



SUNSET ADVISORY COMMISSION

Texas Board of
Professional
Land Surveying



Staff Report
May 2002

TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

SUNSET STAFF REPORT

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SUMMARY



Summary

Sunset Staff Report

Texas Board of Professional Land Surveying

Land surveying in Texas dates back to the early 1800s, when surveyors worked to define the boundaries of Spanish land grants. Methods varied greatly, compass bearings tended to be inaccurate, and distances sometimes were described as “a cigarette’s length” or “half a day’s walk.” Since then, surveyors have continued to play an important role in the state’s land development, and today surveys are required in most property transactions.

Because of the significance of surveys on Texans’ economic welfare, the Texas Board of Professional Land Surveying seeks to ensure that only qualified individuals provide land surveying services. The Board accomplishes this task by administering exams, issuing licenses, and enforcing the Professional Land Surveying Practices Act.

The Sunset review examined the Board’s policies and practices for licensing and regulating land surveyors in Texas. The review also assessed whether a separate agency is needed to achieve this goal.

The review found that licensing of surveyors is needed and that the Board is successful in its mission. However, some of the Board’s processes are too informal and lack needed structure.

Formally adopting rules to define the processes the Board uses to create and approve exams, as well as handle complaints, will provide needed accountability, structure, and public input. The review also noted that the Sunset reviews of other professional licensing agencies will be completed later

Some of the Board’s processes, related to exams and complaints, are too informal and lack needed structure.

this year and determined that the question of the proper administrative placement of this agency would be best answered at the completion of those reviews.

A summary of the recommendations in this report is provided in the following material.

For more information, contact Meredith Whitten, (512) 463-1300. Sunset staff reports are available online at www.sunset.state.tx.us.

Issues / Recommendations

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

Key Recommendations

- 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.
- 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.
- The Board should formally review and approve the exams.
- The Board should conduct its Board exam meetings in executive session and comply with the requirements of the Open Meetings Act.

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

Key Recommendations

- Require the Board to establish its enforcement process in rule, including requirements that staff investigate complaints; dismiss baseless complaints; make initial determinations of violations; and recommend sanctions to the Board.
- Prohibit use of previously dismissed complaints in the enforcement process.

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

Key Recommendations

- Eliminate the application notarization requirement on individuals who apply for licensure with the Board.
- Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Eliminate the requirement that complaints submitted to the Board be notarized.

- Require the Board to adopt, by rule, guidelines for informal settlement conferences.
- Require the Board to adopt a probation guide.
- Authorize the Board to require restitution as part of the settlement conference process.
- Require the Board to adopt an administrative penalty matrix in agency procedures or rules.
- Eliminate the statutory language that sets and caps fees.

**Issue 4 Decide on Continuation of the Board After
Completion of Sunset Reviews of Other Professional
Licensing Agencies.**

Key Recommendation

- Decide on continuation of the Texas Board of Professional Land Surveying as a separate agency upon completion of upcoming Sunset reviews of other professional licensing agencies.

Fiscal Implication Summary _____

The recommendations in this report would not have a fiscal impact to the State.

ISSUES / RECOMMENDATIONS

Issue 1

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

Summary

Key Recommendations

- 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.
- 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.
- The Board should formally review and approve the exams.
- The Board should conduct its Board exam meetings in executive session and comply with the requirements of the Open Meetings Act.

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.

Conclusion

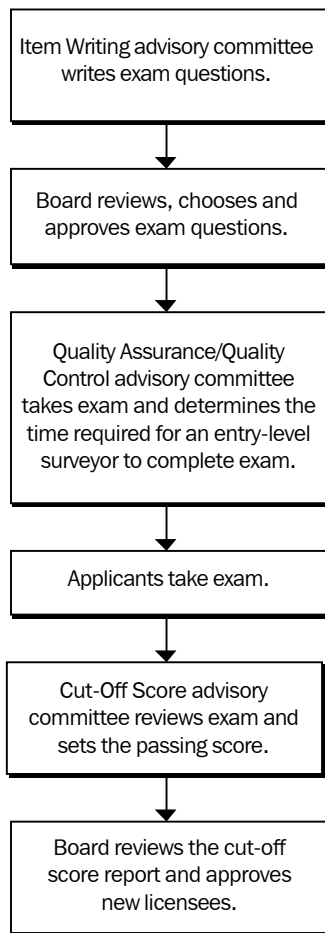
The Texas Board of Professional Land Surveying gives licensing exams to applicants who wish to become Registered Professional Land Surveyors. The Board prepares its exams using advisory committees composed of volunteer licensees, but these committees have no formal guidelines and the Board's interaction with the advisory committees is unstructured, which could lead to questions as to whether the process is fairly administered. The Board has never adopted a written policy for the exam-creation process.

The Sunset review evaluated the Board's exam development process and found that it does not provide sufficient controls to ensure that exams are consistent or fair. The review concluded that requiring the Board to formally structure exam advisory committees and use the Board to formally review and approve exams could help guarantee exams are created in a consistent, unbiased, and independent manner. In addition, requiring the Board to comply with certain provisions of the Open Meetings Act could protect the Board from open records requests regarding test material.

Support

The Board develops and administers land surveyor exams through the use of committees.

Exam Process



- To become a licensed surveyor in Texas, a Surveyor-In-Training must take the Registered Professional Land Surveyor (RPLS) exam. The RPLS exam includes a four-hour section on Texas surveying laws and a four-hour analytical section on the practical application of surveying fundamentals. The RPLS exam is given twice a year in Austin.

Applicants registered in other states with registration requirements equivalent to Texas' requirements may receive a Texas license by taking a four-hour reciprocal exam on Texas surveying laws and the practical application of those laws. State law requires the Board to determine the contents of both the RPLS and reciprocal exams.

- To create the exams, the Board uses three exam advisory committees, the Item Writing, Quality Assurance/Quality Control (QAQC), and Cut-Off Score committees. These advisory committees are composed of volunteer Registered Professional Land Surveyors (RPLSs). RPLSs wanting to serve on the committees express interest to Board members, agency staff, or current advisory committee members. Staff selects members to serve on the committees without formal Board review or appointment.
- The flow chart, *Exam Process*, shows the Board's exam-creation process. Item Writing advisory committee members write questions, which are added to an exam question bank, consisting of about 550 legal, 250 analytical, and 300 reciprocal questions. Staff randomly selects legal and reciprocal exam questions and Board members choose analytical questions from the bank to form the exams.

Once the exams are drafted, subcommittees of Board members review and take the exams to determine if the content is appropriate for an entry-level surveyor. The draft exams then go to the QAQC advisory committee, which reviews the questions for technical errors, fairness, and appropriateness. This advisory committee also determines the ability of applicants to complete the exam within required time limits.

Staff then administers the exam to surveying applicants, after which the Cut-Off Score advisory committee, with the help of a contracted psychometrician, reviews the exam results, determines the passing scores, and submits a report to the Board. The Board then reviews the report and formally approves the new licensees who have successfully passed the exams.

The exam advisory committees are not properly constructed.

- Although the Board considers the exam advisory committees as structured, the Board has never adopted policies or written guidelines outlining such a structure, leaving the process subject to change. Instead, the Board has some informal guidelines for the exam advisory committees, such as size and composition, training, and quorum requirements. None of these guidelines are written, except for those of the Item Writing advisory committee. Because the Board has not formally adopted these guidelines, the advisory committees are not required to adhere to them.

For example, the Item Writing advisory committee is required to have 10 members, but currently has 13 members. Conversely, the Cut-Off Score advisory committee has no requirement for the number of committee members. This lack of formal written guidelines contributes to confusion about the exam-development process and the interaction between the advisory committees and the Board.

- Because the Board does not formally appoint advisory committee members, no guarantee exists that members are qualified to create exam questions, review exam questions, or determine the passing score of the exams. In addition, without formal appointment, advisory committee members are not accountable to the Board. In fact, if enough advisory committee members are not available to create the exam, the committee members or agency staff may send alternates without notifying the Board.¹
- Although Board members do not chair the advisory committees, they serve on the committees as working members, and may have undue influence on the committees' work. Having Board members on the advisory committees negates the objectivity provided by an independent advisory committee that presents its work for approval by the Board. In particular, because Board members participate in the exam process, they should not be involved in all phases of testing, such as exam development, administration, and grading.

Because the Board has not adopted committee guidelines and does not appoint members, the advisory committees lack accountability.

The exam advisory committees are not complying with state law regarding reimbursement and meeting postings.

- Advisory committee members receive a \$100 travel reimbursement each time the committee meets. These travel reimbursements, paid by purchase vouchers, are characterized as professional fees. However, the Board does not have authority to reimburse committee members for travel expenses in the General Appropriations Act. By reimbursing advisory committee members, the Board is not complying with Chapter 2110 of the Government Code, which states that all such reimbursements must be authorized in the General Appropriations Act.²

- The Board does not post notification of exam advisory committee meetings, as required by the Open Meetings Act.³ The applicability of the Open Meetings Act to advisory committees has been debated in the past, and Attorney General Opinions indicate that advisory committees that serve a purely advisory role are not subject to the Act, if the committee has no power to supervise or control business.⁴ However, the Attorney General has also ruled that advisory committees whose recommendations are rubber-stamped by the parent body are subject to the Act.⁵

The Board's approval process for the exams uses unstructured Board subcommittees and lacks the perspective of public members.

- The Board's unstructured method of drafting and approving the exams does not ensure proper review and approval. After a regular Board meeting is adjourned, the Board breaks into informal subcommittees to review the exams, choose questions, take the exams to ensure fairness, and approve the exams. These Board subcommittees include whichever Board members are present at a particular meeting and no requirements exist for the number or type of Board members needed.

Though the Board maintains that the Board exam approval process is consistent and structured, the lack of a written policy and standard subcommittee composition requirements allows the process to vary. The subcommittees typically use only the RPLS Board members to review the exam, and the exam is not approved by the full Board. Because the exam is created and approved by registered surveyors, public members of the Board are not guaranteed to have input.

- The Board practice of adjourning from a posted Board meeting and splitting into unstructured subcommittees to review and approve the exam leaves the exam open to being disclosed to potential applicants. Although the Open Meetings Act allows boards to meet in executive session to discuss test material, the Board does not do so, making subcommittee meetings part of the Board's open meeting.⁶ Although exam applicants have not tried to attend these Board subcommittee sessions, the sessions are still part of the posted open Board meeting, subject to open records requests and attendance by outside parties.
- The Board has established Board subcommittees in rule that are responsible for preparing and grading the state exams. However, no established Board subcommittee is currently involved in creating the exam. For example, although the RPLS subcommittee is charged with preparing and grading the RPLS exam, it does not actually do this.

The lack of a written policy and standard subcommittee composition requirements allows the exam review process to vary.

The Legislature has consistently shown interest in proper construction and structure of advisory committees.

- Chapter 2110 of the Government Code, first passed in 1993 and updated in 2001, outlines the requirements and responsibilities of state agency advisory committees. For example, the statute sets out requirements for the establishment, composition, reporting requirements, and reimbursement of advisory committees.
- The Texas Sunset Act also charges the Sunset Commission and its staff to review the objectives, need, and use of advisory committees, and to make decisions regarding the continuation, reorganization, or abolishment of those committees.⁷ Last Sunset review cycle, the Sunset Commission recommended that the Texas Department of Economic Development's advisory committees be required to meet standard structure and operating procedures, and that the Texas Department of Housing and Community Affairs create an advisory committee to help the Department realize its goals. In the last seven Sunset cycles, the Sunset Commission has had at least nine recommendations directly relating to the formation or structure of advisory committees.

Recommendation

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.⁸ Board members would not be eligible to sit on the committees as working, voting members, while members could attend 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 adopt rules directing the exam advisory committees to comply with the Open Meetings Act addresses the 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 committee 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 of the 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 allow 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.

Impact

Because the exam is an integral part of the licensing process, the Board must ensure that exams are created in a competent, unbiased, fair, and consistent manner. While the Board currently seems to be producing quality exams through the work of volunteer licensees, requiring the Board to formally adopt advisory committee and exam-development guidelines, and to use the full Board to approve the exams, will ensure that the exams continue to be created in a correct, consistent, and independent way, with appropriate input.

These recommendations are also intended to bring the Board into compliance with provisions of state law relating to advisory committees and the Open Meetings Act, eliminating the risks associated with discussing licensing test material in open meetings.

Fiscal Implication

These recommendations would have no fiscal impact to the State. The Board will have to meet to adopt rules regarding the exam committees, but this approval should be incorporated to the Board's already existing Board meeting schedule. In fiscal year 2001, the Board spent \$5,500 of its appropriated funds reimbursing advisory committee members. Though these recommendations would require the Board to request specific reimbursement authority for advisory committee members through the appropriations process, this would not result in a fiscal impact, as the Board already uses its appropriated funds to cover reimbursement.

¹ Sunset staff meeting with the Texas Board of Professional Land Surveying (Austin, Texas, March 21, 2002).

² Texas Government Code, ch. 2110, sec. 2110.004.

³ Texas Board of Professional Land Surveying, Executive Director, "Another exam committee question," e-mail to Sunset Advisory Commission, April 17, 2002. In the past, Board staff has questioned whether these committee meetings should be posted, but determined posting was unnecessary.

⁴ Op. Tex. Att'y Gen H-772 (1976).

⁵ Op. Tex. Att'y Gen JC-0060 (1999).

⁶ Telephone interview with Texas Board of Professional Land Surveying, Board member (Austin, Texas, April 3, 2002).

⁷ Texas Government Code, ch. 325, sec. 325.011-325.012.

⁸ Texas Government Code, ch. 2110, sec. 2110.002(b).

Issue 2

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

Summary

Key Recommendations

- Require the Board to establish its enforcement process in rule, including requirements that staff investigate complaints; dismiss baseless complaints; make initial determinations of violations; and recommend sanctions to the Board.
- Prohibit use of previously dismissed complaints in the enforcement process.

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.

Conclusion

Enforcing the Professional Land Surveying Practices Act and Board rules is a significant responsibility of the Board. The Sunset review evaluated the Board's role in regulating land surveyors and found that Board members are too closely involved with complaint investigation and enforcement.

The Board's practice of 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.

Support

The Board prosecutes complaints filed against regulated land surveyors.

- In fiscal year 2001, the Board received and resolved 51 complaints. The Board receives complaints from the public and may initiate complaints when it finds violations of the Land Surveying Practices Act or Board rules. The chart, *Complaints*, provides more information on complaints received and resolved by the Board.

Complaints FY 1999-2001			
	FY 99	FY 00	FY 01
Complaints received			
from the public	28	37	42
initiated by the Board	16	10	9
Total	44	47	51
Complaints resolved			
dismissed/no merit	20	20	37
resulted in sanctions	32	14	14
referred to SOAH	0	0	0
Total	52	34	51

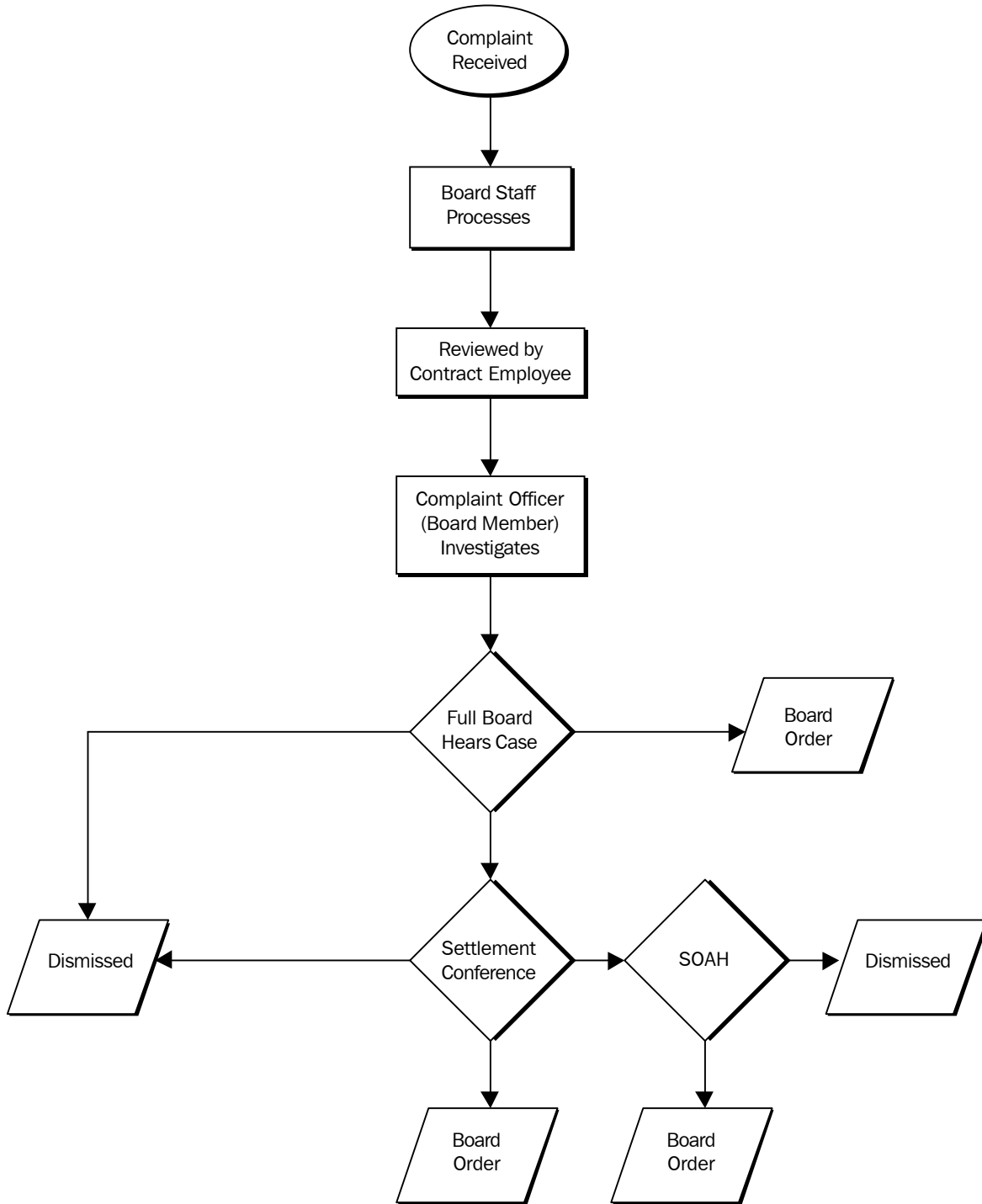
Individual Board members, not agency staff, conduct complaint investigations.

- Board members, not agency staff, handle the complaint investigation and enforcement process. After receiving a complaint, staff notifies the licensee, who responds to the allegations in writing. The Executive Director forwards the complaint, the licensee’s response, and any additional information from the complainant to a consultant hired by the Board.

The consultant reviews complaints for violations of the Act and Board rules. At times, the consultant contacts the complainant or licensee for additional information and makes site visits. The consultant details possible violations and recommends further investigation or dismissal in a report submitted to the Executive Director. The consultant does not recommend sanctions or penalties.

The Executive Director summarizes the consultant’s findings and makes penalty recommendations, then assigns the complaint file to a surveyor Board member, who single-handedly conducts a separate investigation as a complaint officer. The Board member presents the findings and recommends action to the full Board, which may dismiss the case, issue a Board order, or send the case to settlement conference. Licensees who do not agree with a final Board order may appeal the decision as a contested case hearing at the State Office of Administrative Hearings (SOAH). The chart, *Complaint Flow Chart*, further outlines the Board’s process for resolving complaints.

Complaint Flow Chart



- The Land Surveying Practices Act allows the Executive Director to determine if a violation has occurred and recommend an administrative penalty to the Board.¹ Also, by rule, the Board has authorized the Executive Director to consider motions for specific case dismissal and make recommendations to the Board.² However, in practice, staff dismissal does not occur.
- Last session, the Legislature granted the Board authority and appropriated funds to hire a staff investigator. The Board has posted a job vacancy notice, but has not yet filled the position.

The Board's involvement in enforcement is time-consuming, limits use of staff resources, and results in inefficiencies.

- Because every complaint must go to the Board, a complaint can only be heard at Board meetings, held about six times a year. In fiscal year 2001, the Board took an average of 98 days to dismiss a complaint. Although the Board meets its performance measure for time for complaint resolution, some complaints, such as baseless or nonjurisdictional complaints, take longer than needed to be resolved.
- The role of agency staff, including the Executive Director, in the enforcement process is limited to administrative functions, such as sending letters. Board members and staff have indicated that the staff's authority is not clearly defined and the Board currently is not making full use of the staff.³
- Because agency staff does not dismiss baseless complaints, Board members must spend their time reviewing and voting on baseless cases. For example, when a complaint was filed against a surveyor because he would not work for the complainant, agency staff could not dismiss the complaint, even though it was not within the Board's jurisdiction. Instead, the case had to go through the entire complaint process, including being investigated by a Board member and presented to the full Board.⁴
- The consultant hired by the Board reviews every complaint for violations of the Act or Board rules. The consultant may also contact the complainant or licensee for more information and make site visits. However, a Board member repeats these steps when investigating a complaint case.

During investigations, Board members repeat steps performed by a consultant hired by the Board.

The Board's role in complaint investigation and enforcement creates the appearance of a conflict of interest.

- Giving one Board member the authority to conduct investigations as the complaint officer without oversight from other Board members permits that member to control the information flow to the entire Board. In investigating a complaint, this single Board

member determines whether a violation occurred, collects evidence, and reports conclusions and recommendations to the full Board. The other Board members do not receive any information regarding the case, such as a copy of the complaint. Instead, they hear the allegations, findings, and recommendations regarding the case from the Board member acting as the complaint officer.

Board members also do not always keep documentation of evidence gathered from their investigations, including notes from phone calls or site visits, in official complaint files, so if another Board member has a question about information gathered during an investigation, the agency may not have documentation to show how the findings and recommendations were developed.

- The Board itself has recognized that the potential for conflict of interest exists, as Board rule prohibits the complaint officer from voting on the final decision on any case he investigated.⁵ However, as long as the complaint officer controls the flow of information to other Board members, that person – who is always an industry member of the Board – can have undue influence over the outcome of the case.
- Sunset’s licensing model, discussed in Issue 3 of this report, is based on practices observed through 25 years of reviewing occupational licensing agencies. The model states that most boards and commissions whose membership includes a majority of licensees are not involved in the initial recommendations concerning validity of complaints against fellow licensees. This standard is based on the concept that professional staff can make such determinations, eliminating the appearance of bias that may result from licensees making judgments about other licensees at initial decisionmaking stages.

The Board inappropriately considers previously dismissed complaints during enforcement proceedings.

- Board members look at previous complaints filed against a licensee, even if those complaints were dismissed, when deliberating on a complaint case that includes determining the type of sanction or amount of penalty to impose on a licensee. However, through long-established legal principle, previously dismissed complaints have no bearing on a current investigation.
- Other state boards do not look at dismissed complaints when determining sanctions. For example, the Texas Board of Professional Engineers reviews complaints for trends, but does not include previously dismissed complaints against a licensee when investigating a current complaint.⁶

The ability to control the flow of information to the whole Board can give a single Board member undue influence over the outcome of an enforcement case.

The Board does not have a set of formal rules that defines the enforcement process, allowing the process to change at any time.

The Board's complaint and enforcement process is not established in statute or rule, thereby allowing it to change at any time.

- The only place where the Board's complaint process is outlined is on the back of the complaint affidavit form available from the Board. However, nothing prohibits the Board from changing the process at any time, and without any notice to licensees or the general public.
- The Board's rules cover a few areas relating to contested cases, but unlike other agencies, the Board does not have a set of formal rules that define the complaint procedure. With no defined enforcement process, the Board does not have to adhere to a standard policy and has no way to ensure the Board takes appropriate and consistent action. In addition, by not formalizing its enforcement process in rule, the Board operates with a policy developed without formal public input.
- In comparison, the Sunset licensing model indicates that licensing agencies should be required to adopt rules or procedures that clearly lay out the agency's policies for all phases of the complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, and disclosure to the public. These rules or procedures should provide that investigations be thoroughly documented. The model's standard is based on the principle that rules and procedures help ensure appropriate and consistent action by the agency, thereby protecting the public as well as the licensee.

Staff at other regulatory agencies take a more active role in enforcement, including dismissing baseless cases, conducting investigations, and recommending action.

- The Executive Director of the Texas Board of Professional Engineers dismisses complaints as well as initiates disciplinary action, based on staff investigations. Board members get involved in investigations only if the licensee requests an informal conference. In such cases, the informal conference committee includes just one Board member, the Executive Director, and legal counsel.⁷ The agency, which has three full-time investigators plus a director of enforcement, resolved 405 complaint cases in fiscal year 2001.⁸
- Based on investigations conducted and recommendations made by agency staff, the Executive Director of the Texas Board of Architectural Examiners determines the appropriate action to take on complaints. Nearly all of the agency's enforcement cases are resolved through settlement conferences, which are conducted by staff and presented to the Board.⁹ The agency has one full-time investigator and a director of enforcement, who spends about 25

percent of her time on investigations. In fiscal year 2001, the Architectural Examiners board received 448 complaints and resolved 210.¹⁰

- The Sunset licensing model provides a standard for evaluating an occupational licensing agency to see if its enforcement program is structured to adequately protect the public. This model indicates that the investigation of complaints should be a staff function and should include the authority to discuss complaints and conduct settlement conferences.

Recommendation

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. Because the Board's current practice of using a consultant to review complaints is redundant, the Board should eliminate this step.

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.

Impact

These recommendations remove Board members from daily enforcement activities and free Board members up to act as a policymaking board as much as possible. The recommendations also clarify that the Executive Director should dismiss baseless cases without needing Board approval. Allowing staff or contract investigators to conduct investigations, dismiss complaints, and recommend sanctions should streamline the Board's enforcement process and remove the potential for a conflict of interest. One full-time investigator, whose salary the Board already has been appropriated, should be able to handle the Board's complaint workload. Also, by requiring the Board to define its complaint and enforcement process in rule, both the general public and licensees would have the opportunity to contribute to and comment on the Board's process.

Fiscal Implication

These recommendations would have no fiscal impact to the State. The Legislature already has granted the Board authority and appropriations to hire a full-time investigator. This investigator should be able to handle the enforcement workload. Existing staff can handle the additional authority to do investigations, determine violations, and dismiss baseless complaints, which would ease the Board's workload.

¹ Article 5282c, Vernon's Texas Civil Statutes, Ann., sec. 23A (d)-(h).

² Texas Administrative Code, Title 22, part 29, rule 661.77.

³ Sunset staff meetings and interviews with agency staff and Board members (Austin, Texas, March 8, March 15, and March 28, 2002).

⁴ Sunset staff meeting with agency staff (Austin, Texas, March 8, 2002).

⁵ Texas Administrative Code, Title 22, part 29, rule 661.63.

⁶ Telephone interview with Texas Board of Professional Engineers, Enforcement Division staff (Austin, Texas, April 8, 2002).

⁷ Ibid.

⁸ Legislative Budget Board, *Budget and Performance Assessments: State Agencies and Institutions, Fiscal Years 1997-2001* (Austin, Texas, February 2002), pp. 235. Online. Available: http://www.lbb.state.tx.us/Performance/Reporting/Budget_Performance_Assessments_FY97-01_0202.pdf. Accessed: April 12, 2002.

⁹ Texas Board of Architectural Examiners, *Self-Evaluation Report to the Sunset Advisory Commission* (Austin, Texas, August 14, 2001), pp. 28-29.

¹⁰ Telephone interview with Texas Board of Architectural Examiners, Enforcement Division staff (Austin, Texas, April 12, 2002).

Issue 3

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

Summary

Key Recommendations

- Eliminate the application notarization requirement on individuals who apply for licensure with the Board.
- Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.
- Eliminate the requirement that complaints submitted to the Board be notarized.
- Require the Board to adopt, by rule, guidelines for informal settlement conferences.
- Require the Board to adopt a probation guide.
- Authorize the Board to require restitution as part of the settlement conference process.
- Require the Board to adopt an administrative penalty matrix in agency procedures or rules.
- Eliminate the statutory language that sets and caps fees.

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.

Conclusion

Various licensing, enforcement, and administrative processes in the Texas Professional Land Surveying Act do not match model licensing standards that Sunset staff have 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. The Sunset review identified these recommendations by comparing the Board's statute, rules, and practice against these model licensing standards to identify variations from the model and recommended changes to bring them in line with other licensing agencies.

Support

The Board licenses and regulates land surveyors in Texas.

- The Board's mission is to protect the public by ensuring that only competent individuals survey land in Texas. By overseeing individuals who practice surveying, the Board ensures the orderly use of Texas' land.
- To accomplish this purpose, the Board performs two functions, licensing and regulation. Currently, the Board licenses about 3,000 land surveyors. The Board regulates these licensees by investigating and resolving complaints, and enforcing the Texas Professional Land Surveying Practices Act and Board rules through disciplinary action.

The Sunset Commission's experience from reviewing more than 70 occupational licensing programs has been documented for application to future reviews.

- The increase of occupational licensing programs was a main focus behind the creation of the Sunset Advisory Commission. Because of this, the Commission has a historic role in evaluating licensing agencies. The first agencies reviewed by the Commission in 1977 primarily consisted of licensing agencies, and the Commission has reviewed 45 licensing programs since that time. Twenty-four of those programs have been reviewed more than once, so the Sunset Commission has accomplished more than 70 evaluations of licensing agencies.
- The Sunset Commission has adopted eight across-the-board standards for application to licensing agencies undergoing Sunset review. Application of these standards helps to ensure that certain licensing and enforcement functions are used consistently by licensing programs across Texas. For example, two of these standards require licensing agencies to adopt a system of continuing education for licensees, and give these agencies a full range of administrative sanctions.
- Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. These standards provide a guide for evaluating a licensing program's structure, but are not intended for blanket application. Aspects of the Act and some of the Board's regulatory practices differ from these model standards. Bringing those aspects into conformity with licensing standard practices could benefit the Board.

Bringing the Professional Land Surveying Practices Act into conformity with standard practices could benefit the Board.

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.

- *Licensing qualifications.* Qualifications for licensure should not overburden applicants or unreasonably restrict entry into the practice. Currently, the Board requires applicants to notarize applications to ensure that experience and education information on the application is correct. However, by rule, the Board already requires that the applicant include formal education information through certified transcripts, which ensures that education information on the application is correct. Additionally, this requirement is unnecessary as state law already prohibits a person from knowingly making a false entry in a government record.¹
- *Criminal convictions.* Chapter 53 of the Occupations Code provides a general standard to guide licensing agencies in determining what crimes should affect licensure for that agency. In general, this law provides that a criminal conviction affects licensing qualifications when a crime is related to the profession, according to guidelines developed by the agency and published in the Texas Register. These guidelines allow the agency to suspend or revoke a license, or to disqualify individuals from receiving a license or taking the exam because of specific criminal activities. The Board's rules currently set out such guidelines, but referencing Chapter 53 in the Act would clarify the Board's authority over criminal convictions.

Eliminating the complaint notarization requirement would allow the Board to receive complaints over the Internet.

Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting the consumer.

- *Complaint filing.* Legislative enactments have established that the public should have easy access to the agency's enforcement processes through reasonable complaint filing procedures. The public, the agency, or a licensee should be able to file a written complaint against a licensee on a simple, standard agency complaint form provided by the agency on a Web site, through e-mail, or through regular mail. The form should request enough information to start an investigation, but not be so detailed or technical as to discourage complaints.

The Act requires that complaints filed with the Board be accompanied by sworn affidavits. The Board may open complaints in its own name without a written complaint, which is how the Board currently handles anonymous complaints. Eliminating this notarization requirement would increase the public's ability to file complaints and also allow the Board to receive complaints in ways other than in writing, such as over the Internet, a practice that makes complaint filing more convenient for consumers.

- ***Informal settlement conference guidelines.*** Agencies should use methods other than hearings to resolve complaints, as formal hearings often require significant time and expense. Structured informal settlement conferences (ISCs) allow the agency to explore resolution prior to the full hearing process at the State Office of Administrative Hearings. When informal settlement conferences are used, the agency's policymaking body should approve informal agreements. The Board currently uses ISCs to successfully mediate resolution prior to the formal hearing. Requiring the Board to adopt a formal structure for ISCs would ensure that it uses this tool consistently.
- ***Probation procedure.*** Probation allows a licensee to continue practicing the profession after being found guilty of a violation. The agency should have a probation procedure that provides for imposing appropriate conditions, notifying probationers in writing of those conditions and actions they need to take, and tracking probationers' progress to ensure compliance with the terms of probations.

The Board uses probation as an enforcement sanction to correct violations of the Act or rules, but has no formal guide to structure the terms of a licensee's probation or track compliance with the probation. Requiring the Board to adopt a probation guide would allow it to use the probation sanction consistently and ensure that licensees are meeting the terms of probation.

Authorizing the Board to require restitution as part of an informal settlement conference could help defrauded consumers.

- ***Restitution authority.*** The goal of restitution is to return a complainant to some or all of the condition that existed before the act that caused the complaint. Restitution can be granted in situations where a member of the public has been defrauded or subjected to a loss that can be quantified.

The Board's enforcement tools are designed to correct licensee behavior, but do not allow for compensation to the aggrieved party. Authorizing the Board to require quantitative restitution, not to exceed the amount the consumer paid, as part of an informal settlement conference could help defrauded consumers.

- ***Administrative penalty matrix.*** Agencies that use administrative penalties should also use a penalty matrix to establish penalties for specific violations. The matrix helps to ensure fair and consistent treatment for all violators. The matrix should be adopted by an agency's policymaking body in procedure or rule so that opportunity exists for public awareness and debate. Currently, the Board has no penalty matrix but does have some informal guidelines in sanctioning violators. Requiring the Board to adopt a penalty matrix would help ensure fair treatment for all violators.

Certain administrative provisions of the Board’s statute could reduce the Board’s efficiency and flexibility to adapt to changing circumstances.

- **Flexible fees.** The Legislature has established a practice in many programs of eliminating fixed or capped fee amounts in statute and authorizing agencies to set fees by rule. Allowing the agency to set its own fees is consistent with a provision in the appropriations bill that requires agencies to set fee amounts necessary to cover the cost of regulation. Because agencies can only spend what the Legislature appropriates to them, they would be discouraged from setting fees too high. Additionally, the public can comment on all proposed fees, as agencies are required to set them in rule.

The Board’s statute sets some fees and caps others, and the Appropriations Act sets some of the Board’s fees.² The chart, *Fees Set or Capped in Statute*, shows which fees are in statute.

Fees Set or Capped in Statute			
Fee Category	Statutory Set	Statutory Cap	Current Fee ³
Re-examination	N/A	\$100	\$125
Reciprocal exam	N/A	\$100	\$ 125
Inactive status	\$10	N/A	\$10
Duplicate license	\$20	N/A	\$20

Recommendation

Change in Statute

Licensing

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 Chapter 53 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

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.

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.

Administrative

3.8 Eliminate the 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.

Impact

The application of these recommendations to the Board would result in efficiency and consistency from fairer processes for the licensees, additional protection to consumers, administrative flexibility, and standardization of Board processes. The chart, *Benefits of Recommendations*, categorizes the recommendations according to their greatest benefits.

Benefits of Recommendations				
	Benefits			
Recommendation	Efficiency from Standardization	Administrative Flexibility	Fairness to Licensee	Protection of Consumer
Licensing				
3.1 Eliminate license application notarization requirement.			✓	
3.2 Clarify that felony and misdemeanor convictions follow Chapter 53 of the Occupations Code.	✓	✓	✓	✓
Enforcement				
3.3 Eliminate the requirement that complaints be notarized.	✓	✓		✓
3.4 Require the Board to adopt guidelines for informal settlement conferences.	✓		✓	
3.5 Require the Board to adopt a probation guide.			✓	
3.6 Authorize the Board to require restitution as part of the settlement conference process.		✓		✓
3.7 Require the Board to adopt an administrative penalty matrix.	✓		✓	✓
Administration				
3.8 Eliminate the statutory language which sets and caps fees.	✓	✓		

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State. Most recommendations change procedures in ways that do not require additional resources. Some savings may result from increased efficiencies, but this amount cannot be estimated and the savings would be available to meet the Board's other needs. Additionally, the development of a penalty matrix and the authority to require restitution could alter the amount of fines collected. The effect of these modifications cannot be estimated and the Board is not reappropriated those fines. Removing the statutory fee caps would not result in additional revenue as the Board would be directed to set fees only as high as necessary to recover costs.

¹ Texas Penal Code, ch.37, sec. 37.10.

² The Appropriations Act sets some of the Board's fees. The certificate renewal fee for Registered Professional Surveyors must be between \$130 and \$153, the renewal fee for Licensed State Surveyors is set at \$35, and the examination fee for Registered Professional Surveyors is set at \$125. Because these fees are set in the Appropriations Act, the Board has an opportunity every two years to request a change to those fees, achieving the flexibility this standard is designed to accomplish. Texas Senate Bill 1 (General Appropriations Act), 77th Legislature, VIII-41 (2001).

³ Although the Board's enabling statute caps both the re-examination and reciprocal exam fees at \$100, the Board believes that these exams are synonymous with the Registered Professional Surveyor exam, which has its fee set in the Appropriations Act, and therefore has set the fee at \$125. Texas Senate Bill 1 (General Appropriations Act), 77th Legislature, VIII-41 (2001).

Issue 4

Decide on Continuation of the Board After Completion of Sunset Reviews of Other Professional Licensing Agencies.

Summary

Key Recommendation

- Decide on continuation of the Texas Board of Professional Land Surveying as a separate agency upon completion of upcoming Sunset reviews of other professional licensing agencies.

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.
- Although the Board operates effectively, organizational alternatives may achieve added administrative efficiency.
- A complete study of the organizational alternatives should also consider the results of the Sunset Commission's reviews of other professional licensing agencies this review cycle.
- All 50 states regulate land surveyors, although organizational structures vary.

Conclusion

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 review evaluated the continuing need for regulation of land surveyors in Texas, as well as the need for the Texas Board of Professional Land Surveying as the agency to provide these functions. Although the State should continue to regulate land surveyors, Sunset staff recommends that the Sunset Commission delay its decision on continuation of the Board as a separate agency until the Sunset reviews of other professional licensing agencies are completed this year, as these reviews may show administrative efficiencies could be achieved in the organization of the State's separate professional licensing agencies.

Support

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 regulated surveyors since 1919, when the Legislature created the Board of Examiners of Licensed State Land Surveyors. Since then, several duties have been added to broaden the Board's responsibilities.
- The Board seeks to protect the public by ensuring that only qualified land surveyors practice in Texas and by sanctioning those

Board Activity FY 2001	
Licensees regulated	
Registered Professional Land Surveyors	2,878
Licensed State Land Surveyors	61
Surveyors-in-Training	485
Complaints received	
From the public	42
Opened by the Board	9
Complaints resolved	
Dismissed/Found to be with no merit	37
Resulted in sanction	14

practitioners who violate the law or Board rules. To achieve this goal, the Board performs two core functions: licensing and enforcement. State law requires land surveyors to be licensed and Surveyors-in-Training to be certified with the Board. To ensure that licensees comply with the Professional Land Surveying Practices Act, the Board investigates and resolves complaints regarding land surveyors. The chart, *Board Activity*, shows the Board's recent licensure and complaint efforts.

Texas has a continuing need for regulating land surveyors to protect the economic welfare of Texans.

- Land surveys, which define property boundaries and are required in most property transactions, play an important part in Texas' multibillion-dollar real estate market. Surveying is a profession that can put consumers at risk, as improper surveys can lead to significant economic losses if the boundaries of a property are not computed accurately.
- Surveying is a highly technical profession, so most consumers are not able to determine independently if a person is a competent surveyor. Also, the consumer normally does not have direct control of the survey. Through licensure, the Board ensures the competence of individuals who provide land surveying services.
- The Board develops and implements rules and regulations to ensure that licensees engage in safe and ethical practices. The Professional Land Surveying Practices Act is designed to protect consumers and give them rights and recourse if laws are violated. Further, the public needs an agency that can receive and investigate complaints

Improper surveys can result in significant economic losses.

about land surveyors, and, if necessary, to discipline surveyors who violate the law.

Although the Board operates effectively, organizational alternatives may achieve added administrative efficiency.

- The Board successfully licenses and regulates land surveyors. The Board also consistently meets or exceeds its performance targets and output and efficiency targets.¹ Some of these performance measures are shown in the chart, *Selected Performance Measures*.

Selected Performance Measures FY 2001		
Measure	Target	Actual
Number of complaints resolved	40	50
Median time (in days) for complaints resolved within six months	180	83
Percent of documented complaints resolved within six months	58%	88%
Number of new licenses issued to individuals	40	101

- The Board recovers all costs through fees collected by licensees. Because the cost of operating the agency is paid by regulated licensees, the Board does not place a burden on the General Revenue Fund. In fact, the Board contributes about \$40,000 more to General Revenue than it is appropriated during the budgeting process, including the cost of direct and indirect appropriations.

- The last Sunset staff review of the Board, conducted in 1991, questioned the need for a separate agency to license and regulate land surveyors. Also in that year, the Comptroller of Public Accounts' Texas Performance Review recommended consolidating the Professional Land Surveying, Architectural Examiners, and Professional Engineers boards to achieve greater administrative efficiency. In both instances, however, the Legislature continued the Board as a separate agency.

A 1991 Sunset staff review and other performance reviews have questioned the need for a separate land surveying agency.

- The General Land Office (GLO) is closely tied to the Board in statute, as the Land Commissioner is a voting ex officio member of the Board. However, GLO's interest in land surveying relates only to surveys on lands in which the State holds an interest. Such surveys must be performed by a Licensed State Land Surveyor (LSLS), who operates as an agent of the State. Only about 2 percent of surveyors hold an LSLS license. Also, GLO is not a regulatory agency and would need to develop expertise to perform the licensing and enforcement functions currently handled by the Board if GLO assumed regulatory responsibility. In this scenario, GLO would most likely use the same or similar structure as already exists at the Board.

- As an umbrella licensing agency for 20 occupations, the Texas Department of Licensing and Regulation (TDLR) has a structure for occupational and professional licensure, examination, and enforcement. However, to oversee regulation of land surveyors, TDLR would need to develop expertise in the technical nature of

surveying. Also, if transferred to TDLR, the Board would need to continue in some form to advise the TDLR Commission on rulemaking and policymaking issues related to land surveying.

- The Texas Board of Professional Engineers has some historic ties to the Board. Until 1979, professional engineers could offer surveying services without passing an exam in land surveying. However, as surveying became more technical, fewer engineers took courses and gained experience in surveying. As a result, the Legislature decided that engineers must pass an exam on land surveying and become licensed as surveyors to perform surveying work in Texas.

Also, the National Council of Examiners for Engineering and Surveying (NCEES) is the national coordinating body for engineering and surveying boards in the United States, including Texas. Both Texas boards use NCEES' model law and require applicants to take NCEES' national exam. However, the land surveying and engineering professions continue to diverge. For example, surveying principles are taught less and less frequently to engineering students, while surveying curricula now focus more on Geographical Information Systems and Global Positioning System techniques.

- No federal agency regulates land surveying. The National Council of Examiners for Engineering and Surveying gives examinations to land surveyors and issues technical and professional standards through its model law. However, as a membership association, NCEES does not perform licensing functions and is not equipped to take regulatory actions against individuals.

A complete study of the organizational alternatives should also consider the results of the Sunset Commission's reviews of other professional licensing agencies this review cycle.

- Sunset reviews of the Texas Board of Architectural Examiners, Texas Board of Professional Engineers, Texas State Board of Public Accountancy, and Board of Tax Professional Examiners are scheduled for completion in the fall of 2002, after the completion of this agency's review.
- The results of these reviews may indicate that administrative efficiencies can be gained among these agencies. In addition, opportunities may exist to provide for greater coordination and consistent regulation across Texas' professional licensing agencies. Delaying decisions on continuation of the Board until that time will allow Sunset staff to finish its work on all the professional licensing agencies and base its recommendations on the most complete information.

Other Sunset reviews this cycle may find opportunities for administrative efficiencies and greater coordination that could be gained among professional licensing agencies.

All 50 states regulate land surveyors, although organizational structures vary.

- The chart, *State Land Surveying Regulatory Agencies*, describes how land surveying regulatory agencies in the United States are structured. Few states use a separate, stand-alone agency. Instead, many states place regulation of land surveying within an umbrella agency, although the organization of such umbrella agencies varies. Additionally, about half of the states combine land surveying and engineering functions, either in a stand-alone agency or as part of a larger agency. For example, 14 states use a stand-alone land surveying and engineering board, while 12 have placed the land surveying and engineering board within a larger agency structure. Eleven states combine land surveying, engineering, and other professions, such as architecture.

State Land Surveying Regulatory Agencies			
Structure	Profession	Number of States	Examples
Separate Agency	Land Surveying	3	Texas, Nebraska, West Virginia
	Land Surveying & Engineering	14	Louisiana, New Mexico, Oklahoma, North Carolina
	Land Surveying, Engineering & Other Professions	4	Arizona, Kansas, Minnesota, New Hampshire
Umbrella Agency	Land Surveying	10	Florida, Illinois, Wisconsin
	Land Surveying & Engineering	12	California, Colorado, New York, Washington
	Land Surveying, Engineering & Other Professions	7	Missouri, Pennsylvania, Virginia

Recommendation

Change in Statute

4.1 Decide on continuation of the Texas Board of Professional Land Surveying as a separate agency upon completion of upcoming Sunset reviews of other professional licensing agencies.

This recommendation would postpone the Sunset Commission's decision on the status of the Board as a separate agency until completion of the Sunset reviews of other professional licensing agencies being reviewed this biennium.

Impact

The Board successfully meets its mission of licensing and regulating land surveyors in Texas. However, although the State should continue to regulate land surveyors, Sunset staff recommends that the Sunset Commission delay its decision on continuation of the Board as a separate agency until the Sunset reviews of other professional licensing agencies are completed this year. At that time, Sunset staff will make recommendations to the Commission regarding continuing the Board, abolishing the Board and transferring its functions, or consolidating specific programs between agencies. The results of each agency review should be used to determine if administrative efficiencies and greater coordination can be achieved in the organization of the State's separate professional licensing agencies.

Fiscal Implication

This recommendation will not have a fiscal impact to the State.

¹ Legislative Budget Board, *Budget and Performance Assessments: State Agencies and Institutions, Fiscal Years 1997-2001* (Austin, Texas, February 2002), pp. 242-243. Online. Available: http://www.lbb.state.tx.us/Performance/Reporting/Budget_Performance_Assessments_FY97-01_0202.pdf. Accessed: April 10, 2002.

ACROSS-THE-BOARD RECOMMENDATIONS

Texas Board of Professional Land Surveying	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Update	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Already in Statute	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Update	10. Require information to be maintained on complaints.
Update	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

Texas Board of Professional Land Surveying	
Recommendations	Across-the-Board Provisions
	B. LICENSING
Update	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Update	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Already in Statute	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Do Not Apply	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Update	5. Authorize the staggered renewal of licenses.
Update	6. Authorize agencies to use a full range of penalties.
Already in Statute	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Already in Statute	8. Require the policymaking body to adopt a system of continuing education.

AGENCY INFORMATION

Agency Information

Agency at a Glance

The Texas Board of Professional Land Surveying's main purpose is to protect 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.** In fiscal year 2001, the Board operated with a budget of about \$322,000. All costs are covered by licensing fees collected from the industry.
- **Staffing.** The Board has five full-time equivalent positions, based in Austin.
- **Licensing.** The Board regulates about 3,000 surveyors. In fiscal year 2001, about 400 individuals took the state licensing exams and 101 received a license.
- **Enforcement.** The Board received 51 complaints in fiscal year 2001. Of the 51 complaints resolved in fiscal year 2001, 32 were found to be without merit and dismissed; 19 complaints resulted in sanctions against a licensee.

Organization

Policy Body

The Texas Board of Professional Land Surveying, the policymaking body, consists of 10 voting members: two Licensed State Land Surveyors (LSLSs), four Registered Professional Land Surveyors (RPLSs), three public members, and the Commissioner of the General Land Office, or the Commissioner's designee. With exception of the Land Commissioner, all Board members are appointed by the Governor and may not serve more than two consecutive terms. The chart, *Board of Professional Land Surveying*, identifies current Board members.

Board of Professional Land Surveying			
Member Name	City	Qualification	Term Expires
Raul Wong, Jr., Chair	Dallas	RPLS	2007
Steven Hofer, Vice Chair	Midland	Public Member	2005
Jerry Goodson	Lampasas	LSLS	2001
Daniel Martinez	Lubbock	RPLS	2005
Kelley Neuman	San Antonio	Public Member	2003
Art Osborn	Tyler	RPLS	2007
Robert Pounds	El Paso	LSLS	2003
Douglas Turner	Houston	RPLS	2005
Joan White	Brownsville	Public Member	2003
Honorable David Dewhurst Ben Thomson, Designee	Austin	GLO Commissioner	Ex Officio

In addition to standard Board activities such as rulemaking and agency oversight, industry Board members investigate complaints and recommend enforcement actions, which the full Board approves or rejects. Board members also prepare, administer, and grade the state exams.

Last session, the Legislature authorized the Board to hire an investigator.

The Board is required to meet twice a year, but typically meets every two months to ensure timely resolution of complaints. In fiscal year 2001, the Board met seven times.

Staff

The Board is allocated five full-time equivalent positions, four of which are currently filled. Last session, the Legislature authorized the Board to hire a full-time investigator, but the position has not yet been filled. The entire staff is based in Austin.

The Executive Director manages the day-to-day operations of the Board and implements Board policy. Generally, staff administers exams and processes exam results; processes licenses, renewals, fees, and complaints; and oversees licensee continuing education. Because of the small staff size, no analysis was prepared comparing the agency's workforce composition to the overall civilian labor force.

Funding

Revenues

In fiscal year 2001, the Board received an appropriation of \$322,121 from General Revenue. To cover its administrative costs, the Board raises revenue through licensing fees, which are deposited into the General Revenue Fund. In fiscal year 2001, the revenue raised by the agency through licensing, certification, and examination totaled about \$387,000. This amount excludes administrative fines because this revenue is paid directly to the General Revenue Fund and is not made available for agency expenditures. In fiscal year 2001, the Board collected \$40,225 more than it spent.

In fiscal year 2001, the Board collected about \$40,000 more than it spent.

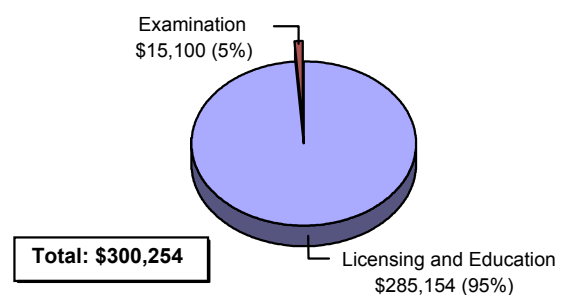
Expenditures

In fiscal year 2001, the Board spent \$300,254 on two strategies: licensing and education, and examination. The chart, *Board Expenditures*, illustrates the budget breakdown.

In addition to the expenditures shown in the chart, the Legislature has directed the Board and other licensing agencies that pay the costs of regulatory programs with fees levied on licensees to also cover direct and indirect costs appropriated to other agencies. Examples of these costs include rent and utilities paid by the State Building and Procurement Commission, employee benefits paid by the Employees Retirement System, and accounting services provided by the Comptroller of Public Accounts. In fiscal year 2001, this amount totaled \$46,775 for the Board.

Appendix A describes the Board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 1998 to 2001. The Board uses HUBs in the categories of commodities and other services. In the other services category – the area of greatest spending – the agency has fallen well short of the State's goal of 33 percent. However, the agency has consistently surpassed the goal for commodities spending by a large margin.

**Board Expenditures
FY 2001**



Agency Operations

To ensure that only competent surveyors practice in Texas, the Board performs two core functions: licensing and examination, and enforcement.

Licensing and Examination

The Board regulates three types of surveyors: Surveyor-in-Training (SIT), Registered Professional Land Surveyor (RPLS), and Licensed State Land Surveyor (LSLS).

- SITs, who are certified by the Board for a six-year period, work as apprentices under the supervision of an RPLS for at least two years before being eligible to become licensed as an RPLS.
- RPLSs conduct land boundary and property surveys for the general public.
- LSLSs 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.

The Board regulates about 3,000 surveyors who have met statutory education, experience, and examination requirements.

Most surveyors hold an RPLS license. In fiscal year 2001, the Board regulated 2,878 such licensees. Only 61 surveyors, or about 2 percent of surveyors, also hold an LSLS license. These surveyors maintain their RPLS license, too, as few surveyors work solely on GLO-related lands. Also, the Board oversaw 485 certified Surveyors-in-Training in fiscal year 2001.

To become a surveyor, an individual must meet statutory education, experience, and examination requirements. The process for becoming certified as an SIT or licensed as an RPLS or LSLS is outlined in the flow chart, *Becoming a Land Surveyor*.

Applicants must pass several exams to become a surveyor in Texas. The eight-hour national exam, required to be certified as an SIT, tests the

Becoming a Land Surveyor

Surveyor-in-Training
An applicant meeting education and experience requirements applies to the Board to take the national Fundamentals of Land Surveying examination. After successfully passing the exam, the Board certifies the individual as a Surveyor-in-Training (SIT).

Registered Professional Land Surveyor
An SIT must complete two years of experience under the supervision of a Registered Professional Land Surveyor (RPLS) and meet additional education requirements to qualify to take the state RPLS exam. After passing the exam, an individual is licensed as an RPLS.

Licensed State Land Surveyor
An RPLS who plans to work on state-owned land takes and passes an additional exam on the General Land Office to also become licensed as a Licensed State Land Surveyor (LSLS).

applicant on the fundamentals of land surveying. The National Council of Examiners for Engineering and Surveying (NCEES) develops and administers this exam. The RPLS exam, written and administered by the Board, includes a four-hour legal section covering Texas surveying laws and a four-hour analytical section on the practical application of surveying laws. To become an LSLS, a registered surveyor takes an eight-hour exam, also written and administered by the Board, that covers the history and functions of GLO, and legal aspects pertaining to lands in which the State has an interest.

In addition to gaining licensure in these ways, applicants registered in another state may receive a Texas license by taking a four-hour exam on land surveying fundamentals and Texas surveying laws. Historically, applicants have had low pass rates on the national and state exams, which are given twice a year. The chart, *Average Exam Pass Rates*, shows the average pass rates on all exams overseen by the Board during the last three years.

Texas was the first state to require its licensed and registered land surveyors to complete continuing education courses as a condition of license renewal. Both RPLSs and LSLSs must complete eight hours of Board-approved professional development courses annually.

Average Exam Pass Rates FY 1999-2001			
Exam	FY 1999	FY 2000	FY 2001
National Exam	56%	35%	41%
RPLS Analytical	31%	47%	54%
RPLS Legal	42%	53%	65%
Reciprocal RPLS	28%	50%	32%
LSLS	33%	1%	43%

Enforcement

The Board regulates the land surveying profession by investigating complaints against licensees and, if necessary, taking enforcement action against violators of the Professional Land Surveying Practices Act or Board rules. Complaints are either received from the public or opened by the Board. Complaints received from the public must be in writing and be notarized, but anonymous complaints may be opened in the Board's name. After receiving a complaint, staff notifies the surveyor involved and allows the surveyor to respond. The Executive Director forwards the complaint and the licensee's response to a consultant hired by the Board to review complaint cases for violations of the Act.

The Executive Director assigns the complaint file, including the consultant's findings, to a Board member for investigation. Those Board members who are licensed land surveyors act as complaint officers and conduct investigations, which include collecting supporting documents and interviewing those involved in the case. Once the investigation is complete, the complaint officer presents the findings and recommends action to the full Board. If the licensee does not agree with the Board's findings, often the Board holds an informal settlement conference. If the informal settlement conference does not

*Board members
investigate complaints
and make
recommendations to the
full Board.*

Complaint Activity FY 2001	
Complaints received	
from the public	42
initiated by the Board	9
Total	51
Complaints resolved	
dismissed / no merit	36
resulted in sanctions	15
referred to SOAH	0
Total	51

result in a resolution, the case is referred to the State Office of Administrative Hearings (SOAH). However, the majority of complaints received by the Board are resolved with a board order. The chart, *Complaint Activity*, details the number of complaints received and resolved by the Board.

¹ Texas Government Code Ann., ch. 325, sec. 325.001(9)(B).

² Texas Government Code Ann., ch. 2161.

APPENDICES

Appendix A

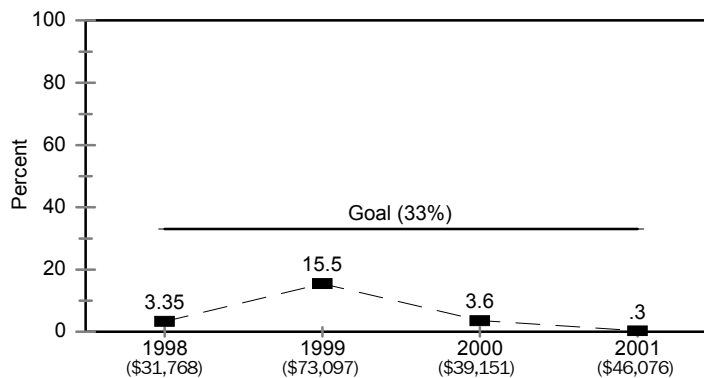
Historically Underutilized Businesses Statistics

1998 to 2001

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 review of the Texas Board of Professional Land Surveying revealed that the agency is not complying with all state requirements concerning HUB purchasing. Specifically, the agency has not adopted HUB rules, though the Texas Building and Procurement Commission's rules are reflected in the Board's strategic plan.

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 the Texas Building and Procurement Commission's statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 1998 to 2001. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. In the category of Other Services, the agency has fallen short of the State's goal of 33 percent. However, the agency has consistently surpassed the goal for the Commodities category.

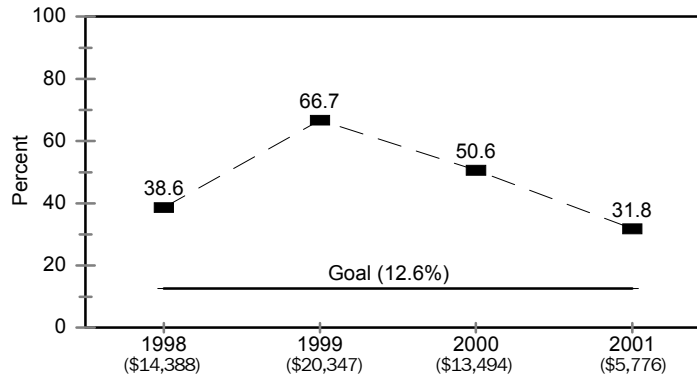
Other Services



The Board fell below the State's goal each year from 1998 to 2001, although its expenditures in this category were not great.

Appendix A

Commodities



The agency significantly exceeded the State's goal each year from 1998 to 2001.

¹ Texas Government Code, ch. 325, sec. 325.011(9)(B).

² Texas Government Code, ch. 2161.

Appendix B

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Texas Board of Professional Land Surveying:

- Worked extensively with agency staff.
- Attended Board meetings and interviewed Board members.
- Met with in person, or interviewed over the phone, staff from the General Land Office, Railroad Commission, Texas Department of Transportation, Texas Board of Professional Engineers, Texas Geographic Information Council, Texas Board of Architectural Examiners, and Attorney General's Office.
- Conducted interviews and solicited written comments from national, state, and local interest groups.
- Met with in person, or interviewed over the phone, representatives from the Texas Society for Professional Surveying, licensees, Board advisory committee members, and consultants hired by the Board.
- Worked with the Governor's Office, Lieutenant Governor's Office, Speaker's Office, State Auditor's Office, Legislative Budget Board, legislative committees, and legislators' staffs.
- Reviewed reports by the State Auditor's Office, Legislative Budget Board, and the National Council of Examiners for Engineering and Surveying.
- Researched the functions of land surveying agencies in other states.
- Observed a survey and visited a surveyor's office.
- Reviewed Board documents and reports, state statutes, legislative reports, previous legislation, and literature on land surveying issues.
- Performed background and comparative research using the Internet.

**SUNSET REVIEW OF THE
TEXAS BOARD OF PROFESSIONAL
LAND SURVEYING**

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