



# Self Evaluation Report

By

**TEXAS BOARD OF PROFESSIONAL ENGINEERS**

September 2011



**TEXAS BOARD OF PROFESSIONAL ENGINEERS**

**Sunset Self-Evaluation Report**

**September 2011**

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## I. Agency Contact Information

**A. Please fill in the following chart. See Exhibit 1: Agency Contacts.**

Texas Board of Professional Engineers Exhibit 1: Agency Contacts				
	Name	Address	Telephone & Fax Numbers	E-mail Address
<b>Agency Head</b>	Lance Kinney, P.E.	1917 IH 35 South Austin, TX 78741	(512) 440-3080 (o) (512) 440-0417 (f)	<a href="mailto:Lance.kinney@tbpe.state.tx.us">Lance.kinney@tbpe.state.tx.us</a>
<b>Agency's Sunset Liaison</b>	Priscilla Piphó, MPA	1917 IH 35 South Austin, TX 78741	(512) 440-3050 (o) (512) 440-0417 (f)	<a href="mailto:Priscilla.piphó@tbpe.state.tx.us">Priscilla.piphó@tbpe.state.tx.us</a>

## II. Key Functions and Performance

**A. Provide an overview of your agency's mission, objectives, and key functions.**

### AGENCY VISION STATEMENT

"A Well Engineered Texas"

### AGENCY MISSION STATEMENT

Our mission is to protect the health, safety, and welfare of the people in Texas by regulating the practice of engineering through licensure of qualified individuals and compliance with the laws and rules.

### AGENCY PHILOSOPHY

As professionals, we value:

- ethics
- communication
- learning
- innovation
- efficiency
- accountability

The Texas Board of Professional Engineers (TBPE) regulates the practice of professional engineering in Texas, providing oversight through licensing qualified engineers and ensuring that these engineers practice ethically and competently.

## Key Functions

### Compliance and Enforcement

The agency is charged with protecting the public by enforcing the Texas Engineering Practice Act (TEPA) which is the chief charge of the seven staff members who are assigned to the Compliance and Enforcement division. There is a clear and present need to continue the agency's work of holding practitioners accountable to state laws, including standards of conduct, to ensure that engineering is practiced in a safe and appropriate manner. The continued regulation of the practice of engineering is essential to maintaining a safe Texas.

## Licensing

The agency licenses engineers by reviewing qualifications that include education, experience, and examination which is the charge of the ten staff members of the Licensing division. Licensees are required to complete fifteen hours of continuing education each year, including one hour of ethics training, and to affirm that they have done so when they renew their license annually. The current fee for license renewal is \$35 which is used to fund all agency operations, and has not changed since March 2004. In addition, most licensees are statutorily required to pay an additional \$200 fee increase that is transferred to the General Revenue fund. In Fiscal Year 2010, there were over 52,000 licensed Professional Engineers (PEs), a number which has increased to more than 54,000 in Fiscal Year 2011.

## Operations and Administration

The remainder of the agency's functions are performed by the remaining thirteen staff members of the agency found in three divisions – Executive which includes Board administration and human resources, IT/Communications, which handles technical and outward-facing communications, and Finance. These three divisions provide the direction and support needed to operate the agency on a daily basis. Further detail about the activities performed by these divisions is found in this section under Improvements.

**B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed. What harm would come from no longer performing these functions?**

As will be seen in the next section, the regulation of engineers was established to protect the safety of the citizens of the State of Texas in response to a catastrophic loss life over 70 years ago. That need to protect the public is just as great today, if not more so, with changes in technology, infrastructure, building codes, and an increase in the population of Texas and the number of Texas licensed professional engineers. Removing oversight of the licensure of engineers or the regulation of engineering practice would leave the public vulnerable and at risk. As long as structures and systems are built, there will be a need for educated, competent individuals who can apply the laws of science to the safe engineering of these structures and systems.

Even with exemptions found in the Texas Engineering Practice Act (TEPA) the sheer number of licensed professional engineers strengthens the case for regulation. The public deserves to have some assurance that those individuals who are offering and providing engineering services are technically competent and will be held accountable for practicing in a manner that causes no harm. Even more importantly, the public deserves protection from individuals who lack the verifiable knowledge and skills that may mislead and endanger the public through unlicensed practice. Licensure and regulation of professional engineers provides this assurance.

**C. What evidence can your agency provide to show your overall effectiveness and efficiency in meeting your objectives?**

TBPE documents more than 40 performance measures which are reported to the Board every six months and are used to determine improvements, gauge workload, and in some cases to comply with mandates. Those measures can be found in Attachment 14, Performance Measures. These measures were chosen because they help determine whether the process improvements that the agency is implementing are resulting in real improvements to efficiency and effectiveness. Examples of key measures for enforcement issues include the number of

complaints filed, recidivism rate, and the time to process an enforcement case; for our licensing department, examples include and the number of licensees, cost to process applications, and the time to process an application.

**D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions? Have you recommended changes to the Legislature in the past to improve your agency's operations? If so, explain. Were the changes adopted?**

The agency's enabling legislation is clear and consistent with our mission and functions. Recommendations to the Texas Engineering Practice Act (TEPA) generally come from various external sources, including the professional societies, with input from TBPE as requested. Minor clarifications to the statute have been made to better serve the public and to clarify procedures. The agency has been able to make process improvements to internal policies within the constraints of current statute.

**E. Do any of your agency's functions overlap or duplicate those of another state or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?**

Historically, the professions of engineering and architecture have been linked because both deal with the design of buildings and structures. The bright line separating the two is not an easy one to draw, and the professions have continued to wrestle with the issue for decades. In 2003, the 78<sup>th</sup> Legislature created the Joint Advisory Committee for Engineering and Architecture to facilitate the Texas Board of Professional Engineers (TBPE) and the Texas Board of Architectural Examiners (TBAE) addressing the overlap issue. During the 82<sup>nd</sup> Legislative Session, changes to the Engineering and Architect Acts (via House Bill 2284 by Representative Hardcastle) have provided the guidance needed to define the distinct work done by each profession. TBPE is working closely with the Texas Board of Architectural Examiners to ensure efficient implementation of the statute which goes into effect September 1, 2011.

Other areas of potential overlap in specific areas of practice are addressed through open communications and/or Memoranda of Understanding with other agencies, such as between TBPE and the Texas Board of Professional Geoscientists, the Texas Board of Professional Land Surveyors, and the Texas Department of Insurance Windstorm Inspector Program.

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

All states in the U.S. regulate the practice and licensure of engineering and investigate and act on violations of engineering practice laws. The agency is a member of the National Council of Examiners of Engineers and Surveyors (NCEES) whose main goal is to provide a forum for communication between state boards of licensure for engineering and surveying throughout the United States and to provide nationally recognized examinations for licensure. Model laws developed by NCEES set widely accepted standards which address issues related to licensing and enforcement. Other states adhere to similar practices, and TBPE is very active in the national organization, providing guidance and sharing best practices, and leading such nation-wide efforts as Computer Based Testing, which will allow for the national exams to be taken electronically, and the licensure of software engineers.

### **G. What key obstacles impair your agency's ability to achieve its objectives?**

We are confident that with the passage of HB2284, the issue of overlap with the architects will no longer be a primary concern between professions that expends time and agency resources. We believe that the new focus on cooperation between the agencies will not only remove the obstacles, but will assist in future endeavors to enforce against those who could harm the public.

In carrying out our charge of enforcing the engineering practice act, several provisions in the statute have come to our attention as being confusing to the public, contradictory, or unnecessarily complex. These items are highlighted in Section IX of this report.

### **H. Discuss any changes that could impact your agency's key functions in the future (e.g., changes in federal law or outstanding court cases).**

There have been no federal law changes or significant court cases that would impact key agency functions.

### **I. What are your agency's biggest opportunities for improvement in the future?**

#### **Self-Directed Semi-Independent Status**

The Self-Directed Semi-Independent status (SDSI) and its self-funding mechanism have facilitated the implementation of legislative mandates without fee increases due to innovative processes and flexibility in budgeting and planning. TBPE has been extremely conservative and prudent in managing funding, maintaining one of the lowest licensing fees in the country (\$35 annually) while contributing a professional fee of \$200 for licensees to the general fund which, along with a lump sum payment, totals over \$7 million annually. If SDSI is to be continued, we would suggest moving the language into the enabling statute to avoid confusion and to allow further transparency.

#### **Organizational Excellence**

With the genesis of the Self-Directed, Semi-Independent Pilot Program (SDSI), the agency embarked on the road of innovation that would improve processes and demonstrate success. Being outside of the general appropriations process, TBPE recognized that collecting data and reporting on agency activities would be key to demonstrating fiscal and operational accountability, a cornerstone to the SDSI program. Performance measures were chosen that would help understand whether process improvements were working as intended. The agency reports key performance measures to the Legislature on a quarterly basis and as prescribed in statute in annual and biennial reports. (See Attachment 14, Performance Measures)

In addition to process improvements that have been implemented in deliberate ways over the past ten years, the agency as a whole has recently formalized the application of this concept by initiating the pursuit of excellence via the Quality Texas Foundation Engagement Level (See Attachment 18, Quality Texas Foundation Letter). Our long-term goal is to receive the Texas Award for Performance Excellence that is based on process improvements utilizing the Baldrige Performance Excellence Criteria. We recently received a feedback report from the Foundation that is included in our (See attachment 26, FY11 Performance Measures Report) and provides specific recommendations for improvement. As we continue along the pathway

of improvement, the agency will embark upon the Progress Level and will receive feedback as to whether recommended improvements have been implemented.

### **Outreach**

A key component of the enforcement and licensure functions of the agency is an extensive outreach program which consists of as many as seven different staff members and any of the board or emeritus board members making presentations to professional engineers and aspiring PEs all over the state throughout the year. In the recent three years, we have averaged over 8,300 personal contacts in roughly 143 presentations per year. The number of people we reach with the message in person continues to grow as we have trained staff to share the message. We have recently made improvements to our outreach program, including investing in webinar technology to allow further reach with fewer resources. In addition, we have explored alternative educational methods, including presentations that incorporate advanced freeware to improve presentation techniques and hopefully facilitate greater comprehension. If outreach messages are more easily understood, the ultimate result should be an awareness of applicable laws, possibly reducing enforcement actions against licensees.

### **Technology**

TBPE continues along a path of applying technology to solve problems and achieve efficiencies. Over the last 10 years, technology has changed dramatically and the agency has taken full advantage by automating process as often as practicable. The in-house database developed in 2004 helped move the agency from dependence upon the Northrop-Grumman mainframe environment and into a more facile technology that has grown and adapted over the years. Texas Informational Database for Engineers (TIDE) has allowed in-house management of enforcement cases and licensing applications. Online commerce was implemented with the introduction of Engineer's Cash Handling Online (ECHO) and we continue to expand capabilities beyond simply accepting payments to allowing customers more immediate access to information relevant to their license. Recent improvements include an online application that allows the potential licensee to manage his/her licensure information, and a system that allows applicants to track their application through every step in the process. Future changes include expansion of the website, accepting automated complaints, and expanding automated communication confirming receipt of data from constituents.

Further technological improvements are expected as we move towards a less paper-intensive environment. By investing in Laserfiche, a digital document management system, we are moving towards a goal of managing workflow electronically. Process improvements include the management of cases electronically, a detailed electronic case tracking system, and integration into other internal systems. Our goal is reduced redundancies, improved communication, and more efficient workflow.

### **Customer Service and Workforce Development**

The move towards organizational excellence within the agency makes us aware of the importance of customer focus and workforce development, both areas of the Malcolm Baldrige Performance Excellence Criteria.

Customer service focus is an important area where improvements are planned. We intend to address issues of improved content and design on all materials that are available for the public including website, printed publications, and outreach presentation materials. One goal we have is to begin coordinating agency communication to ensure messages are clear,

consistent, and reaching the appropriate audiences. While customer service surveys are conducted every year, we hope to begin using the data from these surveys to identify areas where change should occur and begin offering those more frequently.

For several years, we have tracked the results of the Survey of Organizational Excellence (now the Survey of Employee Engagement) to determine how staff perceives working at the agency. With data from the most recent survey, efforts were made to improve internal communication through presentations, town hall meetings, regular staff meetings, as well as offering communication workshops for the teams.

Further changes that we expect to implement in the coming years include a revision of the employee handbook or personnel manual to address issues raised by staff during the town hall meetings, and a revamping of the agency employee performance appraisal process to ensure that we are communicating clearly and appropriately about performance expectations. Part of that change will include incorporating staff professional development into the annual performance appraisal, connecting agency goals and objectives with individual accomplishments, as well as a new evaluation form that broadens appraisals beyond simple task analysis. We believe that the opportunities for improving the culture and climate of the agency will result in a more productive and engaged workforce.

**J. In the following chart, provide information regarding your agency’s key performance measures included in your appropriations bill pattern, including outcome, input, efficiency, and explanatory measures. See Exhibit 2: Key Performance Measures—Fiscal Year 2010**

As a SDSI agency, TBPE does not prepare an appropriations request. As such, we recognize the need for even greater accountability and transparency than other non-SDSI agencies, so we prepare and submit a report quarterly to key legislators and the Office of the Governor. We have also created a set of comprehensive performance measures that are presented to the Board twice per year. Finally, a set of key measures are reported biennially to the legislature as prescribed in VTCS 8930(a):

<b>Texas Board of Professional Engineers Exhibit 2: Key Performance Measures Fiscal Year 2010</b>			
<b>Key Performance Measures</b>	<b>FY 2010 Target</b>	<b>FY 2010 Actual Performance</b>	<b>FY 2010 % of Annual Target</b>
Number of Examination Candidates PE and FE exams	N/A	6794	N/A
Number of Licensees	N/A	52,360	N/A
Number of Certificate Holders	N/A	12,969	N/A
Number of Enforcement Activities Open Cases	N/A	764	N/A
Closed Cases	N/A	771	N/A
Cases Pending (8/31/2010)	N/A	126	N/A

For the entire report, please see Attachment 25, 8930A Report.

### III. History and Major Events

In **1937**, the Texas Board of Professional Engineers was created by the 45<sup>th</sup> Legislature in the aftermath of the New London School explosion in which more than 300 students and teachers were killed. The agency was originally known as the State Board of Registration for Professional Engineers. The original version of the engineering practice act stated in part, “That in order to safeguard life, health, and property, any person practicing or offering to practice the profession of engineering as hereinafter defined shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or offer to practice the profession of engineering in this State...” The regulation of the practice of licensure is so important that similar language exists to this day.

In **1965**, industrial exemptions were introduced, with the perspective that the previous requirement was unnecessarily restrictive. The Board’s enforcement authority was also strengthened at that time to make it easier for the Board to obtain an injunction against a person practicing professional engineering without a license and provided for the suspension or revocation of a license for any violation of the Act. It was at this time that the Act was designated The Texas Engineering Practice Act (TEPA).

In **1987**, the 70<sup>th</sup> Legislature amended the TEPA to strengthen the educational and examination requirements for licensure, phasing in the law into effect over five years. The Act was amended to require graduation from an approved curriculum in engineering or a related science, and passage of both the Fundamentals of Engineering and the Principles and Practice of Engineering examinations in order for engineers to become licensed in Texas. A provision for certification as an engineer-in-training was also created, incorporating the same educational requirements and passage of the Fundamentals of Engineering examination.

In **1991**, the 72<sup>nd</sup> Legislature added a section to the Act which increased the initial license, annual renewal, and the reciprocal license fees by \$200. This professional fee is a pass-through fee which goes directly to the General Revenue Fund. This increase resulted in Texas licensing and renewal fees becoming among the highest in the nation. In 1991, the Legislature also altered the agency’s Sunset Review date from September 1, 1993, until September 1, 2003, due to the agency’s esteemed reputation for being a well-administered and efficient regulatory agency.

Also in **1991**, the Texas Board was the first state to promote and develop mutual agreements with Canada and Mexico that addressed academic and professional engineering practice issues in order to implement the North American Free Trade Agreement (NAFTA). For three years, engineering roundtable meetings were held between Texas engineers and engineers from Mexico which resulted in the creation of the Mutual Recognition Document (MRD) early in 1995. In June, all representatives met in Washington, DC, and signed the MRD. On November 18, 1996, a Letter of Intent to Implement the NAFTA Mutual Recognition Document was signed by the Chair and Executive Director of the Texas Board in the Governor’s Office. Texas Governor George W. Bush witnessed this historic event. All three nations were represented as well as members and staff of the Texas Board, engineering societies and associations, and the National Council of Examiners for Engineering and Surveying.

In **1997**, the 75<sup>th</sup> Legislature modified numerous sections of the Act and the name of the agency changed to the Texas Board of Professional Engineers. All language pertaining to “registration” and “registered” was changed to “licensure” and “licensed.” Among the list of

changes to the Act is a provision that specifically states that architects are not prevented by the Engineering Act from performing their professional practice.

In **1999**, the SDSI Pilot Program was created. Senate Bill 1438 created a four-year pilot project wherein the Texas Board of Professional Engineers, the Texas State Board of Public Accountancy, and the Texas Board of Architectural Examiners were changed to a SDSI status and removed from the legislative appropriations process. However, due to several unforeseen issues concerning the repository of the agency's funds, the Board was not able to implement the pilot project in September 1999. These issues were resolved and the agencies began operating under the SDSI program in 2001. SDSI was originally set to expire September 1, 2003. In addition, firm registration was added to the Engineering Act.

In **2003**, after the most recent sunset review of the agency, Senate Bill 277 continued the agency's functions until the next sunset date of 2015. Other changes made by SB 277:

- Established the mandatory Continuing Education Program for licensees.
- Created the Joint Advisory Committee with the Architects Board.
- Continued the Self-Directed, Semi-Independent pilot program with slight modifications
- Modified exemptions to industrial practice, including when the designation of "engineer" may be used.

In **2009**, House Bill 2649 modified the engineering exemptions related to the Windstorm certification handled by the Texas Department of Insurance, modified the exemptions for Fire Department employees and prohibited the requirement of additional certifications to perform engineering work.

In **2011**, there was yet another legislative session that brought changes to the TEPA. As will be seen in the section on new legislation, legislation regarding overlapping jurisdiction was passed. HB 2284 by Representative Hardcastle provided, among other things, clear direction as to what is considered architecture and what is considered engineering. Additionally, House Bill 3 by Smithee (82<sup>nd</sup> first called special session) addresses the overlapping jurisdictions of the Texas Department of Insurance and TBPE regarding the Texas Windstorm Insurance association and engineers who perform windstorm design and who are windstorm inspectors.

#### IV. Policymaking Structure

**A. Complete the following chart providing information on your policymaking body members. See Exhibit 3: Policymaking Body**

<b>Texas Board of Professional Engineers Exhibit 3: Policymaking Body</b>			
<b>Member Name</b>	<b>Term/ Appointment Dates/ Appointed by ___ (e.g., Governor, Lt. Governor, Speaker)</b>	<b>Qualification (e.g., public member, industry representative)</b>	<b>City</b>
G. Kemble Bennett, Ph.D., P.E., Chair	Unlimited/07-10-08/Appointed by Governor Rick Perry	Professional Engineer	College Station
Daniel O. Wong, Ph.D., P.E.	09-26-13/07-10-08 through 09-26-13/Appointed by Governor Rick Perry	Professional Engineer	Sugar Land
Gary Raba, D.Eng., P.E.	09-26-13/07-10-08 through 9-26-13/Appointed by Governor Rick Perry	Professional Engineer	San Antonio
Edward L. Summers, Ph.D.	09-26-11/07-27-06 through 9-26-11/Appointed by Governor Rick Perry	Public member	Austin
Carry Ann Baker	09-26-15/01-07-11 through 9-26-15/Appointed by Governor Rick Perry	Public member	Amarillo
Lamberto "Bobby" Balli, P.E.	09-26-15/01-07-11 through 9-26-15/Appointed by Governor Rick Perry	Professional Engineer	Houston
James "Jim" Greer, P.E.	09-26-15/04-14-06 through 9-26-15/Appointed by Governor Rick Perry	Professional Engineer	Dallas
Govind Nadkarni, P.E.	09-26-11/03-06-00 through 9-26-11/Appointed by Governor Rick Perry	Professional Engineer	Corpus Christi
Elvira Reyna	09-26-13/06-17-08 through 9-26-13/Appointed by Governor Rick Perry	Public member	Denton County

**B. Describe the primary role and responsibilities of your policymaking body.**

The Texas Board of Professional Engineers is responsible for protecting the health, safety and welfare of the citizens of Texas by establishing the policies and procedures for administering the provisions of the Act. The Act provides the Board with the authority and power to make and enforce all rules, regulations, and bylaws necessary for the performance of its duties and to regulate the practice of engineering in Texas. The Board follows the Open Meetings Act, the Administrative Procedures Act, and uses Roberts Rules of Order to conduct quarterly board meetings and act upon issues.

**C. How is the chair selected?**

Per Section §1001.108 of the Act, the chair is appointed by the Governor of Texas.

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

Section §1001.102 lists requirements for public and professional engineer members of the Board. For example, public members cannot be professional engineers or control more than 10% interest in an engineering company. Professional engineer members must have practiced engineering for over 10 years.

**E. In general, how often does your policymaking body meet? How many times did it meet in FY 2010? In FY 2011?**

The Board generally meets quarterly in an open meeting and met four times in both FY 2010 and FY 2011.

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

All new board members receive training at the Austin office in ethics, open government – including the Open Meetings Act, and issues relevant to policy making bodies. Each board member also spends time meeting with staff, receives one-on-one training from each department director, and learns from the executive director of recent relevant policy issues. In addition, information is made available through conferences such as those offered by the Governor's Center for Management and Development Legislative Issues Conference.

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

The statute defines the responsibilities of the Board and staff the Act and the Board Rules of Practice and Procedure, Texas Administrative Code 22, Part 6, Chapter 131, Subchapter A through G.

**H. What information is regularly presented to your policymaking body to keep them informed of your agency's performance?**

The Board reviews the agency operating budget quarterly and approves it on an annual basis. The Board biannually reviews performance measures (Attachment 14, Performance Measures). In addition, the board reviews and approves enforcement orders, rules for

proposal and adoption, policy advisory opinions, general policy issues, and applications for licensure.

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

The Board receives input from the public by posting all meeting agendas and proposed rules in the Texas Register and on the agency website, as well as through public comment periods at the beginning of all the scheduled Board and committee meetings. In addition, the agency sends electronic newsletters after each board meeting to all licensed professional engineers with information about Board actions, and a link to any proposed rules, which is a good vehicle for eliciting public comments on rules. These comments are consolidated and presented to the Board for consideration before rules are formally adopted.

Stakeholder input is received in meetings that are generally held annually with participation from governmental entities, educational institutions, and industry stakeholders via the advisory committees (see below section "J"). The results of these meetings are consolidated and presented to the Board at regular meetings. In addition, the agency solicits feedback via several other methods, such as a yearly customer service survey, a survey that is sent along with each licensure approval, online feedback forms, and through public interaction at outreach presentations.

**J. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. See Exhibit 4: Subcommittees and Advisory Committees**

<b>Texas Board of Professional Engineers Exhibit 4: Subcommittees and Advisory Committees</b>			
<b>Name of Subcommittee or Advisory Committee</b>	<b>Size/Composition/How are members appointed?</b>	<b>Purpose/Duties</b>	<b>Legal Basis for Committee</b>
Ad Hoc Committees	The board's chair, board, and/or committee chair may appoint ad hoc committees composed of committee members, other board members, and other persons to address particular issues.	The board and its committees may appoint temporary committees to assist in resolving particular engineering issues.	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(c)
Enforcement Committee	Four members plus one alternate. The Board Chair appoints the Chair of the Committee and the members.	Evaluates issues and develops proposed actions for the full Board concerning enforcement issues. May participate in activities such as evaluating rules	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(a)(3)

<b>Texas Board of Professional Engineers Exhibit 4: Subcommittees and Advisory Committees</b>			
		concerning enforcement of the Act; reviewing the progress of major enforcement cases or groups of cases, suggesting sanctions for violations of the Act, participation in national and international engineering law enforcement activities on the Board's behalf, and providing general guidance to the executive director on enforcement issues; evaluating any other issue indirectly or directly relating to engineering law enforcement.	
General Issues Committee	Four members plus one member. The Board Chair appoints the committee members. The Board Vice- Chair serves as the Chair of this Committee.	Evaluate issues and possibly develop proposed actions for the full board on issues of importance to the board and the profession. Such issues might include engineering ethics, professionalism in practice, legislation, board management, and engineering business issues.	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(a)(1)
Joint Advisory Committee (JAC)	The chair shall appoint three members of the board and one practicing architectural engineer to the Joint Advisory Committee on Practice of Engineering and Architecture.	The advisory committee shall work to resolve issues that result from the overlap between activities that constitute the practice of engineering and	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(e) Abolished by

<b>Texas Board of Professional Engineers Exhibit 4: Subcommittees and Advisory Committees</b>			
		those that constitute the practice of architecture.	HB 2284 effective 9/1/2011
Legislative Committee	Four members plus one alternate. The Board Chair appoints the Chair of the Committee and the members.	Considers legislative matters that may affect the practice of engineering in the state. Pursuant to the Chapter 556, Texas Government Code, the committee shall not lobby or strive to influence legislation regarding the practice of engineering but meet to consider board responses to pending legislation and assist in answering related inquiries from the Texas Legislature, Governor or other state agency or governmental entity during the legislative session. The committee shall report to the full board on actions and activities addressed on behalf of the board.	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(a)(5)
Licensing Committee	Four members plus one alternate. The Board Chair appoints the Chair of the Committee and the members.	Evaluate issues and possibly develop proposed actions for the full board on licensing issues. The committee may participate in activities such as evaluating rules concerning licensing of engineers; evaluating education and continuing education program	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(a)(2)

<b>Texas Board of Professional Engineers Exhibit 4: Subcommittees and Advisory Committees</b>			
		requirements; conducting personal interviews of applicants; evaluating applications; participating in national and international engineering licensing activities on the board's behalf; providing general guidance to the executive director on licensing issues; and evaluating any other issue indirectly or directly relating to engineering licensing.	
Nominating Committee	Three members plus one alternate. The Board Chair serves as the Chair of the Committee and appoints two other members.	Nominates candidates for the offices of vice chair, secretary, and treasurer. The nominating committee shall meet prior to the regular board meeting prior to September 1 of each year to allow election of officers at that meeting.	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(b)
Policy Opinion Advisory Committee	Four members plus one alternate. The Board Chair appoints the Chair of the Committee and the members.	Review, prepare and recommend policy advisory opinions regarding the interpretation or application of the Act and to perform related activities pursuant to board approval. The committee shall follow the process and procedures for	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(a)(4)

<b>Texas Board of Professional Engineers Exhibit 4: Subcommittees and Advisory Committees</b>			
		issuing advisory opinions as prescribed in Subchapter G of this chapter (relating to Advisory Opinions).	
Industry Advisory Committee	The Board solicits 15-20 voluntary members who represent the engineering industry profession. The board chair may appoint one or more board members as liaisons to the advisory committee.	Provides guidance and assistance concerning engineering issues relative to the profession via the General Issues Committee.	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(d)(2)
Education Advisory Committee	The Board solicits volunteer members who are deans of the engineering colleges, department heads, or other program administrators and other invited representatives of the academic community. The board chair may appoint one or more board members as liaisons to the advisory committee.	Provides guidance and assistance concerning engineering education issues via the Licensing Committee.	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(d)(1)
Government Advisory Committee	The Board solicits voluntary members from various governmental agencies, organizations, or jurisdictions that employ professional engineers or use engineering services. The board chair may appoint one or more board members as liaisons to the advisory committee.	Provides guidance and assistance concerning engineering issues relative to state government.	Chapter 131: Organization and Administration, Subchapter A: Organization of the Board, §131.15(d)(3)

## V. Funding

### A. Provide a brief description of your agency's funding.

TBPE is one of three agencies that were assigned to the Self-Directed Semi-Independent Pilot Project in 1999, as seen in the History section above. As an SDSI agency, funding is not assigned by the legislature nor is it received from any source other than fees collected. For this reason, TBPE is extremely conscientious and transparent with regards to funding.

The Board licenses both individuals and firms. The annual \$35 renewal fee for license holders accounts for the majority of the agency's revenues and has not been changed since FY 2004. The \$200 professional fee paid by licensees generated nearly \$7 million in contributions to the State's general revenue fund in Fiscal Year 2010. In addition, TBPE makes an annual payment of \$373,900 to the general fund in accordance with the SDSI 8930 statutory requirements. SDSI has allowed the board the flexibility to manage its own spending and revenue streams while still achieving an increase in value and services for the state.

The budget is prepared annually using generally accepted accounting principles. It is reviewed and approved by the agency's governing board notwithstanding any other provisions of law, including the General Appropriations Act. The agency is responsible for all costs, both direct and indirect, and no costs are incurred by the general revenue fund. The Board is mandated to establish fees in amounts that are reasonable and necessary to cover the costs of administering the different licenses and other activities of the Board.

The Board uses strict financial controls, responsible budget management, and a comprehensive planning process to meet all budgetary and operating requirements. The Board drafted a fund balance policy as a guideline and tool to use in budgeting and estimating the annual ending fund balance. The policy states that the TBPE should prepare its annual Budget to provide for an end-of-period Agency Fund Budgeted Balance equal or as close as possible to three times the standard error of the difference (defined as: start-of-period forecast Agency Fund balance minus end-of-period actual Agency Fund balance) for the past five years. As a guide to considering the necessity of changes in long-term parameters, the Board has instructed staff to establish upper and lower limits, based on the computed standard deviation. The Board may consider adopting a smaller target end-of-period Agency Fund Budgeted Balance, and/or different upper and lower limits, if the preponderance of recent experience has been that forecast errors are positive.

### B. List all riders that significantly impact your agency's budget.

There are no riders that impact TBPE budget.

### C. Show your agency's expenditures by strategy.

As a self-directed agency, expenditures are not tracked by strategy but by overall operations. The strategic plan is used separately to direct the agency's activities, and metrics of achievements are found in the performance measures which are tracked monthly and reported to the Board biannually.

**D. Show your agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2010-2011. See Exhibit 7, Texas Board of Professional Engineers**

TEXAS BOARD OF PROFESSIONAL ENGINEERS

Exhibit 7

FY 10 - FY 11 Objects of Expense

Fund 0880, Board of Professional Engineers Operating Trust Fund

	FY 10 Actual	FY 11 Budget
Expenditures:		
Salaries and Wages	\$ 1,659,397	1,757,435
Payroll Related costs		
TBPE Retirement Matching	110,122	119,650
TBPE-Paid Insurance	284,214	293,150
TBPE OASI Matching	121,287	139,700
Unemployment	-	2,850
Professional fees & Services	74,808	82,500
Travel	27,395	34,225
Materials and Supplies	110,082	177,980
Communication and Utilities	48,869	43,000
Repairs and Maintenance	39,130	42,089
Rental and Leases	16,987	20,150
Printing and Reproduction	50,022	88,020
Other Operating Expenditures	234,271	278,011
Advertising, Awards, Training, Registration Fees, Contracted Services, Freight, Indirect State Cost, Janitorial, PE Renewal, Background Checks, Professional Dues, Workers Comp, Tx Online, Bank Fees, Bldg Insurance		
Capital Lease/Outlay	38,078	4,810
Total Operating Expenditures	\$ 2,794,460	\$ 3,081,570
SDSI Article 8930 - Annual Payment to GR	\$ 373,900	\$ 373,900
Examination Fee Expenditures	1,150,460	1,264,071
Grand Total Expenditures	\$ 4,318,810	\$ 4,719,541

**E. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines. See Exhibit 8: Sources of Revenue Fiscal Year 2010 (Actual)**

<b>Texas Board of Professional Engineers Exhibit 8: Sources of Revenue Fiscal Year 2010 (Actual)</b>	
<b>Source</b>	<b>Amount</b>
License Fees	\$ 2,881,678.00
Penalties (includes \$35,290 for enforcement fines)	\$ 175,190.00
Other	\$ 11,931.00
Examination Fee Revenue (pass-through)	\$ 1,273,820.00
<b>Total Revenue</b>	<b>\$ 4,342,619.00</b>
<b>Total Professional Fees collected and remitted to General Revenue</b>	<b>\$ 6,957,000.00</b>

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

Not applicable.

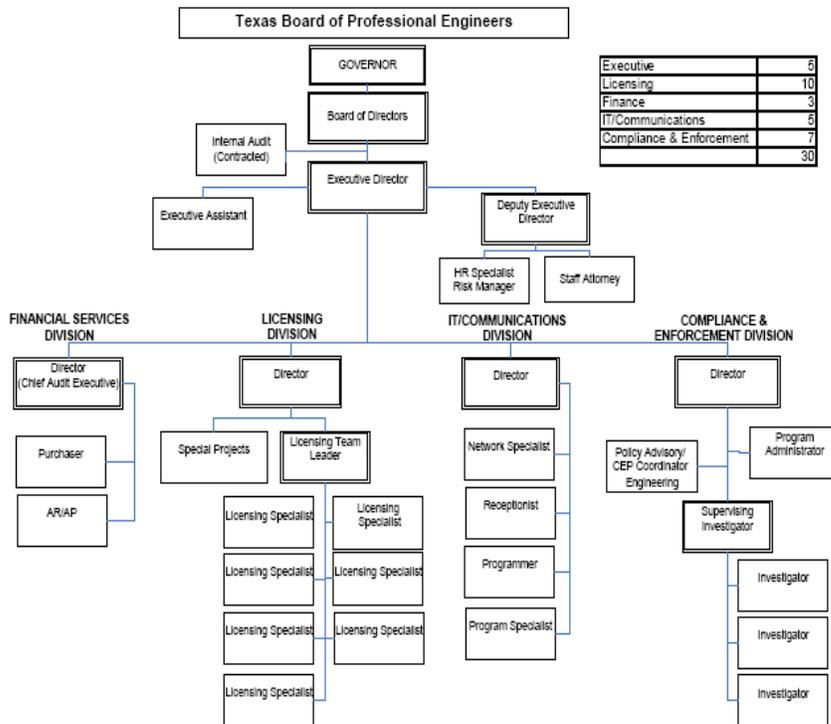
**G. If applicable, provide detailed information on fees collected by your agency. See Exhibit 9: Fee Revenue Fiscal Year 2010**

<b>Texas Board of Professional Engineers Exhibit 9: - Fee Revenue Fiscal Year 2010</b>				
<b>Fee Description Program Statutory Citation</b>	<b>Current Fee/ Statutory maximum</b>	<b>Number of persons or entities paying fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., general revenue fund)</b>
Professional Fee	\$200.00	34,785	\$6,957,000.00	All funds are deposited in the Safekeeping Trust Company Fund. The Professional Fee is then transferred to the State General Revenue Fund.
PE License Fee	\$50.00	2,987	\$148,755.00	
PE Renewal Fee	\$35.00	51,117	\$1,787,935.00	
Late PE Renewal Fee	\$75.00	1,836	\$136,800.00	
Firm Registration Fee	\$150.00	669	\$99,675.00	
Sole Practitioner (SP) Firm Registration Fee	\$25.00	526	\$12,375.00	
Firm Renewal Fee	\$150.00	4,752	\$707,525.00	
SP Firm Renewal Fee	\$25.00	2,868	\$69,830.00	

Texas Board of Professional Engineers Exhibit 9: - Fee Revenue Fiscal Year 2010			
Firm Late Renewal Fee	\$150.00	175	\$26,125.00
SP Firm Late Renewal Fee	\$25.00	167	\$4,175.00
Administrative Penalty Fee	Varies	Not Available	\$35,920.00
EIT Certificate Fee	\$15.00	1,862	\$27,765.00
FE Exam Fee	\$120.00	5,226	\$625,835.00
PE Exam Fee	\$265.00	2,397	\$647,985.00
Open Records/Copies Fee	Varies	Not Available	\$2,838.87
Duplicate Certificates	\$5.00	187	\$1,335.00
Return Check Fee	\$40.00	21	\$740.00

## VI. Organization

**A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division.**



**B. If applicable, fill in the chart below listing field or regional offices. See Exhibit 10: FTEs by Location Fiscal Year 2010**

<b>Texas Board of Professional Engineers Exhibit 10: FTEs by Location Fiscal Year 2010</b>			
<b>Headquarters, Region, or Field Office</b>	<b>Location</b>	<b>Number of Budgeted FTEs, FY 2010</b>	<b>Number of Actual FTEs as of August 31, 2010</b>
Headquarters	1917 IH 35 South Austin, TX 78741	31	29
<b>TOTAL</b>		31	29

**C. What are your agency's FTE caps for fiscal years 2010-2013?**

TBPE submits a quarterly budget update to the Board, including salaried positions. Under the Self-Directed Semi-Independent status, while the agency is not bound legislatively to have a cap on FTEs the agency has held steady at 29-31 employees since 2005, and the current budget for FY 2012 is 30 employees. The budgetary process provides the oversight needed to ensure fiscal accountability as the budget is approved annually and reviewed quarterly by the Board.

**D. How many temporary or contract employees did your agency have as of August 31, 2010?**

Not applicable.

**E. List each of your agency's key programs or functions, along with expenditures and FTEs by program. See Exhibit 11: List of Program FTEs and Expenditures Fiscal Year 2010**

<b>Texas Board of Professional Engineers Exhibit 11: List of Program FTEs and Expenditures Fiscal Year 2010</b>		
<b>Program</b>	<b>FTEs as of August 31, 2010</b>	<b>Actual Expenditures</b>
Licensing	10	\$947,284.86
Enforcement/Compliance	7	\$553,624.40
Registry Services (Finance, IT, Communications, Building Maintenance, Utilities)	9	\$957,135.31
Executive	3	\$329,915.62
<b>TOTAL</b>	29	\$2,787,960.19

## VII. Guide to Agency Programs

### A. Compliance & Enforcement

**A. Provide the following information at the beginning of each program description.**

<b>Name of Program or Function</b>	Compliance & Enforcement Division
<b>Location/Division</b>	Austin, TX
<b>Contact Name</b>	C. W. Clark, P.E., Director of Compliance & Enforcement
<b>Actual Expenditures, FY 2010</b>	\$553,624.40
<b>Number of FTEs as of August 31, 2010</b>	7

**B. What is the objective of this program or function? Describe the major activities performed under this program.**

The Compliance & Enforcement (C & E) division's objectives include the responsibility to receive and process complaints against licensed professional engineers as well as against unlicensed individuals who are allegedly in violation of the agency's statute and/or Board rules. When evidence indicates that a violation has occurred, a case file is opened and assigned to a staff investigator. Subsequently, an investigation of the facts, including interviews with the complainant and witnesses are conducted. The case proceeds forward if sufficient evidence is present, when the subject of the complaint is notified for a response to the allegations. In FY 2010, 764 complaints were received. The Office of the Attorney General has served as the agency's legal representative for enforcement actions until July 2011, when a staff attorney was hired.

The Compliance & Enforcement division also receives and responds to requests for timely informal interpretations of the statute and Board rules via phone, email, facsimile, special delivery, and regular mail for specific situations.

Open record requests for documents are received and processed through the Compliance and Enforcement division, which totaled 251 in Fiscal Year 2010. Additionally, the division is charged with responding to Policy Advisory Requests which is a way that the public can ask for an interpretation of a Board rule.

Compliance & Enforcement division is charged with two additional activities: audit of continuing education and verification of newly licensed sealing documents. Continuing education audits are currently about two percent of the total population of professional engineers, roughly 250 audits per quarter, verifying compliance with the state continuing education requirements. In addition, newly licensed individuals are required to send documents to verify that they have acquired the appropriate professional engineering seal. These documents are sent to the C & E division for review and approval.

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.**

Compliance and Enforcement is key to protecting the health, safety, and welfare of the public. As such, the TBPE takes action each year against licensed and non-licensed individuals that have violated the law. The include substantial sanctions, including significant monetary penalties, licensure suspensions, and revocations of professional engineering licenses.

The TBPE tracks C & E outcomes and performance using several different performance measures that assist management in understanding the workload of staff, indicate trends which can be used to identify areas of improvement or to predict future workload for resource allocation, and provide metrics for evaluating process improvements. Among these measures is the number of complaints opened from the public, number of complaints resolved, number and amount of sanctions, recidivism rates, etc. The efficiency of the program is measured by tracking the resources involved in performing the functions associated with implementation of the program. Efficiency measures used include the amount of time (days) for complaint resolution, the cost per complaint, and the number of continuing education audits.

Key measures which assist management in determining success of the program those that help the agency determine how effective our programs have been. As enforcement activities are focused on education and compliance, the following measures indicates program effectiveness. The recidivism rate is quite low with less than one half of one percent (0.5%) of all licensed engineers with an enforcement action taken against them. (See Attachment 14, Performance Measures)

The Board believes that the outreach performed by staff is a component of educating engineers and preventing future violations.

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

Since the inception of the agency, the need to protect the health, safety, and welfare of the public of Texas has established the importance of enforcement of the statute and Board rules against violators. Over time the statute has had modifications to add or clarify enforcement requirements and responsibilities as well as add exemptions to the act.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The Compliance & Enforcement division enforces the laws that protect all citizens in the state of Texas who are exposed to engineering services – from the roads on which they drive to the schools to the buildings in which they do business. The primary responsibility of the Compliance & Enforcement division is to investigate complaints and prosecute violations of the engineering practice act to protect the health, safety, and welfare of the public. The enforcement program serves the entire population of Texas and endeavors to hold

accountable the 54,000 licensees and 8,800 registered firms - directly through enforcement cases and indirectly through communication and education programs.

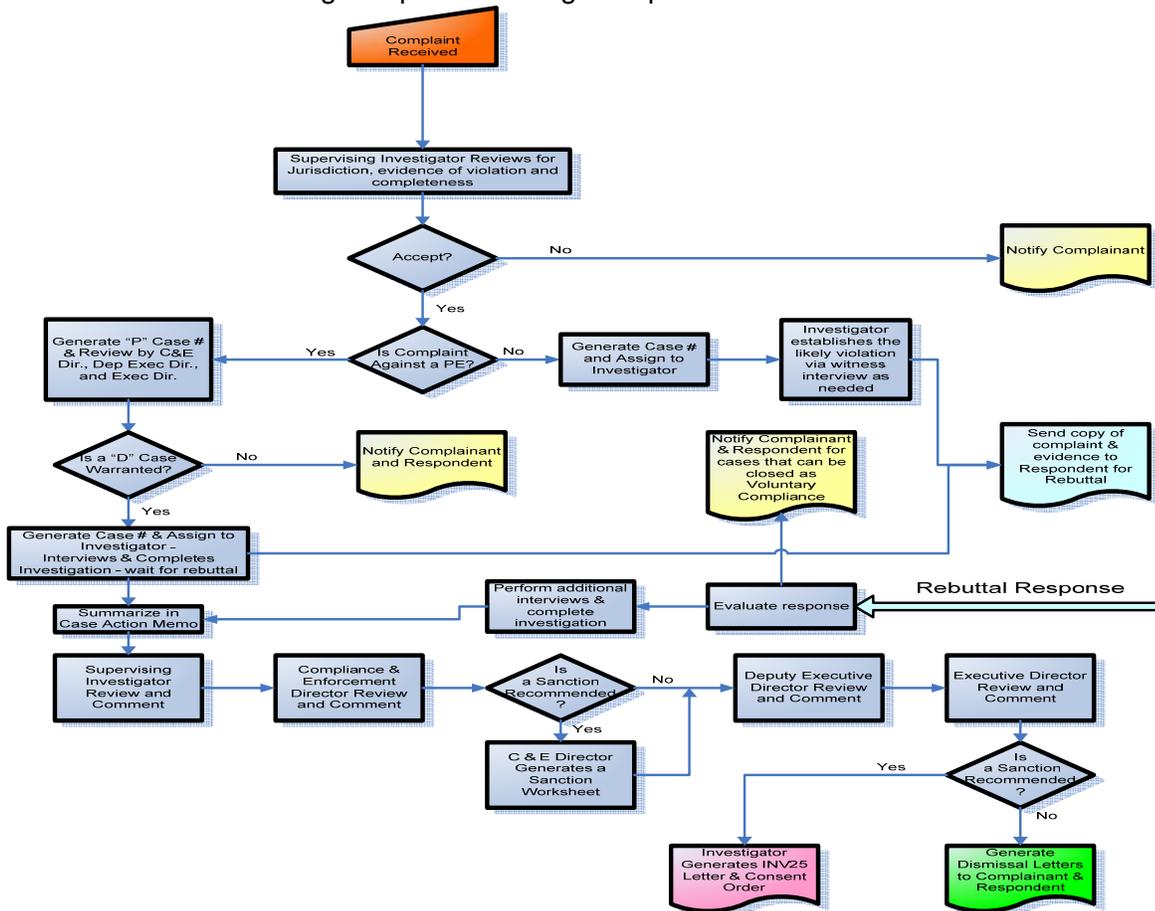
**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**

The Compliance & Enforcement division is administered by the Director of Compliance & Enforcement who reports directly to the Executive Director. Reporting directly to him are Staff Engineer, Supervising Investigator and Compliance and Enforcement Administrator. Three Investigators report to the Supervising Investigator.

The Director is actively involved in all aspects of enforcement, compliance, policy advisory opinions, continuing education audits, and open records requests. This includes involvement in the investigative process, providing guidance where appropriate, evaluating investigation files and recommending administrative and/or other sanctions for those found to be in violation.

The Supervising Investigator opens and assigns cases to the investigators and evaluates their work and directs investigations of alleged violation of the statute and Board rules. The Supervising Investigator and the other three investigators are highly trained and experienced. Due to the complexity of the statute and Board rules, the investigators must have regular interaction with other staff members, legal counsel for the Board, licensed professional engineers, complainants, and respondents.

The overall case-handling complaint/investigation process is outlined in the flow chart below.



The division also responds to requests for statute and rule interpretations on a daily basis; however, there is a process in place to receive and address formal policy advisory opinion requests that involve both staff and the Board’s Policy Advisory Opinion Committee.

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

Funding for all TBPE operations comes primarily from the application and renewal licensing fees. There are administrative penalties that are also collected from violators of the statute and rules and for FY2010 that amount was \$35,920.00.

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

There is no known program or agency that provides an identical service or function within the state of Texas. Other states have similar boards, generally following a model similar to that provided by the National Council of Examiners for Engineering and Surveying (NCEES).

**I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

While there are no other agencies that license or regulate engineers in Texas, there are professions that relate to or are closely aligned with engineering practice and the Board has entered into open communication and/or has developed MOUs to address any areas of overlap between professions. There is ongoing dialogue between TBPE and the following agencies:

Texas Board of Architectural Examiners  
 Texas Board of Professional Land Surveying  
 Texas Board of Professional Geoscientists  
 Texas Department of Insurance – Windstorm Certifications

**J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.**

The Compliance & Enforcement division has occasional interaction with cities, counties, and other local regional authorities as they relate to our statute and rules. Specifically, sections §§1001.402 and 1001.407 of TEPA relate to requirements of public officials or political subdivisions of the state to ensure that engineering plans, specifications, and documents are signed and sealed by licensed professional engineers. If public works projects include engineering, it is also necessary to ensure that those plans are prepared by licensed professional engineers, and that the construction is under the direct supervision of a licensed professional engineer. TBPE works closely with local officials to help answer questions and provide guidance about state requirements and jurisdiction.

The Board has established specific rules that require that political subdivisions of the state adhere to the Qualifications Based Selection process for engineers as defined in Government Code Chapter 2254, referred to as the Professional Services Procurement Act.

The Board has also established several advisory committees that meet up to twice per year, and the Government Advisory Committee meets periodically to discuss the issues that are common to the Board and the cities, counties and other state entities that utilize and or interact with licensed professional engineers.

**K. If contracted expenditures are made through this program please provide:**

- **the amount of those expenditures in fiscal year 2010;**
- **the number of contracts accounting for those expenditures;**
- **a short summary of the general purpose of those contracts overall;**
- **the methods used to ensure accountability for funding and performance; and**
- **a short description of any current contracting problems.**

Our statute allows us to contract with technical experts and other professionals in the course of our complaint investigation and disposition as defined by section §1001.252(i) of the TEPA. To this end, the Compliance & Enforcement division has posted a request for assistance on our homepage for technical experts. We have had over 300 licensed professional engineers

respond with their resumes, volunteering to assist in our enforcement cases. Once a technical expert is selected, we request a quote for the cost to provide the defined service, and if within generally accepted price guidelines of the profession, we make a decision as to whether or not we will purchase the services. Many of the professionals we contract with do not ask for remuneration. No paying contracts were executed this Fiscal Year. We do not have any contracting problems at this time.

**L. What statutory changes could be made to assist this program in performing its functions? Explain.**

Please reference section IX for policy issues.

**M. Provide any additional information needed to gain a preliminary understanding of the program or function.**

Not Applicable.

**N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

- **why the regulation is needed;**
  - **the scope of, and procedures for, inspections or audits of regulated entities;**
  - **follow-up activities conducted when non-compliance is identified;**
  - **sanctions available to the agency to ensure compliance; and**
  - **procedures for handling consumer/public complaints against regulated entities.**
- The enforcement of the state laws is essential to ensuring the safe and responsible practice of engineering in Texas.
  - Audits of continuing education are performed quarterly at a rate of 250 or about 2% of licensees who have recently renewed. The audit includes review of the professional engineer's documentation along with his/her affirmation at time of renewal that all requirements had been met.
  - Compliance is monitored by the investigations division to ensure fines and required actions have been met. If requirements have not been met within the prescribed period of time, additional steps are taken, often including lifting of probation which leads to license suspension. When warranted, additional cases will be opened and new charges may be applied.
  - The agency has broad enforcement authority, including the ability to enforce cease-and-desist orders for unlicensed practice and up to suspension or termination of license for professional engineers. The Board reviews and updates the sanction table found in Board Rules 139.35 Sanctions and Penalties.
  - The procedures for filing a complaint with the board for violations of the TEPA are found on the agency website and include a complaint form and instructions: <http://www.tbpe.state.tx.us/complaint.htm> . The investigation process is described in great detail : [http://www.tbpe.state.tx.us/complaint\\_process.htm](http://www.tbpe.state.tx.us/complaint_process.htm).

**O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices. See Exhibit 12: Information on Complaints Against Regulated Persons or Entities**

<b>Texas Board of Professional Engineers Compliance &amp; Enforcement Division Exhibit 12: Information on Complaints Against Regulated Persons or Entities Fiscal Years 2009 and 2010</b>		
	<b>FY 2009</b>	<b>FY 2010</b>
Total number of regulated persons	52,185	53,688
Total number of regulated entities	7,618	8,600
Total number of entities inspected	0 (n/a)	0 (n/a)
Total number of complaints received from the public	433	432
Total number of complaints initiated by agency	850	764
Number of complaints pending from prior years	202	195
Number of complaints found to be non-jurisdictional	Tracked as Number of Jurisdictional Complaints Received	Tracked as Number of Jurisdictional Complaints Received
Number of jurisdictional complaints found to be without merit	0	0
Number of complaints resolved	870	771
Average number of days for complaint resolution	104	86
Complaints resulting in disciplinary action:	58	36
administrative penalty	44	30
Reprimand	28	10
Probation	10	8
Suspension	2	1
Revocation	1	1
Other- Cease & Desist and/or Ethics Course	18	20

**B. Licensing****A. Provide the following information at the beginning of each program description.**

<b>Name of Program or Function</b>	Licensing
<b>Location/Division</b>	Austin
<b>Contact Name</b>	David Howell, P.E., Director of Licensing
<b>Actual Expenditures, FY 2010</b>	\$947,284.86
<b>Number of FTEs as of August 31, 2010</b>	11

**B. What is the objective of this program or function? Describe the major activities performed under this program.**

The primary function of the licensing division is to evaluate applications and renewals for individual licensure and registered engineering firms as prescribed in Subchapter G of the Texas Engineering Practice Act (TEPA) related to License Requirements, Subchapter H related to License Renewal, section §1001.405 related to Practice by Business Entity and the associated Board Rules.

The evaluation process for individual licenses uses the criteria of education, experience, and examinations to determine if an applicant is qualified, capable, and competent to engage in the practice of engineering. If an applicant is deemed qualified, the licensing division grants the opportunity to take the professional examination. Upon passage of the examination, the applicant becomes a licensed professional engineer. In very limited cases, the TEPA and Board Rules also allow for certain people, with qualifying education and sufficient years of creditable and acceptable experience, to request a waiver of one or both of the examination requirements.

The licensing division oversees implementation of the Fundamentals of Engineering and Principles and Practice of Engineering examinations as specified in section §1001.304 of the TEPA. The examinations are developed and administered by the National Council of Examiners for Engineering and Surveying under contract with the agency.

The registration process for engineering firms ensures that all sole practitioners, partnerships, corporations, and other business entities may not offer or perform engineering in Texas unless certain eligibility requirements are met. The licensing division accepts and evaluates firm registrations in accordance with the Act and Board Rules.

**C. What evidence can you provide that shows the effectiveness and efficiency of this program or function? Provide a summary of key statistics and performance measures that best convey the effectiveness and efficiency of this function or program.**

The TBPE tracks licensing outcomes and performance using several different performance measures. Outcome and efficiency performance measures are used as indicators of the effectiveness of the overall programs, and are also reported as indicators of workload. Explanatory measures are not directly controlled by the agency. Output measures

demonstrate the workload that the agency responsibly handles on a regular basis and indicate trends which can be used to predict future workload for resource allocations as well as help identify opportunities for process improvements where they can have the most impact. Performance measures include the number of new licenses issued and renewed, new firms registered and renewed, number of exams taken, percent of exams passed, etc.

Key measures are used by management to determine the efficiency and effectiveness of the program. One example, and a key goal of the agency, is the number of days to complete an application. Due to process improvements, the average number of days has dropped from over 80 days in FY2009 to approximately 30 days on average in FY2010. (See Attachment 14, Performance Measures)

**D. Describe any important history regarding this program not included in the general agency history section, including how the services or functions have changed from the original intent.**

The licensing programs have evolved over the life of the Texas Engineering Practice Act as the Act itself has been modified. Since its inception, the Act has been modified in all aspects of licensure requirements including required education, experience, and examinations. As changes are made to the Act, the Board creates rules to implement the changes and makes necessary changes to processes and procedures.

The licensing division has made significant process improvements in the last five years to address internal and external customer needs, many utilizing technological advances. These include online renewals for individual licenses and firm registrations, an automated notification system for application processing, online exam registration processing, new online application system, a custom database, and a digital document imaging system. Each of these improvements allows better use of agency resources and provides increased service for customers.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

The licensing program affects engineers of all disciplines who may intend to practice engineering in the state of Texas. All engineering students in Texas are potentially affected by the education requirements in the Act and may take the Fundamentals of Engineering (FE) examination. Qualified engineers from Texas, other states, and even other countries may obtain licensure in Texas.

Texas has approximately 54,000 licensed engineers of all engineering disciplines, which is the second largest license roster of all US states. Licensed engineers range in age from their late 70s and 80s to recent licensees in their mid 20s, with most between 40 – 60 years of age.

The FE exam administered in accordance with agency rules is traditionally taken by engineering students or recent graduates and has numbered over 3,000 examinees per year since 2003 and well over 4,000 examinees in recent years.

Engineering companies are required to register with the agency before offering or performing engineering services in Texas. They are registered as either a regular firm or a sole practitioner. A sole practitioner is a single-employee firm. It has the same responsibilities as

a regular firm, but pays a reduced fee. Texas has approximately 8,800 registered engineering firms, of which approximately 40% are sole practitioners.

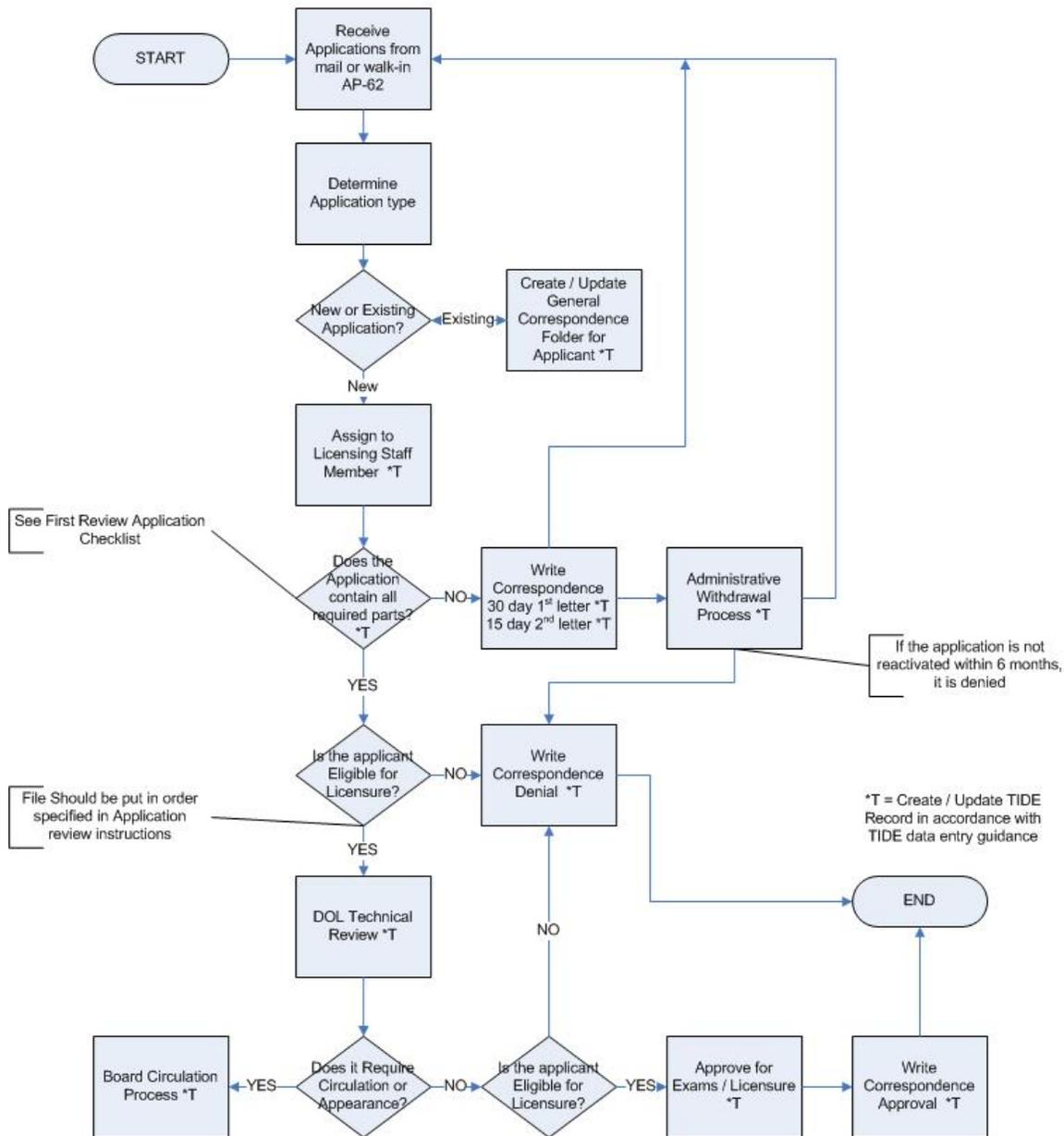
**F. Describe how your program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**

In an effort to create and maintain policies and procedures in a fluid, but documented manner, and allow the staff with the appropriate knowledge to contribute, the agency created the equivalent of an online process manual constructed in a Wiki format. The Licensing department has a page on the agency Wiki system which is used for a repository for written policies and procedures for its regular functions. Each of the following processes has a written procedure on the agency Wiki system:

- PE Application Review
- PE Renewals
- Firm Registration
- Firm Renewals
- Delinquent Firm Renewal
- Expired Firm Renewal
- FE Exam Registration
- PE Exam Registration
- FE/PE Exam Result Letters
- Exams Not Approved procedure
- PE Did Not Schedule procedure
- Duplicate Certificate Process
- Change of Address/Employer Change Process
- Inactive Status Application Processing Procedures
- PE Reactivation Application Process
- EIT Process
- Verifications
- Cash Handling Procedure
- Notice of Death Processing
- Voluntary Surrender Processing
- Mail Processing

There have been flowcharts developed for the major functions and examples for the PE Application Review and Firm Registration processes follow.

PE Application Review – Main Process





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

The funds collected by the Licensing program include those related to obtaining new PE licenses and Firm registrations and renewals of PE licenses and Firm registrations.

- Professional Fee – This is a \$200 fee attached to new PE applications and PE renewals as required by section §1001.206 of the Act. There are exemptions from this fee in the Act for certain individuals. This is a pass-through fee that is deposited to the General Revenue Fund
- PE Application - \$50 for all PE applications
- PE Renewal - \$35 for all PE renewals
- Late PE Renewal - \$75 additional fee for late PE renewals. Another \$75 is assessed if the renewal is late three months or more.
- Firm Registration (non-sole practitioner) - \$150
- Sole Practitioner Firm Registration - \$25
- Firm Registration (non-sole practitioner) Renewal - \$150
- Sole Practitioner Firm Registration Renewal - \$25
- Late Firm and Sole Proprietor Renewal – Fee adds \$150 or \$25 for late renewal
- EIT Certification - \$15
- Duplicate PE Certificate - \$5
- Duplicate Firm Certificate - \$5
- Exam Fees – Currently \$125 for the FE exam and \$265 for the PE exam. These costs are set by the exam administrator and were collected and passed through to cover the costs of the exam. In May 2011, the Board agreed that these fees could be collected by the exam administrator.

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

The board is the only agency responsible for the licensure and regulation of professional engineers in Texas. All states license professional engineers and engineering licensure agencies in the U.S. participate in providing the Fundamentals of Engineering and Principles and Practice of Engineering examinations developed by National Council of Examiners for Engineering and Surveying (NCEES).

**I. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question H and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

As stated in question H above, there are no other agencies in Texas that regulate engineers directly, but there are several regulatory Boards with which the TBPE has created MOUs and/or similar policies to avoid or handle issues of overlap of the professions:

Texas Board of Architectural Examiners

Texas Board of Professional Land Surveying

Texas Board of Professional Geoscientists

Texas Department of Insurance – Windstorm

National Council of Examiners for Engineering and Surveying (NCEES)

**J. If the program or function works with local, regional, or federal units of government include a brief description of these entities and their relationship to the agency.**

Not applicable.

**K. If contracted expenditures are made through this program please provide:**

- the amount of those expenditures in fiscal year 2010;
- the number of contracts accounting for those expenditures;
- a short summary of the general purpose of those contracts overall;
- the methods used to ensure accountability for funding and performance; and
- a short description of any current contracting problems.

The licensing of qualified engineers requires the administration of examinations. There are two major exams given during the complete licensure process: The Fundamentals of Engineering (FE) exam and the Principles and Practice of Engineering (PE) exam. Both of these exams are developed and administered under contract by the NCEES. The contract was set up so that examinees register and pay for the whole exam process including the fees associated with the exam administration and materials and the fees associated with the grading of the exams. Prior to May, 2011, those funds were held in the TBPE accounts until NCEES billed the TBPE for the appropriate amounts to be paid. The contract for NCEES exam administration will remain in place, but as of May, 2011, those fees will be paid directly by examinees to NCEES and will not be handled in the TBPE financial system at all. For FY 2010 the amount paid the NCEES under this contract was \$1,150,450.

The Licensing department sends numerous pieces of official correspondence to regulated customers relating to Engineer in Training certification, initial PE licensure, PE License renewals, initial Firm -registrations and Firm renewals. Each of these are massive print-and-mail jobs that are handled under contract with Whitley Printing in Austin. The contract is set up to handle large batches of items and pricing is set and/or based on the number of items in each batch. For Fiscal Year 2010, the amount paid to Whitley under this contract was \$31,086.

The third standing contract for TBPE is related to the payment of online fees. Under the statewide Department of Information Resources (DIR) contract with NICUSA, the TBPE pays NICUSA \$0.25 per transaction directly plus credit card fees which are deducted from our Trust Fund bank account. For Fiscal Year 2010 the amount paid for online transactions was \$162,092.

**L. What statutory changes could be made to assist this program in performing its functions? Explain.**

See recommendations in Section IX.

**M. Provide any additional information needed to gain a preliminary understanding of the program or function.**

Not applicable.

**N. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. For each regulatory program, if applicable, describe:**

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

Licensing engineers is intended to protect the public health, safety, and welfare by ensuring that only competent individuals may practice engineering. The specific licensing requirements for education, experience, and examinations set standards for minimal competence for licensed Professional Engineers. The thorough and complete review of an applicant's qualifications for licensure is required for each license issued. The Texas Board of Professional Engineers reviews the qualifications of all applicants and does not rely on endorsements from other state Boards for licensure.

The certification of Engineer- in-Training (EIT) and the registration of Engineering Firms (Firms) are both functions related to the licensing of engineers. The EIT certification is a nationally recognized stage in the process toward becoming a licensed engineer showing that a candidate has qualifying education and has passed the FE exam. The registration of Firms is an extension of licensure to help protect the public by clarifying that only qualified companies may offer or perform engineering services.

Renewals of licenses and registrations are essential to the implementation of the continuing education requirements and are an effective way to help licensees keep their license or registration information current.

**O. For each regulatory program, if applicable, provide the following complaint information. The chart headings may be changed if needed to better reflect your agency's practices.**

Please reference the table in the Compliance and Enforcement section.

## VIII. Statutory Authority and Recent Legislation

A. Fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact your agency. Do not include general state statutes that apply to all agencies, such as the Public Information Act, the Open Meetings Act, or the Administrative Procedure Act. Provide information on Attorney General opinions from FY 2007 – 2011, or earlier significant Attorney General opinions, that affect your agency's operations. See Exhibit 13: Statutes/Attorney General Opinions.

Texas Board of Professional Engineers Exhibit 13: Statutes/Attorney General Opinions	
Statutes	
Citation/Title	Authority/Impact on Agency (e.g., Provides authority to license and regulate nursing home administrators)
The Texas Engineering Practice Act Texas Occupations Code Ch.1001.	Provides the Texas Board of Professional Engineers authority to license and regulate engineers and the practice of engineering.
Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
Opinion No. JC-0525	Affirmed that "in-house" engineers may not use "engineer" on business cards or letterhead unless licensed by the Board as a professional Engineer.
Opinion No. GA-0439	Affirmed that city building officials may rely on the seal of a professional engineer that the plat or plan was prepared by a professional engineer who endeavored to comply with all applicable requirements.

**B. Provide a summary of recent legislation regarding your agency by filling in the chart below or attaching information already available in an agency-developed format. Briefly summarize the key provisions. For bills that did not pass, briefly explain the key provisions and issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation). See Exhibit 14: 82<sup>nd</sup> Legislative Session Chart**

<b>Texas Board of Professional Engineers Exhibit 14: 82nd Legislative Session Chart</b>		
<b>Legislation Enacted – 82nd Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions</b>
HB 2284	Hardcastle	Provides definitions of the practice of architecture and the practice of engineering; creates a process for allowing engineers who have been practicing architecture to become licensed; creates allowances
HB 3	Smithee	Assigns responsibilities to the Texas Department of Insurance Windstorm Inspection division and the Texas Board of Professional Engineers for determining criteria for a windstorm inspector and enforcement actions.
HB 2687	Callegari	Allows provisions for petroleum engineers to practice in states with agreements with Texas that have petroleum reserves that cross state lines.
<b>Legislation Not Passed – 82nd Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions/Reason the Bill Did Not Pass</b>
HB 1164	Keffer	This bill would have prohibited enforcement of the TEPA against a political subdivision of the state of Texas or of an employee of a political subdivision or of the state who is not licensed under this chapter. The proposed legislation appeared to allow cities, counties, employees of cities or counties, or employees of the state to freely practice engineering without a license. The language as written could have caused enforcement issues for the agency and have public safety implications.
HB 1092 and HB 1231	Hopson and Christian (identical bills)	This bill was very narrowly focused on specific projects performed by a municipality in a county of fewer than 80,000 people.
HB 1465	Callegari	Would have dissolved the Joint Advisory Committee in both the architect and engineering acts. This language was included in the text of HB 2284.
HB 1698	Smith	Would prohibit an SDSI agency named within 8930 from bringing cases against licensees of another profession that is named in the Act (engineers, architects, accountants) by prohibiting the engagement of the attorney general in civil, criminal or contested hearings against those licensees.

<b>Texas Board of Professional Engineers Exhibit 14: 82nd Legislative Session Chart</b>		
<b>Legislation Not Passed – 82nd Legislative Session</b>		
HB 2480	Geren	Would have added the regulation of land surveyors to the Texas Board of Architectural Examiners and geoscientists to the Texas Board of Professional Engineers.
HB 2522	Otto	Would have prohibited a licensing agency from taking action against a licensee of another board if that board has determined a particular service or work is not prohibited.
HB 2543	Smith	Would have abolished several regulatory boards and created a Professional Services board that regulates architects, landscape architects, land surveyors and engineers. Created a new board appointed by the governor. Would have repealed laws regarding interior design regulation, removed all agencies from Self-Directed, Semi-Independent status, and prohibited current executive directors of any of these agencies from being hired to lead the new agency. Was rolled into HB 3166.
HB 3166	Callegari	A consolidation bill that would combine numerous agencies into larger agencies, including the entire text from HB 2543 above.
SB 1828	Wentworth	Would have created certification for structural engineers.

## IX. Policy Issues

### Policy Issue 1: Allowable Sanctions.

#### A. Brief Description of Issue

Enforcement sanctions of the board need to be clarified and updated to provide the board the tools necessary to effectively enforce the Texas Engineering Practice Act (TEPA)

#### B. Discussion

Section §1001.451 TEPA lays out specific disciplinary actions of the board. Additionally, section §1001.501 provides that the board may impose an administrative penalty and caps the penalty per violation to \$3,000. Currently, administrative penalties are listed separately and not listed as a disciplinary action in section §1001.451. Finally, section §1001.4526 allows the board to order restitution as part of a disciplinary action in certain limited circumstances. As written, having allowable disciplinary actions listed in different sections creates opportunities for confusion for licensees and the public.

The board has a maximum sanction of \$3,000 per violation per day. Other boards, including the Texas Medical Board, the Texas Board of Nursing, the Texas State Board of Veterinary Medical Examiners, the Texas Board of Architectural Examiners, and the Texas State Board of Pharmacy, have a maximum penalty of \$5,000. The board feels that an increased maximum penalty would be helpful to appropriately enforce the TEPA and to better protect the public.

In some enforcement actions, an engineer or unlicensed individual may have taken payment from a member of the public and not performed the required work adequately, competently, or may not have performed the work at all. In those cases, it may be appropriate to require that

the violating individual pay restitution to the aggrieved party. However, section §1001.4526 limits the ability of the board to order restitution to only agreed orders resulting from an informal settlement conference. The board feels that the broader ability to order restitution when necessary would be helpful to better protect the public.

### **C. Possible Solutions and Impact**

We recommend modifying the TEPA section §1001.451 to include administrative penalties per §1001.501 and restitution per §1001.4526. In addition, we recommend modifying §1001.4526 to allow restitution as a sanction in all cases as necessary by removing the language “as provided in an agreement resulting from an informal settlement conference”. Finally, we recommend modifying section §1001.502(a) to raise the maximum sanction per violation from \$3,000 to \$5,000. This will give the board additional and appropriate tools to effectively enforce the Act.

## **Policy Issue 2: Licensure for Engineering Educators**

### **A. Brief Description of Issue**

Several sections of the TEPA appear to be in conflict and/or may create situations precluding the licensing of engineering educators as professional engineers.

### **B. Discussion**

Section §1001.003(c)(5) TEPA states that “responsible charge of engineering teaching or the teaching of engineering” is the practice of engineering. This reasonably suggests that anyone teaching or supervising the teaching of engineering, such as professors or university administrators, should be licensed engineers, since only licensed engineers may practice engineering (with certain exemptions addressed subsequently).

However, TEPA section §1001.065(b) states that “[a]n employee of an institution of higher education or a private or independent institution of higher education who is performing research or instructional work within the scope of the person’s employment by the institution is exempt from the licensing requirements of this chapter.” This language could be interpreted that any engineering educator or employee at a college or university is exempt from licensure.

Finally, TEPA section §1001.302(c)(1) states that engineering teaching cannot be counted as qualifying experience toward licensure.

These conflicts make it very difficult and confusing for engineering educators and the board. In general, the board supports and encourages engineering educators to be licensed and act as role models as they provide the education required for young engineers to become licensed. However, if an engineering educator has only followed an academic path, i.e. has no consulting or private sector experience, then section §1001.302(c)(1) effectively prohibits them from ever becoming licensed unless they leave academia to gain the required experience of four or eight years.

Conflict regarding the licensure of engineering educators exists within the profession itself, with consulting engineers concerned that engineering educators could be licensed with only academic experience, and could provide engineering services to the public, competing in the private sector with non-faculty engineers. From the academic side, there was concern that all engineering faculty would be required by §1001.003(c)(5) to become licensed. It was argued that this would create an unnecessary burden on college and universities hiring engineering

faculty, as some individuals from other states or countries may have difficulty becoming licensed in Texas.

### **C. Possible Solutions and Impact**

We would recommend that Sunset revisit this issue and clarify the appropriate requirements for the licensure of engineering educators. One possibility would be to remove the restriction on teaching experience in §1001.302(c)(1) or adding permissive language that engineering teaching may be counted as meeting experience requirements.

## **Policy Issue 3: Exemptions from Licensure**

### **A. Brief Description of Issue**

Subchapter B contains a number of exemptions from the TEPA, covering a broad range of activities and requirements. These provisions have been added to the TEPA over time, and some are in conflict, are confusing, or use terms that have become outdated or have broadened beyond the original intent.

### **B. Discussion**

Throughout Subchapter B, different exemption provisions use different phrases to exempt an individual, firm, or engineering work from the TEPA. For example, section §1001.052 exempts a person “from the licensing requirements of this chapter”, while section §1001.062 exempts a person “from this chapter”. Does an engineer performing exempted work and therefore exempted from licensure requirements still have to abide by other provisions of the act? While this can be reasoned out, it is not plainly clear to the public and has resulted in enforcement issues with the board.

Individual sections of Subchapter B also have various issues as identified over time by board staff through repeated questions from the public or issues raised during enforcement cases or applications for licensure.

The first is section §1001.051, which states that the exemptions do not apply to individuals or firms that offer engineering to the public. However, the issue has been raised as to who the ‘public’ is, especially if an individual or firm is offering engineering services to an entity that is exempt, such as a utility or an oil or gas firm. Some have attempted to interpret “the public” narrowly to include only individual members of the public, such as private citizens, and not to include other engineers or engineering companies. Defining the “public” in this section could avoid confusion and assist enforcement to better protect the “public.”

Section §1001.053 includes dollar amount thresholds for public works. The board hears from different stakeholders that these thresholds are outdated and are therefore too low and require engineering on all public works. In addition, questions have arisen about the need for different thresholds in §1001.053(1) and (2).

In addition, section §1001.053(3) describes an exemption for road maintenance or improvements undertaken by the commissioners court of a county. The board has received comments and questions regarding why road maintenance or improvements undertaken by a city are not included in this exemption. This section could be reviewed in light of this concern.

Section §1001.056(a)(2)(F)(iii) describes a requirement of a one story building to be exempt, specifically that the structure “does not contain a clear span between supporting structures

greater than 24 feet on the narrow side.” The phrase “on the narrow side” creates confusion and is not necessary.

Section §1001.056(c)(2) was added by the 81st legislature (2009) to require engineering on certain residential foundations built on expansive soils. However, the language is confusing and is difficult to interpret by the public and has caused difficulty in the enforcement of this provision. Questions have been raised about issues such as the definition of expansive soils (how deep, how to measure, etc.), what to do with jurisdictions that have not adopted certain codes, etc. We feel that this section could benefit from some clarification.

Section §1001.057 exempts the activities of certain companies and their employees from the TEPA. This provision is generally referred to as an ‘Industrial Exemption’, and most states have one. However, the question often arises as to how broadly this exemption applies. Some companies have laid off employees and are now re-hiring them as independent contractors, or companies are outsourcing activities to be provided by the private sector. How does this provision work with these contract employees, firms that only support one particular firm or industry that may be exempt or other situations where the parent company is exempt? This section could benefit from a clarification similar to §1001.051.

In addition, the board has had enforcement cases relating to §1001.057 and ‘custom’ products. A firm could primarily be a manufacturing firm and therefore be exempt, but they also provide ‘customization’ or ‘modifications’ of their standard products that could involve engineering design or calculations. Examples include large light poles, oil rigs, etc. that could ultimately represent a threat to the public health, safety, and welfare. This section could benefit from clarification on this issue.

Section §1001.058 provides an exemption for a “privately owned public utility”. Questions have arisen as to why a publicly owned utility is also not exempt since they both ultimately serve the same public.

Sections §§1001.057(b) and 1001.058(b) address a situation where a person has claimed an exemption and then attempts to offer or offers engineering services and prohibits them from claiming the exemption for 10 years. These sections are confusing and to our knowledge have never been utilized. They do not seem to add any additional protection to the public than would be provided by normal application of the provisions of the Act.

Section §1001.061 provides an exemption for telephone companies, and specifically to any “plan, design, specification, or service that relates strictly to the science and art of *telephony*”. While this term telephony may have originally implied copper wire voice communications, the industry and companies involved have expanded to providing digital communications, fiber optics, wireless communications, digital television and internet access, etc. which may be well beyond the scope of the original exemption. Therefore, this exemption could benefit from a review and the definition of the term “*telephony*” to address modern communications methods and business practices.

### **C. Possible Solutions and Impact**

The following are changes that could be considered to address individual concerns listed in section B above.

§1001.051 – To clarify who “the public” is, add “...to the public or a firm or individual that is

exempt under this chapter.”

§1001.053 – Re-evaluate appropriate thresholds for public works; consider consolidating paragraphs (1) and (2); consider including cities in the exemption in (3) for road maintenance and improvements.

§1001.056(a)(2)(F)(iii) – Consider removing “on the narrow side”.

§1001.056(c)(2) – Clarify language in this section as appropriate.

§1001.057 – Clarify the limits of the exemption to only the primary company and its employees, and that the exemption does not apply to contracted individuals or firms that provide engineering services to the primary company. In addition, clarify language concerning ‘custom’ manufactured products.

§1001.058 – Review in regards to an exemption for a ‘privately owned public utility’ or a public utility in general.

§1001.057(b) and 1001.058(b) – Consider removal of these sections as they are confusing and do not provide any additional protection to the public.

§1001.061 – Review exemption and clarify in regards to the term ‘telephony’ and modern communications methods and business practices.

#### **Policy Issue 4: Combine Self-Directed Semi-Independent (SDSI) Statutory Language with Texas Engineering Practice Act**

##### **A. Brief Description of Issue**

The board currently has two main statutes that govern its operations – Occupations Code Chapter 1001 (Texas Engineering Practice Act - TEPA) and Vernon’s Texas Civil Statutes article 8930 (Self-Directed Semi-Independent Agency Project Act – SDSI).

##### **B. Discussion**

Having two controlling statutes complicates determining operational and financial requirements for the board. In some instances, provisions of the two statutes can conflict or create competing requirements that must be resolved. In addition, there are three agencies included in the SDSI act – the Texas Board of Professional Engineers, the Texas Board of Architectural Examiners, and the Texas State Board of Public Accountancy.

During the 81st regular session (2009), several financial regulatory agencies were given SDSI status, including the Texas Department of Banking, the Department of Savings and Mortgage Lending, the Office of Consumer Credit Commissioner, and the Credit Union Department. However, these agencies were not added to the original SDSI act, but rather the provisions for SDSI status were added directly to the finance code.

An example of a provision in the Act that conflicts with instructions in the SDSI act includes section §1001.507, which directs that the portion of an enforcement penalty representing the costs incurred by the board “may be appropriated only to the board to reimburse the board for performance of its regulatory functions”, while section 14(c) of the SDSI act states that a” project agency may retain each fiscal year an amount of fines and other revenue the project

agency receives during the fiscal year as a result of enforcement actions that is equal to 20 percent of the total amount expended by the project agency during the previous fiscal year, not to exceed \$1 million.” Disregarding the fact that the TEPA still references appropriations, the language can still be read as providing conflicting directions to the board and can create difficulties for financial audits and reviews.

### **C. Possible Solutions and Impact**

We recommend incorporating the appropriate language from VTCS 8930 directly into Texas Occupations Code Chapter 1001 and removing the board from VTCS. In addition, we recommend including language that parallels VTCS 8930 article 14(c) and removing section §1001.507 from the TEPA.

## **Policy Issue 5: Clarification of Expert Engineering Testimony**

### **A. Brief Description of Issue**

References to expert testimony appear in two sections of the TEPA and cause confusion to the public.

### **B. Discussion**

Section §1001.003(c)(1) states that “providing an expert engineering opinion or testimony” is considered the practice of engineering. Section §1001.004(e)(2) states that the Act does not prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal, subject to the board’s disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering.”

These two provisions, when read together, are very confusing to the general public. Section §1001.003 says that expert engineering testimony is the practice of engineering, and therefore can only be performed by a licensed engineer. Section §1001.004(e)(2) seems to say that testimony (engineering or otherwise) is not prohibited by the TEPA. If a person is a licensed engineer, then there is no problem as they meet the test of both sections. However, the question is often asked if a non-licensed person can give engineering testimony. This would violate §1001.003, but seems to be allowed by §1001.004(e)(2).

In addition, the final phrase of §1001.004(e)(2) – “subject to the board’s disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering” seems to imply that, even if a non-licensed individual is permitted to provide engineering testimony, that they would be subject to the Act as if they were licensed. This causes confusion to the public and board staff as how to enforce this provision.

### **C. Possible Solutions and Impact**

We propose an evaluation of these two sections regarding expert engineering testimony and possible clarifying language to identify if and when a non-licensed person may provide engineering testimony. Changes might include modifications to section §1001.004(e)(2) to change the word “person” to “unlicensed individual” and to remove the final phrase from that section as discussed above.

## Policy Issue 6: Revise Fee Increase Language

### A. Brief Description of Issue

Section §1001.206 outlines several exemptions from the \$200 fee increase for licenses and renewals, and requires the board to deposit a portion in the Foundation School Fund. The exemptions can be confusing and the deposit to the Foundation School Fund is actually handled by the Comptroller.

### B. Discussion

Section §1001.206(b) of the TEPA requires that \$50 of the \$200 fee increase collected by the board to be deposited directly into the Foundation School Fund. The board has been informed by the Office of the Comptroller that all funds are to be directly deposited into a single account and that the Comptroller will handle disbursement to the Foundation School Fund. This puts the statute into conflict with actual practice.

As for exemptions, §1001.206(c)(1) exempts individuals that meet the qualifications of §§1001.057 (employees of private corporations) and 1001.058 (employees of certain utilities) from paying the fee increase, and includes the language “but does not claim that exemption”. This creates confusion, as employees of private corporations and utilities are not required to be licensed and would therefore not have any fee to pay. Therefore, the only individuals that would be subject to the renewal fee and therefore the fee increase would be engineers that are licensed and inherently do not take the exemption (i.e. – they get licensed). So, this language is redundant and unnecessary as it causes confusion by licensees.

The board also often gets questions from licensees concerning why only §§1001.057 and 1001.058 are included as exemptions from the professional fee. A review of exemptions may be beneficial.

### C. Possible Solutions and Impact

We recommend the removal of section §1001.206(b), and the removal of the language “but does not claim that exemption” from section §1001.206(c)(1).

In addition, other exemptions from Subchapter B might be considered.

## Policy Issue 7: Remove Reference to Exam Length

### A. Brief Description of Issue

Section §1001.309(b)(2) of the Act references an eight hour exam. The NCEES is currently moving to a Computer Based Testing delivery system, and future exams may not be eight hours long.

### B. Discussion

NCEES exams are currently delivered in paper and pencil format, and examinees are given eight hours to complete the exam. However, NCEES is moving to a Computer Based Testing delivery system, and this may allow examinations to be shorter in length while still testing for minimum competency. NCEES is recommending to all state licensure boards to remove references to examination length in their statutes and rules to accommodate the future examinations.

### **C. Possible Solutions and Impact**

We recommend removal of the reference to the eight hour exam. The reference to the fundamentals of engineering exam is sufficient to indicate the requirement for enrollment as an Engineer-In-Training. This will allow the board to use the future NCEES exams delivered via Computer Based Testing in the future.

## **Policy Issue 8: Clarification of Renewal of Expired License for Out-of-State License Holder**

### **A. Brief Description of Issue**

Section §1001.354 is no longer necessary as other provisions in the TEPA and rules provide for re-licensure of previously licensed engineers, regardless of current licensure in another state.

### **B. Discussion**

This section of the TEPA directs the board to have a special process to allow individuals who were previously licensed in Texas to become re-licensed if they are currently licensed in another state. It also states that such an applicant does not need to re-take any exams. All applicants for licensure or re-licensure are already allowed to apply at any time, including individuals contemplated in this section. Any applicant that has taken an exam in the past does not have to re-take an exam, whether they are a previous Texas license holder or not or whether they are currently licensed in another state or not.

Finally, the fee outlined in the statute for re-application (currently set at twice the standard renewal fee or 2x\$235 or \$470) is actually higher than a standard application (and re-application) fee of \$250. Therefore, any ex-licensee wishing to be re-licensed whether licensed in another state or not, would not avail themselves of this provision.

### **C. Possible Solutions and Impact**

Since this section is redundant and unnecessary, we recommend removing it from the TEPA as it can be confusing for applicants. Removal of this section would not prohibit re-licensure of previously licensed individuals and would clarify the re-licensure process.

## X. Other Contacts

A. Fill in the following chart with updated information on people with an interest in your agency, and be sure to include the most recent e-mail address. See Exhibit 15: Contacts

<b>Texas Board of Professional Engineers Exhibit 15: Contacts</b>			
<b>INTEREST GROUPS</b> (groups affected by agency actions or that represent others served by or affected by agency actions)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Texas Society of Professional Engineers (TSPE)/Trish Smith	PO Box 2145 Austin, TX 78768-2145	(512) 472-9286	<a href="mailto:trishb@tspe.org">trishb@tspe.org</a>
Texas Council of Engineering Companies (TCEC)/ Steve Stagner, P.E.	1001 Congress Ave., Ste 200 Austin, Texas 78701	(512) 474-1474	<a href="mailto:steve@cectexas.org">steve@cectexas.org</a>
<b>INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS</b> (that serve as an information clearinghouse or regularly interact with your agency)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
National Council of Examiners for Engineering and Surveying/Jerry Carter	280 Seneca Creek Rd, Seneca, SC 29678	864-654-6824	<a href="mailto:jcarter@ncees.org">jcarter@ncees.org</a>
<b>LIAISONS AT OTHER STATE AGENCIES</b> (with which your agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)			
<b>Agency Name/Relationship/ Contact Person</b>	<b>Address</b>	<b>Telephone</b>	<b>E-mail Address</b>
Legislative Budget Board/Analyst/Emily Hoffman	Robert E. Johnson Bldg Fifth Floor 1501 North Congress Austin, Texas 78701	512-936-3043	<a href="mailto:Emily.Hoffman@lbb.state.tx.us">Emily.Hoffman@lbb.state.tx.us</a>

<b>Texas Board of Professional Engineers Exhibit 15: Contacts</b>			
Attorney General's Office/ Assistant Attorney General/Kevin Heyburn,	300 W. 15 <sup>th</sup> St, 10 <sup>th</sup> Floor Austin, TX 78711-2548	(512) 475-4203	<a href="mailto:Kevin.heyburn@oag.state.tx.us">Kevin.heyburn@oag.state.tx.us</a>
Office of the Governor/Governor Liaison/Ed Robertson	PO Box 12428, Austin, TX 78711	512-463-3827	<a href="mailto:erobertson@governor.state.tx.us">erobertson@governor.state.tx.us</a>
Texas Board of Architectural Examiners/Cathy Hendricks, Executive Director	333 Guadalupe, Suite 2-350, Austin Texas 78701	(512) 305-9000	<a href="mailto:Cathy.hendricks@tae.state.tx.us">Cathy.hendricks@tae.state.tx.us</a>
Texas Board of Professional Geoscientists/Mike Hess, Executive Director	P.O. Box 13225 Austin, TX 78711	512-936-4401	<a href="mailto:MHess@tbpge.state.tx.us">MHess@tbpge.state.tx.us</a>
Texas Board of Public Accountancy/William Treacy, Executive Director	333 Guadalupe, Tower 3, Suite 900 Austin, TX 78701-3900	512-305-7800	<a href="mailto:WTreacy@tsbpa.state.tx.us">WTreacy@tsbpa.state.tx.us</a>
Texas Department of Insurance/ Alexis Dick-Paolik, Deputy Commissioner for Inspections (Note: TBPE has only recently begun close work with TDI related to HB3 passed during the 82 <sup>nd</sup> Leg. Special Session)	P.O. Box 149104 Austin, TX 78714-9104	800-578-4677	<a href="mailto:Alexis.Dick@tdi.state.tx.us">Alexis.Dick@tdi.state.tx.us</a>
Texas Board of Professional Land Surveying/Frank DiTucci	12100 Park 35 Circle Bldg A Suite 156 MC-230 Austin TX 78753	512-239-5263	<a href="mailto:fditucci@txls.state.tx.us">fditucci@txls.state.tx.us</a>

## XI. Additional Information

- A. Fill in the following chart detailing information on complaints regarding your agency. Do not include complaints received against people or entities you regulate. The chart headings may be changed if needed to better reflect your agency's practices. See Exhibit 16: Complaints Against the Agency—Fiscal Years 2009 and 2010

Texas Board of Professional Engineers Exhibit 16: Complaints Against the Agency Fiscal Years 2009 and 2010		
	FY 2009	FY 2010
Number of complaints received	0	0
Number of complaints resolved	0	0
Number of complaints dropped/found to be without merit	0	0
Number of complaints pending from prior years	0	0
Average time period for resolution of a complaint	n/a	n/a

- B. Fill in the following chart detailing your agency's Historically Underutilized Business (HUB) purchases. See Exhibit 17: Purchases from HUBs

Texas Board of Professional Engineers Exhibit 17: Purchases from HUBs				
FISCAL YEAR 2008				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade	\$38,968	\$13,269	34.0%	57.2%
Professional Services	\$5,787	0	0	20.0%
Other Services	\$979,844	\$12,648	1.29%	33.0%
Commodities	\$22,945	\$9,946	43.3%	12.6%
<b>TOTAL</b>	<b>\$1,047,544</b>	<b>\$35,863</b>	<b>3.42%</b>	

<b>Texas Board of Professional Engineers Exhibit 17: Purchases from HUBs</b>				
<b>FISCAL YEAR 2009</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>				11.9%
<b>Building Construction</b>				26.1%
<b>Special Trade</b>	\$34,034	\$11,294	33.1%	57.2%
<b>Professional Services</b>	0	0	n/a	20.0%
<b>Other Services</b>	\$1,127,586	\$17,473	1.54%	33.0%
<b>Commodities</b>	\$33,189	\$19,407	58.4%	12.6%
<b>TOTAL</b>	1,194,809	\$48,174	4.03%	
<b>FISCAL YEAR 2010</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>				11.9%
<b>Building Construction</b>				26.1%
<b>Special Trade</b>	\$20,916	\$10,362	49.5%	57.2%
<b>Professional Services</b>	\$4,960	\$4,960	100%	20.0%
<b>Other Services</b>	\$1,270,280	\$16,330	1.28%	33.0%
<b>Commodities</b>	\$99,355	\$45,009	45.3%	12.6%
<b>TOTAL</b>	\$1,395,511	\$76,661	5.49%	

**C. Does your agency have a HUB policy? How does your agency address performance shortfalls related to the policy? (Texas Government Code, Sec. 2161.003; TAC Title 34, Part 1, rule 20.15b)**

The agency has a HUB policy as set forth in our strategic plan.

**D. For agencies with contracts valued at \$100,000 or more: Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available for contracts of \$100,000 or more? (Texas Government Code, Sec. 2161.252; TAC Title 34, Part 1, rule 20.14)**

Not applicable.

**E. For agencies with biennial appropriations exceeding \$10 million, answer the following HUB questions.**

	<b>Response / Agency Contact</b>
1. Do you have a HUB coordinator? (Texas Government Code, Sec. §2161.062; TAC Title 34, Part 1, rule 20.26)	N/A
2. Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Texas Government Code, Sec. §2161.066; TAC Title 34, Part 1, rule 20.27)	N/A
3. Has your agency developed a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Texas Government Code, Sec. §2161.065; TAC Title 34, Part 1, rule 20.28)	N/A

**F. Fill in the chart below detailing your agency's Equal Employment Opportunity (EEO) statistics.<sup>1</sup> See Exhibit 18: Equal Employment Opportunity Statistics**

<b>Texas Board of Professional Engineers</b>							
<b>See Exhibit 18: Equal Employment Opportunity Statistics</b>							
<b>FISCAL YEAR 2008</b>							
<b>Job Category</b>	<b>Total Positions</b>	<b>Minority Workforce Percentages</b>					
		<b>Black</b>		<b>Hispanic</b>		<b>Female</b>	
		<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>	<b>Agency</b>	<b>Civilian Labor Force %</b>
Officials/Administration	1	0.0%	6.6%	0.0%	14.2%	3.0%	37.3%
Professional	11	0.0%	8.3%	3.0%	13.4%	6.0%	53.2%
Technical	1	0.0%	12.4%	0.0%	20.2%	0.0%	53.8%
Administrative Support	19	15.5%	11.2%	24.29%	24.1%	54.5%	64.7%
Service Maintenance	1	0.0%	13.8%	3.0%	40.7%	3.0%	39.0%
Skilled Craft	0	0.0%	6.0%	0.0%	37.5%	0.0%	4.8%

<sup>1</sup> The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals are no longer reported as separate groups. Please submit the combined Service/Maintenance category totals, if available.

FISCAL YEAR 2009							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	1	0.0%	9.0%	0.0%	23.7%	2.7%	38.8%
Professional	11	0.0%	11.7%	2.7%	19.9%	54.0%	54.5%
Technical	2	0.0%	17.0%	0.0%	27.0%	0.0%	55.6%
Administrative Support	22	13.5%	13.2%	27.0%	31.9%	56.7%	66.2%
Service/Maintenance	1	0.0%	12.8%	2.7%	44.8%	2.7%	39.7%
Skilled Craft	0	0.0%	5.1%	0.0%	46.9%	0.0%	5.1%

FISCAL YEAR 2010							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	2	0.0%	7.5.0%	0.0%	21.17%	3.1%	37.5%
Professional	10	0.0%	9.7%	3.1%	18.8%	9.3%	53.3%
Technical	2	0.0%	13.9%	0.0%	27.1%	0.0%	53.9%
Administrative Support	17	6.2%	12.7%	28.1%	31.9%	43.7%	67.1%
Service/Maintenance	1	0.0%	14.4%	3.1%	49.9%	3.1%	39.1%
Skilled Craft	0	0.0%	6.6%	0.0%	46.3%	0.0%	6.0%

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

TBPE has an equal employment opportunity policy which establishes a framework to ensure that all facets of employment, including recruitment, selection, assignment, training, promotion, and compensation, are based on job-related factors such as an individual's education, qualifications, experience, demonstrated abilities, and job performance.

Issues related to equal employment opportunity policy are addressed in the agency's affirmative action plan as set forth by the Civil Rights Division of the Texas Workforce Commission.

**XII. Agency Comments**

We look forward to the Sunset Advisory Commission team's visit to provide what information is needed to make a thorough assessment of our agency's operations.