

Marcelino Estrada



Texas Board of Professional Land Surveying

Sunset Review for 2018-2019 Review Cycle, 86th
Legislative Session

Hearing before the Sunset Advisory Commission

December 13, 2018

The following was addressed at the November 30 TBPLS board meeting:

Issue 1: The board is opposed to the recommendation as outlined in Issue 1 of the Sunset staff report.

Issue 2:

Overly restrictive licensure requirements create barriers to entry and reduce agency efficiency.

1. Subjective qualifications for licensure and registration

- Notarization of forms: Staff has been instructed to remove notarization requirements from application forms.
- Reference forms: Occupations Code §1071.252 requires the use of reference forms. These forms are to be completed by a registered professional land surveyor (RPLS) so, for efficiency and accuracy in helping staff confirm this, the RPLS may use his seal and signature on the form as permitted by 22 TAC §663.18(f). There is concern that doing away with the character, reputation and fitness form would be detrimental to the application review and acceptance process. The board has asked that this be placed on the agenda for its January 25, 2019 board meeting for discussion.
- Board members serving as references for LSLS: The board adopted a policy that no board members may serve as references as permitted under 22 TAC §661.43(b). The board will be initiating its rule review and will revise this rule at that time.
- GLO training for LSLS applicants: The TBPLS Candidate Guide states that a LSLS applicant "must" meet with the director of surveying at the General Land Office. This information is incorrect, and the board has changed the Guide to read that the board suggests that the applicant meet with the director of surveying at the GLO because it provides the applicant with beneficial education concerning the GLO and its functions.

2. Inefficient license and registration renewal process

- Biennial renewal: The board instructed staff to gather information on what would be required to move to biennial renewals. This information will be reviewed by the board for potentially amending its license renewal rules during its rule review process.
- Staggering license renewals: Staff was instructed to gather information on staggering renewals and recommend a system that could be efficiently implemented.

3. Agency exam development and administration create unnecessary burdens on staff and applicants.

- Unnecessary, inflexible, and time-consuming exam development: The board previously reviewed adopting the NCEES PS exam and determined it was not appropriate for Texas applicants. The board directed staff to gather information moving towards a computer-based test using the exam software currently in place. The software has a CBT component, but we need to identify exam locations and costs.
- Inappropriate board member involvement: Two board members and the GLO designee are involved in different aspects of the LSLS exam phases. Board members noted that the LSLS exam questions have changed little over the years other than to update case law and statutes. As a result, selection of LSLS questions can be performed by staff. The board authorized the LSLS Committee

to form a subcommittee for reviewing the LSLS exam process and identifying LSLS licenses interested in serving on the advisory committee. All new members to the committee will sign a non-disclosure agreement.

4. Enforcement process

- Lack of enforcement policies: Board staff has begun reducing its enforcement procedures to writing. We are identifying non-jurisdictional, with merit/without merit and risk of harm. The board, during its rule review, will also be addressing board rules that require all complaints to be investigated.
- Conflict of interest: The board directed the executive director to draft a job description for a full-time investigator that includes the board's policy on conflict of interest. The description has been drafted and should be posted after the beginning of the year.
- Lack of publicly available disciplinary information: Disciplinary information is currently published in the board's minutes and available on the board's web site. To assist the public, this disciplinary information will be moved to a separate tab on the web site and will be more easily accessible.

Sunset Staff Recommendations

Statutory Changes

2.1 Remove residency requirements: The board feels strongly that this requirement should not be removed from the statute. Occupations Code, section 1071.355, states that a LSLS is an agent of the state when acting in that official capacity. At its November 30 board meeting, members wondered if it were possible for a non-resident to be an agent of the state. It was also noted that LSLS take an oath to the state and work under the direction of the GLO. The Act defines a LSLS 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 filing field notes in the General Land Office." Enforcement against a non-resident may also be an issue.

2.3 Replace the board's exam advisory committees with general statutory authority to establish advisory committees: The board has no opposition to amending the language in the Professional Land Surveying Practices Act that will broaden the board's authority to establish advisory committees and not limit the board to only exam advisory committees.

*Note: The other items listed under **Statutory Changes and Management Action** are addressed in the first section above.*



TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

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November 26, 2018

Jennifer Jones, Acting Director
Texas Sunset Advisory Commission
PO Box 13066
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Dear Ms. Jones:

On behalf of our board members and myself, I would like to thank you for the opportunity to respond to the Sunset Advisory Commission Staff Report on the Texas Board of Professional Land Surveying.

The Texas Board of Professional Land Surveying ("the Board") appreciates that the Sunset Commission staff recognizes the profession of land surveying needs to be regulated. As noted in the report, the Professional Land Surveying Practices Act (the Act) seeks to protect property owners by ensuring the competence of individuals licensed as Registered Professional Land Surveyors and Licensed State Land Surveyors. The Act also requires that these individuals follow the minimum standards which the Board has established by rule. The Board was the agency that was created to "receive and investigate complaints about land surveyors, and, if necessary, discipline those who violate" the Act and/or minimum standards. The Board has been doing this since 1979, presently with a staff of seven employees. Prior to 1979, there were two separate Boards that regulated land surveying in Texas. During this time there has been one Board that regulates the profession of engineering. If the Texas Legislature considered it appropriate for the engineering Board to regulate land surveying, it would have created one Board at that time to handle both professions rather than two.

To understand the importance to maintain an independent regulatory agency for Texas land surveyors, one must understand the history of the Texas original land grant system. The Texas Licensed State Land Surveyor (LSLS) is unique to our state and was the original land surveying license to be regulated by the State of Texas. Texas retained sovereignty to its lands in the 1850 Compromise. This is unique to Texas because states joining the United States were required to surrender their land to the benefit of the Federal government.

Texas Licensed State Land Surveyors have been duly qualified through examination for a century under the Act of 1919. Their legacy stems from the need of the Commissioner of the Texas General Land Office to have qualified experts in land surveying provide services on original land grants. The LSLS is responsible only for the recovery of the proper boundaries of original land surveys; the Registered Professional Land Surveyor (RPLS) must know both where those boundaries are located as well as the location of private boundaries within the original surveys.

TBPLS agrees that corrections to the complaint process are necessary. However, we believe that the Texas Board of Professional Engineering is not qualified to provide land surveying regulation to protect the public. Some professional engineers are not educated or duly qualified in Texas case and statutory laws dealing with the complex Texas land system. It is faulty to presume that the Board of Engineering could address the technical complaints concerning land surveying issues without having the expertise. A review of the complaints handled by the Board of Professional Engineering proves that the majority concern unlicensed engineers practicing engineering. Further, the revised Board would not adequately represent the citizens of Texas where land surveying issues are concerned. The recommendation to replace one engineer with one land surveyor, plus add the General Land Office as a silent member, is insufficient.

ISSUE 1

The Texas Board of Professional Engineers Could More Effectively Regulate Land Surveying

Sunset Commission staff based their recommendation on the following:

- **Broken Enforcement Process**

The report notes, "Land surveying is a highly technical profession". Reviewing complaints is also technical and requires a review of documentation related to the survey of the complainant's property. What is noted in the report is the time line for complaint resolution but no real description of the process.

In 2010, the allegations made in a complaint were what drove the investigation. By 2013, a new philosophy was adopted which, it was believed, would better serve and protect the public. Would it be better for the public if, in the review of a complaint, only that one allegation was addressed? What if the survey submitted along with the complaint was rife with violations of the Board's minimum standards in addition to the allegation? Would it not be better to investigate those violations as well since the purpose of the Board is to ensure that licensees are following the Act and minimum standards? These minimum standards are technical and that means it takes more time to review and investigate a complaint. At its previous Board meeting, the Board assigned a task force to review the complaint process. The task force will offer its recommendation to the Board members at the November 30, 2018 Board meeting, The Executive Director will also present a policy that outlines the process to determine jurisdictional v. non-jurisdictional complaints and the steps taken to remove non-jurisdictional complaints from full review. To immediately address the backlog, the Board is immediately bringing in former Board members as volunteers to assist with the backlog created by the change in philosophy. Board staff is working closely with its general counsel to ensure there is no conflict of interest and that the Board is compliant with any employment laws that may come into play. The Board recognizes and understands that improvement is necessary in this area and is prepared to take the steps necessary.

The report states that inadequate and outdated enforcement policies have led to inconsistencies in investigations and case resolutions. The National Council of Examiners for Engineers and Surveyors (NCEES) produces a manual of enforcement procedures for those serving as investigators for engineering and surveying Boards. The Board's investigators were recently asked to review the NCEES recommended procedures against their investigatory procedures. They found that the

procedures they follow were near identical to those established by NCEES. Board enforcement staff will reduce its procedures to writing for Board review at its next regularly scheduled meeting.

Sunset staff also criticizes Board staff for developing their own methods for completing tasks. Because the majority of the issues raised by Sunset staff focus on complaints, we presume they are referring to this area of agency tasks. The Board uses Versa Regulation to track complaints. Due to the type of information that is often needed, Excel spreadsheets are also used to supplement the information obtained from Versa. The main process, however, does not change and each employee has followed the main process:

- Enter complaint
- Obtain complaint number
- Acknowledge receipt of complaint
- Notify subject surveyor of complaint
- Create case file to maintain documents
- Track responses
- Alert investigators to receipt of responses

All have used an Excel spreadsheet to supplement the information on Versa or to see, at-a-glance, the status of each complaint. Some have used one spreadsheet, some have used multiple, simply to assist them with their duties and tracking dates. To ensure that anyone assuming the role of complaint administrator can perform the duties, current procedures are formalized by current staff.

The report also states that complainants were not notified quarterly regarding the status of their complaint. This is an area that staff has revisited on multiple occasions because we were aware we needed to improve. Different methods of tracking the quarterly dates have been tried without success. Staff recently began to use a feature of Versa Regulation that generates letters based on entry date of complaint. When entering a complaint in the system, the complaint administrator selects "correspondence" and when certain criteria is met, the system generates a report which is forwarded by email to the complaint administrator. The report contains individual letters that meet the criteria of quarterly time period from the date of entry of the complaint in the system. The letters are then printed and mailed. Using this report has helped staff to ensure quarterly letters are being sent to complainants.

Sunset staff notes that the Board lacks case prioritization. During the review, it was suggested that there should be an initial review upon receipt of a complaint to determine prioritization. The Complaint Administrator and the investigators, however, do review complaints as they are received. Often, it is not simple to immediately categorize a complaint, as some degree of investigation is necessary unless the complainant alleges facts that clearly indicate a lack of board jurisdiction. At its November 30, 2018 Board meeting, members will consider the adoption of a policy that will assist enforcement staff with this issue.

It is also noted that there was no documentation in certain enforcement case files explaining why the outcome strayed from the sanction recommended by investigators. First, the matrix is based on Occupations Code §1071.452 which states that an administrative penalty may not exceed \$1,500. The Board's matrix, then, is based on the violations of the Act and /or minimum standards making the initial recommendation higher than the actual outcome. Second, the subject surveyors of complaints that yield violations, almost always request an Informal Settlement Conference. In accordance with Occupations Code §1071.4035 and 22 Tex. Admin. Code §661.62(f), this is the

subject surveyor's opportunity to negotiate a settlement or present additional evidence. It is this process then, which may yield a lower penalty or, sometimes, a dismissal. The Board makes every effort to treat all licensees consistently and fairly. However, beginning with Informal Settlement Conferences this month, documentation will be included in each case file, along with the informal notes taken by the Executive Director, summarizing the actions taken by the Informal Settlement Conference Committee and their reasoning for reducing administrative penalties or dropping violations against the subject surveyor.

Finally, Sunset staff notes potential conflicts of interest due to the part-time occupation of each of the investigators. The Executive Director made his policy quite clear to each investigator, upon hiring, of the importance to maintain a transparent, fair and unbiased work ethic when handling land surveying complaints. If either investigator has had so much as one interaction at a professional level with a surveyor which is under review, they are to self-report to the Executive Director. The complaint is then assigned to the remaining investigator or, if both have had professional contact with the subject surveyor outside of their current position, the Executive Director will find another individual, usually a former Board member whose term has been expired for more than two years and who has not been involved with the matter or person being investigated, to handle the complaint. The Board strives to ensure fairness and objectivity concerning complaint resolution. To correct this deficiency, the Board will review and consider a draft policy that provide conflict guidelines of interest by addressing some, or all, of the following:

- Potential conflict of interest
- Perceived conflict of interest
- Conflict of duty
- Direct interests
- Indirect interests
- Financial interests
- Non-financial interests

- **Ongoing Lack of Reliable Performance Data**

To address Sunset staff's concerns with lack of performance data, we note that the agency uses Versa Regulation, a system used by numerous Texas occupational licensing agencies. Performance measure data is taken from Versa Regulation reports. Information concerning licensing and complaints is input into Versa by the complaint administrator. Quarterly, and annually, a report is obtained from Versa that reports:

- New licenses issued broken down by RPLS and LSLS
- Number of licenses renewed (including those renewed online)
- Complaint resolution based on the date entered and the date closed:
 - Number of complaints closed for period
 - Number of complaints closed in 180 days or less
 - Percentage of complaints dismissed in 180 days or less
 - Average number of days to closure

Calculations are performed by Versa using information input by the staff. The complaint administrator also keeps a spreadsheet from which similar information is gleaned.

The procedure used in reporting the information to the Legislative Budget Board is:

- Executive Director requests report from Versa
- The report is forwarded to the Accountant who inputs the information into ABEST.
- The information in ABEST is saved in the system.
- The report is then returned to the Executive Director who reviews the report and data entered in ABEST and then submits.

The procedure used will be written down and reviewed by the Board for accuracy.

- **Poor Budgetary Management**

The Board is in a unique position in that our Act, Occupations Code section 1071.152(b), states that "General revenue of the state may not be used to pay the costs of administering this chapter in an amount that exceeds the amount of fees received under this chapter." Sunset staff failed to understand that in a meeting between the Board's Executive Director and the Governor's Office, it was brought to the Board's attention that for Fiscal years 2019, 2020 and 2021, a deficit was being projected. Prior to the repeal of the \$200 occupation tax (effective September 1, 2015) which impacted our licensing fees for 2016, the fees received by the Board well exceeded the appropriations from the State.

The deficit came about when combining what the agency receives in General Revenue plus state employee benefits paid out by the State. This amount is subtracted from estimated revenue earned by the agency through licensing fees. The net difference is a deficit. Most agencies are limited to spending only the amounts contained in their appropriations bill. This agency is limited not only by its appropriations bill, but it is limited further to an amount well below what it collects in fees, similar to SDSI agencies. This agency has restricted its expenditures to keep its own total expenditures below the amount it collects in fees to comply with the statute. Notwithstanding these measures, because of the statute cited above, the usual practice of benefits paid by the State to state employees has caused a deficit. Ironically, the agency's efforts to comply with the statutory provision have caused the agency to lapse funds.

For example, General Revenue funding is \$468,107. The anticipated total of state employee benefits paid by the State equals \$155,320. The sum of these two figures equals \$623,427. The revenue the agency anticipates collecting equals \$550,000. The difference is a deficit to the State of \$73,427.

If the expenses incurred to administer the chapter include state employee benefits, as the Governor's office staff pointed out, then the revenue we project for FY2019 through FY2021 will be insufficient. Sound fiscal management would require agency action to correct the deficit. To resolve this deficit, to the apparent bewilderment of Sunset staff, was the need to raise revenue in the form of an increase to annual firm registration. Sunset staff implies that lapsing funds even further, by spending less, will resolve the budgetary issue, but it won't because then the Board would be criticized for having lapsed funds. Without a statutory change, the Board will be faced with the deficit unless it raises fees to comply with the statute. The sound solution is to raise fees, which the Board approved at its August 24, 2018 meeting. The Executive Director has been mindful of the fact that the Board is funded with taxpayer money and has been a good steward and has done his utmost best to operate the agency within the laws.

Sunset staff notes that the Board does not have authority to reimburse advisory committees for travel expenses related to Board business. They note that in 2003, Sunset staff noted a similar issue.

However, in 2007, the Comptroller's Office informed the Board that it did have authority to reimburse the advisory committee members for travel. The Board has also always provided information regarding its advisory committee expenses, including the anticipated expenses for travel.

The Board has currently suspended reimbursement of travel expenses to advisory committee members and has submitted a Request to Exceed to both the Legislative Budget Board and the Governor's Office. We understand that if it is approved, we will be able to reimburse the members this year and subsequent years if the current language in section IX of the General Appropriations Act regarding travel expenses for advisory committees is carried forward.

Issue 2

Key Elements of the Agency's Licensing and Enforcement Functions Do Not Conform to Common Standards

The Board appreciates Sunset Commission staff bringing their regulatory agency standards to our attention. Until the review, the Executive Director was unaware of their existence. This information, along with their critique, will help us improve how we do business.

Overly Restrictive Licensure Requirements

- **Subject qualifications for licensure and registration**

It is not the Board's intent to create restrictive licensure requirement that create barriers to entry. The Board, however, is bound by its Act and the Act lays out certain requirements.

There are two steps to becoming a registered professional land surveyor in Texas, if you are not already registered in another state. An interested individual must first become a Surveyor-in-Training (SIT), obtain experience under the direction of a registered professional land surveyor (RPLS) and then pass the Board's registered professional land surveyor exam.

The Act (Occupations Code, section 1071.252) lays out the requirements for applying for either the SIT, RPLS or Licensed State Land Surveyor (LSLS) which are:

- Complete application on form prescribed and furnished by the Board that contains:
 - Applicant's education;
 - Applicant's experience; and
 - References from three RPLSs having personal knowledge of the applicant's surveying experience.

This statute indicates that the form may be accepted regardless of whether it has been notarized. What, then, would be the purpose of having the form notarized and why would the statute even raise it as a point? Since the application is not signed by the applicant in front of Board staff, it would seem logical to have a notary verify the identity of the person signing the application as the one submitting the application. This appears to be presented as an option to the Board but not a requirement. Yet, the language is within the Act the Board must follow. No application has been rejected for lack of notarization.

The Board will review the Sunset Commission staff recommendation to dispense with the character form and consider eliminating from the application form the reference to notarization but would

suggest that the statute be amended to remove the ambiguous language related to notarization from Section 1071.252(b).

In addition, the Board will review for amendment its rule (22 TAC §661.43(b)) that permits a Board member to serve as a reference for an applicant.

The Sunset Commission staff is recommending amending the Act (Occupations Code, section 1071.255(c)) by removing the Texas residency requirement to become an LSLS. This requirement is important to the integrity of the work that is being performed for the Commissioner of the Texas General Land Office. A Texas resident would be a more interested party to providing those services than those that live outside the state. An LSLS is also considered an official of the State of Texas, according to the Act, while working under this capacity which would require that official to be a resident of the State of Texas. The Board is not attempting to license an abundance of state land surveyors, but only to license qualified individuals willing to provide their expertise for the State of Texas.

- **Inefficient license and registration renewal process**

The Board acknowledges that the Act authorizes the Board to adopt by rule a system where certificates and licenses expire on various dates during the year if it so chooses (Occupations Code, section 1071.301(a)). This will require discussion for rulemaking and adoption at one of its regular meetings. With a pending rule review, this would be the time to incorporate this recommendation. However, the Act seems to imply that the certificate or license shall be valid for one year so to make the renewal biennial as suggested may require an amendment to the Act.

Exam development/administration create unnecessary burdens on staff and applicants

- **Unnecessary exam development and administration create unnecessary burdens on staff and applicants**

The Sunset Commission staff recommends that the Board conduct a formal cost-benefit analysis regarding adoption of the NCEES Principals and Practice of Surveying (PS) exam. The Board will accept this recommendation. However, the Sunset Commission staff recommendation to outsource the development of the state exams, especially the LSLS examination, would jeopardize a century of protecting the contents of a limited number of example problems used for the analytical portion of the examination. It is important to note that Texas' land system is much different than in those states. The states in which the Federal government has jurisdiction to land management matters are Public Land System States (PLSS) and have explicit instructions to surveying methods published by the BLM. These standard methods are studied and examined through the National Council of Examiners for Engineers and Surveyors (NCEES.) Unlike the land system in Texas, the PLSS examination can be used in other common PLSS. Since there is no sovereign Federal land in Texas, the BLM surveying methods cannot be applied for boundary construction. Understanding this major difference in land surveying in Texas compared to other states is important to understanding the main reason the Board has not adopted the PS exam.

The LSLS exam is also unique and the idea of outsourcing this exam is simply incomprehensible. Many generations of LSLS have developed LSLS questions based on their applicable experience of the case and statutory laws that specifically deal with surveying original land grants in the State of Texas. The exam questions are not theoretical, nor do they create hypothetical scenarios that would not exist for the state land surveyor. The questions are from real-world cases that have been

resolved using the laws that are applicable. LSLs members that have served on the Board have protected the examination from extortion and fraud for a hundred years through the pride of their responsibility to the State of Texas to which they have given their oath. Nearly every project that requires the capacity of an LSLs has a certain historical and regional aspect that could never be simplified into an examination question by a developer that is not qualified under the Act.

The Sunset Commission staff also questions the use of the NCEES FS exam. Unlike the PS exam, the Fundamentals in Surveying exam is intended to be a more general exam testing the mathematical skills of the examinee rather than the more specific state laws and boundary analysis that occurs in the Board's RPLS exam. This reason is why the Board was willing to accept using the FS exam over creating their own entry-level exam.

In its report, the Sunset Commission staff raises concern over the passing rates and the consistency and fairness of the Board's approach. The Board's process of using three exam advisory committees is strictly for creating consistent and fair exams. The Item Writers committee creates exam questions that go into the Board's exam data bank. For each exam date, questions are pulled from the data bank based on a "blueprint" to create the exam that will be offered to examinees. The QAQC committee reviews new questions and those in the data bank for correctness and accuracy. Questions that make dated references are either amended or removed from the data bank. Finally, the Cut-off Score committee will review statistical information provided by the psychometrician who performs a statistical analysis of each exam offered. The purpose of the analysis is to review the examinees responses to the exam questions and through the statistical analysis, provide information to the Cut-off Score committee. That information helps them determine if there was a problem with the question itself or with the answers and detractors listed. This determination then sets the passing score for the specific exam as opposed to simply setting a passing rate at 70% or greater. We believe this results in a consistent and fair exam.

- **Inappropriate Board member exam involvement**

The Sunset Commission staff identifies what it believes is inappropriate Board member involvement in the LSLs examination process. To address the inappropriate involvement, the LSLs examination committee could be modeled after the RPLS exam advisory committee which would consist of selected/appointed LSLs to an Item Writing Committee, QAQC Committee, and Cut-off Score committee. However, the Board is opposed to any changes to the current three-member LSLs committee based on the fact the LSLs, who (other than the GLO designee) are appointed by the Governor with the recommendation of the Land Commissioner, work under the direction/supervision of the Land Commissioner as agents of the state and the current LSLs board members have the vested interest inherited to them by the former Board of Examiners of Licensed State Land Surveyors since 1919. Therefore, who best to represent the future agents of the state and the GLO than the three LSLs members. As has been mentioned previously, the LSLs is unique compared to the RPLS, who serves the public. To outsource the LSLs exam may be unnecessary considering the rigorous exam preparation procedures the Board follows to ensure the integrity of the LSLs exam.

Nonstandard enforcement processes and lack of clear policies

- **Lack of clear, consistent enforcement policies**

At the November 30, 2018 Board meeting, members will consider proposed policy that the staff follows concerning complaints. While the Board has not defined in rule what is "jurisdictional" and "non-jurisdictional," it has provided guidance through board member comments at meetings.

Currently, the complaint administrator and the lead investigator review all complaints. Board discussion during its meetings has indicated that if the complaint allegations are concerning trespass, a boundary dispute or a contractual issue, the complaint is not appropriate for agency review. In these cases, notification of the complaint is sent to the subject surveyor, but a response is not required. The complaint is slated for dismissal as not being under the purview of the Board. However, complaints with other allegations that appear to be in the Board's purview will require a response from the subject surveyor.

The recommendation also alludes to the agency risking inappropriate fishing for violations. It is not the intent to "fish" but there are times when an investigation into a complaint that falls under the Board's purview yields additional violation of the minimum standards set by the Board. However, the Board will take note of the Sunset staff's recommendation when drafting its policy on complaints to avoid the risk of any inappropriate fishing or even the appearance of impropriety.

- **Unnecessary Board approval for dismissed cases**

To ensure that complaints being dismissed were not being handled inappropriately, the Board by rule created the Complaint Review Panel. The rule requires that any complaints designated for dismissal be reviewed by this panel. However, as the Sunset Commission staff noted, the Act gives staff the authority to dismiss complaints. The Board will review this rule and take appropriate action at its next regularly scheduled meeting.

- **Unclear practice standards**

The Board staff would like to suggest the creation of a FAQ page on the Board's web site. This would provide information to both the licensees and the public. During the review process, it was mentioned to the Sunset Commission staff that something helpful would be to give the Board authority to issue advisory opinions that would provide interpretation of its rules. We have discussed creating a FAQ page, and this would help alleviate this concern.

It should be noted that our web site does inform individuals considering filing complaints with the Board that the Board does not handle trespass and boundary issues. To make this information clearer, Board staff will revise the page so that it is simpler to read.

- **No maintenance of complainant's confidentiality**

The Board will consider the Sunset staff's recommendation to find ways to protect the confidentiality of the complainant. In most cases, maintaining confidentiality is not possible because the statute expressly makes complaints public information. Maintaining confidentiality usually is impossible, also because the subject surveyor will need to know the allegations and the survey in question to respond to the Board. It has also been our experience that in most cases the surveyor has already had contact with the individual prior to the complaint being filed and is often expecting to hear from the Board as a result. Nevertheless, we will explore options in presenting the allegations and submit information to the subject surveyor in a manner that does not unnecessarily identify the name or contact information of the complainant at the outset.

- **Missing complaint information**

During the review, the Board staff was asked to provide statistical information by certain categories. Though we did not track complaints in that manner, we were able to provide that data to the Sunset

Commission staff. As part of the complaint policy, the Board will discuss this issue at its meeting on November 30, 2018.

- **Lack of publicly available disciplinary information**

The Sunset staff failed to recognize that the enforcement information is available on the web site. Complaints, with details from the agreed orders, are in the minutes. Board staff is working to extract this data from the previous Board meeting minutes for posting under a separate heading on the Board's web site, under the main "Complaints" tab. Information within the enforcement information would be searchable using CTRL-F so the public would be able to search for a specific name.

Recommendations

The Board will be reviewing the recommendations provided under Issue 2. Most of these recommendations could be implemented immediately, with the exception of those that require statutory change.

2.1 Remove the residency requirement for LSLs

Respectfully, the Board disagrees with this recommendation. Inviting a non-resident licensee to become licensed as a LSLs could be harmful to the public because the individual would not have the required knowledge and expertise concerning Texas unique land history. Texas land boundaries come from Spain, Mexico, the Republic of Texas and finally statehood. Land grants from these various sovereigns are not found in other states within the US.

2.2 Authorize the Board to set biennial license and firm registration terms in rule

The Act currently permits the Board to stagger its registration deadlines but an amendment to the statute would be required to give the Board authority to move to a two-year term. The Board will discuss this at its November 30 Board meeting.

2.3 Replace the Board's exam advisory committees with general statutory authority to establish advisory committees.

The Board would have no objection to repealing the current statute and replacing it with a statute to give the Board authority by rule to create advisory committees. However, the Board could proceed by creating a task force or special committee to review the issues concerning licensing, exams and enforcement. The Board presently has a Continuing Education Committee.

2.4 Authorize the agency to outsource its exams

The Board disagrees with this recommendation concerning the development of the RPLS, Reciprocal and LSLs exams because it believes it would compromise the integrity of its exams. The Board currently uses a cloud-based system that would allow for a computer-based testing (CBT) of its exam. The Board would need to conduct a study to determine the steps and costs necessary in implementing a CBT exam.

2.5 Clarify statute to realign the agency's complaint intake and investigation procedures with model standards

The Board agrees with this recommendation and is taking steps now to implement the Sunset Commission staff's recommendations to make its complaint process more effective and efficient.

2.6 Direct the Board to review application requirements to conform to current policy and statute

The Board will begin discussing its application requirements, starting with its November 30, 2018 Board meeting. A task force should be created to perform an analysis and provide a recommendation to the full Board at its subsequent meeting.

2.7 Direct the Board to adopt a staggered renewal system for licenses and registrations

The Board will review this recommendation at its November 30, 2018 Board meeting.

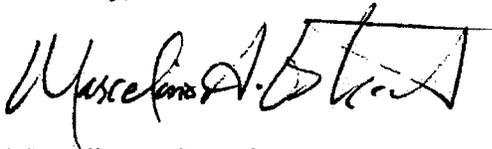
2.8 Direct the Board to conduct a comprehensive analysis regarding adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam.

At its February 19, 2016 Board meeting, members received a report from Bill Merten, Mary Chruszczak and Paul Kwan analyzing moving to the NCEES PS exam. However, the Board will reconsider Sunset staff's recommendation at its November 30, 2018 Board meeting and take appropriate action.

2.9 Direct the Board to publish disciplinary history online

The Board currently publishes this information as part of the minutes for each Board meeting. Staff has begun the process, as noted elsewhere in this response, to move this information to a section under "Complaints" on its web site. The information will provide a summary of the findings of the complaint along with the disciplinary action taken by the Board. This information is searchable.

Sincerely,



Marcelino A. Estrada
Executive Director



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November 26, 2018

Jennifer Jones, Acting Director
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PO Box 13066
Austin, Texas 78711

Dear Ms. Jones:

On behalf of our board members and myself, I would like to thank you for the opportunity to respond to the Sunset Advisory Commission Staff Report on the Texas Board of Professional Land Surveying.

The Texas Board of Professional Land Surveying ("the Board") appreciates that the Sunset Commission staff recognizes the profession of land surveying needs to be regulated. As noted in the report, the Professional Land Surveying Practices Act (the Act) seeks to protect property owners by ensuring the competence of individuals licensed as Registered Professional Land Surveyors and Licensed State Land Surveyors. The Act also requires that these individuals follow the minimum standards which the Board has established by rule. The Board was the agency that was created to "receive and investigate complaints about land surveyors, and, if necessary, discipline those who violate" the Act and/or minimum standards. The Board has been doing this since 1979, presently with a staff of seven employees. Prior to 1979, there were two separate Boards that regulated land surveying in Texas. During this time there has been one Board that regulates the profession of engineering. If the Texas Legislature considered it appropriate for the engineering Board to regulate land surveying, it would have created one Board at that time to handle both professions rather than two.

To understand the importance to maintain an independent regulatory agency for Texas land surveyors, one must understand the history of the Texas original land grant system. The Texas Licensed State Land Surveyor (LSLS) is unique to our state and was the original land surveying license to be regulated by the State of Texas. Texas retained sovereignty to its lands in the 1850 Compromise. This is unique to Texas because states joining the United States were required to surrender their land to the benefit of the Federal government.

Texas Licensed State Land Surveyors have been duly qualified through examination for a century under the Act of 1919. Their legacy stems from the need of the Commissioner of the Texas General Land Office to have qualified experts in land surveying provide services on original land grants. The LSLS is responsible only for the recovery of the proper boundaries of original land surveys; the Registered Professional Land Surveyor (RPLS) must know both where those boundaries are located as well as the location of private boundaries within the original surveys.

TBPLS agrees that corrections to the complaint process are necessary. However, we believe that the Texas Board of Professional Engineering is not qualified to provide land surveying regulation to protect the public. Some professional engineers are not educated or duly qualified in Texas case and statutory laws dealing with the complex Texas land system. It is faulty to presume that the Board of Engineering could address the technical complaints concerning land surveying issues without having the expertise. A review of the complaints handled by the Board of Professional Engineering proves that the majority concern unlicensed engineers practicing engineering. Further, the revised Board would not adequately represent the citizens of Texas where land surveying issues are concerned. The recommendation to replace one engineer with one land surveyor, plus add the General Land Office as a silent member, is insufficient.

ISSUE 1

The Texas Board of Professional Engineers Could More Effectively Regulate Land Surveying

Sunset Commission staff based their recommendation on the following:

- **Broken Enforcement Process**

The report notes, "Land surveying is a highly technical profession". Reviewing complaints is also technical and requires a review of documentation related to the survey of the complainant's property. What is noted in the report is the time line for complaint resolution but no real description of the process.

In 2010, the allegations made in a complaint were what drove the investigation. By 2013, a new philosophy was adopted which, it was believed, would better serve and protect the public. Would it be better for the public if, in the review of a complaint, only that one allegation was addressed? What if the survey submitted along with the complaint was rife with violations of the Board's minimum standards in addition to the allegation? Would it not be better to investigate those violations as well since the purpose of the Board is to ensure that licensees are following the Act and minimum standards? These minimum standards are technical and that means it takes more time to review and investigate a complaint. At its previous Board meeting, the Board assigned a task force to review the complaint process. The task force will offer its recommendation to the Board members at the November 30, 2018 Board meeting, The Executive Director will also present a policy that outlines the process to determine jurisdictional v. non-jurisdictional complaints and the steps taken to remove non-jurisdictional complaints from full review. To immediately address the backlog, the Board is immediately bringing in former Board members as volunteers to assist with the backlog created by the change in philosophy. Board staff is working closely with its general counsel to ensure there is no conflict of interest and that the Board is compliant with any employment laws that may come into play. The Board recognizes and understands that improvement is necessary in this area and is prepared to take the steps necessary.

The report states that inadequate and outdated enforcement policies have led to inconsistencies in investigations and case resolutions. The National Council of Examiners for Engineers and Surveyors (NCEES) produces a manual of enforcement procedures for those serving as investigators for engineering and surveying Boards. The Board's investigators were recently asked to review the NCEES recommended procedures against their investigatory procedures. They found that the

procedures they follow were near identical to those established by NCEES. Board enforcement staff will reduce its procedures to writing for Board review at its next regularly scheduled meeting.

Sunset staff also criticizes Board staff for developing their own methods for completing tasks. Because the majority of the issues raised by Sunset staff focus on complaints, we presume they are referring to this area of agency tasks. The Board uses Versa Regulation to track complaints. Due to the type of information that is often needed, Excel spreadsheets are also used to supplement the information obtained from Versa. The main process, however, does not change and each employee has followed the main process:

- Enter complaint
- Obtain complaint number
- Acknowledge receipt of complaint
- Notify subject surveyor of complaint
- Create case file to maintain documents
- Track responses
- Alert investigators to receipt of responses

All have used an Excel spreadsheet to supplement the information on Versa or to see, at-a-glance, the status of each complaint. Some have used one spreadsheet, some have used multiple, simply to assist them with their duties and tracking dates. To ensure that anyone assuming the role of complaint administrator can perform the duties, current procedures are formalized by current staff.

The report also states that complainants were not notified quarterly regarding the status of their complaint. This is an area that staff has revisited on multiple occasions because we were aware we needed to improve. Different methods of tracking the quarterly dates have been tried without success. Staff recently began to use a feature of Versa Regulation that generates letters based on entry date of complaint. When entering a complaint in the system, the complaint administrator selects "correspondence" and when certain criteria is met, the system generates a report which is forwarded by email to the complaint administrator. The report contains individual letters that meet the criteria of quarterly time period from the date of entry of the complaint in the system. The letters are then printed and mailed. Using this report has helped staff to ensure quarterly letters are being sent to complainants.

Sunset staff notes that the Board lacks case prioritization. During the review, it was suggested that there should be an initial review upon receipt of a complaint to determine prioritization. The Complaint Administrator and the investigators, however, do review complaints as they are received. Often, it is not simple to immediately categorize a complaint, as some degree of investigation is necessary unless the complainant alleges facts that clearly indicate a lack of board jurisdiction. At its November 30, 2018 Board meeting, members will consider the adoption of a policy that will assist enforcement staff with this issue.

It is also noted that there was no documentation in certain enforcement case files explaining why the outcome strayed from the sanction recommended by investigators. First, the matrix is based on Occupations Code §1071.452 which states that an administrative penalty may not exceed \$1,500. The Board's matrix, then, is based on the violations of the Act and /or minimum standards making the initial recommendation higher than the actual outcome. Second, the subject surveyors of complaints that yield violations, almost always request an Informal Settlement Conference. In accordance with Occupations Code §1071.4035 and 22 Tex. Admin. Code §661.62(f), this is the

subject surveyor's opportunity to negotiate a settlement or present additional evidence. It is this process then, which may yield a lower penalty or, sometimes, a dismissal. The Board makes every effort to treat all licensees consistently and fairly. However, beginning with Informal Settlement Conferences this month, documentation will be included in each case file, along with the informal notes taken by the Executive Director, summarizing the actions taken by the Informal Settlement Conference Committee and their reasoning for reducing administrative penalties or dropping violations against the subject surveyor.

Finally, Sunset staff notes potential conflicts of interest due to the part-time occupation of each of the investigators. The Executive Director made his policy quite clear to each investigator, upon hiring, of the importance to maintain a transparent, fair and unbiased work ethic when handling land surveying complaints. If either investigator has had so much as one interaction at a professional level with a surveyor which is under review, they are to self-report to the Executive Director. The complaint is then assigned to the remaining investigator or, if both have had professional contact with the subject surveyor outside of their current position, the Executive Director will find another individual, usually a former Board member whose term has been expired for more than two years and who has not been involved with the matter or person being investigated, to handle the complaint. The Board strives to ensure fairness and objectivity concerning complaint resolution. To correct this deficiency, the Board will review and consider a draft policy that provide conflict guidelines of interest by addressing some, or all, of the following:

- Potential conflict of interest
- Perceived conflict of interest
- Conflict of duty
- Direct interests
- Indirect interests
- Financial interests
- Non-financial interests

- **Ongoing Lack of Reliable Performance Data**

To address Sunset staff's concerns with lack of performance data, we note that the agency uses Versa Regulation, a system used by numerous Texas occupational licensing agencies. Performance measure data is taken from Versa Regulation reports. Information concerning licensing and complaints is input into Versa by the complaint administrator. Quarterly, and annually, a report is obtained from Versa that reports:

- New licenses issued broken down by RPLS and LSLS
- Number of licenses renewed (including those renewed online)
- Complaint resolution based on the date entered and the date closed:
 - Number of complaints closed for period
 - Number of complaints closed in 180 days or less
 - Percentage of complaints dismissed in 180 days or less
 - Average number of days to closure

Calculations are performed by Versa using information input by the staff. The complaint administrator also keeps a spreadsheet from which similar information is gleaned.

The procedure used in reporting the information to the Legislative Budget Board is:

- Executive Director requests report from Versa
- The report is forwarded to the Accountant who inputs the information into ABEST.
- The information in ABEST is saved in the system.
- The report is then returned to the Executive Director who reviews the report and data entered in ABEST and then submits.

The procedure used will be written down and reviewed by the Board for accuracy.

- **Poor Budgetary Management**

The Board is in a unique position in that our Act, Occupations Code section 1071.152(b), states that “General revenue of the state may not be used to pay the costs of administering this chapter in an amount that exceeds the amount of fees received under this chapter.” Sunset staff failed to understand that in a meeting between the Board’s Executive Director and the Governor’s Office, it was brought to the Board’s attention that for Fiscal years 2019, 2020 and 2021, a deficit was being projected. Prior to the repeal of the \$200 occupation tax (effective September 1, 2015) which impacted our licensing fees for 2016, the fees received by the Board well exceeded the appropriations from the State.

The deficit came about when combining what the agency receives in General Revenue plus state employee benefits paid out by the State. This amount is subtracted from estimated revenue earned by the agency through licensing fees. The net difference is a deficit. Most agencies are limited to spending only the amounts contained in their appropriations bill. This agency is limited not only by its appropriations bill, but it is limited further to an amount well below what it collects in fees, similar to SDSI agencies. This agency has restricted its expenditures to keep its own total expenditures below the amount it collects in fees to comply with the statute. Notwithstanding these measures, because of the statute cited above, the usual practice of benefits paid by the State to state employees has caused a deficit. Ironically, the agency’s efforts to comply with the statutory provision have caused the agency to lapse funds.

For example, General Revenue funding is \$468,107. The anticipated total of state employee benefits paid by the State equals \$155,320. The sum of these two figures equals \$623,427. The revenue the agency anticipates collecting equals \$550,000. The difference is a deficit to the State of \$73,427.

If the expenses incurred to administer the chapter include state employee benefits, as the Governor’s office staff pointed out, then the revenue we project for FY2019 through FY2021 will be insufficient. Sound fiscal management would require agency action to correct the deficit. To resolve this deficit, to the apparent bewilderment of Sunset staff, was the need to raise revenue in the form of an increase to annual firm registration. Sunset staff implies that lapsing funds even further, by spending less, will resolve the budgetary issue, but it won’t because then the Board would be criticized for having lapsed funds. Without a statutory change, the Board will be faced with the deficit unless it raises fees to comply with the statute. The sound solution is to raise fees, which the Board approved at its August 24, 2018 meeting. The Executive Director has been mindful of the fact that the Board is funded with taxpayer money and has been a good steward and has done his utmost best to operate the agency within the laws.

Sunset staff notes that the Board does not have authority to reimburse advisory committees for travel expenses related to Board business. They note that in 2003, Sunset staff noted a similar issue.

However, in 2007, the Comptroller's Office informed the Board that it did have authority to reimburse the advisory committee members for travel. The Board has also always provided information regarding its advisory committee expenses, including the anticipated expenses for travel.

The Board has currently suspended reimbursement of travel expenses to advisory committee members and has submitted a Request to Exceed to both the Legislative Budget Board and the Governor's Office. We understand that if it is approved, we will be able to reimburse the members this year and subsequent years if the current language in section IX of the General Appropriations Act regarding travel expenses for advisory committees is carried forward.

Issue 2

Key Elements of the Agency's Licensing and Enforcement Functions Do Not Conform to Common Standards

The Board appreciates Sunset Commission staff bringing their regulatory agency standards to our attention. Until the review, the Executive Director was unaware of their existence. This information, along with their critique, will help us improve how we do business.

Overly Restrictive Licensure Requirements

- **Subject qualifications for licensure and registration**

It is not the Board's intent to create restrictive licensure requirement that create barriers to entry. The Board, however, is bound by its Act and the Act lays out certain requirements.

There are two steps to becoming a registered professional land surveyor in Texas, if you are not already registered in another state. An interested individual must first become a Surveyor-in-Training (SIT), obtain experience under the direction of a registered professional land surveyor (RPLS) and then pass the Board's registered professional land surveyor exam.

The Act (Occupations Code, section 1071.252) lays out the requirements for applying for either the SIT, RPLS or Licensed State Land Surveyor (LSLS) which are:

- Complete application on form prescribed and furnished by the Board that contains:
 - Applicant's education;
 - Applicant's experience; and
 - References from three RPLSs having personal knowledge of the applicant's surveying experience.

This statute indicates that the form may be accepted regardless of whether it has been notarized. What, then, would be the purpose of having the form notarized and why would the statute even raise it as a point? Since the application is not signed by the applicant in front of Board staff, it would seem logical to have a notary verify the identity of the person signing the application as the one submitting the application. This appears to be presented as an option to the Board but not a requirement. Yet, the language is within the Act the Board must follow. No application has been rejected for lack of notarization.

The Board will review the Sunset Commission staff recommendation to dispense with the character form and consider eliminating from the application form the reference to notarization but would

suggest that the statute be amended to remove the ambiguous language related to notarization from Section 1071.252(b).

In addition, the Board will review for amendment its rule (22 TAC §661.43(b)) that permits a Board member to serve as a reference for an applicant.

The Sunset Commission staff is recommending amending the Act (Occupations Code, section 1071.255(c)) by removing the Texas residency requirement to become an LSLS. This requirement is important to the integrity of the work that is being performed for the Commissioner of the Texas General Land Office. A Texas resident would be a more interested party to providing those services than those that live outside the state. An LSLS is also considered an official of the State of Texas, according to the Act, while working under this capacity which would require that official to be a resident of the State of Texas. The Board is not attempting to license an abundance of state land surveyors, but only to license qualified individuals willing to provide their expertise for the State of Texas.

- **Inefficient license and registration renewal process**

The Board acknowledges that the Act authorizes the Board to adopt by rule a system where certificates and licenses expire on various dates during the year if it so chooses (Occupations Code, section 1071.301(a)). This will require discussion for rulemaking and adoption at one of its regular meetings. With a pending rule review, this would be the time to incorporate this recommendation. However, the Act seems to imply that the certificate or license shall be valid for one year so to make the renewal biennial as suggested may require an amendment to the Act.

Exam development/administration create unnecessary burdens on staff and applicants

- **Unnecessary exam development and administration create unnecessary burdens on staff and applicants**

The Sunset Commission staff recommends that the Board conduct a formal cost-benefit analysis regarding adoption of the NCEES Principals and Practice of Surveying (PS) exam. The Board will accept this recommendation. However, the Sunset Commission staff recommendation to outsource the development of the state exams, especially the LSLS examination, would jeopardize a century of protecting the contents of a limited number of example problems used for the analytical portion of the examination. It is important to note that Texas' land system is much different than in those states. The states in which the Federal government has jurisdiction to land management matters are Public Land System States (PLSS) and have explicit instructions to surveying methods published by the BLM. These standard methods are studied and examined through the National Council of Examiners for Engineers and Surveyors (NCEES.) Unlike the land system in Texas, the PLSS examination can be used in other common PLSS. Since there is no sovereign Federal land in Texas, the BLM surveying methods cannot be applied for boundary construction. Understanding this major difference in land surveying in Texas compared to other states is important to understanding the main reason the Board has not adopted the PS exam.

The LSLS exam is also unique and the idea of outsourcing this exam is simply incomprehensible. Many generations of LSLS have developed LSLS questions based on their applicable experience of the case and statutory laws that specifically deal with surveying original land grants in the State of Texas. The exam questions are not theoretical, nor do they create hypothetical scenarios that would not exist for the state land surveyor. The questions are from real-world cases that have been

resolved using the laws that are applicable. LSLS members that have served on the Board have protected the examination from extortion and fraud for a hundred years through the pride of their responsibility to the State of Texas to which they have given their oath. Nearly every project that requires the capacity of an LSLS has a certain historical and regional aspect that could never be simplified into an examination question by a developer that is not qualified under the Act.

The Sunset Commission staff also questions the use of the NCEES FS exam. Unlike the PS exam, the Fundamentals in Surveying exam is intended to be a more general exam testing the mathematical skills of the examinee rather than the more specific state laws and boundary analysis that occurs in the Board's RPLS exam. This reason is why the Board was willing to accept using the FS exam over creating their own entry-level exam.

In its report, the Sunset Commission staff raises concern over the passing rates and the consistency and fairness of the Board's approach. The Board's process of using three exam advisory committees is strictly for creating consistent and fair exams. The Item Writers committee creates exam questions that go into the Board's exam data bank. For each exam date, questions are pulled from the data bank based on a "blueprint" to create the exam that will be offered to examinees. The QAQC committee reviews new questions and those in the data bank for correctness and accuracy. Questions that make dated references are either amended or removed from the data bank. Finally, the Cut-off Score committee will review statistical information provided by the psychometrician who performs a statistical analysis of each exam offered. The purpose of the analysis is to review the examinees responses to the exam questions and through the statistical analysis, provide information to the Cut-off Score committee. That information helps them determine if there was a problem with the question itself or with the answers and detractors listed. This determination then sets the passing score for the specific exam as opposed to simply setting a passing rate at 70% or greater. We believe this results in a consistent and fair exam.

- **Inappropriate Board member exam involvement**

The Sunset Commission staff identifies what it believes is inappropriate Board member involvement in the LSLS examination process. To address the inappropriate involvement, the LSLS examination committee could be modeled after the RPLS exam advisory committee which would consist of selected/appointed LSLS to an Item Writing Committee, QAQC Committee, and Cut-off Score committee. However, the Board is opposed to any changes to the current three-member LSLS committee based on the fact the LSLS, who (other than the GLO designee) are appointed by the Governor with the recommendation of the Land Commissioner, work under the direction/supervision of the Land Commissioner as agents of the state and the current LSLS board members have the vested interest inherited to them by the former Board of Examiners of Licensed State Land Surveyors since 1919. Therefore, who best to represent the future agents of the state and the GLO than the three LSLS members. As has been mentioned previously, the LSLS is unique compared to the RPLS, who serves the public. To outsource the LSLS exam may be unnecessary considering the rigorous exam preparation procedures the Board follows to ensure the integrity of the LSLS exam.

Nonstandard enforcement processes and lack of clear policies

- **Lack of clear, consistent enforcement policies**

At the November 30, 2018 Board meeting, members will consider proposed policy that the staff follows concerning complaints. While the Board has not defined in rule what is "jurisdictional" and "non-jurisdictional," it has provided guidance through board member comments at meetings.

Currently, the complaint administrator and the lead investigator review all complaints. Board discussion during its meetings has indicated that if the complaint allegations are concerning trespass, a boundary dispute or a contractual issue, the complaint is not appropriate for agency review. In these cases, notification of the complaint is sent to the subject surveyor, but a response is not required. The complaint is slated for dismissal as not being under the purview of the Board. However, complaints with other allegations that appear to be in the Board's purview will require a response from the subject surveyor.

The recommendation also alludes to the agency risking inappropriate fishing for violations. It is not the intent to "fish" but there are times when an investigation into a complaint that falls under the Board's purview yields additional violation of the minimum standards set by the Board. However, the Board will take note of the Sunset staff's recommendation when drafting its policy on complaints to avoid the risk of any inappropriate fishing or even the appearance of impropriety.

- **Unnecessary Board approval for dismissed cases**

To ensure that complaints being dismissed were not being handled inappropriately, the Board by rule created the Complaint Review Panel. The rule requires that any complaints designated for dismissal be reviewed by this panel. However, as the Sunset Commission staff noted, the Act gives staff the authority to dismiss complaints. The Board will review this rule and take appropriate action at its next regularly scheduled meeting.

- **Unclear practice standards**

The Board staff would like to suggest the creation of a FAQ page on the Board's web site. This would provide information to both the licensees and the public. During the review process, it was mentioned to the Sunset Commission staff that something helpful would be to give the Board authority to issue advisory opinions that would provide interpretation of its rules. We have discussed creating a FAQ page, and this would help alleviate this concern.

It should be noted that our web site does inform individuals considering filing complaints with the Board that the Board does not handle trespass and boundary issues. To make this information clearer, Board staff will revise the page so that it is simpler to read.

- **No maintenance of complainant's confidentiality**

The Board will consider the Sunset staff's recommendation to find ways to protect the confidentiality of the complainant. In most cases, maintaining confidentiality is not possible because the statute expressly makes complaints public information. Maintaining confidentiality usually is impossible, also because the subject surveyor will need to know the allegations and the survey in question to respond to the Board. It has also been our experience that in most cases the surveyor has already had contact with the individual prior to the complaint being filed and is often expecting to hear from the Board as a result. Nevertheless, we will explore options in presenting the allegations and submit information to the subject surveyor in a manner that does not unnecessarily identify the name or contact information of the complainant at the outset.

- **Missing complaint information**

During the review, the Board staff was asked to provide statistical information by certain categories. Though we did not track complaints in that manner, we were able to provide that data to the Sunset

Commission staff. As part of the complaint policy, the Board will discuss this issue at its meeting on November 30, 2018.

- **Lack of publicly available disciplinary information**

The Sunset staff failed to recognize that the enforcement information is available on the web site. Complaints, with details from the agreed orders, are in the minutes. Board staff is working to extract this data from the previous Board meeting minutes for posting under a separate heading on the Board's web site, under the main "Complaints" tab. Information within the enforcement information would be searchable using CTRL-F so the public would be able to search for a specific name.

Recommendations

The Board will be reviewing the recommendations provided under Issue 2. Most of these recommendations could be implemented immediately, with the exception of those that require statutory change.

2.1 Remove the residency requirement for LSLs

Respectfully, the Board disagrees with this recommendation. Inviting a non-resident licensee to become licensed as a LSLs could be harmful to the public because the individual would not have the required knowledge and expertise concerning Texas unique land history. Texas land boundaries come from Spain, Mexico, the Republic of Texas and finally statehood. Land grants from these various sovereigns are not found in other states within the US.

2.2 Authorize the Board to set biennial license and firm registration terms in rule

The Act currently permits the Board to stagger its registration deadlines but an amendment to the statute would be required to give the Board authority to move to a two-year term. The Board will discuss this at its November 30 Board meeting.

2.3 Replace the Board's exam advisory committees with general statutory authority to establish advisory committees.

The Board would have no objection to repealing the current statute and replacing it with a statute to give the Board authority by rule to create advisory committees. However, the Board could proceed by creating a task force or special committee to review the issues concerning licensing, exams and enforcement. The Board presently has a Continuing Education Committee.

2.4 Authorize the agency to outsource its exams

The Board disagrees with this recommendation concerning the development of the RPLS, Reciprocal and LSLs exams because it believes it would compromise the integrity of its exams. The Board currently uses a cloud-based system that would allow for a computer-based testing (CBT) of its exam. The Board would need to conduct a study to determine the steps and costs necessary in implementing a CBT exam.

2.5 Clarify statute to realign the agency's complaint intake and investigation procedures with model standards

The Board agrees with this recommendation and is taking steps now to implement the Sunset Commission staff's recommendations to make its complaint process more effective and efficient.

2.6 Direct the Board to review application requirements to conform to current policy and statute

The Board will begin discussing its application requirements, starting with its November 30, 2018 Board meeting. A task force should be created to perform an analysis and provide a recommendation to the full Board at its subsequent meeting.

2.7 Direct the Board to adopt a staggered renewal system for licenses and registrations

The Board will review this recommendation at its November 30, 2018 Board meeting.

2.8 Direct the Board to conduct a comprehensive analysis regarding adoption of the nationally accepted practice exam and a separate, corresponding jurisprudence exam.

At its February 19, 2016 Board meeting, members received a report from Bill Merten, Mary Chruszczak and Paul Kwan analyzing moving to the NCEES PS exam. However, the Board will reconsider Sunset staff's recommendation at its November 30, 2018 Board meeting and take appropriate action.

2.9 Direct the Board to publish disciplinary history online

The Board currently publishes this information as part of the minutes for each Board meeting. Staff has begun the process, as noted elsewhere in this response, to move this information to a section under "Complaints" on its web site. The information will provide a summary of the findings of the complaint along with the disciplinary action taken by the Board. This information is searchable.

Sincerely,



Marcelino A. Estrada
Executive Director