



**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

*Texas Board
of Professional Land Surveying*

A Staff Report
to the
Sunset Advisory Commission

1991

BOARD OF PROFESSIONAL LAND SURVEYING

December 1989

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BACKGROUND

Creation and Powers

The Texas Board of Land Surveying was created in 1979 as the result of the consolidation of the State Board of Registration for Public Surveyors (created in 1919) and the Board of Examiners of Licensed State Land Surveyors (created in 1955). In 1989, the name was changed to the Texas Board of Professional Land Surveying. The agency's main responsibility is to ensure that only qualified surveyors provide services to the residents of Texas. The board achieves this by evaluating the qualifications of persons seeking certification, registration and licensure, and administering examinations to those that qualify. The board also investigates complaints and conducts enforcement actions when necessary. The board also prints and distributes a current roster of registered professional land surveyors and an agency newsletter.

Policy-making Body

The agency has a ten member board consisting of nine members appointed by the governor and confirmed by the senate and the Commissioner of the General Land Office or his designee. Three of the nine appointed members must be from the general public, two must be Licensed State Land Surveyors and four must be Registered Land Surveyors. Prior to September 1, 1989, the governor was statutorily authorized to designate the chairman of the board. However, amendments to the surveying act in 1989 added language authorizing the board to choose the chairman from among the board membership but did not repeal the provision authorizing the governor to designate the chair. The current chairman was designated by the governor.

The duties of the board are to:

- make and enforce all reasonable rules for the performance of the board's statutory duties;
- conduct hearings and impose sanctions for violations of the agency's statute;
- administer license examinations; and
- conduct oversight of the agency and select the executive director.

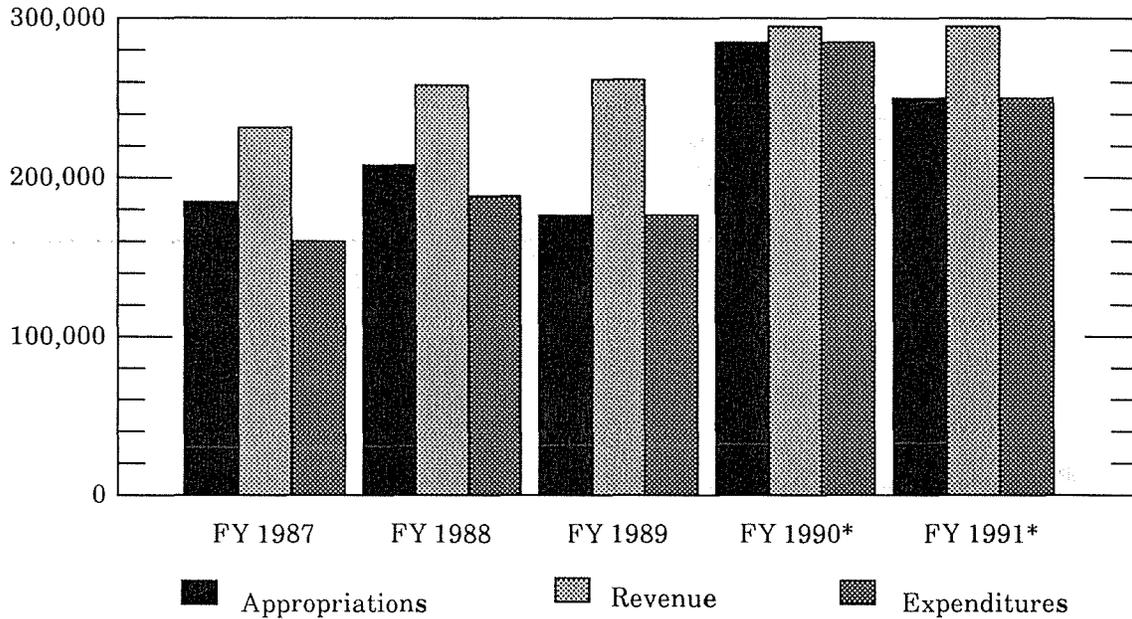
The part-time board is required to meet at least twice a year and met eight times in fiscal year 1989. Meetings are normally held in Austin.

Funding and Organization

The board was appropriated \$286,000 for fiscal year 1990 and \$250,000 for fiscal year 1991. The board will collect and deposit an estimated \$296,000 in fees to the Land Surveying Fund, within the treasury, during each fiscal year of the 1990-91 biennium. Exhibit 1 shows agency appropriations, revenues, and expenditures for the last four years. The board is authorized for five-full time employees but

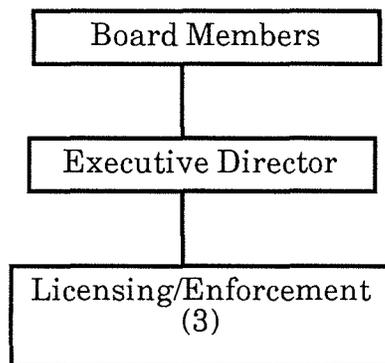
currently employs a staff of four full-time employees. A full-time investigator position is currently unfilled. Investigators for complaint investigations are contracted for as needed. All employees are located in Austin. Exhibit 2 shows the agency's organizational structure.

Exhibit 1
Revenues and Expenditures
Fiscal Years 1987 - 1990 YTD



*Figures for revenue and expenditures are estimated.

Exhibit 2
Board of Professional Land Surveying
Organizational Chart



Programs and Functions

Examination and Licensing

The board regulates three different groups of surveyors, registered professional land surveyors, licensed state land surveyors and surveyors-in-training. Registered professional land surveyors conduct land boundary and property surveys for the general public. Licensed state land surveyors conduct surveys on land in which the state or the public free school fund has an interest or on land requiring an original survey for the purpose of filing field notes in the General Land Office. A licensed state land surveyor operates as an agent of the state when conducting these types of surveys. Surveyors-in-training are individuals certified by the board as having met all of the basic requirements for registration and served a two year apprenticeship with a registered surveyor prior to taking the examination for registration.

All individuals seeking registration as a professional and surveyor, licensure as licensed state land surveyor, or certification as a surveyor-in-training, are required to make an application with the board and pay a \$100 application fee. Each application must show that the applicant has met the necessary educational and experience requirements and must include three references who can vouch for the applicant's experience as a surveyor. The following chart (Exhibit 3) outlines the specific educational and experience requirements for surveyor-in-training, registered professional land surveyor and licensed state land surveyor. Requirements for surveyor-in-training and registered professional land surveyor were revised by the 71th Legislature in 1989. The requirements shown in Exhibit 3 will remain in effect until January 1, 1996. After January 1, 1996 the more stringent standards, also shown in Exhibit 3, will take effect.

Exhibit 3

Professional Land Surveying Education Requirements

Current Requirements

Surveyor-In-Training

- Bachelor of Science (B.S.) in surveying from an accredited university or;
- B.S. from an accredited university with at least **32 hours** in civil engineering, land surveying, mathematics, photogrammetry, forestry, or the physical sciences, with **one year** of experience acceptable to the board or;

Requirements as of January 1, 1996

Surveyor-in-Training

- B. S. from an accredited university with 32 hours in surveying or survey related courses acceptable to the board.
- All other options for meeting the educational requirements are removed.

Exhibit 3
Professional Land Surveying Education Requirements (cont.)

Current Requirements

Requirements as of January 1, 1996

Surveyor-In-Training

- Associate degree in surveying and **four years** experience acceptable to the board in responsible charge as a subordinate to an active registered professional land surveyor or;
- Completion of a course of study composed of **32 semester hours** in land surveying or the academic equivalent in board-approved courses related to surveying and **four years** of experience acceptable to the board in "delegated responsible charge" as a subordinate to an active registered professional land surveyor or;
- Graduation from an accredited high school, at least **six years** of experience acceptable to the board in "delegated responsible charge" as a subordinate to an active registered professional land surveyor and evidence satisfactory to the board that the applicant is self-educated in professional land surveying.

Registered Professional Land Surveyor

- Certified as a surveyor-in-training (S.I.T).
- **Two years** experience as a S.I.T. under a surveyor registered or licensed to practice surveying in Texas or any other state whose requirements are equivalent to those in Texas.

Licensed State Land Surveyor

Registered professional land surveyor.

Registered Professional Land Surveyor

- Certified as a surveyor-in-training.
- **Four years** office and field experience in land surveying acceptable to the board of which **two years** must be in "delegated responsible charge" of surveying projects as a subordinate to registered professional land surveyor.

Licensed State Land Surveyor

Same as the current requirements.

Once the board determines that a person is qualified to take an examination the board's staff administers an examination to qualified applicants. Registered professional land surveyor applicants, in addition to passing the National Council of Examiners of Engineers and Surveyors (NCEES) exam covering the fundamentals of surveying, must pass an eight-hour examination developed by the board which includes an analytical problem solving section and another section covering the legal aspects of surveying in Texas. The fee for taking this exam is \$100. Licensed state land surveyors must pass an eight-hour exam developed by the board that tests an applicant's knowledge of the history, files and functions of the General Land Office, survey construction, legal aspects pertaining to state interests in vacancies, excesses, and unpatented lands. This examination also tests the applicant's familiarity with other state interests in surface and subsurface rights as covered by existing law. The fee for this examination is \$100. Surveyor-in-training applicants must pay a \$100 examination fee and pass the eight-hour examination developed by NCEES that covers surveying fundamentals.

Surveyors licensed in other states who want to practice surveying in Texas must meet certain requirements. If the board determines that the requirements of the state the applicant is licensed in are equivalent to those in Texas, the applicant must pass a two-hour exam to be registered. The two-hour exam assesses the applicants knowledge of how surveying is conducted in Texas, as well as Texas surveying law. If the board determines that the requirements of the state that the applicant is licensed in are not equivalent to those in Texas, the applicant must take and pass the eight hour examination that covers the practice and legal aspects of surveying in Texas. The fee for being registered through endorsement is \$100.

In fiscal year 1989, 313 registered professional land surveyor applicants two licensed state land surveyor applicants and 82 surveyor-in-training applicants, were examined by the board. Of those examined, 30 surveyor-in-training applicants were certified as surveyors-in-training and 92 of the registered professional land surveyor applicants passed and were registered. Neither of the licensed state land surveyor applicants passed the exam. During the same time period, 27 surveyors licensed by other states applied for licensure in Texas and 10 were admitted.

Renewal of Licenses

All registrations and licenses expire on December 31 of each year. To renew, a person must pay a fee before the expiration date. After January 1, 1993, persons seeking renewal will have to meet continuing education requirements currently being developed by the board. The renewal fee for a registered professional surveyor is \$60 annually and \$35 for a licensed state land surveyor. There is no renewal for a surveyor-in-training. An individual can renew a registration or a license within 90 days of the expiration date by paying a \$100 late fee in addition to the renewal fee. If the registration or license has been expired for more than 90 days, the board can require the individual to qualify as a new applicant and pay the necessary fees. In fiscal year 1989, the agency issued renewals to 3,485 professional land surveyors and 87 licensed state land surveyors.

The 71st Legislature added a new provision which allows a professional land surveyor to request inactive status from the agency, before the registration expires. If inactive status is granted, the surveyor cannot practice surveying, and is not required to comply with up coming professional development requirements adopted by the board or required to take an examination to be reinstated. The fee for being

on inactive status is \$10 annually. Registered surveyors seeking to be reinstated must simply notify the board of their intention. To date, no surveyors have sought inactive status.

Enforcement

The agency has several enforcement powers designed to ensure compliance with the board's statute and rules. The board can reprimand a registrant or licensee and can revoke or suspend a registration or license. The agency can also seek criminal penalties (Class B misdemeanor) for violations of the surveying statute and agency rules. In addition, the board can seek injunctive relief against a registrant or licensee who violates the statute or agency rule or a person practicing surveying for compensation without a license.

Enforcement actions by the agency are based on investigations of complaints the board receives from consumers and complaints generated by the board. The board does not conduct periodic inspections but does investigate complaints as necessary. All complaints are required to be in writing. Once a complaint is received, the surveyor involved is notified and given the opportunity to respond. The complaint and response, once received, are assigned to a board member. The board member reviews the complaint to determine whether it falls under the board's jurisdiction. If the complaint is determined to be under the jurisdiction of the board, an informal, fact-finding hearing is held. At this informal hearing, the surveyor in question can bring legal counsel. If the case cannot be resolved informally, a formal hearing is conducted as deemed necessary by the board. The formal hearing is conducted in accordance with Article 6252 APTRA and the Professional Land Surveying Act (Article 5282c, Vernon's Texas Civil Statutes). The complainant may attend the formal hearing and the surveyor can bring legal counsel. The attorney general represents the agency in formal hearings.

In fiscal year 1989, the board had a total of 30 complaints to resolve. Of this number 26 were filed during the fiscal year and four were from the previous year. During fiscal year 1989, the board acted on 15 complaints resulting in one revocation, two suspensions, one reprimand and 11 dismissals. At the end of fiscal year 1989, 15 complaints were pending.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

Previous Sunset Review

As part of the overall review of the Board of Professional Land Surveying, materials from the 1979 sunset review of the agency were reviewed. In addition, the recommendations adopted by the sunset commission were examined and compared to the current activities of the agency.

The sunset review in 1979 recommended that the Board for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors be merged into one agency. Both agencies were regulating two types of surveying that had developed to a point where they were not significantly different enough to require two separate regulatory boards. Combining the two agencies also was expected to increase the regulatory and administrative efficiency of these two boards.

Other operational changes recommended by the sunset staff in 1979 included:

- the use of a qualified individual to address problems associated with the design, administration and grading of the examination; and
- the formalization and strengthening of administrative procedures to improve the quality of information used for decision-making and the review of regulatory activities.

In 1979, the sunset commission concurred with the staff that the agency should be continued and that the two separate boards regulating surveyors should be combined. The commission also recommended the following:

- the addition of conflict of interest provisions which apply to board members and employees;
- the addition of statutory provisions concerning board records and reports;
- the deposit of all funds related to the regulation of surveying in a special fund within the State Treasury;
- the addition of provisions requiring all registered public engineers engaged in the practice of surveying to register biennially with the new surveying regulatory board;
- the elimination of the oral examination;
- the reduction of the experience requirement to two years in responsible charge and the elimination of the education requirement;

- the addition of provisions which require all written contracts for surveying services to contain the name, mailing address, and telephone number of the regulatory board having jurisdiction over that licensed individual;
- the addition of disclosure provisions requiring that a firm engaged in the practice of surveying identify those registered or licensed individuals who are legally responsible for the firm's actions; and
- the restructuring of the statutory language concerning the complaint and hearing process to ensure due process.

The sunset bill finally passed by the 66th Legislature incorporated the majority of recommendations made by the Sunset Advisory Commission. Amendments to the surveyors' statutes resulted in the merger of the Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors into one agency, the addition of conflict of interest provisions which apply to board members and employees, the placing of agency funds into a special fund in the State Treasury, and the specifying of complaint procedures in statute. In addition, other sunset across-the-board provisions were added to the statute. These provisions, among other things required standard time frames for licensees who are delinquent in renewal of licenses, provided for an analysis of the licensing exam to those who fail the exam and specified board hearing requirements among other changes

Approach to Current Review

As part of the analysis of the board's efficiency and effectiveness, the sunset review examined both the current operations of the agency and the findings and recommendations of the sunset staff and sunset commission which resulted from the review conducted in 1979 and the subsequent action by the legislature.

In accordance with the Sunset Act the review included an assessment of the need to continue the regulating functions performed by the agency; whether benefits could be gained by performing the function through another agency; and finally if the function is continued, whether changes are needed to improve the efficiency and effectiveness of the agency.

To make the assessment of these general areas, a number of efforts were undertaken. These included:

- review of previous sunset staff recommendations;
- review of documents developed by the agency, legislative reports, other states information, documents prepared by national industry and research groups containing background material;
- interviews with agency staff in the Austin office;
- interview with a board member;

- attendance at a board meeting;
- field visit with a surveyor from the General Land Office;
- interviews with other states, the National Council of Examiners for Engineers and Surveyors, the National Council of State Legislatures, and the American Congress of Surveying and Mapping; and
- meetings with interest groups and individuals affected by the board.

The results of the assessment of each of these areas is contained in the following material.

Assessment of Need to Regulate

Assessment of Need to Regulate

ISSUE 1: The state should continue regulation of the profession of land surveying.

BACKGROUND

Several conditions must be present to justify the regulation of a profession through licensure. First, the unlicensed practice of the profession should pose a serious risk to the public's life, health and safety or economic well being. Second, the benefits to the public should clearly outweigh any potential effects, such as a decrease in the availability of practitioners. Finally, the duties of the occupation should be of a complexity that consumers cannot properly evaluate the appropriateness of the service and the qualifications of the practitioners.

To assess whether the above conditions exist to an extent that would justify the board's continuation, the 1979 staff report prepared for the Sunset Commission was reviewed and the board's current functions were evaluated. The 1979 review concluded that:

- ▶ Historically, the state regulated the practice of surveying to ensure that property rights of individuals and the land interests of the state were protected and that need still existed.
- ▶ The review indicated a need for regulating surveyors as expressed through the licensing requirements imposed on surveyors by all of the 50 states.
- ▶ The regulation of surveying would be more effective and efficient if the two agencies that were regulating surveying in 1979, the Board of Registration for Public Surveyors and the Board of Examiners of Licensed State Land Surveyors were consolidated.

The current evaluation of the need to continue state regulation determined the following:

- ▶ Surveying plays an important part in the multi-billion Texas real estate industry because it defines the actual boundaries and property rights of property being bought and sold. A survey is typically required in all property transactions.
- ▶ Surveying is a profession that can put the consumer at a high degree of risk. The consumer normally does not have direct control of the survey because it is usually handled by the title or mortgage company closing the real estate transaction. Without direct control, some other mechanism is needed to ensure that competent individuals perform surveys.

- ▶ Surveying is a technical profession based on an understanding of mathematics and the physical sciences. Consumers and businesses needing surveying services are not able to determine independently if a person, claiming to be a surveyor, has the expertise to be a competent surveyor.
- ▶ The consumer runs a greater risk of receiving an improper survey if the profession of surveying is not regulated. Improper surveys can create situations where the value of residential or commercial properties is destroyed, leading to significant economic losses.
- ▶ In situations where a consumer may need to purchase a survey, the practice of surveying is too technical for the consumer to make a sound, qualitative evaluation of the services offered by competing surveyors.
- ▶ All 50 states continue to regulate the profession of surveying.

Based on these factors, the review concluded that the state should continue regulation of surveying. Surveyors should have a certain degree of competency so that their actions do not threaten the economic well being or the property rights of the public.

RECOMMENDATION

- **The state should continue regulation of the profession of land surveying.**

Continuing the regulation will provide continued assurance to consumers that surveyors are competent which reduces the risk of economic losses associated with an improper survey.

FISCAL IMPACT

If the regulation is continued using the current board structure, its annual appropriation of approximately \$260,000 would be required. The board is supported by fees which exceed operating costs, therefore no fiscal impact is anticipated.

Assessment of Organizational Alternatives

Organizational Alternatives

ISSUE 2: The functions of the Board of Professional Land Surveying board should be transferred to the Department of Licensing and Regulation.

BACKGROUND

Centralization of licensing functions has been contemplated for a number of years. The regulated occupations and their affiliated trade associations usually favor an independent, free-standing board. These groups assert that matters relating to the occupation require the specialized expertise of one who practices in the field and indicate that centralization could lead to control by persons who know little about the occupation. Proponents of centralization argue that duplication occurs through the licensure of many professions using free-standing boards and agencies. Centralization would result in many routine tasks performed in licensing being carried out by a single agency at less cost and with greater consistency, making comparison of data and other management efforts possible. A centralized regulatory structure allows for the development of uniform policies and procedures. The regulatory function is believed to be more accountable to the public under a centralized agency structure.

Centralization received specific attention by the legislature in 1988. A Special Committee on the Organization of State Agencies reported to the governor and the 71st Legislature on the possibility of consolidating certain state agencies. The report recommended the consolidation of 12 licensing agencies, including the Board of Professional Land Surveyors. The report proposed the continuation of separate boards or commissions to set policy and standards and make disciplinary determinations for their respective professions while the consolidated agency would handle all administrative matters and provide staff services to the boards. The committee indicated that cost savings in the areas of investigation, legal counsel, accounting, data processing and other staff functions could be achieved through consolidation. The staff of the Legislative Budget Board estimated that a net savings of over \$200,000, or eight percent of the total budgets of the consolidated agencies, could be achieved in one biennium.

Last session, the Texas Department of Licensing and Regulation was modified to structure one of its divisions to serve as a centralized licensing agency. The division is set up to process applications and renewals and to enforce related laws and rules.

Centralization is a way to ensure that small agencies with limited budgets and personnel can conduct their regulatory functions in a more efficient and effective manner. Placing small regulatory agencies under a larger licensing agency can result in greater administrative efficiency for smaller agencies because of the combined economies of scale. In many states, activities such as providing space, answering inquiries, collecting fees, processing license renewals and other routine duties are the responsibility of the central licensing agency. In addition,

combining several smaller agencies in a larger regulatory agency also leads to standardization of practices, such as licensing renewals, among the different agencies. Centralization also strengthens the small regulatory agencies enforcement activities. The smaller agencies can take advantage of the larger regulatory agency's existing enforcement structure, such as regional offices and enforcement personnel.

The activities conducted by the Texas Board of Professional Land Surveying were examined to determine whether the current structure allowed the board to meet its regulatory responsibilities or if an alternative regulatory structure existed which would allow the board to meet its responsibilities more efficiently and effectively. The review indicated the following:

- ▶ The Department of Licensing and Regulation has the structure and enforcement personnel to enhance the board's enforcement actions. The board's enforcement powers are hampered because the board has not been appropriated the funds needed to employ enforcement personnel. The board has received funding to contract with private investigators and licensed surveyors to conduct investigations when a complaint needs to be investigated.
- ▶ The review found no problems with the way the board administers its activities. However, greater administrative efficiency could be achieved through greater economies of scale brought about by combining several small agencies, including the board, in a larger regulatory agency, specifically the Department of Licensing and Regulation.
- ▶ Transferring several smaller regulatory agencies, including the board, to the Department of Licensing and Regulation would lead to the standardization of operations of all of these agencies.

RECOMMENDATION

- **The functions of the Board of Professional Land Surveying should be transferred to the Department of Licensing and Regulation. In addition the statute should provide for:**
 - the board to develop and recommend rules to the commissioner;
 - the staff of TDLR to investigate and develop enforcement cases and make recommendations to the board for final action; and
 - a maximum one year phase-in of the transfer.

The transfer of the agency's functions to TDLR should result in a more standardized approach to licensure, additional fiscal controls and potentially an overall reduction in licensing fees for the licensees.

The transfer would result in the consolidation of administrative services such as mailing, record-keeping, and issuance of licenses. Staff of the Texas Department of Licensing and Regulation would perform inspections through their existing field offices. All rules developed by the surveying board would be forwarded for final approval to the commissioner of TDLR, as is currently the case with two commissions that are already under TDLR's centralized structure. The board would maintain final disciplinary authority over licensees.

A one-year phase-in period would provide time for coordination of administrative changes, development of rules under the new structure, and informing licensees of the changes. The fees for licensing surveyor could be determined and set in such a manner as to fund the regulatory operation.

To ensure that a smooth transition could take place, the computer operations of the agency, currently done through contract with the State Purchasing and General Services Commission, could continue without change until the TDLR determined that it could perform the activities in a more cost-effective and efficient manner. The one year phase-in period would also assist in this effort.

FISCAL IMPACT

Transferring the Board of Professional Land Surveying to the Texas Department of Licensing and Regulation (TDLR) would result in administrative savings of approximately \$100,000 per year, once the transfer is completed. The administrative functions conducted by the board would be absorbed into TDLR's administrative structure. As a result, the board's executive secretary and administrative technician position would be eliminated. Also, two administrative positions, an administrative director and accounting clerk, would be replaced with data entry personnel. Additional savings in the area of computer operations would be achieved once the TDLR converts the computerized activities of the board to its own system. Some one time costs would be associated with the physical move of the board and its property and records; however, an estimate was not available for this report.

Recommendations if Agency is Continued

Summary of Recommendations

The recommendations which follow are generally consistent with the findings and recommendations resulting from the sunset process 12 years ago. They reflect a general conclusion that licensing requirements and regulation of occupations should not be unnecessarily restrictive to those wishing to enter the profession and should be structured in such a way that licensees are treated fairly and equitably and the cost of licensing is not unduly shifted to the consumers.

The current sunset review found that a number of changes have occurred in the regulation of the surveying industry in the 12 years since the first review. The surveying industry is currently regulated by one board instead of two separate boards. Also, the board no longer uses an oral examination to test the competency of surveying applicants seeking certification, registration and licensure. The board now relies on a national exam and a state exam, developed with the assistance of an examination consultant, to test candidates for certification, registration, and licensure. In addition, the board has implemented many of the sunset commission across the board approaches recommended in the 1979 review, including provisions calling for the placement of board funds in a special fund in the State Treasury and the addition in statute of conflict of interest language that applies to board members and employees.

Whether the regulation of the surveying industry is continued by the Texas Board of Professional Land Surveying or by another agency, the changes recommended below are expected to improve the effectiveness and efficiency of the regulation.

Policy-making Body

A standard part of the sunset review is the examination of the agency's policy-making body. One recommendation involves the designation of the board chair. Currently, the board's statute contains two contradictory provisions relating to the designation of the board chair. One provision authorizes the board membership to designate the chair, while the other authorizes the governor to designate the chair. The review concluded that the governor should designate the chair of the board, as is currently the case in many other agencies. A second recommendation relates to the board's ability to make disciplinary decisions. Currently, the board's statute requires a minimum of six favorable votes to reprimand, suspend, or revoke a certificate, registration or license. The review concluded that this requirement unnecessarily restricts the board's ability to make disciplinary decisions and recommended that this language be removed from statute.

Overall Administration

The review of the administrative operations of the board indicated that no changes were needed to improve the current activities carried out through this function.

Programs

Licensing

A second area of inquiry relates to the licensing requirements and procedures of the agency. The review of this area focused on the necessity and relevance of some of the current requirements for registration. The review identified one registration requirement, that an applicant be of good character and reputation, that was vague, indefinable and not directly related to the occupation of surveying. A recommendation removing this requirement is contained in the report.

Enforcement

Another area of inquiry relates to the board's enforcement powers. The board has the power to reprimand, suspend or revoke a certificate, registration or a license. The board also has the power to seek, through the attorney general's office, criminal penalties (Class B misdemeanors) or injunctive relief in response to a violation of the statute or related rules. However, the review indicated that the board does not have administrative and civil penalty authority. Licensing agencies are generally provided with a full range of enforcement sanctions to ensure compliance. A recommendation giving the board administrative and civil penalty authority is included in the report.

One other area of inquiry relates to standards for surveying. The review indicated that the board has not set minimum standards of practice for surveying that could be used to determine what constitutes a proper survey and when a surveyor has committed gross, negligence, incompetence or misconduct. As a result, board disciplinary actions are made on a case by case basis, which could result in the inconsistent decisions regarding violations of the surveying statute and related board rules. A recommendation addressing this problem is also included in the report.

None of the recommendations in this section of the report would have a significant fiscal impact.

ISSUE 3: The statute should require that the governor designate the chairman of the board.

BACKGROUND

Prior to September 1, 1989, the board's statute contained a provision that authorized the governor to designate the chair of the board who served in that capacity at the pleasure of the governor. The 71st Legislature added a provision to the board's statute which allowed the members of the board to elect the chair. However, the language authorizing the governor to designate the chair was not removed. These two contradictory provisions have resulted in confusion regarding who has authority to designate the chair of the board. The sunset commission has routinely recommended that the governor appoint the chair based on improving direct accountability to the state's chief executive. Except in unusual circumstances, this provision has been included in the statutes of all agencies under sunset. The governor selects the chair in many other state agencies, such as the Board of Pardons and Paroles, the Texas Department of Mental Health and Mental Retardation, the Texas Air Control Board, the Texas Water Commission and the Texas Department of Human Services. The majority of the agencies reviewed for the 71st Legislature had this provision in their statutes. Where it was not in statute, it was added as a result of sunset action.

PROBLEM

The board's statute contains two contradictory provisions regarding the designation of the board chairman. One authorizes the governor to choose the chair and while the other provides for the election of the chairman by the board membership. The election of the chairman by the board members each year does not provide the most direct method of ensuring a continuity of policy or accountability to the state's chief executive officer.

RECOMMENDATION

- **The statute should be changed so the governor designates the chair of the Texas Board of Professional Land Surveying.**

The person appointed as chair would continue in that position at the pleasure of the governor. This would promote accountability between the commission and governor.

FISCAL IMPACT

No fiscal impact would occur as a result of the recommendation.

ISSUE 4: The statute should be changed to reduce the vote required to take disciplinary action.

BACKGROUND

The Board of Professional Land Surveying has ten board members consisting of the commissioner of the General Land Office or an approved designee, three public members, two licensed state land surveyors and four registered professional land surveyors.

The board's statute was amended by the 71st Legislature to require that, after notice and a hearing, the board may reprimand, suspend or revoke a certificate or license only if a minimum of six members of the board vote favorably to do so. Prior to September 1, 1989, the board only needed favorable votes of the majority of a quorum of the board to reprimand, suspend, or revoke.

The provision in the surveyor's statute, which requires a two-thirds vote of the full voting membership, is the highest vote required among regulatory agencies. Almost all state regulatory agencies take disciplinary action on the affirmative vote of a majority of a quorum.

A review of provisions governing the disciplinary decision making process of the surveying board and other regulatory boards indicated the following:

- ▶ A computer search of the statutes of the state's regulatory agencies indicated that the surveyor's act requires a higher vote than any other licensing statute. Only one other agency, the Board of Optometry, has a provision similar to the one found in the surveyors' statute. Five members of that nine member board must vote favorably to revoke, suspend, reprimand, or deny a license.
- ▶ The board has indicated that the new provision will make it difficult for the board to take disciplinary actions because it is much easier to get a vote involving a majority of the board quorum of the board (five members) than it will be to get six members to reprimand, suspend or revoke.
- ▶ The board indicated that the average attendance at board meetings ranges from seven to eight members.

PROBLEM

The provision in the board's statute requiring at least six affirmative votes to reprimand, suspend or revoke a certificate, registration or license is more stringent than that of other regulatory agencies in the state.

RECOMMENDATION

- The board's statute should be changed to remove the provision that requires a minimum of six affirmative votes to reprimand, suspend or revoke a certificate or license.

Removing this provision would provide the board with flexibility needed to make disciplinary decisions. Also, the board's voting requirement would be consistent with that of most regulatory agencies in the state.

FISCAL IMPACT

No fiscal impact would occur as result of the recommendation.

ISSUE 5: The statute should be changed so that the board does not have to use good character and reputation as a criteria for licensure.

BACKGROUND

The board's statute sets out a number of requirements with which applicants must comply to take the exam for certification as a surveyor-in-training or a registered public surveyor. More specifically, an applicant seeking certification as a registered professional surveyor must meet certain education and experience qualifications. In addition, an applicant must be of good character and reputation. If an applicant fails to meet these requirements, the board can refuse to allow the applicant to take the exam needed for registration.

The licensing requirements set out in the statute are generally related to the practice of surveying and are specific enough so that clarification in rules is not necessary. When a requirement needs further clarification, the board has adopted rules to provide necessary interpretation. For example, the statute requires applicants for certification as a registered professional surveyor to meet certain experience requirements. Board rules define what is considered valid experience.

One of the primary purposes of licensing laws is to set reasonable standards and requirements for persons seeking to be licensed to practice an occupation. The language used in statute to describe these requirements must be clear and have a substantial relationship to the functions and responsibilities of the occupation being licensed.

The statute specifically requires the commission to determine if an applicant is of good character and reputation. This type of provision has traditionally been included in licensing statutes without any thought given to the practical implications of enforcement. Once placed in statute, removal is difficult because to do so would give the appearance that approval was being given to persons of bad moral character. The provision, therefore, continues to be included in each licensing statute as it is created. Where assessment of character is critical other methods have been included in statute eliminating the need for the general and judgmental language of good moral character.

A review of the board's licensing requirements indicated the following:

- ▶ The statute or board rules clearly define all requirements for licensure except the one which requires that applicants for registered professional land surveyor and surveyor-in-training be of "good character and reputation, as attested by references".
- ▶ The board has never used this requirement to prevent an applicant from pursuing licensure and has indicated that it would have no standard on which such an action could be based.

PROBLEM

The statute contains a licensing requirement that is vague, undefineable and not related to the practice of surveying. This could permanently disqualify a person for licensure even though the disqualifying condition has no direct relationship to the profession.

RECOMMENDATION

- **The statute should be changed to remove language which requires applicants for licensure as a registered professional land surveyor and surveyor-in-training to be of good "moral character and reputation".**

Removal of the language will prevent applicants for licensure by the board from being disqualified by the board based on requirements that are either too vague or unrelated to the practice of surveying.

FISCAL IMPACT

No fiscal impact will occur as a result of this recommendation.

ISSUE 6: The statute should include administrative and civil penalties of up to \$1,000 per violation, for violations of the surveying act or related rules.

BACKGROUND

The board has several enforcement powers to ensure compliance with the state surveying laws and board rules. The board can reprimand a surveyor-in-training, a registrant or a licensee, as well as suspend and revoke a certificate, license or registration. In addition, the board can seek injunctive relief to prevent unauthorized and unlicensed activity and criminal penalties for violations of the surveying statute or the board's rules. The board currently is not authorized to levy an administrative penalty or to seek civil penalties.

A regulatory agency normally has a full range of enforcement powers to ensure compliance with the statutory provisions and agency rules. A review of the board's enforcement powers indicated the following:

- ▶ State regulatory agencies that are judged to have a sufficient range of enforcement powers usually have general civil and administrative penalty authority. The sunset commission has routinely recommended additional enforcement powers, specifically civil and administrative penalties, in previous reviews of regulatory agencies where the current enforcement structure lacked certain powers needed to ensure compliance. For example, the Texas Department of Agriculture was given administrative and civil penalties for several of its programs last legislative session as part of its sunset legislation.
- ▶ Surveying acts in other states, specifically Arkansas, Washington, and Florida, include administrative penalty authority for use against violations.
- ▶ The National Council of Examiners for Engineers and Surveyors, in model legislation developed for the regulation of land surveyors, recommends that state regulatory bodies be authorized to levy an administrative penalty of up to \$1,000 for each offense.

PROBLEM

The board's current enforcement structure does not have all the powers needed to ensure compliance with its statute and rules.

RECOMMENDATION

- The board's statute should be changed to provide the board with the general authority to impose administrative penalties and seek civil penalties of up to \$1,000 per violation for violations of the surveying act or related rules.

These changes would provide the board with enforcement powers similar to those used by other regulatory agencies in Texas and surveying boards in other states. The process for levying an administrative penalty should be set in statute and should be similar to the process established for the Department of Agriculture last session.

FISCAL IMPACT

The authorization to levy administrative penalties will result in some increased revenue to the general revenue fund. Seeking civil penalties will result in some increased costs for the attorney general's efforts and penalties imposed are local funds. The overall fiscal impact is expected to be minimal given the lack of information regarding how often the penalties will be imposed. However, an exact estimate was not available for this report.

ISSUE 7: The statute should require the board to establish standards defining the procedure and content of boundary surveys.

BACKGROUND

The board is authorized to promulgate rules necessary to perform its duties and for the purpose of establishing standards of conduct and ethics for registered professional land surveyors. The board has not promulgated any rules establishing minimum standards regarding the procedures used in a survey or the content of the survey documents. Consequently, the board has few clear standards to determine when a surveyor is guilty of gross negligence, incompetence, or misconduct in the practice of surveying as a registered professional land surveyor or a licensed state land surveyor.

Agencies with responsibilities for the regulation of a technical profession should have standards for determining when an individual is guilty of gross negligence, incompetence, or misconduct in the practice of the occupation. Without standards of practice, the agency makes decisions on a case by case basis. Inconsistent decisions can result and the standards of practice that are created by these decisions are not necessarily communicated to the regulated community.

A review of the need to establish standards of practice in rules indicated the following:

- ▶ Several states, specifically Arkansas, Washington, and Florida, have established minimum standards for surveying in rule, with the authority for doing so established in statute.
- ▶ One other state regulatory agency has developed standards for practicing an occupation. The State Board of Accountancy is required in statute to adopt rules of professional conduct to establish and maintain high standards of competence and integrity in the practice of accountancy. The standards the board has adopted as include GAAP (generally accepted accounting principles), general accepted auditing standards, Statements on Auditing Standards issued by the American Institute of Certified Public Accountants, auditing standards included in Standards for Audit of Government Organization Programs, Activities and Functions issued by the General Accounting Office.
- ▶ The board has indicated that the lack of minimum standards of practice can, in some cases, make it difficult to take disciplinary action.
- ▶ Title companies normally include minimum standards of performance for surveys in contracts with surveying companies that define how the survey should be conducted.

- ▶ The American Congress on Surveying and Mapping (ASCM), has developed extensive performance standards that can be used by the board.
- ▶ The board has indicated that they are in the process of developing rules that will establish minimum standards based on ASCM standards which will be modified for conditions in Texas.

PROBLEM

The board currently lacks standards of practice for surveying which makes it difficult for the board to determine objectively when a surveyor has acted negligently and for the surveyor to determine the minimum acceptable performance allowed by the board.

RECOMMENDATION

- **The board's statute should be changed to require the board in rules to develop rules establishing minimum standards defining the procedure and content of boundary surveys.**

Minimum standards would enhance the board's ability to determine, in a more objective manner, when a surveyor has performed incompetently or negligently. Also, minimum practice standards would provide surveyors with the board's perception of how to conduct a proper survey.

FISCAL IMPACT

No fiscal impact would occur as a result of this recommendation.

Across the Board Recommendations

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

State Board of Professional Land Surveying

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. GENERAL
x			1. Require public membership on boards and commissions.
x			2. Require specific provisions relating to conflicts of interest.
		*	3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
x			4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
x			5. Specify grounds for removal of a board member.
		*	6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.
x			7. Require the board to establish skill-oriented career ladders.
x			8. Require a system of merit pay based on documented employee performance.
x			9. Provide for notification and information to the public concerning board activities.
		*	10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
x			11. Require files to be maintained on complaints.
x			12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
x			13. Require development of an E.E.O. policy.
x			14. Require the agency to provide information on standards of conduct to board members and employees.
x			15. Provide for public testimony at agency meetings.
x			16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
x			17. Require development of accessibility plan.

* Already in law.

State Board of Professional Land Surveying
(cont.)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
x			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
x			2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
x			3. Provide an analysis, on request, to individuals failing the examination.
x			4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
x			5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		*	6. Authorize the staggered renewal of licenses.
x			7. Authorize agencies to use a full range of penalties.
x			8. Specify board hearing requirements.
x			9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		*	10. Authorize the board to adopt a system of voluntary continuing education.

* Already in law.

Minor Statutory Modifications

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

**Minor Modifications to the
Texas Board of Professional Land Surveying**

Change	Reason	Location in Statute
Delete authorization for committees of the legislature to overrule adoption of a commission rule.	To delete language that is believed to be unconstitutional.	Section 9(a)

Texas Board of Professional Land Surveying

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