

# SUNSET ADVISORY COMMISSION

Texas State Board of Public  
Accountancy

Texas Board of Architectural  
Examiners

Texas Board of  
Professional Engineers

Licensing Agency Pilot Project



Staff Report  
October 2002

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

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**TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY  
TEXAS BOARD OF ARCHITECTURAL EXAMINERS  
TEXAS BOARD OF PROFESSIONAL ENGINEERS  
LICENSING AGENCY PILOT PROJECT**

**SUNSET STAFF REPORTS**



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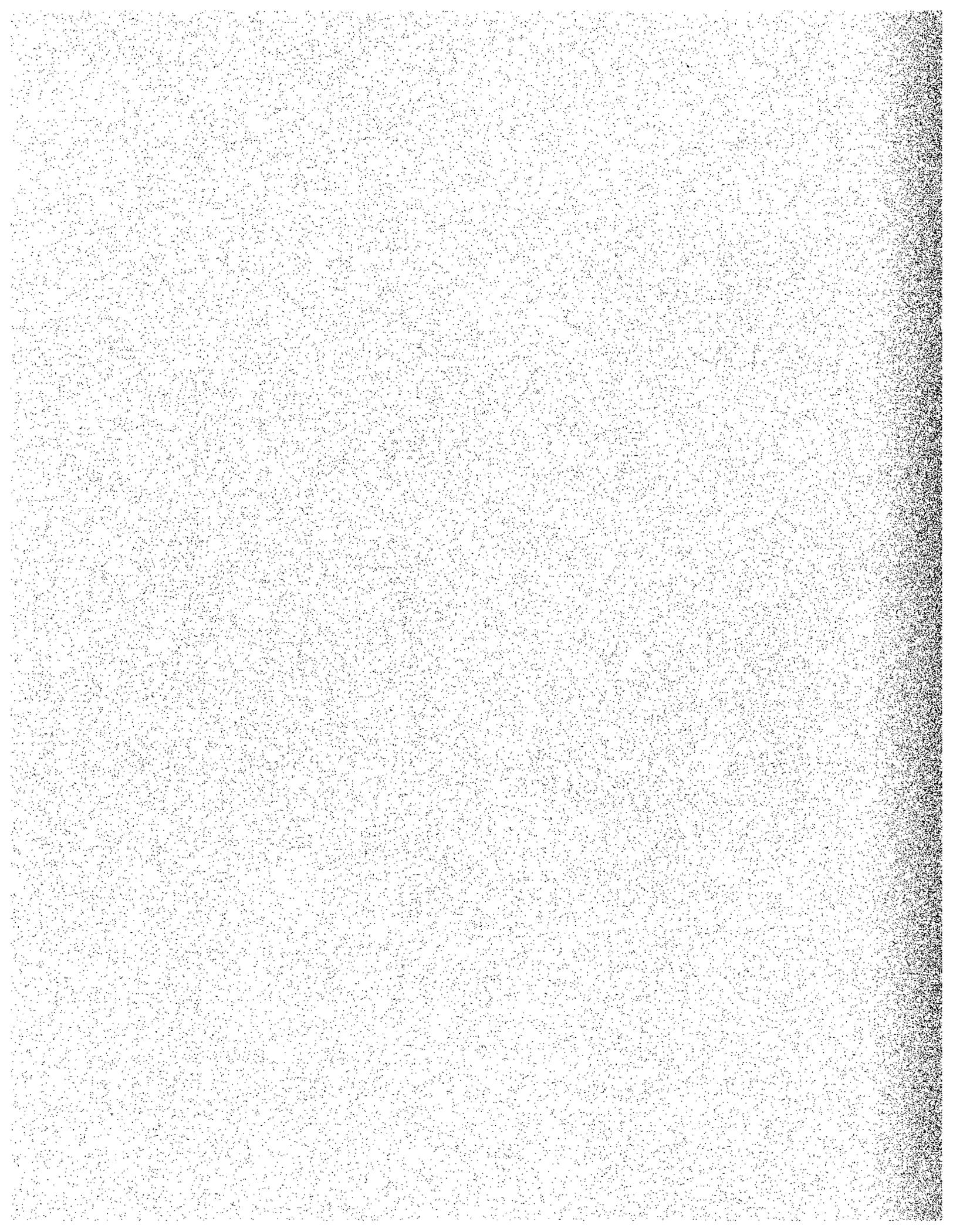
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**TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

**SUNSET STAFF REPORT**



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# **SUMMARY**





## Summary

### Sunset Staff Report

## Texas State Board of Public Accountancy

The Sunset staff review of the Texas State Board of Public Accountancy began during a period of crisis in the accounting profession. Reports of scandals and crises of confidence in the actions of public accountants stimulated a spirit of reform on the state and federal levels. Against this backdrop, the Sunset review assessed the ability of the Board to take strong enforcement action against the individuals and firms that it licenses. The review also examined the history of self-regulation by the accountancy industry and the close ties between the state agency and accountancy professional associations with an eye towards determining whether these ties affected efforts to enforce the Public Accountancy Act.

While the Board demonstrated that it has a strong, effective enforcement function, the review concluded that it needs additional tools to assist in its work. These tools include enhanced criminal penalties, an increase in the maximum administrative penalty, and the ability to share information with other law enforcement agencies to improve joint investigations.

The examination of the relationship between the Board and the regulated profession revealed a web of interconnections. One concern is the ability of employees and officers of major accounting trade associations to hold positions of authority on Board committees even though these same individuals are not permitted to sit as a member of the Board. This design also permits these individuals to have input on cases where they may have a personal interest without disclosing that interest to others.

The look at the ties between the accounting profession and the Board also raised questions about the way the Board carries out its major program to ensure the quality of accounting reports – the peer review program. Peer review, which is performed largely by the accounting trade associations, is a process where accountants check each other's work. As a part of federal accounting reforms, peer review for accounting firms that audit nationally traded corporations is being replaced by an inspection process. While the Sunset review did not reveal evidence of major problems within the state-level peer review program, and has no recommendations in this area, the program should continue to be monitored.

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*The Sunset review assessed the ability of the Board to take strong, effective enforcement actions.*

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The review also looked at simplifying and streamlining some of the Board's processes and suggested applying several of the provisions of the Sunset

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licensing model. Finally, the review concluded that the Board should continue its regulation of the public accountancy profession and that no suitable alternative exists to the current stand-alone agency approach.

## **Issues / Recommendations**

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### **Issue 1 The Public Accountancy Act Lacks Key Provisions Needed to Protect the Public.**

#### **Key Recommendations**

- Expand the range of criminal penalties in the Public Accountancy Act.
- Increase administrative penalties to a maximum of \$10,000.
- Authorize the Board to order licensees to pay restitution to consumers as a part of enforcement actions.
- Authorize the Board to issue summary suspension orders.
- Grant the Board authority to issue subpoena orders.
- Grant the Board the authority to share confidential information with governmental agencies and law enforcement officials.

### **Issue 2 The Board Benefits From the Service of Non-Board Members on its Committees, but this Practice Is Not Authorized.**

#### **Key Recommendations**

- Authorize the appointment of non-Board members to Board enforcement committees.
- Require non-Board members appointed to Board committees to meet the statutory qualifications of Board members and to file financial disclosure statements.
- Prohibit the Board from appointing non-Board members to Board policymaking committees.

**Issue 3 Key Elements of the Public Accountancy Act Do Not Conform to Commonly Applied Occupational Licensing Practices.****Key Recommendations**

- Require the Board to define which misdemeanor convictions disqualify an applicant from certification in the standard manner defined in the Occupations Code.
- Authorize the Board to delegate the collection of Uniform CPA Examination fees.
- Require Board members to recuse themselves from voting on disciplinary actions when they serve on the respective enforcement committees.
- Require the Board to make detailed information about disciplinary actions available to the public.

**Issue 4 Texas Has a Continuing Need for the Texas State Board of Public Accountancy.****Key Recommendation**

- Continue the Texas State Board of Public Accountancy for 12 years.

**Fiscal Implication Summary** \_\_\_\_\_

These recommendations will not result in a fiscal impact to the State. The Board is a participant in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which tests the ability of certain agencies to effectively operate outside the legislative appropriations process. Because the Board has been removed from the appropriations process, any gains or losses implicated in these recommendations would not be reflected in the General Revenue Fund.



**ISSUES / RECOMMENDATIONS**



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# Issue 1

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## The Public Accountancy Act Lacks Key Provisions Needed to Protect the Public.

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### Summary

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#### Key Recommendations

- Expand the range of criminal penalties in the Public Accountancy Act.
- Increase administrative penalties to a maximum of \$10,000.
- Authorize the Board to order licensees to pay restitution to consumers as a part of enforcement actions.
- Authorize the Board to issue summary suspension orders.
- Grant the Board authority to issue subpoena orders.
- Grant the Board the authority to share confidential information with governmental agencies and law enforcement officials.

#### Key Findings

- The Board of Public Accountancy regulates the accounting industry by enforcing the Public Accountancy Act and taking enforcement actions against violators.
- The current range of criminal and administrative penalties allowed by the Act is an insufficient deterrent to the types of violations occurring in today's business environment.
- The Board does not have the authority to order licensees to pay restitution to victims.
- The Board's enforcement efforts are hampered by confidentiality provisions in the Act, lack of subpoena power, and summary suspension authority.

#### Conclusion

The Texas State Board of Public Accountancy seeks to protect the public through its enforcement of the Accountancy Act. In light of recent accounting scandals, the Sunset review assessed whether the Act contains the full range of enforcement tools necessary to adequately deter and redress violations. Sunset staff found that the Board needs additional authority to be able to bring more significant criminal and administrative penalties, order licensees to pay restitution to victims, and compel the production of witnesses and records in investigations. In addition, the Board lacks the authority to share information with other regulatory agencies, which hampers multijurisdictional investigations.

## Support

### The Board takes enforcement action against CPAs and accounting firms to enforce the Public Accountancy Act.

- The Board enforces the Public Accountancy Act and the Rules of Professional Conduct to ensure that the public is being served by qualified accountants, who maintain high standards of professional competence and integrity. Currently, the Board regulates more than 57,000 certified public accountants (CPAs) and 10,000 firms engaged in the practice of public accountancy.
- The Board divides complaints into two categories – administrative and disciplinary. Administrative violations are generally initiated by the Board against licensees for noncompliance with annual licensing requirements, such as failure to renew a license, complete peer review, or complete continuing professional education. The Board seeks to bring the license holder into compliance, but, if compliance is not achieved, it initiates legal proceedings at the State Office of Administrative Hearings.

*Last year the Board opened 4,400 enforcement cases against some of its 67,000 licensees.*

The Board also investigates disciplinary violations, such as allegations of misconduct by licensees or unlawful practice by nonlicensees. These complaints are initiated by the public, state or federal agencies, or the Board. The Board’s enforcement staff investigate the complaints and one of the Board’s enforcement committees determines whether grounds for discipline exists. The enforcement committee recommends dismissal or disciplinary action. Regardless of the committee’s recommendation, the Board has final authority over the case. The textbox, *Disciplinary Powers of the Board*, lists the possible sanctions.

<p><b>Disciplinary Powers of the Board</b></p> <p>To enforce the Act, the Board may:</p> <ul style="list-style-type: none"> <li>● enjoin a nonlicensee from using the CPA title or practicing public accountancy;</li> <li>● recoup administrative costs incurred by the Board;</li> <li>● impose an administrative penalty up to \$1,000 per violation;</li> <li>● require completion of a peer review or continuing education program;</li> <li>● place licensee on probation;</li> <li>● limit scope of practice;</li> <li>● reprimand licensee;</li> <li>● refuse to renew a license;</li> <li>● suspend, for up to five years, a certificate, individual license, firm license, or practice privilege;</li> <li>● revoke certificate, firm license, or practice privilege; or</li> <li>● work with the local district attorneys to bring a class B misdemeanor charge.</li> </ul>
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- In FY 2001, the Board opened 4,406 complaint cases and closed 4,416 cases. The table, *Complaint Activity, FY 1997-2001*, provides information on complaints received and resolved by the Board.<sup>1</sup> As evidenced by the number of cases initiated by the Board each

fiscal year, the majority of cases are administrative violations. In FY 2001, the Board took an average 4.5 months to resolve administrative violations and 5.9 months to close disciplinary violations.

Complaint Activity - FY 1997 - 2001					
	FY 97	FY 98	FY 99	FY 00	FY 01
<b>Complaints Received</b>					
From the public	170	121	156	146	122
State/Federal agencies	4	1	5	20	5
Initiated by the Board	3,415	3,926	4,524	4,533	4,279
<b>Total</b>	<b>3,589</b>	<b>4,048</b>	<b>4,685</b>	<b>4,699</b>	<b>4,406</b>
<b>Complaints Resolved</b>					
Dismissed	234	288	369	436	258
Dismissed - voluntary compliance	411	582	562	651	788
Dismissed - continuing education/other	2,149	1,867	2,005	2,930	2,407
Resulted in sanctions	45	56	41	22	31
License suspension/revocation	611	933	1,022	1,360	927
Voluntary surrenders - disciplinary	2	2	3	7	5
<b>Total</b>	<b>3,452</b>	<b>3,728</b>	<b>4,002</b>	<b>5,406</b>	<b>4,416</b>

**The statute lacks the full range of enforcement tools needed to oversee the practice of accountancy.**

- The Board does not have the authority to impose a broad range of penalties against license holders or non-licensees who violate the Public Accountancy Act. This results in a direct impact upon individuals and firms who rely on the financial information prepared by CPAs, use the services of CPAs, or employ CPAs. The current range of penalties limits the Board's ability to tailor the punishment to the seriousness of the violation and thus lessens its ability to protect the public. The following material details the most significant deficiencies in the Board's criminal and administrative enforcement authority.
- ***Criminal Penalties.*** The current range of criminal penalties available to the Board is an insufficient deterrent to violations of the Act. Violations of the Act are class B misdemeanors, punishable by a fine not to exceed \$2,000, and up to 180 days in jail. Some cases that come before the Board may warrant stiffer penalties, especially cases of a major nature or those that involve significant monetary losses.

*The current range of penalties limits the ability of the Board to tailor the punishment to the seriousness of the violation.*

The provision authorizing the Board to impose criminal penalties for violations of the Accountancy Act was placed in statute in 1979, during a very different era in the business environment. The past decade has brought unprecedented change both to the global economy and capital markets. As a result, accountants who were

*Current criminal penalties are an insufficient deterrent to violations of the Public Accountancy Act.*

once considered to be behind-the-scenes number-crunchers now have a direct impact upon securities markets and retirement savings. The textbox, *Recent Scandals*, describes major instances in which misstated earnings resulted in massive declines in stock prices.

While CPAs may be prosecuted for illegal activity, such as theft or embezzlement under the authority of the Penal Code, having the specific penalty referenced in the Accountancy Act emphasizes the importance of compliance to licensees, and to district attorneys who would bring the prosecutions. Although the Board has never exercised its authority to impose criminal penalties, a broader range of criminal sanctions will allow the district attorneys to pursue appropriate penalties when circumstances dictate.

- **Administrative Sanctions.**

Without adequate authority to pursue administrative sanctions, the Board is deprived of the full set of tools that it can use on its own to ensure compliance with state laws and Board rules. It also lacks the ability to ensure that compliance will be achieved in a timely manner for the protection of the public. Specific areas where the Board lacks full authority to take administrative action are described below.

*A large accounting firm with revenue of millions of dollars could view the current \$1,000 maximum fine as just the cost of doing business.*

**Penalties.** The Board's lack of greater administrative penalties leaves it ineffective to prosecute large-scale frauds. While a \$1,000 per violation penalty might have some impact on an individual CPA, it has a lesser impact upon medium-to-large size firms that have significantly higher earnings. For example, as a result of the well-publicized Arthur Andersen obstruction of justice case, the Board revoked Andersen's license to practice, and imposed the maximum penalty allowed by law: a \$1,000 fine. A low administrative fine could be seen by a large accounting firm with millions of dollars in revenue as just the cost of doing business.

<b>Recent Scandals</b>	
<b>Enron</b>	November 8, 2001 – Enron, the nation's largest trader of electric power and natural gas, announced it had overstated earnings by \$586 million by hiding losses in off-balance sheet investments called special purpose entities. Enron filed bankruptcy, leaving thousands of employees out of work and with worthless retirement plans. Enron's auditor, Arthur Andersen, was convicted in June 2002 on felony obstruction of justice charges for admittedly destroying Enron-related documents. <sup>2</sup> The Texas State Board of Public Accountancy later revoked Andersen's license to practice in the State of Texas. <sup>3</sup>
<b>WorldCom</b>	June 25, 2002 – WorldCom, the nation's second largest long-distance telephone provider, recorded normal operating expenses, like network maintenance, as investments. That allowed the company to spread the cost over a number of years instead of having to account for it at once, <sup>4</sup> and resulted in overstated earnings totaling more than \$7 billion. <sup>5</sup> WorldCom filed Chapter 11 bankruptcy on July 21, 2002. Arthur Andersen was WorldCom's auditor during the period that the false and misleading financial statements were released.

**Restitution.** The Board cannot order licensees to pay restitution to their victims, and this lessens its effectiveness as a regulatory agency. Because the Public Accountancy Act does not authorize the Board to recover restitution for victims, when CPAs commit fraudulent acts or perform services incompetently, victims not only lose the money paid for services, but may also incur additional expenses seeking redress in the courts. Although a disciplinary order issued by the Board may help a victim obtain a judgment in a civil case, granting the Board the authority to recover monetary losses for victims would allow victims to avoid the additional expense of civil litigation.

**Summary Suspension.** The Board is limited in its ability to protect the public from incompetent or dishonest CPAs. Although the Board may suspend or revoke practice privileges after proper notice and hearing, the Board lacks the authority to issue a summary suspension order. Because the average disciplinary case takes more than five months to resolve, even licensees with serious allegations against them may continue practicing and offering services to unsuspecting individuals and business owners.

**Subpoena Power.** Because the Public Accountancy Act does not authorize the Board to issue subpoenas or summons, the Board is unable to compel the attendance of witnesses or the production of documents.<sup>6</sup> Instead, the Board relies on the cooperation of individuals being investigated and the threat of further disciplinary action. The Board, by rule, requires licensees to respond to any communication from the Board and furnish requested documentation; however, because the rule lacks a clear statutory basis, Board staff have encountered difficulty enforcing it. In one case, a committee of the Board was unable to compel the license holder to produce documents in a timely manner. As a result, the informal hearing was delayed by several months.

*Without summary suspension authority the Board is powerless to stop a CPA, who is the subject of serious allegations, from continuing to practice.*

### **Other states' Accountancy Boards have a broader range of enforcement authority.**

- Other states have harsher criminal penalties than Texas, including Alabama, Alaska, Arkansas, Connecticut, Florida, Kansas, Kentucky, Louisiana, Michigan, and West Virginia. These states have penalties of up to one year in jail. Additionally, in New York, the practice of accountancy without a license is a felony offense. Also, Oklahoma holds CPAs accountable for filing false reports or financial statements, punishable by a felony charge and a fine not to exceed \$25,000.
- Other states' Accountancy Boards have the authority to impose higher administrative penalties. Penalties range from \$2,000 to \$10,000. For example, New York, Oklahoma, and Washington may impose penalties of \$10,000; Florida and Maryland, \$5,000;

*Other states can use harsher administrative and criminal penalties against CPAs.*

Idaho, California, and Virginia, \$2,500; and Missouri, Kansas, Arizona, and Colorado, \$2,000.

**Other Texas agencies with similar regulatory functions have greater enforcement authority.**

- ***Criminal Penalties.*** The State Securities Board (SSB) effectively prosecutes violations of the Texas Securities Act by working with local district attorneys to pursue felony charges against violators. The Texas Securities Act ties the class of felony offense to the amount of fraud involved. For example, if the fraud involved less than \$10,000, the maximum penalty is two to 10 years; if the offense involved between \$10,000 and \$99,999, the maximum penalty is two to 20 years; if the offense involved \$100,000 or more, the maximum penalty is five to 99 years. Prosecutors believe that having specific criminal penalties within the Securities Act makes these prosecutions easier to substantiate.
- ***Administrative Penalties.*** Violations of the Securities Act carry up to a \$10,000 penalty for a single violation, or \$100,000 for multiple violations in a single proceeding or a series of related proceedings. SSB has authority to aggregate the amounts of money involved, if the acts were part of the same scheme or course of conduct.

*Other state agencies have greater ability to address more serious violations.*

***Restitution.*** The Office of Consumer Credit Commissioner regulates businesses that advance cash or loan money, and that sell merchandise on credit, including pawnshops and their employees. The Commissioner has the authority to require a person who violates, or causes a violation of the Finance Code, to make restitution to persons injured by the violation.

Also, the Commissioner of Insurance, as part of informal settlements, may authorize the payment of restitution to each Texas resident, each Texas insured, and each entity operating in Texas that is harmed by a violation of the Insurance Code. The Insurance Commissioner determines the manner and period of the payments.

***Summary Suspension.*** The Texas Commission on Private Security may summarily suspend the license, registration, or security officer commission of an individual who has been arrested for, or charged with, a Class B misdemeanor or greater offense. The Commission must serve proper notice, citing the alleged violations that constitute the grounds for summary suspension. The suspension is effective when notice is served.

***Subpoena Power.*** In the course of an investigation, the Securities Commissioner may require, by subpoena or summons, the testimony of witnesses and the production of all related records. The Commissioner may sign subpoenas, administer oaths and

affirmations, examine witnesses and receive evidence, provided that the information is treated confidentially by the Commission and is not disclosed to the public except by court order. Similarly, both the Texas Department of Banking and Texas Department of Insurance have authority to issue subpoenas to compel the testimony of witnesses if required in the course of an investigation.

**Confidentiality provisions in the Public Accountancy Act prevent the Board from being able to pursue enforcement actions with other authorities, unlike other state agencies.**

- The Act contains a very strong confidentiality provision that restricts the Board from releasing information without the written consent of the licensee, unless the Board has issued a final order in a disciplinary proceeding or a formal public hearing has been held. Although the Board may learn during an investigation that a criminal act has been, is being, or is about to be committed, the confidentiality provision prevents it from collaborating with other regulatory agencies or reporting such information to appropriate law enforcement authorities.
- Both the State Securities Board and the Department of Banking may disclose confidential information to any Board-approved governmental or regulatory authority. Further, the Finance Code authorizes the Banking Commissioner to disclose confidential information in the interest of law enforcement, and allows the Commissioner to establish information sharing exchange programs with other regulatory agencies with whom it has overlapping regulatory jurisdiction. The Texas Department of Insurance can also share investigatory information with law enforcement authorities and other governmental agencies.

*The Act's strong confidentiality provision prevents the Board from collaborating with other regulatory and law enforcement agencies.*

## Recommendation

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### Change in Statute

#### 1.1 Expand the range of criminal penalties in the Public Accountancy Act.

This recommendation would increase the penalty for violating the Public Accountancy Act to a felony offense. The class of felony would depend upon the amount of monetary loss: less than \$10,000, the maximum penalty would be two to 10 years of imprisonment; if the offense involved between \$10,000 and \$99,999, the maximum penalty would be two to 20 years; \$100,000 or more, the penalty would be five to 99 years. This would allow the district attorneys to pursue criminal penalties that directly relate to the severity of the offense. Having strong criminal penalties within the Public Accountancy Act emphasizes the importance of pursuing prosecutions of criminal behavior by licensees and allows prosecutions for violations of the Act. These prosecutions would be brought by local district attorneys, while the Board's role would be to conduct investigations and assist in prosecutions. The Board would model its involvement after that of the State Securities Board in similar prosecutions.

## **1.2 Increase administrative penalties to a maximum of \$10,000.**

This change would increase the statutory cap on administrative penalties from \$1,000 per violation to \$10,000 per violation. With this broader range of monetary penalties, the Board can impose penalties which are more appropriate to the nature of the violations committed. The Board would pass rules to establish a matrix to identify which offenses merit higher penalties.

## **1.3 Authorize the Board to order licensees to pay restitution to consumers as a part of enforcement actions.**

This change would authorize the Board to order the payment of restitution to victims. Refunds would be limited to actual amounts paid by consumers to licensees.

## **1.4 Authorize the Board to issue summary suspension orders.**

This change would authorize the Board to summarily suspend the license of any person or firm that is committing fraud, violating the Public Accountancy Act, or is about to engage in fraudulent activity or violations. Summary suspension authority would be limited to situations presenting an immediate threat to the public welfare, and would be subject to appeal. An individual or firm restricted from practice by summary suspension would be able to file a request for hearing within 30 days of service of the order. Within 10 days after the receipt of such a request, the Board, or its designee, would issue a notice of hearing to be held before a hearing officer in accordance with the Administrative Procedure Act to recommend whether the order should be modified, vacated, or upheld, and to consider other matters set forth in the notice of hearing. At the hearing, the Board would maintain the burden of proof and would be required to present evidence in support of the order. A summary suspension order would continue to be in effect until the order is stayed by the Board.

## **1.5 Grant the Board authority to issue subpoena orders.**

This recommendation would grant the Board the authority to require, by subpoena or summons issued, the attendance and testimony of witnesses and the production of all records relating to matters for which the Board has authority in the Public Accountancy Act to investigate. The production of records would include records maintained by electronic or other means. Further, this recommendation would grant the Board the authority to sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence, provided that such information is treated confidentially under terms of the Public Accountancy Act.

## **1.6 Grant the Board the authority to share confidential information with governmental agencies and law enforcement officials.**

This recommendation would allow the Board to disclose confidential information in the Board's possession to any governmental, regulatory, or law enforcement authority without violating the Public Accountancy Act or Chapter 552, Government Code relating to public information. The Board would create rules to guide the agency when sharing this information with other jurisdictions pursuing enforcement actions.

## Impact

Each of the recommended changes to the Board's enforcement authority would enable it to respond more appropriately to violations of the Public Accountancy Act, add further deterrence to violations, and further the agency's mission of protecting the public. The recommendation to increase the criminal penalty in the Act would subject licensees to a more appropriate penalty for major violations of the public trust than is currently in the Act. Increasing the maximum administrative penalty amount will allow the Board to match penalties to the degree of harm created by violations. Authorizing the Board to order licensees to pay restitution will allow consumers to more easily recoup their losses from accountants who do not fulfill the terms of their contracts. The recommendation to allow the Board to issue summary suspension orders is designed to quickly stop licensees from harming the public, while permitting an adequate appeals process. Clarifying the Board's subpoena authority will improve its ability to collect needed investigatory information. The recommendation to permit the Board to share investigatory information will assist the Board with multijurisdictional investigations.

## Fiscal Implication

These recommendations will not have a fiscal impact to the State. The Board may incur some costs as a result of increased enforcement efforts. However, these costs can be recovered by the Board through its flexibility as part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project.

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<sup>1</sup> Texas State Board of Public Accountancy, "Annual Financial Report" (Austin, Texas, November 21, 1997), pp. 36-37; Texas State Board of Public Accountancy, "Annual Financial Report" (Austin, Texas, November 20, 1998), p. 40; Texas State Board of Public Accountancy, "Annual Financial Report" (Austin, Texas, November 20, 1999), p. 38; Texas State Board of Public Accountancy, "Annual Financial Report" (Austin, Texas, November 20, 2000), p. 38; Texas State Board of Public Accountancy, "Annual Financial Report" (Austin, Texas, November 20, 2001), p. 29.

<sup>2</sup> "Corporate Confidence Crisis, Primer: Enron's Downfall," *Washingtonpost.com* (July 10, 2002). Online. Available: [www.washingtonpost.com/wp-dyn/business/specials/energy/enron/](http://www.washingtonpost.com/wp-dyn/business/specials/energy/enron/) Accessed: September 10, 2002.

<sup>3</sup> "Arthur Andersen's license revoked in Texas," Texas State Board of Public Accountancy, August 16, 2002 (press release).

<sup>4</sup> "WorldCom: Why it matters," *BBC News World Edition* (June 26, 2002). Online. Available: [news.bbc.co.uk/2/hi/business/2066959.stm](http://news.bbc.co.uk/2/hi/business/2066959.stm) Accessed: September 10, 2002.

<sup>5</sup> "WorldCom Announces Additional Changes to Reported Income for Prior Periods," WorldCom, August 8, 2002 (press release). Online. Available: [www1.worldcom.com/us/news/](http://www1.worldcom.com/us/news/) Accessed: September 10, 2002.

<sup>6</sup> The Public Accountancy Act formerly contained a provision authorizing the Board to issue subpoenas. According to Legislative Council staff, the provision was removed when the Act was recodified in 1999, because it was duplicative of Chapter 2001, Government Code, relating to procedures to be used by a state agency in taking disciplinary action against a license holder. Although recodification was not intended to make any substantive changes to the Accountancy Act, it provided subpoena authority only in contested cases.



## Issue 2

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### The Board Benefits From the Service of Non-Board Members on Its Committees, but This Practice Is Not Authorized.

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## Summary

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### Key Recommendations

- Authorize the appointment of non-Board members to Board enforcement committees.
- Require non-Board members appointed to Board committees to meet the statutory qualifications of Board members and to file financial disclosure statements.
- Prohibit the Board from appointing non-Board members to Board policymaking committees.

### Key Findings

- Although the Board has benefitted from the use of non-Board members in working committees, the statute does not specifically allow this practice for enforcement committees.
- Non-Board members serving on working committees may have undisclosed interests in matters before the committees.
- The Board's Rules committee represents an inappropriate delegation of policymaking authority to non-Board members.

### Conclusion

The Board has created 11 Board committees to assist in administering the Public Accountancy Act. These committees can be divided into two categories: working committees that carry out the functions of the Board, such as considering enforcement actions or overseeing the peer review process, and policymaking committees that set the direction of the Board and write rules. Because the committees are composed of both Board members and industry representatives, they are neither true advisory committees nor Board committees.

The Sunset review assessed whether the Board has inappropriately delegated its authority to non-Board members. The review found that the Board's committee structure allows the Board to access needed technical assistance in its working committees, but that the statute does not authorize the Board to use non-Board members in enforcement committees. In addition, this technical expertise may be provided by individuals who may have an undisclosed interest in matters coming before them because of their close ties to the accounting profession. The review also found that the Board has delegated policymaking authority to nonmembers serving on the Rules committee in a way that the Legislature has generally acted to avoid. The review concluded that the Board should be permitted to use nonmembers in its enforcement committees, all non-Board members of committees should disclose their financial interests and meet the same qualifications test as Board members, and the Board should not have nonmembers on its policymaking committees.

## Support

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### **The Board uses committees composed of Board members and nonmembers, to assist in the work of the Board.**

- The Board has established 11 formal standing committees to assist in deciding enforcement cases, making rules, and overseeing the agency. The committees, which are established in rule, range in size from four to nine members, are appointed by the Presiding Officer, and contain both Board members and nonmembers. The Presiding Officer chooses the non-Board members of the committees from volunteers and from suggestions made by the Texas Society of CPAs – the largest Texas CPA association. The committees do not have binding authority, but make recommendations to the full Board. The table, *Texas State Board of Public Accountancy Committees*, lists the committees and shows their composition and functions.
- The Board's 11 committees can be divided into two groups: working committees that help carry out the functions of the Board and policymaking committees that help the Board establish policies in specific areas. For example, the Board's three enforcement committees – Behavioral Enforcement, Major Case, and Technical Standards Review – are working committees that evaluate enforcement cases. Other working committees include the Continuing Professional Education, Licensing, Peer Assistance Oversight, Qualifications, and Peer Review committees. The Board's policymaking committees – Executive, Regulatory Compliance, and Rules – set the direction of the agency and its administration of the statute and rules. Although some working committees have a secondary function of suggesting rules changes, changes in Board rules are typically considered by the Rules committee.
- The Board's committees are fundamentally different from committees formed by most state agencies – because most of the committees are composed of both Board members and nonmembers, the committees are neither truly board committees nor advisory committees. State agencies typically reserve policymaking functions to board committees, while working functions may be performed either by board or advisory committees.

### **Although the Board has benefitted from the use of non-Board members in working committees, the statute does not specifically allow this practice for enforcement committees.**

- The Board's use of non-Board members on its committees has enabled it to access a broad range of technical expertise in the

*Because Board committees are composed of Board members and nonmembers, the committees are different from those of other state agencies.*

<b>Texas State Board of Public Accountancy Committees</b>		
<b>Committee</b>	<b>Composition</b>	<b>Function</b>
Behavioral Enforcement	<u>9 Members:</u> 3 Board CPAs 2 Board Public Members 4 Non-Board CPAs	Reviews complaints for violations by licensees, recommends dispositions, and follows up on Board orders to licensees.
Continuing Professional Education	<u>7 Members:</u> 2 Board CPAs 2 Board Public Members 3 Non-Board CPAs	Makes recommendations on continuing professional education program; investigates sponsor compliance with agreements; and evaluates facilities, course content, and presenters.
Executive	<u>5 Members:</u> 4 Board CPAs 1 Board Public Member	Makes recommendations concerning litigation, changes in rules of professional conduct, and statutory amendments. Composed of all Board officers, committee may act on behalf of the full Board in emergencies.
Licensing	<u>5 Members:</u> 1 Board CPA 3 Board Public Members 1 Non-Board Public Member	Makes recommendations on applications for certification, registration, licensure, and reinstatement.
Major Case Enforcement	<u>9 Members:</u> 4 Board CPAs 1 Board Public Member 4 Non-Board CPAs	Makes recommendations regarding litigation and major cases. Committee may act on the Board's behalf when disclosure of facts to the Board could jeopardize the Board's objectivity.
Peer Assistance Oversight	<u>4 Members:</u> 1 Board CPA 3 Non-Board CPAs	Oversees peer assistance program administered by the Texas Society of Certified Public Accountants. Makes recommendations to Board and TSCPA, and refers cases to other Board committees for disciplinary or remedial action.
Qualifications	<u>6 Members:</u> 2 Board CPAs 2 Board Public Members 2 Non-Board CPAs	Makes recommendations on educational and work experience qualifications of applicants; administration and security of the Uniform Certified Public Accountant Examination; and professional competency of applicants for reciprocal CPA certificates.
Peer Review	<u>8 Members:</u> 2 Board CPAs 2 Board Public Members 4 Non-Board CPAs	Reviews public reports filed with the State by firms engaged in the practice of public accountancy, and refers substandard reports to the Technical Standards Review committee.
Regulatory Compliance	<u>5 Members:</u> 5 Board CPAs	Represents Board to legislative committees and makes recommendations on legislative oversight of budgets and performance measures, and changes in legislation.
Rules	<u>9 Members:</u> 4 Board CPAs 1 Board Public Member 4 Non-Board CPAs	Makes recommendations regarding Board rules.
Technical Standards Review	<u>8 Members:</u> 4 Board CPAs 1 Board Public Member 3 Non-Board CPAs	Studies complaints involving violations of technical standards, recommends dispositions, and follows up on Board orders to ensure compliance.

accountancy profession. For example, the work of the three enforcement committees, in evaluating cases, is aided by the presence of non-Board members with technical expertise in specific areas of the accounting profession. Without this expertise on the committees, the Board would need to contract with outside accountants to assist the committees in difficult cases. The Board has estimated that the cost of providing this outside consultant assistance to the three enforcement committees is more than \$113,400 per year.<sup>1</sup>

- The statute authorizes the Board to appoint enforcement committees from its members. The Legislature added this provision in 1991 when also adding a provision that the Board's enforcement committees include a public member. In practice, the Board interprets the provision as establishing a minimum standard for the committees to which they may add additional members.

**Non-Board members serving on working committees may have undisclosed interests in matters before the committees.**

*Non-Board members of committees do not meet the eligibility standards for Board members and do not disclose their financial interests.*

- While the Board benefits from the expertise provided by the additional members, the Board's committee structure raises concern because of delegating the work of the Board to individuals who might have undisclosed interests in matters before the committee. In all but one case, the non-Board members appointed to the committees are representatives of the CPA industry. The degree to which these non-Board members may have interests in matters before the committees is unknown because these members have not been confirmed by the Senate and are not required by the Ethics Code to file personal financial disclosure statements. In addition, many of the non-Board members are also officers or employees of industry groups who would not be eligible to be members of the Board under the qualifications specified in the Board's statute.

One example of this situation is the Board's Peer Review committee. This committee oversees the peer review process which the Board has primarily delegated to the Texas Society of CPAs. Among the appointed members of the Peer Review committee is the Texas Society's Director of Peer Review, who is, therefore, in the position of overseeing his own performance. Other examples can be found on the Board's Behavioral Enforcement, Major Case Enforcement, Peer Assistance Oversight, Qualifications, and Technical Standards Review committees – each of which have a least one member who is on the Board of Directors of the Texas Society of CPAs.

Concern over the potential that non-Board members have an undisclosed interest in matters before them is increased because the full Board generally agrees with the recommendations of its

committees. Attorney General opinions have concluded that committees whose recommendations are rubber-stamped by their boards are, in fact, exercising the power of the board.<sup>2</sup>

**The Board's Rules committee represents an inappropriate delegation of policymaking authority to non-Board members.**

- The Board committee structure places non-Board members in the position of exercising policymaking authority that is usually reserved for appointed Board members. Three of the Board's 11 committees are policymaking committees: Executive, Regulatory Compliance, and Rules. The Board itself has recognized that non-Board members should not sit on two of these committees, although it has made outside appointments to the Rules committee. The Rules committee drafts rules for adoption by the Board, even though rulemaking is an authority that the Legislature has assigned only to policymaking bodies.

In addition to the service of non-Board industry members on the Rules committee, the Board recently undertook a process that further increased the opportunity for industry input while weakening the input of appointed Board members and the public. Following the recodification of the Public Accountancy Act in 2001, the Board began a major revision of its rules. The Board was assisted in this process by a joint committee between the Board and the Texas Society of CPAs. This joint committee did not have any public members and constituted a quorum of the Board's Rules committee, which later recommended that the Board adopt the revised rules, as it did in September 2001.

- In the past, the Legislature has acted to remove the undue influence of industry representatives from the Board's policymaking decisions. For example, in 1979, the Legislature moved to ensure that the Board has the sole power to promulgate rules by abolishing the Board's practice of permitting licensees to vote on changes in Rules of Professional Conduct.<sup>3</sup> The Legislature has also acted twice to increase public representation on the Board. In 1989, the Legislature added three public members to the, then, 12-member board to create a 15-member board. In 1991, the Legislature increased the public membership to five of the 15 members.

*Non-Board members of committees exercise policymaking authority usually reserved for appointed Board members.*

# Recommendation

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## Change in Statute

### **2.1 Authorize the appointment of non-Board members to Board enforcement committees.**

This recommendation would repeal the current statutory language requiring the Board to make appointments to the enforcement committees from its membership and specifically authorize the Board to seek technical assistance from non-members. These non-Board members would serve as full, voting members. The Board would check the compliance history of all appointees to ensure that CPAs with past enforcement actions are not evaluating enforcement cases of others.

### **2.2 Require non-Board members appointed to Board committees to meet the statutory qualifications of Board members and to file financial disclosure statements.**

This recommendation would ensure that the non-Board members appointed to serve on Board committees meet the same qualifications as Board members. These qualifications would apply the statutory test that excludes officers and employees of Texas trade associations in the field of public accountancy from serving on the Board. To ensure that personal interests in the work of the committees is fully disclosed, the financial disclosure standards in the Ethics Code would apply to the non-Board members in the same way as it does to Board members who have been confirmed by the Senate. The Board would create rules requiring non-Board committee members to recuse themselves from discussing or voting on matters where they have a personal interest.

### **2.3 Prohibit the Board from appointing non-Board members to Board policymaking committees.**

This recommendation would ensure that the Board does not permit non-Board members to perform its key policymaking functions. The Board would remain free to establish its committee structure as needed, with the provision that committees performing policymaking functions, such as writing rules and formulating the direction of the agency, must only contain Board members.

## Impact

The recommendation to permit the Board to appoint nonmembers to its enforcement committees recognizes and continues the benefit of the technical expertise that the Board has been able to gain from these volunteers. To reduce the possibility of nonmembers helping shape decisions on matters in which they have a direct interest, these non-Board members would meet the same qualifications and disclosure requirements that apply to current Board members. The recommendation requiring Board policymaking committees to include only Board members would ensure that the accounting profession does not exert undue influence over the policymaking work of the state agency regulating accountancy. The Board is currently composed of 15 members, which is an adequate number to perform the policymaking work.

## Fiscal Implication

These recommendations would not have a fiscal impact to the State. Costs associated with any additional workload for Board members would be paid by the Board from its operating funds. As a pilot project agency, the Board maintains its funds outside the Treasury, not subject to the appropriations process.

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<sup>1</sup> Letter from Texas State Board of Public Accountancy General Counsel, Amanda G. Birrell, to Sunset Commission Director, Joey Longley, October 8, 2002.

<sup>2</sup> Op. Tex. Att'y Gen JC-0060, LO 97-017, JM-1072.

<sup>3</sup> Texas State Board of Public Accountancy, Self Evaluation Report to the Sunset Commission, September, 2001, p. 7. The change was also a result of questions raised by the U.S. Department of Justice.



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## Issue 3

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### Key Elements of the Public Accountancy Act Do Not Conform to Commonly Applied Occupational Licensing Practices.

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## Summary

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### Key Recommendations

- Require the Board to define which misdemeanor convictions disqualify an applicant from certification in the standard manner defined in the Occupations Code.
- Authorize the Board to delegate the collection of Uniform CPA Examination fees.
- Require Board members to recuse themselves from voting on disciplinary actions when they serve on the respective enforcement committees.
- Require the Board to make detailed information about disciplinary actions available to the public.

### Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could negatively 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 consumers.
- Certain administrative practices could reduce the Board's protection of the public or its ability to adapt to major change.

### Conclusion

Various licensing and enforcement processes set up in the Board's statute and in its management practices do not match model licensing standards that Sunset staff has developed from experience gained through more than 70 occupational licensing reviews in 25 years. The Sunset review identified these recommendations by comparing the Board's programs and statutes against these licensing standards to identify unwarranted variations and to recommend changes to bring them in line with the model standards. In some cases, statutory vagueness could mislead certificate applicants or fail to prevent a conflict of interest in processing disciplinary actions. Other problems could prevent the proper allocation of exam fees, or inhibit the public's ability to learn more about disciplinary actions or the accountancy profession in general.

## Support

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*The Board enforces the Public Accountancy Act and the Rules of Professional Conduct.*

### **The Board licenses and regulates certified public accountants and accounting firms in Texas.**

- The Board strives to protect the public by enforcing the Texas Public Accountancy Act and setting professional standards in its rules. These laws and rules focus on maximizing individual CPAs skills, ethics, and educational levels, as well as the competency of firms that provide audit services.
- To accomplish its mission, the Board oversees three programs: Qualifications, Licensing, and Enforcement. The Board has delegated most of the administration of these programs to its staff, which perform tasks such as recording certificate applications, investigating enforcement actions, and validating license renewals.
- The Board, along with the Texas Board of Professional Engineers and the Texas Board of Architectural Examiners, participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project (Pilot Project) – a test of the effectiveness of removing self-funded licensing agencies from the legislative appropriations process. As part of the Pilot Project, the Board now collects its revenues directly from licensing and exam fees, and spending limitations in the General Appropriations Act, such as caps on agency full-time equivalent positions and travel expenditures, do not apply to the Board.

### **The Sunset Commission's experience from reviewing more than 70 occupational licensing programs during the last 25 years has been documented for application to future reviews.**

- Questionable practices by occupational licensing programs spurred the creation of the Sunset Advisory Commission in 1977. About 65 professional or occupational licensing functions exist in Texas as free-standing agencies, member agencies, or programs under an umbrella agency such as the Texas Department of Licensing and Regulation. By the end of this year, the Commission will have reviewed more than 45 licensing agencies, and 24 of these programs have been reviewed at least twice.
- Since its inception, the Sunset Commission has adopted eight across-the-board provisions for licensing agencies. For example, one standard requires agencies to adopt a system of continuing education for licensees and another calls for a full range of administrative sanctions, ranging from reprimands to license revocation. These standards help establish the consistent use of licensing and enforcement features across licensing programs.

- In reviewing licensing programs, the Sunset staff has documented themes and trends to guide reviews of occupational licensing agencies. These observations are not intended for blanket application to all licensing agencies but provide a model framework for evaluating a licensing program. Although the Board participates in the Pilot Project, its licensing and enforcement functions should still follow these standard procedures. The following material describes how making the Board's statutes conform with these standards would help the agency.

*Although the Board participates in the Pilot Project, its licensing and enforcement functions should still follow standard procedures.*

**Licensing provisions of the Board's statute do not follow model licensing practices and could negatively affect the fair treatment of licensees and consumer protection.**

- ***Criminal convictions.*** State law provides a general standard to guide licensing agencies in determining which crimes should affect licensure in a given profession. This law, Chapter 53 of the Occupations Code, "Consequences of Criminal Conviction," takes effect when individual licensing statutes are silent on the relationship of crime to licensure. Basically, it provides that a criminal conviction, including one for misdemeanors, affects qualifications for licensure when the crime is related to the profession, according to guidelines developed by the agency and published in the Texas Register. By following these guidelines, an agency may disqualify a person from receiving a license or deny the opportunity to take a licensing exam.

Texas' Public Accountancy Act and Board rules do not adequately specify the crimes that would disqualify a person from entering the accounting profession. The Act says that an applicant must be of "good moral character as demonstrated by a lack of history of dishonest or felonious acts." In addition, the Board may deny an individual's application to take the CPA exam because of a conviction or deferred adjudication for a felony offense. In practice, the Board does not advance the application of an individual who has committed a felony offense, subject to a hearing at the State Office of Administrative Hearings. The Board also looks at applicants who have misdemeanor convictions on a case-by-case basis, but has not produced a list of misdemeanors that relate directly to the practice of accountancy. Although the Board has an extended precertification process, the lack of clarity in the statute and rules could lead applicants with criminal convictions to expend a lot of time and energy futilely trying to qualify for a certificate.

*Neither the statute nor Board rules list the crimes that would disqualify a person from entering the accounting profession.*

- ***Test administration.*** Agencies conducting examinations should maintain clear guidelines, procedures, and rules governing the entire testing process – from the security at test sites to the manner in which the Board administers test fees.

State accountancy boards, including Texas, have agreed to administer the Uniform CPA exam in a computer-based format. The Board, like other state agencies, is required under terms of state law, designed to maximize State revenue, to collect and hold all examination fees for national testing services instead of allowing applicants to pay the testing service directly. However, the agency is no longer in the appropriations process or required to hold its funds in the State Treasury because of terms in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. Therefore, the current provision on fee payments unnecessarily limits the agency's flexibility and could impair the Board's ability to enter into a contract to administer the test.

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

- *Recusal.* Board members should not take part in both the investigation of a complaint and determining the final action of that complaint. State laws requiring recusal of board members generally require the member to publicly state the reason for the recusal, and not vote or otherwise participate in the decision. This process helps ensure the fairness and objectivity of the full Board's consideration of the matter.

*The Public Accountancy Act does not require Board members who perform investigatory functions to recuse themselves from voting on the matter.*

In the Board's committee structure, members serve on each of the enforcement committees, Technical Review, Behavioral, and Major Case. These committees – composed of Board and non-Board members – perform investigatory functions on behalf of the full Board, such as examining evidence and, with the assistance of staff, negotiating agreed consent orders. While the Board has passed and respects current ethics rules on ex parte communications, nothing in its statute specifically requires Board members sitting on enforcement committees to recuse themselves when disciplinary actions come up for a final vote. In addition, Board members do not always clearly state when they are recusing themselves from a Board vote. Creating a specific recusal regulation in the Board's statute will ensure that future Boards will continue to avoid ex parte communications and ensure greater fairness in the full Board's consideration of complaints.

**Certain administrative practices could reduce the Board's protection of the public and licensees.**

- *Public information.* A licensing agency exists to protect the public, and the public should have access to general information about the profession and operations of the agency. This information can help consumers understand their options when seeking services and seeking recourse when they have a complaint.

The Board maintains a Web site that offers a range of information for CPAs, such as application forms, press releases, and online versions of its newsletters. Most of the information, however, is not geared toward the general public but to CPAs. The site does not easily provide a way for consumers to get information about past disciplinary actions against licensees. In addition, the Board does not maintain descriptive outcome data differentiating administrative acts from disciplinary actions, which would better illustrate the level of serious accountant misconduct in Texas.

*The Board's Web site does not easily provide a way for consumers to get information about past disciplinary actions against licensees.*

## Recommendation

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### Change in Statute

#### **3.1 Require the Board to define which misdemeanor convictions disqualify an applicant from certification in the standard manner defined in the Occupations Code.**

This recommendation would require the Board to apply the process in Occupations Code, Chapter 53, to define which criminal convictions disqualify an applicant from licensure as a public accountant. Current statutory provisions on good moral character demonstrated by a lack of dishonest or felonious acts would be replaced with a reference to Chapter 53 and a clear statement excluding felons from licensure. Based on the process required in this Chapter, the Board would create a list of misdemeanors with explanations on how a particular crime relates to the CPA license. The resulting list of crimes would be published in rule so that interested individuals would be able to determine their ability to become a CPA before beginning a period of study for the profession. In addition, the Board would publish a statement explaining the process it would use to determine which misdemeanors committed in other states would prevent licensing in Texas.

#### **3.2 Authorize the Board to delegate the collection of Uniform CPA Examination fees.**

Under this recommendation, the current statutory language requiring the Board to collect examination fees would be modified to include specific authority allowing third parties to collect exam fees on behalf of the Board.

#### **3.3 Require Board members to recuse themselves from voting on disciplinary actions when they serve on the respective enforcement committees.**

This recommendation would create a clear separation between the Board's investigative and final disciplinary action functions. Board members would be required to clearly announce their recusal from specific votes. Requiring the Board to adopt ethical rules and ex parte communications rules would ensure that future boards continue to abide by these policies.

## Management Action

### 3.4 The Board should make detailed information about disciplinary actions available to the public.

This recommendation would require the Board to give consumers full and easy access to public information on disciplinary rulings and licensees' disciplinary histories on its Web site. The recommendation would also require the Board to compile detailed statistics about complaints received and resolved each year and provide this information in its annual report. The Board would provide a separate breakdown of cases resolved each year, classified either as administrative violations that generally originate with the staff, or as disciplinary cases that generally originate as a complaint by the public or other source outside the agency. Specifically, this information would include the following data.

- The reason or basis for the complaint, such as lack of continuing education or professional misconduct.
- The origin of the complaint, such as the public, the Board's staff, referral from another agency, or another source outside the agency.
- The average time to resolve the case from the date the complaint was received.
- The outcome of the case, including the number of cases dismissed and the reason for the dismissal, and the number of cases resulting in disciplinary action and the action taken.
- The cases resulting in enforcement action should also show how the action is imposed, such as by agreed order approved by the Board, or Board order resulting from a contested case.

The agency should also provide the number, type, and age of all open cases as of the end of each fiscal year and any other information required by Section 901.163 of the Accountancy Act, relating to statistical analysis of complaints.

## 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 refinement of Board procedures. The chart, *Benefits of Recommendations*, categorizes the recommendations according to their greatest benefits.

<b>Benefits of Recommendations</b>				
<b>Recommendation</b>	<b>Benefit</b>			
	<b>Efficiency from Standardization</b>	<b>Administrative Flexibility</b>	<b>Fairness to Licensee</b>	<b>Protection of Consumer</b>
<b>Statutory</b>				
3.1 Define which misdemeanors disqualify CPA candidates.	✓		✓	✓
3.2 Authorize Board to delegate collection of exam fees.	✓	✓		
3.3 Adopt rules on recusal.			✓	✓
<b>Management</b>				
3.4 Post more information on disciplinary actions.	✓		✓	✓

### **Fiscal Implication**

These recommendations would not have a significant fiscal impact to the State. Because the Board participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project and its funds are not part of the appropriations process, any fiscal savings or cost would not accrue to the General Revenue Fund. These recommendations would also not have a significant fiscal affect on the Board because they do not require the Board to expend additional resources. The Board may need to devote more staff time to improving its Web site, but this should be only a short-term investment. Permitting licensees to pay the national testing service for examinations directly will not result in a loss of funds to the Board because any loss of interest income will be offset by decreased administrative expense.



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## Issue 4

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### Texas Has a Continuing Need for the Texas State Board of Public Accountancy.

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## Summary

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### Key Recommendation

- Continue the Texas State Board of Public Accountancy for 12 years.

### Key Findings

- Texas has a continuing interest in regulating the practice of public accountancy.
- The Board functions effectively in its role of regulating public accountancy.
- No benefit would result from changing the agency structure or having any other federal or state agency perform the Board's functions.
- Most other states use a separate licensing agency to oversee the practice of public accountancy.

### Conclusion

The Board licenses individual Certified Public Accountants and accounting firms. While the accounting standards by which CPAs and firms must operate are established by national accounting organizations, the Board acts to license CPAs and firms and enforce the Public Accountancy Act in Texas. Because the practice of accountancy affects the business climate in the state, and members of the public are unable to independently determine the competency of an accountant, the Board's regulatory functions continue to be needed.

The Sunset review assessed the overall need for a separate Board to regulate accountancy in Texas. The review determined that the Board is functioning well as a stand-alone agency and should continue as currently organized. Although the Board needs improvements that are discussed elsewhere in this report, the Board has shown itself to be an effective regulator and should be continued for the standard 12 years.

## Support

### The Texas State Board of Public Accountancy oversees the practice of public accountancy in Texas.

- The Texas State Board of Public Accountancy has played a role in protecting the public, by overseeing the practice of public accountancy, since the Legislature passed the Public Accountancy Act and created the Board in 1915. The Board accomplishes its mission by examining prospective accountants, licensing CPAs, licensing each location of an accounting firm, investigating and resolving complaints, and sanctioning licensees who violate the Act. The chart, *TSBPA Workload*, has additional information regarding the extent of the Board's work.

TSBPA Workload - FY 2001	
CPAs Licensed	57,291
Accounting Firm Locations Licensed	10,179
Exams Administered	5,720
Total Complaints Resolved	4,416

### Texas has a continuing interest in regulating the practice of public accountancy.

- The practice of public accountancy directly affects the business climate in Texas. Corporations need accounting services to calculate balance sheets, prepare tax forms, and participate in securities markets. Investors need accurate accounting reports on which to base investments. State government also relies on accounting services to ensure the accuracy of tax and investment information. The public at large benefits from quality accounting because when business fraud remains unchecked, public confidence erodes and the state's economic health is affected. As accountancy is a technical and complex profession, the public, on its own, is unable to determine the competency of CPAs.

The Board achieves its mission by licensing individuals and firms that provide accountancy services to the public. The Board also develops and enforces rules to ensure that licensees engage in ethical practices. Consumers benefit not only from the knowledge that licensees are qualified to provide accountancy services, but also from having recourse to take action if licensees violate laws or board rules.

### The Board functions effectively in its role of regulating public accountancy.

- The Board has an effective examination function. Each year the Board administers some 6,000 tests. The two-day, four-part test is offered twice a year in six cities. The rigorous nature of the exam is demonstrated by the average pass rate of only 25 percent.

The Board has also undertaken efforts to improve its examination function. In 2004, the Board will implement a computerized

*The practice of public accountancy directly affects the business climate in Texas.*

examination system. The new system, developed through efforts of the Board, the American Institute of Certified Public Accountants, the National Association of State Boards of Accountancy, and a private testing firm, will allow candidates to take the exam at 20 sites throughout the state. Test candidates will receive results within three weeks, as compared to the current 13 weeks, and will have greater flexibility on which days to take the test.

- The Board oversees a large number of licensees – 67,500 considering both firms and individuals. In maintaining this base of licenses, the Board has effectively automated many of its functions. The Board uses an annual license renewal system that is based on the licensee's birthday. At the time of renewal, licensing staff ensure compliance with Board rules on continuing education and previous enforcement actions. Many firms are also subject to the Board's rules regarding peer review. This process is intended to ensure that firms are complying with professional accounting standards and requires that firms, performing auditing services, be reviewed by another accounting firm every three years.
- While this report contains recommendations to improve the Board's enforcement of the Act, the Board has been generally effective in this regard. In fiscal year 2001, the Board received or initiated 4,406 complaints. Although the majority of the complaints concerned violations of the Act or rules related to minimum licensing qualifications, such as failure to complete continuing education requirements, 387 of the complaints involved serious violations, such as incompetence or discreditable acts. The Board resolves these complaints relatively quickly; the average processing time for licensing violations was 4.5 months, while the more serious disciplinary cases took an average of 5.9 months.

**No benefit would result from changing the agency structure or having any other federal or state agency perform the Board's functions.**

- The regulation of public accountancy is largely performed by the states. However, in recent years, the federal government has become more involved in overseeing the large accounting firms that audit nationally traded corporations. This effort has been assigned to the federal Securities and Exchange Commission and was recently modified by the accounting reform and investor protection act, known as the Sarbanes-Oxley Act. While this legislation dramatically changes how CPA firms that provide financial services to publicly held companies perform their duties, it will not greatly affect the majority of CPAs or firms operating in Texas. Although, through this bill, the federal government is

*The Board licenses 67,500 CPAs and accounting firms.*

*Public accountancy is primarily regulated by the states, although the federal government is becoming more involved in overseeing large accountancy firms that audit publicly traded corporations.*

expanding its scope of accountancy regulation, federal agencies are not prepared to replace the licensing, examination, and enforcement service provided by the Board.

No state agency is prepared to undertake the functions of the Board. Transferring the Board's functions to another agency would not result in a significant gain in efficiency, because the Board's specialized enforcement functions would have to be recreated in the other agency. For example, the Texas Department of Licensing and Regulation (TDLR) has a structure for licensure, examination, and investigation and it oversees some 20 different occupational licensing programs. However, at this time, TDLR's enforcement division is not capable of taking on the additional assignment of enforcing the Act without an extensive expansion of its staff. In addition, neither TDLR nor any other state agency oversees a licensing population that is similar to the accountants regulated by the Board.

- Because the Board recovers all costs through fees collected by licensees, no cost-savings would result if the Board was abolished. Also, as part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the Board now operates outside of the spending limitations set in the General Appropriations Act. In fact, the Board is required, under the Pilot Project Act, to annually contribute \$500,000 to the General Revenue Fund. Abolishing or transferring the Board would possibly eliminate this payment. In addition, discontinuing the licensing of accountants would eliminate the annual \$200 professional licensing fee CPAs pay to the State. In fiscal year 2001, revenue from the professional licensing fee brought more than \$11 million into the General Revenue Fund.

**Most states use a separate licensing agency to oversee the practice of public accountancy.**

- All 50 states license public accountants. In most states, CPA licensing requirements and statutes are similar because most states, like Texas, have based their statutes on the model public accountancy act written by the National Association of State Boards of Accountancy.
- Although the structures vary, each state has established a separate board of public accountancy to oversee the practice of the profession. In 27 states, the accountancy board functions as a separate, stand-alone licensing agency. In the remaining states, the accountancy board is housed within a larger administrative structure such as a secretary of state's office or a department of business regulation.

*All 50 states license CPAs under statutes similar to Texas.*

## Recommendation

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### Change in Statute

#### 4.1 Continue the Texas State Board of Public Accountancy for 12 years.

### Impact

This recommendation would continue the Board for the standard 12-year period.

### Fiscal Implication

Because the Board currently participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project and lies outside the appropriations process, continuing the Board will have no fiscal impact to the State. Similarly, should the Board be brought back under the legislative appropriations process, the Board would be supported by licensing fees paid into the General Revenue Fund, and therefore have a revenue-neutral impact to the State.



**ACROSS-THE-BOARD RECOMMENDATIONS**



<b>Texas State Board of Public Accountancy</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Already in Statute	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.
Already in Statute	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.
Update	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.

<b>Texas State Board of Public Accountancy</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Update	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Already in Statute	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.
Apply	5. Authorize the staggered renewal of licenses.
Modify	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**



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# Agency Information

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## Agency at a Glance

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The Texas State Board of Public Accountancy (Board) regulates the accounting profession in an effort to provide competent, objective accountants and auditors for Texas' financial markets, banking systems, and businesses. The Board's major functions include:

- administering the Uniform Certified Public Accountant (CPA) Examination;
- certifying and licensing accountants who have passed the Exam and met all requirements;
- registering firms engaged in the practice of public accountancy; and
- enforcing provisions of the Public Accountancy Act, and taking disciplinary action when necessary.

## Key Facts

- **Funding.** In Fiscal Year 2001 (FY 2001), the Board operated with an annual budget of about \$2.7 million, all of which was derived from examination and licensing fees collected from the accounting profession.
- **Staffing.** The Board has 43 full-time equivalent (FTEs) positions, all based in Austin.
- **Licensing.** The Board regulates about 57,400 CPAs and 10,000 accounting firms. In FY 2001, about 5,700 applicants took the CPA exam and about 1,400 passed the exam and were eligible to apply for a license.
- **Enforcement.** The Board opened 4,406 complaints in FY 2001. In that same year, the Board closed 4,416 complaints with an average processing time of 4.7 months.
- **Self-Directed, Semi-Independent Licensing Agency Status.** The Legislature included the Board, along with the Texas Board of Professional Engineers and the Texas Board of Architectural Examiners, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project (Pilot Project). Beginning in September 2001, as part of the Pilot Project, the Board was removed from the legislative appropriations process. The Board now collects its

**Texas State Board of Public Accountancy on the Internet**  
Information about the Board, including its statutes, rules, newsletters, and administrative actions taken against licensees, is available on the Internet at [www.tsbpa.state.tx.us](http://www.tsbpa.state.tx.us).

revenues directly from licensing fees. In addition, spending limitations in the General Appropriations Act, such as caps on agency FTEs and travel expenditures, do not apply to the Board.

## Major Events in Agency History

*Since 1945, the practice of accountancy has been restricted to individuals licensed by the Board.*

The Legislature created the Texas State Board of Public Accountancy in 1915 to regulate the practice of accountancy. Initially, State Board members developed the examination questions used to test CPA candidates. Beginning in 1919, in an effort to promote more consistency in certification requirements across the states, the Board began using the Uniform Accounting Examination written by the American Institute of Certified Public Accountants (AICPA).

In 1945, the Legislature limited the practice of public accountancy to individuals licensed by the Board and also authorized the Board to promulgate rules. The practice of allowing licensees to vote on the Rules of Professional Conduct was abolished in 1979, in favor of vesting sole authority with the Board. In 1989, the Legislature directed the Board to establish a peer review program to monitor firms' compliance with accounting and auditing standards. In 1997, a new qualifications standard was imposed that increased the number of required college credit hours from 120 hours to 150 hours. In 1999, the Legislature created the Self-Directed, Semi-Independent Licensing Agency Pilot Project, and included the Board as one of three agencies in the Pilot Project.

## Organization

### Policy Body

*Board members proctor exams, serve on committees, and participate in the enforcement process.*

The Texas State Board of Public Accountancy consists of 15 voting members – 10 CPAs and five public members – appointed by the Governor. Board members serve six-year terms, but are not permitted, by statute, to serve consecutive terms. The chart, *Texas State Board of Public Accountancy*, identifies current Board members.

While the Board participates in standard board activities, such as rulemaking and agency oversight, Board members also proctor examinations and participate in the enforcement process. The Board met six times in fiscal year 2001. In addition to receiving reimbursement for travel expenses, Board members also receive a \$30 per diem for each day that the member conducts Board business.

The Board has 11 formal standing committees to assist in its work in making rules, handling enforcement cases, and overseeing the agency. The committees range in size from four to nine members, are appointed

Texas State Board of Public Accountancy			
Name	Residence	Expiration	Qualification
K. Michael Conaway, CPA (Presiding Officer)	Midland	2001	CPA
Billy M. Atkinson, CPA	Sugarland	2005	CPA
Marcela E. Donadio, CPA	Houston	2007	CPA
Kimberly M. Dryden	Amarillo	2005	Public Member
April L. Eyeington, CPA	College Station	2005	CPA
Edwardo B. Franco	Houston	2005	Public Member
Gwen B. Gilbert, CPA	Dallas	2003	CPA
Rebecca B. Junker, CPA	Richmond	2003	CPA
Carlos Madrid, Jr.	San Antonio	2007	Public Member
Robert C. Mann, CPA	Fort Worth	2005	CPA
Reagan S. McCoy, Esq.	San Antonio	2003	Public Member
Catherine J. Rodewald	Frisco	2007	Public Member
Edward L. Summers, Ph.D., CPA	Austin	2003	CPA
Melanie G. Thompson, CPA	Canyon Lake	2007	CPA
Vacancy		2003	CPA

by the Presiding Officer, and contain both Board members and non-members. The committees do not have binding authority, but make recommendations to the full Board. The textbox, *Texas State Board of Public Accountancy Committees*, lists the committees.

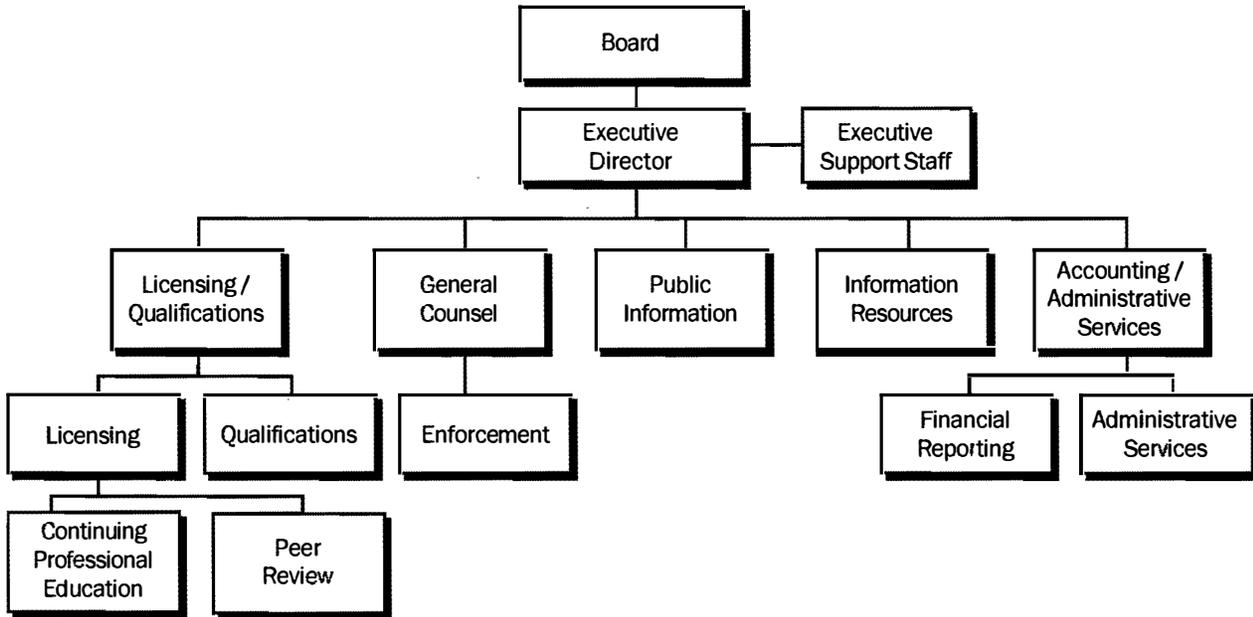
**Staff**

At the end of FY 2001, the agency had a staff of 39 employees. The Executive Director oversees the agency’s operations, and the chart, *Texas State Board of Public Accountancy Organizational Chart*, depicts the organization of the agency.

A comparison of the agency’s workforce composition to the minority civilian labor force over the past four years is shown in Appendix A, *Equal Employment Opportunity Statistics – Fiscal Years 1998-2001*. The Board has generally met the civilian labor force guidelines for most job categories.

Texas State Board of Public Accountancy Committees
Behavioral Enforcement
Continuing Professional Education
Executive
Licensing
Major Case Enforcement
Peer Assistance Oversight
Qualifications
Peer Review
Regulatory Compliance
Rules
Technical Standards Review

**Texas State Board of Public Accountancy  
Organizational Chart**



**Funding**

**Revenues**

In FY 2001, the Board received an appropriation of almost \$3 million. As a licensing agency, the Board generates revenue through licensing and examination fees, which exceed its administrative costs. In FY 2001, examination and licensing fees totaled approximately \$3.6 million. These funds went directly into the General Revenue Fund. In FY 2001, the Board collected \$1 million more than it spent.

In addition to the above fees, the Board also collected professional fees totaling about \$11 million, administrative penalties totaling \$782,000, and scholarship fees totaling \$574,000; however, those funds were deposited into General Revenue and Scholarship Funds and were not available for agency use.

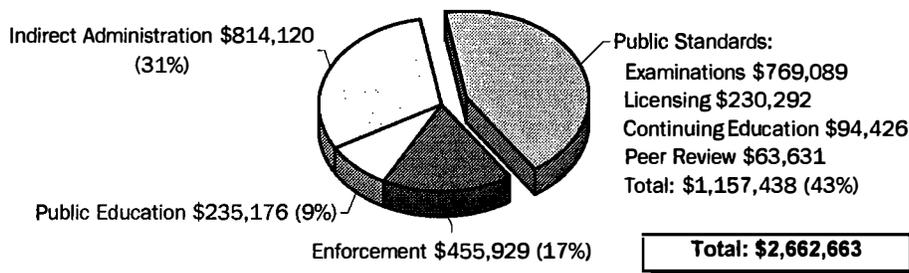
Beginning in FY 2002, the Board began participating in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which removed the Board from the legislative appropriation process and granted the Board the authority to operate under its own discretion. As a result, the Board did not receive an appropriation for FY 2002 and 2003. Instead, agency revenues will be based on funds raised through licensing fees and administrative fines/penalties. The Legislature did, however, appropriate the Board a one-time, start-up stipend of \$1.5 million, but that money must be repaid to the State Treasury as funds become available.

*In fiscal year 2001, the Board collected \$1 million more in fees than it expended.*

## Expenditures

The pie chart, *Expenditures by Goal*, reflects the Board's expenditures for FY 2001, approximately \$2.7 million. The Board spent 43 percent, or more than \$1.1 million of its total budget on licensing and examination costs, including continuing education and peer review costs. The next highest expenditure was indirect administrative costs.

**Expenditures by Goal  
FY 2001**



In addition to the expenditures shown above, the Legislature has directed the Board, and other licensing agencies that pay the costs of regulatory programs with fees imposed upon licensees, to cover direct and indirect costs appropriated to other agencies for services provided. Examples of these costs include rent and utilities paid by the State Building and Procurement Commission, security provided by the Department of Public Safety, and accounting services provided by the Comptroller of Public Accounts. For FY 2001, these costs totaled \$663,289. In FY 2002, due to the Board's participation in the Pilot Project, these funds will no longer be appropriated. The Board must pay the fees directly to the agency providing the services.

The Board's projected expenditures for FY 2002 are estimated at \$3.3 million, approximately \$630,000 more than FY 2001 expenditures. The budget increase is mainly due to increased spending in the public standards and enforcement goals. The Board estimates spending \$265,000 more for the licensing and examination program and \$260,000 more for enforcement than it did in FY 2001. The increase is due to anticipated increases in the examination grading fee, number of exam candidates, and major case enforcement activity. In addition to the above expenditures, beginning in FY 2002, the Legislature required the Board to submit an annual lump-sum payment to the General Revenue Fund. Because licensing agencies typically collect more funds than they expend, the Legislature required an annual payment from each agency participating in the Pilot Project in order to avoid a loss of funds to the State Treasury. The amount of the payment varies by agency. For the Board of Accountancy, that amount is \$500,000.

*As of FY 2002, the Board operates outside the state budget process.*

Appendix B describes the Board’s use of Historically Underutilized Businesses (HUBs) in its purchasing of goods and services. Although the Board has had some difficulty meeting statewide goals in each category, its HUB spending for professional services was well above the goal in fiscal years 1999 through 2001, and the Board slightly exceeded the statewide goal in the other services category in fiscal year 2001. The amount paid to the AICPA each year for the purchase and grading of the Uniform CPA examinations was excluded from the total amount spent in the other services category because the Board must use a sole-source provider.

### Agency Operations

*In overseeing the practice of accountancy, the Board operates three programs – qualifications, licensing, and enforcement.*

The Board’s primary function is overseeing Certified Public Accountants practicing in Texas. While not everyone who performs bookkeeping services is required to be licensed, only licensees may call themselves CPAs. Three types of activities require a license:

- using the title CPA;
- performing attest services, such as audits; and
- providing accounting services directly to the public.

To support its main function, the Board operates three programs: qualifications, licensing, and enforcement. The qualifications process determines who has the right to call themselves certified public accountants, while licensing procedures help ensure that CPAs and accounting firms follow current, standard accounting principles. The Board’s enforcement program handles complaints and investigates allegations of misconduct.

### Qualifications

The Qualifications Program acts as the Board’s first line of defense in quality control by enforcing certification criteria, dubbed the 4Es, which are described in the textbox, *Qualification 4Es*. In addition to these qualifications, Texas residents undergo a Department of Public Safety background check, while out-of-state applicants must have a FBI background check. Applicants must pass every requirement before they are granted a certificate.

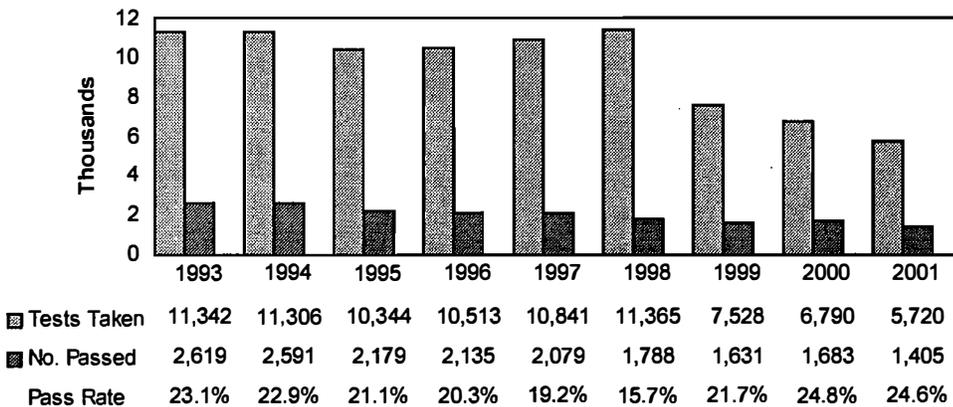
<p align="center"><b>Qualification 4Es</b></p> <p><i>Education</i> - Bachelor’s degree with 150 semester hours of college credit, including 36 semester hours of accounting and 20 semester hours of business courses.</p> <p><i>Examination</i> - Pass all parts of the Uniform CPA Examination and an exam on the rules of professional conduct.</p> <p><i>Experience</i> - One year of qualifying work experience.</p> <p><i>Ethics</i> - Complete a Board-approved course on professional ethics.</p>
---

One of the program’s main duties is administering the Uniform CPA Examination. The AICPA, a national organization, writes and grades the two-day test, while the Board is responsible for managing the testing site. Staff administer the exam in May and November in six cities: Austin, El Paso, Fort Worth, Houston, Lubbock, and San Antonio. Board members proctor each test site to assist with security and address any irregularities that might occur. The exam cost \$354,609 to administer in FY 2001. The Board also paid AICPA \$414,480 to grade the exams. These costs were recovered by fees charged to applicants.

The Board disseminates information about the four-part Exam through a newsletter, *Candidate Chronicle*. Since 1999, an average of 6,000 applicants have taken the exam each year, with an average pass rate of 25 percent for all four parts. The chart, *Exam Candidates by Fiscal Year*, shows how many candidates have attempted the exam since 1993, and how many passed. The Board believes that the drop in the number of candidates for 1999 was due to the increase in the education requirement qualification from 120 to 150 college credit hours. This increased qualification for CPA candidates also had the effect of increasing exam pass rates by nine percent since the change became effective.

*About 6,000 applicants take the CPA exam each year, with an average pass rate of 25 percent for all four parts.*

**Exam Candidates by Fiscal Year**



In May 2004, the examination process will change from a paper-based format to a computerized system. The AICPA, the National Association of State Boards of Accountancy (NASBA) and Prometric, a private testing firm, have entered into an agreement to provide the Uniform Exam electronically at private testing centers, including about 20 sites in Texas. Computer-based testing permits AICPA to grade the tests within three weeks, as opposed to 13 weeks in the current system. Test candidates also will have more freedom on which days to take the test. AICPA will continue writing and grading the test, but the Board will no longer manage the test locations or security.

*In 2004, the Board will convert its paper CPA test to a computerized examination system.*

### Licensing

While the Board’s qualifications process ensures the skills of entering CPA candidates, the licensing function manages individuals and firms already practicing public accountancy in Texas. The chart, *Number of Active Licensees*, shows the number of licenses issued to individuals and firms in June 2002. Each firm, as well as each individual office of each firm, must be licensed. In this activity, the Board manages license renewals, programs on continuing professional education (CPE), and peer review. Dividing the Board’s 67,500 licensees into two categories, individuals and firms, helps illustrate how these programs function.

Number of Active Licensees		
Type		Number
Individuals	CPAs	57,291
	Public Accountants	48
	Foreign CPAs	51
<b>Total Individuals</b>		57,390
Firms	Corporations	2,388
	Partnerships	533
	Sole proprietorships	6,977
<b>Total Practice Units<sup>1</sup></b>		10,179

**Individuals** – Each year, CPAs pay a \$40 licensing fee on their birth month to renew their license; \$10 of that fee is directed toward a scholarship fund for disadvantaged, fifth-year accounting students. CPAs pay a \$200 professional fee on their birth month, which goes to the General Revenue Fund. The major fees that the Board collects are listed in the chart, *Major Fees*. In addition to paying fees, CPAs

must submit a signed document verifying that they have not been convicted of, or received deferred adjudication for, any felony offense in the previous year. Also, CPAs must take 120 hours of CPE every three years, with no less than 20 hours per year.

While most individual licensees are CPAs, the Board licenses some 48 public accountants who registered with the Board in 1945 and maintains this license under a grandfather exemption. An additional 51 licensees are licensed under the terms of another country and are considered to be foreign CPAs.

Major Fees	
Application fee	\$50
Certificate fee	\$50
Exam fee (proposed Nov. 2002)	\$234
Professional fee	\$200
Individual license	\$40
Firm license	\$50
Temporary/reciprocal registration	Both \$100

The Board’s licensing staff maintain a database with all individual licensees’ information. The system helps detect license holders who have fallen out of compliance with Board regulations. After discovering a problem, licensing staff refer a complaint to the enforcement staff. Licensing staff also issue certificates and temporary permits for out-of-state and non-U.S. residents, and approve entities that provide CPE.

**Firms** – The Board requires all accounting firms to hold licenses and to register the location of each separate office. Like individual license holders, firms renew their licenses annually or register with the Board

if they are based out of state and temporarily practicing in Texas. Firms, however, face other requirements. Most importantly, they must have a peer review every three years if they conduct attest, accounting, or auditing services. The textbox, *Qualifying Services*, describes the types of services requiring peer review. Board staff monitor the reviews and collect data on firms' performance, but the Texas Society of Certified Public Accountants (TSCPA), the AICPA Division for CPA Firms Securities and Exchange Commission Practice Section (SECPS), or the National Conference of CPA Practitioners (NCCPAP) handles the logistics and field work of a peer review. To keep firms abreast of peer review rules, procedures and other issues, the TSCPA produces a quarterly newsletter, *Checkpoint*, and provides information on its Web site for firms being reviewed and those conducting reviews.<sup>2</sup>

#### Qualifying Services

Licensed firms must undergo peer review if they perform:

- audits
- reviews
- compilations
- forecasts
- projections
- other special reports

The Board's staff offers one-on-one guidance on licensing and peer review processes and publishes the *Texas State Board Report*, which contains information about Board rules, summaries of disciplinary actions, and other information of interest to Texas CPAs.<sup>3</sup>

## Enforcement

The Board enforces the Act by investigating and prosecuting complaints filed against licensees and non-licensees. The enforcement staff has authority to open a case, but only the Board has authority to dismiss a case or impose sanctions. The Board takes enforcement actions against persons who commit violations such as fraud, dishonesty, or gross negligence while performing accountancy services. For a list of possible violations, see the textbox *Grounds for Disciplinary Action*.

#### Grounds for Disciplinary Action

- Use of fraud or deceit in obtaining a certificate or license
- Failure to obtain or renew a license
- Violating rules of professional conduct, professional standards, the Public Accountancy Act, or a Board order
- Disciplinary action by another state or federal agency
- Conviction of a felony or any offense involving fraud or dishonesty
- Conduct indicating lack of fitness to serve the public
- Fraud, dishonesty, or gross negligence in the performance of services
- Use of the CPA title without a license

The enforcement staff separates violations into two general categories – administrative and disciplinary. Administrative violations are generally initiated by the Board against licensees who fail to comply with licensing requirements, such as failure to pay the annual license fee, obtain CPE, or participate in peer review. If a licensee does not respond to the Board's request for information or fails to address the deficiency, the case is forwarded to the State Office of Administrative Hearings (SOAH) for a hearing before an administrative law judge. The results of the hearing are returned to the Board, which may then vote to accept, modify, or remand the decision.

Disciplinary violations are generally initiated by members of the public, other CPAs, or other state or federal agencies for alleged violations of the Rules of Professional Conduct. The enforcement staff conducts an initial investigation of the complaint and then forwards a summary of the information and relevant material to a Board

*Enforcement committees investigate disciplinary violations by licensees and make recommendations to the Board.*

committee. The textbox, *Enforcement Committees*, lists the committees that hear disciplinary violations. The enforcement committee may send the case back to staff for further information, recommend dismissal to the Board, recommend disciplinary action in the form of an agreed consent order (ACO), set the case for informal conference, or refer the case to SOAH. The textbox, *Disciplinary Powers of the Board*, details the various administrative penalties that the Board may order.

At an informal conference, the complainant and the licensee have the opportunity to present their case to the committee. Committee members ask follow-up questions, deliberate in closed session and then inform the parties of their decision and recommended sanctions, if appropriate. If the licensee agrees to accept the committee's decision, an ACO is presented to the Board for approval. If the licensee rejects the ACO, the case is referred to SOAH. As with administrative hearings at SOAH, the Board later has the opportunity to approve, modify, or remand the administrative law judge's decision. If a case proceeds to hearing and results in a Board order, the Board may impose an administrative penalty of \$1,000 per violation.

**Enforcement Committees**

*Behavioral Enforcement Committee (BEC)* handles investigations involving CPA client relations, including violations of the CPA core standards: independence, integrity, competence, and objectivity.

*Technical Standards Review (TSR) Committee* addresses violations of professional standards, for example, a CPA who failed to conduct a review in accordance with Generally Accepted Auditing Standards or Generally Accepted Accounting Principles.

*Major Case Enforcement Committee* addresses complaints against large accounting firms and other cases of a major nature.

**Disciplinary Powers of the Board**

After determining that disciplinary action is warranted, the Board may:

- require a licensee to complete a peer review or continuing education program;
- place a licensee on probation;
- limit the licensee's scope of practice;
- reprimand a licensee;
- refuse to renew a license;
- suspend, for up to five years, a certificate, individual license, firm license, or practice privilege;
- revoke a certificate, firm license, or practice privilege;
- impose direct administrative costs incurred by the Board; or
- impose an administrative penalty.

<b>Top Allegations – FY 2001</b>	
Failure to report CPE	2,555
Failure to pay fees for 3 years	951
Failure to renew a license	466
Failure to obtain a license	82
Failure to perform competently	38
Discreditable acts	38

The majority of complaints filed each year are administrative in nature. In FY 2001, of the 4,406 complaints, more than 4,000 were for administrative violations. The highest number of complaints (2,555) was for failure to report or complete mandatory CPE hours. A listing of the top allegations, as they were classified at the time of filing, is presented in the textbox *Top Allegations*.

Because most of the complaints are administrative violations and later result in some form of dismissal, only a small percentage of cases require enforcement committee review. Of the cases closed in FY 2001, the majority of cases were dismissed because the licensee provided proof of CPE. Nevertheless, if the case resulted in a Board order, the Board imposes a \$100 penalty for the untimely filing of CPE. Also, consistent with the Public Accountancy Act, the Board imposes late fees upon CPAs who fail to timely renew their licenses. The table, *Complaint Dispositions*, provides a picture of the closed cases and the manner in which they were resolved. The average processing time for administrative complaints was 4.5 months; disciplinary cases took an average of 5.9 months.

*The majority of complaints handled by the Board are for administrative violations, such as failure to report continuing education hours.*

Complaint Dispositions - FY 2001	
Disposition	Complaints Closed
<b>Dismissed:</b>	
Dismissed	258
Dismissed upon voluntary compliance	788
Dismissed with CPE	2,356
Dismissed - Other	51
<b>Probation:</b>	
Probation	10
<b>Reprimand:</b>	
Reprimand	11
Reprimand plus quality review, CPE, limitation on scope of practice, suspension, or probation	6
Limitations on Scope of Practice	4
Suspension <sup>4</sup>	188
Revocation <sup>5</sup>	739
Voluntary Surrenders - disciplinary	5
<b>TOTAL<sup>6</sup></b>	<b>4,416</b>

<sup>1</sup> The total number of firms does not equal the number of practice units because some firms have more than one practice unit.

<sup>2</sup> TSCPA's Web site can be accessed at [www.tscpa.org](http://www.tscpa.org).

<sup>3</sup> The Board has provided a limited number of *Texas State Board Report* issues on its Web site ([www.tsbpa.state.tx.us](http://www.tsbpa.state.tx.us)).

<sup>4</sup> A license suspension by the Board restricts the licensee from performing any services related to the practice of accountancy, including bookkeeping and tax preparation services, for up to five years.

<sup>5</sup> License revocation restricts individuals from using the CPA designation or performing accountancy services which require a license, but allows them to perform services such as bookkeeping and tax preparation. The former licensee must file an application with the Board for consideration of license reinstatement.

<sup>6</sup> The number of complaints closed in FY 2001 is greater than the number opened because some of the complaints were opened in previous years.



# **APPENDICES**



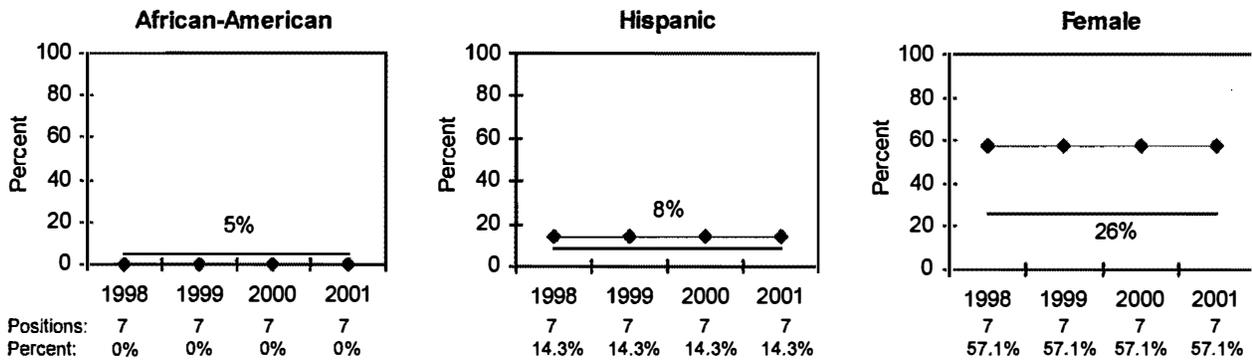
## Appendix A

### Equal Employment Opportunity Statistics

#### 1998 to 2001

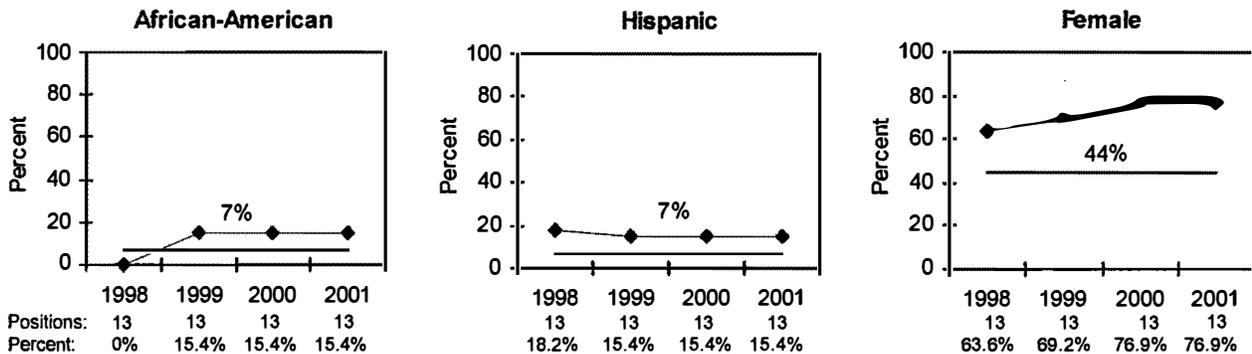
In accordance with the requirements of the Sunset Act, the following material shows trend information for the agency's employment of minorities and females in all applicable categories of the labor force.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian labor force for African-Americans, Hispanics, and Females. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The dashed lines represent the agency's actual employment percentages in each job category from 1998 to 2001. The agency does not employ persons in some job categories – protective services, skilled craft, and service/maintenance.

#### State Agency Administration



The agency has exceeded the state's civilian labor force guidelines for Hispanics and Female employment, but has lagged behind these guidelines for African-Americans.

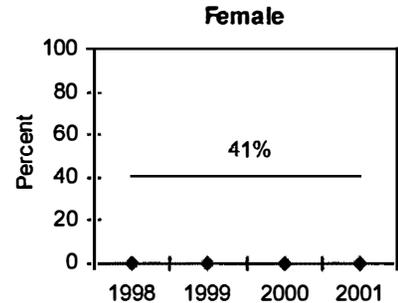
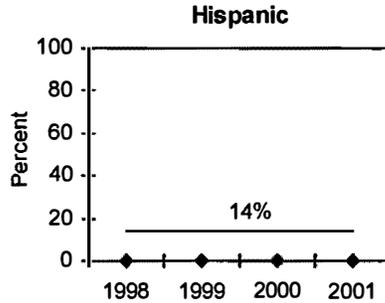
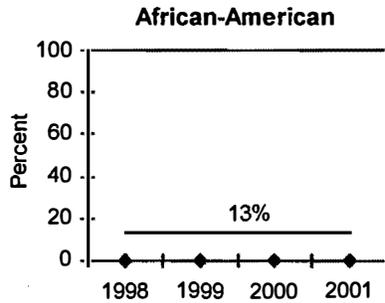
#### Professional



The agency has generally met or exceeded expectations for employment in the professional category.

## Appendix A

### Technical



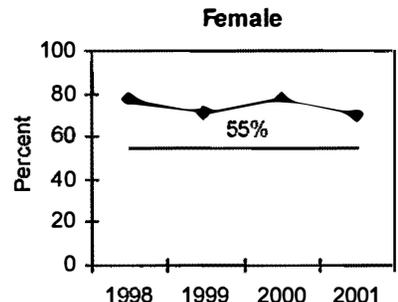
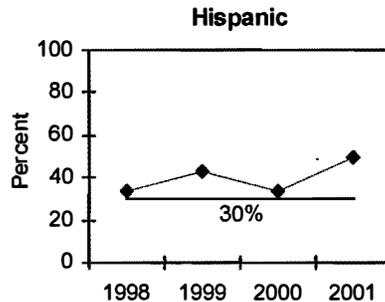
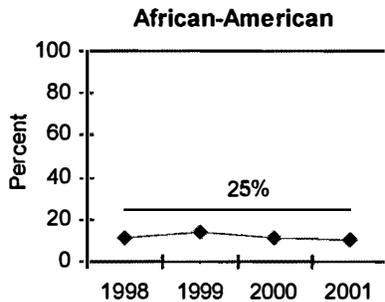
Positions: 2 2 1 0  
 Percent: 0% 0% 0% 0%

Positions: 2 2 1 0  
 Percent: 0% 0% 0% 0%

Positions: 2 2 1 0  
 Percent: 0% 0% 0% 0%

The agency has not met its hiring guidelines in this job category, although this is more difficult due to the few available positions in this category.

### Paraprofessional



Positions: 9 8 9 10  
 Percent: 11.1% 14.3% 11.1% 10%

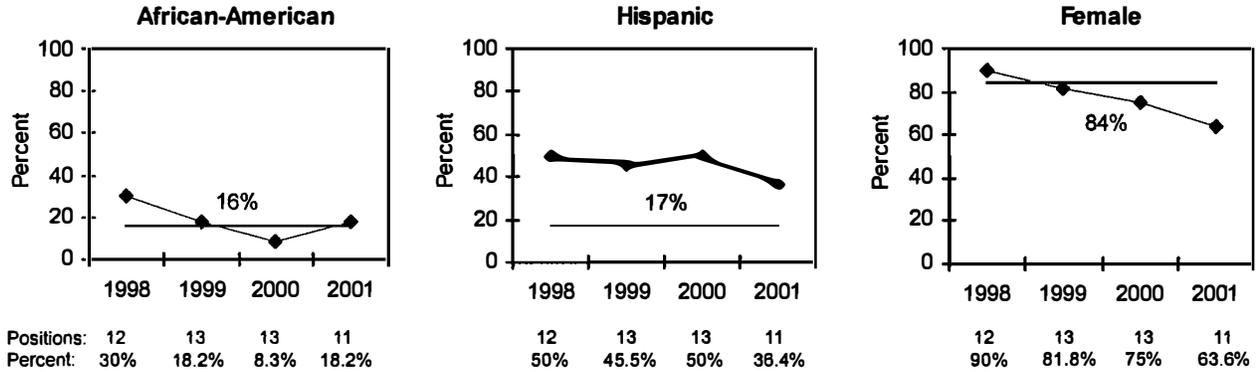
Positions: 9 8 9 10  
 Percent: 33.3% 42.9% 33.3% 50%

Positions: 9 8 9 10  
 Percent: 77.8% 71.4% 77.8% 70%

The agency exceeded the civilian labor force percentage for Females by a wide margin, met the percentage for Hispanics, but it fell short of the percentage for African-Americans.

## Appendix A

### Administrative Support



The agency greatly exceeded the State’s goal for Hispanic employment and generally met the goal for African-Americans. However, the agency has experienced difficulty in meeting hiring guidelines for Females in the administrative support category.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, ch. 21, sec. 21.501.



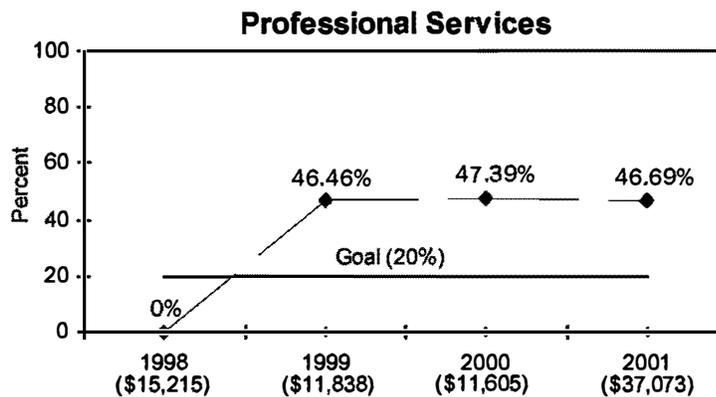
## Appendix B

### Historically Underutilized Businesses Statistics

#### 1998 to 2001

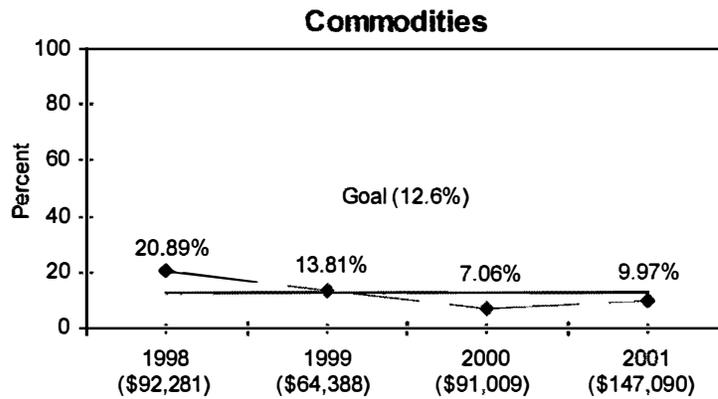
The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup> The review of the Texas State Board of Public Accountancy revealed that the agency is not complying with all state requirements concerning HUB purchasing. Specifically, the agency has not adopted HUB rules, although the Board has published a HUB policy statement.

The following material shows trend information for the Texas State Board of Public Accountancy'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.<sup>2</sup> 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 each category, the Board has had some difficulty meeting the HUB purchasing goals.

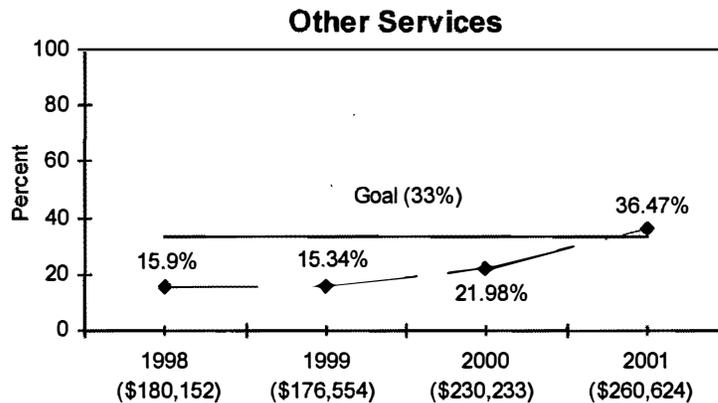


The Board exceeded the state goal in three of the past four years.

## Appendix B



The Board has fallen short of the State’s goal for HUB spending on commodities for the past two years.



The Board slightly exceeded the State goal in fiscal year 2001, but fell short all other years. In addition, the total in this category excludes the amounts paid each fiscal year to the American Institute of Certified Public Accountants (AICPA) for purchasing and grading of national CPA exams. The Board must use this sole-source provider, which represents a significant amount of money spent in the other services category.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.

## Appendix C

### Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Texas State Board of Public Accountancy.

- Worked extensively with agency staff.
- Attended Board meetings and committee meetings. Interviewed and received written comments from past and current Board and non-Board members of Board committees.
- Met with, and received written comments from, professional associations representing accountancy and other interested parties.
- Met with, or received written comments from, university accounting professors, certified public accountants, and the public, regarding their ideas and opinions about the Board.
- Conducted phone interviews with representatives from professional liability insurance companies regarding claims against accounting firms.
- Met with, and visited the offices of, the Texas Society of Certified Public Accountants in Dallas to obtain information on the peer review program, and observe a Peer Review Report Committee meeting.
- Reviewed reports by the State Auditor's Office and General Accounting Office, and listened to an audio recording of a House Appropriations Committee meeting.
- Met with, or interviewed by phone, staff from the Legislative Budget Board, State Securities Board, Office of the Attorney General, Speaker's Office, State Auditor's Office, Texas Higher Education Coordinating Board, and Comptroller's Office.
- Reviewed Board documents including meeting minutes, press releases, agency contracts, reports, legislative reports, previous legislation and budgetary information.
- Reviewed statutes of Texas and other states, federal information, and Attorney General opinions.
- Researched and held phone interviews with other professional licensing agencies regarding the structure and requirements of programs with similar functions.
- Performed background and comparative research using the Internet, and reviewed literature on accountancy issues. Researched the functions of accountancy boards in other states and conducted phone interviews with agency representatives.



**SUNSET REVIEW OF THE  
TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

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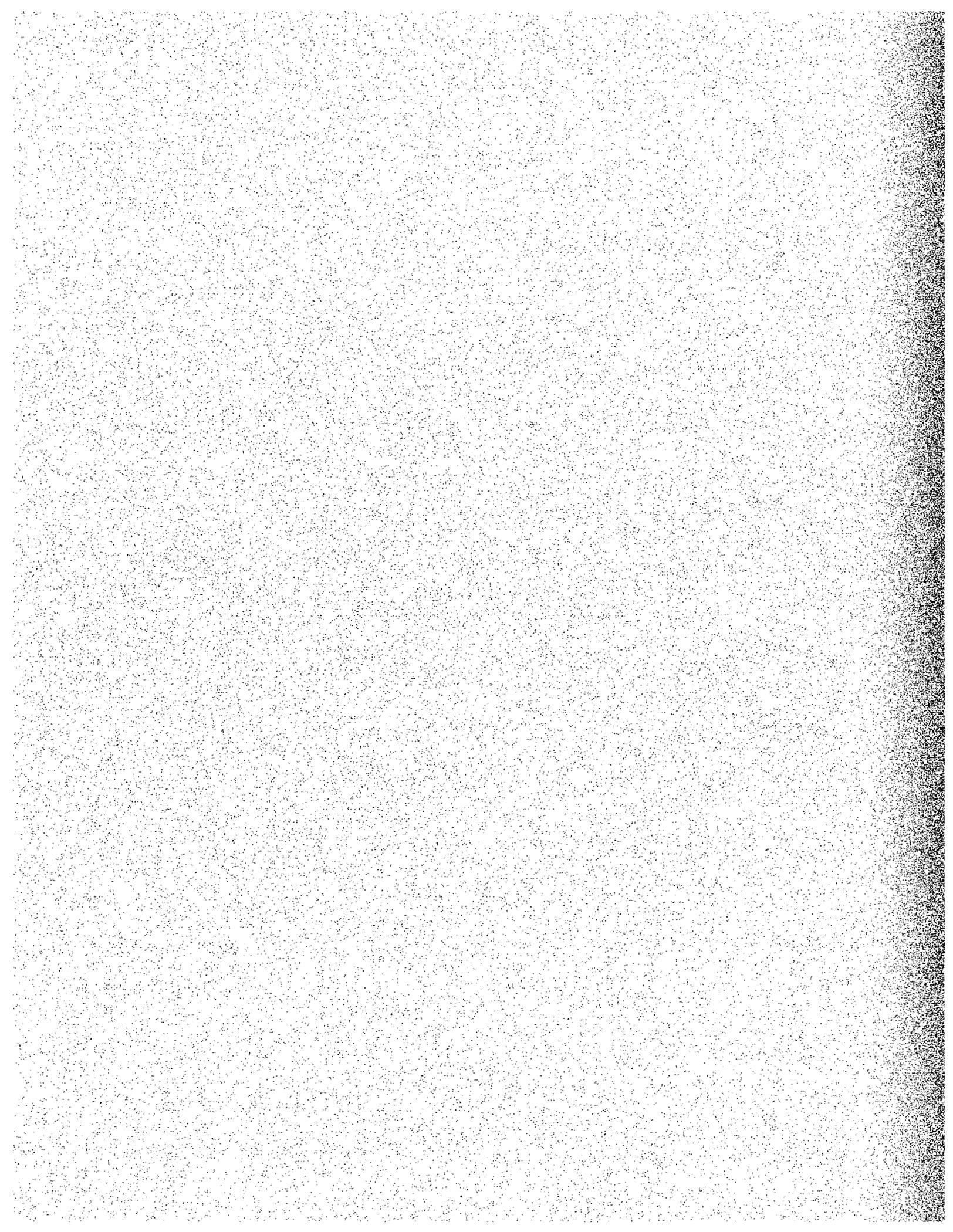
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**TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

**SUNSET STAFF REPORT**



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## **SUMMARY**





## Summary

### Sunset Staff Report

## Texas Board of Architectural Examiners

The responsibilities of the Texas Board of Architectural Examiners have grown significantly since the Legislature established the Board in 1937 to regulate the practice of architecture. The Legislature has added the regulation of landscape architects and interior designers to the Board's duties, and has increased the scope of the Board's regulatory authority over the three professions.

Today, the Board faces the challenge of effectively enforcing the Architecture, Landscape Architecture, and Interior Design Acts to meet its legislative mandate of protecting the public. While the Board has focused attention on enforcement, the program continues to be hampered by insufficient resources, a backlog of enforcement cases, and inconsistent application of penalties. In addition, the agency's efforts to register design firms provide little enforcement value and deplete the agency's limited resources. The Sunset review considered the Board's challenges with enforcement and is recommending a series of actions to improve the Board's efforts.

The Sunset staff review also considered the Board's special demands of enforcing three statutes, and determined that increased uniformity across the statutes would ease enforcement and administration.

Finally, Sunset staff considered whether the current stand-alone agency structure remains appropriate. Two previous Sunset reviews discussed combining the Board with other licensing agencies, but found no significant benefit to such action. Yet, crossover among the professions regulated by the Board and the practice of engineering, along with unclear statutes, may cause confusion over which professionals may work on certain projects. While no significant problems exist that would be solved by changing the agency structure, coordination with the Texas Board of Professional Engineers would better protect the public by resolving overlapping enforcement issues between the two Boards.

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*The Sunset review  
sought ways to help the  
Board with its  
enforcement challenges.*

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

*For more information,  
contact Amy Frost, (512)  
463-1300. Sunset staff  
reports are available online  
at [www.sunset.state.tx.us](http://www.sunset.state.tx.us).*

## **Issues / Recommendations**

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### **Issue 1 The Board's Enforcement Process Does Not Adequately Protect the Public.**

#### **Key Recommendations**

- Increase the Board's enforcement authority by authorizing the issuance of cease and desist orders; increased administrative penalties; inclusion of fine amounts in the Board's penalty matrix; and the ability to require restitution as part of Board orders.
- Increase the Board's enforcement efforts by requiring the Board to direct additional resources toward enforcement activities; establish time lines for enforcement processes; consult with design professionals in complaint investigations; and develop a system of compliance checks of Board disciplinary orders.
- Improve the Board's ability to gain compliance with statutes by requiring the Board to increase outreach to licensees, the public, and individuals; provide an enforcement grace period after the establishment of new rules and laws; improve coordination with building officials; and provide information about state and federal accessibility laws on the Board's Web site.

### **Issue 2 The Board's Registration of Firms Is Not the Best Use of Limited Agency Resources.**

#### **Key Recommendations**

- Clarify that the Board does not have authority to require firms to register.
- Direct the Board to reallocate firm registration resources to actual enforcement tasks.

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

#### **Key Recommendations**

- Standardize the Board's licensing functions by requiring the Board to address felony and misdemeanor convictions, exam accessibility, and examination fee refunds; and streamline the process used for exam administration.
- Revise the Board's enforcement activities by requiring common licensing model elements, such as standards of conduct and rules for the complaint process; standardizing Board statutes regarding grounds for disciplinary

action; conforming the statute with procedures of the State Office of Administrative Hearings; and ensuring that all disciplinary actions are made public.

- Change administrative aspects of the Board's activities by eliminating statutory fee caps, creating uniform consumer notifications procedures, and standardizing the powers, duties, and processes of the Board.

**Issue 4 Texas Has a Continuing Need for the Texas Board of Architectural Examiners, but Could Benefit From Greater Coordination With the Texas Board of Professional Engineers.**

**Key Recommendations**

- Continue the Texas Board of Architectural Examiners for 12 years.
- Require the Board to form a joint practice committee with the Texas Board of Professional Engineers.

**Fiscal Implication Summary** \_\_\_\_\_

These recommendations will not result in a fiscal impact to the State. The Board is a participant in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which tests the ability of certain agencies to effectively operate outside the legislative appropriations process. Because the Board has been removed from the appropriations process, any gains or losses implicated in these recommendations would not be reflected in the General Revenue Fund.



## **ISSUES / RECOMMENDATIONS**



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# Issue 1

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## The Board's Enforcement Process Does Not Adequately Protect the Public.

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### Summary

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#### Key Recommendations

- Increase the Board's enforcement authority by authorizing the issuance of cease and desist orders; increased administrative penalties; inclusion of fine amounts in the Board's penalty matrix; and the ability to require restitution as part of Board orders.
- Increase the Board's enforcement efforts by requiring the Board to direct additional resources toward enforcement activities; establish time lines for enforcement processes; consult with design professionals in complaint investigations; and develop a system of compliance checks of Board disciplinary orders.
- Improve the Board's ability to gain compliance with statutes by requiring the Board to increase outreach to licensees, the public, and individuals; provide an enforcement grace period after the establishment of new rules and laws; improve coordination with building officials; and provide information about state and federal accessibility laws on the Board's Web site.

#### Key Findings

- The Board lacks the tools necessary to enforce the laws under its jurisdiction.
- The Board's current use of its resources limits the effectiveness of enforcement efforts and results in a backlog of cases.
- The Board has had difficulty determining penalties and sanctions.
- The Board fails to take advantage of opportunities to augment its enforcement program.

#### Conclusion

The enforcement of the Architecture, Landscape Architecture, and Interior Design Acts is a significant responsibility of the Board. Sunset staff evaluated the effectiveness of the Board's enforcement activities and concluded that the agency does not adequately enforce its laws and rules. Factors supporting this conclusion include a backlog of cases, a focus on minor infractions of law and rule, lack of follow-up activity to disciplinary actions, inconsistent application of administrative penalties and sanctions, and limited informational outreach to licensees and the public. The Board's lack of attention to these activities potentially erodes the overall strength of the enforcement program and sends a message that disciplinary action lacks importance.

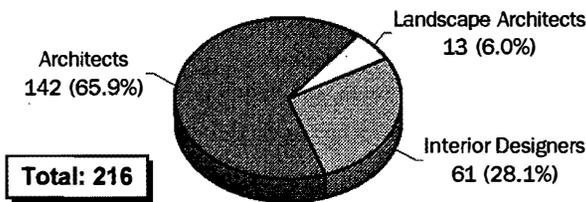
Staff recommendations would strengthen the Board's enforcement authority, redirect resources to enforcement efforts, speed up the enforcement process, and increase outreach to licensees and other affected parties.

## Support

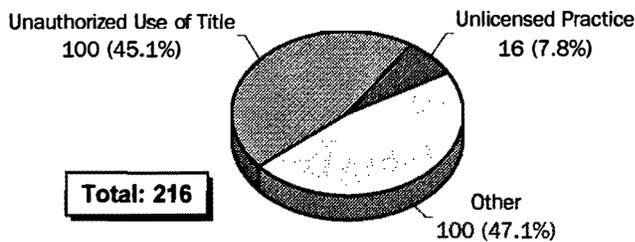
**The Board investigates and prosecutes complaints against architects, landscape architects, and interior designers who violate Board rules and statutes.**

- The Board regulates nearly 19,000 design professionals, including 10,000 architects, 7,500 interior designers, and 1,200 landscape architects. The Board has responsibility for enforcing all three professions' statutes and rules. The agency enforces restrictions on the use of professional titles for the three professions, and limitations on the scope of practice for architecture and landscape architecture.
- About two-thirds of the 216 complaints received in fiscal year 2001 involved the practice of architecture, as shown in the graph, *Complaints by Profession*. More than half of all cases concerned non-licensed individuals illegally practicing or advertising architecture, landscape architecture, or interior design services, as shown in the graph, *Complaints by Type*.

**Complaints by Profession**



**Complaints by Type**

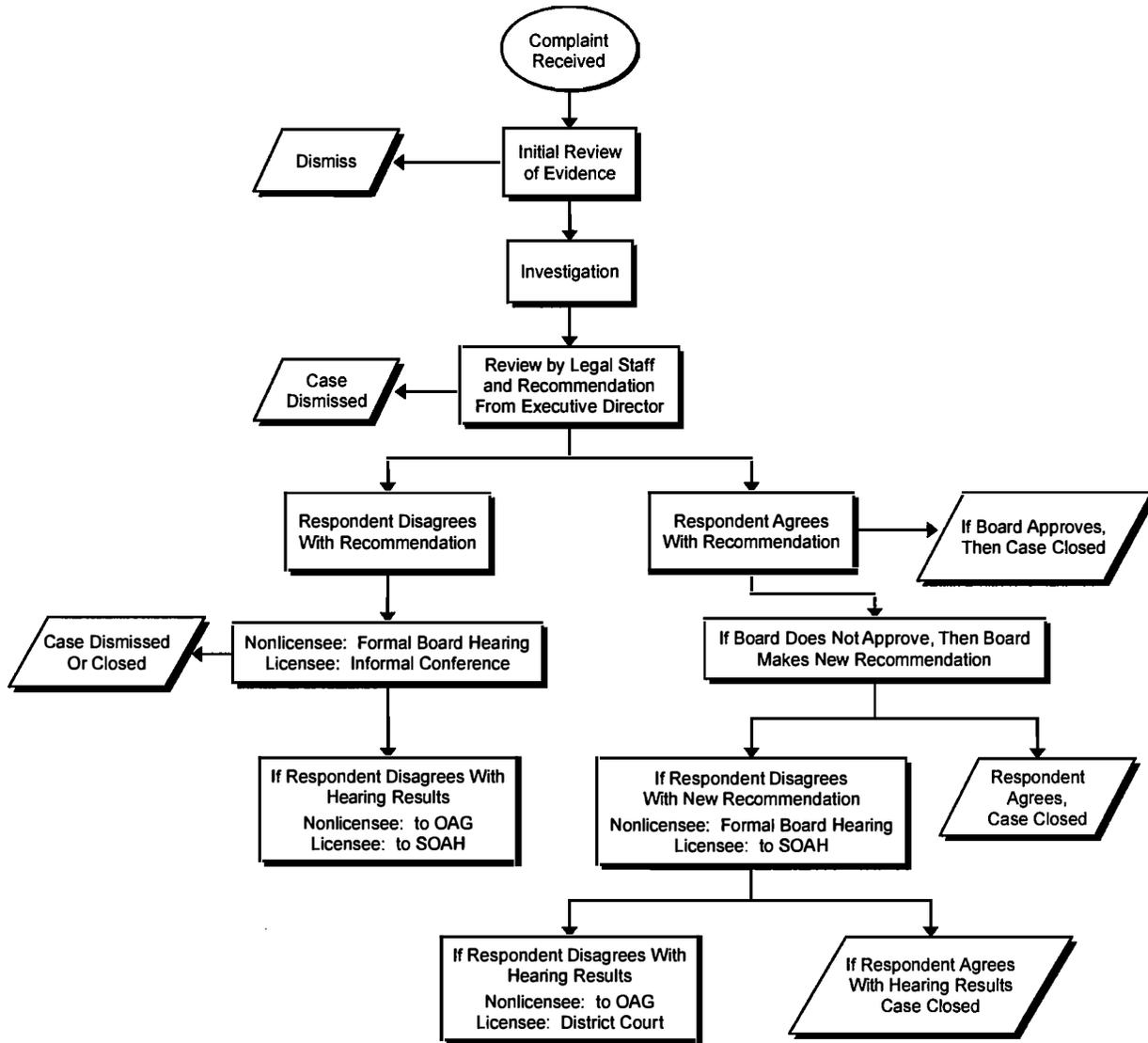


- The Board receives complaints from the public and also initiates complaints when it uncovers violations of statutes and rules. After receiving a complaint, enforcement staff create a complaint file and conduct an investigation of the complainant's allegations. Upon completion of an investigation, staff may authorize a consent order.

If the respondent agrees with the provisions of the consent order, staff seek Board approval. If the licensee does not agree with the consent order, the case goes either to an informal conference or a formal Board hearing. Cases for nonlicensees go directly to a formal Board hearing. If a conference or hearing does not result in a resolution, the Board refers a licensee's case to the State Office of Administrative Hearings (SOAH), or a nonlicensee's case to the Office of the Attorney General (OAG) for prosecution

through the courts. However, the agency resolves the majority of complaints with a consent order. The chart, *Complaint Process*, details the Board's complaint process.

### Complaint Process Texas Board of Architectural Examiners



**The Board lacks the tools necessary to enforce the laws under its jurisdiction.**

- To stop unlicensed persons from practicing or advertising design services, the Board must apply for an injunction through OAG, a slow and ineffective process.<sup>1</sup> While the Board has referred 11 cases to OAG since 1998 – each one involving an unlicensed individual refusing to comply with the law or to respond to the Board’s communications – it has obtained just two injunctions.<sup>2</sup> Seven cases have been returned to the Board and two cases await further action. Violators may potentially continue to practice while cases await action at OAG. In addition, the Board’s statutes do not permit the agency to refer interior design cases to OAG.
- The Board’s maximum administrative penalty of \$1,000, for two of its three statutes, is insufficient to deter violations of Board statutes and rules. The maximum penalty barely covers the average cost per investigation, currently about \$900, and may not be a deterrent for a licensee who can earn \$80,000 to \$100,000 in fees per project.<sup>3</sup> Other Texas state agencies, including the Texas Board of Professional Engineers, have authority to assess fines up to \$3,000 per violation. In addition, agency staff, Board members, professional organizations, and educators indicated to Sunset staff that this penalty is inadequate.

The Board’s statutes also lack standardization of administrative penalties, which potentially contributes to inconsistent application of penalties. The architecture statute authorizes the Board to assess a penalty of up to \$1,000; the landscape architecture statute provides for a penalty of up to \$1,000 per day of violation; and the interior design statute places no upper limit on the amount of an administrative fine.

- The Board does not have authority to order licensees to pay restitution to consumers who have been defrauded. The Board’s enforcement tools are designed to correct licensee behavior, but do not allow for compensation to an aggrieved party. Consequently, when licensees commit fraudulent acts or perform services incompetently, consumers may lose the money paid for services or be left with incomplete or poorly designed projects.

**The Board’s current use of its resources limits the effectiveness of its enforcement efforts and results in a backlog of cases.**

- As of July 2002, the Board has 64 unresolved enforcement cases more than one year old, almost one-fourth of its open cases. Thirty cases filed in fiscal year 2001 remain unresolved, and an additional 34 cases from previous fiscal years remain open, with one case dating back to fiscal year 1995. The table, *Enforcement Case Backlog*, details the age of these cases.

*The Board has 64 unresolved enforcement cases more than one year old.*

Enforcement Case Backlog <sup>4</sup>		
Year Opened	Pending Cases	Average Age
1995	1	7 years
1996	2	7 years
1997	2	5 years
1998	8	4 years
1999	4	4 years
2000	17	2 years
2001	30	1 year
<b>Total</b>	<b>64</b>	<b>2.2 years</b>

- The Board does not direct adequate resources to its enforcement effort. In FY 2001, the agency spent \$251,763, about 16 percent of its \$1.6 million budget, on its enforcement program. The Board spent more than twice that amount on its examinations program, and three times that amount on its registration and renewal program. Of the agency’s 21 full-time employees, only three are assigned to enforcement. The agency is in the process of a reorganization to better align staff with program needs. However, the agency needs to continue redirecting resources towards enforcement.
- No procedural time lines exist for the agency’s enforcement process, contributing to lengthy investigations and lack of case prioritization. Currently, staff spend as much time as deemed necessary on each step of the enforcement process.<sup>5</sup> Staff indicate that the investigation process and legal proceedings are quite time-consuming, but no specific guidelines are in place to reduce the time necessary to complete these steps. Board staff believe that current staffing levels prevent them from adopting and following time lines.<sup>6</sup>

*The Board spends about 16 percent of its budget on enforcement.*

- The Board appears to focus its enforcement efforts on minor infractions and title violations. Out of 216 cases in fiscal year 2001, 73 were for minor violations and 100 for title violations – more than three-fourths of all cases. Minor violations included filing incomplete renewal forms and failure to display license numbers in advertisements. The Board generally resolved these minor cases in one to three months. In addition, the Board spends significant time investigating simple cases of title violation that do not allege an actual practice violation. Industry representatives believe the agency focuses on these cases because they are easily and inexpensively prosecuted.<sup>7</sup> The chart, *Enforcement Cases*, details the types of complaints the Board investigated during the past fiscal year.

In contrast, technically complex cases against practicing licensees and nonlicensees languish in the enforcement process. Eighteen such cases – opened in fiscal year 2001 and now more than one year old – remain unresolved. Agency staff cite a lack of enforcement staff and expert help of design professionals in investigations as key reasons for slow

Enforcement Cases - FY 2001			
Violations		Number of Cases	Totals
Serious	Aiding/Abetting Unlicensed Persons	3	40
	Negligent Practice	1	
	Unauthorized Practice	16	
	Unprofessional Conduct	6	
	Seal Violations	12	
	Submitting Incomplete Plans	2	
Moderate	Unauthorized Use of Title	100	100
Minor	Late Filing of Architectural Barrier Plans	39	73
	Failure to Display License Number in Advertisements	6	
	Incomplete Renewal Form	23	
	Other	5	
	Nonjurisdictional Complaints	3	3
Grand Total			216

*Board staff conduct little follow up to disciplinary action, which may contribute to repeat violations.*

complaint resolution of technical cases.<sup>8</sup> The agency relies on past Board members and a few local design professionals to help the Board investigate complex practice cases. However, only a few experts are available for investigations, and cases get delayed until an expert is available to assist with a technical case.

- Board staff conduct little follow up to disciplinary action, which may contribute to recidivism, currently 18 percent. Although staff ensures that the agency receives penalty payments, it does not check to see that violators have complied with other orders. For example, if an unlicensed person receives an order to remove a sign advertising services, the Board does not confirm the sign’s removal. Another example concerns license suspension. When the agency probates a license suspension, it frequently requires the licensee to submit quarterly listings of work projects, but does not review them for compliance.<sup>9</sup>

**The Board has had difficulty determining penalties and sanctions.**

- A review of agency enforcement cases shows inconsistent application of sanctions and penalties. For example, the Board sometimes takes outside considerations into account when making a determination of penalties and sanctions. In one case, a licensee failed to seal design plans and pay project contractors, despite receiving payment from the client. Staff did not assess a fine, citing the individual’s personal situation as mitigating circumstances. However, in another

case, a licensee caring for an ill relative did not make a timely license renewal payment, and was fined \$1,000 for practicing with a revoked license.

In addition, the Board recently adopted a penalty matrix that outlines recommended disciplinary actions for specific violations, but does not indicate sanction time frames or fine amounts. Consequently, the Board has no guidelines to ensure the consistent application of fines or sanctions for similar violations. For example, in fiscal year 2001, the agency closed six cases involving individuals practicing or advertising design services with revoked licenses. Fines ranged from \$500 for work on 16 design plans to \$1,000 for work on one design plan. The chart, *Selected Outcomes of Recent Enforcement Cases*, details inconsistencies in

Selected Outcomes of Recent Enforcement Cases		
Violation	Case Details	Fine
Practice with a Revoked License	Case 1: Submitted 16 design projects	\$500
	Case 2: Submitted one design project	\$1,000
	Case 3: Advertised design services; claimed to be unaware of revoked license	\$250
Unauthorized Practice	Case 4: Worked on projects requiring an architect; used title on resume	\$2,000
	Case 5: Worked on projects requiring an architect; used title in advertising	\$0
Licensee Violation of Laws	Case 6: Aiding and abetting an unlicensed person in unauthorized practice; Board suspended license for 12 months	\$1,000
	Case 7: Failed to pay contractors and suppliers after receiving payment from client; failed to seal six design plans	\$0
	Case 8: Failed to seal 11 design plans	\$5,500

enforcement case outcomes. In citing these situations, Sunset staff is not substituting its judgment for that of the Board. However, the apparent inconsistencies do call the administrative fine determination process into question.

Sunset staff found an unusual disciplinary procedure against licensees who violated a new law. In fiscal year 2001, the agency initiated, and then dismissed, cases against 37 licensees who failed to submit architectural barrier plans to the Texas Department of Licensing and Regulation (TDLR) within a newly established five-day statutory period. Because licensees were confused about the new law, the Board allowed licensees to enter a no-contest plea and pay \$300 to defray the costs of investigation.<sup>10</sup> In addition, the Board decided to dismiss the cases if a licensee did not violate the law within the next year. The Board's records now indicate that the cases were dismissed, even though some licensees were assessed a \$300 penalty.

*The Board used an unusual disciplinary procedure against licensees who violated a confusing new law.*

**The Board fails to take advantage of opportunities to augment its enforcement program.**

- The Board does not have an adequate outreach program for individuals who must follow the laws and rules enforced by the agency. All licensees still receive an annual newsletter, but the agency no longer includes a detailed explanation of new rules. The Board also discontinued its practice of notifying licensees of rule changes throughout the year, citing mailing expense. The agency does not use an e-mail network for inexpensive and timely distribution of information. Instead, the Board directs licensees to the agency Web site. Unfortunately, information can be difficult to find on the Web site, and unless the agency actively promotes the site, licensees may not use the site to keep informed. The agency's outreach problems are compounded by an outdated database system incapable of efficiently storing and distributing information.
- The Board believes that building officials need more information about Board rules and statutes, to prevent the approval of unsafe buildings and use of unauthorized plans. The textbox, *What Do Building Officials Do?*, describes building officials' jobs. Interviews with building officials throughout the state indicate that officials have little to no contact with the Board.<sup>11</sup> Not all officials interviewed receive the agency's annual newsletter. In addition, several officials state that industry organizations and city lobbyists provide more frequent updates of design profession policies. Most said that other state agencies they work with do a better job informing officials through the use of frequent mailings or e-mail notices. All officials interviewed hoped for more frequent rule and policy updates from the Board.

**What Do Building Officials Do?**

Building officials enforce municipal building codes. Duties include reviewing architectural plans, issuing building permits, and conducting building inspections. Building code organizations estimate that Texas has between 400 and 1,000 building officials.

- The Board does not provide adequate information to its licensees on Texas Accessibility Standards (TAS), although licensees must submit building plans to the Texas Department of Licensing and Regulation to ensure compliance with TAS. The Board's Web site does not include state and federal accessibility laws, and the link to TDLR cannot be found easily. TDLR reports that about 56 percent of all architectural barrier plans submitted fail initial approval, and 76 percent of finished projects fail initial inspection.<sup>12</sup> TDLR argues that most design problems result from architects' lack of TAS knowledge, not poor architecture skills. The Board misses an opportunity to increase its licensees' compliance with accessibility laws by not making information about TAS more readily available.

## Recommendation

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### Change in Statute

#### **1.1 Authorize the Board to issue cease-and-desist orders.**

This recommendation would provide the Board with an additional tool to stop unlicensed individuals from violating the architecture, landscape architecture, and interior design statutes. The Executive Director could issue a cease-and-desist order to an individual refusing to cooperate with the agency's requests to stop unauthorized activity. The order would not be effective for 21 days, during which time the individual could request a hearing. If no hearing is requested, the order is effective at the end of 21 days. If the individual requests a hearing, the Board must hold a hearing within 30 days of the request.

#### **1.2 Authorize the Board to levy administrative penalties for each of its statutes up to \$3,000 per violation.**

This recommendation would standardize the maximum administrative penalty in each of the agency's statutes – architecture, landscape architecture, and interior design – while allowing the Board to raise the penalty amount to help ensure that fines provide adequate deterrence to violation of the agency's statutes and rules. The Board would establish the appropriate penalty amounts in rule.

#### **1.3 Direct the Board to include fine amounts in its administrative penalty matrix.**

This recommendation would require the Board to update its administrative penalty matrix to include recommended fines to help ensure the fair and consistent application of administrative fines.

#### **1.4 Authorize the Board to require restitution as part of Board orders.**

This recommendation would authorize the Board to order payment of restitution to consumers as a part of enforcement actions. Refunds would be limited to actual amounts paid by consumers to

licensees. 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.

## **Management Action**

### **1.5 Require the Board to direct additional resources toward enforcement activities.**

This recommendation would help the Board improve its enforcement efforts without incurring extra costs. Directing more resources to enforcement could be accomplished as follows.

- Review enforcement staff tasks to determine which tasks would be more effectively performed by other agency staff. The discontinuation of the firm registration program, as described in Issue 2 of this report, would free up additional resources for enforcement activities.
- Prioritize travel for enforcement purposes.
- Continue efforts to redirect more of the agency's budget and full-time equivalents to benefit the agency's enforcement arm.

### **1.6 Require the Board to establish time lines for enforcement processes and a plan to resolve older cases.**

This recommendation would direct the Board to resolve enforcement cases more quickly. Determining time limits for each step in the enforcement process – with the exception of the legal process – will help streamline the process and encourage better prioritization of cases. Inability of the Board to meet adopted time lines would not require case dismissal, but would indicate a need to redirect more resources to enforcement, as required in Recommendation 1.5. The Board would also be required to devise a plan to resolve all cases older than one year by January 1, 2004.

### **1.7 Require the Board to consult with design professionals in technically complex complaint investigations.**

The Board should consult with architects, landscape architects, and interior designers when conducting investigations of technically complex enforcement cases. To develop a pool of consultants, the agency would recruit licensees in good standing with the Board. Recruitment would be accomplished through notices placed in the annual newsletter and recruitment-specific mailings, on the Board's Web site, and through use of an e-mail network. Any candidate chosen would be screened to ensure professional knowledge, lack of agency disciplinary actions, and a clean background check. The Board would direct staff to ensure that consultants would not assist in cases where they had a conflict of interest. Consultants would be immune from lawsuits and liability for services rendered to the Board in good faith. The consultants would be given continuing education credits as reimbursement for their efforts.

**1.8 Require the Board to develop a system of compliance checks of Board disciplinary orders.**

This recommendation would strengthen the Board's enforcement program by ensuring that individuals comply with Board orders. Staff would adopt a schedule to follow up on compliance with all orders – from payment of penalties to removing advertisements from the Internet.

**1.9 Require the Board to increase outreach to licensees, the public, and individuals required to follow agency statutes and rules.**

This recommendation would require the Board to engage in more frequent communication with licensees and others who have a need for agency information. Use of an e-mail network would provide an inexpensive and efficient way to communicate important information to many individuals. Use of e-mail would allow for additional agency newsletters, more frequent announcement and explanation of rule changes, and details about enforcement concerns.

**1.10 Require the Board to provide for an enforcement grace period after the establishment of new rules and laws.**

This recommendation requires the Board to focus on education for licensees, instead of enforcement, when new laws and rules are adopted. A six-month to one-year grace period would be determined after adoption of new rules and policies. During the grace period, the agency would mail affected parties information detailing the changes, prominently display rule changes on its Web site, and make use of an e-mail network to publicize changes. Licensees who violate new policies during the grace period may be given a warning letter, but the Board should not initiate an official complaint. After the grace period ends, licensees would be held accountable for any violation of new rules and statutes

**1.11 Require the Board to improve coordination with building officials.**

This recommendation would require the agency to keep building officials better informed of agency rules and laws. Improved coordination could be accomplished as follows.

- Development of a document for building officials that details important agency rules and laws, answers to frequently asked questions, and illustrations of authorized seals.
- More frequent rule and enforcement updates through use of an e-mail network.
- More presentations at building official meetings.
- Attendance at construction and building shows to increase visibility among, and outreach to, building officials.

**1.12 Require the Board to provide information about state and federal accessibility laws on the Board's Web site.**

This recommendation would improve licensees' access to information about the Texas Accessibility Standards and TDLR's architectural barrier program. Information could include links to both state and federal accessibility laws, TDLR's Web site, and the laws and rules pertaining to TDLR's architectural barriers program. The link to the information should be placed in such a way that anyone accessing the Board's Web site could quickly find the information.

## Impact

These recommended changes would strengthen the Board's enforcement process and increase protection of the public. Authorizing the Executive Director to issue cease and desist orders to individuals practicing without a license protects the public from poorly designed, and potentially dangerous, buildings. Increasing the maximum administrative penalty and including fine amounts in the Board's penalty matrix would discourage violation of statute and rules, while ensuring the consistent application of penalties and sanctions to all respondents. Checking compliance with Board orders, adopting a grace period after the establishment of new rules and laws, and improving outreach to individuals needing agency information would improve compliance with rules and laws, potentially reducing the number of enforcement cases. Other recommendations would streamline the Board's enforcement process and help resolve the case backlog.

## Fiscal Implication

These recommendations will not result in a fiscal impact to the State. The Board is a participant in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which tests the ability of certain agencies to effectively operate outside the legislative appropriations process. Because the Board has been removed from the appropriations process, any gains or losses implicated in these recommendations would not be reflected in the General Revenue Fund.

The statutory recommendation to give the Executive Director cease and desist authority will result in some costs to the agency. However, costs cannot be estimated for this report, as the number of cases for which the Executive Director will choose to exercise this authority cannot be predicted. The recommendation to increase the maximum administrative penalty would have a positive impact for the agency, although expected revenue cannot be estimated. The number of cases, types of violations, and penalties assessed per violation cannot be predicted.

Directing more resources toward enforcement activities would not have a fiscal impact, as the recommendation proposes to redistribute existing resources, rather than add additional resources to enforcement functions. Additionally, discontinuing the firm registration program will direct an additional \$16,500 toward enforcement activities, as discussed in Issue 2.

Requiring the Board to establish enforcement time lines and provide for an enforcement grace period would have no fiscal impact to the agency or the State and could be accomplished with existing resources. Use of design professionals as consultants for enforcement investigations would have some costs. Costs cannot be estimated for this report, as costs would depend on the degree of effort and number of cases, but considerations would include reimbursement of travel, agency staff time, and materials necessary for performance of investigations. Performing compliance checks would cost the agency an estimated \$5,000 annually.

The recommendations to increase informational outreach to licensees, the public, and building officials would have some costs associated with the development of an e-mail network and improvement to the Board's Web site.

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- <sup>1</sup> Texas Occupations Code, sec. 1051.502; and Texas Occupations Code, sec. 1052.052. The Interior Design Act does not presently contain provisions for referral to the Office of the Attorney General.
- <sup>2</sup> Texas Board of Architectural Examiners (TBAE), "RE: List of Cases Referred to OAG Since 1998," September 30, 2002 (fax).
- <sup>3</sup> TBAE, Fiscal Year 2002 Performance Measures, August 20, 2002.
- <sup>4</sup> Enforcement case backlog as of July 2002. The table excludes FY 02 cases.
- <sup>5</sup> Interview with TBAE staff (Austin, Texas, July 26, 2002).
- <sup>6</sup> Telephone interview with TBAE staff (Austin, Texas, July 24, 2002).
- <sup>7</sup> Interview with Texas Society of Architects (Austin, Texas, July 9, 2002).
- <sup>8</sup> Telephone interview with TBAE staff (Austin, Texas, August 14, 2002).
- <sup>9</sup> Interview with TBAE staff (Austin, Texas, July 26, 2002).
- <sup>10</sup> TBAE, "RE: Question About Penalties," e-mail to Sunset Advisory Commission, July 30, 2002.
- <sup>11</sup> Interviews with building officials from Dallas, Corpus Christi, El Paso, Midland, Georgetown, Harlingen, and College Station (August - September, 2002).
- <sup>12</sup> Interview with TDLR staff (Austin, Texas, July 15, 2002).

## Issue 2

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### **The Board's Registration of Firms Is Not the Best Use of Limited Agency Resources.**

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## Summary

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### **Key Recommendations**

- Clarify that the Board does not have authority to require firms to register.
- Direct the Board to reallocate firm registration resources to actual enforcement tasks.

### **Key Findings**

- The Board lacks clear statutory authority to register firms.
- Firm registration is not a valuable enforcement tool for the Board.
- Pursuing firm registration wastes the Board's limited enforcement resources.
- No national consensus exists on the value of firm registration for design firms.

### **Conclusion**

As a part of its enforcement program, the Board currently registers about 1,200 architecture, landscape architecture, and interior design firms. While the Board believes it has authority to require these firms to register, it has taken no disciplinary action when firms fail to register.

The Sunset review evaluated the Board's firm registration program to determine its value and the degree to which the program takes resources away from enforcement programs. Sunset staff found that the program provides little enforcement value, unnecessarily burdens design firms, and diverts the agency's limited resources away from important enforcement issues.

## Support

### **The Board conducts a voluntary firm registration program.**

- In 1997, the Texas Board of Architectural Examiners began to register architecture, landscape architecture, and interior design firms on a voluntary basis because agency staff believed it would enhance enforcement efforts. Initially, staff went through phone books and contacted firms directly to inform them about firm registration. Because the process consumed too much time, staff stopped actively searching for firms and now collect firm registration information through routine investigations of other complaints. For example, if a complaint is filed with the Board against an architect working in a firm, then staff will request the firm to register.
- Approximately 1,200 firms have registered with the agency. The agency does not charge a registration fee, but has the authority to do so under Board rules. The Board granted this authority in anticipation that the Legislature might make firm registration mandatory. When registering a firm, the agency requires that a licensed professional of record be listed for each firm. Licensees of record confirm that they are full-time employees of the firm or have contractual relationships with the firm.

### **The Board lacks clear statutory authority to register firms.**

- The Board liberally interprets its statutes to allow for firm registration. This interpretation is based on the fact that the architecture statute permits firms to engage in the practice of architecture or advertise architectural services only if a licensed architect provides the actual service.<sup>1</sup> The provision appears only in the architecture statute; neither the landscape architecture nor the interior design statutes contain a similar provision.
- The Board believes the statutes allow it to adopt rules for mandatory firm registration for all three professions. Although the Board's rules require registration for architecture, landscape architecture, and interior design firms, the Board has never taken disciplinary action against a licensee for failing to follow these rules.

### **Firm registration is not a valuable enforcement tool for the Board.**

- Unlike firm registration for other professions, firm registration by the Board does not provide a valuable enforcement tool. Registering firms is a useful tool for professions in which corporate entities, rather than licensed individuals, take action. For example, the Texas State Board of Public Accountancy licenses accounting firms – even though that agency also licenses individual Certified Public

*The Board liberally interprets its statutes to allow for firm registration.*

Accountants within firms – because accounting firms, not individuals, verify financial statements. Since multiple licensees collaborate on tasks, firm registration helps enforcement by providing accountability.

- Firm registration is not as valuable a regulatory tool for professions in which licensed individuals, not firms, directly take action. For example, Texas does not require the registration of law firms and medical clinics because work products such as legal briefs or medical treatments are directly attributable to individual licensees. Also, because licensing boards can concentrate enforcement action against licensees, firm registration is unnecessary for regulating these professionals, such as plumbers or veterinarians.
- Although multiple licensees often collaborate on design projects, all design and construction plans are individually sealed by a licensed architect, landscape architect, or interior designer who has legal responsibility for the content. In addition, architects, landscape architects, and interior designers often work within firms, but individuals – not firms – in all three professions have strict and direct accountability for their work.
- Advocates of firm registration argue that it allows the Board to take action against companies that perform services without using a licensee. However, the Board may take action for professional practice by nonlicensees even without having firm registration authority.

Advocates also argue that firm registration allows the Board to keep current records of where licensees are employed, thus enabling the Board to determine whether firms are legally providing design services. In practice, however, the Board's firm registration program requires only one licensee at each firm be designated the licensee of record. The agency does not have a renewal system for firm registration and updates records only when the licensee of record leaves the firm. Firm registration, therefore, provides little additional information to the Board regarding the majority of a firm's actual employees.

### **Pursuing firm registration wastes the Board's limited enforcement resources.**

- The Board's enforcement staff spend approximately 10 to 15 hours a week registering firms. Since the enforcement division had only three full-time employees in FY 2001, firm registration consumed, on average, more than 10 percent of the Board's enforcement staff resources, or about \$16,500 per year.<sup>2</sup> Since the agency does not charge fees for firm registration, registering firms resulted in a significant loss of the agency's limited resources.

*Firm registration is not as valuable a regulatory tool for professions in which licensed individuals, not firms, directly take action.*

*The Board can take action for professional practice by nonlicensees without firm registration authority.*

- Firm registration also diverts enforcement staff from important tasks, such as addressing the agency’s backlog of more complicated enforcement cases. For example, in FY 2001, the Board opened 238 enforcement cases pertaining to firm registration, simply because those unregistered firms had requested registration information. Staff later dismissed all of these cases because the firms in question had committed no violations.

**No national consensus exists on the value of registration for design firms.**

- All 50 states regulate architects, but only 25 states require firm registration. Of the 46 states that regulate landscape architects,

State Firm Registration Policies		
Profession	States That Require Firm Registration	States That Do Not Require Firm Registration
Architecture	25 states, including: California Florida Pennsylvania	25 states, including: New York North Carolina Michigan
Landscape Architecture	18 states, including: Florida North Carolina Virginia	28 states, including: California Pennsylvania New York
Interior Design	3 states: Florida Nevada Virginia	16 states, including: New York Tennessee New Mexico

only 18 require firm registration. While 19 states regulate interior designers, only three require firm registration. For examples of states and their policies, see the chart, *State Firm Registration Policies*.

- These professions’ national associations also lack consensus on the value of firm registration. The chart, *Position Statements of Major National Organizations*, summarizes the position of each association on the issue of firm registration.

Position Statements of Major National Organizations			
Organization Name	Supports Firm Registration	Opposes Firm Registration	Neutral Position
National Council of Architectural Registration Boards			✓
American Institute of Architects			✓
Council of Landscape Architectural Registration Boards	✓		
American Society of Landscape Architects			✓
National Council of Interior Design Qualification			✓
American Society of Interior Designers			✓
International Interior Design Association		✓	

## Recommendation

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### Change in Statute

#### **2.1 Clarify that the Board does not have authority to require firms to register.**

This recommendation would remove questions about the Board's authority to register firms by explicitly stating that the Board cannot require firms to register. This clarification would not limit the Board's current enforcement authority because the Board would still be able to pursue enforcement efforts against licensees who are responsible for sealing project plans, and nonlicensees who violate Board statutes.

### Management Action

#### **2.2 Direct the Board to reallocate firm registration resources to actual enforcement tasks.**

This recommendation would ensure that the Board used its enforcement resources on actual enforcement, rather than on firm registration tasks. These resources currently total 10 percent of the Board's enforcement efforts, or about \$16,500 per year.

### Impact

These recommendations would require the agency to discontinue its firm registration program, and target its limited resources to more important enforcement issues. The resources saved from the elimination of firm registration would allow the Board to continue to improve its enforcement functions. The recommendations would also remove an unnecessary requirement the Board has placed on businesses.

### Fiscal Implication

Since the Board currently participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project and lies outside the appropriations process, these recommendations would have no fiscal impact to the State. While these recommendations would save the agency about \$16,500 annually, the funds would be reallocated to other enforcement efforts.

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<sup>1</sup> Texas Occupations Code, sec. 1051.301 (b).

<sup>2</sup> This cost was estimated by taking 10 percent of the cost of salaries and benefits that the agency devoted to complaint investigation in FY 2001. It does not include other associated expenses, such as office supplies and other operating costs consumed by firm registration.



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# Issue 3

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

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### Summary

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#### Key Recommendations

- Standardize the Board's licensing functions by requiring the Board to address felony and misdemeanor convictions, exam accessibility, and examination fee refunds; and streamline the process used for exam administration.
- Revise the Board's enforcement activities by requiring common licensing model elements, such as standards of conduct and rules for the complaint process; standardizing Board statutes regarding grounds for disciplinary action; conforming the statute with procedures of the State Office of Administrative Hearings; and ensuring that all disciplinary actions are made public.
- Change administrative aspects of the Board's activities by eliminating statutory fee caps, creating uniform consumer notifications procedures, and standardizing the powers, duties, and processes of the Board.

#### 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 consumers.
- 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 statutes of the Texas Board of Architectural Examiners do not match model licensing standards that Sunset staff have developed from experience gained through more than 70 occupational licensing reviews. The Sunset review identified these recommendations by comparing the Board's statutes, rules, and practice against these model licensing standards to identify variations from the model and to recommend changes to bring them in line with other licensing agencies.

## Support

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### **The Board licenses and regulates architects, landscape architects, and interior designers in Texas.**

*To accomplish its mission, the Board performs two key functions – licensing and enforcement.*

- The Board's mission is to protect the public's health, safety, and welfare by ensuring that competent individuals practice architecture, landscape architecture, and interior design in Texas. This mission, as well as the Board's powers and duties, are laid out in three separate occupational licensing statutes, one for each regulated profession.
- To accomplish its mission, the Board performs two key functions – licensing and enforcement. The Board licenses individuals in all three professions by ensuring that new licensees meet certain education and experience criteria, and are able to pass a comprehensive professional examination developed by a national testing service. The agency enforces its three statutes and Board rules through the investigation of complaints against both licensed and unlicensed individuals.
- The Board, along with the Texas Board of Professional Engineers and the Texas State Board of Public Accountancy, participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project – a test of the effectiveness of removing self-funded licensing agencies from the legislative appropriations process. As part of the Pilot Project, the Board now collects its revenues directly from licensing fees, and spending limitations in the General Appropriations Act, such as caps on agency FTEs and travel expenditures, do not apply to the Board.

### **The Sunset Commission's experience from reviewing more than 70 occupational licensing programs during the last 25 years has been documented for application to future reviews.**

- The increasing number and questionable practices of some occupational licensing programs was a main focus behind the creation of the Sunset Advisory Commission. Since its creation in 1977, the Commission has completed more than 70 evaluations of licensing agencies.
- Sunset staff has documented standards learned from its reviews of licensing programs and from national sources to guide reviews of occupational licensing agencies. These standards have been applied by the Sunset Commission to each licensing agency reviewed since the completion of the standards. These standards are a guide for evaluating licensing programs, but are not intended for blanket application. Although the Board participates in the Pilot Project, its licensing and enforcement functions should still follow these standard procedures.

**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.**

- *Criminal convictions.* State law provides a general standard to guide agencies in determining which crimes should affect licensure in a given profession. This law, Chapter 53 of the Texas Occupations Code, "Consequences of Criminal Conviction," takes effect when individual licensing statutes are silent on the relationship of crime to licensure. The statute provides that a criminal conviction affects qualifications for licensure when the crime is related to the profession, according to guidelines developed by the agency and published in the Texas Register. Following these guidelines, an agency may then choose to suspend or revoke a license, disqualify a person from receiving a license, or deny the opportunity to take a licensing exam because of specific criminal activity.

None of the Board's statutes addresses the issue of criminal convictions. The Board's rules currently set out such guidelines, but referencing Chapter 53 in the statutes would clarify the Board's authority to create rules governing how criminal convictions affect an individual's application for licensure.

- *Disability access to examinations.* Exams should not exclude individuals because of a disability, as long as those individuals qualify to sit for the testing procedure. This procedure should follow all applicable legal guidelines related to equal opportunity and access. Title II of the Americans with Disabilities Act requires that state agencies must make their programs and services accessible to disabled persons.

The Board appears to have made good efforts to ensure that examinations are accessible to qualified applicants, regardless of disability. However, current Board statutes do not require the Board to adopt rules pertaining to exam accessibility. Referencing the Americans with Disabilities Act in the Board's statutes would clarify the Board's responsibility to set accessibility policies in rule, and ensure that the Board's future actions continue to ensure accessibility for applicants with disabilities.

*The Board appears to have made good efforts to ensure that examinations are accessible to qualified applicants, regardless of disability.*

- *Testing fees.* Fees for both initial exams and retakes of exams should only be refundable in certain limited circumstances that are clearly outlined by the Board. Since the agency incurs a cost for procedures such as processing applications and notifying national exam providers of an applicant's intent to take the exam, the Board's refund policy should require the agency to keep a portion of the testing fee in an amount sufficient to cover the administrative costs incurred on the applicant's behalf.

*The current exam refund policy could lead to unfair treatment of applicants.*

The Board’s statutes have no provisions concerning testing fee refunds, but the Board has adopted a policy that allows applicants to reschedule exams in certain circumstances, such as severe illness or the death of an immediate family member. This policy is not set in Board rules, but has been approved by the Board. In the past, agency staff have interpreted the policy as authorizing exam refunds.<sup>1</sup> The Board’s policy does not address issues such as the proper deadlines for rescheduling and refund requests, or the amount of the exam fee that the agency should retain to cover administrative costs. The current Board policy could lead to the unfair treatment of applicants and may also cause administrative inefficiency.

- **Examination process.** Licensing agencies should have clear, consistent, and streamlined examination processes. These processes should be adequately documented to ensure that the agency operates efficiently and that licensees are treated fairly.

The Board, like other state agencies, is required under terms of state law to collect and hold all examination fees for national testing services instead of allowing applicants to pay the testing service directly. To comply with state law, the Board had to create complex payment systems that include vouchers sent between the Board, the national testing services, and the test candidates. This system is wasteful and confusing for both the Board and its applicants. Also, Texas is the only state that does not permit its architecture and interior design exam candidates to pay the testing services directly; should the testing services stop providing an exception for Texas, candidates would be forced to register for the exam in other states.

*Texas is the only state that does not permit its architecture and interior design exam candidates to pay the testing services directly.*

Because, under terms of the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the agency is no longer in the appropriations process or required to hold its funds in the State Treasury, this provision unnecessarily limits the agency’s flexibility.

- **Licensure qualifications.** Qualifications for licensure should not overburden applicants or unreasonably restrict entry into practice. Candidates for licensure should be able to apply on simple, standard forms. These forms should request enough information to assess a candidate’s eligibility for registration, but should not be unnecessarily burdensome.

Currently, the Board requires applicants to notarize applications to ensure that experience and education information on the application is correct. However, the Board already requires, by rule, that the applicant include formal education information through certified transcripts, which ensures that education information on the

application is correct. In addition, this notarization requirement is unnecessary because state law already prohibits a person from knowingly making a false entry in a government record.<sup>2</sup>

- **Licensing renewal dates.** The date for license renewals should be scheduled to avoid bottleneck periods. A staggered renewal system leads to greater staff efficiency and more timely processing of renewals, thereby improving agency service to licensees. The Legislature has agreed with this model standard, giving the Board the statutory authority to set staggered renewal dates in rule.

The Board has set six renewal periods staggered throughout the year. However, since the Board regulates three professions, each profession only has two renewal dates. Architects have significantly more licensees than the other two professions, meaning the staff must process a disproportionately high number of renewals on architect renewal dates. The Board could achieve greater staff efficiency and better service to licensees by switching to a continuous renewal cycle in which licenses expire on the licensee’s birthday. Continuous renewal would spread the workload evenly throughout the year and be more convenient to licensees, who frequently forget the renewal dates under the current system. Current statutory provisions already state that during any transition period to new renewal schedules the Board must prorate fees on a monthly basis.

*Shifting to continuous license renewal would spread staffs’ workload evenly throughout the year.*

**Nonstandard enforcement provisions of the Board’s statute could reduce the agency’s effectiveness in protecting consumers.**

- **Standards of conduct.** A licensing agency should be required by statute to have clear standards of conduct to provide a sound basis for acting on consumer complaints. This ensures that consumers are protected adequately and that standards are applied to licensees in a fair and consistent manner. The Board may adopt these standards in either its rules or in a separate Code of Ethics.

By rule, the Board has adopted standards of conduct for all three professions. However, statute requires the Board to do this for only one profession – interior design. Standardizing the statutes so that this requirement applies to all three professions will ensure adequate consumer protection and fairness to licensees.

- **Complaint processes.** Agencies should adopt rules that clearly lay out policies for all phases of the complaint process. These rules should include complaint intake, preliminary evaluation, investigation, adjudication, resulting sanctions, and disclosure to the public. Having such rules that clearly explain the complaint process protects consumers, increases administrative efficiency, and ensures procedural fairness for licensees.

*Inconsistencies in the Board's three statutes result in each profession having significantly different grounds for disciplinary action.*

In rule, the Board has outlined the complaint process with regard to adjudication, sanctions, and disclosure. However, the agency's processes for complaint intake, preliminary evaluation, and investigation are established only in intra-agency procedural documents. Placing all procedures into the public rules would allow both consumers and licensees to have a more complete understanding of the complaint process.

- **Grounds for disciplinary action.** A licensing agency's enforcement process should not make it overly difficult to bring disciplinary action. In an agency that regulates multiple professions, inconsistent grounds for disciplinary action create administrative inefficiencies and can adversely affect consumer protection.

Inconsistencies in the Board's three statutes result in each profession having significantly different grounds for disciplinary action, as shown in the chart, *Selected Grounds for Disciplinary Action*. The

Selected Grounds for Disciplinary Action			
Ground	Architects	Landscape Architects	Interior Designers
Gross incompetence	✓	✓	
Gross negligence		✓	✓
Dishonest practice	✓		
Dishonesty in helping another person to get licensed		✓	✓
Use of another person's license		✓	

three regulated professions all work closely together on design projects, and no discernible reason for these statutory differences exists. A single action might be covered by different grounds in different professions. For example, an act of malpractice might be charged as either gross incompetence, gross negligence, or a violation of Board rules, depending on which professional the complaint was lodged against. Since staff must define violations by variable standards, this inconsistency creates an additional hurdle in the

enforcement process. Lack of conformity in disciplinary grounds also causes administrative inefficiencies; is unnecessarily confusing for consumers, licensees, and agency staff; and may reduce consumer protections.

- **Complaint hearings.** Most state agencies must conduct their hearings through the State Office of Administrative Hearings (SOAH). SOAH separates the adjudicative function of state agencies from their other enforcement functions. This separation allows for greater consumer protection, and ensures fairness to licensees. Agencies that have their hearings conducted by SOAH should have statutes that clearly conform to the enabling statute of SOAH. Additionally, agency statutes should conform to the Administrative Procedure Act (APA), which also governs agency hearings.

The statutes under which the Board operates include outdated language in reference to the SOAH hearing process. Currently, each of the Board's three statutes has a section that states that licensees are entitled to a hearing if the Board intends to suspend or revoke their license, and that the Board must either make the final decision or hear appeals in such matters. State law requires the Board to handle contested cases through SOAH. Additionally, the APA states that the Board may allow a SOAH administrative law judge to render the final decision in contested cases. Under the Board's statutes, the Board would then be required to hear appeals. However, the APA states that to appeal, affected persons must seek judicial review by filing suit in District Court. The Board's current statutes are needlessly confusing for both Board staff and licensees. Statutory conflicts with the APA and the SOAH enabling statute reduce Board flexibility and hinder its ability to perform its public protection duties.

*The Board's statutes conflict with the Administrative Procedure Act and SOAH's enabling statute.*

- **Public information on complaints.** Agencies should make all enforcement information, such as final disciplinary orders and sanctions, available to the public in an easily accessible format. This helps to protect consumers and ensures procedural fairness to all licensees.

The Board does not make enforcement decisions easily accessible to the public. While the Board publishes a yearly newsletter that contains most disciplinary orders and sanctions, some licensees negotiate settlements in which the Board does not publish the final order. Consumers who wish to check the particular disciplinary history of a licensee must either read through old newsletters or call Board staff. The public cannot easily access this information through other means such as a searchable database on the agency's Web site.

*The Board's enforcement decisions are not easily accessible to the public.*

- **Probation procedures.** Licensing agencies should have a probation procedure that provides for imposing appropriate conditions, notifying probationers of those conditions and actions they need to take, and tracking probationers' progress. Such standard procedures create administrative efficiency, ensure the fair treatment of licensees, and help protect consumers.

The Board has adopted an administrative penalty matrix that delineates when the suspension of a license is an appropriate punishment. However, the matrix does not distinguish between active and probated suspensions. This could result in the inequitable use of probation as a punishment. In addition, the Board does not have clear guidelines regarding the duties and obligations of persons placed on probation. Board staff negotiates these conditions on a case-by-case basis.

*Notarized complaints are not needed as state law already prohibits false entries on a government record.*

- **Complaint filing.** Legislative enactments have established that the public should have easy access to an agency's enforcement processes through reasonable complaint filing procedures. The public, agency, or a licensee should be able to file a written complaint on a simple, standard agency form provided 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.

Currently, the Board requires complaints to be notarized. This requirement is unnecessary as state law already prohibits a person from knowingly making a false entry in a government record.<sup>3</sup> 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 writing, such as over the Internet, a practice that makes complaint filing more convenient for consumers.

- **Complaint trend analysis.** Licensing agencies should analyze the sources and types of complaints to identify problem areas and trends. Identifying such trends can help the agency to manage its resources more effectively, leading to greater protection of consumers. Additionally, such information can be used by the agency to create educational materials for licensees about common violations of statutes and rules.

The Board currently has no method for performing trend analysis. The staff has attempted to address what it perceives to be common violations by including informational material in its annual newsletter. However, a formal system to analyze the sources and types of complaints would lead to better enforcement and increased administrative efficiency.

- **Complaint jurisdictional tracking.** A licensing agency should have a process to refer complaints outside of its jurisdiction to the appropriate organization. The agency should keep track of these nonjurisdictional complaints to have a full picture of the public's problems and concerns in this regulatory area.

The Board frequently receives nonjurisdictional complaints. These complaints may be about regulated professions, such as engineers, or unregulated professions, such as building designers and contractors. While staff refers these complainants to the appropriate state agency or to a local District Attorney, the agency maintains minimal information about the complaint. This prevents the Board, and the Legislature, from having valuable information about problems in the design and construction industry, particularly those parts of the industry that are not regulated. Collection of nonjurisdictional complaint data would allow the agency to develop

referral guides to increase administrative efficiency and provide for greater consumer protection.

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

- *Flexible fees.* A licensing agency should have the authority to set its fees. This allows for greater administrative flexibility and reduces the need for the Legislature to continually update agency statutes to accurately reflect the costs of providing basic services. Additionally, flexible fees ensure that the agency continues to provide basic services between legislative sessions.

The Board currently has two statutory caps that limit its ability to set fees: a \$10 cap on the fee used to pay for an Architectural Registration Examination (ARE) scholarship, and a \$300 cap on the cost of the ARE. An outside national organization develops and administers the ARE. The entire exam currently costs \$981. Because of the statutory \$300 cap, the Board must request a legislative appropriations rider each legislative session to charge the full price of the exam. When the price of the ARE rose significantly in 1997, because the test was transferred from a pencil-and-paper format to an electronic format, the Board was unable to offer the architecture exam for five months until the Legislature gave the Board a new appropriations rider. Since the agency is now in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the Appropriations Act can no longer give the agency this authority.

*Fee caps limit the Board's ability to set adequate architecture scholarship and exam fees.*

- *Public information.* A licensing agency should have the means to notify consumers of its jurisdiction over its regulated professions. Usually, this notification is achieved by requiring licensees to post certificates in their businesses or by printing a statement of Board jurisdiction in all licensee contracts. This makes the complaint process more accessible to consumers and leads to greater consumer protection.

The Board's statutes have inconsistent standards regarding consumer notification of the Board's jurisdiction. The architecture statute allows the Board to choose from various notification options. The landscape architecture statute requires licensees to print a statement of jurisdiction in all contracts. The interior design statute does not comment on this matter at all, implying that the Board lacks the authority to develop rules on this topic. This statutory inconsistency reduces Board flexibility, leads to administrative inefficiency, and compromises the Board's authority to protect consumers.

*Standardization would help the Board enforce its three separate statutes.*

- Standardization.** Programs within a larger licensing structure should be standardized to the greatest extent possible. Agencies that regulate multiple professions should have statutes that provide for uniform powers, duties, and processes, unless a reasonable basis exists for differences among the professions.

The Board currently enforces three statutes. Lack of standardization among these statutes means that the Board has inconsistent powers, duties, and processes. These inconsistencies create administrative inefficiency, reduce Board flexibility, lead to the unfair treatment of licensees, and adversely affect the Board's ability to protect consumers. The chart, *Standardization Issues in Board Statutes*, summarizes these inconsistencies and the statutes to which they apply.

Standardization Issues in Board Statutes			
Statutory Provision	Architecture	Landscape Architecture	Interior Design
Employees working under the supervision of a licensee (such as drafters) are protected from prosecution. <sup>4</sup>	✓		
Professionals licensed in another state may work in Texas if they: (1) hire a Texas licensee as a consultant, or (2) serve as a consultant to a Texas licensee. <sup>5</sup>	✓		
The Board is required to keep public records or rosters of licensees.	✓		✓
The Attorney General may act as a legal advisor to the Board on certain enforcement matters.		✓	
The Board is granted the ability to seek injunctive relief, and may be represented by the Attorney General.	✓	✓	
The Board may create rules for the use of professional seals by licensees.	✓	✓	
The Board must maintain a register of all applicants.			✓
The Board has a reinstatement procedure for licensees who have had their license revoked, suspended, or denied.			✓
The cumulative effect of provisions is stated.	✓		

# Recommendation

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## Licensing

### Change in Statute

#### **3.1 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 Texas Occupations Code for dealing with criminal convictions by specifically referencing Chapter 53 in the Board's enabling statutes. The Board would not need to adopt new rules defining which crimes relate to its regulated professions because its current rules meet the standard of this statute.

#### **3.2 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.**

The Board's statutes would reference the Americans with Disabilities Act. The Board would need to adopt new rules regarding accessibility accommodations, but could model the rules after current policies which meet the standard of the Americans with Disabilities Act.

#### **3.3 Require the Board to adopt, by rule, comprehensive refund policies for its examinations.**

This recommendation would ensure that the agency treats all applicants fairly and that the agency is able to cover the costs associated with its examinations. The comprehensive policy should include a list of acceptable excuses, the required documentation to support such excuses, refund request deadlines, and the specific fee portion (in percentage or dollar-value terms) that the agency should retain to cover administrative costs.

#### **3.4 Eliminate the requirement that the Board must collect all examination fees.**

This recommendation would streamline the exam process by eliminating the Board's complex payment system and allowing applicants to pay the national testing providers directly. Direct payment would create better service for applicants and would give the agency greater flexibility and efficiency.

### Management Action

#### **3.5 Eliminate the application notarization requirement on individuals who apply for licensure with the Board.**

This recommendation would eliminate the Board's requirement that applicants notarize applications. Current provisions of the Texas Penal Code that make falsifying a government record a crime would continue to apply to license applications.

### **3.6 Direct the Board to consider switching to a continuous license renewal system.**

The Board would eliminate the six bottleneck periods of license renewals and create a system in which licenses expired on a licensee's birthday. The current statutory provisions requiring the Board to prorate renewal fees on a monthly basis during a one-year transition to new expiration dates would be preserved. The Board would also be directed to prorate fees on a quarterly basis for new registration applicants should the Board decide to switch to continuous renewal based on licensee birthdays. This would result in greater administrative efficiency and would provide better service to licensees.

## **Enforcement**

### **Change in Statute**

#### **3.7 Require the Board to adopt clear standards of conduct for all of the professions that it regulates.**

This recommendation would ensure adequate consumer protection and fairness to licensees by extending the current requirement in the interior design statute to both the architecture and landscape architecture statutes. The Board would not need to adopt new rules regarding such standards because its current rules would meet these new statutory requirements. However, this recommendation will ensure that the Board continues to maintain standards of conduct for its regulated professions in the future.

#### **3.8 Require the Board to adopt comprehensive rules outlining all phases of the complaint process.**

Consumers and licensees would have an enhanced understanding of the complaint process under this recommendation. Comprehensive rules should include all phases of the process, including complaint intake, preliminary evaluation, investigation, adjudication, sanctions, and public disclosure. The Board would need to update its current rules to address the phases of intake, preliminary evaluation, and investigation.

#### **3.9 Standardize statutory grounds for disciplinary action in the Board's three statutes.**

This recommendation would make the Board's enforcement authority clear and consistent by ensuring that all three statutes address the same grounds for disciplinary action, including gross incompetence, gross negligence, dishonest practice, dishonesty helping another person to get licensed, and use of another person's license. The change would increase agency efficiency and flexibility, strengthen consumer protection, and make the enforcement process less confusing for licensees, complainants, and agency staff.

### **3.10 Conform the Board statutes concerning hearings and appeals to the Administrative Procedure Act and the enabling statute of the State Office of Administrative Hearings.**

This recommendation would rewrite the sections of Board statutes dealing with hearing and appeals processes. The new language should clearly state that the procedures for contested cases are to be conducted in accordance with the Administrative Procedure Act and the enabling statute and rules of the State Office of Administrative Hearings.

### **3.11 Require the Board to make public all disciplinary orders and sanctions.**

The Board would be required under this recommendation to pass rules ensuring that all disciplinary orders and sanctions are treated in the same manner. Licensees would no longer be able to negotiate unpublished settlements. This would ensure procedural fairness to licensees and greater protection to consumers.

#### **Management Action**

### **3.12 Direct the Board to make available all disciplinary orders and sanctions on the Board Web site in a format that consumers may access easily.**

Under this recommendation consumers would have easy access to disciplinary information. Increasing accessibility could include creating a searchable database of disciplinary information or making an up-to-date listing of all enforcement orders and sanctions arranged alphabetically by licensee name. This would reduce the amount of time that staff must dedicate to handling consumer inquiries.

### **3.13 Direct the Board to clearly delineate standards of probation.**

This recommendation would require the Board to include in its administrative penalty matrix when probation is an appropriate punishment, and develop guidelines for the duties and obligations of probationers. While these standards should not be strictly binding for the agency, they should be a safeguard to ensure that the agency imposes and conducts probation in a fair and consistent manner.

### **3.14 Eliminate the complaint notarization requirement on individuals who file complaints with the Board.**

This recommendation would eliminate the Board's onerous requirement that complainants must notarize complaints. Current provisions of the Texas Penal Code that make falsifying a government record a crime would continue to apply to filed complaints.

### **3.15 Direct the Board to develop a system for complaint trend analysis.**

The Board would need to develop a system for analyzing the sources and types of complaints. Such a system should lead to stronger enforcement and greater administrative efficiency.

### **3.16 Direct the Board to develop a system for tracking nonjurisdictional complaints.**

This recommendation would direct the Board to keep track of complaints it receives that fall outside of its jurisdiction. This will give the agency and the Legislature a fuller picture of the public's problems and concerns in this regulatory area.

## Administration

### Change in Statute

#### 3.17 Eliminate the statutory language that sets and caps fees.

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 fee should be set to cover costs and not to earn additional revenue for the agency.

#### 3.18 Require the Board to adopt, by rule, uniform standards pertaining to consumer notification of the Board’s jurisdiction.

This recommendation would allow the Board to require all three professions to notify their consumers of the Board’s regulation of the industry through standard procedures, such as requiring licensees to post their license in their place of business, and requiring all licensees to place the Board’s address and telephone number in all business contracts.

#### 3.19 Standardize the three Board statutes with respect to Board powers, duties, and processes.

This recommendation would eliminate inconsistencies in the Board’s statutes with respect to Board powers, duties, and procedures. Nonstandard statutory provisions should be allowed to remain, provided that a reasonable basis exists for differences among the statutes. Sunset staff recommends that the statutes be standardized in the manner outlined in the chart, *Proposed Standardization of Board Statutes*.

Proposed Standardization of Board Statutes			
Statutory Provision	Architecture	Landscape Architecture	Interior Design
Employees working under the supervision of a licensee (such as drafters) are protected from prosecution.	Already in Statute	Apply	Not Applicable <sup>6</sup>
Professionals licensed in another state may work in Texas if they: (1) hire a Texas Licensee as a consultant, or (2) serve as a consultant to a Texas licensee.	Already in Statute	Apply	Not Applicable <sup>7</sup>
The Board is required to keep public records or rosters of licensees.	Already in Statute	Apply	Already in Statute
The Attorney General may act as a legal advisor to the Board on certain enforcement matters.	Apply	Already in Statute	Apply
The Board is granted the ability to seek injunctive relief, a and may be represented by the Attorney General.	Already in Statute	Already in Statute	Apply
The Board may create rules for the use of professional seals by licensees.	Already in Statute	Already in Statute	Apply
The Board must maintain a register of all applicants.	Apply	Apply	Already in Statute
The Board has a reinstatement procedure for licensees who have had their license revoked, suspended, or denied.	Apply	Apply	Already in Statute
The cumulative effect of provisions is stated.	Already in Statute	Apply	Apply

## 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				
Recommendation	Benefits			
	Efficiency from Standardization	Administrative Flexibility	Fairness to Licensee	Protection of Consumer
<b>Licensing</b>				
3.1 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.	✓		✓	✓
3.2 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.	✓		✓	
3.3 Require the Board to adopt, by rule, comprehensive refund policies for its examinations.	✓		✓	
3.4 Eliminate the requirement that the Board must collect all examination fees.	✓	✓	✓	
3.5 Eliminate the application notarization requirement for individuals who apply for licensure with the Board.			✓	
3.6 Direct the Board to consider switching to a continuous license renewal system.	✓			
<b>Enforcement</b>				
3.7 Require the Board to adopt clear standards of conduct for all of the professions that it regulates.	✓		✓	✓
3.8 Require the Board to adopt comprehensive rules outlining all phases of the complaint process.	✓		✓	✓
3.9 Standardize statutory grounds for disciplinary action in the Board's three statutes.	✓	✓	✓	✓

<b>Benefits of Recommendations</b>				
	<b>Benefits</b>			
<b>Recommendation</b>	<b>Efficiency from Standardization</b>	<b>Administrative Flexibility</b>	<b>Fairness to Licensee</b>	<b>Protection of Consumer</b>
<b>Enforcement</b>				
3.10 Conform the Board's statutes concerning hearings and appeals to the Administrative Procedure Act and the enabling statute of the State Office of Administrative Hearings.		✓	✓	✓
3.11 Require the Board to make public all disciplinary orders and sanctions.	✓		✓	✓
3.12 Direct the Board to make available all disciplinary orders and sanctions on the Board Web site in a format that consumers may access easily.				✓
3.13 Direct the Board to clearly delineate standards of probation.	✓		✓	✓
3.14 Eliminate the complaint notarization requirement for individuals who file complaints with the Board.		✓		✓
3.15 Direct the Board to develop a system for complaint trend analysis.	✓			✓
3.16 Direct the Board to develop a system for tracking nonjurisdictional complaints.	✓			✓
<b>Administration</b>				
3.17 Eliminate the statutory language that sets and caps fees.		✓		
3.18 Require the Board to adopt, by rule, uniform standards pertaining to consumer notification of the Board's jurisdiction.	✓	✓		✓
3.19 Standardize the three Board statutes with respect to Board powers, duties, and processes.	✓	✓	✓	✓

## Fiscal Implication

These recommendations would not have a fiscal impact to the State. The agency is currently in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which means it is removed from the appropriations process and its funds are maintained outside the Treasury. 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 used to meet the Board's other needs. Reducing 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.

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<sup>1</sup> Sunset staff meeting with agency staff (Austin, Texas, July 10, 2002).

<sup>2</sup> Ibid.

<sup>3</sup> Texas Penal Code, sec. 37.10.

<sup>4</sup> Such an exemption is not necessary for interior designers since they have a title act, not a practice act.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.



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## Issue 4

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### **Texas Has a Continuing Need for the Texas Board of Architectural Examiners, but Could Benefit From Greater Coordination With the Texas Board of Professional Engineers.**

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## Summary

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### **Key Recommendations**

- Continue the Texas Board of Architectural Examiners for 12 years.
- Require the Board to form a joint practice committee with the Texas Board of Professional Engineers.

### **Key Findings**

- Texas has a continuing interest in licensing and regulating architects, landscape architects, and interior designers.
- No significant benefit would result from changing the agency structure or having any other state or federal agency perform the Board's functions.
- Although no significant benefit would result from consolidation, coordination with the Texas Board of Professional Engineers could achieve greater operational efficiency.
- While organizational structures vary, most other states regulate architects and landscape architects, and many regulate interior designers.

### **Conclusion**

The Texas Board of Architectural Examiners regulates architects, landscape architects and interior designers through its licensing and enforcement programs. Its regulatory functions are needed to protect the public by ensuring that only qualified individuals become licensed design professionals, and the Board generally performs its functions well.

The Sunset review assessed the overall need for an independent agency to regulate architects, landscape architects, and interior designers. The review also evaluated whether the Board's functions could be successfully transferred to another agency and looked at how other states perform these functions. Sunset staff concluded that the Board performs an important mission, and should be continued for 12 years.

## Support

### **The Texas Board of Architectural Examiners licenses and regulates architects, landscape architects, and interior designers.**

- Texas has regulated architects since 1937 when the Legislature created the Texas Board of Architectural Examiners. Since then, the State added the regulation of landscape architects, in 1979, and interior designers, in 1991, to the Board’s duties. The agency licenses about 19,000 professionals: 10,000 architects, 7,500 interior designers, and 1,200 landscape architects.
- The Board plays an important role in protecting the public by ensuring that only qualified architects, landscape architects, and interior designers practice in Texas. To achieve this goal, the agency performs two key functions: licensing and enforcement. The agency enforces restrictions on the use of professional titles for the three professions, and limitations on the scope of practice for architecture and landscape architecture.

*The agency licenses about 19,000 professionals: 10,000 architects, 7,500 interior designers, and 1,200 landscape architects.*

### **Texas has a continuing interest in licensing and regulating architects, landscape architects, and interior designers.**

- Architecture, landscape architecture, and interior design are professions that can put the public at risk if practiced incorrectly. Faults in the design or construction of structures by incompetent architects could significantly harm the public, and landscape architects who use improper drainage and erosion control could cause consumers large financial losses. Interior designers who fail to take into account fire and building codes could also harm the public. Additionally, Texans may be harmed if any of these professionals fail to adequately consider accessibility standards for people with disabilities.
- The Board licenses individuals to ensure their competence to practice architecture, landscape architecture, and interior design. The Board also develops and implements rules and regulations to ensure that licensees engage in safe design. The Board’s statutes are designed to protect the public and provide recourse if laws are violated. The public needs an agency that can receive and investigate complaints about design professionals to bring them into compliance, and to discipline those that violate the law or rules.

*The agency confronts special demands in enforcing three statutes.*

### **The Board is generally effective at regulating the design professions.**

- The agency has generally been effective at accomplishing the duties set out for it by the Legislature. The agency confronts special demands in enforcing three statutes, and has streamlined its

processes to accommodate some of those demands. For example, the agency has one licensing division for all three regulated professions, and currently takes an average of just one day to issue a license. The agency conducted virtually no enforcement before the Board hired its current Executive Director in 1994. While the enforcement program continues to face challenges, the agency has taken strides to enforce its statutes and rules.

**No significant benefit would result from changing the agency structure or having any other state or federal agency perform the Board's functions.**

- The Texas Department of Licensing and Regulation (TDLR) has a structure for licensure, examination, and investigation in place. However, if the Legislature consolidated the Board into TDLR, then TDLR would need to add staff who understand the technical nature of architecture, landscape architecture, and interior design. No significant gain in efficiency would result by transferring the Board's functions to TDLR.
- Two previous Sunset reports of the agency considered combining it with the Texas Board of Professional Engineers. The 1978 review concluded that the consolidation potential could not be clearly established. The 1991 review concluded that investigators at the Engineers Board lacked the necessary technical expertise in architecture and landscape architecture, so merging the agencies would not significantly improve the enforcement process.
- While national boards that examine design professionals exist, they do not issue licenses and could not perform the enforcement function of the Board. No federal agency regulates design professionals.
- The Board recovers all costs through fees collected from licensees; therefore, no cost savings would result if the Board was abolished. Also, as part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the Board is outside of the legislative appropriations process. Under terms of the Pilot Project Act, the Board contributes \$700,000 to the General Revenue Fund that would be lost if the agency was discontinued. In addition, architect licensees contribute almost \$2 million in professional licensing fees to General Revenue that would be lost if the architecture license was not continued.

*No significant gains would result by transferring the Board's functions to TDLR.*

**Although no significant benefit would result from consolidation, coordination with the Texas Board of Professional Engineers could achieve greater operational efficiency.**

- Unclear statutes and overlap between certain types of engineering and architecture have caused some enforcement difficulties for the

*Similarities exist between architecture and the fields of civil, mechanical, and structural engineering.*

two agencies. Similarities exist between architecture and the fields of civil, mechanical, and structural engineering, and statutes do not clearly define the two professions, creating a gray area of practice. The gray area makes it difficult for the Boards to resolve some types of enforcement cases. For example, the Architects Board currently has three pending cases in which, according to the agency, engineers practiced architecture, but the Board of Professional Engineers disagrees with this conclusion.

- Despite the overlap between the professions, Sunset staff determined that merging the Boards would not improve enforcement, due to problems with both Boards' enforcement processes. In addition, because of longstanding tension between the professions of architecture and engineering, a combined board may face additional hurdles in managing its licensee base.
- In October 2001, the Boards established a joint committee to develop policies and procedures related to the effective regulation of engineering, architecture, and landscape architecture. The committee includes three members from each Board, and the agencies' Executive Directors serve as nonvoting ex officio members. The Boards have made previous attempts at collaboration, including adopting resolutions of cooperation in 1991 and 1993. The Boards formed the committee voluntarily; statute does not require that the two Boards coordinate. Because the committee is voluntary, the possibility exists that the Boards will cease meeting, especially if incoming Board or staff members do not see the value of coordination. (Coordination between the two Boards is also discussed in Issue 3 in the section of this report covering the Texas Board of Professional Engineers.)

*The Boards have made previous attempts at collaboration, including adopting resolutions of cooperation in 1991 and 1993.*

**While organizational structures vary, most other states regulate architects and landscape architects, and many regulate interior designers.**

- All 50 states regulate architects, while 46 regulate landscape architects, and 19 license interior designers. The composition of other state boards may vary. For example, 25 states regulate only architects through independent or umbrella agencies, while nine states regulate architects together with landscape architects, interior designers, or both.

## Recommendation

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### Change in Statute

#### **4.1 Continue the Texas Board of Architectural Examiners for 12 years.**

This recommendation would continue the Texas Board of Architectural Examiners as an independent agency responsible for overseeing architects, landscape architects, and interior designers for the standard 12-year period.

#### **4.2 Require the Board to form a joint practice committee with the Texas Board of Professional Engineers.**

Although the Professional Engineers and Architectural Examiners Boards have voluntarily formed a joint committee, this recommendation would ensure that the Boards continue to work together. The committee's guiding principle should be to improve the agencies' protection of the public, and this principle should take precedence over the interests of each Board. The committee should work to resolve issues stemming from the overlap among the professions overseen by the agencies. The committee should issue advisory opinions to both Boards regarding matters such as specific enforcement cases, the definitions of architecture and engineering, and requirements relating to the need for professionals licensed by the two Boards on specific projects. In addition, each Board would be responsible for reporting back to the committee the final action or outcome on the specific issue considered by the committee. The committee would thus develop a body of information that can help resolve future issues and further clarify the respective practice of these professions. The committee should consist of three members from each Board, and should meet at least twice a year. Both Boards should adopt resolutions regarding the committee, its composition, and its purpose.

### Impact

These recommendations would continue the Texas Board of Architectural Examiners as a stand-alone agency responsible for regulating design professionals, in addition to making coordination with the Texas Board of Professional Engineers a statutory requirement.

### Fiscal Implication

Because the Board currently participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project and lies outside the appropriations process, continuing the Board will have no fiscal impact to the State.

In addition, because of the agency's status as a project agency, the joint practice committee with the Texas Board of Professional Engineers would not have a fiscal impact to the State, but would cost the agency approximately \$600 annually for travel reimbursement.



## **ACROSS-THE-BOARD RECOMMENDATIONS**



<b>Texas Board of Architectural Examiners</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Already in Statute	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.
Update	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.
Update	9. Provide for public testimony at meetings of the policymaking body.
Modify	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.

<b>Texas Board of Architectural Examiners</b>			
<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Architecture</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Landscape Architecture</div> <div style="writing-mode: vertical-rl; transform: rotate(180deg);">Interior Design</div> </div>			
<b>Recommendations</b>			<b>Across-the-Board Provisions</b>
<b>B. LICENSING</b>			
m	m	m	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
u	u	u	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
u	u	u	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
n	n	n	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
u	u	u	5. Authorize the staggered renewal of licenses.
u	u	u	6. Authorize agencies to use a full range of penalties.
m	m	a	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
m	m	m	8. Require the policymaking body to adopt a system of continuing education.

a = apply; u = update; m = modify; n = do not apply

## **AGENCY INFORMATION**



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# Agency Information

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## Agency at a Glance

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The Texas Board of Architectural Examiners (the Board) protects the public by regulating architects, landscape architects, and interior designers. The Board traces its beginning to 1937, when the Legislature recognized the need to regulate architects after a catastrophic school fire claimed hundreds of lives. In 1969, the Legislature began the regulation of landscape architects and, ten years later, gave this responsibility to the Board. In 1991, the Legislature added interior designers to the list of design professionals regulated by the Board.

To accomplish its mission, the Board:

- licenses qualified architectural, landscape architectural, and interior designer applicants;
- ensures compliance with the Architecture, Landscape Architecture, and Interior Design Acts and Board rules by investigating and resolving complaints against persons or businesses; and
- provides information to licencees and the public.

*On the Internet  
Information about the  
Board is available at  
[www.tbae.state.tx.us](http://www.tbae.state.tx.us)*

## Key Facts

- **Funding.** The Board operates with an annual budget of \$1.6 million, all of which comes from licensing fees.
- **Staffing.** The Board has 20 full-time equivalent positions, all based in Austin.
- **Registration and Examinations.** In fiscal year 2001, the Board regulated about 19,000 design professionals – 10,000 architects, 1,200 landscape architects, and 7,500 interior designers. That year, the Board processed 18,054 license renewals, and helped administer 2,590 exam sections.
- **Enforcement.** The Board received 216 complaints in fiscal year 2001. The Board resolved 223 complaints, referred 16 cases to the Office of the Attorney General and the State Office of Administrative Hearings, and issued 118 orders.
- **Public Information.** The Board annually provides information regarding agency programs to more than 25,000 entities, including licencees, applicants, building officials, schools of architecture, landscape architecture, and interior design, and the general public.

*The Board is composed of four architects; one landscape architect; one interior designer; and three public members, one of whom must have a physical disability.*

- **Pilot Project.** In 2001, the Legislature included the Board, along with the Texas State Board of Public Accountancy and the Texas Board of Professional Engineers, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. Beginning in fiscal year 2002, the Pilot Project removed the Board from the legislative appropriation process, allowing the Board to operate under its own discretion, outside the spending limitations set in the General Appropriations Act.

## Organization

### Policy Body

The Texas Board of Architectural Examiners is governed by a nine-member, part-time Board appointed by the Governor. The Board is composed of four architects; one landscape architect; one interior

designer; and three public members, one of whom must have a physical disability. The Governor appoints the Board Chair. The chart, *Texas Board of Architectural Examiners*, identifies current Board members and their city of residence.

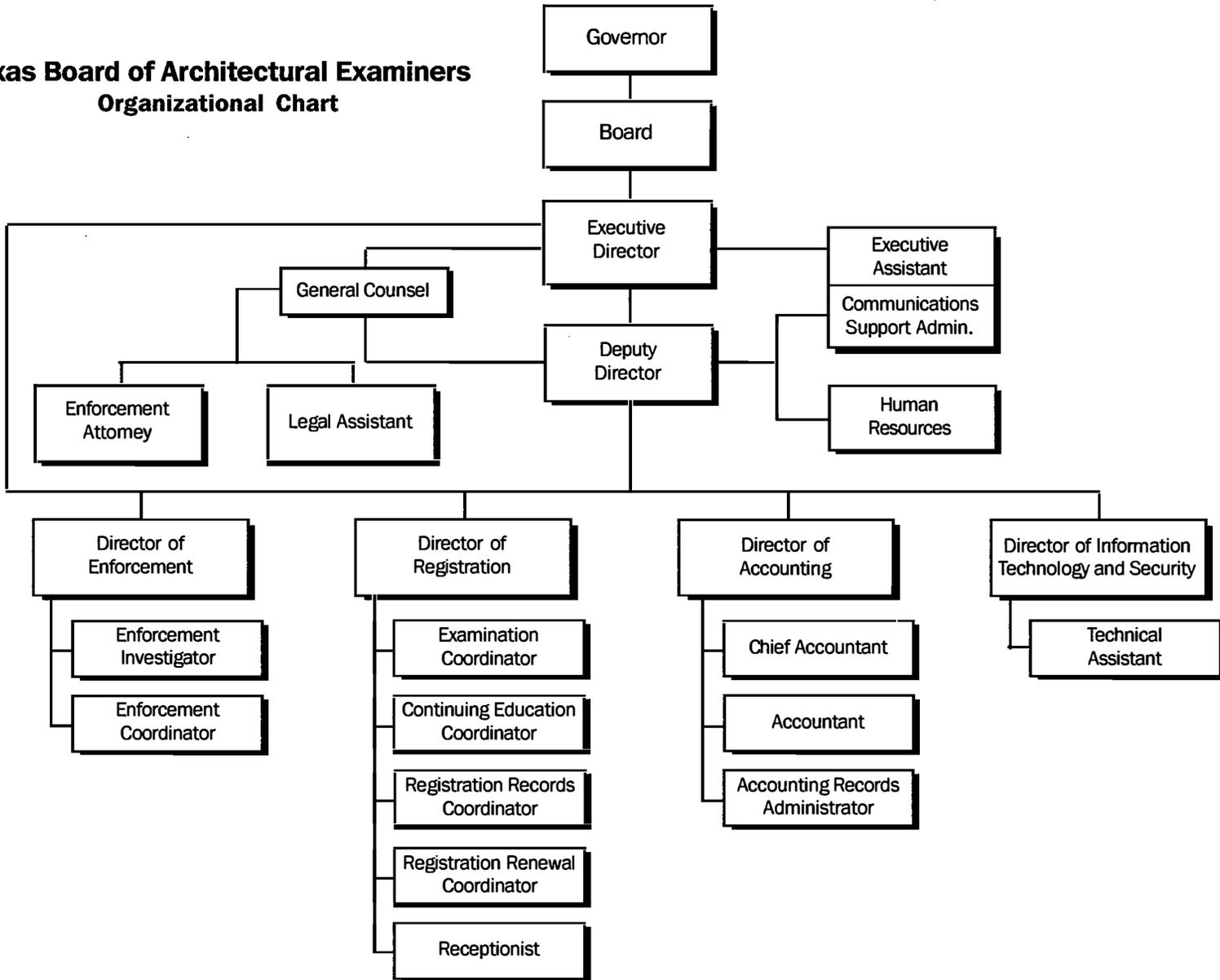
The Board sets policies and rules to regulate the architectural, landscape architectural, and interior design professions, and participates in the disciplinary proceedings of licensees.

Texas Board of Architectural Examiners			
Member	City	Qualification	Term Expiration
Steven T. Ellinger, Chair	Abilene	Architect	2003
Gordon E. Landreth	Corpus Christi	Architect	2007
Alan R. Lauck	Dallas	Interior Designer	2005
Chao-Chiang Lee	Houston	Architect	2003
Janet Parnell	Canadian	Public Member	2007
Diane Steinbrueck	Austin	Landscape Architect	2007
Anthony Trevino, Jr.	Laredo	Public Member	2005
R. Nolen Willis	Bellaire	Architect	2005
Vacancy		Public Member	2003

### Staff

The Executive Director, under the direction of the Board, oversees the agency's day-to-day activities. All Board employees work in Austin. The *Texas Board of Architectural Examiners Organizational Chart* shows the agency's divisions. A comparison of the agency's composition to the minority civilian labor force is provided in Appendix A. The agency has had some difficulty meeting equal employment opportunity goals, which is common for a small agency.

### Texas Board of Architectural Examiners Organizational Chart



*As a pilot project agency, the Board is now outside the state budget process.*

## Funding

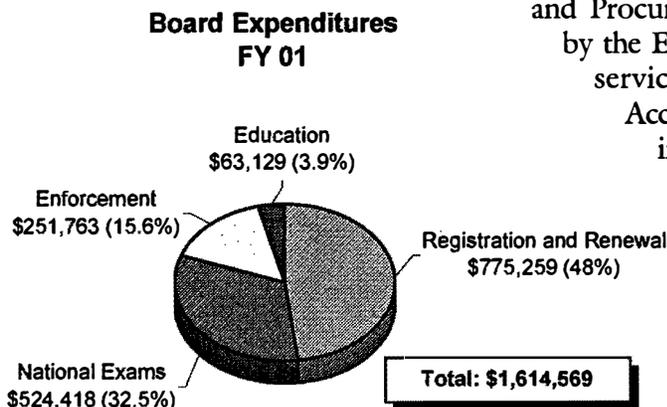
### Revenues

The Board received an appropriation of \$1,614,569 for fiscal year 2001. As a licensing agency, the Board generates revenue through registration, renewal and examination fees, which exceed its administrative costs. In fiscal year 2001, the Board collected fees totaling approximately \$2.4 million. These funds went directly into the General Revenue Fund. In addition, the Board collected professional fees totaling about \$1.9 million, and administrative penalties assessed against licensees totaling about \$27,000; however, those funds were deposited into the State's General Revenue Fund and were not available for agency use.

In fiscal year 2002, the Board began participating in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which removed the agency from the legislative appropriation process and granted the Board authority to operate under its own discretion. As a result, the agency did not receive an appropriation for fiscal years 2002 and 2003. Instead, agency revenues will be based on funds raised through licensing fees and administrative fines.

### Expenditures

In fiscal year 2001, the Board spent \$1,614,569 on four strategies: registration and renewal, national examinations, public information, and enforcement. The chart, *Board Expenditures*, illustrates the budget breakdown.



In addition to the expenditures shown above, 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. For fiscal year 2001, these direct and indirect costs totaled \$256,842. As of fiscal year 2002, the Board will pay all direct and indirect operating costs from fee collections, as required by the Self-Directed, Semi-Independent Licensing Agency Pilot Project.

Appendix B 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.

Although the agency fell well behind the statewide goal for other services in FY 2001, its HUB spending on commodities was above the goal. The Board must use sole source providers for purchasing and grading national exams, and this sole source acquisition represented 77 percent of the total amount expended for other services in FY 2001.

## Agency Operations

The Board protects the public by enforcing title acts for its three regulated professions, and practice acts for architects and landscape architects. The chart, *Board Professional Licenses*, describes some of the activities these professionals perform. As explained in the following sections, the Board accomplishes its goal through three core functions: registration, enforcement, and public education.

### Registration

The Board's registration staff provides five key services to its licensees: licensure, renewal, national examinations, continuing education, and examination scholarship program.

**Licensure.** The Board processes applications for its three regulated professions. While specific requirements vary among the three professions, all applicants must meet education and experience requirements, pass a national examination, and have a clear professional disciplinary record to be approved for registration in Texas. Additionally, staff checks applicants to determine if they have a disqualifying criminal history. The chart, *License Fees*, shows the number of licensed professionals and the fees they pay.

**Renewal.** Staff members oversee the annual registration renewal process for the three regulated professions. Before the renewal date, the Board mails notices to licensees. Licensees must send a renewal fee and a form verifying that they have finished continuing education requirements, and that they have had no criminal convictions in the last year. The Board has the authority to revoke a

Board Professional Licenses	
Profession	Functions
Architect	Designs buildings and structures intended for human occupancy. Architects consider many factors in building design, such as structural systems, building codes, life-safety systems, accessibility standards, wind and seismic forces, mechanical and electrical systems, and building materials and methods. Architects also oversee building construction and manage building projects.
Landscape Architect	Designs urban and natural environments. Design considerations include drainage and irrigation systems, storm water management, erosion and sediment controls, landscape design, and fire and flood prevention. Examples of design projects include recreational facilities, housing developments, and urban plazas.
Interior Designer	Designs non-load bearing features in commercial and residential spaces. Design projects consider building codes, acoustics, ergonomics, lighting, fire prevention, furnishings, fixtures, and space planning. Examples of design projects include hotels, office and government buildings, and private residences.

License Fees - FY 01			
Profession		Number	License Fee
Architects <sup>1</sup>	Resident	6,657	\$82
	Nonresident	3,194	\$125
Landscape Architects	Resident	936	\$82
	Nonresident	337	\$125
Interior Designer	Resident	6,614	\$82
	Nonresident	637	\$125

license if the licensee has a disqualifying criminal conviction. The Board may also revoke the license of any licensees who fail to renew their license within a year of its expiration date.

*National Examinations.* All architects, landscape architects, and interior designers must pass a national examination to be eligible for professional registration in Texas. The chart, *Board Examinations*, lists

Board Examinations - FY 01			
Examination	Fee	Test Sections Administered	Passage Rate
Architect	\$980	1,650	74%
Landscape Architect	\$570	394	38%
Interior Designer	\$495	546	75%

the cost of the exams, number of test sections administered, and passage rates. Staff coordinates the collection of examination fees and the administration of examinations with an approved national testing service for each profession. Staff members are responsible for reviewing examination applications, entering qualified applicants into each national testing service's data base of approved test candidates, collecting examination fees, and issuing

payments to each of the national testing services. The national testing services grade the exams, and then report the test scores to the staff, who distributes the scores to the examinees.

*Continuing Education.* In 1999, the Legislature established mandatory continuing education requirements for architects, landscape architects, and interior designers. The Board requires each licensee to complete eight hours of education annually. At least one of these hours must be related to barrier-free design, which is based on accessibility requirements set by the Americans with Disabilities Act and the Texas Accessibility Standards. At each renewal period, staff randomly audits a percentage of licensees who are then required to submit evidence of completion of continuing education. Licensees who have not fulfilled the requirements must complete the hours within 180 days or face license revocation.

*Examination Scholarship Program.* Staff members oversee the administration of the Architect Registration Examination Financial Assistance Fund (the Fund), which the Legislature established in 1999 to help defray the costs of the national architecture exam – currently \$981.<sup>2</sup> The Fund is supported by a \$10 mandatory renewal fee collected from architects, and currently has a balance of \$272,811. Texas residents who demonstrate financial need may apply for a \$500 scholarship. Through July 2002, a total of \$12,000 in awards was distributed to 24 recipients.

*The Legislature established an assistance fund in 1999 to help defray the costs of the national architecture exam.*

**Enforcement**

The enforcement staff investigates and prosecutes complaints about regulated and unregulated individuals. Complaints are either received from the public or opened by the agency. Formal complaints received

from the public must be in writing and notarized, but the agency may also open complaints received by telephone or electronic mail. After receiving a complaint, enforcement staff assesses the merits of a complaint and evidence. After setting up a complaint file and sending preliminary correspondence, the Enforcement Director assigns the complaint file to an investigator. The chart, *Complaint Activity*, describes the number and type of complaints the agency receives.

Staff investigators conduct investigations, including collecting supporting documents and interviewing those involved in the case, and prepare investigative reports. If staff cannot obtain evidence to substantiate allegations, the complaint may be dismissed.

In cases requiring disciplinary action, the agency sends a settlement proposal, approved by the Executive Director, to the individual under investigation. If the individual agrees with the proposal, the terms are finalized and presented to the Board at one of its meetings. If the individual and the agency cannot agree upon settlement terms, and the agency wants to impose an administrative penalty or take other action, the case is referred to the State Office of Administrative Hearings (SOAH). The agency may refer cases involving unlicensed persons to the Office of the Attorney General (OAG) for civil or criminal action.

In fiscal year 2001, the agency received 216 complaints. The agency took an average of 107 days to resolve a complaint. As of July 2002, the agency had 82 unresolved cases more than six months old.

*In fiscal year 2001, the agency took an average of 107 days to resolve a complaint.*

<b>Complaint Activity FY 01<sup>3</sup></b>							
	<b>Architects</b>		<b>Landscape Architects</b>		<b>Interior Designers</b>		<b>TOTAL</b>
	<b>Licensees</b>	<b>Nonlicensees</b>	<b>Licensees</b>	<b>Nonlicensees</b>	<b>Licensees</b>	<b>Nonlicensees</b>	
<b>Complaints Received</b>							
from public	39	7	1	0	5	5	57
from licensees	5	0	0	0	0	0	5
initiated by Board	29	62	4	8	17	34	154
<b>TOTAL</b>	<b>73</b>	<b>69</b>	<b>5</b>	<b>8</b>	<b>22</b>	<b>39</b>	<b>216</b>
<b>Complaints Resolved</b>							
dismissed/no merit	46	14	3	1	19	6	89
resulted in sanctions	31	49	2	5	1	30	118
referred to SOAH	8	0	0	0	0	0	8
referred to OAG	0	6	0	0	0	2	8
<b>TOTAL</b>	<b>85</b>	<b>69</b>	<b>5</b>	<b>6</b>	<b>20</b>	<b>38</b>	<b>223</b>

### **Public Information**

Public information program staff distributes information regarding both registration and enforcement concerns to schools of architecture, landscape architecture, and interior design; the public; and others through an annual newsletter, periodic mailings, and live presentations. In 2001, the agency provided information to about 25,000 entities. This information includes qualifications and requirements for professional registration, changes in laws affecting the regulated professions, and summaries of enforcement actions taken by the agency.

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<sup>1</sup> Architects must also pay a \$200 professional fee and \$10 scholarship fund fee.

<sup>2</sup> Although the Fund was established in 1999, it did not take effect until the Legislature passed clarifying language in 2001. The first grants were administered in June 2002, and the second grants will be administered in December 2002.

<sup>3</sup> The Board received and initiated an additional 238 complaints against design firms. All 238 cases were dismissed because no fault was found against the firms; however, in some instances, a separate case was opened against an individual.

# **APPENDICES**



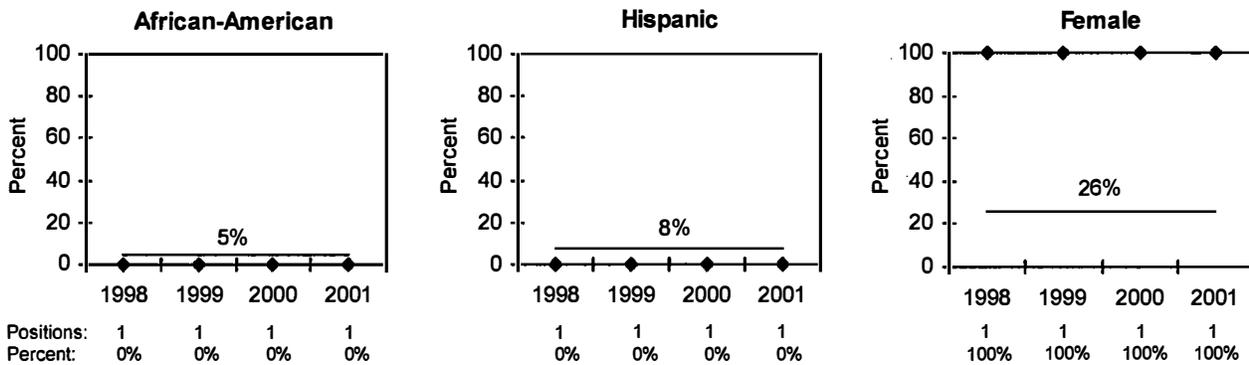
## Appendix A

### Equal Employment Opportunity Statistics

#### 1998 to 2001

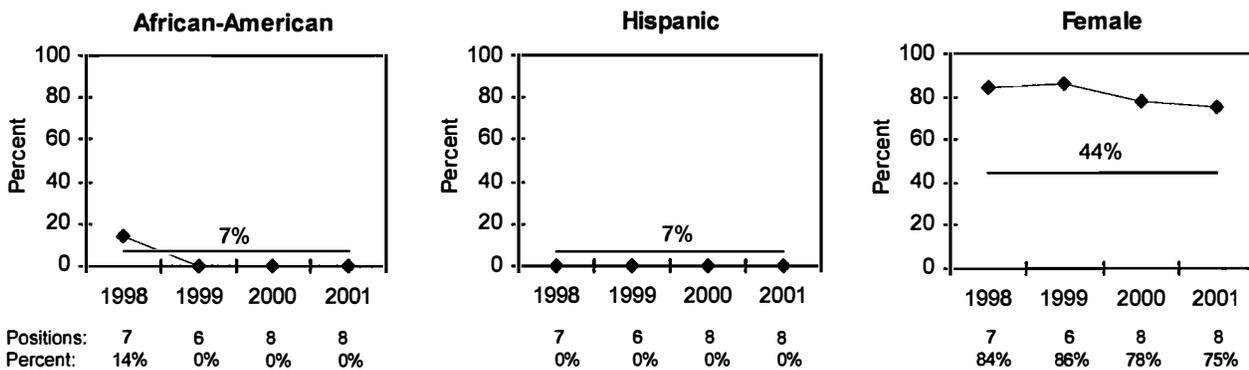
In accordance with the requirements of the Sunset Act, the following material shows trend information for the agency’s employment of minorities and females in all applicable categories of the labor force.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian labor force for African-Americans, Hispanics, and Females in each job category. These percentages provide a yardstick for measuring agencies’ performance in employing persons in each of these groups. The dashed lines represent the agency’s actual employment percentages in each job category from 1998 to 2001.

#### State Agency Administration



The Board exceeded the state goal for Female employment every year, but fell short of the goals for Hispanics and African-Americans each year.

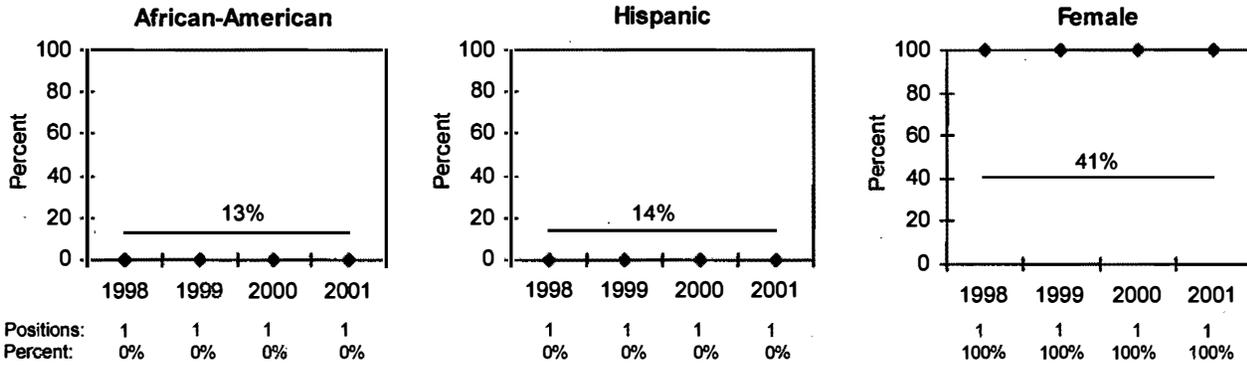
#### Professional



While the Board exceeded the goal for Female employment, it generally fell short of the goals for Hispanic and African-American employment during this period.

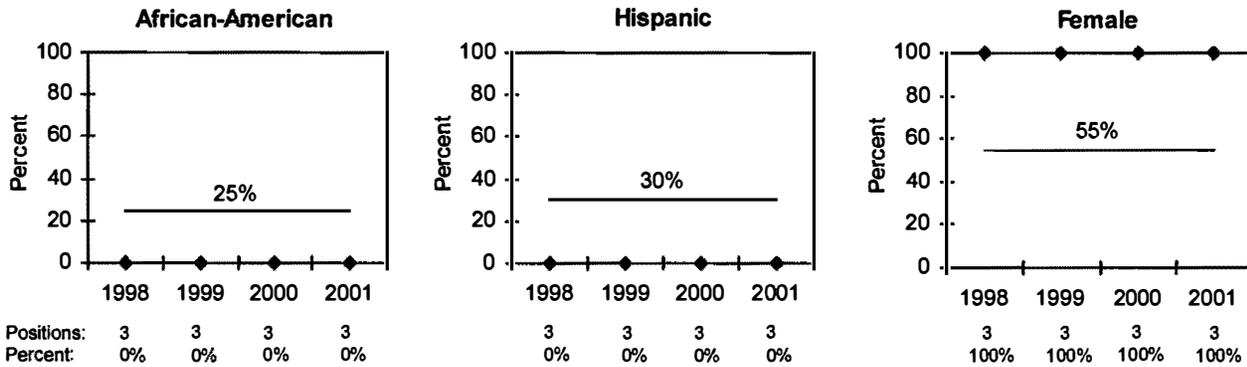
## Appendix A

### Technical



The Board exceeded the goal for Female employment, but had no Hispanics or African-Americans in this category.

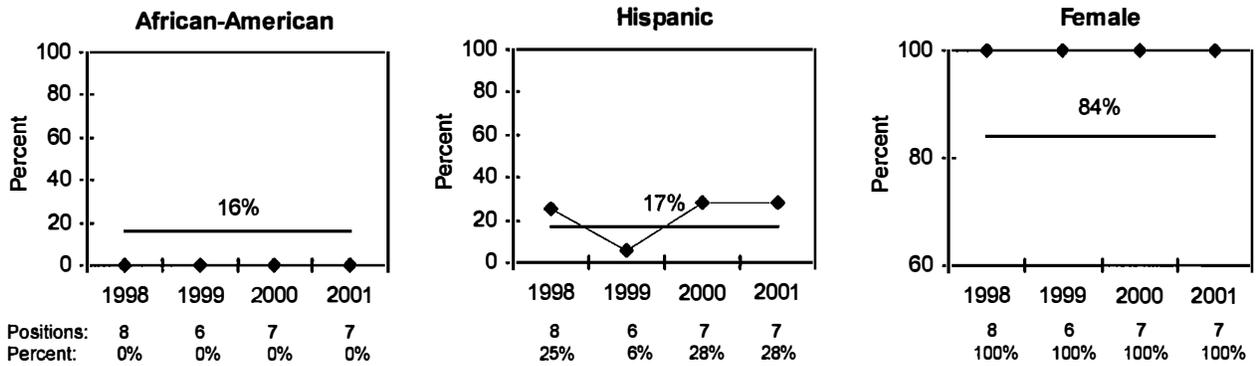
### Paraprofessional



While the Board exceeded the State's goal for Female employment in this category, it did not meet targets for Hispanics and African-Americans.

## Appendix A

### Administrative Support



The Board generally exceeded goals for Female and Hispanic employment, but had no African-Americans in this category.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501



## Appendix B

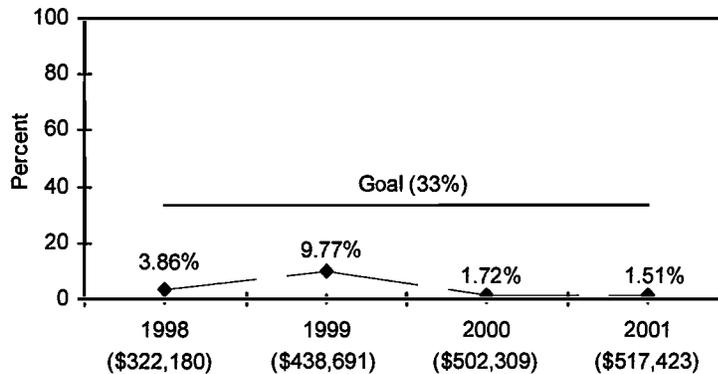
### Historically Underutilized Businesses Statistics

#### 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.<sup>1</sup> The review of the Texas Board of Architectural Examiners 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 agency's procedures.

The following material shows trend information for the Texas Board of Architectural Examiners 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.<sup>2</sup> 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. While the agency has fallen short of the State's goal for Other Services, it has generally met the goal for Commodities.

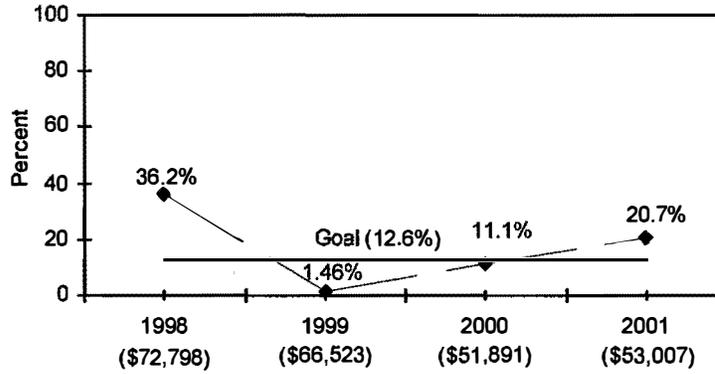
#### Other Services



The Board fell well below the statewide goal in Other Services. The Board must use sole source providers for the majority of its expenses in this category.

## Appendix B

### Commodities



The Board generally met the State's goal in this category.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.

## Appendix C

### Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Texas Board of Architectural Examiners.

- Worked extensively with agency staff.
- Attended Board meetings, reviewed audiotapes and minutes of Board meetings, and interviewed Board members.
- Attended a joint meeting of the Board and Texas Board of Professional Engineers.
- Met with in person, or interviewed over the phone, staff from the Texas Department of Licensing and Regulation, Texas Board of Professional Engineers, Texas State Board of Public Accountancy, Texas Department of Insurance, Legislative Budget Board, and the State Auditor's Office.
- Conducted interviews and solicited written comments from national, state, and local interest groups.
- Conducted interviews with licensees.
- Conducted interviews with representatives from professional design associations.
- Met with in person, or interviewed over the phone, building officials from College Station, Corpus Christi, Dallas, El Paso, Georgetown, Harlingen, and Midland.
- Researched the functions of architecture, landscape architecture, and interior design regulatory agencies in other states.
- Observed administration of the Landscape Architect Registration Exam.
- Reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature on architecture, landscape architecture, and interior design issues.
- Performed background and comparative research using the Internet.



**SUNSET REVIEW OF THE  
TEXAS BOARD OF ARCHITECTURAL EXAMINERS**

**Report Prepared By:**

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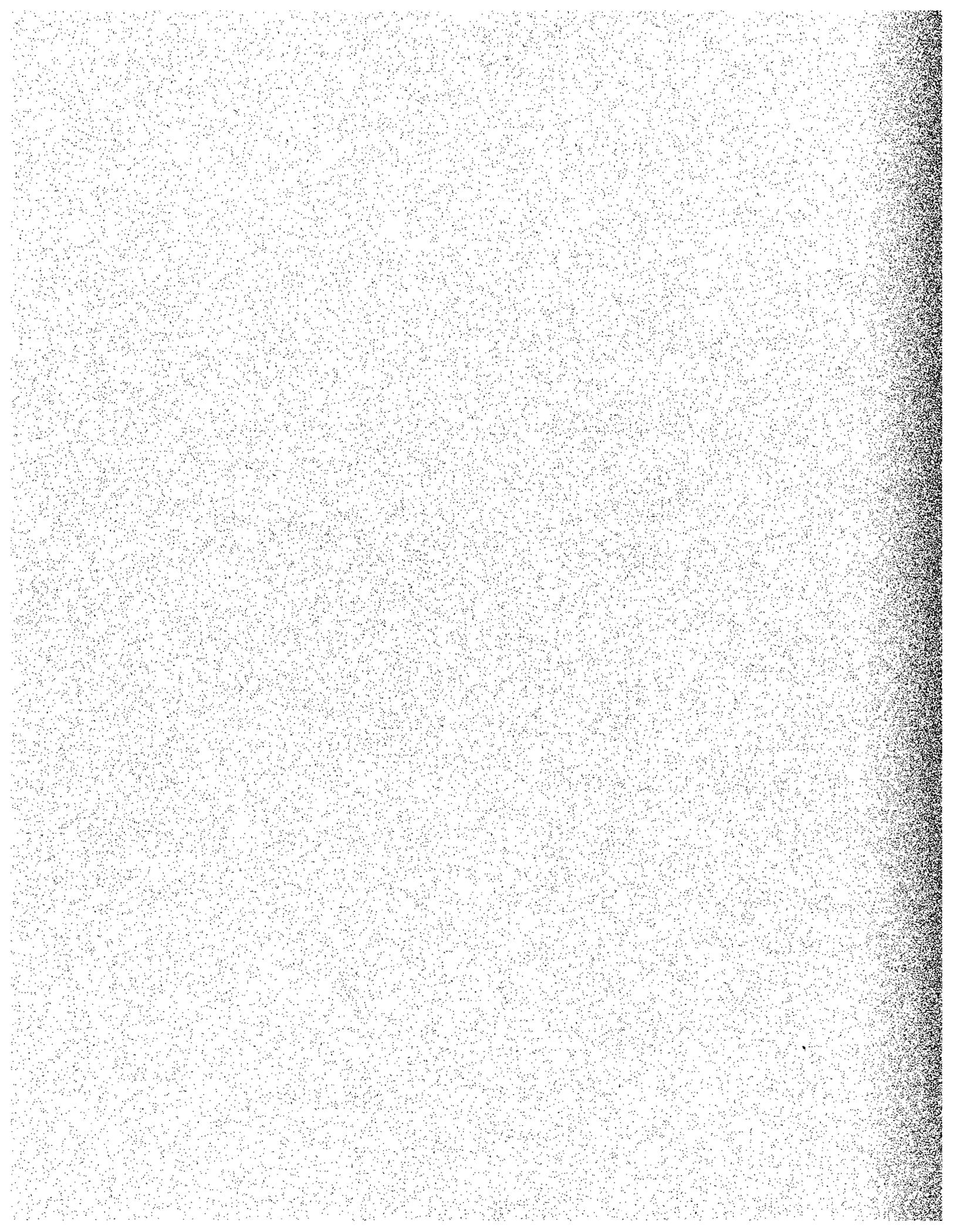
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**TEXAS BOARD OF PROFESSIONAL ENGINEERS**

**SUNSET STAFF REPORT**



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## **SUMMARY**





## Summary

### Sunset Staff Report

## Texas Board of Professional Engineers

Texas began regulating engineers in 1937, after a natural gas explosion at the school in the East Texas town of New London killed 300 students and teachers. In creating the Texas Board of Professional Engineers, the Legislature noted “the vital impact ... the practice of engineering is having upon the lives, property, economy, and security of our people.”

Because engineering can have a significant impact on Texans, the Board regulates the practice of engineering to ensure that only qualified individuals provide engineering services to the public. The Board accomplishes this task by licensing Professional Engineers, registering engineering firms, and enforcing the Texas Engineering Practice Act.

The Sunset review examined the Board’s policies and practices for licensing engineers and regulating the practice of engineering in Texas, seeking to improve the Board’s effectiveness in protecting the public. The review also assessed whether a separate agency is needed to accomplish this task.

The review found that although the Board meets its mission, the Board directs much of its attention to minor issues, possibly at the expense of more significant engineering concerns.

The review found that although the Board meets its mission, the Board directs much of its attention to minor issues, possibly at the expense of more significant engineering concerns, particularly in the Board’s enforcement efforts. Improvements to the way the Board receives and processes complaints would help the Board focus its enforcement activities on major infractions, improve the Board’s accountability, and provide better public access to the Board’s enforcement process.

While the review noted that the Board should continue as a stand-alone agency, Sunset staff found that increased coordination with the Texas Board of Architectural Examiners would help the two Boards resolve overlapping issues, and ultimately provide better public protection.

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](http://www.sunset.state.tx.us).*

*The Board directs  
much of its attention to  
minor issues, possibly at  
the expense of more  
significant engineering  
concerns.*

## Issues / Recommendations

---

### **Issue 1 The Board's Enforcement Activities Create a Burden on Complainants, Focus on Minor Infractions, and Provide Little Tracking Capabilities.**

#### **Key Recommendations**

- Require the Board to establish a simple, accessible process for accepting, opening, and investigating complaints, defined in rules, and available on its Web site.
- Require the Board to prioritize complaints and focus its efforts on those complaints that could harm the public.
- Authorize the Board to employ advisors and consultants to provide technical assistance on enforcement cases.
- Require the Board to track complaint information and report this information annually.
- Authorize the Board to establish a 30-day grace period for firms to register with the Board.

### **Issue 2 Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.**

#### **Key Recommendations**

- Revise elements of the agency's licensing authority to reflect standard practices in the way the Board accepts applications for licensure, makes exams accessible to individuals with disabilities, addresses applicants' criminal history, and processes renewals.
- Update elements of the agency's enforcement activities to improve the way the Board makes decisions on complaints, require staff to update the Board about administratively dismissed complaints, adopt a probation guide, and provide restitution as an option during informal conferences.
- Eliminate fees set and capped in statute and encourage the Board to increase coordination with other state agencies that have overlapping responsibilities.

---

**Issue 3 Texas Has a Continuing Need for the Texas Board of Professional Engineers, but Could Benefit From Greater Coordination With the Texas Board of Architectural Examiners.****Key Recommendations**

- Continue the Texas Board of Professional Engineers for 12 years.
- Require the Board to form a joint practice committee with the Texas Board of Architectural Examiners.

**Fiscal Implication Summary** \_\_\_\_\_

These recommendations will not result in a fiscal impact to the State. The Board is a participant in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which tests the ability of certain agencies to effectively operate outside the legislative appropriations process. Because the Board has been removed from the appropriations process, any gains or losses implicated in these recommendations would not be reflected in the General Revenue Fund.



**ISSUES / RECOMMENDATIONS**



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# Issue 1

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## The Board's Enforcement Activities Create a Burden on Complainants, Focus on Minor Infractions, and Provide Little Tracking Capabilities.

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### Summary

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#### Key Recommendations

- Require the Board to establish a simple, accessible process for accepting, opening, and investigating complaints, defined in rules, and available on its Web site.
- Require the Board to prioritize complaints and focus its efforts on those complaints that could harm the public.
- Authorize the Board to employ advisors and consultants to provide technical assistance on enforcement cases.
- Require the Board to track complaint information and report this information annually.
- Authorize the Board to establish a 30-day grace period for firms to register with the Board.

#### Key Findings

- The Board processes, investigates, and prosecutes complaints filed against both licensed engineers and nonlicensed individuals.
- The Board's process for filing a complaint creates a burden on the complainant and may limit public access.
- The Board cannot adequately address technical issues that arise during the enforcement process.
- The Board appears to focus its enforcement efforts on minor violations of the Act.
- The Board does not have a reliable system to track complaints.

#### Conclusion

The Sunset review evaluated the Texas Board of Professional Engineering's enforcement efforts to identify ways to better protect the public. Sunset staff found that the current enforcement process hinders the public's ability to conveniently file complaints with the Board. As a result, the majority of complaints prosecuted by the Board are initiated by staff and focus on minor infractions of the Texas Engineering Practice Act. Also, because engineering disciplines vary greatly, the Board lacks needed expertise to adequately address complaints that relate to technical engineering issues. Finally, poor tracking capabilities limit the Board's ability to provide reliable data on its enforcement process.

The recommendations should afford the public more convenient access to the Board's enforcement process, focus the Board on significant violations of the Act, facilitate the Board's access to industry experts, and enhance the Board's accountability.

## Support

**The Board processes, investigates, and prosecutes complaints filed against both licensed engineers and nonlicensed individuals.**

- The Board receives complaints from the public, accepts referrals from other agencies, and initiates complaints on its own when it finds violations of the Texas Engineering Practice Act or Board rules. The chart, *Complaint Activity*, provides information on complaints received and resolved by the Board over the last five fiscal years.

Complaint Activity - FY 1998-2002					
	FY 98	FY 99	FY 00	FY 01	FY 02
<b>Complaints received</b>					
From the public/referrals	341	323	306	442	370
Initiated by the Board	748	782	778	545	553
<b>Total</b>	<b>1,089</b>	<b>1,105</b>	<b>1,084</b>	<b>987</b>	<b>923</b>
<b>Complaints resolved</b>					
Dismissals	369	424	354	319	276
Sanctions	98	140	116	72	61
Cease-and-desist notices	16	19	29	43	20
Injunction	5	5	5	5	5
Voluntary compliance	474	589	614	579	553
Referred to SOAH	0	1	1	2	1
<b>Total</b>	<b>962</b>	<b>1,178</b>	<b>1,119</b>	<b>1,020</b>	<b>916</b>

*Complaints are initiated by the public, other agencies, or Board staff.*

- Generally, to file a complaint with the Board, a member of the public contacts the Board and speaks with a staff investigator, who sends the caller a copy of the Act and Board rules and a complaint form. When the Board receives either the complaint form or a written complaint, staff investigators open an inquiry in the complainant's name and solicit supporting information from the complainant to determine if enough information exists to substantiate the complaint. If evidence supporting a violation exists, staff opens a disciplinary case, notifies the respondent, and conducts an investigation.
- After staff completes an investigation, the Executive Director can dismiss the case, or offer the respondent an agreement of voluntary compliance or a consent order. If the respondent agrees to the consent order, the matter must still be approved by the full Board. If the respondent does not accept a consent order, the respondent can request that the case go before an informal conference committee, which includes the Executive Director, General Counsel, and one Board member. All Board members are used, on a rotating

basis, for informal conferences, although in technical cases one of the Professional Engineer members of the Board serves on the committee.

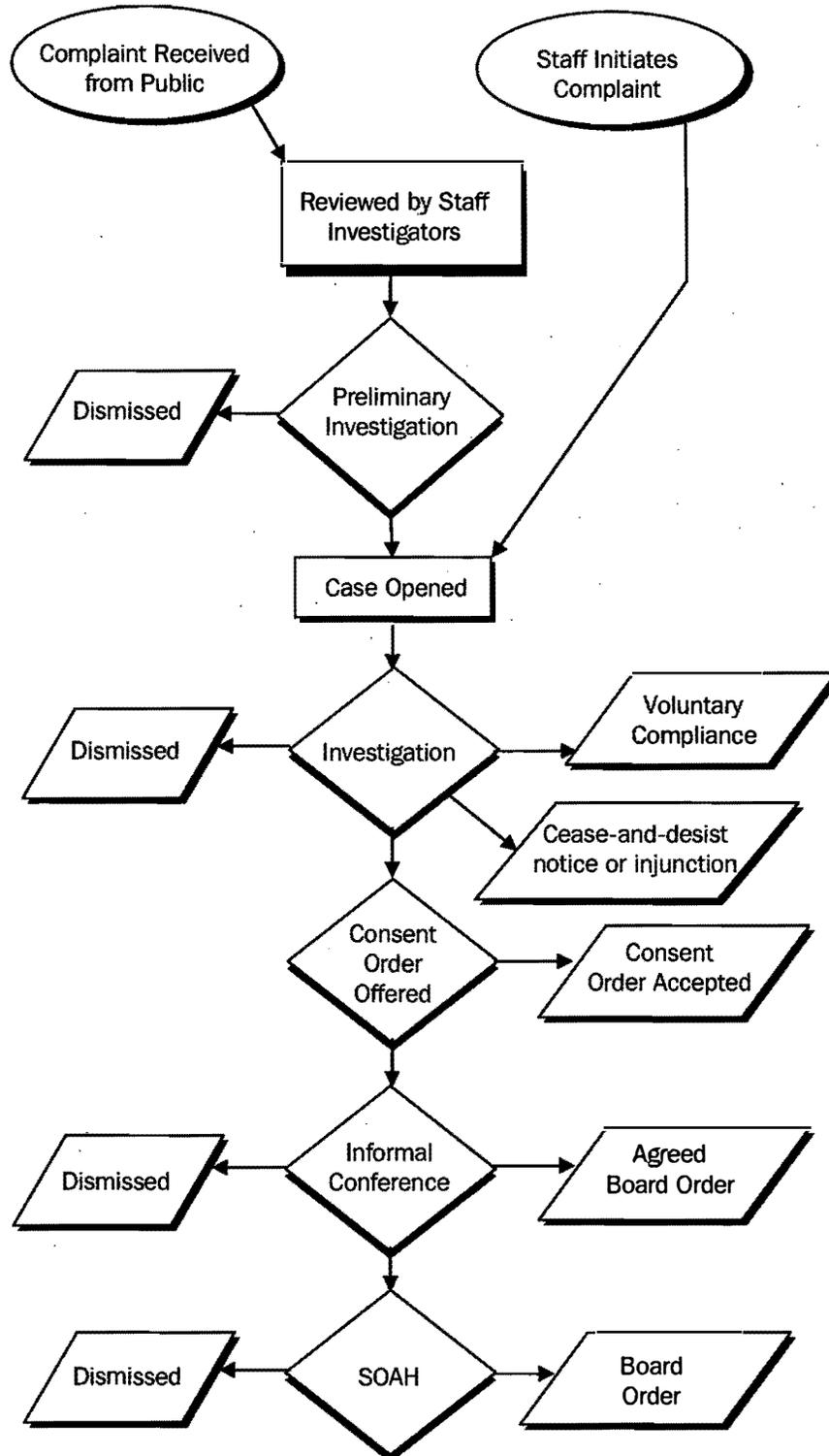
- The informal conference committee can either dismiss the case or issue an agreed order, which must be approved by the full Board. If the informal conference does not result in a resolution, the case is referred to the State Office of Administrative Hearings (SOAH). Respondents can opt to bypass the informal conference step and instead request that the case go straight to an administrative hearing before SOAH.
- Staff-initiated complaints and referrals from other agencies receive little to no preliminary investigation because they usually involve a simple fact situation or merely require acceptance of another agency's findings. Most staff-initiated complaints concern use of the title "engineer" or firm registration, and are discovered by staff investigators conducting phone book or Internet searches. The flow chart, *Engineers Board Enforcement Process*, on the next page, further outlines the Board's enforcement activities.

**The Board's process for filing a complaint creates a burden on the complainant and may limit public access.**

- Individuals wanting to file a complaint with the Board typically have to call the Board to receive information describing the complaint process and to request a complaint form. This information cannot be obtained any other way, such as through the Board's Web site.<sup>1</sup> Potential complainants' calls to the Board are routed to staff investigators, who interview them about the nature of their complaints, determine if the Board has jurisdiction, and recommend whether the caller should submit a complaint.
- Confusion about how to file a complaint may deter individuals from getting their complaints into the Board's enforcement process. Individuals who contact the Board about filing a complaint are sent a complaint form. The complaint form is lengthy and may not be easy to use by the general public.<sup>2</sup> In addition, the Board's *Consumer Information Pamphlet* says that a sworn affidavit is preferred when a licensee is the subject of the complaint, even though neither the Act nor Board rules requires complaints to be notarized.<sup>3</sup> However, the Board will proceed with complaints filed without a complaint form, as long as the complaint is in writing and includes a description of the violation, supporting information and factual evidence, names and addresses of witnesses, sources of other pertinent information, and what section of the Act or Board rules have been violated.<sup>4</sup>
- The Board requires complainants to perform much of the investigatory work before the Board will open a complaint. In fact,

*Complaints must be written and accompanied by factual evidence, names of witnesses, and the section of law that was violated.*

### Engineers Board Enforcement Process



Board rules maintain that it is not responsible for proving the basis of a complaint.<sup>5</sup> Complaints must be accompanied by sufficient information and factual evidence for the Executive Director to determine if probable cause exists.<sup>6</sup> Complainants provide evidence such as documents, engineering designs and plans, and expert witness testimony. The complainant also must specify the section of the Act or Board rule allegedly violated, show that a violation of law or rules likely has occurred, and demonstrate that the Board has jurisdiction and that some action should be considered.<sup>7</sup> The Board returns complaints that do not meet these criteria for completion.

*The Board maintains that it is not responsible for proving the basis of a complaint.*

The Board also encourages complainants to contact an attorney when preparing to file a complaint, noting that, "Legal counsel and considerations may prove beneficial in preparing a complaint as administrative hearings closely parallel those of a court action with regard to evidence, timely and proper submission of motions, subpoenaed witnesses, and the like."<sup>8</sup>

- The Board does not consider a complaint filed with the Board to actually be a "complaint" until the complainant provides enough evidence to warrant finding a violation. Files are opened in the complainant's, not the respondent's, name until the Board is satisfied that evidence exists that shows a violation likely occurred. Some cases take months to be deemed complaints, while other cases are never opened as complaints. The Board's enforcement manual defines "complaint" as an allegation of misconduct by a Texas licensed Professional Engineer that could result in a disciplinary action by the Board; or in the case of an unlicensed individual, prosecution in a court of competent jurisdiction.<sup>9</sup> Therefore, the Board claims to receive no nonjurisdictional complaints.

*Complaints are only viewed as such after the Board is satisfied with the evidence.*

The Board does not have a process to refer written complaints outside of its jurisdiction to the appropriate entity, such as another state agency or local District Attorney. As a result, the Board does not maintain information about such complaints. This prevents the Board, and the Legislature, from having valuable information about problems that may need to be addressed in the engineering industry, as well as in areas of the profession that overlap with other, similar professions.

**The Board cannot adequately address technical issues that arise during the enforcement process.**

- The Board does not have the in-house resources to address technical issues that arise during investigations and enforcement procedures, such as informal conference committees. The Board recognizes 27 engineering disciplines, such as civil engineering and structural engineering. The Act requires six Board members to be licensed

*Because engineering disciplines vary greatly, the Board's licensed engineers cannot be knowledgeable about all areas of engineering.*

Professional Engineers and Board rules or policies require the Executive Director and the directors of the Licensing and Compliance Assistance divisions also to be licensed Professional Engineers. As a result, all 27 disciplines cannot be represented on the Board. In fact, the nine Board and staff members who are Professional Engineers are skilled in five engineering disciplines: civil, electrical, environmental, mechanical, and structural engineering. Because engineering disciplines vary greatly, the Board's licensed engineers cannot be knowledgeable about all areas of engineering.

- The Board's investigators are not required to be licensed engineers, and none of the current staff investigators holds a Professional Engineer license or has an engineering background. Although some knowledge of engineering is essential to conducting comprehensive investigations, the Board offers no formal training for staff investigators, which may affect the type of information gathered and recorded during investigations. The Board's informal training methods include on-the-job training and "shadow" periods, when a newly hired investigator accompanies a current investigator on his daily routine. Without some training in engineering, vital evidence can be lost or go unnoticed and the complaint process may be unnecessarily delayed, as investigators must routinely seek input from licensed Professional Engineers on staff or on the Board.
- The Board is reluctant to use technical assistance experts because of concerns about liability. In the past, engineers who have provided the Board with expert witness testimony or other technical input have later been threatened with legal action by respondents. As a result, agency staff indicated that Professional Engineers are hesitant to assist the Board with enforcement matters. Board staff has said that access to technical experts would help the Board stay abreast of standard engineering practices. Cases in which the Board would benefit most from technical assistance are more likely to involve situations that could harm the public, such as the illegal or incompetent practice of engineering.

*About two-thirds of the Board's enforcement cases are initiated by staff each year.*

**The Board appears to focus its enforcement efforts on minor violations of the Act.**

- The Board has an internal quota of opening at least 25 enforcement cases per week. The public and other outside sources typically do not generate enough complaints for the Board to meet this quota, so staff generates the rest by searching phone books or the Internet for violations of the Act or Board rules. As a result, staff investigators initiate about two-thirds of the Board's enforcement cases each year. Of the 545 cases opened by staff in fiscal year 2001, 513 related to issues such as firm registration, not notifying the Board of a change of address, and title violations. While the Board does not track the

amount of time it takes to close a staff-initiated case, both licensees and nonlicensees have expressed concern about the amount of time the Board spends on such investigations.<sup>10</sup>

For example, when staff investigators discover engineering firms that have not registered with the Board, staff opens a complaint against the business and notifies the firm that it has not complied with registration requirements. However, when made aware of the need to register, most firms comply quickly. Of 50 firm registration violations examined by Sunset staff, 44 of the engineering firms complied with the registration requirements upon first contact from the Board. Yet, the Board still goes through the process of opening a case and pursuing an enforcement action against such firms, possibly at the expense of more serious engineering violations that require greater investigative resources.

- The Board does not devote adequate attention to cases involving technical engineering issues. Such disciplinary cases tend to be those that could most likely harm the public, such as gross negligence or incompetent practice cases. Instead, the cases the Board is most likely to see through include minor infractions, such as the illegal use of the title “engineer” or failure to register as a firm. For example, out of the cases involving licensees received in fiscal year 2001, the Board has dismissed half, while out of cases opened against firms and nonlicensees – most of which include minor violations – 75 percent have resulted in a sanction or an agreement of voluntary compliance.

*The Board is most likely to see through complaints that involve minor infractions.*

**The Board does not have a reliable system to track complaints.**

- During the Sunset review, the Board had difficulty providing accurate, consistent statistics on complaint activity, such as the number of cases dismissed, the number of nonjurisdictional complaints received, and the number and types of sanctions issued. Without a tracking system that follows complaints from initial receipt to final disposition, the Board cannot ensure that all complaints are addressed and that information reported by the Board is accurate, and thus it cannot evaluate the quality of its enforcement program.
- The Board assigns multiple case numbers for the same complaint, making tracking difficult, cumbersome, and prone to confusion. Also, the Board does not accurately account for the time it takes to close a case. Staff does not start tracking the time a case is open until staff has performed preliminary investigatory work and determined that a violation of the Act or Board rules likely occurred. For example, if a complaint is filed with the Board on June 1, but staff takes until September 1 to determine that a violation likely occurred, staff would not begin counting the time the case is open

*The Board does not track the time it takes to resolve staff-initiated complaints.*

until September. If the case is closed on December 1, the Board would report the case as being closed in three months. However, the complainant actually filed the complaint six months earlier. The Board does not track the time it takes to resolve staff-initiated complaints.

- Definitions used for the disposition of complaints seems to vary among staff. For example, when enforcement staff closes a case, investigators must label the disposition as “no violation,” “voluntary compliance,” or “violation terminated.” However, cases that resulted in consent orders have been classified under each of these headings. As a result, data supplied by the Board is not reliable.

**Legislative enactments regarding other agencies and a recent legislative study of the Board indicate ways to improve enforcement of the Texas Engineers Practice Act.**

- Standard practices among licensing agencies, detailed in the Sunset Occupational Licensing Model, indicate that the Board should 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 the public have easy access to the agency’s enforcement processes through reasonable, simple complaint filing procedures and that investigations be thoroughly documented. Doing so would help ensure appropriate and consistent action by the agency, thereby protecting licensees as well as the public.

Agencies should not place too much of a burden on complainants to have their complaints accepted. In fact, agencies typically assume responsibility for complaints on behalf of complainants once the agency receives a valid allegation. For example, the Texas Board of Professional Land Surveying has made its one-page complaint form available on the Internet. Complainants are asked to describe their complaint and given the option of providing any supporting documentation. Once an individual turns the complaint in to the Land Surveying Board, the Board opens an enforcement case, determines if the Board has jurisdiction, and if so, begins investigating the complaint.

- A 2002 report by the State Auditor’s Office, Management Advisory Services (MAS), recommended that Board staff review the definition of what constitutes a complaint and define the types of complaints addressed by the Board.<sup>11</sup> The study also found that the Board’s case management could be improved to enhance tracking and reporting of cases and to standardize documentation.<sup>12</sup> The Board recently has taken action to implement some of MAS’ recommendations. For example, to address concerns about the

Board's application of administrative penalties, the Board revised its penalty matrices in rule and began using a penalty worksheet to determine penalty amounts.

- The Legislature has granted confidentiality and immunity from suit to committees and individuals who provide technical expert testimony and assistance to other occupational licensing agencies, such as the Texas Board of Medical Examiners, the State Board of Dental Examiners, and the Texas State Board of Podiatric Medical Examiners. Such immunity has allowed other agencies to more easily receive technical input on enforcement matters.

For example, the Texas State Board of Podiatric Medical Examiners has authority to use licensed podiatrists as investigators for complaint investigation and disposition. Statute grants these investigators used by the Board immunity from suit and liability for providing testimony and opinions in an enforcement case, as well as for investigating a complaint and participating in an informal conference to determine the facts of the complaint.<sup>13</sup> Also, the Texas Board of Medical Examiners uses paid and voluntary physicians who serve as consultants to the Board in enforcement cases. The Medical Board's statute allows the Medical Board to offer these consultants immunity from liability in exchange for their technical expertise. Medical Board staff indicated that without the ability to offer consultants immunity, the Medical Board would not be able to recruit experts to assist the Board and as a result, the Medical Board's enforcement efforts would be greatly hampered.<sup>14</sup>

*The ability to offer immunity from suit to technical experts has allowed other agencies to more easily receive technical input on enforcement matters.*

## Recommendation

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### Change in Statute

#### **1.1 Require the Board to establish a simple, accessible process for accepting, opening, and investigating complaints.**

This recommendation would streamline the Board's complaint process by requiring the Board to open an enforcement action upon receipt of a complaint from the public or licensee, or a referral from another agency. The Board would consider any written grievance, including those that fall outside of the Board's jurisdiction, as a complaint. The Board would discontinue its current practice of waiting until it is possible to make a determination on disciplinary action before opening an official complaint case. Classifying all grievances as actual complaints also would allow the Board to maintain confidentiality from the time the complaint is initially filed with the Board until formal charges have been filed. This recommendation also would clarify that complainants should be required only to provide enough information for the Board to determine jurisdiction, and that Board staff is responsible for conducting all phases of investigations, including gathering needed evidence.

**1.2 Require the Board to establish the process for filing a complaint in rule and to make this information available to the public via the Board's Web site.**

This recommendation would ensure that the Board clearly defines the method for filing a complaint in rule, and that the Board accepts public input in determining this method. The Board would be required to put the process for filing a complaint, as well as the complaint form, on the Board's Web site, making the Board's enforcement process more accessible to the public. The public should be able to easily and conveniently access the Board's complaint process without having to first be screened by staff investigators. Complainants who want to speak with an investigator before filing a complaint should still be able to do so, but this should not be a requirement.

**1.3 Require the Board to prioritize complaints and focus its efforts on those complaints that could harm the public.**

While engineer title issues, firm registration cases, and other minor infractions are violations of the Act and Board rules, the Board should develop a method to prioritize complaints. Complaints that allege actions that could potentially harm the public and complaints received by the public should take precedence over staff-initiated complaints and minor infractions.

**1.4 Authorize the Board to employ advisors and consultants to provide technical assistance on enforcement cases.**

This recommendation would authorize the Board to seek the advice of technical experts in enforcement cases that involve expertise beyond the Board's in-house resources. Specifically, the Board would be able to use advisors, consultants, engineers, or others to assist it in performing its duties relating to enforcement. These persons would be immune from civil liability for any damage caused in the performance of their official duties, in the absence of fraud, conspiracy, or malice. This provision would help protect persons who contract with the Board, witnesses called to testify by the Board, and consultants appointed by the Board, from being harassed and threatened with legal action while performing official duties.

**1.5 Require the Board to track complaint information and report this information annually.**

This recommendation would require the Board to compile detailed statistics about complaints received and resolved each year and provide this information in its annual report. The Board would provide a separate breakdown of cases resolved each year, classified either as administrative violations that generally originate with the staff, or as disciplinary cases that generally originate as a complaint by the public or other source outside the agency. Keeping track of nonjurisdictional complaints received by the Board would give the agency and the Legislature a fuller picture of the public's problems and concerns in this regulatory area. Specifically, the information the Board should track and report includes the following.

- The reason or basis for the complaint, such as professional misconduct or failure to register as a firm.
- The origin of the complaint, such as the public, the Board's staff, referral from another agency, or another source outside the agency.

- The average time to resolve the case from the date the Board initially received the complaint.
- The outcome of the cases, including the number of cases dismissed and the reason for the dismissal, and the number of cases resulting in disciplinary action and the action taken.
- The cases resulting in enforcement action should also show how the action is imposed, such as by consent order, agreed order approved by the Board, or Board order resulting from a contested case.
- The number of complaints received that fall outside of the Board's jurisdiction, the nature of the complaint, and the action taken.
- The agency should also provide the number, type, and age of all open cases as of the end of each fiscal year and any other information required by the Texas Engineering Practice Act relating to statistical analysis of complaints.

The Board should ensure appropriate documentation on all complaint files, including from the investigative process and from the informal conference. The Board should assign one case number to a complaint, allowing for easier tracking capability and reducing the chance that a case will get overlooked.

#### **1.6 Authorize the Board to establish a 30-day grace period for firms to register with the Board.**

Under this grace period, firms registering with the Board for the first time would be granted 30 days after specific, written notification from the Board to comply with registration requirements. Such notification of the need to register would not be considered opening of an enforcement case, but instead a means of bringing otherwise legal firms into compliance. Firms that comply within the 30-day period would have no record of enforcement action taken against them. If firms do not register within the 30-day period, the Board would open a complaint case and begin enforcement action. The 30-day grace period would apply only to firms registering for the first time; firms that fail to renew their registration would be subject to enforcement action when their registration expires. This recommendation would allow the Board to use its professional discretion in determining whether a firm should receive the 30-day grace period.

### **Management Action**

#### **1.7 Provide formal training for all investigative staff.**

Investigators should be initially trained to ensure that they understand investigative techniques, the Texas Engineering Practice Act, and other engineering issues. While investigators should not be expected to have the knowledge of an engineer, formal training should lead to higher quality investigations and cases that can be resolved more quickly.

### **Impact**

These recommendations are intended to improve the public's access to the Board's enforcement process, prioritize the Board's attention on major engineering infractions, and make the Board more accountable for providing accurate information about its enforcement activities. Requiring

the Board to establish its complete complaint process in rule, provide the Board's complaint form on the Internet, open an enforcement case upon receipt of a complaint, and annually report complaint tracking information would ensure that the Board promptly, consistently, and reliably addresses complaints. Extending immunity from legal action to engineering experts who assist the Board, granting engineering firms 30 days to comply with registration requirements, and providing training for staff investigators would strengthen the Board's ability to investigate complaints that allege engineering actions that could harm the public. Ultimately, these recommendations would help the Board better enforce the Texas Engineering Practice Act.

## Fiscal Implication

These recommendations would not have a fiscal impact to the State. The Board may incur some costs as a result of contracting with technical experts. However, costs can be recovered by the Board through its flexibility as a part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project.

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<sup>1</sup> The Board publishes a *Consumer Information Pamphlet*, which is available on the Board's Web site. However, the pamphlet does not address the process for filing a complaint. Texas Board of Professional Engineers, *Consumer Information Brochure*, [www.tbpe.state.tx.us/downloads/consinfo.htm](http://www.tbpe.state.tx.us/downloads/consinfo.htm). Accessed: August 1, 2002.

<sup>2</sup> A 2002 report by the State Auditor's Office, Management Advisory Services (MAS), recommended that Board provide a simple, easy-to-use complaint form on its Web site. As of the publication of this report, the Board has not yet implemented this MAS recommendation. State Auditor's Office, Management Advisory Services, "Improving the Enforcement Process at the Texas Board of Professional Engineers, report no. 02-330 (Austin, Texas, February 2002), p. 10.

<sup>3</sup> Texas Board of Professional Engineers, *Consumer Information Brochure*, [www.tbpe.state.tx.us/downloads/consinfo.htm](http://www.tbpe.state.tx.us/downloads/consinfo.htm). Accessed: August 1, 2002.

<sup>4</sup> Texas Board of Professional Engineers, *Frequently Asked Questions Regarding Enforcement*, [www.tbpe.state.tx.us/enforce\\_faqs.htm](http://www.tbpe.state.tx.us/enforce_faqs.htm). Accessed: September 26, 2002.

<sup>5</sup> Texas Administrative Code, Title 22, part 6, rule 131.171.

<sup>6</sup> Ibid.

<sup>7</sup> Texas Administrative Code, Title 22, part 6, rule 131.171; and Texas Board of Professional Engineers, letter sent to potential complainants.

<sup>8</sup> Ibid.

<sup>9</sup> Texas Board of Professional Engineers, *Enforcement Section Information Manual* (Austin, Texas, revised February 7, 2001), p. 11.

<sup>10</sup> Sunset Advisory Commission, Survey of the Complaint Process of the Texas Board of Professional Engineers, July-September 2002.

<sup>11</sup> State Auditor's Office, Management Advisory Services, "Improving the Enforcement Process at the Texas Board of Professional Engineers, report no. 02-330 (Austin, Texas, February 2002), p. 15.

<sup>12</sup> Ibid., p. 15-17.

<sup>13</sup> Texas Occupations Code, sec. 202.204.

<sup>14</sup> Telephone interview with Texas Board of Medical Examiners staff, August 22, 2002.

## Issue 2

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

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## Summary

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### Key Recommendations

- Revise elements of the agency's licensing authority to reflect standard practices in the way the Board accepts applications for licensure, makes exams accessible to individuals with disabilities, addresses applicants' criminal history, and processes renewals.
- Update elements of the agency's enforcement activities to improve the way the Board makes decisions on complaints, require staff to update the Board about administratively dismissed complaints, adopt a probation guide, and provide restitution as an option during informal conferences.
- Eliminate fees set or capped in statute and encourage the Board to increase coordination with other state agencies that have overlapping responsibilities.

### 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 Engineering Practice Act do not match model licensing standards developed by Sunset staff from experience gained through more than 70 occupational licensing reviews over the last 25 years. For example, some licensing requirements are unclear or overburdensome, such as application notarization and separate character references. The Sunset review compared the Board's statute, rules, and practices against the model licensing standards to identify variations. Based on these variations, staff identified the recommendations needed to bring the Board in line with the model standards.

## Support

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### **The Board licenses and regulates Professional Engineers in Texas.**

- The Board's mission is to protect the public's health, safety, and welfare by ensuring that only competent individuals are licensed as Professional Engineers in Texas and by regulating the practice of engineering in Texas.
- The Board performs two core functions: licensing and enforcement. In fiscal year 2002, the Board regulated 48,793 Professional Engineers. The Board regulates the engineering profession by investigating and resolving complaints alleging illegal or incompetent practice of engineering by both licensed and unlicensed persons; and by enforcing the Texas Engineering Practice Act and taking disciplinary action when necessary.
- In fiscal year 2002, the Board, along with the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners, began participating in the Self-Directed, Semi-Independent Licensing Agency Pilot Project — a test of the effectiveness of removing self-funded licensing agencies from the legislative appropriations process. As part of the Pilot Project, the Board now collects its revenues directly from licensing fees, and spending limitations set in the General Appropriations Act, such as caps on agency full-time equivalent positions and travel expenditures, do not apply to the Board.

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

- The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 70 reviews of licensing agencies.
- To help ensure that certain licensing and enforcement features are used consistently by licensing programs across Texas, the Sunset Commission has adopted eight across-the-board standards for application to licensing agencies undergoing Sunset review. For example, one of these standards requires licensing agencies to adopt a system of continuing education for licensees, while another gives licensing agencies a full range of administrative sanctions.
- Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. Aspects of the Texas Engineering Practice Act and some of the Board's

*The Sunset Commission has worked to ensure consistency across licensing programs in Texas.*

regulatory practices differ from model standards. Although the Board participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, its licensing, enforcement, and administrative programs should still follow standard practices, as bringing those aspects into conformity with licensing 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 be easily determined and should relate to the practice of the profession. Otherwise, they introduce a level of subjectivity to the licensing process that has little or no bearing on protecting the public and may disqualify suitable applicants from licensure.

Applicants for licensure as a Professional Engineer must submit at least five references that address the applicant's character, reputation, and general suitability for licensure. Three of the references must come from a licensed Professional Engineer who attests to both the applicant's engineering experience and suitability for licensure. The additional two references dealing solely with the applicant's character are not needed to provide the valid, objective verification of experience required to protect the public.

*References dealing solely with an applicant's character are not needed to protect the public.*

- *Application notarization.* The process for applying for licensure should not overburden applicants or unreasonably restrict entry into the profession. Currently, individuals seeking licensure must submit notarized applications to the Board to ensure that education and experience information on the application is correct. However, by rule the Board requires that the applicant include formal education information through certified transcripts which ensures that education information on the application is correct. Additionally, this notarization requirement is unnecessary as state law prohibits a person from knowingly making a false entry in a government record.<sup>1</sup>
- *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. This law provides that a criminal conviction affects qualification for licensure when a crime is related to the profession, according to guidelines developed by the agency and published in the Texas Register. These guidelines allow an agency to suspend or revoke a license, disqualify a person from receiving a license, or deny the opportunity to take a licensing exam because of specific criminal activity. 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.

*Clarifying the Board's responsibility to establish accessibility policies will ensure that applicants with disabilities are not excluded from taking the Board's exams.*

- *Access to exams.* Exams should not exclude individuals because of disability, as long as those individuals qualify to sit for the test. The testing procedure should follow all legal guidelines related to equal opportunity and access. The Americans with Disabilities Act requires that state agencies make their programs and services accessible to disabled persons. The Board currently follows policies set by the National Council of Examiners for Engineering and Surveying to accommodate examinees who notify the Board of a disability. However, the Board's statute does not require the Board to adopt rules regarding exam accessibility. Referencing the Americans with Disabilities Act in the Board's statute would clarify the Board's responsibility to establish accessibility policies in rule and ensure that future applicants with disabilities are not excluded from taking exams.
- *License renewal dates.* The date for license renewals should be scheduled to avoid bottleneck periods. A staggered renewal system leads to greater staff efficiency and more timely processing of renewals, thereby improving agency service to licensees. Although the Legislature has given the Board authority to set staggered renewal dates in rule, the Board has scheduled renewal of its approximately 50,000 licenses quarterly, creating a backlog several times a year. Switching to a continuous renewal cycle in which licenses expire on the licensee's birthday would achieve a more even workload for staff and be more convenient for licensees.

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

- *Recusal.* Board members who participate in enforcement cases should recuse themselves in subsequent disciplinary proceedings to ensure fair and objective decision making by the full Board. Currently, Board members participate, on a rotating basis, in informal conferences, including reviewing case information. While Board members typically recuse themselves from voting on any disciplinary action proceedings involving cases they heard as part of an informal conference, they are not mandated to do so. Including a statutory requirement that Board members recuse themselves from voting on final disciplinary actions of cases they reviewed during an informal conference would ensure that the Board continues this practice, maintaining the fairness and objectivity of the Board's consideration of enforcement cases.
- *Complaint reporting.* Authorizing agency staff to dismiss complaints without having to involve Board members saves time in considering each complaint. However, staff should inform the Board of all dismissals to ensure that the Board is kept abreast of staff actions as well to help the Board understand the staff's enforcement workload and any trends in the types of complaints being received by the agency. Currently, the Executive Director has

authority to dismiss complaints; however, staff does not report these dismissals to the Board. Requiring staff to inform the Board of administratively dismissed complaints would keep the Board aware of staff actions without requiring Board members to invest time in each complaint case.

- **Probation procedure.** Probation of a license allows licensees found in violation of regulatory requirements to continue practicing while they take corrective action to address the agency's concerns. Probation procedures should provide 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 currently 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.
- **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 when 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.

**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 set or capped fee amounts in statute and authorizing agencies to set fees by rule. Allowing an agency to set its own fees provides greater administrative flexibility and reduces the need for the Legislature to continually update agency statutes to accurately reflect the costs of regulation. Because agencies are required to set fees in rule, the public can comment on all proposed fees.

The Board's statute caps fees, including a \$200 limit on the examination fee. A national testing organization develops and administers the Board's exams. Currently, the Board purchases two of these exams, Structural Engineering II and Structural Engineering III, at a cost of \$200 each. The Board charges examinees \$200 for the morning session of the exam and \$200 for the afternoon session, yet at the current statutory fee level, the agency cannot recover its administrative costs. Allowing the Board to set examination fees would alleviate this problem and ensure that the Board can adapt quickly to future fee changes made by the national testing organization. The chart, *Board Fees Capped in Statute*, outlines the statutory limit and current level of the Board's fees.

*At the current exam fee level, the Board cannot recover its administrative costs.*

- **Coordination with other state agencies.** Sometimes regulation of an industry may result in overlap among state agencies. When consolidating functions is not practical, agencies should coordinate the efforts of their overlapping responsibilities.

Board Fees Capped in Statute		
Fee Category	Statutory Cap	Current Fee
Examination	\$200	\$50 to \$400, depending on exam <sup>2</sup>
License	\$50	\$50
Renewal	\$75	\$30
Reciprocal license	\$50	N/A
Duplicate license	\$5	\$5
Engineer-in-Training certificate	\$15	\$15
Roster of engineers	\$10	\$10
Firm registration	\$100	\$75 for firms, \$25 for sole proprietors

Overlap exists between engineering and other professions, including land surveying and geoscience, that may cause confusion among the public and regulated individuals. (Overlap between the Board and the Texas Board of Architectural Examiners is addressed in Issue 4 of this report.) The Board should use memoranda of understanding or other less formal methods to increase coordination with other state agencies with overlapping responsibilities and interests. Doing so will streamline processes and provide the public with more efficient service.

## Recommendation

### Licensing

#### Change in Statute

##### **2.1 Eliminate the requirement that applicants must submit separate character references as a qualification for licensure.**

This recommendation would eliminate the requirement that an applicant for licensure submit separate references relating to the applicant’s character. An applicant would still need to supply three references from licensed Professional Engineers that address the applicant’s engineering experience and general suitability for licensure, which could include character. Removing the requirement for separate character references would help ensure fairness in the application process and focus on more measurable characteristics of applicants.

##### **2.2 Eliminate the application notarization requirement on individuals who apply for licensure with the Board.**

This recommendation would remove 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.

### **2.3 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 general guidelines in Chapter 53 of the Occupations Code for dealing with criminal convictions by specifically referencing the chapter in the Board's enabling statute.

### **2.4 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.**

Under this recommendation, the Board's statute would be amended to ensure that testing accommodations for the Fundamentals of Engineering and Principles and Practice of Engineering exams are in accordance with the Americans with Disabilities Act. The Board would need to adopt rules regarding accessibility accommodations and work with the national testing organization the Board uses to ensure that these rules are followed.

## **Management Action**

### **2.5 The Board should explore switching to a continuous license renewal system.**

This recommendation would encourage the Board to create a continuous license renewal system in which licenses expire on a licensee's birthday. This would eliminate quarterly backlogs, result in greater administrative efficiency, and provide more convenient service to licensees. Should the Board opt to use a continuous license renewal system, the Board should prorate fees on a monthly basis during any transition period.

## **Enforcement**

### **Change in Statute**

### **2.6 Require Board members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations or informal hearings.**

This recommendation would require Board members to recuse themselves from voting on disciplinary actions in cases in which they played a role at the investigatory or informal hearing level. Recusing Board members who have a prior interest in a case would promote objective decision making and ensure that the respondent receives a fair hearing.

### **2.7 Require agency staff to report administratively dismissed complaints to the Board.**

Staff would regularly report administratively dismissed complaints to Board members under this recommendation. When reporting dismissals, staff should include the complainant, respondent, nature of the complaint, and reason for the dismissal.

### **2.8 Require the Board to adopt a probation guide.**

This recommendation would require the Board to adopt guidelines in rule for probating license suspensions and to develop a system for tracking compliance with probation, thus ensuring that the Board uses the probation sanction consistently and that licensees meet the terms of probation.

## **2.9 Authorize the Board to require restitution as part of the settlement conference process.**

Under this recommendation, the Board would be allowed to include restitution as a part of an agreed order reached in an informal conference. Authority would be limited to ordering a refund not to exceed the amount the complainant paid. 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.

## **Administration**

### **Change in Statute**

#### **2.10 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.

### **Management Action**

#### **2.11 The Board should increase coordination efforts with other state agencies to address overlapping responsibilities and interests.**

This recommendation would encourage the Board to actively seek memoranda of understanding or other methods of coordinating with other state agencies to address areas of overlap that may exist.

## **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.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the State. Because the Board participates in the Self-Directed, Semi-Independent Licensing Agency Pilot Project and its funds are not part of the appropriations process, any fiscal savings or cost would not accrue to the State. These recommendations would not have a significant fiscal impact on the Board because they do not require the Board to expend additional resources. Some savings may result from increased efficiencies; these savings would be available to meet the Board's other needs. The authority to require restitution could alter the amount of administrative fines collected, but this could not be estimated for this report. Removing the statutory fee caps could not result in additional revenue, but the Board would be directed to set fees only as high as necessary to recover costs.

<b>Benefits of Recommendations</b>				
<b>Recommendation</b>	<b>Benefits</b>			
	<b>Efficiency from Standardization</b>	<b>Administrative Flexibility</b>	<b>Fairness to Licensee</b>	<b>Protection of Consumer</b>
<b>Licensing</b>				
2.1 Eliminate the requirement that applicants must submit separate character references as a qualification for licensure.			✓	
2.2 Eliminate the application notarization requirement on individuals who apply for licensure with the Board.			✓	
2.3 Clarify that the Board must address felony and misdemeanor convictions in the standard manner defined in the Occupations Code.	✓	✓	✓	✓
2.4 Require the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.			✓	
2.5 The Board should explore switching to a continuous license renewal system.	✓	✓		
<b>Enforcement</b>				
2.6 Require the Board members to recuse themselves from voting on disciplinary actions in cases in which they participated in investigations or informal hearings.			✓	✓
2.7 Require agency staff to report administratively dismissed complaints to the Board.		✓		✓
2.8 Require the Board to adopt a probation guide.			✓	✓
2.9 Authorize the Board to require restitution as part of the settlement conference process.		✓		✓
<b>Administration</b>				
2.10 Eliminate the statutory language that sets and caps fees.	✓	✓		
2.11 The Board should increase coordination efforts with other state agencies to address overlapping responsibilities and interests.			✓	✓

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<sup>1</sup> Texas Penal Code, sec. 37.10.

<sup>2</sup> The Board's exam fees range from \$50 for the Fundamentals of Engineering student exam to \$400 for the Principles and Practice of Structural Engineering II exam. To cover the cost of purchasing and grading this exam, the Board charges examinees \$200 for the morning session and \$200 for the afternoon session of the exam. Other exam fees include \$75 for the Fundamentals of Engineering graduate exam and \$125 for all other versions of the Principles and Practice of Engineering exam.

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## Issue 3

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### **Texas Has a Continuing Need for the Texas Board of Professional Engineers, but Could Benefit From Greater Coordination With the Texas Board of Architectural Examiners.**

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## Summary

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### **Key Recommendations**

- Continue the Texas Board of Professional Engineers for 12 years.
- Require the Board to form a joint practice committee with the Texas Board of Architectural Examiners.

### **Key Findings**

- The Texas Board of Professional Engineers protects the public by ensuring that only qualified engineers offer services to the public.
- The State has a continuing interest in regulating engineers to protect the safety of Texans.
- While organizational structures vary, all 50 states regulate the engineering industry at the state level.
- No significant benefit would result from changing the agency structure or having any other state agency perform the Board's functions.
- Although no significant benefit would result from consolidation, greater coordination with the Texas Board of Architectural Examiners could achieve operational efficiency.

### **Conclusion**

The Sunset review evaluated the continuing need for licensing and regulation of Professional Engineers in Texas, as well as the need for the Texas Board of Professional Engineers to provide these functions. Sunset staff examined whether the Board's functions could be successfully transferred to another agency and studied how other states regulate engineers. Staff concluded that regulation of Professional Engineers is needed to protect public safety and welfare, and that the Board should be continued for 12 years. However, staff also concluded that establishing a joint practice committee of the Board and the Texas Board of Architectural Examiners would ensure coordination between the agencies to resolve ambiguities among the professions overseen by the two agencies.

## Support

**The Texas Board of Professional Engineers protects the public by ensuring that only qualified engineers offer services to the public.**

*Regulating engineers protects public health and safety.*

- Texas has regulated engineers since 1937, when the Legislature created the State Board of Registration for Professional Engineers. Since then, several duties have been added to broaden the Board's responsibilities, including allowing the Board to issue waivers for licensing examination requirements.
- The Board plays a role in protecting public health and safety by ensuring that only qualified engineers offer services to the public, and by sanctioning those practitioners who violate the law. To achieve this goal, the Board performs two core functions: licensing engineers who offer services to the public, and enforcing the Texas Engineering Practice Act by investigating and resolving complaints against both licensed and unlicensed persons. The table, *Board Activity, FY 2002*, shows the Board's recent licensure and complaint efforts.

<b>Board Activity, FY 2002</b>	
<b>Total licensees regulated</b>	<b>48,793</b>
Professional Engineer licenses issued	1,666
Professional Engineer licenses renewed	47,127
<b>Engineers-in-Training certificates issued</b>	<b>1,333</b>
<b>Total complaints received</b>	<b>923</b>
From the public/Referred from other agencies	370
Opened by the Board	553
<b>Total complaints resolved</b>	<b>916</b>
Dismissed	276
Resulted in voluntary compliance	553
Resulted in sanction or other disciplinary remedy	87

**The State has a continuing interest in regulating engineers to protect the safety of Texans.**

- Engineering is a highly technical and complex profession in which most consumers are not able to determine independently the competency of practitioners. Engineering activities also can put the public at risk if practiced incorrectly. Faults in design or construction of structures by incompetent engineers could significantly harm the public's safety, health, and economic welfare. As a result, the State has an interest in ensuring that only competent individuals perform engineering work.

- The Board licenses individuals to ensure their competence to practice engineering and provide engineering services to the public. The Board also develops and implements rules and regulations to ensure that licensees engage in safe and ethical practices. The Texas Engineering Practice 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 about the practice of engineering and, if necessary, discipline those who violate the law.

**While organizational structures vary, all 50 states regulate the engineering industry at the state level.**

- The chart, *State Engineering Regulatory Agencies*, describes the structure of engineering agencies in the United States. Few states use a separate, stand-alone agency to regulate engineers as Texas does. Most states combine regulation of engineering with other professions, such as land surveying and architecture, although the organization of such agencies varies.

State Engineering Regulatory Agencies <sup>1</sup>			
Structure	Profession	Number of States	States
Separate agency	Engineering	5	Texas, Delaware, Florida, Maine, West Virginia
	Engineering & Land Surveying	15	Alabama, Arkansas, Kentucky, Idaho, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Wyoming
	Engineering & Architecture	1	Nebraska
	Engineering, Land Surveying, Architecture & Others	4	Arizona, Kansas, Minnesota, New Hampshire
Umbrella agency	Engineering	6	Illinois, Indiana, Maryland, Michigan, Vermont, Wisconsin
	Engineering & Land Surveying	12	California, Colorado, Connecticut, Georgia, Iowa, Massachusetts, Montana, New Jersey, New York, South Carolina, Utah, Washington
	Engineering & Architecture	1	Tennessee
	Engineering, Land Surveying, Architecture & Others	6	Alaska, Hawaii, Missouri, Rhode Island, South Dakota, Virginia

*Engineering agencies in several states, including Texas, are semi-independent.*

- Several states, including Texas, Florida, Delaware, and Oregon, have made their engineering agencies independent or semi-independent. In 2001, the Legislature included the Board, along with the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. The Pilot Project removed the Board from the legislative budgeting process, allowing the Board to operate under its own discretion, outside the spending limitations and other provisions set in the General Appropriations Act. The semi-independent agency status is intended to allow the Board greater budget flexibility to raise and spend its own funds.

In Florida, the private, nonprofit Florida Engineers Management Corporation provides administrative, investigative, and prosecutorial services for the regulation of engineers on a contractual basis with the Florida Department of Business and Professional Regulation. The Department employs a full-time contract manager to oversee the contract and to determine compliance with its requirements. The Department retains the responsibility for issuing emergency orders and for prosecuting unlicensed activity cases.

The engineering profession in Delaware is self-regulating. The Delaware Association of Professional Engineers, established by the Delaware General Assembly, comprises all licensed engineers in the state, and performs the licensing and regulation duties typically performed by engineering regulatory agencies in other states.

**No significant benefit would result from changing the agency structure or having any other state agency perform the Board's functions.**

- Because the Board recovers all costs through fees collected by licensees, no cost-savings would result if the Board was abolished. Also, as part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the Board is outside of the legislative appropriations process. Under terms of the Pilot Project Act, the Board contributes \$50,000 to the General Revenue Fund that would be lost if the agency was discontinued. In addition, Professional Engineers contribute about \$6.5 million in professional licensing fees to General Revenue that would be lost if the Professional Engineer license was not continued.
- Several previous reports, primarily from Sunset reviews, have recommended or considered combining the Board with the Architectural Examiners Board or Land Surveying Board, or both. Each time, however, the Legislature has continued the Board as a separate agency. The textbox, *Merging the Board*, highlights some of these previous reports.

### Merging the Board

Over the past 25 years, a number of reports have examined the potential of combining the Board with other professional licensing agencies. These reports and their conclusions follow.

- *Sunset review, Architectural Examiners Board, 1978* – Consolidation among the Engineers, Architectural Examiners, and Land Surveying boards cannot clearly be established.
- *Sunset review, Engineers Board, 1980* – Combining Engineers and Surveyors “could improve the overall efficiency of the operations.”
- *Sunset review, Architectural Examiners Board, 1991* – Investigators at the Engineers Board lack necessary expertise in architecture and landscape architecture, so merging the agencies would not significantly improve enforcement efforts.
- *Comptroller of Public Accounts, Texas Performance Review, 1991* – Consolidate the Engineers, Architects, and Land Surveying boards to achieve greater administrative efficiency.

- The Texas Board of Professional Land Surveying has ties to the Board. Until 1979, Professional Engineers could offer surveying services without holding a land surveyor license. 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 a surveyor to perform surveying work in Texas. Also, the National Council of Examiners for Engineering and Surveying (NCEES) serves as the national coordinating body for engineering and surveying boards in the United States, including Texas. Both boards use NCEES’ model law and require applicants to pass NCEES’ national exam.

Despite the similarities in the two professions, combining the boards would not result in any significant cost-savings or increased operational efficiencies, and would not enhance the regulation of either profession. The Engineers Board should address issues relating to its enforcement process, as addressed elsewhere in this report, before serious consideration can be given to adding the regulation of land surveying to its responsibilities. In this way, the Legislature may also be assured that the Land Surveying Board’s enforcement efforts are not harmed through such a consolidation.

*The Board should address its enforcement issues before considering adding regulation of land surveying to its duties.*

- The Texas Department of Licensing and Regulation (TDLR) has a structure for licensure, examination, and investigation in place. In addition, TDLR has shown itself to be able to assume responsibility for an ever-widening array of regulatory programs. However, it does not have the expertise to take on the regulation of engineering. Thus, the in-house expertise of the Board would need to be replicated at TDLR, leaving the primary benefit of transfer as one of small administrative efficiency. This advantage alone was not significant enough for staff to recommend such a transfer.

- The National Council of Examiners for Engineering and Surveying gives examinations to engineers and issues technical and professional standards through its model law. However, NCEES does not perform licensing functions and is not equipped to take regulatory action against individuals. No federal agency regulates engineering.

**Although no significant benefit would result from combining the Board with other professional licensing agencies, greater coordination with the Texas Board of Architectural Examiners could achieve operational efficiency.**

- Because of confusion stemming from the statutory definitions of engineering and architecture, the Board and the Texas Board of Architectural Examiners have had overlapping responsibilities, particularly in enforcement. Certain aspects of civil, mechanical, and structural engineering relating to the design and construction of structures have some similarities with the practice of architecture, which has led to a gray area of practice.

*Overlap between the practices of engineering and architecture has led to a gray area of practice.*

Despite this overlap, merging the two boards, as mentioned previously for the Land Surveying Board, would not significantly improve the regulation of either profession. Each agency has issues relating to its enforcement process that it should address separately for the betterment of each board's regulatory program. As important, however, the antipathy of the members of each profession toward the other would likely undermine the benefits that may accrue from having both regulatory programs in one place. Finally, merging the boards would not resolve the problems stemming from the definitions of architecture and engineering.

- In 2001, the boards formed a special issues joint committee to develop policies, procedures, and other material related to the regulation of engineering, architecture, and landscape architecture. The committee includes three members from each Board and the agencies' executive directors serve as nonvoting ex officio members. The boards have made previous attempts at collaboration, including adopting resolutions of cooperation in 1991 and 1993. However, statute does not require the two boards to coordinate, and because the joint committee is voluntary, the boards could discontinue meeting at any time. (Coordination between the two boards is also discussed in Issue 4 in the section of this report covering the Texas Board of Architectural Examiners.)

## Recommendation

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### Change in Statute

#### **3.1 Continue the Texas Board of Professional Engineers for 12 years.**

This recommendation would continue the Engineers Board as an independent agency responsible for overseeing professional engineering in Texas for the standard 12-year period.

#### **3.2 Require the Board to form a joint practice committee with the Texas Board of Architectural Examiners.**

Although the Professional Engineers and Architectural Examiners Boards have voluntarily formed a joint committee, this recommendation would ensure that the Boards continue to work together. The committee's guiding principle should be to improve the agencies' protection of the public, and this principle should take precedence over the interests of each Board. The committee should work to resolve issues stemming from the overlap among the professions overseen by the agencies. The committee would issue advisory opinions to both Boards regarding matters such as specific enforcement cases, the definitions of architecture and engineering, and requirements relating to the need for professionals licensed by the two Boards on specific projects. In addition, each Board would be responsible for reporting back to the committee the final action or outcome on the specific issue considered by the committee. The committee would thus develop a body of information that could help resolve future issues and further clarify the respective practice of the professions. The committee should consist of three members from each Board, and should meet at least twice a year. Both Boards should adopt resolutions regarding the committee, its composition, and its purpose.

### Impact

These recommendations would continue the Board as a stand-alone agency responsible for regulating Professional Engineers and enforcing the Texas Engineering Practice Act. They would also make coordination with the Texas Board of Architectural Examiners a statutory requirement.

### Fiscal Implication

Because the Board currently is part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project and is outside of the appropriations process, continuing the Board will have no fiscal impact to the State. Making the current joint practice committee between the Board and the Texas Board of Architectural Examiners a statutory requirement would cost the agency approximately \$1,100 annually for travel reimbursement.

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<sup>1</sup> Engineers in Delaware are self-regulating and are licensed by the Delaware Association of Professional Engineers. The Florida Board of Professional Engineers is operated by the Florida Engineer Management Company, a nonprofit. Maine's engineering board is semi-independent. Illinois has a separate board for structural engineers. Pennsylvania regulates engineers, surveyors, and geologists under one board. Boards in Arizona, Kansas, Minnesota, and New Hampshire include other professions, such as geologists.



## **ACROSS-THE-BOARD RECOMMENDATIONS**



<b>Texas Board of Professional Engineers</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
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.
Apply	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.
Apply	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.
Apply	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.
Apply	9. Provide for public testimony at meetings of the policymaking body.
Update	10. Require information to be maintained on complaints.
Apply	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

<b>Texas Board of Professional Engineers</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Modify	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.
Apply	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
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.
Modify	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Apply	8. Require the policymaking body to adopt a system of continuing education.

## **AGENCY INFORMATION**



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# Agency Information

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## Agency at a Glance

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The Texas Board of Professional Engineers protects public health, safety, and welfare by ensuring that only qualified individuals provide engineering services to the public in Texas. The Board traces its roots to 1937, when the Legislature created the State Board of Registration for Professional Engineers in the aftermath of the New London School explosion, which killed nearly 300 students and teachers.

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

- licensing Professional Engineers and certifying Engineers-in-Training;
- registering engineering firms, sole proprietorships, partnerships, corporations, and joint stock associations;
- investigating and resolving complaints alleging illegal or incompetent practice of engineering by both licensed and unlicensed persons; and
- enforcing the Texas Engineering Practice Act and taking disciplinary action when necessary.

*Information about the Board is available at [www.tbpe.state.tx.us](http://www.tbpe.state.tx.us).*

## Key Facts

- **Funding.** In fiscal year 2001, the Board operated with a budget of about \$1.5 million. All costs are covered by licensing fees collected from the industry.
- **Staffing.** The Board has 25 full-time equivalent positions, based in Austin.
- **Licensing.** The Board regulates 48,322 Professional Engineers. In fiscal year 2001, the Board issued 1,623 new licenses.
- **Firm Registration.** Since 2000, the Board has registered engineering firms, including sole proprietorships. Currently, 5,449 firms are registered.
- **Enforcement.** In fiscal year 2001, the Board received 442 complaints from the public. That same year, Board staff also initiated 545 complaints. Of the 1,018 complaints resolved in fiscal year 2001, 72 resulted in sanctions against a licensee.

- **Pilot Project.** In 2001, the Legislature included the Board, along with the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. Beginning in fiscal year 2002, the Pilot Project removed the Board from the legislative appropriations process, allowing the Board to operate under its own discretion, outside the spending limitations set in the General Appropriations Act.

*The Pilot Project removed the Board from the legislative appropriations process.*

## Organization

### Policy Body

The Board consists of nine members – six Professional Engineers and three public members – appointed by the Governor, with the advice and consent of the Senate. Board members elect a chair, vice chair, and secretary. The chart, *Board of Professional Engineers Policy Body*, identifies current Board members.

Board of Professional Engineers Policy Body			
Member	City	Qualification	Term Expires
Brenda Bradley Smith, PE, Chair	Houston	Professional Engineer	2003
Bob Sweazy, PE, Vice Chair	Lubbock	Professional Engineer	2005
Roland Haden, PE	College Station	Professional Engineer	2007
William Lawrence	Highland Village	Public Member	2007
Shannon McClendon	Dripping Springs	Public Member	2003
Govind Nadkarni, PE	Corpus Christi	Professional Engineer	2005
James Nichols, PE	Fort Worth	Professional Engineer	2003
Gerry Pate, PE	Magnolia	Professional Engineer	2007
Vicki Ravenburg, CPA	San Antonio	Public Member	2005

The Board sets policy and establishes procedures to administer the Texas Engineering Practice Act, and approves applications for licensure and makes final decisions on all disciplinary matters. Although the Board is required to meet twice a year, the Board typically meets quarterly to ensure timely approval of licensure applications and resolution of complaints.

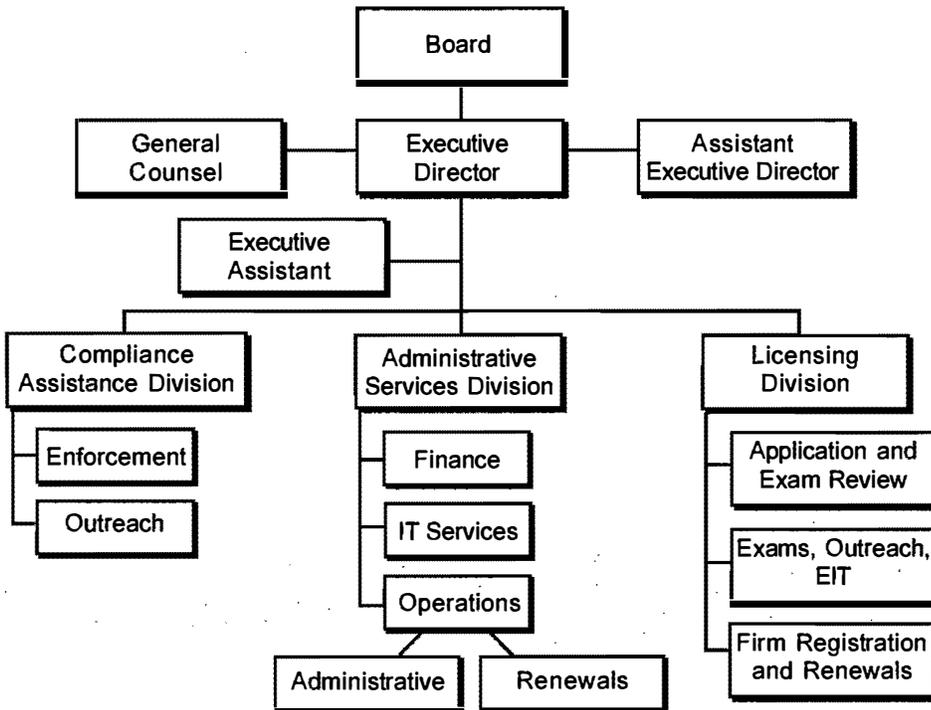
In rule, the Board has established three Board committees: the Licensing, Enforcement, and General Issues committees. The Board receives assistance from two advisory committees – the Industry Advisory Committee and the Education Advisory Committee. Advisory committee members serve on a voluntary basis.

**Staff**

The Board has 25 full-time equivalent positions, all based in Austin. Employees work in three divisions – Licensing, Compliance Assistance, and Administrative Services. The Executive Director, under the direction of the Board, manages the agency’s day-to-day operations and implements Board policy. The *Texas Board of Professional Engineers Organizational Chart* shows the agency’s structure.

Appendix A compares the agency’s workforce composition to the minority civilian labor force. The Board has generally met the civilian labor force guidelines for most job categories.

**Texas Board of Professional Engineers  
Organizational Chart**



**Funding**

**Revenues**

The Board received an appropriation of \$1,503,273 in fiscal year 2001. As a licensing agency, the Board generates revenue through licensing, registration, and examination fees that exceed its administrative costs. These licensing and examination fees totaled about \$2 million in fiscal year 2001, and were deposited directly into the State’s General Revenue Fund. In fiscal year 2001, the Board collected about \$50,000 more than overall appropriations made to cover its direct and indirect costs.

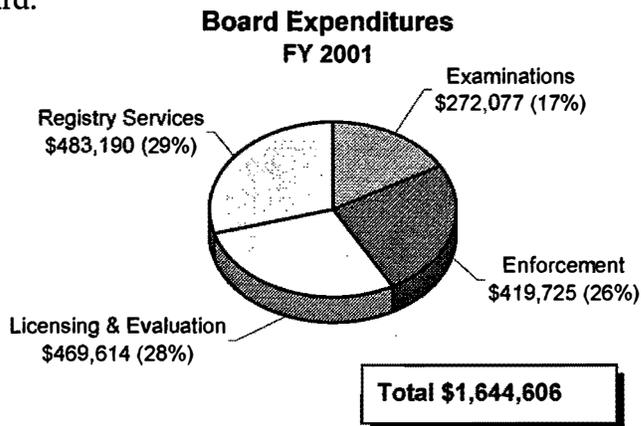
In addition, in fiscal year 2001, the Board collected professional fees totaling \$6.5 million, and administrative penalties assessed against licensees and nonlicensees totaling \$68,900; however, those funds were paid directly to the General Revenue Fund and were not made available for agency use.

*The Board's revenues of \$2.5 million in FY 2002 were an increase of about \$500,000 from the previous fiscal year.*

In fiscal year 2002, the Board began participating in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, which removed the agency from the legislative appropriations process and granted the Board authority to operate under its own discretion. As a result, the Board did not receive an appropriation for fiscal years 2002 and 2003. Instead, agency revenues are based on funds raised through licensing, registration, and examination fees, and administrative penalties. For fiscal year 2002, the Board had revenues of \$2.5 million, an increase of about \$500,000 from revenues raised in fiscal year 2001. This additional revenue comes from retained administrative penalties and fee increases to cover increased direct and indirect costs incurred as a result of the agency's participation in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. Also, for the Pilot Project, the Legislature allocated the Board a startup stipend of \$751,637, which the Board must repay to the General Revenue Fund by the end of fiscal year 2003.

**Expenditures**

In fiscal year 2001, the Board spent about \$1.6 million on three strategies: registration and evaluation, examinations, and enforcement. The chart, *Board Expenditures*, illustrates the budget breakdown by program area. In addition, 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 and employee benefits paid by the Employees Retirement System. In fiscal year 2001, these direct and indirect costs totaled \$268,996 for the Board.



The Board's expenditures for fiscal year 2002 were \$2,038,996, which is about \$440,000 more than fiscal year 2001 expenditures. In addition to these costs, beginning in fiscal year 2002, the Legislature is requiring the Board to submit an annual lump-sum payment to the General Revenue Fund as a condition of participating in the Self-Directed, Semi-Independent Licensing Agency Pilot Project. Because licensing agencies typically collect more funds than they expend, the Legislature requires an annual payment from each agency participating in the pilot project in order to avoid a loss of funds to the State Treasury. The amount of the payment varies by agency. For the Board, this amount is \$50,000.

Appendix B describes the Board's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 1998 to 2001. Although the agency fell well short of the State's goal for the category of other services, its HUB spending in the commodities category surpassed the goal by a large margin. The Board must use a sole-source provider for purchasing and grading national exams, and this sole-source acquisition represented 54 percent of the total amount spent for other services in fiscal year 2001.

## Agency Operations

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To ensure that qualified individuals practice engineering in Texas and to regulate the practice of professional engineering in the state, the Board performs two core functions: licensing and examination, and enforcement.

### Licensing and Examination

#### Professional Engineers

Under the Texas Engineering Practice Act, only licensed Professional Engineers may provide engineering services, including planning, design, or analysis in connection with – among other things – utilities, structures, buildings, and machines, to the public. Also, all public works, such as roads and bridges, must be designed and constructed under the direct supervision of a licensed Professional Engineer.

In 1965, the Legislature amended the Act to exempt individuals who practice engineering for a private manufacturer from needing a Professional Engineer license. About 80 percent of individuals in the engineering profession fall under the industry exemption. As a result, the Board licenses only a segment of individuals in the engineering profession.

*Because of industry exemptions, the Board licenses only about 20 percent of individuals in the engineering profession.*

To become a Professional Engineer, an individual must meet statutory education, examination, and experience requirements, outlined below.

*Education.* Generally, an applicant must graduate from an engineering program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (EAC/ABET). The Board also approves applicants who hold a related science degree or a degree from a nonaccredited engineering program, if the program meets Board criteria. All degree programs must include at least eight hours of math beyond trigonometry and 20 hours of engineering sciences courses.

*Examination.* Applicants must pass several exams to become a Professional Engineer in Texas, including two developed by the National Council of Examiners for Engineering and Surveying (NCEES). These exams are described in the chart, *Engineering Exams*. In 1997, the Legislature, in response to the North American Free Trade Agreement, granted the Board authority to waive either or both the Fundamentals of Engineering and Principles and Practice of Engineering exams. The Board issues waivers on a case-by-case basis.

*Experience.* To be eligible for licensure, an applicant must submit a Supplementary Experience Record detailing the applicant's engineering experience. Experience requirements vary depending on the applicant's education and examination status, as explained in the chart, *Experience Requirements*. Experience does not have to be obtained while working under the supervision of a licensed Professional Engineer. Applicants must also provide references, which must address the applicant's technical ability and character.

**Engineering Exams**

**Fundamentals of Engineering (FE)**

The eight-hour FE exam, developed by NCEES, typically is taken during an applicant's senior year in college. The first half of the exam is common to all disciplines; the second half is administered in five engineering disciplines with a general engineering section for all other disciplines.

**Principles & Practice of Engineering (PE)**

After completing the experience requirements, approved applicants take the eight-hour, NCEES-developed PE exam, which is offered in specific engineering disciplines

**Ethics of Engineering**

Finally, applicants must pass the Texas Ethics of Engineering examination, an open-book exam covering the Texas Engineering Practice Act and the Board Rules.

Experience Requirements			
Education	Exam Waiver	Experience	References
Accredited engineering degree	No	4 years	5 (3 from licensed PEs)
	Yes	12 years	9 (5 from licensed PEs)
Science-related degree or nonaccredited engineering degree	No	8 years	5 (3 from licensed PEs)
	Yes	16 years	9 (5 from licensed PEs)

Individuals who wish to practice professional engineering in Texas and hold a Professional Engineer license from another jurisdiction, such as another state, must apply for licensure in Texas. Applicants must either show proof that they passed the exams or request a waiver. All applicants must also pass the Board's Ethics of Engineering exam.

In fiscal year 2002, the Board issued 1,666 new Professional Engineer licenses, bringing the total number of licensees to 48,793.

*Continuing Education.* The Board does not require continuing education for Professional Engineers. In 1995, the Board began a voluntary Continuing Professional Competency program to gauge licensees' interest in continuing education. The program's trial period ended in June 2001. During the six-year period, about 10 percent of licensees participated in the program.

### Engineers-in-Training

Becoming an Engineers-in-Training (EIT) is not a mandatory part of the Board's licensing process. EITs, who are certified by the Board for an eight-year period, work as apprentices while gaining the experience needed to apply for a Professional Engineer license. EITs must meet certain education requirements and pass the Fundamentals of Engineering exam. The Board certified 1,331 Engineers-in-Training in fiscal year 2002.

### Firm Registration

In 2000, the Board began its firm registration program. All engineering firms, including sole proprietorships, that offer engineering services to the public must annually register with the Board. Out-of-state firms that offer engineering services in Texas must register as well. In addition, all engineering services provided by a firm must either be performed by or under the direct supervision of a licensed Professional Engineer who is a regular full-time employee of the firm. In fiscal year 2002, the Board had 5,449 registered firms.

*The Board began  
registering engineering  
firms in 2000.*

## **Enforcement**

The Board regulates the engineering profession by enforcing the Texas Engineering Practice Act, and by investigating and resolving complaints against both licensed and unlicensed individuals. Complaints are received from the public or licensees. Also, the Board opens cases in its name when staff learns of unlicensed individuals or unregistered firms providing engineering services to the public. Staff investigators discover many of these cases while conducting phone book or Internet searches.

When a complaint is received, Compliance Assistance Division staff solicits supporting information from the complainant. If enough evidence exists to substantiate the complaint, staff opens a disciplinary case, notifies the respondent, and proceeds with an investigation.

After staff completes an investigation, the Executive Director can either dismiss the case or offer the respondent a consent order. If the respondent agrees to the consent order, the matter must then be approved by the full Board. If the respondent does not agree to a consent

*The majority of complaints are resolved with an agreement of voluntary compliance.*

order, the respondent may request either an informal conference or a formal hearing before the State Office of Administrative Hearings (SOAH). If an informal conference is requested, the case goes to the informal conference committee, which includes the Executive Director, general counsel, and one Board member.

The informal conference committee can either dismiss the case or issue an agreed Board order, which must be approved by the full Board. If the informal conference does not result in a resolution, the case is referred to SOAH. Of the complaints not dismissed by the Board, the majority are resolved with an agreement of voluntary compliance.

Staff-initiated complaints bypass much of the jurisdiction and investigatory steps because they typically involve a simple fact situation. Such cases follow the same process for dismissals, sanctions, and hearings as public complaints. The Board's enforcement activities are further outlined in the flow chart, *Enforcement Process*, in Issue 1 of this report.

The chart, *Complaint Activity*, details the number of complaints received from the public and initiated by the Board and shows the disposition of all complaints and cases resolved by the Board in fiscal year 1998 through fiscal year 2002.

Complaint Activity - FY 1998-2002					
	FY 98	FY 99	FY 00	FY 01	FY 02
<b>Complaints received</b>					
From the public/referrals	341	323	306	442	370
Initiated by the Board	748	782	778	545	553
<b>Total</b>	<b>1,089</b>	<b>1,105</b>	<b>1,084</b>	<b>987</b>	<b>923</b>
<b>Complaints resolved</b>					
Dismissals	369	424	354	319	276
Sanctions	98	140	116	72	61
Cease-and-desist notices	16	19	29	43	20
Injunction	5	5	5	5	5
Voluntary compliance	474	589	614	579	553
Referred to SOAH	0	1	1	2	1
<b>Total</b>	<b>962</b>	<b>1,178</b>	<b>1,119</b>	<b>1,020</b>	<b>916</b>

# APPENDICES



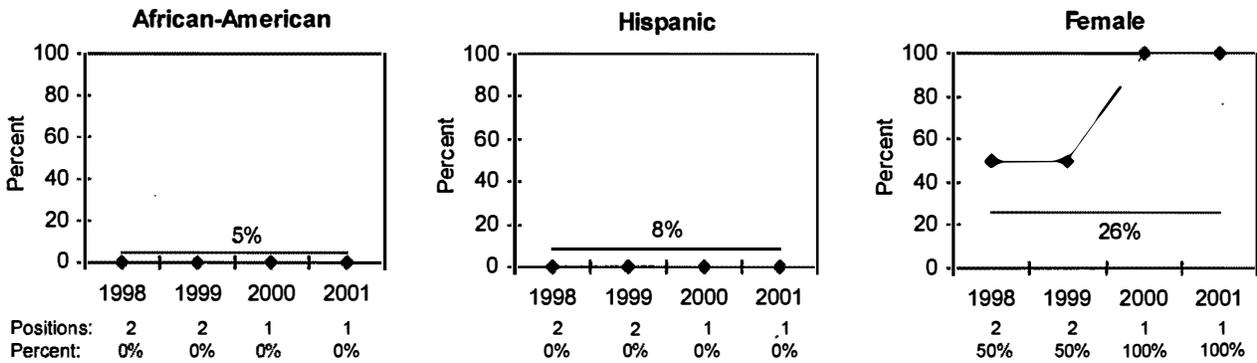
## Appendix A

### Equal Employment Opportunity Statistics

#### 1998 to 2001

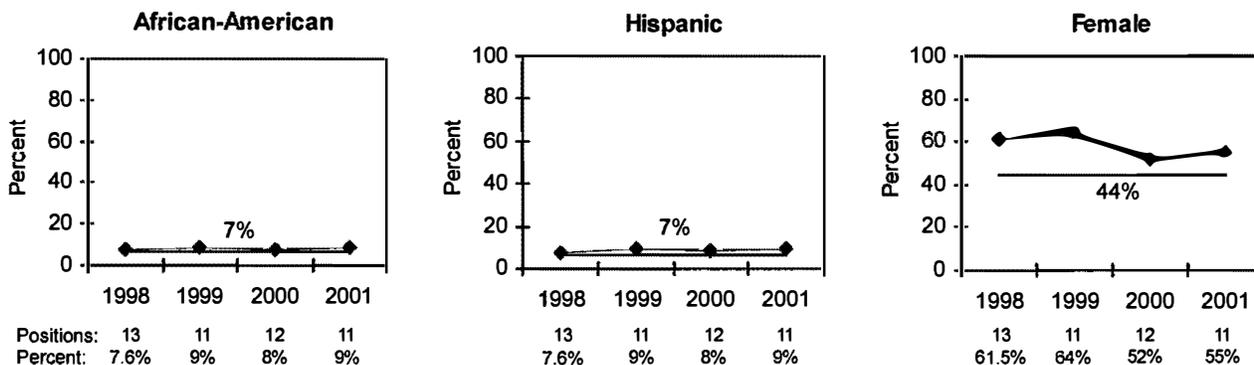
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Board of Professional Engineers employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian labor force for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The dashed lines represent the agency's actual employment percentages in each job category from 1998 to 2001. The agency does not employ persons in some job categories – technical, protective services, skilled craft, and service/maintenance.

#### State Agency Administration



The Board exceeded the State goal for Female employment every year, but fell short of the goals for Hispanics and African-Americans each year.

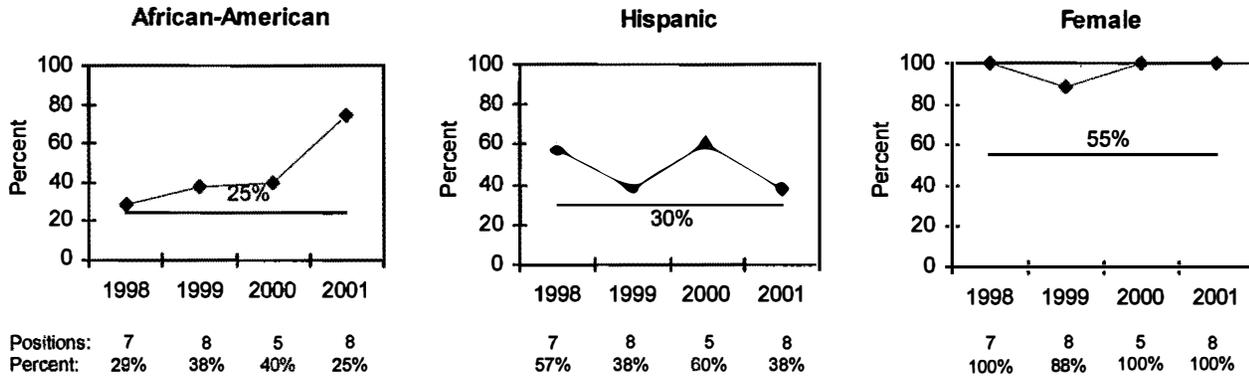
#### Professional



The Board exceeded the goal for African-Americans, Hispanics, and Females each year.

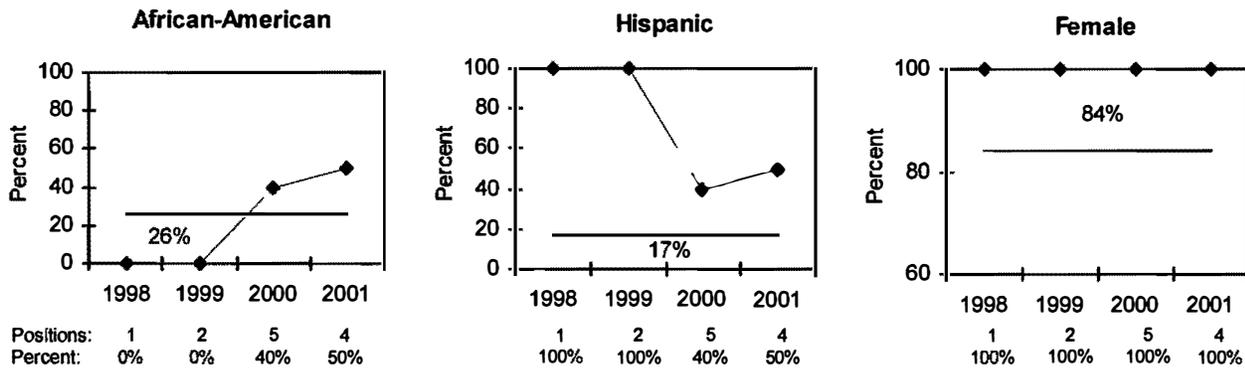
## Appendix A

### Paraprofessional Support



The Board met or exceeded the State’s goal for Hispanic, African-Americans, and Female employment each year.

### Administrative Support



The Board exceeded the State goals for Hispanics and Females each year. The Board fell short of the goal for African-Americans in fiscal years 1998 and 1999, but exceeded the goal in fiscal years 2000 and 2001.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code, sec. 21.501.

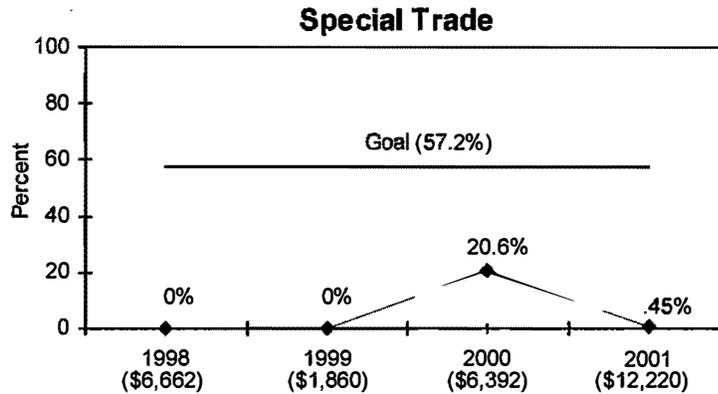
## Appendix B

### 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.<sup>1</sup> The review of the Texas Board of Professional Engineers revealed that the agency is not complying with all requirements concerning HUB purchasing. Specifically, the agency has not adopted HUB rules, although the Board does have procedures to address the sole-source acquisition used in the other services category.

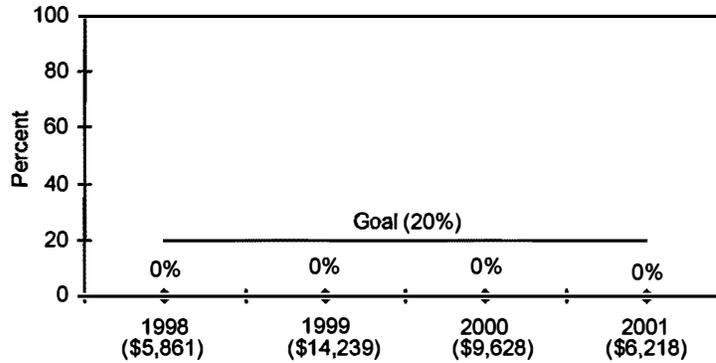
The following material shows trend information for the Texas Board of Professional Engineers use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat 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 each 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 area of greatest spending, other services, the Board has fallen well short of the State's goal of 33 percent. However, the agency has consistently surpassed the goal for commodities spending.



The Board has fallen short of the State's goal in this category.

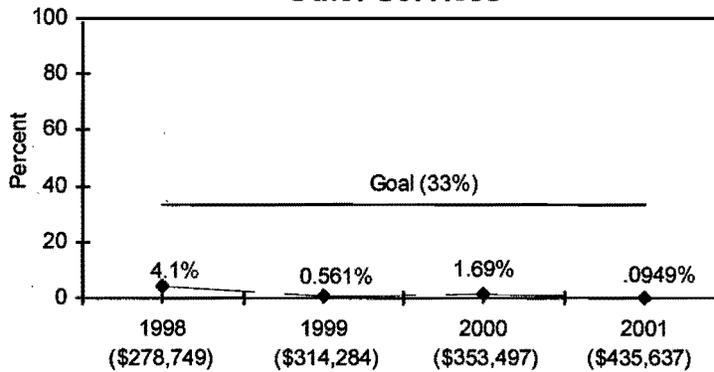
## Appendix B

### Professional Services



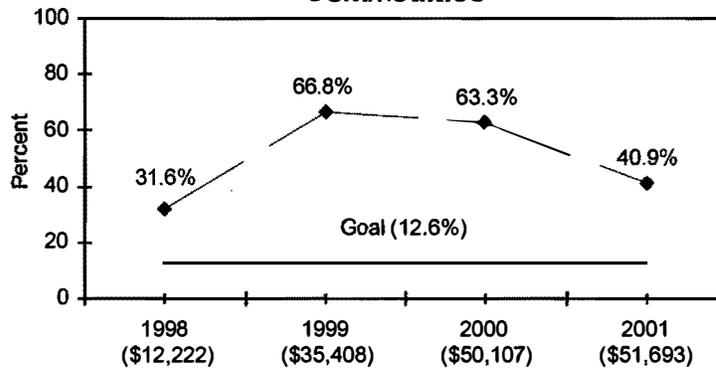
The Board had no expenditures with HUBs in this category.

### Other Services



The Board has not met the State's goal for spending in other services. However, the Board must use sole-source providers for purchasing and grading national exams, and this sole-source acquisition represented 54 percent of the total amount spent for other services in fiscal year 2001.

### Commodities



The Board greatly exceeded the goal for commodities every year.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

<sup>2</sup> Texas Government Code, ch. 2161.

## Appendix C

### Complaint Process Survey Results

As part of the review of the Texas Board of Professional Engineers, Sunset staff designed a survey to obtain input from individuals who have been involved with the Board's complaint process. Using the most recent cases closed by the Board, Sunset staff sent the survey to 50 people who filed a complaint (complainants) and 50 people who had a complaint filed against them (respondents). Sunset staff conducted the survey in July 2002. Sunset staff received a total of 31 responses, including 20 responses, or 38 percent, from complainants and 11 responses, or 22 percent, from respondents. The chart below summarizes the responses and shows selected comments made by survey respondents. Sunset staff did not attempt to verify the comments and does not present them as fact.

Survey Responses		
Question	Complainants	Respondents
How well did the Board make information about the agency and its complaint process available?	<p>Most complainants said information about the complaint process was easily available.</p> <p>"They did a good job of informing me of the process for filing a complaint."</p> <p>"Once I located the Board, they were helpful."</p>	<p>About half of respondents said information about the process was available. The remaining half felt information was either not available or inadequate.</p> <p>"I received notification of the complaint, but received no information about the complaint process or any actions I could take."</p> <p>"They were very clear."</p>
<p><b>Complainants:</b> How convenient and accessible was the process of filing a complaint with the Board?</p> <p><b>Respondents:</b> How did the Board solicit your participation in the process once the investigation was initiated?</p>	<p>Most complainants found the complaint process convenient and accessible. About one-fourth found accessing the process difficult.</p> <p>"Difficult and unclear."</p> <p>"Once I determined who I needed to speak with to file a complaint, the process was easy."</p>	<p>More than half of respondents noted that the Board asked for information. One-third believed that the Board never read or considered the requested information.</p> <p>"The Board only asked for information, but did not go any further in regards to my participation."</p> <p>"I had an opportunity to present my defense. I did it by letter."</p>
Does the Board handle your complaint in a timely manner?	<p>More than half of complainants felt the Board resolved their cases in a timely manner. One-third said the Board took too long.</p> <p>"The complaints I filed were taken seriously and seem to have been responded to quickly."</p> <p>"Not at all. It took long enough for the complaint to be ignored."</p>	<p>The majority of respondents said their cases received timely resolution. One-fourth felt their cases were not handled timely.</p> <p>"Though I do wish my innocence would have been proven sooner, I do feel the Board handled the matter in a professional and timely fashion with its available resources."</p>
How well did the Board keep you informed of the status of your complaint?	<p>More than half of complainants said they were kept informed. The rest felt they were not kept informed or received inadequate information.</p> <p>"I received regular notices of progress."</p> <p>"I was kept in the dark."</p>	<p>Half of respondents said they were kept informed; half said they were not.</p> <p>"Fair to poor."</p> <p>"Each step of the process was made known to us in a timely manner."</p>

## Appendix C

<b>Survey Responses</b>		
<b>Question</b>	<b>Complainants</b>	<b>Respondents</b>
How thoroughly did the Board investigate your complaint?	<p>Most complainants said the Board's investigation was thorough, although about one-third said it was not.</p> <p>"Apparently, quite thoroughly."</p> <p>"I do not believe it was thoroughly investigated. Another agency took action against the individual, but the Board found no wrongdoing."</p>	<p>Just over half of respondents said the Board thoroughly investigated their case. The remaining half either felt the investigation was not thorough or could not determine how thoroughly the Board investigated their cases.</p> <p>"Very little if at all."</p> <p>"Quite thoroughly over several months."</p>
How fair is the Board's enforcement process?	<p>About half of complainants said the Board's enforcement process was unfair.</p> <p>"From the complaints I have been involved with, my impression is that engineers receive more lenient treatment than non-engineers."</p> <p>"It is too partial."</p>	<p>Most respondents felt the process was fair. About one-third felt it was unfair</p> <p>"Fair to all parties."</p> <p>"Not fair at all. Seems concerned with harassing small businesses. Does not even consider complaints about PEs practicing outside their area of expertise."</p>
Did the Board explain to you the reason for its final decision on your case?	<p>About one-half of complainants received an explanation for the Board's decision. One-fourth received no explanation.</p> <p>"On easier, more clear-cut decisions, the reason for final decision was explained. For a complicated complaint I filed, all I received was the final decision and the punishment."</p>	<p>About three-fourths of respondents said they received an explanation of the Board's findings. One-fourth said the Board did not give them an explanation.</p> <p>"Yes, but I thought the punishment was excessive."</p> <p>"No! No!"</p> <p>"Yes, after the evidence was presented and questions answered at my informal hearing, the Board immediately dismissed all charges along with an explanation on how they reached their conclusion."</p>
Are the Board's disciplinary measures adequate to effectively sanction and deter fraudulent or unprofessional behavior?	<p>Most complainants said the Board is ineffective at deterring fraudulent or unprofessional behavior. Less than one-fourth found the Board effective.</p> <p>"The disciplinary measures, rules, and laws are adequate, but the action it takes will not deter fraudulent behavior effectively."</p> <p>"Texas is lax when compared with even our neighboring states."</p>	<p>About half of respondents did not think the Board deterred fraudulent or unprofessional behavior. Approximately one-third felt the Board was effective.</p> <p>"Does a very good job."</p> <p>"I have seen efforts, not results."</p>

## Appendix C

<b>Survey Responses</b>		
<b>Question</b>	<b>Complainants</b>	<b>Respondents</b>
<p>How can the Board improve its complaint process?</p>	<p>“Education is one of the most important services the Board can provide. I believe that most engineers do not understand when they have to apply a signature and seal to a set of drawings or a report.”</p> <p>“Have access to peer review by engineers who can advise the Board on technical matters in a case and not be liable for their actions.”</p>	<p>“Work with TSPE chapters.”</p> <p>“Disband it.”</p> <p>“I was treated fairly. I can’t think of anything they can do.”</p>
<p>Please add any other comments about the Texas Board of Professional Engineers.</p>	<p>“The Texas Board of Professional Engineers is at the forefront of the process — they are quick and effective. It is not broke, do not try to fix it.”</p> <p>“My opinion is the Board hands out different disciplinary actions to different PEs who might have committed similar unethical practices.”</p> <p>“I am convinced that the Board is not an effective enforcement agency. They may well serve the role of licensing engineers and developing professional standards for the state, but enforcement requires a level of detachment and objectivity that appears to me to be missing from the TBPE.”</p>	<p>“It would certainly be nice to simplify the manual, reducing the legal jargon, eliminating the contradictions and exceptions, etc. In doing so, I believe all rules would be better understood.”</p> <p>“Until my experience with my complaint last year, I was proud to be registered in Texas. Now, I am not.”</p>



## **Appendix D**

### **Staff Review Activities**

The Sunset staff engaged in the following activities during the review of the Texas Board of Professional Engineers (the Board).

- Worked extensively with agency staff.
- Attended Board meetings and Board committee meetings and interviewed Board members.
- Attended meetings of the Special Issues Joint Committee of the Texas Board of Professional Engineers and the Texas Board of Architectural Examiners.
- Conducted a written survey of complainants and respondents involved in the Board's complaint process, and reviewed Board enforcement files.
- Met with in person or interviewed over the telephone staff from the Texas Department of Transportation, Texas Department of Criminal Justice, Texas Department of Insurance, and Texas Board of Professional Land Surveying.
- Conducted interviews and solicited written comments from national, state, and local associations representing engineering and related interests.
- Met with in person or interviewed over the telephone Professional Engineers licensed by the Board, engineering students, and city officials who work with licensed engineers.
- Worked with the State Auditor's Office, Legislative Budget Board, legislative committees, and legislators' staffs.
- Reviewed reports by the State Auditor's Office, Management Advisory Services, Legislative Budget Board, National Society of Professional Engineers, American Council of Engineering Companies, and the National Council of Examiners for Engineering and Surveying.
- Researched the functions of professional engineering agencies in other states.
- Reviewed Board documents and reports, state statutes, legislative reports, previous legislation, audio recordings of legislative hearings, and literature on engineering issues.
- Performed background and comparative research using the Internet.



**SUNSET REVIEW OF THE  
TEXAS BOARD OF PROFESSIONAL ENGINEERS**

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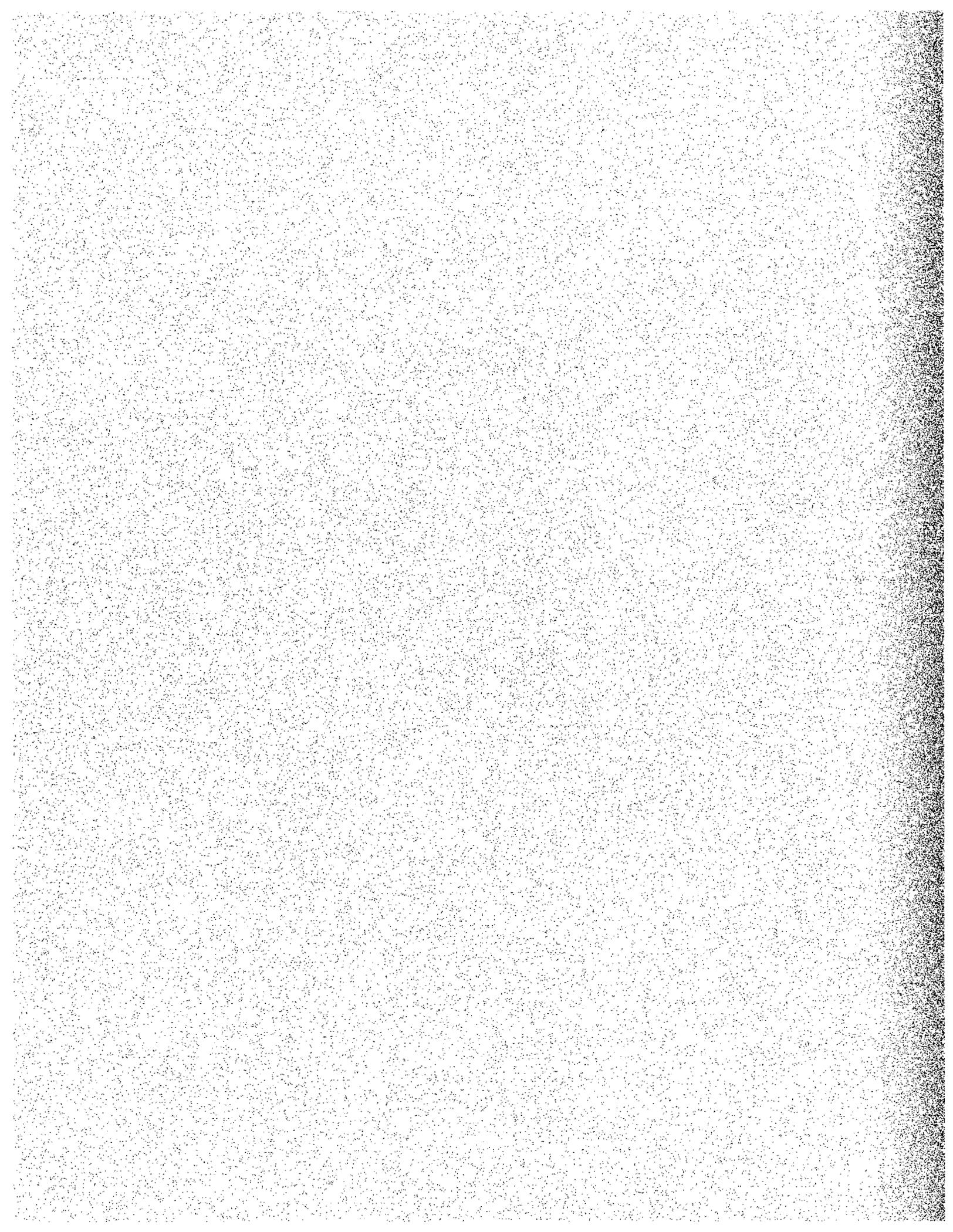
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**LICENSING AGENCY PILOT PROJECT**

**SUNSET STAFF REPORT**



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# **SUMMARY**





## Summary

### Sunset Staff Report

## Licensing Agency Pilot Project

The Self-Directed, Semi-Independent Licensing Agency Pilot Project is designed to be a test of the effectiveness of allowing agencies to make financial decisions outside of the appropriations process. The Sunset review of the Pilot Project sought to assess whether the flexibility offered to project agencies to operate without legislative scrutiny of their finances outweighed the risks to the State.

This analysis was hampered by the fact that the Pilot Project had only been in existence for a single year at the time of the review. Because of the limited information on which to test the Pilot Project, the Sunset review concluded that the test should run an additional four years and that the Pilot Project Act should be amended to clearly state the basis for which its success or failure should be judged.

Despite the recommendation to continue the Pilot Project, the review did find examples of practices by the project agencies that could result in harm to the reputation of the State that and should be modified during the test period. For example, project agencies are permitted keep all funds raised through enforcement efforts – a process that may result in questions about whether agencies are more concerned with pursuing revenue or protecting the public. In a similar manner, project agencies may keep and spend donations from any source without full disclosure. The review resulted in recommending limitations to these practices.

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*The Sunset review of the Pilot Project sought to assess whether the benefits of additional flexibility outweigh the risks posed to the State.*

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### Issues / Recommendations

#### **Issue 1 The Self-Directed, Semi-Independent Licensing Agency Pilot Project Should Be Continued for Four Years.**

#### **Key Recommendations**

- Continue the Self-Directed, Semi-Independent Licensing Agency Pilot Project for four years.
- Establish standards by which to judge the success or failure of the Pilot Project.

*For more information, contact Steve Hopson, (512) 463-1300. Sunset staff reports are available online at [www.sunset.state.tx.us](http://www.sunset.state.tx.us).*

**Issue 2 Provisions of the Pilot Project Act Do Not Provide Needed Public Safeguards for the Use of Revenue From Fines and Gifts.****Key Recommendations**

- Permit agencies operating under the Pilot Project Act to retain a percentage of administrative fines, penalties, contributions, and other enforcement revenue for use in enforcement programs.
- Prohibit agencies operating under the Pilot Project Act from accepting gifts, grants, and donations from parties to enforcement actions, or to pursue specific enforcement cases.
- Require agencies operating under the Pilot Project Act to report all fines, settlements, gifts, grants, and donations received, and the purpose for which such funds are used.

**Issue 3 Provisions of the Pilot Project Act Conflict With the Enabling Statute for the Texas Safekeeping Trust Company.****Key Recommendation**

- Clarify that the Pilot Project agencies' contract with the Texas Treasury Safekeeping Trust Company shall be under the same terms as other state agencies.

**Fiscal Implication Summary** \_\_\_\_\_

This report contains one recommendation that would have a fiscal impact to the State. Issue 2 would require the bulk of enforcement revenue to be deposited in the General Revenue Fund and would result in additional funds being remitted to the State, but this impact cannot be estimated, as these funds vary greatly from year to year.

**ISSUES / RECOMMENDATIONS**



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# Issue 1

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## **The Self-Directed, Semi-Independent Licensing Agency Pilot Project Should Be Continued for Four Years.**

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### **Summary**

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#### **Key Recommendations**

- Continue the Self-Directed, Semi-Independent Licensing Agency Pilot Project for four years.
- Establish standards by which to judge the success or failure of the Pilot Project.

#### **Key Findings**

- The Pilot Project has not had adequate time to test its effectiveness.
- Although the Pilot Project was designed to be a test, the statute does not provide guidance on the standards with which to judge the success or failure of the project.
- Because the Pilot Project allows agencies to operate outside the normal legislative oversight process, performance of the Pilot Project agencies should be carefully monitored.

#### **Conclusion**

The Legislature created the Self-Directed, Semi-Independent Licensing Agency Pilot Project Act to test whether certain agencies could operate effectively outside of the normal legislative appropriations process. Based on the limited time the Act has been in effect, Sunset staff had difficulty assessing the need for and effectiveness of the Act. However, staff determined that the Act should provide guidance on the standards by which its success or failure should be judged, and that long-term operation of the project agencies without close oversight could pose dangers to the State. The review concluded that the Pilot Project should be continued, for a limited period of time, to complete the test and to ensure adequate oversight. In addition, the review recommended that the Act include objective standards to guide the future Sunset review.

## Support

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### **The Legislature created the Self-Directed, Semi-Independent Licensing Agency Pilot Project to test how agencies would function outside of the legislative appropriations act.**

- Over time, the Legislature has created more than 50 state agencies to oversee the licensing of specific occupations and professions. These agencies generally derive their funds from licensing fees paid by the regulated licensees. These funds are deposited into the General Revenue Fund and appropriated to the agencies by the Legislature.

The appropriations process includes submission of legislative appropriations requests by the agencies, joint hearings held by the Governor's Budget Office and Legislative Budget Board, and passage of the General Appropriations Act by the Legislature. The Appropriations Act imposes agency spending limits and general riders on issues that apply broadly to most state agencies, such as caps on travel spending and number of employees.

- The Self-Directed, Semi-Independent Licensing Agency Pilot Project (Pilot Project) is a test of the practicality of allowing licensing agencies to raise and spend funds outside of the appropriations process and not be subject to the limitations of riders in the General Appropriations Act. As a test, the Pilot Project was given a four-year Sunset clause, which, unless continued by the Legislature, would cause the Act to expire September 1, 2003. The Texas State Board of Public Accountancy, Texas Board of Architectural Examiners, and Texas Board of Professional Engineers constitute the agencies participating in the Pilot Project. Each of the agencies is separately subject to a 2003 Sunset date, and expiration of the Pilot Project Act does not automatically abolish the agencies.
- Advocates of the Pilot Project argued that the agencies chosen for the project had demonstrated maturity in their handling of fiscal affairs and that the agencies would benefit from the freedom to make their own budgetary decisions. Advocates also praised the enforcement efforts of the three agencies.

### **The Pilot Project has not had adequate time to test its effectiveness.**

- The Legislature originally passed the Pilot Project Act in 1999, but because the bill did not provide for the project agencies to keep funds outside of the State Treasury, the agencies were still bound by spending limits in the General Appropriations Act, and the Pilot Project did not fully take effect. The Legislature corrected this technical problem in 2001 by providing for the project agencies to

*The Pilot Project removes three agencies from the appropriations process and lets them raise and spend funds on their own.*

keep their funds in the Texas Safekeeping Trust Company, outside of the Treasury.

- Although the original bill envisioned the Pilot Project as a four-year test, no change was made in the Sunset date to accommodate the fact that the project did not effectively start until September 1, 2001. As a result, the Pilot Project will have had only one full year of operation before the 78<sup>th</sup> Legislature convenes to decide on its continuation.

In addition, due to the uncertain continuation of the Pilot Project, agencies are not able to take full advantage of the anticipated benefits of the Act. For example, all three project agencies have prepared legislative appropriations requests for the next fiscal year – although freedom from the appropriations process was a key benefit of the Pilot Project. Each agency has directed its spending in ways that are different from their last appropriation, although, in general, the project agencies are voluntarily abiding by the limitations in the appropriations process on salaries, number of employees, and travel spending.

*The Pilot Project Act  
does not provide  
guidance on how its  
success or failure should  
be measured.*

**Although the Pilot Project was designed as a test, the statute does not provide guidance on the standards with which to judge the success or failure of the project.**

- Advocates of the Pilot Project envisioned the project as a test of whether the project would be appropriate to apply to a broader number of other licensing agencies.<sup>1</sup>
- The Pilot Project Act contains no objective standards concerning how the success or failure of the project should be evaluated, which limits the assessment of project agency performance. While advocates argued that the Pilot Project would be a test of the practicality and efficiency of self-directed status, the Act does not define the type of efficiency to be measured or what is meant by practicality. For example, an agency could achieve a high level of cost efficiency by minimizing efforts to enforce its statute.
- In addition, because the project agencies had not been recently evaluated by either the Sunset Commission or State Auditor's Office before passage of the legislation, information on the overall performance of the agencies is not available.

**Because the Pilot Project allows agencies to operate outside the normal legislative oversight process, the performance of Pilot Project agencies should be carefully monitored.**

- While the Pilot Project is currently limited to three agencies, the ability of the agencies to operate without close oversight creates risk to the State. Although the project agencies seek to be semi-independent, their authority to collect fees, enforce their acts, and

*The Pilot Project presents the risk that actions by a project agency may harm the reputation of the State.*

stop the unlicensed practice of the regulated profession rests on the sovereign authority of the State.

Potential risks of allowing agencies to operate without close fiscal oversight include the possibility that a project agency may overreach its authority, create barriers to entry for regulated professions through abnormally high fees, or fail financially and leave the State to remedy the situation. The long-term effect of these potential failures could include a loosening of standards for the professionals overseen by the agencies, a liability to the State created by actions of project agency officials, and a loss of confidence in the ability of government to protect the public.

The State is also at risk in that the agencies may not fully pursue their missions when those missions are unpopular with fee-paying licensees. For example, licensing agencies are created to enforce state laws controlling licensee behavior, and the active enforcement of these laws sometimes puts agencies at odds with licensees and their associations. Since the Pilot Project gives licensees more direct input on the agency's budget, these groups may be able to negotiate a more lenient approach to enforcement.

- Because the actions of the project agencies pose potential risks to the State, the Pilot Project should remain under Sunset review on a shorter than normal cycle.

**Two other states have permitted certain agencies to operate on a semi-independent basis.**

- In North Carolina, most state licenses are administered through self-funded occupational licensing boards. North Carolina's Occupational Licensing Board statute contains similar provisions to the Pilot Project Act, including annual reports and required audits. North Carolina also expressly prohibits its occupational licensing boards from lobbying its state legislature.
- Oregon began a pilot project similar to Texas' in 1997 for nine occupational licensing agencies. The agencies include Oregon's state boards of Architect Examiners, Landscape Architect Examiners, Engineering and Land Surveying, and Optometry. In each case, the agencies in Oregon have much smaller budgets and numbers of employees than the three Pilot Project agencies chosen in Texas. While Oregon's statute is similar to Texas' in that the agencies are outside of the budget process, Oregon's agencies may use private banks and are required to submit their annual budgets for approval by the licensees.

# Recommendation

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## Change in Statute

### **1.1 Continue the Self-Directed, Semi-Independent Licensing Agency Pilot Project for four years.**

This recommendation would continue the Pilot Project to test its value, but with a shortened Sunset review date.

### **1.2 Establish standards by which to judge the success or failure of the Pilot Project.**

This recommendation would guide the future Sunset review of the Pilot Project by establishing standards for the review. These standards would include the effectiveness of the agencies' enforcement efforts, degree to which the agencies' regulation has benefitted the public or the industry, proper administration of licensing and other fees, appropriate results on audits by the State Auditor's Office, quality of financial and other information reported to the Legislature, and responsiveness of the agencies to legislative requests for information and testimony.

## Impact

The recommendation creating a shortened Sunset date would allow the Pilot Project adequate time to show its worth, yet protect the State's interests in the event that the Pilot Project proves to allow the three agencies too much freedom. With the establishment of objective standards to judge the success of the Pilot Project, the future Sunset review would focus on the most appropriate information. Creating such standards would also clearly state to the agencies the attributes that the Legislature considers to be important. The future Sunset review would also benefit from the baseline information on the agencies' performance on enforcement and budgeting that was established during this Sunset review.

## Fiscal Implication

Because the agencies in the Pilot Project operate outside of the appropriations process and do not receive funds from the General Revenue Fund, continuing the Pilot Project will not have a fiscal impact on the State.

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<sup>1</sup> K. Michael Conaway, Presiding Officer, Texas State Board of Public Accountancy, testimony before Senate Finance Committee on SB 736 (Austin, Texas, March 26, 2001).



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## Issue 2

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### Provisions of the Pilot Project Act Do Not Provide Needed Public Safeguards for the Use of Revenue From Fines and Gifts.

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## Summary

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### Key Recommendations

- Permit agencies operating under the Pilot Project Act to retain a percentage of administrative fines, penalties, contributions, and other enforcement revenue for use in enforcement programs.
- Prohibit agencies operating under the Pilot Project Act from accepting gifts, grants, and donations from parties to enforcement actions, or to pursue specific enforcement cases.
- Require agencies operating under the Pilot Project Act to report all fines, settlements, gifts, grants, and donations received, and the purpose for which such funds are used.

### Key Findings

- The Pilot Project Act permits participating agencies to keep and spend revenue from penalties and gifts without needing specific appropriations authority.
- The ability to keep and spend fine revenue creates the perception that agency enforcement actions may be performed to raise revenue, not to protect the public.
- The aggressive pursuit of fines by Pilot Project agencies has raised questions concerning the agencies' use of penalties to generate revenue.
- Terms of the Pilot Project Act allow project agencies to accept and spend gifts, grants, or donations without needed accountability.

### Conclusion

The Legislature created the Self-Directed, Semi-Independent Licensing Agency Pilot Project as a test of the effectiveness of allowing some state licensing agencies to raise and spend money outside of the appropriations process. Agencies covered under the Pilot Project Act can keep and spend revenue from enforcement actions, administrative fines, gifts, and donations without needing approval through the legislative appropriations process. However, the ability to raise and spend fine revenue creates the impression that regulatory agencies are more concerned with raising revenue than with protecting the public. In addition, the power to erect and benefit from regulatory speed traps violates long-standing principles established by the Legislature to ensure that regulatory processes act independently of funding questions. Since joining the Pilot Project, two of the project agencies have aggressively pursued fines and, thereby, have raised questions about their motivation.

In a similar fashion, the ability of regulatory agencies to accept and expend gifts without proper oversight and full disclosure may tempt project agencies to solicit funds from interest groups and

licensees. These donations may raise questions in the public's mind about the interrelationships between the agencies and the professions.

The Sunset review assessed the value of permitting project agencies to expend revenues from fines without appropriations authority. The value of these sources of revenue was compared to the danger of harming the reputation of the State. The review concluded that the dangers outweigh the benefits of permitting agencies to raise operating funds in this manner. The review also looked at questions surrounding the ability of project agencies to accept gifts without full disclosure. The review concluded that project agencies should not be permitted to accept gifts from parties to enforcement actions or for the purpose of pursuing a particular investigation, and that the project agencies should be required to fully disclose all gifts.

## Support

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**The Pilot Project Act permits agencies to keep and spend revenue from penalties and gifts without needing specific appropriations authority.**

- Most regulatory agencies that have the authority to assess administrative penalties for violations of statute and rule must deposit penalties to the credit of the General Revenue Fund. The Pilot Project Act changes the standard appropriations process regarding regulatory penalties by permitting project agencies to keep and spend administrative fines and other penalty revenue without needing appropriations authority. The project agencies are required to deposit all fines into accounts in the Texas Treasury Safekeeping Trust Company, but are then free to spend funds, subject only to internal approval.
- In a similar fashion, the Legislature has created a series of restrictions on the ability of all state agencies to accept gifts, grants, or donations as a means of preventing conflicts of interest between regulatory agencies and the regulated professions. A state agency may accept gifts only if it has specific authority in its enabling statute and may expend monetary donations only if the Legislature has granted it authority in the General Appropriations Act.

All gifts to state agencies must be deposited in the Treasury and all expenditures must be for a purpose related to the agency's statutory duty. Gifts of more than \$500 must be accepted by the agency's policy body in an open meeting and agencies may not accept gifts from parties to contested cases until 30 days after the decisions are final. State agency policy bodies must also adopt rules governing the relationship between a specific donor and the agency that address concerns, including agency use and investment of donations, restrictions on the degree to which a donor can influence an agency, and restrictions on financial enrichment by agency employees and officers.

*Unlike other state agencies, Pilot Project agencies may keep and spend all enforcement and gift revenue without approval through the appropriations process.*

The Pilot Project Act, however, does not include restrictions related to the spending of gift funds. While current statutory provisions controlling the acceptance of gifts still apply, project agencies may spend all legally accepted donations without additional appropriations authority. Of the three project agencies, the Texas Board of Professional Engineers does not have statutory authority to any accept gifts, grants, or donations; the Texas Board of Architectural Examiners has authority to accept gifts only under the Interior Design Act, but not under the Architecture and Landscape Architecture Acts; and the Texas State Board of Public Accountancy has authority to solicit and accept money from any source.

**The ability to keep and spend fine revenue creates the perception that agency enforcement actions may be performed to raise revenue, not to protect the public.**

- Funding regulatory agencies through the collection of fine revenue weakens the integrity of enforcement programs because the public may perceive enforcement actions as a tool for revenue generation, not as a means to protect the public. The Legislature created regulatory agencies and authorized them to pursue administrative fines, agreed consent orders, civil judgments, and other enforcement actions as a means of protecting the public by deterring or punishing violations of statutes and rules.
- To keep agencies objective in the oversight of professions and prevent abuse of the authority to fine, the Legislature has acted to ensure that agencies do not use fines as a source of revenue. For example, a section of the Government Code that applies broadly to all state agencies requires agencies to deposit all fines and penalties to the credit of the General Revenue Fund.<sup>1</sup> While the Legislature has appropriated a portion of fine revenues to a few agencies, these appropriations are made for specific purposes – not as a general funding mechanism.

The Legislature has also acted to prevent political subdivisions from financing their governmental operations through fines, thereby ensuring the integrity of local enforcement actions. For example, to stop the use of speed traps, state law has long prohibited small municipalities from financing more than 30 percent of their budgets through traffic citations. The law also requires fine revenue of large municipalities to be spent on traffic law enforcement or road building. In 1999, because of changes due to the law's recodification in a previous session, the Legislature renewed and broadened the application of this speed-trap rule.<sup>2</sup>

*The unfettered collection and spending of fine revenue may lead to the public perception that enforcement actions are taken to generate revenue.*

*The Legislature has acted to ensure that regulatory agencies and political subdivisions do not abuse their fine authority.*

**The aggressive pursuit of fines by Pilot Project agencies has raised questions concerning the agencies' use of penalties to generate revenues.**

*The Board of Architectural Examiners considered a proposal to quadruple fines as a means of addressing its budget shortfall.*

- Faced with decreasing revenue due to a reduction in license renewals and increasing expenses resulting from participation in the Pilot Project, the Texas Board of Architectural Examiners is considering ways of addressing its unexpected budget shortfall. When a proposal to increase professional fees met strong resistance from industry representatives at a recent Board meeting, Board members expressed support for increasing administrative fines to support additional funding needs. The Board then considered a proposal to quadruple penalty amounts and apply a \$250 minimum fine to each enforcement case.<sup>3</sup>
- In the past 10 fiscal years, the Texas State Board of Public Accountancy has collected \$6.8 million in negotiated settlements and administrative fines levied on certified public accountants and accountancy firms.<sup>4</sup> Before joining the Pilot Project, the Board transferred all settlements in major cases to the Office of the Attorney General (OAG) to reimburse OAG for costs associated with prosecuting these cases.<sup>5</sup> Since the creation of the Pilot Project, the Board has negotiated a new agreement with OAG that limits the amount of the settlements to only one-third of the previous amount.<sup>6</sup> The remaining amount now becomes part of the Board's revenue base.

For example, in May 2002, the Board negotiated two agreed consent orders with Arthur Andersen LLP for a total of \$250,000. Previously, the Board would have turned over this entire amount to OAG, but under the Pilot Project, the Board paid \$83,333 to the Attorney General and kept the remainder. In addition, since the Board's new agreement only takes effect when OAG does work on major cases, the Board has an additional incentive to settle cases on its own, make no payments to OAG, and keep the entire settlement. This approach contributes to the impression that the Board favors expediency over justice in the pursuit of enforcement actions.

*A project agency may spend the proceeds of a gift from a firm subject to an enforcement action without oversight or clear disclosure.*

**Terms of the Pilot Project Act allow project agencies to accept and spend gifts, grants, or donations without needed accountability.**

- The Pilot Project Act circumvents legislative oversight of the process of receiving and spending gifts. Because the Act does not clearly require project agencies to report the receipt of gifts and conveys the ability to spend gifts without appropriations authority, this removal of oversight may permit potential conflicts of interest to occur. For example, a project agency may now spend the proceeds of a gift from a firm that is the subject of an enforcement action without clearly disclosing this fact.

- This lack of accountability is highlighted by a practice that the Board of Public Accountancy employed even before joining the pilot project. The Board usually considers settlements received from its major enforcement cases to be contributions for the “betterment of the accounting profession,” and accepts these fines through its gift authority. Since joining the Pilot Project, the Board has received two contributions greater than \$100,000 each. While the Ethics Code prohibits agencies from accepting gifts from parties to contested cases until 30 days after the decision becomes final, this provision does not prohibit the Board from accepting gifts from parties to most of its enforcement cases because the Board typically disposes of most cases through agreed consent orders.

The Texas State Board of Public Accountancy also accepts gifts without clear disclosure and without having adopted statutorily required rules governing the process of accepting such gifts. For example, the Board received a series of three gifts, totaling \$95,000, in 1996 and 1997 from the Texas Society of CPAs and did not clearly disclose the gifts in its annual financial reports.<sup>7</sup> These gifts were for the purpose of pursuing a specific enforcement case – the prosecution of American Express Tax and Business Services Inc. for the unlicensed practice of public accountancy.<sup>8</sup> The Board accepted the gifts despite a general principle of state government that enforcement agencies should not accept gifts to pursue particular cases because an interested party could influence the outcome of specific cases through donations.<sup>9</sup>

*Even before the Pilot Project, the Board of Public Accountancy accepted contributions in lieu of fines for enforcement cases, and took donations without clear disclosure or required ethics rules.*

## Recommendation

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### Change in Statute

#### **2.1 Permit agencies operating under the Pilot Project Act to retain a percentage of administrative fines, penalties, contributions, and other enforcement revenue for use in enforcement programs.**

This recommendation would remove the automatic ability of project agencies to keep and spend all fine revenue without an appropriation. In place of the current authority, project agencies would be permitted to retain enforcement revenue up to 5 percent of the agency’s previous fiscal year expenditures. The retained enforcement funds would be directed for use only in the agency’s enforcement program. Excess funds would be deposited to the credit of the General Revenue Fund. To offset the cost of individual years with extraordinary enforcement efforts, project agencies would be permitted to retain an additional 10 percent of enforcement revenue received in excess of the baseline amount. To ensure full public disclosure of these revenues, project agencies would be required to report these amounts as separate items in their required annual reports and current provisions permitting the State Auditor’s Office to audit these records would be retained.

## **2.2 Prohibit agencies operating under the Pilot Project Act from accepting gifts, grants, or donations from parties to enforcement actions, or to pursue specific enforcement cases.**

This recommendation would not remove the existing authority of the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners to accept gifts, provided the agencies comply with all other laws concerning the gift process. However, to remove questions that donations may be made as a means of changing the outcome of cases, this recommendation would prevent project agencies from accepting funds from parties to enforcement actions. To further ensure that the enforcement powers of project agencies are not available to those who may donate funds, the project agencies would not be able to accept donations for the purpose of pursuing specific investigations or prosecutions. Project agencies would continue to be expected to comply with all statutory provisions concerning the acceptance and disclosure of gifts.

## **2.3 Require agencies operating under the Pilot Project Act to report all gifts, grants, and donations received, and the purpose for which such funds are used.**

This recommendation would clarify that current requirements for project agencies to report information on revenues clearly include specific information on gifts, grants, and donations. Project agencies would be required to detail this information as separate amounts and would not be permitted to include these totals as part of other revenues received. If, in the future, the Legislature grants appropriations authority to a project agency to expend fines or gifts, the agency would be required to state the purpose for which the funds were expended.

## **Impact**

Because the public and members of regulated professions may believe that project agencies have a financial motivation to pursue large enforcement cases, removing the automatic ability of project agencies to keep and spend all fine revenue would help to preserve the integrity of the enforcement process. Limiting the amount of enforcement revenue that project agencies may keep and directing these funds for the sole use of enforcement efforts will remove the direct, unfettered access to these funds while enabling effective enforcement. Because project agencies may currently solicit and spend funds without approval from the Legislature, or clear reporting standards, this lack of accountability may tempt project agencies to raise funds from regulated entities. In turn, accepting donations from regulated licensees could be perceived by the public as payment to influence enforcement efforts. Prohibiting the project agencies from accepting grants from parties to enforcement actions or to pursue a particular case, would help ensure that entities making gifts to regulatory agencies are not creating potential conflicts of interest.

Reducing these potential conflicts benefits the project agencies and State government in general, by minimizing the public appearance that regulatory agencies are making special accommodations for those who are able and willing to pay. Clarifying that project agencies must report information on gifts and enforcement action settlements would further ensure that agency dealings are publicly disclosed and are consistent with the agency's mission.

## Fiscal Implication

These recommendations would result in a positive fiscal impact to the State, but this impact cannot be estimated for this report. The recommendation requiring the bulk of enforcement revenue to be deposited in the General Revenue Fund would result in additional funds being remitted to the State but these funds vary greatly from year to year. The other recommendations would not have a fiscal impact to either the State or the project agencies.

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<sup>1</sup> Texas Government Code, sec. 404.094.

<sup>2</sup> House Research Organization, Bill Analysis HB 352 (April 22, 1999).

<sup>3</sup> Texas Board of Architectural Examiners Board meeting (Austin, Texas, May 14, 2002) (audio tape).

<sup>4</sup> Texas Board of Public Accountancy response to Sunset Staff information request, September 2002. Total includes penalties, administrative fines, agreed consent orders, and major case fines, settlements, and contributions.

<sup>5</sup> The Legislature appropriates these funds to OAG as a method of finance to reimburse the agency for court costs, attorney fees, and investigative costs. This legislative appropriation is capped in the General Appropriations Act.

<sup>6</sup> Letter from Texas State Board of Public Accountancy Executive Director William Treacy to First Assistant Attorney General Howard Baldwin, February 20, 2002.

<sup>7</sup> The agency's annual financial reports for fiscal years 1996 and 1997 do not separate the gift, grant, and donation revenue either in the tables or the endnotes. The balances for the category "other revenues" do show an increase, but the reason for this increase is not explained. The annual financial report for fiscal year 1999 shows a negative balance for "other revenues" and the endnote explains that the amount includes the refund of a grant.

<sup>8</sup> Memorandum from Texas State Board of Public Accountancy Executive Director William Treacy to Texas Sunset Commission (September 6, 2002).

<sup>9</sup> For example, Texas Government Code sec. 402.005 (a) forbids the Attorney General from accepting money intended for specific investigations or prosecutions.



## Issue 3

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### Provisions of the Pilot Project Act Conflict With the Enabling Statute for the Texas Safekeeping Trust Company.

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## Summary

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### Key Recommendation

- Clarify that the Pilot Project agencies' contract with the Texas Treasury Safekeeping Trust Company shall be under the same terms as other state agencies.

### Key Findings

- The Pilot Project Act requires pilot project agencies to deposit funds in the Texas Treasury Safekeeping Trust Company.
- Terms of the Pilot Project Act conflict with provisions of the Trust Company statute.

### Conclusion

The Legislature created the Self-Directed, Semi-Independent Licensing Agency Pilot Project to test the effectiveness of permitting certain, self-funded state agencies to operate outside of the General Appropriations Act. To enable the project agencies to operate free from spending constraints placed on appropriated funds and ensure the safekeeping of the agencies' assets, the Pilot Project Act provided that agencies must deposit all funds into the Texas Treasury Safekeeping Trust Company. The Trust Company is administered by the State Comptroller, and safeguards some \$30 billion in assets of the State and its political subdivisions. A provision of the Pilot Project Act that requires the Trust Company to contract with the project agencies under terms comparable to a commercial bank violates the Trust Company's statute, and may potentially make the Trust Company subject to federal banking laws and liable for investment losses.

The Sunset review assessed the appropriateness of the current statutory contractual requirement on the Trust Company. The review noted that the Trust Company properly negotiated a contract that protects its interests and does not violate its enabling statute. The review also noted that other statutory provisions concerning state agencies depositing funds with the Trust Company do not contain similar requirements. The review concluded that provisions of the Pilot Project Act concerning the project agencies' contracts with the Trust Company should be clarified to ensure compliance with the Trust Company's statute.

## Support

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### **The Pilot Project Act requires project agencies to deposit funds in the Texas Treasury Safekeeping Trust Company.**

*The Safekeeping Trust Company is an independent investment fund under the State Comptroller with assets of \$30 billion.*

- The Legislature created the Texas Treasury Safekeeping Trust Company, in 1986, to provide the State Treasury with direct access to the Federal Reserve System, including the ability to initiate and receive wire transfers, pay state warrants, and settle and maintain custody of government securities without using a separate bank. In 1996, Texas voters passed a constitutional amendment merging the State Treasury into the Comptroller of Public Accounts, and in 2001, the Legislature recreated the Trust Company as a separate entity with the State Comptroller as the sole officer, director, and shareholder. Under terms of the 2001 act, the Trust Company may provide investment management services to the Comptroller and also invest funds for political subdivisions and state agencies that are authorized to hold funds outside of the Treasury.

Today, the Trust Company has assets of about \$30 billion, including about \$15 billion in investments held mainly for political subdivisions, \$1 billion in Tobacco lawsuit investment receipts, and \$1 billion in Texas Tomorrow Fund investments. The Trust Company maintains funds for 22 state agencies, outside of the Treasury, including funds for the General Land Office, the State Preservation Board, and the Texas Department of Economic Development.

- The Self-Directed, Semi-Independent Licensing Agency Pilot Project Act requires project agencies to deposit funds in the Trust Company. This requirement permits project agencies to hold funds outside of the Treasury while ensuring safe management. Based upon this requirement, each of the three project agencies has negotiated contracts specifying the terms under which the Trust Company holds and manages the funds.

### **Terms of the Pilot Project Act conflict with provisions of the Trust Company statute.**

*Although the Trust Company is prohibited from engaging in bank-like activities, the Pilot Project Act requires it to contract with project agencies under terms comparable to a commercial bank.*

- The Trust Company's enabling statute specifically prohibits it from engaging in any commercial bank-like activities. However, the Pilot Project Act requires project agencies to deposit funds in interest-bearing accounts in the Trust Company, and requires the Comptroller to contract with the project agencies under terms comparable to a contract between a commercial bank and its customers. Requiring the Trust Company to enter into a contract to provide depository services may subject it to federal banking laws and make it liable for investment losses.<sup>1</sup> Unlike the terms prescribed in the Pilot Project Act, the actual contract negotiated

between the Trust Company and each of the project agencies does not make the Trust Company liable for losses, but imposes a prudent investment standard of care on the Trust Company.

- The Texas Safekeeping Trust Company acts as a fiduciary when other state agencies use it to manage investment funds. The role of a fiduciary does not create a guarantee of the return of any of the deposit, only a promise to manage the funds as a prudent investor. In no other instance does state law prescribe the terms by which the Trust Company must contract with a state agency.

*For other state agencies, the Trust Company acts as a fiduciary that manages funds in a prudent manner.*

## Recommendation

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### Change in Statute

- 3.1 Clarify that the Pilot Project agencies' contract with the Texas Treasury Safekeeping Trust Company shall be under the same terms as other state agencies.**

### Impact

This recommendation would ensure that the contract between the Trust Company and the project agencies continues to comply with terms of the Trust Company's statute. The recommendation would remove language from the Pilot Project Act that requires the contract to be under terms comparable to that between a commercial bank and its customers and, instead, direct the Trust Company to act as a fiduciary, investment advisor, and safekeeping custodian for Pilot Project agencies. In this role, the Trust Company would not be liable for investment losses related to the Pilot Project agency funds, but would be guided by an appropriate body of fiduciary law, such as the Uniform Prudent Investor Act.

### Fiscal Implication

This recommendation would not result in a fiscal impact to the State. The statutory change would ensure that the current contract between the Trust Company and the project agencies would continue. In the event of any losses of project agency assets, under terms of the Pilot Project Act, these losses would accrue to the project agencies, and not to the State.

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<sup>1</sup> State Auditor's Office, A Review of State Entity Compliance with the Public Funds Investment Act (Austin, Texas, May 2002), p. 10.



## **PILOT PROJECT INFORMATION**



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# Pilot Project Information

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## Pilot Project at a Glance

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In 1999, the Legislature established the Self-Directed, Semi-Independent Licensing Agency Pilot Project Act to test whether certain agencies could effectively operate outside of the legislative appropriations process. Three agencies were selected to participate in the Pilot Project – Texas State Board of Public Accountancy, Texas Board of Architectural Examiners, and Texas Board of Professional Engineers.

Under terms of the Act, Pilot Project agencies are not required to participate in the legislative budgeting process or adhere to the spending limits and General Appropriations Act provisions that affect most other state agencies. The semi-independent agency status is intended to allow the agencies greater budget flexibility to raise and spend their own funds.

Because the 1999 Pilot Project bill did not provide for agency funds to be held outside the State Treasury, agencies were still bound by appropriations limits and the project did not fully take effect. In 2001, the Legislature provided that Pilot Project funds were to be deposited into the Texas Treasury Safekeeping Trust Company, clearing the way for the three agencies to commence participation in the Pilot Project.

*The Pilot Project Act allows the Boards of Public Accountancy, Architectural Examiners, and Professional Engineers to “get out” of the appropriations process.*

## Key Facts

- **Revenue and Expenses.** Each project agency must raise its own revenue to support agency functions and pay other agencies that provide services, such as rent and utilities provided by the Texas Building and Procurement Commission and employee health and retirement benefits provided by the Employees Retirement System. Licensing fees and other agency funds are deposited into the Texas Treasury Safekeeping Trust Company.
- **Appropriations Act Riders.** Pilot Project agencies are not required to adhere to provisions in the General Appropriations Act that limit state agencies’ travel spending, control the number of employees, and provide other limitations. In addition, funds remaining at the end of each fiscal year are available for use in future years.
- **Administrative Fines.** Like licensing fees, the Pilot Project Act permits each project agency to receive and control any administrative fine it collects.

*The three project agencies are required to reimburse the General Revenue Fund for the excess revenue they formerly contributed.*

- **Professional Licensing Fees.** The boards continue to collect and remit to the General Revenue Fund the \$200 annual professional fee paid by most licensed professionals. The professional fees collected by the boards totaled about \$19 million during fiscal year 2002.
- **Payments to General Revenue.** To ensure the revenue-neutral nature of the Pilot Project Act, the three project agencies are required to make payments to the General Revenue Fund equal to the amount of excess revenue generated at the time of the Act’s passage.
- **Staff.** The imposition of the Pilot Project did not change the status of agency employees as members of the Employee Retirement System; project agency employees remain eligible for State health and retirement benefits.
- **Reporting.** Each project agency must submit an annual report to the Legislature that provides information on staff salary and travel expenses, board member travel expenses, agency revenue and expenses, and an operating plan and budget. Before each legislative session, the agencies must also provide additional information on financial and performance audit results, enforcement activities, and rules adopted or repealed.

## Organization

Each project agency is governed separately by its Governor-appointed board. Other than joint status under the Pilot Project Act, no formal connection or oversight body exists among the agencies. However, the three agencies have formed an informal group, consisting of each of the executive directors and presiding officers, that meets to discuss common issues.

## Funding

### Revenues

Pilot Project Startup Appropriations	
Agency	Appropriation
Board of Public Accountancy	\$1,514,698
Board of Architectural Examiners	\$624,164
Board of Professional Engineers	\$751,636

Under the Pilot Project, agencies no longer receive appropriations. However, for the 2002-03 biennium, the Legislature made a one-time appropriation to each board – equal to one-half of each board’s fiscal year 2001 appropriation – as a startup fund as shown in the chart, *Pilot Project Startup Appropriations*. The Boards must repay the startup fund to General Revenue as funds become available.

In lieu of receiving future appropriations, each project agency raises revenue through licensing and examination fees, and administrative fine collection. The agencies deposit all funds

into the Texas Treasury Safekeeping Trust Company, a special investment fund administered by the State Comptroller. Agencies may keep and use any accrued interest from their accounts. Additionally, the agencies may keep for future use any funds not expended for agency operations, rather than having those funds lapse to the State.

The table, *Funds Generated by Pilot Project Agencies*, details each agency’s revenue for the fiscal years before and after the Act took effect. Agencies may adjust licensing and other fees to ensure that enough funds are raised to operate all agency programs and functions. Although legislative approval is not needed, project agencies must receive board approval to change fee rates, which are still, in some cases, capped by statute.

*Project agencies must keep their funds in the Safekeeping Trust Company, but are free to keep their interest earned and all unexpended balances.*

<b>Funds Generated by Pilot Project Agencies Fiscal Years 2001 and 2002</b>			
<b>Agency</b>	<b>Revenue Type</b>	<b>FY 2001</b>	<b>FY 2002</b>
<b>Public Accountancy</b>	Licensing and Examination Fees	\$3,624,743	\$4,195,968
	Administrative Fines	\$782,269	\$822,860
	Professional Fee	\$11,021,463	\$10,810,460
	Scholarship Fee	\$573,918	\$557,598
	<b>TOTAL</b>	\$16,002,393	\$16,386,886
<b>Architectural Examiners</b>	Licensing and Examination Fees	\$2,372,962	\$2,334,339
	Administrative Fines	\$27,164	\$13,511
	Professional Fee	\$1,904,048	\$1,849,085
	Scholarship Fees	\$99,270	\$97,240
	<b>TOTAL</b>	\$4,403,444	\$4,294,175
<b>Professional Engineers</b>	Licensing and Examination Fees	\$1,775,811	\$2,509,967
	Administrative Fines	\$68,900	\$66,990
	Professional Fee	\$6,500,000	\$6,513,000
	<b>TOTAL</b>	\$8,344,711	\$9,089,957

In addition to licensing fees and fines, each agency collects the annual \$200 professional licensing fee which is paid by most licensed professionals. These fees are deposited in the State Treasury and are not available for project agency use. Each licensing group in the three

agencies pays this fee with the exception of landscape architects and interior designers overseen by the Board of Architectural Examiners.

**Expenditures**

Each project agency has responsibility for paying its direct costs of regulatory programs with fees imposed upon licensees. The agencies must also pay for all indirect costs appropriated to other agencies for services provided. Examples of these indirect costs include rent and utilities paid by the State Building and Procurement Commission, workers' compensation claims paid by the State Office of Risk Management, security provided by the Department of Public Safety, accounting services provided by the Comptroller of Public Accounts, and legal services provided by the Office of the Attorney General. Although the majority of service agencies are paid through the Statewide Cost Allocation Plan administered by the Comptroller, the project agencies have arranged to directly pay certain service agencies, on a fee-for-service arrangement. For example, the project agencies pay the State Office of Risk Management directly for workers' compensation services, while the agencies reimburse the Building and Procurement Commission for rent and utilities through the Statewide Cost Allocation Plan.

*Agencies in the Pilot Project must reimburse other agencies for services provided - such as rent, utilities, or workers' compensation.*

Because the three project agencies have historically collected more funds than they were appropriated, the Legislature also requires each project agency to make annual payments to the General Revenue Fund. These payments are intended to offset the General Revenue loss that would have otherwise occurred by removing the agencies' funds from the Treasury. The chart, *Pilot Project Agency Expenditures*, compares each project agency's fiscal year 2001 expenditures with expenditures for fiscal year 2002. All three agencies have experienced increased expenditures in fiscal year 2002.

Pilot Project Agency Expenditures Fiscal Years 2001 and 2002						
Expenditures	Public Accountancy		Architectural Examiners		Professional Engineers	
	FY 01	FY 02	FY 01	FY 02	FY 01	FY 02
Direct Costs	\$2,662,663	\$3,290,888	\$1,614,569	\$1,264,428	\$1,644,606	\$1,675,636
Indirect Costs	\$663,289	\$611,624	\$256,842	\$330,345	\$268,995	\$312,185
Payment to General Revenue	0	\$500,000	0	\$700,000	0	\$50,000
<b>TOTAL</b>	<b>\$3,325,952</b>	<b>\$4,402,512</b>	<b>\$1,871,411</b>	<b>\$2,294,773</b>	<b>\$1,913,601</b>	<b>\$2,037,821</b>

# **APPENDIX**



## Appendix A

### Staff Review Activities

The Sunset staff engaged in the following activities during the review of the Self-Directed, Semi-Independent Licensing Agency Pilot Project.

- Worked extensively with staff from each project agency.
- Attended project agency board meetings, reviewed audiotapes and minutes of project agency board meetings, and interviewed project agency board members.
- Attended a meeting of the Executive Directors and Board presiding officers of each project agency.
- Met with in person, or interviewed over the phone, staff from Office of the Attorney General, State Office of Risk Management, Legislative Budget Board, State Auditor's Office, Texas Treasury Safekeeping Trust Company, Department of Information Resources, Ethics Commission, Department of Public Safety, Texas Building and Procurement Commission, and the Comptroller of Public Accounts.
- Met with staff from the House Speaker's Office and House Appropriations Committee, and staff of Texas Senators and Representatives.
- Conducted telephone interviews with staff from self-directed, semi-independent licensing boards in Oregon, Florida, and North Carolina.
- Attended legislative budget hearings for each project agency.
- Met with and conducted telephone interviews with professional associations involved in the fields regulated by the project agencies.
- Reviewed project agency documents and reports, state statutes, legislative reports, and previous legislation.
- Received assistance from staff of the State Auditor's Office in analyzing the revenues and expenditures of each project agency.
- Performed background and comparative research using the Internet.



**SUNSET REVIEW OF THE  
LICENSING AGENCY PILOT PROJECT**

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