



TEXAS GENERAL LAND OFFICE
GEORGE P. BUSH, COMMISSIONER

November 26, 2018

Sunset Advisory Commission
Jennifer Jones, Acting Director
1501 N. Congress, 6th Floor, REJ Bldg.
Austin, Texas

Re: Response to the Sunset Advisory Commission Staff Report on the Texas Board of Professional Land Surveying

Dear Ms. Jones:

This letter is in response to the Sunset Staff Report on the Texas Board of Professional Land Surveying ("Board") as recently submitted to the Sunset Advisory Commission ("Commission"). The Texas General Land Office ("GLO") would like to take this opportunity to express its gratitude to the Commission for providing it with a forum to respond and address some key concerns and issues with the Sunset Staff Report and their detailed assessment of the Board. We would also like to thank the Commission staff for their thorough evaluation and analysis of the Board while pointing out key areas of improvement and enhancement that the Board may take through corrective measures and actions in the near future.

As stated on page 5 of the Sunset Staff Report under *Key Facts*, the current nine-member Board consists of the Land Commissioner of the GLO or the Commissioner's designee, three Registered Professional Land Surveyors ("RPLS"), two Licensed State Land Surveyors ("LSLS"), and three public members. In October 2015, I was promoted to the Director of Surveying Services for the GLO under the direction of current Texas Land Commissioner, Honorable George P. Bush. In my capacity as the GLO Director of Surveying Services, I also serve as Commissioner Bush's official designee to the Board and attend Board functions as needed. During my land surveying career, I have advanced from the initial Surveying Intern certification (now called Surveying-In-Training certification) to registration as an RPLS, and to licensure as an LSLS. Throughout my surveying career and continuous interaction with the Board, I have always had and maintained a positive experience and relationship with the Board and fully recognize the need to regulate the unique land surveying profession in Texas.

The GLO is the oldest state agency in Texas and continues to play an active participating role in the land surveying profession by being the custodian of original land grant surveying records dating back to the late 1700's, managing the surface and mineral interests to millions of acres of sovereign lands for the use and benefit of the Permanent School Fund ("PSF"), and processing dozens of requests and applications each year for issuance of original Land Patents, corrected Land Patents, Deeds of Acquittance (purchase of excess acreage), and Vacancies (unsurveyed, unsold School Land).

The first Texas Land Commissioner, John P. Borden, was a land surveyor appointed to the GLO to provide direction and supervision to the early pioneer land surveyors in matters of land surveying and distribute sovereign lands to settlers and other land certificate holders who fulfilled the terms and obligations of their early land certificates. The GLO is firmly and deeply rooted in the history of land surveying in Texas and has the statutory authority to manage the state's sovereign land interests and the PSF.

The LSLs are defined in the Professional Land Surveying Practices Act ("Act") as... *"a surveyor licensed by the board to survey land in which the state or the permanent school fund has an interest or perform other original surveys for the purpose of filing field notes in the General Land Office."* The LSLs are authorized to conduct or perform surveys of public land under Texas Natural Resources Code ("TNRC") §21.011 and are subject to the Texas Land Commissioner's direction in matters of land surveying in cases which come under the supervision of the Land Commissioner. The jurisdiction of the LSLs is coextensive with the limits of the state and the licensee is an agent of the state when acting in that official capacity. Therefore, the GLO is routinely dependent upon the professional services of an LSL to conduct surveys as authorized under TNRC §21.011 and the Act.

As of November 2018, there are 60 LSLs in Texas who have demonstrated the necessary knowledge, experience, and aptitude to successfully complete the requirements for licensure. Of particular note is Section 1071.255 (b) of the Act which states... *"The board may not issue a license to a licensed state land surveyor until the applicant takes the official oath stating that the person shall faithfully, impartially, and honestly perform all the duties of a licensed state land surveyor to the best of the person's skill and ability in all matters in which the person may be employed."* Section 1071.255 (c) of the Act further states... *"The board may not issue a license as a licensed state land surveyor to a person residing outside the state."* By taking the said oath and residing in Texas, an LSL is acting as an agent of the state to the state's surface and mineral interests in matters regarding land surveying with direct communication with the GLO.

The Sunset Staff Report provides a thorough explanation and review of the history and background of land surveying in Texas. To say that land surveying is unique and highly technical in Texas is quite an understatement. The State of Texas was once a Sovereign Republic after previously being under Spanish and Mexican authority and a strong working knowledge of the history of land surveying in Texas is essential. A portion of the RPLS and LSL exams tests candidates on their knowledge and education on the various surveying eras throughout Texas history as well as statutes and case law specific to Texas boundary surveying. The LSL exam also covers the history, archive files/records, duties and functions of the GLO; additional case law and statutes; the Act; and the authority, duties, and obligations of an LSL. The extensive LSL exam is necessary to select individuals dedicated and qualified to preserving and looking after the interests of the State of Texas and the PSF. The LSL functions as an agent of the state while serving under the direction and supervision of the Texas Land Commissioner. As the GLO Director of Surveying Services, I serve on the LSL examination committee along with the two LSL board members to develop, select, and grade the LSL exam.

I respectfully disagree with the Sunset Staff Report that recommends outsourcing the development and administration of the LSL exam which could, in my opinion, place the LSL

exam development in unqualified/inexperienced hands and lead to a compromise of the exam's integrity, quality, and content after over a century of development by dedicated and responsible LSLs who were mindful of preserving and protecting the state's interests.

Prior to an applicant submitting their application to sit for the LSLS exam, it is highly recommended and encouraged by the Board that the applicant attend an informal study session with the GLO Director of Surveying Services to educate and familiarize the applicant with the history, duties, functions, contents, and resources of the GLO in addition to answering questions regarding the duties, functions, obligations, and responsibilities of the LSLS. Although the Board has no statute, rule, or policy regarding the informal study session with the GLO Director of Surveying Services, the Board recognizes the importance and sensibility of the applicant attending the informal study session at the GLO since the applicant will work under the direction and supervision of the Texas Land Commissioner once the applicant completes the requirements for licensure. The informal study session is not mandatory and all applicants attending such sessions are provided the same information in an effort to better inform them of the role and expectations of the LSLS and the interaction with the GLO.

The LSLS exam has been given to examinees since the Texas Legislature created the Board of Examiners of Licensed State Land Surveyors in 1919 to regulate surveyors who surveyed land in which the state had an interest. The content of the LSLS exam has evolved over the past one hundred years as legislative and case law has affected the practice of land surveying in Texas. There remains a continued demand for LSLs to conduct land surveying throughout the state to delineate the boundaries between state-owned lands and privately-owned lands, file field notes at the GLO for issuance of Patents, corrected Patents, Deeds of Acquittance, and Vacancies, and survey lands in which the state and/or the PSF has an interest. Therefore, when the LSLS is acting in their official capacity as an agent of the State of Texas, the residency requirement for the LSLS should remain in effect as per the Act to protect the interests of the state and the PSF and remain under the direction and supervision of the Texas Land Commissioner.

We certainly appreciate and agree with the Sunset Staff Report and Commission that Texas has a clear and continued need to regulate land surveying to protect the welfare and interests of the public and the state in land surveying matters. The Sunset Staff Report recommends that the Texas Board of Professional Engineers (TBPE) could more effectively regulate land surveying. However, the GLO respectfully disagrees with the Sunset Staff Report's recommendation to combine/transfer the regulation of land surveyors to the TBPE for the following reasons:

- The Texas Legislature, acting upon the recommendations of the Sunset Advisory Commission, combined the Board of Examiners of Licensed State Land Surveyors and the State Board of Registration for Public Land Surveyors in 1979 to regulate the land surveying profession resulting in the current Texas Board of Professional Land Surveying. In 1979 the Texas Legislature had the opportunity and means to combine the two aforesaid surveying boards with the TBPE; however, the Legislature understood and determined at the time that the TBPE was not qualified to regulate land surveying and it was in the best interest of the public's overall welfare and necessity to combine the two surveying boards and create the current Board.

- Engineering is a highly diverse and technical profession consisting of multiple disciplines of engineering practice including civil, petroleum, mechanical, chemical, electrical, etc. The TBPE regulates the practice of all facets of engineering in Texas and it has little or no knowledge, experience, or qualifications in dealing with surveying statutes, case law, boundary construction, and a highly complex Texas land system. It is common in today's business environment for civil engineers and land surveyors to routinely work together on land development and construction projects. However, there is very limited to no interaction between land surveyors and the other disciplines within the engineering profession. Therefore, land surveying regulatory authority should be restricted to a board which has the appropriate knowledge, experience, and qualifications as exhibited by the current Board.

- As stated in the Sunset Staff Report... *"Land surveying is a highly technical profession,"* and in my observation the review of surveying complaints is a highly technical, extensive, and thorough process investigated by two part-time Board employees. One of the part-time investigators is an RPLS and the other an RPLS/LSLS, both with the appropriate knowledge, experience, and qualifications to sufficiently investigate complaints. Although the complaint investigation review process has suffered from longer than satisfactory complaint resolution timelines in some instances resulting in a complaint case backlog, the complaint investigation process does require additional time to conduct a technical, extensive, and thorough review in an effort to protect the public and the state's interests. The Sunset Staff Report states... *"Engineers board staff investigators are not licensees, and instead the agency hires subject matter experts to assist with technical evaluation of enforcement cases if needed and could do so for the land surveying profession."* We respectfully submit that the complaint investigation review process should not be left up to a regulatory board/agency which lacks the extensive land surveying knowledge, experience, and qualifications as exhibited by the current Board investigators who currently act and serve as the Board's *"subject matter experts."* We fully recognize that curative and corrective measures need to be addressed and taken by the Board to reduce the timelines of the complaint investigation resolutions but disagree that combining the Board with the TBPE will have the desired effect.

- The Sunset Staff Report recommends that the Board be consolidated with the TBPE to create the Texas Board of Professional Engineers and Land Surveyors. As part of the said consolidation recommendation, the Sunset Staff Report states... *"The membership of the engineers board would be restructured to include five rather than six engineers, one land surveyor, and three public members, all appointed by the governor with the advice and consent of the Senate. Both licensed state land surveyors and registered professional land surveyors would be eligible for appointment to the land surveyor position, and the position may not be held by a land surveyor who is also a licensed professional engineer. The board would also include a non-voting, ex officio position for the commissioner of the General Land Office or a licensed state land surveyor employee of the General Land Office designated by the commissioner to serve as the director of surveying."* It is the GLO's position that having only one land surveyor and the Texas Land Commissioner with only a non-voting, ex officio position on the proposed consolidated board disregards and unfairly diminishes the importance of land surveyors and the surveying profession in Texas.

- If this consolidation is adopted, the GLO submits that the public interest would best be served by having an RPLS on the proposed consolidated board while the state's interest would best be served by having an LSLS on the proposed consolidated board. The Texas Land Commissioner, or the commissioner's official designee, should also remain as a full voting and participating member representing the PSF and the state's interests after well over a century of the Land Commissioner's direction and supervision of LSLS and, the GLO's historic and active involvement and participation in land surveying. To subject the land surveying profession to the regulatory authority of the proposed consolidated board of engineers and land surveyors with minimal land surveying representation does not, in our estimation, appropriately protect the public health, safety, welfare, and financial well-being of consumers as the Texas Legislature intended with the creation of the Board in 1979.

Thank you again for providing the opportunity to express our viewpoints and concerns regarding the Sunset Staff Report and recommendations to the Board and the Commission.

Sincerely,



Mark J. Neugebauer
Director of Surveying Services
Texas General Land Office

MJN/mjn

cc: Honorable George P. Bush, Texas Land Commissioner
Mark Havens, GLO Chief Clerk
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