

BILL ANALYSIS

S.B. 260
By: Shapleigh
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, the Texas Board of Professional Land Surveying (board) protects the public by ensuring that qualified surveyors prepare accurate surveys, which result in the orderly use of land. The board enforces the Professional Land Surveying Practices Act and investigates and resolves complaints against land surveyors. The Sunset Commission found that licensing of surveyors is needed to protect the economic welfare of Texans and that some of the process lacks needed structure and is too informal. S.B. 260 continues the Texas Board of Professional Land Surveying for 12 years and adds structure to the board's licensing and enforcement processes. S.B. 260 clarifies the board's authority to create advisory committees to help the board develop exams; requires the board to establish its enforcement process in rule; authorizes the board to order restitution as part of an agreement in an informal settlement conference; and provides that dismissed complaints cannot be disclosed to the public.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Professional Land Surveying in SECTION 10 (Section 1071.151, Occupations Code), SECTION 11 (Section 1071.1515, Occupations Code), SECTION 26 (Section 1071.4035, Occupations Code), SECTION 27 (Section 1071.404, Occupations Code), SECTION 28 (Section 1071.452, Occupations Code), and SECTION 29 (Section 1071.552, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1071.003, Occupations Code, as follows: Sec. 1071.003.
APPLICATION OF SUNSET ACT. Continues the Texas Board of Professional Land Surveying (board) for a 12-year period until September 1, 2015.

SECTION 2. Amends Section 1071.051(a) and (g), Occupations Code, as follows: (a) Decreases the number of members of the Texas Board of Professional Land Surveying from ten to nine. Decreases the number of board members who are registered professional land surveyor members actively engaged in the practice of professional surveying from four to three. (g) Requires appointments to the board to be made without regard to race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 3. Amends Section 1071.053, Occupations Code, to update standard Sunset language relating to conflicts of interests applicable to board members and employees.

SECTION 4. Amends Section 1071.054(a), Occupations Code, to provide that members of the board appointed by the governor serve staggered six-year terms, with the terms of approximately onethird of those members expiring on January 31 of each odd-numbered year.

SECTION 5. Amends Sections 1071.056(a) and (c), Occupations Code, to update standard Sunset language relating to the grounds for removal of board members.

SECTION 6. Amends Chapter 1071B, Occupations Code, by adding Section 1071.059, as follows: Sec. 1071.059. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a board member from voting, deliberating, or being counted as a member in attendance at a board meeting until the person completes a training program that complies with this section. (b) Requires the training program to provide the person with certain information. (c) Provides that a person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 7. Amends Section 1071.104, Occupations Code, as follows: Sec. 1071.104. New heading: REQUIREMENTS AND STANDARDS OF CONDUCT INFORMATION. Requires the executive director or the executive director's designee to provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 8. Amends Section 1071.106, Occupations Code, to update standard Sunset language requiring the executive director to maintain an equal employment opportunity program.

SECTION 9. Amends Chapter 1071C, Occupations Code, by adding Section 1071.107, as follows: Sec. 1071.107. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to board employees information and training on the benefits and methods of participation in the state employee incentive program under Chapter 2108B, Government Code (State Employee Incentive Program).

SECTION 10. 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 11. Amends Chapter 1071D, Occupations Code, by adding Section 1071.1515, as follows: Sec. 1071.1515. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the board to adopt rules necessary to comply with Chapter 53 (Consequences of Criminal Conviction).

SECTION 12. Amends Chapter 1071D, Occupations Code, by adding Sections 1071.1525, 1071.1526, and 1071.158, as follows: Sec. 1071.1525. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules and the appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction. (b) Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings regarding the use of alternative dispute resolution by state agencies. (c) Requires the board to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training necessary for implementation of the negotiated rulemaking or alternative dispute resolution procedures, and collect data on the effectiveness of the procedures as implemented by the board. Sec. 1071.1526. FEES. Requires the board to set fees in amounts reasonable and necessary to cover the costs of administering this chapter. Sec. 1071.158. TECHNOLOGY POLICY. Requires the board to develop and implement a policy

requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. Requires the technological solutions to meet certain criteria.

SECTION 13. Amends Section 1071.203, Occupations Code, to require the board to accept a complaint regardless of whether the complaint is notarized.

SECTION 14. Amends Section 1071.204, Occupations Code, to update standard Sunset language requiring information to be maintained on complaints.

SECTION 15. Amends Section 1071.252(b), Occupations Code, to update standard Sunset language regarding applications and their acceptance regardless of whether the applications are notarized.

SECTION 16. Amends Section 1071.257, Occupations Code, to update standard Sunset language regarding examination results and notification.

SECTION 17. Amends Section 1071.258, Occupations Code, to authorize an applicant who fails an examination to apply to take a subsequent examination by filing an updated application and paying an additional examination fee set by the board, rather than a fee not to exceed \$100.

SECTION 18. Amends Section 1071.259(b), Occupations Code, to update standard Sunset language regarding the issuance of certification.

SECTION 19. Amends Section 1071.262, Occupations Code, to provide for the replacement of certain certificates upon payment of a fee set by the board, rather than a fee of \$20.

SECTION 20. Amends Section 1071.263(b), Occupations Code, to require a registration holder on inactive status to pay an annual fee set by the board, rather than a fee of \$10.

SECTION 21. Amends Section 1071.301(a), Occupations Code, to authorize the board by rule to adopt a system under which certificates of registration and licenses expire on various dates during the year. Requires the board to prorate certificate and license fees on a monthly basis so that each certificate or license holder pays only that portion of the certificate or license fee that is allocable to the number of months during which the certificate or license is valid, for the year in which the certificate or license expiration date is changed. Provides that on renewal of the certificate or license on the new expiration date, the total certificate or license renewal fee is payable.

SECTION 22. Amends Section 1071.302, Occupations Code, to require the board to send written notice of the impending expiration to the person at a person's last known address according to the board's records, not later than the 30th day before the date the person's certificate of registration or license is scheduled to expire.

SECTION 23. Amends Section 1071.303, Occupations Code, to update standard Sunset language regarding procedures for renewal of a certificate of registration or license.

SECTION 24. Amends Section 1071.401(a), Occupations Code, to update standard Sunset language regarding the board's revocation of a certificate of registration or license.

SECTION 25. 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 each alleged violation of this chapter or a board rule that is reported to the board. Authorizes the board to employ investigators and inspectors as necessary to properly enforce this chapter. (c) Authorizes a board employee investigating an alleged violation to dismiss a complaint that is without merit or determine whether a person has committed the violation and recommend sanctions to the board. (d) Requires a board employee investigating an alleged violation to report the dismissal of a complaint under Subsection (c) (1) to the board in the manner required by the board. (e) Authorizes the person making a complaint that is dismissed under Subsection (c) (1) 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. 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. (g) Prohibits the board from taking into consideration a previously dismissed complaint while resolving a complaint before the board. Authorizes the board to take into consideration any previous violation of this chapter or a board rule when assessing a sanction or penalty for a complaint before the board.

SECTION 26. Amends Chapter 1071I, Occupations Code, by adding Section 1071.4035, as follows: Sec. 1071.4035. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION. (a) Requires the board by rule to establish guidelines for an informal settlement conference related to a complaint filed with the board. (b) Authorizes the board to order a person licensed or registered under this chapter to pay restitution to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under this chapter, subject to Subsection (c). (c) Prohibits the amount of restitution ordered as provided in an agreement resulting from an informal settlement conference from exceeding the amount the consumer paid to the person for a service regulated by this chapter. Prohibits the board from requiring payment of other damages or estimating harm in a restitution order.

SECTION 27. 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 28. 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 29. Amends Chapter 1071, Occupations Code, by adding Subchapter L, as follows: SUBCHAPTER L. EXAMINATION ADVISORY COMMITTEES Sec. 1071.551. EXAMINATION ADVISORY COMMITTEES. Authorizes the board to establish examination advisory committees to assist the board in developing each examination required by this chapter. Sec. 1071.552. BOARD RULES. (a) Requires the board by rule to establish the purpose, role, responsibility, and goals of an examination advisory committee, determine the size of and quorum requirements for an examination advisory committee, determine the qualifications of an examination advisory committee member, which may include experience and geographic location requirements, provide a process for the appointment of examination advisory committee members, establish the term of office for examination advisory committee members, and determine the training requirements for an examination advisory committee member. (b) Requires the board by rule to define the examination development process under this chapter, including the board's interaction with the examination advisory committees during the process. Sec. 1071.553. ELIGIBILITY OF BOARD MEMBER. (a) Prohibits a board member from serving as a voting member of an examination advisory committee. (b) Authorizes a board member to attend an examination advisory committee meeting to act as a liaison with the board. Sec. 1071.554. MEETINGS. (a) Provides that except as provided by Subsection (b) the meetings of an examination advisory committee are open meetings under Chapter 551, Government Code (Open Meetings). (b) Authorizes an examination advisory committee to hold a closed meeting to

consider a test item or information related to a test item as provided by Section 551.088, Government Code. Sec. 1071.555. **APPLICABILITY OF OTHER LAW.** (a) Provides that except as provided by Subsection (b), an examination advisory committee is subject to Chapter 2110, Government Code (State Agency Advisory Committees). (b) Provides that Section 2110.002(b), Government Code, does not apply to the appointment of examination advisory committee members. Sec. 1071.556. **EXAMINATION ADVISORY COMMITTEE DUTIES.** Requires the examination advisory committee to develop the examinations required by this chapter in accordance with board rules and to perform other tasks assigned by the board.

SECTION 30. Applies standard Sunset language requiring the board to adopt rules, set fees, guidelines, and administer penalties.

SECTION 31. Applies standard Sunset language for this Act to take precedence over previous Acts.

SECTION 32. (a) 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. (b) 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. (c) Makes the change in law made by this Act to Chapter 1071, Occupations Code, relating to the investigation of a complaint prospective. (d) Provides that of the four positions on the Texas Board of Professional Land Surveying held by registered professional land surveyor members, one of the positions is abolished on September 1, 2003. Requires the four members who hold those positions to determine by unanimous agreement or by lot which of the four positions is abolished on September 1, 2003, on or before September 1, 2003. Requires the members to inform the president of the board of that determination.

SECTION 33. Effective date: September 1, 2003.

EFFECTIVE DATE

September 1, 2003.