Sunset Advisory Commission

Texas State Board of Public Accountancy

Texas Board of Architectural Examiners

Texas Board of Professional Engineers

Licensing Agency Pilot Project

Staff Report
October 2002

Texas Board of Architectural Examiners

Sunset Staff Report

Table of Contents

PAGE

SUMMARY

..... 59

ISSUES / RECOMMENDATIONS

1 The Board's Enforcement Process Does Not Adequately Protect the Public 63

2 The Board's Registration of Firms Is Not the Best Use of Limited Agency Resources 75

3 Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices 81

4 Texas Has a Continuing Need for the Texas Board of Architectural Examiners, but Could Benefit From Greater Coordination With the Texas Board of Professional Engineers 99

ACROSS-THE-BOARD RECOMMENDATIONS

..... 105

AGENCY INFORMATION

..... 107

APPENDICES

Appendix A — Equal Employment Opportunity Statistics 115

Appendix B — Historically Underutilized Businesses Statistics 119

Appendix C — Staff Review Activities 121

SUMMARY

Sunset Staff Report

Texas Board of Architectural Examiners

Summary

The responsibilities of the Texas Board of Architectural Examiners have grown significantly since the Legislature established the Board in 1937 to regulate the practice of architecture. The Legislature has added the regulation of landscape architects and interior designers to the Board's duties, and has increased the scope of the Board's regulatory authority over the three professions.

Today, the Board faces the challenge of effectively enforcing the Architecture, Landscape Architecture, and Interior Design Acts to meet its legislative mandate of protecting the public. While the Board has focused attention on enforcement, the program continues to be hampered by insufficient resources, a backlog of enforcement cases, and inconsistent application of penalties. In addition, the agency's efforts to register design firms provide little enforcement value and deplete the agency's limited resources. The Sunset review considered the Board's challenges with enforcement and is recommending a series of actions to improve the Board's efforts.

The Sunset staff review also considered the Board's special demands of enforcing three statutes, and determined that increased uniformity across the statutes would ease enforcement and administration.

Finally, Sunset staff considered whether the current stand-alone agency structure remains appropriate. Two previous Sunset reviews discussed combining the Board with other licensing agencies, but found no significant benefit to such action. Yet, crossover among the professions regulated by the Board and the practice of engineering, along with unclear statutes, may cause confusion over which professionals may work on certain projects. While no significant problems exist that would be solved by changing the agency structure, coordination with the Texas Board of Professional Engineers would better protect the public by resolving overlapping enforcement issues between the two Boards.

The Sunset review sought ways to help the Board with its enforcement challenges.

A summary of the recommendations in this report is provided in the following material.

For more information, contact Amy Trost, (512) 463-1300. Sunset staff reports are available online at www.sunset.state.tx.us.

Issues / Recommendations

Issue 1 The Board's Enforcement Process Does Not Adequately Protect the Public.

Key Recommendations

- Increase the Board's enforcement authority by authorizing the issuance of cease and desist orders; increased administrative penalties; inclusion of fine amounts in the Board's penalty matrix; and the ability to require restitution as part of Board orders.
- Increase the Board's enforcement efforts by requiring the Board to direct additional resources toward enforcement activities; establish time lines for enforcement processes; consult with design professionals in complaint investigations; and develop a system of compliance checks of Board disciplinary orders.
- Improve the Board's ability to gain compliance with statutes by requiring the Board to increase outreach to licensees, the public, and individuals; provide an enforcement grace period after the establishment of new rules and laws; improve coordination with building officials; and provide information about state and federal accessibility laws on the Board's Web site.

Issue 2 The Board's Registration of Firms Is Not the Best Use of Limited Agency Resources.

Key Recommendations

- Clarify that the Board does not have authority to require firms to register.
- Direct the Board to reallocate firm registration resources to actual enforcement tasks.

Issue 3 Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Recommendations

- Standardize the Board's licensing functions by requiring the Board to address felony and misdemeanor convictions, exam accessibility, and examination fee refunds; and streamline the process used for exam administration.
- Revise the Board's enforcement activities by requiring common licensing model elements, such as standards of conduct and rules for the complaint process; standardizing Board statutes regarding grounds for disciplinary

action; conforming the statute with procedures of the State Office of Administrative Hearings; and ensuring that all disciplinary actions are made public.

- Change administrative aspects of the Board's activities by eliminating statutory fee caps, creating uniform consumer notifications procedures, and standardizing the powers, duties, and processes of the Board.

Issue 4 Texas Has a Continuing Need for the Texas Board of Architectural Examiners, but Could Benefit From Greater Coordination With the Texas Board of Professional Engineers.

Key Recommendations

- Continue the Texas Board of Architectural Examiners for 12 years.
- Require the Board to form a joint practice committee with the Texas Board of Professional Engineers.

Fiscal Implication Summary

These recommendations will not result in a fiscal impact to the State. The Board is a participant in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which tests the ability of certain agencies to effectively operate outside the legislative appropriations process. Because the Board has been removed from the appropriations process, any gains or losses implicated in these recommendations would not be reflected in the General Revenue Fund.

ISSUES / RECOMMENDATIONS

Issue 1

The Board's Enforcement Process Does Not Adequately Protect the Public.

Summary

Key Recommendations

- Increase the Board's enforcement authority by authorizing the issuance of cease and desist orders; increased administrative penalties; inclusion of fine amounts in the Board's penalty matrix; and the ability to require restitution as part of Board orders.
- Increase the Board's enforcement efforts by requiring the Board to direct additional resources toward enforcement activities; establish time lines for enforcement processes; consult with design professionals in complaint investigations; and develop a system of compliance checks of Board disciplinary orders.
- Improve the Board's ability to gain compliance with statutes by requiring the Board to increase outreach to licensees, the public, and individuals; provide an enforcement grace period after the establishment of new rules and laws; improve coordination with building officials; and provide information about state and federal accessibility laws on the Board's Web site.

Key Findings

- The Board lacks the tools necessary to enforce the laws under its jurisdiction.
- The Board's current use of its resources limits the effectiveness of enforcement efforts and results in a backlog of cases.
- The Board has had difficulty determining penalties and sanctions.
- The Board fails to take advantage of opportunities to augment its enforcement program.

Conclusion

The enforcement of the Architecture, Landscape Architecture, and Interior Design Acts is a significant responsibility of the Board. Sunset staff evaluated the effectiveness of the Board's enforcement activities and concluded that the agency does not adequately enforce its laws and rules. Factors supporting this conclusion include a backlog of cases, a focus on minor infractions of law and rule, lack of follow-up activity to disciplinary actions, inconsistent application of administrative penalties and sanctions, and limited informational outreach to licensees and the public. The Board's lack of attention to these activities potentially erodes the overall strength of the enforcement program and sends a message that disciplinary action lacks importance.

Staff recommendations would strengthen the Board's enforcement authority, redirect resources to enforcement efforts, speed up the enforcement process, and increase outreach to licensees and other affected parties.

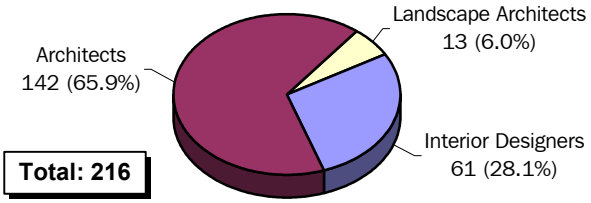
Support

The Board investigates and prosecutes complaints against architects, landscape architects, and interior designers who violate Board rules and statutes.

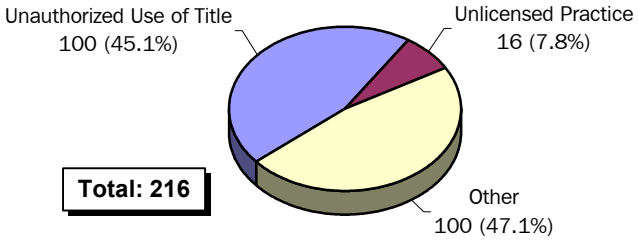
- The Board regulates nearly 19,000 design professionals, including 10,000 architects, 7,500 interior designers, and 1,200 landscape architects. The Board has responsibility for enforcing all three professions' statutes and rules. The agency enforces restrictions on the use of professional titles for the three professions, and limitations on the scope of practice for architecture and landscape architecture.

- About two-thirds of the 216 complaints received in fiscal year 2001 involved the practice of architecture, as shown in the graph, *Complaints by Profession*. More than half of all cases concerned non-licensed individuals illegally practicing or advertising architecture, landscape architecture, or interior design services, as shown in the graph, *Complaints by Type*.

Complaints by Profession



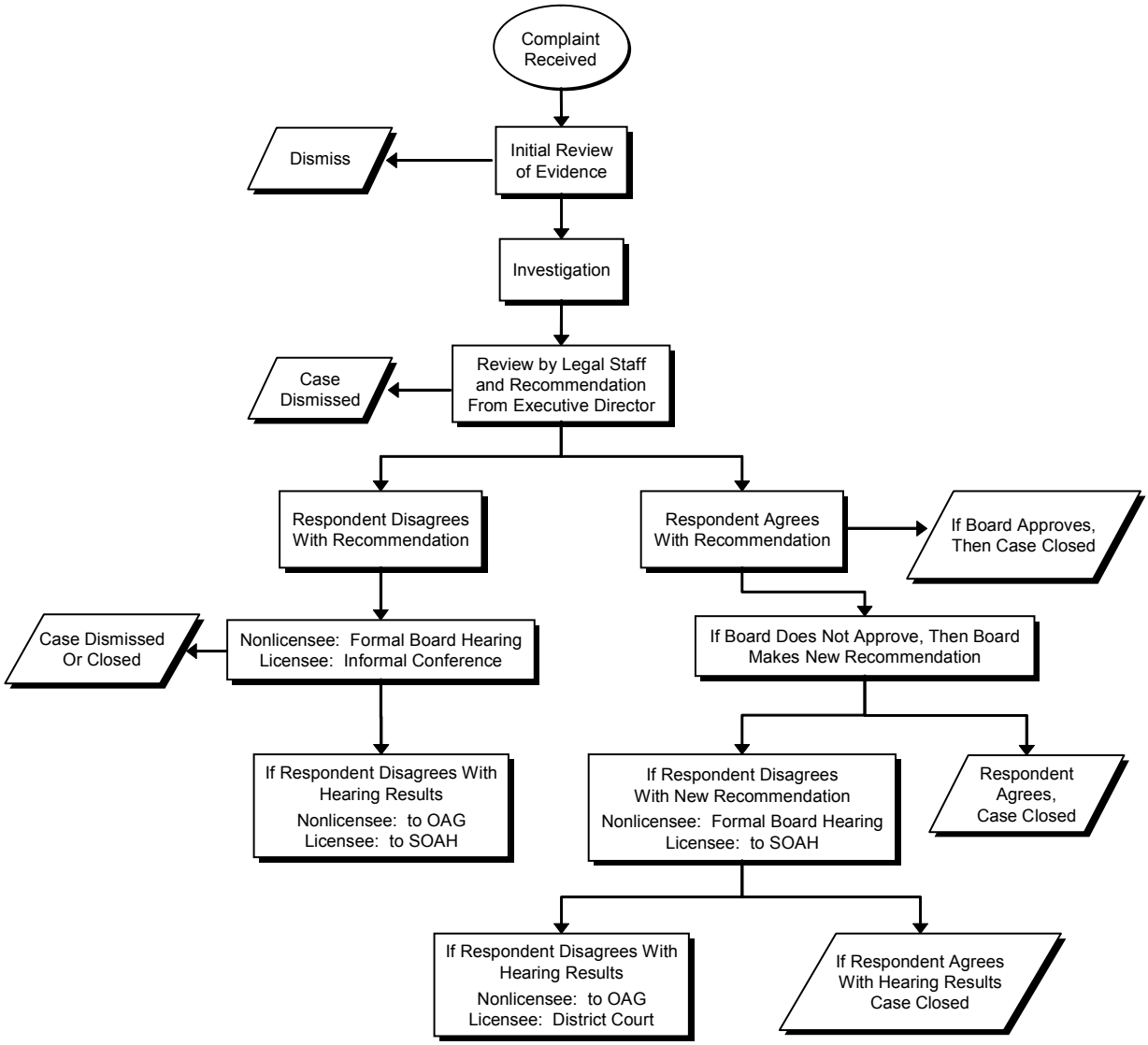
Complaints by Type



- The Board receives complaints from the public and also initiates complaints when it uncovers violations of statutes and rules. After receiving a complaint, enforcement staff create a complaint file and conduct an investigation of the complainant's allegations. Upon completion of an investigation, staff may authorize a consent order.

If the respondent agrees with the provisions of the consent order, staff seek Board approval. If the licensee does not agree with the consent order, the case goes either to an informal conference or a formal Board hearing. Cases for nonlicensees go directly to a formal Board hearing. If a conference or hearing does not result in a resolution, the Board refers a licensee's case to the State Office of Administrative Hearings (SOAH), or a nonlicensee's case to the Office of the Attorney General (OAG) for prosecution through the courts. However, the agency resolves the majority of complaints with a consent order. The chart, *Complaint Process,* details the Board's complaint process.

Complaint Process
Texas Board of Architectural Examiners



The Board lacks the tools necessary to enforce the laws under its jurisdiction.

The Board has 64 unresolved enforcement cases more than one year old.

- To stop unlicensed persons from practicing or advertising design services, the Board must apply for an injunction through OAG, a slow and ineffective process.[1] While the Board has referred 11 cases to OAG since 1998 – each one involving an unlicensed individual refusing to comply with the law or to respond to the Board's communications – it has obtained just two injunctions.[2] Seven cases have been returned to the Board and two cases await further action. Violators may potentially continue to practice while cases await action at OAG. In addition, the Board's statutes do not permit the agency to refer interior design cases to OAG.

- The Board's maximum administrative penalty of $1,000, for two of its three statutes, is insufficient to deter violations of Board statutes and rules. The maximum penalty barely covers the average cost per investigation, currently about $900, and may not be a deterrent for a licensee who can earn $80,000 to $100,000 in fees per project.[3] Other Texas state agencies, including the Texas Board of Professional Engineers, have authority to assess fines up to $3,000 per violation. In addition, agency staff, Board members, professional organizations, and educators indicated to Sunset staff that this penalty is inadequate.

  The Board's statutes also lack standardization of administrative penalties, which potentially contributes to inconsistent application of penalties. The architecture statute authorizes the Board to assess a penalty of up to $1,000; the landscape architecture statute provides for a penalty of up to $1,000 per day of violation; and the interior design statute places no upper limit on the amount of an administrative fine.

- The Board does not have authority to order licensees to pay restitution to consumers who have been defrauded. The Board's enforcement tools are designed to correct licensee behavior, but do not allow for compensation to an aggrieved party. Consequently, when licensees commit fraudulent acts or perform services incompetently, consumers may lose the money paid for services or be left with incomplete or poorly designed projects.

Enforcement Case Backlog[4]

Year Opened	Pending Cases	Average Age
1995	1	7 years
1996	2	7 years
1997	2	5 years
1998	8	4 years
1999	4	4 years
2000	17	2 years
2001	30	1 year
Total	**64**	**2.2 years**

The Board's current use of its resources limits the effectiveness of its enforcement efforts and results in a backlog of cases.

- As of July 2002, the Board has 64 unresolved enforcement cases more than one year old, almost one-fourth of its open cases. Thirty cases filed in fiscal year 2001 remain unresolved, and an additional 34 cases from previous fiscal years remain open, with one case dating back to fiscal year 1995. The table, *Enforcement Case Backlog*, details the age of these cases.

- The Board does not direct adequate resources to its enforcement effort. In FY 2001, the agency spent $251,763, about 16 percent of its $1.6 million budget, on its enforcement program. The Board spent more than twice that amount on its examinations program, and three times that amount on its registration and renewal program. Of the agency's 21 full-time employees, only three are assigned to enforcement. The agency is in the process of a reorganization to better align staff with program needs. However, the agency needs to continue redirecting resources towards enforcement.

The Board spends about 16 percent of its budget on enforcement.

- No procedural time lines exist for the agency's enforcement process, contributing to lengthy investigations and lack of case prioritization. Currently, staff spend as much time as deemed necessary on each step of the enforcement process.[5] Staff indicate that the investigation process and legal proceedings are quite time-consuming, but no specific guidelines are in place to reduce the time necessary to complete these steps. Board staff believe that current staffing levels prevent them from adopting and following time lines.[6]

- The Board appears to focus its enforcement efforts on minor infractions and title violations. Out of 216 cases in fiscal year 2001, 73 were for minor violations and 100 for title violations – more than three-fourths of all cases. Minor violations included filing incomplete renewal forms and failure to display license numbers in advertisements. The Board generally resolved these minor cases in one to three months. In addition, the Board spends significant time investigating simple cases of title violation that do not allege an actual practice violation. Industry representatives believe the agency focuses on these cases because they are easily and inexpensively prosecuted.[7] The chart, *Enforcement Cases*, details the types of complaints the Board investigated during the past fiscal year.

  In contrast, technically complex cases against practicing licensees and nonlicensees languish in the enforcement process. Eighteen such cases – opened in fiscal year 2001 and now more than one year old – remain unresolved. Agency staff cite a lack of enforcement staff and expert help of design professionals in investigations as key reasons for slow

Enforcement Cases - FY 2001

Violations		Number of Cases	Totals
Serious	Aiding/Abetting Unlicensed Persons	3	40
	Negligent Practice	1	
	Unauthorized Practice	16	
	Unprofessional Conduct	6	
	Seal Violations	12	
	Submitting Incomplete Plans	2	
Moderate	Unauthorized Use of Title	100	100
Minor	Late Filing of Architectural Barrier Plans	39	73
	Failure to Display License Number in Advertisements	6	
	Incomplete Renewal Form	23	
	Other	5	
	Nonjurisdictional Complaints	3	3
Grand Total			216

complaint resolution of technical cases.[8] The agency relies on past Board members and a few local design professionals to help the Board investigate complex practice cases. However, only a few experts are available for investigations, and cases get delayed until an expert is available to assist with a technical case.

Board staff conduct little follow up to disciplinary action, which may contribute to repeat violations.

- Board staff conduct little follow up to disciplinary action, which may contribute to recidivism, currently 18 percent. Although staff ensures that the agency receives penalty payments, it does not check to see that violators have complied with other orders. For example, if an unlicensed person receives an order to remove a sign advertising services, the Board does not confirm the sign's removal. Another example concerns license suspension. When the agency probates a license suspension, it frequently requires the licensee to submit quarterly listings of work projects, but does not review them for compliance.[9]

The Board has had difficulty determining penalties and sanctions.

- A review of agency enforcement cases shows inconsistent application of sanctions and penalties. For example, the Board sometimes takes outside considerations into account when making a determination of penalties and sanctions. In one case, a licensee failed to seal design plans and pay project contractors, despite receiving payment from the client. Staff did not assess a fine, citing the individual's personal situation as mitigating circumstances. However, in another case, a licensee caring for an ill relative did not make a timely license renewal payment, and was fined $1,000 for practicing with a revoked license.

Selected Outcomes of Recent Enforcement Cases

Violation	Case Details		Fine
Practice with a Revoked License	Case 1:	Submitted 16 design projects	$500
	Case 2:	Submitted one design project	$1,000
	Case 3:	Advertised design services; claimed to be unaware of revoked license	$250
Unauthorized Practice	Case 4:	Worked on projects requiring an architect; used title on resume	$2,000
	Case 5:	Worked on projects requiring an architect; used title in advertising	$0
Licensee Violation of Laws	Case 6:	Aiding and abetting an unlicensed person in unauthorized practice; Board suspended license for 12 months	$1,000
	Case 7:	Failed to pay contractors and suppliers after receiving payment from client; failed to seal six design plans	$0
	Case 8:	Failed to seal 11 design plans	$5,500

In addition, the Board recently adopted a penalty matrix that outlines recommended disciplinary actions for specific violations, but does not indicate sanction time frames or fine amounts. Consequently, the Board has no guidelines to ensure the consistent application of fines or sanctions for similar violations. For example, in fiscal year 2001, the agency closed six cases involving individuals practicing or advertising design services with revoked licenses. Fines ranged from $500 for work on 16 design plans to $1,000 for work on one design plan. The chart, *Selected Outcomes of Recent Enforcement Cases*, details inconsistencies in

enforcement case outcomes. In citing these situations, Sunset staff is not substituting its judgment for that of the Board. However, the apparent inconsistencies do call the administrative fine determination process into question.

Sunset staff found an unusual disciplinary procedure against licensees who violated a new law. In fiscal year 2001, the agency initiated, and then dismissed, cases against 37 licensees who failed to submit architectural barrier plans to the Texas Department of Licensing and Regulation (TDLR) within a newly established five-day statutory period. Because licensees were confused about the new law, the Board allowed licensees to enter a no-contest plea and pay $300 to defray the costs of investigation.[10] In addition, the Board decided to dismiss the cases if a licensee did not violate the law within the next year. The Board's records now indicate that the cases were dismissed, even though some licensees were assessed a $300 penalty.

The Board used an unusual disciplinary procedure against licensees who violated a confusing new law.

The Board fails to take advantage of opportunities to augment its enforcement program.

- The Board does not have an adequate outreach program for individuals who must follow the laws and rules enforced by the agency. All licensees still receive an annual newsletter, but the agency no longer includes a detailed explanation of new rules. The Board also discontinued its practice of notifying licensees of rule changes throughout the year, citing mailing expense. The agency does not use an e-mail network for inexpensive and timely distribution of information. Instead, the Board directs licensees to the agency Web site. Unfortunately, information can be difficult to find on the Web site, and unless the agency actively promotes the site, licensees may not use the site to keep informed. The agency's outreach problems are compounded by an outdated database system incapable of efficiently storing and distributing information.

- The Board believes that building officials need more information about Board rules and statutes, to prevent the approval of unsafe buildings and use of unauthorized plans. The textbox, *What Do Building Officials Do?*, describes building officials' jobs. Interviews with building officials throughout the state indicate that officials have little to no contact with the Board.[11] Not all officials interviewed receive the agency's annual newsletter. In addition, several officials state that industry organizations and city lobbyists provide more frequent updates of design profession policies. Most said that other state agencies they work with do a better job informing officials through the use of frequent mailings or e-mail notices. All officials interviewed hoped for more frequent rule and policy updates from the Board.

What Do Building Officials Do?

Building officials enforce municipal building codes. Duties include reviewing architectural plans, issuing building permits, and conducting building inspections. Building code organizations estimate that Texas has between 400 and 1,000 building officials.

- The Board does not provide adequate information to its licensees on Texas Accessibility Standards (TAS), although licensees must submit building plans to the Texas Department of Licensing and Regulation to ensure compliance with TAS. The Board's Web site does not include state and federal accessibility laws, and the link to TDLR cannot be found easily. TDLR reports that about 56 percent of all architectural barrier plans submitted fail initial approval, and 76 percent of finished projects fail initial inspection.[12] TDLR argues that most design problems result from architects' lack of TAS knowledge, not poor architecture skills. The Board misses an opportunity to increase its licensees' compliance with accessibility laws by not making information about TAS more readily available.

Recommendation

Change in Statute

1.1 Authorize the Board to issue cease-and-desist orders.

This recommendation would provide the Board with an additional tool to stop unlicensed individuals from violating the architecture, landscape architecture, and interior design statutes. The Executive Director could issue a cease-and-desist order to an individual refusing to cooperate with the agency's requests to stop unauthorized activity. The order would not be effective for 21 days, during which time the individual could request a hearing. If no hearing is requested, the order is effective at the end of 21 days. If the individual requests a hearing, the Board must hold a hearing within 30 days of the request.

1.2 Authorize the Board to levy administrative penalties for each of its statutes up to $3,000 per violation.

This recommendation would standardize the maximum administrative penalty in each of the agency's statutes – architecture, landscape architecture, and interior design – while allowing the Board to raise the penalty amount to help ensure that fines provide adequate deterrence to violation of the agency's statutes and rules. The Board would establish the appropriate penalty amounts in rule.

1.3 Direct the Board to include fine amounts in its administrative penalty matrix.

This recommendation would require the Board to update its administrative penalty matrix to include recommended fines to help ensure the fair and consistent application of administrative fines.

1.4 Authorize the Board to require restitution as part of Board orders.

This recommendation would authorize the Board to order payment of restitution to consumers as a part of enforcement actions. Refunds would be limited to actual amounts paid by consumers to

licensees. Any restitution order would not include an estimation of other damages or harm. The restitution may be in lieu of, or in addition to, a separate Board order assessing an administrative penalty.

Management Action

1.5 Require the Board to direct additional resources toward enforcement activities.

This recommendation would help the Board improve its enforcement efforts without incurring extra costs. Directing more resources to enforcement could be accomplished as follows.

- Review enforcement staff tasks to determine which tasks would be more effectively performed by other agency staff. The discontinuation of the firm registration program, as described in Issue 2 of this report, would free up additional resources for enforcement activities.
- Prioritize travel for enforcement purposes.
- Continue efforts to redirect more of the agency's budget and full-time equivalents to benefit the agency's enforcement arm.

1.6 Require the Board to establish time lines for enforcement processes and a plan to resolve older cases.

This recommendation would direct the Board to resolve enforcement cases more quickly. Determining time limits for each step in the enforcement process – with the exception of the legal process – will help streamline the process and encourage better prioritization of cases. Inability of the Board to meet adopted time lines would not require case dismissal, but would indicate a need to redirect more resources to enforcement, as required in Recommendation 1.5. The Board would also be required to devise a plan to resolve all cases older than one year by January 1, 2004.

1.7 Require the Board to consult with design professionals in technically complex complaint investigations.

The Board should consult with architects, landscape architects, and interior designers when conducting investigations of technically complex enforcement cases. To develop a pool of consultants, the agency would recruit licensees in good standing with the Board. Recruitment would be accomplished through notices placed in the annual newsletter and recruitment-specific mailings, on the Board's Web site, and through use of an e-mail network. Any candidate chosen would be screened to ensure professional knowledge, lack of agency disciplinary actions, and a clean background check. The Board would direct staff to ensure that consultants would not assist in cases where they had a conflict of interest. Consultants would be immune from lawsuits and liability for services rendered to the Board in good faith. The consultants would be given continuing education credits as reimbursement for their efforts.

1.8 Require the Board to develop a system of compliance checks of Board disciplinary orders.

This recommendation would strengthen the Board's enforcement program by ensuring that individuals comply with Board orders. Staff would adopt a schedule to follow up on compliance with all orders – from payment of penalties to removing advertisements from the Internet.

1.9 Require the Board to increase outreach to licensees, the public, and individuals required to follow agency statutes and rules.

This recommendation would require the Board to engage in more frequent communication with licensees and others who have a need for agency information. Use of an e-mail network would provide an inexpensive and efficient way to communicate important information to many individuals. Use of e-mail would allow for additional agency newsletters, more frequent announcement and explanation of rule changes, and details about enforcement concerns.

1.10 Require the Board to provide for an enforcement grace period after the establishment of new rules and laws.

This recommendation requires the Board to focus on education for licensees, instead of enforcement, when new laws and rules are adopted. A six-month to one-year grace period would be determined after adoption of new rules and policies. During the grace period, the agency would mail affected parties information detailing the changes, prominently display rule changes on its Web site, and make use of an e-mail network to publicize changes. Licensees who violate new policies during the grace period may be given a warning letter, but the Board should not initiate an official complaint. After the grace period ends, licensees would be held accountable for any violation of new rules and statutes

1.11 Require the Board to improve coordination with building officials.

This recommendation would require the agency to keep building officials better informed of agency rules and laws. Improved coordination could be accomplished as follows.

- Development of a document for building officials that details important agency rules and laws, answers to frequently asked questions, and illustrations of authorized seals.
- More frequent rule and enforcement updates through use of an e-mail network.
- More presentations at building official meetings.
- Attendance at construction and building shows to increase visibility among, and outreach to, building officials.

1.12 Require the Board to provide information about state and federal accessibility laws on the Board's Web site.

This recommendation would improve licensees' access to information about the Texas Accessibility Standards and TDLR's architectural barrier program. Information could include links to both state and federal accessibility laws, TDLR's Web site, and the laws and rules pertaining to TDLR's architectural barriers program. The link to the information should be placed in such a way that anyone accessing the Board's Web site could quickly find the information.

Impact

These recommended changes would strengthen the Board's enforcement process and increase protection of the public. Authorizing the Executive Director to issue cease and desist orders to individuals practicing without a license protects the public from poorly designed, and potentially dangerous, buildings. Increasing the maximum administrative penalty and including fine amounts in the Board's penalty matrix would discourage violation of statute and rules, while ensuring the consistent application of penalties and sanctions to all respondents. Checking compliance with Board orders, adopting a grace period after the establishment of new rules and laws, and improving outreach to individuals needing agency information would improve compliance with rules and laws, potentially reducing the number of enforcement cases. Other recommendations would streamline the Board's enforcement process and help resolve the case backlog.

Fiscal Implication

These recommendations will not result in a fiscal impact to the State. The Board is a participant in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which tests the ability of certain agencies to effectively operate outside the legislative appropriations process. Because the Board has been removed from the appropriations process, any gains or losses implicated in these recommendations would not be reflected in the General Revenue Fund.

The statutory recommendation to give the Executive Director cease and desist authority will result in some costs to the agency. However, costs cannot be estimated for this report, as the number of cases for which the Executive Director will choose to exercise this authority cannot be predicted. The recommendation to increase the maximum administrative penalty would have a positive impact for the agency, although expected revenue cannot be estimated. The number of cases, types of violations, and penalties assessed per violation cannot be predicted.

Directing more resources toward enforcement activities would not have a fiscal impact, as the recommendation proposes to redistribute existing resources, rather than add additional resources to enforcement functions. Additionally, discontinuing the firm registration program will direct an additional $16,500 toward enforcement activities, as discussed in Issue 2.

Requiring the Board to establish enforcement time lines and provide for an enforcement grace period would have no fiscal impact to the agency or the State and could be accomplished with existing resources. Use of design professionals as consultants for enforcement investigations would have some costs. Costs cannot be estimated for this report, as costs would depend on the degree of effort and number of cases, but considerations would include reimbursement of travel, agency staff time, and materials necessary for performance of investigations. Performing compliance checks would cost the agency an estimated $5,000 annually.

The recommendations to increase informational outreach to licensees, the public, and building officials would have some costs associated with the development of an e-mail network and improvement to the Board's Web site.

[1] Texas Occupations Code, sec. 1051.502; and Texas Occupations Code, sec. 1052.052. The Interior Design Act does not presently contain provisions for referral to the Office of the Attorney General.

[2] Texas Board of Architectural Examiners (TBAE), "RE: List of Cases Referred to OAG Since 1998," September 30, 2002 (fax).

[3] TBAE, Fiscal Year 2002 Performance Measures, August 20, 2002.

[4] Enforcement case backlog as of July 2002. The table excludes FY 02 cases.

[5] Interview with TBAE staff (Austin, Texas, July 26, 2002).

[6] Telephone interview with TBAE staff (Austin, Texas, July 24, 2002).

[7] Interview with Texas Society of Architects (Austin, Texas, July 9, 2002).

[8] Telephone interview with TBAE staff (Austin, Texas, August 14, 2002).

[9] Interview with TBAE staff (Austin, Texas, July 26, 2002).

[10] TBAE, "RE: Question About Penalties," e-mail to Sunset Advisory Commission, July 30, 2002.

[11] Interviews with building officials from Dallas, Corpus Christi, El Paso, Midland, Georgetown, Harlingen, and College Station (August - September, 2002).

[12] Interview with TDLR staff (Austin, Texas, July 15, 2002).

Issue 2

The Board's Registration of Firms Is Not the Best Use of Limited Agency Resources.

Summary

Key Recommendations

- Clarify that the Board does not have authority to require firms to register.
- Direct the Board to reallocate firm registration resources to actual enforcement tasks.

Key Findings

- The Board lacks clear statutory authority to register firms.
- Firm registration is not a valuable enforcement tool for the Board.
- Pursuing firm registration wastes the Board's limited enforcement resources.
- No national consensus exists on the value of firm registration for design firms.

Conclusion

As a part of its enforcement program, the Board currently registers about 1,200 architecture, landscape architecture, and interior design firms. While the Board believes it has authority to require these firms to register, it has taken no disciplinary action when firms fail to register.

The Sunset review evaluated the Board's firm registration program to determine its value and the degree to which the program takes resources away from enforcement programs. Sunset staff found that the program provides little enforcement value, unnecessarily burdens design firms, and diverts the agency's limited resources away from important enforcement issues.

Support

The Board conducts a voluntary firm registration program.

- In 1997, the Texas Board of Architectural Examiners began to register architecture, landscape architecture, and interior design firms on a voluntary basis because agency staff believed it would enhance enforcement efforts. Initially, staff went through phone books and contacted firms directly to inform them about firm registration. Because the process consumed too much time, staff stopped actively searching for firms and now collect firm registration information through routine investigations of other complaints. For example, if a complaint is filed with the Board against an architect working in a firm, then staff will request the firm to register.

- Approximately 1,200 firms have registered with the agency. The agency does not charge a registration fee, but has the authority to do so under Board rules. The Board granted this authority in anticipation that the Legislature might make firm registration mandatory. When registering a firm, the agency requires that a licensed professional of record be listed for each firm. Licensees of record confirm that they are full-time employees of the firm or have contractual relationships with the firm.

The Board lacks clear statutory authority to register firms.

The Board liberally interprets its statutes to allow for firm registration.

- The Board liberally interprets its statutes to allow for firm registration. This interpretation is based on the fact that the architecture statute permits firms to engage in the practice of architecture or advertise architectural services only if a licensed architect provides the actual service.[1] The provision appears only in the architecture statute; neither the landscape architecture nor the interior design statutes contain a similar provision.

- The Board believes the statutes allow it to adopt rules for mandatory firm registration for all three professions. Although the Board's rules require registration for architecture, landscape architecture, and interior design firms, the Board has never taken disciplinary action against a licensee for failing to follow these rules.

Firm registration is not a valuable enforcement tool for the Board.

- Unlike firm registration for other professions, firm registration by the Board does not provide a valuable enforcement tool. Registering firms is a useful tool for professions in which corporate entities, rather than licensed individuals, take action. For example, the Texas State Board of Public Accountancy licenses accounting firms – even though that agency also licenses individual Certified Public

Accountants within firms – because accounting firms, not individuals, verify financial statements. Since multiple licensees collaborate on tasks, firm registration helps enforcement by providing accountability.

- Firm registration is not as valuable a regulatory tool for professions in which licensed individuals, not firms, directly take action. For example, Texas does not require the registration of law firms and medical clinics because work products such as legal briefs or medical treatments are directly attributable to individual licensees. Also, because licensing boards can concentrate enforcement action against licensees, firm registration is unnecessary for regulating these professionals, such as plumbers or veterinarians.

Firm registration is not as valuable a regulatory tool for professions in which licensed individuals, not firms, directly take action.

- Although multiple licensees often collaborate on design projects, all design and construction plans are individually sealed by a licensed architect, landscape architect, or interior designer who has legal responsibility for the content. In addition, architects, landscape architects, and interior designers often work within firms, but individuals – not firms – in all three professions have strict and direct accountability for their work.

- Advocates of firm registration argue that it allows the Board to take action against companies that perform services without using a licensee. However, the Board may take action for professional practice by nonlicensees even without having firm registration authority.

Advocates also argue that firm registration allows the Board to keep current records of where licensees are employed, thus enabling the Board to determine whether firms are legally providing design services. In practice, however, the Board's firm registration program requires only one licensee at each firm be designated the licensee of record. The agency does not have a renewal system for firm registration and updates records only when the licensee of record leaves the firm. Firm registration, therefore, provides little additional information to the Board regarding the majority of a firm's actual employees.

The Board can take action for professional practice by nonlicensees without firm registration authority.

Pursuing firm registration wastes the Board's limited enforcement resources.

- The Board's enforcement staff spend approximately 10 to 15 hours a week registering firms. Since the enforcement division had only three full-time employees in FY 2001, firm registration consumed, on average, more than 10 percent of the Board's enforcement staff resources, or about $16,500 per year.[2] Since the agency does not charge fees for firm registration, registering firms resulted in a significant loss of the agency's limited resources.

- Firm registration also diverts enforcement staff from important tasks, such as addressing the agency's backlog of more complicated enforcement cases. For example, in FY 2001, the Board opened 238 enforcement cases pertaining to firm registration, simply because those unregistered firms had requested registration information. Staff later dismissed all of these cases because the firms in question had committed no violations.

No national consensus exists on the value of registration for design firms.

- All 50 states regulate architects, but only 25 states require firm registration. Of the 46 states that regulate landscape architects, only 18 require firm registration. While 19 states regulate interior designers, only three require firm registration. For examples of states and their policies, see the chart, *State Firm Registration Policies*.

State Firm Registration Policies		
Profession	**States That Require Firm Registration**	**States That Do Not Require Firm Registration**
Architecture	**25 states, including:** California Florida Pennsylvania	**25 states, including:** New York North Carolina Michigan
Landscape Architecture	**18 states, including:** Florida North Carolina Virginia	**28 states, including:** California Pennsylvania New York
Interior Design	**3 states:** Florida Nevada Virginia	**16 states, including:** New York Tennessee New Mexico

- These professions' national associations also lack consensus on the value of firm registration. The chart, *Position Statements of Major National Organizations*, summarizes the position of each association on the issue of firm registration.

Position Statements of Major National Organizations			
Organization Name	**Supports Firm Registration**	**Opposes Firm Registration**	**Neutral Position**
National Council of Architectural Registration Boards			✓
American Institute of Architects			✓
Council of Landscape Architectural Registration Boards	✓		
American Society of Landscape Architects			✓
National Council of Interior Design Qualification			✓
American Society of Interior Designers			✓
International Interior Design Association		✓	

Recommendation

Change in Statute

2.1 Clarify that the Board does not have authority to require firms to register.

This recommendation would remove questions about the Board's authority to register firms by explicitly stating that the Board cannot require firms to register. This clarification would not limit the Board's current enforcement authority because the Board would still be able to pursue enforcement efforts against licensees who are responsible for sealing project plans, and nonlicensees who violate Board statutes.

Management Action

2.2 Direct the Board to reallocate firm registration resources to actual enforcement tasks.

This recommendation would ensure that the Board used its enforcement resources on actual enforcement, rather than on firm registration tasks. These resources currently total 10 percent of the Board's enforcement efforts, or about $16,500 per year.

Impact

These recommendations would require the agency to discontinue its firm registration program, and target its limited resources to more important enforcement issues. The resources saved from the elimination of firm registration would allow the Board to continue to improve its enforcement functions. The recommendations would also remove an unnecessary requirement the Board has placed on businesses.

Fiscal Implication

Since the Board currently participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project and lies outside the appropriations process, these recommendations would have no fiscal impact to the State. While these recommendations would save the agency about $16,500 annually, the funds would be reallocated to other enforcement efforts.

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[1] Texas Occupations Code, sec. 1051.301 (b).

[2] This cost was estimated by taking 10 percent of the cost of salaries and benefits that the agency devoted to complaint investigation in FY 2001. It does not include other associated expenses, such as office supplies and other operating costs consumed by firm registration.

Issue 3

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Summary

Key Recommendations

- Standardize the Board's licensing functions by requiring the Board to address felony and misdemeanor convictions, exam accessibility, and examination fee refunds; and streamline the process used for exam administration.
- Revise the Board's enforcement activities by requiring common licensing model elements, such as standards of conduct and rules for the complaint process; standardizing Board statutes regarding grounds for disciplinary action; conforming the statute with procedures of the State Office of Administrative Hearings; and ensuring that all disciplinary actions are made public.
- Change administrative aspects of the Board's activities by eliminating statutory fee caps, creating uniform consumer notifications procedures, and standardizing the powers, duties, and processes of the Board.

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.
- Certain administrative provisions of the Board's statute could reduce the Board's efficiency and flexibility to adapt to changing circumstances.

Conclusion

Various licensing, enforcement, and administrative processes in the statutes of the Texas Board of Architectural Examiners do not match model licensing standards that Sunset staff have developed from experience gained through more than 70 occupational licensing reviews. The Sunset review identified these recommendations by comparing the Board's statutes, rules, and practice against these model licensing standards to identify variations from the model and to recommend changes to bring them in line with other licensing agencies.

Support

The Board licenses and regulates architects, landscape architects, and interior designers in Texas.

- The Board's mission is to protect the public's health, safety, and welfare by ensuring that competent individuals practice architecture, landscape architecture, and interior design in Texas. This mission, as well as the Board's powers and duties, are laid out in three separate occupational licensing statutes, one for each regulated profession.

To accomplish its mission, the Board performs two key functions – licensing and enforcement.

- To accomplish its mission, the Board performs two key functions – licensing and enforcement. The Board licenses individuals in all three professions by ensuring that new licensees meet certain education and experience criteria, and are able to pass a comprehensive professional examination developed by a national testing service. The agency enforces its three statutes and Board rules through the investigation of complaints against both licensed and unlicensed individuals.

- The Board, along with the Texas Board of Professional Engineers and the Texas State Board of Public Accountancy, participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project – a test of the effectiveness of removing self-funded licensing agencies from the legislative appropriations process. As part of the Pilot Project, the Board now collects its revenues directly from licensing fees, and spending limitations in the General Appropriations Act, such as caps on agency FTEs and travel expenditures, do not apply to the Board.

The Sunset Commission's experience from reviewing more than 70 occupational licensing programs during the last 25 years has been documented for application to future reviews.

- The increasing number and questionable practices of some occupational licensing programs was a main focus behind the creation of the Sunset Advisory Commission. Since its creation in 1977, the Commission has completed more than 70 evaluations of licensing agencies.

- Sunset staff has documented standards learned from its reviews of licensing programs and from national sources to guide reviews of occupational licensing agencies. These standards have been applied by the Sunset Commission to each licensing agency reviewed since the completion of the standards. These standards are a guide for evaluating licensing programs, but are not intended for blanket application. Although the Board participates in the Pilot Project, its licensing and enforcement functions should still follow these standard procedures.

Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.

- ***Criminal convictions.*** State law provides a general standard to guide agencies in determining which crimes should affect licensure in a given profession. This law, Chapter 53 of the Texas Occupations Code, "Consequences of Criminal Conviction," takes effect when individual licensing statutes are silent on the relationship of crime to licensure. The statute provides that a criminal conviction affects qualifications for licensure when the crime is related to the profession, according to guidelines developed by the agency and published in the Texas Register. Following these guidelines, an agency may then choose to suspend or revoke a license, disqualify a person from receiving a license, or deny the opportunity to take a licensing exam because of specific criminal activity.

  None of the Board's statutes addresses the issue of criminal convictions. The Board's rules currently set out such guidelines, but referencing Chapter 53 in the statutes would clarify the Board's authority to create rules governing how criminal convictions affect an individual's application for licensure.

- ***Disability access to examinations.*** Exams should not exclude individuals because of a disability, as long as those individuals qualify to sit for the testing procedure. This procedure should follow all applicable legal guidelines related to equal opportunity and access. Title II of the Americans with Disabilities Act requires that state agencies must make their programs and services accessible to disabled persons.

  The Board appears to have made good efforts to ensure that examinations are accessible to qualified applicants, regardless of disability. However, current Board statutes do not require the Board to adopt rules pertaining to exam accessibility. Referencing the Americans with Disabilities Act in the Board's statutes would clarify the Board's responsibility to set accessibility policies in rule, and ensure that the Board's future actions continue to ensure accessibility for applicants with disabilities.

The Board appears to have made good efforts to ensure that examinations are accessible to qualified applicants, regardless of disability.

- ***Testing fees.*** Fees for both initial exams and retakes of exams should only be refundable in certain limited circumstances that are clearly outlined by the Board. Since the agency incurs a cost for procedures such as processing applications and notifying national exam providers of an applicant's intent to take the exam, the Board's refund policy should require the agency to keep a portion of the testing fee in an amount sufficient to cover the administrative costs incurred on the applicant's behalf.

The current exam refund policy could lead to unfair treatment of applicants.

The Board's statutes have no provisions concerning testing fee refunds, but the Board has adopted a policy that allows applicants to reschedule exams in certain circumstances, such as severe illness or the death of an immediate family member. This policy is not set in Board rules, but has been approved by the Board. In the past, agency staff have interpreted the policy as authorizing exam refunds.[1] The Board's policy does not address issues such as the proper deadlines for rescheduling and refund requests, or the amount of the exam fee that the agency should retain to cover administrative costs. The current Board policy could lead to the unfair treatment of applicants and may also cause administrative inefficiency.

- ***Examination process***. Licensing agencies should have clear, consistent, and streamlined examination processes. These processes should be adequately documented to ensure that the agency operates efficiently and that licensees are treated fairly.

  The Board, like other state agencies, is required under terms of state law to collect and hold all examination fees for national testing services instead of allowing applicants to pay the testing service directly. To comply with state law, the Board had to create complex payment systems that include vouchers sent between the Board, the national testing services, and the test candidates. This system is wasteful and confusing for both the Board and its applicants. Also, Texas is the only state that does not permit its architecture and interior design exam candidates to pay the testing services directly; should the testing services stop providing an exception for Texas, candidates would be forced to register for the exam in other states.

  Texas is the only state that does not permit its architecture and interior design exam candidates to pay the testing services directly.

  Because, under terms of the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the agency is no longer in the appropriations process or required to hold its funds in the State Treasury, this provision unnecessarily limits the agency's flexibility.

- ***Licensure qualifications.*** Qualifications for licensure should not overburden applicants or unreasonably restrict entry into practice. Candidates for licensure should be able to apply on simple, standard forms. These forms should request enough information to assess a candidate's eligibility for registration, but should not be unnecessarily burdensome.

  Currently, the Board requires applicants to notarize applications to ensure that experience and education information on the application is correct. However, the Board already requires, by rule, that the applicant include formal education information through certified transcripts, which ensures that education information on the

application is correct. In addition, this notarization requirement is unnecessary because state law already prohibits a person from knowingly making a false entry in a government record.[2]

- ***Licensing renewal dates.*** The date for license renewals should be scheduled to avoid bottleneck periods. A staggered renewal system leads to greater staff efficiency and more timely processing of renewals, thereby improving agency service to licensees. The Legislature has agreed with this model standard, giving the Board the statutory authority to set staggered renewal dates in rule.

  The Board has set six renewal periods staggered throughout the year. However, since the Board regulates three professions, each profession only has two renewal dates. Architects have significantly more licensees than the other two professions, meaning the staff must process a disproportionately high number of renewals on architect renewal dates. The Board could achieve greater staff efficiency and better service to licensees by switching to a continuous renewal cycle in which licenses expire on the licensee's birthday. Continuous renewal would spread the workload evenly throughout the year and be more convenient to licensees, who frequently forget the renewal dates under the current system. Current statutory provisions already state that during any transition period to new renewal schedules the Board must prorate fees on a monthly basis.

Shifting to continuous license renewal would spread staffs' workload evenly throughout the year.

Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.

- ***Standards of conduct.*** A licensing agency should be required by statute to have clear standards of conduct to provide a sound basis for acting on consumer complaints. This ensures that consumers are protected adequately and that standards are applied to licensees in a fair and consistent manner. The Board may adopt these standards in either its rules or in a separate Code of Ethics.

  By rule, the Board has adopted standards of conduct for all three professions. However, statute requires the Board to do this for only one profession – interior design. Standardizing the statutes so that this requirement applies to all three professions will ensure adequate consumer protection and fairness to licensees.

- ***Complaint processes.*** Agencies should adopt rules that clearly lay out policies for all phases of the complaint process. These rules should include complaint intake, preliminary evaluation, investigation, adjudication, resulting sanctions, and disclosure to the public. Having such rules that clearly explain the complaint process protects consumers, increases administrative efficiency, and ensures procedural fairness for licensees.

Inconsistencies in the Board's three statutes result in each profession having significantly different grounds for disciplinary action.

In rule, the Board has outlined the complaint process with regard to adjudication, sanctions, and disclosure. However, the agency's processes for complaint intake, preliminary evaluation, and investigation are established only in intra-agency procedural documents. Placing all procedures into the public rules would allow both consumers and licensees to have a more complete understanding of the complaint process.

- ***Grounds for disciplinary action.*** A licensing agency's enforcement process should not make it overly difficult to bring disciplinary action. In an agency that regulates multiple professions, inconsistent grounds for disciplinary action create administrative inefficiencies and can adversely affect consumer protection.

  Inconsistencies in the Board's three statutes result in each profession having significantly different grounds for disciplinary action, as shown in the chart, *Selected Grounds for Disciplinary Action*. The three regulated professions all work closely together on design projects, and no discernible reason for these statutory differences exists. A single action might be covered by different grounds in different professions. For example, an act of malpractice might be charged as either gross incompetence, gross negligence, or a violation of Board rules, depending on which professional the complaint was lodged against. Since staff must define violations by variable standards, this inconsistency creates an additional hurdle in the enforcement process. Lack of conformity in disciplinary grounds also causes administrative inefficiencies; is unnecessarily confusing for consumers, licensees, and agency staff; and may reduce consumer protections.

Selected Grounds for Disciplinary Action

Ground	Architects	Landscape Architects	Interior Designers
Gross incompetence	✓	✓	
Gross negligence		✓	✓
Dishonest practice	✓		
Dishonesty in helping another person to get licensed		✓	✓
Use of another person's license		✓	

- ***Complaint hearings.*** Most state agencies must conduct their hearings through the State Office of Administrative Hearings (SOAH). SOAH separates the adjudicative function of state agencies from their other enforcement functions. This separation allows for greater consumer protection, and ensures fairness to licensees. Agencies that have their hearings conducted by SOAH should have statutes that clearly conform to the enabling statute of SOAH. Additionally, agency statutes should conform to the Administrative Procedure Act (APA), which also governs agency hearings.

The statutes under which the Board operates include outdated language in reference to the SOAH hearing process. Currently, each of the Board's three statutes has a section that states that licensees are entitled to a hearing if the Board intends to suspend or revoke their license, and that the Board must either make the final decision or hear appeals in such matters. State law requires the Board to handle contested cases through SOAH. Additionally, the APA states that the Board may allow a SOAH administrative law judge to render the final decision in contested cases. Under the Board's statutes, the Board would then be required to hear appeals. However, the APA states that to appeal, affected persons must seek judicial review by filing suit in District Court. The Board's current statutes are needlessly confusing for both Board staff and licensees. Statutory conflicts with the APA and the SOAH enabling statute reduce Board flexibility and hinder its ability to perform its public protection duties.

The Board's statutes conflict with the Administrative Procedure Act and SOAH's enabling statute.

- ***Public information on complaints.*** Agencies should make all enforcement information, such as final disciplinary orders and sanctions, available to the public in an easily accessible format. This helps to protect consumers and ensures procedural fairness to all licensees.

  The Board does not make enforcement decisions easily accessible to the public. While the Board publishes a yearly newsletter that contains most disciplinary orders and sanctions, some licensees negotiate settlements in which the Board does not publish the final order. Consumers who wish to check the particular disciplinary history of a licensee must either read through old newsletters or call Board staff. The public cannot easily access this information through other means such as a searchable database on the agency's Web site.

The Board's enforcement decisions are not easily accessible to the public.

- ***Probation procedures.*** Licensing agencies should have a probation procedure that provides for imposing appropriate conditions, notifying probationers of those conditions and actions they need to take, and tracking probationers' progress. Such standard procedures create administrative efficiency, ensure the fair treatment of licensees, and help protect consumers.

  The Board has adopted an administrative penalty matrix that delineates when the suspension of a license is an appropriate punishment. However, the matrix does not distinguish between active and probated suspensions. This could result in the inequitable use of probation as a punishment. In addition, the Board does not have clear guidelines regarding the duties and obligations of persons placed on probation. Board staff negotiates these conditions on a case-by-case basis.

Notarized complaints are not needed as state law already prohibits false entries on a government record.

- ***Complaint filing.*** Legislative enactments have established that the public should have easy access to an agency's enforcement processes through reasonable complaint filing procedures. The public, agency, or a licensee should be able to file a written complaint on a simple, standard agency form provided on a Web site, through e-mail, or through regular mail. The form should request enough information to start an investigation, but not be so detailed or technical as to discourage complaints.

  Currently, the Board requires complaints to be notarized. This requirement is unnecessary as state law already prohibits a person from knowingly making a false entry in a government record.[3] Eliminating this notarization requirement would increase the public's ability to file complaints and also allow the Board to receive complaints in ways other than writing, such as over the Internet, a practice that makes complaint filing more convenient for consumers.

- ***Complaint trend analysis.*** Licensing agencies should analyze the sources and types of complaints to identify problem areas and trends. Identifying such trends can help the agency to manage its resources more effectively, leading to greater protection of consumers. Additionally, such information can be used by the agency to create educational materials for licensees about common violations of statutes and rules.

  The Board currently has no method for performing trend analysis. The staff has attempted to address what it perceives to be common violations by including informational material in its annual newsletter. However, a formal system to analyze the sources and types of complaints would lead to better enforcement and increased administrative efficiency.

- ***Complaint jurisdictional tracking.*** A licensing agency should have a process to refer complaints outside of its jurisdiction to the appropriate organization. The agency should keep track of these nonjurisdictional complaints to have a full picture of the public's problems and concerns in this regulatory area.

  The Board frequently receives nonjurisdictional complaints. These complaints may be about regulated professions, such as engineers, or unregulated professions, such as building designers and contractors. While staff refers these complainants to the appropriate state agency or to a local District Attorney, the agency maintains minimal information about the complaint. This prevents the Board, and the Legislature, from having valuable information about problems in the design and construction industry, particularly those parts of the industry that are not regulated. Collection of nonjurisdictional complaint data would allow the agency to develop

referral guides to increase administrative efficiency and provide for greater consumer protection.

Certain administrative provisions of the Board's statute could reduce the Board's efficiency and flexibility to adapt to changing circumstances.

- ***Flexible fees.*** A licensing agency should have the authority to set its fees. This allows for greater administrative flexibility and reduces the need for the Legislature to continually update agency statutes to accurately reflect the costs of providing basic services. Additionally, flexible fees ensure that the agency continues to provide basic services between legislative sessions.

  The Board currently has two statutory caps that limit its ability to set fees: a $10 cap on the fee used to pay for an Architectural Registration Examination (ARE) scholarship, and a $300 cap on the cost of the ARE. An outside national organization develops and administers the ARE. The entire exam currently costs $981. Because of the statutory $300 cap, the Board must request a legislative appropriations rider each legislative session to charge the full price of the exam. When the price of the ARE rose significantly in 1997, because the test was transferred from a pencil-and-paper format to an electronic format, the Board was unable to offer the architecture exam for five months until the Legislature gave the Board a new appropriations rider. Since the agency is now in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the Appropriations Act can no longer give the agency this authority.

Fee caps limit the Board's ability to set adequate architecture scholarship and exam fees.

- ***Public information.*** A licensing agency should have the means to notify consumers of its jurisdiction over its regulated professions. Usually, this notification is achieved by requiring licensees to post certificates in their businesses or by printing a statement of Board jurisdiction in all licensee contracts. This makes the complaint process more accessible to consumers and leads to greater consumer protection.

  The Board's statutes have inconsistent standards regarding consumer notification of the Board's jurisdiction. The architecture statute allows the Board to choose from various notification options. The landscape architecture statute requires licensees to print a statement of jurisdiction in all contracts. The interior design statute does not comment on this matter at all, implying that the Board lacks the authority to develop rules on this topic. This statutory inconsistency reduces Board flexibility, leads to administrative inefficiency, and compromises the Board's authority to protect consumers.

Standardization would help the Board enforce its three separate statutes.

- ***Standardization.*** Programs within a larger licensing structure should be standardized to the greatest extent possible. Agencies that regulate multiple professions should have statutes that provide for uniform powers, duties, and processes, unless a reasonable basis exists for differences among the professions.

  The Board currently enforces three statutes. Lack of standardization among these statutes means that the Board has inconsistent powers, duties, and processes. These inconsistencies create administrative inefficiency, reduce Board flexibility, lead to the unfair treatment of licensees, and adversely affect the Board's ability to protect consumers. The chart, *Standardization Issues in Board Statutes*, summarizes these inconsistencies and the statutes to which they apply.

Standardization Issues in Board Statutes

Statutory Provision	Architecture	Landscape Architecture	Interior Design
Employees working under the supervision of a licensee (such as drafters) are protected from prosecution.[4]	✓		
Professionals licensed in another state may work in Texas if they: (1) hire a Texas licensee as a consultant, or (2) serve as a consultant to a Texas licensee.[5]	✓		
The Board is required to keep public records or rosters of licensees.	✓		✓
The Attorney General may act as a legal advisor to the Board on certain enforcement matters.		✓	
The Board is granted the ability to seek injunctive relief, and may be represented by the Attorney General.	✓	✓	
The Board may create rules for the use of professional seals by licensees.	✓	✓	
The Board must maintain a register of all applicants.			✓
The Board has a reinstatement procedure for licensees who have had their license revoked, suspended, or denied.			✓
The cumulative effect of provisions is stated.	✓		

Recommendation

Licensing

Change in Statute

3.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.

This recommendation would clarify the Board's authority to adopt rules that follow the general guidelines in Chapter 53 of the Texas Occupations Code for dealing with criminal convictions by specifically referencing Chapter 53 in the Board's enabling statutes. The Board would not need to adopt new rules defining which crimes relate to its regulated professions because its current rules meet the standard of this statute.

3.2 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

The Board's statutes would reference the Americans with Disabilities Act. The Board would need to adopt new rules regarding accessibility accommodations, but could model the rules after current policies which meet the standard of the Americans with Disabilities Act.

3.3 Require the Board to adopt, by rule, comprehensive refund policies for its examinations.

This recommendation would ensure that the agency treats all applicants fairly and that the agency is able to cover the costs associated with its examinations. The comprehensive policy should include a list of acceptable excuses, the required documentation to support such excuses, refund request deadlines, and the specific fee portion (in percentage or dollar-value terms) that the agency should retain to cover administrative costs.

3.4 Eliminate the requirement that the Board must collect all examination fees.

This recommendation would streamline the exam process by eliminating the Board's complex payment system and allowing applicants to pay the national testing providers directly. Direct payment would create better service for applicants and would give the agency greater flexibility and efficiency.

Management Action

3.5 Eliminate the application notarization requirement on individuals who apply for licensure with the Board.

This recommendation would eliminate the Board's requirement that applicants notarize applications. Current provisions of the Texas Penal Code that make falsifying a government record a crime would continue to apply to license applications.

3.6 Direct the Board to consider switching to a continuous license renewal system.

The Board would eliminate the six bottleneck periods of license renewals and create a system in which licenses expired on a licensee's birthday. The current statutory provisions requiring the Board to prorate renewal fees on a monthly basis during a one-year transition to new expiration dates would be preserved. The Board would also be directed to prorate fees on a quarterly basis for new registration applicants should the Board decide to switch to continuous renewal based on licensee birthdays. This would result in greater administrative efficiency and would provide better service to licensees.

Enforcement

Change in Statute

3.7 Require the Board to adopt clear standards of conduct for all of the professions that it regulates.

This recommendation would ensure adequate consumer protection and fairness to licensees by extending the current requirement in the interior design statute to both the architecture and landscape architecture statutes. The Board would not need to adopt new rules regarding such standards because its current rules would meet these new statutory requirements. However, this recommendation will ensure that the Board continues to maintain standards of conduct for its regulated professions in the future.

3.8 Require the Board to adopt comprehensive rules outlining all phases of the complaint process.

Consumers and licensees would have an enhanced understanding of the complaint process under this recommendation. Comprehensive rules should include all phases of the process, including complaint intake, preliminary evaluation, investigation, adjudication, sanctions, and public disclosure. The Board would need to update its current rules to address the phases of intake, preliminary evaluation, and investigation.

3.9 Standardize statutory grounds for disciplinary action in the Board's three statutes.

This recommendation would make the Board's enforcement authority clear and consistent by ensuring that all three statutes address the same grounds for disciplinary action, including gross incompetence, gross negligence, dishonest practice, dishonesty helping another person to get licensed, and use of another person's license. The change would increase agency efficiency and flexibility, strengthen consumer protection, and make the enforcement process less confusing for licensees, complainants, and agency staff.

3.10 Conform the Board statutes concerning hearings and appeals to the Administrative Procedure Act and the enabling statute of the State Office of Administrative Hearings.

This recommendation would rewrite the sections of Board statutes dealing with hearing and appeals processes. The new language should clearly state that the procedures for contested cases are to be conducted in accordance with the Administrative Procedure Act and the enabling statute and rules of the State Office of Administrative Hearings.

3.11 Require the Board to make public all disciplinary orders and sanctions.

The Board would be required under this recommendation to pass rules ensuring that all disciplinary orders and sanctions are treated in the same manner. Licensees would no longer be able to negotiate unpublished settlements. This would ensure procedural fairness to licensees and greater protection to consumers.

Management Action

3.12 Direct the Board to make available all disciplinary orders and sanctions on the Board Web site in a format that consumers may access easily.

Under this recommendation consumers would have easy access to disciplinary information. Increasing accessibility could include creating a searchable database of disciplinary information or making an up-to-date listing of all enforcement orders and sanctions arranged alphabetically by licensee name. This would reduce the amount of time that staff must dedicate to handling consumer inquiries.

3.13 Direct the Board to clearly delineate standards of probation.

This recommendation would require the Board to include in its administrative penalty matrix when probation is an appropriate punishment, and develop guidelines for the duties and obligations of probationers. While these standards should not be strictly binding for the agency, they should be a safeguard to ensure that the agency imposes and conducts probation in a fair and consistent manner.

3.14 Eliminate the complaint notarization requirement on individuals who file complaints with the Board.

This recommendation would eliminate the Board's onerous requirement that complainants must notarize complaints. Current provisions of the Texas Penal Code that make falsifying a government record a crime would continue to apply to filed complaints.

3.15 Direct the Board to develop a system for complaint trend analysis.

The Board would need to develop a system for analyzing the sources and types of complaints. Such a system should lead to stronger enforcement and greater administrative efficiency.

3.16 Direct the Board to develop a system for tracking nonjurisdictional complaints.

This recommendation would direct the Board to keep track of complaints it receives that fall outside of its jurisdiction. This will give the agency and the Legislature a fuller picture of the public's problems and concerns in this regulatory area.

Administration

Change in Statute

3.17 Eliminate the statutory language that sets and caps fees.

The Board would have the flexibility to set fees at the level necessary to recover program costs as conditions change. Statutory language would be added to clarify that the Board's fee should be set to cover costs and not to earn additional revenue for the agency.

3.18 Require the Board to adopt, by rule, uniform standards pertaining to consumer notification of the Board's jurisdiction.

This recommendation would allow the Board to require all three professions to notify their consumers of the Board's regulation of the industry through standard procedures, such as requiring licensees to post their license in their place of business, and requiring all licensees to place the Board's address and telephone number in all business contracts.

3.19 Standardize the three Board statutes with respect to Board powers, duties, and processes.

This recommendation would eliminate inconsistencies in the Board's statutes with respect to Board powers, duties, and procedures. Nonstandard statutory provisions should be allowed to remain, provided that a reasonable basis exists for differences among the statutes. Sunset staff recommends that the statutes be standardized in the manner outlined in the chart, *Proposed Standardization of Board Statutes*.

Proposed Standardization of Board Statutes

Statutory Provision	Architecture	Landscape Architecture	Interior Design
Employees working under the supervision of a licensee (such as drafters) are protected from prosecution.	Already in Statute	Apply	Not Applicable[6]
Professionals licensed in another state may work in Texas if they: (1) hire a Texas Licensee as a consultant, or (2) serve as a consultant to a Texas licensee.	Already in Statute	Apply	Not Applicable[7]
The Board is required to keep public records or rosters of licensees.	Already in Statute	Apply	Already in Statute
The Attorney General may act as a legal advisor to the Board on certain enforcement matters.	Apply	Already in Statute	Apply
The Board is granted the ability to seek injunctive relief, a and may be represented by the Attorney General.	Already in Statute	Already in Statute	Apply
The Board may create rules for the use of professional seals by licensees.	Already in Statute	Already in Statute	Apply
The Board must maintain a register of all applicants.	Apply	Apply	Already in Statute
The Board has a reinstatement procedure for licensees who have had their license revoked, suspended, or denied.	Apply	Apply	Already in Statute
The cumulative effect of provisions is stated.	Already in Statute	Apply	Apply

Impact

The application of these recommendations to the Board would result in efficiency and consistency from fairer processes for the licensees, additional protection to consumers, administrative flexibility, and standardization of Board processes. The chart, *Benefits of Recommendations*, categorizes the recommendations according to their greatest benefits.

Benefits of Recommendations				
	Benefits			
Recommendation	Efficiency from Standardization	Administrative Flexibility	Fairness to Licensee	Protection of Consumer
Licensing				
3.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.	✓		✓	✓
3.2 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.	✓		✓	
3.3 Require the Board to adopt, by rule, comprehensive refund policies for its examinations.	✓		✓	
3.4 Eliminate the requirement that the Board must collect all examination fees.	✓	✓	✓	
3.5 Eliminate the application notarization requirement for individuals who apply for licensure with the Board.			✓	
3.6 Direct the Board to consider switching to a continuous license renewal system.	✓			
Enforcement				
3.7 Require the Board to adopt clear standards of conduct for all of the professions that it regulates.	✓		✓	✓
3.8 Require the Board to adopt comprehensive rules outlining all phases of the complaint process.	✓		✓	✓
3.9 Standardize statutory grounds for disciplinary action in the Board's three statutes.	✓	✓	✓	✓

Benefits of Recommendations				
	Benefits			
Recommendation	Efficiency from Standardization	Administrative Flexibility	Fairness to Licensee	Protection of Consumer
Enforcement				
3.10 Conform the Board's statutes concerning hearings and appeals to the Administrative Procedure Act and the enabling statute of the State Office of Administrative Hearings.		✓	✓	✓
3.11 Require the Board to make public all disciplinary orders and sanctions.	✓		✓	✓
3.12 Direct the Board to make available all disciplinary orders and sanctions on the Board Web site in a format that consumers may access easily.				✓
3.13 Direct the Board to clearly delineate standards of probation.	✓		✓	✓
3.14 Eliminate the complaint notarization requirement for individuals who file complaints with the Board.		✓		✓
3.15 Direct the Board to develop a system for complaint trend analysis.	✓			✓
3.16 Direct the Board to develop a system for tracking nonjurisdictional complaints.	✓			✓
Administration				
3.17 Eliminate the statutory language that sets and caps fees.		✓		
3.18 Require the Board to adopt, by rule, uniform standards pertaining to consumer notification of the Board's jurisdication.	✓	✓		✓
3.19 Standardize the three Board statutes with respect to Board powers, duties, and processes.	✓	✓	✓	✓

Fiscal Implication

These recommendations would not have a fiscal impact to the State. The agency is currently in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which means it is removed from the appropriations process and its funds are maintained outside the Treasury. Most recommendations change procedures in ways that do not require additional resources. Some savings may result from increased efficiencies, but this amount cannot be estimated and, the savings would be used to meet the Board's other needs. Reducing the statutory fee caps would not result in additional revenue as the Board would be directed to set fees only as high as necessary to recover costs.

[1] Sunset staff meeting with agency staff (Austin, Texas, July 10, 2002).

[2] Ibid.

[3] Texas Penal Code, sec. 37.10.

[4] Such an exemption is not necessary for interior designers since they have a title act, not a practice act.

[5] Ibid.

[6] Ibid.

[7] Ibid.

Issue 4

Texas Has a Continuing Need for the Texas Board of Architectural Examiners, but Could Benefit From Greater Coordination With the Texas Board of Professional Engineers.

Summary

Key Recommendations

- Continue the Texas Board of Architectural Examiners for 12 years.
- Require the Board to form a joint practice committee with the Texas Board of Professional Engineers.

Key Findings

- Texas has a continuing interest in licensing and regulating architects, landscape architects, and interior designers.
- No significant benefit would result from changing the agency structure or having any other state or federal agency perform the Board's functions.
- Although no significant benefit would result from consolidation, coordination with the Texas Board of Professional Engineers could achieve greater operational efficiency.
- While organizational structures vary, most other states regulate architects and landscape architects, and many regulate interior designers.

Conclusion

The Texas Board of Architectural Examiners regulates architects, landscape architects and interior designers through its licensing and enforcement programs. Its regulatory functions are needed to protect the public by ensuring that only qualified individuals become licensed design professionals, and the Board generally performs its functions well.

The Sunset review assessed the overall need for an independent agency to regulate architects, landscape architects, and interior designers. The review also evaluated whether the Board's functions could be successfully transferred to another agency and looked at how other states perform these functions. Sunset staff concluded that the Board performs an important mission, and should be continued for 12 years.

Support

The Texas Board of Architectural Examiners licenses and regulates architects, landscape architects, and interior designers.

The agency licenses about 19,000 professionals: 10,000 architects, 7,500 interior designers, and 1,200 landscape architects.

- Texas has regulated architects since 1937 when the Legislature created the Texas Board of Architectural Examiners. Since then, the State added the regulation of landscape architects, in 1979, and interior designers, in 1991, to the Board's duties. The agency licenses about 19,000 professionals: 10,000 architects, 7,500 interior designers, and 1,200 landscape architects.
- The Board plays an important role in protecting the public by ensuring that only qualified architects, landscape architects, and interior designers practice in Texas. To achieve this goal, the agency performs two key functions: licensing and enforcement. The agency enforces restrictions on the use of professional titles for the three professions, and limitations on the scope of practice for architecture and landscape architecture.

Texas has a continuing interest in licensing and regulating architects, landscape architects, and interior designers.

- Architecture, landscape architecture, and interior design are professions that can put the public at risk if practiced incorrectly. Faults in the design or construction of structures by incompetent architects could significantly harm the public, and landscape architects who use improper drainage and erosion control could cause consumers large financial losses. Interior designers who fail to take into account fire and building codes could also harm the public. Additionally, Texans may be harmed if any of these professionals fail to adequately consider accessibility standards for people with disabilities.

The agency confronts special demands in enforcing three statutes.

- The Board licenses individuals to ensure their competence to practice architecture, landscape architecture, and interior design. The Board also develops and implements rules and regulations to ensure that licensees engage in safe design. The Board's statutes are designed to protect the public and provide recourse if laws are violated. The public needs an agency that can receive and investigate complaints about design professionals to bring them into compliance, and to discipline those that violate the law or rules.

The Board is generally effective at regulating the design professions.

- The agency has generally been effective at accomplishing the duties set out for it by the Legislature. The agency confronts special demands in enforcing three statutes, and has streamlined its

processes to accommodate some of those demands. For example, the agency has one licensing division for all three regulated professions, and currently takes an average of just one day to issue a license. The agency conducted virtually no enforcement before the Board hired its current Executive Director in 1994. While the enforcement program continues to face challenges, the agency has taken strides to enforce its statutes and rules.

No significant benefit would result from changing the agency structure or having any other state or federal agency perform the Board's functions.

No significant gains would result by transferring the Board's functions to TDLR.

- The Texas Department of Licensing and Regulation (TDLR) has a structure for licensure, examination, and investigation in place. However, if the Legislature consolidated the Board into TDLR, then TDLR would need to add staff who understand the technical nature of architecture, landscape architecture, and interior design. No significant gain in efficiency would result by transferring the Board's functions to TDLR.
- Two previous Sunset reports of the agency considered combining it with the Texas Board of Professional Engineers. The 1978 review concluded that the consolidation potential could not be clearly established. The 1991 review concluded that investigators at the Engineers Board lacked the necessary technical expertise in architecture and landscape architecture, so merging the agencies would not significantly improve the enforcement process.
- While national boards that examine design professionals exist, they do not issue licenses and could not perform the enforcement function of the Board. No federal agency regulates design professionals.
- The Board recovers all costs through fees collected from licensees; therefore, no cost savings would result if the Board was abolished. Also, as part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the Board is outside of the legislative appropriations process. Under terms of the Pilot Project Act, the Board contributes $700,000 to the General Revenue Fund that would be lost if the agency was discontinued. In addition, architect licensees contribute almost $2 million in professional licensing fees to General Revenue that would be lost if the architecture license was not continued.

Although no significant benefit would result from consolidation, coordination with the Texas Board of Professional Engineers could achieve greater operational efficiency.

- Unclear statutes and overlap between certain types of engineering and architecture have caused some enforcement difficulties for the

Similarities exist between architecture and the fields of civil, mechanical, and structural engineering.

two agencies. Similarities exist between architecture and the fields of civil, mechanical, and structural engineering, and statutes do not clearly define the two professions, creating a gray area of practice. The gray area makes it difficult for the Boards to resolve some types of enforcement cases. For example, the Architects Board currently has three pending cases in which, according to the agency, engineers practiced architecture, but the Board of Professional Engineers disagrees with this conclusion.

- Despite the overlap between the professions, Sunset staff determined that merging the Boards would not improve enforcement, due to problems with both Boards' enforcement processes. In addition, because of longstanding tension between the professions of architecture and engineering, a combined board may face additional hurdles in managing its licensee base.

The Boards have made previous attempts at collaboration, including adopting resolutions of cooperation in 1991 and 1993.

- In October 2001, the Boards established a joint committee to develop policies and procedures related to the effective regulation of engineering, architecture, and landscape architecture. The committee includes three members from each Board, and the agencies' Executive Directors serve as nonvoting ex officio members. The Boards have made previous attempts at collaboration, including adopting resolutions of cooperation in 1991 and 1993. The Boards formed the committee voluntarily; statute does not require that the two Boards coordinate. Because the committee is voluntary, the possibility exists that the Boards will cease meeting, especially if incoming Board or staff members do not see the value of coordination. (Coordination between the two Boards is also discussed in Issue 3 in the section of this report covering the Texas Board of Professional Engineers.)

While organizational structures vary, most other states regulate architects and landscape architects, and many regulate interior designers.

- All 50 states regulate architects, while 46 regulate landscape architects, and 19 license interior designers. The composition of other state boards may vary. For example, 25 states regulate only architects through independent or umbrella agencies, while nine states regulate architects together with landscape architects, interior designers, or both.

Recommendation

Change in Statute

4.1 Continue the Texas Board of Architectural Examiners for 12 years.

This recommendation would continue the Texas Board of Architectural Examiners as an independent agency responsible for overseeing architects, landscape architects, and interior designers for the standard 12-year period.

4.2 Require the Board to form a joint practice committee with the Texas Board of Professional Engineers.

Although the Professional Engineers and Architectural Examiners Boards have voluntarily formed a joint committee, this recommendation would ensure that the Boards continue to work together. The committee's guiding principle should be to improve the agencies' protection of the public, and this principle should take precedence over the interests of each Board. The committee should work to resolve issues stemming from the overlap among the professions overseen by the agencies. The committee should issue advisory opinions to both Boards regarding matters such as specific enforcement cases, the definitions of architecture and engineering, and requirements relating to the need for professionals licensed by the two Boards on specific projects. In addition, each Board would be responsible for reporting back to the committee the final action or outcome on the specific issue considered by the committee. The committee would thus develop a body of information that can help resolve future issues and further clarify the respective practice of these professions. The committee should consist of three members from each Board, and should meet at least twice a year. Both Boards should adopt resolutions regarding the committee, its composition, and its purpose.

Impact

These recommendations would continue the Texas Board of Architectural Examiners as a stand-alone agency responsible for regulating design professionals, in addition to making coordination with the Texas Board of Professional Engineers a statutory requirement.

Fiscal Implication

Because the Board currently participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project and lies outside the appropriations process, continuing the Board will have no fiscal impact to the State.

In addition, because of the agency's status as a project agency, the joint practice committee with the Texas Board of Professional Engineers would not have a fiscal impact to the State, but would cost the agency approximately $600 annually for travel reimbursement.

Across-the-Board Recommendations

Texas Board of Architectural Examiners	
Recommendations	**Across-the-Board Provisions**
	A. GENERAL
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Already in Statute	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Update	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Update	9. Provide for public testimony at meetings of the policymaking body.
Modify	10. Require information to be maintained on complaints.
Update	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

Texas Board of Architectural Examiners			
Architecture	Landscape Architecture	Interior Design	
Recommendations			**Across-the-Board Provisions**
			B. LICENSING
m	m	m	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
u	u	u	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
u	u	u	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
n	n	n	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
u	u	u	5. Authorize the staggered renewal of licenses.
u	u	u	6. Authorize agencies to use a full range of penalties.
m	m	a	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
m	m	m	8. Require the policymaking body to adopt a system of continuing education.

a = apply; u = update; m = modify; n = do not apply

AGENCY INFORMATION

Agency Information

Agency at a Glance

The Texas Board of Architectural Examiners (the Board) protects the public by regulating architects, landscape architects, and interior designers. The Board traces its beginning to 1937, when the Legislature recognized the need to regulate architects after a catastrophic school fire claimed hundreds of lives. In 1969, the Legislature began the regulation of landscape architects and, ten years later, gave this responsibility to the Board. In 1991, the Legislature added interior designers to the list of design professionals regulated by the Board.

To accomplish its mission, the Board:

- licenses qualified architectural, landscape architectural, and interior designer applicants;
- ensures compliance with the Architecture, Landscape Architecture, and Interior Design Acts and Board rules by investigating and resolving complaints against persons or businesses; and
- provides information to licencees and the public.

On the Internet
Information about the Board is available at www.tbae.state.tx.us

Key Facts

- **Funding.** The Board operates with an annual budget of $1.6 million, all of which comes from licensing fees.
- **Staffing.** The Board has 20 full-time equivalent positions, all based in Austin.
- **Registration and Examinations.** In fiscal year 2001, the Board regulated about 19,000 design professionals – 10,000 architects, 1,200 landscape architects, and 7,500 interior designers. That year, the Board processed 18,054 license renewals, and helped administer 2,590 exam sections.
- **Enforcement.** The Board received 216 complaints in fiscal year 2001. The Board resolved 223 complaints, referred 16 cases to the Office of the Attorney General and the State Office of Administrative Hearings, and issued 118 orders.
- **Public Information.** The Board annually provides information regarding agency programs to more than 25,000 entities, including licencees, applicants, building officials, schools of architecture, landscape architecture, and interior design, and the general public.

The Board is composed of four architects; one landscape architect; one interior designer; and three public members, one of whom must have a physical disability.

- **Pilot Project.** In 2001, the Legislature included the Board, along with the Texas State Board of Public Accountancy and the Texas Board of Professional Engineers, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. Beginning in fiscal year 2002, the Pilot Project removed the Board from the legislative appropriation process, allowing the Board to operate under its own discretion, outside the spending limitations set in the General Appropriations Act.

Organization

Policy Body

The Texas Board of Architectural Examiners is governed by a nine-member, part-time Board appointed by the Governor. The Board is composed of four architects; one landscape architect; one interior designer; and three public members, one of whom must have a physical disability. The Governor appoints the Board Chair. The chart, *Texas Board of Architectural Examiners*, identifies current Board members and their city of residence.

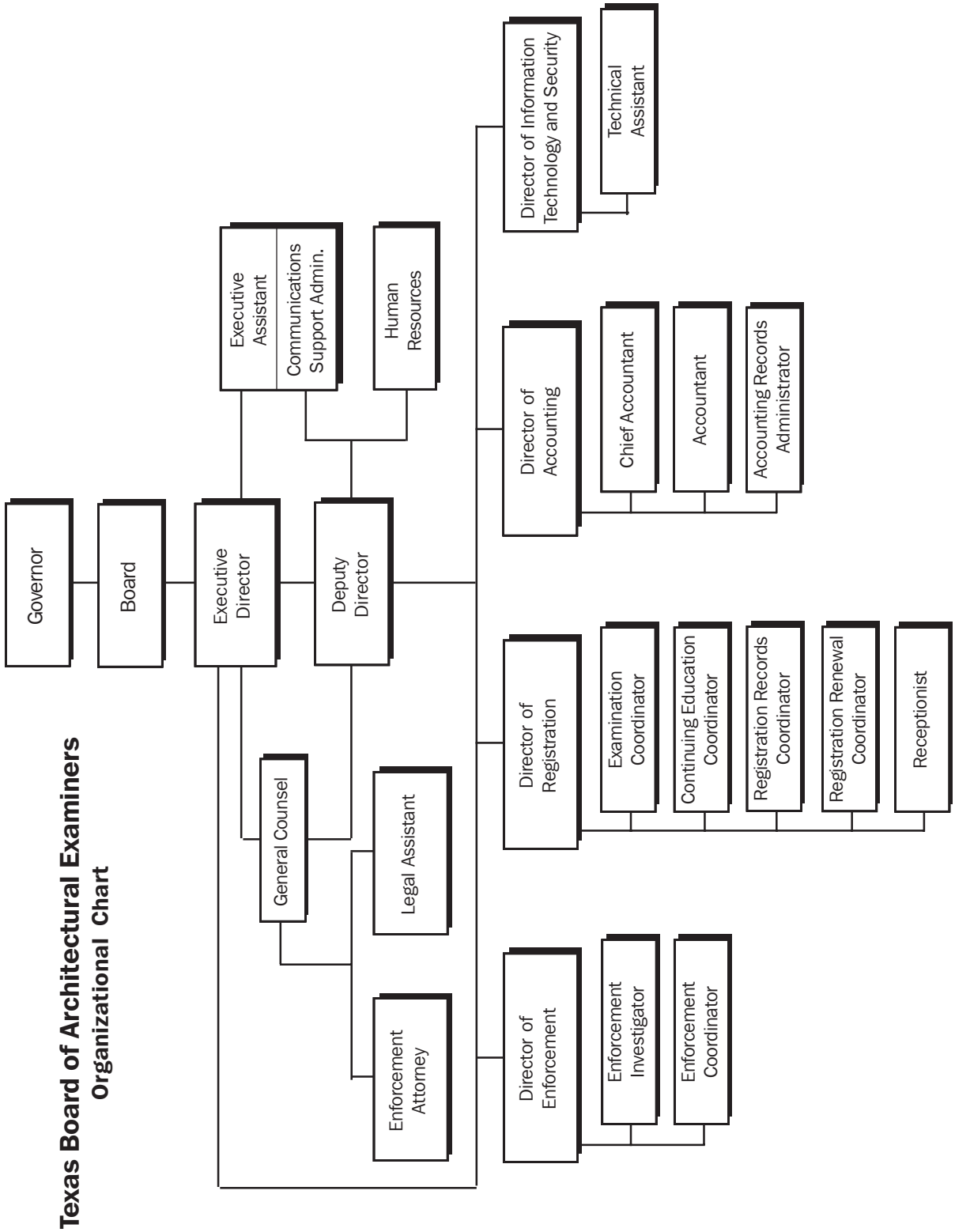
Texas Board of Architectural Examiners

Member	City	Qualification	Term Expiration
Steven T. Ellinger, Chair	Abilene	Architect	2003
Gordon E. Landreth	Corpus Christi	Architect	2007
Alan R. Lauck	Dallas	Interior Designer	2005
Chao-Chiung Lee	Houston	Architect	2003
Janet Parnell	Canadian	Public Member	2007
Diane Steinbrueck	Austin	Landscape Architect	2007
Anthony Trevino, Jr.	Laredo	Public Member	2005
R. Nolen Willis	Bellaire	Architect	2005
Vacancy		Public Member	2003

The Board sets policies and rules to regulate the architectural, landscape architectural, and interior design professions, and participates in the disciplinary proceedings of licensees.

Staff

The Executive Director, under the direction of the Board, oversees the agency's day-to-day activities. All Board employees work in Austin. The *Texas Board of Architectural Examiners Organizational Chart* shows the agency's divisions. A comparison of the agency's composition to the minority civilian labor force is provided in Appendix A. The agency has had some difficulty meeting equal employment opportunity goals, which is common for a small agency.


Texas Board of Architectural Examiners
Organizational Chart
Governor
Board
Executive Director
Executive Assistant
Communications Support Admin.
Human Resources
Deputy Director
General Counsel
Legal Assistant
Enforcement Attorney
Director of Information Technology and Security
Technical Assistant
Director of Accounting
Chief Accountant
Accountant
Accounting Records Administrator
Director of Registration
Examination Coordinator
Continuing Education Coordinator
Registration Records Coordinator
Registration Renewal Coordinator
Receptionist
Director of Enforcement
Enforcement Investigator
Enforcement Coordinator

Funding

Revenues

As a pilot project agency, the Board is now outside the state budget process.

The Board received an appropriation of $1,614,569 for fiscal year 2001. As a licensing agency, the Board generates revenue through registration, renewal and examination fees, which exceed its administrative costs. In fiscal year 2001, the Board collected fees totaling approximately $2.4 million. These funds went directly into the General Revenue Fund. In addition, the Board collected professional fees totaling about $1.9 million, and administrative penalties assessed against licensees totaling about $27,000; however, those funds were deposited into the State's General Revenue Fund and were not available for agency use.

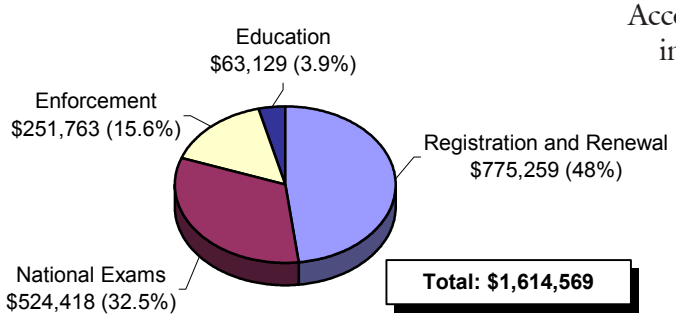
In fiscal year 2002, the Board began participating in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which removed the agency from the legislative appropriation process and granted the Board authority to operate under its own discretion. As a result, the agency did not receive an appropriation for fiscal years 2002 and 2003. Instead, agency revenues will be based on funds raised through licensing fees and administrative fines.

Expenditures

In fiscal year 2001, the Board spent $1,614,569 on four strategies: registration and renewal, national examinations, public information, and enforcement. The chart, *Board Expenditures*, illustrates the budget breakdown.

In addition to the expenditures shown above, the Legislature has directed the Board, and other licensing agencies that pay the costs of regulatory programs with fees levied on licensees, to also cover direct and indirect costs appropriated to other agencies. Examples of these costs include rent and utilities paid by the State Building and Procurement Commission, employee benefits paid by the Employees Retirement System, and accounting services provided by the Comptroller of Public Accounts. For fiscal year 2001, these direct and indirect costs totaled $256,842. As of fiscal year 2002, the Board will pay all direct and indirect operating costs from fee collections, as required by the Self-Directed, Semi-Independent Licensing Agency Pilot Project.

Board Expenditures
FY 01



Appendix B describes the Board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 1998 to 2001. The Board uses HUBs in the categories of commodities and other services.

Although the agency fell well behind the statewide goal for other services in FY 2001, its HUB spending on commodities was above the goal. The Board must use sole source providers for purchasing and grading national exams, and this sole source acquisition represented 77 percent of the total amount expended for other services in FY 2001.

Agency Operations

The Board protects the public by enforcing title acts for its three regulated professions, and practice acts for architects and landscape architects. The chart, *Board Professional Licenses*, describes some of the activities these professionals perform. As explained in the following sections, the Board accomplishes its goal through three core functions: registration, enforcement, and public education.

Board Professional Licenses

Profession	Functions
Architect	Designs buildings and structures intended for human occupancy. Architects consider many factors in building design, such as structural systems, building codes, life-safety systems, accessibility standards, wind and seismic forces, mechanical and electrical systems, and building materials and methods. Architects also oversee building construction and manage building projects.
Landscape Architect	Designs urban and natural environments. Design considerations include drainage and irrigation systems, storm water management, erosion and sediment controls, landscape design, and fire and flood prevention. Examples of design projects include recreational facilities, housing developments, and urban plazas.
Interior Designer	Designs non-load bearing features in commercial and residential spaces. Design projects consider building codes, acoustics, ergonomics, lighting, fire prevention, furnishings, fixtures, and space planning. Examples of design projects include hotels, office and government buildings, and private residences.

Registration

The Board's registration staff provides five key services to its licensees: licensure, renewal, national examinations, continuing education, and examination scholarship program.

Licensure. The Board processes applications for its three regulated professions. While specific requirements vary among the three professions, all applicants must meet education and experience requirements, pass a national examination, and have a clear professional disciplinary record to be approved for registration in Texas. Additionally, staff checks applicants to determine if they have a disqualifying criminal history. The chart, *License Fees*, shows the number of licensed professionals and the fees they pay.

License Fees - FY 01

Profession		Number	License Fee
Architects[1]	Resident	6,657	$82
	Nonresident	3,194	$125
Landscape Architects	Resident	936	$82
	Nonresident	337	$125
Interior Designer	Resident	6,614	$82
	Nonresident	637	$125

Renewal. Staff members oversee the annual registration renewal process for the three regulated professions. Before the renewal date, the Board mails notices to licensees. Licensees must send a renewal fee and a form verifying that they have finished continuing education requirements, and that they have had no criminal convictions in the last year. The Board has the authority to revoke a

license if the licensee has a disqualifying criminal conviction. The Board may also revoke the license of any licensees who fail to renew their license within a year of its expiration date.

National Examinations. All architects, landscape architects, and interior designers must pass a national examination to be eligible for professional registration in Texas. The chart, *Board Examinations*, lists the cost of the exams, number of test sections administered, and passage rates. Staff coordinates the collection of examination fees and the administration of examinations with an approved national testing service for each profession. Staff members are responsible for reviewing examination applications, entering qualified applicants into each national testing service's data base of approved test candidates, collecting examination fees, and issuing payments to each of the national testing services. The national testing services grade the exams, and then report the test scores to the staff, who distributes the scores to the examinees.

Board Examinations - FY 01

Examination	Fee	Test Sections Administered	Passage Rate
Architect	$980	1,650	74%
Landscape Architect	$570	394	38%
Interior Designer	$495	546	75%

Continuing Education. In 1999, the Legislature established mandatory continuing education requirements for architects, landscape architects, and interior designers. The Board requires each licensee to complete eight hours of education annually. At least one of these hours must be related to barrier-free design, which is based on accessibility requirements set by the Americans with Disabilities Act and the Texas Accessibility Standards. At each renewal period, staff randomly audits a percentage of licensees who are then required to submit evidence of completion of continuing education. Licensees who have not fulfilled the requirements must complete the hours within 180 days or face license revocation.

The Legislature established an assistance fund in 1999 to help defray the costs of the national architecture exam.

Examination Scholarship Program. Staff members oversee the administration of the Architect Registration Examination Financial Assistance Fund (the Fund), which the Legislature established in 1999 to help defray the costs of the national architecture exam – currently $981.[2] The Fund is supported by a $10 mandatory renewal fee collected from architects, and currently has a balance of $272,811. Texas residents who demonstrate financial need may apply for a $500 scholarship. Through July 2002, a total of $12,000 in awards was distributed to 24 recipients.

Enforcement

The enforcement staff investigates and prosecutes complaints about regulated and unregulated individuals. Complaints are either received from the public or opened by the agency. Formal complaints received

from the public must be in writing and notarized, but the agency may also open complaints received by telephone or electronic mail. After receiving a complaint, enforcement staff assesses the merits of a complaint and evidence. After setting up a complaint file and sending preliminary correspondence, the Enforcement Director assigns the complaint file to an investigator. The chart, *Complaint Activity*, describes the number and type of complaints the agency receives.

In fiscal year 2001, the agency took an average of 107 days to resolve a complaint.

Staff investigators conduct investigations, including collecting supporting documents and interviewing those involved in the case, and prepare investigative reports. If staff cannot obtain evidence to substantiate allegations, the complaint may be dismissed.

In cases requiring disciplinary action, the agency sends a settlement proposal, approved by the Executive Director, to the individual under investigation. If the individual agrees with the proposal, the terms are finalized and presented to the Board at one of its meetings. If the individual and the agency cannot agree upon settlement terms, and the agency wants to impose an administrative penalty or take other action, the case is referred to the State Office of Administrative Hearings (SOAH). The agency may refer cases involving unlicensed persons to the Office of the Attorney General (OAG) for civil or criminal action.

In fiscal year 2001, the agency received 216 complaints. The agency took an average of 107 days to resolve a complaint. As of July 2002, the agency had 82 unresolved cases more than six months old.

Complaint Activity FY 01[3]

	Architects		Landscape Architects		Interior Designers		
	Licensees	Nonlicensees	Licensees	Nonlicensees	Licensees	Nonlicensees	Total
Complaints Received							
from public	39	7	1	0	5	5	**57**
from licensees	5	0	0	0	0	0	**5**
initiated by Board	29	62	4	8	17	34	**154**
Total	**73**	**69**	**5**	**8**	**22**	**39**	**216**
Complaints Resolved							
dismissed/no merit	46	14	3	1	19	6	**89**
resulted in sanctions	31	49	2	5	1	30	**118**
referred to SOAH	8	0	0	0	0	0	**8**
referred to OAG	0	6	0	0	0	2	**8**
Total	**85**	**69**	**5**	**6**	**20**	**38**	**223**

Public Information

Public information program staff distributes information regarding both registration and enforcement concerns to schools of architecture, landscape architecture, and interior design; the public; and others through an annual newsletter, periodic mailings, and live presentations. In 2001, the agency provided information to about 25,000 entities. This information includes qualifications and requirements for professional registration, changes in laws affecting the regulated professions, and summaries of enforcement actions taken by the agency.

[1] Architects must also pay a $200 professional fee and $10 scholarship fund fee.

[2] Although the Fund was established in 1999, it did not take effect until the Legislature passed clarifying language in 2001. The first grants were administered in June 2002, and the second grants will be administered in December 2002.

[3] The Board received and initiated an additional 238 complaints against design firms. All 238 cases were dismissed because no fault was found against the firms; however, in some instances, a separate case was opened against an individual.

APPENDICES

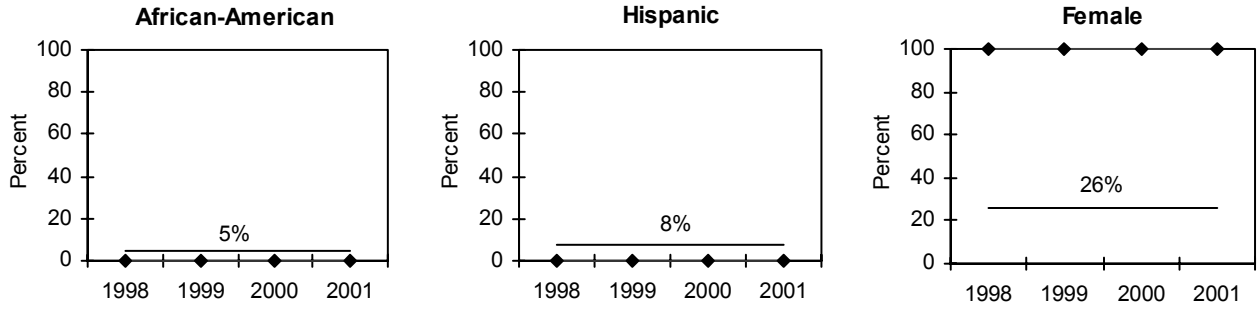
Appendix A

Equal Employment Opportunity Statistics

1998 to 2001

In accordance with the requirements of the Sunset Act, the following material shows trend information for the agency's employment of minorities and females in all applicable categories of the labor force.[1] The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.[2] In the charts, the flat lines represent the percentages of the statewide civilian labor force for African-Americans, Hispanics, and Females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The dashed lines represent the agency's actual employment percentages in each job category from 1998 to 2001.

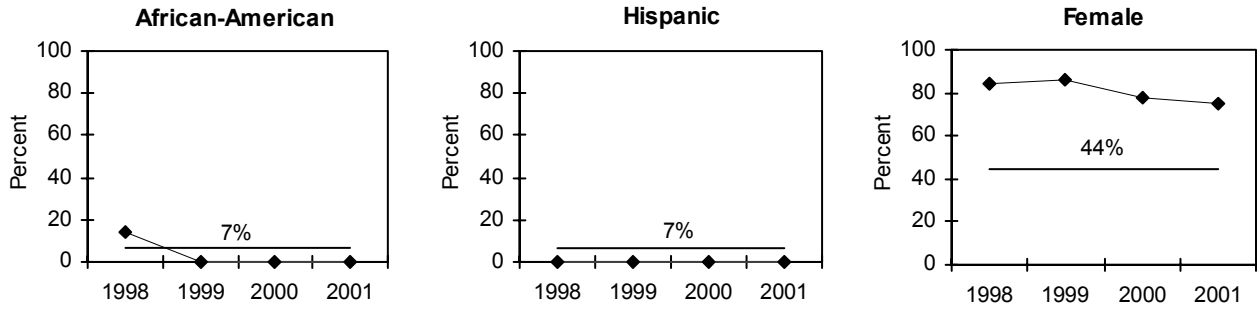
State Agency Administration



	African-American				Hispanic				Female			
Positions:	1	1	1	1	1	1	1	1	1	1	1	1
Percent:	0%	0%	0%	0%	0%	0%	0%	0%	100%	100%	100%	100%

The Board exceeded the state goal for Female employment every year, but fell short of the goals for Hispanics and African-Americans each year.

Professional

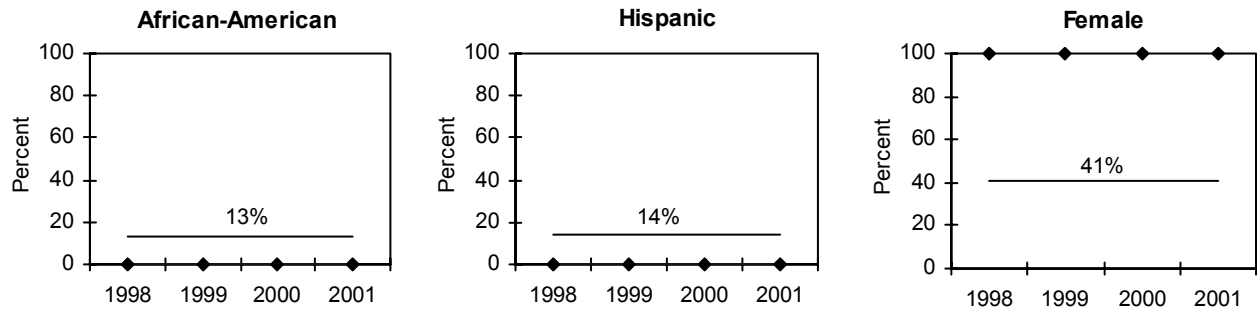


	African-American				Hispanic				Female			
Positions:	7	6	8	8	7	6	8	8	7	6	8	8
Percent:	14%	0%	0%	0%	0%	0%	0%	0%	84%	86%	78%	75%

While the Board exceeded the goal for Female employment, it generally fell short of the goals for Hispanic and African-American employment during this period.

Appendix A

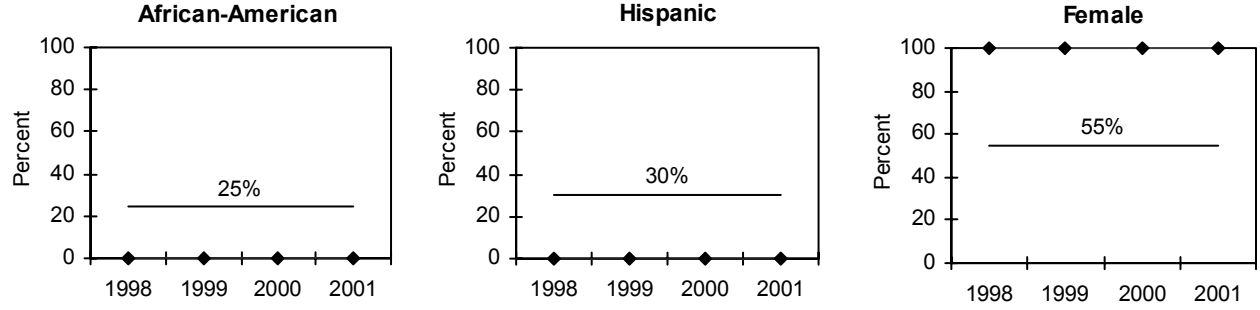
Technical



	1998	1999	2000	2001
Positions: African-American	1	1	1	1
Percent: African-American	0%	0%	0%	0%
Positions: Hispanic	1	1	1	1
Percent: Hispanic	0%	0%	0%	0%
Positions: Female	1	1	1	1
Percent: Female	100%	100%	100%	100%

The Board exceeded the goal for Female employment, but had no Hispanics or African-Americans in this category.

Paraprofessional

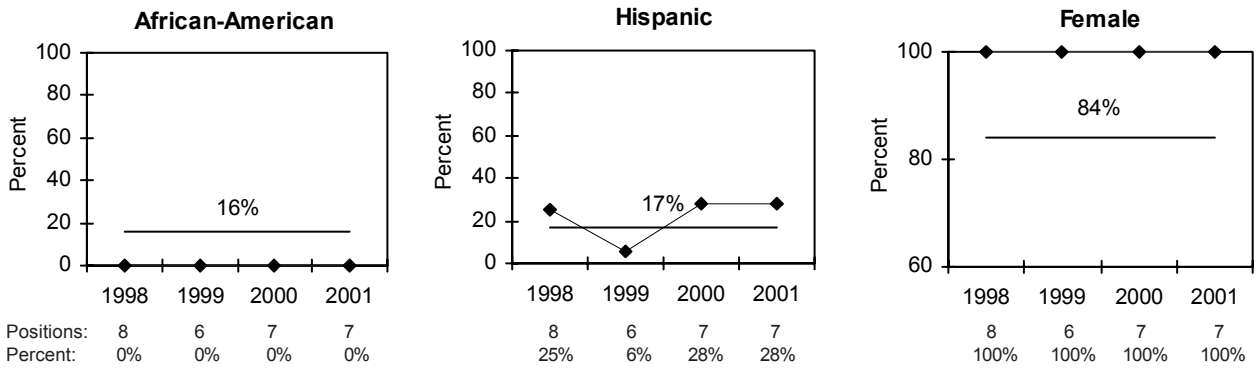


	1998	1999	2000	2001
Positions: African-American	3	3	3	3
Percent: African-American	0%	0%	0%	0%
Positions: Hispanic	3	3	3	3
Percent: Hispanic	0%	0%	0%	0%
Positions: Female	3	3	3	3
Percent: Female	100%	100%	100%	100%

While the Board exceeded the State's goal for Female employment in this category, it did not meet targets for Hispanics and African-Americans.

Appendix A

Administrative Support



	1998	1999	2000	2001
Positions:	8	6	7	7
Percent:	0%	0%	0%	0%
	8	6	7	7
	25%	6%	28%	28%
	8	6	7	7
	100%	100%	100%	100%

The Board generally exceeded goals for Female and Hispanic employment, but had no African-Americans in this category.

[1] Texas Government Code, sec. 325.011(9)(A).

[2] Texas Labor Code, sec. 21.501

Appendix B

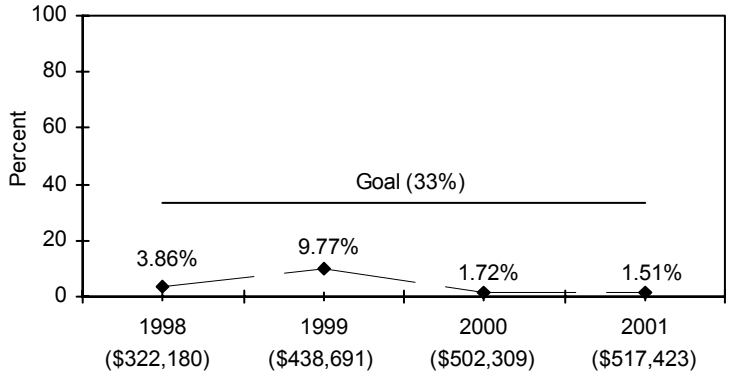
Historically Underutilized Businesses Statistics

1998 to 2001

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1] The review of the Texas Board of Architectural Examiners revealed that the agency is not complying with all state requirements concerning HUB purchasing. Specifically, The agency has not adopted HUB rules, though the Texas Building and Procurement Commission's rules are reflected in the agency's procedures.

The following material shows trend information for the Texas Board of Architectural Examiners use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.[2] In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 1998 to 2001. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. While the agency has fallen short of the State's goal for Other Services, it has generally met the goal for Commodities.

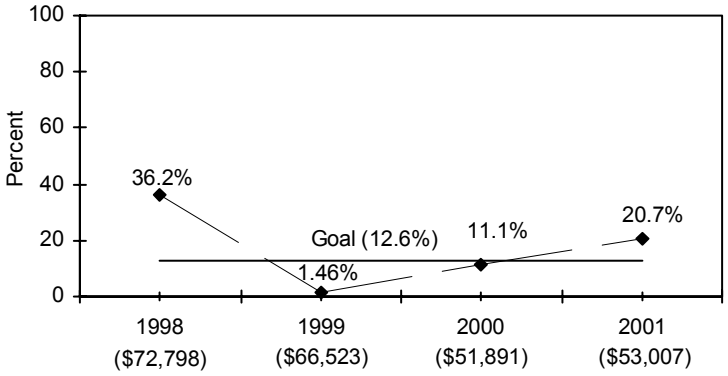
Other Services



The Board fell well below the statewide goal in Other Services. The Board must use sole source providers for the majority of its expenses in this category.

Appendix B

Commodities



The Board generally met the State's goal in this category.

[1] Texas Government Code, sec. 325.011(9)(B).

[2] Texas Government Code, ch. 2161.

Appendix C

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Texas Board of Architectural Examiners.

- Worked extensively with agency staff.
- Attended Board meetings, reviewed audiotapes and minutes of Board meetings, and interviewed Board members.
- Attended a joint meeting of the Board and Texas Board of Professional Engineers.
- Met with in person, or interviewed over the phone, staff from the Texas Department of Licensing and Regulation, Texas Board of Professional Engineers, Texas State Board of Public Accountancy, Texas Department of Insurance, Legislative Budget Board, and the State Auditor's Office.
- Conducted interviews and solicited written comments from national, state, and local interest groups.
- Conducted interviews with licensees.
- Conducted interviews with representatives from professional design associations.
- Met with in person, or interviewed over the phone, building officials from College Station, Corpus Christi, Dallas, El Paso, Georgetown, Harlingen, and Midland.
- Researched the functions of architecture, landscape architecture, and interior design regulatory agencies in other states.
- Observed administration of the Landscape Architect Registration Exam.
- Reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature on architecture, landscape architecture, and interior design issues.
- Performed background and comparative research using the Internet.

Sunset Review of the Texas Board of Architectural Examiners

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