
Texas Board of Professional Land Surveying

Agency at a Glance

The Texas Board of Professional Land Surveying (Board) protects the public by ensuring that qualified surveyors prepare accurate surveys, which result in the orderly use of Texas' land. The Board traces its history to 1919, when the Legislature, recognizing that land surveys affect the property and economy of the state, established the Board of Examiners of Licensed State Land Surveyors for surveyors of state-owned lands. In 1955, the Legislature created a separate board, the State Board of Registration for Public Surveyors, for surveyors who worked on private lands. The Legislature merged the two agencies in 1979, later renaming it the Texas Board of Professional Land Surveying.

To accomplish its goal, the Board licenses land surveyors, and regulates their activities through enforcement. The Board's main functions include:

- certifying Surveyors-In-Training, and licensing Registered Professional Land Surveyors and Licensed State Land Surveyors;
- developing and administering state land surveying exams;
- investigating and resolving complaints against land surveyors; and
- enforcing the Professional Land Surveying Practices Act and taking disciplinary action when necessary.

Key Facts

- **Funding.** The Board operates with an annual budget of about \$379,000. All costs are covered by licensing fees collected from the industry.
- **Staffing.** The Board has four full-time employees and one part-time employee, based in Austin.
- **Licensing.** The Board regulates about 3,000 surveyors. In fiscal year 2002, about 411 individuals took the state licensing exams and 105 received a license.
- **Enforcement.** The Board received 36 complaints in fiscal year 2002. Of the 51 complaints resolved in fiscal year 2002, 30 were found to be without merit and dismissed, and 21 complaints resulted in sanctions against a licensee.

Board Members (10)

Raul Wong, Jr., RPLS, Chair (Dallas)
Steven Hofer, Vice Chair (Midland)
Daniel Martinez, RPLS (Lubbock)
Kelley Neuman (San Antonio)
Art Osborn, RPLS (Tyler)
Honorable Jerry Patterson,
Commissioner of the General Land Office
Ben Thomson, RPLS, LSLS, Designee

Robert Pounds, RPLS, LSLS (El Paso)
D. G. "Greg" Smyth, RPLS, LSLS (Devine)
Douglas Turner, RPLS (Houston)
Joan White (Brownsville)

Agency Head

Sandy Smith, Executive Director
(512) 452-9427

Recommendations

1. Authorize the Board to Create Exam Advisory Committees.
2. Require the Board to Establish Its Enforcement Process in Rule.
3. Conform Key Elements of the Texas Professional Land Surveying Act to Commonly Applied Licensing Practices.
4. Authorize the Board to Keep Dismissed Complaints From Being Disclosed to the Public.
5. Direct the Board to Work With the General Land Office to Increase the Number of Licensed State Land Surveyors.
6. Continue the Texas Board of Professional Land Surveying for 12 Years.

Issue 1 | The Board's Unstructured Method of Developing and Approving Exams Could Result in Unfair or Inconsistent Exams.

Key Findings

- The Board develops and administers land surveyor exams through the use of committees.
- Exam advisory committees are not properly constructed, and are not complying with state law regarding reimbursement and meeting postings.
- The Board's approval process for the exams uses unstructured Board subcommittees and lacks the perspective of public members.
- The Legislature has consistently shown interest in proper construction and structure of advisory committees.

The Board gives licensing exams to applicants who wish to become Registered Professional Land Surveyors (RPLS). The Board prepares its exams using advisory committees composed of volunteer licensees, but these committees have no formal guidelines and the Board's interaction with the advisory committees is unstructured, which could lead to questions as to whether the process is fairly administered. Because the Board has never adopted a written policy for the exam-creation process, it does not provide sufficient controls to ensure that exams are consistent or fair.

Recommendations**Change in Statute****1.1 Authorize the Board to create and maintain exam advisory committees and require the Board to adopt rules regarding the form and use of those committees.**

This recommendation would clarify the Board's authority to create advisory committees to help the Board develop the RPLS and reciprocal exams. The Board should adopt rules regarding these committees, including:

- the purpose, role, responsibility, and goals of the committees;
- the size and quorum requirements of the committees;
- the qualifications of the members, such as experience or geographic location;
- the appointment procedures for the committees;
- the terms of service;
- training requirements; and
- the requirement that the committees comply with the Open Meetings Act.

Because of the technical nature of creating exams, members would continue to be surveying industry representatives, so state law requiring advisory committees to include consumers, or public members, would not apply to these specific committees. Board members would not be eligible to sit on the committees as working, voting members, but could attend committee meetings as liaisons to the full Board. To ensure the exam process is clear and consistently followed, the Board would define the process, including the Board's interaction with the advisory committees, in rule. Requiring the Board to formally structure exam advisory committees and using the Board to formally review and approve exams will help guarantee exams are created in a consistent, unbiased, and independent manner.

Requiring the Board to adopt rules directing the exam advisory committees to comply with the Open Meetings Act addresses questions about the applicability of the Act. The Act has a provision that allows committees to meet in closed session to discuss material related to test items. However, under this exception, the Board still must comply with the applicable posting and record keeping requirements of the Act. Accordingly, the Board would be able to hold advisory committees meetings in closed sessions, which would reduce the risk of exam applicants attending meetings or requesting the exam information through an open records request.

Management Action

1.2 The Board should seek approval through the appropriations process for future advisory committee travel reimbursements and comply with the other statutory requirements for advisory committees.

This recommendation would require the Board to request approval through the appropriations process of any future reimbursements to committee members. Additionally, the Board should comply with the other reporting and evaluation requirements in Chapter 2110, Government Code.

1.3 The Board should formally review and approve the exams.

Requiring the Board to formally review and approve exams, a function currently performed by an informal group of Board members, would ensure that public members of the Board are included in the process. Board subcommittees could evaluate the exam, but should make recommendations to the full Board for final exam approval to ensure public members of the Board have input.

1.4 The Board should conduct its Board exam meetings in executive session and comply with the requirements of the Open Meetings Act.

This recommendation would direct the Board to conduct its Board or subcommittee meetings in closed session, when deliberating on test material. Though the agency must still comply with the Open Meetings Act in posting and notification requirements, the Act permits boards to discuss licensing examinations in closed sessions. This provision eliminates the opportunity for exam applicants to either attend the committee meetings or request exam information through an open records request.

Issue 2 | Involvement of Board Members in Enforcement Activities Causes Inefficiencies and Potential Conflicts of Interest.

Key Findings

- The Board prosecutes complaints filed against regulated land surveyors.
- The Board's involvement in enforcement is time-consuming, limits use of staff resources, and results in inefficiencies.
- The Board's role in complaint investigation and enforcement creates the appearance of a conflict of interest.
- The Board inappropriately considers previously dismissed complaints during enforcement proceedings.
- The Board's complaint and enforcement process is not established in statute or rule, thereby allowing it to change at any time.
- Staff at other regulatory agencies take a more active role in enforcement, including dismissing baseless cases, conducting investigations, and recommending action.

In enforcing the Professional Land Surveying Practices Act and Board rules, the Board sits in judgment of accused violators. However, its practice of having a single Board member conducting investigations, determining violations, and recommending sanctions gives the appearance of conflict of interest, limits use of staff resources, and results in inefficiencies. Further, the Board's enforcement procedures are not defined in statute or rule, limiting the public's input to and knowledge of the process. Reducing the Board's role in daily enforcement activities by allowing staff to conduct investigations, dismiss complaints, conduct settlement conferences, and recommend penalties will allow the Board to focus on providing policy direction concerning the practice of land surveying in Texas.

Recommendations

Change in Statute

2.1 Require the Board to establish its enforcement process in rule.

The process should require that:

- staff, or contract investigators, conduct investigations;
- staff are authorized to dismiss baseless complaints;
- staff determine violations and recommend sanctions; and
- the Board approves final sanctions.

This recommendation ensures that the Board has a clearly defined enforcement process in rule, and that the Board accepts public input in determining its enforcement process. Board members would be removed from the day-to-day enforcement functions, such as conducting investigations. Instead,

staff, or investigators contracted by the Board, would investigate complaints, determine if violations occurred, and either dismiss a complaint or recommend sanctions to the Board. Staff would report dismissals to the Board at each of the Board's public meetings or as directed by the Board. The person who filed the complaint would have the right to request reconsideration. Final approval of violations and penalties would remain under the Board's authority.

In cases where circumstances necessitate Board involvement, the Board would appoint a subcommittee, consisting of at least one public member. All subcommittee members would recuse themselves from voting on violations and sanctions. Also, should a Board member act as a consultant to staff on a complaint case, the Board member would be required to recuse himself from disciplinary hearings related to the case.

2.2 Prohibit use of previously dismissed complaints in the enforcement process.

Although previously dismissed complaints are maintained in a licensee's record, the Board should not consider such dismissed complaints when deliberating on a current complaint. However, Board members would be able to consider a licensee's previous history of violations when determining sanctions for a current violation.

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

Key Findings

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

Various licensing, enforcement, and administrative processes in the Texas Professional Land Surveying Act do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 70 occupational licensing reviews in 25 years. For example, some licensing requirements are unclear or overly burdensome, such as application notarization. Lack of guidelines in some areas, such as the application of penalties, increases the opportunity for inconsistent decisions. Administrative processes such as statutory fee caps reduce the Board's administrative efficiency and flexibility. A comparison of the Board's statute, rules, and practice with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other licensing agencies.

Recommendations

Licensing

Change in Statute

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

This recommendation would eliminate the statutory requirement that applicants submit applications for licensure under oath and would require the Board to accept applications that are not notarized. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply to license applications.

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

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

Enforcement

Change in Statute

3.3 Eliminate the requirement that complaints submitted to the Board be notarized.

The current statutory requirement that complaints be accompanied by sworn affidavits would be eliminated under this recommendation and the Board would be required to accept complaints that are not notarized, but signed as true and correct.

3.4 Require the Board to adopt, by rule, guidelines for informal settlement conferences.

This recommendation would ensure that the Board develops guidelines for informal settlement conferences and adopts them by rule, which would allow the public the opportunity to comment.

3.5 Require the Board to adopt a probation guide.

Under this recommendation, the Board would adopt a written probation guide in rule to ensure that the probation sanction is used consistently.

3.6 Authorize the Board to require restitution as part of the settlement conference process.

The Board would be allowed under this recommendation to include restitution as part of an informal settlement conference. Authority would be limited to ordering a refund not to exceed the amount the consumer paid to the surveyor. Any restitution order would not include an estimation of other damages or harm. The restitution may be in lieu of or in addition to a separate Board order assessing an administrative penalty.

3.7 Require the Board to adopt an administrative penalty matrix in agency procedures or rules.

This recommendation would ensure that the Board develops administrative penalty sanctions that appropriately relate to different violations of the Board's Act or rules. By requiring the Board to adopt the matrix in rule, the public would have the opportunity to comment.

Administration

Change in Statute

3.8 Eliminate statutory language that sets and caps fees.

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

Issue 4 | Public Disclosure of Dismissed Complaints May Harm Licensees.

The Board may receive complaints against a Registered Professional Land Surveyor or Licensed State Land Surveyor that are unwarranted or frivolous. Revealing the existence of a complaint before investigating the validity of that complaint may damage a licensee's credibility. While records of previously dismissed complaints may prove useful for future investigations, unfounded information contained in dismissal complaints about a licensee should not be released to the public.

Recommendation

Change in Statute

4.1 Authorize the Board to Keep Dismissed Complaints From Being Disclosed to the Public.

To protect licensees who were the subject of unwarranted complaints, the Board would be allowed to keep dismissed complaints from being disclosed to the public. The Board would maintain dismissed

and unfounded complaints in a licensee's file, but such complaints would not be available for release to the public or subject to open records requests.

Issue 5 | The State Has a Declining Number of Licensed State Land Surveyors.

Licensed State Land Surveyors (LSLS) conduct surveys on land under the jurisdiction of the General Land Office (GLO), such as Gulf Coast beaches and Permanent School Fund lands, and operate as agents of the State when conducting such surveys. However, Texas has a limited number of LSLSs, and the number of this type of surveyor has declined over time. The General Land Office has determined that steps are needed to maintain the continued availability of qualified LSLSs to help ensure that accurate surveys are filed with GLO. As the agency that licenses and regulates surveyors, the Board can play a pivotal role in finding ways to assist applicants in preparing for the LSLS exam and become licensed.

Recommendation**Management Action****5.1 The Board Should Coordinate With the General Land Office in Efforts to Increase the Number of Licensed State Land Surveyors.**

The Board should work with the General Land Office to jointly sponsor educational seminars for Licensed State Land Surveyor applicants and to develop study guides for the Licensed State Land Surveyor exam.

Issue 6 | Texas Has a Continuing Need for the Texas Board of Professional Land Surveying.

Key Findings

- The Texas Board of Professional Land Surveying protects the public by ensuring that qualified surveyors prepare accurate surveys, resulting in the orderly use of Texas' land.
- Texas has a continuing need for regulating land surveyors to protect the economic welfare of Texans.
- No significant benefit would result from changing the agency's structure or having any other state agency perform the Board's functions.
- All 50 states regulate land surveyors, although organizational structures vary.

Land surveys, which define property boundaries and are required in most property transactions, play a vital part in Texas' multibillion-dollar real estate market. The Texas Board of Professional Land Surveying performs an important mission, as regulation of land surveyors helps protect the public's economic welfare by ensuring that only qualified land surveyors practice in Texas and by sanctioning those practitioners who violate the law. The Sunset Commission concluded that regulation of land surveyors is needed to protect the economic welfare of Texans, and that the Board is the proper place for that regulation.

Recommendation

Change in Statute

6.1 Continue the Texas Board of Professional Land Surveying for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary _____

These recommendations would not have a fiscal impact to the State.