

BILL ANALYSIS

H.B. 706
By: Solomons
Licensing & Administrative Procedures
Committee Report (Amended)

BACKGROUND AND PURPOSE

The Texas Board of Professional Land Surveying (board) protects the public by ensuring that only qualified surveyors provide land surveying services. The board accomplishes this task by administering exams, issuing licenses, and enforcing the Professional Land Surveying Practices Act. The board is subject to the Texas Sunset Act and will be abolished September 1, 2003, unless continued by the legislature. The Sunset Advisory Commission found that licensing of surveyors is needed to protect the economic welfare of Texans, and as a result, recommended the board be continued for 12 years. The Sunset Commission also found that some of the board's processes lack needed structure, accountability and public input.

House Bill 706 provides for continuation of the board and implements the recommendations of the Sunset Advisory Commission including clarifying that the board has authority to create advisory committees to help the board develop exams; requiring the board to establish its enforcement process in rule; authorizing the board to order restitution as part of an agreement in an informal settlement conference; providing that dismissed complaints cannot be disclosed to the public; and applying standard Sunset Commission recommendations.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Professional Land Surveying in SECTION 9 (Section 1071.151(c), Occupations Code), SECTION 10 (Section 1071.1515, Occupations Code), SECTION 25 (Section 1071.4035(a), Occupations Code), SECTION 26 (Section 1071.404(b), Occupations Code), SECTION 27 (Section 1071.452(c), Occupations Code) and SECTION 28 (Section 1071.552, Occupations Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 1071.003, Occupations Code, to continue the Texas Board of Professional Land Surveying (board) until September 1, 2015.

SECTION 2. Amends Section 1071.051(g), Occupations Code, to update standard Sunset language requiring non-discriminatory appointments to the board.

SECTION 3. Amends Section 1071.053, Occupations Code, to update standard Sunset language prohibiting board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association.

SECTION 4. Amends Sections 1071.056(a) and (c), Occupations Code, to update standard Sunset language relating to the grounds for removal of board members.

SECTION 5. Amends Subchapter B, Chapter 1071, Occupations Code, by adding Section 1071.059, to apply standard Sunset language requiring members of the board to complete training before assuming their duties.

SECTION 6. Amends Section 1071.104, Occupations Code, to require the executive director to provide to members of the board and to board employees information regarding the requirements for office or employment and a person's responsibilities relating to standards of conduct for state officers or employees.

SECTION 7. Amends Section 1071.106, Occupations Code, to update standard Sunset language requiring the executive director to maintain an equal employment opportunity program.

SECTION 8. Amends Subchapter C, Chapter 1071, Occupations Code, by adding Section 1071.107, to require the executive director to provide board employees with information and training relating to the State Employee Incentive Program.

SECTION 9. Amends Section 1071.151, Occupations Code, by adding Subsection (c) to require the board by rule to establish the enforcement process for a violation of this chapter or a board rule.

SECTION 10. Amends Subchapter D, Chapter 1071, Occupations Code, by adding Section 1071.1515, to require the board to adopt rules necessary to comply with Chapter 53, Occupations Code, regarding criminal convictions.

SECTION 11. Amends Subchapter D, Chapter 1071, Occupations Code, by adding sections to: add standard Sunset language to require the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures and alternative dispute resolution for disputes under the board's jurisdiction (Section 1071.1525); require the board to set fees in amounts reasonable and necessary to cover the costs of administering this chapter (Section 1071.1526); and add standard Sunset language to require the board to develop and implement a policy for the effective use of technology (Section 1071.158).

SECTION 12. Amends Section 1071.203, Occupations Code, by adding Subsection (c), to require the board to accept a complaint regardless of whether the complaint is notarized.

SECTION 13. Amends Section 1071.204, Occupations Code, to update standard Sunset language requiring the board to maintain information on written complaints and notify the parties about policies for and status of complaints, and to prohibit the board from disclosing dismissed complaints or complaints found to be without merit to the public.

SECTION 14. Amends Section 1071.252(b), Occupations Code, to eliminate the requirement that applications for licensure be notarized.

SECTION 15. Amends Section 1071.257, Occupations Code, to update standard Sunset language to require the board to notify applicants of exam results within a reasonable time and to provide an analysis of exam performance to an applicant who failed a licensing exam.

SECTION 16. Amends Section 1071.258, Occupations Code, to remove the fee cap for reexaminations and to require the board to set the fee.

SECTION 17. Amends Section 1071.259(b), Occupations Code, to remove the fee cap for reciprocal exams for out-of-state surveyors and to require the board to set the fee.

SECTION 18. Amends Section 1071.262, Occupations Code, to remove the fee cap for the replacement of certain certificates and to require the board to set the fee.

SECTION 19. Amends Section 1071.263(b), Occupations Code, to remove the annual fee cap for inactive registration holders and to require the board to set the fee.

SECTION 20. Amends Section 1071.301(a), Occupations Code, to update standard Sunset language

to authorize the board by rule to adopt a staggered license renewal system.

SECTION 21. Amends Section 1071.302, Occupations Code, to update standard Sunset language requiring a time frame for the board to send renewal notification to license holders.

SECTION 22. Amends Section 1071.303, Occupations Code, to update standard Sunset language to establish a method for license renewal and a time-frame and penalty structure for delinquent renewal.

SECTION 23. Amends Section 1071.401(a), Occupations Code, to update standard Sunset language authorizing the board to use a full range of penalties, including refusal to renew a certificate or registration, for violations of this chapter or board rules.

SECTION 24. Amends Section 1071.402, Occupations Code, by amending Subsection (b) and adding Subsections (c) - (g), as follows: (b) requires the board to assign an employee or contract with an investigator to investigate complaints received by the board; (c) authorizes a board employee to dismiss a complaint that is without merit, to determine if a violation has occurred and to recommend sanctions to the board; (d) requires a board employee to report the dismissal of a complaint to the board in the manner required by the board; (e) authorizes the person making a complaint that is dismissed to request reconsideration of the dismissal by the board; (f) authorizes the board to appoint a subcommittee of the board that includes at least one board member who represents the public to assist in an investigation and prohibits a member of a subcommittee or a member of the board who consults with board personnel or an investigator on a complaint from voting at a board disciplinary hearing related to the complaint; and (g) prohibits the board from taking into consideration a previously dismissed complaint while resolving a complaint before the board and authorizes the board to take into consideration any previous violation of this chapter or a board rule when assessing a sanction or penalty.

SECTION 25. Amends Subchapter I, Chapter 1071, Occupations Code, by adding Section 1071.4035, to require the board by rule to establish guidelines for an informal settlement conference related to a complaint filed with the board and to authorize the board to order restitution be paid to a consumer as part of an agreement in an informal settlement conference in an amount that does not exceed the amount the consumer paid to the surveyor and does not require payment of other damages or estimate harm.

SECTION 26. Amends Section 1071.404, Occupations Code, by adding Subsection (b), to require the board by rule to adopt written guidelines to ensure that probation is administered consistently.

SECTION 27. Amends Section 1071.452, Occupations Code, by adding Subsection (c), to require the board by rule to adopt an administrative penalty schedule for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation.

SECTION 28. Amends Chapter 1071, Occupations Code, by adding Subchapter L, to authorize the board to create and maintain exam advisory committees and to require the board to adopt rules regarding the form and use of those committees (Sections 1071.551 and 1071.552); to prohibit board members from serving as voting members of exam advisory committees (Section 1071.553); to clarify that exam advisory committees are open meetings under the Open Meetings Act, but allows closed meetings to consider information related to test questions, as provided by the Act (Section 1071.554); to specify that exam advisory committees do not have to comply with the requirement that consumers, or public members, be included on the committees (Section 1071.555); and to set forth the duties of exam advisory committees (Section 1071.556).

SECTION 29. Provides that by January 1, 2004, the board shall adopt rules necessary to comply with statutory provisions regarding criminal convictions and informal settlement conferences, and to set fees. Provides that by September 1, 2005, the board shall adopt guidelines for probating a license suspension and adopt an administrative penalty schedule.

SECTION 30. Provides that this Act is based on the statute as codified during the 77th session and

incorporates changes made to this chapter last session, and provides that to the extent of any conflict, this Act prevails over other Acts passed this session relating to nonsubstantive additions and correlations.

SECTION 31. Sets forth the effective date of this Act as September 1, 2003. Requires a rule adopted by the board in effect on the effective date of this act to remain in effect as a rule of the board until superseded by a new rule adopted by the board. Makes the application of the changes in law made by this Act by Sections 1071.053 and 1071.059, Occupations Code, in the prohibitions on or qualifications of members of the board prospective. Makes the change in law made by this Act to Chapter 1071, Occupations Code, relating to the investigation of a complaint prospective.

EFFECTIVE DATE

September 1, 2003.

EXPLANATION OF AMENDMENTS

Amendment #1 amends Sections 1071.051 (a) and (g), Occupations Code, to reduce the size of the Texas Board of Professional Land Surveying to nine members by eliminating one of the registered professional land surveyor positions and updates standard Sunset language requiring non-discriminatory appointments to the board.

Amendment #2 amends Section 1071.204 (d), Occupations Code, by substituting language in subsection (d) and adding subsections (e) and (f) to specify that complaints filed with the board, including frivolous complaints, are public information. Requires that the license holder's name and other personal information be redacted from a frivolous complaint. Defines "frivolous complaint" to mean a complaint determined by the executive director and investigator, with board approval, that was filed to harass a licensee that does not demonstrate harm to any person.