



**PERFORMANCE AUDIT**

**BOARD OF TECHNICAL REGISTRATION**

**Report to the Arizona Legislature  
By the Auditor General  
September 1995  
Report #95-4**



DOUGLAS R. NORTON, CPA  
AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

DEBRA K. DAVENPORT, CPA  
DEPUTY AUDITOR GENERAL

September 5, 1995

Members of the Arizona Legislature

The Honorable Fife Symington

Mr. Michael J. Miller, Chairman  
Board of Technical Registration

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Technical Registration. This report is in response to a May 5, 1993, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review set forth in A.R.S. §§41-2951 through 41-2957.

The audit found that three of the six professions licensed by the Board could be deregulated. The state licensure of geologists, landscape architects, and assayers is unnecessary because these professions pose no significant harm to the public and other adequate safeguards exist to ensure the proper and safe delivery of services. In addition, the Board has not resolved complaints against engineers, architects, and land surveyors in a timely manner. A review of complaints found that the Board took a median time of 314 days to resolve a complaint when complaints should be resolved in an average of 175 days.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on September 6, 1995.

Sincerely,

Douglas R. Norton  
Auditor General

DRN:lmn

Enclosure

## SUMMARY

The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Technical Registration (BTR), pursuant to a May 5, 1993, resolution of the Joint Legislative Audit Committee. The audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

The Board of Technical Registration regulates architects, engineers, assayers, land surveyors, geologists, and landscape architects. The agency is overseen by a nine-member Board responsible for examining and licensing members of these professions, enforcing laws that govern their practice, and investigating and resolving complaints. As of June 30, 1994, BTR reported 19,760 registered professionals. BTR was authorized 15 full-time employees and appropriated \$858,700 for fiscal year 1994-1995.

Our audit recommends deregulating three licensing categories and improving the agency's complaint resolution process.

### **State Licensure of Geologists, Landscape Architects, and Assayers Is Unnecessary (See pages 5 through 8)**

The Legislature should consider deregulating the assayer, geologist, and landscape architect professions. Licensing is justified only when there is a need to protect public health, safety, or welfare. Otherwise, licensing may unnecessarily reduce competition. In the case of these three professions, the need for public protection does not exist.

Assayers, geologists, and landscape architects do not engage in activities that significantly threaten the public. None of the 29 complaints filed against licensees from these 3 professions in the past 5 years related to public health, safety, or welfare. Furthermore, none of the persons we interviewed from the three professions, and the users of their services, could relate to us any instances of bodily harm.

Even if a greater potential for harm existed, the main users of these three professions' services — largely mining companies, developers, and governmental entities — can sufficiently assess the qualifications of the professionals they use and already have adequate safeguards in place to ensure the proper and safe delivery of services.

A final indication that licensure is unnecessary is that many other states do not license these professions. Only one state, Arizona, licenses assayers. Only 20 states license geologists, and 31 states license landscape architects.

**Complaints Against  
Engineers, Architects, and Land Surveyors  
Are Not Resolved In a Timely Manner  
(See pages 9 through 13)**

The Board needs to take basic steps to better manage its complaint resolution process. BTR had a one-year backlog of complaints as of March 31, 1995. In addition, complaints filed against licensed practitioners took a median time of 314 days to resolve when they could have been resolved in approximately 175 days. The Board can reduce its complaint backlog and improve its timeliness in resolving complaints by a) eliminating unnecessary delays in processing complaints, and b) making better use of its computer system. At the time of our review the Board had, but was not using, a manual system for tracking complaints. The Board has since resumed tracking complaints using this manual system, but we believe it can modify its computer system to perform this function more effectively.

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# INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit and sunset review of the Board of Technical Registration (BTR), pursuant to a May 5, 1993, resolution of the Joint Legislative Audit Committee. The audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

## Board Responsibilities

A.R.S. §32-101 assigns the Board responsibility for regulating the practice of architects, engineers, assayers, land surveyors, geologists, and landscape architects. Statutes authorize the Board to exercise this responsibility through examining and licensing members of these professions, renewing licenses triennially, and investigating and resolving complaints. BTR reported 19,760 licensed professionals as of June 30, 1994, and 164 open investigations as of March 31, 1995. Measurements of the Board's licensing activities are presented in Table 1, page 2.

## Staffing and Budget

The agency is overseen by a nine-member Board appointed by the Governor. The Board is comprised of two architects, three engineers, one landscape architect, one geologist, one land surveyor, and one public member. The Board employs an executive director and deputy director who oversee agency operations. For fiscal year 1994-95, BTR was authorized 15 full-time equivalent (FTE) employees to carry out its investigative (5 employees), licensing (4 employees), and administrative (6 employees) duties.

The Legislature appropriated \$858,700 for agency operations in fiscal year 1994-95. The Board is self-supporting, deriving its revenues from fees charged for applications, examinations, and license renewals. While 90 percent of its fees are used for Board operations as appropriated by the Legislature, the remaining 10 percent of its fees are deposited in the State General Fund. In addition, all fines collected by the Board are deposited in the State General Fund.

Table 1

**Board of Technical Registration Licensing Activities  
Fiscal Years 1992, 1993, and 1994**

| <u>Activity</u>                   | <u>Fiscal Year<br/>1992</u> | <u>Fiscal Year<br/>1993</u> | <u>Fiscal Year<br/>1994</u> |
|-----------------------------------|-----------------------------|-----------------------------|-----------------------------|
| Total Licenses by Profession:     |                             |                             |                             |
| Architect                         | 4,379                       | 4,524                       | 4,640                       |
| Assayer                           | 46                          | 42                          | 40                          |
| Engineer                          | 11,285                      | 11,613                      | 11,890                      |
| Geologist                         | 459                         | 533                         | 570                         |
| Landscape Architect               | 441                         | 455                         | 474                         |
| Land Surveyor                     | 2,128                       | 2,160                       | 2,146                       |
| Total Number of Licenses:         | <u>18,738</u>               | <u>19,327</u>               | <u>19,760</u>               |
| Licenses Granted: <sup>(a)</sup>  |                             |                             |                             |
| <b>Professional:</b>              |                             |                             |                             |
| Architect                         | 180                         | 257                         | 210                         |
| Assayer                           | 1                           | 0                           | 2                           |
| Engineer                          | 465                         | 579                         | 514                         |
| Geologist                         | 52                          | 80                          | 42                          |
| Landscape Architect               | 22                          | 24                          | 28                          |
| Land Surveyor                     | 58                          | 63                          | 24                          |
| <b>In Training:<sup>(b)</sup></b> |                             |                             |                             |
| Architect                         | 32                          | 63                          | 40                          |
| Assayer                           | 0                           | 0                           | 0                           |
| Engineer                          | 168                         | 270                         | 224                         |
| Geologist                         | 7                           | 40                          | 14                          |
| Landscape Architect               | 3                           | 2                           | 6                           |
| Land Surveyor                     | 17                          | 41                          | 9                           |

(a) These figures are included in the Total Number of Licenses shown above. Licenses are renewed triennially.

(b) An individual who is in training has partially completed the requirements for registration.

Source: Board of Technical Registration licensing and enforcement records for fiscal years 1992-94.

## 1985 Report Follow-up and Update

As part of our current audit, we revisited some concerns identified in our 1985 performance audit report of the Board (Auditor General Report 85-3) and found:

- **1985 Finding/Recommendation:** The practices of geology, landscape architecture, and assaying posed little threat to the public's health, safety, or welfare and could be eliminated without significantly threatening the public health, safety, or welfare.



**Follow-Up:** Currently, based on the histories, work practices, clientele, and existing safeguards associated with these practices, licensure is not needed to protect the public or the economic well-being of these practitioners (see Finding I, pages 5 through 8).

- **1985 Finding/Recommendation:** The Board did not appear to use nationally recognized standards and procedures in developing its licensing examinations. In addition, inconsistencies in grading and errors in scoring further reduced the Board's ability to make sound licensing decisions. We recommended that the Board play an active role in addressing deficiencies in its licensing examinations.

**Follow-Up:** Over the past ten years, the Board has participated in the development and adoption of nationally accepted examinations. In addition, in cases that require the use of local examinations, the Board has sought assistance from professional testing experts to help validate exam content.

- **1985 Finding/Recommendation:** A statutory exemption that allowed unlicensed practitioners to design commercial and multifamily structures did not protect the public because it was based on a dollar amount and calculated differently by building permit officials from one jurisdiction to another. Also, professional liability carriers were not required to report malpractice claims against licensed professionals. We recommended that the Board make statutory changes to strengthen its enforcement program.

**Follow-Up:** Since 1985, the Board has successfully sought an amendment to A.R.S. §32-144.A.3. Unlicensed practitioners were allowed to design buildings or structures that cost less than \$75,000. This statute was changed to reflect a size rather than a price limitation on structures designed by unlicensed practitioners. Currently, unlicensed practitioners are allowed to design buildings less than 3,000 square feet in size.

In addition, the Legislature adopted A.R.S. §32-146 to require plaintiff attorneys in malpractice suits involving Board registrants to forward a copy of the complaint to the Board. This requirement improves Board enforcement by ensuring that BTR is receiving available complaint information.

- **Other Pertinent Information:** In 1985, only 6 of Arizona's 15 counties were issuing permits. The building permit process protects the public by ensuring that structures comply with all relevant state and local laws and codes.

**Follow-Up:** At least 12 counties in Arizona are now issuing building permits.

## **Audit Scope**

Our audit work focused on the Board's licensing, enforcement, and administrative procedures. We present findings and recommendations in two areas:

- The deregulation of geologists, landscape architects, and assayers and,
- The need to address the extensive complaint backlog and the untimely resolution of complaints.

The audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the Board of Technical Registration, the Executive Director, and staff for their cooperation and assistance throughout the audit.

## FINDING I

### STATE LICENSURE OF GEOLOGISTS, LANDSCAPE ARCHITECTS, AND ASSAYERS IS UNNECESSARY

The Legislature should consider deregulating the assayer, geologist, and landscape architect professions. None of these professions require regulation to protect the public health, safety, or welfare. These professions cause little, if any, harm to the public and are utilized primarily by knowledgeable parties. Moreover, the economic impact of deregulation on the professions would be minimal.

A.R.S. §32-121 authorizes the Board of Technical Registration to license assayers, landscape architects, and geologists. Assayers determine the mineral content of ore. Geologists assess various characteristics of the earth. Landscape architects design adjunct features of buildings such as sidewalks and lawns. However, statutes exempt licensure requirements for landscape design for buildings under 3,000 square feet.

The Council of State Governments (CSG) states that professions should only be licensed to protect the public health, safety, or welfare. CSG, in its publication *Occupational Licensure: Questions A Legislator Should Ask*, suggests that licensure can actually have an adverse impact on the public by reducing competition. Thus, licensing decisions should focus on public protection rather than benefits to professions. CSG states:

*“Licensing makes it illegal for anyone who does not hold a valid license to engage in the occupation, profession, trade, etc. covered by the statute. Thus, the power to license can be used to deny individuals the legal opportunity to earn livelihoods in their chosen fields. This is an awesome power – one that must be exercised judiciously.”*

The CSG lists three criteria or questions that a state must answer when evaluating the need for licensure:

- “1) Whether the unlicensed practice of an occupation poses a **serious risk** to the consumers’ life, health, and safety or economic well-being;
- 2) Whether potential users of the occupational service can be expected to possess the **knowledge needed** to properly evaluate the qualifications of those offering services; and

- 3) Whether **benefits to the public** clearly outweigh any potential harmful effects such as a decrease in the availability of practitioners, higher costs of goods and services, and restrictions on optimum utilization of personnel." (emphasis added)

### **Many States Do Not License Assayers, Geologists, or Landscape Architects**

The fact that many states do not license assayers, geologists, or landscape architects is an indication that there is little actual evidence of harm to the public health, safety, or welfare from those professions. Currently, only 1 state (Arizona) licenses assayers, 20 states license geologists, and 31 states license landscape architects.

Further, interviews with officials from some states that have instituted licensing of geologists and landscape architects in the past ten years reveal that licensure was driven more by economic interests of the professions rather than concern for public health, safety, or welfare.

### **Little Evidence of Harm to Public Health, Safety, or Welfare**

Our review found no evidence that assayers, geologists, or landscape architects harm the public health, safety, or welfare. Our examination of the past five years' complaints against licensees of these professions found that few complaints were received and none involved any threat to public health, safety, or welfare. In addition, interviews with persons knowledgeable about these professions found that no one could identify a single incident where bodily harm was caused.

Only 29 complaints had been filed against licensed members of these professions over the past 5 years. During the period from July 1, 1989, through June 30, 1994, 2 complaints were logged against licensed assayers, 4 against licensed geologists, and 23 against licensed landscape architects. As of 1994, BTR licensed a total of 40 assayers, 570 geologists, and 474 landscape architects. An average of only 6 complaints per year for more than 1,000 licensees is further indication that there is little harm.<sup>(1)</sup>

More important than the number of complaints, analysis of the 29 that were filed revealed that **none** involved any risk to the public health, safety, or welfare. BTR ranks complaints in terms of risk to the public. All of the 29 complaints over the past 5 years were deemed

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<sup>(1)</sup> By comparison, the Board of Medical Examiners annually receives approximately 68 complaints per 1,000 licensees, and the Board of Dental Examiners annually receives approximately 58 complaints per 1,000 licensees.

by BTR as posing no public threat or harm. Typical examples of these complaints include failure to seal plans, expired registrations, and contractual problems.

In fact, the most significant case we could identify involved a licensed landscape architect entangled in a contractual dispute with the complainant over the architect's failure to disclose a financial relationship with a materials supplier and the basis for establishing fees. Normally, these types of problems can be solved through small claims court or the Better Business Bureau rather than a licensing board.

Our interviews with some major employers and other users of these professions, as well as professional trade representatives, found that none could identify a single harmful incident connected with the practices of assaying, geology, and landscape architecture. We interviewed two assaying firms and three consumers (mining companies), three landscape architect firms and three entities using their services, and four geologist firms and five geologic services consumers. Although most of these groups generally favor continued regulation, none could provide examples of these professions negatively affecting public health, safety, or welfare.

## **Knowledgeable Users of Services Employ Adequate Safeguards**

Most users of assayers, geologists, and landscape architects are not the general public. They are comprised of business and government entities that utilize their own professional experience and safeguards put in place to ensure that appropriate services are provided. Several told us that they use a licensee's reputation rather than licensure as a means of selection. The following illustrates these points for each of the three professions.

- **Assayers** – The primary users of assayers are large mining companies. The general public has little, if any, interaction with assayers. Mining companies employ a variety of measures to ensure that assayer services are accurate. These include sending “blind” or duplicate samples to various laboratories, purchasing pre-analyzed samples and sending them to assayers to test their accuracy and methodology, and also interviewing assaying firms to help determine competence.
- **Geologists** – The primary users of geologic services are developers, engineering firms, and the government. These entities generally employ in-house professionals who can monitor geologists' work. In some cases, geologists are required to carry liability insurance. Other users of geologic services follow government or professional guidelines to ensure that work performed is appropriate.

- **Landscape Architects** – The primary users of these services are the government and developers of larger projects. Particularly in this profession, government building codes and guidelines serve to ensure that landscapes are appropriately designed. Plans for landscapes are reviewed by municipal or state planning offices and are not approved unless they comply. Government building codes provide appropriate specifications for landscape design including such aspects as water conservation and protection, safety, and allowable vegetation. In addition, users often require liability insurance.

## **Deregulation Will Have Minimal Economic Impact**

Deregulating assayers, geologists, and landscape architects will not significantly impact the economic well-being of those professions. These professions are practiced in many other states that do not have licensure requirements. In fact, according to licensure theory, deregulation would probably lower the cost of these services because of increased competition. Users of these services told us that deregulation would not impact their selection methods for choosing a member of these professions. Again, they utilize reputation and previous performance as primary selection criteria.

Some representatives of these professions told us that deregulation could cause them to be unable to obtain contracts in other states that require licensure. Before deregulation occurs, current licensees can utilize reciprocal licensing agreements with other states to obtain out-of-state licensure. After deregulation, members of these professions can seek licensure in other states just as anyone else would who desires to practice there.

## **RECOMMENDATION**

The Legislature should consider deregulating the practice of geology, landscape architecture, and assaying.

## FINDING II

### COMPLAINTS AGAINST ENGINEERS, ARCHITECTS, AND LAND SURVEYORS ARE NOT RESOLVED IN A TIMELY MANNER

The Board needs to take fundamental steps to better manage its complaint resolution process. Our review found that the Board had a one-year complaint backlog as of March 31, 1995. In addition, the Board takes a median of 314 days to resolve a complaint when approximately 175 days would be more appropriate. BTR can reduce its backlog and resolve its complaints in a more timely manner by using and improving its complaint tracking system and by providing better management oversight.

The Board's fundamental purpose is to protect the public health, safety, and welfare. The Board's enforcement unit helps protect the public by investigating complaints of unsafe practices by regulated professionals and taking appropriate enforcement action. Moreover, timely complaint handling helps to ensure problems are quickly addressed and minimizes public exposure to possible substandard practice by engineers, architects, and land surveyors.

#### **Complaint Backlog Exists**

During the last three fiscal years, the Board has had a complaint backlog. As shown in Table 2, page 10, the Board has resolved an average of 142 complaints annually since fiscal year 1991-92 and has received an average of 157 complaints annually over the same period. As of March 31, 1995, the Board had 164 complaints pending. If the Board received no more complaints, it would take about 1 year to eliminate the 164 unresolved complaints.

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Table 2

**Board of Technical Registration Complaint Statistics**  
**Fiscal Years 1991-92 through 1993-94**

| <u>Number of Complaints<sup>(a)</sup></u> | <u>Fiscal Year</u><br><u>1991-92</u> | <u>Fiscal Year</u><br><u>1992-93</u> | <u>Fiscal Year</u><br><u>1993-94</u> |
|---|--------------------------------------|--------------------------------------|--------------------------------------|
| Beginning of Year                         | 180                                  | 198                                  | 227                                  |
| Received                                  | 152                                  | 194                                  | 124                                  |
| Resolved                                  | <u>134</u>                           | <u>165</u>                           | <u>128</u>                           |
| End of Year                               | <u>198</u>                           | <u>227</u>                           | <u>223</u>                           |

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<sup>(a)</sup> The numbers in Table 2 pertain to both licensed and unlicensed practitioners. We found that approximately 30 percent of BTR's caseload represents complaints filed against unlicensed practitioners. The remaining 70 percent of BTR's caseload represents complaints filed against licensed practitioners.

Source: Information compiled from BTR enforcement unit data.

### **Substantial Delays Have Hampered the Board's Enforcement Process**

Significant delays in the complaint resolution process impede the Board's ability to resolve complaints in a timely manner. Our review of 30 complaints closed in fiscal year 1993-94 found that it took the Board a median time of 314 days to resolve complaints filed against licensed practitioners. As illustrated in Table 3, page 11, we estimate the Board could close complaints in approximately six months. The Executive Director concurs that complaints on average should be resolved in six months. Moreover, we have found in other audits that state regulatory boards could resolve complaints within six months. For example, our 1994 report of the Board of Medical Examiners estimated they could resolve complaints in 172 days.

Although the Board completes most steps in the complaint resolution process in a timely manner, our analysis identified two steps in BTR's enforcement process that accounted for most of the excess complaint processing time. After BTR receives a complaint it is investigated by in-house staff for about three weeks (Step 2). Then, BTR utilizes a professional registrant volunteer to review and validate the complaint. BTR typically utilizes a second professional opinion to provide further validation. As shown in Table 3, additional assessments (Step 4) take nearly twice as long to complete than the suggested time frame. In 1 incident it took 113 days to complete an assessment when it should have been



done within 30 days. After the assessments, BTR uses an enforcement advisory committee to develop a recommendation for Board action. The recommendation is received by BTR staff and then forwarded to the Board.

An extensive delay (over 100 days) occurs in forwarding complaints to the Board (Step 7). Because the Board meets about every 90 days, a complaint referred to the Board typically should take a median of 45 days for Board approval (Step 7) versus the current 149 days. In 1 case it took BTR staff more than 190 days to refer a complaint to the Board for action.

**Table 3**

**Median and Suggested Time Frames for  
Steps in the Licensee Complaint Resolution Process  
for Fiscal Year 1993-94**

| <u>Step</u>               | <u>Description</u>  | <u>Median Time</u> | <u>Suggested Time <sup>(a)</sup></u> |
|---------------------------|---|--------------------|--------------------------------------|
| 1                         | Number of days from receipt of complaint until the case is opened   | 8 days             | 3 days                               |
| 2                         | Number of days from opening a case until it is assigned to an assessor <sup>(b)</sup>   | 21 days            | 21 days                              |
| 3                         | Number of days from assignment of complaint to an assessor until the assessor's report is returned (first assessment)   | 17 days            | 17 days                              |
| 4                         | Number of days from receipt of first assessment to receipt of final assessment (second or more assessments) <sup>(c)</sup>  | 59 days            | 30 days                              |
| 5                         | Number of days from final assessment to enforcement advisory committee meeting date   | 46 days            | 45 days                              |
| 6                         | Number of days from the enforcement advisory committee meeting date to receipt of its recommendation  | 14 days            | 14 days                              |
| 7                         | Number of days from receipt of enforcement advisory committee's recommendation until it is forwarded to the Board for review and final disposition <sup>(d)</sup> | 149 days           | 45 days                              |
| <b>Total of steps 1-7</b> |   | <u>314 days</u>    | <u>175 days</u>                      |

<sup>(a)</sup> Suggested times determined by Auditor General staff review of BTR statutes and its complaint process, and interviews with BTR management.

<sup>(b)</sup> Cases are given a preliminary investigation by BTR enforcement staff before being forwarded to an assessor. BTR uses professional volunteers (assessors) to provide technical assistance (assessments) when evaluating a complaint.

<sup>(c)</sup> One complaint may have multiple assessments.

<sup>(d)</sup> During this time frame, BTR staff review the committee recommendation for consistency with Board policy and attempt to negotiate a settlement with the registrant. For some cases, these activities may require more than 45 days.

Source: Auditor General staff analysis of 30 complaints closed in fiscal year 1993-94.

## **BTR Can Improve Complaint Tracking and Management**

The delays described above could be attributed to BTR's failure to fully use its current complaint tracking system and a lack of management oversight.

*Tracking system not used* — The Board does not effectively monitor the timeliness of its complaint resolution process. According to the Board's Executive Director, the agency tracks complaints with a "tickler sheet." A tickler sheet allows the enforcement unit manager to manually review a complaint's progress throughout the complaint resolution process. However, we noted that this system was not being used. For example:

- A review of complaints sent to the Attorney General's (A.G.) Office for advice showed that 7 of these cases have been open for more than 1,400 days. For example, on February 5, 1991, the Board received a complaint alleging that a land surveyor changed a map after it was approved by the Yavapai County Board of Supervisors. On August 28, 1991, BTR sent a request for advice to the A.G.'s office. At the time of our review, over three and one-half years later, we found that the A.G.'s Office had not responded nor had BTR ever followed up on its request.

To remedy additional complaint resolution delays, BTR has reinstated the use of its tickler sheet tracking procedure.

Better utilization of the agency's computer system could have identified delays within the various steps of the Board's resolution process and could also have served as a better tracking system than the agency's current tickler file system. For example, the Board could modify its database to capture each step of the complaint resolution process, including corresponding time frames. As a result, time frames and delays can be easily computed. BTR's management should consider developing these reports to monitor the complaint resolution process and identify unnecessary delays.

*Stronger management oversight could have prevented delays* — The Board's unnecessary delays and backlog could have been reduced if management had provided adequate oversight. The Executive Director attributes much of the unnecessary delay and backlog to former problematic staff who discontinued tracking complaints and did not follow up when problems arose. However, the Executive Director told us he should have acted sooner to address this situation.

## RECOMMENDATIONS

1. BTR should improve its complaint resolution time by eliminating administrative delays in its complaint resolution process. Specifically, BTR staff should:
  - a) reduce delays associated with case assessments, and forward cases to the Board as soon as recommendations are received by BTR staff.
  - b) improve its complaint tracking system by enhancing and making better use of its computer system.
  - c) assume a more aggressive role in overseeing the Board's complaint process to ensure that complaints are processed in a timely manner.

# SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Arizona Board of Technical Registration should be continued or terminated.

**1. Objective and purpose in establishing the Board.**

A.R.S. §32-101 defines the purpose of the Arizona Board of Technical Registration, which is to provide for the safety, health, and welfare of the public through standards of qualification for individuals licensed, or seeking licenses, as architects, assayers, engineers, geologists, landscape architects, and land surveyors.

To carry out this responsibility, a nine-member Board is statutorily empowered to ensure the competency of these practitioners by evaluating applications for licensure, conducting examinations for in-training and professional registration, initiating and conducting investigations to determine the validity of complaints and charges, and by disciplining violators of the Board's rules or regulations. The Board employs an executive director and investigators, and licensing and other administrative staff to carry out these duties.

**2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which the Board has operated.**

The Board can improve its effectiveness and efficiency in fulfilling its statutory responsibility to protect the public from incompetent professionals. The Board has been slow to resolve licensee complaints. Our review found that complaint resolution could have been more timely if agency management had exercised appropriate oversight and better utilized its complaint tracking system (see Finding II, pages 9 through 13).

**3. The extent to which the Board has operated within the public interest.**

The Board's licensure and enforcement functions serve the public interest by ensuring that Board-licensed professionals operating in Arizona meet minimum competency standards and that unlicensed individuals do not practice these professions except as provided by law. However, state licensing of geologists, landscape architects, and assayers does not serve the general public's interest because the practice of these professions does not threaten the public's health, safety, or welfare (see Finding I, pages 1 through 8).

Moreover, within the last ten years, the Board has improved its licensing examinations by participating in the development of and adopting nationally accepted examinations. For example, through a joint effort initiated by the Board, a regional land survey examination was developed and is now used by the National Council of Examiners for Engineering and Surveying. The Board also played a major role in the development of the National Geologist Registration Examination.

**4. The extent to which rules adopted by the Board are consistent with the legislative mandate.**

According to the agency's Attorney General representative, all required rules have been promulgated. However, as part of its review process, the Board is currently amending some of its rules. For example, an environmental engineer classification is being introduced to provide environmental protection to the public.

**5. The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

In addition to providing required public notice of rules, the Board notifies licensees and industry associations of rule-making activities in its newsletters and through other written correspondence. In addition, other agency actions, including sanctions imposed by the Board, are also provided in the newsletters. These newsletters are sent twice a year to licensed practitioners, professional associations, building officials, and public libraries.

**6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.**

Statutes and rules provide the Board authority to investigate and resolve complaints of misconduct by licensed practitioners. After investigation by Board staff, an advisory committee comprised of public and professional volunteers assesses the complaint information to determine whether the complaint is valid and then makes a recommendation for discipline, if necessary. Then, through a negotiated consent process the complaint is usually resolved, thereby minimizing the need for formal hearings. According to the Executive Director, both of these steps serve to reduce the costs to the Board and its respondents.

However, the Board needs to improve the overall timeliness of its complaint resolution process. Our review found that the agency had a one-year complaint backlog as of March 31, 1995. Moreover, the Board takes 314 days to resolve a complaint when approximately 6 months would be more appropriate. BTR could reduce its backlog and resolve complaints in a more timely manner by using and improving its com-

plaint tracking system and by providing better management oversight (see Finding II, pages 9 through 13).

- 7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under the enabling legislation.**

Criminal sanctions can be prosecuted by the Town, City, County Attorney, or State Attorney General on behalf of the State, depending on the violation. According to the Executive Director, the agency has had some success in initiating criminal complaints against unlicensed practitioners; however, there is a reluctance on the part of prosecutors in the larger municipalities and counties to accept what they perceive to be "technical complaints."

- 8. The extent to which the Board has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate.**

According to the Executive Director, the agency corrected most of its legislative deficiencies in 1986, when a number of bills were introduced and changes were made in statutes. During the 1994 legislative session, BTR obtained authority to contract for exam administration services. In the 1995 legislative session, BTR obtained authority to recognize qualifying experience not gained under the direct supervision of a licensed professional. Also, the legislature granted BTR authority to impose civil penalties of no more than \$2,000 per violation against unlicensed practitioners and to set term limits for Board members of no more than 2 consecutive terms.

- 9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the subsection.**

Based on our audit work, we recommend that the Legislature delete references to geologists, landscape architects, and assayers from A.R.S. §32-121, which requires the licensure of these professions, and other pertinent statutes relating to these professions, because licensing is not needed to protect the public health, safety, or welfare (see Finding I, pages 1 through 8).

- 10. The extent to which the termination of the Board would significantly harm the public health, safety, or welfare.**

Terminating the Board could significantly harm the public by eliminating essential regulation of the architecture, engineering, and land surveying professions. The absence of regulation would create a void by removing competency requirements and an enforcement process necessary to protect the public from personal injury or fi-

nancial loss. However, terminating the licensure of assayers, geologists, and landscape architects would not harm the public health, safety, or welfare (see Finding I, pages 1 through 8).

**11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.**

The level of regulation exercised by the Board with regard to architecture, engineering, and land surveying appears to be generally appropriate, and major changes in this regulation are not necessary. However, as noted above, the Board does not need to license geologists, landscape architects, and assayers (see Finding I, pages 1 through 8).

Furthermore, during the audit, legislation was passed requiring BTR to participate in developing a plan to "provide for standards of qualification for professionals practicing in environmental disciplines, including environmental consultants and environmental contractors." An amendment to House Bill 2188 requires that BTR, the Department of Environmental Quality, the State Fire Marshal, and the Registrar of Contractors examine registration, licensing, and certification as options for qualifying these professionals. In addition, these agencies must research and identify any existing regulatory authority to establish standards and make recommendations for any additional regulatory authority that would be needed. The plan is to be submitted to the Legislature and to the Governor by November 15, 1995. We did not conduct audit work on this issue.

**12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

The Board has used private contractors for services it cannot provide in-house. For example, the Board contracts with private vendors to develop, proctor, and grade some exams. Our audit work does not indicate the need for further private sector contracting.

Agency Response





State of Arizona  
BOARD OF TECHNICAL REGISTRATION

FOR ARCHITECTS, ASSAYERS, ENGINEERS, GEOLOGISTS, LANDSCAPE ARCHITECTS AND LAND SURVEYORS  
1951 W. CAMELBACK ROAD • SUITE 250 • PHOENIX, ARIZONA 85015 • (602) 255-4053 • FAX: (602) 255-4051

August 24, 1995

Mr. Douglas R. Norton  
Auditor General  
State of Arizona  
2910 N. 44th. Street  
Suite 410  
Phoenix, Az. 85018

Dear Mr. Norton:

The Board of Technical Registration has reviewed the Draft Copy of the performance audit. Our reply is attached.

We would like to compliment your auditors for their professionalism and thank them for the constructive criticism relayed during discussions while the audit was in process.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Miller", written over a horizontal line.

Michael J. Miller  
Chairman



# State of Arizona BOARD OF TECHNICAL REGISTRATION

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## RESPONSE TO THE REPORT OF THE AUDITOR GENERAL

### COMMENTS ON THE FINDINGS

#### FINDING I

The Board has consistently taken the position that the decision to regulate, or not to regulate, a specific profession is a matter to be decided by the state legislature and the members of the profession, and the Board would remain neutral.

We would, however, point out that in the professions of Landscape Architecture and Geology the emerging trend across the nation is toward registration.

The increased need for environmental studies has caused many private property owners to need geological information for ADEQ mandated studies and reviews.

Private mining activity is increasing in the state and more members of the public may have a need for assaying services.

#### FINDING II

The Board acknowledges that an excessive backlog of cases existed at the time of the audit. The audit identified the magnitude of the problem. We thank the audit team for their comments. We have made a number of changes based on their input.

There are many variables that may lengthen case resolution time without detracting from the effectiveness of the process (getting equitable settlement at the lowest reasonable cost). Time needed to effect closure should be important; however, we feel appropriateness of action, attainment of a suitable final disposition and control of cost are factors that are as important.

A number of factors contributed to the number of cases more than one year old. One factor was a decision made by a supervisor to focus all resources on those cases opened after the supervisor's assumption of control. This was an error. A lessening of administrative monitoring controls on investigations initiated when the supervisor was hired created a situation where the problem was not fully recognized and corrected.

The problem was identified by the auditors and corrective action has been taken. The previously enacted controls have been re-initiated. This coupled with personnel changes, have eliminated this problem.

An extended absence of one of the two field investigators also contributed to the length of time needed to close some investigations.

This problem has resolved itself and the investigative staff is at full strength.

Some of the excessive delay problem was attributed to a failure of the Attorney General's Office to provide requested advice in a timely manner in some cases. This problem was exacerbated by the Board staff failure to adequately monitor the progress on those requests. We have had a number of discussions in the last three months with representatives of the Attorney General and, coupled with the re-initiation of the previous administrative controls, we feel this situation has been corrected.

Cases involving settlements that incorporated a period of peer review, periodic fine payments or suspension were carried as open investigations after the Board and the respondent had signed a consent order. After the consent order was signed, all that remained to be done was compliance monitoring. A new procedure has been initiated and cases are closed immediately after a consent order is signed and accepted. Monitoring is done by staff. If there is a failure to comply with the Board order, a new case alleging a violation of 32-150 (failure to comply with a Board order) will be opened. This change will reduce the number of days some cases are open.

Cases were routinely sent out shortly after being opened to a case reviewer to determine whether, in the reviewer's opinion, there was a reasonable belief that a violation had occurred and what additional evidence was needed to determine appropriate Board action. If the initial reviewer stated there was no reasonable basis for continued investigation, the case was sent to a second reviewer for another review. If the second reviewer also recommended no action, the case was sent to the board for review and action. Cases are now being sent to two case reviewers concurrently for preliminary review and recommendation when it appears there is a question of jurisdiction.

Additionally, there was a reluctance to push volunteer reviewers for rapid recommendations because of their volunteer status. Volunteers provide this service in addition to meeting their professional responsibilities. Currently, monitoring of every case is done on a monthly basis and case material is pulled back and given to another reviewer if the original reviewer cannot complete the assignment in a reasonable time.

We are currently looking at commercially produced case investigation software programs to replace the original Paradox software used to try and develop a case tracking system. Paradox has not been effective because of the need to develop all operation and information retrieval instructions. We do not have the capability to do that effectively. We feel the packages developed by several companies for investigation tracking may offer more operational capabilities and increase our effectiveness in this area.

In the past our main concentration was on closing a case in a manner we felt protected the public. We concentrated on getting appropriate settlements without necessitating costly (to the Board and the Respondent) formal hearings. We feel we have been very successful in this area. In fact, the Arizona Board is recognized as a national model for informal settlement. We made the length of time needed to close the case a less important factor than the appropriateness of the settlement or the utilization of the informal settlement process. We still consider the three factors in that relative priority order, but we will be placing more emphasis on those actions that unnecessarily slow up the resolution process.

Currently, the Board is closing more cases per month than it is opening. From March, 1995, through July, 1995, the Board opened 66 cases. During the same period, 110 cases were closed.