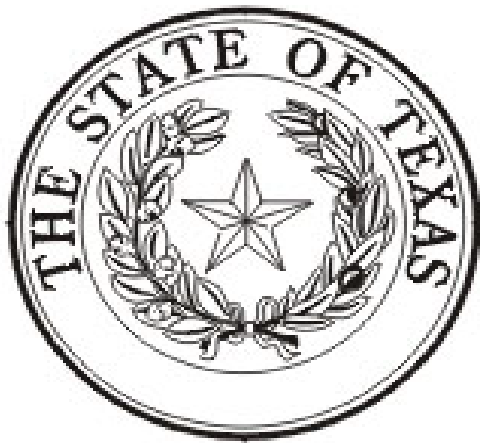


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**SELF-EVALUATION REPORT  
TO THE  
SUNSET ADVISORY COMMISSION**

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**Submitted by the  
TEXAS BOARD OF LAW EXAMINERS**

**August, 2001**

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## Board of Law Examiners Self-Evaluation Report

### I. Key Functions, Powers, and Duties

**A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.**

It is the responsibility of the Board of Law Examiners ("Board" or "BLE") to: (a) determine whether all candidates for a Texas law license possess present good moral character and fitness; (b) determine whether all candidates for a Texas law license have adequate law study; (c) examine each eligible candidate and give failing candidates an analysis of their performance on the bar examination; and (d) determine whether Applicants who are licensed attorneys in another state meet the requirements for a license to practice law in Texas. These responsibilities have been substantially the same since 1919.

The Supreme Court of Texas has adopted rules that govern many aspects of the Board's activities, including the qualifications for admission, the development and administration of the Texas Bar Examination, and the issuance of the license. In conjunction with the Supreme Court's *Rules Governing Admission to the Bar of Texas*, the Texas Legislature has enacted a statute, Texas Government Code Section 82, that addresses the responsibilities of the Board, key provisions of which are as follows:

1. Section 82.022 outlines the authority of the Supreme Court of Texas to adopt rules on eligibility and on the manner in which the Texas Bar Examination is conducted.
2. Section 82.004 requires the Board to examine each eligible candidate's qualifications to practice law and to determine the eligibility of candidates for examination for a license to practice law in Texas.
3. Section 82.004(c) prohibits the Board from recommending any person for a license to practice law unless the person has shown to the Board, in the manner prescribed by the Supreme Court of Texas, that the person is of sufficient capacity, attainment, and moral character for that person to be licensed.

These statutory provisions, together with the *Rules Governing Admission to the Bar of Texas*, as adopted by the Supreme Court of Texas, are published in the Board's rulebook, appear in full on the Board's website, and are found in the Attachments Volume at Tab 1.

**B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?**

Yes.

**C. Please explain why these functions are needed. Are any of these functions required by federal law?**

These functions, although not required by federal law, are needed to protect the public by providing an efficient and uniform means of determining that persons seeking a license to practice law in Texas are of sufficient capacity, attainment, and character to be able to serve the public in a competent and ethical manner.

**D. In general, how do other states carry out similar functions?**

Other states carry out substantially the same functions in a similar fashion, virtually always with a Board that answers to the supreme court of the state. An efficient means of comparing bar admission requirements and other functions of the Board with similar agencies in other jurisdictions is by reviewing the *Comprehensive Guide to Bar Admission Requirements* published by the American Bar Association and the National Conference of Bar Examiners, a copy of which is found in the Attachments Volume at Tab 19.

**E. Describe any major agency functions that are outsourced.**

None. Certain professional services that would not be described as major agency functions, such as expert review of requests for testing accommodations under the Americans with Disabilities Act, are referred to independent experts consistent with best practices in this evolving and complex area. In addition, computer programming is outsourced on an as needed basis.

**F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency's key functions.**

None. The Americans with Disabilities Act ("ADA") is evolving and the Board's review of requests for testing accommodations could foreseeably change over time to remain consistent with ADA requirements. BLE's staff stays abreast of outstanding court cases and statutory changes in this area, as do BLE's expert consultants.

**G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency. Do not include general state statutes that apply to all agencies, such as the Open Records Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1997 – 2001, or earlier significant Attorney General opinions, that affect the agency's operations.**

<b>Board of Law Examiners Exhibit 1: Statutes/Attorney General Opinions</b>	
<b>Statutes</b>	
<b>Citation/Title</b>	<b>Authority/Impact on Agency</b>
Government Code - Title 2, Chapter 82, Subchapter A consists of statutes applicable to the general activities of the Board. Section 82.001	Sets forth requirements for the composition, qualifications, and terms of members of the Board.
Section 82.002	Delineates circumstances considered to be a conflict of interest.
Section 82.0021	Establishes the grounds for removal of a member of the Board.
Section 82.003	Makes the Board subject to both the Open Records and Open Meetings laws, with stated exceptions.
Section 82.004	Outlines the duties of the Board of Law Examiners.

Self-Evaluation Report Instructions

Section 82.005	Acknowledges that the Supreme Court of Texas is authorized to set the compensation of members of the Board, but caps that compensation at \$20,000 per year.
Section 82.006	Makes the Board subject to the Texas Sunset Act.
Section 82.007	Addresses personnel policy guidelines and reports applicable to the Board, its executive director, and employees.
Section 82.008	Addresses communications between the Board and the public.
Section 82.009	Requires the Board to prepare and maintain a written plan to provide reasonable access to its programs to any person with a disability.
Government Code - Title 2, Chapter 82, Subchapter B consists of statutes specifically applicable to the licensing of attorneys. Section 82.021	Recognizes that only the Supreme Court of Texas may issue licenses to practice law in the State of Texas.
Section 82.023	Consists of provisions related to the requirement for, and the composition and use of, the Declaration of Intention to Study Law as an investigative tool of the Board.
Section 82.024	Establishes the law study requirements to be met to be eligible to take the Texas Bar Examination.
Section 82.0241	Acknowledges that matters related to the licensure of persons from unaccredited law schools in Texas are within the exclusive jurisdiction of the Supreme Court of Texas.
Section 82.027	Consists of provisions related to the requirement for, and the composition and use of, the Application for Admission as an investigative tool of the Board.
Section 82.028	Addresses the scope of the Board's character and fitness investigation and the grounds for denial of admission.
Section 82.029	Authorizes the Board to obtain criminal history record information maintained by the Texas DPS or the FBI.
Section 82.030	Requires the Board to assess each Applicant's character and fitness based on its investigations of the Declaration of Intention and Application for Admission, establishes deadlines for notification of Applicants with character or fitness problems, and specifies the required content of such notifications.
Section 82.033	Establishes caps for the various fees the Board may charge Applicants for the performance of its services.
Section 82.034	Establishes that fees collected by the Board are to be deposited in a fund established and used as directed by the Supreme Court of Texas to administer the functions of the Board.

Section 82.035	Makes the financial transactions of the Board subject to audit by the State of Texas and requires the Board to file an annual report as required by the General Appropriations Act.
Section 82.038	States that the Board may not deny a person who passes the bar examination a probationary license just because the person is chemically dependent. Defines chemical dependency as the abuse, pathological use, or physiological dependence on alcohol or a controlled substance.
<b>Attorney General Opinions</b>	
<b>Attorney General Opinion No.</b>	<b>Impact on Agency</b>
OR93-308 (1993)	States that a requestor's examination booklets, to the extent they contain the examinee's answers, are excepted from required public disclosure by virtue of a July 7, 1987 order of the Supreme Court of Texas.
OR623 (1994)	States that the Board may withhold information, otherwise available to an applicant under the Open Records Act, if the person who supplied the information has requested that the Board not disclose it.
Opinion No. JC-0050 (1999)	States that a licensing agency, under the Americans with Disabilities Act, must consider an Applicant's request for accommodations and sets forth factors the agency should consider regarding such a request.

**H. Please fill in the following chart:**

<b>Board of Law Examiners Exhibit 2: Agency Contacts</b>			
	<b>Name</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
<b>Agency Head</b>	Julia E. Vaughan	P. O. Box 13486 Austin, TX 78711-3486	512-463-8929 512-463-5300 (fax) <a href="mailto:julia.vaughan@mail.capnet.state.tx.us">julia.vaughan@mail.capnet.state.tx.us</a>
<b>Agency's Sunset Liaison</b>	Julia E. Vaughan	P. O. Box 13486 Austin, TX 78711-3486	512-463-8929 512-463-5300 (fax) <a href="mailto:julia.vaughan@mail.capnet.state.tx.us">julia.vaughan@mail.capnet.state.tx.us</a>

## II. History and Major Events

**Provide a timeline discussion of the agency's history, briefly describing the key events in the development of the agency, including:**

- the date the agency was established;
- the original purpose and responsibilities of the agency;
- major changes in responsibilities or statutory authority;
- agency/policymaking body name and composition changes;
- the impact of state/federal legislation, mandates, and funding;
- the impact of significant state/federal litigation that specifically affects the agency's operations; and
- key organizational events and areas of change and impact on the agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

- A. The responsibility for regulation of the practice of law has been recognized as a judicial function since 1846.
- B. From 1846 until 1903, admission to practice law at the local level was the responsibility of the various district courts. The Supreme Court of Texas was responsible during this period for admission to practice law at the appellate level.
- C. In 1903, the Supreme Court began centralizing the admissions process by creating a board of law examiners under each of the five existing courts of appeals.
- D. In 1919, the 39<sup>th</sup> Legislature created a five (5) member Board of Law Examiners to govern the admission of attorneys to practice law in Texas, under the jurisdiction of the Supreme Court, which has maintained statewide jurisdiction over the issuance of law licenses since that time. Within the 1919 statute, the Board was required to give examinations when as many as five (5) candidates requested that an examination be scheduled, for an examination fee of \$20.00. Graduates of law schools approved by the Supreme Court were granted "diploma privilege," meaning that they were not required to pass the bar examination to achieve a license. Those law school graduates were nevertheless required to satisfy the requirement of possessing good moral character.
- E. The 1919 statute also provided for the Supreme Court, through the Board of Law Examiners, to have centralized control over the determination of the moral character of Applicants to the bar. Each Applicant was required to present certificates from three attorneys practicing in the Applicant's county, attesting to the Applicant's "character and standing," and containing a recommendation that the Applicant be admitted to the bar examination. The Board also had authority under statute and under Supreme Court rules to use other means to fairly investigate Applicants. The overriding effect of the 1919 legislation was to establish in the Supreme Court the sole power to regulate the Texas Bar; only the Supreme Court could issue a license to practice law in Texas or issue rules governing admission to the Bar of Texas. The Supreme Court has maintained these powers and responsibilities continuously since 1919.
- F. In the 1930's, the Supreme Court adopted more stringent admission requirements. Some of these included: the necessity of meeting specific educational requirements; the requirement that Applicants file a Declaration of Intention to Study Law approximately two years before presentation for examination; and the adoption of standards for law office study, which required the submission of proof from a local district judge certifying that the Applicant was indeed pursuing his or her studies in a law office.
- G. In 1935, the diploma privilege was abolished. Graduates of all law schools have since been required to pass an examination prior to admission to the Bar of Texas.
- H. In 1945, the Supreme Court first adopted the precursor of the current rule providing that any

- graduate of an ABA-approved law school would be considered to have met the law study requirement and thus be eligible for admission to the Texas Bar Examination.
- I. In 1956, the Supreme Court adopted new rules that provided that Applicants could take the Texas Bar Examination a maximum of five times but gave the Board the discretion to allow “worthy applicants” to take the exam more than five times. The five-time maximum rule has been in effect since that time, although the Board did allow, by policy, waiver of the rule up to a maximum of eight attempts for several years.
  - J. From 1974 through 1979, the Supreme Court delegated the responsibility for investigation of persons who filed a Declaration of Intent to Study Law to the State Bar of Texas, which performed this task with the help of district committees. Throughout all administrative changes related to character and fitness determinations, the Board of Law Examiners maintained its authority to administer the bar examination.
  - K. In 1974, a nationally standardized test, the Multistate Bar Examination, was adopted by the Supreme Court as an integral part of the Texas Bar Examination.
  - L. In 1979, the Supreme Court removed all responsibility for admissions from the State Bar’s Standards of Admission Committee and delegated the responsibility for determining present good moral character and fitness to the Board of Law Examiners.
  - M. In 1981, law office study as a means of gaining admission to the Texas Bar Examination was abolished.
  - N. In 1983, the Texas Bar Examination saw the addition of a half-day session of testing on civil and criminal procedure and evidence.
  - O. In 1984, the Board began requiring that all Applicants seeking a license to practice law in Texas, whether they be students or out of state attorneys, must pass the Multistate Professional Responsibility Examination before being recommended for a law license.
  - P. In 1997, the Board added to the Texas Bar Examination a second nationally standardized test, the Multistate Performance Test, beginning with the February 1998 examination.
  - Q. In 1998, the Board launched its website. By 1999, the website was enhanced to include downloadable forms and to contain all rules, statutes, and other useful information pertinent to all aspects of the Board’s work.
  - R. In 2001, the Board launched its Application for Admission to take the Texas Bar Examination on diskette, after conducting a survey to determine filing preferences among applicants.
  - S. In February 2002, the Board will offer the Texas Bar Examination in two additional cities, El Paso and Kingsville, Texas, in addition to the traditional sites in six Texas cities in which there is a law school.



### III. Policymaking Structure

**A. Please complete the following chart:**

<b>Board of Law Examiners Exhibit 3: Policymaking Body</b>				
<b>Member Name</b>	<b>Term/ Appointment Dates/ All Members are Appointed by the <u>Supreme Court of Texas</u></b>	<b>Qualification</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Robert E. Valdez Chair	9-4-1993	Attorney	9311 San Pedro, Ste. 700 San Antonio, TX 78216	210-558-3993 210-697-9272 <a href="mailto:revaldez@aol.com">revaldez@aol.com</a>
Donato D. Ramos* Vice Chair	11-2-1994	Attorney	Person, Whitworth, et. al. 602 East Calton Road Laredo, TX 78042- 6668	956-727-4441 956-727-2696 <a href="mailto:dramos@personwhitworth.com">dramos@personwhitworth.com</a>
U. Lawrence Bozé	9-1-1997	Attorney	2208 Blodgett Houston, TX 77004	713-520-0260 713-520-6194 <a href="mailto:bozelaw@aol.com">bozelaw@aol.com</a>
Jack V. Strickland	9-1-1997	Attorney	909 Throckmorton Street Fort Worth, TX 76102	817-338-1000 817-338-1020 <a href="mailto:jvs1943@aol.com">jvs1943@aol.com</a>
Albert Witcher	9-1-1997	Attorney	Naman, Howell, Smith & Lee 900 Washington, Ste. 700 Waco, TX 76701	254-755-4100 254-754-6331 <a href="mailto:witcher@nama-howell.com">witcher@nama-howell.com</a>
Walter Steele	1-1-1998	Attorney	28 Pine Valley Scroggins, TX 75480	903-860-3002 903-860-7093 <a href="mailto:waltersteelejr@cs.com">waltersteelejr@cs.com</a>
Jerry Grissom	9-1-1999	Attorney	2323 Bryan Street, Ste. 2100 Dallas, TX 75201	214-744-5267 214-720-6010 <a href="mailto:grissomadr@aol.com">grissomadr@aol.com</a>

\* Mr. Ramos' letter of resignation submitted to the Supreme Court Liaison August 15, 2001, is pending.

<b>Board of Law Examiners Exhibit 3: Policymaking Body (con't.)</b>				
<b>Member Name</b>	<b>Term/ Appointment Dates/ All Members are Appointed by the Supreme Court of Texas</b>	<b>Qualification</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Jerry Nugent	9-1-1999	Attorney	3800 Woodbrook Circle Austin, TX 78759	512-338-9099 512-338-0636 <a href="mailto:jpnugent@onr.com">jpnugent@onr.com</a>
Cynthia S. Olsen	9-11-2000	Attorney	Wilson, Cribbs, Goren & Flaum 440 Louisiana, Ste. 2200 Houston, TX 77002	713-547-8510 713-229-8824 <a href="mailto:colsen@wcfg.com">colsen@wcfg.com</a>

**B. How is the chair of the policymaking body appointed?**

The Board currently elects its chair from its membership, which, by Supreme Court rule, occurs if the Court does not appoint the chair.

**C. Describe the primary role and responsibilities of the policymaking body.**

The Board of Law Examiners is composed of nine attorneys who must meet the same qualifications as members of the Supreme Court of Texas. Board members must be 35 years of age and have practiced law for ten years. The Supreme Court appoints members for two-year terms that expire on August 31 of odd-numbered years. Board members can serve up to five terms for a total of ten years.

The Board's responsibilities include:

1. Investigating and approving or denying present good moral character and fitness of examinees and out-of-state attorneys seeking admission to the Texas Bar;
2. Ensuring adequate legal study by examination applicants;
3. Developing and administering examinations and providing analyses to persons failing the examination; and
4. Ensuring that out-of-state attorneys meet the eligibility requirements necessary to obtain a license to practice law in Texas.

**D. List any special circumstances or unique features about the policymaking body or its responsibilities.**

Board duties are unusually comprehensive and varied. Many time-consuming and unique responsibilities requiring legal expertise are related to the semi-annual Texas Bar Examination. Pre-examination duties include researching and drafting two proposed and two alternate bar examination questions for an assigned subject (subject assignments generally rotate every few years), as well as grading guidelines for all four questions. This question drafting process occurs twice annually, in preparation for the February and the July bar examinations. In addition, each member must participate in the review, evaluation, critique, and revision of all proposed questions. Examination administration duties also include attending and assisting in

the administration of the two-and-one-half day bar exam each February and July at an assigned exam site in one of eight Texas cities.

Other duties related to the bar examination include hiring, training, and supervising two licensed attorney graders to assure that grading is done in a uniform, fair, and timely manner. Each board member is personally responsible for grading approximately one hundred (100) examinee answers to use in calibration sessions with graders and must meet or communicate with graders periodically during the grading process to ascertain that graders are still in calibration with the member's expectations of an acceptable answer. Board members must report grades and re-grades to Board staff, and must personally re-grade the answers of examinees whose grades fall within a designated re-grade bracket, all within a specified time frame. In an average year, over three thousand five hundred (3,500) examinations are graded, the majority of which are graded between August 1 and late October in connection with the July bar exam. After each semiannual grade release, Board members conduct written or telephonic informal reviews of the answers of all failing examinees who request such reviews, as well as conduct in-person formal reviews of qualifying failers' answers.

Other Board member duties include: attending and participating in four to six board meetings per year; serving on approximately eight monthly character and fitness hearing panels per year; and participating in periodic Board-sponsored long-range planning meetings and seminars, as well as workshops, seminars, and meetings relating to the bar admissions and bar examination process often sponsored by the National Conference of Bar Examiners.

**E. In general, how often does the policymaking body meet? How many times did it meet in FY 2000? In FY 2001?**

The complete Board meets approximately six times annually to adopt policy, interpret rules, consider budgetary matters, review and approve questions for the bar examination, and conduct in-person reviews of the examinations of certain eligible Applicants who failed the exam on two or more occasions. In addition, panels of three Board members meet monthly to consider character and fitness issues and requests for rule waivers in public hearings. There are approximately twenty hearings panels per year with each Board member serving on approximately eight panels during the year.

During Fiscal Year 2000, the complete Board met on five (5) occasions: November 1999, January 2000, March 2000, June 2000, and November 2000. In the same year, twenty (20) hearings panels were convened, composed of three (3) Board members each. Additionally, two (2) Executive Committee meetings were held in Fiscal Year 2000.

The Board's calendar for Fiscal Year 2001 reflects six (6) meetings of the complete Board: September and November, 2000 and January, April, June, and November, 2001. In the same year, seventeen (17) hearings panels were convened, composed of three (3) Board members each. Additionally, five (5) Executive Committee meetings were held in Fiscal Year 2001.

**F. What type of training do the agency's policymaking body members receive?**

New Board members receive a thorough orientation, usually presented by the Chairman, one other Board member, and senior staff. All Board members also receive the training required by the Public Funds Investment Act. In addition, most Board members receive training related to the bar admissions and bar examination process conducted by the National Conference of Bar Examiners. Beginning in Fall 2001, Board members are expected to attend a training course

conducted by the Attorney General of Texas covering numerous aspects of Board membership. Representatives of the Attorney General of Texas and Texas Ethics Commission have given briefings to the Board on Open Government and other Board responsibilities during Board meetings in FY 2001. Two Members of the Board have also received specialized training on Americans with Disabilities Act (“ADA”) issues at a symposium held in Fall 2000 on the impact of the ADA on attorney admission and licensing.

**G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.**

The Board’s role in running the agency includes selection and oversight of the Executive Director, approval of the Board budget, and oversight of Board administration. Acting under the Rules promulgated by the Supreme Court, the Board determines the eligibility of candidates for examination, holds hearings on character and fitness issues, prepares and administers the bar examinations, and determines whether attorneys from other states meet the admission requirements. When a candidate has met all requirements for admission, the Board recommends the candidate to the Court for licensing. Only the Supreme Court of Texas can issue a license to practice law in this State.

The following are the responsibilities of Board staff in running the agency and essential duties of each position:

1. Executive Director
  - a. Chief administrative office of the Board Of Law Examiners;
  - b. Responsible for the organization, operation, and supervision of the Board’s activities as guided by the Board’s enabling statutes, *Rules Governing Admission to the Bar of Texas*, and the policies and goals established by the Board;
  - c. Hired by and serves at the pleasure of the Board;
  - d. General duties include:
    - 1) Providing assistance to the Chair and the members of the Board, as needed;
    - 2) Overseeing all office operations, personnel, financial management, budget control, and compliance with statutory requirements;
    - 3) Interfacing with the Supreme Court Liaison regarding Board matters;
    - 4) Representing the Board in all dealings with other state agencies, including statutory reporting;
    - 5) Communicating and coordinating with approved Texas law schools concerning the Board’s processes, as they relate to law students and as to implementation of Board policies and Supreme Court rule changes;
    - 6) Speaking at Texas law schools about BLE filing requirements;
    - 7) Communicating with representatives of the State Bar, Office of the General Counsel, Unauthorized Practice of Law Committee, and such other sections and divisions of the State Bar as may be affected by or interested in Board policies;
    - 8) Responding to requests for information from elected officials and members of the media; and
    - 9) Keeping the Board informed of legislation which may affect its functions and responsibilities.
2. Other Employees working under the direction and control (either directly or indirectly) of the Executive Director:
  - a. The Director of Character and Fitness, who is responsible for overseeing and recommending policy decisions on the certification of the character and fitness of Declarants and Applicants;

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- b. The Director of Eligibility and Examination, who is responsible for overseeing the administration of all examinations and for overseeing and recommending decisions on the eligibility of Applicants to be recommended for licensure as well as all questions concerning testing accommodations for disabled Applicants under the ADA;
- c. A Senior Staff Attorney, who is responsible for preparing and presenting contested cases to the Board and for serving as legal counsel to the Executive Director and the Board;
- d. A Staff Attorney, who assists in preparing and presenting contested cases to the Board and who assists in cases involving requests for testing accommodations for disabled Applicants;
- e. The Executive Assistant to the Executive Director, who is the office manager responsible for all matters relating to personnel and employee benefits, in addition to providing assistance and support to the Executive Director;
- f. The Assistant Director of Character and Fitness, who supervises all Probationary Licensees, assists the Staff Attorneys with docket management responsibilities, and is responsible for the intermediate supervision of the character and fitness investigations conducted by the Licensure Analysts;
- g. The Assistant Director of Eligibility and Examination, who is responsible for the day-to-day administration of the Board's special testing program for Applicants who are covered by the ADA, for the intermediate supervision of the examination and eligibility functions, and for information systems;
- h. A number of Licensure Analysts, each of whom is responsible for handling and processing declaration and application files, including conducting the character and fitness and eligibility investigations of persons whose names fall within a particular segment of the alphabet, as well as for carrying out other specifically assigned duties;
- i. A part-time Accountant, who is responsible for handling the financial matters of BLE, including budget, payroll, and reimbursements, among other matters as well as support for information systems;
- j. A Purchaser, who is responsible for inventory and purchase functions, for verification of expenditures, and for providing assistance to the Accountant where needed;
- k. A Receptionist, who is responsible for greeting visitors, answering the telephone, coordinating examination proctors, assisting with the agency's Records Retention Schedule, and providing support work where needed;
- l. A Support Clerk, who is responsible for providing back-up telephone and reception duty, handling mail (posting and mail check-in), filling and mailing application packets, running daily fee reports, handling application copy requests, archiving files, and providing general assistance to other BLE employees as needed;
- m. A part-time Clerk, who is responsible for running errands, handling copying projects, shredding, and providing assistance where needed; and
- n. A part-time Reproduction Equipment Operator, who is responsible for printing BLE forms, booklets, examinations, and related duties.

<b>H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.</b>
-------------------------------------------------------------------------------------------------------------------------------------------

<b>Board of Law Examiners</b>			
<b>Exhibit 4: Subcommittees and Advisory Committees</b>			
<b>Name of Subcommittee or Advisory Committee</b>	<b>Size/Composition/How members are appointed</b>	<b>Purpose/Duties</b>	<b>Legal Basis for Committee</b>
Investment Advisory Committee	3 Members appointed by Chairman	To assure compliance with Public Funds Investment Act	Pursuant to the Board's Investment Policy, as amended September 22, 2000, and in accordance with the Public Funds Investment Act
Executive Committee	3 – Chairman, Vice Chairman and Member at Large appointed by Chairman	To consider appeals of disability accommodations decisions of Board Staff. (A more detailed discussion is included on pages 22 – 23.)	Board Policy Adopted February 13, 1998
Special Character & Fitness Committee	2 Members chosen by Full Board	To decide whether a character & fitness matter involving allegations pending in a legal proceeding before a court or administrative body should be deferred pursuant to Rule XV(b).	Rule XV(b)

**I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?**

The Board takes very seriously its duty to the public and to the Supreme Court to thoroughly investigate all persons seeking admission to the Bar of Texas prior to the Supreme Court granting a law license to any such person. While the Board does, from time to time, make recommendations to the Supreme Court concerning proposed changes to the *Rules Governing Admission to the Bar of Texas*, the rulemaking power is reserved to the Supreme Court of Texas. In its investigative efforts, the Board is constantly in touch with members of the public as well as educational institutions and public entities of all types in an effort to secure input into determining the present character and fitness of persons seeking admission to the Bar of Texas. The Board's investigative procedures, guided by statutory requirements concerning confidentiality, necessarily limit public participation in certain phases of the investigative process. However, in addition to submission of information, members of the public participate by testifying and by attending proceedings open to the public. Board Meetings are open to the public and members of the public are given an opportunity to present information relevant to matters on the agenda when they appear at Board Meetings. Input from the public received in Board Meetings is given consideration by the Board in deciding matters on the agenda. At recent Board Meetings, groups such as the State Bar of Texas Disability Issues Committee and groups representing corporate counsel and military attorneys have offered important input to the Board concerning potential rule changes. Beginning in 2001, the Board will hold one meeting per year outside of the Board's Austin headquarters in an attempt to obtain greater input from the public. The November 2001 Board Meeting will occur in Waco on the campus of Baylor

Law School. In future years, the out of town meeting will likely occur at a law school elsewhere in the State.

#### IV. Funding

**A. Describe the agency’s process for determining budgetary needs and priorities.**

The statute and Supreme Court rules each address the Board’s funding. The statute imposes upper limits on the fees but designates the Supreme Court as the entity responsible for setting fees. The statute also requires the fees to be set at a rate that is sufficient to cover the costs associated with administering the Board’s responsibilities.

The Board is not subject to the appropriation process. The Supreme Court sets fees and approves the annual operating budget of the Board. Board staff prepares and submits a proposed budget to the Board at the June Board meeting. The Board subsequently approves a recommended budget for presentation to the Supreme Court, which typically approves the budget prior to September of each year. The Board’s fiscal year begins September 1 and ends August 31.

**PLEASE FILL IN EACH OF THE CHARTS BELOW, USING EXACT DOLLAR AMOUNTS.**

**B. Show the agency’s sources of revenue. Please include all local, state, and federal sources.**

<b>Board of Law Examiners Exhibit 5: Sources of Revenue – Fiscal Year 2000 (Actual)</b>	
Source	Amount
Investigation Fees	\$827,770
Texas Bar Exam Fees	\$1,044,175
AWOX/SFX Exam Fees	\$222,555
Foreign Legal Fees	\$2,600
Other Fees – Copy, MBE, Labels, NSF	\$7,165
Investment & Interest Income	\$113,818
<b>TOTAL</b>	<b>\$2,218,083</b>

**C. If you receive funds from multiple federal programs, show the types of federal funding sources.**

Not Applicable.

**D. Show the agency's expenditures by strategy.**

Not Applicable.

**E. Show the agency's expenditures and FTEs by program.**

<b>Board of Law Examiners</b>					
<b>Exhibit 8: Expenditures and FTEs by Program — Fiscal Year 2000 (Actual)</b>					
<b>Program</b>	<b>Budgeted FTEs, FY 2000</b>	<b>Actual FTEs as of August 31, 2000</b>	<b>Federal Funds Expended</b>	<b>State Funds Expended**</b>	<b>Total Actual Expenditures</b>
Character & Fitness / Hearings	9.00	7.25	0	0	\$363,001.67
Eligibility & Examinations	6.50	5.50	0	0	\$263,735.81
Administrative	7.25	4.75	0	0	\$256,506.79
E&E – Exam Proctors*	0	0	0	0	\$72,440.74
<b>TOTAL</b>	<b>22.75</b>	<b>17.50</b>	<b>0</b>	<b>0</b>	<b>\$955,685.01</b>

\* Exam Proctors These individuals are hired on an as needed basis for the exams, approximately 25 to 30 hours twice per year, in February and July. FTE equivalents cannot be reasonably calculated.

\*\* All Board Funds consist of Fee Revenues generated from Applicants and Declarants together with investment income.

**F. If applicable, please provide information on fees collected by the agency.**

<b>Board Of Law Examiners</b>				
<b>Exhibit 9: Fee Revenue and Statutory Fee Levels — Fiscal Year 2000</b>				
<b>Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory Maximum</b>	<b>Number of Persons or Entities Paying Fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
I – Applicants	150	2743	\$411,475	Special Revenue Fund
J – Declarants	150	2191	\$328,620	Special Revenue Fund
K – Investigation Fees	150	37	\$5,550	Special Revenue Fund
S – Late Fees Related to Declarants	150	547	\$82,050	Special Revenue Fund
V – NSF Fees Related to Declarants	25	3	\$75	Special Revenue Fund
R – Application Deposit	30	1238	\$37,135	Special Revenue Fund



Self-Evaluation Report Instructions

<b>Board Of Law Examiners</b>				
<b>Exhibit 9: Fee Revenue and Statutory Fee Levels — Fiscal Year 2000 (con't.)</b>				
<b>Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory Maximum</b>	<b>Number of Persons or Entities Paying Fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
X – Typing Fee	50	76	\$3,815	Special Revenue Fund
F – Incomplete Fee	75	7	\$525	Special Revenue Fund
D – Attorney Application	700	190	\$133,010	Special Revenue Fund
C – Exam Deposit	30	10	\$300	Special Revenue Fund
A – Instate Law School Student	150	1967	\$295,020	Special Revenue Fund
B – Out of State Law School Student	150	511	\$76,690	Special Revenue Fund
E – Exam Fees	75/150	2748	\$221,220	Special Revenue Fund
G – Retakers	150	1024	\$153,640	Special Revenue Fund
N – Attorney Reinstatement	150	1	\$120	Special Revenue Fund
T – Late Fees Related to TBE	150	815	\$122,175	Special Revenue Fund
U – NSF Service Charge	25	21	\$525	Special Revenue Fund
M – SFX Late Fee	150	23	\$3,390	Special Revenue Fund
L – Short Form	700	37	\$25,970	Special Revenue Fund
W – No Exam (a.k.a. AWOX)	700	253	\$177,300	Special Revenue Fund
Y – Short Form	150	38	\$5,700	Special Revenue Fund
Z – Retakers Short Form	150	23	\$3,450	Special Revenue Fund
O – Miscellaneous	N/A	N/A	\$6,745	Special Revenue Fund
H – Foreign National Attorney	100	9	\$900	Special Revenue Fund
P – Renew Foreign Legal Consultant	150	2	\$300	Special Revenue Fund
Q – Foreign Legal Consultant	700	2	\$1,400	Special Revenue Fund

**G. Please fill in the following chart.**

<b>Board Of Law Examiners Exhibit 10: Purchases from HUBs FISCAL YEAR 1998</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>	N/A	N/A	N/A	11.9%
<b>Building Construction</b>	N/A	N/A	N/A	26.1%
<b>Special Trade</b>	N/A	N/A	N/A	57.2%
<b>Professional Services</b>	212,550.00	84,585.00	39.8%	20.0%
<b>Other Services</b>	256,117.00	9,476.35	3.7%	33.0%
<b>Commodities</b>	85,828.37	11,071.86	12.9%	12.6%
<b>TOTAL</b>	554,495.37	105,133.21		
<b>Board Of Law Examiners Exhibit 10: Purchases from HUBs (con't.) FISCAL YEAR 1999</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>	N/A	N/A	N/A	11.9%
<b>Building Construction</b>	N/A	N/A	N/A	26.1%
<b>Special Trade</b>	N/A	N/A	N/A	57.2%
<b>Professional Services</b>	292,042.00	190.00	0.1%	20.0%
<b>Other Services</b>	25,815.00	22,027.78	85.3%	33.0%
<b>Commodities</b>	112,002.00	10,764.00	9.6%	12.6%
<b>TOTAL</b>	429,859.00	32,981.78		
<b>FISCAL YEAR 2000</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>	N/A	N/A	N/A	11.9%
<b>Building Construction</b>	N/A	N/A	N/A	26.1%
<b>Special Trade</b>	N/A	N/A	N/A	57.2%
<b>Professional Services</b>	339,101.00	1,590.00	0.6%	20.0%
<b>Other Services</b>	5,795.00	2,064.00	35.6%	33.0%
<b>Commodities</b>	94,562.00	34,574.50	29.3%	12.6%
<b>TOTAL</b>	439,458.00	38,228.50		

**H. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?**

The Board has not developed a formal HUB policy document but has frequently exceeded the statewide goal in categories other than for computer programming services. The computer programmer contracted by the Board for various projects over a multi-year period is best equipped to efficiently handle the Board's programming needs and does not qualify as a HUB.

## V. Organization

**A. Please fill in the chart below. If applicable, list field or regional offices.**

<b>Board Of Law Examiners</b>			
<b>Exhibit 11: FTEs by Location — Fiscal Year 2000</b>			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 2000	Number of Actual FTEs as of August 31, 2000
Headquarters	Austin	22.75	17.50
<b>TOTAL</b>		22.75	17.50

**B. What was the agency's FTE cap for FY 2000?**

Not Applicable.

**C. How many temporary or contract employees did the agency have as of August 31, 2000?**

One.

**D. Please fill in the chart below.**

<b>Board Of Law Examiners</b>							
<b>Exhibit 12: Equal Employment Opportunity Statistics</b>							
<b>FISCAL YEAR 1998</b>							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
<b>Officials/Administration</b>	3	0%	5%	0%	8%	66.6%	26%
<b>Professional</b>	2	0%	7%	0%	7%	25%*	44%
<b>Technical</b>	7	0%	13%	0%	14%	62.5%	41%
<b>Protective Services</b>	0	N/A	13%	N/A	18%	N/A	15%
<b>Para-Professionals</b>	0	N/A	25%	N/A	30%	N/A	55%
<b>Administrative Support</b>	4.5	0%	16%	11.2%	17%	88.8%	84%
<b>Skilled Craft</b>	0.5	0%	11%	0%	20%	0%	8%
<b>Service/Maintenance</b>	0	N/A	19%	N/A	32%	N/A	27%

<b>Board Of Law Examiners</b>							
<b>Exhibit 12: Equal Employment Opportunity Statistics (cont.)</b>							
<b>FISCAL YEAR 1999</b>							
<b>Job Category</b>	<b>Total Positions</b>	<b>Minority Workforce Percentages</b>					
		<b>Black</b>		<b>Hispanic</b>		<b>Female</b>	
		<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>
<b>Officials/Administration</b>	3	0%	5%	0%	8%	33.3%	26%
<b>Professional</b>	2	0%	7%	0%	7%	25%*	44%
<b>Technical</b>	8	0%	13%	0%	14%	75%	41%
<b>Protective Services</b>	0	N/A	13%	N/A	18%	N/A	15%
<b>Para-Professionals</b>	0	N/A	25%	N/A	30%	N/A	55%
<b>Administrative Support</b>	4.5	0%	16%	11.2%	17%	88.8%	84%
<b>Skilled Craft</b>	0.5	0%	11%	0%	20%	0%	8%
<b>Service/Maintenance</b>	0	N/A	19%	N/A	32%	N/A	27%
<b>FISCAL YEAR 2000</b>							
<b>Job Category</b>	<b>Total Positions</b>	<b>Minority Workforce Percentages</b>					
		<b>Black</b>		<b>Hispanic</b>		<b>Female</b>	
		<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>
<b>Officials/Administration</b>	3	0%	5%	0%	8%	33.3%	26%
<b>Professional</b>	2	0%	7%	0%	7%	25%*	44%
<b>Technical</b>	8	0%	13%	0%	14%	62.5%	41%
<b>Protective Services</b>	0	N/A	13%	N/A	18%	0%	15%
<b>Para-Professionals</b>	0	N/A	25%	N/A	30%	N/A	55%
<b>Administrative Support</b>	4.5	0%	16%	11.2%	17%	88.8%	84%
<b>Skilled Craft</b>	0.5	0%	11%	0%	20%	0%	8%
<b>Service/Maintenance</b>	0	N/A	19%	N/A	32%	N/A	27%

\* Professional positions for 1998, 1999, and 2000 consist of one full time attorney (male), one half-time attorney (female) and one half-time Certified Public Accountant (male). This gives rise to the 25% female number.

**E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?**

The Board is committed to the principles of equal employment opportunity. All applicants are considered for employment on the basis of job-related qualifications without regard to race, color, religion, sex, sexual orientation, national origin, age, disability, or political affiliation.

1. The following policy was adopted in 1995 in order to facilitate compliance with federal and state legislation aimed at affording equal employment opportunities to persons seeking and holding employment with the State of Texas:
  - a. The Board shall not select any individual for employment, advancement, or training on the basis of race, color, disability, sex, religion, age, or national origin.
  - b. The Board shall, in the dissemination of information about employment, advancement, or training opportunities, use such methods as are designed to reach all persons, regardless of race, color, disability, sex, religion, age, or national origin.
  - c. Minority group applicants shall be considered on the basis of their aptitudes, experience, and interests, rather than traditional occupational patterns of such persons.
  - d. Any employment aptitude or proficiency tests utilized by the Board shall be administered without regard to the race, color, disability, sex, religion, age, or national origin of applicant.
  - e. In the taking of applications for employment, the Board shall, when interviewing a member of minority groups, obtain all information required for job placement and record such information accurately; refrain from recording any identification by code or otherwise of the race, color, or national origin of the applicant, except as may be required by law; and provide each applicant with all information pertinent to the available employment position.
  - f. In selecting individuals for employment, advancement, or training, the Board shall make its decision based on individual experience, education, qualifications, ability, dedication, and references, and not on race, color, disability, sex, religion, age, or national origin.
2. The Board shall prepare, and file with the Supreme Court of Texas and the Office of the Governor, an Equal Employment Opportunity policy statement, at least annually, which contains the policies set forth above, as well as the following information:
  - a. A comprehensive analysis of the Board's work force that meets federal and state guidelines;
  - b. A determination of whether the Board's work force meets federal and state guidelines adopted to encourage a balanced work force; and
  - c. A statement setting forth reasonable methods to address any imbalance determined to exist.
3. The Board adheres to the following federal statutes in its employment policies:
  - a. Title VII, Civil Rights Act of 1964, as amended, particularly Sections 703 and 704 (42 U.S.C. §§2000e-2 and 2000e-3)
  - b. 29 U.S.C. §794 Relating to the Employment of Handicapped Persons
  - c. Americans with Disabilities Act
4. The Board has no formal policies addressing shortfalls related to the policy principally due to the relatively small size of the agency and the infrequent turnover among staff.

## VI. Guide to Agency Programs

**A. Please complete the following chart.**

<b>Board Of Law Examiners Exhibit 13: Program Information — Fiscal Year 2000</b>	
<b>Name of Program</b>	Texas Bar Examination (including eligibility analysis and determination)
<b>Location/Division</b>	Eligibility and Examination Division
<b>Contact Name</b>	Josh Henslee, Division Director
<b>Number of Budgeted FTEs, FY 2000</b>	6.5
<b>Number of Actual FTEs as of August 31, 2000</b>	5.5

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

1. Examination

The key services and functions of this program are to provide a fair, standardized examination through which eligible Applicants seeking admission to the Bar of Texas may demonstrate minimum professional competency as one of the elements required under the statutes and *Rules Governing Admission to the Bar of Texas*. An exemption from the exam requirement may apply to certain attorneys licensed in other states who qualify under Rule XIII(a)(1), but the majority of Applicants are required under Rule II(a)(6) to successfully complete the 2½ day Texas Bar Examination. Applicant categories include: in-state law students, out-of-state law students, attorneys licensed in other jurisdictions seeking to practice in Texas, attorneys previously licensed seeking reinstatement, foreign nation attorneys, and repeat test takers who have failed a prior exam and who are limited to a total of five attempts even if otherwise eligible. According to Rule XI(e) a passing score on the Texas Bar Examination is a combined scaled score of 675 (of a possible 1000 points).

With regard to the Texas Bar Examination, major program activities include:

a. Question Drafting and Test Preparation

1. The Supreme Court-appointed members of the Board of Law Examiners are charged with the preparation of test questions in the areas required under Rule XI, i.e. civil and criminal procedure and evidence, business associations, consumer rights, family law, real property including oil and gas, trusts and guardianships, Uniform Commercial Code, and wills and administration.
2. Draft test questions in the above subjects are extensively reviewed and edited, both by the Board and an outside editor, before printing in the Board's print shop for each exam.
3. One Multistate Performance Test (MPT), a long, essay-style question designed to test basic lawyering skills, and the Multistate Bar Examination (MBE), a multiple choice test covering several areas of the law, are purchased from the National Conference of Bar Examiners. Grading the MPT essay answers is the responsibility of Board members and their graders. Grading the MBE is done by

- machine from an answer grid and is the responsibility of the National Conference or outside contractors under its direction.
4. The Director and Assistant Director, together with the Executive Director, participate in question review meetings and are responsible for accomplishing agreed editing changes as well as assuring that approved revisions are made before sending camera-ready copy with the order for printing of exam booklets.
  5. The Director and Assistant Director determine the quantity of exam materials to be printed or ordered based on the number of applications received.
  6. The Assistant Director supervises Licensure Analysts and other staff members in packaging and boxing exam materials needed for each exam site.
- b. Testing Accommodations for Applicants with Disabilities
1. To ensure program accessibility for Applicants with disabilities in accordance with Rule XII, any Applicant who desires testing accommodations may submit a written request and supporting documentation by completing an application form and filing it with the Application to take the bar examination. In addition to Rule XII and Appendix D of the *Rules Governing Admission to the Bar of Texas*, the application form contains detailed information and instructions for disabled Applicants about the procedure for requesting testing accommodations. The same information and application forms are available and downloadable from the Board's website.
  2. Initially Licensure Analysts receive applications for accommodations. Analysts verify the completeness of the application and the current licensing or certification of the Applicant's physician, psychologist or healthcare provider. Analysts prepare a brief outline for review by the Director or Staff Attorney describing the nature of the disability or condition and the accommodations requested by the Applicant and recommended by Applicant's expert.
  3. In many cases it is necessary or appropriate to seek the advice of an independent physician, psychologist, or other expert consultant to aid in understanding the medical, psychological, or other scientific basis for the diagnosis and the recommendation of accommodations. In these cases, upon initial review of the application and at the direction of the Director or Staff Attorney, the application and supporting documentation will be forwarded to a qualified expert for review and advice as to the diagnosis of a disability and appropriateness of testing accommodations requested.
  4. The Director may route the matter to the Staff Attorney at any point in the analysis for review and comment, or as an assignment to complete the processing of the request. The Director or the Staff Attorney may contact the Applicant to discuss alternative accommodations that may be adequate or that may have been overlooked by the Applicant or the Applicant's healthcare provider in making the request for accommodations.
  5. Based on the final review of the application for accommodations, the supporting documentation, reports from any experts consulted, and information obtained through further interactive communication, if any, with the Applicant or Applicant's expert, the Staff Attorney may recommend, or the Director will make, a determination whether the requested testing accommodations should be granted, whether they should be denied in whole or in part, or whether accommodations other than those requested should be allowed.
  6. The Applicant is sent written notification of the decision in a letter from the Director or the Staff Attorney.
    - i. For any Applicant who has been denied a requested accommodation, in whole or in part, the letter will include an explanation of the procedure for requesting

- the Executive Committee of the Board to review the decision. The Committee consists of the Board's Chair, the Vice-Chair, and a member-at-large, who meet periodically in public meetings to deliberate on appeals from accommodation decisions. Members of the Executive Committee have received specialized training on ADA issues.
- ii. Applicants who have been granted the testing accommodations they requested or who wish to accept the accommodations offered are asked to sign and return a copy of the letter indicating that they have read and understood the accommodations they will receive during the exam.
7. When an Applicant has timely requested Executive Committee review of the decision to deny a requested accommodation, the matter is set on the next agenda for a public meeting of the Executive Committee.
    - i. The Executive Committee will review the application for accommodations, the supporting documentation, reports from any experts consulted, and other records in the file pertinent to the accommodations request. Copies will be sent to each member of the Committee in advance of the meeting for their individual study, together with a summary report prepared by the Director or the Staff Attorney.
    - ii. Executive Committee members will deliberate on the matter in an open meeting and vote on whether to affirm, modify, or reverse the decision. Applicants are not required to attend, but any interested person may attend and many Applicants choose to be present.
  8. The Assistant Director supervises the Licensure Analysts and other staff members in compiling a notebook concerning the testing accommodations to be furnished at each exam site, arranging for court reporters and other special equipment or services, and in preparing charts for site administrators and proctors to refer to during the exam to assure that the granted accommodations are fulfilled.
- c. Exam Administration
    1. Exam sites are reserved in advance in the cities where the exam will be held, including Austin, Dallas, Houston, Lubbock, San Antonio, and Waco.
    2. Effective for examinations in 2002, a pilot program was instituted to offer the examination in El Paso and Kingsville, contingent upon adequate enrollment at these two new locations.
    3. All of the Board's staff and the Board members participate in administering the examination. Key personnel (usually including the Executive Director, Executive Assistant, Director and Assistant Director for Eligibility and Examination, and the Director and Assistant Director for Character and Fitness) are assigned to coordinate and supervise staff at the exam sites.
    4. The Board hires temporary exam staff to serve as "proctors" or exam monitors.
    5. Site supervisors and the exam staff are responsible for maintaining the security of exam materials and proper exam conditions.
    6. Completed exams are returned to the Board's office. After sorting in examinee number order and by subject and accounting for each examinee's papers, the exams are shipped to the Board member or designated grader responsible for each subject.
  - d. Grading and Grade Release
    1. The members of the Board of Law Examiners are responsible for grading or supervising the grading of the Texas Bar Examination -- except for the Multistate Bar Examination segment ("MBE"). The MBE is a multiple-choice exam that is machine graded and statistically scaled by American College Testing ("ACT") under the direction of the National Conference of Bar Examiners.



2. Board members hire and supervise licensed attorney graders and assure that examinee raw scores for their assigned topics are timely reported to the Board's office.
  3. As required by Rule XI(e), the raw scores are scaled using the equipercntile method (based on the array of scaled MBE scores received from ACT) and then compiled to obtain the combined scaled scores. Scaling of raw scores and compiling of final scores are performed with the aid of a computer system in the Board's office under the immediate direction of the Assistant Director.
  4. A list of examinees with passing scores is prepared, together with result letters for each examinee. Promptly after the deposit of the result letters in the mail, the list of passing examinees is delivered to the Justices of the Supreme Court of Texas and the Clerks of the Supreme Court of Texas and the Court of Criminal Appeals of Texas. Copies of the pass list are posted in the State Law Library and on the Board's Internet website as soon as possible thereafter. Copies are also sent to the Board members, the Texas law school deans and the press.
  5. Successful examinees are invited to attend a swearing-in ceremony which is convened a few weeks after grade release by the Supreme Court and the Court of Criminal Appeals jointly.
- e. Review of Failing Papers Upon Timely Request From Eaminees
1. Within two weeks after grades are released, Applicants may submit a written request for a review of their performance on failed parts of the exam (excluding the MBE).
  2. An Applicant who has failed at least twice may request a Formal Review and will be scheduled to meet personally with Board members in Austin for a review of the most recently failed exam. An Applicant may receive only one Formal Review.
  3. Otherwise an Applicant will receive an Informal Review, which may consist of a written report, a telephone conference or meeting at the Board member's discretion.
  4. The Board's staff coordinates the review process by notifying Board members of the examinees requesting review, by scheduling the examinees, by providing support staff for Formal Review meetings in Austin, and by collecting and distributing the Board members' written reports to examinees who requested Informal Review.
- f. Storage of Failing Exam Papers
1. Failing exam papers must be retained for one year from the date of the examination.
  2. Board members may store these in their offices or arrange for storage in a secure area of their own choosing.
  3. In the alternative, failed exam papers may be shipped to the Board's office and staff will prepare them for storage in the State Archives until they can be destroyed one year after the date of the exam.
2. Eligibility Analysis and Determination
- The key services and functions of this program are to accomplish the requirements set out in the statutes and the Rules for determining the eligibility of Applicants seeking admission to the Bar of Texas (other than determining the present good moral character and fitness, which is a separate division or program of the agency).
- a. Initial screening for routine deficiencies such as incomplete fees or obvious non-responses on application forms is performed during mail check-in before the file is forwarded to a Licensure Analyst.

- b. Mail check-in staff sends notices of such deficiencies to the Applicant to allow a grace period for resolving the deficiency.
- c. Analysts initially screen the form for responses made by the Applicant, check for required supporting documentation and notify the Applicant of remaining documentation or information that needs to be received to complete the eligibility determination.
- d. Analysts prepare and send correspondence and form letters seeking verification as to eligibility-related matters specified in Rule II(a)(4), III(a) or Rule XIII such as legal education; pertinent employment history or law practice experience; bar admission dates; and status of law license if licensed in another jurisdiction.
- e. The Director and Assistant Director provide training and direction for Licensure Analysts as to the eligibility requirements, the exemptions in Rule XIII, and the issues that can arise pertaining to the eligibility requirements.
- f. After reviewing the application, collecting the required documentation and receiving responses to verification letters, Licensure Analysts make an assessment as to the Applicant's eligibility for admission to the Texas Bar Examination.
- g. For Applicants seeking an exemption under Rule XIII, either from the requirement of taking and passing the bar examination or from the law study requirement to be admitted to the examination, the Director or Assistant Director will conduct a final review of the file. This final review includes a careful analysis as to whether the qualifications for the exemption have been demonstrated.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

See Section II for when and for what purpose the program was created.

<b>Statutory Requirements pertaining to Eligibility &amp; Examination: Texas Government Code</b>	
82.004	Board of Law Examiners shall examine qualifications to practice law and determine the eligibility of candidates for examination
82.004(c)	Board may not recommend licensure unless the Applicant has shown, as prescribed by the Supreme Court, the proper capacity and attainment
82.009	Board is to prepare and maintain a written plan to provide people with disabilities reasonable access to its programs
82.021	Only the Supreme Court of Texas may issue law licenses in Texas
82.022	Supreme Court may adopt rules on eligibility
82.024	Law study requirement for taking examination
82.0241	Supreme Court jurisdiction as to graduates of unaccredited schools
82.025	Exemption from law study requirement for legislative service
82.027	Requirements for composition and use of Application for Admission as an investigative tool for the Board
82.0271	Residency or citizenship status of Applicant does not bar admission to exam
82.033(b)	Fees
82.036	Supreme Court jurisdiction as to admission of foreign attorneys

<b>Requirements concerning Eligibility &amp; Examination: <i>Rules Governing Admission to the Bar of Texas</i></b>	
I(a)(1-3, 11, 13, 16)	Definitions
I(c)	Criteria by which documents are deemed timely filed
II(a)(4-6)	The general eligibility requirements for admission to the Bar of Texas
II(b)	Passing Texas Bar Examination scores are valid for two (2) years from the date Applicant is notified
III(a)	Law study requirement for admission to the Texas Bar Examination
IX	Application requirements for Texas Bar Examination
XI(e)	Score required to pass the Texas Bar Examination
XI(f)	Five-time limitation on attempts to pass the Texas Bar Examination
XII	Elements a person with a disability must establish to receive testing accommodations on the Texas Bar Examination
XIII(a)(1)	Elements an attorney licensed in another state must establish to be exempted from the Texas Bar Examination requirement
XIII(a)(2)	Elements an attorney licensed in another state must establish to be exempted from the law study requirement for admission to the Texas Bar Examination
XIII(b)	Elements an attorney licensed in another nation must establish to be exempted from the law study requirement for admission to the Texas Bar Examination
XIV	Elements an attorney licensed in another nation must establish to be exempted from the law study requirement for admission to the Texas Bar Examination
XVIII	Fees
XX(a)	Procedures for Texas Bar Examination grade release
XX(d)	Board may prescribe application forms and make reasonable regulations
XX(e)	Board may exercise some discretion in interpretation and application of <i>Rules Governing Admission to the Bar of Texas</i>
Appendix A	Texas Bar Examination subjects
Appendix B	Outline of new subjects to be added to the Texas Bar Examination effective July 1999
Appendix D	Instructions for completing the application for testing accommodations

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

Additional history:

1. Effective on December 31, 2000, Rule XIII(a)(2) was amended to eliminate the one-day Short Form Examination. In the past, the Short Form Examination was administered to qualified attorneys, licensed in other jurisdictions, who were not eligible under Rule XIII(a)(1) for admission without examination.
2. Prior to 1998, Rule XI(f) limited the number of attempts to pass the Texas Bar Examination to five, but the rule also expressly provided that the Board had discretion to waive the five-time limit and to impose conditions (such as further study) for allowing additional attempts. On December 21, 1998, Rule XI(f) was amended by order of the Supreme Court to strike the provision covering the Board's discretion to waive the five-time limit.
3. In 1997, the Multistate Performance Test ("MPT") was added to the Texas Bar Examination. Performance testing is designed to test basic lawyering skills by simulating assignments that a newly-licensed lawyer might be given, such as preparing an opinion

letter, a legal memorandum or brief, based on a library of case materials and legal authorities provided in the test. The MPT is prepared by the National Conference of Bar Examiners and has been adopted by a number of other jurisdictions since its inception.

There will not be a time when the mission of determining the minimal competency and eligibility of persons seeking admission to the practice of law will be accomplished and the program will no longer be needed.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

1. Examinations

This program serves all Applicants for admission to the Bar of Texas who are eligible under Rules II(a)(4) and III(a) for admission to the Texas Bar Examination and who are not exempt from the examination under Rule XIII(a)(1). Generally, to be eligible to take the Texas Bar Examination, Rule III(a) requires an Applicant to hold a *Juris Doctor* (J.D.) degree from an American Bar Association approved law school or to be within 4 semester hours of graduation with such a degree. Rules II(a)(4) and XIII allow an experienced attorney licensed in another state or country to take the Texas Bar Examination without meeting the Rule III law study requirement, if the attorney can demonstrate the qualifications required under Rule XIII for an exemption from the law study requirement.

In FY 2000, there were 2,473 Texas Bar Examination Applicants licensed.

2. Eligibility

This program serves all Applicants for admission to the Bar of Texas and the members of the public who are consumers of attorney services.

FISCAL YEAR 2000 SEPTEMBER 1, 1999 – AUGUST 31, 2000			
Texas Bar Examination Number of Applications Filed	Texas Bar Examination Number Licensed	Admission Without Examination Number Filed	Admission Without Examination (AWOX) Number Licensed *
3611	2473	257	296

a. Full Bar Exam Admission and Licensing Requirements

1. To be eligible for licensure, a candidate must be at least 18 years of age; of present good moral character and fitness; and a U.S. citizen or U.S. national or permanent resident alien (or a holder of a valid non-immigrant visa status as provided in the Rule). In addition, the candidate must have graduated with a J.D. degree from an A.B.A.-approved law school (unless exempted under Rule XIII); passed the Multistate Professional Responsibility Exam; and passed the full Texas Bar Exam.
2. To gain entrance into the bar exam, it is necessary to provide proof of fulfillment

\* The figure for AWOX Number Licensed in FY 2000 describes AWOX applicants who were certified for licensure in FY 2000. This number exceeds the number who filed AWOX applications in FY 2000 because some of these applicants filed for AWOX before FY 2000. Also, efficiency in processing AWOX files improved in FY 2000 as a result of changes in Board policy in the latter part of 1999 reducing the amount of documentation that AWOX applicants were required to submit.

of the legal education requirement, which, for the purposes of the exam, generally means either having received the J.D. degree from an A.B.A.-approved law school or being within four hours of graduation. For those who have met the legal education requirement, all other licensing requirements must be met within two years from the date of grade release. Failure to do so results in the passing exam scores being voided.

b. Rule XIII(a) Eligibility and Admission Requirements for attorneys seeking Admission Without Examination (“AWOX”)

1. For experienced U.S. attorneys, Rule XIII(a)(1) provides an exception to the general requirement of passing the full Texas Bar Exam as a means of demonstrating competency to practice law.  
AWOX requirements are similar to the general requirements for full bar exam admission, with the added requirement of proving that the Applicant has been actively and substantially engaged in the lawful practice of law as his or her principal business or occupation for at least five of the last seven years immediately preceding the filing of the application.
2. At the time of filing the application, and for each year for which Rule XIII credit is sought, an attorney Applicant must have held an active and valid law license issued by the licensing jurisdiction in any state or territory of the United States or the District of Columbia. *See* Rule I(a)(11) and (16); Rule XIII(a) and (a)(1)(C).
3. An AWOX Applicant may not have failed either a Texas full bar exam or a Texas Short Form Examination or the last bar exam taken in any state.
4. Rule XIII(c) states that an Applicant shall furnish such proof of active and substantial employment in the practice of law as a principal business or occupation as the Board may require, and Rule XIII(c)(1) contains illustrations of activities that are included in the term “practice of law” as used in this rule.

c. Rule XIII(b) Foreign Nation Attorneys

1. For experienced attorneys educated and licensed in jurisdictions outside the United States, Rule XIII(b) provides certain exceptions to the general requirement (in Rule II(a) and III(a) for admission to the Texas Bar Exam) of having received a J.D. degree from an A.B.A.- approved law school.
2. An attorney holding an active and valid law license issued by a foreign nation must pass the Texas Bar Exam to be eligible for admission. If the attorney cannot meet the legal education requirement (i.e., graduation or within four hours of graduation from an approved law school) then, to gain entrance to the examination, the foreign attorney must demonstrate, among other things:
  - (a) That he or she has been licensed to practice law in the highest court of the foreign nation and has been actively and substantially engaged in the practice of law in the foreign jurisdiction as a principal business or occupation for a required period of time, and
  - (b) That he or she holds the equivalent of a J.D. degree, not based on study by correspondence, from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study, which is the substantial equivalent of the legal education provided by an A.B.A.-approved law school.
  - (c) If the foreign attorney cannot prove that the law of the foreign nation is sufficiently comparable to Texas law, Rule XIII(b) requires the Applicant to have an L.L.M. degree from a law school whose J.D. program is approved by the A.B.A.
  - (d) The practice-time requirement or window is reduced if the Applicant can

- demonstrate that the law of the foreign nation is sufficiently comparable to Texas law *and* the Applicant has an L.L.M. degree from a law school whose J.D. program is approved by the A.B.A.
3. Certification under Rule XIV permits a foreign nation attorney who resides in Texas (and meets other requirements specified in Rule XIV) to engage in a limited practice as a Foreign Legal Consultant (FLC) to advise clients on the law of the foreign nation. Although the Texas Bar Examination is not required for FLC status, the Board has typically received very few FLC applications per year.

**F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.**

See response to B above.

There are no field or regional services.

**G. If the program works with a federal government agency (e.g., Housing and Urban Development, Federal Deposit Insurance Corporation) or local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

In letters reporting the examination results to successful examinees when grades are released, the staff of the Board includes information about the procedure for enrollment in the State Bar of Texas, which is a separate agency. The result letters also include information about the fees that will be due to the State Bar of Texas and the Clerk of the Supreme Court of Texas for enrolling and obtaining the license. The Board's staff assists the Clerk of the Supreme Court by providing additional staff to assist in answering questions about enrollment following a Swearing-In Ceremony conducted twice each year by the Supreme Court and the Court of Criminal Appeals.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The program is funded entirely from the annual budget of the Board of Law Examiners derived from fee income.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

Yes.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

The National Conference of Bar Examiners offers Multistate Essay Examination (MEE) questions which cover some, but not all, of the test subjects required by the Supreme Court in Appendices A and B of the *Rules Governing Admission to the Bar of Texas*. Also, the MEE subjects include topics, such as Conflict of Laws, on which the Texas Bar Examination has never tested. If the Board were to purchase MEE questions from the National Conference of Bar Examiners, it would not relieve the Board of the obligation to draft questions on subject areas not covered by the MEE nor would it eliminate the need to handle testing accommodation requests, administer the examination in many Texas cities, and provide grading of the answers

based on applicable state law.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

Not applicable.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

None.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

As to why the regulation of entry into the legal profession in Texas is needed, it is worth noting that admission to the legal profession is regulated in each state and territory of the United States as well as the District of Columbia. Each jurisdiction has a bar examination. The purpose of a professional licensing examination is that, in addition to the requirement as to legal education and moral character and fitness, it is widely considered to be in the public interest to require such an examination as a demonstration of the Applicant's minimum professional competency before licensure.

Attorneys have considerable power to affect the lives and interests of their clients, so that it is in the public's interest to assure that those who are admitted to the practice of law in Texas have met standards that are reasonably related to their professional competency, fitness, and ability. The State Bar of Texas regulates Applicants who have become members of the State Bar of Texas.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

Not Applicable.

<b>Board Of Law Examiners (Regulatory Program Name)</b>		
<b>Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1999 and 2000</b>		
	<b>FY 1999</b>	<b>FY 2000</b>
<b>Number of complaints received</b>	Not Applicable	
<b>Number of complaints resolved</b>		
<b>Number of complaints dropped/found to be without merit</b>		
<b>Number of sanctions</b>		
<b>Number of complaints pending from prior years</b>		
<b>Average time period for resolution of a complaint</b>		
<b>Number of entities inspected or audited by the agency</b>		
<b>Total number of entities regulated by the agency</b>		

**A. Please complete the following chart.**

<b>Board Of Law Examiners Exhibit 13: Program Information — Fiscal Year 2000</b>	
<b>Name of Program</b>	Character and Fitness: Including Investigations and Hearings
<b>Location/Division</b>	Character and Fitness Division
<b>Contact Name</b>	Jack Marshall, Division Director
<b>Number of Budgeted FTEs, FY 2000</b>	9.0
<b>Number of Actual FTEs as of August 31, 2000</b>	7.75

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The key services and functions of this program are to accomplish the requirements set out in the Statutes and the *Rules Governing Admission to the Bar of Texas* as to determining the present good moral character and fitness of a Declarant (law student attending an ABA law school in Texas who wishes to apply for licensure in Texas) or an Applicant for Admission to the Bar of Texas.

Major program activities consist of the following in sequence (also depicted in accompanying flowchart):

1. Licensure Analyst receives Declaration or Application form from person seeking



*Self-Evaluation Report Instructions*

- admission.
2. Analyst screens the form for responses made by the person.
    - a. If no concerns or only minor concerns, Analyst is authorized to complete the investigation. If no additional concerns develop, Analyst may certify person as having good character and fitness within the required time limit (180 days for Applicants and 270 days for Declarants).
    - b. If concerns are serious ones, the Analyst will summarize the issues and route the file to Director or Assistant Director for review and guidance.
  3. The Director and Assistant Director analyze the issues and make an initial assessment as to whether the issues are serious enough to potentially result in a negative preliminary determination letter (PDL), based on the Board's policies.
    - a. If the decision is that the issues do not rise to the level of a potential PDL, the analyst may complete the investigation and certify the person's character and fitness within the required time limit (180 days for Applicants and 270 days for Declarants), unless additional serious issues develop, in which case the file is returned to the Director or Assistant Director.
    - b. If the decision is that the issues may result in a PDL, the Director or Assistant Director will make notes for the Analyst and return the file to the Analyst for completion of the preliminary investigation.

NOTE: The Director may route the file to a Staff Attorney at any point in the investigation for review and comment.

4. Once the preliminary investigative work has been completed by the Analyst for a case that includes serious issues, the Director or Assistant Director will conduct a final review of the file. This final review includes a careful analysis of whether the preliminary investigation results are sufficient to support a preliminary finding that the person meets the criteria cited in the Board's policies as to those matters that may result in a PDL. The Director's review will result in one of the following actions:
  - a. Determination that concerns are not serious enough to warrant a hearing pursuant to Board policy, the file is then certified;
  - b. Referral to a Staff Attorney or the Executive Director for review and comment;
  - c. Preparation of a draft Preliminary Determination Letter (PDL), to the effect that staff has made a preliminary determination that the Declarant or Applicant lacks present good moral character and fitness necessary for licensure for specific reasons and notification of the right to an evidentiary hearing on the issue; or
  - d. Referral of the case to the staff Issue Review Committee (IRC). This committee is made up of the Executive Director, the Director and Assistant Director of Character and Fitness Division, and both Staff Attorneys. The review by this committee will result in one of the following decisions:
    - 1) The character, fitness, chemical dependency (CD) concerns will be resolved by means other than a hearing and the file will be certified; or,
    - 2) A Preliminary Determination Letter (PDL) will be prepared.

NOTE: Cases in which the matters of concern are based on allegations pending in a legal proceeding before a court or administrative body must be presented to the Issue Review Committee (IRC). If the IRC does not vote to otherwise resolve the concerns, the Director will summarize the case and forward a copy of the summary to the Board's Special Character and Fitness Review Committee, composed of two Board Members, for a decision as to whether the matter should be deferred pursuant to Rule XV(b). If one member votes to proceed without waiting for a final resolution of the pending civil matter, the case will not be deferred pursuant to Rule XV(b).

5. If the determination is made to issue a PDL, the Director or Assistant Director will prepare the PDL in draft form and send to a Staff Attorney for review. The review by a Staff Attorney will result in one of the following actions:
  - a. Approval and comment on the draft PDL consistent with evidence obtained during the investigation; or,
  - b. Referral of the case to the Issue Review Committee (unless the Issue Review Committee has already reviewed the case).

The Senior Staff Attorney will decide which of the two Staff Attorneys will be assigned to the case.

6. Once the draft PDL has been approved by a Staff Attorney, the Director or Assistant Director will finalize the PDL. The PDL must be finalized and sent within the required time limit for completing the preliminary investigation (180 days for Applicants and 270 days for Declarants).
7. The person who receives the PDL has the following options:
  - a. If the matters of concern are related to good moral character the person may:
    - 1) Request a hearing within 30 days of receipt of PDL. If a hearing is requested, the assigned Staff Attorney will set the case for a hearing before a three member panel of the Board at some future time;
    - 2) Request a hearing **and** provide proof of taking curative measures. The staff reviews the evidence provided, and, if the evidence is sufficient to “cure” any of the matters raised, those matters will be dismissed. If the evidence is sufficient to “cure” all of the matters raised, the entire PDL will be dismissed; or
    - 3) Request a hearing **and** request consideration for an agreed order. The assigned Staff Attorney will review such cases and negotiate and prepare a draft agreed order if (s)he agrees that the matter lends itself to disposition via an agreed order.
  - b. If the matters of concern are related to Chemical Dependency (“CD”), the PDL requires that the person obtain an evaluation by a licensed chemical dependency professional whose credentials are approved by the Board. The staff will review the results of the evaluation. If the evaluation results do not support a finding that the person suffers from CD, or may suffer from CD, the staff will dismiss the PDL, unless there are other unresolved character or fitness concerns. If the evaluation results do support a finding that the person suffers from CD, or may suffer from CD, the assigned Staff Attorney may offer the person an agreed order for a probationary license (if an Applicant); or for a conditional approval (if a Declarant), or proceed to a hearing.
  - c. If the matters of concern are related to fitness issues (generally involving mental health), the PDL usually suggests a psychological and/or psychiatric evaluation as one of the curative measures. The person may request a hearing and should obtain any required evaluation by a licensed professional in the applicable field whose credentials are approved by the Board. The staff reviews the evaluation results. If the evaluation results indicate that the fitness issues are not a concern, the staff will dismiss the PDL. If the evaluation results support the preliminary determination that there are serious fitness concerns, the assigned Staff Attorney may set the case for a panel hearing at some future time; or, the matter may become moot as a result of the Applicant’s withdrawal from the bar exam; or the Staff Attorney may offer the person an agreed order for a probationary license (if an Applicant) or a conditional approval (if a Declarant).

Self-Evaluation Report Instructions

8. Hearings:
  - a. The Board conducts character and fitness hearings eleven (11) months of the year, most often simultaneously convening two hearings panels of three members each. Hearings are governed by the *Rules Governing Admission to the Bar of Texas* and are open to the public, pursuant to such *Rules*.
  - b. Board members, all of whom are experienced attorneys licensed to practice law in the State of Texas, are chosen to serve as panel members according to a schedule determined by the Executive Director and Chairman of the Board, with each member assigned to an approximately equal number of hearing panels each year.
  - c. Staff Attorneys, also licensed to practice law in Texas, prosecute the cases before the Board. Respondents have a right to counsel or may appear *pro se*. Historically, about one-half retain counsel and about one-half do not.
  - d. Each hearing day begins with a docket call at 8:00 a.m. Each hearing is open to the public and usually lasts about an hour, but may be shorter or longer depending on its complexity and the number of witnesses called by each side. A court reporter records the testimony made at each hearing in case either party needs a transcript of testimony at a later date.
  - e. Hearings consist of the introduction of documentary evidence, opening statements, direct and cross-examination of witnesses, and closing statements. The presiding chair hears evidentiary objections and each panel member may ask questions of witnesses or their counsel.
  - f. Panel members deliberate at the close of the hearing. Deliberations on character and fitness matters may occur in closed session pursuant to a specific exemption from the Open Meetings Act. Following deliberations, the panel chair communicates its decision to the Staff Attorney who prosecuted the case. The Attorney then communicates the decision of the panel to the Declarant or Applicant or his/her counsel and drafts a written order with findings of fact and conclusions of law with citations to the record, to be circulated for approval by the panel, signed by the panel chair, and forwarded to the Declarant or Applicant or his/her counsel.
  - g. Respondents have the right to appeal panel decisions to the district courts of Travis County. On appeal, the court reviews the record of the hearing, conducts its own hearing, and decides the case pursuant to the substantial evidence rule.

<b>C.</b>	<b>When and for what purpose was the program created? Describe any statutory or other requirements for this program.</b>
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See Section II for when and for what purpose the program was created.

<b>Statutory Requirements pertaining to Character &amp; Fitness: Texas Government Code</b>	
82.003	With specified exceptions, the Board is subject to the Open Records and Open Meetings laws
82.022(a)(1)(A)	Supreme Court may adopt rules on eligibility that may include provisions to ensure good moral character
82.023	Requirement of the Declaration of Intention to Study Law of each person intending to apply for admission to the bar
82.027	Requirement for composition and use of Application for Admission to be used by the Board as an investigative tool
82.028	Moral character and fitness of Applicants
82.029	Access to criminal history records
82.030	Board assessment of moral character and fitness

82.031	Supreme Court appointment of district committees
82.032	District committees to aid the Board in investigating the moral character and fitness of persons filing declarations
82.036	Supreme Court jurisdiction as to admission of foreign attorneys
82.038	Provisions for a probationary license for Applicant(s) suffering from chemical dependency
<b>Requirements concerning Character &amp; Fitness: <i>Rules Governing Admission to the Bar of Texas</i></b>	
I(a)(5, 6, 14, 15)	Definitions
I(c)	Criteria by which documents are deemed timely filed
II(a)(3)	The general eligibility requirements for admission to the Bar of Texas
IV	Requirement of good moral character and fitness
VI	General provisions of the Declaration of Intention to Study Law
VII	District committees of admission
VIII	Determination of Declarant character and fitness
IX	Application requirements for Texas Bar Examination
X	Determination of Applicant character and fitness
XIII(a)(1-2)(B)	An attorney licensed in another state must satisfy the Board of his/her good moral character and fitness whether he or she is attempting to qualify for admission with or without the Texas Bar Examination
XIV(a)(2); (b)(3); and (c)	An attorney licensed in a foreign nation seeking a certificate as a Foreign Legal Consultant must possess good moral character and fitness
XV	Hearings
XVI	Probationary licenses
XVII(b)	Criteria for cancellation of law licenses obtained fraudulently or by willful failure to comply with the <i>Rules Governing Admission to the Bar of Texas</i>
XX(f)	Board may require fingerprint cards of Applicants and Declarants

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

Additional history:

1. Prior to 1992, a finding of good moral character and fitness was a prerequisite for being allowed to take the Texas Bar Exam. In 1992, statutory changes (Sec. 82.024) dictated that character and fitness certification remained a prerequisite for licensure but was not necessary prior to taking the Texas Bar Exam.
2. Prior to 1992, the staff was organized with two separate staffs devoted to investigating character and fitness and determining eligibility. The two staffs were combined in 1992. Since that time, Licensure Analysts have capably performed both functions.
3. Prior to 1993, the Board contracted with the National Conference of Bar Examiners to conduct character and fitness investigations of out-of-state student and attorney Applicants, which represented approximately twenty percent (20%) of its Applicant pool at the time. In 1993, however, the Board determined that its administrative staff would conduct character and fitness investigations of all Declarants and Applicants to assure a more thorough and uniform investigation as well as a more efficient use of the resources of the Board.
4. District Committees (total of 17) had a larger role prior to several rule changes that became effective June 30, 1992. See Rule VII.

There will not be a time when the character and fitness mission is expected to be accomplished and the program will no longer be needed.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

This program serves all Applicants for admission to the Bar of Texas, all law students who attend A.B.A.-approved law schools in Texas who choose to file a Declaration of Intention to Study Law (Declarants), and all members of the public who rely on attorneys licensed in Texas to perform legal services in a competent and ethical manner.

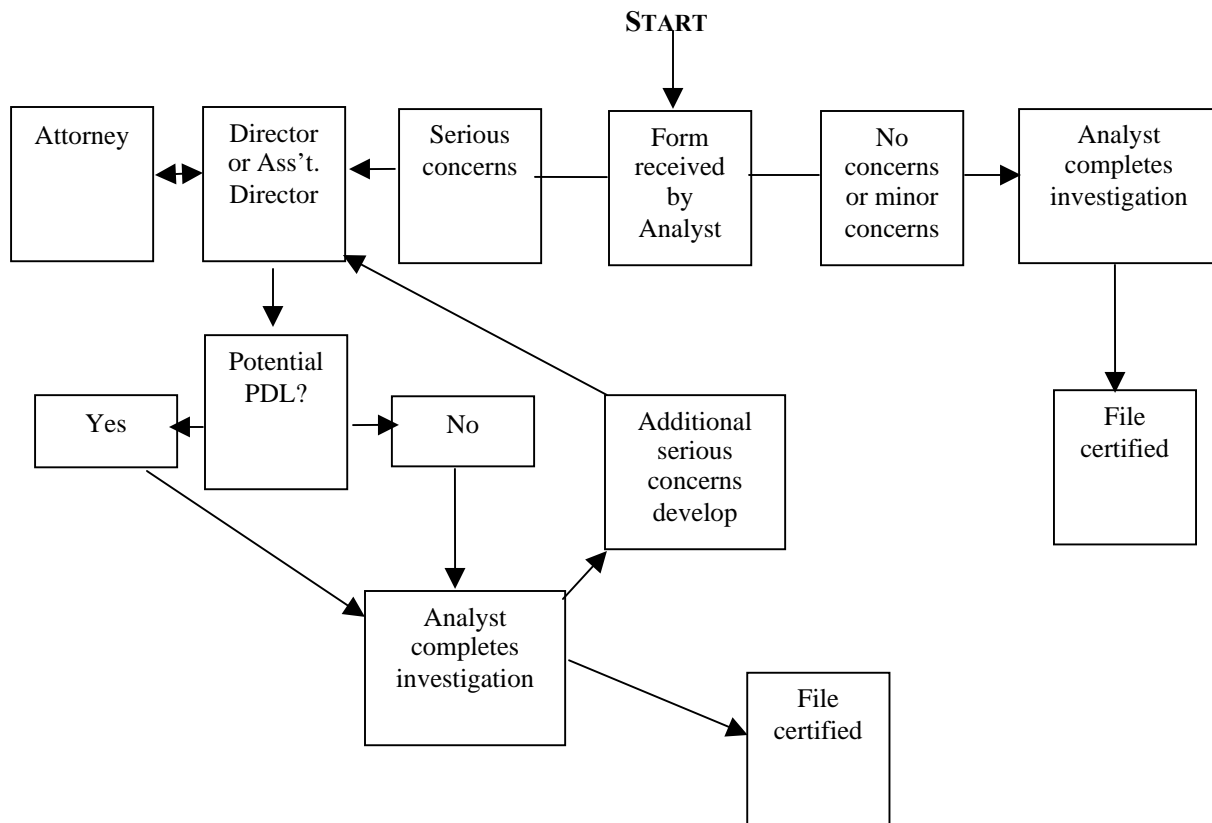
Eligibility requirements for Declarants are listed in Rule VI(a). Eligibility requirements for Applicants are listed in Rule III.

In FY 2000, the Board served 2193 individuals who filed a Declaration of Intention to Study Law, referred to as Declarants, and 2672 individuals filing applications to take the Texas Bar Examination, referred to as Applicants.

**F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.**

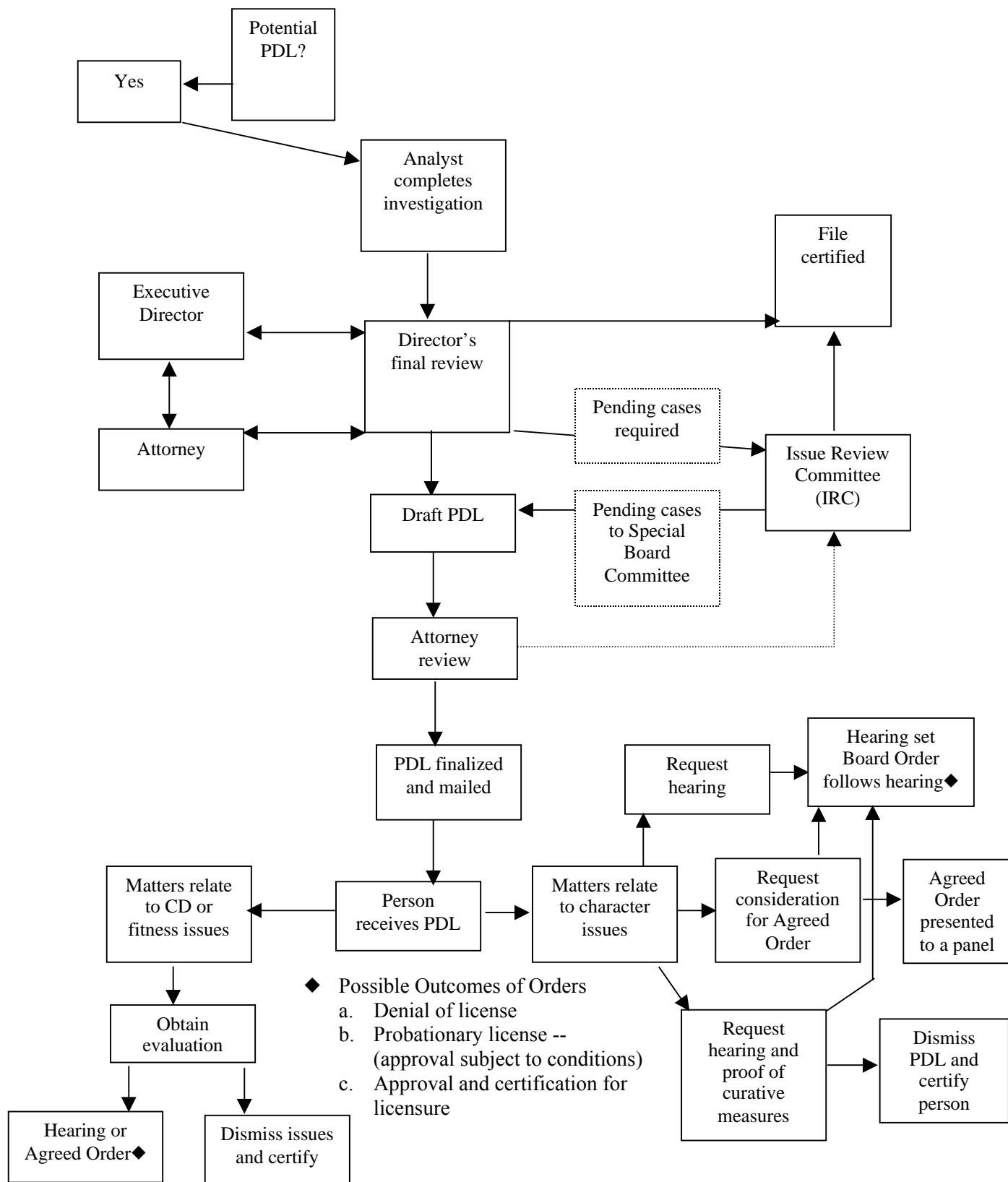
See response to B above, and attached flow chart. There are no field or regional services.

**CHARACTER AND FITNESS PROCESSING**



(Flow chart continues on next page concerning “Potential PDL Not Certified”)

**CHARACTER AND FITNESS PROCESSING (CON'T.)**



**G. If the program works with a federal government agency (e.g., Housing and Urban Development, Federal Deposit Insurance Corporation) or local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The staff of the Board obtains criminal history record information on Declarants and Applicants from the Federal Bureau of Investigation via a fingerprint card. See Sec. 82.029 and Rule XX(f).

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The Character and Fitness Investigations Program, including the public hearings component, is funded entirely from the annual budget of the Board of Law Examiners derived principally from fees generated from persons seeking admission to the Bar of Texas.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

Yes. However, expensive technology has recently been acquired and fees paid to outside agencies, such as FBI for criminal history checks, have nearly doubled in recent years. Should continued increases be experienced, it is conceivable that modest fee increases may become necessary.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

The National Conference of Bar Examiners offers its own investigative service, but has neither the resources nor the expertise in Texas law required to conduct the hearing component of our program. As indicated in the response to D above, prior to 1993 the Board contracted with the Conference to conduct approximately twenty percent (20%) of its character and fitness investigations. The Board determined, however, that the administrative staff was better equipped to conduct such investigations, for the reasons stated previously in section D.3 above.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

Not applicable.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

None.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

To the extent that this section has not been fully covered within prior answers, it is not applicable.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

Not Applicable.

<b>Board Of Law Examiners (Regulatory Program Name)</b>		
<b>Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1999 and 2000</b>		
	FY 1999	FY 2000
Number of complaints received	Not Applicable	
Number of complaints resolved		
Number of complaints dropped/found to be without merit		
Number of sanctions		
Number of complaints pending from prior years		
Average time period for resolution of a complaint		
Number of entities inspected or audited by the agency		
Total number of entities regulated by the agency		

**A. Please complete the following chart.**

<b>Board Of Law Examiners Exhibit 13: Program Information — Fiscal Year 2000</b>	
Name of Program	Administration
Location/Division	Administrative Division
Contact Name	Julia E. Vaughan, Executive Director
Number of Budgeted FTEs, FY 2000	7.25



<b>Number of Actual FTEs as of August 31, 2000</b>	4.75
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**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The purpose of this division is to provide support to the Board members and the other two divisions of the Board. Executive, legal, accounting, personnel, data processing, and printing functions are under the supervision of the Executive Director. The Executive Director reports directly to the Board and is responsible for overseeing all of the Board's operations. The Executive Director also keeps the Supreme Court Justice, appointed as Liaison to the Board, informed of the Board's activities.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

Not Applicable. This Division supports all other divisions described elsewhere in this report.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

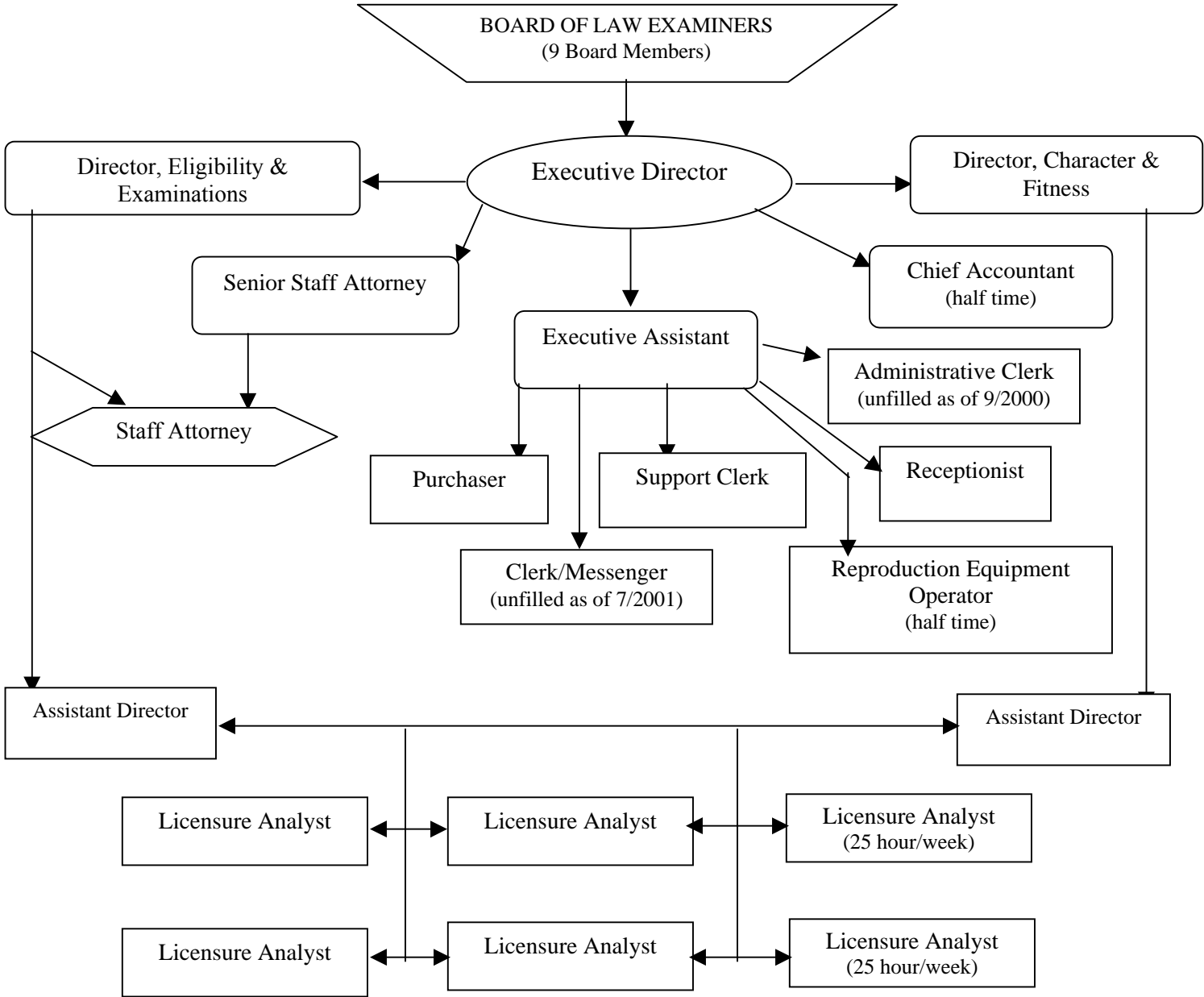
None.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

Not Applicable.

**F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.**

See response to B above. There are no field or regional services.



**G. If the program works with a federal government agency (e.g., Housing and Urban Development, Federal Deposit Insurance Corporation) or local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

Not Applicable.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The program is funded entirely from the annual budget of the Board of Law Examiners derived from fee income.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

Yes.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

None.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

Not applicable.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

None.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

Not Applicable.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

Not Applicable.

<b>Board Of Law Examiners (Regulatory Program Name)</b>		
<b>Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1999 and 2000</b>		
	<b>FY 1999</b>	<b>FY 2000</b>
<b>Number of complaints received</b>	Not Applicable	
<b>Number of complaints resolved</b>		
<b>Number of complaints dropped/found to be without merit</b>		
<b>Number of sanctions</b>		
<b>Number of complaints pending from prior years</b>		
<b>Average time period for resolution of a complaint</b>		
<b>Number of entities inspected or audited by the agency</b>		
<b>Total number of entities regulated by the agency</b>		

## **VII. Agency Performance Evaluation**

**A. What are the agency's most significant accomplishments?**

1. Increased accessibility of the Board and its services through:
  - a. Technological innovation in the case of the downloadable application available since 1999 and the application on diskette rolled out in Summer 2001.
  - b. Opening two additional bar examination sites in El Paso and Kingsville in 2002 (in addition to the traditional six sites in each Texas city in which there is a law school).
  - c. Continuously operating and improving on a website that has been functioning as a clearinghouse of information on every aspect of the Board's work since 1998.
  - d. Adoption of a Board policy to hold one Board meeting per year at a law school site beginning Fall 2001.
  - e. Offering programs such as a March 2000's "Meet the Bar Examiners" held in the chambers of the Texas Senate by invitation of Senator Rodney Ellis, in which law students throughout Texas were given the opportunity to attend and hear about the Bar Examination from members of the Board of Law Examiners and ask questions as time permitted. This session was videotaped by the Austin Young Lawyers' Association. Reportedly, the videotapes have been widely distributed.
  - f. Offering reviews to failing examinees, in person, in the case of those who have failed on two or more occasions, and by means of letter or telephonically to others who timely request a review.
  - g. Frequent visits to law schools by BLE staff to conduct new student orientations and frequent communication of BLE staff and Board Members with law school administration, members of the judiciary, and State Bar of Texas officials at an annual meeting and luncheon hosted by the BLE in Austin.



**F. What process does the agency use to determine customer satisfaction and how does the agency use this information?**

There are few ways to determine customer satisfaction in the licensure process. Those Applicants who pass the bar examination and have no character and fitness issues of concern usually have no communication with the agency after achieving licensure. Those Applicants who fail the bar examination and timely request it are given the opportunity to obtain a review of their failing exam, which tends to promote a more positive experience with the agency. In FY 1999, a total of 55 persons obtained formal reviews and 132 obtained informal reviews of failing exams. In FY 2000, 59 formal reviews and 125 informal reviews of failing exams occurred. Those Applicants and Declarants who are found to lack present good moral character or fitness and who timely appeal are given their day in the District Court of Travis County. As of the date of this report, only two litigation matters are pending against the Board; this indicates a substantial majority of the hundreds of such determinations went unchallenged in court. The Board also hosts an annual forum, including all Justices of the Supreme Court of Texas, all Deans of the law schools located in Texas and leaders of the State Bar of Texas and Texas Young Lawyers Association, for the express purpose of improving communication between the parties on issues related to bar admissions and encouraging a dialogue between all parties concerned with legal education and the bar admissions process. The Board uses all information communicated at the annual forum and through informal communications with others concerned with legal education and the bar admission process to endeavor to improve on the Board's programs.

**G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.**

Complaints against the agency are forwarded to the Executive Director, who responds to the complaint or assigns the preparation of a response to the appropriate Division Director if appropriate. In certain instances, the Board's Chairman and the Supreme Court Liaison also become involved in addressing complaints. Many complaints about the Board really amount to complaints about its character and fitness determinations, the examination, or grades assigned to examinees. Processes are in place, including formal and informal reviews as previously indicated, to address such matters in an organized fashion. Complaint letters and responses are contained in the files of those persons submitting them. General correspondence not referencing any Applicant or Declarant is maintained by the Executive Assistant to the Executive Director.

**H. Please fill in the following chart. The chart headings may be changed if needed to better reflect the agency's practices.**

Not Applicable.

Board Of Law Examiners		
Exhibit 15: Complaints Against the Agency – Fiscal Years 1999 and 2000		
	FY 1999	FY 2000
Number of complaints received	Not Applicable	
Number of complaints resolved		
Number of complaints dropped/found to be without merit		

Self-Evaluation Report Instructions

<b>Number of complaints pending from prior years</b>		
<b>Average time period for resolution of a complaint</b>		

**I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?**

When staff receives a telephone request for any information from the file of any Declarant or Applicant or the data reports compiled from those files, staff is required to ask the requesting party to send a written request, specifically detailing the information and/or document desired.

- a. The requesting party is informed that the requested information will be provided if it is clearly subject to disclosure under applicable law, although there may be a charge for copies provided.
- b. The requesting party is also informed that if the information is considered not subject to disclosure, Board staff will request the Attorney General to issue an Open Records Decision, and that such AG request will be made within ten (10) calendar days of our receipt of the written request for the information.
- c. When staff receives a written request from a third party for any information from the files of any Declarant or Applicant or related data compilations, staff is required to forward it immediately to the Senior Staff Attorney or the Executive Director, who will review it and prepare a response.
- d. Copies of written requests and staff responses are to be filed in Declarant and Applicant files and with the Executive Assistant to the Executive Director.

**J. Please fill in the following chart with information that is as current and up-to-date as possible:**

<b>Board Of Law Examiners Exhibit 16: Contacts</b>		
<b>INTEREST GROUPS</b> (groups affected by agency actions or that represent others served by or affected by agency actions)		
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Baylor University School of Law Bradley Toben, Dean	P. O. Box 97288 Waco, TX 76798-7288	254-710-4155 254-710-2316 <a href="mailto:Bradley_Toben@baylor.edu">Bradley_Toben@baylor.edu</a>
St. Mary's University School of Law Bill Piatt, Dean	One Camino Santa Maria San Antonio, TX 78228	210-436-3533 210-436-3515 <a href="mailto:piattb@law.stmarytx.edu">piattb@law.stmarytx.edu</a>
South Texas College of Law Frank Read, Dean	1303 San Jacinto Street Houston, TX 77002-7000	713-646-1819 713-646-1744 <a href="mailto:tread@stcl.edu">tread@stcl.edu</a>
Southern Methodist University Dedman School of Law John Attanasio, Dean	P. O. Box 750116 Dallas, TX 75275-0116	214-768-2620 214-768-2182 <a href="mailto:jba@mail.smu.edu">jba@mail.smu.edu</a>
Texas Southern University Thurgood Marshall School of Law John Brittain, Dean	3100 Cleburne Avenue Houston, TX 77004	713-313-1071 713-313-1049

Texas Tech University School of Law W. Frank Newton, Dean	1802 Hartford Lubbock, TX 79409	806-742-3793 806-742-1629 <a href="mailto:xhwfn@ttacs.ttu.edu">xhwfn@ttacs.ttu.edu</a>
Texas Wesleyan University School of Law Richard Gershon, Dean	1515 Commerce Fort Worth, TX 76102	817-212-4100 817-212-4199 <a href="mailto:rgershon@law.txwes.edu">rgershon@law.txwes.edu</a>
University of Houston Law Center Nancy Rapoport, Dean	4800 Calhoun Houston, TX 77204-6391	713-743-2100 713-743-2122 <a href="mailto:nrapoport@uh.edu">nrapoport@uh.edu</a>
University of Texas School of Law William Powers, Jr., Dean	727 East Dean Keeton Street Austin, TX 78705	512-232-1120 512-471-6987 <a href="mailto:wpowers@mail.law.utexas.edu">wpowers@mail.law.utexas.edu</a>
State Bar of Texas Disabilities Issues Committee Beth Sufian, Chair	802 West Alabama Houston, TX 77006	713-524-7618 713-665-7486 <a href="mailto:bethsufian@aol.com">bethsufian@aol.com</a>
<b>INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS</b> (that serve as an information clearinghouse or regularly interact with the agency)		
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
State Bar of Texas Antonio Alvarado, Executive Director	P. O. Box 12487 Austin, TX 78711-2487	512-463-1400 512-473-2295 <a href="mailto:aalvarado@txbar.com">aalvarado@txbar.com</a>
Supreme Court of Texas Nadine Schneider, Administrative Asst.	P. O. Box 12248 Austin, TX 78711-2248	512-463-1317 512-936-2308 <a href="mailto:nadine.schneider@courts.state.tx.us">nadine.schneider@courts.state.tx.us</a>
National Conference of Bar Examiners Erica Moeser, Executive Director	402 West Wilson Street Madison, WI 53703-3614	608-280-8550 608-280-8552
<b>LIAISONS AT OTHER STATE AGENCIES</b> (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)		
<b>Agency Name/ Relationship/ Contact Person</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Supreme Court of Texas Deborah Hankinson, Liaison	201 West 14 <sup>th</sup> Street, 3 <sup>rd</sup> Floor Austin, TX 78701	512-463-1332 512-494-9566 <a href="mailto:deborah.hankinson@courts.state.tx.us">deborah.hankinson@courts.state.tx.us</a>
Office of the Attorney General Raymond C. Winter, Legal Counsel for Administrative Appeals	Administrative Law Division 300 West 15 <sup>th</sup> Street, 12 <sup>th</sup> Floor Austin, TX 78701	512-475-4208 512-370-9477 <a href="mailto:raymond.winter@oag.state.tx.us">raymond.winter@oag.state.tx.us</a>



### VIII. 77<sup>th</sup> Legislative Session Chart

**Fill in the chart below or attach information if it is already available in an agency-developed format.** In addition to summarizing the key provisions, please provide the intent of the legislation. For example, if a bill establishes a new regulatory program, please explain why the new program is necessary (e.g., to address specific health and safety concerns, or to meet federal mandates). For bills that did not pass, please briefly explain the issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation)..

<b>Board Of Law Examiners Exhibit 17: 77<sup>th</sup> Legislative Session Chart</b>		
<b>Legislation Enacted in the 77<sup>th</sup> Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions/Intent</b>
<b>Legislation Not Passed in the 77<sup>th</sup> Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions/Intent/Reason the Bill did not Pass</b>
HB214	Longoria	Licensing of persons as attorneys without passing the Texas Bar Examination. It was not supported by the Board or the Supreme Court as communicated in various meetings with members of the Legislature, including the bill's author.

### IX. Policy Issues

**A. Brief Description of Issue**

A policy issue has arisen due to an apparent conflict between Texas Government Code Sec. 82.027(a) requiring applications for the Bar Exam to be filed 180 days before the exam and Supreme Court Rule IX allowing for later filings for good cause or to prevent hardship and even later filings by persons who failed the prior exam who could not have predicted the need to file until notice of failure. When this conflict became apparent, it was communicated to the Supreme Court Liaison, Justice Deborah Hankinson, in a letter dated March 23, 2001 and subsequently to Senate Jurisprudence Committee Chair Royce West in a letter dated April 18, 2001. There is no fiscal impact of the change proposed below.

**B. Discussion**

Pursuant to the request of Justice Hankinson, an executive summary of the Board of Law Examiners' concerns about the apparent inconsistency between the bar examination application deadline set forth in Tex. Govt. Code Sec. 82.027(a) <sup>\*</sup>, which states that each Applicant to take a bar examination must file an application with the Board of Law Examiners (Board) not later than the 180<sup>th</sup> day before the first day of the examination for which the person is applying, and Rule

<sup>\*</sup> Referred to herein as the Statute

*IX Rules Governing Admission to the Bar of Texas*, promulgated by the Supreme Court of Texas\*, which currently states that, upon a showing of good cause or to prevent hardship, the Board may permit Applicants to file approximately 60 days later than contemplated by the Statute upon payment of the applicable late fee and allows even later deadlines for Re-Applicants who failed the immediately preceding Texas Bar Examination and who could not have known of the need to reapply until grades have been released, was prepared and submitted to Senator Royce West.

By way of background, the Texas Bar Examination is always administered beginning the last Tuesday of February and July of each year. Hence, the statutory deadline of 180 days before the first day of the examination is within the spirit if not precisely within the letter of Rule IX a (1), which requires Applicants for the February examination to file between June 30 and August 30 of the year preceding the examination, and Rule IX a (2), which requires Applicants for the July examination to file between the preceding November 30 and January 30. The Rule's application deadlines (consistently at the end of a month and on or within a few days of the exact 180 day requirement) convey to Applicants certainty as to date and arguably do no violence to the Statute's 180 day deadline. While this might be considered a technical inconsistency, it is of such negligible potential for controversy that the Board did not recommend an amendment of either the Statute or the Rule to address this matter.

Of greater concern is the apparent conflict between the Rule IX(a)(3) provision to the effect that, upon a showing of good cause or to prevent hardship, the Board may permit the application to be filed approximately 60 days later than the Statute permits (October 30 for the February Examination or March 30 for the July Examination). This provision has long been referred to as the "Absolute Deadline" or "Late Deadline." In addition, the Statute does not appear to contemplate the Re-Applicant who seeks to take the next available bar examination upon learning of failure of the immediately preceding examination. For example, February 2001 Bar Examination results were published May 2, 2001. Under a strict reading of the Statute, it would have been impossible for a person who failed the February 2001 Bar Examination to have applied for the July 2001 Bar Examination, as he or she could not have anticipated the need to apply within the Statute's 180 day requirement. Rule IX(f) addresses this by giving re-Applicants a date certain soon after learning of the need to reapply (May 30 for July Exam and November 30 for February exam).

Board staff researched the formulation of the deadlines set forth in Rule IX and to what extent the impact of the statutory deadlines may have been considered in connection therewith. Article 305a(e), the predecessor statute to Tex. Govt. Code Sec. 82.027(a), was enacted effective September 1, 1979, at a time when the *Rules Governing Admission to the Bar of Texas* did not allow an application to be filed beyond the 180 day deadline. Effective August 1, 1981, the *Rules Governing Admission to the Bar of Texas* were revised to allow later filings upon a showing of good cause or to prevent hardship. Between September 1, 1979 and August 1, 1981, the Board considered requests for waivers of the 180 day deadline on a case by case basis. In reviewing Board minutes from 1981 through 1992, it is clear that the Board continued to handle waiver requests concerning the filing deadline the same way until 1992. The Board in 1992 delegated its discretion to staff to consider waivers of the deadline. In our research, we also came across a 1982 article in the *Texas Bar Journal* which criticized the Board's lack of discretion in permitting late filings after a recent rule change that resulted in certain Applicants being unable to take the bar examination when anticipated. This article places some historical

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\* Referred to herein as the Rule or Rule IX

perspective on why the Rules may have been designed to allow late filings on a showing of good cause or to prevent hardship.

The apparent inconsistency between the Statute and Rule IX was discussed at length during the Board's January 2001 Meeting, at which Justice Hankinson and Denise Davis, then Director for the Texas Judicial Council, participated. It is important to emphasize that the apparent inconsistency was not brought to light as a result of problems with Rule IX nor has there been any challenge to the Supreme Court's authority to establish a late deadline or a separate deadline for Re-Applicants. The existence of a such extended deadlines has no negative impact on the public interest because permitting an Applicant to take a particular bar examination does not impact on the deadline to complete a character and fitness determination or any other matter designed to protect the public interest. Moreover, Board staff has for 20 years been able to facilitate the processing of initial applications filed up to 60 days late and re-applications filed even later, resulting in additional persons being allowed to take the Texas Bar Examination. As reflected in the minutes of the January 2001 Board Meeting, the Board decided to recommend to the Supreme Court that the Supreme Court take the lead in deciding whether to propose a statutory amendment to the Legislature to seek amendment of the Statute to permit application filing deadlines consistent with those found in current Rule IX. The minutes also reflect that the timing of the Board's recommendation be deferred to avoid prejudice to Applicants for the July 2001 Bar Examination who were proceeding under deadlines established by the current Rule (March 30 Late Deadline and May 30 Re-Application Deadline).

In mid-April, 2001, Justice Hankinson communicated that the Supreme Court wanted the Board to pursue a statutory amendment and requested that staff consult with Denise Davis about the most efficient means of initiating this process. Ms. Davis recommended preparing the summary for Senator West and his staff and seeking a meeting between Senator West, Justice Hankinson and the Board's Executive Director, which occurred shortly thereafter. An initial draft of an amendment to the Statute was submitted in redline form for review and discussion.

<b>C. Possible Solutions and Impact</b>
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Resolution prior to the conclusion for the Legislative Session was not possible as there were no bills germane to which the draft amendment to the Statute could be added as an amendment and the matter was brought to light too late in the session to be addressed in any other fashion. All parties concerned expressed an interest in addressing the issue again as part of the Sunset Review process.

## **X. Comments**

If additional policy issues arise as part of the Sunset Review process, the Board will welcome the opportunity to supplement this Report.

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