

SUNSET ADVISORY COMMISSION

STAFF REPORT

*Texas Board of
Architectural Examiners*

*Texas Board of
Professional Engineers*

*Self-Directed
Semi-Independent Agency
Project Act*

OCTOBER 2012



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Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. The beautifully carved wood door frames are emphasized with elaborate, custom-designed bronze hinges and hardware produced especially for the building by Sargent and Co. of New Haven, Connecticut, in the late 1880s. The eight inch by eight inch hinges are inscribed with the words "Texas Capitol", decorated with incised designs of geometric and stylized floral motifs, and weigh over seven pounds each.

**TEXAS BOARD OF
ARCHITECTURAL EXAMINERS**

**TEXAS BOARD OF
PROFESSIONAL ENGINEERS**

**SELF-DIRECTED SEMI-INDEPENDENT
AGENCY PROJECT ACT**

SUNSET STAFF REPORT

OCTOBER 2012

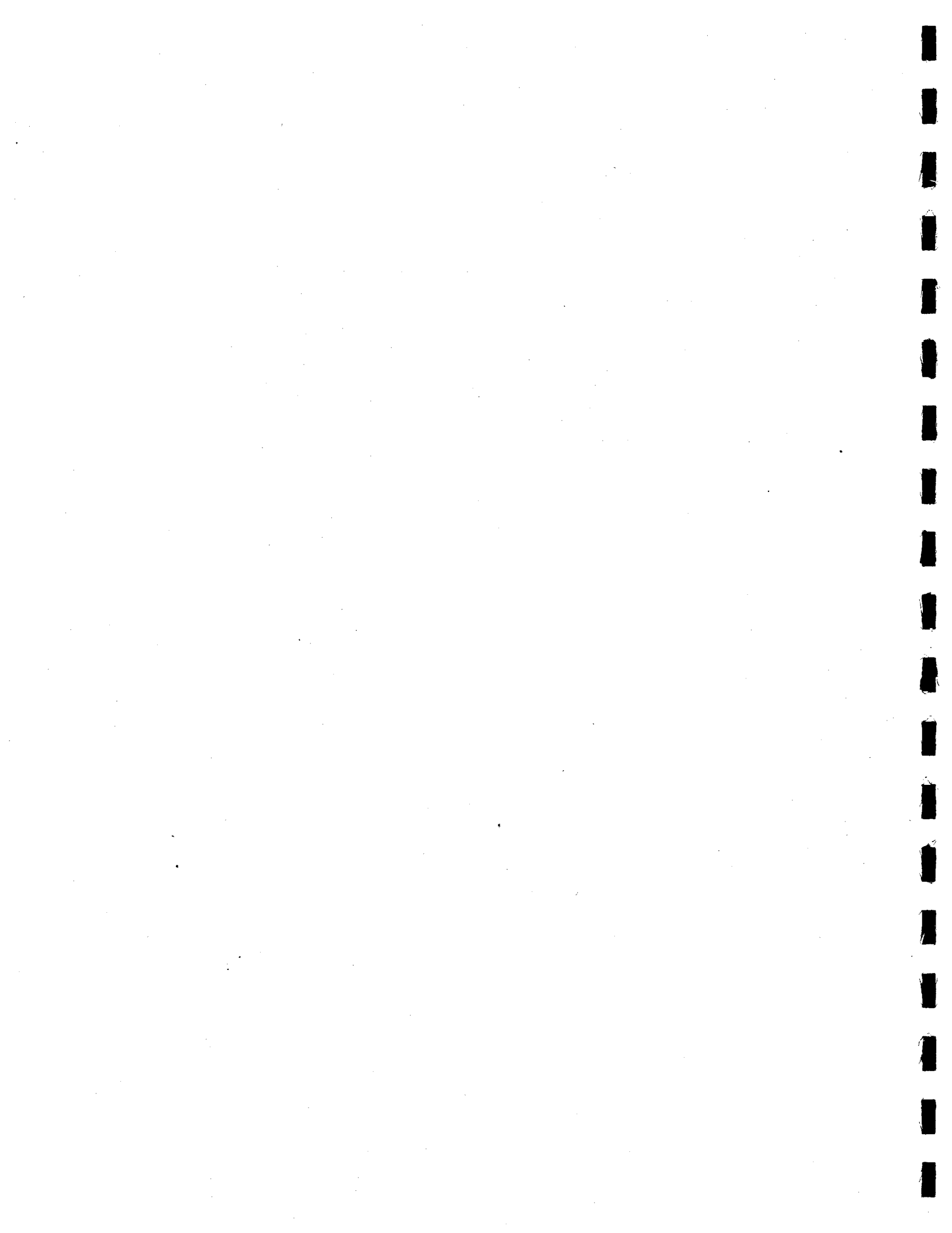


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SUMMARY



SUMMARY

In some ways, the regulation of professions, such as architects and engineers, reflects an arrangement between the State and a regulated community. Certainly, the overriding interest of such regulation is to protect the public by ensuring the competence of practitioners and taking action against those who do not demonstrate that competence or otherwise harm the public through the regulated activity. The regulated community shares this interest to ensure safe conduct, but also has a self interest to ensure that all practitioners play by the same rules and no one obtains an advantage by failing to meet established standards. As a result, the regulated community plays a large role in all aspects of regulation, from pursuing it through the Legislature, funding it through fees, and overseeing it through policy bodies that make decisions on competence standards and enforcement actions.

A consequence of this relationship is that the regulation tends to be of greater interest to the regulated community than to the public, at least collectively, beyond the scattered individuals who may suffer harm because of these regulated activities. Questioning or seeking to change basic regulatory assumptions or approaches once established is difficult without the tacit consent of the regulated community. In addition, an ongoing risk exists for any regulatory agency that it will become unduly influenced by the professionals it oversees. With the Self-Directed Semi-Independent (SDSI) Agency Project Act allowing the boards regulating architectural, engineering, and accountancy professionals to operate outside the legislative appropriations process, a different arrangement has been made with the regulatory agencies but with similar implications for the regulation of these professions and a greater risk of undue influence because of the lack of ongoing legislative oversight.

Against this backdrop, Sunset staff reviewed the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers, and separately the SDSI Act, under which both agencies and the Texas State Board of Public Accountancy operate. The Sunset review evaluated the need for the regulation imposed by the two agencies, concluding that the State has an interest in regulating architects, landscape architects, and engineers, but questioning the essential State purpose that justifies the ineffectual regulation of interior design.

Sunset staff also evaluated the appropriateness of the current organizational approaches to regulating these professions, but could not justify changes in organizational structure at this time. The Texas Department of Licensing and Regulation (TDLR) has become recognized not as a punishment for troubled agencies — a view, perhaps, held by some — but as the State's successful umbrella regulatory structure with a record of effective and efficient operations. A full consideration of benefits and drawbacks of consolidating regulation at

Questioning basic regulatory approaches is difficult without the consent of the regulated community.

TDLR, however, was complicated by the agencies' SDSI status and the likely loss of revenue to the State from disturbing that SDSI status and ending the current arrangement of remittances to General Revenue under the SDSI Act. A concurrent review of these agencies with TDLR would allow a more complete consideration of such reorganization while also exploring possible SDSI status for TDLR as part of the State's strategy for using this flexible budgeting approach.

The review of the SDSI Act presented additional challenges to Sunset staff. As a statute, the Act does not lend itself to the standard criteria for Sunset reviews tailored for state agencies. A larger challenge, however, is what the review asks of Sunset staff as legislative employees, with the Legislature's perspective, to evaluate a concept that implies a criticism of the Legislature for its reluctance to perform one of its essential duties of determining funding for agencies that exercise the power of the State. More challenging still is that the SDSI Act is but a piece of a larger arrangement with six other state agencies that have SDSI provisions but are not affected by this review. In addition, the waiting list for more agencies desiring SDSI status is expected to grow longer.

Despite these challenges, Sunset staff found that the three project agencies have operated appropriately under the SDSI Act and that the Act should continue beyond its pilot project status with additional safeguards in place to ensure adequate controls and oversight. Separate review of the SDSI Act would no longer be needed as the provisions would be reviewed in conjunction with each agency's Sunset review. Although beyond the scope of this review, the Legislature should consider pausing further enactment of SDSI agency status until it can assess the overall approach to SDSI and the impact it has on effective agency oversight.

The following material summarizes all of the Sunset staff recommendations on the Board of Architectural Examiners, the Board of Professional Engineers, and the SDSI Act.

Issues and Recommendations

TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Issue 1

The State Has a Continuing Need to Regulate Architects and Landscape Architects, but Not Interior Designers.

The Texas Board of Architectural Examiners regulates architects, landscape architects, and registered interior designers. Sunset staff found that the State has a continuing need to license and regulate architects and landscape architects as the State is the only entity that provides the necessary assurance to the public that these professionals have the education and training necessary to competently design indoor and outdoor spaces. The State's regulation of interior designers, however, is ultimately a voluntary process that is not needed to ensure public protection. A separate national certification process ensures the competence of practitioners for those seeking it without involving the State in the transaction.

The Sunset review also found little justification at present for reorganizing the agency. Because of the Board's SDSI status, such reorganization would not result in savings and would likely have costs to the State. However, more careful consideration is needed to assess the potential benefits and drawbacks of organizational structures like TDLR. A separate review of the Board in six years at the same time as TDLR would allow such a comprehensive look at organizational structures and SDSI status.

Key Recommendations

- Discontinue the regulation of registered interior designers.
- Continue the Texas Board of Architectural Examiners until the next Sunset review of the Texas Department of Licensing and Regulation.

Issue 2**Key Elements of the Texas Board of Architectural Examiners' Statute Do Not Conform to Common Licensing Standards.**

In reviewing the Board's regulatory functions, Sunset staff found that certain licensing and enforcement processes in the Board's statute do not match model standards developed over many years of Sunset reviews of regulatory agencies.

Key Recommendations

- Clarify statute to require the Board to assess the \$200 professional fee at initial registration and renewal for all three regulated professions.
- Require the Board to conduct fingerprint-based criminal background checks of applicants and licensees with active licenses.
- Clarify statute to require the Board to use only its own renewal fee when calculating penalties for late renewal.
- Clarify statute to authorize the Board to apply administrative penalties per violation per day.

TEXAS BOARD OF PROFESSIONAL ENGINEERS**Issue 1****Texas Has A Continuing Need for the Regulation of Professional Engineers.**

The Texas Board of Professional Engineers regulates the practice of engineering by licensing individuals and firms that provide engineering services to the public. Sunset staff found that Texas has a continuing need to license and regulate Professional Engineers to protect consumers and ensure the competent and ethical practice of engineering.

The Sunset review also found little justification at present for reorganizing the agency. Because of the Board's SDSI status, such reorganization would not result in savings and would likely have costs to the State. However, more careful consideration is needed to assess the potential benefits and drawbacks of organizational structures like TDLR. A separate review of the Board in six years at the same time as TDLR would allow such a comprehensive look at organizational structures and SDSI status.

Key Recommendation

- Continue the Board of Professional Engineers until the next Sunset review of the Texas Department of Licensing and Regulation.

Issue 2

Key Elements of the Engineering Practice Act's Licensing and Regulatory Requirements Do Not Conform to Common Licensing Standards.

In reviewing the Board's regulatory functions, Sunset staff found that certain licensing and enforcement processes in the Board's statute do not match model standards developed over many years of Sunset reviews of regulatory agencies.

Key Recommendations

- Require the Board to conduct fingerprint-based criminal background checks of professional engineer applicants and licensees with active licenses.
- Increase the Board's administrative penalty authority to \$5,000 per violation per day for violations of the Engineering Practice Act or Board rules.
- Grant cease-and-desist authority to the Board for the unlicensed practice of engineering.

SELF-DIRECTED SEMI-INDEPENDENT AGENCY PROJECT ACT

Issue 1

Despite Lack of a Comprehensive State Approach to SDSI, the SDSI Act Is Working as Intended and Should Be Continued.

The Self-Directed Semi-Independent Agency Project Act authorizes the Texas State Board of Accountancy, Texas Board of Professional Engineers, and Texas Board of Architectural Examiners to operate outside of the legislative appropriations process. The Act provides project agencies with flexibility to set their own fees and budgets and to operate on the revenue generated from fees. Sunset staff found the Act difficult to evaluate using the review criteria provided in the Sunset Act and that the analysis was hampered by the fact that only two out of the three agencies under the SDSI Act were under Sunset review. In addition, a number of other agencies that the Legislature granted SDSI status through separate statutory provisions were not subject to Sunset review.

Sunset staff did not attempt to make a judgment on the prudence of the SDSI concept, instead the evaluation focused only on the continuing need for the Act. Sunset staff analysis of the project agencies' performance data found the agencies to be acting in the public interest and the Act to be working as intended. However, improved reporting requirements would provide the Legislature the adequate trend data needed to ensure proper oversight.

Key Recommendations

- Continue the SDSI Act, but remove its separate Sunset date and pilot project status and provide for its future Sunset review with agencies subject to the Act.
- Expand the data in the current reports required by agencies subject to the SDSI Act to help improve oversight.

Issue 2

The SDSI Act Does Not Provide Needed Safeguards to Ensure Oversight and Prevent Potential Abuse.

The SDSI Act allows the project agencies to operate outside the appropriations process, giving them flexibility in raising revenue to respond to events or agency needs quickly. Project agencies remain state agencies, using state employees and exercising the power of the State through their licensing and enforcement efforts. However, the SDSI Act does not clearly establish what provisions of general law applicable to all state agencies also apply to the project agencies, running the risk that important checks on these agencies' activities could be compromised.

The Act also does not clearly establish the Comptroller's role in managing the agencies' accounts, outside of the initial transfer of funds to the Texas Treasury Safekeeping Trust Company. While all project agencies have chosen to use the Comptroller's Uniform Statewide Accounting System for all financial transactions, project agencies are not specifically prevented from keeping accounts at commercial banks, away from needed State oversight. Finally, the SDSI Act allows project agencies to keep revenue from administrative penalties, going against good government standards for state agencies and creating the potential for project agencies to use penalties to self-support operations or increase fund balances.

Key Recommendations

- Clarify that provisions of general law applicable to state agencies apply to the project agencies if not in conflict with their SDSI status.
- Clarify that project agencies must use the Comptroller's Uniform Statewide Accounting System to make all payments.
- Require the project agencies to remit all administrative penalties to General Revenue.

Fiscal Implication Summary

When fully implemented, the recommendations in these reports would result in an estimated net loss of \$604,458 to the General Revenue Fund. The specific fiscal impact of these recommendations is summarized below.

Texas Board of Architectural Examiners

Issue 1 — Discontinuing the regulation of registered interior designers would result in the annual loss of \$928,600 to the General Revenue Fund because interior designers would no longer pay the \$200 professional fee. Through this deregulation, the Board would experience an annual loss in licensing and other fees of about \$660,500.

Issue 2 — Clarifying that the \$200 professional fee applies to architects at initial licensure would result in the Board collecting an additional \$120,000 annually to be deposited to General Revenue. In addition, requiring the Board to use only its own renewal fee, and not the professional fee, when calculating penalties for late renewal would result in an annual loss to the Board of approximately \$155,000.

Texas Board of Professional Engineers

Issue 2 — Prohibiting the Board from collecting the \$200 professional fee from applicants before they have satisfied the licensing requirements would result in a loss of approximately \$44,000 annually to the General Revenue Fund.

Self-Directed Semi-Independent Agency Project Act

Issue 2 — Requiring all three agencies to remit collected administrative penalties to General Revenue would result in an annual gain to the General Revenue Fund in the amount of \$248,142. Conversely, the project agencies would experience annual revenue losses in the following amounts: \$129,272 for the Accountancy Board, \$71,332 for the Architectural Board, and \$47,538 for the Engineers Board.

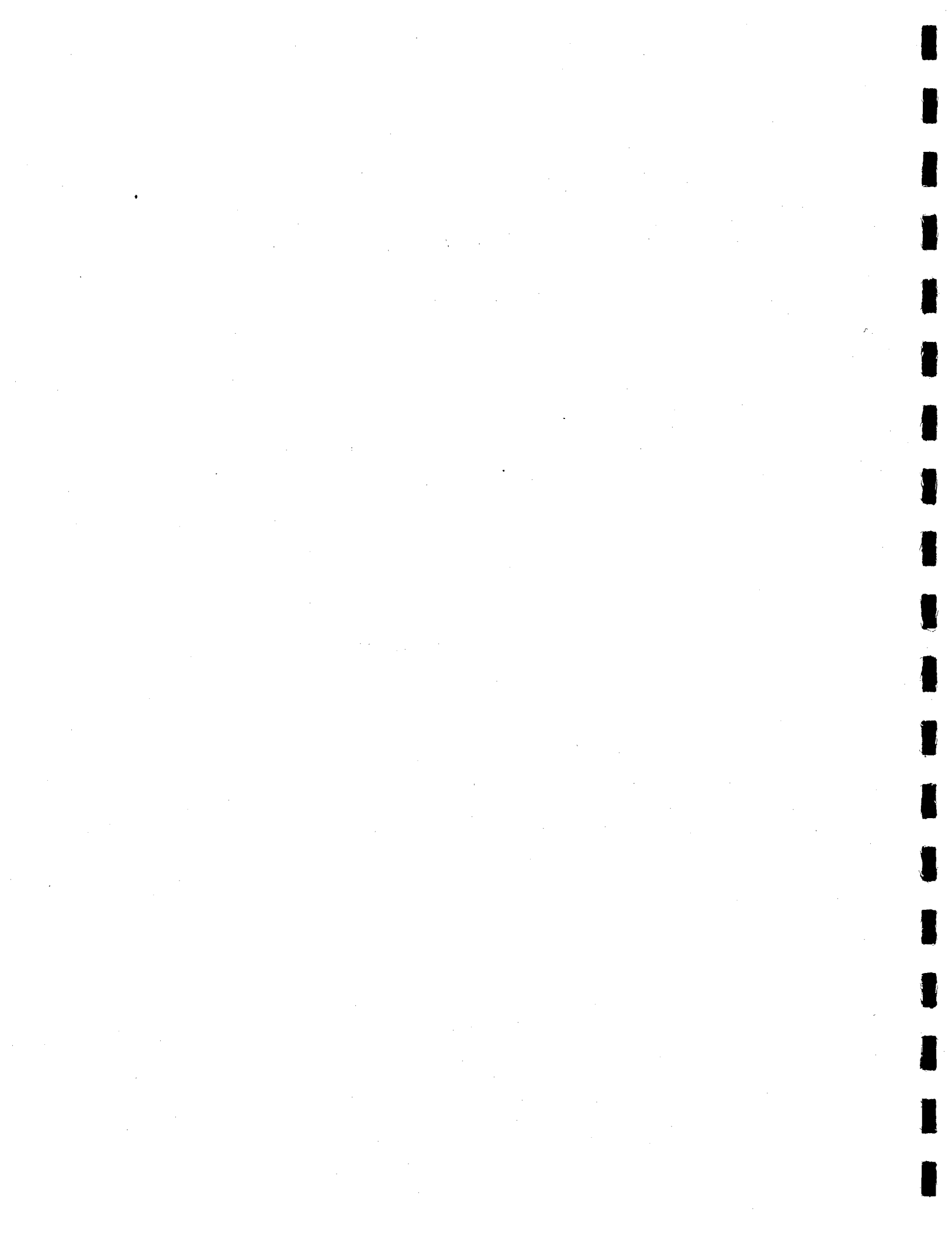
Architectural Examiners, Professional Engineers, SDSI

Fiscal Year	Gain to the General Revenue Fund	Loss to the General Revenue Fund	Net Fiscal Impact to the General Revenue Fund
2014	\$368,142	(\$972,600)	(\$604,458)
2015	\$368,142	(\$972,600)	(\$604,458)
2016	\$368,142	(\$972,600)	(\$604,458)
2017	\$368,142	(\$972,600)	(\$604,458)
2018	\$368,142	(\$972,600)	(\$604,458)

TEXAS BOARD OF ARCHITECTURAL EXAMINERS



AGENCY AT A GLANCE



AGENCY AT A GLANCE

The Texas Board of Architectural Examiners (Board) regulates architects, landscape architects, and registered interior designers in the state. The Board was established to regulate architects after a 1937 explosion at a school in New London, Texas, in which improperly designed mechanical and electrical devices resulted in a natural gas explosion that killed more than 300 students and teachers. A separate agency created to regulate landscape architects in 1969 was combined with the Board in 1979. The Legislature added the regulation of interior designers in 1991.

To fulfill its mission of protecting the public, the Board carries out the following key activities.

- Licenses architects and landscape architects practicing in Texas.
- Licenses interior designers who wish to call themselves Registered Interior Designers.
- Receives and investigates complaints concerning licensees, and takes disciplinary actions against individuals who violate the Board's statute or rules.
- Provides information to licensees, building officials, and the public.

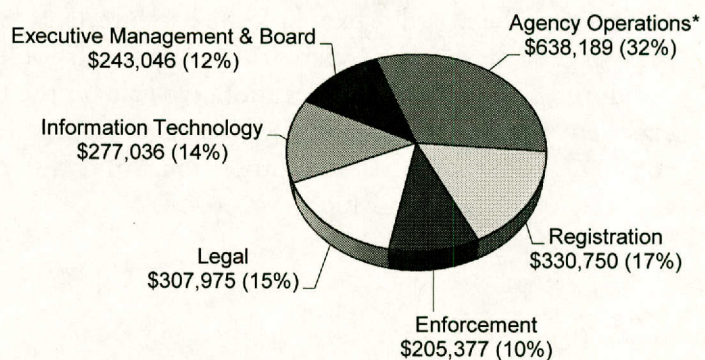
Key Facts

- **Texas Board of Architectural Examiners.** The Board's policymaking body consists of nine Governor-appointed members including four architects, one landscape architect, one registered interior designer, and three public members, one of whom must have a physical disability.
- **Funding and Staffing.** In fiscal year 2011, the Board collected just over \$2.8 million in licensing and other fees and administrative penalties to pay for agency operations and other costs. The large majority of this revenue comes from fees assessed against architects, landscape architects, and registered interior designers. In addition, the Board collected about \$3.3 million in professional fees from these licensees but sends these directly to the General Revenue Fund; these fees are not used to support the agency.

That same year, the Board spent about \$2 million. The pie chart, *Agency Expenditures*, provides a breakdown of these expenditures by program area. In fiscal year 2011, the Board employed 22 staff, all of whom were based in Austin.

The Board does not receive a legislative appropriation. As a state agency operating under the Self-Directed Semi-Independent (SDSI) Agency Project Act, the Board sets its own budget, and funds itself through licensing fee revenues.

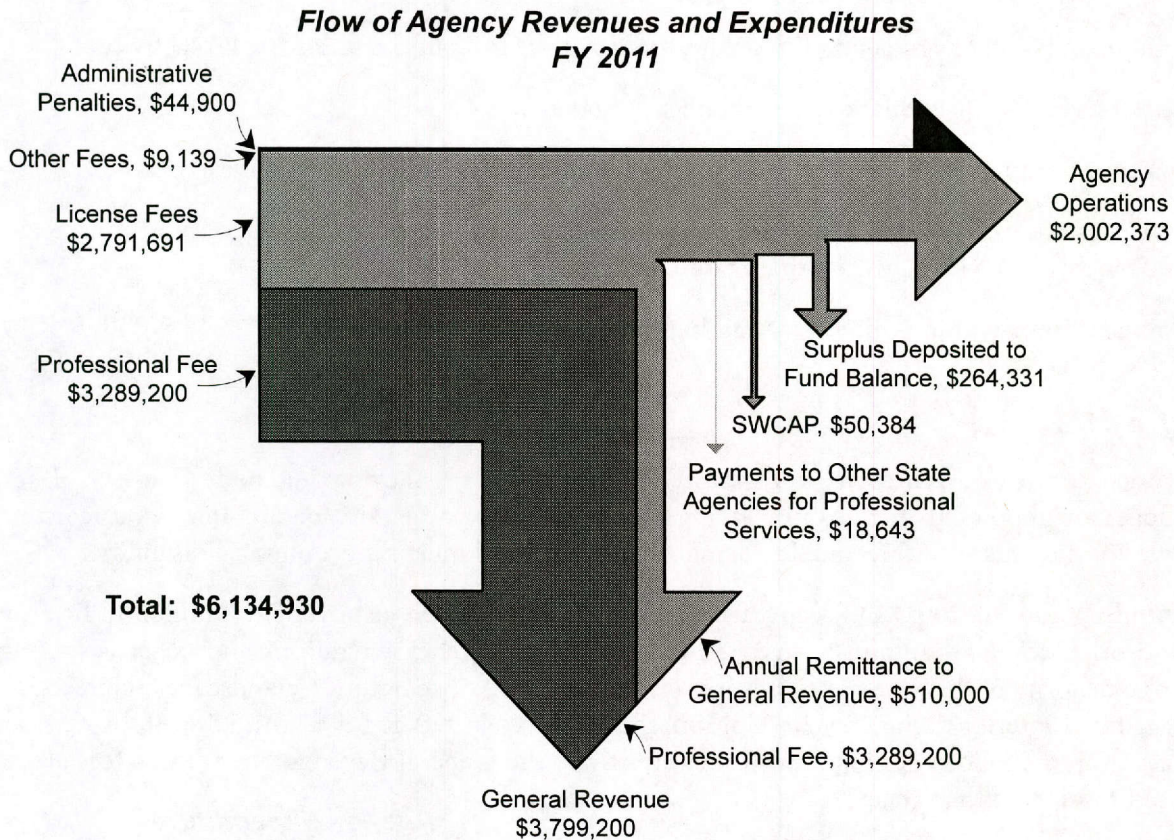
**Agency Expenditures
FY 2011**



Total: \$2,002,373

* These functions include administrative and executive support, human resources, finance, and accounting.

The graph, *Flow of Agency Revenues and Expenditures*, breaks down the various sources of revenues associated with the regulation of architects, landscape architects, and registered interior designers and shows how these revenues were spent in fiscal year 2011. After accounting for the agency's operating expenses, costs for the Statewide Cost Allocation Program (SWCAP), professional service transfers to the Office of the Attorney General and State Office of Administrative Hearings, and the remainder deposited to the Board's fund balance, the regulation of these design professionals generated almost \$3.8 million to the General Revenue Fund to be used for other state purposes. This amount includes both the \$200 professional fee paid by these design professionals and the agency's \$510,000 annual remittance as required under the SDSI Act.



- Licensing.** The Board regulated 12,482 architects, 1,485 landscape architects, and 5,217 registered interior designers in fiscal year 2011.¹ Applicants for licensure must satisfy the same basic process for all three professions — education, typically in the form of a degree from an accredited school, experience, and examination. Licenses must be renewed annually, with separate requirements for continuing education for each profession. In addition, as of August 2012, the Board registered about 2,700 firms employing those professionals.

- **Enforcement.** The Board investigates and resolves complaints against both licensed and unlicensed individuals, and imposes sanctions on individuals found to be in violation of board statute or rule. The table, *Board Enforcement Data*, 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 2011.

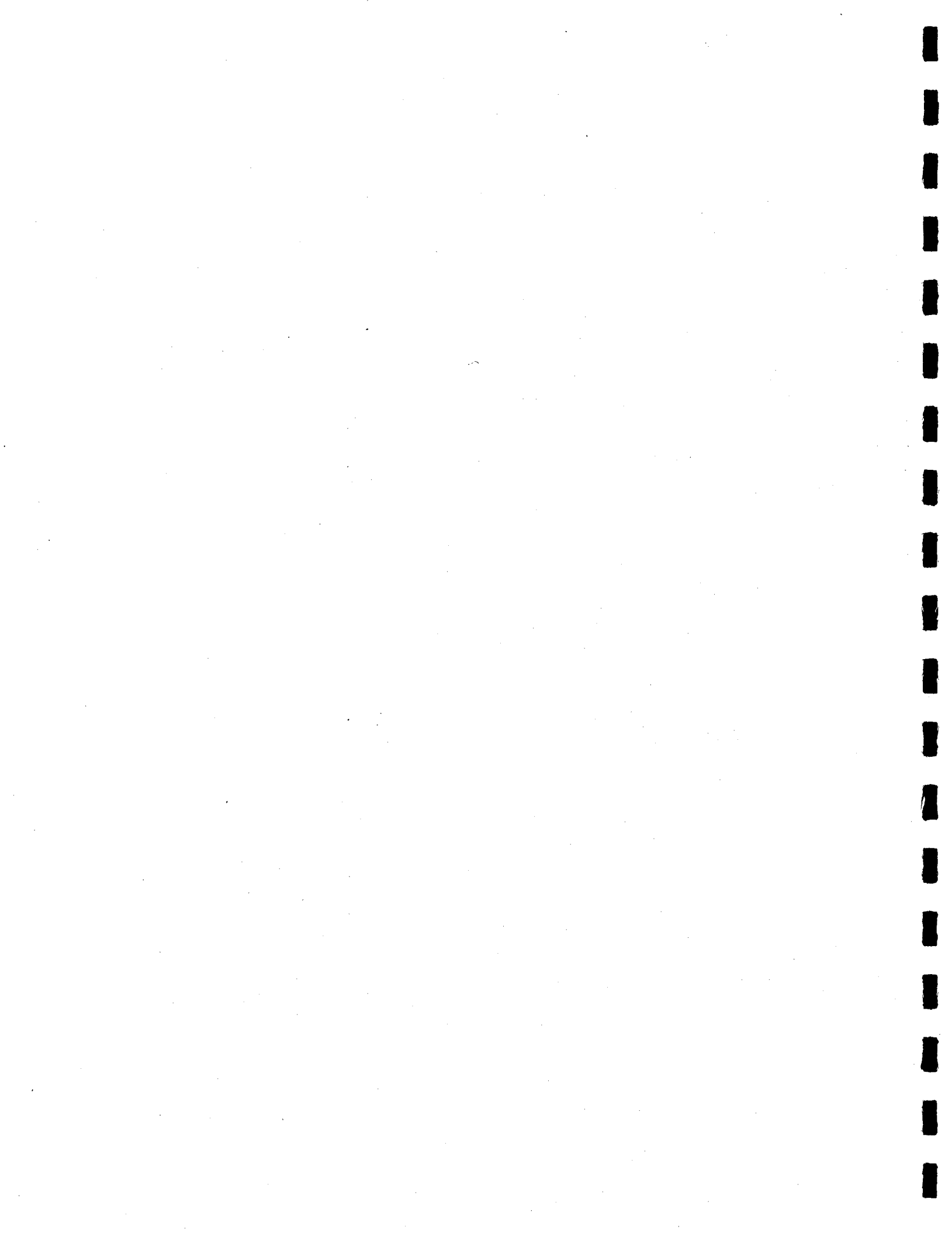
Board Enforcement Data – FY 2011

Complaints Received	
From the Public	101
From Staff	24
Total	125
Resolved Complaints by Disposition	
Dismissed	37
Voluntary Compliance	49
Administrative Penalty	27
Cease-and-Desist Notice	6
Revocation	1
Total	120

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¹ Numbers include active licensees, inactive licensees whose licensure is on hold, and emeritus licensees. Emeritus status allows retired licensees who meet certain age and experience criteria to retain the use of their professional title for a low renewal fee and without continuing education requirements.

ISSUES



ISSUE 1

The State Has a Continuing Need to Regulate Architects and Landscape Architects, but Not Interior Designers.

Background

In 1937, the Legislature created the Texas Board of Architectural Examiners (Board) to register and regulate individuals using the title “architect” after a 1937 disaster that claimed the lives of hundreds of schoolchildren in New London, Texas. In 1979, the Legislature moved the regulation of landscape architects under the Board. In 1991, the Board was given the additional responsibility to regulate the use of the title “interior designer,” which the Legislature modified in 2009 to regulate the title “registered interior designer” after a lawsuit raised free speech concerns about the original regulation. Under the current law, any individual may practice interior design, but only those who register with the Board may call themselves registered interior designers. At the end of fiscal year 2011, the Board regulated 12,482 architects, 1,485 landscape architects, and 5,217 registered interior designers.

The agency’s licensing division screens applicants from each profession to ensure that they meet the Board’s education, experience, and examination requirements for licensure. The Board’s enforcement division investigates accusations of violations of the agency’s law and rule by licensed and non-licensed individuals and may take enforcement action. The agency’s governing board includes four architects, one landscape architect, one registered interior designer, and three members of the public, one of whom is a person with a physical disability. The governing board is responsible for approving the agency’s budget, adopting rules, and determining the appropriate sanctions when a violation of the agency’s law or rule has occurred.

Since 2002 the Board has participated with the Texas Board of Professional Engineers and the Texas State Board of Public Accountancy in the Self-Directed Semi-Independent (SDSI) Agency Project Act. Under SDSI, the agency no longer receives appropriations from the State but has the autonomy to raise and use fees to run the agency outside the Legislature’s two-year budget cycle. The SDSI Act requires the agency to remit \$510,000 annually to General Revenue. In addition, the Board collects a \$200 professional fee annually from each registrant that is directly deposited into General Revenue. In 2011, the Board had a budget of about \$2 million and its registrants contributed nearly \$4 million to General Revenue through its SDSI remittance and the professional fees. The Board’s performance under the SDSI Act is evaluated in the Sunset Staff Report on the SDSI Act.

Findings

Texas has a continuing interest in regulating the practice of architecture and landscape architecture.

State regulation in the form of occupational licensing generally exists to protect the public from risks to its health, safety, and welfare. Regulation is often necessary when a profession directly affects public health, such as medicine, or when consumers may not have sufficient expertise to make informed choices when hiring a professional whose work could impact their

Competent architectural design of a space is essential to public health, safety, and welfare.

safety or welfare. When a sufficient level of potential public harm exists, state regulation assures public protection by licensing those deemed competent to practice the profession, ensuring that licensed professionals maintain their credentials and receive ongoing education, and enforcing against those who violate statute or rules governing professional practice.

- **Architects.** To ensure built spaces in Texas are safe for human use, statute provides clear requirements for when an architect is required for building design. These requirements take into account the potential harm that could arise from poor design work. The textbox, *When an Architect is Required*, shows the major projects requiring an architect.¹ By affixing their seal to a design, architects ensure that their plans comply with building and accessibility codes and that the plans are ready for regulatory approval or construction. Competent design of a space is essential to the health, safety, and welfare of the public both inside and outside the structure.

<p>When an Architect is Required</p> <ul style="list-style-type: none"> ● Public buildings to be used for education, assembly, or office space if anticipated construction costs exceed \$100,000, or alterations to such buildings if costs exceed \$50,000. ● Public or private buildings to be used for an institutional residential facility. ● Commercial buildings that exceed two stories or 20,000 square feet. ● Multifamily dwellings that exceed two stories and 16 units per building.

Financially, architectural designs represent a significant investment both in terms of the initial cost of construction and the long-term costs associated with the maintenance and upkeep of a structure over time. Poorly designed structures can also result in economic loss to the owner once built. The Board enforces practice standards against architects and has taken enforcement action against unlicensed individuals who unlawfully practice architecture and against architects whose poor design caused financial damage to the owners of the buildings.

- **Landscape architects.** Though Texas regulates the practice of landscape architecture, a number of exemptions for landscape-related activities make statute read more like a title act.² Unlike for architects, statute does not provide thresholds for when a landscape architect is needed for a project. Like architects, however, the State does have an interest in regulating the practice of landscape architecture to ensure proper design of outdoor spaces and outdoor structures that have an impact on public health, safety, and welfare. Landscape architects are often the lead or only design professional working on a project, and, like architects, when landscape architects affix their seals to designs, they are certifying that the design is ready for regulatory approval or construction.

While landscape architects do focus on the aesthetics of a space, which may indicate an element of consumer choice that may argue against regulation, they also design for safety and accessibility, which regulation ensures. For example, when designing playgrounds, landscape architects will factor in the amount of padded ground covering each piece of equipment needs in order to prevent serious injury. Landscape architects also are capable of designing small structures that do not meet the thresholds for an architect or engineer, such as archways or small pedestrian bridges. The Texas Department of Transportation uses landscape architects to help design transportation systems that work with the existing landscape while ensuring driver safety.³ While often associated with residential projects, landscape architects regularly design large commercial or public projects that have an impact on many people. Consequently, landscape architectural designs represent a large financial investment, often of public funds, which also elevates the need for regulation.

- **Other states.** All 50 states currently regulate the practice of architecture and landscape architecture. State licensure allows Texas' architects and landscape architects to become licensed in other states without having to meet additional qualifications. By holding licenses in other states, Texas residents are able to compete for contracts outside the state, an important aspect of these design professions. If Texas did not provide regulation for architects or landscape architects, these professionals would be at a disadvantage compared to their counterparts in other states. Outside of state licensure, no other form of certification currently exists to distinguish architects and landscape architects. The national organizations of state boards that set standards for education, experience, and examination for architects and landscape architects do not provide certifications to non-licensed individuals.⁴ Although state regulation should not exist solely to promote or maintain the economic viability of a profession, the State has an interest in assuring that individuals who design and seal plans meet minimum qualifications and that an enforcement process is in place to penalize those who violate law and rule.

State regulation of registered interior designers is unnecessary.

The State does not have a clear interest in maintaining what is ultimately a voluntary registration program for interior designers, and its approach to regulating interior designers is ineffective. The Board only interacts with a subset of interior designers who have chosen to register, and has little knowledge of the many professionals practicing across Texas who have not chosen to register. With this limited reach, even if potential public harm from the practice of interior design was presumed to exist, the Board could not adequately protect Texans from threats to their health, safety, or welfare. If an unregistered interior designer causes public harm, the Board cannot take any action other than for title violation if the person is unlawfully using the full title of registered interior designer.

*All 50 states
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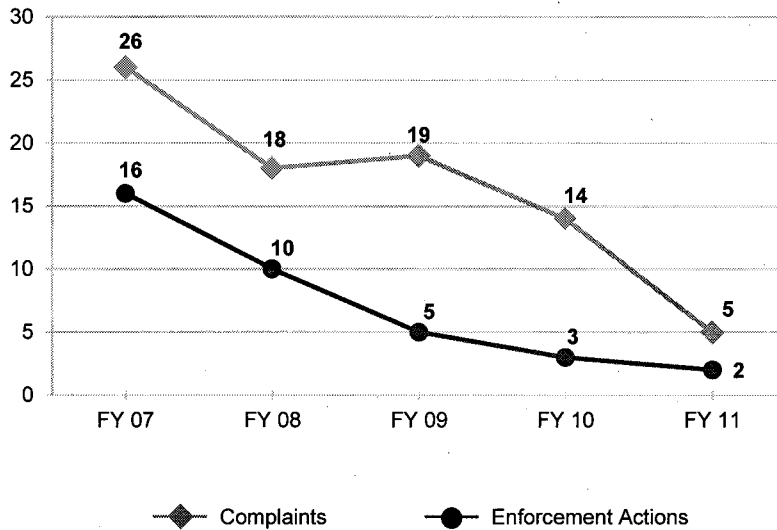
*The regulation of
interior designers
is ultimately
a voluntary
registration
program.*

Another aspect of the law that may affect public protection dates back to the establishment of the regulation, when individuals already engaged in interior design were grandfathered into regulation without any requirement that they meet established qualifications. Grandfather provisions are not unusual in establishing regulatory programs, but they do tend to undermine the promise of competence assumed when engaging a licensed professional. This effect is especially true if the grandfathered licensees do not have to meet competency requirements imposed on new licensees. Of the 5,217 registered interior designers as of fiscal year 2011, well over half are grandfathered and do not meet standards for registration.

Beyond the State's ineffective approach to regulation, analysis of the Board's complaint and enforcement files do not show that interior designers pose a significant risk to the public health, safety, or welfare. The graph, *Complaints and Enforcement Actions Against Interior Designers*, shows that few complaints and even fewer enforcement actions involve interior designers. In addition,

the chart shows how these low numbers have dropped further since 2009, when the title act was modified.

**Complaints and Enforcement Actions
Against Interior Designers
FYs 2007-2011**



Of these enforcement actions, only one included a finding of incompetence in the practice of interior design. Most of the remaining enforcement actions were for failure to complete required continuing education. While continuing education is valuable, only registered interior designers are required to fulfill continuing education requirements, and failing to do so does not constitute a serious violation of standards of practice of the profession.

Recognizing the technical expertise necessary to practice the professions, the Legislature has set thresholds in statute for certain projects that can only be designed by an engineer or an architect.⁵ In contrast, statute does not specify any work that can only be done by a registered interior designer. Statute also specifies that a local public official may only accept an architectural or engineering plan or specification if it is sealed by the supervising architect or engineer; no similar provision exists for interior designers.⁶ While interior designers sometimes submit plans to secure commercial building permits, interviews with municipal building officials showed that cities generally do not require a seal by a registered interior designer. Instead, municipalities defer to state law and only require that plans submitted by architects and engineers be sealed.

The discussion of the need for regulation is not intended to denigrate the interior design profession. To become registered requires extensive study, experience, and passing a rigorous examination. However, an alternative means of demonstrating this competence is available without requiring state sanction of this activity. Only 26 states regulate interior designers. In the other 24 states that do not, those wishing to hire interior designers rely on a national credential to indicate competence. A certificate issued by the National Council for Interior Design Qualification (NCIDQ) is an alternative to state registration to provide assurance to consumers that an interior designer has demonstrated competence in the field. An NCIDQ certificate indicates that an interior designer has passed the same examination that Board registration requires and has met similar minimum education and experience requirements.⁷

State regulation of interior designers is duplicative of national certification.

While the Board has no specific performance problems to justify reorganizing its functions at this time, opportunities for improvement could be considered in other organizational structures.

The Board generally meets its mission to regulate architectural design professionals in Texas. Sunset staff found that the Board's licensing division takes a standardized approach to licensing all three professions resulting in an efficient licensing process. The Board has processes in place to process complaints from the time the complaint is received by the Board until it is resolved. Since the last Sunset review, the Board has started providing outreach to licensees and building officials to keep them informed of law and rule. However, in spite of existing processes, the Board struggled to provide Sunset staff with complete and trustworthy data to show the results of its efforts. In the absence of useful data, Sunset staff had difficulty fully evaluating the Board's effectiveness in the regulation of the design professionals, particularly regarding the agency's enforcement efforts.

The Board struggled to give Sunset staff trustworthy data.

One reason for the Board's difficulty is that, as a pilot project agency under the SDSI Act, the Board does not experience the same level of oversight as a typical occupational licensing agency. Without the oversight of the appropriations process, particularly the Legislative Budget Board's performance measures, the Board sets its own performance measures and determines how best to track those measures and has no separate obligation to collect such information. Recommendation 1.2 in the Sunset Staff Report on the Self-Directed Semi-Independent Agency Project Act attempts to remedy this inconsistent approach to data by extending the agency's reporting requirements. Another reason the Board has difficulty producing comprehensive enforcement data is that it has focused its efforts on customer service and outreach. While customer service and outreach may help the Board achieve better compliance with its regulatory requirements, the Board should be careful not to engage in these activities to the detriment of its regulatory functions. The Board would benefit from viewing its customer service and outreach functions as an extension of its regulatory function by measuring the impact of those efforts on its licensing and enforcement duties.

Sunset staff considered the following organizational alternatives for improving agency operations, and while it cannot recommend reorganization at this time, the Texas Department of Licensing and Regulation (TDLR) offers opportunities worthy of further consideration in its next Sunset review.

- **Texas Department of Licensing and Regulation.** TDLR is the State's occupational licensing agency, administering 29 licensing programs and overseeing a licensee population of more than 650,000. TDLR's uniform approach to licensing allows the agency to accommodate a wide range of regulatory programs, which have begun to include the regulation of professions, with the transfer of regulation for property tax professionals in 2009. The Legislature has shown a continuing desire to have licensing programs consolidated at TDLR, and such programs have historically fared well under the umbrella agency.

Licensing programs consolidated at TDLR have historically fared well under the umbrella agency.

By developing a large professional staff to administer its licensing and enforcement functions, TDLR is able to provide opportunities for staff development and continuity which is difficult for small agencies. This advantage is key to the increases in administrative effectiveness and efficiency of licensing programs the Legislature has transferred to TDLR. In addition, TDLR has experience administering the State's accessibility standards that are important components of both architectural and engineering plans. TDLR also regulates industrialized housing and buildings, which relates at least partially to the same kind of building design and construction that may require an architect or engineer.

TDLR may provide opportunities to increase the effectiveness and efficiency of the regulation of design professionals. However, while TDLR has processes in place to uniformly administer occupational licensing programs, it has not historically overseen the regulation of professions with the educational and experience requirements of architects and landscape architects. A more complete assessment of TDLR's ability to absorb this regulatory function and the feasibility of such a reorganization would be needed before making such a determination. In addition, the Board's SDSI status complicates the consideration of such a consolidation at this time. Because the Board is completely self-funded and outside the appropriations process, combining it with TDLR would not result in savings to the State. Putting the Board in TDLR would likely require removing the Board's SDSI status costing the State at least the \$510,000 annual remittance the Board pays under the SDSI Act. Sunset staff could not overcome the high burden to justify such a move. However, the opportunity exists to conduct a more comprehensive assessment of the possible benefits and drawbacks of transferring the Board's functions during TDLR's next Sunset review by aligning both agencies' reviews.

- **Texas Board of Professional Engineers.** The Engineers Board shares many things in common with the Architectural Board, as both agencies regulate individuals that are responsible for ensuring that our built spaces are safe. In fact, many design firms employ professional engineers

alongside other design professionals, including architects, landscape architects, and interior designers. Past attempts to consolidate the two boards appear to be less about efficiency and more of a reaction to the difficulties the two boards faced regarding unclear statutes that created scope of practice issues between architects and engineers. A bill enacted last session has cleared up much of the confusion by drawing clearer lines of practice for both groups, and in the process removed much of the impetus for consolidation. Through the current evaluation of the two Boards, Sunset staff did not find that consolidation would create significant efficiencies, as new procedures would have to be created to accommodate the different processes for licensing the professions. This new process would largely require the retention of each agency's staff to ensure the level of expertise needed to maintain continuity of regulatory services. Likewise, as both agencies are SDSI pilot project agencies, receiving no state appropriations, a merger would not result in a cost savings to the State.

Consolidation with the Board of Professional Engineers would not result in significant efficiencies.

Recommendations

Change in Statute

1.1 Discontinue the regulation of registered interior designers.

This recommendation would remove the title act for interior designers from statute. The State would no longer regulate the profession of interior design or interior design firms, and all regulatory functions related to this profession would cease on the effective date of the provision. In addition, any references to the registration of interior designer in statutes would be deleted. However, any requirement imposed on these individuals not associated with regulation, such as the submittal of accessibility plans for review by TDLR, would continue in effect. Interior designers who have met the requirements of the National Council for Interior Design Qualification would maintain their national certificates and their ability to practice in most other states. By eliminating the regulation of interior designers, this recommendation would not affect the practice of architecture or require architects to do any work currently performed by interior designers.

Under this recommendation, any licensing or professional fees paid by registered interior designers before the effective date of this provision would not be refunded. Any enforcement cases open before the effective date would be continued in effect under the terms that existed before the effective date. The recommendation would also remove the \$200 professional fee paid by registered interior designers. The recommendation would not affect the annual remittance that the Board is required to pay under the SDSI Act.

1.2 Remove the registered interior designer from the Board and replace the position with an additional landscape architect member.

If the regulation of interior design is abolished, the registered interior designer who sits on the Board should be replaced by an additional landscape architect member, who would serve the remainder of the term that expires in 2017. The restructured Board would consist of four architects, two landscape architects, and three public members, one of whom has a disability. Providing for staggering the landscape architects' terms would add consistency in the expertise needed to regulate that profession.

1.3 Continue the Texas Board of Architectural Examiners until the next Sunset review of the Texas Department of Licensing and Regulation.

This recommendation would continue the Texas Board of Architectural Examiners as an independent agency responsible for overseeing architects and landscape architects until the next Sunset review of TDLR currently scheduled for the 2019 legislative session. This timing would enable a comprehensive assessment of the benefits of transferring the agency's functions to TDLR. This review would be limited to an evaluation of the Board's implementation of the recommendations in this report and the potential benefit of a transfer of the regulation of architects and landscape architects to TDLR.

Management Action

1.4 Direct the Board to measure the effects its customer service and outreach efforts have on licensing and enforcement.

This recommendation would direct the Board to tie both its customer service and outreach functions to its regulatory functions by collecting data that highlight the impact of those efforts on licensing and regulation.

Fiscal Implication

Overall, this recommendation would have a negative fiscal impact to the State of about \$928,600 by removing the \$200 professional fee paid by registered interior designers. By statute, the annual professional fees flow to General Revenue.⁸ Based on the current number of licensees, interior designers contribute about \$928,600 annually to General Revenue, which would no longer be collected by the Board.

Registered interior designers also pay licensing and other fees, totaling about \$660,500 in 2011, that cover the Board's administrative expenses, which the Board would no longer collect. The agency would need to make budgetary and staffing changes as needed to accommodate this loss. The agency would continue regulating architects and landscape architects with the fees from those professionals. The Board would also need to accommodate the loss of licensing fees from interior designers, comprising 27 percent of the agency's licensees, in making its annual remittance of \$510,000 to General Revenue under the SDSI Act.⁹

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¹ Sections 1051.0016, 1051.601, 1051.606, and 1051.703, Texas Occupations Code. Per Section 1051.607 of the Texas Occupations Code, a limited class of licensed professional engineers may engage in the practice of architecture on any project. For a comprehensive list of projects requiring an architect, see statute.

² Section 1052.002 of the Texas Occupations Code exempts certain occupation and certain practices from the Landscape Architecture Act. The list includes licensed nursery stock salespeople, building designers, landscape contractors, landscape designers, golf course designers, and licensed architects, engineers, land surveyors, as well as designers for most residential, park and recreational, and farm and ranch projects.

³ Texas Department of Transportation, *Landscape and Aesthetics Design Manual November 2009*, accessed September 16, 2012, <http://onlinemanuals.txdot.gov/txdotmanuals/lad/lad.pdf>.

⁴ The National Council of Architectural Registration Boards does not provide certification to an architect unless the individual is already licensed by a state regulatory agency and the Council of Landscape Architectural Registration Boards does not provide certification at all.

⁵ Chapter 1001 and Chapter 1051, Texas Occupations Code.

⁶ Sections 1001.402 and 1051.551, Texas Occupations Code.

⁷ Both the Board and NCIDQ require examination, a degree from an accredited program, and two years experience. Also, both the Board and NCIDQ have alternative paths to registration or certification that allow a candidate with a different educational background to substitute additional work experience.

⁸ Section 1053.0521, Texas Occupations Code and Section 9, Article 8930, Vernon's Civil Statutes.

⁹ Section 6(c), Article 8930, Vernon's Civil Statutes.

ISSUE 2

Key Elements of the Texas Board of Architectural Examiners' Statute Do Not Conform to Common Licensing Standards.

Background

The Board of Architectural Examiners (Board) performs several standard licensing and enforcement activities in its regulations of 12,482 architects, 1,485 landscape architects, and 5,217 registered interior designers.¹ The Board also investigates complaints against licensees, taking disciplinary action when necessary. In fiscal year 2011, the Board resolved 120 jurisdictional complaints.

The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 100 licensing agency reviews. 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. The following material highlights areas where the Board's statute and rules differ from these model standards, and describes the potential benefits of conforming to standard practices.

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.

- **Professional fees.** The Board's statute requires the collection of a \$200 professional fee from architects, landscape architects, and registered interior designers, which is remitted to the General Revenue Fund.² However, statutory direction to the Board varies in how the fee should be collected for the three professions. For landscape architects and registered interior designers, the fee applies to initial registration and renewal, whereas for architects, it applies only to renewal. In accordance with statute, the Board does not charge architects the professional fee upon initial registration, as it does for the other two professions, resulting in an inconsistent and unfair application of the fee across the three professions the Board regulates. Standard practice is for agencies to impose licensing fees and, where applicable, professional fees, at the time of initial licensing and upon renewal. Clarifying in law that the Board should assess the \$200 professional fee at initial registration and renewal for all three professions would help ensure all applicants for licensure are treated fairly and consistently.
- **Criminal background checks.** Criminal background checks of licensees help protect the public, especially for occupations in which licensees regularly interact with the public or a potential risk of consumer fraud

Statute does not consistently and fairly apply the professional fee.

exists. In recent years many state agencies have switched from name-based checks to the Department of Public Safety (DPS) fingerprint system, which provides more accurate, real-time information than a name-based criminal background check. Fingerprint-based criminal background checks precisely match an individual with any associated criminal history, including any criminal history from other states or the FBI. After the initial background check, DPS also issues ongoing, automatic notice of subsequent arrests in Texas.

The use of fingerprint-based checks is expanding in Texas and nationally, as electronic imaging has made them more affordable. At least 14 state agencies in Texas use fingerprint-based criminal checks including the Board of Law Examiners, Department of Insurance, Department of Licensing and Regulation, State Board of Public Accountancy, Racing Commission, and Real Estate Commission.

In contrast, the Board requires applicants for licensure and licensure renewal to self-report their criminal history, and performs a DPS name-based check one month later. This type of check, however, does not provide a high level of accuracy and does not capture out-of-state criminal activity. Architects, landscape architects, and interior designers are mobile, and may perform services in more than one state. Also, some applicants for initial licensure are from outside the state. Requiring staff to shift to fingerprint checks would better protect the public by providing the Board with criminal history from other states, and would eliminate the need for checks at renewal, as DPS would provide automatic notice of subsequent arrests.

- **Late renewal of registration.** Penalties for late renewal of registration should provide an incentive to licensees to renew on time, but should not be overly punitive. The Board's statute requires the agency to charge licensees renewing up to 90 days late a penalty of one and a half times the normally required renewal fee and to charge licensees renewing more than 90 days late a penalty of twice the normally required renewal fee.³ This provision does not specify that the agency's renewal fee, for the purposes of calculating late payment penalties, should not include the separate \$200 professional fee. Although the professional fee is paid at the time of renewal, it goes straight to General Revenue, and does not support the agency's operations. Including the professional fee in the calculation of the late renewal penalty unfairly increases the penalty for late renewal. A common approach in other agencies' statutes is to separate the late penalty intended to encourage timely renewal from any additional professional fee due at renewal. Clarifying how the Board should calculate its late renewal penalty would help ensure a fair renewal process without affecting incentives for timely renewal.

Name-based criminal history checks are not always accurate and timely.

Including the professional fee unfairly increases the penalty for late renewal.

A nonstandard enforcement provision of the Board's statute could reduce the agency's effectiveness in protecting the consumer.

- **Administrative penalty authority.** An agency's administrative penalty authority should authorize penalty amounts that reflect the severity of the violation and serve as a deterrent to violations of the law. Given the potential for illegal activity such as fraud and unlicensed practice, the Board has authority to impose a penalty amount of up to \$5,000 for violations of state law or Board rules. However, statute does not contain customary language allowing the Board to apply its administrative penalties per violation for each day the violation occurred. The Board does apply penalties per violation per day, but does not have explicit statutory authority to do so, which could put the Board at risk of a challenge to its authority in applying administrative penalties. Clarifying statute to ensure that the Board can apply penalties per violation per day would give the Board more explicit authority to deter unlawful activity and would conform the Board's authority to the standard administrative penalty authority for state agencies.

Recommendations

Change in Statute

2.1 Clarify statute to require the Board to assess the \$200 professional fee at initial registration and renewal for all three regulated professions.

Under this recommendation, statute would be updated to apply the \$200 professional fee for architects at the time of license issuance and not just on renewal. This change would match how statute already applies to landscape architects and registered interior designers, and would reflect the standard practice for many other professions regulated by the State.

2.2 Require the Board to conduct fingerprint-based criminal background checks of applicants and licensees with active licenses.

This recommendation would require the Board to conduct fingerprint-based criminal background checks, through DPS, on all applicants and licensees to review complete federal and state criminal histories of applicants. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints at the next renewal of an active license. Inactive licensees would submit to criminal background checks before re-activating their licenses. Both applicants and existing licensees would pay a one-time cost of \$42 to the State's fingerprinting vendor and would not have ongoing charges for these checks.

2.3 Clarify statute to require the Board to use only its own renewal fee when calculating penalties for late renewal.

Under this recommendation, statute would be updated to require the Board to no longer include the \$200 statutory professional fee when calculating penalties for late renewal. Instead, the Board would use only its own renewal fee when calculating late renewal penalty amounts.

2.4 Clarify statute to authorize the Board to apply administrative penalties per violation per day.

This recommendation would clarify statute to allow the Board to apply its administrative penalties per violation for each day the violation occurred. The maximum penalty amount of \$5,000 already in statute would not change.

Fiscal Implication

These recommendations would result in a revenue gain to the State and cause a loss in revenue to the Board, which it would have to absorb under the provisions of the SDSI Act. By clarifying that the \$200 professional fee applies to architects at initial registration, the Board would collect an additional \$120,000 annually to be deposited to General Revenue. This estimate is based on the average number of new architect registrations over the past five fiscal years.

The criminal background provisions in Recommendation 2.2 require licensees to pay a one-time fee of \$42 directly to the vendor providing the fingerprint checks and would not have an impact to the State or the agency. Recommendation 2.3 would reduce revenue to the Board by about \$155,000 annually, based on a five-year average of the \$200 professional fee component of late renewal penalties, that would no longer be included in the calculation. Since late penalties are not deposited to General Revenue, this recommendation would have no impact to the State.

Texas Board of Architectural Examiners

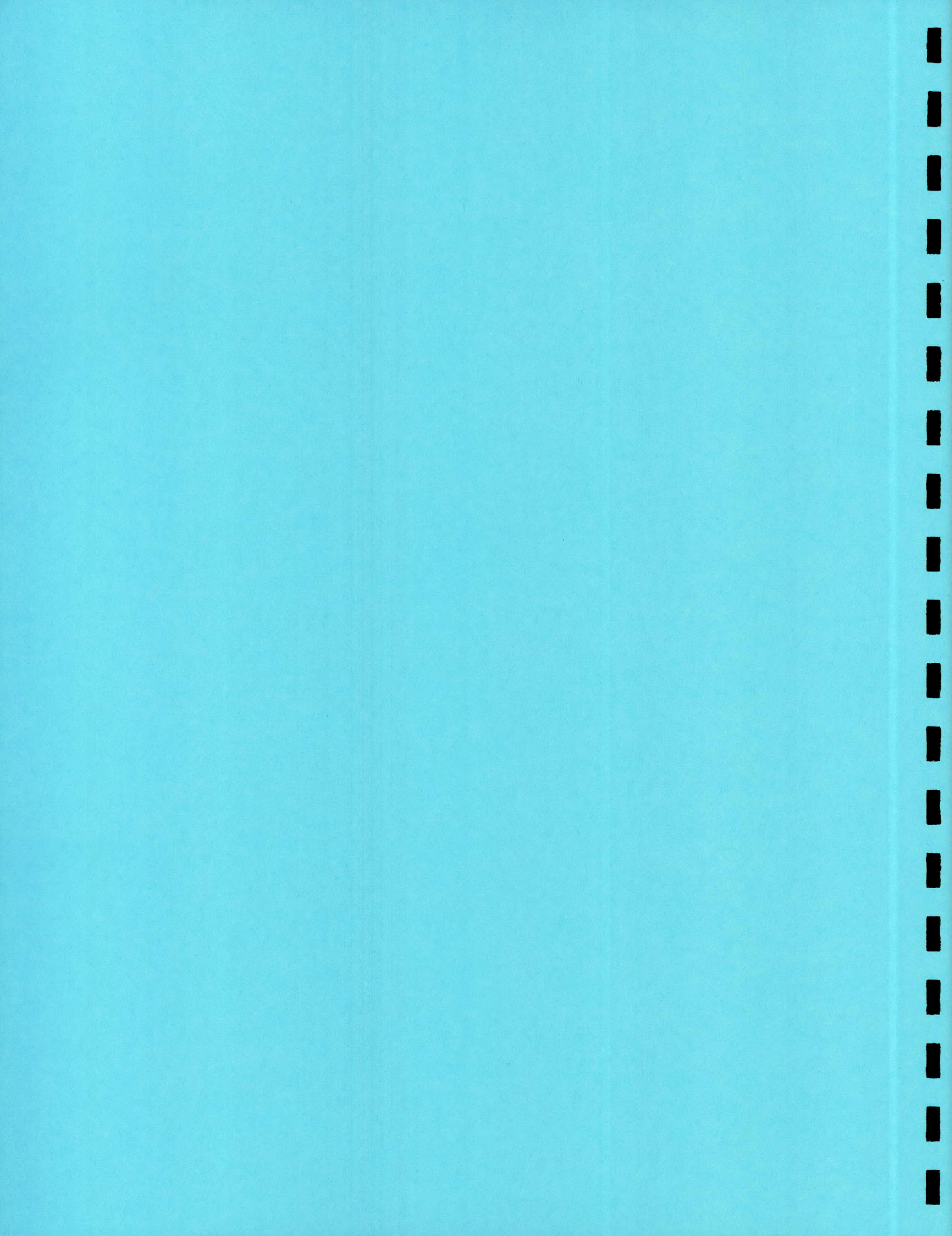
Fiscal Year	Gain to the General Revenue Fund
2014	\$120,000
2015	\$120,000
2016	\$120,000
2017	\$120,000
2018	\$120,000

.....
¹ Numbers include active licensees, inactive licensees whose licensure is on hold, and emeritus licensees registered with the Board at the end of fiscal year 2011. Emeritus status allows retired licensees who meet certain age and experience criteria to retain the use of their professional title for a low renewal fee and without continuing education requirements.

² Sections 1051.652, 1052.0541, and 1053.0521, Texas Occupations Code and Section 9, Article 8930, Vernon's Civil Statutes.

³ Section 1051.353, Texas Occupations Code.

TEXAS BOARD OF PROFESSIONAL ENGINEERS



AGENCY AT A GLANCE



AGENCY AT A GLANCE

The Texas Board of Professional Engineers seeks to protect public health, safety, and welfare by ensuring that only qualified individuals provide engineering services to the public. The Board was established in response to the 1937 explosion at a New London, Texas school, in which improperly designed mechanical and electrical devices resulted in a natural gas explosion that killed more than 300 students and teachers. The textbox, *Professional Engineering in Texas*, summarizes the activities regulated by the Engineering Practice Act. To achieve its mission, the Board carries out the following key activities.

- Licensing Professional Engineers and certifying Engineers-in-Training (EIT).
- Registering engineering firms, including sole proprietorships, partnerships, corporations, and joint stock associations.
- Investigating complaints alleging illegal or incompetent practice of engineering by both licensed and unlicensed persons and taking disciplinary action when necessary.

Professional Engineering in Texas

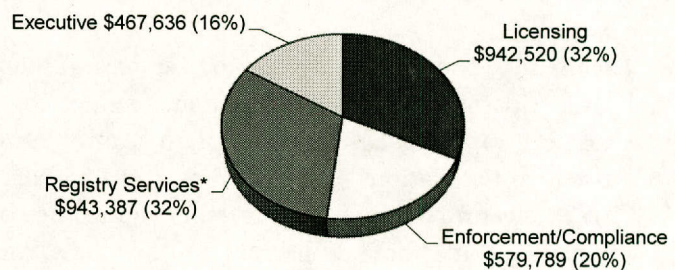
Under the Texas Engineering Practice Act, only licensed Professional Engineers may provide engineering services, including analysis, planning, design, and compliance monitoring in connection with engineering works and systems, such as roads and bridges, utilities, buildings, and machines, to the public. Engineers employed by private companies are largely exempt from licensing requirements.

Key Facts

- **Texas Board of Professional Engineers.** The agency's governing body consists of nine Governor-appointed members who serve six-year terms. The Board chair is appointed by and serves at the will of the Governor. Six members are engineers and three members represent the public.
- **Funding and Staffing.** The Board collected about \$4.7 million in license and examination fees and administrative penalties in fiscal year 2011 to pay for the agency's operations and other obligations. Licensing fees made up about 65 percent of total revenue. Examination fees collected by the agency were largely passed through to the entity that administers the examination, with just a portion retained by the agency for administration. In 2012, applicants began paying this fee directly to the testing entity, with no involvement by the Board. In addition, the Board collected professional fees totaling \$7.4 million, but sends these funds directly to the General Revenue Fund and does not use these funds to support the agency.

In fiscal year 2011, the Board spent about \$2.9 million on agency operations, which included transfers to other agencies for professional and support services. The pie chart, *Agency Expenditures*, illustrates the budget breakdown by program area. The Board also employed 29 staff, all located

Agency Expenditures FY 2011

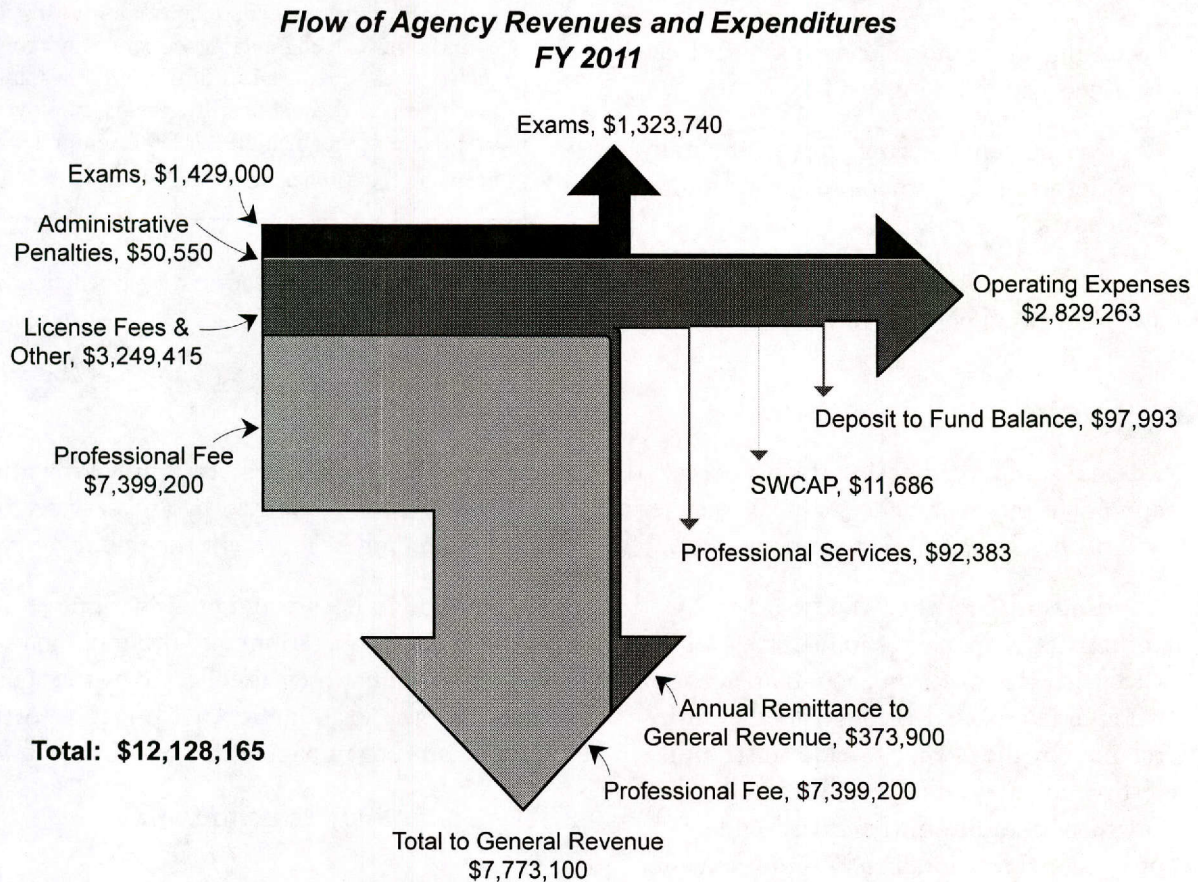


Total: \$2,933,332

* Departments included are Finance, IT, Communications, Building Maintenance, and Utilities.

in Austin. As a Self-Directed Semi-Independent (SDSI) agency, the Board operates solely on funds raised through licensing fees and administrative penalties collected from the industry, and does not go through the State appropriations process.

The graph, *Flow of Agency Revenues and Expenditures*, breaks down the various sources of revenues associated with the regulation of engineers and shows how these revenues were used in fiscal year 2011. After accounting for the agency's operating expenses, costs for the Statewide Cost Allocation Program (SWCAP), professional service costs, such as transfers to the Office of the Attorney General and State Office of Administrative Hearings, and any remainder deposited to the Board's fund balance, the regulation of engineers generated more than \$7.7 million to the General Revenue Fund for other state purposes. This amount includes both the \$200 professional fee paid by Professional Engineers and the agency's \$373,900 annual remittance as required under the SDSI Act.



- Licensing.** To provide engineering services to the public in Texas, an individual must be licensed by the Board. Licensure requires an engineering or science-related degree from an accredited or Board-approved academic program, a minimum of four years' engineering-related experience, passage of two national examinations, and a \$50 license fee. In fiscal year 2011, the Board licensed 2,651 new Professional Engineers, bringing the total number of licensees to 55,407. This total represented only about 37 percent of individuals who performed engineering-related work in Texas. The other 63 percent of individuals, such as engineers working for private industry, practiced under exemptions from the Engineering Practice Act. Licenses must be renewed annually by satisfying continuing education requirements and paying a renewal fee.

- Engineers-in-Training.** The Board certifies Engineers-in-Training to work as apprentices while gaining the experience needed to apply for a Professional Engineer license, although not as a mandatory part of the Board's licensing process. To become an EIT, individuals must meet certain education requirements and pass the Fundamentals of Engineering examination. Certification is for an eight-year period. In fiscal year 2011, the Board issued 1,918 new EIT certificates, bringing the total to 13,154.
- Firm registrations.** All engineering firms, including sole practitioners that offer engineering services to the public, as well as out-of-state firms offering engineering services in Texas, must annually register with the Board. In addition, all engineering work provided by a firm that requires a license 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 2011, the Board registered 858 new engineering firms, bringing the total number of registered firms to 8,927.
- Enforcement.** The Board regulates the engineering profession by enforcing the Engineering Practice Act. The Board investigates and resolves complaints against both licensed and unlicensed individuals regarding professional engineering activity, and imposes sanctions on individuals found to be in violation of Board statute or rule. The table, *Board Enforcement Data*, 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 2011.

Board Enforcement Data – FY 2011

Complaints Received	
From the Public	413
From Staff	301
Total	714
Resolved Complaints by Disposition	
Voluntary Compliance	462
Dismissed	144
Administrative Penalty	37
Probate Suspension	12
Informal Reprimand	11
Ethics Course	10
Cease-and-Desist Notice	9
Formal Reprimand	3
Revocation	2
Other	2
Suspension	1
Total	693

ISSUES



ISSUE 1

Texas Has A Continuing Need for the Regulation of Professional Engineers.

Background

The State began regulating engineers in 1937, after the New London, Texas school explosion, which resulted in the deaths of more than 300 children and teachers. Today, the Texas Board of Professional Engineers seeks to protect public health, safety, and welfare by ensuring the competency of individuals who provide engineering services to the public. To achieve this goal the Board licenses Professional Engineers (PE) and certifies Engineers-in-Training (EIT); registers engineering firms; investigates and resolves complaints alleging illegal or incompetent practice of engineering by both licensed and unlicensed persons; and enforces the Texas Engineering Practice Act.

In fiscal year 2011, the Board oversaw more than 55,000 PEs and 13,000 EIT, and nearly 9,000 registered firms. That same year, the Board received 714 complaints from the public and Board staff, resulting in 462 instances of voluntary compliance, 144 dismissals, and 46 cases closed by Board disciplinary action, most of which involved professional misconduct.

Since 2002, the Board has participated in the Self-Directed Semi-Independent (SDSI) Agency Project Act with the Texas State Board of Public Accountancy and the Texas Board of Architectural Examiners, which allows the agencies to operate outside the appropriations process. The Act provides project agencies the authority to set their own fees and operate on the revenue produced by those fees. In fiscal year 2011, the agency operated on a budget of nearly \$3 million. The regulation of PEs contributed more than \$7.7 million to General Revenue in the form of its annual SDSI remittance and professional licensing fees. The Board's performance under the SDSI Act is evaluated in the Sunset Staff Report on the SDSI Act.

Findings

Texas has a continuing interest in regulating Professional Engineers to ensure the safety of citizens.

Engineering is a highly technical profession that requires specialized education, passing two national exams, and many years of experience before an engineer can use the title of Professional Engineer. Most consumers are unable to independently determine the competency of an engineer and without state regulation could be at risk of contracting with someone who is not qualified to perform needed engineering services. Improperly performed engineering work, such as negligently performed foundation inspections or negligently designed building plans, poses a serious risk to the public's safety, health, and economic welfare.

Negligently performed engineering work poses a serious risk to the public.

The Board seeks to protect the public by ensuring PEs are qualified to practice engineering and provide engineering services to the public. To protect the public from the unsafe and unethical practice of engineering the Board

also develops and implements rules that govern the conduct of professional engineers. In addition, the Board enforces the Engineering Practice Act, which protects consumers from the unlicensed or negligent practice of engineering and provides consumers with an avenue to pursue violations of the law.

While the Board performs its functions appropriately, opportunities for improvement could be considered in other organizational structures.

The Board is generally effective in meeting its mission to regulate Professional Engineers in Texas. The licensing program follows basic standards of all other states regarding education, experience, and examination to judge the competence of applicants for licensure. The enforcement program ensures compliance with the Engineering Practice Act and the agency has recently sought to take greater control of this effort through the hiring of its own staff attorney. The agency has also been active in pursuing approaches to achieve performance excellence and ongoing process improvements. In addition, in the separate Sunset review of the SDSI Act, Sunset staff found the Board to be performing appropriately with the budgetary flexibility and relaxed oversight provided through that project.

Despite the Board's basic operational success in regulating engineers, other organizational structures exist that could be considered for the improvements they could provide to regulation. Texas, in fact, is in the minority of states that use a separate stand-alone agency to regulate professional engineers as shown in the chart on the following page, *State Engineering Regulatory Agencies*. A majority of states, 27, combine the regulation of engineering with other occupational licenses in a single umbrella regulatory agency that administers many regulatory functions, though the states vary in how they structure these umbrella agencies. In states that do not use an umbrella agency structure, the regulation of engineers is often combined with the regulation of architecture and land surveying.

Sunset staff considered the following organizational alternatives for improving agency operations, and while it cannot recommend a change to the Board's structure at this time, the Texas Department of Licensing and Regulation (TDLR) offers opportunities for increased efficiency and effectiveness worthy of consideration in the next Sunset review of the Board.

- **Texas Department of Licensing and Regulation.** TDLR is the State's occupational licensing agency, administering 29 licensing programs and overseeing a licensee population of more than 650,000. TDLR's uniform approach to licensing allows the agency to accommodate a wide range of regulatory programs, which have begun to include the regulation of professions, with the transfer of regulation for property tax professionals in 2009. The Legislature has shown a continuing desire to have licensing programs consolidated at TDLR, and such programs have historically fared well under the umbrella agency.

A majority of states combine the regulation of engineers with other occupational licenses.

State Engineering Regulatory Agencies

Structure	Profession	Number of States	States
Separate Agency	Engineering	4	Texas, Delaware, Florida, 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	3	Arizona, Kansas, Minnesota
Dedicated Board Under Larger Umbrella Licensing Agency	Engineering	6	Illinois, Indiana, Maine, Maryland, Michigan, Vermont
	Engineering & Land Surveying	11	California, Connecticut, Georgia, Iowa, Massachusetts, Montana, New Jersey, New York, South Carolina, Utah, Washington
	Engineering & Architecture	1	Tennessee
	Engineering, Land Surveying, Architecture & Others	9	Alaska, Colorado, Hawaii, Missouri, New Hampshire, Rhode Island, South Dakota, Virginia, Wisconsin

By developing a large professional staff to administer its licensing and enforcement functions, TDLR is able to provide opportunities for staff development and continuity which is difficult for small agencies. This advantage is key to the increases in administrative effectiveness and efficiency of licensing programs the Legislature has transferred to TDLR. In addition, TDLR has experience administering the State's accessibility standards that are important components of both engineering and architectural plans. TDLR also regulates industrialized housing and buildings, which relates at least partially to the same kind of building design and construction that may require an engineer or architect.

TDLR may provide opportunities to increase the effectiveness and efficiency of the regulation of Professional Engineers. However, while TDLR has processes in place to uniformly administer occupational licensing programs, it has not historically overseen the regulation of professions with the educational and experience requirements of Professional Engineers. A more complete assessment of TDLR's ability to absorb this regulatory function and the feasibility of such a reorganization would be needed before making such a determination. In addition, the Board's SDSI status complicates the consideration of such a consolidation at this time. Because the Board is completely self-funded and outside the appropriations process, combining it with TDLR would not result in savings to the State. Putting the Board in TDLR would likely require removing the Board's SDSI status costing the State at least the \$373,900 annual remittance the Board pays under the SDSI Act. Sunset staff could not overcome the high burden to justify such a

The Legislature has successfully consolidated many licensing programs at TDLR.

move. However, the opportunity exists to conduct a more comprehensive assessment of the possible benefits and drawbacks of transferring the Board's functions during TDLR's next Sunset review by aligning both agencies' reviews.

Any efficiency gained by combining the Engineers and Architectural boards would be minimal.

- **Texas Board of Architectural Examiners.** Combining the Board of Engineers with another design profession board like the Board of Architectural Examiners, would consolidate the regulation of design professionals performing similar services for the public, which has been suggested in the past.¹ While the two agencies have had issues of apparent regulatory overlap, recent statutory changes have helped to delineate the two practices, eliminating much of the apparent overlap.² Any efficiency gained by combining the boards would be minimal, as the technical expertise required for the regulation of each profession would require retaining much of each Board's staff, and the regulation of each profession would not be significantly improved. Further, as SDSI agencies, both operate outside of the appropriations process, and therefore any savings would not accrue to General Revenue.

Recommendation

Change in Statute

1.1 Continue the Board of Professional Engineers until the next Sunset review of the Texas Department of Licensing and Regulation.

This recommendation would continue the Board of Engineers until the next Sunset review of TDLR, currently scheduled for the 2019 legislative session with the staff evaluation in fiscal year 2018. By reviewing the Board of Engineers with TDLR, Sunset could better evaluate the potential benefit of transferring the regulation of Professional Engineers from the Board of Engineers to TDLR. This review would be limited to an evaluation of the Board's implementation of the recommendations in this report and the potential benefits of a transfer of the regulation of engineers to TDLR.

Fiscal Implication

This recommendation would have no fiscal impact to the State, as the Board is a SDSI project agency and receives no appropriations.

¹ Last session, two bills, H.B. 2543 and H.B. 3166, would have abolished the Texas Board of Professional Engineers, Texas Board of Architectural Examiners, and the Texas Board of Professional Land Surveyors and transferred their functions to the newly created Texas Board of Professional Services.

² Section 1001.0031, Texas Occupations Code.

ISSUE 2

Key Elements of the Engineering Practice Act's Licensing and Regulatory Requirements Do Not Conform to Common Licensing Standards.

Background

The Board's mission is to serve and protect the public by regulating the practice of engineering. Under the Engineering Practice Act, only a licensed Professional Engineer (PE) can provide engineering services to the public. Also, public works, such as roads and bridges, must be designed and constructed under the direct supervision of a licensed PE. The Board accomplishes its mission by licensing qualified individuals to practice professional engineering in Texas, registering engineering firms, enforcing the Act, and taking disciplinary action against licensees when necessary. In fiscal year 2011, the Board regulated 55,407 Professional Engineers and 8,927 engineering firms.

The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 100 licensing agency reviews. 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. The following material highlights areas where the Board's statute and rules differ from these model standards, and describes the potential benefits of conforming to standard practices.

Findings

Licensing provisions of the Engineering Practice Act do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.

- **Examination procedures.** Applicants for PE licensure must pass two national examinations, Fundamentals of Engineering and Principles and Practice of Engineering. Statute refers to the Fundamentals exam as an eight-hour written test. However, the national body that administers the engineers' licensing examination, the National Council of Examiners for Engineers and Surveyors, has indicated that the current specifications for the Fundamentals exam will change in conjunction with the exam's transition to computer-based testing, causing the Texas law to become outdated once exam changes take place in January 2014. Updating statute to keep pace with national changes affecting exam administration and to reference the National Council's examination process would ensure that the law reflects current licensing requirements and that potential applicants have access to the latest information on the exams required to become a licensed PE in Texas.

Statute does not reflect anticipated changes in testing practices.

Collecting the \$200 professional fee at licensure ensures fair treatment of applicants.

In addition, the Engineering Practice Act requires PEs to pay a \$200 professional fee at initial licensure and upon the annual renewal of that license. However, the Board collects this \$200 professional fee at the initial application for PE licensure, regardless of whether the applicant satisfies the licensing requirements. In fiscal year 2011, the Board had 220 applicants pay the professional fee and not become licensed because they were either denied or failed to pass the required examination. This practice imposes a burden on applicants because the professional fee was intended to apply to licensed professionals, as is common in other regulatory programs that also collect a professional fee. Common practice for other agencies responsible for collecting this professional fee is to do so at the time of issuing the license. Requiring the Board to assess the \$200 professional fee for the issuance of the license would ensure fairer treatment of applicants for licensure without significantly delaying the licensing process.

- **Criminal background checks.** Criminal background checks of licensees help protect the public, especially for occupations in which licensees regularly interact with the public or a potential risk of consumer fraud exists. In recent years several agencies have switched from name checks to the Department of Public Safety (DPS) fingerprint system, which provides more accurate, real-time information than a name-based criminal background check. Fingerprint-based criminal background checks precisely match an individual with any associated criminal history, including any criminal history from other states or the FBI. DPS also issues automatic notice of subsequent arrests in Texas.

The use of fingerprint-based checks is expanding in Texas and nationally, as electronic imaging has made them more affordable. At least 14 state agencies use fingerprint-based criminal background checks including the Board of Law Examiners, Department of Insurance, Department of Licensing and Regulation, State Board of Public Accountancy, Racing Commission, and Real Estate Commission.

Currently, the Board conducts a DPS name and birthdate check for criminal history in Texas upon initial licensure. This type of check, however, does not provide the highest level of accuracy and does not capture out-of-state criminal activity. Professional Engineers are mobile, as 28 percent of Texas PEs practice in other states. Likewise, some applicants for PE licensure are from out of state. In addition, the Board has recently conducted name-based criminal background checks on renewal of current licensees. Like the Board's current process for new applicants, however, this effort does not provide needed accuracy and lacks information about out-of-state criminal history. Requiring the Board to shift to fingerprint checks would capture more complete criminal history and better protect the public by providing the Board with criminal history from other states, and eliminating the need for checks at renewal, as DPS would provide automatic notice of subsequent arrests.

Fingerprint-based checks provide more accurate and timely criminal history.

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

- Administrative penalty.** An agency's administrative penalty authority should authorize penalty amounts that reflect the severity of the violation and serve as a deterrent to violations of the law. The Board has authority to impose a penalty amount of up to \$3,000 per violation per day for violations of state law or Board rules. Given the significant harm that can result from illegal activity related to the practice of engineering and an engineer's fiduciary responsibility, the Board's current administrative penalty amount may not be adequate to deter illegal behavior. Other licensing agencies have authority to impose a maximum penalty of least \$5,000 per violation per day, as illustrated in the table, *Administrative Penalty Maximums*. Increasing the Board's administrative penalty limit to \$5,000 per violation per day for a violation of state laws or Board rules would give the Board greater authority to deter illegal activity and would conform the Board to the standard penalty amount.

Administrative Penalty Maximums

Agency	Maximum
Texas Board of Professional Engineers	\$3,000
Texas State Board of Public Accountancy	\$100,000
Texas Board of Architectural Examiners	\$5,000
Texas Department of Licensing and Regulation	\$5,000
Texas Funeral Service Commission	\$5,000
Texas Real Estate Commission	\$5,000
Texas State Board of Plumbing Examiners	\$5,000

- Summary suspension.** Granting an agency authority to summarily suspend a license provides a means to address situations where substantial harm can result if an activity is not stopped immediately. While the practice of engineering generally involves design work that takes time and relies on many parties to get to a point where harm may occur, some engineering activities move at a faster pace and involve less redundancy, such that significant harm can occur that the Board is limited in its ability to prevent. Examples of such work include structural foundation and windstorm inspections. Although the Board may suspend or revoke practice privileges after proper notice and hearing, such disciplinary action may take considerable time to resolve, and licensees with serious allegations against them may continue practicing and offering services to unsuspecting individuals and business owners.
- Cease-and-desist authority.** A licensing agency should have enforcement authority not only over its licensees, but also over those who engage in unlicensed activity. However, standard sanctions against licensees do not apply to unlicensed activity. While injunctive authority through the Office of the Attorney General allows agencies to seek legal action to stop unlicensed activity, cease-and-desist orders provide a more immediate step that agencies may take on their own to stop unlicensed activity. The Board's current process of issuing a warning letter to stop unlicensed practice is ineffective and lacks real enforcement authority, and seeking injunctions through the Attorney General can be cumbersome

The Board lacks a comprehensive set of enforcement tools to protect consumers.

and time consuming. Cease-and-desist orders would provide for faster action, especially when violators of these orders are subject to additional sanctions, such as administrative penalties. In addition, violations of cease-and-desist orders could help the agency obtain future injunctive relief.

Recommendations

Change in Statute

2.1 Require the Board to adopt clear procedures governing all parts of the testing process, including test administration.

Under this recommendation, statute would be updated to eliminate specific references to testing format to provide the Board with flexibility in how it approaches test administration. Specifically, this change would remove a reference in statute to an eight-hour written examination that is scheduled to be phased out by the national testing entity by 2014. To ensure that applicants and potential applicants can readily find information on current exam requirements, the Board would update its guidelines and website detailing procedures for the testing process.

2.2 Require the Board to conduct fingerprint-based criminal background checks of Professional Engineer applicants and licensees with active licenses.

This recommendation would require the Board to conduct fingerprint-based criminal background checks, through DPS, on all applicants and licensees to review complete federal and state criminal histories of applicants. New prospective licensees would provide fingerprints at the time of application, and existing licensees would provide fingerprints at the next renewal of an active license. Inactive licensees would submit to the criminal background check before reactivating their licenses. Applicants and licensees would pay a one-time \$42 cost directly to the State's fingerprint vendor providing the fingerprint checks, and would not have ongoing charges for these checks.

2.3 Prohibit the Board from collecting the \$200 professional fee before applicants satisfy licensing requirements as Professional Engineers.

Under this recommendation the Board would no longer collect the \$200 professional fee upon application for licensure. Instead, the Board would collect the fee upon issuance of a license. As such, the professional fee would only be paid by those individuals who actually obtain a PE license, eliminating the fee assessment on applicants who either fail to receive Board approval to take the PE exam, or fail to pass the exam. This recommendation would bring the Board in line with other agencies responsible for collecting professional fees and ensure all applicants for licensure are fairly assessed the professional fee.

2.4 Increase the Board's administrative penalty authority to \$5,000 per violation per day for violations of the Engineering Practice Act or Board rules.

The amount of an administrative penalty the Board is able to impose on an individual who violates the Engineering Practice Act or rule would be increased to \$5,000 per violation per day, from the current \$3,000 per violation per day. The provision that each day a violation continues or occurs is a separate violation for purposes of imposing the penalty would continue to apply. To ensure that all parties are aware of the potential penalties for law and rule violations, the Board should amend its penalty matrix

to reflect the increased administrative penalty amount. This recommendation reflects the significant harm that can result from illegal activity in the practice of engineering and would pose a larger deterrent to potential wrongdoing than the existing penalty amount.

2.5 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 Engineering Practice 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.

2.6 Grant cease-and-desist authority to the Board for the unlicensed practice of engineering.

This recommendation would allow the Board to issue cease-and-desist orders when it discovers an individual or entity operating without a license. As part of this recommendation, the Board would also be authorized to assess administrative penalties on unlicensed individuals or entities who fail to comply with the Board's order. These changes would not affect the Board's authority to also seek an injunction through the Attorney General. Cease-and-desist authority would help the Board better protect consumers from unlicensed engineering practices and standardize the Board's procedures with commonly applied licensing practices.

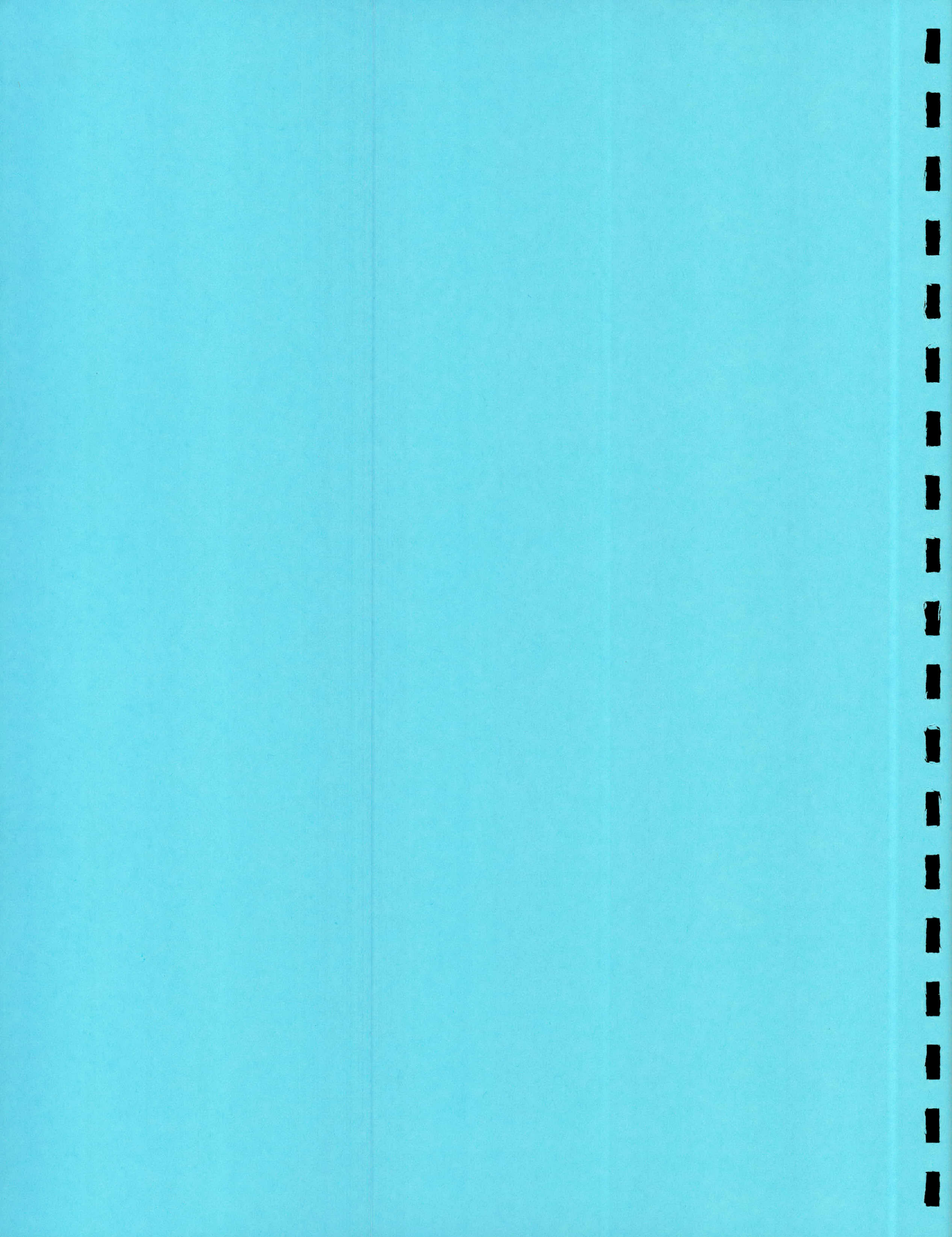
Fiscal Implication

These recommendations would result in a small loss of revenue to General Revenue related to the change in the way the Board collects the \$200 professional fee from license applicants. Based on the number of applicants who paid this fee in 2011, but did not become PEs, the loss would be approximately \$44,000 annually. The criminal background provisions in Recommendation 2.2 require licensees to pay a one-time \$42 fee directly to the vendor providing the fingerprint checks and would not have an impact to the State or the agency. Recommendation 2.4 increasing the Board's administrative penalty authority would likely increase penalty revenue, but the amount cannot be estimated because the number of violations and their seriousness cannot be predicted. Under current law, this increase would accrue to the agency, but would go to General Revenue under a separate recommendation related to the Self-Directed Semi-Independent Agency Project Act. The Board could implement the remaining recommendations with its current resources.

Texas Board of Professional Engineers

Fiscal Year	Loss to the General Revenue Fund
2014	(\$44,000)
2015	(\$44,000)
2016	(\$44,000)
2017	(\$44,000)
2018	(\$44,000)

**SELF-DIRECTED SEMI-INDEPENDENT AGENCY
PROJECT ACT**



ACT AT A GLANCE



ACT AT A GLANCE

Beginning in fiscal year 2002, the Texas State Board of Public Accountancy, Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners began operation under the Self-Directed Semi-Independent (SDSI) Agency Project Act, allowing them to collect revenues and establish budgets outside of the appropriations process. The Legislature has since extended SDSI status to additional agencies, comprising financial regulatory agencies and the Texas Real Estate Commission, and two divisions within the Texas Department of Insurance, but has done so through separate statutory provisions and not under the provisions of this Act. As such, the SDSI status and provisions of these other agencies are not included as part of the Sunset review of this Act.

The SDSI Act authorizes the Accountancy, Engineers, and Architectural boards to:

- establish and collect licensing fees for deposit outside the State Treasury in the Texas Safekeeping Trust Company;
- adopt an annual budget based on their own projections of revenues approved by the agencies' governing boards;
- keep administrative penalties, capped at 20 percent of an agency's previous year's expenditures, not to exceed \$1 million; and
- enter into contracts and lease property.

The Act makes the Accountancy, Engineers, and Architectural boards responsible for all direct and indirect costs and for all expenses or debts incurred. The Act specifically provides that money from the General Revenue Fund may not be used to pay expenses or debt of project agencies. Each agency must maintain information regarding its financial condition and operation and must remit a fixed sum annually to the General Revenue Fund. Each agency maintains a reserve fund balance to allow them to cover future costs should revenues decline and to plan for future expenditures.

SDSI agencies are exempt from the General Appropriations Act and any state laws inconsistent with SDSI status, but are still required to comply with other general laws such as the Public Information and Open Meetings acts and meet provisions generally applicable to state agencies, such as audits by the State Auditor's Office. The agencies must also biennially report statistical information reflecting their licensing and enforcement efforts to the Governor and the Legislature. In addition, the agencies are required to annually report financial data to the Governor, House Appropriations and Senate Finance committees, and Legislative Budget Board.

Key Facts

- **Texas State Board of Public Accountancy.**

Expenditures. In fiscal year 2011, the Accountancy Board had total expenditures of \$4,855,444.

Annual payment. The Accountancy Board is required to annually remit \$703,344 to General Revenue.

Fund balance. At the end of fiscal year 2011, the Accountancy Board had a fund balance of \$4,524,896.

Staff level. In fiscal year 2011, the Accountancy Board employed 40 full-time staff.

- **Texas Board of Professional Engineers.**

Expenditures. In fiscal year 2011, the Engineers Board had total expenditures of \$2,933,332.

Annual payment. The Engineers Board is required to annually remit \$373,900 to General Revenue.

Fund balance. At the end of fiscal year 2011, the Engineers Board had a fund balance of \$1,177,800.

Staff level. In fiscal year 2011, the Engineers Board employed 29 full-time staff.

- **Texas Board of Architectural Examiners.**

Expenditures. In fiscal year 2011, the Architectural Board had total expenditures of \$2,071,399.

Annual payment. The Architectural Board is required to annually remit \$510,000 to General Revenue.

Fund balance. At the end of fiscal year 2011, the Architectural Board had a fund balance of \$2,683,770.

Staff level. In fiscal year 2011, the Architectural Board employed 22 full-time staff.

ISSUES



ISSUE 1

Despite Lack of a Comprehensive State Approach to SDSI, the SDSI Act Is Working as Intended and Should Be Continued.

Background

Occupational and professional licensing agencies generally derive their funds from fees paid by the regulated community. The agencies deposit fees into the General Revenue Fund, and the Legislature appropriates revenue back to the agency to administer the regulatory programs, chiefly related to licensing and enforcement. The appropriations process includes several levels of legislative oversight, including submission of legislative appropriations requests to the Legislative Budget Board (LBB), and oversight by the Senate Finance and House Appropriations committees. In addition, the General Appropriations Act limits overall agency spending and the number of employees, and further restricts specific spending on things like capital items, travel, and executive director salaries.

In 2001, the Legislature authorized the Texas State Board of Public Accountancy, Texas Board of Professional Engineers, and the Texas Board of Architectural Examiners to operate outside the legislative appropriations process under the provisions of the Self-Directed Semi-Independent (SDSI) Agency Project Act. The Sunset Commission reviewed the SDSI Act during the 2002–2003 biennium and recommended abolishing the Act. However, separate legislation continued the Act and provided more time for the agencies to establish a record under the Act to evaluate in a subsequent review by the Sunset Commission.¹ The Legislature has since extended SDSI status to additional agencies, including financial regulatory agencies, the Texas Real Estate Commission, and two divisions within the Texas Department of Insurance, but has done so through separate statutory provisions and not under the SDSI Act. The SDSI status and provisions of these other agencies are not included in this Sunset review of the SDSI Act.

The Act provides the project agencies with budgeting flexibility, authorizing the project agencies to set their own fees and to operate on the revenue produced by those fees, and to have annual budgets approved by the agencies' governing boards and not through legislative appropriation.² The Act specifically provides that money from the General Revenue Fund may not be used to pay expenses or debt of project agencies.³ The Act also makes each project agency responsible for all direct and indirect costs, including employee benefit and retirement costs, and the costs incurred by any state agency, including work performed by the State Auditor's Office (SAO) and the Office of the Attorney General.⁴ In addition, each agency must annually remit a fixed sum to General Revenue.⁵

The Act exempts the project agencies from the General Appropriations Act and any state laws inconsistent with SDSI status, but the agencies are still required to comply with other general laws such as the Public Information and Open Meetings acts and with general agency provisions.⁶ The project agencies are also required to biennially report statistical information reflecting their licensing and enforcement efforts to the Governor and the Legislature.⁷ In addition, the project agencies must annually report financial data to the Governor, House Appropriations and Senate Finance committees, and Legislative Budget Board.⁸

Findings

The determination of the need to continue the SDSI Act is complicated by the unique nature of the Act and the State's disjointed, incremental approach to SDSI.

- **Standard for judging need.** The Sunset Act requires recommendations on the abolition, continuation, or reorganization of *state agencies* based on the application of review criteria listed in the Sunset Act. Traditionally, the question of the need for an agency has been guided by the public purpose served, which for regulatory agencies, is expressed in terms of public protection that justifies the State's interest. The standards for assessing the need for a state agency do not lend themselves so neatly to determining the need for something like the SDSI Act.

A direct correlation between SDSI status and agency performance is hard to make.

The SDSI Act exists as a way for project agencies to control their own funds and budgets to take care of their own operations without having to request funding and receive budgetary oversight from the Legislature. This arrangement is touted to enable project agencies to improve operations through better planning to meet needs having longer-term costs such as information technology or complex enforcement cases, but a direct correlation between SDSI status and agency performance is hard to make. Conversely, this arrangement also has potential risks of allowing agencies to operate without close fiscal oversight, including the opportunity for abuse of this flexibility by a project agency and the possibility that, without the appropriations process as a buffer, regulatory programs may be overly influenced by the regulated community that underwrites the cost of these agencies.

In the absence of clear standards for assessing the need for an idea like SDSI, a simple conclusion may seem obvious — the State has no inherent need to continue the SDSI Act because the Legislature is more than capable of overseeing the funding and judging the performance of the project agencies through the normal appropriations process. In fact, controlling revenues and expenditures of state agencies is a central power of the legislative branch. However, the assessment of need for SDSI is not so simple. Continuing legislative interest in the SDSI approach and the desire to see how project agencies have performed with this flexibility require a deeper analysis.

- **Impact on agency oversight.** A key aspect of SDSI status is an arrangement by which the three project agencies pay the State a combined \$1.6 million annually to operate outside the appropriations process. While these payments ostensibly reflect the amounts each agency had historically provided to General Revenue beyond their operating costs, the codification in statute gives the appearance of a consideration between these agencies and the State for the relaxed oversight they enjoy. To be sure, project agencies are still subject to other State oversight, such as SAO audits and Comptroller post-payment audits, but without biennial

budgetary approval and the accompanying performance checks through the appropriations process, only periodic Sunset reviews provide an ongoing mechanism for judging their performance.

A project agency's status under SDSI, however, may also have a subtle but real effect on its Sunset review depending on the timing of the review. Specifically, SDSI status affects the consideration to reorganize or consolidate such an agency if the action involves another agency not under SDSI and not also under review. In this case, the agency's SDSI status effectively imposes a separate burden beyond the consolidation to also justify removing the agency's SDSI status because of limitations in extending SDSI status to the other agency. For example, any consideration to transfer the functions of a project agency to the Texas Department of Licensing and Regulation (TDLR) for the potential effectiveness and efficiency improvements that could result, would likely come at the expense of the agency's SDSI status because of TDLR's non-SDSI status. In addition, such a consolidation would not have any ongoing savings to the State and would instead have potential costs because of the loss of the agency's annual remittance specified in the SDSI Act.

- **Disjointed approach to SDSI.** As noted, this Sunset review only addresses the SDSI Project Act that pertains to the Accountancy, Engineers, and Architectural boards, with only the latter two agencies also subject to concurrent Sunset review. Since the enactment of this Act, two regulatory programs within the Texas Department of Insurance, and five additional agencies comprising financial regulatory agencies and the Texas Real Estate Commission have obtained SDSI status through separate statutes that are outside the scope of this review. As a result, these agencies' SDSI provisions would not be subject to any of the refinements or oversight enhancements that this review produces. These agencies' performance under SDSI provisions would be reviewed when each agency comes up for Sunset review, but that is spread over several legislative sessions for these agencies.⁹ Subsequent legislative action may harmonize the provisions, but the potential for disparate treatment caused by this incremental approach to applying SDSI heightens the risk that the State may lose control of one of these agencies.
- **Approach to the current Sunset review.** Despite the various complications presented by the review of the SDSI Act, the Sunset Act requires an assessment of its continuing need and that is what follows. This assessment recognizes the Legislature's interest in establishing and maintaining the SDSI Act over the years. The assessment focuses on how the project agencies have complied with the Act's provisions and provides some basic standards for judging how these agencies have responded to this funding and oversight flexibility. This assessment, however, should not be construed as a judgment of the appropriateness of the SDSI concept for other state agencies waiting in the wings or the State's overall approach because such matters are outside the scope of this review. Certainly, the conclusions in this report on the narrow question

SDSI status complicates the consideration to reorganize or consolidate an agency.

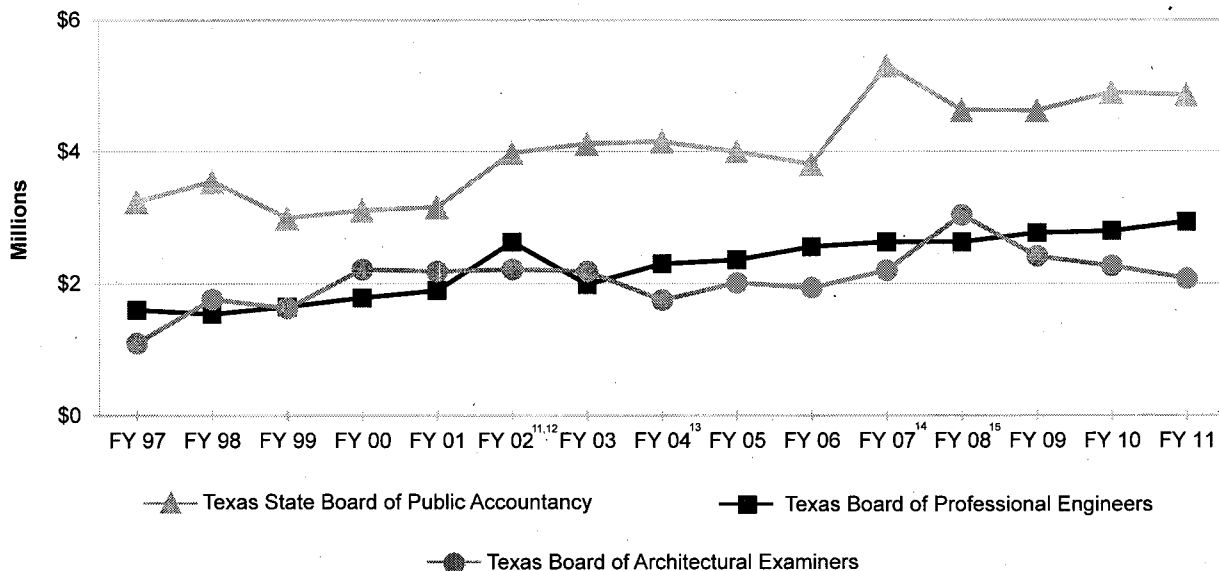
The conclusions in the report should not be seen as an endorsement of expanding the SDSI concept.

of the need for the SDSI Act should not be seen as an endorsement of expanding the SDSI concept, because of the State's uncoordinated approach and because the risk of having agencies operating on their own with little State oversight is too great. While the project agencies under the SDSI Act are performing appropriately as discussed in the following material, the State needs a more comprehensive assessment and holistic approach to SDSI before expanding the concept any further.

The SDSI Act appears to be working as intended and available performance information suggests that project agencies are generally acting in the public interest.

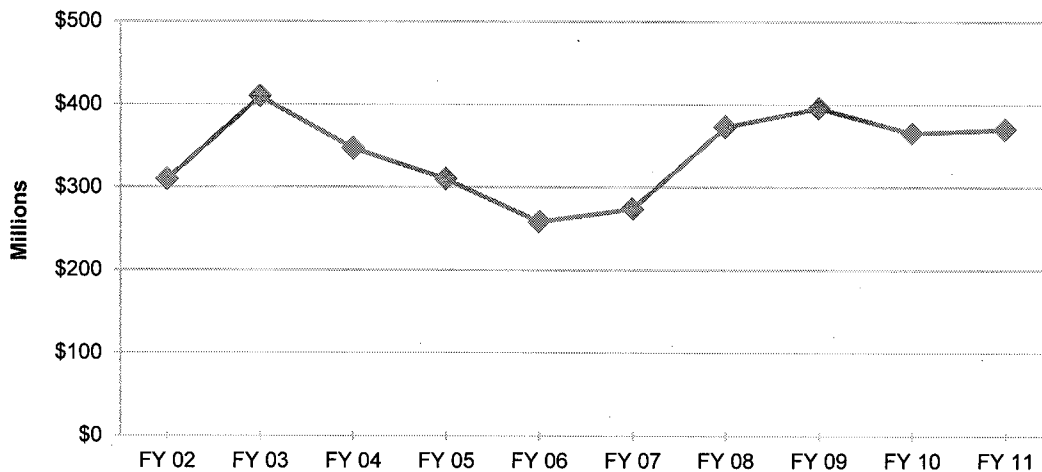
- Expenditures and Staffing.** Expenditures and staffing have not increased excessively. Project agency expenditures have generally increased since the agencies began operating under the Act in fiscal year 2002, but not significantly out of line with the comparable trend in expenditures for all regulatory agencies in Article VIII of the General Appropriations Act. The graph, *SDSI Agency Expenditures*, shows the expenditures of the three project agencies from fiscal year 1997 to fiscal year 2011 to give context to how the agencies were performing before inclusion in the SDSI project. The boards of Accountancy and Engineers basically show steady increases in expenditures from fiscal year 2002 to 2011, reflecting an overall 22 percent increase for the accountants and a 28 percent increase for the engineers.¹⁰ The Architectural Board decreased its expenditures overall by 6 percent.

**SDSI Agency Expenditures
FYs 1997–2011**



Overall spending by other regulatory agencies has increased at a comparable rate to the project agencies. The graph, *Article VIII Agencies Expenditures*, shows the total expenditures for all regulatory agencies in Article VIII. While some agencies may have experienced changes in their regulatory programs in this timeframe well beyond the experience of the SDSI project agencies, the overall growth in their expenditures gives a good point of comparison. These agencies had increased expenditures of nearly 20 percent, in line with the average increase of the project agencies. The only real difference in the trends is that the Article VIII agencies experienced significant decreases in funding from 2003 to 2006, that the SDSI agencies were largely able to avoid.

**Article VIII Agencies Expenditures
FYs 2002–2011**

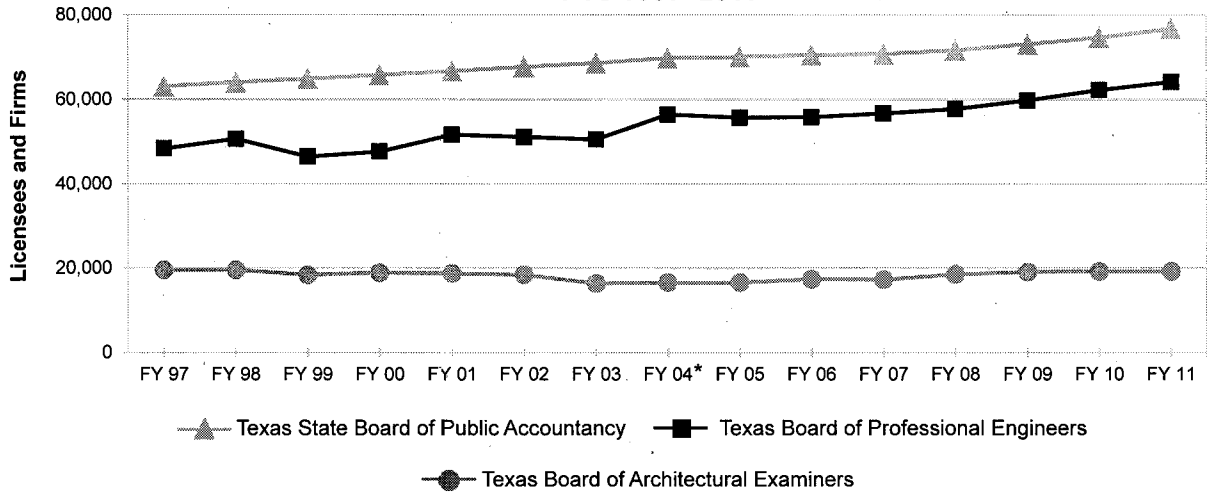


While the project agencies’ regulated populations have either grown or remained relatively the same size, the agencies have maintained consistent staffing levels. The graph on the following page, *SDSI Agencies Number of Licensees and Firms*, shows the number of regulated individuals for each agency from fiscal year 1997 to fiscal year 2011. Focusing on the SDSI years after 2002, the Accountancy and Engineers boards had higher growth rates in their regulated population, with a 13 percent increase for accountants and a 19 percent increase for engineers. This higher growth rate for engineers may be attributable to the licensing of engineering firms, which started in 2004. The Architectural Board experienced a 4 percent increase in its regulated population.

In comparison to the change in regulated population, the SDSI agencies did not experience a large variation in staffing levels to handle any change in workload. The graph on the following page, *SDSI Agencies Full-Time Equivalent Employees*, shows the project agencies’ full-time equivalent employee counts for the same period of time, indicating that the Accountancy Board stayed essentially flat from 2002 to 2011, while the Engineers Board added four employees, for a 16 percent increase, and Architectural Board added two employees, for a 10 percent increase.

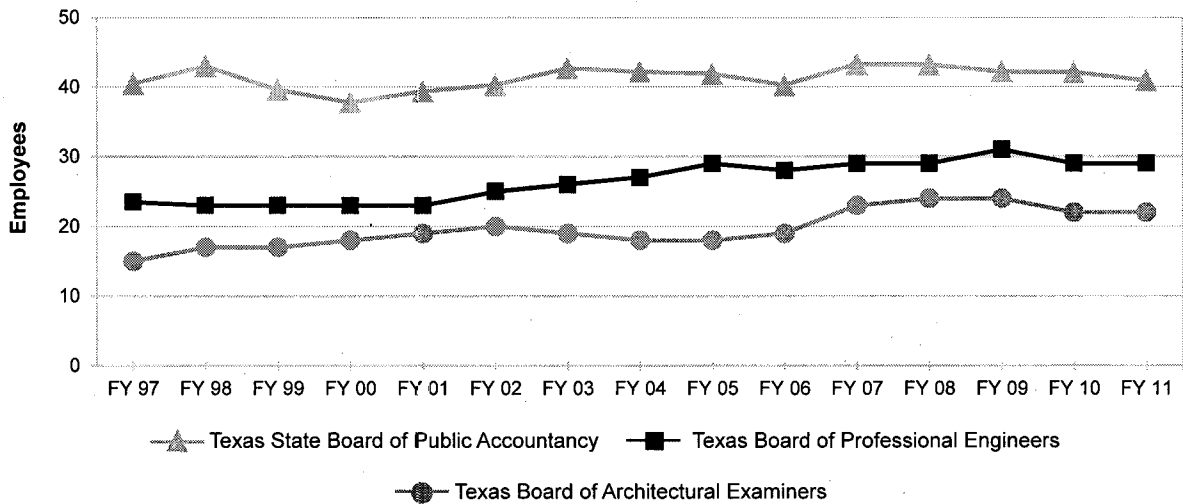
The SDSI agencies maintained consistent staffing levels in spite of increases in regulated populations.

**SDSI Agencies
Number of Licensees and Firms
FYs 1997-2011**



* The Texas Board of Professional Engineers began firm registration.

**SDSI Agencies
Full-Time Equivalent Employees
FYs 1997-2011**



- Licensing.** The project agencies issued licenses more efficiently, improving their time to issue licenses. All three agencies attribute improvements in information technology and improved processes as reasons for increased licensing efficiency. Standard measures across project agencies do not exist, but specific indicators show this improvement. The Accountancy Board has improved its performance from 87 percent of new licenses issued within 10 days to an average of 95 percent for the last four fiscal years. Since 2006, the earliest year for which the Engineers Board has data, its average time to issue a new license has decreased from nearly 55 days to a little more than 31 days in 2011. The Architectural

Board does not keep data on time to issue a new license, but indicates that in 1997 it had a performance measure of 2.7 days, and currently, it routinely issues new licenses in less than one business day.

- **Enforcement.** The boards strive for consistency in enforcement efforts. Analysis of any agency's enforcement effort is difficult because they generally do not report information in a way that distinguishes actions taken on the most serious cases from less serious administrative violations. Even if data does exist, enforcement effort is hard to analyze because of the difficulty of substituting one's judgment for that of the agency in such matters. Having a lot of enforcement actions may indicate a robust effort or overzealousness; having few such actions may indicate greater compliance by licensees or agency negligence. In addition, comparing actions from one agency to another is difficult given the differences in how each collects and reports this information.

An assessment of enforcement data for the three SDSI project agencies shows that the boards of Accountancy and Engineers have basically maintained a consistent effort regarding enforcement outcomes. Both agencies resolved most complaints by gaining voluntary compliance but still have taken action against violators. The Architectural Board historically dismissed most complaints but since fiscal year 2004, following Sunset recommendations to refocus its enforcement efforts, the Board has decreased the number of dismissals, increased the number of complaints closed through voluntary compliance, and maintained a fairly consistent number of cases closed each year through enforcement action. The graph on the following page, *SDSI Enforcement Actions*, shows the disposition of complaints for all three agencies from fiscal year 1997 to fiscal year 2011.

- **Salaries.** Employee salaries appear appropriate. The project agencies pay salaries that follow the classification plan provided for in the General Appropriations Act. Appendix A provides the fiscal year 2011 salary for all salaried positions at each project agency and the Appropriations Act scheduled salary range for each position. Every salaried position at both agencies was paid a salary within the Appropriations Act's schedule, even though the agencies have the discretion to not follow Appropriation Act guidelines.

The project agencies pay their executive directors salaries that are commensurate with other regulatory agency executive directors and are below the market average, according to the State Auditor's Office.¹⁶ The accompanying table, *Executive Director Salaries*, shows the agencies' executive directors' salaries are in line with the salaries of five other regulatory agency executive directors for fiscal year 2011. The Architectural and Engineers boards have recently given their executive directors pay increases.¹⁷

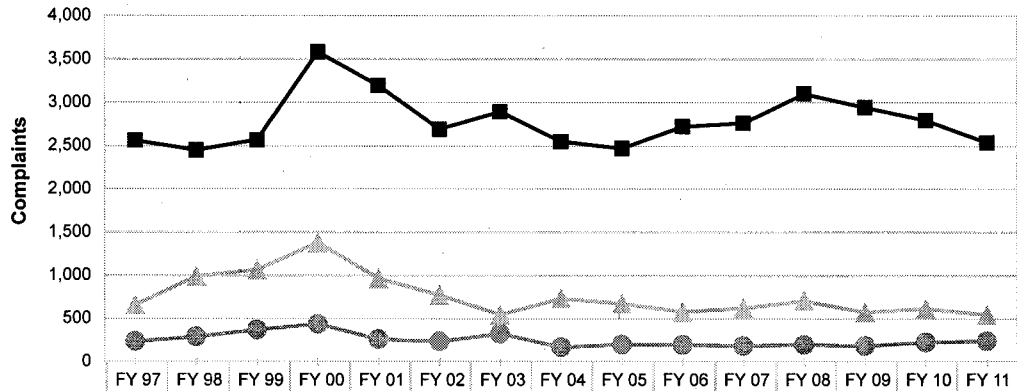
Project agencies' salaries are in line with other regulatory agencies.

Executive Director Salaries

Agency	FY 2011 Salary
TDLR	\$135,000
Securities Board	\$130,000
<i>Accountancy Board</i>	<i>\$127,308</i>
Medical Board	\$110,000
<i>Architectural Board</i>	<i>\$108,303</i>
Real Estate Commission	\$106,500
Pharmacy Board	\$106,500
<i>Engineers Board</i>	<i>\$105,000</i>

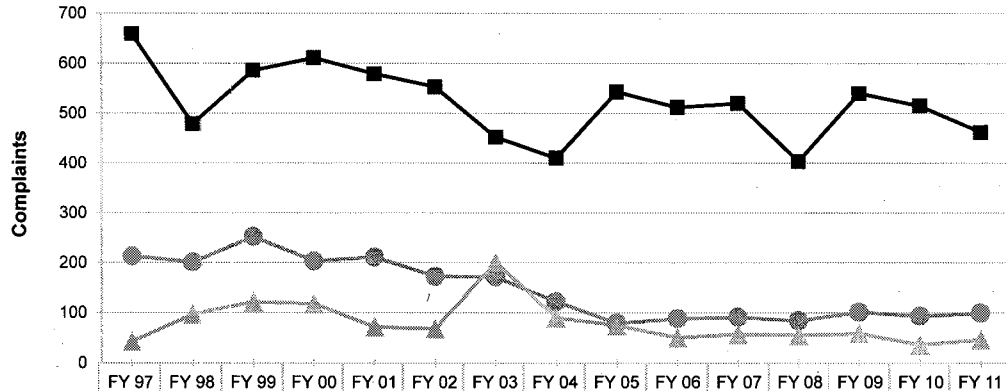
SDSI Enforcement Actions FYs 1997-2011

Texas State Board of Public Accountancy



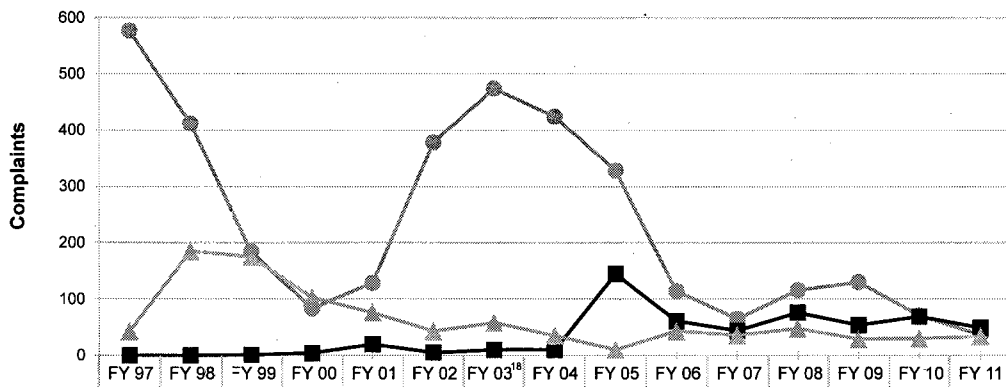
	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11
■ Dismissed - Voluntary Compliance	2,560	2,449	2,567	3,581	3,195	2,692	2,894	2,550	2,469	2,724	2,763	3,102	2,944	2,796	2,537
▲ Closed by Enforcement Action	658	991	1,066	1,382	963	772	546	733	672	577	622	703	573	614	542
● Dismissed	234	288	369	436	258	234	324	168	200	195	184	196	183	223	238

Texas Board of Professional Engineers



	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11
■ Dismissed - Voluntary Compliance	659	479	586	611	579	553	452	410	543	512	520	403	540	515	462
▲ Closed by Enforcement Action	43	97	122	118	72	68	201	90	75	50	57	55	58	36	46
● Dismissed	213	201	252	203	211	172	171	122	79	88	91	84	101	93	99

Texas Board of Architectural Examiners



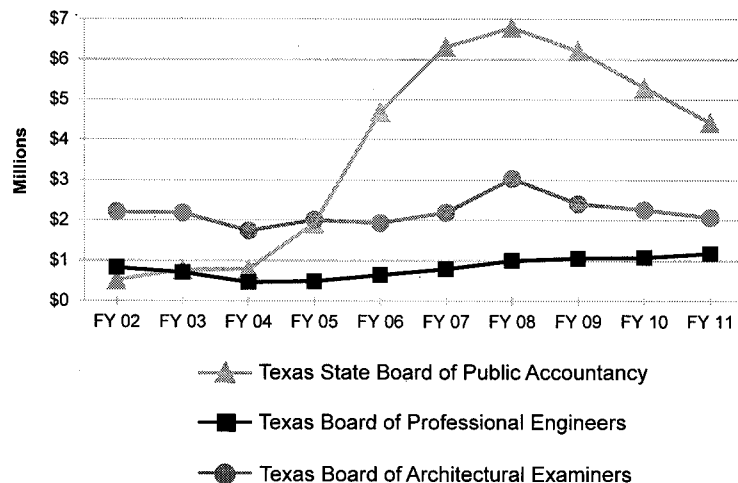
	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	FY 10	FY 11
■ Dismissed - Voluntary Compliance	0	0	1	4	20	5	10	10	145	61	44	76	54	69	49
▲ Closed by Enforcement Action	43	185	175	103	76	43	58	35	10	43	36	48	29	30	34
● Dismissed	577	412	184	83	129	378	474	424	328	114	65	116	130	71	37

- Fee levels and reserve fund balances.** Fee levels and reserve fund balances have not grown excessively. SDSI agencies must set fees at a level to cover the year's operating expenses, the annual remittance to the State, and provide enough excess revenue to meet the targeted reserve fund balance. After almost doubling initial licensing fees for all of its regulated professions just before joining SDSI, the Architectural Board has essentially maintained the same fee levels throughout its SDSI experience. The Accountancy Board has maintained a \$30 license and renewal fee except for the period between 2005 and 2008, when the Board indicates that it raised fees as high as \$60 to fund the agency's enforcement action against Enron and Arthur Andersen.¹⁹ The Engineers Board has maintained a \$50 license fee, and raised its renewal fee only once, from \$30 to \$35 in fiscal year 2004.

The agencies carry reserve fund balances to budget for unforeseen shortfalls in revenue and for large expenditures. Because these agencies cannot rely on the State to pay any expenses or debt they incur under SDSI, reserves provide a cushion for the unexpected. In addition, the agencies identified the ability to carry forward a reserve fund balance as one of the primary benefits of the Act, as these balances allow the agencies to budget for large expenditures over many years rather than being confined to a biennial budget cycle. Increases in the agencies' reserve fund balances have appeared to coincide with changes in agency needs. The graph, *Fund Balance History*, shows the agencies' reserve fund balances since fiscal year 2002.

The Accountancy Board has had the most active history, with its fund balance growing from a little more than \$500,000 in 2002, to a high of \$6.8 million in 2008. The Accountancy Board attributes this high balance to the need to pay litigation costs for its large, multiyear enforcement action against Enron and Arthur Andersen, which included all attorneys' fees, expert witness fees, court costs, and the cost of defending all appeals. While the Accountancy Board may have overestimated the funds needed to litigate the case and set its fees too high, without a backstop of State support should it run out of funds, it must budget conservatively to ensure enough funds in reserve to pay the bills. The Accountancy Board let fees drop back to pre-litigation levels in 2009, at the conclusion of the enforcement action, and fund balance decreased to \$4.4 million in 2011. The Board plans to allow the fund balance to continue to decrease over the next several years.

**Fund Balance History
FYs 2002–2011**



Without trend information the Legislature cannot accurately assess the performance of SDSI agencies.

The Engineers Board began with a fund balance of more than \$800,000 in 2002, and after an initial drop, the fund balance has slowly increased since 2008, with a fund balance of nearly \$1.2 million in fiscal year 2011. The Engineers Board has primarily used the fund balance for IT improvements, but it also maintains funding in reserve based on past budgeting performance, which works out to about four months of operating expenses.

The Architectural Board began with a fund balance of more than \$860,000 in 2002, which has slowly increased to nearly \$2.7 million in 2011. The Architectural Board explains the need for this increase to cover drops in fee revenue, as the Board has greater fluctuations in licensee populations than the other two project agencies, especially in difficult economic times. The Architectural Board has used the fund balance for IT improvements, office renovations to comply with the Americans with Disabilities Act, and for litigation expenses.

The SDSI Act does not require project agencies to report detailed, trend performance data to improve Legislative oversight.

The ability of project agencies to operate without close legislative, budgetary oversight creates both opportunity and risk to the State. The project agencies' authority to collect fees, issue licenses, and take enforcement action, relies on the authority of the State. However, without proper feedback, the State can

neither gauge the improvements or successes these agencies deliver nor ensure appropriate behavior that does not abuse the flexibility they have been given.

Current reporting requirements, shown in the textbox, *SDSI Reporting Requirements*, do not provide enough detail or historical context to allow for legislative oversight committees to effectively evaluate the agencies' performance. In addition, LBB does not play a role in establishing and evaluating project agencies' performance measures. To effectively oversee these agencies, the Legislature needs more detailed trend information regarding the agencies' finances and operations, and licensing and enforcement activities. Without this more complete picture of the agencies' performance and better context as to how they have been performing over time, the Legislature is unable to spot both the promise and the potential problems of the SDSI approach.

<p><i>SDSI Reporting Requirements</i></p>
<p>Annual report to the Governor, Senate Finance, House Appropriations, and LBB:</p> <ul style="list-style-type: none"> • salary for all project personnel and total of employee per diem and travel expenses; • total of per diem and travel expenses for each member of the governing body; • the operating plan and budget covering a two-year period; and • a detailed report on all revenue received and expenses incurred over the last year. <p>Biennial report to the Governor and Legislature:</p> <ul style="list-style-type: none"> • any audit by SAO; • a financial report of the previous year; • a description of any change in licensing fees; • a report on the number of regulated persons, examination candidates, and enforcement activities and any change in those numbers; and • a description of all new rules adopted or repealed.

Recommendations

Change in Statute

1.1 Continue the SDSI Act, but remove its separate Sunset date and pilot project status and provide for its future Sunset review with agencies subject to the Act.

This recommendation would remove the Sunset provision from the Act and would instead require that a Sunset review of an agency operating under the SDSI Act include a review of the agency's performance under the Act to ensure continued legislative oversight. In addition, the recommendation would remove references to project status from the Act since the agencies have completed the test period and the Sunset review of the performance of the pilot project during that time. This change would enable the Texas Legislative Council to recodify this statute so it may be more easily found from its current location in an outdated section of the Civil Statutes under a heading for Boat or Motor Manufacturers, Distributors, and Dealers. With the recommendations to continue the Engineers and Architectural boards in the same time period as the next Sunset review of TDLR, this provision would help ensure a more comprehensive assessment of the State's overall approach to SDSI status for state agencies.

1.2 Expand the data in the current reports required by agencies subject to the SDSI Act to help improve oversight.

This recommendation would continue the reporting requirements in the Act and would require agencies operating under the SDSI Act to provide five years of trend performance data in the reports they are already required to submit to the Governor, Senate Finance and House Appropriations, and Legislative Budget Board each biennium. The report should include trend data in the following areas:

- operating budgets, including revenues and a breakdown of expenditures by program, also showing administrative expenses;
- projected budgets for two fiscal years;
- FTE counts;
- number of complaints received from the public and generated by staff;
- number of complaints dismissed and the number of complaints resolved by enforcement action;
- number of enforcement actions by sanction type;
- number of cases closed through voluntary compliance;
- amount of administrative penalties assessed and rate of collection of those penalty amounts;
- number of cases alleging threats to public health, safety, or welfare, or that violate professional standards of care and the disposition of these cases;
- average time to resolve a complaint;
- number of licensees or regulated persons or entities broken down by licensee and license status, such as inactive or emeritus;
- fees for initial licensure and renewal;

- average time to issue a license;
- travel expenses;
- litigation costs, broken down by administrative hearing, court and outside counsel costs; and
- reserve fund balances.

Fiscal Implication

These recommendations would have no fiscal impact to the State as the SDSI agencies do not receive funds from the General Revenue Fund.

1 Section 4(a), Article 8930, Vernon's Civil Statutes.

2 Sections 6(a) and 14(a), Article 8930, Vernon's Civil Statutes.

3 Sections 6(a) and 15(a), Article 8930, Vernon's Civil Statutes.

4 Sections 6(a), 7, and 13, Article 8930, Vernon's Civil Statutes.

5 Section 6(c), Article 8930, Vernon's Civil Statutes.

6 Sections 6(a) and 16, Article 8930, Vernon's Civil Statutes.

7 Section 8(a), Article 8930, Vernon's Civil Statutes.

8 Section 8(b), Article 8930, Vernon's Civil Statutes.

9 2015 Sunset Review: Office of Banking Commissioner, Section 12.109, Texas Finance Code; Office of Commissioner and Department of Savings and Mortgage Lending, Section 13.012, Texas Finance Code; Office of Consumer Credit Commissioner, Section 14.066, Texas Finance Code. 2019 Sunset Review: Texas Real Estate Commission, Section 1101.006, Texas Occupations Code. 2021 Sunset Review: Credit Union Department and Commission, Section 15.212, Texas Finance Code. 2023 Sunset Review: Texas Department of Insurance, Section 31.004(a), Texas Insurance Code.

10 In fiscal year 2004 the Engineers Board added firm registration, increasing expenditures in licensing and enforcement, and Sunset expenditure analysis begins with this year.

11 The Texas State Board of Public Accountancy received a one-time appropriation of \$1,489,498 in fiscal year 2002 to start up operations as an SDSI agency. Those funds were repaid by fiscal year 2005. The Texas Board of Professional Engineers received a one-time appropriation of \$751,636.56 in fiscal year 2002 to start up operations as an SDSI agency. Those funds were repaid by fiscal year 2003. The Texas Board of Architectural Examiners received a one-time appropriation of \$624,164 in fiscal year 2002 to start up operations as an SDSI agency. Those funds were repaid by fiscal year 2005.

12 In fiscal year 2002, the Engineers Board administered the Professional Engineer exam itself for the last time, resulting in greater expenditures in the year.

13 In fiscal year 2004, the Engineers Board added firm registration, increasing expenditures in licensing and enforcement.

14 The increase in expenditures was a result of the Accountancy Board's large enforcement action against Enron and Arthur Andersen.

15 In fiscal year, 2008 the Architectural Board remodeled its office space and had an increase in legal expenses, resulting in greater expenditures in the year.

16 State Auditor's Office, *Executive Compensation at State Agencies August 2012*, accessed September 11, 2012, <http://www.sao.state.tx.us/reports/main/12-708.pdf>. Appendix 6 of the report provides a chart of executive compensation of SDSI executive officers and indicates that the fiscal year 2012 salary for the executive director of the Accountancy Board was \$127,308, which was \$7,496 below market average. The Engineers Board's executive directors' fiscal year 2012 salary was \$107,625, which was \$30,732 below market average. The Architectural Board's executive director's fiscal year 2012 salary was \$114,801, which was \$19,226 below market average.

17 The Architectural Board raised its executive director's pay to \$121,689 on September 1, 2012. The Engineers Board raised its executive director's pay to \$111,930 on September 1, 2012.

18 The Architectural Board stopped opening enforcement cases for licensing form errors leading to a decrease in the number of dismissed cases.

19 Beginning November 30, 2012 the Accountancy Board's licensing fee will increase from \$30 to \$41.

ISSUE 2

The SDSI Act Does Not Provide Needed Safeguards to Ensure Oversight and Prevent Potential Abuse.

Background

When the Legislature passed the Self-Directed Semi-Independent (SDSI) Agency Project Act allowing the Texas State Board of Public Accountancy, the Texas Board of Architectural Examiners, and the Texas Board of Professional Engineers to operate outside the appropriations process, it made each project agency wholly financially responsible for its operations.¹ The project agencies are responsible for all direct and indirect operating costs, including those associated with employee benefits, audits, litigation, and any special projects. The Act expressly states that General Revenue will not be used to cover any expenses or debt that project agencies incur.²

In exchange for taking financial responsibility of their operations, project agencies have the freedom to raise fees and set their own budgets with only the approval of their governing boards, instead of the Legislature as is typical for state agencies. This process gives project agencies flexibility in how they respond to events or needs compared to typical agencies that must go through the biennial appropriations process. Belying this freedom, project agencies remain state agencies, using state employees and exercising the power of the State through their licensing and enforcement efforts to determine who can and cannot work in these professions.

The SDSI Act requires project agencies to deposit revenue to the Texas Treasury Safekeeping Trust Company and to contract with the Comptroller of Public Accounts to maintain the accounts, just like a commercial bank.³ In practice, these agencies rely on the Comptroller's Office to process payments through the Uniform Statewide Accounting System (USAS), much like any state agency. The Act also requires project agencies to contract with the State Auditor's Office for audits and to obtain legal representation by the Office of the Attorney General.⁴ Project agencies and the SDSI Act are also subject to review by the Sunset Advisory Commission. The agencies must submit reports to the Governor, Legislature, and Legislative Budget Board detailing their regulatory activities and financial information.⁵ In addition, they must comply with the Administrative Procedure, Open Meetings, and Public Information acts.⁶

Findings

The SDSI Act does not clearly establish that the powers and duties generally applicable to state agencies also apply to project agencies.

The language of the SDSI Act only requires the three project agencies to comply with the basic good government statutes related to administrative procedures, open meetings, and public information, and that they participate in the Employees Retirement System.⁷ By the specific application of these laws, the Act could be interpreted as exempting the project agencies from other provisions of general law that grant authority to or impose a duty on state

Statute does not clearly require project agencies to abide by general law.

agencies generally. In practice, however, project agencies appear to follow most general laws applicable to state agencies, such as laws relating to purchasing and procurement, employee classification, and travel. By doing so, the project agencies have been operating in a way that provides some safeguards and a standard level of oversight for conducting audits and maintaining needed controls. For example, the project agencies submit reports to several other state entities and agencies, such as reports to the Comptroller on contracts awarded to historically underutilized businesses, reports to the State Office of Risk Management, and biennial strategic plans to the Governor, Legislature, and other oversight agencies. However, nothing in statute requires them to continue to operate in this way, running the risk that important checks on these agencies' activities could be compromised.

Statute does not clearly establish the Comptroller's role in managing the agencies' accounts.

While project agencies have chosen to work with the Comptroller's Office, which provides necessary oversight of the project agencies' financial transactions, statute does not prohibit these agencies from holding accounts outside the control of the Comptroller's Office. Project agencies use USAS for financial transactions because of the convenience and low cost of maintaining the account, but issues have arisen regarding SDSI agencies maintaining excessive fund balances in USAS, affecting the Comptroller's annual cash reporting. Beginning September 1, 2012, the Comptroller addressed this concern by changing reporting requirements and prohibiting the agencies from holding excessive fund balances in USAS. However, the SDSI Act does not require project agencies to use USAS, and it does not provide guidance on how the project agencies are to make payments. The Act's silence could enable project agencies to keep accounts at a commercial bank and direct the Safekeeping Trust Company to transfer funds to that account. If this were to happen, the State would lose a level of oversight, as the Comptroller's Office currently performs post-payment audits on the project agencies' transactions. Post-payment audits determine how agencies document payments, if they are making payments on time, and if they have internal controls to protect against abuse, such as making certain proper security measures are in place to prevent an individual from issuing a payment without another individual's oversight.

The Act's silence could enable project agencies to keep commercial bank accounts.

Allowing SDSI agencies to keep revenue from administrative penalties creates the appearance of a conflict and is not standard practice for state agencies.

The SDSI Act allows project agencies to keep administrative penalties up to 20 percent of total agency expenditures from the previous year, not to exceed \$1 million.⁸ In practice, these agencies have never come close to this cap and have remained fairly consistent in their use of this enforcement tool, as shown in the chart on the following page, *Administrative Penalties Collected*.

Administrative Penalties Collected

Agency	FY 2011	FY 2010	FY 2009	FY 2008	FY 2007
Texas State Board of Public Accountancy	\$182,192	\$121,875	\$88,525	\$91,362	\$162,410
Texas Board of Architectural Examiners	\$44,900	\$55,900	\$112,310	\$81,750	\$61,800
Texas Board of Professional Engineers	\$50,550	\$35,920	\$39,610	\$59,651	\$51,960

Since late 2011, the Accountancy Board has dedicated administrative penalties, except penalties for failure to maintain continuing education, to the Board's scholarship fund for fifth-year accounting students, whereas the Engineers and Architectural boards use the penalties as part of their revenue stream.⁹ The standard for state agencies is to remit administrative penalties to General Revenue as a check on their enforcement authority to ensure that it is not used to enrich themselves. Allowing agencies to keep administrative penalties could result in a proverbial "speed trap," used to increase revenue. This approach is generally avoided even for agencies that go through the appropriations process. Because project agencies do not experience the same level of oversight and are allowed to use administrative penalties to support a portion of their operations, this type of safeguard is especially important to avoid the appearance of using penalties to self-support operations or increase fund balances.

Recommendations

Change in Statute

2.1 Clarify that provisions of general law applicable to state agencies apply to the project agencies if not in conflict with their SDSI status.

This change to clarify the project agencies' status as state agencies would not impose additional duties on the agencies but would simply clarify that provisions of general law applicable to state agencies apply to the project agencies. This recommendation would make statute consistent with the manner in which the project agencies currently operate and prevent future confusion regarding the agencies' authorities and duties. Provisions of general law that apply to the project agencies to the extent that they do not conflict with the project agencies' SDSI status, include but are not limited to:

- prompt payment requirements;
- purchasing and procurement policies;
- interagency transfer vouchers; and
- travel, using the General Appropriations Act to guide reimbursement rates.

2.2 Clarify that project agencies must use the Comptroller's Uniform Statewide Accounting System to make all payments.

This recommendation would make clear that the project agencies use the Uniform Statewide Accounting System to process payments and cannot open accounts outside the control of the Comptroller's Office.

This requirement will ensure the project agencies continue to use USAS for their financial transactions, allowing the Comptroller’s Office to provide oversight through its post-payment audits.

2.3 Require the project agencies to remit all administrative penalties to General Revenue.

This recommendation would require that the project agencies remit collected administrative penalties to the General Revenue Fund as is common practice for state agencies. The recommendation would also delete a provision in the Engineers Board’s statute that provides authority to assess and keep a portion of administrative penalties to cover the cost of bringing an enforcement action. This change would help instill confidence in these agencies’ enforcement programs by removing the appearance that penalties are agency revenue generators.

Fiscal Implication

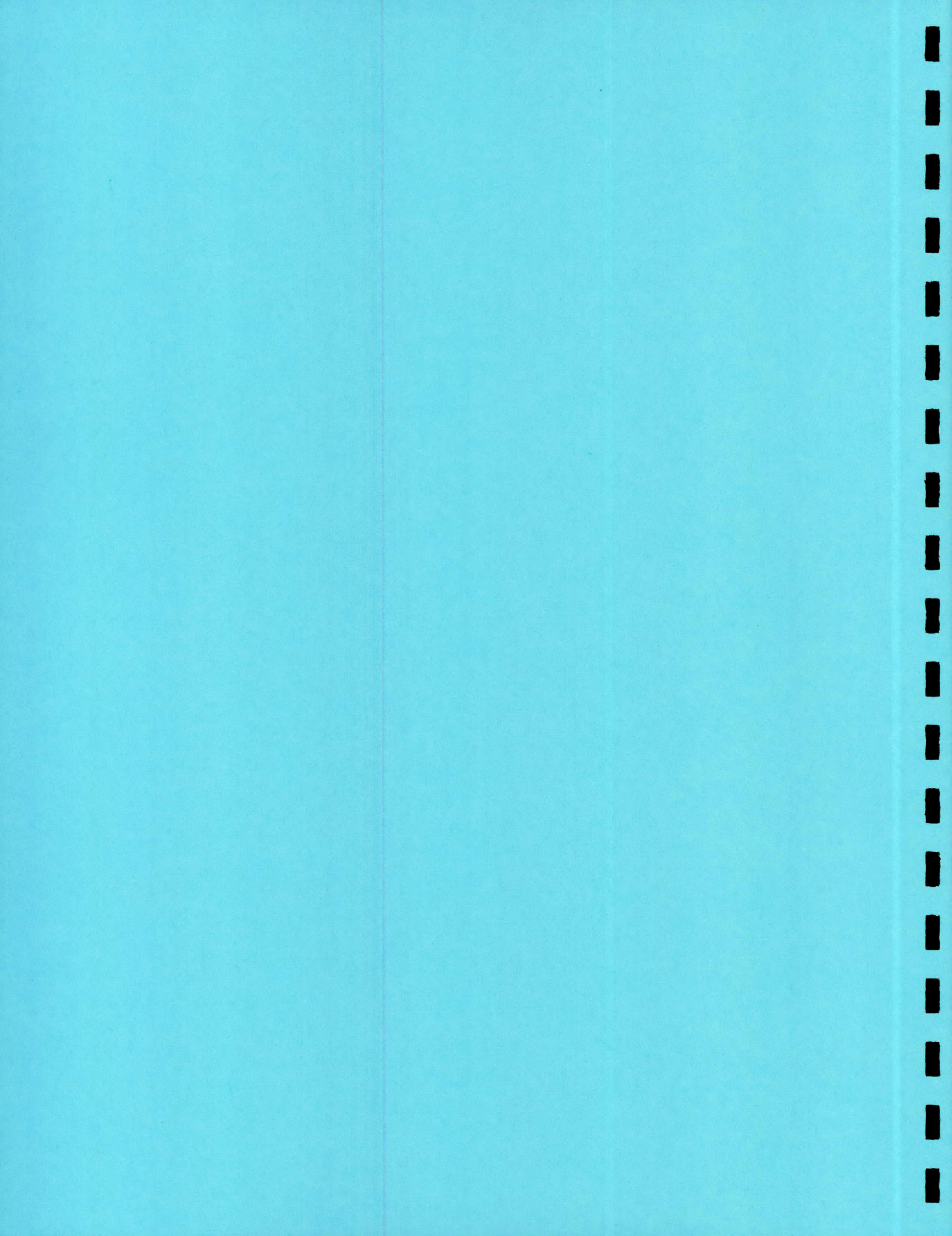
Recommendation 2.3 would create a positive fiscal impact to the State of about \$250,000 per year. This estimate is based on the average amount of administrative penalties collected by the three project agencies over the past five fiscal years. Likewise, each project agency would experience a loss in revenue. Based on the average amount in administrative penalties collected over the past five fiscal years, the agencies would experience annual revenue losses in the following amounts: \$129,272 for the Accountancy Board, \$71,332 for the Architectural Board, and \$47,538 for the Engineers Board.

Self-Directed Semi-Independent Agency Project Act

Fiscal Year	Gain to the General Revenue Fund
2014	\$248,142
2015	\$248,142
2016	\$248,142
2017	\$248,142
2018	\$248,142

- 1 Section 6(a), Article 8930, Vernon’s Texas Civil Statutes.
- 2 Sections 6(a) and 15(a), Article 8930, Vernon’s Texas Civil Statutes.
- 3 Section 14(b), Article 8930, Vernon’s Texas Civil Statutes.
- 4 Sections 7 and 13, Article 8930, Vernon’s Texas Civil Statutes.
- 5 Section 8, Article 8930, Vernon’s Texas Civil Statutes.
- 6 Sections 4(b) and 16, Article 8930, Vernon’s Texas Civil Statutes.
- 7 Sections 4(b), 16, and 17, Article 8930, Vernon’s Texas Civil Statutes.
- 8 Section 14(c), Article 8930, Vernon’s Texas Civil Statutes.
- 9 22 T.A.C. Section 519.8(e).

APPENDICES



APPENDIX A

SDSI Salary Classification – FY 2011

Position	Yearly Salary	GAA Schedule	Within Range
Texas State Board of Public Accountancy			
Information Specialist III	\$56,777	\$40,816–\$65,306	✓
Executive Assistant I	\$48,992	\$35,651–\$55,258	✓
Director III	\$116,699	\$81,529–\$134,524	✓
Accountant V	\$68,160	\$46,731–\$74,769	✓
Accountant Technician II	\$31,000	\$28,239–\$43,770	✓
Accountant I	\$43,055	\$29,933–\$46,396	✓
Staff Service Officer II	\$46,603	\$38,146–\$61,034	✓
Administrative Assistant II	\$32,970	\$25,132–\$38,955	✓
Administrative Assistant I	\$30,519	\$22,581–\$32,742	✓
System Analyst VI	\$100,350	\$67,380–\$111,176	✓
System Analyst IV	\$78,771	\$50,002–\$80,003	✓
System Analyst IV	\$74,195	\$50,002–\$80,003	✓
System Analyst IV	\$72,014	\$50,002–\$80,003	✓
Administrative Assistant IV	\$42,963	\$31,729–49,180	✓
Administrative Assistant IV	\$39,519	\$31,729–49,180	✓
Administrative Assistant III	\$30,000	\$28,239–\$43,770	✓
Director I	\$99,806	\$67,380–\$111,176	✓
Program Specialist I	\$42,008	\$35,651–\$55,258	✓
Inspector II	\$35,736	\$25,132–\$38,955	✓
Inspector II	\$31,308	\$25,132–\$38,955	✓
Inspector II	\$31,200	\$25,132–\$38,955	✓
Director I	\$80,499	\$67,380–\$111,176	✓
Program Specialist I	\$54,740	\$35,651–\$55,258	✓
Inspector III	\$32,784	\$28,239–\$43,770	✓
Inspector III	\$33,870	\$28,239–\$43,770	✓
Program Specialist I	\$42,602	\$35,651–\$55,258	✓
Administrative Assistant II	\$28,800	\$25,132–\$38,955	✓
Administrative Assistant II	\$28,800	\$25,132–\$38,955	✓
Director I	\$83,306	\$67,380–\$111,176	✓

Appendix A

Position	Yearly Salary	GAA Schedule	Within Range
Inspector III	\$42,539	\$28,239-\$43,770	✓
Inspector III	\$42,596	\$28,239-\$43,770	✓
Inspector III	\$35,058	\$28,239-\$43,770	✓
Inspector IV	\$40,668	\$31,729-\$49,180	✓
General Counsel IV	\$116,699	\$89,682-\$147,976	✓
Attorney IV	\$74,202	\$61,254-\$98,007	✓
Attorney IV	\$73,479	\$61,254-\$98,007	✓
Texas Board of Architectural Examiners			
Customer Service Representative III	\$34,800	\$23,239-\$43,770	✓
Accountant IV	\$45,753	\$40,816-\$65,306	✓
Customer Service Representative IV	\$45,184	\$31,729-\$49,180	✓
Staff Services Officer II	\$57,395	\$38,146-\$61,034	✓
Manager III	\$87,669	\$57,247-\$91,595	✓
Legal Assistant IV	\$66,476	\$46,731-\$74,769	✓
Programmer IV	\$72,999	\$53,502-\$85,603	✓
Investigator III	\$45,747	\$33,633-\$52,130	✓
Marketing Specialist III	\$53,560	\$40,816-\$65,306	✓
General Counsel III	\$87,313	\$74,118-\$122,294	✓
Administrative Assistant IV	\$44,988	\$31,729-\$49,180	✓
Manager I	\$69,184	\$50,002-\$80,003	✓
Programmer IV	\$72,999	\$53,502-\$85,603	✓
Administrative Assistant II	\$32,059	\$25,132-\$38,955	✓
Accountant V	\$64,999	\$46,731-\$74,769	✓
Network Specialist III	\$51,426	\$43,673-\$69,878	✓
License and Permit Specialist III	\$39,024	\$33,633-\$52,130	✓
Attorney IV	\$79,856	\$61,254-\$98,007	✓
Investigator V	\$56,924	\$43,673-\$69,878	✓
Customer Service Representative IV	\$41,015	\$31,729-\$49,180	✓
Administrative Assistant II	\$25,131	\$25,132-\$38,955	✓
Texas Board of Professional Engineers			
Accountant III	\$48,792	\$35,651-\$55,258	✓
Attorney IV	\$66,999	\$61,254-\$98,007	✓
Director I	\$90,000	\$67,380-\$111,176	✓

Appendix A

Position	Yearly Salary	GAA Schedule	Within Range
Engineer IV	\$67,535	\$57,247-\$91,595	✓
Engineer IV	\$67,867	\$57,247-\$91,595	✓
Executive Assistant II	\$59,183	\$40,816-\$65,306	✓
Human Resources Specialist III	\$52,275	\$35,651-\$55,258	✓
Investigator IV	\$50,333	\$38,146-\$61,034	✓
Investigator IV	\$49,482	\$38,146-\$61,034	✓
Investigator VI	\$62,481	\$50,002-\$80,003	✓
Management Analyst II	\$54,552	\$43,673-\$69,878	✓
Manager IV	\$82,897	\$61,254-\$98,007	✓
Manager IV	\$89,558	\$61,254-\$98,007	✓
Manager IV	\$87,143	\$61,254-\$98,007	✓
Manager IV	\$84,108	\$61,254-\$98,007	✓
Network Specialist II	\$49,200	\$38,146-\$61,034	✓
Program Specialist I	\$42,807	\$35,651-\$55,258	✓
Program Specialist I	\$35,651	\$35,651-\$55,258	✓
Program Specialist I	\$36,764	\$35,651-\$55,258	✓
Program Specialist I	\$37,077	\$35,651-\$55,258	✓
Program Specialist I	\$37,077	\$35,651-\$55,258	✓
Program Specialist II	\$47,497	\$38,146-\$61,034	✓
Program Specialist IV	\$56,239	\$43,673-\$69,878	✓
Programmer IV	\$68,477	\$53,502-\$85,603	✓
Purchaser IV	\$51,370	\$38,146-\$61,034	✓

APPENDIX B

Staff Review Activities

During the review of the Board of Architectural Examiners, the Board of Professional Engineers, and the Self-Directed Semi-Independent (SDSI) Agency Project Act, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with personnel from both agencies; attended Board and subcommittee meetings; spoke with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to these agencies and the SDSI Act.

- Worked with the Texas State Board of Public Accountancy regarding the SDSI review.
- Interviewed staff from the Comptroller of Public Accounts, the Texas Department of Licensing and Regulation, the Texas Department of Public Safety, the Legislative Budget Board, the State Auditor's Office, and the Texas Treasury Safekeeping Company.
- Surveyed and interviewed regulated architects, landscape architects, interior designers, engineers, and complainants.
- Met with architects, landscape architects, and interior designers in the field.
- Observed an interview with a respondent to an enforcement complaint.
- Attended informal settlement conferences of agency enforcement actions.
- Reviewed agency enforcement case files.
- Spoke with staff of the Council of Landscape Architectural Registration Boards and the National Council for Interior Design Qualification.
- Attended the Architecture and Engineering Joint Task Force meeting.

Sunset Staff Review of the
Texas Board of Architectural Examiners
Texas Board of Professional Engineers
Self-Directed Semi-Independent Agency Project Act

————— *Report Prepared By* —————

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