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An Audit Report on

# **Performance Measures at the Department of Licensing and Regulation**

July 2011

Report No. 11-041

# Performance Measures at the Department of Licensing and Regulation

## Overall Conclusion

The Department of Licensing and Regulation (Department) reported reliable results for 6 (42.9 percent) of 14 key performance measures tested for fiscal year 2010. A result is considered reliable if it is certified or certified with qualification. The Department's performance measures provide important information regarding its licensing, enforcement, and compliance functions.

Six key performance measures were certified with qualification because of internal control weaknesses in the Department's processes for collecting and reporting performance measure information and other issues. Those six performance measures were:

- Percent of Licensees Who Renew Online.
- Number of New Licenses Issued to Individuals.
- Number of Licenses Renewed (Individuals).
- Percent of Complaints Resulting in Disciplinary Action.
- Percent of Architectural Barrier Building Plan Reviews Completed within 30 Days.
- Percentage of Boilers Inspected for Certification within Appropriate Timelines.

Factors prevented certification of three key performance measures because certain data in one of the Department's enforcement systems was not reliable. In addition, the Department did not calculate the performance measure results according to the performance measures' definitions and methodologies in the Automated Budget and Evaluation System of Texas (ABEST) because it incorrectly included its criminal history investigations of unlicensed applicants in its performance measure calculations. The Department asserted that it deviated from

### Background Information

The Department of Licensing and Regulation (Department) regulates a wide variety of businesses, industries, trades, and occupations from boxing and electricians to manicure salons and tow trucks. The Department oversees 29 statutes with 142 license types and a licensee population of more than 620,000. It has an authorized workforce of 402 full-time equivalent positions.

The Department has organized its operations into six functional areas. The three areas listed below were included in this audit:

- Licensing Division - Processes applications and issues licenses to qualified individuals, equipment, and businesses.
- Enforcement Division - Investigates complaints and criminal convictions and prosecutes violators.
- Compliance Division - Performs inspections and plan reviews, provides industry and technical expertise, and monitors third-party inspectors and plan reviewers.

Source: The Department's *Strategic Plan for the Fiscal Years 2011- 2015*, submitted on June 18, 2010.

the performance measures' definitions and methodologies to more accurately represent its completed work.

Those three performance measures were:

- Number of Complaints Resolved.
- Number of Jurisdictional Complaints Received.
- Average Time for Consumer Complaint Resolution (Days)

In addition, factors prevented certification of four other performance measures because the Department did not retain sufficient information to support reported amounts. Those four performance measures were:

- Percent of Licensees with No Recent Violations.
- Total Number of Individuals Licensed.
- Total Number of Business Facilities Licensed.
- Inspection Coverage Rate.

One key performance measure, Percent of New Individual Licenses Issued Online, was inaccurate because the Department did not follow the performance measure's definition and methodology in ABEST when calculating its performance measure results.

Table 1 summarizes the certification results for the key performance measures tested.

**Key Performance Measures**

Key performance measures are:

- Budget drivers that are generally externally focused.
- Closely related to the goals identified in the statewide strategic plan.
- Reflective of the criteria of good performance measures.

Entities report results for their key performance measures to the Legislative Budget Board's budget and evaluation system, which is called the Automated Budget and Evaluation System of Texas, or ABEST.

*Source: Guide to Performance Measure Management (State Auditor's Office Report No. 06-329, August 2006).*

Table 1

Department of Licensing and Regulation (Agency No. 452)				
Related Objective or Strategy, Classification	Description of Measure	Fiscal Year	Results Reported in ABEST	Certification Results <sup>a</sup>
1.1.2, Outcome	Percent of Licensees Who Renew Online	2010	85.00%	Certified with Qualification
1.1.1.1, Output	Number of New Licenses Issued to Individuals	2010	Qtr 1 - 30,599 Qtr 2 - 23,081 Qtr 3 - 26,295 Qtr 4 - 32,690	Certified with Qualification
1.1.1.2, Output	Number of Licenses Renewed (Individuals)	2010	Qtr 1 - 43,684 Qtr 2 - 44,285 Qtr 3 - 59,789 Qtr 4 - 57,815	Certified with Qualification

**Department of Licensing and Regulation (Agency No. 452)**

Related Objective or Strategy, Classification	Description of Measure	Fiscal Year	Results Reported in ABEST	Certification Results <sup>a</sup>
2.1.1, Outcome	Percent of Complaints Resulting in Disciplinary Action	2010	38.95%	Certified with Qualification
2.1.3, Outcome	Percent of Architectural Barrier Building Plan Reviews Completed within 30 Days	2010	98.08%	Certified with Qualification
2.1.6, Outcome	Percentage of Boilers Inspected for Certification within Appropriate Timelines	2010	65.08%	Certified with Qualification
2.1.3.1, Output	Number of Complaints Resolved	2010	Qtr 1 - 2,742 Qtr 2 - 2,918 Qtr 3 - 3,503 Qtr 4 - 3,721	Factors Prevented Certification
2.1.4.1, Explanatory	Number of Jurisdictional Complaints Received	2010	12,000	Factors Prevented Certification
2.1.3.1, Efficiency	Average Time for Consumer Complaint Resolution (Days)	2010	Qtr 1 - 225.50 Qtr 2 - 233.30 Qtr 3 - 217.60 Qtr 4 - 214.30	Factors Prevented Certification
1.1.1, Outcome	Percent of Licensees with No Recent Violations	2010	98.60%	Factors Prevented Certification
1.1.1.1, Explanatory	Total Number of Individuals Licensed	2010	416,396	Factors Prevented Certification
1.1.2.1, Explanatory	Total Number of Business Facilities Licensed	2010	219,246	Factors Prevented Certification
2.1.5, Outcome	Inspection Coverage Rate	2010	90.13%	Factors Prevented Certification
1.1.3, Outcome	Percent of New Individual Licenses Issued Online	2010	62.90%	Inaccurate

<sup>a</sup> A measure is certified if reported performance is accurate within plus or minus 5 percent of actual performance and if it appears that controls to ensure accuracy are in place for collecting and reporting performance data.

A measure is certified with qualification when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A measure is also certified with qualification if agency calculation of performance deviated from the measure definition but caused less than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

A measure is inaccurate when the actual performance is not within 5 percent of reported performance, or when there is more than a 5 percent error rate in the sample of documentation tested. A measure is also inaccurate if the agency's calculation deviated from the measure definition and caused more than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

A factors prevented certification designation is used if documentation is unavailable and controls are not adequate to ensure accuracy. This designation also will be used when there is a deviation from the measure definition and the auditor cannot determine the correct performance measure result.

## ***Summary of Management's Response***

Department management concurs with all recommendations and all but one conclusion in this report. The Department disagrees with the conclusion that it incorrectly included certain investigations as complaints when calculating three key performance measures. The information in the Department's management response did not cause the State Auditor's Office to modify the conclusions in this report.

The Department's responses to the specific recommendations are presented immediately following each set of recommendations in the Detailed Results section of this report. The Department also submitted a letter and an attachment to its management response, which is presented in Appendix 2.

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

Auditors assessed the information technology (IT) controls over the Department's information systems and the automated processes the Department used for performance measure data. Auditors evaluated general IT controls, including logical access, program change management, physical security, and backup and restore processes. Auditors also reviewed application controls, including input controls, process controls, and output controls.

Overall, the Department's general IT controls and application controls were adequate with some exceptions (see Chapter 5 of this report for more information). Most information systems contained adequate input edits or other controls to help ensure data integrity. However, the Department should strengthen its program change management and backup and restore processes.

## ***Summary of Objectives, Scope, and Methodology***

The objectives of the audit were to determine whether the Department:

- Is accurately reporting its performance measures to ABEST.
- Has adequate controls in place over the collection, calculation, and reporting of its performance measures.

The audit scope included 14 key performance measures the Department reported for fiscal year 2010. Auditors reviewed the controls over submission of the data used in reporting the performance measures and traced performance measure information to the original source documents when possible.

The audit methodology consisted of selecting 14 performance measures, auditing reported results for accuracy and adherence to performance measure definitions, evaluating controls over the performance measure calculation processes and

related information systems, and testing of original source documentation. Auditors assessed the data reliability of the information used to report performance measures when possible. That assessment included analyzing the performance measure data to determine whether anomalies existed.

Auditors identified other less significant issues that were communicated to Department management separately in writing.

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# Detailed Results

Chapter 1

## *The Department Should Improve Certain Controls that Affect Its Performance Measures*

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The Department of Licensing and Regulation (Department) processes a large amount of information on a daily basis and uses multiple information systems to report performance measures. Because of this, the Department should implement additional controls over collecting, reporting, and reviewing its performance measures to help it report complete and accurate performance measure results. Specifically, auditors noted the following weaknesses in the Department's processes:

- The Department does not review the licensing and enforcement data that its staff enter into its information systems by periodically comparing the data to source documentation. This is important because the Department uses information in its information systems to calculate performance measures.
- The Department does not review the data extracted from its information systems to ensure that the information is correct and complete when reporting performance measure results. Much of the data extracted from the information systems is reported on a summary level and does not contain sufficient detail to allow a user to verify that reports contain appropriate and complete information in accordance with performance measure definitions.
- The Department does not consistently document and retain its division-level reviews of performance measure preparation.
- The Department does not have a process to compare performance measure results entered into the Automated Budget and Evaluation System of Texas (ABEST) to the spreadsheets used to calculate performance measure results.

### Recommendations

The Department should:

- Implement periodic reviews of the accuracy of licensing and enforcement data entered into its information systems compared to source documentation.

- Implement a review process to ensure that data extracted from its information systems is accurate and complete, and develop reports that contain sufficient detail to allow a user to verify the reports' accuracy and completeness.
- Implement a process that includes preparer and reviewer sign-offs of a division's performance measure calculations and retain evidence of that preparation and review.
- Compare the performance measure results entered into ABEST to the spreadsheets used to calculate the performance measure results.

### Management's Response

*We concur.*

*As a result of the audit, we have analyzed and modified our data entry and reporting processes. We developed swim lane diagrams [See Appendix 2 of this audit report for the diagrams, labeled appendices A, B, C, and D in the attachment] to visually group sub processes by the responsible parties. We have added or strengthened data validation, documentation and centralized data storage controls. The diagrams create the framework for division specific policies and procedures which are scheduled to be completed by the respective division directors by the end of the second quarter of fiscal year 2012. Periodic data input validation, reported data validation, documentation of validation and the centralized storage of detail reports as of the reporting date will result. These controls will improve the reliability of our data and reporting.*

*The Director, Information Systems Development will implement a process by the end of the first quarter of fiscal year 2012 to ensure the accuracy of extracted data by reviewing report programming code for new programs and when definitions change. The agency will conduct a programmer peer review of all performance measure reports initially and then review accuracy of extracted data upon the implementation of new programs or changes to performance measures by the LBB.*

## ***The Department Should Improve Certain Controls and Processes Over Its Licensing Performance Measures***

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The Department reported reliable results for 3 (42.9 percent) of 7 key licensing performance measures tested for fiscal year 2010. A result is considered reliable if it is certified or certified with qualification. Factors prevented the certification of three key licensing performance measures because the Department did not retain documentation necessary to validate the Department's summary information. One performance measure was inaccurate because the Department did not follow that performance measure's definition and methodology when calculating the performance measure results.

Additionally, the Department has not developed written policies and procedures for collecting and calculating its licensing performance measures. The *Guide to Performance Measure Management* (State Auditor's Office Report No. 06-329, August 2006) is a helpful resource for developing procedures for performance measure reporting.

### **Recommendation**

The Department should develop written policies and procedures for collecting and calculating its licensing performance measures.

### **Management's Response**

*We concur.*

*As a result of the audit, we have analyzed and modified our data entry and reporting processes. We developed swim lane diagrams [See Appendix 2 of this audit report for the diagram, labeled appendix B in the attachment] to visually group sub processes by the responsible parties. We have added or strengthened data validation, documentation and centralized data storage controls. The diagrams create the framework for division specific policies and procedures which are scheduled to be completed by the respective division directors by the end of the second quarter of fiscal year 2012. Periodic data input validation, reported data validation, documentation of validation and the centralized storage of detail reports as of the reporting date will result. These controls will improve the reliability of our data and reporting.*

## Number of New Licenses Issued to Individuals

## Number of Licenses Renewed (Individuals)

## Percent of Licensees Who Renew Online

The Department calculated these three performance measures correctly according to the performance measure definitions. These performance

### Results: Certified with Qualification

A measure is certified with qualification when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A measure is also certified with qualification if agency calculation of performance deviated from the measure definition but caused less than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

measures were certified with qualification because the control weaknesses discussed in Chapter 1 create a risk that the Department may report inaccurate results in the future. To ensure continued accuracy, the Department should implement the recommendations in Chapter 1.

In addition, the Department could not provide some of the detailed data it used to calculate Number of New Licenses Issued to Individuals and Number of Licenses Renewed (Individuals). For those two performance measures, the Department was not able to provide detailed information for 2,366 of the 112,665 new licenses it reported in ABEST or for 566 records of the 205,573 renewed licenses it reported in ABEST. In addition, some of the data that the Department provided contained duplicate records that should have been counted only once, and the totals of the data provided did not

match amounts it had originally reported. These errors offset each other, which caused the reported amounts for the two performance measures to be within 5 percent of the correct results.

The Department deviated from the performance measure definition for the Percent of Licensees Who Renew Online because it included renewed licenses, registrations, or certifications for which the online application was not available in its calculation of that performance measure. According to the ABEST definition, only the renewed licenses, registrations, or certifications for which an online application was available should be included in that performance measure's calculation. The deviation did not result in an error rate greater than 5 percent.

Additionally, the ABEST performance measure definition is unclear as to whether the Department should count the number of **licenses** or the number of licensed **individuals** to calculate Percent of Licensees Who Renew Online and Number of Licenses Renewed (Individuals). For the Percent of Licensees Who Renew Online, the performance measure's title and definition refer to a count of individuals, while the methodology refers to a count of licenses, registrations, or certifications. For the Number of Licenses Renewed (Individuals), the performance measure's title and the methodology refer to a count of licenses, registrations, and certifications, while the definition refers to a count of individuals. The distinction between the number of licensed

individuals and number of licenses is significant because many individuals have more than one type of license. Therefore, inconsistencies between the performance measure's title, definition, and methodology can make the intent of the performance measure unclear.

## Recommendations

The Department should:

- Retain detailed supporting documentation, in paper or electronic form, for performance measures for the fiscal year reported plus three years in accordance with the State's records retention schedule.
- Ensure that its licensing system is appropriately issuing and counting new and renewed licenses to avoid duplicate records.
- Follow the ABEST performance measure definitions and methodologies when calculating Percent of Licensees Who Renew Online.
- Work with the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy to clarify performance measure titles, definitions, and methodologies in ABEST for Percent of Licensees Who Renew Online and Number of Licenses Renewed (Individuals) to ensure that those performance measures' titles, definitions, and methodologies consistently refer to the same population of data.

## Management's Response

*We concur.*

*By the end of the second quarter of fiscal year 2012, detail reports, as of the reporting date will be centrally stored electronically in accordance with the swim lane diagrams [See Appendix 2 of this audit report for the diagram, labeled appendices A and B in the attachment] we have developed.*

*Data entry and reporting controls, in accordance with the swim lane diagrams we have developed will be implemented by the end of the second quarter of fiscal year 2012.*

*The Executive Director, in a letter to the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy dated June 17, 2011, requested specific changes to performance measure elements to harmonize them and address the concerns raised in the audit.*

## Total Number of Individuals Licensed

## Total Number of Business Facilities Licensed

## Percent of Licensees with No Recent Violations

Factors prevented certification of these three performance measures because the Department could not provide supporting documentation to validate the summary documentation it retained for the number of active licenses issued to individuals and business facility licenses it reported in ABEST. Auditors could not certify Percent of Licensees with No Recent Violations because that performance measure's calculations are based on the results for Total Number of Individuals Licensed, which auditors also could not certify.

### Results: Factors Prevented Certification

A factors prevented certification designation is used if documentation is unavailable and controls are not adequate to ensure accuracy.

The Department did not retain detailed reports necessary to validate the Department's summary information for these three performance measures, and the Department's licensing information systems were not programmed with the capability to re-create the supporting documentation for a specific point in time. According to the *Guide to Performance Measure Management* (State Auditor's Office Report No. 06-329, August 2006), the Department should retain adequate documentation of performance measure data to support the reported performance for the fiscal year reported plus three years in accordance with the State's records retention schedule.

In addition, the ABEST definitions and methodologies for Total Number of Individuals Licensed and Percent of Licensees with No Recent Violations refer to a count of licensed individuals; however, that methodology may not be practical because the Department takes disciplinary action against a license, not a licensee. The Department is currently counting the number of licenses to calculate these three performance measures.

## Recommendations

The Department should:

- Retain detailed supporting documentation, in paper or electronic form, for performance measures for the fiscal year reported plus three years in accordance with the State's records retention schedule.
- Follow the ABEST performance measure definitions and methodologies by counting the number of licensed individuals when calculating Total Number of Individuals Licensed and Percent of Licensees with No Recent Violations or work with the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy to change the ABEST performance measure titles, definitions, and methodologies for those two performance measures to require a count of licenses.

## Management's Response

*Detail reports, as of the reporting date will be centrally stored electronically in accordance with the swim lane diagrams [See Appendix 2 of this audit report for the diagram, labeled appendix A in the attachment] we have developed.*

*The Executive Director requested the needed changes of the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy on June 17, 2011.*

## Percent of New Individual Licenses Issued Online

The Department reported inaccurate results for Percent of New Individual Licenses Issued Online because it deviated from the performance measure

### Results: Inaccurate

A measure is inaccurate when the actual performance is not within 5 percent of reported performance, or when there is more than a 5 percent error in the sample of documentation tested. A measure is also inaccurate if the agency's calculation deviated from the measure definition and caused more than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

definition and methodology. According to ABEST, this performance measure should be calculated by dividing the number of new licenses, registrations, or certifications issued online to individuals by the total number of new licenses, registrations, or certifications issued to individuals for whom an online application was available during the reporting period. The Department incorrectly included new licenses, registrations, and certifications issued to individuals for whom an online application was not available.

As a result, the Department reported that 62.9 percent of new individual licenses, registrations, or certifications were issued online.

Auditors recalculated the performance measure according to the ABEST definition and methodology and determined that 80.2 percent of new individual licenses, registrations, or certifications were issued online.

### Recommendation

The Department should include only new licenses, registrations, and certifications issued to individuals for whom an online application was available in calculating the results for Percent of New Individual Licenses Issued Online, in accordance with the performance measure's definition and methodology in ABEST.

### Management's Response

*We concur. Implementation complete. We are now counting only renewals for which on-line renewal is available which results in a higher level of performance.*

## ***The Department Should Improve Certain Controls and Processes Over Its Enforcement Performance Measures***

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The Department reported reliable results for 1 (25 percent) of 4 key enforcement performance measures tested for fiscal year 2010. A result is considered reliable if it is certified or certified with qualification. Factors prevented certification of three performance measures because the Department deviated from the performance measure definitions and certain data contained in one of its enforcement systems was unreliable.

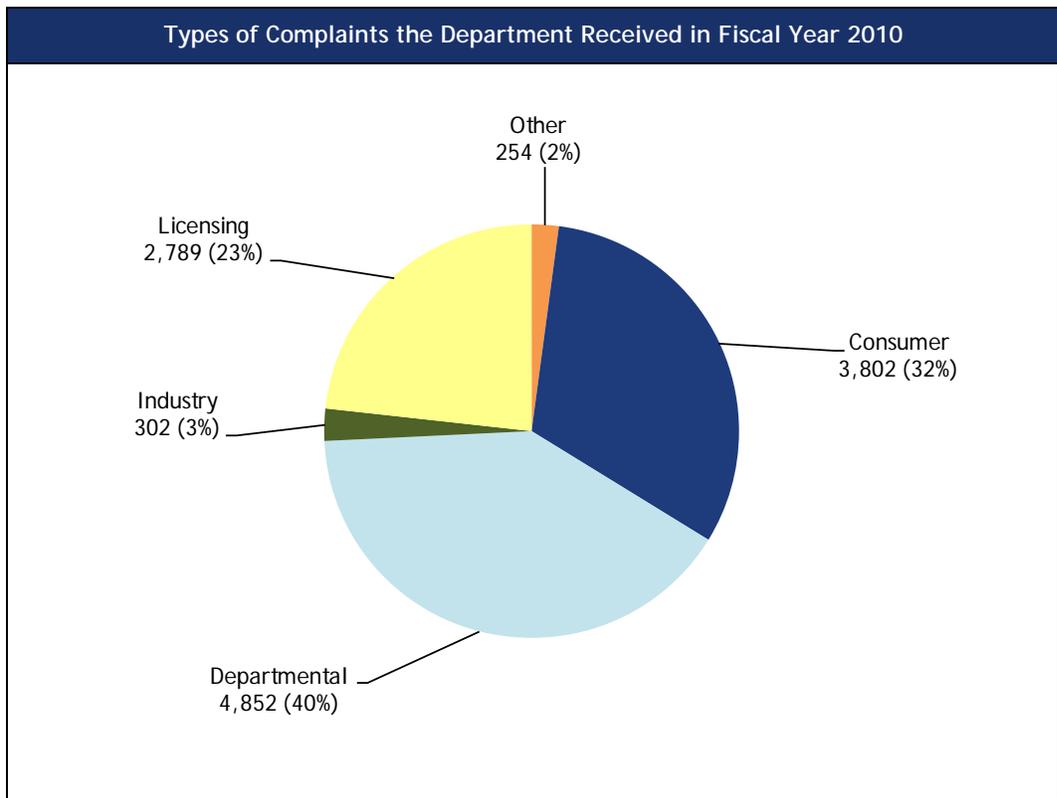
### **Background Information on Types of Complaints**

The Department included different types of internal and external complaints in its enforcement performance measure calculations. Of all complaints received in fiscal year 2010, 65 percent were generated internally by Department staff. Specifically, during fiscal year 2010:

- Departmental complaints, which occur when a Department inspector observes a violation and opens a legal proceeding against the licensee, were the most common, comprising 40 percent of the total complaints that the Department received in fiscal year 2010. Departmental complaints also include legal proceedings to collect unpaid fees owed to the Department.
- Consumer complaints were the second most common complaint. A consumer complaint is generated when a member of the general public files a complaint against someone working in an occupation that the Department regulates.
- Licensing complaints were the third most common complaint. A licensing complaint is created when the Department's licensing or enforcement division determines that a licensee has a criminal history conviction that may disqualify him or her from continued licensure and files a complaint to open an investigation. The Department's enforcement division also investigates applicants who may have a criminal history conviction that disqualifies them from licensure.

Figure 1 on the next page shows the types of complaints the Department received in fiscal year 2010.

Figure 1



Source: Unaudited data provided by the Department.

#### Key Measures

### Percent of Complaints Resulting in Disciplinary Action

#### Results: Certified with Qualification

A measure is certified with qualification when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A measure is also certified with qualification if agency calculation of performance deviated from the measure definition but caused less than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

The Department calculated this performance measure according to the performance measure methodology. This performance measure was certified with qualification because the control weaknesses discussed in Chapter 1 create a risk that the Department may report inaccurate results in the future. To ensure continued accuracy, the Department should implement the recommendations in Chapter 1.

Auditors tested a sample of 61 complaints closed during fiscal year 2010 and determined that 2 (3.3 percent) cases should not have been included in the performance measure's calculation. The Department incorrectly closed one complaint because the inspector left employment, but the complaint had not been resolved. The second case was a duplicate complaint that should not have been counted in the performance measure's calculation.

In addition, the ABEST methodology prescribes a calculation that contains a mathematical error. According to the methodology in ABEST, the performance measure should be calculated by dividing the total number of

disciplinary actions the Department issued for the reporting period by the total number of complaints the Department resolved minus the complaints it received from its licensing division during the reporting period. That methodology allows complaints from the licensing division that resulted in a revocation of a license to be reported in the numerator, but it does not allow those same types of complaints to be included in the denominator. This error could result in an overstatement of the percentage of complaints that resulted in disciplinary action.

Also, because the Department processes several types of complaints, the Department could help ensure consistency in how it reports this performance measure if it more clearly defined in ABEST the types of complaints that should be included in Percent of Complaints Resulting in Disciplinary Action. The Department has specified in the ABEST methodology the types of disciplinary actions it includes in the performance measure's calculation; however, it does not clearly specify the types of complaints that it includes in the calculations.

## Recommendations

The Department should:

- Revise its process for closing complaints to ensure that complaints remain open until they are fully investigated and duplicate complaints are excluded from its performance measure calculation.
- Work with the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy to:
  - ♦ Revise the methodology for Percent of Complaints Resulting in Disciplinary Action so that the reported results are accurate.
  - ♦ Document in ABEST the types of complaints that should be included in the performance measure's calculation.

## Management's Response

*We concur.*

*Please see the response in Chapter 1 regarding the complaint closing process and elimination of duplicates.*

*The Executive Director requested the needed changes of the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy on June 17, 2011.*

## Number of Complaints Resolved

## Number of Jurisdictional Complaints Received

## Average Time for Consumer Complaint Resolution (Days)

Factors prevented certification of these three performance measures because certain data in one of the Department's enforcement systems was not reliable. In addition, the Department did not follow the performance measures' definitions in ABEST by incorrectly including its criminal history investigations on unlicensed applicants in its performance measure calculations.

### Results: Factors Prevented Certification

A factors prevented certification designation is used if documentation is unavailable and controls are not adequate to ensure accuracy. This designation also will be used when there is a deviation from the measure definition and the auditor cannot determine the correct performance measure result.

The Department's calculations departed from the ABEST performance measure definitions because it counted the number of investigations it opened or closed, instead of counting the number of complaints it received or resolved as required by the ABEST definitions. As a result, the Department included its criminal history investigations on unlicensed applicants as complaints when calculating these performance measures. While the Department completes a significant amount of work by investigating the criminal histories of applicants, these investigations do not qualify as complaints because there is no accusation of a violation of the law, which is required for the Department to follow its complaint resolution process. Furthermore, because the ABEST performance measure definitions do not define a complaint and the Department excluded unlicensed applicant investigations in its calculation of one other key performance measure—Percent of Complaints Resulting in Disciplinary Action—auditors concluded that unlicensed applicant investigations also should be excluded from the following performance measures: (1) Number of Complaints Resolved, (2) Number of Jurisdictional Complaints Received, and (3) Average Time for Consumer Complaint Resolution (Days).

Auditors could not determine the extent of the Department's deviations from the correct results because one of the enforcement systems is not programmed with edit checks that require staff to enter a valid license number on which a complaint was filed. Auditors identified records containing invalid license numbers. As a result, auditors were not able to determine the number of criminal history investigations related to unlicensed applicants that should have been excluded from the performance measures' calculations.

In addition, the ABEST title, definition, and methodology for Average Time for Consumer Complaint Resolution (Days) are not consistent. The title indicates that only complaints from consumers should be included; however, the definition and methodology states that all types of complaints should be included in the performance measure. The definition and methodology also does not specify what date should be used as the starting date to calculate the performance measure. Currently, the Department uses the date on which it entered the complaint into one of its enforcement systems as the point in time

that the complaint begins to age. However, using the date on which it received the complaint may more accurately reflect the amount of time it took the Department to resolve the complaint.

Because the Department processes several types of complaints, the Department could help ensure consistency in how the performance measures are reported if it more clearly defined the types of complaints that should be included in Number of Complaints Resolved, Number of Jurisdictional Complaints Received, and Average Time for Consumer Complaint Resolution (Days).

## Recommendations

The Department should:

- Implement processes and controls to ensure that it can accurately:
  - ♦ Distinguish between complaints against current license holders and complaints against unlicensed applicants.
  - ♦ Record the license numbers related to the complaints against current license holders. Those controls could include edit checks that prevent its enforcement systems from accepting a complaint record related to a license holder without entering a valid license number.
- Ensure that it reports accurate results for its enforcement performance measures by either:
  - ♦ Excluding criminal history investigations on unlicensed applicants from its results for Number of Complaints Resolved, Number of Jurisdictional Complaints Received, and Average Time for Consumer Complaint Resolution (Days), in accordance with the ABEST definitions; or
  - ♦ Working with the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy to modify its existing performance measures and/or adding new performance measures to allow the Department to report on its criminal history investigations on unlicensed applicants.
- Work with the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy to:
  - ♦ Modify the ABEST information for Average Time for Consumer Complaint Resolution (Days) to (1) ensure consistency among the performance measure's title, definition, and methodology and (2)

specify the date that should be used as the starting date for calculating the performance measure.

- ♦ Document in ABEST the types of complaints the Department should include in Number of Complaints Resolved, Number of Jurisdictional Complaints Received, and Average Time for Consumer Complaint Resolution (Days).

### Management's Response

*We respectfully disagree with the auditor's conclusion that we incorrectly included criminal history investigations on unlicensed applicants as complaints. To exclude them would be to materially understate our workload. Our performance measure targets and history were both established counting all licensing complaints as complaints.*

*The eligibility provisions of a statute can be violated as well as the other substantive provisions of the statute and that is the basis for our complaint in those cases. [See Appendix 2 of this audit report for more information, labeled appendix F in the attachment.]*

*In the administrative actions which arise out of these complaints, we must prove our statutory authority to take the action. That authority is stated by the administrative law judge in the proposal for decision and in any order by the Commission. We are working with the Legislative Budget Board and the Governor's Office of Budget Planning and Policy to address your concerns.*

*We also respectfully disagree with the auditor's conclusion that we did not follow the definition by counting investigations opened and investigations closed instead of jurisdictional complaints received and complaints resolved in the calculation. When we know that something received is a jurisdictional complaint we open an investigation and when a complaint is resolved, it is closed. Those are the events we store and report.*

*The Executive Director requested the needed changes of the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy on June 17, 2011.*

## ***The Department Should Improve Certain Controls and Processes Over Its Compliance Performance Measures***

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The Department reported reliable results for 2 (66.7 percent) of 3 key compliance performance measures tested for fiscal year 2010. A result is considered reliable if it is certified or certified with qualification. Factors prevented the certification of one key compliance performance measure because the Department was not able to provide reliable, detailed supporting documentation necessary to validate the Department's reported results.

In addition, the Department did not have policies and procedures that contained sufficient details to ensure the continued accuracy of the Department's reported performance measures. Because several employees provide input to calculate the Department's compliance performance measures, it is important that the Department maintain detailed policies and procedures to ensure accurate and consistent reporting of its performance measures.

### **Recommendation**

The Department should develop policies and procedures that contain sufficient detail to ensure continued accuracy of reporting its compliance performance measures.

### **Management's Response**

*We concur.*

*As a result of the audit, we have analyzed and modified our data entry and reporting processes. We developed swim lane diagrams [See Appendix 2 of this audit report for the diagram, labeled appendix D in the attachment] to visually group sub processes by the responsible parties. We have added or strengthened data validation, documentation and centralized data storage controls. The diagrams create the framework for division specific policies and procedures which are scheduled to be completed by the compliance division director in the first quarter of fiscal year 2012. Periodic data input validation, reported data validation, documentation of validation and the centralized storage of detail reports as of the reporting date will result.*

## Percent of Architectural Barrier Building Plan Reviews Completed within 30 Days

The Department calculated this performance measure correctly because it reported results that were within 5 percent of the actual results. This performance measure was certified with qualification because the control weaknesses discussed in Chapter 1 create a risk that the Department may

report inaccurate results in the future. To ensure continued accuracy, the Department should implement the recommendations in Chapter 1.

### Results: Certified with Qualification

A measure is certified with qualification when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A measure is also certified with qualification if agency calculation of performance deviated from the measure definition but caused less than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

In addition, the Department did not follow the ABEST performance measure definition and methodology because it used a mathematically unsound method to calculate this performance measure. The Department averaged the quarterly results (which were averaged from the monthly results), instead of obtaining the total number of reviews for the year and then calculating the percentage completed within 30 days based on that total. The flawed methodology did not result in an error rate greater than 5 percent.

The Department reported correct results for all 61 architectural barrier building plan reviews completed in fiscal year 2010 that auditors tested. However, auditors identified several instances in which the dates in the Department's information system did not match the dates on the supporting documentation. This is important because the Department uses the dates in its information system to determine whether a review was completed within 30 days.

The performance measure's title, definition, and methodology in ABEST are not consistent. The definition limits the performance measure to only those architectural barrier building plan reviews that the Department performed. The title and methodology, however, do not limit the types of reviews that should be included. Because the Department regulates architectural barrier building plan reviews that third parties perform, it should clarify this performance measure's title, definition, and methodology in ABEST so all three components of the performance measure refer to the same population of reviews. Currently, the Department is including only reviews that it completed, which the Department estimates is approximately 5 percent of the total architectural barrier reviews completed overall.

## Recommendations

The Department should:

- Calculate Percent of Architectural Barrier Building Plan Reviews Completed within 30 Days based on the total number of reviews for the year, as required by the performance measure's definition and methodology in ABEST.
- Ensure that the dates in its compliance system used to calculate Percent of Architectural Barrier Building Plan Reviews Completed within 30 Days are correct and match the dates on the supporting documentation.
- Work with the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy to clarify the ABEST title, definition, and methodology to consistently define the types of reviews that should be included in Percent of Architectural Barrier Building Plan Reviews Completed within 30 Days.

## Management's Response

*We concur.*

*The procedures to be adopted pursuant to the swim lane diagrams [See Appendix 2 of this audit report for the diagram, labeled appendix D in the attachment] we developed are scheduled to be completed by the Director of Compliance in the first quarter of fiscal year 2012. They will include procedures to enter the actual completion date of projects when they are known.*

*The Executive Director requested the needed changes of the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy on June 17, 2011.*

## Percentage of Boilers Inspected for Certification within Appropriate Timelines

### Results: Certified with Qualification

A measure is certified with **qualification** when reported performance appears accurate but the controls over data collection and reporting are not adequate to ensure continued accuracy. A measure is also certified with qualification when controls are strong but source documentation is unavailable for testing. A measure is also certified with qualification if agency calculation of performance deviated from the measure definition but caused less than a 5 percent difference between the number reported to ABEST and the correct performance measure result.

The Department calculated this performance measure correctly because it reported results that were within 5 percent of the actual results. This performance measure was certified with qualification because the control weaknesses discussed in Chapter 1 create a risk that the Department may report inaccurate results in the future. To ensure continued accuracy, the Department should implement the recommendations in Chapter 1.

In addition, the Department did not follow the ABEST performance measure definition and methodology because it used a mathematically unsound method to calculate this performance measure. The Department averaged the quarterly results (which were averaged from the monthly results), instead of obtaining the total number of inspections for the year and calculating the percentage completed within 30 days based on that total. The flawed methodology did not result in an error rate greater than 5 percent.

The Department deviated from the performance measure's definition and methodology in ABEST by including inspections that occurred outside the fiscal year and excluding some inspections that occurred during the fiscal year. The Department reported results for boiler inspections that occurred between June 1, 2009, and May 31, 2010. According to the December 2009 Legislative Budget Board report *Performance Measure Reporting in ABEST*, agencies should report performance measures using the state fiscal year, which begins September 1 and ends August 31. The Department asserted that it reported results for a different time period because it lacks complete information about third-party inspections at the end of the fiscal year. Specifically, the Texas Health and Safety Code allows third-party inspectors 30 days to submit their reports to the Department. In addition, the Department estimates it takes approximately 45 days to review third-party inspection reports. As a result, the Department does not complete processing third-party inspections conducted during the last quarter of a fiscal year until the first quarter of the following fiscal year.

Also, the performance measure's definition and methodology in ABEST contradict each other. The definition states that the performance measure should be calculated by dividing the total number of Department-conducted and third-party-conducted inspections that were completed within 30 days after the certificate of expiration date by the total number of boiler inspections completed during the reporting period. However, the methodology states that the performance measure should be calculated by dividing the total number of inspections that were completed within 30 days after the certificate of expiration date by the total number of boiler inspections due during the reporting period. The Department calculated this performance measure by

using the total number of boiler inspections completed during the reporting period.

## Recommendations

The Department should:

- Calculate Percentage of Boilers Inspected for Certification within Appropriate Timelines based on the total number of inspections for the year, as required by the performance measure's definition and methodology in ABEST.
- Work with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy:
  - ♦ To ensure that the time period of reported inspections matches the time period required in ABEST.
  - ♦ To clarify the ABEST definition and methodology to consistently refer to the same calculation required for Percentage of Boilers Inspected for Certification within Appropriate Timelines.

## Management's Response

*We concur.*

*The Executive Director requested the needed changes of the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy on June 17, 2011.*

## Inspection Coverage Rate

Factors prevented certification of this performance measure because the Department was not able to provide reliable, detailed supporting documentation to validate the summary documentation it retained for three of the inspections types it included in the reported results. Specifically, the

### Results: Factors Prevented Certification

A factors prevented certification designation is used if documentation is unavailable and controls are not adequate to ensure accuracy. This designation also will be used when there is a deviation from the measure definition and the auditor cannot determine the correct performance measure results.

### Types of Inspections the Department Regulates

- Architectural barriers.
- Barber and cosmetology establishments.
- Boilers.
- Combative sporting events.
- Elevators.
- Industrialized housing and buildings.
- Tow trucks, operators, and vehicle storage facilities.

Department could not provide the following information:

- Inspections of barber and cosmetology booths. During its inspections, the Department does not capture sufficient information to uniquely identify the booths that it inspected.
- Inspections of boilers. The data the Department provided to auditors for the number of boilers inspected varied significantly from the amount that it had originally reported to ABEST. The Department reported to ABEST that it and third parties completed 19,677 boiler inspections during fiscal year 2010; however, detailed reports that the Department provided to auditors based on the data in its information system indicated that it and third parties completed 24,812 inspections. The Department was not able to reconcile the populations provided to auditors with the results reported in ABEST.
- Inspections of industrialized housing and buildings. The Department could not provide sufficient information to recreate the total number of inspections the Department conducted because those inspections were tracked during the year on a paper calendar that the Department did not retain.

According to the *Guide to Performance Measure Management* (State Auditor's Office Report No. 06-329, August 2006), the Department should retain adequate documentation of performance measure data to support the reported performance for the fiscal year reported plus three years in accordance with the State's records retention schedule.

Additionally, the Department did not follow the ABEST definition and methodology when it calculated its results because of the following issues:

- To determine the total number of inspections required, the Department used the targeted amount listed in the General Appropriations Act (81st Legislature) instead of using the inspection data stored in its compliance systems. According to the ABEST definition, this performance measure is calculated by dividing the total number of inspections completed by Department and third-party inspectors by the total number of inspections required. The methodology in ABEST describes inspections required as "the number of inspections projected, in all regulated industries,

forwarded (carried over) from previous period, plus the number of new inspections coming due during the current reporting period.”

- The Department included inspections that occurred outside the fiscal year and excluded some inspections that occurred during the fiscal year for two of the seven types of inspections it reported. Specifically, the Department reported boiler inspections that occurred between June 1, 2009, and May 31, 2010, due to the reasons discussed above. In addition, the Department reported industrialized housing and building inspections that occurred between August 1, 2009, and July 31, 2010. According to the Legislative Budget Board, agencies should report performance measures using the State’s fiscal year, which begins September 1 and ends August 31.

## Recommendations

The Department should:

- Retain detailed, reliable supporting documentation, in paper or electronic form, for performance measures for the fiscal year reported plus three years in accordance with the State’s records retention schedule.
- Work with the Legislative Budget Board and the Governor’s Office of Budget, Planning, and Policy to ensure that the time period of reported inspections matches the time period required in ABEST.
- Follow the definition and methodology in ABEST when calculating Inspection Coverage Rate by using the data it retains in its information systems, databases, and spreadsheets to calculate the number of inspections required.

## Management’s Response

*We concur.*

*The Director of Compliance is revising the Barber and Cosmetology inspection reports to require the entry of the license numbers for the booth renters in the shops/salons inspected rather than just the number of booth renters inspected. The procedure is scheduled to be in place by the end of the first quarter of fiscal year 2012.*

*The Executive Director requested the needed changes of the Legislative Budget Board and the Governor’s Office of Budget, Planning and Policy on June 17, 2011.*

## The Department Should Improve Its Controls Over Its Information Systems

Overall, the Department's general information technology controls and application controls were adequate to ensure that the data in its systems was reliable with some exceptions. Specifically, the Department's general and application information technology controls contained weaknesses that could cause data reliability issues in the areas of change management, data backup and recovery, user management, and physical security. Identified instances of unreliable data were reported in Chapters 1 through 4 of this report.

The Department uses multiple systems, databases, and spreadsheets to calculate and report performance measures.

The Department uses 6 separate information systems, 2 databases, and 5 spreadsheets to collect, calculate, and report the 14 performance measures tested. Table 2 lists the systems, databases, and spreadsheets the Department used to report its performance measures in fiscal year 2010 and a brief description of the data in each system.

Table 2

Systems, Databases, and Spreadsheets The Department Used to Calculate and Report Performance Measures for Fiscal Year 2010	
Licensing and Compliance	
Name of System, Database, or Spreadsheet	Data in System, Database, or Spreadsheet
Texas Umbrella Licensing Information Project	<ul style="list-style-type: none"> <li>▪ Licensing data for 121 license types.</li> <li>▪ Inspection data for elevators, barbers, and cosmetologists.</li> </ul>
Architectural Barrier System	<ul style="list-style-type: none"> <li>▪ Licensing, inspection, and review data for architectural barrier registrations.</li> </ul>
Licensing and Regulation System	<ul style="list-style-type: none"> <li>▪ Licensing data for 12 license types.</li> </ul>
Boiler System	<ul style="list-style-type: none"> <li>▪ Certification and inspection data for boilers.</li> </ul>
Texas Occupations Online Licensing System	<ul style="list-style-type: none"> <li>▪ Certification and inspection data for vehicle storage facilities and tow truck companies.</li> </ul>
Industrialized Housing and Buildings Access Database	<ul style="list-style-type: none"> <li>▪ Licensing and inspection data for industrialized housing and buildings.</li> </ul>
Five Excel Spreadsheets	<ul style="list-style-type: none"> <li>▪ Licensing data for six types of licenses or permits.</li> <li>▪ Inspection data for combative sports events.</li> </ul>
Enforcement	
Name of System or Database	Data in System or Database
Complaint Intake and Monitoring System	<ul style="list-style-type: none"> <li>▪ Complaints and investigations data.</li> </ul>
Final Orders Access Database	<ul style="list-style-type: none"> <li>▪ Data on orders issued against license, certificate, and registration holders.</li> </ul>

Source: Data provided by the Department.

According to the Department, it does not always have the resources to immediately consolidate acquired databases into its Texas Umbrella Licensing Information Project system when it acquires additional monitoring responsibilities. The Department is replacing its existing enforcement system and database with a new consolidated Legal Files system. The Department's overall plan is to incorporate all licensing and compliance systems into the Texas Umbrella Licensing Information Project system.

The Department should strengthen its controls over the entry and processing of data.

Most of the Department systems used for performance measure reporting contain controls over data input and processing to prevent data entry errors. However, auditors identified some control weaknesses, discussed in Chapter 1 through 4, that the Department should address to comply with the Texas Administrative Code (see text box) and to decrease the risk of data errors.

**Excerpts from Title 1, Texas  
Administrative Code, Chapter 202**

Managing Data (Section 202.21)

(E) [It is management and staff's responsibility to] confirm that controls are in place to ensure the confidentiality, integrity, and availability of data.

Managing Changes (Section 202.25)

(6)(B) Information security and audit controls shall be included in all phases of the system development lifecycle or acquisition process.

Additionally, the Department does not have a process to reconcile data across its licensing and enforcement systems to ensure that the data is consistent and complete. For example, the Department does not reconcile the data in its licensing and enforcement systems to ensure that revoked or suspended licenses are not still listed as active in its licensing systems. This increases the risk that the Department could renew a license to an individual who should not have an active license.

The Department should improve certain general and application controls.

**Program change management.** The Department does not have a formal change management process for programming changes to its systems. This weakness was identified for the Texas Umbrella Licensing Information Project system in an August 2006 State Auditor's Office report.<sup>1</sup> Programmers have access to change applications and data, which increases the risk that they could make unauthorized changes to applications and data without detection. The Department informally requires all programming changes to be approved through a help desk system and be made in a test environment prior to moving the changes to production. However, the Department does not verify that all changes were tested and approved prior to implementation. Also, it has not developed documented policies and procedures for this process to help ensure that all system modifications are developed, documented, and tested.

**Backup and recovery.** The Department has not tested its disaster recovery plan in accordance with Title 1, Texas Administrative Code, Chapter 202, and it does not routinely test its ability to restore its data using its database backup

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<sup>1</sup> See *An Audit Report on the Department of Licensing and Regulation* (State Auditor's Office Report No. 06-053, August 2006).

files. The Department also has not developed documentation of its information resources backup and recovery processes for each system in accordance with its internal policies and procedures. It is important that the Department test the restoration of its databases from its backups on a routine basis to ensure that it can recover vital information in the event of data corruption or other unanticipated problem.

**Access management.** The Department has appropriate controls to prevent unauthorized access to its network; however, it should strengthen its controls over user access to its applications. All of the systems the Department uses that are significant to reporting performance measure results contained weaknesses in user access and password controls. In addition, the Department does not periodically review access to its information technology resources as required by its internal policies and procedures.

**Physical security.** The Department did not properly control physical access to its server room. Auditors identified 904 badges that allowed inappropriate access to the server room. The individuals with inappropriate badge access included state troopers, sergeants, maintenance, custodians, and Team for Texas employees. When auditors brought this weakness to the Department's attention, it immediately took action to remove all inappropriate access to the server room.

## Recommendations

The Department should:

- Develop and implement a documented process to reconcile data among its licensing and enforcement systems to ensure that the data is consistent and complete across those systems.
- Limit programmer access to the production database and source code for its information systems.
- Document its change management policies and procedures to help ensure that all system modifications are developed, documented, and tested as required.
- Test its disaster recovery plan and the restoration of its databases on a routine basis.
- Document its information resources backup and recovery process for each system.
- Monitor user access to its systems and appropriately modify or remove access when users' employment or job responsibilities within the Department change.

- Ensure that each system is programmed to enforce a password policy that meets the Department's internal policies and procedures.
- Monitor physical access to mission-critical computer equipment to protect information resources from unauthorized access, use, modification, or destruction.

## Management's Response

*We concur.*

*A system will be developed by September 1, 2011 to reconcile data in the Enforcement and Licensing systems to ensure the process for revoked and suspended licenses is complete. Final sign-off of the reconciliation will be the responsibility of the Director of Licensing.*

*TDLR's efficient licensing systems are dependent upon the ability of our programmers to remedy database issues. Any risk is balanced by the need to deliver excellent customer service. With this track record of efficiency, the Department will continue to allow programmers immediate access to alleviate database discrepancies but will enforce strict password guidelines for the agency's database source code.*

*In addition to the password restrictions will also establish a mandatory test environment, as well as, final sign off prior to any changes going to production. This will be accomplished by a formal change management system which will be implemented by the second quarter of FY 2012. The Change Management system will be strictly enforced by the Director of Information Systems Development (ISD).*

*The Agency, through our Data Center Services Contractor, conducted a successful Table Top Disaster Recovery exercise on June 22, 2011 [See Appendix 2 of this audit report for additional information, labeled appendix E in the attachment]. Management has formally requested that the Data Center Services contractor conduct a true Disaster Recovery test on TDLR's systems. We anticipate this exercise taking place within 6 months. Agency databases will be periodically restored and all restores will be logged. A complete backup and restore process will be implemented by first quarter FY 2012. This process is the responsibility of the Director of ISD and the Director of Network Services.*

*TDLR's Network Services (NS) division will purchase Admin Report Kit for Windows Enterprise to monitor user access of systems which will be in full operation by the end of the second quarter of FY 2012. The Director of NS will be responsible for monitoring the product's use and reporting to Executive Management quarterly.*

*All mission-critical computer equipment and rooms are monitored with electronic badge entry sensors and video surveillance. Access to agency locations is authorized by a third-party, the Texas Department of Public Safety (DPS). The agency informs DPS of TDLR employees authorized to access certain areas dependent upon job responsibilities. The Director of Network Services has asked DPS to provide a quarterly report regarding access privileges for mission-critical locations and ask that the number of non-TDLR employees with access be limited.*

# Appendices

Appendix 1

## **Objectives, Scope, and Methodology**

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### **Objectives**

The objectives of this audit were to determine whether the Department of Licensing and Regulation (Department):

- Is accurately reporting its performance measures to the Automated Budget and Evaluation System of Texas (ABEST).
- Has adequate controls in place over the collection, calculation, and reporting of its performance measures.

### **Scope**

The scope of this audit included 14 key performance measures the Department reported for fiscal year 2010. Auditors reviewed controls over the submission of data used in reporting performance measures and traced performance measure information to the original source documents when possible.

### **Methodology**

Auditors tested all 14 key performance measures that the Department reported in ABEST for fiscal year 2010. The Department completed questionnaires related to its performance measurement process to help identify preliminary control information.

Auditors assessed the reliability of Department data by (1) performing electronic testing of data extractions to identify obvious errors in completeness and accuracy; (2) observing controls over data integrity in the systems, databases, and spreadsheets used to report performance measures, such as edit checks, if implemented; (3) reviewing existing information about the data and the systems that produced the data; and (4) performing access control testing. In addition, auditors traced a random sample of data to source documents when source documentation was available. Auditors determined that the data was sufficiently reliable for the purposes of this report, with the exception of some data in the enforcement system (see Chapter 3 for additional information).

Information collected and reviewed included the following:

- Documentation supporting the Department's calculation of each performance measure tested.

- Hard-copy files, including licensee files for licensing performance measures, complaint files for enforcement performance measures, and architectural barriers and boiler files for compliance performance measures.
- Performance measure data stored in multiple information systems, databases, and spreadsheets.
- Program code for database performance measure calculations.
- Regulated industry background information from the Department's Web site.

Procedures and tests conducted included the following:

- Auditing calculations for accuracy and to determine whether the calculations were consistent with the methodology on which the Department, the Legislative Budget Board, and the Governor's Office of Budget, Planning and Policy agreed.
- Analyzing data flow to evaluate whether proper controls were in place.
- Testing a sample of documents to verify the accuracy of reported performance when possible.
- Conducting high-level reviews of the information systems, databases, and spreadsheets that support performance measure data.
- Assessing performance measure results in one of four categories: certified, certified with qualification, inaccurate, and factors prevented certification.
- Interviewing Department staff to gain an understanding of the process used to calculate performance measures.
- Evaluating the sufficiency of policies and procedures to determine whether they were adequate to help ensure the correct calculation of performance measures.

Criteria used included the following:

- *The Guide to Performance Measure Management* (State Auditor's Office Report No. 06-329, August 2006).
- *Submitting Performance Measure Definitions in ABEST* (Legislative Budget Board Report, April 2008).
- *Performance Measure Reporting in ABEST* (Legislative Budget Board Report, December 2009).

- ABEST performance measure definitions.
- Department policies and procedures.
- Title 1, Texas Administrative Code, Chapter 202.
- General Appropriations Act (81st Legislature).
- Texas Occupations Code, Chapters 51 and 53.
- Texas Health and Safety Code, Chapter 755.

### **Project Information**

Audit fieldwork was conducted from March 2011 through May 2011. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Tracy Jarratt, CPA (Project Manager)
- Scott Ela, CPA, CIA (Assistant Project Manager)
- Erin Cromleigh, CGAP
- Michelle Lea DeFrance, CPA
- Namita Pai, CPA
- Michelle Ann Duncan Feller, CPA, CIA (Quality Control Reviewer)
- James Timberlake, CIA (Audit Manager)

## The Department's Letter and Attachment to Its Management Responses

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The following is the letter and attachment that the Department of Licensing and Regulation (Department) submitted as part of its management responses to the findings and recommendations in this audit report.



### TEXAS DEPARTMENT OF LICENSING AND REGULATION

P.O. Box 12157, Capitol Station • Austin, Texas 78711  
512-463-3173 • fax 512-475-2874 • [www.license.state.tx.us](http://www.license.state.tx.us)

July 12, 2011

John Keel  
State Auditor  
P.O. Box 12067  
Austin, Texas 78711-2067

Dear Mr. Keel:

I want to thank your team for its work on this audit. We concur with the findings except as detailed in our response. As a result, we will be establishing enhanced internal controls over the next few months. We have already requested that the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy harmonize our performance measure elements with the measures purposes. These requested changes and enhanced internal controls will result in improvements in our data collection and reporting processes.

We are making the changes needed to improve our processes and measures and request a follow up audit as soon as the second quarter of fiscal year 2012, prior to the convening of the 83<sup>rd</sup> Texas Legislature.

Sincerely,

A handwritten signature in blue ink that reads "William H. Kuntz, Jr.".

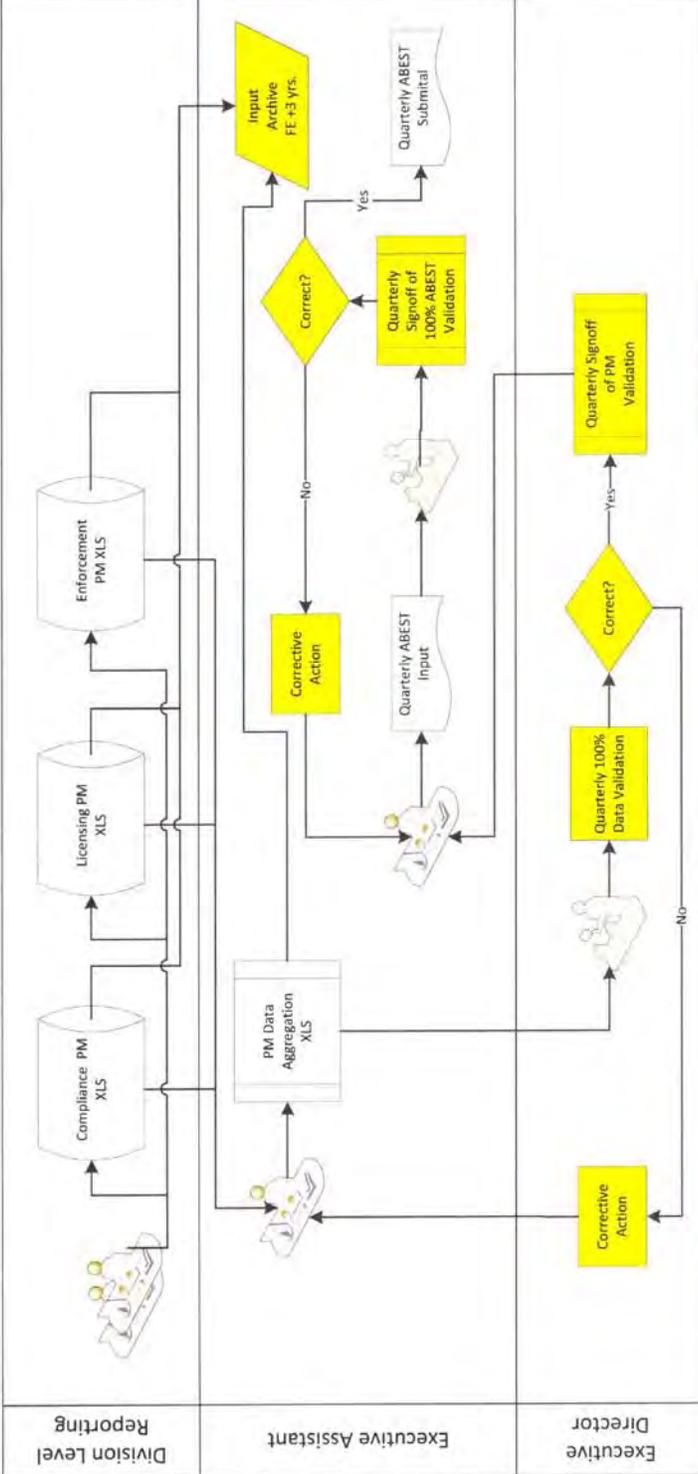
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation

Attachments

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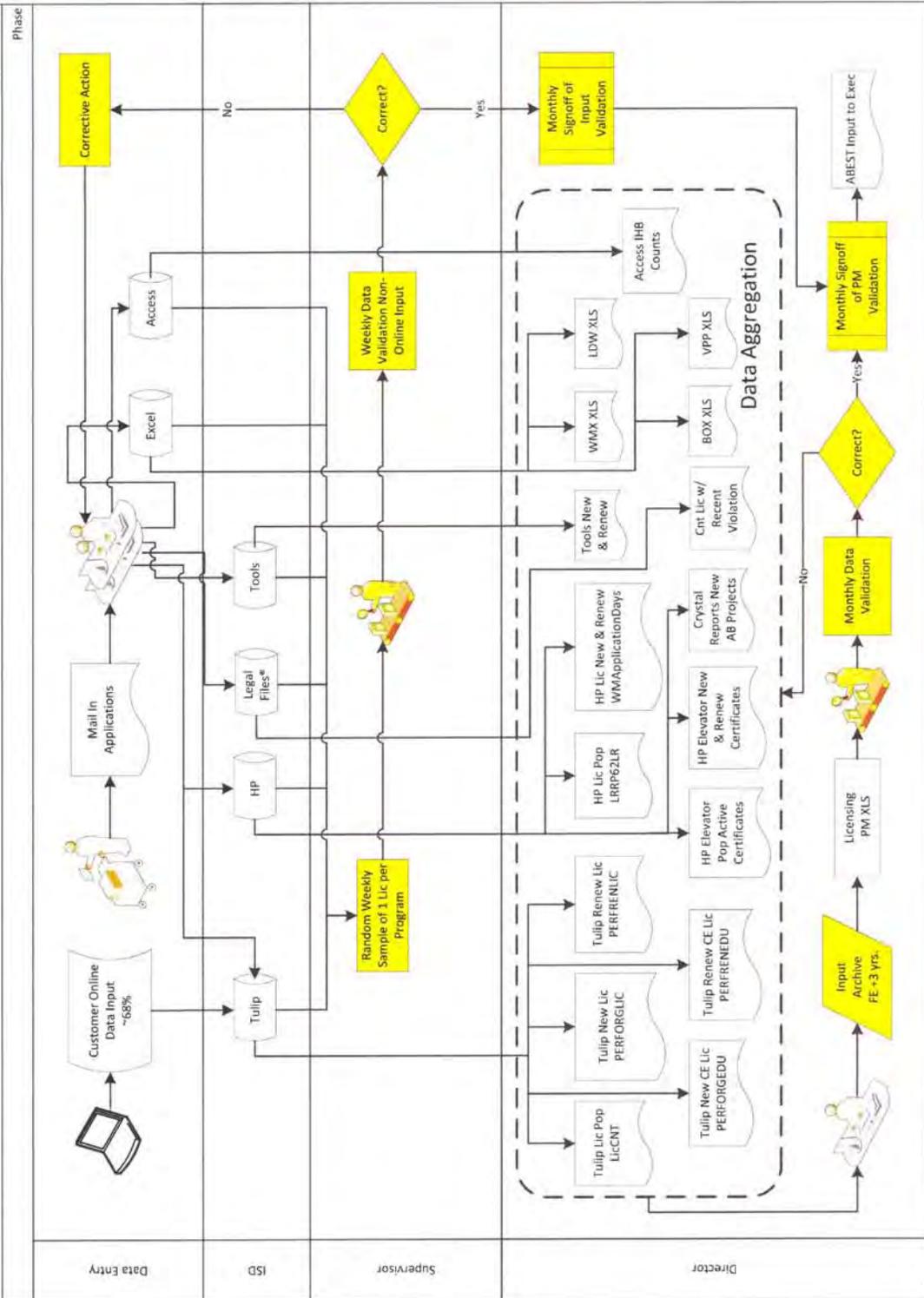
*Frank S. Denton, Chair – Conroe, Texas*  
*Mike Arismendez – Shallowater, Texas*  
*LuAnn Morgan – Midland, Texas*  
*Fred Moses – Plano, Texas*  
*Lilian Norman-Keene – Taylor Lake Village, Texas*  
*Ravi Shah – Carrollton, Texas*  
*Deborah A. Yurco – Austin, Texas*

Appendix A To Be ABEST Data Entry

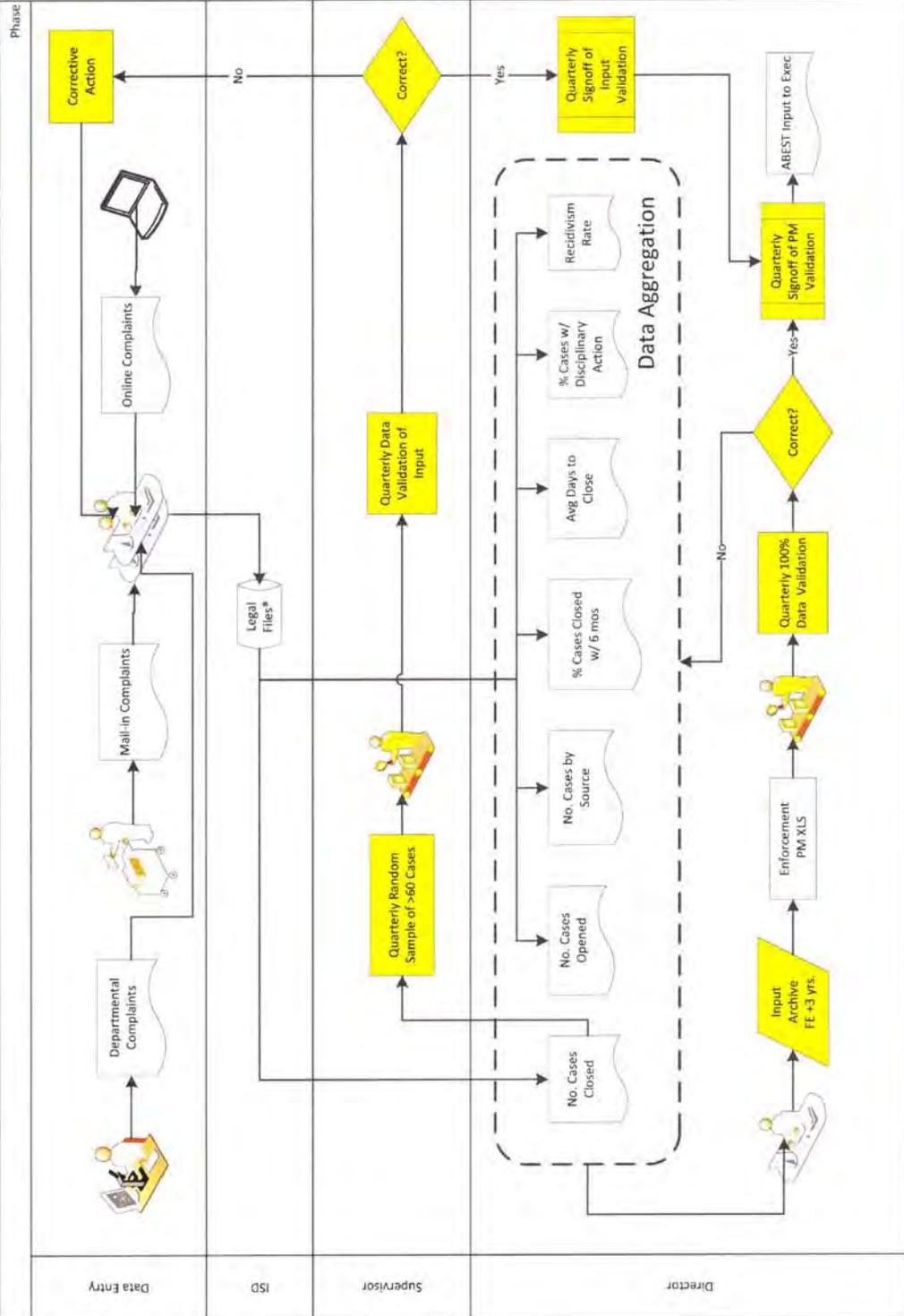


Yellow highlights represent improved processes

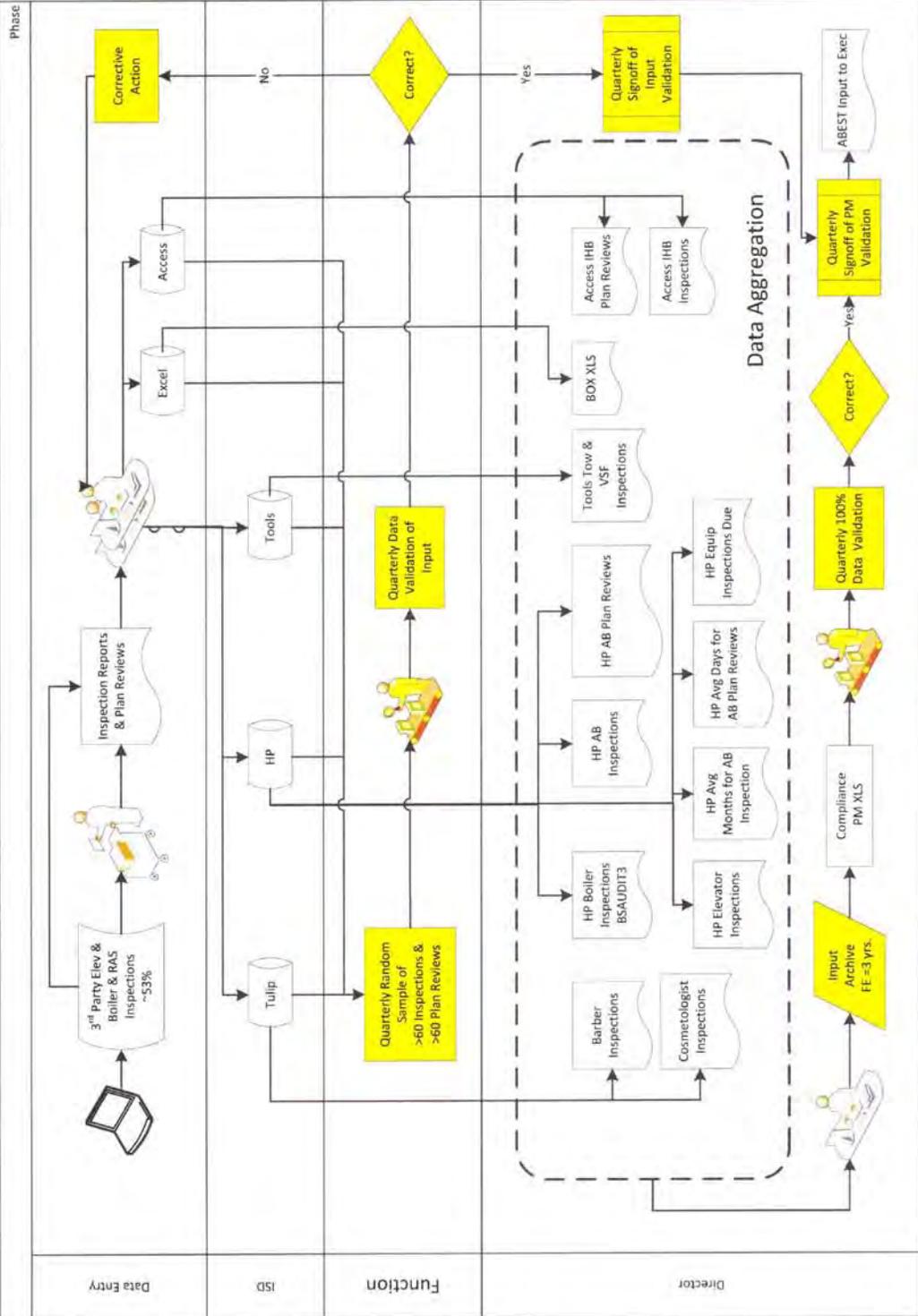
**Appendix B To Be Licensing LBB Performance Measurement Process**



Appendix C To Be Enforcement LBB Performance Measurement Process



Appendix D To Be Compliance LBB Performance Measurement Process



## Appendix E

### Backup and Recovery

- On June 22nd 2011 TDLR's Network Services and Information Software Development Divisions along with representation from the existing Data Center Services vendor conducted a DR (Disaster Recovery) table-top exercise. The exercise took the following steps to ensure we all knew what actions to take:
- The DR Coordinator declared the disaster scenario and initiated contact with both the offsite storage vendor and DR site. In the event of a true disaster the tapes would be dispatched to that site.
- The BCRS (Business Continuity and Recovery Services) Project Manager in Bolder Colorado gave a high level overview of their processes including delivery of equipment required for TDLR systems and the restoration to Operating System levels. Approximate time 24 hrs.
- IBM and Unisys networking then explained their process to verify WAN connectivity between locations
- TDLR Network services explained their process to verify network routes were in place and that traffic is following the correct paths.
- Unix Team then explained their process to bring the Tivoli Backup System online at the BCRS location and using media of TDLR's backup systems would bring up and prepare to hand of the systems to the Backup Administrator.
- Backup Administrator would then follow pre-determined order to restore TDLR systems to a state where they can be handed over to the System Admins.
- System Admins will utilize the Server Run Books to configure the systems i.e. ensure Operating System Patch levels are current, services are configured, partitions are sized correctly. Once all steps have been followed the servers are handed over to the agency.
- Agency along with the IBM Database Administrators then walked through their steps of how they will bring up the application databases, verify user access then test each system.

## Appendix F

### Criminal Background Cases

A criminal background case is a complaint filed with Enforcement by the Licensing Division. Licensing conducts the initial screen of applicants' criminal histories, obtained from the Department of Public Safety for all original and renewal applications filed by individuals. This screening is performed with reference to the agency's Criminal Conviction Guidelines, promulgated pursuant to Occupations Code Section 53.025. Applicants with convictions that appear to fall within the guidelines are referred to Enforcement for investigation of the criminal background and possible denial of the license. Under the agency's functional alignment, Enforcement is the division responsible for investigating possible statutory violations and instituting legal actions to impose penalties or sanctions upon individuals and entities regulated by the Department.

Enforcement receives complaints from a variety of sources, both inside and outside the agency. A criminal background complaint is no different from any other internal complaint. Many internal complaints are referred by the Compliance Division. These include complaints based on inspections of Cosmetology salons, inspection fee collection cases arising from Architectural Barriers projects, complaints against building owners who have failed to correct deficiencies as required by the Elevator statute, and complaints against Combative Sports promoters suspected of acting unlawfully. Some internal complaints are filed by the Education and Examinations Division, relating to applicants' conduct during licensing examinations. Some internal complaints are also filed by field investigators within the Enforcement Division, who discover violations through sting operations and other proactive investigative techniques.

Criminal background cases are investigated and resolved according to standard processes, the same as all other cases. The amount of work involved and the movement of the case through the Enforcement Division is no different from any other complaint. An intake function is performed, an investigation is performed, and then a prosecutor review is performed to determine the manner in which the case should be resolved.

Enforcement follows standard procedures for the investigation and resolution of all complaints, regardless of their source. Specialized procedures have been created for certain types of cases, to allow for more expeditious processing. Procedures for all cases, including criminal background cases, are reflected in Enforcement's Complaint Resolution Procedures Manual. Similarly, standardized screens have been created in Legal Files, our complaint tracking database, to record data about all types of complaints. Specialized screens have been created for certain types of cases that involve data that is out of the ordinary. Criminal background complaints are recorded in Legal Files, the same as all other complaints.

In determining whether to characterize a matter as a complaint, the scope should not be so narrow as to require a communication from someone outside the agency. The analysis should be, if the public did know about a situation would they complain? In the context of criminal backgrounds of license applicants, experience shows the answer is a resounding yes. Members of the public do complain when they find out about licensees and license applicants with criminal convictions.

1) a violation has not occurred

In criminal background cases, the possible violation is the applicant's lack of eligibility for the license. Eligibility requirements are set in the individual program statutes and in Chapters 51 and 53 of the Occupations Code. Chapter 53 applies to all licensing agencies, and is the primary driver of the criminal background analysis. Section 53.021(a)(1) states, "A licensing authority may suspend or revoke a license, [or] disqualify a person from receiving a license... on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation." Several provisions of Chapter 51, TDLR's enabling statute, set out additional eligibility requirements relating to an applicant's criminal background. Section 51.4012(a) states, "Notwithstanding any other law, the commission may determine that a person is not eligible for a license based on the person's criminal history or other information that indicates that the person lacks the honesty, trustworthiness, and integrity to hold a license issued by the department." Section 51.356(a) states, "The commission may deny, suspend, revoke, or refuse to renew a license... if the commission determines that a deferred adjudication makes the person holding or seeking the license unfit for the license."

In criminal background cases, an investigation is conducted to determine whether the applicant is eligible for the license in accordance with the specific requirements set out in those statutes. This is similar to a case arising from a consumer complaint, where an investigation is conducted to determine whether the respondent has acted in accordance with the practice-related portions of the statutes. In both types of cases, the possible violation being investigated is whether a person's conduct or circumstances comply with specific statutory provisions. And in both instances, if the person's conduct is found to be not in compliance with the applicable statutory scheme, consequences will follow in the context of a formal legal process.

The auditor seems to be arguing that a "violation" may exist only with regard to the substantive, practice-related portions of our statutes. This is incorrect. The eligibility provisions may also be violated. For example, some of our licensees are required to maintain insurance or other forms of financial security. Before the agency will grant a license, the applicant must demonstrate that the insurance is in place. If the applicant fails to do so, the agency will deny the license due to the applicant's failure to satisfy the eligibility requirement. Specific due process rights, including the right to a hearing, are available to the applicant at this time if he chooses to take advantage of them. If the applicant demonstrates insurance initially and obtains the license, and then later drops or loses the insurance, the agency will take action to revoke the license. Here again, the basis for the

revocation is the violation of the eligibility provision relating to insurance. And here again, due process rights are available to the licensee.

The analysis is the same with regard to criminal background checks. A satisfactory criminal background is an eligibility requirement that must be demonstrated at the time of application and must be maintained after a license is granted. If this eligibility requirement is not satisfied at either of those stages, the consequence of that violation will be denial or revocation of the license.

2) no disciplinary action can be taken

The denial of a license is a disciplinary action, just the same as revocation of a license or imposition of an administrative penalty. Chapter 51, TDLR's enabling statute, spells out the types of disciplinary actions the agency may take. There are two categories: administrative penalties and sanctions. Sanctions include the denial of a license. See section 51.353(a), which states: "The commission may deny, revoke, suspend, or refuse to renew a license or may reprimand a license holder for a violation of this chapter, a law establishing a regulatory program administered by the department, or a rule or order of the commission or the executive director."

The denial of a license is a disciplinary action, the same as license revocation or imposition of a penalty, because the applicant has the same due process rights as does the respondent in a case for penalties or sanctions. The Administrative Procedures Act (APA), found at Chapter 2001 of the Government Code, sets out the baseline due process rights that must be provided in all contested cases before administrative agencies. The APA defines "contested case" as a proceeding in which the "legal rights, duties, or privileges of a party" are determined. See APA section 2001.003(1).

Criminal background cases clearly fall within this definition. If an applicant is found ineligible for a license due to his criminal history, the agency may take action to deny him the privilege of practicing the licensed profession. The APA specifically states that its due process provisions apply to license denial cases. See section 2001.054 which states, "The provisions of this chapter concerning contested cases apply to the grant, denial, or renewal of a license..."

Chapter 53 of the Occupations Code, the primary authority for license denials on the basis of criminal background, also recognizes the due process rights that attach to license applicants facing denial. See section 53.024, which states the APA applies to proceedings relating to the ineligibility for a license.

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