

**Regulatory Board Evaluation**

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**Board of Examiners of  
Land Surveyors**

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**Licensure of the Practice of Land Surveying  
is Needed to Protect Public Interest**

**The Board Complies, or is in the Process of  
Complying, With Most of the General Provisions  
of Chapter 30**

**The Legislature Should Consider Adding at Least  
Two Additional Board Members to the  
Board of Examiners of Land Surveyors**



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John Sylvia  
Director

September 7, 2003

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Regulatory Board Evaluation of the Board of Examiners of Land Surveyors, which will be presented to the Joint Committee on Government Operations on Sunday, September 7, 2003. The issues covered herein are "Licensure of the Practice of Land Surveying is Needed to Protect Public Interest;" "The Board Complies, or is in the Process of Complying, With Most of the General Provisions of Chapter 30;" and "The Legislature Should Consider Adding at Least Two Additional Board Members to the Board of Examiners of Land Surveyors."

We transmitted a draft copy of the report to the Board of Examiners of Land Surveyors on August 20, 2003. We held an Exit Conference with the Board via telephone on August 26, 2003. We received the agency response on August 29, 2003.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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# Executive Summary

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## **Issue 1: The Board of Examiners of Land Surveyors Is Needed to Protect Public Interest**

The Board of Examiners of Land Surveyors was created through legislation in 1969. The Board's primary duties include examining applicants for competency as land surveyors in the State of West Virginia; issuing licenses to those applicants meeting the requirements set forth in §30-13A-5 of the *Code*; issuing regulations to control the practice of land surveying in West Virginia; receiving complaints against land surveyors; determining the merits of the complaints; and issuing orders as necessary. Potential harm to the public could occur without the regulation of the profession. Inaccurate surveys could have significant impacts on various construction projects and could have significant monetary damages. **Therefore it is the opinion of the Legislative Auditor that it is necessary to continue licensing this profession to provide protection of the public interest.**

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*Potential harm to the public could occur without the regulation of the profession.*

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## **Issue 2: The Board Complies, or is in the Process of Complying, With Most of the General Provisions of Chapter 30**

The Board of Examiners of Land Surveyors is in compliance with most of the provisions of Chapter 30; however, not all provisions are met in full by the Board. It is important that the Board come into compliance with all provisions in order to become a more effective licensing board.

In order to meet more of the provisions of the *Code*, the Board is in the process of implementing a computer database system. The computer database will store continuing education records, an active roster of all applicants for license or registration, and all complaints received by the Board. Although the complaint process used by the Board is steadily progressing, the Legislative Auditor finds that from 1997 until present, each complaint is taking approximately 12 years to be resolved. In the time it takes to resolve complaints, a licensee could hypothetically continue performing improper land surveys because an existing complaint against that licensee has not been resolved.

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*Although the complaint process used by the Board is steadily progressing, the Legislative Auditor finds that from 1997 until present, each complaint is taking approximately 12 years to be resolved.*

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*The Board is financially self-sufficient; however, expenditures have exceeded revenues in three of the last five years.*

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The Board is financially self-sufficient; however, expenditures have exceeded revenues in three of the last five years. This can be attributed to a large increase in expenses, such as the purchase of a new computer database for over \$20,000, investigation costs related to a large backlog of complaints, and the expansion of the State Land Surveyor Examination, which added nearly

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\$17,000 to the fiscal year 2001 expenses. To compensate for the increase in expenditures, the Board raised license renewal fees from \$40 to \$50 in 2002; the fees were raised again to \$80 in 2003. With the increase in fees, the Board has exceeded the renewal fee allowed in *Code*, which is \$40. Given the nature of some of the expenses incurred, which appear to be non-recurring, the Legislative Auditor cannot determine at this time if the \$80 renewal fee of the Board is reasonable. However, it is apparent that some increase is needed.

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*Although the board has stated that Executive Sessions are regularly occurring during board meetings to discuss complaints, most meeting minutes do not make any mention of an Executive Session.*

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Finally, an issue of non-compliance was found in the Open Governmental Proceedings Act as it relates to Executive Session. Although the board has stated that Executive Sessions are regularly occurring during board meetings to discuss complaints, most meeting minutes do not make any mention of an Executive Session. The Legislative Auditor recommends that the Board comply with all aspects of the Open Governmental Proceeding Act.

### **Issue 3: The Legislature Should Consider Adding at Least Two Additional Board Members to the Board of Examiners of Land Surveyors**

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*The use of three land surveyors as Board members could be limiting to the Board.*

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The Board of Examiners of Land Surveyors is composed of three members. The use of three land surveyors as Board members could be limiting to the Board. The addition of one or two members outside of the land surveying profession would help ensure a level of independence for the Board. Also, additional board members would help distribute the time spent on the Board to more individuals, and could increase the effectiveness of the Board. Raising the number of board members could result in an increase in compensation and travel expenses. This expected increase illustrates further the need for the Board's increase in license renewal fees, as discussed in Issue 2.

### **Recommendations**

1. *The Legislative Auditor recommends that the Board of Examiners of Land Surveyors be continued.*
2. *The Legislative Auditor recommends that the Board resolve all complaints in a timely manner as they are received.*
3. *The Legislative Auditor recommends that the Board seek an amendment in Code through the Legislature to allow for an increase in renewal fees.*



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4. *The Legislative Auditor recommends that the Board be reviewed again in two years to determine if the renewal fee charged by the Board is reasonable, given the level of expenses of the Board at the time.*
  5. *The Legislative Auditor recommends that the Legislature consider amending West Virginia Code §30-1-12(c) to require all Chapter 30 licensing boards to have a web site in operation by January 1, 2005. Such web site should consist of the required information listed in this issue and be accessible from the State's web site.*
  6. *The Legislative Auditor recommends that the Board of Examiners of Land Surveyors comply with all aspects of the Open Governmental Proceeding Act.*



# Review Objective, Scope and Methodology

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A Chapter 30 board review of the Board of Examiners of Land Surveyors is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia *Code*, as amended.

## Objective

A regulatory board evaluation is to determine whether a Board is 1) necessary for the protection of public health and safety, and 2) whether the Board is operating in compliance with applicable laws and rules.

## Scope

This regulatory board evaluation covers the period from fiscal year 2000 through 2003. However, if it was deemed necessary, the Legislative Auditor reviewed files dated prior to fiscal year 2000.

## Methodology

Information for this report was compiled from annual reports, complaint files, board minutes, budget items, licensure qualifications, and continuing education information.



# Issue 1

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## **Licensure of the Practice of Land Surveying is Needed to Protect Public Interest.**

*The Legislative Auditor has determined that licensing land surveyors is necessary for protecting the interests of the citizens of West Virginia.*

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The Board of Examiners of Land Surveyors was created through legislation in 1969. The Board's primary duties include examining applicants for competency as land surveyors in the State of West Virginia; issuing licenses to those applicants meeting the requirements set forth in §30-13A-5 of the *West Virginia Code*; issuing regulations to control the practice of land surveying in West Virginia; receiving complaints against land surveyors; determining the merits of the complaints; and issuing orders as necessary. The Legislative Auditor has determined that licensing land surveyors is necessary for protecting the interests of the citizens of West Virginia.

## **Licensure of Land Surveyors**

The Board of Examiners of Land Surveyors has 1,546 professional surveyors in license status. Of these, 1,055 are in active status, 102 are in inactive status, 95 are in retired status, and 294 have expired, but not lapsed, licenses. According to the National Council of Examiners for Engineering and Surveying, the practice of land surveying can include the following:

- i Determining the configuration or contour of the earth's surface.
- ii Performing geodetic surveying, which includes surveying for determination of the size and shape of the earth.
- iii Determining the position for any survey monument or reference point; or setting, resetting, or replacing any such monument or reference point.
- iv Creating, preparing, or modifying electronic or computerized data, including land information systems, and geographic information systems, relative to the performance of the activities in the above described items.
- v Determine the location or create the establishment of any property line or boundary of any tract of land or any road, right of way, easement, alignment, or elevation of any of the fixed works embraced within the practice of engineering.

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- i Making any survey for the subdivision of any tract of land.
  - ii Creating, preparing, or modifying electronic or computerized data, including land information systems, and geographic information systems, relative to the performance of the activities in the above described items.

Prior to June 30, 1996, West Virginia *Code* allowed professional engineers to practice land surveying without taking the land surveying examination. However, professional engineers must now sit for the licensing examination and submit an application, with proof of surveying experience, before a license from the Board will be granted. This is also true for other technical or professional degrees, such as landscape architecture, forestry, etc. The *Code* allows exemptions from regulation and licensing for the following:

- i Employees of business entities which engage in the practice of land surveying in West Virginia, provided that the employees work under the supervision of a licensed employee of the business entity;
- ii Employees who practice land surveying exclusively for a person, firm, association or corporation by which employed (i.e. does not hold himself/itself out to the public as being engaged in the business of land surveying); and
- iii Any governmental employee (Federal, State, or local) who practices land surveying exclusively for such governmental unit.

*Inaccurate surveys could have significant impacts on various construction projects and could have significant monetary damages.*

In determining if there is a need for licensure of land surveyors, a primary consideration is whether the unregulated practice of the profession would jeopardize the public interest. Inaccurate surveys could have significant impacts on various construction projects and could have significant monetary damages. **The Legislative Auditor finds that regulation is essential to protecting the public interest.** Currently, all states regulate the practice of land surveying. According to the Chairman of the Board:

*The potential harm to the public could be staggering because public works and infrastructure projects depend upon accurate surveying and mapping to ensure the safety of the motorists on the highways and to provide pin-point location of underground utilities during any type of construction.*

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*By regulating the profession, the State ensures that individuals have the necessary education and training to be competent professionals in the field of land surveying.*

The Chairman goes on to provide an example of the November 2002 Pennsylvania mining incident in which several miners were trapped in a mine. A licensed surveyor set the stake to determine where the air shaft hole would be drilled. By regulating the profession, the State ensures that individuals have the necessary education and training to be competent professionals in the field of land surveying.

## **Conclusion**

West Virginians need a regulated standard of practice provided by qualified professionals. Inaccurate surveys could have significant impacts on various construction projects and could have significant monetary damages. With regulation, the State is protecting citizens from unqualified surveyors. The Legislative Auditor concludes that licensure of land surveyors is necessary to protect the interest of the public.

## **Recommendation**

1. *It is the recommendation of the Legislative Auditor that the Board of Examiners of Land Surveyors be continued.*





# Issue 2

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## **The Board Complies, or is in the Process of Complying, With Most of the General Provisions of Chapter 30.**

The Board of Examiners of Land Surveyors complies, or is in the process of complying, with most of the general provisions of Chapter 30 of the *West Virginia Code*. However, not all provisions have been completely met by the Board. The Board is in compliance with the following Chapter 30 provisions:

1. An official seal has been adopted (β30-1-4);
2. The Board meets annually (β30-1-5a);
3. The Board maintains a record of its proceedings (β30-1-12a);
4. The Board maintains a roster of licensees (β30-1-12);
5. The Board submits annual reports to the Governor and the Legislature (β30-1-12b);
6. A representative of the Board has attended the orientation session provided by the State Auditor's Office (β30-1-2a(b));
7. The Board's address and telephone number are listed in the State Government listing of the Charleston area telephone book (β30-1-12c);
8. The Board has promulgated Legislative Rules specifying a procedure for the investigation and resolution of complaints against persons licensed (β30-1-8h).

## **Continuing Education Requirements Are Progressively Being Met**

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*Continuing education requirements did not go into effect for land surveyors until fiscal year 2002.*

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In the general provisions applicable to all boards (β30-1-7a), boards are to establish continuing education requirements that include course content, course approval, hours required, and reporting periods. Continuing education requirements did not go into effect for land surveyors until fiscal year 2002. For the first year of the rule's existence, land surveyors were obligated only to complete half of the Professional Development Hours (PDH) required. After June 30, 2002, all requirements, as stated in Legislative Rule β23-2-3, were to be met in full. These requirements are as follows:

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1. Every licensee is required to obtain eight PDH units for each renewal period year;
  2. Every four years, 32 PDH units are required, which should include the following:
    - a. A minimum of two PDH units on minimum technical standards, in courses or activities sponsored or approved by the Board; and
    - b. A minimum of two PDH units on professional ethics for land surveyors at a seminar sponsored or approved by the Board.

*With the establishment of continuing education requirements in fiscal year 2002, the Board also began offering a continuing education seminar that specifically addresses the ethics and minimum technical standards required by West Virginia Code.*

The Board is in the process of completing a computer database for all continuing education records. According to the Board, *“The database is in place and all data were entered for the FY 2002 licensing year. The Board plans to conduct a random audit of continuing education competency requirements reported in FY 2003.”* Prior to FY 2003, the Board never audited the continuing education hours submitted by surveyors.

With the establishment of continuing education requirements in fiscal year 2002, the Board also began offering a continuing education seminar that specifically addresses the ethics and minimum technical standards required by West Virginia Code. An additional fee of \$100 is charged to surveyors who elect to take the course. For the 2003 course, a speaker was brought in with a background in professional land surveying, professional engineering, and law.

## **The Board Has Plans In Place to Comply With The Register Requirements**

Within the general provisions for Chapter 30 are the following requirements as written in §30-1-12:

*The secretary of every board shall keep a record of its proceedings and a register of **all applicants for license or registration**, showing for each the date of his or her application, his or her name, age, educational and other qualifications, place of residence, whether an examination was required, whether the applicant was rejected or a certificate of license or registration granted, the date of*

*this action, the license or registration number, all renewals of the license or registration, if required, and any suspension or revocation thereof. [Emphasis added]*

The Board submitted a register to the Legislative Auditor. However, the register only contained the applicants for the last four examinations administered, instead of all applicants as required by *Code*. As with continuing education records, the Board is in the process of implementing a computer database for the register. The Board's administrator explained that, *the register segment of the database was suspended temporarily due to budget considerations.* Once the database is completed, the Board plans to be in full compliance by listing all applicants in the database records.

### **Complaint Process is Steadily Progressing, but Complaints Could be Resolved More Timely**

*After reviewing complaints logged by the Board, the Legislative Auditor discovered that a majority of the complaints filed are due to boundary disputes and unlicensed surveyors.*

As required by the general provisions of Chapter 30, the Board has promulgated rules for the investigation and resolution of all complaints against licensees. After reviewing complaints logged by the Board, the Legislative Auditor discovered that a majority of the complaints filed are due to boundary disputes and unlicensed surveyors. Actions taken by the Board against licensees have included license suspension and revocation, as well as imposing fines. The Board, as required by §30-1-10a, has deposited the money collected from fines in the State general fund. The disposition of complaints can be seen in Table 1 below.

**Table 1  
Disposition of Complaints, 1997-2003**

<b>Year</b>	<b>Total # of Complaints</b>	<b>Open</b>	<b>Dismissed</b>	<b>Revocation<sup>^</sup></b>	<b>Fined</b>	<b>Disciplinary Action<sup>^</sup></b>
<b>1997</b>	26	1*	18	2	-	-
<b>1998</b>	16	1	11	-	-	3
<b>1999</b>	34	4	21	1	1	1
<b>2000</b>	27	7	16	1	-	2
<b>2001</b>	26	16	10	-	-	-
<b>2002</b>	57	36	18	-	1	2
<b>2003<sup>‡</sup></b>	9	7	2	-	-	-
<b>Total</b>	195	72	96	4	2	8

<sup>^</sup> There are two additional revocation orders and one additional disciplinary action pending signature as of August 2003.

\* The 1997 case was closed in April 1998, but reopened in November 2001.

<sup>‡</sup> The 2003 data is as of June 30, 2003.

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The disciplinary actions included in the above table are formal in nature, such as signed consent agreements and formal reprimands. According to the Board, there are times when less formal disciplinary actions are taken, as discussed below:

*Although many of the complaints do not result in formal disciplinary action..., the Board's review process often identifies deficiencies in accepted standards of practice and the surveyors are required to correct or modify plats. In other instances, surveyors have been required to finish a survey or refund the complainant's money.*

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*The Legislative Auditor finds that from 1997 until the present, each complaint is taking approximately 18 months to be resolved.*

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The Legislative Auditor finds that from 1997 until the present, each complaint is taking approximately 18 months to be resolved. This can be attributed to a rise in complaints, multiple complaints filed against the same surveyor, a backlog of complaints stemming from 1997, and the lack of steady legal assistance from the Attorney General's office. However, the Board has made numerous strides in improving the complaint process. These include hiring more staff; promulgating new rules (took effect September 2001); implementing the use of three part-time contract investigators; setting up a complaint review committee; and, as with continuing education and register and roster requirements, the Board is in the process of developing a complaints component in the Board's computer database. Over the last year, with the addition of these improvements, the Board has reduced the length of time it takes to resolve a complaint from approximately 18 months to 1 year.

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*In the time it takes to resolve complaints, a licensee could hypothetically continue performing improper land surveys because an existing complaint against that licensee has not been resolved.*

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Despite the Board's progress in shortening the length of time it takes to resolve complaints, there is room for more improvement. In the time it takes to resolve complaints, a licensee could hypothetically continue performing improper land surveys because an existing complaint against that licensee has not been resolved. This has already been the case with the Board, as some complaints have been received against the same licensee before other complaints against that licensee have been closed. The ultimate outcome of those complaints was revocation of the individual's license. **A shorter response time to complaints would have reduced the number of people harmed by the licensee.** The Legislative Auditor recommends that the Board resolve all complaints in a timely manner from the date of receipt. The average amount of time for boards evaluated by the Legislative Auditor is three to four months.

## The Board is Financially Self-Sufficient But There Are Financial Concerns

*The Board has experienced expenditures that have exceeded revenues in three of the last five fiscal years.*

The Board is financially self-sufficient, as required by West Virginia Code §30-1-6(c). The Board had an ending cash balance for FY 2003 of \$43,374, with average annual expenditures of less than \$175,000. As can be seen in Table 2 below, however, the Board has experienced expenditures that have exceeded revenues in three of the last five fiscal years.

<b>Fiscal Year</b>	<b>Revenues</b>	<b>Expenditures</b>	<b>Increase/(Decrease) in Cash Balance</b>	<b>EOY Cash Balances</b>
1999	\$74,156	\$59,827	\$14,329	\$115,240
2000	\$63,584	\$81,262	(\$17,678)	\$97,562
2001	\$66,156	\$111,003	(\$44,847)	\$52,715
2002	\$144,728	\$161,541	(\$16,813)	\$35,902
2003	\$180,240	\$172,768	\$7,472	\$43,374

### Increase in Expenses

As can be seen in the above table, the Board's year end cash balances have decreased by almost two-thirds since 1999. This drop from \$115,000 to \$43,000 can be attributed to a larger increase in expenses than revenues in fiscal years 2000, 2001 and 2002. Specific factors that appear to be contributing to the increase in expenses include the following:

- i **Increase in Salaries** - The Board operated with one full time clerk and a part time temporary employee until fiscal year 2001. In June 2001, a director was hired to replace the full time clerk. At the beginning of fiscal year 2003, a clerk was hired, making a total of two full time staff. This has caused salaries to nearly double since 2001.
- i **Creation of a Computer Database** - The Board has spent over \$20,000 in fiscal year 2002 and 2003 for a new computer database system. According to the Board,

*The Board has spent over \$20,000 in fiscal year 2002 and 2003 for a new computer database system.*

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*[The computer system] has enabled the Board to transfer many records to its new computer database which [will] help bring the Board into compliance with register/ roster requirements of Chapter 30 in the Code. It also allows the Board office to prepare reports and license certificates in-house without having to go to outside sources....Prior to the installation of this computer system a year ago, the Board mainly had paper processes in place.*

ï **Continuing Education Workshop** - The Board began offering an optional continuing education workshop in fiscal years 2002 and 2003. The fee for the one day course is \$100, and surveyors in attendance earn six continuing education credit hours. The \$100 fee effectively raised revenues for the Board in fiscal years 2002 and 2003. In addition, expenses increased as a result of the workshop. The expenses include such items as the cost of the facility, a lunch buffet, and the instructor's fee.

ï **Investigations and Legal Fees** - The Board has had numerous complaints (*see Table I*) that have resulted in increased investigation and legal fees. Investigations are contracted out to three land surveyors. In addition, the Board briefly had a full-time staff investigator in fiscal year 2002.

ï **Expansion of the State Land Surveyor Examination** - In fiscal year 2001, the Board expanded and updated the West Virginia Land Surveyor Examination. This exam is given in conjunction with the national land surveying examination, and asks specific questions concerning the State's laws, rules, and regulations related to the practice of land surveying in West Virginia. The Board contracted with a company to develop the exam, which added nearly \$17,000 to the fiscal year 2001 expenses. The Board continues to contract with the same company to update the examination, which has added expenses to fiscal years 2002 and 2003. However, the Board does not anticipate contracting with the company in the near future.

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*The Board contracted with a company to develop the exam, which added nearly \$17,000 to the fiscal year 2001 expenses.*

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*The Board operated primarily with hand written manual processes until fiscal year 2002.*

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ï **Computer Purchase** - The Board operated primarily with hand written manual processes until fiscal year 2002. Consequently, in fiscal year 2002, the Board had a one time expense to purchase new computers

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and printers.

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*The three Board members have charged approximately \$11,800 and \$9,700 in calendar years 2002 and 2001, respectively.*

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- ii **Board Member Compensation** - The three Board members have charged approximately \$11,800 and \$9,700 in calendar years 2002 and 2001, respectively. According to the Board, some of this time has been due to the Board members' involvement in implementing such items as continuing education requirements, new Legislative Rules, and in creating the West Virginia Land Surveyor Examination. In addition, the members have been involved in complaint hearings.

### **Increase in Board Revenues**

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*The increase in revenues can be attributed to a change in the Board's annual renewal fees. In 2002, the Board raised those fees from \$40 to \$50; in 2003, the fee was raised again to \$80.*

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The Board also experienced a large increase in revenues in fiscal years 2002 and 2003. There are two factors contributing to this increase. First, the \$100 fee associated with the new continuing education course increased revenues in fiscal years 2002 and 2003. Second, the increase in revenues can be attributed to a change in the Board's annual renewal fees. In 2002, the Board raised those fees from \$40 to \$50; in 2003, the fee was raised again to \$80. These additional fees are within the prescribed guidelines of Legislative Rule B23-1-5.1, which state that the annual fee shall not exceed \$100. However, the current renewal fee and late fees charged by the Board are not in compliance with *Code*. **Legislative Rules cannot legally supersede the Code.** According to B30-13a-6:

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*The current renewal fee and late fees charged by the Board are not in compliance with Code.*

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*A license may be renewed without examination upon application for a renewal on a form prescribed by the board and payment to the board of an annual renewal fee of forty dollars.*

Given the large increase in the expenses of the Board over the past three years, some increase in the renewal fees appears necessary. However, the Legislative Auditor is unable to determine how much of an increase is warranted. Based on the detail of expenses described above, there appear to be some expenses that will not be recurring, such as the computer database, the purchase of computers, and the expansion of the West Virginia Land Surveyor Examination. In addition, it is not apparent whether the Board members will be charging as many expenses in the future, as many of the new procedures they have initiated are now in place. However, some of the additional expenses are expected to recur over time. For example, the need for additional staff is apparent, given the increase in the duties of the Board (i.e. continuing education requirement). Also, investigation and legal fees are expected to recur for the Board due to the large number of open complaints.

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*Given the nature of some of the one time expenses of the Board, the Legislative Auditor cannot determine at this time if the \$80 renewal fee of the Board is reasonable. However, it is apparent that some increase is needed in order for the Board to remain solvent.*

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Given the nature of some of the one time expenses of the Board, the Legislative Auditor cannot determine at this time if the \$80 renewal fee of the Board is reasonable. However, it is apparent that some increase is needed in order for the Board to remain solvent. As a result, the Legislative Auditor recommends that the Board seek an amendment in *Code* through the Legislature to allow an increase in renewal fees.

### **Licensing Boards Should Be Required to Have a Web Site**

*West Virginia Code* §30-1-12(c) stipulates that boards shall regularly evaluate the feasibility of adopting additional methods of providing public access through means including computerized communication. However, it does not require boards to actually adopt such additional methods. The Board of Examiners of Land Surveyors has been in the process of developing a web site, but was stalled due to a lack of funds. According to the Board, the web site will be completed and made accessible to the public as the funds become available.

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*The Legislative Auditor recommends that the Legislature consider adding language to the Code, requiring all Chapter 30 licensing boards to have a web site by the start of 2005.*

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The Legislative Auditor recommends that the Legislature consider adding language to the *Code*, requiring all Chapter 30 licensing boards to have a web site by the start of 2005. With society's technological growth and use of the internet for communication, making a website mandatory for each board would provide enhanced public service.

A web site for a licensing board should contain, but is not limited to, the following content:

1. Where a licensee received the required education;
2. When a licensee completed the required education;
3. When a licensee was licensed;
4. The number of complaints, if any, filed against a licensee;
5. The number of substantiated complaints, if any, against a licensee;
6. A complaint form that can be downloaded and/or filed online; and
7. A link to and from the State's web site.

Licensing boards may be able to obtain assistance from the Information Services and Communications Division within the Department of Administration for developing a web site.



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## Issues of Non-Compliance with Open Governmental Proceedings Act

*The Board is not in compliance with the requirements of the Open Governmental Proceedings Act as it relates to Executive Session.*

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The Board meets approximately four times a year and generally meets the requirements of the Open Governmental Proceedings Act. However, there are recommendations that the Legislative Auditor makes to the Board. First, the Board is not in compliance with the requirements of the Open Governmental Proceedings Act as it relates to Executive Session. According to West Virginia Code, §6-9A-4,

*(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session. (b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency.*

*Although the Board has stated that Executive Sessions are regularly occurring during board meetings to discuss complaints, most meeting minutes do not make any mention of an Executive Session.*

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The Board of Examiners of Land Surveyors is currently not meeting the above requirements. Although the Board has stated that Executive Sessions are regularly occurring during board meetings to discuss complaints, most meeting minutes do not make any mention of an Executive Session. In one board meeting, the only mention of an Executive Session is, *All other agenda items relating to active complaints were deferred to Executive Session.* Without identification of the authorization to enter Executive Session, and of the final decisions made during Executive Session, it is difficult for a member of the public to determine if complaints are being dealt with on a regular basis, or the outcome of complaints.

Secondly, there has been one instance that the Board has not filed a meeting notice, as required by the Open Governmental Meetings Act. This instance occurred in 2001; however, since it is under the scope of this audit, mention is made. All other meeting notices have been filed in compliance with the Open Governmental Meetings Act. Given the instances of non-compliance found with the requirement to identify Executive Sessions, and the requirement to file open meeting notices, the Legislative Auditor recommends that the Board of Examiners of Land Surveyors comply with all aspects of the Open Governmental Proceedings Act.

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## Recommendations

2. *The Legislative Auditor recommends that the Board resolve all complaints in a timely manner from the date of receipt.*
3. *The Legislative Auditor recommends that the Board seek a statutory amendment to allow for an increase in license renewal fees.*
4. *It is the recommendation of the Legislative Auditor that the Legislature consider amending West Virginia Code §30-1-12(c) to require all Chapter 30 licensing boards to have a web site in operation by January 1, 2005. Such web site should consist of the required information listed in this issue and be accessible from the State's web site.*
5. *The Legislative Auditor recommends that the Board of Examiners of Land Surveyors comply with all aspects of the Open Governmental Proceedings Act.*

# Issue 3

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## The Legislature Should Consider Adding at Least Two Additional Board Members to the Board of Examiners of Land Surveyors

The Board of Examiners of Land Surveyors is composed of three members. According to §30-13A-3(a) of the *Code*,

*There is hereby created the state board of examiners of land surveyors which shall be composed of three members appointed by the governor by and with the advice and consent of the Senate. Each member shall have been actively engaged in the practice of land surveying for at least ten years and shall be the holder of a license under the provisions of this article.*

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*The use of three land surveyors as Board members could be limiting to the Board.*

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The use of three land surveyors as Board members could be limiting to the Board. Possible problems encountered by only having three land surveyors on the Board include the following:

i **Independence of Board Members** - Although the Legislative Auditor has not seen any evidence to suggest that the three Board members favor members of the land surveying profession, the addition of one or two members outside of the land surveying profession would help ensure a level of independence for the Board.

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*The addition of one or two members outside of the land surveying profession would help ensure a level of independence for the Board.*

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i **Distribute Time Spent on Board to More Board Members** - The three Board members currently are involved with a large number of complaints and disciplinary hearings related to those complaints. In addition, the Board members administer licensing exams in the spring and fall and prepare administrative policies for the Board. As a result of these responsibilities, the Board members have worked a large amount of time outside of the four Board meetings held during the year. In fact, one Board member had to reimburse the Board \$2,981 for compensation received during 2002 in excess of the \$4,500 maximum allowable to any Board member in a calendar year. Attached to the reimbursement check was a letter, which stated in part,

*Although I have attended three separate State Auditor's training sessions in the past three years, I was not aware that there was such a limit....It is perhaps obvious that my efforts on behalf of the Board will need to*

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*be curtailed in 2003 to avoid this unfortunate circumstance from recurring. It is my hope that, since the work load of this Board does not appear to be significantly diminishing, the other two Board members will provide enough effort to fill the void my lessened efforts will leave, so that the work and representation of the Board does not suffer.*

The addition of two or more Board members might better distribute the time spent on the Board to more individuals.

*If one Board member is unable to vote on an issue, only two Board members are remaining to make the vote. This could pose a problem if the two members disagree about the resolution to the issue.*

i

**Additional Board Members Allow a More Effective Process** - If one Board member is unable to vote on an issue, only two Board members are remaining to make the vote. This could pose a problem if the two members disagree about the resolution to the issue. The above scenario is actually being faced by the Board, as one Board member has recently been named in a complaint. According to the Board, this member has been removed from all discussions relating to the complaint. However, this means that the two remaining Board members will ultimately have to vote on the final resolution to the complaint. The addition of more Board members will increase the effectiveness of the Board and help ensure that an independent decision is made by the Board in these situations.

The addition of board members to the Board of Examiners of Land Surveyors could result in an increase in compensation and travel expenses for the Board. This expected increase in expenses illustrates further the need for the Board's increase in license renewal fees, as discussed in *Issue 2* of this report.

## **Recommendation**

6. *The Legislative Auditor recommends that the Legislature consider adding at least two additional members to the Board of Examiners of Land Surveyors.*





# Appendix A Transmittal Letter

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## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

August 20, 2003

Mr. Gregory A. Smith, Chairman  
West Virginia Board of Examiners of Land Surveyors  
2298 Sutton Lane, P.O. Box 390  
Flatwoods, West Virginia 26621-0390

Dear Chairman Smith:

This is to transmit a draft copy of the Regulatory Board Evaluation of the Board of Examiners of Land Surveyors. This report is scheduled to be presented at the September 7-9, 2003 interim meeting of the Joint Committee on Government Operations. This meeting will be held in Lewisburg, West Virginia. A separate letter will be sent at a later date to confirm the specific time and location of the meeting. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to schedule the meeting between Thursday, August 21, 2003 and Tuesday, August 26, 2003. Please notify us to schedule an exact time. In addition, we need your written response by noon on Thursday, August 28, 2003 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, September 4, 2003 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Enclosure

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*Joint Committee on Government and Finance*

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# Appendix B Agency Response

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**CHAIRMAN**  
*Gregory A. Smith*

**SECRETARY**  
*Leon K. Spencer*

**MEMBER**  
*Marshall W. Robinson*

STATE OF WEST VIRGINIA  
STATE BOARD OF EXAMINERS OF LAND SURVEYORS  
2298 Sutton Lane, P. O. Box 390, Flatwoods, West Virginia 26621-0390  
Telephone (304) 765-0315 Fax (304) 765-0316  
[wvbels@mail.state.wv.us](mailto:wvbels@mail.state.wv.us)

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August 29, 2003

Mr. John Sylvia, Director  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610

Dear Mr. Sylvia:

The Board appreciates the opportunity to review the Regulatory Board Evaluation of the State Board of Examiners of Land Surveyors and offers the following comments:

**Issue 1: Licensure of the Practice of Land Surveying Is Needed to Protect Public Interest.**

**Licensure of Land Surveyors:**

Professional engineers were exempt from this Board's licensing provisions until June 30, 1996. Subsequently, the Board adopted a policy allowing applicants with other technical or professional degrees, such as civil engineering, landscape architecture, forestry, etc., to sit for the licensing examination if their degree includes 30 credit hours of surveying-related courses and they have the requisite land surveying experience.

The Board advocates that any individuals that are exempt from licensing should be mandated to comply with the regulations. It is a policy of the National Council of Examiners for Engineering and Surveying (NCEES) that any one providing professional services in any way that may affect the public or by way of any data such as plans, etc., that will later be utilized by the public should also comply with each jurisdiction's regulations. Therefore, the Board is in full agreement with the Legislative Auditor's finding that regulation is essential to protecting the public interest.

**Issue 2: The Board Complies, or is in the Process of Complying, with most of the General Provisions of Chapter 30.**

**Continuing Education Requirements:**

The Board is generally pleased with the way that most professional surveyors responded to the implementation of the mandatory continuing education program that was implemented in FY 2002. In FY 2002, only 4 PDHs (professional development hour) were required and that being the first year, all continuing education reporting forms were

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reviewed. Licensees with non-relevant courses were granted their license but they were reminded that course content in future reporting needed to be reasonably related to the practice of land surveying, as stated in the Board rules. Even though the extensive review was not tagged as a formal audit, the Board found it beneficial to the Board as well the licensee since the Board modified its reporting form to better categorize the information needed. Also the Board provided clarification on reporting problems and content at the state society's annual convention and through its quarterly newsletter.

A random audit of at least 5% of the active licensees will be conducted for continuing education hours reported in FY 2003, the first year that licensees were to meet the full 8 PDH annual requirement.

**Register Requirements:**

The Board Administrator has provided the specifications to the database consultant for the register of all applications for license examination. This last segment of the database should be available soon.

**Complaints:**

As noted in the report, the Board has implemented new procedures during the last 2 years to improve its handling of complaints. As the backlog is alleviated, the Board will continue to strive to resolve them in a shorter time period. The complaint review committee is facilitating the closure of complaints that have no merit in a timely fashion. However, given the technical evaluation that is usually required, the discussions with complainants and interviews of landowners, records research, and field reviews that are often necessary, it is unlikely that substantiated complaints can be resolved in the three-to-four month average of other boards that is cited in the report.

**Creation of a Computer Database:**

While the cost of the database design and programming has exceeded \$20,000 over the last two fiscal years, it has been at a cost savings over original projections of \$15-25,000 for design and \$45-125,000 for programming by the Department of Administration's Information Services and Communications Division. Work remains to be done on the applicants component and programming to manipulate or extract data into various reports (such as status of complaints: open, closed, under investigation) and letters (such as generating follow-up letters to licensees who haven't renewed their licenses).

**State Land Surveyor Examination:**

As noted in the report and in its continuing effort to improve fairness and quality, the Board sought the advice of a testing expert in 2000 to ensure that the state-specific licensing examination, which is designed to measure a candidate's knowledge of statutes, rules and regulations that impact the land surveying profession in West Virginia, also complemented the knowledge and skills assessed in the national portions of the exam.

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The expert was also asked to aid in developing a test that would not expose the Board to liability from disgruntled applicants who might charge that the exam was unfair. In the ensuing period, an extensive databank of questions and answers was developed and evaluated. The Board planned to forego the workshop that was held after the fall 2002 exam; however, because several new questions had not been evaluated by the subject matter experts, one additional workshop was held in January 2003; exams were prepared for spring and fall 2003 administrations. The Board plans to have TEST, Inc. score the fall 2003 exam and does not anticipate contracting with the company in the foreseeable future. The Board is pursuing other avenues, such as an institution of higher education maintaining the databank and using software to randomly select questions from the data bank to prepare the exam and ultimately score it. This will be on the agenda for discussion at the next Board meeting.

*Increase in Board Revenues:*

With regard to inconsistency between the Code (§30-13A-6) and Legislative Rule 23-1-5.1, attempts to amend the Code to replace the reference to a renewal fee of \$40 with "to be determined by the board by rule" have been unsuccessful the last two legislative sessions. The Board will again seek this change during the next legislative session.

*Web Site:*

To enhance the Board's proposed web site, the Board chose to have the database component developed first. The Board fully understands and appreciates the value of a web site and will strive to have one available as soon as our funding permits.

The Board offers comments, however, on a web site's proposed components as expressed in the report. Although legislation has been proposed to do so, there is no education requirement for professional surveyor licensure at this time; therefore, where and when a licensee received or completed his education doesn't denote qualification to take the exam; generally, relevant education and qualifying experience must total 8 years. What is important is when an applicant meets the requirement and is thus approved to take the licensing examination and when he is licensed. In addition, specific educational data might be considered age discriminatory as well. This Board also does not see the value in simply noting the number of unsubstantiated complaints that may have been filed against a licensee. This could have a negative impact on a licensee when there was no merit found in the complaint.

*Open Governmental Proceedings Act:*

The Board regrets that it has not been compliant with the meeting notice and executive session provisions of the Act. All meeting notices have been timely filed since the Board Administrator was employed in mid-June 2001; to be more cognizant of such issues, she attended a seminar, "What You Need to Know About Public Records and Open Meetings" on June 17, 2003, in Charleston; it was sponsored by Lorman Education

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Services. The Board intends to be fully compliant with the all aspects of the Open Governmental Proceedings Act in the future.

**Issue 3: The Legislature Should Consider Adding at Least Two Additional Board Members**

**Distribute Time Spent on Board to More Board Members:**

Part of the discussion supporting the need for additional board members notes that a member of this Board exceeded the \$4,500 maximum allowable compensation in calendar year 2002; based on guidance received, he subsequently reimbursed the Board for the overage. Since another opinion has now surfaced, it seems prudent to request an opinion that would be applicable to all Chapter 30 boards clarifying the maximum allowable limits for compensation for attending meetings as well as for engaging in other official duties.

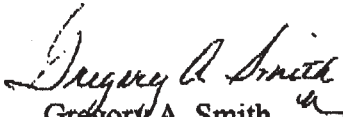
**Additional Board Members Allow a More Effective Process:**

The Board is not opposed to adding two additional members to the Board if they are technically proficient to participate in decisions affecting the profession, including the review of applications for licensure and complaints. The Board estimates that its workload is 90% technically oriented. However, the Board is concerned about funding, so an increase in funding would be needed to cover additional compensation and travel expenses.

In discussions with other Boards at the NCEES meetings over the past 3 or 4 years, a recurring theme has been that an inordinate amount of time is spent explaining the technical jargon to non-survey related members; they generally don't have an underlying interest in the profession so they lose interest quickly or do not show up for meetings. It is worth noting, however, that additional members with a legal or investigatory background would enhance the Board's ability to complete its work, as has occurred with a couple of other state boards.

In summary, the Board feels it has made great strides in its efforts to provide for a higher level of protection of the public through its investigatory and examination processes. The Board would be more than willing to meet with you or members of the Joint Committee to answer any questions you might have.

Sincerely,

  
Gregory A. Smith  
Chairman

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