

SUBJECT: Continuing the Board of Professional Land Surveying

COMMITTEE: Licensing and Administrative Procedures — favorable, with amendments

VOTE: 9 ayes — Flores, Hamilton, Raymond, Driver, Eissler, Goolsby, Homer, D. Jones, Wise

0 nays

WITNESSES: None

BACKGROUND: Land surveying in Texas dates to the early 1800s, when surveyors worked to define the boundaries of Spanish land grants. The Board of Professional Land Surveying licenses and regulates land surveyors to help ensure accurate surveys of land in Texas. The board has adopted rules to perform these duties and to set and enforce ethical standards for surveyors. The board, made up of 10 members — six practicing surveyors, three public members, and a commissioner — succeeded the Board of Examiners of Land Surveyors (1919) and the State Board of Registration for Public Surveyors (1955).

In addition to testing and licensing land surveyors, the board receives, initiates, and investigates complaints of violations of the Professional Land Surveying Practices Act. Complaints sent to the board must be substantiated by an affidavit. The board has authority to collect license fees, impose a \$1,500 penalty for each violation, and suspend or revoke licenses.

In fiscal 2002-03, the board's budget was \$755,692, and it employed 4.5 full-time equivalent employees. By law, the state cannot spend general revenue in excess of the amount received by the board as fees to fund the administration of the Professional Land Surveying Practices Act. The board last underwent sunset review in 1991, and its authority will expire September 1, 2003, unless the 78th Legislature renews it.

Penal Code, Section 37.10 makes it an offense, with varying penalties, for a person to knowingly make a false entry in a governmental record or make, present, or use any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record.

DIGEST: HB 706, as amended, would reduce the size of the Board of Professional Land Surveying from 10 members to nine by eliminating one professional member and would change various procedures governing the handling of complaints against licensed surveyors. The bill would:

- abolish the requirement that a person who files a complaint with the board substantiate it with an affidavit — a sworn and written statement — in order for the board to begin its investigation;
- authorize the investigator to recommend sanctions for a violation or to dismiss a complaint that lacks merit;
- authorize a complaining party to ask the board to reconsider a dismissal;
- authorize the board to appoint a subcommittee to assist in an investigation; and
- require the board to assign an employee or to contract with an investigator to perform its investigation after receiving a complaint.

The board could not consider a dismissed complaint in the process of trying to determine the veracity of a current complaint. A board member could not vote on a case at a disciplinary proceeding if the board member had helped to investigate the case. A license holder's name and other personal information would have to be redacted in the event of a frivolous complaint, defined as a complaint that the board found to have been made to harass and not to have demonstrated harm to any person.

The board could enact rules to conduct informal settlement conferences to address complaints against land surveyors. It could order limited restitution resulting from a settlement conference in addition to or instead of assessing an administrative penalty. The board would have to implement a policy of alternative dispute resolution and negotiated rulemaking.

The board could set fees in amounts reasonable and necessary to cover the costs of administering the Professional Land Surveying Practices Act. The bill would remove ceilings on fees set and collected by the board for issuing certificates of registration; replacing a revoked, lost or destroyed license; and allowing a license holder to remain on inactive status.

The board could establish examination advisory committees to help it develop examinations required for licensing applicants. The board would have to adopt rules to govern these committees and would have to develop and implement a technology policy to improve its ability to carry out its functions.

HB 706 would add standard sunset language governing board membership, conflicts of interest, grounds for removing a board member, maintaining information on complaints, requiring equal employment opportunity, and requiring standard time frames for renewing expired licenses.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 706 would continue the necessary licensing and enforcement functions of the Board of Professional Land Surveying while changing certain procedures to speed up enforcement and update the board's funding.

Removing the requirement of an affidavit to accompany a written complaint to launch an investigation would simplify the complaint process and speed the board's response in investigating the possibility of damaging conduct. Current law already penalizes making false assertions in the form used for complaining to the board, thus deterring false complaints. Should an affidavit later become necessary for litigation purposes, the complainant could provide one. During fiscal 2002, the board took 139 days on average to resolve a complaint. Removing the affidavit requirement and making other changes proposed in HB 706 would help the board reduce this average response time. Nevertheless, the bill would ensure fairness by allowing complainants to request reconsideration of their complaints and by still allowing a license holder to appeal the board's decision.

HB 706 would grant the board a necessary degree of freedom to adjust the fees it assesses. The board needs the flexibility to adjust fees to accommodate fixed costs it must pay to provide its service. The bill would not give the board absolute discretion to set the fees, which would have to be reasonable and necessary. The Legislature would scrutinize the board's assessments and expenditures to determine whether the fees met this standard.

The board has a responsible record of regulating the professionals it oversees. Abolishing the agency would compromise its important mission. Moreover,

the agency costs taxpayers nothing, because it raises the fees necessary to fund its own operation. The changes proposed by HB 706 would make it even less likely that the board would burden the state, because the board could generate more revenue than it does now.

**OPPONENTS
SAY:**

HB 706 should retain the requirement that a complaint to the board be substantiated by affidavit. This requirement cuts down on frivolous complaints filed against licensees and eases the handling of cases once they are ripe for litigation. As time passes, complainants become unavailable. By establishing a sworn and detailed factual record at the outset of the complaint process, state attorneys have a better chance to win cases on behalf of the board, no matter the location or condition of a key witness.

The board needs no additional discretion to assess fees on surveyors. Because the board normally collects more in fees than it spends to perform its duties, any increased assessment would act as an unnecessary tax. The temptation to impose greater fees under expanded authority likely would result in higher fees, whether or not they were necessary.

**OTHER
OPPONENTS
SAY:**

While the board's functions and duties should be continued, a separate agency is not necessary to perform them. The state could save on administrative costs by consolidating this and other professional licensing and regulatory boards under a single agency, as proposed by other bills this session.

NOTES:

The committee amendments would reduce the board's size by one professional member and would specify that a complaint filed with the board, including a frivolous complaint, was public information, except that the license holder's name and other personal information would have to be redacted from the record of a frivolous complaint, as defined by the amendment.

The companion bill, SB 260 by Shapleigh, passed the Senate on the Local and Uncontested Calendar on April 3 and has been referred to the House Licensing and Administrative Procedures Committee.

HB 2 and HB 3001, both by Swinford, would abolish the Board of Professional Land Surveying and would assign its powers, duties, and assets to a Department of Professional Licensing, which would be created under HB 2489 by Swinford.

