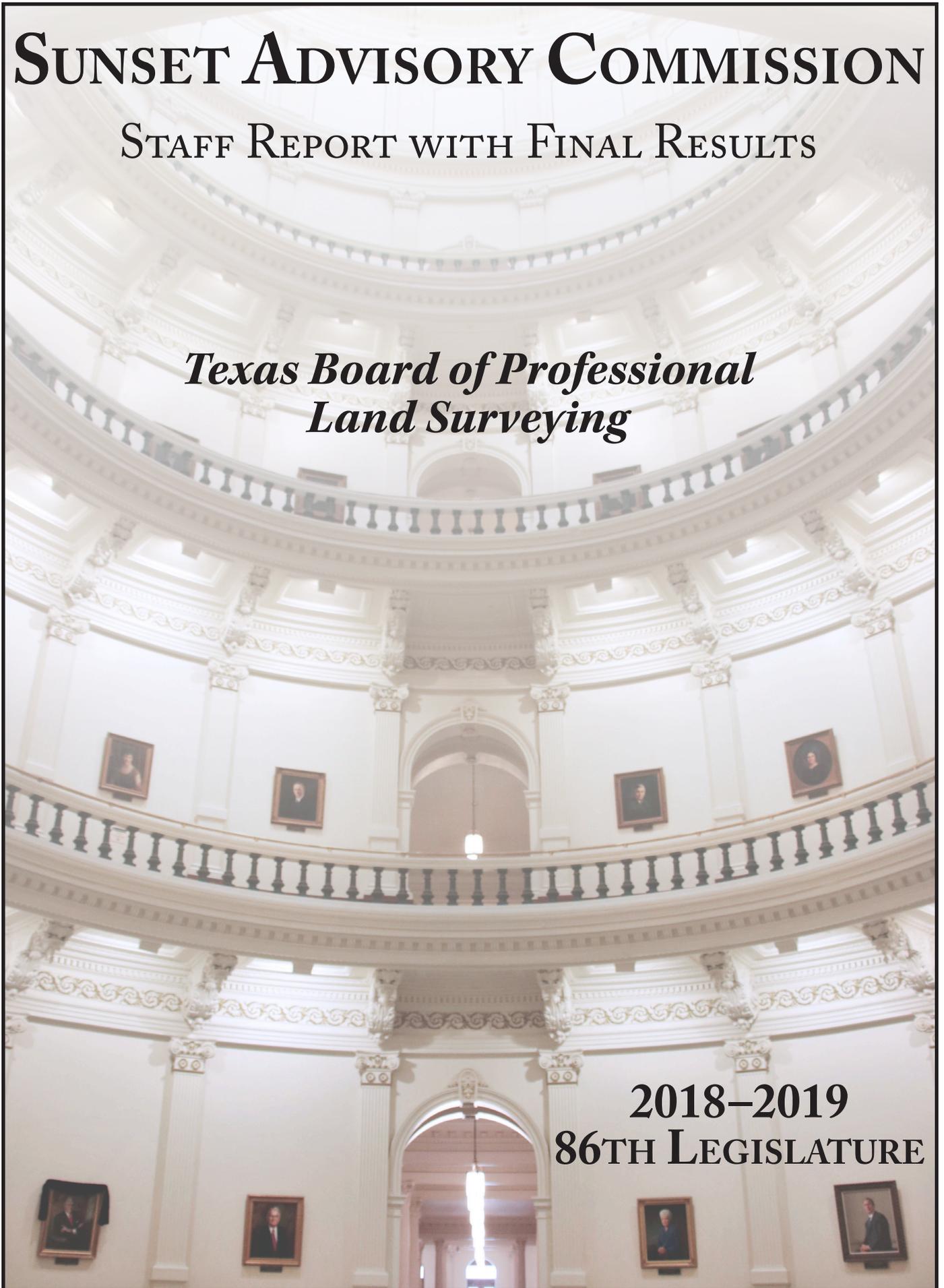


SUNSET ADVISORY COMMISSION

STAFF REPORT WITH FINAL RESULTS

Texas Board of Professional Land Surveying

2018–2019
86TH LEGISLATURE



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TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

**SUNSET STAFF REPORT WITH FINAL RESULTS
2018-2019
86TH LEGISLATURE**

HOW TO READ SUNSET REPORTS

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

FIRST VERSION: The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

SECOND VERSION: The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

THIRD VERSION: The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.

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FINAL RESULTS

FINAL RESULTS

House Bill 1523

Summary

The Sunset Commission found that the Texas Board of Professional Land Surveying has increasingly struggled to carry out several key functions since its last Sunset review in 2003. These struggles were most notable in enforcement, where broken processes place consumers at risk and treat licensees unfairly, as shown by an unacceptably long average complaint resolution timeframe of over two years. The agency was also unable to provide consistent accounting information and standard licensing and enforcement data. Furthermore, the agency knowingly lapsed over \$423,000 since fiscal year 2012, leaving funds unspent despite a clear need to improve programs and functions.

The board and agency's ineffective attempts to make improvements and inaction in other areas led the commission and Legislature to determine these problems could not be fixed within the current organizational structure. As a result, House Bill 1523 transfers the regulation of land surveyors to the Texas Board of Professional Engineers to create the Texas Board of Professional Engineers and Land Surveyors. Other provisions in the bill aim to increase the effectiveness and efficiency of licensing, examination, and enforcement processes by applying occupational licensing best practices. Finally, House Bill 1523 requires a land surveying advisory committee and authorizes associate degree holders to be eligible for a registered professional land surveyor license.

The following material summarizes results of the Sunset review of the Texas Board of Professional Land Surveying, including management actions directed to the agency that do not require legislative action.

ISSUE 1 — *Consolidate Professional Land Surveyors and Professional Engineers*

Recommendation 1.1, Adopted — Abolish the Texas Board of Professional Land Surveying and transfer the regulation of land surveyors to the Texas Board of Professional Engineers to create the Texas Board of Professional Engineers and Land Surveyors.

- Restructure the existing engineers board to include five rather than six engineers, one land surveyor, and three public members, all appointed by the governor with the advice and consent of the Senate. Specify a registered professional land surveyor or a licensed state land surveyor is eligible for the land surveyor board position, and the position may not be held by a land surveyor who is also a licensed professional engineer. Specify the board would also include a non-voting, ex officio position for the commissioner of the General Land Office or a licensed state land surveyor employee of the General Land Office designated by the commissioner to serve as director of surveying.
- Require the board to appoint an advisory committee consisting of at least five land surveyors to provide advice and recommendations to the board on matters related to land surveying, as added by the Legislature.

ISSUE 2 — *Licensing and Enforcement*

Recommendation 2.1, Adopted — Remove the residency requirement for licensed state land surveyors from statute.

Recommendation 2.2, Adopted — Authorize the board to set biennial license and firm registration terms in rule.

Recommendation 2.3, Adopted — Replace the board's exam advisory committees with general statutory authority to establish advisory committees to provide advice and recommendations to the board on any matter relevant to the administration of the Texas Engineering Practice Act or the Professional Land Surveying Practices Act.

Recommendation 2.4, Adopted — Authorize the agency to outsource its exams.

Recommendation 2.5, Adopted — Clarify statute to realign the agency's complaint intake and investigation procedures with model standards.

Recommendation 2.6, Adopted — Direct the board to review application requirements to conform with current policy and statute. (Management action – nonstatutory)

Recommendation 2.7, Adopted — Direct the board to adopt a staggered renewal system for licenses and registrations. (Management action – nonstatutory)

Recommendation 2.8, Adopted — Direct the board to conduct a comprehensive analysis regarding adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam. (Management action – nonstatutory)

Recommendation 2.9, Adopted — Direct the board to publish disciplinary history online. (Management action – nonstatutory)

Provisions Added by the Legislature

Land surveying advisory committee — Require the board to establish a land surveying advisory committee consisting of at least five land surveyors to provide advice and recommendations to the board on matters related to land surveying. Prohibit the board from adopting a rule related to the scope of, practice of, professional or technical standards for, or standards of conduct and ethics for land surveyors before considering advice and recommendations from the advisory committee.

Education requirements for licensure — Authorize the board, by rule, to waive the statutory requirement that an applicant for a registered professional land surveyor license have a bachelor's degree if the applicant has an associate degree with sufficient qualifications and does not pose a threat to public health, safety, or welfare.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations, as enacted in House Bill 1523, to abolish the Texas Board of Professional Land Surveying and transfer regulation of the profession to the newly created Texas Board of Professional Engineers and Land Surveyors will result in an approximate loss to the state of \$144,000 per year, beginning in fiscal year 2021.

The new board will be a self-directed semi-independent (SDSI) agency. As an SDSI agency, the board will be required to set fees in an amount to cover the costs of regulation and will not be appropriated any state funds. Therefore, beginning in fiscal year 2021, professional fees from land surveyors will no longer be collected and deposited in the General Revenue Fund, resulting in an approximate annual loss of \$625,000. This loss will be offset by an estimated annual savings of \$468,108 in general revenue and \$12,500 in appropriated receipts, in addition to a reduction of six full-time equivalent (FTE) positions. Based on the contingency rider for House Bill 1523 in the General Appropriations Act, fiscal year 2020 appropriations for the Board of Professional Land Surveying will be used to transfer operations to the Texas Board of Professional Engineers and Land Surveyors, and all funds appropriated for fiscal year 2021 will be reduced to zero.¹

Texas Board of Professional Land Surveying

Fiscal Year	Savings to the General Revenue Fund	Savings to Appropriated Receipts	Loss to the General Revenue Fund	Change in Number of FTEs From FY 2019
2020	\$0	\$0	\$0	0
2021	\$468,108	\$12,500	\$625,000	-6
2022	\$468,108	\$12,500	\$625,000	-6
2023	\$468,108	\$12,500	\$625,000	-6
2024	\$468,108	\$12,500	\$625,000	-6

.....

¹ Sunset Contingency Rider, page VIII-24, Article VIII (H.B. 1), Acts of the 86th Legislature, Regular Session, 2019 (the General Appropriations Act).

———— **SUNSET COMMISSION DECISIONS**
JANUARY 2019

SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Board of Professional Land Surveying.

The Sunset Commission found that the Texas Board of Professional Land Surveying has increasingly struggled to carry out several key functions since its last Sunset review in 2003. These struggles are most notable in enforcement, where broken processes put consumers at risk and treat licensees unfairly, as shown by an unacceptably long average complaint resolution timeframe of over two years. The agency was also unable to provide consistent accounting information and standard licensing and enforcement data. Furthermore, the agency has knowingly lapsed over \$423,000 since fiscal year 2012, leaving funds unspent despite a clear need to improve programs and functions.

As required by the Sunset Act, the commission considered whether the agency's organizational structure provides the most effective and efficient regulation. The board and agency's modest attempts to make improvements have not worked, and inaction in other areas led the commission to determine these problems cannot be fixed within the current organization. As a result, the Sunset Commission recommends transferring the regulation of land surveyors to the Texas Board of Professional Engineers to create the Texas Board of Professional Engineers and Land Surveyors, which could more effectively regulate this important profession. The commission also adopted recommendations to increase the effectiveness and efficiency of licensing, examination, and enforcement processes by applying occupational licensing best practices.

ISSUE 1

The Texas Board of Professional Engineers Could More Effectively Regulate Land Surveying.

Recommendation 1.1, Adopted — Consolidate the Texas Board of Professional Land Surveying with the Texas Board of Professional Engineers, creating the Texas Board of Professional Engineers and Land Surveyors.

ISSUE 2

Key Elements of the Agency's Licensing and Enforcement Functions Do Not Conform to Common Standards.

Recommendation 2.1, Adopted — Remove the residency requirement for licensed state land surveyors from statute.

Recommendation 2.2, Adopted — Authorize the board to set biennial license and firm registration terms in rule.

Recommendation 2.3, Adopted — Replace the board's exam advisory committees with general statutory authority to establish advisory committees.

Recommendation 2.4, Adopted — Authorize the agency to outsource its exams.

Recommendation 2.5, Adopted — Clarify statute to realign the agency’s complaint intake and investigation procedures with model standards.

Recommendation 2.6, Adopted — Direct the board to review application requirements to conform with current policy and statute. (Management action – nonstatutory)

Recommendation 2.7, Adopted — Direct the board to adopt a staggered renewal system for licenses and registrations. (Management action – nonstatutory)

Recommendation 2.8, Adopted — Direct the board to conduct a comprehensive analysis regarding adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam. (Management action – nonstatutory)

Recommendation 2.9, Adopted — Direct the board to publish disciplinary history online. (Management action – nonstatutory)

Fiscal Implication Summary

Overall, the Sunset Commission’s recommendations would result in an estimated positive fiscal impact to the state of about \$183,888 over the next five years. The Sunset Commission recommendation to abolish the Texas Board of Professional Land Surveying and transfer regulation of the profession to the newly created Texas Board of Professional Engineers and Land Surveyors would result in an estimated annual positive impact to the state of about \$45,972 each year beginning in fiscal year 2021, and a reduction of two staff positions.

In fiscal year 2017, the agency reported \$563,220 in revenue and \$439,185 in expenditures, resulting in a deposit of \$124,035 in excess revenue to the General Revenue Fund. Land surveying regulation would no longer fall under the appropriations process beginning fiscal year 2021, as a result of the newly created board also being a self-directed semi-independent (SDSI) agency, so any excess funding would no longer be deposited to general revenue. However, eliminating the land surveying board executive director and chief financial officer staff positions would result in annual savings of \$170,007 in salary and benefits to general revenue.

The estimated annual operating costs for the new Texas Board of Professional Engineers and Land Surveyors to regulate land surveying is approximately \$260,227. As an SDSI agency, the new board would maintain the flexibility to set licensing fees necessary to cover the costs of its operations.

Texas Board of Professional Land Surveying

Fiscal Year	Savings to the General Revenue Fund	Loss to the General Revenue Fund	Change in Number of FTEs From FY 2019
2020	\$0	\$0	0
2021	\$170,007	\$124,035	-2
2022	\$170,007	\$124,035	-2
2023	\$170,007	\$124,035	-2
2024	\$170,007	\$124,035	-2

**SUMMARY OF SUNSET
STAFF RECOMMENDATIONS**

SUMMARY

Land surveying has a lengthy and storied history in Texas dating back to 18th century Spanish land grants. Land surveyors continue to play an important role in the state — especially during Texas' current real estate boom with unprecedented new construction — measuring and documenting property boundaries for legal transfers from one owner to another. Inaccurate work by land surveyors can result in costly legal battles to determine property boundaries and potentially take away a person's right to property legally paid for. Since 1979, the Texas Board of Professional Land Surveying has sought to protect individuals from financial harm by ensuring only competent surveyors practice in Texas and sanctioning those who violate the law or board rules.

Since its last Sunset review in 2003, this small agency has increasingly struggled to carry out several key functions. Alarming performance data caused Sunset staff to focus on the agency's enforcement program early in the review and ultimately conclude the agency's enforcement processes are broken. Complaint resolution timeframes have increased every year since 2012 and are now unacceptably long — an average of more than two years — ultimately putting consumers at risk while the subject of a complaint potentially continues to perform poor land surveying work. The agency has more than 170 open cases, some more than six years old, which is unfair to licensees, particularly if open complaints are unfounded. Additionally, the lack of current complaint investigation policies and procedures and case management objectives results in investigators handling cases differently, calling the fairness of the process into question.

As currently structured, the agency cannot effectively regulate land surveyors.

Throughout the review, the agency was also unable to provide consistent accounting information and standard licensing and enforcement data, limiting Sunset staff's, as well as the board's and agency's, ability to analyze and evaluate operations to make needed improvements. The agency attributes its inability to provide this basic information to the lack of functionality in its data systems and the high costs to improve them. However, the agency does not use basic functions available in its current systems to run on-demand reports that would help evaluate and improve its operations at no additional cost. Furthermore, the agency has knowingly lapsed over \$423,000 since fiscal year 2012, despite a clear need to improve its programs and functions.

While the agency's dedicated staff work hard, these significant and ongoing issues remain unresolved. The board and agency's modest attempts to make improvements have not worked, and inaction in other areas led Sunset staff to determine these problems cannot be fixed within the current organization. Sunset staff recommends transferring the regulation of land surveyors to the Texas Board of Professional Engineers, which could more effectively regulate

this important profession with its well-developed complaint and investigation procedures. The following material summarizes Sunset staff recommendations on the Texas Board of Professional Land Surveying.

Issues and Recommendations

Issue 1

The Texas Board of Professional Engineers Could More Effectively Regulate Land Surveying.

While Texas has a clear, ongoing need to regulate the practice of land surveying, the Texas Board of Professional Land Surveying is failing to meet its fundamental duties and responsibilities to protect consumers, taking an average of more than two years to resolve a complaint and struggling with a backlog of cases, some dating as far back as 2012. The agency's performance data is inconsistent and unreliable, preventing it and the board from fully assessing and improving agency performance, and the agency has not managed its budget well, lapsing funds that could have been used to help resolve some of these serious and ongoing challenges.

In response to these significant, long-standing problems the board and agency have been unable to address, Sunset staff determined regulation of land surveying would be more effective in a consolidated regulatory structure. The Texas Board of Professional Engineers could more successfully license and regulate land surveyors together with engineers, a regulatory structure more states use than Texas' stand-alone approach. Because the Texas Board of Professional Engineers is a self-directed semi-independent (SDSI) agency, the newly created Texas Board of Professional Engineers and Land Surveyors would be as well.

Key Recommendation

- Consolidate the Texas Board of Professional Land Surveying with the Texas Board of Professional Engineers, creating the Texas Board of Professional Engineers and Land Surveyors.

Issue 2

Key Elements of the Agency's Licensing and Enforcement Functions Do Not Conform to Common Standards.

In reviewing the agency's licensing and enforcement functions, the review found certain processes do not match model standards or common practices, and lack documented policies, inhibiting the agency's ability to best protect the public and treat licensees fairly and consistently. Specifically, several licensure requirements are overly restrictive, such as requiring character, reputation, and fitness evaluations — which are not authorized by law — and an unnecessary requirement to be a resident of Texas. Additionally, the agency's excessive involvement in the exam development and administration processes is costly and time consuming, and limits applicants' access to fair, consistent exams.

Key Recommendations

- Remove the residency requirement for licensed state land surveyors from statute.

- Clarify statute to realign the agency’s complaint intake and investigation procedures with model standards.
- Replace the board’s examination advisory committees with general statutory authority to establish advisory committees, and authorize the agency to outsource its exams.
- Direct the board to conduct a comprehensive analysis evaluating adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam.

Fiscal Implication Summary

Overall, the recommendations in this report would result in an estimated positive fiscal impact to the state of about \$183,888 over the next five years. The recommendation to abolish the Texas Board of Professional Land Surveying and transfer regulation of the profession to the newly created Texas Board of Professional Engineers and Land Surveyors would result in an estimated annual positive impact to the state of about \$45,972 each year beginning in fiscal year 2021, and a reduction of two staff positions.

In fiscal year 2017, the agency reported \$563,220 in revenue and \$439,185 in expenditures, resulting in a deposit of \$124,035 in excess revenue to the General Revenue Fund. Land surveying regulation would no longer fall under the appropriations process beginning fiscal year 2021, as a result of the newly created board also being an SDSI agency, so any excess funding would no longer be deposited to general revenue. However, eliminating the land surveying board executive director and chief financial officer staff positions would result in annual savings of \$170,007 in salary and benefits to general revenue.

The estimated annual operating costs for the new Texas Board of Professional Engineers and Land Surveyors to regulate land surveying is approximately \$260,227. As an SDSI agency, the new board would maintain the flexibility to set licensing fees necessary to cover the costs of its operations.

Texas Board of Professional Land Surveying

Fiscal Year	Savings to the General Revenue Fund	Loss to the General Revenue Fund	Change in Number of FTEs From FY 2019
2020	\$0	\$0	0
2021	\$170,007	\$124,035	-2
2022	\$170,007	\$124,035	-2
2023	\$170,007	\$124,035	-2
2024	\$170,007	\$124,035	-2

AGENCY AT A GLANCE

NOVEMBER 2018

AGENCY AT A GLANCE

Regulation of land surveying in Texas dates to 1919 when the Legislature created the Board of Examiners of Licensed State Land Surveyors to regulate individuals who surveyed land in which the state had an interest. In 1955, the Legislature created the State Board of Registration for Public Surveyors to regulate individuals who surveyed private land. In 1979, as a result of a Sunset Commission recommendation, the Legislature consolidated the two agencies to form the Texas Board of Professional Land Surveying. Today, the agency's mission is to establish and enforce standards ensuring the competency of individuals licensed as professional land surveyors and as state land surveyors for the protection of current and future property owners of Texas.¹ The agency's key duties include

What Land Surveyors Do

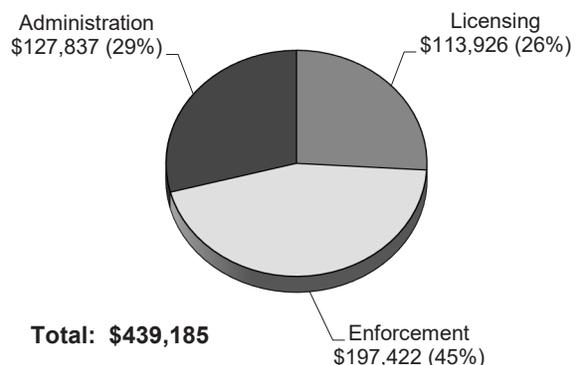
Land surveyors determine property lines and define corners of a piece of land described in a deed. Land surveying is an important aspect of property ownership because it provides an assessment and a record of what land someone can or will legally own.

- developing, administering, and grading exams for registered professional land surveyor and licensed state land surveyor applicants;
- licensing and registering qualified surveyors-in-training, registered professional land surveyors, licensed state land surveyors, and surveying firms; and
- investigating and resolving complaints, and taking disciplinary action when necessary to enforce the Professional Land Surveying Practices Act and board rules.

Key Facts

- **Texas Board of Professional Land Surveying.** The nine-member board consists of the commissioner of the General Land Office or the commissioner's designee, three registered professional land surveyors, two licensed state land surveyors, and three public members. Land surveyor and public members are appointed by the governor and confirmed by the Senate.² They serve staggered six-year terms and may not serve more than two consecutive full terms.³ The board uses three advisory committees to develop and grade licensure exams.⁴
- **Funding.** In fiscal year 2017, the agency reported \$563,220 in revenue, generated by licensing fees, sales of continuing education products, and Public Information Act copy requests. In the same fiscal year, the agency reported expenditures of \$439,185, resulting in a deposit to the General Revenue Fund of \$124,035 in excess revenue. The pie chart, *Texas Board of Professional Land Surveying Expenditures*, breaks out the agency's spending by major program areas. Appendix A describes the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2015 to 2017.

Texas Board of Professional Land Surveying Expenditures – FY 2017



- **Staffing.** In fiscal year 2017, the agency had seven staff, including two part-time investigators, who primarily work at the agency’s office in Austin, colocated with the Texas Commission on Environmental Quality (TCEQ). The agency maintains interagency contracts with TCEQ for mailroom, telephone, and information technology services, and with the Health Professions Council for database administration. Because of the agency’s small size, Sunset staff did not prepare an analysis comparing the agency’s workforce composition to the overall civilian labor force.
- **Licensing.** The agency licenses surveyors-in-training, registered professional land surveyors, licensed state land surveyors, and surveying firms, as shown in the table, *Surveying Licenses and Registrations*. All agency licenses and registrations are valid for one year, with the exception of the surveyor-in-training registration which is valid for eight years, with yearly renewals thereafter. Surveyors typically begin their careers as a surveyor-in-training while working to gain the on-the-job experience necessary to apply for the registered professional land surveyor license. Some surveyors seek the additional state land surveyor license, which qualifies a registered professional land surveyor to survey state land and file field notes with the General Land Office. Board rules also require businesses that offer land surveying services to register for an annual certificate.⁵ Candidates for each level of registration and licensure must meet education and experience requirements, pass an exam to demonstrate minimum competency, and pay a fee. Appendix B provides more information about the required qualifications, exams, and fees for the license and registration types the agency offers.

**Surveying Licenses and Registrations
FY 2018***

Type	Number
Surveyor-in-Training	428
Registered Professional Land Surveyor	2,833
Licensed State Land Surveyor	61
Surveying Firm	1,477
Total	4,799

* The agency was unable to provide a breakdown of total licensees and registrants by type for fiscal year 2017.

- **Exams and advisory committees.** The agency uses four exams to test applicants for minimum competency in surveying. A surveyor-in-training applicant must pass the Fundamentals of Surveying exam developed by the National Council of Examiners for Engineering and Surveying, which is administered electronically at testing centers around the nation. The agency develops, administers, and grades the other three exams that are offered twice yearly in Austin — the registered professional land surveyor exam, the reciprocal exam for out-of-state applicants, and the licensed state land surveyor exam. These exams test candidates on legal and analytical topics, including statute, measurements, and computations used in land surveying. The board uses three advisory committees comprised of subject matter experts to develop and grade licensure exams as described in the textbox, *Exam Development Advisory Committees*. A board subcommittee develops the licensed state land surveyor exam which covers additional case law, surface and subsurface rights, and knowledge of the history, files, and functions of the General Land Office.⁶

**Exam Development
Advisory Committees**

Item Writers: Develops new and amends existing questions to reflect current land surveying laws and practices, with the intent of testing an applicant’s minimum surveying competency.

Quality Assurance and Quality Control: Reviews questions drafted by the Item Writers Committee for spelling, grammar, clarity, and viability to provide constructive criticism and improve the test.

Cut-off Score: Determines the passing score for each exam by working with a psychometrician to identify problematic answers and removing questions that do not meet agency standards.

- Enforcement.** The agency regulates the practice of professional land surveying by investigating complaints against both licensed and unlicensed individuals and firms, and if necessary, taking enforcement action against those who violate the Professional Land Surveying Practices Act or board rules. The agency may sanction licensees by reprimand, administrative penalty, probation, suspension, or revocation. The agency does not categorize complaints based on initial allegation, and board rules require staff to investigate all complaints that contain evidence supporting a credible accusation.⁷ Common violations found by agency investigators include failure to register as a firm, a licensee allowing an unlicensed individual to exert control over a survey, and violations of board rules related to accuracy, boundary construction, and monumentation, which is the process of placing markers on surveyed land to distinguish boundaries. In fiscal year 2017, the agency averaged 813 days to resolve a total of 44 complaints. The table, *Texas Board of Professional Land Surveying Enforcement Data*, breaks down complaints received and resolved by source and disposition for fiscal year 2017.

**Texas Board of Professional Land Surveying Enforcement Data
FY 2017**

Complaints Received by Source	
Public	47
Licensees	6
Agency Initiated	5
Total	58
Complaints Closed by Disposition	
Dismissed	36
Agreed Order	6
Assurance of Voluntary Compliance	2
Total	44
Disciplinary Actions in Agreed Orders	
Administrative Penalty and Reprimand	2
Reprimand	1
Additional Continuing Education	1
Reprimand and Additional Continuing Education	1
Reprimand, Administrative Penalty, and Additional Continuing Education	1
Total	6

¹ "The Board," Texas Board of Professional Land Surveying, accessed October 30, 2018, <http://txls.texas.gov/the-board/>.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1071.051(b), Texas Occupations Code.

³ Section 1071.054, Texas Occupations Code.

⁴ Section 1071.551, Texas Occupations Code; 22 T.A.C. Section 665.1.

⁵ 22 T.A.C. Section 661.55.

⁶ 22 T.A.C. Section 661.45(d).

⁷ 22 T.A.C. Section 661.62(b)(2).

ISSUES

ISSUE 1

The Texas Board of Professional Engineers Could More Effectively Regulate Land Surveying.

Background

Land surveying in Texas dates back to the late 1700s as the governments of Spain, Mexico, and the Republic of Texas granted land within the boundaries of the present-day area of the state. Surveying practices in Texas are unique compared to the rest of the country because as the land transferred ownership under different sovereign nations, surveyors developed and used different methods than are used elsewhere in the United States, such as units of measurement and methods of describing land.¹

Texas has regulated land surveyors since 1919 and in 1979, the Legislature created the Texas Board of Professional Land Surveying. The agency seeks to protect the public from financial harm by ensuring only competent surveyors practice in Texas and by sanctioning those who violate the law or board rules. To achieve this goal, the agency's seven staff regulate about 3,300 individuals and 1,500 firms. The agency enforces the Professional Land Surveying Practices Act by investigating and resolving complaints, receiving 58 and resolving 44 complaints in fiscal year 2017.

Findings

Texas has a continuing need to regulate land surveyors.

The primary role of state regulation of occupations is to protect public health, safety, or welfare, including the financial well-being of consumers. Land surveys are essential to property transactions and play an important part in Texas' multibillion-dollar real estate market and other critical industries.² Land surveyors define property boundaries and identify easements and encroachments for the financial and real estate industries in the development of buildings and roads, residential and commercial property sales, and oil and natural gas production. Additionally, the state's Permanent School Fund lands can only be surveyed by a licensed state land surveyor. Land surveying is a highly technical profession, and poor land surveying can put consumers at financial risk as the use of improper techniques or methods can lead to significant economic losses, including legal fees necessary to correct an improperly surveyed boundary line, or costs to remove property improvements erected based on a flawed survey.

The agency's statute and rules protect consumers by ensuring the competence of individuals who provide land surveying services, and that these individuals follow established standards and requirements to maintain a license. To ensure consumer protection, the state needs an agency to receive and investigate complaints about land surveyors and, if necessary, discipline those who violate statute or rule to bring them into compliance. The potential negative financial implications for consumers are clear, and land surveying should remain regulated by the state. Furthermore, all 50 states regulate land surveyors, indicating a broad national consensus about the importance of regulation.

Improperly performed land surveying can have serious financial and legal consequences.

The agency is failing to carry out several key functions, potentially putting consumers and the public at risk.

Statute directs the Sunset Commission to consider the efficiency and effectiveness with which an agency operates and to consider the promptness and effectiveness with which an agency addresses complaints about licensees and other affected entities.³ The review found that while the agency's dedicated staff work hard, serious operational deficiencies greatly reduce the agency's ability to protect consumers and the public, and merit consideration of the best structure to regulate land surveying in the future.

- **Broken enforcement process.** The agency's inability to effectively enforce its statute and rules prevents it from best protecting consumers and the public, and treating licensees fairly. Sunset staff found a case backlog resulting from very slow complaint resolution timeframes in addition to inconsistencies in the enforcement process and potential conflicts of interest.

The agency averaged 813 days to resolve complaints in fiscal year 2017.

Unacceptable complaint resolution times resulting in backlogs. The agency averaged 813 days to resolve complaints in fiscal year 2017, an unacceptable number that increases the potential for public harm since a licensee conducting poor land surveying work could continue working while a complaint languishes with the agency. Additionally, slow complaint resolution is unfair to licensees, particularly if open complaints are frivolous. The *Texas Board of Professional Land Surveying Enforcement* table shows how complaint resolution timeframes consistently increased and the percentage of complaints resolved within six months consistently decreased since 2010. Slow complaint resolution timeframes over an extended period have led to a case backlog as the number of complaints received consistently exceeds the number of complaints resolved. The agency has open cases dating as far back as 2012, and as of September 2018, the agency has over 170 open complaints. Individual attempts to address these problems, such as hiring a second part-time investigator in 2015 and recently setting unrealistic monthly case resolution goals, have not helped, and neither the board nor staff have developed a comprehensive plan to ultimately fix the problems. Issue 2 further describes several shortcomings that have created this untenable situation.

Texas Board of Professional Land Surveying Enforcement — FYs 2010–2017

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Average Complaint Resolution in Days	94	204	N/A*	270	N/A*	591	781**	798**
Percentage of Complaints Resolved in Six Months	94%	46%	58%	17%	16%	5%	13%	14%
Complaints Received	53	48	N/A*	47	N/A*	36	59	58
Complaints Resolved	59	31	31	12	12	21	50	44

* Data unavailable in the Automated Budget and Evaluation System of Texas (ABEST).

** Agency reported different numbers in response to Sunset staff information request, as listed in the table on Page 12, *Complaint Resolution in Days Data Discrepancies*.

Inconsistencies in investigations and case resolutions. The agency's inadequate and outdated enforcement policies have contributed to inconsistent procedures and a lack of due process, as new staff have had to develop their own methods for completing tasks. When asked for current operating procedures, the agency provided Sunset staff with a unacceptably out-of-date internal handbook that included complaint and investigation procedures unchanged since 2003. Well-developed and well-documented policies and procedures are especially important for smaller agencies to ensure consistency over time and to help insulate against the loss of institutional knowledge, since turnover in critical staff positions can paralyze operations.

The agency's operating procedures are unacceptably out of date.

Sunset staff uncovered numerous inconsistencies in the handling of enforcement cases, raising questions about the agency's ability to effectively manage the program and ensure the public and licensees are treated consistently and fairly. For example, while statute requires the agency to update parties to a complaint about the status of a case at least quarterly until final disposition, Sunset staff review of a sample of complaint files from 2012 to 2017 showed the agency sends quarterly updates infrequently, and sent none at all in 2015 and 2016, leaving complainants and respondents completely unaware of the status of their complaints for several years.⁴ Additionally, the agency's lack of uniform case prioritization based on risk to consumers and the public has led to investigators developing individual case prioritization, resulting in inconsistent practices. Finally, while the agency has a penalty matrix to help ensure disciplinary action relates appropriately to the seriousness of an offense and ensure consistent application of penalties, Sunset staff reviewed enforcement case files with no clear documentation of aggravating or mitigating factors, and no clear documentation of why outcomes strayed so far from sanctions recommended by investigators. While it is not uncommon to reduce or adjust penalties proposed by investigators, the lack of documentation prevents the agency from properly evaluating its enforcement efforts and ensuring licensees are treated consistently and fairly.

The agency's unreliable data is a persistent, ongoing problem.

Potential conflicts of interest. Each of the agency's two part-time investigators also operates a private land-surveying related business — one conducts land surveys and the other offers land surveying continuing education courses. The agency lacks written policies surrounding these types of situations to protect against any conflicts of interest. As a regulatory entity, the agency should ensure unbiased and fair regulation for licensees, consumers, and the public. While Sunset staff did not identify any mishandled cases, the potential exists for an investigator to treat a competitor or continuing education recipient inconsistently.

- **Ongoing lack of reliable performance data.** The agency has continually struggled to track and report basic performance information, preventing its governing board, the Legislature, and oversight agencies from determining whether it can effectively meet its mission. The State Auditor's Office has twice raised red flags about the agency's lack of policies and procedures

related to an inability to report accurate performance measures, but the agency did not make improvements. In 2008, an audit of the agency's performance measures concluded that three key measures related to enforcement — complaints resolved, median time for complaint resolution, and percent of complaints resolved within six months — were inaccurate as reported.⁵ The audit also found the agency did not have adequate policies and procedures related to the collection, calculation, and reporting of the measures. A 2015 audit of the agency's performance measures reported similar conclusions, finding key measures for complaints resolved and percent of complaints resolved within six months were inaccurate, and the agency still had no written policies and procedures.⁶

Despite promising to take corrective action in response to the 2015 audit, agency staff still cannot verify whether any changes have been made to better track this important data. For this review, the agency was unable to report fiscal year 2015 data for complaints resolved until very late in the review,

Complaint Resolution in Days Data Discrepancies FYs 2015–2017

Fiscal Year	Sunset Information Request	Performance Measure Reported to Legislature
2015	591	0
2016	815.8	781
2017	813.4	798

and had reported zero complaints resolved to the Legislature for that year. The agency also reported different numbers to Sunset staff and the Legislature for fiscal years 2016 and 2017, as shown in the *Complaint Resolution in Days Data Discrepancies* table. The board's longstanding inability to improve the reliability of its data prevents proper oversight of operations, potentially putting the public at risk.

- **Poor budgetary management.** The agency has not managed its budget efficiently or effectively to do its job. The agency routinely lapses funding it does not believe it has use for, while longstanding problems go unfixed.

Land Surveying Board Lapsed Funding FYs 2012–2017

Fiscal Year	Amount
2012	\$59,034
2013	\$76,154
2014	\$89,320
2015	\$98,079
2016	\$57,902
2017	\$43,481
Total	\$423,970

Lapsed funding. The agency routinely lapses funding, totaling over \$423,000 in the last six fiscal years, which is unusual for an agency with such a small budget, as shown in the table, *Land Surveying Board Lapsed Funding*. The agency's main source of funding is general revenue, and a much smaller amount comes from appropriated receipts for the sale of continuing education products. Throughout the review, the agency struggled to explain why funds lapsed and why the amounts varied widely over the years. For example, in 2015 the agency lapsed \$98,079, about 22 percent of its \$446,143 total appropriation, in part because the agency did not properly account for efficiencies from an exam administration overhaul that was outlined by the national association several years in advance.⁷ The General Appropriations Act provides agencies with discretionary authority to transfer up to 20 percent of unexpended funding from one appropriation item to another, without seeking additional approval, but the agency is not using this flexibility. Some lapsed funding can be attributed to the statewide hiring freeze in 2017, and the agency cannot predict the precise amount of

appropriated receipts it will receive each year. However, continuing lapses indicate inadequate planning and financial oversight, from both staff and board members, to address known problem areas such as enforcement.

Recently, in response to a projected \$73,428 deficit in fiscal years 2020–2021, the board raised the annual licensing fee for its 1,477 firm registrations from \$31 to \$125 to cover the cost of administering its programs, as required by statute.⁸ The exact cause of the deficit remains unclear, but Sunset staff found it difficult to reconcile the need to raise fees with the fact that the agency continually lapses funds back to the state.

Unauthorized advisory committee reimbursement. The agency has been reimbursing its exam development advisory committee members for travel expenses — totaling \$144,303 from fiscal years 2012 to 2018 — but does not have authority to do so. Statute requires reimbursement of advisory committee members to be authorized in the General Appropriations Act or approved by the governor and the Legislative Budget Board, but the agency has neither authorization nor approval.⁹ The 2003 Sunset review of the agency found similar problems with its use of advisory committees, concluding that the agency lacked the authority to provide reimbursements for travel expenses.¹⁰ The review recommended the agency seek approval through the appropriations process to reimburse advisory committee member travel which the agency still has not done.

Continuing to lapse funds indicates inadequate planning and financial oversight.

The Texas Board of Professional Engineers could more effectively regulate land surveyors.

In response to the significant problems uncovered during the review, Sunset staff considered alternatives to a separate, independent agency devoted solely to regulating land surveyors. Staff determined a consolidated regulatory structure could more successfully oversee the profession together with engineers. Although engineering and surveying are two distinct professions, they complement one another, and civil engineers and surveyors often work together. Consolidated regulation of engineering and land surveying is a common structure, as a majority of states combine regulation of engineers with at least one other occupation. In addition, state licensing agencies for both engineers and surveyors belong to one national association — the National Council of Examiners for Engineering and Surveying. The 2013 Sunset review found the Texas Board of Professional Engineers to generally be a well-performing agency that effectively accomplishes its mission, making it well suited to take on the regulation of land surveyors.

- **Common regulatory structure.** While there is broad consensus among all 50 states about the need to regulate land surveying, Texas is in the minority of states that use a separate, stand-alone agency to regulate land surveyors. As shown in the graph on the following page, *Regulation of Land Surveying in the United States*, nearly half of all states regulate surveyors and engineers together at one agency, and an umbrella licensing agency regulating numerous occupations alongside land surveying is also common.

Unlike most other states, Texas uses a stand-alone agency to regulate land surveying.

Regulation of Land Surveying in the United States

Board of Surveyors and Engineers	AL, AR, CT, GA, IA, ID, KY, LA, MA, MS, MT, NC, ND, NJ, NM, NV, OH, OK, OR, SC, UT, WA, WY	23
Independent Land Surveying Board	DE, FL, IL, IN, MD, ME, MI, NE, NH, RI, TN, TX, WV, VT	14
Other Umbrella Structure	AZ, HI, KS, MN, MO, SD, VA, WI	8
Board of Surveyors, Engineers, and Another Profession	AK, CA, CO, NY, PA	5

- Existing processes at the Texas Board of Professional Engineers would support regulation of both professions.** The most recent Sunset review of the Texas Board of Professional Engineers in 2013 found its enforcement program effectively ensures compliance with statute and found the agency to be performing appropriately under the budgetary flexibility and relaxed oversight provided through the Self-Directed Semi-Independent Agency Project Act.¹¹

Engineers Board Licensee Totals – FY 2018

Engineer – Active	55,963
Engineer – Inactive	10,362
Engineering Firm	10,805
Engineer-in-Training	21,869

As listed in the table, *Engineers Board Licensee Totals*, the engineers board licenses and registers over 88,000 people and nearly 11,000 firms offering engineering services to the public in Texas. The engineers board issued new licenses to an average of about 3,000 individuals annually over the last five fiscal years, so licensing and registering about 3,300 additional individuals and 1,500 surveying firms would not be an onerous regulatory burden for the agency.

Sunset staff found the engineers board, unlike the land surveyors board, maintains well-developed complaint and investigation procedures to ensure enforcement staff treat licensees and the public fairly and consistently. Engineers board staff investigators are not licensees, and instead the agency hires subject matter experts to assist with technical evaluation of enforcement cases if needed, and could do so for the land surveying profession. In comparison with the land surveyors board, the engineers board closes complaints in a far more timely manner, as shown in the table on the following page, *Enforcement Data Comparison*.

Enforcement Data Comparison – FY 2017

	Engineers Board	Land Surveying Board
Complaints Received	622	58
Average Complaint Resolution in Days	110	798
Complaints Closed	598	44
Complaints Resulting in Disciplinary Action	63	8

Recommendation**Change in Statute****1.1 Consolidate the Texas Board of Professional Land Surveying with the Texas Board of Professional Engineers, creating the Texas Board of Professional Engineers and Land Surveyors.**

This recommendation would abolish the Texas Board of Professional Land Surveying and transfer the regulation of land surveyors to the Texas Board of Professional Engineers to create the new Texas Board of Professional Engineers and Land Surveyors, effective September 1, 2020. This recommendation would include the following provisions:

- **Board membership.** The membership of the engineers board would be restructured to include five rather than six engineers, one land surveyor, and three public members, all appointed by the governor with the advice and consent of the Senate. Both licensed state land surveyors and registered professional land surveyors would be eligible for appointment to the land surveyor position, and the position may not be held by a land surveyor who is also a licensed professional engineer. The board would also include a non-voting, ex officio position for the commissioner of the General Land Office or a licensed state land surveyor employee of the General Land Office designated by the commissioner to serve as director of surveying.

To implement this recommendation, the first engineer board member position vacant after the effective date of the creation of the new Texas Board of Professional Engineers and Land Surveyors would be replaced with a land surveyor position. As part of Recommendation 2.3, the board would have general advisory committee authority to seek additional input for policy development regarding land surveying.

- **Staff.** Four of the land surveying board's six full-time equivalent positions would transfer to the Texas Board of Professional Engineers and Land Surveyors no later than September 1, 2020. Because the existing engineers board already has a director and finance staff, the director and chief financial officer positions would not need to transfer.
- **Self-directed semi-independent (SDSI) status.** As part of the recommendation, the Texas Board of Professional Engineers and Land Surveyors would be an SDSI agency as is the existing Texas Board of Professional Engineers. Funding for land surveying regulation would no longer appear in the General Appropriations Act beginning fiscal year 2021.
- **Coordination provision.** The Texas Board of Professional Land Surveying would work with the Texas Board of Professional Engineers, Health Professions Council, and Texas Commission on Environmental Quality to coordinate, provide access to, and transfer all necessary information,

equipment, and systems so that the engineers board can absorb the existing functions of the agency. The Health Professions Council and Texas Commission on Environmental Quality both provide information technology and other services for the land surveying board. As part of this provision, the land surveying board should work with the engineers board to develop a plan and timeline to migrate data from the Versa Regulation case management system to the engineers board.

- **Timeline.** The transfer of the land surveying board functions to the Texas Board of Professional Engineers would be completed no later than September 1, 2020, when the Texas Board of Professional Engineers and Land Surveyors would be operational under its new name.
- **Legislative issues.** This provision would direct Sunset staff to work with staff from the Texas Board of Professional Engineers, Texas Board of Professional Land Surveying, and the Texas Legislative Council in drafting legislation to account for the consolidation of the two agencies. As part of this provision, administrative provisions in the engineers board statute would replace similar provisions in the Professional Land Surveying Practices Act. For example, the engineers board’s current authority to conduct fingerprint background checks and set license and renewal fees to cover the cost of administration would apply to land surveying regulation.
- **Sunset date.** This provision would remove the separate Sunset date from the land surveying statute as the program would be subject to review under the engineers board’s existing Sunset date, currently set for September 1, 2025.

Fiscal Implication

The recommendation to abolish the Texas Board of Professional Land Surveying and transfer regulation of the profession would result in an estimated annual positive fiscal impact to the state of about \$45,972 each year beginning in fiscal year 2021 and a reduction of two staff positions. In fiscal year 2017, the Texas Board of Professional Land Surveying reported expenditures of \$439,185 and \$563,220 in revenue, resulting in a deposit of \$124,035 in excess revenue to the General Revenue Fund. Because surveying regulation would no longer fall under the appropriations process, that excess funding would no longer be deposited to general revenue. However, eliminating the director and chief financial officer staff positions would result in savings of \$170,007 in salary and benefits to general revenue.

The estimated annual operating costs for the new Texas Board of Professional Engineers and Land Surveyors to regulate land surveying is approximately \$260,227, the majority of which would cover salaries and benefits for the four transferred staff positions. As an SDSI agency, the Texas Board of Professional Engineers and Land Surveyors would continue to have the flexibility to set licensing fees necessary to cover the costs of its operations and would continue to be prohibited from incurring any cost to the General Revenue Fund.

Texas Board of Professional Land Surveying

Fiscal Year	Savings to the General Revenue Fund	Loss to the General Revenue Fund	Change in Number of FTEs From FY 2019
2020	\$0	\$0	0
2021	\$170,007	\$124,035	-2
2022	\$170,007	\$124,035	-2
2023	\$170,007	\$124,035	-2
2024	\$170,007	\$124,035	-2

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¹ “Getting the Lay of the Land — Pioneer Surveying in Texas,” Texas General Land Office, published January 14, 2016, <https://medium.com/save-texas-history/getting-the-lay-of-the-land-pioneer-surveying-in-texas-20b32311ca83>.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1071.002(5), Texas Occupations Code.

³ Section 325.011, Texas Government Code.

⁴ Section 1071.204(c), Texas Occupations Code.

⁵ State Auditor’s Office (SAO), *An Audit Report on Performance Measures at the Board of Professional Land Surveying* (March 2008), 1–5.

⁶ SAO, *An Audit Report on Performance Measures at the Board of Professional Land Surveying* (August 2015), 1–4.

⁷ “FE, FS Exams to Begin Gradual Move to Computer-Based Format,” National Council of Examiners for Engineering and Surveying, published on August 27, 2010, <https://ncees.org/fe-fs-exams-to-begin-gradual-move-to-computer-based-format/>.

⁸ Section 1071.1526, Texas Occupations Code.

⁹ Section 2110.004, Texas Government Code; Article IX, Section 5.08, (S.B. 1), Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act).

¹⁰ Sunset Advisory Commission (SAC), *Texas Board of Professional Land Surveying Staff Report* (Austin: Sunset Advisory Commission, May 2002), 7.

¹¹ SAC, *Texas Board of Professional Engineers Sunset Final Report with Legislative Action* (Austin: Sunset Advisory Commission, July 2013), 29–31.

ISSUE 2

Key Elements of the Agency's Licensing and Enforcement Functions Do Not Conform to Common Standards.

Background

The Texas Board of Professional Land Surveying's mission is to protect the public by issuing and renewing licenses to only competent land surveyors and enforcing the agency's laws and rules. To accomplish this mission, the agency licenses registered professional land surveyors (RPLS) and licensed state land surveyors (LSLS), registers surveyors-in-training (SIT) and land surveying firms, and enforces the Professional Land Surveying Practices Act by investigating complaints and taking disciplinary action when necessary. The accompanying table provides the total number of licensees and registrants in fiscal year 2018.¹

**Surveying Licenses and Registrations
FY 2018**

Type	Number
Surveyor-in-Training	428
Registered Professional Land Surveyor	2,833
Licensed State Land Surveyor	61
Surveying Firm	1,477
Total	4,799

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, asking not only if the functions of an agency continue to be needed, but also whether the agency is performing those functions in the most effective, fair, and efficient manner. Over the course of more than 40 years, the Sunset Commission has completed more than 110 licensing board reviews. Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. Staff continues to refine and develop these standards, reflecting additional experience and different or changing needs, circumstances, or practices in licensing agencies. The following material highlights areas where the agency's statute and rules differ from the model standards, and describes the potential benefits of conforming to standard practices.

Findings

Overly restrictive licensure requirements create barriers to entry and reduce agency efficiency.

- **Subjective qualifications for licensure and registration.** Qualifications for licensure and registration should not arbitrarily overburden applicants or unreasonably restrict entry into the profession. Regulatory practices that create an unnecessary administrative burden while providing minimal public benefit should be eliminated.

As a prerequisite to take the required exam for each license, applicants must meet a number of *Application Requirements*, described in the textbox on the following page. In particular, the agency evaluates experience and qualifications by requiring SIT and out-of-state RPLS, also called reciprocal, applicants to submit three notarized references from registered professional land surveyors with personal knowledge of the applicant's

The agency requires reference forms to be notarized, without statutory authority.

Application Requirements

Surveyor-in-Training (SIT) and all other applicants

- Meet education requirements and submit relevant transcripts
- Submit passport photo
- Pay application fee
- Complete character, reputation, and fitness form
- Pass Department of Public Safety name-based criminal history check
- Submit three professional surveyor references to attest to supervised experience

Registered Professional Land Surveyor (RPLS)

- Hold SIT registration for at least two years
- Submit five compliance verification forms signed by the designated RPLS, demonstrating 4,000 work hours as an SIT
- Submit two sample surveys reviewed by the applicant's designated RPLS, with supporting documentation

Out-of-state RPLS (Reciprocal)

- Hold a current license as a professional land surveyor from another state
- Pass the Fundamentals of Surveying exam

Licensed State Land Surveyor (LSLS)

- Arrange an LSLS orientation meeting with the director of surveying at the General Land Office prior to beginning application process
- Hold a current Texas RPLS license
- Submit proof of Texas residency
- Submit three professional surveyor references, including one from a current LSLS
- Submit a working sketch of an area that embraces several surveys and at least three original locating surveys, with supporting documentation

surveying experience. For each license, every applicant must also submit a form vouching for their own character, reputation, and fitness to practice.² However, the agency's 2003 Sunset report clarified the agency cannot require application components to be notarized, and the agency does not have clear statutory authority to require the character form.³ While the agency has never rejected an applicant based on information provided in the character form, it needlessly introduces subjectivity into the application process and is unnecessary to evaluate an applicant's minimum competency to practice. Updating forms to remove the notarization requirements and eliminating all character, reputation, and fitness forms would eliminate unnecessary hurdles to entering the land surveying profession and better align the agency's requirements with standard occupational licensing practices.

The agency also requires three professional references for LSLS applicants, and encourages an optional reference from a current LSLS. However, agency rule specifically allows a licensed RPLS board member to submit a professional reference for an LSLS applicant if the board member has the most knowledge of the applicant's experience.⁴ Generally, board members should be prohibited from providing professional references for any applicants to avoid the appearance of favoritism or bias.

Statute requires an LSLS applicant to prove Texas residency to receive the license, even though a person's residence should have no bearing on competency to practice.⁵ Additionally, as a prerequisite to submit an application, an applicant must meet with the director of surveying at the General Land Office (GLO) who familiarizes the applicant with GLO operations and answers questions regarding the duties and functions of an LSLS.⁶ The agency does not participate in this meeting and no statute, rules, or policies exist to justify it, essentially outsourcing a

prerequisite to apply for the license to a separate agency with no assurance that these conversations and outcomes are objective. While the agency receives fewer than four LSLS applications per year, removing these unnecessarily subjective licensure requirements would ensure applicants are treated more fairly.

- **Inefficient license and registration renewal process.** A regulatory agency's license renewal process should be scheduled as efficiently as possible to

minimize burdens on both the agency and licensees, and biennial renewal also saves time and effort. Moreover, staggering renewals encourages periodic license renewal rather than all occurring at one particular time each year. Currently, the agency has authority to stagger annual renewals for the RPLS and LSLS licenses, and to set firm renewals in rule.⁷ The agency has chosen to require its licenses and firm registrations to expire on December 31 each year with a two-month renewal window opening November 1, creating a large seasonal workload for the agency's small staff. Just over half of licensees and firms renew online, leaving staff to process the remaining 1,770 renewals manually in a two-month period that includes several state holidays, limiting staff's ability to timely and efficiently process all the renewals. By authorizing biennial renewal and adopting rules to implement a staggered renewal process, the agency could better allocate staff resources and avoid unnecessarily increased seasonal workload during major holidays.

The agency's exam development and administration create unnecessary burdens on staff and applicants.

- **Unnecessary, inflexible, and time-consuming exam development.** Over the years, state licensing agencies have largely outsourced their exams to national testing entities, which have inclusive exam development with subject matter experts and stakeholders, as well as efficient scoring processes. These national entities can also administer exams electronically at many locations throughout the year. Statute requires the board to develop rules for the creation and administration of the RPLS, reciprocal, and LSLS exams, but does not specify the frequency of the exams offered per year.⁸ Currently, the agency administers its paper-based exams just twice a year and only in Austin, limiting opportunities to take the exam, and requiring extra time and expense for applicants who have to travel to sit for an eight-hour exam. More information about the four exams the agency uses can be found in the table, *Required Exams for Texas Surveyors*.

The agency administers its exams just twice a year and only in Austin.

Required Exams for Texas Surveyors

Exam Name	Exam Administrator	Examinees	License Received Upon Passage
Fundamentals of Surveying Exam	National Council of Examiners for Engineering and Surveying	Surveyor-in-training applicants	Surveyor-in-training
Texas Registered Professional Land Surveyor Exam	Texas Board of Professional Land Surveyors	Surveyors-in-training and in-state registered professional land surveyor applicants	Registered professional land surveyor
Texas Reciprocal Exam	Texas Board of Professional Land Surveyors	Out-of-state registered professional land surveyor applicants	Registered professional land surveyor
Texas Licensed State Land Surveyor Exam	Texas Board of Professional Land Surveyors	Registered professional land surveyor licensees	Licensed state land surveyor

Texas is the only state not using the national Practice of Surveying exam.

All states regulating land surveying, including Texas, outsource administration of the entry-level Fundamentals of Surveying exam to the National Council of Examiners for Engineering and Surveying (NCEES). However, Texas is the *only* state not to outsource the advanced-level Practice of Surveying exam to NCEES. Instead, the agency uses an elaborate process involving three advisory committees with more than 40 total members to develop its RPLS and reciprocal written exams, which essentially serve as substitutes for the Practice of Surveying exam. These committees, comprised of board-approved subject-matter experts and a contracted psychometrician, take months to develop, test, re-test, and analyze questions so the agency can administer different versions of its exams twice a year. The percent of applicants that pass each RPLS exam varies greatly, from 26 percent to 62 percent over the past three years, raising questions about the consistency and fairness of the board's approach. Also, agency staff must proctor the eight- and four-hour exams and scan the answer sheets into an electronic format, placing an additional administrative burden on the small staff. The agency's investigators, already struggling to manage their workloads, also help proctor the exams. In comparison, NCEES uses a similar exam development process, consisting of subject matter experts and a psychometrician to analyze and score questions, but an algorithm provides regular question and answer analysis to ensure everyone tests on the same topic areas, but with different question prompts.

The board has not conducted a formal analysis regarding adoption of the national exam.

While board members have discussed adopting the Practice of Surveying exam at several board meetings over the past four years, they ultimately decided against adoption because they did not want to “water down our exam.”⁹ Sunset staff also heard several times during the review that Texas does not use the national exam because an RPLS applicant trained in Texas and familiar with Texas statute and rule may reach a different answer than applicants in other states. Despite these discussions and explanations, the board has not conducted a formal cost-benefit analysis regarding adoption of the Practice of Surveying exam or documented why the NCEES Fundamentals of Surveying exam is acceptable for Texans seeking the SIT registration, but the Practice of Surveying exam is unacceptable for Texans seeking the RPLS license.

Most states that outsource both exams through NCEES also require applicants to pass a state-specific jurisprudence exam to obtain a license and ensure state-specific knowledge. By outsourcing licensing exams to a national testing entity, applicants would have more access to exams required for licensure, and both the agency and applicants would save time and money. To ensure applicants understand the difference between surveying practices in Texas and other states, the agency would benefit from developing a short jurisprudence exam, offered electronically at testing centers throughout the state.

- **Inappropriate board member exam involvement.** Generally, board members should be excluded from the testing process; however, if they cannot be excluded due to the size of the agency or other factors, they should

not be involved in all phases of testing, such as development, administration, and grading. Currently, a separate board subcommittee, consisting of only the two LSLs board members and the GLO commissioner or designee, develops and grades the LSLs exam, which had just three applicants per exam administration on average since fiscal year 2015.¹⁰ The subcommittee develops the exam using a question bank similar to but separate from the RPLS exam question bank. Having the same board members who develop the exam also grade it risks subjectivity. Passing rates for the exam range from zero to 33 percent over the last four years, raising questions about the consistency and fairness of the board's approach to this exam as well. Outsourcing the development and administration of the LSLs exam would ensure more objectivity.

Passing rates for the LSLs exam range from zero to 33 percent.

Nonstandard enforcement processes and lack of clear policies inhibit the agency's ability to protect the public and treat licensees fairly and consistently.

- **Lack of clear, consistent enforcement policies.** A licensing agency's entire complaint process should be guided by clear rules or procedures from intake to resolution, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public. The agency's numerous deficiencies in this area contribute directly to the unacceptable 813 days to resolve a complaint and backlog of over 170 open cases dating back to 2012. Adopting clear rules and procedures would help ensure appropriate and consistent action by the agency, thereby protecting the public and providing fair treatment for all licensees.

Needlessly investigating every complaint without any documented prioritization. Regulatory agencies should establish clear policies to guide and document preliminary jurisdictional determinations for incoming complaints. Currently, the agency has no preliminary process for deciding if a complaint falls within its jurisdiction and instead believes it must open a full investigation for every complaint received. Even after determining a complaint is nonjurisdictional, investigators continue to examine any surveys requested or received with the complaint and open separate complaints if they find violations. Investigating complaints that cannot be resolved by the agency risks inappropriate "fishing" for violations without clear authority to investigate, and creates inefficiency in the enforcement process, needlessly lengthening complaint resolution timeframes. Additionally, regulatory agencies should prioritize complaints based on seriousness and risk of harm to the public to focus attention where it is needed the most. Instead, the agency has no system to prioritize complaints until after the investigation is complete. By establishing clear policies regarding initial complaint evaluation, including preliminary jurisdictional determinations, the agency can properly evaluate whether a full investigation is warranted, and further prioritize complaints by risk of harm to the public in an effort to resolve them more timely and adequately protect the public.

Investigating nonjurisdictional complaints risks inappropriate "fishing" for violations.

Unneeded board involvement wastes valuable time in the enforcement process.

Unnecessary board approval for complaint dismissals. Generally, staff should have clear authority to dismiss complaints without board approval or involvement, but should regularly notify the board of dismissals. Even though the previous Sunset review found the board was too heavily involved in decisions to dismiss meritless complaints, and the Legislature clarified statute to authorize staff to dismiss such complaints, board members are still approving staff-recommended dismissals of unsubstantiated complaints through a complaint review panel.¹¹ Two board members, the executive director, and the investigator must meet to either agree or disagree on the recommended dismissal, unnecessarily adding to the overall complaint resolution time. By removing the requirement for the panel to approve staff recommendations to dismiss unsubstantiated complaints, the agency would save valuable time within its enforcement program while still providing its policy body with information on staff actions.

The public submitted 81 percent of total complaints in fiscal year 2017.

Unclear practice standards to best inform and protect consumers. Regulatory agencies should have clear standards of conduct or operation to provide a sound basis to act on consumer complaints and define appropriate behavior for licensees. These standards give the public a measuring stick for judging appropriate behavior and a basis for submitting complaints to the agency, and they are most useful in situations where practitioners have close contact with the public and can cause financial harm. Currently, the agency has statutes and rules outlining the standards of professional responsibility and rules of conduct, but no clear explanation or translation for consumers to understand what violations are under the agency's jurisdiction.¹² For example, the agency considers pure boundary disputes and contractual matters nonjurisdictional, as something best left to the courts to decide, but provides almost no information on its website or throughout the complaint resolution process on these topics. Moreover, the agency continues to receive more complaints from the public than any other source. In fiscal year 2017, the public submitted 81 percent of the total complaints received by the agency. Publishing clear information for consumers regarding acceptable practice standards and instructions about filing complaints, including suggested baseline evidence to provide and which topics or concerns are jurisdictional and not, would help the agency act efficiently on consumer complaints.

No maintenance of complainant's confidentiality. To the extent possible, licensing agencies should protect the identity of complainants. Upon receipt of a complaint, the agency will provide the respondent with a copy of the complaint, without ensuring confidentiality of the complainant in any way, such as redacting identifying information. Failing to redact a complainant's identifying information potentially puts individuals at risk of retaliation and may discourage consumers and current licensees from filing necessary, legitimate complaints. While licensees may ultimately learn who filed a complaint against them as the investigation process moves forward, many licensing agencies do their best to protect a complainant's identity for as long as possible. Maintaining a complainant's confidentiality ensures an

agency does not create an unnecessary barrier to filing complaints, and may increase the likelihood that consumers and licensees bring substantive issues to light.

Missing complaint information. Regulatory agencies should keep and report statistical information detailing the number, source, and type of complaints received, and the disposition of complaints resolved. Currently, the agency does not categorize or track complaint allegations, whether jurisdictional or not, which inhibits its ability to provide trend data and properly evaluate its overall enforcement performance. For example, many occupational licensing agencies track complaints according to the statute or rule violated, or categories such as continuing education or record-keeping. Tracking complaint allegations and subsequent violations would help the agency better revise or develop rules, provide general guidance for licensees, and even provide more focused continuing education.

- **Lack of publicly available disciplinary information.** Generally, licensing agencies should make the full text of disciplinary actions that are subject to public disclosure available to the public online. While the agency's website allows the public to look up a surveyor's current license status, the search results do not provide any enforcement history information. Allowing easy access to publicly available enforcement action, like final agreed orders, helps consumers make better-informed choices when choosing surveying services.

The agency's poor complaint tracking inhibits its ability to evaluate its enforcement program.

Recommendations

These recommendations are formatted to apply to the Texas Board of Professional Land Surveying as it currently exists. However, if the Sunset Commission adopts the recommendation in Issue 1 to abolish the agency and transfer the regulation of land surveying to the Texas Board of Professional Engineers, Sunset staff would work with the agencies and the Texas Legislative Council to ensure any needed statutory changes are included in draft Sunset legislation. Additionally, the agency should begin implementing the recommended management actions as soon as the Sunset Commission takes formal action on the recommendations to make needed improvements while the Legislature deliberates the transfer.

Change in Statute

2.1 Remove the residency requirement for licensed state land surveyors from statute.

Under this recommendation, LSLS applicants would not be required to be residents of Texas. This change would align LSLS licensure requirements with model licensing standards to ensure they relate to the competency to practice.

2.2 Authorize the board to set biennial license and firm registration terms in rule.

This recommendation would allow the board to set biennial license and registration expirations, instead of the current annual license and registrations required in statute. Providing the board additional flexibility to set license and firm registration terms for two years and in rule would help reduce resources and staff time spent on processing renewals without compromising the oversight of licensees.

2.3 Replace the board's exam advisory committees with general statutory authority to establish advisory committees.

Repealing the board's statutory authority to establish exam advisory committees and instead authorizing the board to establish any necessary advisory committees by rule would give the board flexibility to create advisory committees as needed, not just for developing exams. For example, the board could create advisory committees to provide expertise and open discussion regarding licensing, continuing education, exams, or enforcement. Additionally, any advisory committees created in rule would adhere to Texas Government Code chapters regarding state agency advisory committees, open meetings, public information and disclosures, and the Administrative Procedure Act.¹³

2.4 Authorize the agency to outsource its exams.

Under this recommendation, the board would be clearly authorized to outsource the development and administration of the SIT, RPLS, reciprocal, and LSLS exams. By outsourcing written exams to an approved provider, the agency would recognize efficiencies in staff time and resources, and applicants would appreciate the accessibility of sitting for an exam in variety of testing locations throughout the year.

2.5 Clarify statute to realign the agency's complaint intake and investigation procedures with model standards.

This recommendation would align the agency's statute with model standards regarding complaint records, and direct the board to adopt clear rules regarding complaint investigation and disposition. In addition to operating a more organized and fair complaint process, the agency would be able to better categorize complaints and prioritize investigations for a more efficient and effective enforcement program overall. Specifically, the recommended realignment would require the agency to

- keep accurate complaint records, including tracking and identifying trends;
- provide more comprehensive information for consumers on the practice of land surveying; and
- establish clear enforcement processes including
 - clearly documenting preliminary jurisdiction and merit determinations before opening a full investigation,
 - maintaining complainant confidentiality as long as possible, and
 - providing clear authority for staff to dismiss unsubstantiated complaints without board involvement.

Additionally, this recommendation would direct the board to adopt new or clarify existing rules, policies, and procedures for the entire enforcement process. The board should ensure these rules, policies, and procedures categorize and prioritize complaints and investigations based on risk to public health, safety, or welfare. In establishing these rules, the board could consider past or repeat violations, recent complaints, negative media attention, or other indications of increased risk to the public.

Management Action

2.6 Direct the board to review application requirements to conform with current policy and statute.

In addition to statutory Recommendation 2.1, the agency should review and remove any application requirements not authorized clearly by statute or supported by a corresponding rule, such as notarization

of references, required character form, allowing board members to serve as references, and the required meeting between LSLs applicants and the General Land Office. This would ensure application requirements are supported by statute and current policies and treat applicants fairly.

2.7 Direct the board to adopt a staggered renewal system for licenses and registrations.

This recommendation would direct the board to adopt a staggered license and registration renewal system, potentially based on the licensee or registrant's birth month. The board should adopt and publish clear timelines for renewal periods, and ensure adequate notification to licensees to transition into the staggered renewal process.

2.8 Direct the board to conduct a comprehensive analysis regarding adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam.

In addition to statutory Recommendation 2.4, the board would be directed to provide a report to the Sunset Commission by December 1, 2019, documenting the full consideration and evaluation of adopting the nationally accepted Practice of Surveying exam used by the 49 other states, as well as developing and implementing a corresponding jurisprudence exam. This report should include topics tested on both state and national exams and where clear conflicts may exist, accessibility of the exam for applicants, and the financial benefits or consequences to the agency and licensees by moving to the national exam.

2.9 Direct the board to publish disciplinary history online.

Under this recommendation, the board would post detailed information regarding disciplinary actions on its website, including full versions of any finalized agreed orders and disciplinary actions taken against licensees. This recommendation would increase transparency and improve the ability of consumers to make informed decisions about hiring licensed surveyors by providing access to complete disciplinary information.

Fiscal Implication

The recommendations would not have a significant fiscal impact to the state, but would allow the agency to better allocate staff resources and ensure more effective and fair treatment of applicants, licensees, and parties to complaints. Outsourcing exams would have no fiscal impact to the state because the cost of exam development and administration, although outsourced to a testing administrator, would be covered by the cost of the exam, which examinees already pay.

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¹ Sunset staff worked with the Health Professions Council to obtain this data as the agency was unable to provide a breakdown of total licensees and registrants by type for fiscal year 2017.

² All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 1071.252(b), Texas Occupations Code; 22 T.A.C. Section 661.43; Texas Board of Professional Land Surveying (TBPLS), *Candidate Guidelines*, accessed October 1, 2018, <http://txls.texas.gov/wp-content/uploads/2015/04/Candidate-Guidelines.-Full-Doc.pdf>; TBPLS, *Reference Waiver Form – SIT Applicant*, accessed October 1, 2018, <http://txls.texas.gov/wp-content/uploads/2017/08/Reference-Waiver-Form-SIT.pdf>; TBPLS, *Reference Waiver Form – Reciprocal Applicant*, accessed October 1, 2018, <http://txls.texas.gov/wp-content/uploads/2016/08/reference-waiver-RCPrf.pdf>.

³ *Ibid.*; Sunset Advisory Commission (SAC), *Texas Board of Professional Land Surveying Staff Report* (Austin: Texas Sunset Advisory Commission, May 2002), 25.

⁴ 22 T.A.C. Section 661.43(b).

⁵ Section 1071.255, Texas Occupations Code; 22 T.A.C. Section 661.41.

⁶ TBPLS, *Licensed State Land Surveyor Exam Application*, accessed October 2, 2018, <http://txls.texas.gov/wp-content/uploads/2015/10/8-2015-LSLS-Application.pdf>; TBPLS, *Candidate Guidelines*, 18.

⁷ Sections 1071.301 and 1071.352, Texas Occupations Code; 22 T.A.C. Sections 661.55–661.57.

⁸ Sections 1071.256 and 1071.259, Texas Occupations Code; 22 T.A.C. Section 661.45.

⁹ TBPLS, February 19, 2016, accessed October 24, 2018, http://txls.texas.gov/wp-content/uploads/2016/05/SKMBT_C45116051316451.pdf, board meeting minutes, 9.

¹⁰ Sections 1071.255(a) and 1071.256(c), Texas Occupations Code; 22 T.A.C. Sections 661.8(1) and 661.45(d)–(e).

¹¹ SAC, *Texas Board of Professional Land Surveying Staff Report*, 13–20; Sections 1071.402(c) and .402(d), Texas Occupations Code; 22 T.A.C. Section 661.62(c)(3).

¹² Subchapter H, Chapter 1071, Texas Occupations Code; 22 T.A.C. Chapter 663.

¹³ Chapters 551, 552, 2001, and 2110, Texas Government Code.

APPENDICES

APPENDIX A

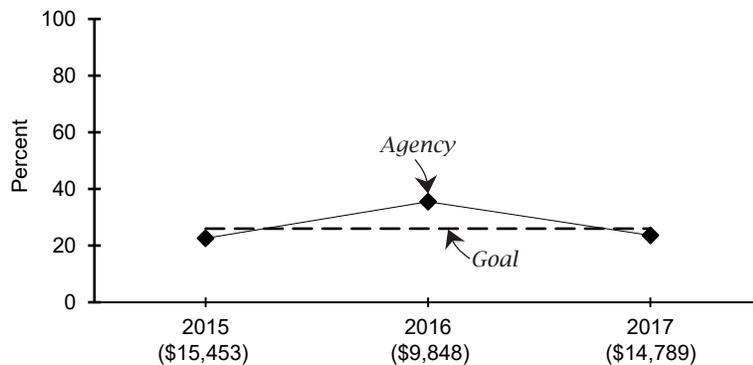
Historically Underutilized Businesses Statistics 2015 to 2017

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the Texas Board of Professional Land Surveying's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency reports no spending in the past three fiscal years in the heavy construction, building construction, special trade, and professional services categories. The agency has neither biennial appropriations nor contracts large enough to mandate other HUB-related requirements such as creating HUB subcontracting plans for large contracts, appointing a HUB coordinator, creating a HUB forum program, and developing a mentor-protégé program.

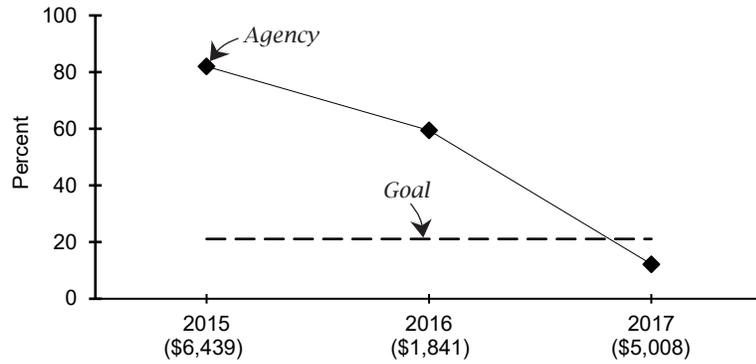
Other Services



The agency exceeded the statewide purchasing goal for other services in fiscal year 2016, but fell just short in fiscal years 2015 and 2017.

Appendix A

Commodities



The agency far exceeded the statewide purchasing goal for commodities in fiscal years 2015 and 2016, but fell short in fiscal year 2017.

¹ All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

² Chapter 2161, Texas Government Code.

APPENDIX B

Texas Board of Professional Land Surveying Licensing Requirements

The following information summarizes the required qualifications, exams, and fees for the four certification, license, and registration types the Texas Board of Professional Land Surveying offers.

Type	Qualifications and Requirements	Description
Surveyor-in-training certification	<ul style="list-style-type: none"> • Meet one of five education and experience requirements • Submit application package including transcripts, references, and a \$128.69 fee • Pass the National Council of Examiners for Engineering and Surveying Fundamentals of Surveying exam and pay a \$175 exam fee 	<ul style="list-style-type: none"> • Certificate with which an individual performs surveying work under the supervision of a registered professional land surveyor • Certificate is valid for up to eight years, with yearly renewals thereafter for \$25.94 per year
Registered professional land surveyor license	<ul style="list-style-type: none"> • Hold a bachelor's degree with 32 hours of board-approved coursework • Hold a surveyor-in-training certification • Perform 4,000 hours of surveying work over two years under supervision of a licensee • Submit application package including transcripts, sample surveys, and a \$128.69 fee • Pass the Texas-specific license exam and pay a \$150 exam fee 	<ul style="list-style-type: none"> • License with which an individual performs land, boundary, or property surveying • License is valid for one year, with a \$179 renewal fee
Licensed state land surveyor license	<ul style="list-style-type: none"> • Hold a registered professional land surveyor license and submit proof of Texas residency • Meet with the director of surveying at the General Land Office • Submit application package including a working sketch of surveying work and a \$128.69 fee • Pass the Texas-specific license exam and pay a \$150 exam fee 	<ul style="list-style-type: none"> • License with which a registered professional land surveyor surveys land in which the state or the Permanent School Fund has an interest, or files surveying field notes with the General Land Office • License is valid for one year, with a \$216 renewal fee
Surveying firm registration	<ul style="list-style-type: none"> • Submit application package including business and legal names, business and branch addresses, and at least one designated active licensee employed full-time and pay a \$32.11 fee 	<ul style="list-style-type: none"> • Registration with which a business offering land surveying services shows it registered with the agency • Registration is valid for one year, with a \$31 renewal fee

APPENDIX C

Staff Review Activities

During the review of the Texas Board of Professional Land Surveying, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Interviewed members of the Texas Board of Professional Land Surveying
- Reviewed a sample of enforcement case files
- Interviewed staff from the comptroller of public accounts, Health Professions Council, Department of Information Resources, General Land Office, Texas Department of Licensing and Regulation, office of the attorney general, and the Texas Board of Professional Engineers
- Observed informal settlement conferences considering enforcement actions against licensees
- Observed an exam advisory committee meeting
- Observed onsite demonstration of land surveying techniques

Sunset Staff Review of the *Texas Board of Professional Land Surveying*

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