

# Polygraph Examiners Board

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## Agency at a Glance

To protect the public from untrained polygraph examiners, the Legislature has provided, since 1965, that only persons licensed by the Polygraph Examiners Board may use instruments designed to detect deception or verify truth. Originally part of the Engineering Extension Service at Texas A&M University, since 1981 the licensing of polygraph examiners has been housed within the Department of Public Safety with a stand-alone Board. The Board's primary function is to test, license, and take enforcement action against violators of the Polygraph Examiners Act.

## Key Facts

- ◆ **Funding.** In fiscal year 2008, the Polygraph Examiners Board operated on a budget of \$102,787.
- ◆ **Staffing.** The Board had two employees in fiscal year 2008.
- ◆ **Licensing.** In fiscal year 2008, the Board issued 17 new licenses and renewed 230 licenses for polygraph examiners.
- ◆ **Enforcement.** The Board reports receiving 10 jurisdictional complaints in fiscal year 2008, all of which the Board dismissed.

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*For additional information,  
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## Commission Members (7)

Andy Sheppard, Presiding Officer (Fate)

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Gory Loveday (Winona)

Lawrence D. Mann (Plano)

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## Agency Head

Frank Di Tucci, Executive Director

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## Recommendation

1. Transfer the regulation of polygraph examiners to the Department of Licensing and Regulation, and standardize licensing and enforcement provisions in the Act.

# Issue 1

## **Transfer the Regulation of Polygraph Examiners to the Department of Licensing and Regulation.**

### **Key Findings**

- ◆ Regulation of polygraph examiners continues to be needed, but the function of polygraph regulation is not well placed at the Department of Public Safety.
- ◆ The Board's enforcement efforts do not adequately protect the public.
- ◆ Portions of the Board's licensing exam for polygraph examiners are overly subjective, and the Board inconsistently applies grading standards.
- ◆ The Board has made several decisions potentially based on interests of Board members rather than on the protection of the public, and has adopted rules that create the appearance of a conflict of interest.

The Legislature has charged the Polygraph Examiners Board with licensing and regulating polygraph examiners in Texas for the protection of the public. However, the Board's ability to protect the public is compromised by the real and potential conflicts of interest inherent in the Board's processes and administrative placement, its overly subjective licensing examination procedures, ineffective enforcement, and the small size of the agency and number of licensees.

### **Recommendations**

#### **Change in Statute**

##### **1.1 Abolish the Polygraph Examiners Board and transfer its functions to the Texas Department of Licensing and Regulation.**

Under this recommendation, the Polygraph Examiners Board would cease to exist as an independent agency, and its testing and regulatory functions transferred to Texas Department of Licensing and Regulation (TDLR). The recommendation would align all regulatory provisions in the Polygraph Examiners Act with TDLR's enabling statute to streamline administration, and would also remove the Sunset provision from the Act, as it would be subject to TDLR's existing Sunset provision. TDLR's expertise with occupational licensing, as well as its economy of scale, would clearly improve regulation of the polygraph industry.

##### **1.2 Establish a polygraph advisory committee to assist with the regulation of polygraph examiners.**

This recommendation would help ensure that licensees and the public continue to have a voice, while improving current regulation, by creating a polygraph advisory committee at TDLR. The Committee would advise the Commission on Licensing and Regulation on rules and standards related to the profession, educational curricula for applicants, licensing examination content, and other technical issues related to the industry. For example, the advisory committee could provide critical input to TDLR regarding methods for modifying the polygraph licensing exam to ensure the exam is as objective as possible while still accurately assessing an examiner's proficiency to practice.

**1.3 Eliminate notarization requirements for individuals applying for licensure.**

This recommendation would remove antiquated requirements from the Polygraph Examiners Act that applicants must notarize polygraph examiner license applications. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to these applications.

**1.4 Clarify that the Act must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.**

This recommendation would require TDLR to follow the general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by requiring TDLR to develop rules defining which specific types of crimes affect the licensee’s ability to administer polygraph exams. Following Chapter 53 would help ensure fairness to all license applicants.

**1.5 Require polygraph examiners to inform consumers of complaint procedures.**

This recommendation would require a polygraph examiner to inform an individual undergoing a polygraph exam of the process for filing a complaint against the examiner with TDLR. Requiring this specific notice to individuals subject to polygraph services would help ensure the agency receives complaints from individuals who feel that the examiner or the exam process was inappropriate.

**1.6 Require appeals of Board actions to district court to be reviewed under the substantial evidence standard.**

This recommendation would require appeals of actions of TDLR in district court to be reviewed under the substantial evidence standard. Updating language in the Polygraph Examiners Act to reflect this common practice would save time and expense while providing a sufficient level of protection on appeal.

**1.7 Remove fee caps in statute.**

This recommendation would remove the schedule of fees for polygraph licensing activities currently found in the Polygraph Examiners Act and authorize the Commission on Licensing and Regulation to establish fees in rule. This allows for greater administrative flexibility and is consistent with a provision in the General Appropriations Act that requires agencies to set fee amounts necessary to recover the cost of regulation.

## *Fiscal Implication Summary*

Transferring the functions of the Polygraph Examiners Board to the Texas Department of Licensing and Regulation would result in an estimated annual savings to the State of \$41,740. This recommendation would result in a reduction of one FTE, based on eliminating the administrative support position, resulting in an annual savings of about \$32,740 based on the average salary and fringe benefits for the position. The recommendation would also result in a savings of approximately \$9,000 due to a reduction of travel costs for Board members, based on average travel reimbursements.

<i>Fiscal Year</i>	<i>Savings to the General Revenue Fund</i>	<i>Change in Number of FTEs From FY 2009</i>
2010	\$41,740	-1
2011	\$41,740	-1
2012	\$41,740	-1
2013	\$41,740	-1
2014	\$41,740	-1

