'n 3 PAs	3 yrs.	18	No	No
Iowa	Accounting-College	2 yrs.-PA	Theory-CPA Exam Practice-CPA Exam	No	Yes	Yes	(Board) 5 CPAs and 2 Public (Committee) 3 Acct. Practitioners	3 yrs.	No	No	Yes, or business or employee
Montana	Baccalaureate	1 yr.-PA	Practice-CPA Theory-CPA or Auditing-CPA or U.S. Treasury Card	Yes	Yes	No	3 CPAs and 2 PAs	6 yrs.	No	Yes or Intent	Yes, or business or employee
New Hampshire (Accounting Practitioners)	2 yrs. College	No	Practice-CPA Auditing-CPA	No	Yes	No	3 CPAs and 2 PAs	3 yrs.	18	No	Yes, or business or employee
Ohio	Baccalaureate	No	No	Yes	Yes	Yes	(Board) 5 CPAs (Adv. Committee) 5 PAs	5 yrs.	18	No	Yes, or business or employee
New Mexico	High School	3 yrs.-PA or 3 yrs.-CPA	NSPA	Yes	Yes	Yes	3 CPAs, 2 PAs	3 yrs.	Age of Majority	Yes	Yes or Business
Oklahoma	High School	3 yrs.-PA	Practice-CPA Auditing-CPA	Yes	Yes	No	(Board) 5 CPAs (Adv. Committee) 5 PAs	5 yrs.	21	No	Yes or Business
Oregon	Accounting-College or High School*	2 yrs.-PA	Practice-CPA	Yes	Yes	Yes	(Board) 5 CPAs (Adv. Committee) 3 to 5 PAs	1 yr.	18	Yes or Intent	Yes
South Carolina (Accounting Practitioners)	Qualifying Exam or Baccalaureate (Major acctng.)	No	Two parts-CPA or College with major in Acctng.	No	No	Yes	5 CPAs and 4 PAs	3 yrs.	21	No	Yes or Business
South Dakota	College	No	(Board)	Yes	Yes	Yes	3 CPAs - 1 PA 1 state Audit-Gen.	4 yrs.	18	Yes or Intent	Yes or business or employee
Tennessee	College-Acct. or Junior College-Acct. or 2 yrs. college acct.	No	NSPA	Yes	No	No	(Board) 6 CPAs 'n 1 Attorney Administrative Committee-6 PAs	3 yrs.	18	Yes	Yes or business or employee
Vermont	High School	1 yr.-PA	NSPA	Yes	No	Yes	2 CPAs 'n 2 PAs 1 Lay	3 yrs.	Age of Majority	No	Yes or business or employee

\* Applicant with high school education must have 2 years experience



function is the issuance of an unqualified, qualified, adverse, or disclaimer of opinion on audited financial statements by a CPA or PA. In order to perform the attest function, the CPA or PA must have substantial knowledge and experience in auditing and other accounting practices.

### Rules and Regulations

The Administrative Committee is directed by law, (TCA 62-125), to adopt rules of procedure which shall be subject to approval by the board. Also, the committee, according to TCA 62-134, shall certify PA candidates' grades to the board. The committee has adopted the Board's rules of procedure and regulation, and the Rules of Professional Conduct. Therefore, the discussion of the Board's Rules and Regulations, pages 33 through 40, apply equally to the Committee in these areas: A. Advertising B. Solicitation C. Ethics Examination D. Competitive Bidding and E. Continuing Professional Education.

### Ethics Examination

The ethics examination is not part of PA or CPA requirements in Tennessee. However, many states are requiring an ethics exam in order to assure that PA candidates are familiar with the states' Code of Professional Ethics. Ten of the fifteen states that license PA's continuously, require a separate ethics exam.

### Continuing Professional Education

Continuing Professional Education (CPE) is a requirement in nine out of the fifteen states that license public accountants on a continuing basis. Both the National Society of Public Accountants and the Tennessee Association of Public Accountants have voluntary continuing professional education programs for PA's. The rationale for CPE is located in the Rules and Regulations section on the Board of Accountancy report, page 36.

## Complaints

According to minutes, the Administrative Committee has received four complaints in the past thirty-six months. The complaints varied from unethical practices, to illegal use of the title "PA", and advertising violations. As a result of the complaints, the Committee referred to the Board two cases for their action. According to the Board's minutes only one complaint was referred. The Administrative Committee has expressed dissatisfaction with their lack of authority in the complaint process. The Board's section on complaints and enforcement covers in more depth the areas of investigation and enforcement of the accountancy law by the Administrative Committee.

## SUMMARY OF ANALYSIS

### Points to Consider:

1. Only fifteen states have provisions for continuous licensing of public accountants, thirty-one states have PA's as a dying class, and four states have never licensed PA's.
2. Eleven of the fifteen states that continue to license PA's allow them to perform the attest function.
3. Tennessee PA's can perform the attest function.
4. Tennessee courts have held that the only function of accountants the state can legitimately regulate is the attest function.
5. There is some question as to whether it is necessary for the State to license two classes of accountants - ie. CPA's and PA's
6. The requirements for licensing - education, experience, and testing—are more strict for CPA's than for PA's. Both can perform the attest function.
7. Three of the fifteen states continuously licensing PA's, including Tennessee, use the National Society of Public Accountants (NSPA) exam. Eight states use parts of the CPA test. Three states use a test of their own device. Ohio requires a college degree with a concentration in accounting in lieu of a test.
8. PA applicants must have a 75% overall average score on the test.
9. Tennessee has no experience requirement for licensure as a PA.
10. Seven of the fifteen states that continue to license PA's have a State Board and an Administrative Committee.
11. There is a lack of coordination between the Board and Committee.
12. Enforcement of the law has been difficult because of inadequate investigative and legal help and lack of Board cooperation.
13. Ten of the fifteen states actively licensing PA's have an ethics exam requirement. Nine of those states require continuing education. Tennessee has neither requirement.
14. The Administrative Committee has no input into the budget process of the Department of Insurance.
15. The present definition of public accounting in the accountancy law is broader than the Courts definition.
16. Tennessee has no PA reciprocity agreements with other state. Anyone coming from out of state must pass the PA exam to practice as a PA in Tennessee.

## FACTORS ADRESSED IN SUNSET LAW

### FACTOR:

The extent to which the Administrative Committee has permitted qualified applicants to serve the public.

### COMMENT:

There is no evidence that indicates the Administrative Committee is restrictive in permitting qualified applicants to serve the public.

### FACTOR:

The extent to which the affirmative action requirements of state and federal statutes have been complied with by the Committee and the accountancy profession.

### COMMENT:

The staff to the Committee and the Board is included in the affirmative action plan of the Department of Insurance. Court decisions have determined that the affirmative action provisions of federal law are not applicable to the issuance of licenses by states.

### FACTOR:

The extent to which the Administrative Committee has required PA's to report to it concerning the impact of its rules and decisions on the public with respect to improvement, economy, and availability of service.

### COMMENT:

The Administrative Committee does not require Public Accountants to report on the impact of its rules and decisions on the public.

### FACTOR:

The extent to which the Administrative Committee has recommended statutory changes to the General Assembly which would benefit the public instead of those regulated.

### COMMENT:

The Administrative Committee recommended an increase in the PA examination fee to cover rising costs.

FACTOR:

The extent to which persons regulated by the Administrative Committee have been required to assess problems in the profession which affect the public.

COMMENT:

The Administrative Committee does not require PA's to assess problems in the accounting profession.

FACTOR:

The extent to which the Administrative Committee has encouraged public participation in its rules and decision-making, as opposed to participation by the persons it regulates.

COMMENT:

The Administrative Committee by way of the Department of Insurance, publishes a prior notice of its meetings. It should be noted the Administrative Committee uses the Board's rules and regulations.

FACTOR:

The degree of efficiency with which formal public complaints concerning accountants have been processed to completion.

COMMENT:

The Administrative Committee has not established a complaint file or systematic process for handling complaints.

FACTOR:

The extent to which the Board has considered alternative methods by which other jurisdictions have attempted to achieve the same or similar program goals.

COMMENT:

The Administrative Committee has considered alternative methods from other states, such as continuing professional education, but they have not formally adopted such alternatives.

FACTOR:

The extent to which the Administrative Committee has considered the results of published and unpublished studies of various alternative methods of accomplishing the objectives of the Administrative Committee.

COMMENT:

See the previous comment.

FACTOR:

The extent to which regulation directly or indirectly increases the cost of goods and services to the public.

COMMENT:

Certain rules and regulations such as advertising restrictions and encroachment prohibitions probably tend to promote a higher cost to the public. The Committee does not regulate fees charged by licensees for their services.

FACTOR:

The extent to which the absence of regulation would endanger the public health, safety, or welfare.

COMMENT:

See "Rationale for Licensure of Accountants", page 18, for effect on public welfare. Absence of regulation would not endanger the public health or safety.

FACTOR:

The extent to which the regulatory process is designed to protect and promote the public interest and the degree to which that process has attained those objectives.

COMMENT:

The current process regulates two classes of accountants designated by similar titles, PA and CPA. Both can perform the attest function but different minimum requirements exist for each class. Public representation is lacking on both the Board and the Committee. Furthermore, lack of investigation and enforcement do not provide protection of the public. No assurance of continued competence after licensure is maintained.

FACTOR:

The extent to which the Administrative Committee has operated in the public interest and the extent to which its operations have been impeded or enhanced by existing statutory procedures, practices of the Department of Insurance, or other circumstances including budgetary, resource, and personnel matters which have affected its performance with respect to its public purpose.

COMMENT:

As stated previously, certain rules and regulations benefit licensed accountants more than the public. Other rules are in the public interest. Increased coordination and cooperation between the Board and the Committee would improve administration of the accountancy law.

FACTOR:

The extent to which changes are necessary in the enabling statutes to adequately comply with the above factors.

COMMENT:

See "Analysis and Evaluation of Accountancy Legislation", page 9. The enabling statutes are in need of revision to improve both effectiveness and efficiency of accounting regulation.

## Alternatives for Legislative Action

The following alternatives are broad, and are not inclusive of all possibilities.

### Alternative I

#### Remain in Present Form

If the Administrative Committee remains unchanged, the problems identified in the evaluation - ie. lack of enforcement activity, lack of coordination between the Board and Committee, and the practices of the administrative staff—will remain unchanged. The current practice of licensing two classes of accountants would also remain.

### Alternative II

#### Termination

This alternative would eliminate the continuation of licensing of public accountants by the State. All states who have passed "dying-class" legislation have allowed currently licensed accountants to remain in practice; however, no new PA's would be licensed.

#### Arguments for:

- (1) There is no reason to license two classes of accountants to perform the attest function.
- (2) The CPA must meet higher qualifications than the PA to be licensed.
- (4) According to case law, only the attest function may be regulated by the state.
- (5) Those people wanting to perform accounting services, other than the attest function, could continue to do so.

#### Arguments against:

- (1) The licensing of PA's sets apart the non-licensed from the licensed accountant, making those that have met some standard readily identifiable to the public.



- (2) PA's provide accounting services for the small businessman.

### Alternative III

#### Restructure

There are several possible alternatives for restructure:

- (1) Continue to license a class of accountants other than CPA's, but without the attest function.
- (2) Reorganize the Board and Administrative Committee into one Board to license all accountants.
- (3) Separate the Administrative Committee from the Board and give them authorization to promulgate rules and enforce the law.
- (4) Change the law in any or all of the following ways:
  - (a) Continuing Professional Education
  - (b) Code of Professional Conduct, including advertising, encroachment, offers of employment, etc.
  - (c) Ethics examination
  - (d) Stricter Enforcement of law
  - (e) Public members on Administrative Committee
  - (f) Qualifications for PA licensing including testing, education, experience. Specific consideration might be given to requiring PA's to pass parts of the CPA exam.
  - (g) Re-examination of CPA's and PA's not in public practice.

STATEMENT OF THE  
TENNESSEE SOCIETY OF  
CERTIFIED PUBLIC ACCOUNTANTS  
BEFORE THE  
HOUSE GOVERNMENT OPERATIONS COMMITTEE  
AND  
THE SENATE SPECIAL COMMITTEE OF GOVERNMENTAL ENTITIES  
JANUARY 4, 1978

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My name is Joe Kraft. I am a certified public accountant and am a partner in a local CPA firm located here in Nashville. I have been practicing as a CPA here since 1953, during which time I have served as president of the Tennessee Society of CPA'S, president of its Nashville Chapter, member of its governing body and member of the governing body of the American Institute of Certified Public Accountants. The Tennessee Society of Certified Public Accountants is an organization of more than two thousand CPA members. I have been requested by the governing body of our organization to appear before you today to deliver this statement on behalf of the Tennessee Society of Certified Public Accountants.

We appreciate the opportunity to appear at this meeting to make this statement regarding the future course of public accounting in our state.

Your committee through the State comptroller's office has assimilated most of the available meaningful information relating to licensing and regulating public accountants throughout the United States, its territories and the District of Columbia. The staff has summarized this information well and has presented the major alternatives available to solve the existing problems of our accounting law and its administration by the Board of Accountancy.

It is not our purpose in making this statement to attack any other organization or group. The present accountancy law has been on the books, virtually unchanged since its passage in 1955. During that time the CPA'S licensed in this state have increased in number from less than 1,000 to approximately 3,400 and we sincerely believe that the young people entering our profession today represent the most qualified group with the greatest potential for service and achievement ever. We think it is appropriate and most fortunate that this is the case, because we are living in a business climate today that is unbelievably complex even when compared to conditions which existed at the time our present law was enacted. There has been an explosion of activity at every level of government which has increased the demands on business to provide more financial data in a more meaningful form and with greater reliability than ever before. Banks and suppliers of goods and services evaluate businesses more intelligently than ever before and insist on financial information properly presented. Consumer awareness and protection movements are challenging the business community and its professional advisors to be more responsive and responsible to the investing public. The General Accounting Office requires opinion audits of many federal agencies today and these audits must be performed primarily by CPA'S. Our courts are holding CPA'S professionally accountable today far beyond what was originally envisioned by our profession. The Securities and Exchange Commission and certain Congressional Committees are seeking to expand our responsibilities to even broader limits. So we must encourage, in every way possible, prospective accountants to equip themselves to meet these new and expanded challenges. After admitting them to practice, we must insist that they, as well as all other practitioners, keep abreast of the dynamic changes which are occurring through an effective program of continuing education. We cannot look at our state and its requirements isolated from those of our neighboring states. These are some of the reasons why we must have accounting licensing and regulation today; so that users of financial statements,

wherever they are, will be assured that an accountant in Tennessee is licensed and regulated at a level which is comparable to that of any other state, district or territory of this country.

To achieve this high degree of quality and comparability, I believe our accountancy law must include the following points:

1. That the performance of services for other persons related to the issuance of financial statements be provided only by independent accountants having or purporting to have expert knowledge in accounting or auditing.

We believe that persons or firms who are newly licensed and permitted to perform these functions in the future should be those who meet uniformly high requirements for practice as independent Certified Public Accountants. We believe that currently licensed public accountants, who are not CPA'S, should be permitted to continue to perform all services which they are now permitted to perform. However, all new entrants into the practice of public accounting, at the very least those who are to be permitted to express independent expert opinions on financial statements, government reports, etc., should be admitted only after meeting the same educational requirements, the same uniform testing requirements and the same experience requirements as all other new entrants into the profession.

Our organization is uncertain of whether or not it is possible to regulate other services in the accounting, bookkeeping and tax field. We offer no specific recommendation in this area at this time.

2. We believe that a code of conduct, suitable to a professional organization, should be established and that all new applicants should be examined on the provisions thereof.

3. We believe that all persons licensed to practice public accounting in our state should be required to maintain high professional competence by complying with mandatory continuing education requirements. These requirements should be on a level with those of any other state. The Tennessee Society of Certified Public Accountants adopted a resolution favoring mandatory continuing education requirements for CPA'S in 1974. We requested that the Board of Accountancy approve and implement this concept through regulation but were advised that the Attorney General for the State of Tennessee had issued an opinion that the State Board did not have the authority to require continuing education and that a statutory amendment would be necessary. We strongly recommend that a provision requiring the Board to adopt a mandatory continuing education program be included in any new legislation, and attach as Exhibit A to this statement a copy of the present plan of the Tennessee Society of Certified Public Accountants.

4. We believe that the Board of Accountancy should be retained and should be charged with the responsibility of administering the state accountancy law. We believe that the State Board should have an adequate budget which would permit it to employ the necessary staff to develop, amend as required and enforce its regulations. The Board should be empowered to develop such appropriate remedial and disciplinary measures as are necessary to assure a high level of performance of all licensed accountants. We think that the Board should be composed primarily of highly qualified CPA'S. CPA'S would be better qualified to evaluate more accurately the compliance and performance of other CPA'S. In addition, we recommend that an attorney continue to serve as a member of the Board along with one licensed public accountant and one non-professional consumer member. We believe that an experienced consumer of financial information such as a chief financial officer of a small business or a publicly held company, a credit officer of a banking institution, a hospital administrator,

or similar consumers would be equipped to make valuable contributions to the Board. We believe that the entire cost of operation of the Board of Accountancy should be covered by licensing fees paid by practicing accounting profession.

5. We recommend that every partnership or professional corporation composed of licensed accountants be required to register annually and be subject to the provisions of the accountancy law and regulations.

This presentation, in an effort to conserve your time, has been general in nature. The staff report does an excellent job of supplying details.

However, I or other members of the Tennessee Society present, will be happy to try and answer any specific questions you might have.



TESTIMONY OF THE  
BOARD OF ACCOUNTANCY  
BEFORE THE  
EVALUATION COMMITTEE  
CREATED PURSUANT TO THE  
"TENNESSEE GOVERNMENTAL ENTITY REVIEW LAW"

January 4, 1978

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Mr. Chairman, members of the committee, my name is David Smith. I am a Certified Public Accountant and a member of the Tennessee Board of Accountancy. The testimony I am about to give is that of the Board of Accountancy as called for in Section 10 of the "Tennessee Governmental Entity Review Law." The purpose of this testimony is to demonstrate the public need for the continuation of the Board of Accountancy and to recommend certain changes which the Board feels are in the public interest.

Demonstration of Public Need for the Board of Accountancy

We feel that the state should promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public or private. The public interest requires that persons attesting as experts in accountancy to the reliability or fairness of presentation of such information be qualified in fact to do so; that a public authority competent to prescribe and assess the qualifications of public accountants be maintained, and that the attestation of financial information by persons professing expertise in accountancy be reserved to persons who demonstrate their ability and fitness to observe and apply the standards of the accounting profession.



Substantial business decisions are made every day on the basis of information contained in financial statements. Owners of businesses use financial statements in the management of their businesses. Third parties rely on financial statements for lending, investing, and supervisory or regulatory purposes. Readers of financial statements prepared by expert accountants assume that they are prepared in accordance with generally accepted accounting principles whether they are audited or not. Statements not presented in accordance with such principles should indicate so. Such principles do not permit the presentation of a misleading statement which might indicate a healthier financial picture than actually exists. Generally accepted accounting principles involves a great deal more than a knowledge of mere bookkeeping.

Because of the reliance upon the work of expert accountants by the public, the state should restrict the activity to only those who are in fact experts. The State should provide a designation which indicates an expertise in accounting, establish a minimum standard for such expertise and limit the use of such designation to those who meet the standard. Persons who rely upon financial statements are generally unable to independently judge the competence of an "expert accountant." The unrestricted use of any designation which would indicate an expertise in accounting would result in the loss of confidence in all financial statements.

Many governmental agencies, including the Internal Revenue Service, Securities Exchange Commission, General Accounting Office, Federal Home Loan Bank Board, etc., as well as the State of Tennessee, recognize the Tennessee CPA designation as an expert accountant. Many businesses in Tennessee are required by the state or governmental agency to engage licensed independent accountants to audit their financial statements in order to conduct their particular type of business. The elimination of the designation of expert accountants in Tennessee would force such businesses to employ individuals licensed by other states.

The elimination of the CPA designation in Tennessee would undoubtedly result in a decline of competent persons in the state to serve the public. Tennesseans wishing to practice as CPA's would have to leave the state to do so.

\* \* \* \* \*

Assuming the Accountancy Law and the Board of Accountancy is continued, the Board makes the following recommendations:

(a) Licensure of Two Classes of Accountants, CPA and PA

Recommendation

The board recommends that the State continue to license all existing Public Accountants as such and discontinue licensing new applicants as Public Accountants.

Rationale

Under present law, the requirements for a CPA certificate are higher than those of a PA license. PA's are licensed to perform the same services which CPA's are licensed to perform. Licensing two classes of professionals on the basis of different standards to perform identical services does not serve a public interest. The practice of public accountancy cannot be bisected into categories to be performed by two classes of accountants with different degrees of competence.

The vast majority of businesses which have their financial statements audited are required to do so by an outsider. A bank may require it before making a loan, an investor may require it before investing in the business or some governmental agency may require it in connection with an activity of the business. Generally accepted accounting principles and audit standards apply to all businesses regardless of size. The State should protect the interests of not only the business which employs licensed accountants but also those who rely upon its financial statements.

What we are recommending will not require all businesses in the state to engage CPA's. Many services needed by Tennessee businesses can be performed by unlicensed accountants. The Tennessee courts have apparently held that the attest function is the only service which the state can reserve to licensed accountants. Book-keeping services, and the preparation of income tax returns and the various sales tax and payroll tax returns which many small businesses need outside help with can be performed by unlicensed persons. Since these services cannot be policed by the State, the State has no business licensing individuals who might perform them. Licensing individuals to perform such services may result in their charging higher fees to perform the same services unlicensed persons charge.

Approximately 1,050 persons took the most recent CPA and PA examinations in Tennessee. One thousand took the CPA examination and 50 took the PA examination. Some of those attempting to enter the profession as PA's would undoubtedly become CPA's eventually if the state no longer licensed PA's. The discontinuation of licensure of PA's will not result in a shortage in licensed accountants in this state. Those PA's presently licensed would be unaffected under our proposal.

Thirty-one states previously having two classes of accountants as Tennessee presently does, have discontinued licensing new PA's. Four states never licensed two classes and four of the states which continue to license PA's limit the type of work they can do. Only 10 states, other than Tennessee, presently continue to license two classes of accountants and permit both classes to perform the same services. They are Alaska, Arizona, Georgia, Montana, New Mexico, Ohio, Oklahoma, Oregon, South Dakota and Vermont.

(b) Composition and Structure of One Entity, Either Board of Commission, to Regulate All Licensed Accountants

Recommendations

The organization which is appropriate to regulate all licensed accountants should be a Board comprised of the professionals regulated plus an attorney member representing the laity. The number of CPA's and PA's should be represented in proportion to the respective number of licensed CPA's and PA's. The term of Board members should be for five years and they should represent each of the three grand divisions of the state.

We have no specific recommendation as to the location of the Board within the state government. We do request that it be within some organization that can provide the support needed.

Rationale

Knowledge and understanding of the duties and responsibilities of expert accountants is necessary in order to effectively administer the accountancy law. The continuation of the Board, comprised principally of individuals possessing such knowledge and understanding, will serve the public interest intended in the law more effectively and efficiently than a full-time governmental agency.

The representation of the CPA's and PA's on the Board should be in proportion to the number of CPA's and PA's licensed and regulated by the Board. The legal profession is a consumer of accounting services. Attorneys are familiar with the regulatory process over professionals. The presence of an attorney on the Board provides the consumer perspective as well as or better than any other non-accountant lay person could.

The present three-year term of Board membership is not sufficient to permit a member, devoting part-time to it, to become familiar with his responsibilities

and make a significant contribution to the Board. A term of more than five years is too long for a person to sustain his effectiveness. It is also too long a commitment to ask of someone.

The CPA examinations are given in Knoxville, Nashville and Memphis and are conducted under the supervision of Board members. Board members also attempt to monitor the profession for possible violations of the accountancy law in each of their geographic areas. The Public should have ready accessibility to the Board through its members. Accordingly, the Board members should be appointed equally from each grand division of the state.

The Board is comprised of persons devoting part-time to the Board's activities. Most members have assumed that the Division of Regulatory Boards of the Department of Insurance plays a larger role in the administration of the accountancy law than it actually does. The State should have experts in the regulatory process who guide the boards in their work. Apparently, the Insurance Department wants the Board to request assistance and will help if asked. The State should provide the Board support with the management of the office, furnishing extra help at peak times, working with the budget, providing adequate legal and investigative services, coordination with other state agencies, compliance with state laws, rules, and regulations and assistance to Board members.

#### (c) Continuing Professional Education and/or Other Methods of Assuring Continued Competence

##### Recommendation

The accountancy law should require the Board to establish requirements for continuing professional education as a prerequisite for relicensure.

##### Rationale

Accountancy is not a static discipline to be learned once and thereafter retained. It is in a continual stage of development in response to needs in the public and private

sectors. Within the past five years twenty-four states have enacted compulsory continuing education requirements as a prerequisite for relicensure. The Board's responsibilities to the public include determining that all practitioners maintain their proficiency.

The Tennessee Society of Certified Public Accountants has adopted a voluntary continuing education program. However, this program cannot be enforced and participation is apparently limited to those practitioners who would continue their education without such a program. The Tennessee Attorney General has informed the Board that it cannot require continuing education unless it is provided for in the law. Course material adequate to meet a compulsory continuing education program is presently available to practitioners.

(d) Examination of Applicant's Knowledge of Professional Ethics

Recommendation

The accountancy law should require that candidates for the CPA certificate pass an examination on professional ethics. The law should empower the Board to prescribe the rules of professional conduct by rules and regulations.

Rationale

The conduct toward which CPA's should strive is embodied in broad concepts stated as affirmative ethical principles:

- Independence, integrity and objectivity,
- Competence and technical standards,
- Responsibilities to clients, and
- Other responsibilities and practices to preserve the credibility of the profession in order to enhance its ability to serve the public.

These principles constitute the philosophical foundation upon which the Rules of Conduct are based. There is no college course material designed to cover the ethical principles. It is in the public interest, as well as that of the practitioner, that each be aware of and adhere to the principles. Accordingly, the Board should require that each applicant has knowledge of them by way of an examination.

The American Institute of Certified Public Accountants has adopted a Code of Conduct which is amended from time to time as conditions require it. For instance, the prohibition against advertising and solicitation has recently been removed from the AICPA's code. Because of the changing conditions which require frequent amendments to the Code of Conduct, the Code of Conduct should be defined in the regulations rather than the law. It is contemplated that the Board will adopt the AICPA Code of Conduct as it is amended from time to time. The present Tennessee Rules of Professional Conduct are embodied in Rules and Regulations adopted by the Board but are outdated in several respects.

(e) Experience and Educational Prerequisites for Licensure of Accountants

Recommendation

The accountancy law should require as a prerequisite for licensure two years experience in the practice of public accountancy or such other experience or employment as the Board in its discretion shall regard as substantially equivalent thereto. The educational requirement should be a baccalaureate degree conferred by a college or university recognized by the Board with a major in accounting, or what the Board determines to be substantially equivalent thereto.

Rationale

The present law requires generally two years experience and a baccalaureate degree with an accounting major or its equivalent. There are approximately three hundred CPA certificates issued each year currently in Tennessee, and there is no indication of a shortage of CPA's in the state. Accordingly, there is no evidence

which warrants the lessening of these requirements. The Board should be granted the authority to prescribe equivalency guidelines to meet the requirements of rapidly changing conditions.

These recommended prerequisites should be considered a minimum when considering the reliance placed upon the work of practitioners in public accountancy. An individual in the practice of public accounting must also possess a broad base of knowledge of commerce and industry. We are talking about designating a person as an expert. It is difficult for me to recognize anyone as an expert in accounting and auditing as well as in commerce and industry without their having a college degree. College is where one learns what to do, practical experience is where one learns how to do it. All licensed accountants, including the PA's if the state continues to license them, should meet these prerequisites.

(f) Statutory Definition of the Practice of Public Accounting

Recommendation

The practice of public accountancy should be defined in the Tennessee Accountancy Law in the same manner defined in §7401 of the New York Statute.

"Section 7401. The practice of the profession of public accountancy is defined as holding one's self out to the public, in consideration of compensation received or to be received, offering to perform or performing for other persons, services which involve signing, delivering, or issuing or causing to be signed, delivered or issued any financial, accounting or related statement if, by reason of the signature, or the stationery or wording employed, or otherwise, it is indicated or implied that the practitioner has acted or is acting, in relation to said financial, accounting or related statement, or reporting as an independent accountant or auditor or as an individual having or purporting to have expert knowledge in accounting or auditing."

Rationale

This definition is a bit wordy but is considered to be the best yet designed.

It has been in the New York Statute since 1971. In substance, it is the holding



onself out to the public to or actually associating in any manner one's name with financial statements as an independent accountant or auditor or as an expert in accounting or auditing. It includes the association with unaudited financial statements as well as audited statements.

Many members of the public cannot tell the difference in audited and unaudited statements. Such people are likely to place reliance on any statements which appear to have been prepared by anyone who might appear to be an expert accountant. The State should insure that the public can in fact place proper reliance on such statements.

(g) Other Topics Deemed Relevant

° Registration of Accounting Firms and Corporations

Recommendation

The Tennessee Accountancy law should provide for the registration of partnerships and professional corporations engaged in the practice of public accounting in this state.

Rationale

A large share of the individuals in the practice of public accounting in Tennessee conduct their practices in a partnership or corporate form. The registration of such organizations assures proper state supervision over such firms as well as the individuals practicing within them. Thirty other states do provide for the registration of such firms.

\* \* \* \* \*

That concludes the testimony of the Board of Accountancy. I shall be happy to attempt to answer any questions you may have at this time or during the course of the day. Thank you for your attention.

REPORT TO THE

SUNSET ADVISORY COMMISSION

by

Texas State Board of Public Accountancy

October 28, 1977

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Pauline Thomas  
Administrative Director

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PART I

ADMINISTRATOR'S GENERAL STATEMENT

## ADMINISTRATOR'S GENERAL STATEMENT

### Overview of Operations

The Texas State Board of Public Accountancy ("the Board") was created by the Texas Legislature in the Public Accountancy Act of 1945, as amended (Article 41A, Vernon's Annotated Civil Statutes) ("the Act"), and charged with the responsibility of administering the Act. The Board is the sole legal authority regulating the accounting profession in Texas.

Under the Act the Board's primary functions and objectives fall into three general areas: administration of the CPA examination; licensing; and enforcement of the Act and the Rules of Professional Conduct.

The Board is composed of nine Certified Public Accountants and Public Accountants. The CPA members of the Board pass upon the education, experience, and other qualifications of persons seeking a certificate and permit to practice public accounting in Texas according to standards provided in the Act. Administration of the CPA examination is an important function of the Board and in 1977 will involve approximately 11,000 candidates. The examination is the first, major step chronologically in the Board's licensing function, serving to establish CPA candidates' basic competence. Through this initial examination step and the subsequent licensing of only those individuals with demonstrated basic competence, the public is provided significant protection.

The Board has the responsibility of enforcing the Act and the rules of conduct authorized in the Act. The Board's enforcement responsibilities include the identification and appropriate handling of cases involving unlicensed persons who hold themselves out to the public, and offer their services, as accountants. The rules make up a strict code of ethical behavior and standards of action designed to insure that licensees are mindful of their obligations and responsibilities to the public, to their profession, and to each other.

Hearings are frequently conducted on alleged violations of the Act and the rules. The hearings stem from complaints initiated by users of accounting services, licensees, and governmental agencies and are conducted somewhat formally with the Board and often the respondent represented by counsel, the respondent and witnesses under oath, and the proceedings recorded by a court reporter. In instances of proven sub-standard work, the Board sometimes takes what it views to be a constructive approach of requiring appropriate continuing education. The Board may (1) reprimand, (2) suspend the permit and certificate for up to five years, or (3) revoke the permit and certificate. An important although infrequently used tool available to the Board in its enforcement activities is its power to subpoena.

#### Major Changes Over Time

The Act effected important changes in the posture of the public accounting profession in Texas, and the objectives and functions -- the thrust of the legislative intent -- given the Board in the Act have remained substantially intact. A "grandfather" clause allowed persons practicing at the time of the Act's adoption to continue practicing as public accountants without passing an examination. New entrants into the profession were required to meet the education and experience standards and pass a nationally uniform CPA examination. Since the enactment of the 1945 Act, CPAs have increased in number to about 16,000 while public accountants have decreased to approximately 1,100 at October 30, 1977.

In 1961 with the adoption of several amendments the educational and experience requirements for CPA candidates were upgraded. These higher standards were imposed to insure that candidates have adequate qualifications of both types to meet increasing complexities of professional accounting. The Board reviews the appropriateness of the experience and education requirements from time to time. The 1961 amendments also gave the Board subpoena authority, which enhanced its enforcement effectiveness.

The Act was changed in 1970 with the enactment of the Texas Professional Corporation Act which permitted the practice of public accounting by professional corporations.

Since the promulgation in 1945, the Rules of Professional Conduct have been amended as the interests of the public and the profession have directed. The most recent amendment relating to independence and opinions respectively became effective September 15, 1977.

Benefit of Agency Operations

The Texas State Board of Public Accountancy believes that the public is the ultimate beneficiary of the administration of the Public Accountancy Act. Much as a member of the public trusts the competency and knowledge of a medical doctor who has been duly licensed to practice, he may also be reassured that a licensed certified public accountant has met similarly rigid qualifications, education, and training requirements. The public and the business community expect, and justifiably so, that the accounting, auditing, tax, and consulting services for which they engage certified public accountants will be carried out responsibly, in accordance with federal and state laws, and in conformity with recognized and nationally accepted principles and standards.

The licensing authority, which imposes restrictions on some for the general welfare of all, clearly operates in the public interest in the accounting profession. For example, there is general agreement that public interest is involved in the case of audit engagements which result in the expression of an independent opinion on the fairness of presentation of financial statements. Large numbers of investors and credit-grantors, both present and prospective, rely upon these financial statements as a basis for the formation of investment decisions. In addition, numerous governmental agencies and other organizations employ the data contained in such statements. Under these circumstances it is reasonable to conclude, as the courts have done with substantial consistency, that protection of the public interest justifies the exercise of authoritative power in establishing and enforcing qualifications for admission to practice. Similarly, tax and other accounting services constitute work obviously endowed with a public interest.

Through service as a clearinghouse for constructive ideas from the public, the profession, and other interested parties, the Board is able to more effectively protect the public. Investigations into violations of the law or the Rules of Conduct are conducted by knowledgeable, practicing accountants. Likewise, testimony presented at hearings is evaluated by knowledgeable members of the profession. The productivity and the resulting costs of the Board staff are carefully evaluated so that maximum work and results are achieved at a minimum cost to licensees. The Board remains alert to the effectiveness and appropriateness of the CPA exam. The immediate past chairman of the Board has only recently completed participating importantly along with prominent accountants from other states in a careful review of the content of and procedures relating to the CPA exam.

One final, important area in which the Board's activities have been beneficial is that of uniformity. From the CPA examination itself which is uniform in all 50 states and which is designed and graded by the American Institute of Certified Public Accountants (AICPA) to such matters as accounting principles and auditing standards, the Board works to further uniformity. Through the use of the uniform CPA examination and grading service, reciprocity as to the CPA certificate is available from, and extended to the other 49 states and several foreign countries. Further, Texas CPAs are commonly engaged to perform services for the Texas-based units of entities headquartered outside Texas. Because of the interstate character of a substantial part of our economy and because of the influence of regulatory agencies that are often of national scope, the Board believes its relationships with the AICPA and the National Association of State Boards of Accountancy are in the public interest.

#### Accomplishments of the Agency

Since its creation in 1945, the Board has been and continues to be an effective influence to insure the high level of integrity and credibility of the accounting profession in Texas.



While guarding against the entry of incompetents into the profession the Board at the same time encourages the pursuit of careers in professional accounting by qualified CPA candidates. Unsuccessful candidates are encouraged and assisted via a CPA Examination Critique Program. This program, for which participants pay a nominal fee, gives unsuccessful candidates an in-depth analysis and diagnosis as to how and why they failed the examination. The Critique Program is presented through the National Association of State Boards of Accountancy, of which the Texas Board is a member. A study conducted by the Board staff a few years ago indicated that over 72% of the candidates who sat for the May, 1970, examination had successfully completed the examination by June 1, 1976. The Critique Program is expected to cause a higher percent to pass.

With a view toward providing useful insight to present and prospective CPA candidates and to the colleges and universities in Texas, the Board has implemented the "Examination Information Analysis" program which statistically relates candidate characteristics, schools, and grades by questions as to all persons who take the CPA examination in Texas. This analysis program will assist the Board in its ongoing evaluation of the educational needs of CPA candidates and undoubtedly will also be helpful to the 38 Texas universities and colleges offering majors in accounting in monitoring and shaping their programs.

In the financial administration of the Board, cost-revenue forecasts and budget procedures have been in use for many years. Such procedures have enabled the Board to accurately set fees at the minimum levels necessary to meet essential costs and expenses.

#### Inclusion in the Appropriations Process

The Act requires the Board to submit annual financial reports to the Governor, and the Board is examined by the State Auditor's office every two years. The record will reflect that the Board has managed its fiscal affairs responsibly and conservatively. Careful

analysis of the Board's record will indicate persuasively that to alter the current procedure would inevitably increase costs or reduce productivity and consequently not be in the best interest of the public. Under the present arrangement, the cost of regulating the public accounting profession in Texas is borne equitably among the ultimate users and beneficiaries of the services provided. The Board is proud that the financial burden of its regulation does not touch the citizens of this state who do not use the services regulated. Inclusion of the Board in the appropriations process would obviously result in a less equitable and less productive or more costly arrangement.

The Board is in the process of surveying other states where regulatory fees are deposited into the state treasuries and subjected to appropriation by the legislatures. Based upon responses to date, Texas has one of the lowest fee structures. In some states, the regulatory fees are significantly higher than the related appropriations for the operation of the Board. Thus, a form of tax is placed upon members of the regulated profession and in turn, ultimately upon the users of accounting services.

There are other reasons the Board should not be subject to the appropriations process. Some of such reasons are:

--The process will seriously erode the Board's flexibility in managing its affairs as the public's and the profession's changing needs dictate;

--The process will inevitably consume resources and cause an increase in the Board's total administrative costs or reduce productivity without any benefits to the public.

Finally the very close break-even cash budgeting currently used, which now permits minimum fee structures, would become inoperative. Under the present arrangement, incentives exist for minimizing costs so that permit and examination fees may be kept at the lowest level possible. Subjecting the Board to the appropriations process would impair these incentives.

Difficulties in Operation

There have been no major or insurmountable difficulties for the Board in the past. One important reason for this is the Public Accountancy Act of 1945 and opportunities for flexibility and the exercise of judgment which the Act presently permits the Board.

No insurmountable difficulties are foreseen for the future.

PART II

INFORMATION ADDRESSING

SUNSET EVALUATION CRITERIA



Criterion 1

" . . . the efficiency with which the agency or advisory committee operates;"  
[S.B. 54, Section 1.10(1), Sixty-fifth Legislature]



Criterion 1

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

A. Tabular Information and Questions

1. See criterion 1, pages 2 and 3 for detailed organization charts of the agency.

2. A detailed listing of the agency's actual staffing pattern by program and activity for each prior fiscal year from 1975 to the current fiscal year is shown below.

Year Ending December 31, 1975	Administration, Licensing and Enforcement	CPA Examination	Total Employees 12 (12-31-75)	Note: All staff members of this agency work on all activities at various times. Analysis work is being done to determine estimates of staffing of individual activities on an "equivalent person" basis, and will be provided as supplementary information when completed.
1976	See Note	See Note	13 (12-31-76)	
1977			14 (10-30-77)	

3. The Agency's sources of funding are as follows:

- CPA Examination and Reciprocal Fees
- Permit Fees and Penalties
- Interest Income on Savings Deposits
- Miscellaneous (mainly cost reimbursements for copies, etc.)

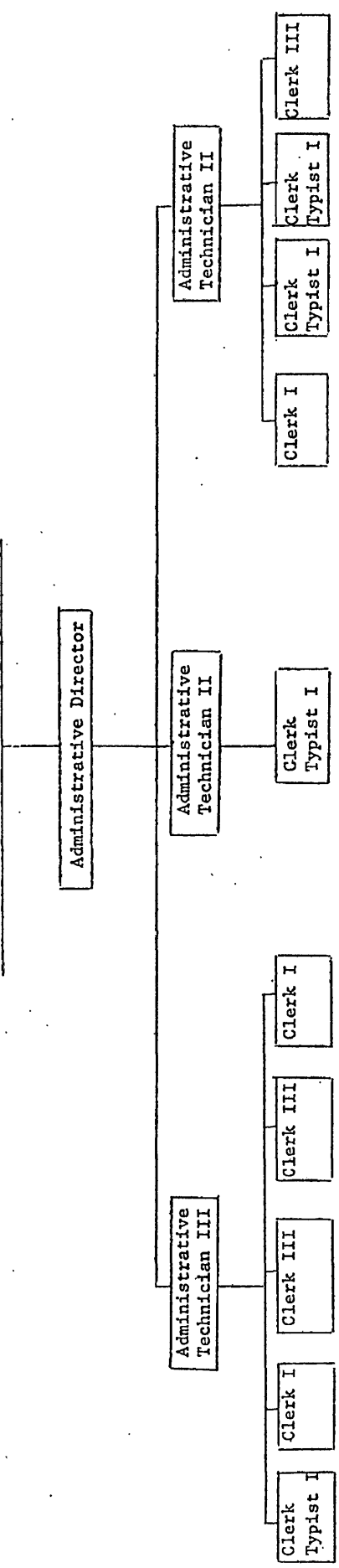
Set by the Board in accordance with provisions of the Public Accountancy Act of 1945, as amended.

4. Costs have been carefully budgeted, rising only because of increased volume of work and inflation. Cost restraint is practiced, therefore cost reduction cannot happen without loss of needed services.



Organization Chart of Job Classifications  
and Reporting Relationships

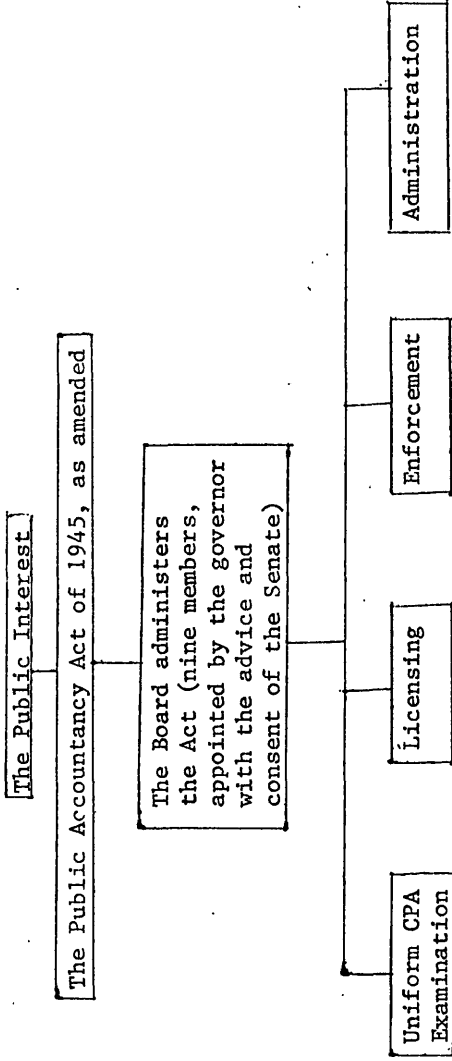
Texas State Board of Public Accountancy



Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Functional Organization Chart



Agency Texas State Board of Public Accountancy

Criterion 1

Prepared by Administrative Director

Page 4

5. Type of Asset	Location	Current Balance (October 1, 1977)		Balance at End of Fiscal Year		Remarks
		1975	1976	1977	(estimated 12-31-77)	
Demand Deposits	Austin, Texas	\$118,611	\$40,373	\$67,602	\$73,600	Frequent transfers are made between savings account and checking account to maximize interest income on temporary surpluses of cash.
Time Deposit	Austin, Texas	47,800	17,252	-0-		
Certificates of Deposit	Austin, Texas	25,000	25,000	25,000	25,000	
Petty Cash	Austin, Texas	<u>5</u>	<u>5</u>	<u>5</u>	<u>5</u>	
Other Liquid Assets (Please Identify)		<u>191,416</u>	<u>82,630</u>	<u>93,102</u>	<u>98,605</u>	
Unused Postage (Meter)	Austin, Texas	1,568		3,142	2,500	

6. Operating budgets for 1975, 1976, 1977 and 1978 are attached (see criterion 1, pages 4 through 7).

7. Do you use management by exception or another management control system within your agency?

Yes, management by exception is practiced. Employees have general guidelines by which to make routine decisions. Exceptional matters are brought to the Administrative Director.

OPERATING BUDGET\*

	Expended 1975	Expended 1976	Budgeted 1977	Budgeted 1978
Program I: Administering the provisions of the Public Accountancy Act of 1945, as amended (see Note).				
Activity 1: Administration, licensing and enforcement				
Board Meeting expense	\$ 5,599	\$ 4,857	\$ 5,905	\$ 6,202
Equipment rental	4,014	5,533	6,074	6,998
Fees - services	8,050	4,485	7,516	7,737
Freight	326	1,143	1,200	1,380
Expenses of hearings	5,924	7,413	6,336	8,526
Insurance and bond	438	1,464	545	535
Insurance (group)	1,970	2,252	2,505	2,520
Lettering of CPA Certificates	2,893	3,928	5,269	6,291
Machine maintenance and repair	2,940	2,876	3,164	3,639
Office expense and supplies	6,053	5,975	7,171	7,551
Postage	13,868	27,594	27,257	35,424
Printing - forms and stationery	5,249	8,548	10,631	10,813
Rent-office	28,631	28,663	33,009	35,232
Retirement fund expense	14,111	11,559	10,467	9,240
Roster Printing	14,788	37,672	-0-	47,500
Salaries	114,561	127,340	140,888	154,056
Social Security Tax expense	6,175	6,910	8,243	9,012
Telephone and telegraph	4,947	6,038	6,342	7,633
Traveling expense	4,950	3,067	2,529	3,527
Other expense	1,385	553	820	700
Annual meeting expense	5,135	5,242	5,858	6,631
Association dues	1,500	1,500	1,500	1,500
(continued on Page 5)				

Source: Annual Reports to Governor

Source: Annual Cash Budgets

\*Operating fiscal year is from January to December.

Note: The sole program of the Texas State Board of Public Accountancy is administering the provisions of the Public Accountancy Act of 1945, as amended.

Agency Texas State Board of Public Accountancy

Criterion 1

Prepared by Administrative Director

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OPERATING BUDGET\*

	Expended 1975	Expended 1976	Budgeted 1977	Budgeted 1978
Program I: Administering the provisions of the Public Accountancy Act of 1945, as amended (See Note).				
Source: Annual Reports to Governor			Source: Annual Cash Budgets	
Activity 1: Administration, licensing and enforcement (continued). State Auditor's examination	\$ -0-	\$ 1,158	\$ 1,330	\$ 1,500
Equipment purchases	1,546	5,356	2,713	6,158
Expert witness fees	-0-	1,627	1,856	1,871
	<u>\$255,053</u>	<u>\$312,753</u>	<u>\$299,128</u>	<u>\$382,176</u>
Subtotal, Activity 1				

\*Operating fiscal year is from January to December.

Note: The sole program of the Texas State Board of Public Accountancy is administering the provisions of the Public Accountancy Act of 1945, as amended.

Agency Texas State Board of Public Accountancy

Criterion 1

Prepared by Administrative Director

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OPERATING BUDGET\*\*

	<u>Expended 1975</u>	<u>Expended 1976</u>	<u>Budgeted 1977</u>	<u>Budgeted 1978</u>
				<u>Source: Annual Cash Budgets</u>
Program I: Administering the provisions of the Public Accountancy Act of 1945, as amended (See Note).				
Activity 2: CPA Examination (direct cost only)				
Grading of CPA examinations (AICPA grading service)	\$208,727**	\$260,348	\$291,746	\$332,631
Other CPA examination expenses				
Rental of facilities and equipment	15,624	29,445		
Board members' and assistants' expenses	9,045	12,127		
monitoring examinations	5,938	9,044	59,590	60,797
Supplies and other	310	250	200	210
Refund of prior years examination fees				
Subtotal, Activity 2	<u>\$239,644</u>	<u>\$310,845</u>	<u>\$351,536</u>	<u>\$393,638</u>
Total, Program I (Note)	<u>\$494,697</u>	<u>\$623,598</u>	<u>\$650,664</u>	<u>\$775,814</u>

\*\* The AICPA grading fee of \$6.50 per paper, effective through the May, 1975 examination, was raised to \$8.00 per paper beginning with the November, 1975 examination, et seq.

Analysis work is being done to make estimates of other cost allocations to the individual activities and will be provided as supplementary information when completed. See Part B (Narrative Summary) for additional commentary.

\*Operating fiscal year is from January to December.

Note: The sole program of the Texas State Board of Public Accountancy is administering the provisions of the Public Accountancy Act of 1945, as amended.

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

**OPERATING BUDGET\***

	<u>Collected 1975</u>	<u>Collected 1976</u>	<u>Budgeted 1977</u>	<u>Budgeted 1978</u>
				Source: Annual Cash Budgets
	\$311,425	\$362,735	\$417,204	\$479,627
	221,601	234,439	239,838	268,568
	-0-	9,413	4,509	5,854
	<u>7,688</u>	<u>7,030</u>	<u>5,088</u>	<u>5,001</u>
	<u>\$540,714</u>	<u>\$613,617</u>	<u>\$666,639</u>	<u>\$759,050</u>

Program I: Administering the provisions of the Public Accountancy Act of 1945, as amended (See Note).

Method of Financing:

- CPA Examination and Reciprocal Fees
- Permit (License) Fees and Penalties
- Interest Income on Savings Deposits
- Miscellaneous Income (Mainly cost reimbursements for copies, etc.)

\* Operating fiscal year is from January to December.

Note: The sole program of the Texas State Board of Public Accountancy is administering the provisions of the Public Accountancy Act of 1945, as amended.

B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).

This agency's accounting and record keeping systems were designed to help carry out its responsibilities under the Public Accountancy Act of 1945, including its annual report to the Governor of cash receipts and disbursements. There has been no requirement or need for detailed cost accounting for the individual activities, other than a general Board policy that CPA examination fees should be kept as low as possible and should cover direct costs of examinations and contribute to the total salaries and administrative expenses. For example, examination fees charged currently are on the basis of \$10.00 per paper (5 papers in all), while grading fees paid to the American Institute of CPA's are \$8.00 per paper.

Budgetary objectives have always been to provide minimum sufficient revenues from the combination of permit fees and CPA examination fees to finance the activities the Board is responsible for under the 1945 Act. Eighteen-month forecasts of monthly receipts and disbursements are prepared each year to help the Board set examination and permit fees several months in advance.

The employees of this agency are organized into teams which work on all activities at various times as the workload requires. This results in maximum utilization of available person-hours and fewer total employees than would be required by organization along one person - one activity lines. Because there has been no requirement or need for it before, much of the information about costs and staffing of individual activities called for in this section is not available from existing records. Analysis work is being done to arrive at reasonable estimates which will be provided as supplementary information when completed.

2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.
 

None
3. Additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.
 

The Board's management of its own fees makes possible direct cost-related setting of fee structures and maximum efficiency of seasonal cash budgeting.





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;"

[S.B. 54, Section 1.10(2), Sixty-fifth Legislature]



Criterion 2

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

A. Tabular Information and Questions

1. PROGRAM PERFORMANCE SUMMARY: Annual Report, 1975 through 1978

a] Program Administering the provisions of the Public Accountancy Act of 1945, as amended.	b] Program Objective Statement Establishing and maintaining a high level of integrity in the public accountancy profession in Texas through exam- ination and licensing practitioners and enforcing ethical standards.	c] Need Addressed by Program	d] Need Data: Source and Accuracy	e] Program Performance Measure	f] 1975 Actual Performance	g] 1976 Actual Performance	h] 1977 Actual Performance	i] 1978 Projected Performance
Number of CPA examination candidates	Actual applications received from candidates (on file)	Number of candidates sitting for examination	May 3,917 Nov. 3,829	May 4,369 Nov. 4,414	May 4,823 Nov. 4,853*	May 5,546*	Nov. 5,581*	
Number of permit holders	Name and address records files maintained by the Accountancy Bd.	Number of permit holders	14,416**	15,798**	17,198**	18,918**		
Number of complaints closed	Correspondence files maintained by the Board	Number of complaints	191	146				
j] Statutory Authority	The State of Texas Public Accountancy Act of 1945, as amended by the 62nd Legislature							

\* Projection estimate  
\*\* As of January 1



B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).

The objectives intended for this agency are to administer the provisions of the Public Accountancy Act of 1945, as amended, in response to the need to establish and maintain a high level of competence and integrity in the profession of public accountancy in the public interest. The data presented in Parts A of Criteria 1 and 2 illustrate that the objectives are being accomplished through increase in numbers of public accounting permit holders in Texas who have met the professional requirements administered by the Board. At the same time, the costs of administration and fees charged have been held to the minimum through efficient, business-like management.

This agency conducts no activities not authorized by the Public Accountancy Act of 1945, as amended.

2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.

None

3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.

None



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;"

[S.B. 54, Section 1.10(3), Sixty-fifth Legislature]





Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

A. Tabular Information and Questions

1. Regulatory Functions are as Follows:

1. Issuance of permits to practice public accountancy in Texas. (Sec. 9, Public Accountancy Act of 1945)
2. Granting the certificate of "Certificate Public Accountant". (Sec 12 & 13, Public Accountancy Act of 1945)
3. Enforcing ethical standards for permit holders. (Sec. 22 & 23, Public Accountancy Act of 1945)
4. Enjoining (through District Court) the unlicensed practice of public accounting (Sec. 24, Public Accountancy Act of 1945)

2. Effects of eliminating the particular function:

1. Loss of opportunity for the citizens of the state to know who is an accredited public accounting practitioner and who is not.
2. Loss of opportunity to use a well-established, uniformly accepted examining process as a test for minimum standards of professional competence for public accountants.
3. Loss of opportunity for a professionally competent peer-review board to see to it that profession members are serving the public ethically.
4. Loss of opportunity to prevent unscrupulous persons from representing themselves to the public as qualified, when they are, in fact, not qualified.

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

- 3. Information not on file or readily available
- 4. Information not on file or readily available
- 5. Information not on file or readily available

Agency Texas State Board of Public Accountancy

Criterion 3

Prepared by Administrative Director

Page 3

6. What national standards pertaining to your regulatory functions affect your agency? What are the constraints associated with these standards in terms of the regulatory functions your agency performs?

The uniform CPA Examination is used by all states and territories of the United States as the primary means to measure the technical accounting competence of candidates for the CPA certificate. The certificate is granted to assure the professional competence of individuals offering or intending to offer their services to the public as professional accountants. It is awarded in the public interest to qualified candidates in accordance with the accountancy statutes of a given jurisdiction. The Texas State Board of Public Accountancy uses the Uniform CPA Examination in compliance with Section 12 (f) of the Public Accountancy Act of 1945. As a result, a citizen of Texas with multi-state operations need not engage the services of a CPA in each of the states in which he operates as is necessary in the case of legal matters.

7. How would the regulatory process be affected in the state if these national standards are not maintained?

The general acceptance of the Uniform CPA Examination by all of the states during the last twenty-five years has led to a free reciprocity among states. A Texas CPA Certificate transfers to another state, generally without additional proof of competence. This favorable treatment would probably change if Texas were to abandon the Uniform CPA Examination.

Agency Texas State Board of Public Accountancy

Criterion 3

Prepared by Administrative Director

Page 4

8. Which regulatory functions of other state agencies should be assumed by your agency or performed cooperatively? Please explain.

None

9. Which regulatory functions of your agency should be, or could be performed by another agency? Please explain.

None

B. Narrative Summary

- 1. Your analysis and interpretation concerning the data presented in Part II(A).

No less-restrictive or other presently known alternative methods of regulating the public accountancy profession for adequate protection of the public interest can be recommended. The Uniform CPA Examination, prepared and graded by the American Institute of CPA's, but administered by state boards of accountancy has the confidence of all the states and assures a uniform, high, technical competence level. Another good result is the free reciprocity between the states for inter-state movement and practice. Licensing and enforcement at the state level continues to be preferable as an encouragement to public input and participation.

- 2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.

None

- 3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.

None



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;"

[S.B. 54, Section 1.10(5), Sixty-fifth Legislature]





Criterion 4

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

A. Tabular Information and Questions

1. What are your target populations?

The public in general including licensees and CPA examination candidates.

2. Is your target population specifically mandated by any federal or state legislation?

Yes. Public Accountancy Act of 1945.

3. What other state or federal agencies serve the same or similar target populations and what is the nature of their responsibilities?

Target Population	Agency	Nature of Responsibilities
None	None	None

Agency Texas State Board of Public Accountancy

Criterion 4

Prepared by Administrative Director

Page 2

4. What other federal or state agencies have responsibilities similar to your agency but serve different target populations?

Agency	Nature of Responsibility	Target Population
Other State Boards of Public Accountancy	Regulation of the practice of Public Accountancy	Individual states' populations of Public Accountants, Certified Public Accountants and CPA Examination Candidates

5. To what extent have the responsibilities of other agencies created difficulties in the ability of your agency to fulfill its objectives? Please explain in detail.

None

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 4

Page 3

6. What formal or informal processes does your agency use to prevent or minimize duplication of effort of similar federal or state agencies?

There are no other agencies which serve the same purposes as this agency. Therefore, this question is not applicable.

7. Are there functions or responsibilities of your agency which could be more efficiently performed by another state agency?

No.

8. Are there similar functions performed by your agency or another agency which could be more efficiently performed through consolidation of effort?

No.

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 4

Page 4

B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).

No additional commentary applicable.

2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.

None.

3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.

None.

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 that the agency regulates;"  
[S.B. 54, Section 1.10(6), Sixty-fifth Legislature]



CRITERION 5

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

A. Tabular Information and Questions

1. Recommendations made by your agency to the Sixty-third, Sixty-fourth, and Sixth-fifth Legislatures which proposed changes in the statutes under which your agency operates.

None



Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 5

Page 2

B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).

No additional commentary applicable.

2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.

None.

3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.

None.

Criterion 6

" . . . the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency;"  
[S.B. 54, Section 1.10(7), Sixty-fifth Legislature]



Criterion 6

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

A. Tabular Information and Questions

1.

Fiscal Year 1975

Type of Complaint	Number of Complaints Received	No. of Complaints Closed *		Disposition of Complaints					Number of Days Between Receipt of Complaint and Final Disposition			
		Agency Action	Refer to Other Agency	Cancellation or Revocation of License	Probation	Other Legal Action	Warning Issued	No Action Required	Min.	Max.	Average	
Your Agency vs. Licensee	3	3					3			23 days	127 days	58 days
Your Agency vs. Unlicensed Individual	130	137			4		132	1		6 "	903 "	90 "
Licensee vs. Your Agency	52	51			2		46	1		12 "	353 "	60 "
Individual vs. Licensee	1											
Individual vs. Your Agency												
Your Agency vs. Other State Agency												
Other State Agency vs. Your Agency												
Your Agency vs. Federal Agency												
Federal Agency vs. Your Agency												

\* 9 files were closed in 1975 which had been received by the Board prior to 1975

Fiscal Year 1976

Type of Complaint	Number of Complaints Received	No. of Complaints Closed		Disposition of Complaints					Number of Days Between Receipt of Complaint and Final Disposition		
		Agency Action	Refer to Other Agency	Cancellation or Revocation of License	Probation	Other Legal Action	Warning Issued	No Action Required	Min.	Max.	Average
Your Agency vs. Licensee	12	12		1		1	10		9 days	301 days	92 days
Your Agency vs. Unlicensed Individual	96	86				86			5 "	330 "	78 "
Licensee vs. Your Agency	51	48		1	4	44			4 "	382 "	91 "
Individual vs. Licensee											
Individual vs. Your Agency	1										
Your Agency vs. Other State Agency											
Other State Agency vs. Your Agency											
Your Agency vs. Federal Agency											
Federal Agency vs. Your Agency											

Fiscal Year 1977

Type of Complaint	Number of Complaints Received	No. of Complaints Closed		Disposition of Complaints					Number of Days Between Receipt of Complaint and Final Disposition		
		Agency Action	Refer to Other Agency	Cancellation or Revocation of License	Probation	Other Legal Action	Warning Issued	No Action Required	Min.	Max.	Average
Your Agency vs. Licensee	3	3				3			13 days	318 days	122 days
Your Agency vs. Unlicensed Individual	95	58				58			7 "	577 "	68 "
Licensee vs. Your Agency	34	32		1		29			15 "	416 "	112 "
Individual vs. Licensee									655 "	655 "	655 "
Individual vs. Your Agency	1										
Your Agency vs. Other State Agency											
Other State Agency vs. Your Agency											
Your Agency vs. Federal Agency											
Federal Agency vs. Your Agency											

NOTE: 55 files remain open at October 30, 1977

Agency Texas State Board of Public Accountancy

Criterion 6

Prepared by Administrative Director

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2. Complaints are received from any source. Investigation and consultation regarding complaints are handled administratively. Hearings, suspensions or revocations are by action of Board.

3. What procedures have been established for appeals from rulings by your agency administration or board?

Appeals from disciplinary action of the Board is through the state courts.

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 6

Page 4

4. How many inspectors or enforcement officers were employed by your agency during fiscal years 1975, 1976 and 1977 whose principal duties involved resolution of complaints?

No special inspectors or enforcement officers were employed. The Board does, however, engage independent investigators and expert witnesses on a contract basis as necessary in connection with resolution of complaints from the public, licensees, and governmental agencies.

5. Does your agency currently have a systematic schedule for the inspection of licenses?

No.

Agency Texas State Board of Public Accountancy

Criterion 6

Prepared by Administrative Director

Page 5

B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).

No additional commentary applicable.

2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.

None.

3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.

None.





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;"

[S.B. 54, Section 1.10(8), Sixty-fifth Legislature]



Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

A. Tabular Information and Questions

<u>1. Publication Date</u>	<u>Type of Publication</u>	<u>Purpose/Subject Matter</u>	<u>Is the Publication Bilingual?</u>	<u>Number Printed</u>	<u>Number Distributed</u>	<u>Method of Determining Distribution List</u>	<u>Cost Charged Per Copy, if any</u>	<u>Total Cost to Agency of Producing Publication</u>
October 1976	Roster June 30, 1976	Listing of names and registered addresses of Texas Public Accountancy permit holders. Also contains rules of professional conduct and Public Accountancy Act of 1945, as amended.	No	18,065	16,500 (approx)	All permit holders and others requesting copies.	None	\$37,672

2. Media advertisements purchased during fiscal years 1975, 1976, and 1977.

<u>Date</u>	<u>Type of Advertisement</u>	<u>Purpose/Subject</u>	<u>Was the Advertisement Bilingual?</u>	<u>Estimated Coverage (Distribution)</u>	<u>Area of State Covered</u>	<u>Number of Responses from Advertisements</u>	<u>Cost to Agency</u>
May 75	San Antonio Express News	CPA Exam Announcement	No	Unknown	City Indicated	Unknown	\$27.36
"	Dallas Morning News	"	"	"	"	"	36.72
"	Houston Post	"	"	"	"	"	47.52
Nov. 75	San Antonio Express News	"	"	"	"	"	32.49
"	Dallas Morning News	"	"	"	"	"	42.75
"	Houston Post	"	"	"	"	"	58.08
May 76	San Antonio Express News	"	"	"	"	"	35.91
"	Dallas Morning News	"	"	"	"	"	45.00
"	Houston Post	"	"	"	"	"	55.80
Nov. 76	San Antonio Express News	"	"	"	"	"	39.27
"	Dallas Morning News	"	"	"	"	"	51.66
"	Houston Post	"	"	"	"	"	58.59
May 77	San Antonio Express News	"	"	"	"	"	45.78
"	Dallas Morning News	"	"	"	"	"	54.60
"	Houston Post	"	"	"	"	"	55.80
Nov 77	San Antonio Express News	"	"	"	"	"	54.50
"	Dallas Morning News	"	"	"	"	"	57.33
"	Houston Post	"	"	"	"	"	60.60
Various	Austin American Statesman- Classified	Help Wanted	"	"	"	"	insignificant

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

3. Please list all conferences, seminars or training sessions conducted by your agency during fiscal years 1975, 1976 and 1977.

Date	Location	Type of Meeting	Purpose/Subject	Number of Participants			Registration Fee Charged	Total Fees Collected	Cost to Agency of Conducting Meeting	
				Trade Associations	Licensee Groups	Consumer Groups				
10/15, 16, 17/76	Ft. Worth	Seminar	Critique session for unsuccessful CPA candidates	none	none	none	\$10.00 per exam part	none	none	
10/8, 9, 10/76	San Antonio									623 (approx)
" " "	Galveston									
10/15, 16, 17/76	Lubbock									
4/15, 16, 17/77	Ft. Worth	"	"	"	"	"	\$15.00 per exam part	"	"	
" " "	San Antonio									419
" " "	Galveston									
" " "	Lubbock									
10/15, 16/77	Ft. Worth	"	"	"	"	"	"	"		
" " "	San Antonio								425	
" " "	Galveston									
" " "	Lubbock									

NOTE: The sessions listed above were arranged by the Texas State Board of Public Accountancy through the National Association of State Boards of Accountancy ("NASBA") for unsuccessful Texas CPA candidates. NASBA organizes, collects for, and conducts the sessions at the CPA examination locations, using teachers from Texas colleges and universities.

Agency Texas State Board of Public Accountancy

Criterion 7

Prepared by Administrative Director

Page 4

4. Does your agency procure technical or professional help, on a formal or informal basis, in the formulation of rules and rule changes?

No.

5. Rule Changes.

<u>Date of Any Pre-publication Notice</u>	<u>To Whom was Such Notice Given?</u>	<u>Date of Publication in Texas Register</u>	<u>Source, Nature and Purpose of Proposed Rule Change</u>	<u>Dates of Public Hearings on Proposed Changes</u>	<u>Date Rule Change Became Effective</u>	<u>Number of Written Communications Received Concerning Rule Change As Proposed After Implementation</u>
June 1, 1977	All permit holders	5/31/77 (Proposed) 8/12/77 (Adopted)	Rules of Professional Conduct	None*	Sept. 15, 1977	19
			Rule 12: To define "independence"			None
			Rule 18: To insert the concept of "adverse opinion" and to require disclaimer of opinion on unaudited financial statements			

\* Submitted to a mail ballot of all permit holders as required by Sect. 5 of the Public Accountancy Act of 1945. Approved by a majority of those voting by July 1, 1977.



Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 7

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6. Public hearings listed under question 5.

None

B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).

No additional commentary applicable.

2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion. None

3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion. None.

None.



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;"  
[S.B. 54, Section 1.10(9), Sixty-fifth Legislature]



Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

A. Tabular Information and Questions

I. Does your agency have a documented affirmative action or equal opportunity plan?

Yes. See copy below.

Affirmative Action Plan, as submitted to the Equal Opportunity Office of the Governor's Office July 26, 1974

I. EEO POLICY STATEMENT - The policy of the Texas State Board of Public Accountancy has and will continue to be to recruit, train, promote, compensate, provide benefits, and retain the best staff that we can maintain, regardless of race, color, creed or sex.

II. PURPOSE OF PLAN - To maintain the most stable and effective staff possible in keeping with fair employment practices.

III. SCOPE OF PLAN - This plan is to cover all present employees and potential applicants of the Board of Public Accountancy.

During this year, the plan will be reviewed quarterly.

The plan will become an integral part of the personnel policies of the Board and will be administered by the Administrative Director.

IV. FUNCTION OF AGENCY - This agency administers the Public Accountancy Act of 1945. The administration of this law requires a staff of proven qualified people who can perform very exacting duties with a minimum of supervision.

V. ORGANIZATIONAL STRUCTURE - Board members are appointed by the Governor for a six year term. The Board sets policies and, when necessary, passes on technical matters. The responsibility for the application of these policies is delegated to the Administrative Director.

VI. EVALUATION OF CURRENT PROGRAMS - The present staff consists of 12 individuals including one Black person and two with Spanish surnames. All employees are females.

EVALUATION OF CURRENT PROGRAMS (con't) - Constant vigilance is maintained to ascertain that each person's skills are best utilized for the benefit of the individual.

This is a very small agency and, therefore, does not require a personnel department. Recruiting is done by the Administrative Director. So little recruiting is necessary that the Administrative Director is able to effectively utilize employment agencies. All agencies are informed that the Board is an equal opportunity employer.

The positions of employment within the agency are developed and reviewed regularly by the Administrative Director and by the members of this Board.

The activities of the Board do not warrant the creation of a committee.

Every staff member is frequently reminded that the Board is an equal opportunity employer. A copy of the plan will be available to employees.

VII. PLAN DEVELOPMENT, COMMUNICATION, AND ADMINISTRATION - The Affirmative Action Plan was developed by the Administrative Director and members of the Board. This small staff does not warrant the designation of department levels.

In the future, we will more extensively display any posters and display material that we can obtain.

The State Board appoints a member of the Board as EEO Coordinator.

The Board has charged the coordinator with the responsibility of providing an equal opportunity to the entire staff, regardless of race, color, creed or sex.

This responsibility will be discharged by constant observation of the activities of the office and by the execution of this plan. The plan will be modified or expanded as future events may dictate.

VIII. JOB STRUCTURING AND UPWARD MOBILITY - At least once each year the progress, potentials and salary of each staff member is reviewed by the Administrative Director and the Board. The entire staff is aware of this procedure.

IX. RECRUITMENT - Very little recruiting effort is required of the Board, therefore, the Administrative Director must use agencies. The agencies are always informed that the Board is an equal opportunity employer. Any applicant referred by the agencies is impartially interviewed.

In recruiting, it is the plan of this Board to contact a sufficient number of diversified agencies and organizations to insure that we have an opportunity to receive applications from minority groups.

We have alerted certain minority organizations that in the future they may be contacted and asked to refer to us qualified minority applicants, including males and females.

Responsibility for all phases of the recruiting effort has always and shall continue to rest with the Administrative Director.

At the end of each calendar quarter, the Administrative Director will make reports to officers of the Board as to problems encountered, how these problems may be resolved, and the overall status of our Affirmative Action.

X. SELECTION, APPOINTMENT AND PLACEMENT - The staff of this Board is too small to warrant a personnel department. The Administrative Director and any Board member who may be involved in this area will make a sincere effort to apply the concepts of EEO.

XI. OTHER PERSONNEL ACTIONS - A Grievance Committee consisting of three employees has been established. This has been published and all personnel informed that grievances, if any, should be presented to this committee.

Any employee having a grievance may contact any member of the Grievance Committee informally. The Committee will sit as a committee to consider the grievance. The Committee will make a report to the Administrative Director for a decision. If the decision is not acceptable to the employee, the employee may appeal to the Board in writing.

XII. TRAINING - Training is a constant activity and is done by the Administrative Director and certain personnel who have been employed by the Board for a sufficient length of time to qualify for training of other personnel.

XIII. INTERNAL EVALUATION OF AAP AND EEO PROGRAM - These activities will be reviewed by the Board as frequently as may be required and on a formal basis once each year.

2. Form EEO-4 is filed annually with the Office of the Governor, Personnel and Equal Opportunity Office.



Agency Texas State Board of Public Accountancy

Criterion 8

Prepared by Administrative Director

Page 4

3. What is the nature and frequency of contacts with other agencies concerning technical assistance relating to your affirmative action or equal opportunity plan?

None

4. Charges of discrimination or unfair employment practices during the past five years.

None

Agency Texas State Board of Public Accountancy

Criterion 8

Prepared by Administrative Director

Page 5

5. Does your agency operate under Merit System Council procedures?

No

6. Does your agency have a documented plan or practice to ensure the rights and privacy of individuals?

Yes. All files containing private information about individuals are confidential. No charges of invasion of privacy or infringement of personal rights have occurred.

Agency Texas State Board of Public Accountancy

Criterion 8

Prepared by Administrative Director

Page 6

7. Does your agency have a documented employee grievance procedure?

See Section XI of Affirmative Action Plan shown in Item 1 on page 1 of Criterion 8.

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 8

Page 7

B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).

No additional commentary applicable.

2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.

None.

3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.

None.



Criterion 9

" . . . the extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees;"  
[S.B. 54, Section 1.10(11), Sixty-fifth Legislature]



Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Page 1

A. Tabular Information and Questions

1. Does your agency provide a copy of Article 6252-9b, Standards of Conduct of State Officers and Employees, V.A.C.S., to each new board member or employee with the request that the material provided be read?

Yes (to board members).

2. Does your agency secure a written statement from new board members or employees indicating that they have read Article 6252-9b, V.A.C.S., and that they will comply with the provisions of the article?

No. Information necessary for compliance is provided to new board members. Written affidavit required of board members pursuant to the provisions of Article 6252-9b, V.A.C.S., does not include such a statement, but knowledge and intent to comply are implied.

3. None

4. None

5. Not applicable



Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 9

Page 2

6. Does your agency have rules or regulations which require periodic review of compliance with Article 6252-9b, V.A.C.S., by your officers and employees?

No.

7. Has your agency taken disciplinary action of any kind against any officer or employee which resulted from non-compliance with the provisions of Article 6252-9b, V.A.C.S.?

No.

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 9

Page 3

B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).

No further commentary applicable.

2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.

None.

3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.

None.



Criterion 10

" . . . the extent to which the agency complies with the "Open Records Act," Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes), and with the "Open Meetings Act," Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes);"  
[S.B. 54, Section 1.10(12), Sixty-fifth Legislature]



Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Page 1

A. Tabular Information and Questions

Open Records Act (Article 6252-17a, V.T.C.S.):

1. List by categories the kinds of records which your agency considers to be confidential under the provisions of Article 6252-17a, V.T.C.S.

Personal information on individual permit holders, individual CPA candidates, and other individuals.

2. Other information considered confidential.

Any information about individual persons subject to the Board's authority or about persons voluntarily assisting the Board in its enforcement duties which would, if disclosed, constitute an invasion of privacy to that individual.

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Criterion 10

Page 2

3. Requests initially denied for information under the "Open Records Act".

None.

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Prepared by Administrative Director

Criterion 10

Page 3

Open Meetings Act (Article 6252-17, V.T.C.S.):

4. Advance notice is given to the public of regular and special meetings through posting notice with the Secretary of State and publication in the Texas Register.

5. The written procedures set forth in the Texas Register form and style manual are used by this agency.

6. Are all agency decisions and opinions indexed and published?

No. All Board decisions relating to procedural rules and rules of conduct are published in the Texas Register. Disciplinary actions are published. Board decisions on individual cases which are deemed by the Board not to be of interest or concern to the public are not published. The Board is committed to protecting the individual right to privacy.



7. Meeting Date	Public or Closed?	Location of Meeting	Purpose of Meeting	Date Notice Filed with Secretary of State	Other Types of Notice to Inform Public		Where are Official Minutes Filed?	Are Minutes Available For Public Inspection?	Date Minutes Became Available
					Type of Notice	Date Filed			
2-3-75	Public	Austin, Tx.	To consider matters	1-27-75	None		Board office	Yes	Within 30 days of Meeting
2-4-75	"	Austin, Tx.	relating to the	1-27-75	"		Austin, Texas	"	"
4-21-75	"	Austin, Tx.	Public Accountancy	4-15-75	"		"	"	"
4-21&22-75	"	Austin, Tx.	Act of 1945	4-15-75	"		"	"	"
6-18-75	"	El Paso, Tx.	"	6-12-75	"		"	"	"
7-24-75	"	Austin, Tx.	"	7-18-75	"		"	"	"
7-25-75	"	Austin, Tx.	"	7-18-75	"		"	"	"
9-12-75	"	Austin, Tx.	"	9-4-75	"		"	"	"
10-11-75	"	San Antonio, Tx.	"	10-2-75	"		"	"	"
12-11-75	"	Austin, Tx.	"	12-3-75	"		"	"	"
2-2-76	"	Austin, Tx.	"	1-21-76	Tx. Reg.	1-21-76	Unknown	"	"
2-3-76	"	Austin, Tx.	"	1-21-76	"	1-21-76	"	"	"
4-19-76	"	Austin, Tx.	"	4-9-76	"	4-9-76	"	"	"
4-20-76	"	Austin, Tx.	"	4-9-76	"	4-9-76	"	"	"
6-25-76	"	Waco, Tx.	"	6-13-76	"	6-13-76	"	"	"
8-2-76	"	Austin, Tx.	"	7-23-76	"	7-23-76	"	"	"
8-3-76	"	Austin, Tx.	"	7-23-76	"	7-23-76	"	"	"
10-4-76	"	Austin, Tx.	"	9-24-76	"	9-24-76	"	"	"
10-4&5-76	"	Austin, Tx.	"	9-24-76	"	9-24-76	"	"	"
10-25-76	"	Philadelphia, Penn.	"	10-14-76	"	10-14-76	"	"	"
1-31-77	"	Austin, Tx.	"	1-20-77	"	1-20-77	"	"	"
2-1-77	"	Austin, Tx.	"	1-20-77	"	1-20-77	"	"	"
4-18-77	"	Austin, Tx.	"	4-7-77	"	4-7-77	"	"	"
4-19-77	"	Austin, Tx.	"	4-7-77	"	4-7-77	"	"	"
6-23-77	"	New Orleans, La.	"	6-13-77	"	6-13-77	"	"	"
8-1-77	"	Austin, Tx.	"	7-21-77	"	7-21-77	"	"	"
8-2-77	"	Austin, Tx.	"	7-21-77	"	7-21-77	"	"	"
9-16-77	"	Williamsburg, Va.	"	9-2-77	"	9-2-77	"	"	"
10-10-77	"	Austin, Tx.	"	9-29-77	"	9-29-77	"	"	"
10-11-77	"	Austin, Tx.	"	9-29-77	"	9-29-77	"	"	"

Agency Texas State Board of Public Accountancy

Criterion 10

Prepared by Administrative Director

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B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).  
No additional commentary applicable.
2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.  
None
3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.  
None



Criterion 11

" . . . the impact in terms of federal intervention or loss of federal funds if the agency is abolished."  
[S.B. 54, Section 1.10(13), Sixty-fifth Legislature]



Criterion 11

Agency Texas State Board of Public Accountancy

Prepared by Administrative Director

Page 1

A. Tabular Information and Questions

1. Does your agency operate under any federal mandate that requires the continuation of your agency?  
No.
2. Have any states experienced a loss of federal funds by abolishing an agency similar in nature to yours that was created or operated as a result of these federal requirements?  
No.
3. Estimate the potential loss of federal funds to the State of Texas if your agency were abolished.  
None

Agency Texas State Board of Public Accountability

Criterion II

Prepared by Administrative Director

Page 2

B. Narrative Summary

1. Your analysis and interpretation concerning the data presented in Part II(A).  
No additional commentary applicable.
2. Any recommendations you might have for changes in your enabling statutes which would improve your performance with regard to this criterion.  
None.
3. Any additional information which you consider relevant to an evaluation of your agency's performance with regard to this criterion.  
None.





# 4

## Preparing for a Sunset Review

To prepare for a sunset review, the accounting profession should familiarize itself with all aspects of the review process. Knowing the type of questions that will be asked during the sunset review, as well as considering the political climate, should help the profession to respond in the best possible manner. Armed with this information, the profession's response to sunset will be neither casual nor overreactive. The review questions, as well as the political factors, should be given careful consideration. The profession should be sensitive to any particular areas of interest on which a sunset review may focus its attention. For example, is the line of questioning during a review concerned with the necessity for continuing the present regulatory method, the need for a board of accountancy, or the effectiveness and efficiency of a board? or, Will the sunset review be interested in all three issues?

The scope of a sunset review can be ascertained from the requirements a sunset law established for the review process and from earlier reviews of other agencies.

The AICPA State Legislation Committee believes that the accounting profession should view sunset as an opportunity to further promote the public interest by using the review process in a positive and meaningful fashion. Sunset is not only a legislative mechanism to terminate or to reestablish an agency or law; but it is also a tool that encourages improving those agencies and laws that are in the public interest. A board of accountancy which can demonstrate that it has performed a useful and vital function and that it has protected and served the public interest is not a likely target for termination.

The accounting profession should be able to justify the need for the regulation of accountants and for a board of accountancy to administer those laws. In section 6, several questions and responses concerning the need for accountancy laws and a board of accountancy have been listed. These questions can be referred to in preparing a response to a sunset review.



# 5

## Sunset Responses

In the majority of sunset reviews, both the board of accountancy and the accountancy law will be evaluated. However, it will be the performance record of the board and the need to have a separate entity to regulate accountants that will receive most of the attention in a review process. After the necessity of the board is justified, then its effectiveness and efficiency will be evaluated. Although the accounting profession should actively support the regulation of accountants, it will be the board's responsibility to justify its performance record.

Lately, state legislatures, the U.S. Congress, the Justice Department, and the Federal Trade Commission have been expressing the concern that regulatory bodies have not been acting in the public interest. The Justice Department and the Federal Trade Commission have initiated independent investigations regarding whether the professions control the agencies that are intended to regulate them. The accounting profession is, and should be, sensitive to these charges. Although a regulatory body should maintain some distance from the profession it regulates, this should not discourage individual CPAs or state societies from providing input in the review process.

In view of the potential liability of an appearance of collusion between the board and the profession, non-board members must guard against preempting the board's role during a review process. This should not prevent the profession, however, from offering to do research and providing other types of assistance to a board of accountancy during a sunset review. This assistance will be valuable especially to boards that are understaffed. The size of the board's staff and political considerations will influence the amount of assistance the accounting profession provides a board. Of course, it is a board's decision on the amount of participation that may be needed.

The accounting profession has the right, indeed the responsibility, to defend the regulation of CPAs and to support the board of accountancy as the best regulatory entity. In a sunset review, individual CPAs and state CPA societies can perform a vital function by submitting testimony on why the regulation of accountancy is in the public's best interest and why a separate board to administer the accountancy law is the best regulatory entity. The profession's role should be both advocate and defender. Although CPAs and state societies are not directly on the firing line during the review process, they should take an active interest in it. The defense of the profession should receive the participation of all members and not just a few concerned CPAs and the state society.

Once the sunset review has been completed, additional effort by the accounting profession may be necessary. If a review recommends changes to the accountancy law or to the board that would be detrimental to the public interest, then the profession should not hesitate to lobby against the recommendations. It is the profession's responsibility to resist changes to the accountancy statutes that would be harmful to the public. Effective lobbying can be achieved through a concerted political effort, possibly through a state society's Key Man Program. This type of organization which consists of politically oriented CPAs can be utilized to educate legislators on the damaging ramifications that could result if the accountancy law were weakened.



# 6

## Presenting the Profession's Case

Educating public officials about the accounting profession is the first step in demonstrating why public accountancy needs to be regulated. State legislators may be misinformed or may lack knowledge about what public accountancy encompasses. The popular caricature of an accountant continues to be that of a Charles Dickens character wearing his green eyeshade, hunched over a dimly lit writing table. It is time to put an end to this archaic image.

The first law regulating the practice of accountancy in the United States was passed in 1896. By 1925, all states had some form of accountancy legislation.

Accountants perform a variety of services—from tax preparation to sophisticated audits of multinational corporations. However, the attest function is the only accounting service that, according to several court rulings, can be restricted. As of 1978, all but four states restrict the attest function. Furthermore, in every state a legal distinction is made between a CPA and other types of accountants. In most states, only CPAs are permitted to perform the attest function.

The questions on the following pages were compiled from many sources, including the Florida sunset law, the Common Cause evaluation criteria for sunset reviews, and the self-evaluation questions that the Montana and Tennessee reviews asked. The *Sunset Handbook* attempts to address the areas of professional regulation that could be covered during a review process of a state board of accountancy and accountancy law. Please take note that other questions may be asked during a sunset review.

### ***1. Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?***

The right to practice the occupation of one's choice is an inalienable right and privilege derived from the freedoms guaranteed under the Fourteenth Amendment. However, a state may use its police power to circumscribe this right in order to protect the public health, safety, and welfare. The following criteria are used to judge if the regulation exceeds a state's police power: Legislation limiting the right to practice an occupation must be reasonable, it must be required by the interests of the general public, it cannot be unduly oppressive upon individuals, it cannot constitute an unusual or unnecessary restriction or an arbitrary interference, it cannot delegate to an agency the power to decide arbitrarily or capriciously who gets a license, and it cannot have as its sole purpose the limiting of competition among licensees. The present state accountancy laws do not violate any of the above criteria. Furthermore, responsible and responsive government results when the rights of the individual and the rights of a state are in balance.

As stated in *Allgeyer v. Louisiana*, 165 U.S. 578, at 589 (1897),

The liberty mentioned in that amendment (the Fourteenth) means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.

The right to practice the occupation of one's choice is a fundamental freedom that cannot be infringed upon except under the most exigent circumstances. Only when the incompetent practice of a profession truly endangers the public health, safety, and welfare can the state use its police power<sup>1</sup> to require a certain level of competency for practitioners of that profession.

One exercise of a state's police powers is the regulation of professions to protect the public interest. Courts have consistently ruled that regulation is one of the police powers that a state enjoys and the principle is well established. In *Graebner v. Industrial Commission*,<sup>2</sup> the court ruled that the legislature has the constitutional authority to establish qualifications for a license and may allow a board to determine whether an applicant meets those qualifications. The public needs and benefits from an assurance of competency. However, use of the police power to require competency for a given profession is not an unlimited power. The courts have established several tests by which to judge whether the exercise of the police power is valid.

One court test is whether restrictions on the right to practice an occupation are reasonable, are required by the interests of the people generally, and are not unduly oppressive upon individuals.

Another test is whether restrictions are an arbitrary interference with private business or unnecessary restrictions upon lawful occupations.

An additional test is whether the legislature, in permitting a board to use discretion in setting licensure requirements, established proper discretionary standards or guidelines. A legislative act delegating licensing authority to an agency may not be drafted so that its construction confers upon the agency the power to exercise its discretion unreasonably, arbitrarily, or capriciously.

Yet another test is whether the regulations operate solely to limit competition among practitioners; if so, it is an invalid exercise of the police power.

In the final analysis, the state's authority to license and to regulate is generally upheld when the overall public interest outweighs the individual's constitutionally protected interest in making a livelihood.

One of the principal criteria that is used by the courts in deciding if regulation infringes upon an individual's right to earn a living is to determine whether the occupation is a trade or a profession. Courts have long established the need to regulate professions since they can significantly affect the public health, safety, or welfare. Therefore, in order to justify why accountancy should be regulated, it is necessary to demonstrate that public accountancy is a profession.

Webster's New Collegiate Dictionary defines a profession as "a calling requiring specialized knowledge and often long and intensive academic preparation." In *Horizons for a Profession*,<sup>3</sup> Robert H. Roy and James H. MacNeill wrote the following definition of what a profession encompasses:

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<sup>1</sup>Police power as defined in Black's Law Dictionary is the power vested in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same. *Com. v. Alger*, 85 Mass. (7 Cush.).

<sup>2</sup>*Graebner v. Industrial Commission*, 269 Wis. 252 at 255, 68 N.W. 2d 714 (1955).

<sup>3</sup>Robert H. Roy and James H. MacNeill, *Horizons for a Profession*, New York: American Institute of CPAs (1967).

Medicine, theology, and law traditionally have been regarded as the "learned professions" and physicians, clergymen, and lawyers long have enjoyed the esteem of society. These well-established professions have common characteristics:

Each renders essential services to society.

Each is governed by ethical principles which emphasize the virtues of self-subordination, honesty, probity, devotion to the welfare of those served.

Each has requirements for admission to the profession which are regulated by law.

Each has procedures for disciplining those whose conduct violates ethical standards.

Each depends upon a body of specialized knowledge acquired through formal education.

Each has developed a language of its own, in its more sophisticated forms understandable only to the initiated.

Certified public accountants and public accountancy exhibit all of the above characteristics.

A fundamental test that separates a profession from a trade is the potential harm a practitioner can have on an unsuspecting public. The following example is often used to illustrate the difference between these two types of occupations. Irreparable harm is not done if a barber cuts a customer's hair unsatisfactorily; however, if a doctor makes a mistake, it can be fatal to the patient. Courts and legislatures have long recognized the need to regulate accountancy due to the importance of the attest function.<sup>4</sup>

A regulatory law can be justified only insofar as it is beneficial to the public interest. It is necessary, therefore, to explain how the practice of public accountancy can adversely affect the public interest.

The practice of public accounting is a highly skilled and technical profession. Financial statements, audited by certified public accountants, are relied upon by many persons required to make judgments on important financial and business transactions. Bankers, who lend their depositors' money largely on the basis of financial statements, credit grantors, investors, financial analysts, and federal and state government agencies, have a right to assume that public accountants who express opinions on financial statements have demonstrated their competence.

It is a reasonable exercise of the state's police power to license professionals who have demonstrated professional competence. The public interest is advanced whenever individuals, financial institutions, businesses, and government agencies are able to readily identify accountants who have demonstrated accounting skill and competence. Users of financial statements cannot be expected to investigate the individual qualifications of every accountant who performs the attest function.<sup>5</sup> The state has protected the public interest by identifying those public accountants who have proven their professional competence.

## ***II. Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?***

The following six questions are used as criteria to justify the need for regulation:

1. Does a danger exist?
2. Is it of sufficient magnitude?
3. Does it concern the public?
4. Does the proposed measure tend to remove it?

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<sup>4</sup>The attest function is also known as an audit.

<sup>5</sup>The courts have consistently held that within public accounting, only the attest function can be regulated. The courts have also ruled that all other accounting services do not involve sufficient harm to the public health, safety, or welfare to restrict them only to licensed persons.

5. Is the restraint or requirement in proportion to the danger?
6. Is it possible to secure the object sought without impairing essential rights and principles?

The nonregulation of the practice of public accountancy clearly constitutes a danger to the public. Accounting is a highly complex and sophisticated field of study. A layman does not understand the intricacies of the attest function, which is the expression of an opinion on the fairness of financial statements in presenting financial positions, results of operations, and changes in financial position in conformity with generally accepted accounting principles. Without regulation, practitioners who are unqualified to do an audit would be able to practice, which could result in substantial monetary losses to users of audited financial statements. Governments, corporations, small businessmen, banks and other financial institutions, investors, and the general public rely on CPAs' judgments and professional opinions. A CPA's competency and skill are highly regarded as evidenced by the public and private sectors' trust in independent audits of financial statements.

We are living in a business climate that is becoming increasingly complex, especially when compared to conditions which existed just a few years ago. Government regulations are increasing the demands on business to provide more meaningful and reliable financial data. Banks and suppliers of goods and services evaluate businesses for credit purposes more carefully than ever before and insist on detailed and accurate financial information. Consumer awareness and protection movements are challenging the business community and its professional advisors to be more responsive and responsible to the investing public. These new public and private sector demands are increasing the independent auditor's importance to other agencies. The Securities and Exchange Commission and the United States Congress are seeking, as they have done in the past, to expand the accounting profession's responsibilities to even broader limits. Another example of the growing importance of CPAs is the increasingly common practice by the courts of holding CPAs professionally accountable far beyond what was originally envisioned when the first accountancy laws were enacted.

Regulation is necessary because the communication of reliable financial information is important. Accountability and independence are the accountant's most important contributions in performing an audit. The late Senator Metcalf, in a letter to the Honorable Abraham Ribicoff, chairman, Senate Governmental Operations Committee, wrote,

Congress and the public have a very real interest in assuring that information reported by corporations is both meaningful and accurate. Accounting practices are instrumental in achieving that result because they control the manner in which corporate financial information is presented and checked for accuracy.

The public interest mandates that not only do practitioners have to demonstrate their ability to perform an audit, but that a public authority, competent to prescribe and assess the practitioner's qualifications, is necessary.

Protection of the public interest is a basic tenet of society. It is a well-established principle that government should enact laws to protect the health and welfare of the public. There are three basic reasons why the public interest warrants the regulation of persons professing auditing expertise. *First*, regulation identifies the expert in accounting. *Second*, regulation assures that only individuals who have proven themselves skilled and knowledgeable of technical accounting procedures may perform the attest function. *Third*, regulation protects the public from incompetent and fraudulent practitioners.

It is difficult to estimate the financial harm that would result if the accounting profession was unregulated. Not only might there be individual and corporate losses due to reliance on incompetent or fraudulent practitioners, but users of public accountants might feel compelled to determine the competency of practitioners before accepting their reports, thereby adding to the costs of preparing financial statements. Any added costs that regulation creates for the user appear to be justified in view of the financial losses that could result without regulation.

Regulation does not prevent individuals who can demonstrate their knowledge and ability from receiving a license to practice public accountancy; hence, it does not impair any individual rights or constitutional guarantees. Furthermore, regulation does not prevent an individual, a small



business, government, a corporation, or a nonprofit organization from using the services of an unlicensed accountant.

### **III. Is the present method of regulation appropriate?**

In view of the fact that regulation is deemed to be in the public interest, licensing is the most efficient and effective way to regulate public accountancy. The best method of protecting the public from substandard performance and services is to have all applicants for a license meet a specified set of qualifications. Licensing those who do meet the criteria sets a definitive standard of quality.

Accountancy laws regulating the issuance of CPA certificates have been enacted in all fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Each of these laws sets forth the "entrance" requirements for an accounting license. These fifty-four jurisdictions have also established a board of accountancy to interpret, administer, and enforce the law.

Although the statutory requirements in each jurisdiction vary considerably, all the laws have common purposes in that they are designed to set apart those who have met certain qualifications for a license and to restrict the use of the title CPA to those who have so qualified. A person must pass the Uniform CPA Examination in order to qualify for a CPA license. The CPA examination, which has been adopted by all states and territories, is prepared under the supervision of the Board of Examiners of the American Institute of Certified Public Accountants. The board continually reviews the level and content of the examination for assurance that candidates are being tested appropriately.

The Uniform CPA Examination is designed to test the CPA candidate's knowledge of auditing standards and procedures, accounting theory, financial reporting problems, and commercial law as related to accounts. Furthermore, this examination tests the competence of the candidate to assume professional responsibility—largely for the fairness of representations on financial statements on which third parties may rely. As a professional examination, it ascertains competence in the highest professional functions charged with the greatest public interest.

The comptroller general of the General Accounting Office, Elmer Staats, issued a recommended policy in 1970 which stated that "after December 31, 1975, only certified public accountants (CPAs) and those public accountants licensed before December 31, 1970, should be engaged to make audits of federally chartered, financed, or regulated private organizations." In 1972, the GAO included this policy in its *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*. The underlying reason given for this requirement was that governmental financial statements include many complex and complicated financial transactions that demand the highest demonstration of accounting knowledge and skill. In a letter to Senator Abraham Ribicoff, Comptroller General Staats wrote that the CPA examination is the most reliable test in existence to measure a person's ability to perform the attest function. This is just one of many indications of the confidence public officials, businessmen, and accounting professionals place in the Uniform CPA Examination.

Although the experience, educational, and other requirements (such as age, citizenship, residency) vary somewhat from one jurisdiction to another, it should be noted that the requirements are prudent and reasonable. The admission requirements are intended to assure an adequate background of professional competence.

Presently, only four states permit unlicensed individuals to perform the attest function and to use professional titles. These states are unable to effectively protect their citizens from incompetent or fraudulent practitioners who are not licensed, inasmuch as the board of accountancy's authority extends only to CPAs. In eleven other states, another class of accountants besides CPAs are licensed on a continuing basis to perform the attest function. This second class of accountants consists of individuals who have not exhibited the high degree of knowledge and skill of sophisticated accounting procedures as have those who have earned the CPA designation. It is not logical, nor in the public interest, to license two classes of accountants on the basis of different standards of competency to perform identical functions.

Four additional states license a second class of accountants to perform accounting procedures except for the attest function. There is no compelling need to license persons offering

bookkeeping and other elementary accounting services, especially in view of the fact that unlicensed accountants are permitted to perform the same accounting services.

Certainly the general public is entitled to have a means of identifying accountants who have demonstrated professional competence through education and passage of a professional examination. The public should not be misled by the existence of a double standard of professional qualification.

As previously mentioned, the courts have consistently ruled that *only* the attest function can be regulated. The merits of regulation are summarized in a 1964 decision of the Tennessee Court of Appeals. The court said,

The Courts have generally recognized that the practice of public accountancy is a highly skilled and technical . . . profession and, as such, may be regulated by the legislature within proper limits. . . . However, the Courts consistently have held that legislation which prohibits non-certified accountants from practicing the profession of accountancy is invalid as it infringes upon rights of contract in matters of purely private concern bearing no perceptible relation to the general or public welfare. And, in so doing, the Courts have indicated that bookkeeping and similar technical services—as contrasted with auditing and expressing opinions on financial statements—do not involve a sufficient public interest to permit legislative interference with the normal right of an individual to deal with anyone he chooses. . . . [*State of Tennessee ex rel. State Board of Accountancy v. Bookkeepers Business Service Col.*, 382 S.W.2d 559, Tenn. App., (1964)].

Therefore, based on this and other court decisions, bookkeeping services, and other elementary accounting procedures cannot be restricted by the state. Licensing, in this instance, does not promote or protect the public interest; it merely confers professional status which can deceive the public into believing that the licensed practitioner has attained an adequate degree of competence to perform public accounting services. Licensing a second class of accountants only brings confusion to the public.

**IV. Are all facets of the regulatory process designed to protect and promote the public interest?**

The present system of licensing certified public accountants is the most appropriate form of regulation to protect and promote the public interest. Identical or similar means of regulation are in effect in all fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. Because of the predominance of interstate commerce in the United States, one state and its requirements cannot be separated from those of its sister states. In order that users of financial statements are assured that an accountant is regulated at a level comparable to that of any other jurisdiction, it is necessary that there be a uniform designation of professional competence that is recognized nationwide. The CPA designation accomplishes this objective since it is regulated in all fifty-four jurisdictions. To maintain high professional standards, an individual's license can be revoked for incompetent or fraudulent practice. A license, therefore, assures the public that a CPA has demonstrated competent and ethical behavior in the execution of his legal and professional obligations.

**V. Does the regulation directly or indirectly increase the cost of fees the CPA charges; and if so, to what degree, and is the increased cost more harmful to the public than the harm which could result from the absence of regulation?**

This question is difficult to answer since there are no data available to support or reject the argument that regulating the accounting profession increases the cost of CPA services to the public. Two arguments are usually advanced to "prove" that regulation increases accounting fees charged to the consumer. First, the cost of regulation itself is cited, for example, the state board of accountancy. Any increased cost to the public because of licensing fees is nominal, if any, since the fee is small. The second reason given for why regulation increases the cost of accounting services is that regulation restricts entry into the profession which acts to keep down the supply of accountants. It could be argued that this would raise the cost of accounting services.

Regulation does tend to limit the number of CPAs entering the accounting profession inasmuch as only individuals who have demonstrated the necessary competence and skill are licensed. However, this should not be viewed as being against the public interest since the CPA entry requirements are not unduly stringent or arbitrary. It has already been shown that public accounting

is a highly technical and complicated profession. In order to protect the public interest, qualifications are necessary to assure that only competent persons are granted the privilege to practice. The charge is occasionally leveled against the accounting profession that it seeks to limit the number of practitioners either by legislative means or by making the Uniform CPA Examination too difficult. The facts do not support these allegations. Accountancy laws are designed to protect the public, not the profession.

The educational and experience requirements are not unreasonable. The accounting profession's educational requirements compare favorably with the other professions. Most states require one to two years of experience for a CPA license. The rationale for the experience requirement is to insure that CPAs have had adequate experience to perform the attest function. It is apparent that in accounting, as in the other skilled professions, experience and knowledge complement each other.

The accounting profession is growing rapidly. From 1965 to 1975, the number of doctors in this country increased by 28 percent and the number of lawyers grew by 30 percent. For this same period, a 78 percent growth rate of CPAs occurred. These data do not support the allegation that the accounting profession and the boards of accountancy are unjustly restricting entry into the profession, and therefore creating a monopoly. Furthermore, accounting is an increasingly popular college major which strongly indicates that the number of CPAs in the foreseeable future will continue to grow, which suggests that the accounting profession should be able to meet the increasing demands for the services of CPAs. To illustrate that a board has not unreasonably restricted entry into the accounting profession, the growth rate of the profession in a state can be compared with that of neighboring states or with the national figure.

The qualifications for becoming a CPA are open to everyone. The profession is exclusive only in the sense that state legislatures have seen fit, out of concern that CPAs are capable individuals, to establish requirements that are reasonably high. To lower the standards of entrance to the accounting profession would be contrary to the requirements of users of financial statements who rely upon the professional expertise of CPAs.

The courts have regularly held that regulation of the accounting profession is in the public interest. If regulation does increase the cost of accounting services, then it is justified in order to protect the public interest. In fact, a lack of regulation could be more costly to the public than the present licensing scheme.

#### ***VI. Why have a board of accountancy rather than another entity to regulate accountants?***

The primary role of a regulatory agency is to expertly represent the public in overseeing, assisting, and directing the maintenance of high technical and ethical standards within the profession. The most effective way to accomplish this objective is through a board whose members have the expertise of that particular profession. Board members should have the professional knowledge to develop and administer programs in order to prevent substandard work, to make sure practitioners provide quality services, and to apply suitable disciplinary measures to incompetent or fraudulent practitioners. Furthermore, a professional board will be able to judge a candidate's qualifications to practice.

A board of accountancy requires more than routine clerical or administrative abilities since it has functions other than simply issuing certificates and administering the Uniform CPA Examination. It is highly unlikely that a nonprofessional entity will have the expertise to judge and enforce standards as well as a board of accountancy. It is in the public interest to have board members who are qualified to assess the performance of applicants and who are able to make intelligent decisions. Otherwise, appreciable harm could result if a non-professional board had the authority to rule on complicated and technical issues.

Some of the inherent problems plaguing bureaucracies are red tape, lack of responsiveness, and divided responsibility. It would not be in the public interest if the functions of the board of accountancy were either combined with another agency or consolidated into a "super-agency." An agency's sole responsibility should be the regulation of the accountancy law. Otherwise, accountability would diminish, which would be contrary to sunset's objective.

A board of accountancy is the most efficient and effective public body available for the protection of the public. The public interest cannot be protected better than by the present system of regulation.

Members of the board of accountancy expend many hours of dedicated service to assure that only qualified accountants are licensed. Board members serve for minimal compensation. They are paid a nominal salary and/or reimbursed for expenses incurred in the performance of their official duties. If the board's functions are transferred to another entity, the cost of regulating the accounting profession will rise significantly, since the salaries of government employees will be higher than the compensation that board members receive.

**VII. Does the board of accountancy operate in an efficient manner?**

This question can be answered best by the individual state boards and state CPA societies. Although there is no single appropriate response to this inquiry for each of the fifty-four boards of accountancy, there are factors which are present in every board's operating procedures. Because no two boards' performance records are identical, the following remarks are general in nature. They can, however, be modified to conform to a board's particular situation.

Regulation by a board of accountancy does not place an undue financial burden on the public treasury. The cost of a board's operation is usually borne by the licensing fees.

To answer this cost-effective question properly, the following questions should be addressed:

1. What is the board of accountancy's annual budget?
2. What are the total licensing fee receipts?
3. How much are board members paid? And, how much time do they spend in their official capacity?
4. What is the present budget for salaried staff?
5. What is the cost for nonpersonnel support?

It should be kept in mind that regulatory agencies usually require little, if any, financial support from the state. Therefore, a board of accountancy should stress the fact that not only is it self-sufficient, but it operates effectively and efficiently. To demonstrate this, the different duties and functions that are a board's responsibility should be explained in a sunset report. This explanation would include, but not be limited to, the following board tasks:

1. The amount of time spent on promulgating regulations to comply with new statutory requirements, comply with legal decisions, or to use its discretionary authority.
2. The number of written and telephone inquiries that the board receives annually.
3. The number of CPA candidates who sit for the Uniform CPA Examination each year.
4. The number of CPA applicants who apply for the CPA license each year.
5. The collection of examination and licensing fees from CPA candidates and renewal fees from practitioners.
6. The number of CPA certificates and licenses issued annually.
7. The number of reciprocal licenses issued annually.
8. The number of temporary licenses issued annually.
9. The number of disciplinary cases the board handles annually.
10. The amount of effort needed to administer mandatory continuing professional education requirements.

A detailed recording of the financial aspects of the board, coupled with a description of its duties and functions, should demonstrate that a board of accountancy operates in an efficient manner.

**VIII. Has the board of accountancy considered alternate methods of regulation by which other jurisdictions have achieved similar objectives?**

This question can only be answered on a state-by-state basis. The three types of accountancy laws that were described under question three are as follows: permissive (any person can perform the attest function), additional class (more than one class of accountants are licensed on a continuing basis), and regulatory-dying class (only CPAs and "grandfathered" PAs are permitted to perform the attest function). Thirty-five jurisdictions have enacted a regulatory-dying class law. Currently, fifteen states have an additional class law and four states have permissive laws.

It is in the public interest to license only those individuals that have demonstrated the knowledge and ability to perform the attest function. This assures the public that all licensed accountants are qualified to do an audit. The accounting profession has given countless hours to protect and to promote the public interest by working for regulatory-dying class legislation in various jurisdictions.

Although there are different types of regulatory laws, all jurisdictions have a board of accountancy to administer the statutes and regulations. In order for legislators to have some basis with which to evaluate the board's method of regulation, it might be useful to compare a board with the other fifty-three boards or with the boards in neighboring states.

Accounting principles and auditing standards used in the practice of public accounting are national in scope; they are not subject to limitations imposed by geographical boundaries. Due to the preponderance of interstate commerce in our economy, it is necessary for qualified accountants to practice across state borders. Any diversity in requirements for a CPA license tends to create confusion. Furthermore, doubt is raised as to whether the competence of CPAs from different jurisdictions is comparable. Therefore, to better serve the public interest, uniform licensing and regulatory requirements should be established and unnecessary restrictions of a local character should be avoided. Uniform requirements for a CPA license will assure the public that a practitioner is qualified to perform the attest function, regardless of where the license is issued.

**IX. Is there another less-restrictive method of regulation available which could adequately protect the public?**

The above question implies that the present method of regulation is too restrictive. This is not so. The accountancy statutes and regulations are not burdensome to the public or to the practitioner.

Replacing the present method of regulation with a lesser form of regulation could have the following adverse effects: (1) loss of confidence in the CPA designation; (2) the public could not readily identify practitioners who are qualified to perform the attest function; and (3) a jurisdiction may not grant reciprocal or temporary CPA licenses to applicants from states that did not have an adequate method of regulation.

The present system of regulation has served the public well. The public interest cannot be as effectively protected by any other means.

**X. Are the functions of the board of accountancy duplicative of another agency's duties?**

The board of accountancy's sole area of responsibility is the administration, execution, and enforcement of the accountancy laws. No other entity shares this function with the board.

**XI. Is the board of accountancy fulfilling the objectives for which it was originally created?**

A board's sole purpose is to protect and to promote the public interest. To achieve this objective, boards of accountancy have been entrusted with the following responsibilities:

1. Administer the accountancy act and promulgate regulations.
2. Determine the qualifications for CPA applicants.
3. Conduct the Uniform CPA Examination.

4. Adopt and enforce rules of professional conduct.
5. Collect examination and licensing fees from CPA candidates and renewal licensing fees.
6. Issue CPA certificates and licenses as well as renew licenses.
7. Issue reciprocal certificates and licenses.
8. Revoke or suspend licenses for violations of the accountancy law, and discipline licensees.

In addition to these duties, most boards of accountancy grant temporary licenses and administer continuing professional education requirements.

One of the most important functions of a board is to determine the eligibility of applicants for a CPA license. In granting licenses, a board does much more than simply issue certificates upon the successful completion of the Uniform CPA Examination. Board members must also evaluate the applicant's qualifications.

The other major responsibility of a board is to discipline licensed practitioners who have performed substandard work or who have committed illegal actions. It is the board's duty to ensure adherence to high professional standards. The public benefits from the assurance that professional ability and conduct are continually monitored.

A board is not only concerned with disciplining licensed practitioners who have harmed the public, but also attempts to protect the public from being harmed in the first place.

The following seven questions may also be asked during a sunset review. The individual boards should answer these questions since they are directed at the internal operations of the board. Although it is the board's responsibility, in the final analysis, to reply to these questions, the profession should be prepared to recommend or to comment on them.

1. To what extent has the board of accountancy's operation been impeded or enhanced by existing statutes, procedures, and practices of the legislative and executive branches, and any other circumstances, including budgetary, resource, and personnel matters?
2. Should there be any modification of the organizational structure of the board of accountancy which would result in more efficient or effective service to the public?
3. To what extent has the board of accountancy encouraged participation by the public in making its rules and decisions as opposed to participation solely by accountants?
4. To what extent has the board of accountancy required accountants to report to it concerning the impact of rules and decisions of the board on the public regarding improved service, economy of service, and availability of service?
5. What is the extent to which the board of accountancy has recommended statutory changes which would benefit the public as distinguished from accountants?
6. What is the efficiency with which formal public complaints filed with the board of accountancy concerning substandard or fraudulent work have been processed to completion by the board or forwarded to appropriate officials for completion?
7. What is the extent to which changes are necessary in the enabling laws of the board of accountancy to adequately comply with the review criteria listed above?



# 7

## Three Types of Sunset Laws

There are three basic types of sunset laws: regulatory, comprehensive, and selective. The regulatory sunset law applies to all governmental agencies that regulate or license occupations and professions. Comprehensive sunset laws include virtually every entity of government. Only constitutionally protected agencies or programs are exempt. A selective sunset law focuses on a specific part or function of government, for example, health care. This type of law often acts as a pilot law to try the sunset review process before broadening it to a regulatory or a comprehensive sunset law.

A typical sunset law for each category has been included for illustration.





REGULATORY SUNSET LAW



# An Act

HOUSE BILL NO. 1088. BY REPRESENTATIVES Kopel, Arnold, Barragan, Bendelow, Boley, Brinton, Brown, Burford, Burrows, Cantrell, Castro, Dick, Durham, Elliott, Flett, Gustafson, Hayes, Hilsmeier, Hogan, Howe, Kirscht, Kramer, Lucero, Lyon, McCroskey, Marks, Massari, Neale, Ore, Orten, Shoemaker, Showalter, Smith, Sprague, Taylor, Traylor, Valdez, Waldow, Wayland, Webb, Wells, Witherspoon, Zakhem, Dittimore, Eckelberry, Frank, Hinman, Lloyd, and Strahle; also SENATORS Anderson, Cisneros, Comer, Cooper, Darby, DeBerard, Gallagher, Holme, Hughes, Kadlecek, Kogovsek, MacManus, Massari, Smedley, Bishop, Brown, Minister, Noble, and Plock.

CONCERNING REGULATORY AGENCIES, AND ESTABLISHING A SYSTEM FOR THE PERIODIC REVIEW AND FOR THE TERMINATION, CONTINUATION, OR REESTABLISHMENT THEREOF.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 34 of title 24, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

24-34-104. General assembly review of regulatory agencies for termination, continuation, or reestablishment. (1) The general assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The general assembly further finds that by establishing a system for the termination, continuation, or reestablishment of such agencies, it will be in a better position to evaluate the need for the continued existence of existing and future regulatory bodies.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1977:

(I) The public utilities commission, created by article 2 of title 40, C.R.S. 1973;

(II) The division of insurance, created by sections 10-1-103 and 10-1-104, C.R.S. 1973;

(III) The division of racing events and the Colorado racing commission, created by article 60 of title 12, C.R.S. 1973.

(b) The following boards and agencies in the division of registrations shall terminate on July 1, 1977:

(I) State athletic commission of Colorado, created by article 10 of title 12, C.R.S. 1973;

(II) State board of barber examiners, created by article 8 of title 12, C.R.S. 1973;

(III) Collection agency board, created by article 14 of title 12, C.R.S. 1973;

(IV) State board of cosmetology, created by part 1 of article 17 of title 12, C.R.S. 1973;

(V) Board of mortuary science, created by part 1 of article 54 of title 12, C.R.S. 1973;

(VI) Passenger tramway safety board, created by part 7 of article 5 of title 25, C.R.S. 1973;

(VII) State board of shorthand reporters, created by article 63 of title 12, C.R.S. 1973;

(VIII) Board of examiners of nursing home administrators, created by article 39 of title 12, C.R.S. 1973;

(IX) Board of examiners of institutions for aged persons, created by article 13 of title 12, C.R.S. 1973;

(X) Board of registration for professional sanitarians, created by article 62 of title 12, C.R.S. 1973.

(3) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1979:

(I) Division of civil rights and the Colorado civil rights commission, created by part 3 of article 34 of this title;

(II) Colorado commission on the status of women, created by part 2 of article 34 of this title.

(b) The following boards and agencies in the division of registrations shall terminate on July 1, 1979:

(I) Real estate commission, created by part 1 of article 61 of title 12, C.R.S. 1973;

(II) Colorado state board of chiropractic examiners, created by article 33 of title 12, C.R.S. 1973;

(III) State board of dental examiners, created by article 35 of title 12, C.R.S. 1973;

(IV) Colorado state board of medical examiners, created by article 36 of title 12, C.R.S. 1973; and the Colorado podiatry board, created by article 32 of title 12, C.R.S. 1973;

(V) State board of nursing, created by part 2 of article 38 of title 12, C.R.S. 1973;

(VI) Board of practical nursing, created by part 1 of article 38 of title 12, C.R.S. 1973;

(VII) State board of optometric examiners, created by article 40 of title 12, C.R.S. 1973;

(VIII) State board of pharmacy, created by part 1 of article 22 of title 12, C.R.S. 1973;

(IX) State board of physical therapy, created by article 41 of title 12, C.R.S. 1973;

(X) State board of veterinary medicine, created by article 64 of title 12, C.R.S. 1973.

(4) (a) The following divisions in the department of regulatory agencies shall terminate on July 1, 1981:

(I) The division of banking, created by article 2 of title 11, C.R.S. 1973;

(II) The division of savings and loan, created by article 44 of title 11, C.R.S. 1973;

(III) The division of securities, created by article 51 of title 11, C.R.S. 1973.

(b) The following boards and agencies in the division of registrations shall terminate on July 1, 1981:

(I) State board of examiners of landscape architects, created by article 45 of title 12, C.R.S. 1973;

(II) Colorado state board of examiners of architects,

created by article 4 of title 12, C.R.S. 1973;

(III) Abstractors' board of examiners, created by article 1 of title 12, C.R.S. 1973;

(IV) State board of accountancy, created by article 2 of title 12, C.R.S. 1973;

(V) State board of registration for professional engineers and land surveyors, created by part 1 of article 25 of title 12, C.R.S. 1973;

(VI) Colorado state board of psychologist examiners, created by article 43 of title 12, C.R.S. 1973;

(VII) Examining board of plumbers, created by article 58 of title 12, C.R.S. 1973;

(VIII) State electrical board, created by article 23 of title 12, C.R.S. 1973;

(IX) Board of hearing aid dealers, created by article 65 of title 12, C.R.S. 1973;

(X) State board of social worker examiners, created by part 1 of article 63.5 of title 12, C.R.S. 1973;

(XI) Colorado mobile home licensing board, created by article 51.5 of title 12, C.R.S. 1973.

(5) Upon termination, each division, board, or agency shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the wind-up period, termination shall not reduce or otherwise limit the powers or authority of each respective agency. Upon the expiration of the one year after termination, each respective agency shall cease all activities.

(6) The life of any division, board, or agency scheduled for termination under this section may be continued or reestablished by the general assembly for periods not to exceed six years. Any newly created division, board, or agency in the department of regulatory agencies shall have a life not to exceed six years and shall be subject to the provisions of this section.

(7) The legislative audit committee shall cause to be conducted a performance audit of each division, board, or agency scheduled for termination under this section. The performance audit shall be completed at least three months prior to the date established by this section for termination. In conducting the audit, the legislative audit committee shall take into consideration, but not be limited to considering, the factors listed in paragraph (b) of subsection (8) of this section. Upon

completion of the audit report, the legislative audit committee shall hold a public hearing for purposes of review of the report. A copy of the report shall be made available to each member of the general assembly.

(8) (a) Prior to the termination, continuation, or reestablishment of any such agency, a committee of reference in each house of the general assembly shall hold a public hearing, receiving testimony from the public and the executive director of the department of regulatory agencies and the agency involved, and in such a hearing the agency shall have the burden of demonstrating a public need for its continued existence and the extent to which a change in the type of transfer of the agency may increase the efficiency of administration or operation of the agency.

(b) In such hearings, the determination as to whether an agency has demonstrated a public need for its continued existence shall take into consideration the following factors, among others:

(I) The extent to which the division, agency, or board has permitted qualified applicants to serve the public;

(II) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the agency or the industry it regulates;

(III) The extent to which the division, board, or agency has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of the department of regulatory agencies, and any other circumstances, including budgetary, resource, and personnel matters;

(IV) The extent to which the agency has recommended statutory changes to the general assembly which would benefit the public as opposed to the persons it regulates;

(V) The extent to which the agency has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency on the public regarding improved service, economy of service, and availability of service;

(VI) The extent to which persons regulated by the agency have been required to assess problems in their industry which affect the public;

(VII) The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates;

(VIII) The efficiency with which formal public complaints



filed with the division, board, or agency or with the executive director of the department of regulatory agencies concerning persons subject to regulation have been processed to completion by the division, board, or agency, by the executive director of the department of regulatory agencies, by the department of law, and by any other applicable department of state government; and

(IX) The extent to which changes are necessary in the enabling laws of the agency to adequately comply with the factors listed in this paragraph (b).

(9) If no action has been taken to extend the life of an agency because the subject was not designated in writing by the governor during the first ten days of the legislative session, pursuant to section 7 of article V of the state constitution, the agency shall continue in existence until the next subsequent odd-numbered year legislative session, at which time the general assembly shall reconsider the termination. If terminated, in no case shall an agency have less than one year to wind up its affairs.

(10) No more than one such division, board, or agency shall be continued or reestablished in any bill for an act, and such division, board, or agency shall be mentioned in the bill's title.

(11) This section shall not cause the dismissal of any claim or right of a citizen against any such agency or any claim or right of an agency terminated pursuant to this section which is subject to litigation. Said claims and rights shall be assumed by the department of regulatory agencies. Nothing in this section shall interfere with the general assembly otherwise considering legislation on any division, board, agency, or similar body existing within the department of regulatory agencies.

SECTION 2. 10-1-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-1-103. Division of insurance - subject to termination.  
(6) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of insurance created by this section.

SECTION 3. 11-2-101, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

11-2-101. Division of banking - creation - subject to termination. (10) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of banking created by this section.

SECTION 4. Article 44 of title 11, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

11-44-101.5. Division subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of savings and loan created by section 11-44-101.

SECTION 5. Article 51 of title 11, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

11-51-103.5. Division subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of securities created by section 11-51-103.

SECTION 6. 12-1-102, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-1-102. Board of examiners - subject to termination. (3) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the abstractors' board of examiners created by this section.

SECTION 7. 12-2-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-2-103. Board of accountancy - subject to termination. (5) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of accountancy created by this section.

SECTION 8. 12-4-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-4-103. State board of examiners - subject to termination. (4) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado state board of examiners of architects created by this section.

SECTION 9. 12-8-104, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-8-104. Board created - subject to termination. (3) The provisions of section 24-34-104, C.R.S. 1973, concerning the

termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of barber examiners created by this section.

SECTION 10. 12-10-101, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-10-101. Commission created - subject to termination.  
(3) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state athletic commission of Colorado created by this section.

SECTION 11. 12-13-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-13-103. Board of examiners - subject to termination.  
(7) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of examiners of institutions for aged persons created by this section.

SECTION 12. 12-14-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-14-103. Collection agency board - subject to termination. (8) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the collection agency board created by this section.

SECTION 13. 12-17-108, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-17-108. State board of cosmetology - subject to termination. (4) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of cosmetology created by this section.

SECTION 14. Part 1 of article 22 of title 12, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-22-103.5. Board subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of pharmacy created by section 12-22-103.

SECTION 15. Article 23 of title 12, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-23-102.5. Board subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state electrical board created by section 12-23-102.

SECTION 16. 12-25-105, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-25-105. State board of registration - subject to termination. (3) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of registration for professional engineers and land surveyors created by this section.

SECTION 17. 12-33-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-33-103. State board of examiners - subject to termination. (3) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado state board of chiropractic examiners created by this section.

SECTION 18. 12-35-104, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-35-104. State board of dental examiners - subject to termination. (5) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of dental examiners created by this section.

SECTION 19. 12-36-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-36-103. State board of medical examiners - immunity - subject to termination. (6) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado state board of medical examiners created by this section.

SECTION 20. Part 1 of article 38 of title 12, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-38-104.5. Board subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of practical nursing created by section 12-38-104.

SECTION 21. 12-38-204, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-38-204. Board created - subject to termination. (3) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of nursing created by this section.

SECTION 22. 12-39-103, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-39-103. Board of examiners of nursing home administrators - subject to termination. (10) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of examiners of nursing home administrators created by this section.

SECTION 23. 12-40-106, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-40-106. State board of optometric examiners - subject to termination. (3) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of optometric examiners created by this section.

SECTION 24. 12-41-102, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-41-102. Board membership - subject to termination. (4) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of physical therapy created by this section.

SECTION 25. 12-43-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-43-103. State board of examiners - subject to termination. (8) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado state board of psychologist examiners created by this section.

SECTION 26. 12-45-103, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-45-103. Board of examiners - subject to termination. (13) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of examiners of landscape architects created by this section.

SECTION 27. 12-51.5-102, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-51.5-102. Colorado mobile home licensing board - subject to termination. (5) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the Colorado mobile home licensing board created by this section.

SECTION 28. 12-54-104, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-54-104. Board of mortuary science - subject to termination. (3) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of mortuary science created by this section.

SECTION 29. 12-58-102, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-58-102. Examining board of plumbers - subject to termination. (4) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the examining board of plumbers created by this section.

SECTION 30. Article 60 of title 12, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-60-102.5. Division and commission subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the division of racing events and the Colorado racing commission created by section 12-60-102.

SECTION 31. 12-61-105, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-61-105. Commission - examination - subject to termination. (4) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the real estate commission created by this section.

SECTION 32. Article 62 of title 12, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

12-62-102.5. Board subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board of registration for professional sanitarians created by section 12-62-102.

SECTION 33. Article 63 of title 12, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

12-63-103.5. Board subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of shorthand reporters created by section 12-63-103.

SECTION 34. 12-63.5-104, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-63.5-104. State board of social work examiners - subject to termination. (7) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of social work examiners created by this section.

SECTION 35. 12-64-105, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-64-105. Board of veterinary medicine - subject to termination. (12) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the state board of veterinary medicine created by this section.

SECTION 36. 12-65-102, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-65-102. Board created - appointment - vacancies - subject to termination. (6) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory

bodies of the state unless extended as provided in that section, are applicable to the board of hearing aid dealers created by this section.

SECTION 37. 24-34-201, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-34-201. Colorado commission on the status of women - creation - legislative declaration - purpose - subject to termination. (7) The provisions of section 24-34-104, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the commission on the status of women created by this section.

SECTION 38. Part 3 of article 34 of title 24, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

24-34-304.5. Division and commission subject to termination. The provisions of section 24-34-104, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the civil rights division and the civil rights commission created by this part 3.

SECTION 39. Part 7 of article 5 of title 25, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

25-5-703.5. Board subject to termination. The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the passenger tramway safety board created by section 25-5-703.

SECTION 40. 40-2-101, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

40-2-101. Creation - appointment - term - subject to termination. (3) The provisions of section 24-34-104, C.R.S. 1973, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the public utilities commission created by this section.

SECTION 41. Effective date. This act shall take effect July 1, 1976.

SECTION 42. Safety clause. The general assembly hereby



finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Ruben A. Valdez  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Fred E. Anderson  
PRESIDENT OF  
THE SENATE

---

Evelyn T. Davidson  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

---

Marjorie L. Rutenbeck  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

---

Richard D. Lamm  
GOVERNOR OF THE STATE OF COLORADO

COMPREHENSIVE SUNSET LAW



ALABAMA

Act No. 512

S. 128—McMillan

AN ACT

An Act creating the "Alabama Sunset Law of 1976" providing definitions; providing for the termination of state agencies, as defined in the Act, or listed dates; providing a deadline for reaching a recommendation as to continuance or termination, as defined herein, on or before the first legislative day immediately following review; providing that any agency, unit or subunit which is terminated shall have 180 days in which to conclude its affairs after which time the specified agency, unit, subunits and their personnel positions would be abolished and all unexpended funds would revert to the state fund from which

appropriation was made; providing for a 4-year limit on the life of any continued or newly created agency, after which time review and evaluation procedures shall be repeated; providing for public hearings on the sufficient public need of agencies under review; providing for review and evaluation criteria; providing for a review and evaluation criterion of a "zero-based review and evaluation" providing for a select committee to assist in the implementation of the provisions of this act; and that their recommendation report shall be submitted to the Legislature and the Governor for distribution on, or before, the first legislative day of the regular session; providing expenses and pay of committee members be made from the state treasury from funds appropriated for the payment of the expenses of the legislature; providing for voting as to the recommendations of the committee and the continuance of any agency by simple majority vote of both Houses; providing for the Examiners of Public Accounts and Legislative Fiscal Office to assist in the review and evaluation process; providing that the Governor be urged to adopt the principles of a "zero-based review and evaluation" in budgetary preparations; providing for the retention of all claims and rights of citizens; providing for severability; providing for repeal of laws inconsistent with this act; and providing an effective date.

*Be It Enacted by the Legislature of Alabama:*

**Section 1.** Short title.—This Act shall be known as the "Alabama Sunset Law of 1976."

**Section 2.** Definitions. As used in this Act, unless the context requires a different meaning the following words shall be defined as follows:

(a) "Agency" shall mean to include all departments, divisions, bureaus, commissions, councils and boards, or like governmental units or subunits of the State of Alabama, regulatory in nature or otherwise.

(b) The word "continuance," or derivative thereof, shall mean continuance as presently in existence or as modified by recommended legislation.

(c) "Performance audit" shall mean the same as operational audit.

(d) "Termination: shall mean the end, abolishment or annulment of any agency or the act of causing the existence to cease.

**Section 3.** The following agencies shall terminate or continue as provided herein in Sections 10, 11, and 14 of this Act.

(a) October 1, 1977, shall be the termination date for:

1. Board of Agriculture and Industries — created by Title 2, Section 25, Code of Alabama 1940, 1939.

2. Farmers' Market Authority — created by Act No. 672, S. 99 of the 1965 Regular Session (Acts 1965, p. 1208), 1965.

3. Department of Labor — created by Act No. 198, S. 341 of the 1943 Regular Session, (Acts 1943, p. 252), 1943.

4. Department of Industrial Relations — created by Title 26, Section 1, Code of Alabama 1940, 1939. (And boards — created by Title 26, Section 25, Code of Alabama 1940, 1939.)

5. Advisory Council — created by Title 26, Section 231 of Code of Alabama 1940, 1939.

6. Department of Examiners of Public Accounts — created by Act No. 351, S. 66, 1947, Regular Session (Acts 1947, p. 231, 1947.)

7. Board of Appeals — created by Title 26, Section 8, Code of Alabama 1940, 1939.

8. Alabama Securities Commission — created by Act No. 740, H. 189 of 1969 Regular Session (Acts 1969, v. II, p. 1315), 1969.

9. Continuing Interim Committee on Finance and Taxation — created by Act No. 949, SJR 130, 1975 Regular Session (Acts 1975, p. 1984-1985), 1975.

10. Alabama Liquefied Petroleum Gas Board — created by Act No. 220, H. 162, 1965 Regular Session (Acts 1965, v. I, p. 305), 1965.

11. Alabama Board of Cosmetology—created by Act No. 653, H. 489 of the 1957 Regular Session (Acts 1957, v. II, p. 981), 1957.

12. Board to Examine Entomologists, Horticulturists, Floriculturists, and Tree Surgeons — created by Title 2, Section 671, Code of Alabama 1940, 1939.

13. Boxing and Wrestling Commission — created by Title 55, Section 347 of the Code of Alabama 1940, 1939.

14. State Board of Veterinary Medical Examiners — created by Title 46, Section 313, Code of Alabama 1940, as amended, and Act No. 1224, S. 660 of the 1975 Regular Session.

15. State Board of Examiners of Speech Pathology and Audiology — created by Act No. 90, S. 102 of the 1975 Fourth Special Session.

16. State Ethics Commission — created by Act No. 130, H. 240 of the 1975 Regular Session. (Supersedes Act No. 1056 of the 1973 Regular Session.) 1973.

17. Air Pollution Control Commission — created by Act No. 769, H. 702 of the 1971 Regular Session (Acts 1971, v. II, p. 1481), 1971.

18. Alabama Commission on Intergovernmental Cooperation — created by Act No. 882, H. 892, of the 1965 Regular Session (Acts 1965, v. II, p. 1659).

(b) October 1, 1978, shall be the termination date for:

1. Alabama Board of Examiner in Psychology — created by Act No. 78, S. 72 of the 1961 Regular Session (Acts 1961, v. II, p. 1955), 1961.

2. State Board of Medical Examiners — created by Act No. 161, H. 165 of the Third Special Session of 1975.

3. Alabama Board of Funeral Service — created by Act No. 214, S. 326 of the 1975 Regular Session.

4. Board of Nursing and the Advisory Councils for Nursing — created by Act No. 427, H. 234 of the 1975 Regular Session.

5. Fire Fighters Personnel and Education Commission — created by Act No. 863, S. 441 of the 1975 Regular Session.

6. Alabama Peace Officers Standards and Training Commission — created by Act No. 1981, H. 732 of the 1971 Regular Session (Acts 1971, v. IV, p. 3224) 1971.

7. State Polygraph Examiners Board — created by Act No. 2056, H. 399 of the 1971 Regular Session (Acts 1971, v. IV, p. 3307), 1971.

8. Alabama Real Estate Commission — created by Act No. 422, H. 325 of the 1951 Regular Session (Acts 1951, p. 745) and as amended and reenacted by Act No. 162, H. 166 of the Third Special Session of 1975.

9. Board of Certification of Water and Waste Water Systems Personnel — created by Act No. 1594, H. 434 of the 1971 Regular Session (Acts 1971, v. IV, p. 2728), 1971.

10. Alabama State Bar — created by Title 46, Section 21, Code of Alabama 1940, 1923.

11. Board of Bar Examiners — created by Act No. 436 of the 1949 Regular Session (Acts 1949, p. 632), 1949.

12. State Board of Barber Examiners — created by Act No. 403, H. 330 of the 1971 Regular Session (Acts 1971, v. I, p. 689), 1971.

13. Alabama Board of Hearing Aid Dealers — created by Act No. 2425, H. 392 of the 1971 Regular Session (Acts 1971, v. V, p. 3858), 1971.

14. Board of Dental Examiners — created by Act No. 100, S. 68 of the 1959 Regular Session (Acts 1959, v. I, p. 569), 1959.

15. Board of Physical Therapy — created by Act No. 476, H. 8 of the 1965 Regular Session (Acts 1965, v. I, p. 686), 1965.

16. State Board of Examiners of Nursing Home Administrators — created by Act No. 986, S. 77 of the 1969 Regular Session (Acts 1969, v. II, p. 1734), 1969.

17. Board of Registration for Sanitarians — created by Act No. 209 of the 1964 First Special Session (Acts 1964, p. 279), 1964.

18. Board of Examiners of Mine Personnel — created by Act No. 207, S. 134 of the 1949 Regular Session (Acts 1949, p. 242), 1949.

19. Board of Medical Technicians Examiners — created by Title 46, Section 151, Code of Alabama 1940, 1937.

20. Board of Nursing (Act No. 427, H. 234 of the 1975 Regular Session) — created by Act No. 867, S. 210 of the 1965 Regular Session (Acts 1965, p. 1615).

21. Board for Registration of Architects — created by Title 46, Section 10, as amended, Code of Alabama 1940, 1931.

22. Board of Examiners of Landscape Architects — created by Act No. 2396, H. 609 of the 1971 Regular Session (Acts 1971, v. V, p. 3819), 1971.

23. State Board of Chiropractic Examiners — created by Act No. 108, H. 152 of the 1959 Regular Session (Acts 1959, v. I, p. 612), 1959.

24. State Board of Embalming — created by Title 46, Section 121 of the Code of Alabama 1940, 1894 (merged into Alabama Board of Funeral Service).

25. State Board of Medical Examiners — created by Title 46, Section 258, Code of Alabama 1940, (1877), as amended, and Act No. 161 of the Third Special Session of 1975.

26. State Board of Optometry — created by Title 46, Section 190, Code of Alabama 1940, (1919), and Act No. 1148, H. 600 of the 1975 Regular Session.

27. State Board of Pharmacy — created by Act No. 147, H. 25 of the Third Special Session 1975, and Act No. 205, S. 134 of the 1966 Special Session (Acts 1966, p. 231), 1966.

28. Alabama State Board of Public Accountancy — created by Title 46, Section 2, as amended, Code of Alabama 1940, 1919.



29. State Board of Registration for Foresters — created by Act No. 533, S. 166 of the 1957 Regular Session (Acts 1957, v. II, p. 750, )1957.

30. State Board for Registration of Professional Engineers and Land Surveyors — created by Act No. 79, S. 76 of the 1961 Regular Session (Acts 1961, v. II, p. 1975), 1961.

31. State Licensing Board for General Contractors — created by Title 46, Section 66, Code of Alabama 1940, 1935.

32. State Licensing Board for the Healing Arts — created by Act No. 106, H. 150 of the 1959 Regular Session (Acts 1959, v. I, p. 590), 1959.

33. State Pilotage Commission — created by Title 38, Section 46, Code of Alabama 1940, 1852.

34. Judicial Commission — created by Act No. 1187, S. 208 of the 1971 Regular Session (Acts 1971, v. III, p. 2049), 1971.

(c) October 1, 1979, shall be the termination date for:

1. Department of Public Safety — created by Act No. 585, H. 798 of the 1953 Regular Session (Acts 1953, p. 828), 1953.

2. Alabama Law Enforcement Planning Agency — created by Executive Order No. 8, dated November 14, 1968, Executive Order No. 11, dated April 22, 1969 and Executive Order No. 6, dated March 4, 1971.

3. State Supervisory Board of Alabama Law Enforcement Planning Agency — created by Executive Order No. 8, dated November 14, 1968, Executive Order No. 11, dated April 22, 1969 and Executive Order No. 6, dated March 4, 1971.

4. Regional Planning Boards — created by Executive Order No. 8, dated November 14, 1968, Executive Order No. 11, dated April 22, 1969 and Executive Order No. 6, dated March 4, 1971.

5. Department of Civil Defense — created by Act No. 47, S. 65 of the 1955 First Special Session (Acts 1955, p. 267).

6. Civil Defense Advisory Council — created by Act No. 47, S. 65 of the 1955 First Special Session (Acts 1955, p. 267).

7. Criminal Justice Information Systems Center — created by Act No. 872, S. 711 of the 1975 Regular Session.

8. Office of Toxicologist — created by Title 14, Section 387 through Section 390, Code of Alabama 1940, 1935.

9. State Safety Coordinating Committee — created by Act No. 92 of the 1965 First Special Session (Acts 1965, p. 107), 1965.

10. Board of Corrections of Alabama — created by Act No. 202, S. 27 of the 1953 Regular Session (Acts 1953, v. I, p. 267).

11. State Board of Pardons and Paroles — created by Title 42, Section 1, Code of Alabama 1940, 1939.

12. Department of Conservation and Natural Resources — created by Act No. 987, H. 1049 of the 1971 Regular Session (Acts 1971, v. III, p. 1763), 1971.

13. Alabama Surface Mining Reclamation Commission — created by Act No. 551, S. 887 of the 1975 Regular Session.

14. Alabama State Guard — created by Act No. 1038, H. 1005 of the 1973 Regular Session (Acts 1973, v. III, p. 1572), 1973.

15. Department of Veteran's Affairs — created by Act No. 173, H. 311 of the 1945 Regular Session (Acts 1945, p. 304), 1945.

16. State Board of Veteran's Affairs — created by Act No. 173, H. 311 of the 1945 Regular Session (Acts 1945, p. 304), 1945.

17. Armory Commission of Alabama — created by Title 35, Section 186 of the Code of Alabama 1940, 1927.

18. Alabama State Docks Department — created by Act No. 103, H. 230 of the 1955 Regular Session (Acts 1955, p. 345), 1955.

(d) October 1, 1980, shall be the termination date for:

1. State Board of Health — created by Title 22, Section 1, Code of Alabama 1940, 1919.

2. State Health Planning and Development Agency — created by Act No. 1197, H. 1433 of the 1975 Regular Session.

3. Statewide Health Coordinating Council — created by Act No. 1197, H. 1433 of the 1975 Regular Session.

4. State Committee of Public Health — created by Act No. 762 of the 1973 Regular Session.

5. Department of Mental Health — created by Act No. 881, H. 699 of the 1965 Regular Session (Acts 1965, v. II, p. 1649), 1965.

6. Alabama Mental Health Board — created by Act No. 881, H. 699 of the 1965 Regular Session (Acts 1965, v. II, p. 1649), 1965.

7. State Department of Pensions and Security — created by Act No. 341, H. 17 of the 1955 Regular Session (Acts 1955, v. II, p. 763), 1955.

8. State Board of Pensions and Security — created by Act No. 341, H. 17 of the 1955 Regular Session (Acts 1955, v. ii, p. 763), 1955.

9. Alabama Water Wells Standards Board — created by Act No. 1516, H. 1864 of the 1971 Regular Session (Acts 1971, v. IV, p. 2630), 1971.

10. Board for Distribution and Delivery of Dead Bodies — created by Title 22, Section 174 of the Code of Alabama 1940, 1923.

11. Governors Committee on Employment of the Handicapped — created by Act No. 226, H. 201 of the 1965 Regular Session (Acts 1965, v. I, p. 323), 1965.

12. Radiation Control Agency — created by Act No. 582, H. 122 of the 1963 Regular Session (Acts 1963, v. II, p. 1269), 1963.

13. Radiation Advisory Board — created by Act No. 582, H. 122 of the 1963 Regular Session (Acts 1963, v. II, p. 1269), 1963.

14. State Forestry Commission — created by Act No. 764, H. 678 of the 1969 Regular Session (Acts 1969, v. II, p. 1354), 1969.

15. Water Improvement Commission — created by Act No. 1260, S. 79 of the 1971 Regular Session (Acts 1971, v. III, p. 2175), 1971.

16. State Highway Department — created by Title 23, Section 1, Code of Alabama 1940, 1939.

#### 17. Highway Finance Corporations

Alabama State Highway Corporation — created by Act No. 44 and Act No. 181 of the 1935 Regular Session, 1935.

Alabama Bridge Commission — created by Title 23, Section 97, Code of Alabama 1940, 1939.

Alabama Highway Finance Corporation — created by Act No. 228 of the 1965 Regular Session (originally created 1943).

Alabama Highway Authority — created by Act No. 43, H. 3 of the 1955 First Special Session (Acts 1955, v. I, p. 66), 1955.

Alabama Turnpike Authority — created by Act No. 166, H. 232 of the 1955 Regular Session (Acts 1955, v. I, p. 412), 1955.

Dauphin Island Bridge Authority — created by Act No. 447, H. 269 of the 1966 Special Session (Acts 1966, p. 605), 1966.

18. State Oil and Gas Board — created by Act No. 1, H. 46 of the 1945 Regular Session (Acts 1945, p. 1), as amended, 1945.

19. State Toll Bridge Authority — created by Act No. 734, H. 23, of the 1969 Regular Session (Acts 1969, v. II, p. 1289), 1969.

20. Alabama Department of Aeronautics — created by Act No. 402, S. 217, 1945 Regular Session (Acts 1945, p. 620), 1945.

21. Alabama Dairy Commission — created by Act No. 408, H. 815 of the 1971 Regular Session (Acts 1971, v. II, p. 1069), 1971.

22. State Banking Department — created by Act No. 204, H. 30 of the 1955 Regular Session (Acts 1955, v. I, p. 497), 1955.

23. Banking Board — created by Title 5, Section 6, (1939),

24. Savings and Loan Board — created by Title 5, Section 244, as amended, 1939.

25. Credit Union Board — created by Act No. 2293, H. 221 of the 1971 Regular Session (Acts 1971, v. V, p. 3694), 1971.

26. Alabama Public Service Commission — Created by Title 48, Section 1, 1881.

27. Alabama Alcoholic Beverage Control Board — created by Title 29, Section 3, Code of Alabama 1940, 1937 —

28. Department of Insurance — Created by Act No. 407, H. 198, 1971 Regular Session (Acts 1971, v. II, p. 707), 1971.

Any state agency existing on the date of the passage of this act and not specifically listed in this act shall be terminated on October 1, 1978, and the provisions hereof shall apply to them as if they were enumerated herein and acted on by the Legislature and Governor as provided herein.

But, however, no state agency shall be terminated unless it has first been reviewed by the select joint committee created herein.

Any entity, which receives state funds of whatever nature,

existing on the date of the passage of this act and not specifically listed in this act shall be subject to a performance audit by the joint committee at such times and in such manner as it deems appropriate. Any such agency shall be required to furnish any information or records requested by the committee. Provided, however, that no agency or bureau referred to herein shall be terminated except by action of both houses of the Legislature and compliance with Article 5, Section 125, of the Constitution of Alabama.

**Section 4.** Legislative committee review of state agencies shall begin at least four months prior to the regular legislative session next preceding the date upon which the agencies are scheduled to terminate pursuant to Section 3, and shall conclude with a recommendation for continuation or termination on or before the first legislative day immediately following said review.

**Section 5.** Any agency specified in Section 3 which is terminated shall have a period of 180 days from the date of termination for the purpose of ceasing its affairs, and termination shall not reduce or otherwise limit the powers, duties or functions of each in this regard. Upon the expiration of this 180-day period, the specified agency, and its personnel positions shall be abolished with all unexpended funds reverting back to the state fund from which that appropriation was made.

**Section 6.** The life of any agency scheduled for termination under this act may be continued on a roll-call vote of the legislature, as provided herein, after which time review and evaluation pursuant to the provisions of this act shall be repeated. Any newly created agency shall have a life, stated in its enabling legislation, not to exceed four years and shall be subject to the provisions of this act.

**Section 7.** Pursuant to the language of Section 4, the legislative committees reviewing such agencies, shall hold public hearings and receive testimony from the public and all interested parties. All agencies shall bear the burden of establishing that sufficient public need is present which justifies their continued existence. All agencies shall provide the reviewing and evaluating committee with the following information:

- (1) The identity of all agencies under the direct or advisory control of the agency under review;
- (2) All powers, duties and functions currently performed by the agency under review;
- (3) All constitutional, statutory, or other authority under

which said powers, duties and functions of the agency are carried out;

(4) Any powers, duties or functions which, in the opinion of the agency under review, are being performed and duplicated by another agency within the state including the manner in which, and the extent to which, this duplication of efforts is occurring and any recommendations as to eliminating the duplication;

(5) Any powers, duties or functions which, in the opinion of the agency under review, is inconsistent with current and projected public needs and which should be terminated or altered; and

(6) Any other information which the reviewing committees, in their discretion, feel is necessary and proper in carrying out their review and evaluative duties.

**Section 8.** In said public hearings, the determination as to whether a sufficient public need for continuance is present shall take into consideration the following factors concerning the agency under review and evaluation:

(1) The extent to which any information required to be furnished to the reviewing committees pursuant to Section 7 has been omitted, misstated, or refused, and the extent to which conclusions reasonably drawn from said information is adverse to the legislative intent inherent in the powers, duties, and functions as established in the enabling legislation creating said agency, or is inconsistent with present or projected public demands or needs;

(2) The extent to which statutory changes have been recommended which would benefit the public in general as opposed to benefitting the agency;

(3) The extent to which operation has been efficient and responsive to public needs;

(4) The extent to which it has been encouraged that persons regulated report to the agency concerning the impact of rules and decisions regarding improved service, economy of service, or availability of service to the public;

(5) The extent to which the public has been encouraged to participate in rule-and-decision-making as opposed to participation solely by persons regulated;

(6) The extent to which complaints have been expeditiously processed to completion in the public interest; and

(7) The extent to which the division, agency or board has permitted qualified applicants to serve the public;

(8) The extent to which affirmative action requirements of state and federal statutes and constitutions have been complied with by the agency or the industry it regulates;

(9) Any other relevant criteria which the reviewing committees, in their discretion, deem necessary and proper in reviewing and evaluating the sufficient public need for continuance of the respective agency.

**Section 9.** In conjunction with the criteria enumerated in Section 8, one criterion which shall be used in determining sufficient public need in such public hearings shall be a "zero-based review and evaluation." A "zero-based review and evaluation" shall be a comprehensive review and evaluation to determine if the merits of the agency support continuation rather than termination and reach a finding as to what amounts of funding, if any shall be authorized to produce correspondingly greater or lesser levels of responsibility and service output. Such a procedure shall necessitate the review and evaluation of all powers, duties and functions which currently are exercised by the agency as well as any request for additions to said powers, duties or functions when reviewing the sufficient public need of the agency. Said "zero-based review and evaluation" shall include, but not be limited to, the following factors:

(1) An identification of other agencies having the same or similar objective, along with a comparison of the cost and effectiveness of said agencies, and any duplication of the agency under review;

(2) Any identification of any agency which has not received and expended state tax dollar revenues within a period of two years prior to said hearings;

(3) An examination of the extent to which the objectives of the agency have been achieved in comparison with the objectives as initially set forth in the enabling legislation and an analysis of any significant variance between projected and actual performance;

(4) A specification, to the extent feasible, in quantitative terms, of the objectives of said agency for the next four years; and

(5) An examination of the impact of said agency on the economy of the state.

**Section 10.** A select eleven-member joint committee shall be named no later than September 1, 1976.

However, in the event that the 1976 Regular Session of the Alabama Legislature adjourns sine die before the elections provided for herein can be held, then, in that event, the Speaker of the House of Representatives and the President of the Senate

shall respectively appoint two members each to fill the elected positions provided for in each house and the persons so appointed shall serve until such time as the Alabama Legislature is next in session when the elections shall be held as provided herein.

In addition to the Chairman of the Senate Finance and Taxation Committee and the Chairman of the House Ways and Means Committee, two members of the House and two members of the Senate shall be elected in the same manner as the elected members of the Legislative Council by the respective Houses. The eleventh member shall be appointed by the Governor. The Chairman of the House Ways and Means Committee shall serve as the Chairman of the select joint committee the first year and the second year the Chairman of the Senate Finance and Taxation Committee shall serve as Chairman of the select committee; each year thereafter the Chairman of the House Ways and Means Committee and the Chairman of the Senate Finance and Taxation Committee shall alternate as Chairman of the select joint committee created herein. Four members appointed, two from the Alabama Senate, two from the Alabama House of Representatives, by the presiding officer of said elected bodies.

Said select joint committee shall be charged with the duty of assisting in the implementation of the procedures of this act and shall be charged with the duty of establishing administrative procedures which shall facilitate the review and the evaluation procedure as provided for in this act.

The committee shall submit its report to the offices of the Speaker and the President for distribution to legislators and the Governor on, or before, the first legislative day of the ensuing regular legislative session. The committee shall submit a report of its recommendations to the legislature in the form of a resolution that the legislature may vote to accept or reject the recommendation with respect to each agency. If the committee's recommendation is that the agency be continued and the legislature votes to accept the recommendation, such agency shall be continued. If the Legislature votes not to accept the recommendation, then the agency shall terminate, if the committee's recommendation is that the agency be terminated, and the legislature votes to accept the recommendation, such agency shall be terminated upon the date specified in Section 3 of this act.

If the Legislature votes not to accept the recommendation, then the agency shall be continued. All action of the Legislature is subject to Article 5, Section 125, of the Constitution of Alabama. The committee shall file with its report data in support of its recommendations with respect to each agency. The committee shall use Sections 8 and 9 hereof as the guideline in preparing its report.



The committee members shall be entitled to their usual legislative per diem and expenses for attending meetings of the committee which shall be paid from funds appropriated for the payment of the expenses of the legislature. There shall be no limitation upon the number of days the committee or any subcommittee thereof shall meet; provided, however, the members shall be entitled to payment only for the days they are actually engaged in committee business.

**Section 11.** On the tenth legislative day of the regular session, one hour after the last House convenes, voting in the respective houses of the legislature on the joint committee's recommendations shall commence and thereafter shall continue, from day to day until voting on all the recommendations with respect to each agency are completed, as the first order of business. Termination or continuance of any agency, unit or subunit shall be by simple majority roll-call vote of both House and Senate; provided, however, that debate on the termination or continuance of any agency, unit or subunit shall not continue beyond the period of two hours from the start of debate on each vote and a recorded vote must be taken at the expiration of said debate.

Debate as used in this section shall mean two hours total time allocated for discussion on each agency considered for continuance. At the end of this two-hour period of time allocated, which shall be continuous and uninterrupted, it shall be mandatory that the President of the Senate and the Speaker of the House shall, in their respective houses call for a recorded vote on whether to continue the agency in question.

**Section 12.** The Examiners of Public Accounts and Legislative Fiscal Office of the state shall furnish, upon request of the reviewing and evaluating committees, any relevant information including the results of prior audits and reviews of any agency under review.

**Section 13.** The Governor is urged to utilize the principles of "zero-based review and evaluation" for each state agency in his preparation of the budget for each fiscal year and to include such analysis, together with this recommendations, in his transmission of the budget to the legislature.

**Section 14.** No more than one agency shall be continued terminated or reestablished in any one resolution as provided for in Section 10 and such agency shall be mentioned in the resolution's title, as provided by law. Such resolution shall be governed by Article 5, Section 125, of the Constitution of Alabama.

**Section 15.** This act shall not cause the dismissal of any claim or right of citizen against any state agency terminated

pursuant to the provisions of this act which is subject to administrative hearing or litigation.

**Section 16.** Nothing in this act shall be construed to abrogate any powers, duties or functions of any agency established by the people of Alabama in the Constitution of 1901. If any provision of this act or the application thereof to any person or circumstance is held invalid, it shall be the intent of the legislature that the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application. To this end the provisions of this act are declared severable.

**Section 17.** All laws or parts of laws which conflict with this act are hereby repealed.

**Section 18.** This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved August 24, 1976.

Time: 5:30 P.M.



SELECTIVE SUNSET LAW



# STATE AFFAIRS AND GOVERNMENT

## CHAPTER 3

(S.B. 1)

### PILOT SUNSET LAW ENACTED

#### AN ACT

ENTITLED, An Act to provide for the review, termination, and reestablishment of state agencies in the department of commerce and consumer affairs, and declaring an emergency.

*BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:*

Section 1. Terms as used in this Act, unless the context otherwise requires, mean:

- (1) "Agency," all divisions, offices, bureaus, commissions, councils and boards, or like government units or subunits of the department of commerce and consumer affairs;
- (2) "Committee," the committee created by section 3 of this Act;
- (3) "Termination," end, abolishment or annulment of any agency or the act of causing its existence to cease.

Section 2. The following agencies shall terminate, and any statutes which relate to them shall be void insofar as they relate to the organization, existence, authority or function of such agencies, on June 30, 1978:

- (1) The division of consumer protection created by § 1-35-3 and chapter 37-23;
- (2) The division of human rights and the state commission of human rights created by § 1-35-3 and chapter 20-13;
- (3) The athletic commission created by chapter 42-6;
- (4) The racing commission created by chapter 42-7;
- (5) The division of banking and finance and the state banking commission created by § 1-35-3 and chapter 51-16;
- (6) The division of securities created by § 1-35-3 and chapter 47-31;

- (7) The division of insurance created by § 1-35-3 and chapter 58-2;
- (8) The savings and loan board created by chapter 52-2.

Section 3. The executive board of the Legislative Research Council shall appoint an interim committee composed of not less than seven nor more than eleven legislative members to review state agencies as set forth in this Act. Such appointments shall be made prior to May 1, 1977. The committee shall be charged with the duty of assisting in the implementation of the procedures of this Act and shall be charged with the duty of establishing administrative procedures which shall facilitate the review and evaluation procedure as provided for in this Act.

Section 4. The committee shall begin review of state agencies at least seven months prior to the regular legislative session next preceding the date upon which the agencies are scheduled to terminate.

Section 5. The committee shall hold public hearings and receive testimony from the public and all interested parties. All agencies shall bear the burden of establishing that sufficient public need is present which justifies their continued existence. All agencies shall provide the committee with the following information:

- (1) The identity of all agencies under the direct or advisory control of the agency under review;
- (2) All powers, duties and functions currently performed by the agency under review;
- (3) All constitutional, statutory, or other authority under which the powers, duties and functions of the agency are carried out;
- (4) Any powers, duties or functions which are being performed and duplicated by another agency within the state including the manner in which, and the extent to which, this duplication of efforts is occurring and any recommendations as to eliminating the duplication;
- (5) Any powers, duties or functions which are inconsistent with current and projected public needs and which would be terminated or altered; and
- (6) Any other information which the committee feels is necessary and proper in carrying out their review and evaluative duties.

Section 6. To determine whether a sufficient public need for continuance is present, the committee shall take into consideration the following factors concerning the agency under review and evaluation:

- (1) The extent to which any information required to be furnished to the reviewing committees pursuant to section 5 of this Act has been omitted, misstated, or refused, and the extent to which conclusions reasonably drawn from such information is adverse to the legislative intent inherent in the powers, duties, and functions as established in the enabling legislation creating the agency, or is inconsistent with present or projected public demands or needs;
- (2) The extent to which statutory changes have been recommended which would benefit the public in general as opposed to benefitting the agency;
- (3) The extent to which operation has been efficient and responsive to the public needs;
- (4) The extent to which it has been encouraged that persons regulated report to the agency concerning the impact of rules and decisions regarding improved services, economy of service, or availability of service to the public;
- (5) The extent to which the public has been encouraged to participate in rule-and-decision-making as opposed to participation solely by persons regulated;
- (6) The extent to which complaints have been expeditiously processed to completion in the public interest;
- (7) The extent with which affirmative action requirements of state and federal statutes and constitutions have been complied by the agency or the industry it regulates;
- (8) Any other relevant criteria which the committee deems necessary and proper in reviewing and evaluating the sufficient public need for continuance of the agency.

Section 7. The department of legislative audit shall furnish, upon request of the committee, any relevant information including the reports of audits of any agency under review.

Section 8. The committee shall submit reports recommending either the continuation, revision, or termination of each agency reviewed to the executive board of the legislative research council for distribution to legislators and the Governor on, or before, the first legislative day of the ensuing regular legislative session.

Section 9. The committee shall submit its recommendations concerning those agencies and laws that it believes should be continued to the Legislature in one or more bills so that the Legislature may vote to either reestablish or allow termination of each agency.



Section 10. On the tenth legislative day of the regular session, voting in the house in which such bills as provided in section 9 of this Act are introduced shall commence and thereafter shall continue from day to day as its primary business until voting on all the recommendations with respect to each agency is completed. Within five days of receipt of such bill or bills introduced pursuant to section 9 of this Act, the second house shall commence voting on all bills approved by the first house. Thereafter, voting shall continue from day to day as its primary business until voting on all the recommendations with respect to each agency is completed.

Section 11. Any agency specified in section 3 of this Act which is terminated shall have a period of one hundred eighty days from the date of termination for the purpose of ceasing its affairs. Termination shall not reduce or otherwise limit the powers, duties or functions of such agency in this regard. Upon the expiration of this one hundred eighty day period, the specified agency, and its personnel positions shall be abolished with all unexpended funds reverting to the state fund from which that appropriation was made, or to the general fund if the existence of such fund is terminated.

Section 12. This Act shall not effect the right to institute or prosecute any cause of action by or against an agency terminated pursuant to this Act if the cause or action accrued prior to the termination date of the agency. Any causes of action pending on the date that an agency is terminated, or instituted thereafter, shall be prosecuted or defended in the name of the state by the attorney general.

Section 13. The executive board of the legislative research council shall determine the feasibility of enacting similar legislation for the purpose of reviewing, terminating, and reenacting all state agencies after reviewing the implementation of this Act and shall report its conclusions to the 1978 legislature.

Section 14. Whereas, this Act is necessary for the immediate support of the state government and its existing public institutions, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage and approval.

Approved April 1, 1977

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COMPILATION OF STATE SUNSET LAWS AFFECTING BOARDS OF ACCOUNTANCY  
(AS OF FEBRUARY 1, 1978)

STATE	TERMINATION DATE	EVALUATION PERIOD	EVALUATED BY	OBSTACLES TO REESTABLISHING THE STATE BOARD OF ACCOUNTANCY	THE PART THE STATE SOCIETY WILL PLAY IN THE SUNSET REVIEW AND REESTABLISHING THE BOARD
ALABAMA	10/1/78	Aug. - Nov. 1977	Legislative Committee	Legislative committee recommended reestablishment of the Board after review. Legislation needed in the 1978 session to reestablish the Board.	Very active in contacting members of the review committee and members of the Legislature.
ALASKA	6/30/80	1979 Legislative Session	Legislative Audit Division	Board has the burden of demonstrating a public need for its continued existence under the statute.	Unknown
ARKANSAS	6/30/81	Unknown	Legislative Committee	Unknown	In any way that the society determines to be helpful.
COLORADO	7/1/81	Summer 1980 to the 1981 Session	Legislative Audit Committee	Board has a very good reputation. Anticipate no major problems in demonstrating the need to reestablish it.	Society will stay in close touch with the state board and prepare to answer questions anticipated at sunset hearings.
CONNECTICUT	7/1/83	Ends 1/1/83	Legislative Program Review and Investigations Committee	None known. A negative review would be very difficult to overcome.	Society will provide both public and private support for continuing the Board. Will testify at hearings and lobby for reenactment.
FLORIDA	7/1/79	1/1/79 to end of 1979 Session	Joint Legislative Committee	Major obstacles expected: Licensing CPAs and not a second tier supporting ban on competitive bidding	Society will attempt to educate the Legislature so that the Board of Accountancy will be continued in the public interest.
GEORGIA	7/1/82	Ends 1/1/82	State Auditor's Hearings by Standing Legislative Committee	None known. Board should easily be able to justify itself.	Will be very much involved with legislators.
HAWAII	12/31/82	Ends 10/31/81	Joint Legislative Committee	None known at present.	Society will provide input for impact statement and testify on the need for continuing state regulation.
INDIANA	Not yet established	Not yet established	Unknown	None known at this time.	Unknown
LOUISIANA	7/1/79	two years before termination	House and Senate Committees on Commerce	None known at this time.	Monitor and lend support if necessary.

STATE	TERMINATION DATE	EVALUATION PERIOD	EVALUATED BY	OBSTACLES TO REESTABLISHING THE STATE BOARD OF ACCOUNTANCY	THE PART THE STATE SOCIETY WILL PLAY IN THE SUNSET REVIEW AND REESTABLISHING THE BOARD
MAINE	6/30/82	10/31/80 to 10/31/81	State Department of Audit	None known at this time.	Society's actions will depend upon the Board's activity in the review process.
MONTANA	7/1/79	ends 1/1/79	Legislative Auditor	Failure to meet the specific criteria for sunset review.	A task force is working with the Legislative Auditor on the review process and will follow-up through the hearing and legislative phases of the review.
NEBRASKA	7/1/83	1/1/83 to 7/1/83	Performance Review and Audit Committee of the Legislature	None known at this time.	Will keep informed on other agencies' reviews and encourage the state board to prepare for their review. Will be represented at public hearings and support the continuation of the Board.
NEW HAMPSHIRE	Not yet established	Not yet established	Joint Legislative Committee on Review of Agencies and Programs	Anticipate difficulty from one legislator who is a public accountant.	Will be involved in the review process and in the legislative process.
NEW MEXICO	7/1/78	No fixed period	Joint Legislative Finance Committee	None. The review is complete and the evaluation report was favorable. A bill to reestablish the board will be introduced this year or next year.	Society was very active in the review process. Members will maintain legislator contacts to support reestablishment of the board.
NORTH CAROLINA	7/1/79	Probably 2/1/78 to 12/31/78	Governmental Evaluation Commission	None known at this time.	Very active in the review process and the legislative process.
OKLAHOMA	7/1/80	7/1/79 to 1/1/80	Legislative Committee	None known at this time.	Unknown at this time.
OREGON	7/1/84	1980-1981	Legislative Review Committee	None known at this time.	Society will provide strong support to the board.
RHODE ISLAND	Not yet established	Not yet established	State Auditor General	No problems foreseen, unless the board becomes a specific target.	Active role in the review process and the legislative process.
SOUTH DAKOTA	Not yet established	April of previous year to March 30 of termination year	Legislative Committee and Executive Branch	None known at this time.	Will testify at hearings and maintain contact with review committee.

NOTE:

New Hampshire Sunset law requires further legislation to set termination dates and amendments to the sunset law. As of January 18, 1978 this legislation has not yet been drafted.

STATE	TERMINATION DATE	EVALUATION PERIOD	EVALUATED BY	OBSTACLES TO REESTABLISHING THE STATE BOARD OF ACCOUNTANCY	THE PART THE STATE SOCIETY WILL PLAY IN THE SUNSET REVIEW AND REESTABLISHING THE BOARD
TENNESSEE	6/30/80	Not specified. Review has been completed.	Comptroller of the Treasury. Public hearing held 1/4/78 by Legislative Evaluation Committee	Gaining the understanding of legislators of the specifics of accountability legislation and the necessity of continuing the board. Public accountants may be a factor.	Testified at public hearing. Will be involved in the legislative effort to reestablish the board.
TEXAS	9/1/79	10/30/77 to 11/1/78 Self-evaluation reports 10/30/73 Advisory Committee reports 10/30/77 Performance Evaluation reports 11/1/77 to 11/1/78	Legislative Budget Board staff	26 agencies will be reviewed by the 1979 Legislature. There is some sentiment to lump all professional licensing in a single bureau.	Contribute in any way to assist the Sunset Commission and to the Legislature during its consideration from January to May 1979.
UTAH	7/1/79	7/1/78 to 1/1/79	Review Committee assigned by the Legislative Management Committee	None known at this time	Will be involved in the review process.
WASHINGTON	Unknown at this time. Date will be set by joint committee reporting to the Governor	Unknown at this time	Joint Committee reporting to the Governor	No specific obstacles known at this time. However, professional self-regulation is not held in high esteem.	Not yet determined.





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## Supplemental Information

This *Sunset Handbook* provides information to prepare the accounting profession for the relatively recent development of sunset reviews of their state boards of accountancy. A sunset review could result in drastic changes to present state regulatory provisions. Currently, twenty-four states have enacted sunset laws, and five of those state's boards either have been or are being reviewed. Also, sunset bills have now been introduced in the remaining state legislatures, and it is likely that some of them will be enacted.

The State Legislation Committee produced this handbook to inform and to prepare the profession for its participation in sunset reviews. The information presented is believed to be accurate and as complete as reasonably possible.

The handbook's looseleaf format will permit updating as new or revised material becomes available. If you wish to receive this material as it is issued, please fill in and return the coupon in this section.





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