



**STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL**

A PERFORMANCE AUDIT  
OF THE

**BOARD OF TECHNICAL REGISTRATION**

**OCTOBER 1981**

**A REPORT TO THE  
ARIZONA STATE LEGISLATURE**



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AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

October 26, 1981

Members of the Arizona Legislature  
The Honorable Bruce Babbitt, Governor  
Ms. Judi E. Ross, Executive Director  
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 June 10, 1980, resolution of the Joint Legislative Budget Committee. The performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Executive Director is found on the yellow pages preceding the appendices.

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

Respectfully submitted,

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Enclosure

OFFICE OF THE AUDITOR GENERAL

A PERFORMANCE AUDIT OF THE  
BOARD OF TECHNICAL REGISTRATION

A REPORT TO THE  
ARIZONA STATE LEGISLATURE

REPORT 81-13

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## SUMMARY

The Office of the Auditor General has evaluated the Board of Technical Registration in response to a June 10, 1980, resolution of the Joint Legislative Budget Committee. This evaluation was conducted as a part of the Sunset process set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Board of Technical Registration was established in 1921 to regulate the practice of architecture, assaying, engineering and land surveying. Geology was added in 1956 and landscape architecture was added in 1968. The nine-member Board is comprised of two architects, three professional engineers, one land surveyor, one landscape architect, one assayer or geologist and one lay member. Each member is appointed by the Governor to a three-year term.

The Board is responsible for the administration and enforcement of Arizona laws concerning the practice of the aforementioned professions. Board duties include:

1. Administration of initial licensure examinations.
2. Issuance of licenses to individuals who meet the Board's educational, testing and experience requirements.
3. Annual renewal of licenses.
4. Resolution of complaints and violations of the Technical Registration Act.

The Board was reviewed previously in Auditor General Report No. 79-9, A Performance Audit of the Arizona State Board of Technical Registration.

In that report, we noted that the Board had been remiss in its duty to protect the safety, health and welfare of the public. In addition, the absence of written policies and adequate records precluded a determination that the Board had exercised its discretionary authority in the public interest. Further, changes were needed to improve the efficiency and effectiveness of the Board. Finally, the Board had been substandard in its encouragement and use of public input in its operations.

Our review of the Board's performance since Auditor General Report No. 79-9 was issued has revealed that of the 22 recommendations in Auditor General Report No. 79-9, the Board of Technical Registration and the Legislature have implemented 15 recommendations, proposed rules and regulations which would implement four recommendations and not implemented three recommendations as of September 30, 1981. (page 5)

## INTRODUCTION AND BACKGROUND

The Office of the Auditor General has evaluated the Board of Technical Registration in response to a June 10, 1980, resolution of the Joint Legislative Budget Committee. This evaluation was conducted as a part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Board of Technical Registration was established in 1921 to regulate the practice of architecture, assaying, engineering and land surveying. Geology was added in 1956 and landscape architecture was added in 1968. The nine-member Board is comprised of <sup>2</sup> two architects, <sup>4</sup> three professional engineers, ~~one landscape architect~~, one land surveyor, ~~one assayer or geologist~~ and <sup>2</sup> ~~one~~ lay member. Each member is appointed by the Governor to a three-year term.

The Board is responsible for the administration and enforcement of Arizona laws concerning the practice of the aforementioned professions. Board duties include:

1. Administration of initial licensure examinations.
2. Issuance of licenses to individuals who meet the Board's educational, testing and experience requirements.
3. Annual renewal of licenses.
4. Resolution of complaints and violations of the Technical Registration Act.

The Board and its operations are funded through fees charged for application, examination and license renewal. Ten percent of the fees received are deposited in the State General Fund while the remaining 90 percent are used for Board operations within the limits of an annual budget approved by the Legislature.

The Board was reviewed previously in Auditor General Report No. 79-9, A Performance Audit of the Arizona State Board of Technical Registration. That report noted that the Board had been remiss in its duty to protect the safety, health and welfare of the public. In addition, the absence of written policies and adequate records precluded a determination that the Board had exercised its discretionary authority in the public interest. Further, changes were needed to improve the efficiency and effectiveness of the Board. Finally, the Board had been substandard in its encouragement and use of public input in its operations. Information regarding meeting notices, proposed rules and regulations, and Board action had not been provided adequately to licensees or consumers of licensees' services.

The objective of the reevaluation was to determine:

1. If the recommendations in Report No. 79-9 have been implemented.
2. If the Board has implemented procedures to enable it to protect the safety, health and welfare of the public in addition to those procedures recommended in Report No. 79-9.
3. What changes, if any, are necessary for the Board to improve its performance.

The Auditor General expresses gratitude to the members of the Board of Technical Registration and its administrative staff for their cooperation, assistance and consideration during the course of the evaluation.

## SUNSET FACTORS

Auditor General Report No. 79-9 stated that the Board of Technical Registration had been remiss in its duty to protect the safety, health and welfare of the public. In that report, a number of recommendations were presented which, if implemented, could increase Board efficiency and effectiveness. The Legislature directed the Auditor General to review the Board's performance again. This review has been restricted to the Board's efforts to comply with the recommendations made in Report No. 79-9.

Inasmuch as the Sunset Factors were addressed in Report No. 79-9, these factors are not readdressed in this report. For further information on the Board of Technical Registration's Sunset Factors, the reader is referred to Report No. 79-9, pages 10-13.

FINDING

OF THE 22 RECOMMENDATIONS IN AUDITOR GENERAL REPORT NO. 79-9, THE BOARD OF TECHNICAL REGISTRATION AND THE LEGISLATURE HAVE IMPLEMENTED 15 RECOMMENDATIONS, PROPOSED RULES AND REGULATIONS WHICH WOULD IMPLEMENT FOUR RECOMMENDATIONS, AND NOT IMPLEMENTED THREE RECOMMENDATIONS AS OF SEPTEMBER 30, 1981.

The Board of Technical Registration has stated its goals as follows:

"Provide for the safety, health and welfare of the public by licensing only those applicants who meet the standards of qualification and by enforcing the regulations by investigating and resolving complaints against those registered by the Board and against non-registrants."

Auditor General Report No. 79-9 stated that the Board had been remiss in its duty to protect the safety, health and welfare of the public. Of the 22 recommendations in Auditor General Report No. 79-9, the Board of Technical Registration and the Legislature have implemented 15 recommendations, proposed rules and regulations which would implement four recommendations, and not implemented three recommendations as of September 30, 1981.

Auditor General Report No. 79-9

Auditor General Report No. 79-9 found not only that the Board had been remiss in its duty to protect the safety, health and welfare of the public, but that the absence of written policies and adequate records precluded a determination that the Board had exercised its discretionary authority in the public interest. Further, changes were needed to improve the efficiency and effectiveness of the Board. Finally, the Board had been substandard in its encouragement and use of public input in its operations. Information regarding meeting notices, proposed rules and regulations, and Board actions had not been adequately provided to licensees or consumers of licensees' services.

These deficiencies were presented in four findings and were accompanied by 22 recommendations to improve the Board's performance. Table 1 summarizes the recommendations and the results of our review as to their status as of September 30, 1981.

TABLE 1  
SUMMARY OF THE STATUS OF THE RECOMMENDATIONS IN  
AUDITOR GENERAL REPORT NO. 79-9 AS OF SEPTEMBER 30, 1981

Recommendation	STATUS				
	Implemented		Addressed in Proposed Rules	Not Implemented	
	Statutorily	Administratively		Statutorily	Administratively
<b>FINDING I</b>					
1. The Board should establish an aggressive peer review program similar to the one currently used by the Board of Accountancy.			X		
2. Make a special effort to work with various building safety departments throughout the State.		X			
3. Maintain better records of its disciplinary process.					X
4. Inform licensees and the public of the Board's oversight responsibility and the results of its disciplinary actions.		X			
5. Increase license renewal fees to allow for the investigation of allegations of illegal or incompetent work performed by its licensees.		X			
6. Discontinue policy which requires a verified formal complaint before Board action.		X			
7. Include the Office of the Attorney General more completely in deliberations.		X			
8. The Legislature should amend A.R.S. §32-101 et. seq. to include the following provisions:					
a. Include censure and probation as disciplinary alternatives to the Board.	X				
b. Require professional liability insurance carriers to report insurance claims to the Board.					X
c. Provide personal immunity for those acting in good faith with regard to the enforcement of the Technical Registration Act.	X				
<b>FINDING II</b>					
1. The Board should make a concerted effort to continue to develop a formal evaluative criteria regarding: a) the determination of the adequacy of an applicant's experience, and b) the requirement for examination. Once developed, these criteria should be incorporated into the rules and regulations of the Board.			X		
2. Improve documentation of its decision-making process to allow for a thorough, independent, qualitative evaluation of the process.					X
3. Comply with A.R.S. §32-106 (A) which requires the Board to keep a register of applicants showing the date of each application, name, qualifications and place of business of the applicant and the disposition of the application.				X	

Table 1 (Cont'd)

Recommendation	STATUS				
	Implemented		Addressed in Proposed Rules	Not Implemented	
	Statutorily	Administratively		Statutorily	Administratively
<b>FINDING III</b>					
1. The Legislature or the Board should amend A.R.S. §32-127 and Rule R4-30-29 to allow for the implementation of a triennial renewal system.	X				
2. Amend Rule R4-30-17 to delete the mandatory requirement for personal audiences.  Further, implement an application review process similar to the one used by the Kansas board.		X		X	
3. Adopt a policy requiring nongovernmental recipients of the annual roster to pay a nominal fee to cover publication and distribution costs.		X			
4. Delete Rule R4-30-01 (G) to remove the possibility of unnecessary delays for applicants.				X	
5. Amend A.R.S. §32-124 to allow the Board to establish applicant fees commensurate with Board costs.	X				
<b>FINDING IV</b>					
1. The Legislature or the Board should adopt methods to encourage public input and participation in promulgation of rules and regulations, development of legislative proposals and other Board decision-making processes.		X			
2. File a statement with the Secretary of State indicating where public notices of meetings will be posted.				X	
3. Amend A.R.S. §§32-102 and 32-103 to provide for public membership on the Board.	X				

The earlier report's recommendations and their status as of September 30, 1981, are detailed below.

FINDING I: THE STATE BOARD OF TECHNICAL REGISTRATION HAS BEEN REMISS IN ITS DUTY TO PROTECT THE SAFETY, HEALTH AND WELFARE OF THE PUBLIC.

Auditor General Report No. 79-9 found that the Board had failed to investigate numerous allegations of illegal or incompetent work by persons licensed by the Board. As a result of the Board's nonfeasance, some public agencies and a number of licensees had ceased filing complaints with the Board, and the Board was not fulfilling its responsibility to protect the public against incompetent or unscrupulous licensees.

The finding listed eight specific recommendations which, if implemented, would improve the Board's performance of its statutory responsibility. Each recommendation is listed below, followed by the results of our review.

Recommendation 1: The Board should establish an aggressive peer review program similar to the one currently used by the Board of Accountancy.

Review Results: The peer review program that was recommended is one in which an investigator compares public filings by registrants to a preliminary review checklist containing the basic elements of "generally accepted auditing standards" and "generally accepted accounting principles." The investigator reports exceptions from these standards to the board for its consideration and action.

The Board of Technical Registration has taken some preliminary steps to comply with the recommendation regarding a peer review program. The current executive director of the Board has proposed a two-part peer review program. The first phase involves the establishment of an informational program to provide specific performance guidelines to building inspectors, licensees and the general public. Once these guidelines have been established, consumers of licensee services and the licensees will have a basic understanding of adequate performance. Instances of substandard performance may be reported to the Board for investigation and possible disciplinary action. The second phase consists of a peer review program wherein the professional work of a registrant would be reviewed by another registrant appointed by the Board randomly. The review would encompass the efficiency, effectiveness and adequacy of the registrant reviewed. Instances of substandard work would be reported to the Board for investigation and possible disciplinary action.

Board members have expressed concern regarding the usefulness of a peer review program. At the July 31, 1981, Board meeting, several members stated that peer review programs could degenerate quickly into witch hunts. The discussion at that meeting came to no substantive conclusions.

The Board has employed a law clerk to draft new Board rules and regulations. The draft includes general rules of professional conduct for all registrants and specific standards of professional conduct for each of the six professions licensed by the Board. Hearings are scheduled for the fall of 1981. The current Board chairman feels that the process of formal adoption will not be completed until February 1982.

Recommendation 2: The Board should make a special effort to work with building safety departments throughout the State.

Review Results: The new executive director has instituted a program to inform building safety departments of the Board's statutory responsibility and of the Board's willingness to work with the agencies for the protection of the public. The program was instituted in August 1981; its impact cannot be evaluated at this time.

The executive director hopes to expand the Board's work with the building safety departments by providing them with published performance standards for each of the regulated professions. However, this cannot be accomplished until the Board formally adopts the standards as part of its administrative rules and regulations. Such Board adoption is scheduled for February 1982.

Recommendation 3: The Board should maintain better records of its disciplinary process, including:

- More complete records in the complaint files (this may include a transcript of formal hearings), and
- A clear indication in each file of how the complaint was resolved and a record of formal Board actions relating to its resolution.

Review Results: The maintenance of records of the disciplinary process remains inadequate. The current reporting system does not provide sufficient documentation to provide a clear indication of investigative results or the ultimate disposition of a complaint. However, the Board staff has taken steps to improve the system.

We examined the disciplinary files awaiting final Board action, as well as cases which had already been closed. We were unable to determine quickly what action, if any, had been taken in a particular case or where the case was in the review process. Closed files contained no statement of resolution, and it was not possible to determine accurately which files were closed and which were still awaiting Board action. It was necessary to review Board minutes to determine which cases were closed. We were informed by the Board staff that one complaint had been "lost" for two years because they thought that the complaint had been closed when, in fact, it had never gone before the Board.

Board staff has made a concerted effort to create a more efficient system of case review. From June 1 to August 30, 1981, the staff has presented 85 cases to the Board for review and disposition; as of September 30, 1981, 20 of the cases had been closed.\* The Board's executive director said that the reduction in the backlog of disciplinary files was essential to the disciplinary process. The Board staff has new procedures for handling complaints which should improve the documentation of the disciplinary process. (See Appendix I for the complaint handling procedures.)

Recommendation 4: The Board should inform licensees and the public of its oversight responsibility and the results of its disciplinary actions.

Review Results: On July 1, 1981, the Board entered into a contract for consultant services in the areas of research and technical writing. These services include:

- Identifying the Board's goals, objectives and responsibilities,
- Describing the functions of the agency,
- Preparing a synopsis of meeting agendas and actions taken by the Board, and
- Preparing reports of Board activities for internal analysis and external information.

The contract runs through March 1982 at a cost not to exceed \$4,500.

The contractor has prepared a mailing list of governmental agencies, professional associations and the Arizona media. These groups receive copies of Board agendas as well as news releases prepared by the contractor.

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\* Three additional cases were sent back to the complaint committees for further review.

There is, however, a potential problem with this contractual arrangement in that it may countermand legislative intent. The Board requested a budget appropriation to fund a public information position for fiscal year 1981-82. The request was denied by the Legislature. According to the past executive director of the Board, the members of the Board directed him to hire the consultant, knowing full well that this was against legislative intent. He believes that his refusal to enter into the contractual arrangement contributed to his dismissal.

According to the former Board chairman, it was his understanding that there was no specific legislative rejection of the public information function, but only of the request for a full-time position; further, he felt there was a direct mandate to perform such function expressed in the Auditor General's Report No. 79-9, and that the contract in question did not contravene legislative intent and was indeed necessary if the mandate to inform the public of the Board's actions was to be met.

Recommendation 5: The Board should increase the license renewal fees to allow for the investigation of allegations of illegal or incompetent work performed by its licensees.

Review Results: The Board has raised its license renewal fees twice since 1979. On July 20, 1979, the Board increased its renewal fee from \$10 to \$15 a year. The fee was increased again to \$21 a year on May 1, 1981. The higher fees have increased the Board's revenues and its fund balance significantly. On June 30, 1979, the Technical Registration Fund had a balance of \$78,924. On June 30, 1981, the balance of the Fund had increased \$90,045 to \$168,969. According to the former Board chairman, the \$21 annual fee will provide sufficient funds for investigations, provided that the Legislature appropriates monies for this purpose.

Recommendation 6: The Board should discontinue the policy which requires a verified formal complaint before Board action.

Review Results: The Board has placed greater emphasis on complaint investigation and does not require verified formal complaints before investigation and/or Board action. The current policy of the Board is to investigate all verbal and/or written complaints, even if a complaint is anonymous.

Recommendation 7: The Board should include the Office of the Attorney General more completely in deliberations.

Review Results: The Board has begun to include actively an assistant Attorney General in every deliberation. Additionally, the Board has used the services of a law clerk from the Office of the Attorney General to assist Board staff in drafting new administrative rules and regulations.

Further Recommendations in Finding I: A.R.S. §32-101 et. seq., should be amended to include the following provisions:

1. Include censure and probation as disciplinary alternatives available to the Board.
2. Require professional liability insurance carriers to report insurance claims to the Board.
3. Provide personal immunity for those acting in good faith with regard to the enforcement of the Technical Registration Act.

Review Results:

1. A.R.S. §32-128.D was amended effective April 26, 1980, and now states:

"If seven or more members of the board find the accused guilty, he may be censured, or placed on probation, and fined an amount not to exceed two thousand dollars or his certificate may be suspended or revoked but may be reissued upon the affirmative vote of seven or more members of the board....." (Emphasis added)

2. The statutes have not been amended to include a requirement that professional liability insurance carriers report claims to the Board.

3. A.R.S. §32-110, effective April 26, 1980, states:

"Members and employees of the board are immune from personal liability with respect to acts done and actions taken in good faith within the scope of their authority."

FINDING II: THE ABSENCE OF WRITTEN POLICIES AND WRITTEN RECORDS OF PROCEEDINGS PRECLUDES A DETERMINATION THAT THE BOARD OF TECHNICAL REGISTRATION HAS EXERCISED ITS DISCRETIONARY AUTHORITY IN THE PUBLIC INTEREST.

Auditor General Report No. 79-9 found that, despite warnings from the Office of the Attorney General, the Board had not: 1) established sufficient standards to ensure that applicants for licensure were evaluated equitably, and 2) sufficiently documented its proceedings and decision-making process. The absence of standards and documentation precluded a thorough, independent, qualitative evaluation of the manner in which the Board had exercised its discretionary authority. However, our review of the limited records that were available indicated that the Board may have exercised its discretionary authority in an arbitrary and capricious manner in evaluating applicants.

Also, the absence of formal policies caused confusion for applicants, causing unnecessary expenditures of time and money.

The report listed three specific recommendations which, if implemented, would improve the Board's fulfillment of its statutory responsibility.

Recommendation 1: The Board should make a concerted effort to continue to develop a formal evaluative criteria regarding: 1) determination of the adequacy of an applicant's experience, and 2) the requirement for examination. Once developed, these criteria should be incorporated into the rules and regulations of the Board.

Review Results: The Board has not yet implemented this recommendation. The development of professional standards was one of the main projects of a law clerk employed by the Board from June to August 1981. The law clerk completed a draft copy of professional standards regarding applicant's educational and experience requirements before examination and licensure. The draft currently is being reviewed for comment by Board members, professional societies and registrants. The former Board chairman has stated that he hopes that the standards will be formally adopted as administrative rules and regulations, but conceded that this action probably cannot be completed before February 1982.

Recommendation 2: The Board should improve documentation of its decision-making process to allow for thorough, independent, qualitative evaluation of the process.

Review Results: We found that the extent of documentation of the decision-making process remains inadequate. Recommendation 2 also is explained in Recommendation 3, Finding I. (See page 11 for further review results.)

Recommendation 3: The Board should comply with A.R.S. §32-106.A which requires it to keep a register of applicants, showing the date of each application, name, qualifications and place of business of the applicant and the disposition of the application.

Review Results: At the time Auditor General Report No. 79-9 was issued, A.R.S. §32-106.A stated, in part:

"The Board shall:

. . . . .

"7. Keep a register which shall show the date of each application for registration, the name, age, qualifications and place of business of the applicant, and the disposition of the application."

The section was amended by Laws 1980, Chapter 250, effective April 26, 1980. A.R.S. §32-106.A now states, in part:

"The Board shall:

. . . . .

"7. Keep a register which shall show the date of each application for registration, the name of the applicant, the practice or branch of practice in which the applicant has applied for registration and the disposition of the application."

Our review of the register revealed that the Board has complied with the requirements of A.R.S. §32-106.A.7.

FINDING III: CHANGES NEEDED TO IMPROVE THE EFFICIENCY AND EFFECTIVENESS OF THE STATE BOARD OF TECHNICAL REGISTRATION.

Auditor General Report No. 79-9 found that there were several changes needed to improve the efficiency and effectiveness of the Board. The report listed five specific recommendations which, if implemented, would improve the Board's performance of its statutory responsibility:

Recommendation 1: A.R.S. §32-127 and Rule R4-30-29 should be amended to allow for the implementation of a triennial renewal system.

Review Results: A.R.S. §32-127 was amended effective April 26, 1980, and the Board has implemented a triennial renewal system.

Recommendation 2: Rule R4-30-17 should be amended to delete the mandatory requirement for personal audiences. Further, the Board should implement an application review process similar to the one used by the Kansas technical registration board.

Review Results: The Board discontinued the requirement for personal audiences in March 1981. It currently is in the process of drafting new administrative rules and regulations. According to the former Board chairman, personal audiences will be optional and conducted only at the request of the applicant. This will allow an applicant an opportunity to appear before the Board or its designated representative to clarify or present information which the applicant deems appropriate for Board consideration.

The Board has made no significant changes in its application process since Auditor General Report No. 79-9 was issued. The former Board chairman has informed our staff that major changes which will reduce significantly the application processing delays have been discussed and that such changes will be implemented if the draft rules and regulations become effective.

Recommendation 3: The Board should adopt a policy requiring nongovernmental recipients of the annual roster to pay a nominal fee to cover publication and distribution costs.

Review Results: The Board adopted Rule R4-30-30 which lists fees for its services. Copies of the annual report may be purchased for one dollar. An alphabetical roster of active registrants may be purchased for \$4.50 and a numerical roster of registrants is \$2. It appears that the purchase prices cover publication and distribution costs of the roster.

Recommendation 4: Rule R4-30-01 (G) should be deleted to remove the possibility of unnecessary delays for applicants.

Review Results:

Rule R4-30-01 (G) required:

"When an application for registration is denied or withdrawn, the applicant will be so notified of the Board's action. No reapplication will be accepted until one year has elapsed from the formal Board action denying the original action." (Emphasis added)

Our previous review of the Board revealed that R4-30-01 (G) had caused substantial and unnecessary delays in the licensure process and that the Board was inconsistent in imposing Rule R4-30-01 (G) in that some applicants were made to wait one year before reapplying while others were not. According to a past executive director of the Board, Rule R4-30-01 (G) had often been imposed as a "penalty" for those applicants that the Board judged had been uncooperative during the application process.

Since Auditor General Report No. 79-9 was issued, the Board has made little effort to address this deficiency. The Board did attempt to amend the rule to eliminate the one year delay for individuals who withdrew their applications. The rule was not certified by the Attorney General and was never implemented. However, the Board's proposed rules do not include a provision for a one year waiting period for applicants denied licensure.

Recommendation 5: A.R.S. §32-124 should be amended to allow the Board to establish fees charged to applicants commensurate with costs to the Board.

Review Results: A.R.S. §32-124 has been amended to allow the Board to charge fees for services up to \$200. Previously, the maximum charge was \$100.

FINDING IV: THE STATE BOARD OF TECHNICAL REGISTRATION HAS BEEN SUBSTANDARD IN ITS ENCOURAGEMENT AND USE OF PUBLIC INPUT IN ITS OPERATIONS. INFORMATION REGARDING MEETING NOTICES, PROPOSED RULES AND REGULATIONS, AND BOARD ACTION HAS NOT BEEN ADEQUATELY PROVIDED TO LICENSEES OF THE BOARD OR THE CONSUMERS OF THE LICENSEES' SERVICES.

Auditor General Report No. 79-9 found that the Board had been substandard in its encouragement of public input from consumers of licensees' services and in notifying license holders of Board meetings, proposed rules and regulations and Board actions. The Board needed to expand its efforts to encourage participation by potential and actual consumers and to notify licensees of Board meetings, activities and actions.

The report listed three specific recommendations which, if implemented, would improve the Board's performance of its statutory responsibility.

Recommendation 1: The Board should adopt methods to encourage public input and participation in the promulgation of rules and regulations, development of legislative proposals and other decision-making processes. Consideration should be given to the methods used by other Arizona regulatory bodies and other methods of increasing public input and participation, including:

- Press releases,
- Special notices,
- Public service announcements, and
- Direct mail.

Review Results: On March 3, 1981, the Board adopted a policy which allows for a public-comment period at each Board meeting. The first such period occurred at the July 31, 1981, Board meeting. Representatives from several professional associations appeared and provided input to the Board regarding its policies. The Board has circulated a copy of proposed rules and regulations to these associations and has solicited written comments from them for Board consideration.

The Board has contracted with a technical writer to assist it in increasing public awareness of the Board. (see page 12) The technical writer has prepared, and the Board has issued, a number of press releases detailing Board actions and decisions. The first such release was issued on June 15, 1981.

Recommendation 2: The Board should file a statement with the Secretary of State indicating where public notices of their meetings will be posted.

Review Results: On March 3, 1981, the Board filed the statement with the Secretary of State, advising that notices of meetings will be posted in the occupational licensing building at 1645 West Jefferson in Phoenix.

Recommendation 3: A.R.S. §§32-102 and 32-103 should be amended to provide for public membership on the Board.

Review Results: The statutes have been amended to provide for public membership on the Board. At the present time, the Board is comprised of the following:

Two architects,  
Three engineers,  
One land surveyor,  
One landscape architect,  
One geologist or assayer, and  
One lay member.

The lay member was appointed by the Governor on October 16, 1980. It is not yet possible to evaluate adequately the impact of a lay member on Board actions. However, Benjamin Shimberg, a recognized authority on occupational regulation, questions whether one member representing the public is sufficient on a Board this size. In a 1978 Council of State Governments publication,\* Shimberg commented:

"How many public members should be on a board? There is no simple answer, but if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to 10 members. In California, the Legislature has decreed that for certain boards\*\* a majority shall be public members."

\* Shimberg, Benjamin, and Roederer, Doug. Occupational Licensing: Questions a Legislator Should Ask. Lexington, Kentucky: Council of State Governments, 1978.

\*\* In California, the boards that regulate architects, engineers, geologists, landscape architects and land surveyors have public representation which constitute a majority of the boards' membership.

The Board has provided for public membership on its six Enforcement Advisory Committees, one for each of the disciplines regulated by the Board, which are comprised of four professional members and one lay member. In addition, the Board has provided for lay membership on the six Registration Advisory Committees proposed in new Board rules and regulations.

Board Draft of New  
Rules and Regulations

The Board presently is in the process of promulgating and adopting new rules and regulations which address some of the recommendations in Auditor General Report No. 79-9.

These recommendations are:

- Finding I Recommendation 1 (page 9)
- Finding II Recommendation 1 (page 15)
- Finding III Recommendation 2 (page 17)
- Finding III Recommendation 4 (page 18)

It should be noted that the proposed rules may not be formally adopted as currently drafted, pending the results of the public hearings on the rules proposal.

The former Board chairman has stated that formal Board adoption of currently proposed rules and regulations may not occur until February 1982, because of the Board's desire to encourage and consider public input and participation in the promulgation of the rules and the time requirement dictated by statute for adoption of rules.\*

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\* Appendix 2 outlines the various steps in the rule making process.

CONCLUSION

Of the 22 recommendations in Auditor General Report No. 79-9, the Board of Technical Registration and the Legislature have implemented 15 recommendations, proposed rules and regulations which would implement four recommendations, and not implemented three recommendations as of September 30, 1981.

RECOMMENDATION

Consideration should be given to the following:

The Board of Technical Registration file a written report to the Legislature when its proposed rules and regulations are certified by the Attorney General and filed with the Secretary of State. The report should cite specifically those rules that address the recommendations made in Auditor General Report No. 79-9.



# State of Arizona BOARD OF TECHNICAL REGISTRATION

FOR ARCHITECTS, ASSAYERS, ENGINEERS, GEOLOGISTS, LANDSCAPE ARCHITECTS AND LAND SURVEYORS  
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October 20, 1981

Mr. Douglas R. Norton  
Auditor General  
State of Arizona  
State Capitol, Suite 200  
Legislative Services Wing  
Phoenix, Arizona 85007

Dear Mr. Norton:

First, on behalf of the Board of Technical Registration and its staff, I would like to express our appreciation for the cooperation and assistance provided by you and your staff, specifically Mr. Gerald Silva, Mr. Robert Back and Mr. William Thomson, during the course of the performance audit. Having just assumed the position of Executive Director when the audit was conducted, I was particularly grateful for the opportunity to review the content of the previous audit and to discuss various items of concern with the audit team.

The results of the 1981 audit reflect, I believe, the substantial progress the Board has made toward compliance with the recommendations of the previous audit, #79-9. The members of the Board are determined to ensure that the Board meets fully its statutory responsibility to protect the public safety, health and welfare and that it does so in an effective, efficient and equitable manner.

As noted in the audit report, the Board is in the process of developing new rules to govern its operations, and the adoption of these rules will satisfy several of the remaining compliance items. The promulgation of rules is a difficult and time-consuming but necessary undertaking, and it ranks among the highest priorities of the Board. An earlier effort to put into effect new rules was unsuccessful (only the portion addressing the fee schedule was approved), apparently due principally to statutory conflicts; however, a law clerk, working under the supervision of the Assistant Attorney General assigned the Board, has been employed to draft the currently proposed rules. His expertise, coupled with the close cooperation and assistance of the Assistant Attorney General and the Board's awareness of the problems encountered in the previous attempt to adopt rules, should permit the Board to avoid such difficulties and facilitate approval. While the Board recognizes the urgent need to implement these rules, it nevertheless wishes to assure that the public and the professions have adequate opportunity to participate in the rule-making process and has encouraged comment on the preliminary drafts. The response has been positive, and a draft incorporating those comments will be completed in the near future. The Board is more than willing to comply with the recommendation that it submit a written report to the Legislature when the proposed rules are certified by the Attorney General and filed with the Secretary of State.

Of the three recommendations not yet implemented, one requires statutory change, and efforts are underway to address the remaining two. Finding I, Recommendation 3

stipulates that the Board should maintain better records of its disciplinary process. As mentioned in the most recent report, the Board staff has taken steps to improve the system. Working with the Attorney General's Office, the staff has designed standardized forms which will allow accurate tracking of a complaint from initiation to closure. Formats for required documents - letters of notification, notices of violation, consent orders, etc. - have been developed. The Board has adopted Enforcement Advisory Committee procedures and is planning a workshop to familiarize members and alternates with these procedures and with their responsibilities. The intention is to ensure that the Board has in place a thorough and smoothly-functioning process which will permit an equitable and expeditious treatment of each complaint and will guarantee that all parties are accorded due process. The greatest obstacle to full implementation of this process is lack of staff and money. Currently, the Board has no enforcement position. The Administrative Assistant, to the detriment of other Board operations, has been assigned this function. He must perform and coordinate the numerous actions necessary to bring a case to closure: from conducting, where possible, the preliminary investigation; to preparing information and documentation for the Advisory Committees; to scheduling committee meetings and serving as staff to the committees; to acting as liaison with all parties involved; to negotiating consent agreements and reporting to the Board. Throughout the process, he must initiate and maintain all paperwork requisite for complete records. Given the severe staffing limitations, the up-dating of existing files will, unavoidably, require time, although with the new procedures, records of recent complaints should be complete and disposition of cases more readily discernible. The absence of adequate staff has compelled the Board to contract with private investigators to conduct the preliminary investigations on the more complex and difficult cases, but this is an expensive alternative, and does not always provide the internal control and direction desirable and contributes nothing to the building of in-house expertise. The necessity of employing outside investigators also detracts from the Board's financial ability to hire "expert witnesses" - professionals in given disciplines - to conduct in-depth professional reviews of cases where such are demanded. However, even with these personnel and budgetary restrictions, the Board has made marked progress in closing out older complaints and in acting on in-coming cases.

Finding II Recommendation 2, which directs the Board to improve documentation of its decision-making process, is the second non-statutory item which the conclusions of the audit indicate the Board has yet to implement. Again, steps are being taken to accomplish this. The proposed rules will establish, in writing, a framework for decision-making by setting forth both registration and regulatory provisions. Examination and registration procedures and requirements are therein defined, as well as standards of professional conduct. Additionally, in the enforcement area, as noted above, Advisory Committee procedures have been adopted and methods of providing complete and accurate records developed. With regard to documenting registration functions, a contract has been signed for the production of a procedures manual for licensing and for staff training.

In addition to the above, it should be noted that the Board staff is attempting to refine internal office procedures in order to allow for greater internal control and to increase efficiency and effectiveness. The Joint Legislative Budget Committee management staff has recently conducted a management audit which makes a number of recommendations in the areas of staffing and office management - several of which have already been effected. Board staff has been in contact with the State Records Management and Microfilming Center to secure assistance in devising a more appropriate records retention schedule and advice in developing a more

effective records management system. Work has begun with the Arizona Financial Information System (AFIS) staff to allow the early implementation of the new accounting system, with manual reconciliation to the existing AFA system until July 1, to assure better accounting controls. These activities, coupled with the improvements both already made and in process to comply with the recommendations of the Auditor General's Report #79-9, substantiate both the Board's determination to fulfill and its progress toward fulfilling its obligation to protect the public safety, health and welfare and to do so in an efficient and responsive fashion.

One final comment should be made to clarify the status of the contract for consultant services noted in the discussion of the Finding I, Recommendation 4 and of Finding IV, Recommendation 1. As mentioned in the report, the former Board chairman has stated that it was his understanding that there was no specific legislative rejection of the public information function and, indeed, that there was a direct mandate to perform such a function expressed in the Auditor General's Report #79-9. Certainly, the services provided by the consultant have proved valuable in assisting the Board's in its attempts to inform the public and the registrants of its activities. However, while the Board will continue to strive to increase public awareness, staff feels that with the development of the mailing list, public notices, press releases and other announcements can be handled largely in-house, with the remainder of the contract devoted primarily to the research and writing of requisite technical and other reports.

In conclusion, I would like to say that I believe the audit was conducted in a thorough and professional manner and, once again, to express my appreciation for the assistance offered me by the audit team.

Sincerely,



Judi E. Ross  
Executive Director

cc: Board members

## Procedure For Handling Complaints

1. Complaint is received by sworn complaint and affidavit, letter or telephone call with written followup, anonymous or identified communications. All complaints are confidential in nature.
2. Preinvestigation:
  - A. Advise party of complaint and request their response.
  - B. Other necessary field investigation to fill in gaps. Staff makes administrative decision to proceed to next step, refer to other agency for lack of jurisdiction, or terminate where no basis is apparent.
3.
  - A. On nontechnical matters - staff verify evidence by field investigation, where appropriate and prepare investigative reports with evidence attached.
  - B. On nonregistrant matters referred to Board for authorization for Cease and Desist Letters.
  - C. Prepares agenda for next Advisory Committee meeting.
  - D. Informs parties of progress.
4. Complaint referred to Advisory Committee
  - A. Technical matter - refer to Technical Investigator, for investigation and report.
  - B. Committee reviews the file and:
    1. Close due to lack of adequate complaint; or
    2. Hears parties in informal hearing; or
    3. Refers matter of informal hearing to future meeting; or
    4. Refers matter for further investigation by staff; or
    5. Delineates findings and makes recommendations to the Board.
  - C. Staff informs parties of progress. Respondent: Consent Order or Decision By Consent, etc.
5. Board receives Advisory Committee Recommendation
  - A. The Board acts on Committee recommendations:
    1. Close the file; or
    2. Initiate Certificate of Compliance or Decision by Consent Agreement; or
    3. Initiate injunctive and/or misdemeanor action; or
    4. Refer back to Committee.
  - B. Staff informs parties of progress, initiates Board action and resolves problems through Compliance Conferences with Respondents.
6. Board received Consent Agreement for approval and signature, Certificate of Compliance or Cease and Desist letters for closing action.
  - A. Lacking acceptance of above document by Respondent, the Board initiates further proceedings:
    1. For Hearing; or
    2. Injunctive and/or misdemeanor actions.
  - B. Formal hearing - Set dates, provides parties with 30-day notice of hearing, hear testimony and act.
  - C. Followup letter monthly to Attorney General regarding pending actions of other agencies, i.e., Attorney General, Superior Court, County or City Attorneys, etc., copy to parties.

7. Staff closes file after Board Action.
  - A. Send letter to complaining party (if applicable) and Respondent.
    1. Both letters should advise parties of the disposition of the matter and what Board action was taken.
  - B. Report to the Board to show action was carried out and the matter was closed.
  - C. Mark all logs.
  - D. Notify all parties.
  - E. Take the Report Sheet from the case file and put it in the Registrant's file (where applicable).
  - F. File nonregistrant reports in alpha history file.
  - G. Maintain computer file (disciplinary code).

APPENDIX II

ATTORNEY GENERAL MEMORANDUM  
PROMULGATIONS OF RULES AND REGULATIONS  
APRIL 15, 1981



Robert R. Corbin

M E M O R A N D U M

RECEIVED

APR 22 1981

STATE BOARD TECHNICAL

TO: All State Agencies  
FROM: Bob Corbin, Attorney General *BC*  
DATE: April 15, 1981  
RE: Promulgation of Rules and Regulations

Attached is a copy of Senate Bill 1046 which has recently been passed by the Arizona Legislature and signed into law effective immediately by the Governor. This bill significantly alters the procedures by which rules and regulations are promulgated by state agencies. The principal changes which you should immediately be aware of are as follows:

1) The notice period has been changed to require that the Notice of Adoption appear in the Secretary of State's Digest at least 20 days prior to the hearing. Previously the statute required that the notice be filed with the Secretary of State 20 days prior to the hearing. This change substantially alters the time periods involved in the promulgation of rules and must be complied with. With respect to rule proceedings that were in process at the time the statute became effective on March 27, 1981, you should consult with your legal counsel regarding whether or not those proceedings need to be renoticed.

2) It is no longer necessary to submit the rule to the Attorney General for certification prior to formal adoption of the rule. Agencies should adopt the rule subject to certification by the Attorney General and then forward it to the Attorney General for certification. The rule, if certified, will be directly forwarded to the Secretary of State by this office and you will be so notified. Accordingly, please send us the original and four copies of the rule. One will be returned to you; one will be kept for our files; the original and two copies will be sent to the Secretary of State.

/ama  
Enc.

ISSUED BY  
**ROSE MOFFORD**  
SECRETARY OF STATE

State of Arizona  
Senate  
Thirty-fifth Legislature  
First Regular Session  
1981

CHAPTER 30

SENATE BILL 1046

AN ACT

RELATING TO STATE GOVERNMENT; PRESCRIBING RULES AND REGULATIONS TO BE PUBLISHED; PROVIDING FOR TWENTY DAY PERIOD AFTER PUBLICATION IN THE ADMINISTRATIVE RULES DIGEST OF NOTICE OF ADOPTION, AMENDMENT OR REPEAL OF AGENCY RULE BEFORE COMMENCING PROCEEDINGS; PRESCRIBING CONTENTS OF NOTICE TO BE FILED WITH THE SECRETARY OF STATE; PROVIDING FOR ADOPTION OF RULES SUBJECT TO REVIEW AND ARTIFICATION BY THE ATTORNEY GENERAL; PRESCRIBING PROCEDURE FOR EMERGENCY ADOPTION, AMENDMENT OR REPEAL OF RULES; PROSCRIBING PROCEDURES FOR FILING RULES WITH SECRETARY OF STATE, AND AMENDING SECTIONS 41-127, 41-1002, 41-1002.01, 41-1003, 41-1004 AND 41-1005, ARIZONA REVISED STATUTES.

1 Be it enacted by the Legislature of the State of Arizona:  
 2 Section 1. Section 41-127, Arizona Revised Statutes, is amended to  
 3 read:  
 4 41-127. Publication of administrative rules and regulations  
 5 A. The secretary of state shall publish at least once each quarter  
 6 or more often if he THE SECRETARY OF STATE deems it advisable all STATE  
 7 AGENCY administrative rules and regulations filed in his THE office OF THE  
 8 SECRETARY OF STATE subsequent to the effective date of this section and  
 9 pursuant to section 41-1004. The rules and regulations shall be published  
 10 in looseleaf volumes and designed to be kept current by the process of  
 11 updating and substitution of pages. They shall be divided into appropriate  
 12 sections for easy reference and shall contain an index and such other  
 13 research aids as the secretary deems necessary.  
 14 B. Publication by the secretary of state pursuant to this section  
 15 shall constitute prima facie evidence of the adoption and filing of such  
 16 rule pursuant to this chapter.  
 17 Sec. 2. Section 41-1002, Arizona Revised Statutes, is amended to  
 18 read:

41-1002. Notice of proposed adoption, amendment or repeal of rule; contents of notice; hearing; time

A. ~~At least twenty days~~ Prior to THE adoption, AMENDMENT OR REPEAL of any rule, notice of the proposed action shall be filed with the secretary of state. The notice shall include:

1. A statement of the time, place and nature of the proceedings for the adoption, AMENDMENT OR REPEAL of the rule.

2. Reference to the authority under which the rule is proposed to be adopted, AMENDED OR REPEALED.

3. ~~Either~~ An informative summary of the proposed rule, ~~or~~ AND the express terms thereof OF THE RULE.

4. Such other matters as are prescribed by statute applicable to the specific state agency or to any specific rule, ~~or~~ class of rules.

B. BEFORE COMMENCING ANY PROCEEDINGS FOR THE ADOPTION, AMENDMENT OR REPEAL OF A RULE, AN AGENCY SHALL ALLOW AT LEAST TWENTY DAYS TO ELAPSE AFTER THE PUBLICATION DATE OF THE ADMINISTRATIVE RULES DIGEST ESTABLISHED BY SECTION 41-129 IN WHICH THE NOTICE OF THE PROPOSED ADOPTION, AMENDMENT OR REPEAL IS CONTAINED.

~~B.~~ C. On the date and at the time designated in the notice, the agency shall afford any interested person, his duly authorized representative, or both, the opportunity to present statements, arguments or contentions in writing relating thereto TO THE RULE, with or without opportunity to present them orally.

Sec. 3. Section 41-1002.01, Arizona Revised Statutes, is amended to read:

41-1002.01. Rule approval and certification by attorney general

A. ~~No rule shall be adopted by~~ A state agency unless ~~it has been reviewed~~ MAY ADOPT A RULE SUBJECT TO REVIEW AND CERTIFICATION by the attorney general. ~~and he has certified~~ THE ATTORNEY GENERAL SHALL REVIEW AND CERTIFY that the proposed rule is:

1. Approved as to form.

2. Within the power of the agency to adopt and within the legislative standards ~~theretofore~~ enacted.

B. The certification of the attorney general shall within ninety days of receipt of the rule be endorsed on ~~each copy~~ THE ORIGINAL AND TWO COPIES of the rule which is filed DIRECTLY with the secretary of state pursuant to section 41-1004.

C. If the attorney general determines that such THE rule does not comply with subsection A of this section he shall endorse his rejection of certification on each copy of such THE rule and return such THE copies to the agency that proposed the rule within ninety days after his receipt of such THE proposed rule.

Sec. 4. Section 41-1003, Arizona Revised Statutes, is amended to read:

41-1003. Emergency adoption, amendment or repeal of rule

A. If in a particular instance the state agency makes a finding that adoption, AMENDMENT OR REPEAL of a rule is necessary for immediate

1 preservation of the public peace, health and safety and that notice and  
 2 public procedure thereon are impracticable, unnecessary or contrary to  
 3 public interest, the rule may be adopted, AMENDED OR REPEALED as an  
 4 emergency rule MEASURE, without the notice provided by section 41-1002 if  
 5 such rule has been first approved and certified by the attorney general  
 6 pursuant to section 41-1002.01 and filed with the secretary of state.

7 B. No rule adopted, AMENDED OR REPEALED pursuant to this section  
 8 shall be valid for more than ninety days after the filing of such rule with  
 9 the secretary of state.

10 Sec. 5. Section 41-1004, Arizona Revised Statutes, is amended to  
 11 read:

12 41-1004. Filing rules with the secretary of state;  
 13 exceptions

14 A. Every rule adopted by each STATE agency shall be certified and  
 15 filed with the office of the secretary of state or shall be of no force or  
 16 effect. The secretary of state shall keep a permanent register of such  
 17 rules. The secretary of state shall not accept for filing a rule of a  
 18 state agency which does not have a certification and approval of the  
 19 attorney general as required by section 41-1002.01 AND IF THE NOTICE OF THE  
 20 PROPOSED ACTION HAS NOT BEEN PUBLISHED IN THE ADMINISTRATIVE RULES DIGEST  
 21 AS REQUIRED BY SECTION 41-1002.

22 B. Nothing in this article shall be construed to require filing  
 23 with the secretary of state any rule which establishes or fixes rates,  
 24 prices or tariffs, or relates to the use of public works, including streets  
 25 and highways under the jurisdiction of any A state agency when the effect  
 26 of the order is indicated to the public by means of signs or signals.

27 Sec. 6. Section 41-1005, Arizona Revised Statutes, is amended to  
 28 read:

29 41-1005. Effective date of rule; exceptions

30 No rule adopted or promulgated by an A STATE agency shall become  
 31 effective until a certified copy ORIGINAL AND TWO COPIES thereof has HAVE  
 32 been filed in the office of the secretary of state, unless:

33 1. Otherwise specifically provided by statute pursuant to which the  
 34 rule was adopted, in which event it becomes effective on the day prescribed  
 35 by the statute.

36 2. A later date is prescribed by the state agency in a written  
 37 instrument filed with or as a part of the rule.

38 Sec. 7. Emergency

39 To preserve the public peace, health and safety it is necessary that  
 40 this act become immediately operative. It is therefore declared to be an  
 41 emergency measure, to take effect as provided by law.

Approved by the Governor - March 27, 1981

Filed in the Office of the Secretary of State - March 27, 1981