



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**

**REGULATORY BOARDS IN THE
DEPARTMENT OF COMMERCE AND INSURANCE**

Performance Audit Report

September 2017

Justin P. Wilson, Comptroller



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September 1, 2017

The Honorable Randy McNally
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The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable Julie Mix McPeak, Commissioner
Department of Commerce and Insurance
500 James Robertson Parkway
Davy Crockett Tower
Nashville, TN 37243-0565

Ladies and Gentlemen:

Transmitted herewith is the sunset performance audit of selected programs and activities of eight boards and commissions that are administratively attached to the Department of Commerce and Insurance's Division of Regulatory Boards. This audit was conducted pursuant to the requirements of the Tennessee Governmental Entity Review Law, Section 4-29-111, *Tennessee Code Annotated*.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the regulatory boards should be continued, restructured, or terminated.

Sincerely,

Deborah V. Loveless, CPA
Director

17257

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Regulatory Boards and Commissions
September 2017

PRIOR AUDIT FINDINGS

Repeat Finding 1: State Regulatory Fee (Not Resolved)

September 2012 Regulatory Boards and Commissions Audit, Finding 1

Unresolved issue: The state regulatory fee has not been analyzed and is not providing sufficient funding for indirect costs. The Department of Finance and Administration has not analyzed the sufficiency of the state regulatory fee since its inception in 1989. Due to insufficient revenues other divisions of Commerce and Insurance and the general fund are subsidizing indirect costs incurred by regulatory boards and commissions (page 7).

Repeat Concern: Tracking and Monitoring Civil Penalties Collection (Partially Resolved)

September 2012 Regulatory Boards and Commissions Audit, Finding 2

Unresolved issue: License suspension or revocation took up to 510 days allowing individuals and businesses to remain licensed when they had not met requirements or paid civil penalties; referrals to collections took up to 267 days to complete after eligibility, and demand letters were not sent (page 16).

Repeat Finding 2: Inadequate Internal Controls (Not Resolved)

September 2012 Regulatory Boards and Commissions Audit, Finding 6

Unresolved issue: The Department of Commerce and Insurance and Division of Regulatory Boards did not provide adequate internal controls in one area (page 19).

CURRENT AUDIT FINDINGS

The Real Estate Appraiser Commission and the Soil Scientist Advisory Committee should consider fee reductions to bring revenues in line with expenses

According to division management, Regulatory Boards have a goal of maintaining two years of expenses to ensure self-sufficiency. The Real Estate Appraiser Commission and Soil Scientist Advisory Committee have received revenues in excess of the self-sufficiency goal (page 21).

The General Assembly may wish to consider removing or modifying the Real Estate Commission Education and Recovery Account and the Auctioneer Commission Education and Recovery Account

Division and board staff do not inform or provide individuals making a complaint against a licensee with information concerning the recovery accounts. The Real Estate Commission provides information on its website regarding filing a claim against the fund; however, the Auctioneer Commission does not (page 23).

The Board of Court Reporting and the Real Estate Appraiser Commission have board vacancies; several boards had members serving on expired terms; and three board and commission members had attendance issues

The Board of Court Reporting and the Real Estate Appraiser Commission have one vacancy each. Several of the boards and commissions under review have members serving on expired terms, as permitted by statute. Two boards have members attending 50% or fewer meetings during period reviewed (page 25).

OBSERVATIONS

The audit report also discusses the following issues: state regulatory fee tracking (page 13), civil penalties (page 18), unlicensed activity reviews (page 27), statement of necessity filing (page 28), data migration (page 29), and department website search functionality (page 30).

Performance Audit Regulatory Boards

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Performance Audit Regulatory Boards

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of eight regulatory boards was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-239, the eight selected boards are scheduled to terminate June 30, 2018. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the boards and to report to the Joint Government Operations Committee of the General Assembly. This audit is intended to aid the committee in determining whether these regulatory boards should be continued, restructured, or terminated:

- Auctioneer Commission
- Board of Court Reporting
- Board of Funeral Directors and Embalmers
- Collection Service Board
- Private Investigation and Polygraph Commission
- Real Estate Appraiser Commission
- Real Estate Commission
- Soil Scientist Advisory Committee

HISTORY AND ORGANIZATION

Department of Commerce and Insurance, Division of Regulatory Boards

Created in 1978 by Section 56-1-301, *Tennessee Code Annotated*, the Division of Regulatory Boards provides administrative and staff support to the various boards that perform the occupational licensing and regulation of various professionals within Tennessee. As a division of the department, it receives fiscal and support services from the department's Administrative Division. In addition, the Office of Internal Audit under the Commissioner for the Department of Commerce and Insurance receives and investigates allegations of fraud, waste, and abuse of state funds and property, but does not investigate complaints against licensees.

The Division of Regulatory Boards is led by an Assistant Commissioner who is responsible for the overall functioning of the division. Each board is assigned administrative staff, such as licensing technicians and administrative assistants. An Executive Director oversees

each board, and some boards share an Executive Director. Each board is also assigned a lawyer who advises and handles various aspects of the complaint process for the boards. The division employs a Director of Accounting, who serves as a liaison to the department's Fiscal Services Section and assists the boards with relevant financial information. Lastly, the division employs a Director of Licensing to assist the boards with licensing questions and as a point of contact for the Comprehensive Online Regulatory & Enforcement (CORE) database. The staff of the division are employees of the Department of Commerce and Insurance.

Office of Investigations

The Office of Investigations reviews and investigates complaints against individuals and businesses licensed or unlicensed for professions under the Division of Regulatory Boards. The complaints are initially received by the boards and are reviewed by the legal staff. If a complaint merits further review, it is then referred to the Office of Investigations so that an investigation can be initiated. Once the investigation has been conducted, a field representative provides a written report to the Director of the Office of Investigations. The director forwards the report to the department's Legal Division staff, who make a recommendation of action to the applicable board or commission.

Regulatory Boards

The regulatory boards are generally responsible for safeguarding the public by interpreting the laws, rules, and regulations to determine, regulate, and enforce the appropriate standard of practice for select professions in Tennessee. The boards meet as statutorily required to examine applications; conduct hearings to revoke or suspend a license; sponsor, conduct, or approve educational programs; and enact rules for licensees.

The members of each board are appointed by the Governor to serve a term defined by the statute for the board. Some board members receive a per diem when actually engaged in the discharge of official duties and are reimbursed for travel and other necessary expenditures. They are not employees of the State of Tennessee.

The boards issue initial licenses and renew licenses on an annual or biennial basis. For the boards audited in this report, all licenses are renewed biennially. See below for a brief description of each of the boards included in the scope of this audit. Following the descriptions, a chart lists the number of licenses and range of renewal fees charged by each board.

Brief Summary of Regulatory Boards Covered in Audit

Auctioneer Commission

The Auctioneer Commission, created in 1967, is governed by Sections 62-19-101 through 62-19-128, *Tennessee Code Annotated*. It licenses and regulates apprentice auctioneers, auctioneers, firms, galleries, firm branches, and gallery branches. The five-member commission is appointed by the Governor and is statutorily required to meet quarterly.

Board of Court Reporting

The Board of Court Reporting was created under the Tennessee Court Reporter Act of 2009. Governed by Sections 20-9-601 through 20-9-616, *Tennessee Code Annotated*, it regulates the profession of court reporters. The board is made up of seven members appointed by the Governor and is statutorily required to meet at least twice a year.

Board of Funeral Directors and Embalmers

The Board of Funeral Directors and Embalmers was created in 1951 and is governed by Sections 62-5-101 through 62-5-611, *Tennessee Code Annotated*. The board regulates the professions of funeral directors, embalmers, funeral establishments, apprentices, and mortuary students. It is made up of seven members appointed by the Governor. Statute does not specify the number of times the board is to meet annually.

Collection Service Board

The Collection Service Board was created under the Tennessee Collection Service Act enacted in 1981 and is governed by Sections 62-20-101 through 62-20-127, *Tennessee Code Annotated*. The board formulates public policy concerning the collection industry, enacts rules, and ensures compliance with enacted legislation pertaining to the collection industry. The five-member board is appointed by the Governor. Statute does not specify the number of times the board is to meet annually.

Private Investigation and Polygraph Commission

The Private Investigation Commission was created in 1993. In 1999, the Polygraph Commission was transferred to the Private Investigation Commission, thus creating the Private Investigation and Polygraph Commission. Governed by Sections 62-26-201 through 62-27-129, *Tennessee Code Annotated*, the commission regulates the professions of private investigators, private investigation companies, and polygraph examiners. The commission is made up of nine members who are appointed by the Governor. Statute does not specify the number of times the board is to meet annually.

Real Estate Appraiser Commission

The Real Estate Appraiser Commission, created in 1981, is governed by Sections 62-39-101 through 62-39-426, *Tennessee Code Annotated*. The commission regulates real estate appraisers in accordance with federal laws, state laws, and policies. It is made up of nine members appointed by the Governor and is statutorily required to meet three times a year.

Real Estate Commission

The Real Estate Commission, created in 1951, is governed by Sections 62-13-101 through 62-13-604, *Tennessee Code Annotated*. The commission licenses and registers real estate firms, brokers, and affiliate brokers. It is made up of nine members appointed by the Governor and is statutorily required to meet three times a year.

Soil Scientist Advisory Committee

The Soil Scientist Advisory Committee was created under the Soil Scientist Licensure Act of 2009 and is governed by Sections 62-18-201 through 62-18-219, *Tennessee Code Annotated*. The committee assists the Commissioner of the Department of Commerce and Insurance in rulemaking. It is made up of five members appointed by the Commissioner of Commerce and Insurance. Statute does not specify the number of times the committee is to meet annually.

License Renewal Amounts and Number of Licenses as of February 2017

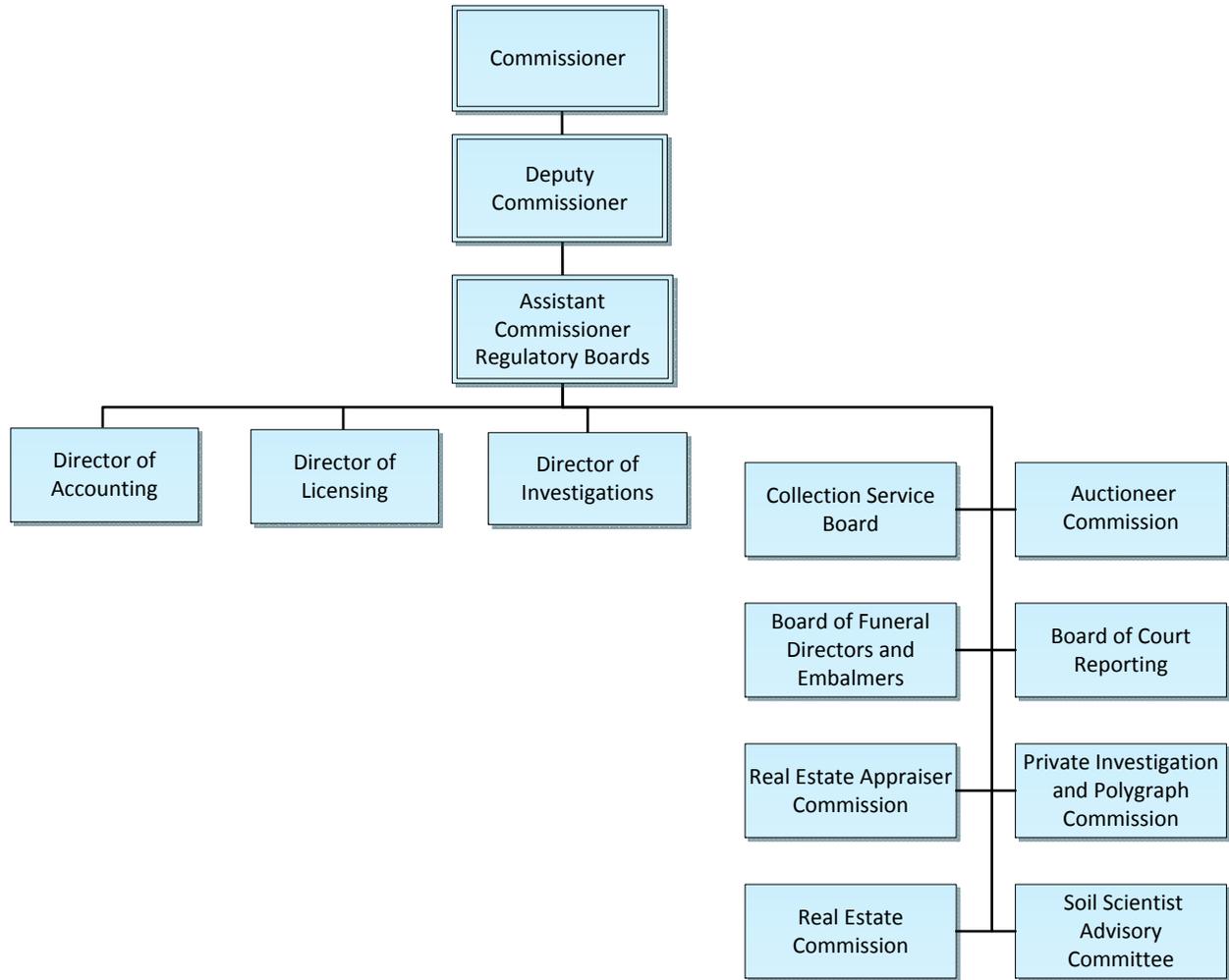
Board/Commission	Biennial Renewal Amount	Number of Licensees^(a)
Auctioneer Commission	\$125-\$175 ^(b)	1,525
Board of Court Reporting	\$200	521
Board of Funeral Directors and Embalmers	\$235-\$575 ^(c)	3,336
Collection Service Board	\$25-\$350 ^(d)	908
Private Investigation and Polygraph Commission	\$100-\$1,000 ^(e)	1,145
Real Estate Appraiser Commission	\$350	2,047
Real Estate Commission	\$80	27,907
Soil Scientist Advisory Committee	\$400	61

Notes:

- (a) Numbers do not include those required only to register with a board.
- (b) Includes individuals and firms.
- (c) Includes funeral directors, embalmers, and establishments.
- (d) Includes individuals and companies.
- (e) Includes individuals and companies.

An organization chart of the Department of Commerce and Insurance's Division of Regulatory Boards and the eight boards and commissions reviewed is on the next page.

Department of Commerce and Insurance
Division of Regulatory Boards
 Eight Boards and Commissions Reviewed
 August 2016



Source: Department of Commerce and Insurance.

AUDIT SCOPE

We audited eight boards and commissions administratively attached to the Department of Commerce and Insurance's Division of Regulatory Boards for the period January 1, 2014, through February 17, 2017. Our audit scope included a review of business practices, internal controls, compliance with laws and regulations, and prior audit findings that are significant within the context of the audit objectives. Management of the boards and commissions and the Division of Regulatory Boards is responsible for establishing and maintaining effective internal controls and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

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.

PRIOR AUDIT FINDINGS, OBJECTIVES, AND METHODOLOGIES

Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. We followed up on the prior audit findings and found the department resolved findings related to the Real Estate and Auctioneer Commission education and recovery accounts and the untimely deposit of board revenue. The finding related to tracking and monitoring civil penalties is partially resolved while the findings about the state regulatory fee and certain information security risks are not resolved. The partially resolved or unresolved findings are discussed below.

September 2012 Audit, Finding 1, State Regulatory Fee (Not Resolved):

“The Department of Finance and Administration has not analyzed the sufficiency of the state regulatory fee...”

The audit recommended the following:

- The Department of Finance and Administration, working with the Department of Commerce and Insurance, should analyze the amount of state regulatory fees collected to the amount of indirect costs incurred through board operations every two years so that the fee is set at an amount sufficient to cover all the state’s indirect costs derived from the Regulatory Boards’ operations.

The state regulatory fee is set by law in the general appropriations act, and the fee stands in lieu of any allocation of indirect costs to the boards. The amount of the fee has been the same since it was established in 1989: \$10 for a two-year license and \$5 for a one-year license. The previous audit found the following deficiencies:

- The Department of Finance and Administration had not analyzed the amount of the state regulatory fee and could not state whether the amount of state regulatory fees collected was sufficient to cover indirect costs incurred by the regulatory boards.
- The Department of Finance and Administration applied the revenue collected from the state regulatory fee to the general fund, not to the indirect costs of the regulatory boards.
- Because the Department of Finance and Administration does not use the fee to offset the Department of Commerce and Insurance’s own indirect costs, it gave Commerce and Insurance a recurring supplemental appropriation from the general fund to cover those indirect costs.

Our objective was to determine whether the Department of Finance and Administration has effectively addressed these three deficiencies. In order to do so, we interviewed Finance and Administration’s Director of Budget and Director of Cash Management, and Commerce and Insurance’s Fiscal Director of Budget. We reviewed Statewide Cost Allocation Plan Agreements, Indirect Charges Recovery Plans, and the Department of Commerce and Insurance’s departmental cost allocation plans. Based on our interviews and reviews, we determined these issues have yet to be resolved.

Repeat Finding 1 – State Regulatory Fee

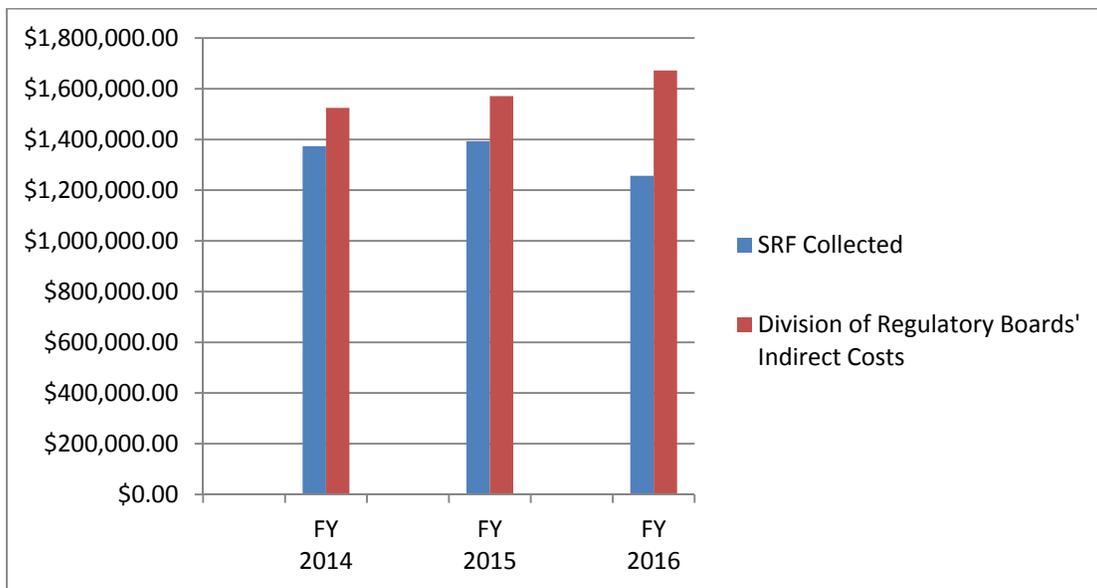
The state regulatory fee has not been analyzed and is not providing sufficient funding for indirect costs

The Department of Finance and Administration has not analyzed the sufficiency of the state regulatory fee to cover the indirect costs incurred by the regulatory boards. These indirect costs include the following:

- departmental indirect costs,
- General Government costs, and
- Statewide Cost Allocation Plan Section I costs.

Of these, only departmental indirect costs are calculated each year for the Division of Regulatory Boards; the Department of Commerce and Insurance makes this calculation for distribution of its own administrative overhead. This overhead includes expenses such as salaries for the Commissioner, Fiscal Services, and Human Resources personnel. During fiscal years 2014, 2015, and 2016, the amount of state regulatory fees collected by the regulatory boards in the Department of Commerce and Insurance was insufficient to cover the boards' departmental indirect costs as captured by Chart 1 and Table 1.

Chart 1
Comparison of State Regulatory Fee Collected to
Division of Regulatory Boards' Indirect Costs
Fiscal Years 2014-2016



Source: Data obtained from Department of Commerce and Insurance Fiscal Services.

Table 1
Comparison of the State Regulatory Fee Amounts to Regulatory Boards' Indirect Costs
Fiscal Years 2014-2016

Fiscal Year	Regulatory Boards' Share of Department Indirect Costs	Difference	Amount of State Regulatory Fee Remitted
2014	\$1,524,796	(\$151,131)	\$1,373,665
2015	\$1,570,898	(\$178,353)	\$1,392,545
2016	\$1,671,945	(\$414,940)	\$1,257,005

Source: Data obtained from Department of Commerce and Insurance Fiscal Services.

The remaining two components of regulatory boards' indirect costs, General Government and Statewide Cost Allocation Plan Section I costs, are not calculated specifically for the Division of Regulatory Boards. Because the state regulatory fee was insufficient during this time period to cover one component of the indirect costs, we estimated numbers for the remaining types of indirect costs in order to present a more complete picture of the fee's insufficiency.

General Government Costs

General Government costs are allocated and billed to six state agencies, based on each agency's payroll dollars as a percentage of total payroll dollars for the state. We calculated General Government costs for the regulatory boards by the same method, using payroll numbers for the Division of Regulatory Boards as a percentage of total state payroll for fiscal years 2014 through 2016. (See Table 2.)

Table 2
Estimated General Government Costs for Regulatory Boards
Fiscal Years 2014-2016

Fiscal Year	General Government Costs	Regulatory Boards' Payroll as a Percentage of Total State Payroll	Regulatory Boards' Share of General Government Costs
2014	\$81,309,730	0.30%	\$247,651
2015	\$82,767,307	0.36%	\$298,150
2016	\$82,695,234	0.37%	\$305,582

Source: Data obtained from Department of Finance and Administration and Department of Commerce and Insurance Fiscal Services.

The Department of Finance and Administration does not bill the Division of Regulatory Boards for General Government costs, but relies on the State Regulatory Fee. Should the Department of Finance and Administration analyze the State Regulatory Fee, it should calculate and include General Government costs for the Division of Regulatory Boards for which the numbers are readily available.

Statewide Cost Allocation Plan Section I Costs

Statewide Cost Allocation Plan costs are for services one state agency performs for another. Section I costs are indirect costs that are allocated across state agencies (for example, costs for Finance and Administration’s work on the state budget). The federal government must approve the Statewide Cost Allocation Plan Agreement each year so that state agencies receiving federal funds may bill these costs to federal grants and contracts. These costs are calculated for agencies’ use; they are not billed except to the same agencies that are billed for General Government costs, as noted above.

The allocation plan agreement shows Section I costs for the Department of Commerce and Insurance as a whole. To estimate the regulatory boards’ share of these costs, we used the same percentages that the Department of Commerce and Insurance used to allocate departmental indirect costs to the regulatory boards. (See Table 3.)

Table 3
Statewide Cost Allocation Plan Section I Costs for Regulatory Boards
Fiscal Years 2014-2016

Fiscal Year	Total Department Share of Statewide Cost Allocation Plan Section I Costs	Percent Used to Allocate Departmental Indirect Costs	Regulatory Boards’ Share of Statewide Cost Allocation Plan Section I Costs
2014	(\$121,489)	17.26 %	(\$20,969)*
2015	\$19,343	16.99 %	\$3,286
2016	(\$5,424)	15.96 %	(\$866)*

Source: Data obtained from Department of Commerce and Insurance Fiscal Services.

*Negative numbers for Statewide Cost Allocation Plan Section I costs occur because current-year costs are estimated using numbers from two years prior. Totals are then adjusted to correct for inaccuracies in previous years’ estimates.

Total Indirect Costs Compared to State Regulatory Fee

The table and chart below show the three components of indirect costs:

- department indirect costs,
- General Government costs, and
- Statewide Cost Allocation Plan Section I costs.

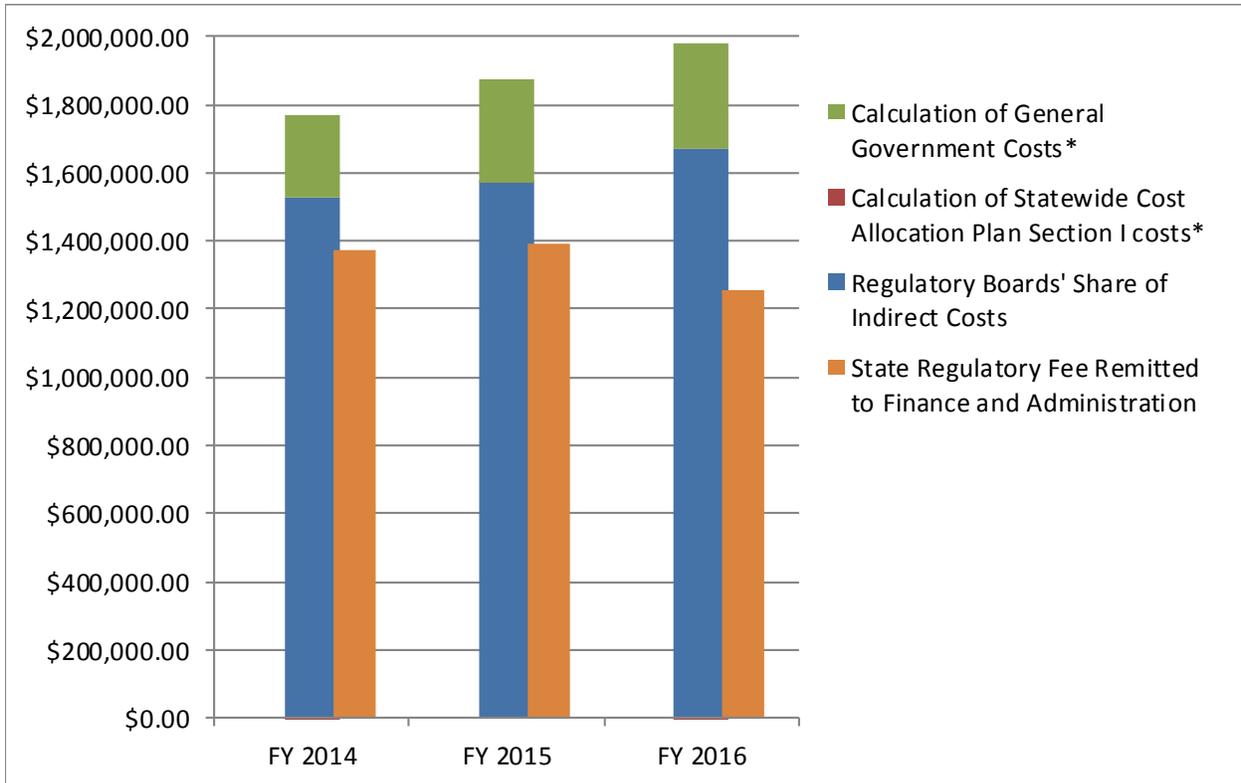
Then the table and chart compare the total of these to the state regulatory fee remitted. Negative numbers in the final column indicate the regulatory fee’s deficiency compared to the indirect costs the fee is intended to cover. The results are also displayed in Table 4 and Chart 2.

Table 4
Total Indirect Costs Compared to State Regulatory Fee
Fiscal Years 2014-2016

Fiscal Year	Department Indirect Costs	General Government Costs	Statewide Cost Allocation Plan Section I Costs	Total Indirect Costs	State Regulatory Fee Remitted	Difference
2014	\$1,524,796	\$247,651	(\$20,969)	\$1,751,478	\$1,373,665	(\$377,813)
2015	\$1,570,898	\$298,150	\$3286	\$1,872,334	\$1,392,545	(\$479,789)
2016	\$1,671,945	\$305,582	(\$866)	\$1,976,661	\$1,257,005	(\$719,656)

Source: Data obtained from Department of Commerce and Insurance Fiscal Services and Department of Finance and Administration.

Chart 2
Comparison of Indirect Costs to State Regulatory Fee
Fiscal Years 2014-2016



Source: Data obtained from Department of Commerce and Insurance Fiscal Services and Department of Finance and Administration.

*Calculated as discussed with Department of Finance and Administration management.

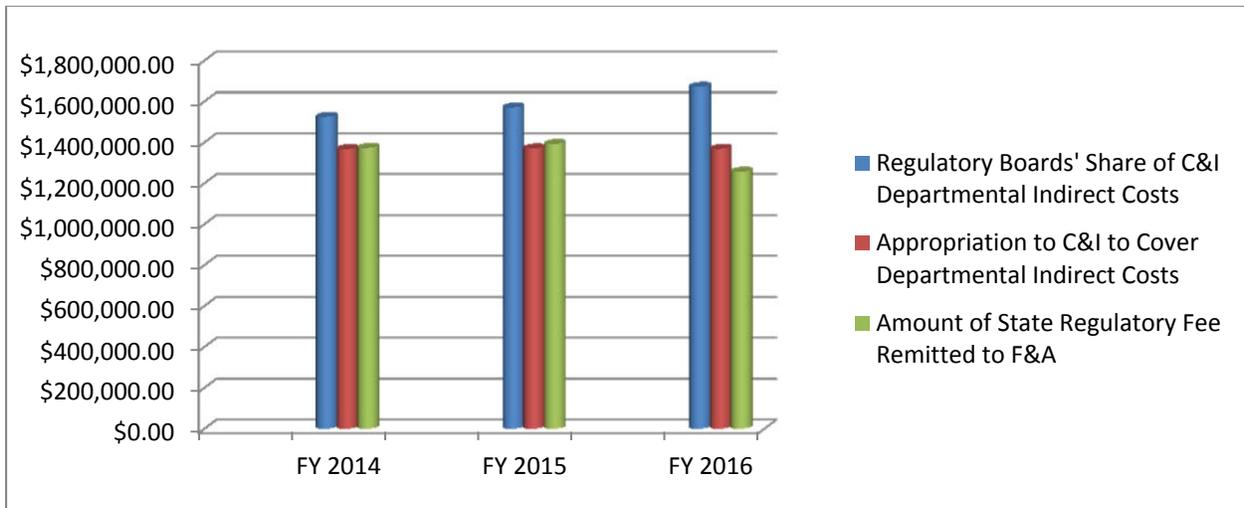
Note: Statewide Cost Allocation Plan Section I costs constitute too small a percentage of the total to be visible on this chart.

Deficient State Regulatory Fee Means Indirect Costs of Boards Funded by Other Divisions of the Department and Ultimately by the General Fund

As discussed previously, for fiscal years 2014, 2015, and 2016, the statewide regulatory fee did not generate enough funds to cover indirect costs (departmental, General Government, and those in the Statewide Cost Allocation Plan). To help address the deficiency the state budget provides a supplemental appropriation to the Department of Commerce and Insurance to cover its indirect costs. We found the supplemental appropriation has been insufficient to cover those costs, effectively resulting in other divisions of the department subsidizing the costs of regulatory boards.

In fiscal year 2016, the amount of the supplemental appropriation was greater than the state regulatory fee remitted, resulting in money from the general fund being used to subsidize regulatory board and commission indirect costs. (See Chart 3.)

Chart 3
Comparison of Department Indirect Costs, Supplemental Appropriation Toward those Costs, and Amount of State Regulatory Fee Remitted
Fiscal Years 2014-2016



Source: Data obtained from Department of Commerce and Insurance Fiscal Services.

Recommendation

The Department of Finance and Administration should analyze the state regulatory fee and take action to prevent the general fund from subsidizing regulatory board and commission indirect costs. Indirect costs include those of the Department of Commerce and Insurance, General Government costs, and statewide allocated costs. Consideration of all should ensure regulatory boards and commissions operate in a self-sufficient manner as required by state law.

Management's Comment

We concur in part. The Department of Finance and Administration has not conducted an analysis to determine if the fee amount established in the appropriations bill provides sufficient funding to cover all indirect costs. While conducting this analysis may provide insight, this analysis is not required in order to establish the fee amount. The fee is established, and intended to be, in lieu of any indirect cost charges to the regulatory boards. The statute states the fee will be in lieu of any indirect cost charges, but does not state how much of the indirect costs it should cover.

The purpose of the flat fee amount is to recognize regulatory board indirect costs exist, but avoid analyzing the large number of accounting transactions of the many small boards to determine actual indirect costs. The regulatory fee approach currently in place is a simple method of collecting from the licensees the approximate indirect cost of having the regulatory boards.

The fee amount, currently \$5 for a one-year license and \$10 for a two-year license, can be changed any year by the General Assembly or the Governor in the appropriations bill. We will analyze the sufficiency of the state regulatory fee at any time that the Governor wants to consider making a budget recommendation to increase the fee or at any time the General Assembly considers increasing the fee.

Observation

- 1. The Department of Commerce and Insurance Division of Regulatory Boards should account for the state regulatory fee separately from other licensee fees, may wish to place state regulatory fees in a dedicated fund, and should include miscalculation of the fee in the division's annual risk assessment**

The Department of Commerce and Insurance has taken steps to ensure that the state regulatory fee calculation is correct; however, entering the fee into the Comprehensive Online Regulatory & Enforcement (CORE) database separately when licenses are issued or renewed would make the process more resistant to error. Additionally, the risk of miscalculation of the fee should be included in the Division of Regulatory Boards' risk assessment.

State Regulatory Fee Calculation

The Director of Accounting for Regulatory Boards has improved the process for counting licenses issued in order to accurately calculate the state regulatory fee owed. The fee is calculated monthly beginning with fiscal year 2017 and will be used as a check against the year-end calculation.

The process for counting licenses to which the state regulatory fee should be applied consists of a series of steps performed in an Excel spreadsheet, and there is no method of checking the accuracy of the count other than re-performing the steps. The Office of Internal

Audit, in follow-up work to the previous performance audit, evaluated the process for calculating the fee and re-performed the calculation of fee owed for fiscal year 2014. Its report stated: “The OIA’s [Office of Internal Audit] calculation of the state regulatory fee was within \$140 of the \$1,373,665 that was remitted to F&A. The amount was not considered material and the OIA did not find any discrepancies with the methodology for the computation.”

OIA staff was able retrace the steps of the process with demonstration and guidance; however, best practices call for a process that can be understood and duplicated if the person who usually performs it is not able to do so, or better yet, that occurs automatically. The department should create a procedure with written instructions or should automate the calculation.

Further, the calculation process would be more robust if the department separated the state regulatory fee from the licensing fee as recommended in the prior audit. Currently the fee is considered a reduction in revenue and is not separated from the license fee when the transaction takes place in CORE. If it were assessed as a separate fee within CORE, the fee amounts could be automatically combined. The current process used to calculate the fee could then be used as a check for correctness.

Risk Assessment

The previous audit recommended that management add risks associated with the state regulatory fee calculation and the indirect costs of the regulatory boards to its annual risk assessment. While the 2015 administrative risk assessment for the Division of Regulatory Boards listed miscalculation of the state regulatory fee as a risk, the 2016 risk assessment did not include this risk. According to division management, the change in the calculation method (resolved audit issue) and the accuracy check provided by the monthly calculation of the fee make the risk of miscalculation of the fee insignificant.

The Department of Commerce and Insurance should improve the accounting of the state regulatory fee to improve efficiency and reduce risks of miscalculation; create a procedure to ensure the process to verify the fee remittance is accurate and replicable; and include the risks associated with the fee in the division’s annual risk assessment.

September 2012 Audit Finding 2, Tracking and Monitoring Civil Penalties Collection (Partially Resolved):

“The Department of Commerce and Insurance’s Legal Division failed to track and monitor civil penalties collection efforts for the Regulatory Boards, increasing the risk that the penalties were not collected timely or at all.”

The audit recommended that the Legal Division should ensure that

- when a partial payment is received on a consent order, legal staff either obtain a signed payment plan consent order or schedule a formal hearing for failure to abide by terms of the consent order;
- demand letters are issued timely and other appropriate action is taken in response to respondents’ failure to meet payment terms;
- revocation letters are issued timely if respondents fail to meet payment terms and the consent orders require revocation as a consequence;
- in cases in which a revocation letter is issued, the license is promptly revoked and noted as such in the CORE (Comprehensive Online Regulatory & Enforcement) database and on the website; and
- all uncollected civil penalty cases referred to the Attorney General’s office collections unit are tracked as to resolution and that amounts collected by the Division of Regulatory Boards are reported to the Attorney General’s office.

A case against a licensee or a person engaging in unlicensed activity may result in the assessment of civil penalties through a hearing before the board or commission and Administrative Law Judge, resulting in a final order. Respondents may avoid a hearing by signing an agreed order or consent order, in which penalties are agreed to. If respondents are unable to pay the penalty in full, they may be allowed to pay over time by negotiating a payment plan. Orders assessing civil penalties may also order revocation or suspension of the respondent’s license, or make revocation or suspension a consequence of non-payment. Legal staff are tasked with monitoring orders and payment plans for payment by due dates so that actions including suspension, revocation, and referral to collections take place timely.

The previous audit found the following deficiencies:

- Of cases tested, 13% involved respondents who returned consent orders with only a partial payment although the order required full payment.
- For 60% of cases tested, the Legal Division did not promptly issue demand letters or begin collections processes.
- For all of the cases tested, board attorneys did not send license revocation letters to respondents or notify board administrative staff so that licenses could be revoked, when revocation was required as a consequence of failure to meet the terms of the consent orders.

- For all of the cases tested, when the Legal Division sent revocation letters, the respondent's license was not then immediately revoked in the regulatory boards information system, and was not therefore changed to revoked status on the Division of Regulatory Boards' website for public use.
- Of cases listed by the Attorney General's office as referrals for collections from the Division of Regulatory Boards, 24 were not found on the Legal Division's list of referrals. Some payments made to the Legal Division after cases were referred for collections were not reported to the Attorney General's office, and six cases listed as referred by both the Legal Division and the Attorney General's office recorded different amounts owed.

Our objectives were to determine if the Legal Division has instituted new procedures and control activities for tracking payments to payment plans, and if paralegals' spreadsheets used to track civil penalties match cases coded in CORE with a payment plan status. Further, we sought to determine if respondents who do not make payments are sent demand letters as required, and whether licenses are revoked or suspended and cases are referred to collections in a timely manner. An additional objective was to determine whether lists maintained by the Attorney General's office and the state's collections vendor match lists of referrals from the Regulatory Boards' Legal Division as to case and monetary amounts collected and owed.

In order to meet these objectives, we interviewed Legal Division management and staff to gain an understanding of the CORE system's compliance module and how it is used to track civil penalties requirements including payments. We obtained spreadsheets that board paralegals use to track cases with payment plans, and matched the spreadsheets to the Case and Complaint report, a weekly query that management of the Division of Regulatory Boards uses to track and evaluate the progress of complaints. We obtained a spreadsheet maintained by a Legal Division paralegal of cases referred for collections and matched it to lists of cases we obtained from the Attorney General's office and the state's collections vendor. We also used the collections spreadsheet to test cases for timeliness of follow-up measures.

We concluded that the 2012 audit finding is partially resolved. The Legal Department has made considerable progress in improving processes. However, improvements can be made as noted below.

Repeat Concern: Tracking and Monitoring Civil Penalties Collection

License suspension or revocation took up to 510 days, allowing individuals and businesses to remain licensed when they had not met requirements or paid civil penalties; referrals to collections took up to 267 days to complete after eligibility, and demand letters were not sent

Using the spreadsheet of collections cases obtained from Legal Division management, we identified cases of respondents with payment plans for the eight boards within our audit scope and tested 27 files that had been referred to the Attorney General's office or to the state's collections vendor, Focus. Some of these cases were consent orders with payment plans, and some were final or agreed orders which respondents had failed to pay.

Our testing showed that legal staff assigned to the boards are tracking cases with civil penalties for payment due dates; however, legal staff referrals to collections when respondents failed to pay were sometimes delayed for several months after the cases were eligible for referral according to the Division of Regulatory Boards Standard Operating Procedure for Sending Cases for Collection. The procedure specifies deadlines applicable to each type of order: consent, agreed, or final. Cases are eligible for referral to collections when 30 days have passed beyond the payment deadline. When files included communications between legal staff and respondents negotiating extended payment deadlines, we extended dates in our testing accordingly. Department policy does not specify when a case should be referred to collections once it becomes eligible. We determined that 100 days would provide sufficient time for processing and referring a case to collections. However, we found cases referred to collections up to 267 days after eligibility. The following issues were noted:

- In 8 of 27 instances (30%), we found that legal staff referral to collections took more than 100 days past the eligible date.
- In 4 of 9 instances (44%), legal staff did not process revocation or suspension timely. In two of these instances, revocation or suspension was part of the judgment in addition to payment of a civil penalty, and in two instances, revocation or suspension was required if payment terms were not met. In the instances when suspension or revocation was required because payment terms were not met, legal staff sent a warning letter or suspension letter to the respondent. Cases ranged from 43 to 510 days late.
- For 10 consent or agreed orders with payment plans, in 2 instances (20%) legal staff could not provide a demand letter sent to the respondent prior to referral to collections.

Attorneys send demand letters when respondents do not pay civil penalties according to their payment plan. However, the attorneys refer cases directly to collections when there is no payment plan, although their procedure requires attorneys to “make one last effort to collect the total outstanding amount.” To be consistent and perhaps increase collections, the Legal Division may wish to send a demand letter for every case before sending it to collections.

Recommendation

Legal Division staff should continue to monitor civil penalty cases to allow respondents reasonable time to pay while simultaneously keeping an eye toward timely referral to collections. Legal Division and board staff must coordinate to ensure that revocation or suspension is performed as directed in the order. Management should determine in which instances a demand letter is appropriate, and revise the Standard Operating Procedure for Sending Cases for Collection to make the requirements clear. To be consistent and perhaps increase collections, the Legal Division may wish to send a demand letter for every case before sending it to collections.

Management's Comment

We concur in part. While the department agrees that collection and compliance are areas that can always be further refined, it disagrees that this should be considered a repeat finding. The previous audit finding was that “The Department of Commerce and Insurance’s Legal Division failed to track and monitor civil penalties collection efforts for the Regulatory Boards, increasing the risk that penalties were not collected timely or at all.” This audit has made a finding regarding the timeliness of matters being referred to collection or of taking enforcement action authorized by Consent Orders. The department would respectfully note that the processes set out the earliest time that such an action take place, but do not set out a deadline to take into account the additional work that must be done to take such action and the individuality of each such case. While the department understands that the audit team has found that some such efforts occurred far enough beyond the initial authorization to be considered untimely, and the department believes that it will ensure faster action in the future, this appears to be a substantially different finding than the one that is being listed as repeated.

Observation

2. The Division of Regulatory Boards’ system can better manage unpaid civil penalties by including them in its Case and Complaint report and implementing a process for determining that civil penalty debts are uncollectible

Management uses the Case and Complaint September report, a weekly report with information drawn from the Comprehensive Online Regulatory & Enforcement (CORE) database, to track the complaints process. However, the division removes unpaid cases from the report when it sends them to collections. Review of this report has become central to management review of case progress; keeping the collections cases in the report would help management track cases to their completion and provide an overview of the number of unpaid penalties.

Additionally, the department has no process for determining that a case is uncollectible and closing out amounts owed for civil penalties. Cases in which penalties were assessed as long ago as 2009 are among the collections cases currently with the Attorney General’s office; and Legal Division staff have re-referred to the state’s new collections vendor, HS Financial Group, LLC, those cases which had been returned to the department by the state’s previous collections vendor after one year of unsuccessful collection attempts. State agencies’ ability to write off uncollectible debts is guided by the Department of Finance and Administration Policy 23 and Rule 0620-1-9, neither of which addresses timelines for writing off debt. However, the department’s process of sending civil penalties to collections is cumbersome and labor-intensive. Due to the change in the state’s collections vendor in January 2017, three different entities are currently pursuing collections efforts for the Division of Regulatory Boards, and one paralegal must track cases in a spreadsheet and reconcile amounts collected with all three. Since respondents in collections status sometimes still make their payments directly to the department, both the department and the collections entities must communicate updates on payments made.

Staff should track and ensure that records on outstanding debt are accurate and focus on pursuing debts most likely to be paid. If no debt is written off, the cumulative contents of the collections spreadsheet will continue to grow and add to the workload of the paralegal tasked with tracking cases in collections. The Office of Internal Audit's July 2015 follow-up report to the 2012 performance audit stressed the importance to management of data on uncollectible cases and recommended that another code be added to CORE for cases that had been deemed uncollectible.

The Department of Commerce and Insurance and Division of Regulatory Boards should develop criteria for deciding when cases are uncollectible and follow Department of Finance and Administration guidelines to move the appropriate cases into this status. The department and division should implement recommendations made from their Office of Internal Audit which would create a case code of "Uncollectible." The "Sent to Collections" and "Uncollectible" cases should be tracked and analyzed in the CORE system.

September 2012 Audit, Finding 6, Inadequate Internal Controls (Not Resolved):

The audit recommended the following:

- Department and division management should ensure that the conditions identified are remedied by the prompt development and implementation of effective controls and assign staff to be responsible for ongoing monitoring of the risks and mitigating controls.
- Management should ensure risks associated with this finding are adequately identified and assessed in the risk assessments of the department, division, and boards along with mitigating control activities.

Our objective was to determine whether the department and division have effectively addressed these deficiencies. In order to do so, we interviewed department human resources management and Strategic Technology Solutions management assigned to the Department of Commerce and Insurance. Based on our interviews and reviews, we determined these issues have yet to be resolved.

Repeat Finding 2 – Inadequate Internal Controls

The Department of Commerce and Insurance and Division of Regulatory Boards did not provide adequate internal controls in one area

As noted in the 2012 and 2009 performance audits, the department did not design and monitor internal controls in one area. We found several internal control deficiencies. Ineffective implementation of internal controls increases the likelihood of errors and unauthorized access to licensees' information.

The details of this finding are confidential pursuant to Section 10-7-504(i), *Tennessee Code Annotated*. We provided the Division of Regulatory Boards and the Department of

Commerce and Insurance with detailed information regarding specific deficiencies as well as our recommendations for improvement.

Recommendation

Department and division management should ensure that these conditions are remedied by the prompt development and implementation of effective controls. Management should ensure that risks associated with this finding are adequately identified and assessed in the department, division, and boards' risk assessments; this would include determining if any weaknesses have actually been exploited. Management should implement effective controls to ensure compliance with applicable requirements, assign staff to be responsible for ongoing monitoring of the risks and mitigating controls, and take action if deficiencies occur.

Management's Comment

We concur in part. While the department agrees that internal controls is an area that can always be further mitigated, it disagrees that this should be considered a repeat finding.

CURRENT AUDIT OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

OPERATING ACCOUNTS AND RESERVE BALANCES

Section 4-29-121(a), *Tennessee Code Annotated*, requires the commissioner of the Department of Finance and Administration to provide a list of all regulatory boards—including regulatory boards that were not self-sufficient during the preceding fiscal year—to the Senate and House Government Operations Committees and to the Office of Legislative Budget Analysis. In addition, under Section 4-29-121(b), any such regulatory board identified as not self-sufficient for two consecutive fiscal years must be reviewed by a joint evaluation committee of the legislature in the next legislative session. This statute effectively requires each regulatory board to be self-supporting by collecting fees in an amount sufficient to pay the operational costs of the board.

Our audit objective was to determine if each board and commission currently under review has sufficient funds to cover expenses for the two-year license cycle. We reviewed relevant statutes and obtained operating fund balances. We also talked with division management about board and commission self-sufficiency expectations.

From our audit work, we determined that the Real Estate Appraiser Commission and the Soil Scientist Advisory Committee have reserve balances in excess of the self-sufficiency goals as outlined by division management. Details are in the following finding.

Finding

1. The Real Estate Appraiser Commission and the Soil Scientist Advisory Committee should consider fee reductions to bring revenues in line with expenses

We reviewed operating budgets for fiscal years 2013-2016 to determine if boards and commissions reviewed during this audit were charging appropriate fees to cover expenses. Table 5 shows the FY 2016 summary for each board and commission:

**Table 5
Regulatory Boards' Operating Accounts
As of June 30, 2016**

Board, Commission, or Committee	Board of Court Reporting	Real Estate Appraiser Commission	Private Investigation Polygraph Commission	Auctioneer Commission	Soil Scientist Advisory Committee	Collection Service Board	Funeral Directors and Embalmers	Real Estate Commission
Revenues	\$79,585	\$739,029	\$179,670	\$200,349	\$92,958	\$273,186	\$772,915	\$2,047,099
Expenditures	\$22,487	\$443,641	\$160,253	\$139,509	\$70,259	\$180,998	\$514,828	\$1,715,988
Net Balance	\$57,098	\$295,388	\$19,417	\$60,840	\$22,699	\$92,188	\$258,087	\$331,111
Prior Year Reserve	\$83,678	\$1,639,871	\$372,007	\$279,421	\$331,751	\$428,139	\$983,166	\$4,081,414
June 30, 2016 Reserve	\$140,776	\$1,935,259	\$391,424	\$340,261	\$354,450	\$520,327	\$1,241,253	\$4,412,525

Source: Account balance information obtained from Division of Regulatory Boards Director of Accounting.

Each board and commission under review increased its account balance during the time period reviewed. Table 6 shows the growth for each board and commission from FY 2013 to FY 2016.

**Table 6
Regulatory Boards' Operating Account Growth
From Fiscal Year Ended June 30, 2013, to Fiscal Year Ended June 30, 2016**

Board or Commission	Account Balance Growth
Real Estate Appraiser Commission	68%
Private Investigation and Polygraph Commission	24%
Auctioneer Commission	107%
Soil Scientist Advisory Committee	34%
Collection Service Board	94%
Board of Funeral Directors and Embalmers	74%
Real Estate Commission	48%

Source: Operating account balance information obtained from Division of Regulatory Boards Director of Accounting.

*Board of Court Reporting not included due to late 2015 addition to the Department of Commerce Insurance Division of Regulatory Boards.

According to division management, regulatory boards are considered self-sufficient if they do not have two consecutive years with an operating deficit. The following table outlines the average operating account balance, average expenses incurred, and number of years expenses held for the time period reviewed.

Board, Commission, or Committee*	Real Estate Appraiser Commission	Private Investigation and Polygraph Commission	Auctioneer Commission	Soil Scientist Advisory Committee	Collection Service Board	Board of Funeral Directors and Embalmers	Real Estate Commission
Average Operating Account Balance	\$1,546,297	\$350,709	\$244,660	\$309,554	\$372,149	\$1,001,281	\$3,696,210
Average Expenditures	\$452,193	\$154,063	\$189,438	\$73,197	\$252,677	\$550,921	\$1,695,472
Years of expenses held in reserve	3.42	2.28	1.29	4.23	1.47	1.82	2.18

Source: Operating account balance data provided by Division of Regulatory Boards Director of Accounting.

*Board of Court Reporting not included due to late 2015 addition to Department of Commerce and Insurance Division of Regulatory Boards.

The Auctioneer Commission, Collection Service Board, and Board of Funeral Directors and Embalmers are currently below the two-year expense goal; however, all three have experienced the highest growth in their operating budgets from Fiscal Year 2013 to Fiscal Year 2016. The Real Estate Appraiser Commission and the Soil Scientist Advisory Committee have also increased their operating accounts by 68% and 34%, respectively, from fiscal year 2013 to fiscal year 2016.

Recommendation

Regulatory boards should ensure that they are generating sufficient revenues to cover expenses yet strive to maintain their fund balance at a reasonable level. The Real Estate Appraiser Commission and Soil Scientist Advisory Committee should consider a fee reduction to bring revenues in line with expenses.

Management's Comment

We concur. The department concurs with the recommendation to lower fees for these programs and has begun the internal process of determining the optimal fee in order to promulgate appropriate rules.

EDUCATION AND RECOVERY ACCOUNTS

Section 62-13-208, *Tennessee Code Annotated*, established the Real Estate Commission Education and Recovery Account. Likewise, Section 62-19-116, *Tennessee Code Annotated*, established the Auctioneer Commission Education and Recovery Account. The stated purpose of each fund provides that “any person may, by order of any court having competent jurisdiction, recover from the account actual or compensatory damages, . . . resulting from any violation of this chapter or of any rule promulgated under this chapter.” In addition, each commission may use interest earned on the accounts to provide educational opportunities for their respective licensees. The accounts are funded by fees charged by the respective professions.

Our audit objective was to determine how many recovery claims have been paid, how much has been spent from the accounts on education events or programs, and how consumers or

complainants are notified of the accounts if a complaint against a licensee is lodged. We reviewed relevant statutes, rules and regulations, and commission webpages. We also obtained financial information and claim records from board accounting and legal management.

From our audit work, we determined that education and recovery accounts have had few, if any, claims and have been used to fund few, if any, education events or programs. Details are in the following finding and observation.

Finding

2. The General Assembly may wish to consider removing or modifying the Real Estate Commission Education and Recovery Account and the Auctioneer Commission Education and Recovery Account

We reviewed the Real Estate Commission Education and Recovery Account and the Auctioneer Commission Education and Recovery Account from fiscal year 2013 through 2016 to determine if awards were issued, and if education opportunities were funded through interest earned on the accounts. We found that the Department of Commerce and Insurance did not use the Real Estate Education Account for educational purposes and the Real Estate Recovery Account has had one claim paid out since 2012 and one case is pending, resulting in a nearly \$4 million balance. Further, the department has never paid any claims from the Auctioneer Commission Education and Recovery Account. Neither commission informs complainants of the recovery accounts although the Real Estate Commission does have information on its website. The results of our review are as follows:

Real Estate Commission Education and Recovery Account

Real Estate Education and Recovery Account Balances FY 2013-2016

<i>Fiscal Year</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>
Education Account Balance	\$109,237	\$115,564	\$164,124	\$179,728
Recovery Fund Balance	\$3,856,168	\$3,891,873	\$3,931,913	\$3,973,858

Source: Education and Recovery Account balance information obtained from Director of Accounting, Division of Regulatory Boards.

- Since the previous audit in 2012, the recovery account paid an award of \$30,000 in May 2013 and another claim is being litigated.
- Education opportunities were not expensed in fund reports reviewed by auditors. According to commission management, education events are funded through the commission operating budget.

Auctioneer Commission Education and Recovery Account

**Auctioneer Commission Education and Recovery Account Balances
FY 2013-2016**

<i>Fiscal Year</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>
Account Balance	\$208,779	\$223,283	\$231,009	\$218,134

Source: Education and Recovery Account balances obtained from Director of Accounting, Division of Regulatory Boards.

- According to Division of Regulatory Boards legal staff, the fund has not paid out any awards to date.
- Educational opportunities funded by the account were limited to newsletters sent to licensees.

We requested any information provided to consumers when filing a complaint against a licensee of the Real Estate Commission or the Auctioneer Commission. According to commission legal staff, when a complaint is received, staff does not automatically inform the complainant of the recovery accounts and the filing process. The Real Estate Commission webpage does provide information concerning the fund and the process to go about filing a claim, but the Auctioneer Commission webpage does not provide this information.

Recommendation

The General Assembly may wish to remove or modify statute concerning the Real Estate Commission Education and Recovery Account and the Auctioneer Commission Education and Recovery Fund to reduce or eliminate fees associated with the funds or to eliminate the funds entirely. An alternative could be to reimburse licensees from funds held in reserve. Unless and until such change occurs, the Auctioneer Commission should include information regarding the recovery fund and the process to file a claim against the account on the commission webpage.

Management's Comment

We concur. The department has incorporated the recommendation to include information regarding the Auctioneer Commission Education and Recovery Account on its website and defers to the Legislature as to the Comptroller's request that the General Assembly alter or abolish the accounts.

BOARD VACANCIES AND EXPIRED TERMS

To be effective, regulatory boards need members who regularly attend meetings, and when members' terms expire, appointments should be made as soon as possible. Our audit objective was to determine whether board members attended meetings and whether board vacancies were filled timely.

Finding

3. The Board of Court Reporting and the Real Estate Appraiser Commission had board vacancies; several boards had members serving on expired terms; and three board and commission members had attendance issues

As of February 17, 2017, the Board of Court Reporting had a board position that is vacant, and the previous board member's term expired on June 30, 2016. The Real Estate Appraiser Commission had one board position that became vacant December 2016. Sections 20-9-604(c) and 62-39-201(b), *Tennessee Code Annotated*, stipulate that appointments to the board and commission are to be made by the Governor. In addition, the following boards and commissions had members serving on expired terms. Statute provides that members serve until a successor is appointed. (See Table 7.)

**Table 7
Regulatory Boards With Members Serving on Expired Terms
As of May 2017**

Board or Commission	Number of Members With Expired Terms	Expiration Dates of Terms
Auctioneer Commission	1	8/31/2016
Collection Service Board	1	6/30/2015
Board of Court Reporting	2	6/30/2015*
Private Investigation and Polygraph Commission	4	9/30/2014; 9/30/2016**
Real Estate Appraiser Commission	1	6/30/2015

Source: Secretary of State website.

*Term expired at the same time for both members.

**Three members have the same term expiration.

The following boards and commissions had members that attended 50% of board meetings or fewer for calendar years 2015 and 2016. Boards need regular attendance by all members to ensure that decisions are based on the viewpoints and expertise of all. (See Table 8.)

Table 8
Regulatory Boards With Members Attending 50% or Fewer Board Meetings
Calendar Years 2015-2016

Name of Board	Number of Members	Meetings Attended
Collection Service Board	1	3/10
Private Investigation and Polygraph Commission	2	4/8*

Source: Attendance records obtained from meeting minutes on the Department of Commerce and Insurance Regulatory Board's website.

*Attendance record is the same for both commission members for the reviewed time period.

Recommendation

To ensure the most efficient and effective operations, the Regulatory Board Division should continue to communicate the two vacancies identified and the board and commission members that are presently serving on expired terms.

The General Assembly may wish to amend board and commission statutes to include an attendance requirement.

Management's Comment

We concur. After the department administration received the recommendation for finding 3 from the Comptroller's audit staff, three of the vacant or expired terms have been filled. The administration will continue to work closely with the Governor's office to fill the vacant or expired terms. In addition, the administration along with the board directors will monitor and track board member attendance and will report this back to the Governor's office in instances where the attendance requirement was not met. The administration and board staff will also ensure that board members are adequately notified of meetings and the attendance requirement.

UNLICENSED ACTIVITY

Section 62-19-116(l)(C), *Tennessee Code Annotated*, establishes the statutory authority for the Auctioneer Commission to employ an investigator. The investigator working on behalf of the commission has the authority to stop any auction activity that is being promoted, managed, or supervised by unlicensed individuals. Section 62-20-115(a)(1), *Tennessee Code Annotated*, provides the Collection Service Board with the statutory authority to investigate any collection service entity upon its own motion or by receipt of a sworn complaint. Section 62-5-208, *Tennessee Code Annotated*, requires the Board of Funeral Directors and Embalmers to conduct an unannounced annual inspection of every funeral establishment each year. Additional information regarding unannounced annual inspections of funeral establishments is discussed later in this report.

Our audit objective was to determine if disciplinary and other action taken by the Division of Regulatory Boards had an impact on unlicensed activity and if the boards and commissions with the statutory authority to conduct proactive unlicensed activity reviews did so. We reviewed relevant statutes and interviewed division staff and management regarding current investigative and inspection work.

From our audit work, we determined that generally the regulatory boards did not conduct unlicensed activity reviews unless a complaint was received; however, the Board of Funeral Directors and Embalmers' annual inspection program did include unlicensed activity reviews. The Auctioneer Commission and the Collection Service Board should conduct, from time to time, proactive unlicensed activity reviews. Details are in the following observation.

Observation

3. The Division of Regulatory Boards should consider proactive unlicensed activity reviews as a way to increase protection of consumers

Section 62-5-208(b)(2), *Tennessee Code Annotated*, requires the Board of Funeral Directors and Embalmers to conduct unannounced funeral establishment inspections on an annual basis. Of the total violations listed in Disciplinary Action Reports reviewed by auditors, 27 out of 108, or 25%, of the Board of Funeral Directors and Embalmers' violations were related to unlicensed activity. (Each establishment is licensed and is to be operated by individually licensed Funeral Directors and Embalmers.) According to department management, staff actively market the department's website where consumers may verify that professionals are licensed. In addition, the department relies on members of the licensed profession to report unlicensed activity. According to legal staff, unlicensed activity violations were originally reported from the following sources:

- 22 violations were discovered as a result of funeral establishment inspections conducted by board staff,
- 4 violations were reported initially as a complaint by consumers, and
- 1 violation was reported initially as a complaint by another licensee.

We conducted web searches of individuals and businesses advertising themselves within the purview of the boards and commissions under review and compared results to the Department of Commerce and Insurance Division of Regulatory Boards' license verification system to determine if the individual or business was licensed as required by statute. (The Board of Court Reporting and Soil Scientist Advisory Committee were not included in this review due to the nature of the industries.) We found suspected unlicensed activity during these searches for all boards and commissions under review except for the Board of Funeral Directors and Embalmers. For example, we found people with expired licenses claiming to be licensed professionals and saw unlicensed businesses advertising private investigation services. While websites may remain even after the underlying business activity has ceased, this could be indicative of potential unlicensed activity.

The following boards and commissions have the statutory authority to conduct inspections or unlicensed activity investigations without a prior complaint from a consumer or another licensee: the Auctioneer Commission, the Board of Funeral Directors and Embalmers, and the Collection Service Board. The remaining boards' and commissions' statutory authority is limited to receiving a complaint before actions are taken.

In order to better protect the citizens of Tennessee and ensure compliance with rules and regulations, the boards and commissions with the statutory authority should consider implementing an unlicensed activity program that, from time to time, conducts reviews of individuals and businesses that are purporting to be appropriately licensed and operating in the state. Additionally, the General Assembly may wish to modify statutory authority to allow unlicensed activity reviews for the applicable boards and commissions.

STATEMENTS OF NECESSITY FOR BOARD MEETINGS

Observation

- 4. The Board of Court Reporting, Private Investigation and Polygraph Commission, Real Estate Appraiser Commission, and Real Estate Commission did not properly include required statements of necessity in meeting minutes and/or did not file such statements with the Secretary of State when, to achieve a quorum, members were allowed to tele-participate in meetings**

Section 8-44-108(b)(2-3), *Tennessee Code Annotated*, requires that, if a physical quorum is not present at a board meeting's location, the board must make a determination of the necessity for board members to participate by electronic or other means to achieve a quorum. This determination and a recitation of the facts and circumstances upon which the decision was made must be included in the meeting minutes and must be filed with the Secretary of State within two days of the board meeting. Our objective was to review the division's compliance with this law.

We reviewed all board and commission meeting minutes from January 2015 through December 2016, to determine whether board meetings and members met key statutory requirements. During this time, the boards and commissions allowed for teleconferencing to achieve a quorum in a total of five meetings; however, three of them did not reflect a statement of necessity in their minutes and did not have a determination of necessity on file with the Secretary of State's office. Two meeting minutes did reflect a statement of necessity in the minutes but did not have a determination of necessity on file with the Secretary of State's office.

The Division of Regulatory Boards should inform regulatory boards and commissions about requirements to include a statement of necessity in board meeting minutes and submit a determination of necessity with the Secretary of State's office within two business days after the meeting.

COMPREHENSIVE ONLINE REGULATORY & ENFORCEMENT (CORE) TRANSITION

The Department of Commerce and Insurance transitioned from its former computerized licensing system, the Regulatory Boards System (RBS), to its replacement system, the Comprehensive Online Regulatory & Enforcement (CORE) database, in September 2015.

The objective of our review was to determine whether the department made a reasonable effort to ensure all information from RBS was successfully transferred to CORE.

To accomplish this objective, we spoke with the Director of Information Systems; interviewed the Director of Licensing; contacted Strategic Technology Solutions in the Department of Finance and Administration; reviewed relevant information technology policies and procedures regarding project management; and gathered relevant documentation of work performed.

Observation

- 5. The Department of Commerce and Insurance's Division of Regulatory Boards did not retain documentation of its post-implementation review testing to ensure that its licensing data was successfully migrated from the Regulatory Boards System (RBS) to the Comprehensive Online Regulatory & Enforcement (CORE) system and that the licensing data in CORE is valid and reliable**

The Department of Commerce and Insurance provided the auditors with User Acceptance Testing data that shows that the functionality of the new CORE licensing system was tested. However, some of the information provided is unclear and does not demonstrate that the department produced or retained documentation of post-implementation review testing that shows all data is valid and reliable and successfully migrated from RBS to CORE in September 2015. In the course of our audit, we did not find any evidence of errors in migration or data reliability.

The Department of Commerce and Insurance should maintain documentation of testing and edit work performed on information technology projects for assurance that the data within a given system or the data migrated from one system to another is valid and reliable so that management can use the data to make informed decisions.

CORE DATABASE AND WEBSITE CONSISTENCY

In September 2015, the Department of Commerce and Insurance's Regulatory Board Division launched a new licensing database system, CORE (Comprehensive Online Regulatory & Enforcement), to replace its legacy system, RBS. The CORE system was designed to include enhancements that provide the ability to apply for original licenses online and process license renewals without using a different system to interface with the license database. The CORE system maintains licensee data and complaints; it also provides department management and staff with productivity reports for each board and employee.

The Department of Commerce and Insurance provides the public with a searchable function within the department website to "verify a license." This function allows consumers to verify the license of an individual or business to ensure the individual or business is in compliance with statutory requirements and board rules and regulations. According to department staff, the website is updated nightly with information contained in the CORE database. Additionally, the website includes a Disciplinary Action Report for the boards attached to the department. This monthly report provides Tennessee residents and consumers with disciplinary action taken by each regulatory board in a given month. Each report lists the program name (board), respondent (individual or business), location, violation, action (taken by the board), and date.

Our audit objective was to determine if licensee data presented on the publicly accessible department website was consistent with information contained in the CORE database. We interviewed division management and staff, reviewed division risk assessments, selected a random sample of active status licensees from boards included in this audit, and compared data on the department's website to data in CORE.

From our audit work, we determined that the information contained on the department's website was consistent with information in the CORE database. We did note the following observation concerning improvements that could be made to the department website.

Observation

6. The Division of Regulatory Boards could improve licensee search results by incorporating disciplinary action report data

Individuals searching to verify licensure did not automatically receive in the search results any disciplinary action taken by the board against the licensee. To review disciplinary actions taken by the boards, individuals must review monthly disciplinary reports provided on the department website. The reports are not linked to verification search results and do not include a search feature.

The Department of Commerce and Insurance Division of Regulatory Boards may wish to add disciplinary action information regarding a specific licensee to other information provided with search results for that licensee.

INSPECTION OF FUNERAL ESTABLISHMENTS

Section 62-5-208, *Tennessee Code Annotated*, requires the Board of Funeral Directors and Embalmers to conduct annual, unannounced funeral establishment inspections. As of November 2016, the board had 580 active funeral establishment licensees. Two field representatives conduct the annual inspections with help from an investigator whose primary job is to investigate complaints of malpractice. The field representatives and investigator are licensed funeral directors and embalmers as required by statute. Per statute, inspections are to occur between the hours of 8:00 a.m. and 4:30 p.m. and should be limited to items on the inspection checklist, which is to be posted on the board's website. In addition, the board performs unannounced annual inspections of every crematory.

Our audit objective was to determine if the Board of Funeral Directors and Embalmers inspected funeral establishments and embalming sites as established by statute and policy. We reviewed pertinent policies, procedures, and statute and interviewed the board's executive director. From the population of 580 licensed funeral establishments and crematories, we selected a sample of 60 establishments to determine if the board performed annual unannounced establishment inspections. The sample included 10 establishments (17%) that were both funeral homes and crematories; 44 (73%) that were solely funeral homes; and 6 (10%) that were exclusively crematories. (Our results cannot be projected to the population.)

We determined that the board performed all annual unannounced inspections for the sampled establishments for calendar years 2015 and 2016. For two inspections in which the board issued citations, one complaint is being reviewed by the department's legal division while the other was closed with the establishment paying a civil penalty of \$250.

Appendix

Comparison of Licensing Requirements

We compared the State of Tennessee’s licensure requirements to three other states, North Carolina, Florida, and Georgia, to determine if current laws, rules, and regulations may pose an undue barrier to entry. A summary of the results can be found in the following table.

<u>Education</u>	<u>Experience</u>	<u>Fees</u>
<u>Real Estate Appraiser</u>		
<i>North Carolina</i>		
<p>More stringent than TN – NC requires licensed residential appraisers to have an associate’s degree or higher; TN requires 30 college semester hours. NC requires licensed residential appraisers to have 200 classroom hours, TN -150. Equal – Both require a bachelor’s degree or higher for certified residential and general appraisers. Both require certified appraisers to earn 200 classroom hours and general appraisers to earn 300.</p>	<p>More stringent than TN – NC requires licensed residential appraisers to have 2,500 hours of appraisals, while TN requires 2,000 hours’ worth of appraisals. Equal – Both NC and TN require 2,500 hours of appraisals for state certified appraisers and 3,000 hours of appraisals for general appraisers.</p>	<p>Less stringent than TN – NC requires a \$200 application fee, while TN requires a \$125 application fee and a \$350 fee for license issuance and renewals.</p>
<i>Florida</i>		
<p>More stringent than TN – FL requires registered trainee appraisers to complete 100 hours of approved pre-licensure education and certified residential appraisers to complete 200 hours of approved pre-licensure education and hold a bachelor’s degree or higher, while TN requires trainee appraisers to earn 75 hours of appraiser courses and state licensed appraisers to earn 150.</p>	<p>Equal – Both FL and TN require certified residential appraisers/state certified appraisers to accumulate 2,500 hours of experience and certified general appraisers to accumulate 3,000 hours of experience.</p>	<p>Less stringent than TN – There is no application fee and the issuance fee for registered trainee appraisers is \$230, while the issuance fee is \$350 in TN. Equal – the issuance fee for certified residential appraisers/state certified appraisers is \$351 in FL and \$350 in TN, and the issuance fee for certified general appraisers is \$351 in FL and \$350 in TN.</p>

<u>Education</u>	<u>Experience</u>	<u>Fees</u>
<i>Georgia</i>		
Equal – In addition to holding a high school diploma, both GA and TN require state licensed real estate appraisers to have an associate’s degree or 30 semester hours of college-level education and state certified residential appraisers and state certified general appraisers to have a bachelor’s degree.	Equal – Both GA and TN require state licensed real estate appraisers to submit a detailed appraisal experience log documenting at least 2,000 hours of real property appraisal experience; state certified residential appraisers, a log documenting at least 2,500 hours; and state certified general appraisers, a log documenting at least 3,000 hours experience, gained over a period of at least 30 months, with at least 50% non-residential.	Less stringent than TN – GA requires a \$125 application fee, and the following fees for renewals: a \$140 fee for licensed and certified appraisers and a \$100 fee for registered and trainee appraisers, while TN requires a \$125 application fee and a \$350 fee for license renewals.
<u>Real Estate Broker</u>		
<i>North Carolina</i>		
Less stringent than TN – NC requires 75 hours of pre-licensing coursework, while TN requires 90 hours.	Less stringent than TN – NC requires 90 classroom hours of post-licensing education to be completed within three years of the date of initial licensure, while TN requires brokers to complete 120.	Less stringent than TN – NC requires a \$30 application fee and a \$45 annual renewal fee, while TN requires a \$100 license fee and an \$80 biennial renewal fee.
<i>Florida</i>		
Less stringent than TN – FL requires that sales associates have obtained 63 hours of pre-licensing courses (which are valid for two years) and for brokers to have obtained 72 hours while TN requires affiliate brokers to have obtained 90 hours and brokers to have obtained 150.	Less stringent than TN – FL requires sales associates to have obtained 45 hours of post-licensing courses within two years of initial licensing and for brokers and broker associates to obtain 60 while TN requires brokers to obtain 120 hours of post-licensing courses before the third year of initial licensing.	Less stringent than TN – FL requires initial license fees of \$64 for sales associates and \$72 for brokers and biennial renewal fees of \$64 for sales associates and \$72 for brokers. TN requires \$100 for an initial license fee and an \$80 biennial renewal fee.

<u>Education</u>	<u>Experience</u>	<u>Fees</u>
<i>Georgia</i>		
Less stringent than TN – GA requires salespersons to have 75 hours of pre-licensing courses and for brokers to have 60 hours while TN requires affiliate brokers to have 90 hours and brokers to have 150.	Less stringent than TN – There is no experience requirement for salespersons in GA. Brokers in GA are required to have been licensed a minimum of three of the previous five years while TN brokers are required to have accumulated 120 hours of post-licensing courses before the third year of licensing.	More stringent than TN – GA’s broker license fee is \$170 and the renewal fee is \$125, while TN’s broker’s license fee is \$100 and biennial renewal fee is \$80.
<u>Auctioneer</u>		
<i>North Carolina</i>		
Less stringent than TN – NC requires either the completion of a two-year apprenticeship or graduating from an approved school of auctioneering, while TN requires 80 classroom hours to become an apprentice, and an additional 30 hours to become a licensed auctioneer, in addition to a two-year apprenticeship.	Less stringent than TN – NC requires either the completion of a two-year apprenticeship or graduation from a school of auctioneering, while TN requires a two-year apprenticeship.	More stringent than TN – NC requires an initial \$300 fee [\$50 application; \$50 examination; \$150 (annual) license and \$50 Recovery Fund] for auctioneer applicants and a \$200 [\$50 application, \$100 (annual) license and \$50 Recovery Fund] for apprentice auctioneers, while TN requires an initial \$50 application fee, \$50 Education and Recovery Account fee, a \$125 apprentice license, and a \$175 auctioneer license.
<i>Florida</i>		
Less stringent than TN – FL requires initial applicants to participate in a 12-month sponsorship or complete 80 classroom hours of auctioneer school, while TN requires 80 classroom hours to become an apprentice and an additional 30 hours to become a licensed auctioneer, in addition to a two-year apprenticeship.	Less stringent than TN – FL requires an apprenticeship of one year or more, while TN requires a two-year apprenticeship.	Less stringent than TN – FL requires a \$444.50 application fee for initial license based on education or apprenticeship, \$205 application fee (to enter apprenticeship), and a \$155 biennial license renewal fee (includes \$5 unlicensed activity fee), while TN requires an initial \$50 application fee, \$50 Education and Recovery Account fee, a \$125 apprentice license, and a \$175 auctioneer license.

<u>Education</u>	<u>Experience</u>	<u>Fees</u>
<i>Georgia</i>		
Less stringent than TN – GA requires that applicants have graduated from an auctioneer’s school, while TN requires 80 classroom hours to become an apprentice, and an additional 30 hours to become a licensed auctioneer, in addition to a two-year apprenticeship.	Less stringent than TN – GA does not require an apprenticeship for licensure, while TN requires a two-year apprenticeship.	More stringent than TN- GA requires a \$200 application fee and a \$150 fee payable to the Recovery Fund, with the \$150 renewal fee paid every even year, while TN requires an initial \$50 application fee, \$50 Education and Recovery Account fee, a \$125 apprentice license, and a \$175 auctioneer license.
<u>Collection Services</u>		
<i>North Carolina</i>		
N/A	N/A	More stringent than TN – NC requires a \$1,048 initial agency application fee and a \$1,038 agency renewal fee, while TN requires a \$750 initial application fee (\$150 license application fee and a \$600 collections service license) and a \$350 renewal fee
<i>Florida</i>		
N/A	N/A	Less stringent than TN – FL requires a \$200 application fee and a \$200 renewal fee, while TN requires a \$750 initial appl. fee (\$150 license application fee and a \$600 collections service license) and a \$350 renewal fee.
<i>Georgia</i>		
N/A	N/A	N/A
<u>Court Reporting</u>		
<i>North Carolina</i>		
N/A	N/A	N/A
<i>Florida</i>		
N/A	N/A	N/A

<u>Education</u>	<u>Experience</u>	<u>Fees</u>
<i>Georgia</i>		
Equal – Both GA and TN require court reporters to hold designations by the National Court Reporters Association and the National Verbatim Reporters Association.	N/A	Equal – Both GA and TN require a \$200 registration/license fee.
<u>Funeral Directors and Embalmers</u>		
<i>North Carolina</i>		
Less stringent than TN – NC requires a high school diploma plus 32 semester hours from or graduate of a mortuary science college approved by the board, while TN requires 30 semester or 45 quarter hours at a school accredited by American Board of Funeral Service Education, for funeral director applicants and an associate's degree in mortuary science, with at least 60 semester or 90 quarter hours at a school accredited by same, for embalmer applicants.	Less stringent than TN for funeral directors and equal for embalmer applicants – NC requires that applicants have a sponsor and work at least 2,000 hours (1 year) during the resident traineeship. Trainees are to assist in directing at least 25 funerals, while TN requires that funeral applicants serve a two-year or one-year apprenticeship and have an associate's degree from a school accredited by the American Board of Funeral Service Education. TN requires embalmer applicants to serve a one-year apprenticeship.	Less stringent than TN – NC requires \$150 for an Embalmer, Funeral Director, Funeral Service application; \$100.00 for an annual combined funeral director and embalmer renewal fee; and \$250 for an establishment permit. TN requires \$200 for a funeral director or embalmer application, \$235 for a funeral director or embalmer renewal fee, and \$575 for a funeral establishment permit.

<u>Education</u>	<u>Experience</u>	<u>Fees</u>
<i>Florida</i>		
<p>More stringent than TN for funeral director intern applicants and equal for embalmer intern applicants – FL requires an associate’s degree in funeral services or a bachelor’s in any subject area along with a one-year Funeral Service Arts course and a two-hour communicable disease course for funeral director intern applicants and completion of a one-year mortuary science course and a two-hour communicable disease course for embalmer intern applicants. TN requires 30 semester or 45 quarter hours for funeral director intern applicants and an associate’s degree in mortuary science.</p>	<p>Less stringent than TN for funeral director intern applicants and equal for embalmer intern applicants – FL requires completion of a one-year funeral director internship and a one-year embalmer internship. TN requires a two-year funeral director apprenticeship, or one year plus an associate’s degree for a funeral director intern applicant and a one-year embalmer apprenticeship.</p>	<p>Equal to TN – FL requires a \$100 application fee and a \$375 license fee (\$187.50 if application is received between Aug. 1 and Sept. 30 of an odd year); TN requires a \$200 application fee and a \$275 license fee (\$235 for renewal).</p>
<i>Georgia</i>		
<p>Equal – GA requires a high school diploma or GED and a degree from an accredited college of funeral service, while TN requires a high school diploma or GED and 30 semester or 45 quarter hours at a school accredited by the American Board of Funeral Service Education for funeral director applicants, and an associate’s degree in mortuary science with at least 60 semester or 90 quarter hours.</p>	<p>Equal – GA requires that apprenticeships begin as of the date the application is approved by the board and 3,120 hours (equivalent to 18 months of full-time service); funeral directors are required to be licensed embalmers in GA, while TN requires funeral directors to serve two-year apprenticeships or serve a one-year apprenticeship and earn an associate’s degree from a school accredited by the American Board of Funeral Service Education, with embalmers requiring one-year apprenticeships.</p>	<p>Less stringent than TN – GA requires a \$40 initial apprenticeship application fee, a \$50 funeral director and \$50 embalmer application fee, a \$150 funeral establishment application fee, a \$100 funeral director and embalmer license renewal fee, and a \$140 funeral establishment renewal fee. TN requires a \$70 initial apprenticeship application fee, a \$200 funeral director or embalmer application fee, a \$575 establishment application fee, a \$235 director or embalmer renewal fee, and a \$575 establishment renewal fee.</p>

<u>Education</u>	<u>Experience</u>	<u>Fees</u>
<u>Soil Scientists</u>		
<i>North Carolina</i>		
More stringent than TN – NC requires 30 semester hours or 45 quarter hours in agriculture, or biological, physical, or earth sciences and at least 15 semester hours or equivalent quarter hours in soil science, while TN requires 15 semester hours in soil science.	More stringent than TN – both NC and TN require at least three years of professional experience; however, NC requires the experience to be as an apprentice, while TN allows applicants to substitute advanced degrees, teaching, and/or research experience for the three years.	Less stringent than TN – NC requires a \$50 application fee and \$85 renewal fee, while TN requires a \$100 application fee and a \$400 license/renewal fee for active licenses.
<i>Florida</i>		
N/A	N/A	N/A
<i>Georgia</i>		
N/A	N/A	N/A
<u>Private Investigation</u>		
<i>North Carolina</i>		
More stringent than TN – NC requires a high school diploma, GED, or proof of graduation from an accredited college or university, while TN does not require any level of education.	More stringent than TN – NC requires three years’ experience in private investigation, or three years in an investigative capacity in law enforcement or government, while TN requires one person in an investigation company to have one year of related experience or education.	Equal – Both NC and TN require a \$150 application fee. Less stringent than TN – NC requires a \$45 license fee, while TN requires a \$125 sole practitioner license fee.
<i>Florida</i>		
Equal – FL allows for college coursework to be substituted for experience, as does TN.	Equal – Both FL and TN allow for either prior investigative experience and/or college coursework to be substituted for experience.	Less stringent than TN – FL requires for individual licensees a \$50 application fee, a \$75 license fee, and a \$75 renewal fee. For private investigative agencies, FL requires a \$50 application fee, a \$450 initial license fee, and a \$450 license renewal fee. TN requires for individuals a \$150 application fee, a \$125 license fee, and a \$250 renewal fee, and requires for agencies a \$250 application fee, a \$500 initial license fee, and a \$1,000 renewal fee (for over 5 licensed staff).

<u>Education</u>	<u>Experience</u>	<u>Fees</u>
<i>Georgia</i>		
Equal – GA allows for college coursework to be substituted for experience, as does TN.	More stringent than TN – GA requires two years’ investigative experience with prior detective experience and college coursework substitutable for licensure experience, while TN requires one year of investigative experience with prior detective experience and college coursework substitutable for licensure experience.	Less stringent than TN – GA requires companies to pay \$100 for an application, \$300 for the license fee, and \$300 for renewal, with individuals required to pay \$45 for an initial license (\$70 armed), and a \$65 renewal fee. TN requires companies to pay a \$1,000 application fee with more than five licensed investigators, \$500 license fee, and \$1,000 renewal fee. Individuals to pay a \$150 application fee, a \$125 license fee, and a \$250 license renewal fee.
<u>Polygraph</u>		
<i>North Carolina</i>		
Less stringent than TN – NC requires that applicants have graduated from high school and a board approved polygraph course, while TN requires that applicants hold a bachelor’s degree or two years of college credits.	Less stringent than TN – NC requires six months as a trainee or one year of experience, while TN requires five years’ experience in criminal, counterintelligence, or private investigative work.	Equal – NC requires a \$150 application fee and a \$45 license fee, while TN requires a \$50 application fee and a \$150 license fee.
<i>Florida</i>		
N/A	N/A	N/A
<i>Georgia</i>		
N/A	N/A	N/A