#468

Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER)

Report to
the Mississippi Legislature

A Review of the Board of Registration for Professional Engineers and Land Surveyors

The Legislature established the Board of Registration for Professional Engineers and Land Surveyors in 1928. The board's mission is to safeguard life, health, and property and to promote the public welfare by providing a complete and thorough registration process for professional engineers and land surveyors, ensuring that each is properly qualified to practice in the state of Mississippi.

The Board of Registration for Professional Engineers and Land Surveyors provides assurance to the public of applicants' competency to practice their profession by requiring passage of national licensure examinations that are developed and administered in accordance with accepted professional testing guidelines. The board also requires completion of continuing education requirements. However, the state examination for professional land surveyors--which the board developed to measure knowledge of Mississippi's laws, rules, and regulations regarding land surveying--has not been developed or administered in accordance with accepted professional testing guidelines.

The board fairly and consistently enforces professional regulatory requirements through a thorough, comprehensive complaint and disciplinary process. However, in using consent orders to settle disciplinary cases, the board should only use such to implement penalties authorized in state law. Also, the board's current practice of not publicizing information on disciplinary sanctions limits the public's and practitioners' awareness of rules infractions and their consequences.

August 10, 2004

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

PEER Committee
Post Office Box 1204
Jackson, MS 39215-1204

(Tel.) 601-359-1226
(Fax) 601-359-1420
(Website) http://www.peer.state.ms.us

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

SENATORS
LYNN POSEY
Chair
MERLE FLOWERS
ROBERT (BUNKY) HUGGINS
SAMPSON JACKSON
DEAN KIRBY
EZELL LEE
RICHARD WHITE

REPRESENTATIVES
DIRK DEDEAUX
Vice Chair
ALYCE CLARKE
Secretary
WILLIE BAILEY
JOEY HUDSON
HARVEY MOSS
WALTER ROBINSON
RAY ROGERS

Post Office Box 1204
Jackson, Mississippi 39215-1204

TELEPHONE:
(601) 359-1226

FAX:
(601) 359-1457

www.peer.state.ms.us

Max K. Arinder, Ph.D.
Executive Director

OFFICES:
Woolfolk Building
501 North West Street, Suite 301-A
Jackson, Mississippi 39201

August 10, 2004

Honorable Haley Barbour, Governor
Honorable Amy Tuck, Lieutenant Governor
Honorable Billy McCoy, Speaker of the House
Members of the Mississippi State Legislature

On August 10, 2004, the PEER Committee authorized release of the report entitled **A Review of the Board of Registration for Professional Engineers and Land Surveyors.**

Senator Lynn Posey, Chair

This report does not recommend increased funding or additional staff.

Table of Contents

Letter of Transmittal i

List of Exhibits v

Executive Summary vii

Introduction 1

Authority 1
Scope and Purpose 1
Method 2

Background 3

Definitions of Engineering and Land Surveying 3
Jurisdictional Dispute Between Engineers and Geologists 4
Statutory Authority for Licensing and Regulation of Engineering and Land Surveying 5
Board Composition 6
Staff 6
Revenues and Expenditures 7

Conclusions 12

Does Mississippi need a Board of Registration for Professional Engineers and Land Surveyors? 12
What are the board's responsibilities in regulating the practices of engineering and land surveying? 14
Does the board's licensing process provide assurance of competency of professionals? 15
Does the Board of Registration for Professional Engineers and Land Surveyors fairly and consistently enforce professional regulatory requirements? 23

Recommendations 29

Appendix: The Board of Registration for Professional Engineers and Land Surveyors' Code of Ethics; Board Rule 17.07 on Character and Reputation 31

Agency Response 35

List of Exhibits

1. Members of the Board of Registration for Professional Engineers and Land Surveyors, Their Geographic Base of Appointment, and Terms of Office 8

2. Fees Authorized in State Law that May Be Charged by the Board of Registration for Professional Engineers and Land Surveyors 9

3. FY 1999 through FY 2003 Revenues, Expenditures, and Cash Balances of the Board of Registration for Professional Engineers and Land Surveyors 10

4. Board of Registration for Professional Engineers and Land Surveyors Expenditures by Major Object for FY 1999- FY 2003 11

5. Requirements for Licenses Issued by the Board of Registration for Professional Engineers and Land Surveyors 16

6. Disposition of Investigations, 1999-2003 25

A Review of the Board of Registration for Professional Engineers and Land Surveyors

Executive Summary

Introduction

The PEER Committee reviewed the Board of Registration for Professional Engineers and Land Surveyors. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). This review is a "cycle review," which is not driven by specific complaints or allegations of misconduct.

In conducting this review, PEER sought to determine the effectiveness of the Board of Registration for Professional Engineers and Land Surveyors by answering the following questions:

- Does Mississippi need a Board of Registration for Professional Engineers and Land Surveyors?
- What are the board's responsibilities in regulating the practice of engineering and land surveying?
- Does the board's licensing process provide assurance of competency of professionals?
- Does the board fairly and consistently enforce regulatory requirements?

Background

All fifty states regulate the professions of engineering and land surveying. The Legislature established the Mississippi Board of Registration for Professional Engineers and Land Surveyors in 1928. The board's mission is to safeguard life, health, and property and to promote the public welfare by providing a complete and thorough registration process for professional engineers and land surveyors, ensuring that each is properly

qualified to practice in the state of Mississippi (MISS. CODE ANN. Section 73-13-1 et seq. [1972]).

According to the FY 2003 Annual Report of the Board of Registration for Professional Engineers and Land Surveyors, the board has 7,165 professional engineers, 595 professional land surveyors, and 494 dual registrants (engineers who are also land surveyors) on the registry (i.e., licensed in Mississippi). Thus the board licenses and regulates 8,254 professional practitioners.

Conclusions

Does Mississippi need a Board of Registration for Professional Engineers and Land Surveyors?

Risk factors associated with the engineering and land surveying professions create a need for state government to protect the public. Proper regulation by a competent board diminishes the professions' potential risks to the public.

The nature of the practice of engineering and land surveying presents risks to the public if practitioners are not properly trained and regulated. Inadequate or erroneous engineering knowledge as the basis for constructing buildings or systems puts human life and health directly at risk. Widespread land surveying inaccuracies could engage enormous judicial resources and time to remedy. Thus state regulation of the engineering and land surveying professions is necessary to reduce or eliminate risks to the public.

What are the board's responsibilities in regulating the practices of engineering and land surveying?

The board's responsibilities in regulating the practices of engineering and land surveying consist of registering (licensing) professionals and enforcing applicable laws and regulations.

The state's regulation of the engineering and land surveying professions should ensure that practitioners meet and maintain certain qualifications and competency requirements, act in a professional and competent manner, and comply with laws and regulations governing the professions.

Does the board's licensing process provide assurance of competency of professionals?

The Board of Registration for Professional Engineers and Land Surveyors provides assurance to the public of applicants' competency to practice their profession by requiring passage of national licensure examinations that are developed and administered in accordance with accepted professional testing guidelines. The board also requires completion of continuing education requirements. However, the only examination developed by the board, the state examination for professional land surveyors, has not been developed or administered in accordance with accepted professional testing guidelines.

The national examinations that the board requires for licensing have been validated in regard to content, relevancy of problems, and scoring by the National Council of Examiners for Engineers and Land Surveyors. The board accepts passage of these examinations as assurance of knowledge of and competency in practicing their respective professions.

The state examination that the board requires for professional land surveyors has not been developed or administered in accordance with accepted professional testing guidelines. PEER determined that improvement is needed to meet professional testing standards in the elements of test development, test administration, and statistical analysis and research.

Does the Board of Registration for Professional Engineers and Land Surveyors fairly and consistently enforce professional regulatory requirements?

The board fairly and consistently enforces professional regulatory requirements through a thorough, comprehensive complaint and disciplinary process. However, in using consent orders to settle disciplinary cases, the board should only use such to implement penalties authorized in state law. Also, the board's current practice of not publicizing information on disciplinary sanctions limits the public's and practitioners' awareness of rules infractions and their consequences.

State law and the board's rules and regulations have set up a comprehensive complaint and disciplinary process with appropriate penalties. The board deals with an average of twenty-eight investigations per year. Of those cases resulting in discipline, approximately one-third of the cases are settled by a consent order. By using consent orders, the board has used an administrative means to settle cases and avoid lengthy formal hearings or litigation. However, in at least one case in the last two years, the board used a consent order to implement a disciplinary action not given to the board by statute. The board does levy fines in some cases (a total of $4,810 in

the last five years), usually waiving them if respondents agree to further education in the subject of the offense.

Until approximately five years ago, the board routinely included information on sanctions in disciplinary cases in the newsletter to registrants. The board dropped this information in response to concerns about the accuracy of case summaries and the resulting potential for defamation of character charges against the board. Lack of information regarding professional discipline limits the public's and practitioners' awareness of rules infractions and their consequences.

Recommendations

1. The Board of Registration for Professional Engineers and Land Surveyors should ensure that the Mississippi Section examination for land surveyor candidates meets professional testing standards by:

   (a) establishing the equivalency of the three versions of the Mississippi Section examination or using one validated version of this examination;

   (b) periodically reviewing the Mississippi Section examination to determine needed updates;

   (c) posting information (now available in handout) about the content of the Mississippi Section examination to the board website; and,

   (d) analyzing Mississippi Section examination results to achieve full test validation and measure of test effectiveness.

2. In using consent orders for disciplinary cases, the Board of Registration for Professional Engineers and Land Surveyors should use them to implement only those disciplinary remedies given to the board in state law.

3. The Board of Registration for Professional Engineers and Land Surveyors should use its newsletter and website to publicize the results and sanctions invoked in disciplinary cases. The board's staff should work with cooperating attorneys from the state Attorney General's Office to assure accuracy of case summaries transmitted for public information.

For More Information or Clarification, Contact:

PEER Committee
P.O. Box 1204
Jackson, MS 39215-1204
(601) 359-1226
http://www.peer.state.ms.us

Senator Lynn Posey, Chair
Union Church, MS 601-786-6339

Representative Dirk Dedeaux, Vice Chair
Gulfport, MS 228-255-6171

Representative Alyce Clarke, Secretary
Jackson, MS 601-354-5453

A Review of the Board of Registration for Professional Engineers and Land Surveyors

Introduction

Authority

The PEER Committee reviewed the Board of Registration for Professional Engineers and Land Surveyors. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972). This review is a "cycle review," which is not driven by specific complaints or allegations of misconduct.

Scope and Purpose

PEER sought to determine the effectiveness of the Board of Registration for Professional Engineers and Land Surveyors by answering the following questions:

- Does Mississippi need a Board of Registration for Professional Engineers and Land Surveyors?
- What are the board's responsibilities in regulating the practice of engineering and land surveying?
- Does the board's licensing process provide assurance of competency of professionals?
- Does the board fairly and consistently enforce regulatory requirements?

Method

In conducting this review, PEER:

- reviewed relevant sections of federal and state laws, board rules, regulations, policies, and procedures;
- interviewed board staff; and;
- analyzed financial information and board files.

Background

According to the *FY 2003 Annual Report of the Board of Registration for Professional Engineers and Land Surveyors*, the board has 7,165 professional engineers, 595 professional land surveyors, and 494 dual registrants (engineers who are also land surveyors) on the registry (i.e., licensed in Mississippi). Thus the board licenses and regulates 8,254 professional practitioners.

Definitions of Engineering and Land Surveying

PEER's review was conducted prior to the re-enactment of Title 73, Chapter 13, of the MISSISSIPPI CODE, effective July 1, 2004. The following definitions of engineering and land surveying were in effect during the period of review.

MISS. CODE ANN. § 73-13-3 (1972) defines the *"practice of engineering"* as:

> *. . .any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, design, and design coordination of engineering works and systems, planning the use of land and water, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any highways, transportation facilities, utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment, of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services.*

MISS. CODE ANN. § 73-13-71 (d) (1972) defines *"land surveying"* as:

> *. . .surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the platting of lands and subdivisions thereof, and such other duties as traditional or sound surveying practices would direct.*

Jurisdictional Dispute Between Engineers and Geologists

Recently, the Board of Registration for Professional Engineers and Land Surveyors and the Board of Professional Geologists have been involved in a jurisdictional dispute over the question of whether registered professional engineers may engage in practices that are within the statutory definition of geology without being licensed geologists, particularly with respect to underground storage tanks (specifically, in the context of projects of the Department of Environmental Quality and the Department of Transportation).

The Attorney General's Office has issued three recent opinions on this question, one in 1998 and two in 2003. Also, House Bill 792, Regular Session 2004, reenacted provisions of law creating and empowering the Board of Registration for Professional Engineers and Land Surveyors and also expanded the scope of the definition of engineering to include geological activities incidental to the practice of engineering, thereby removing doubt that the Board of Registration for Professional Engineers and Land Surveyors has authority over matters that were the subject of the dispute between the two boards.

Specifically, the Attorney General's opinions said that:

> *. . .registered professional engineers may engage in practices which are within the definition of geology, where those practices are either expressly within the statutory definition of engineering or are 'incidental to' the practice of engineering, recognizing that there may be some areas in which the two practices will overlap. To state this more accurately, engineers may engage in 'such other professional services as may be necessary to the planning, progress and completion of any engineering services.'*

The Attorney General's July 18, 2003, opinion also reminds the respective boards of their dispute resolution responsibilities:

> *Section 73-63-7(3)(d) provides that certain 'engineering-related' activities are not included in the definition of the 'practice of geology,' but leaves the determination of what these activities are to the BRPG and the BRPELS, acting jointly. A licensed engineer would be able to perform any such activities without a license to practice geology.*

The 2004 legislation embodies these opinions by adding "geotechnical (including geology and geohydrology incidental to the practice of engineering)" to the list of engineering services or work in defining the "practice of engineering."

Statutory Authority for Licensing and Regulation of Engineering and Land Surveying

All fifty states regulate the professions of engineering and land surveying. The Legislature established the Mississippi Board of Registration for Professional Engineers and Land Surveyors in 1928. The board's mission is to safeguard life, health, and property and to promote the public welfare by providing a complete and thorough registration process for professional engineers and land surveyors, ensuring that each is properly qualified to practice in the state of Mississippi (MISS. CODE ANN. Section 73-13-1 et seq. [1972]).

Mississippi law prohibits individuals from practicing engineering or land surveying in this state without registering with the board (MISS. CODE ANN. Section 73-13-1 and 73-13-73 [1972]). CODE Section 73-13-23 et seq. establishes a regulatory regimen by which engineers are registered and Section 73-13-77 et seq. establishes the regimen of registration for land surveyors. CODE Section 73-13-39 provides that persons practicing engineering without registering are guilty of a misdemeanor punishable by a fine of not less than $100 nor more than $1,000 and/or imprisonment in the county jail for a period not exceeding three months. CODE Section 73-13-95 provides the same penalties for anyone practicing land surveying without registering.

MISS. CODE ANN. Section 73-13-15 [1972] requires the board to enforce the professional standards outlined in the CODE. Professional conduct is defined in the statute

and in the board's *Rules and Regulations*. CODE Sections 73-13-37 and 73-13-89 enumerate the reasons for which the board shall take disciplinary action against any person practicing engineering or land surveying and the allowable sanctions that the board can invoke.

Board Composition

Currently, the Board of Registration for Professional Engineers and Land Surveyors consists of seven members appointed by the Governor for staggered four-year terms: five registered professional engineers who are appointed by the Governor and two registered professional land surveyors who are not registered professional engineers who are appointed by the Governor. (See Exhibit 1, page 8.) As of July 1, 2004, state law changes these appointments to a total membership of nine--six engineers and three surveyors.

The board has one engineer member from each of the three State Supreme Court districts and two engineer members appointed from the state at large. Beginning July 1, 2004, the board will have two engineer members from each State Supreme Court district and no at-large members. The two surveyor members are presently appointed from the state at large. Beginning July 1, 2004, one surveyor will be appointed from each of the three State Supreme Court districts.

The board meets approximately every two months; MISS. CODE ANN. Section 73-13-13 (1972) requires March and September meetings.

Staff

The Board of Registration for Professional Engineers and Land Surveyors has statutory authority (MISS. CODE ANN. Section 73-13-17 [1972]) to employ an executive director and a staff to assist in its operations. The board currently employs five full-time staff members and one part-time staff member.

The current staff positions are: Executive Director, Deputy Director, Principal Secretary, and two administrative assistants. The part-time employee is a contract clerical worker for one day a week. During the last five years, the board has had professional consultation contracts with three individuals--two for investigating specific disciplinary cases and one for specific research services concerning development of legislation clarifying the

professional jurisdictions of engineers and geologists (see "Jurisdictional Dispute Between Engineers and Geologists," page 4). The board receives assistance in legal services from the Attorney General's Office staff under an interagency agreement.

The board's staff spends most of its time in information provision and records management, performing the following tasks:

- serving registration applicants by providing application information and verifying their credentials and notifying them of test-related information and results;
- notifying registrants of their annual license renewal and continuing education requirements; and,
- supporting the processing of disciplinary cases.

The Executive Director and board members deal not only with routine business, but also are directly involved in disciplinary processes and with the periodic review, update, and development of professional standards for engineers and land surveyors. The board's work on developing professional standards involves consulting with the Mississippi state professional associations of engineering and land surveying and the National Council of Examiners for Engineers and Surveyors (NCEES).

Revenues and Expenditures

The Board of Registration for Professional Engineers and Land Surveyors is a special fund agency, with revenues generated from fees charged for licensure application, examination, and annual license renewal. State law establishes a fee schedule for professional engineers and surveyors and interns for application for licensure and for the examinations for each profession. In addition to the fees listed, the board also charges small fees to recoup expenses for such items as the printed roster, the *Rules and Regulations* booklet, and replacement certificates. The board has the authority to adjust fees with legislative approval. The fees currently charged for application and registration renewal are at the statutory maximums (see Exhibit 2, page 9).

As illustrated in Exhibit 3, page 10, the board's revenues have exceeded expenditures for four of the past five fiscal years and the board has maintained a substantial cash balance at the end of each of the last five fiscal years.

Exhibit 4, page 11, shows the board's expenditures by major object for FY 1999 through FY 2003. Generally, over the last five years, the board has spent approximately fifty percent of its budget each year on salaries, wages, and fringe benefits for its employees; approximately forty percent on contractual services; approximately six percent on travel and subsistence; approximately three percent on commodities; and approximately one percent on capital outlay (equipment).

Exhibit 1: Members of the Board of Registration for Professional Engineers and Land Surveyors, Their Geographic Base of Appointment, and Terms of Office

Member	Profession	Geographic Base of Appointment	Term Expires
Raymond Dearman, Hattiesburg	engineer and land surveyor	Second Supreme Court District	4/8/2006
Bill Waters, Tupelo	Engineer	Third Supreme Court District	4/8/2006
Homer D. Lang, Jackson	land surveyor	At large	4/8/2003
Thomas W. Elliott, Oxford	engineer and land surveyor	At large	4/8/2004
James H. Kopf, Jackson	engineer and land surveyor	First Supreme Court District	4/8/2006
Edward Springer, Starkville	engineer and land surveyor	At large	4/8/2004
Shannon D. Tidwell, Ripley	land surveyor	At large	4/8/2006

SOURCE: PEER analysis of information from website of the Board of Registration for Professional Engineers and Land Surveyors.

Exhibit 2: Fees Authorized in State Law that May Be Charged by the Board of Registration for Professional Engineers and Land Surveyors

Type		Amount		
	Engineer Intern	Professional Engineer	Surveyor Intern	Professional Surveyor
Application	$25	$75	$25	$75
Examinations	Actual cost	Actual cost	Actual cost	Actual cost
Registration Renewal	$50	$50	$50	$50
Dual Registration Renewal		$75		$75

SOURCE: PEER analysis of MISS. CODE ANN. Sections 73-13-25, 73-13-31, 73-13-79, 73-13-85 and the website of the Board of Registration for Professional Engineers and land surveyors.

Exhibit 3: FY 1999 through FY 2003 Revenues, Expenditures, and Cash Balances of the Board of Registration for Professional Engineers and Land Surveyors

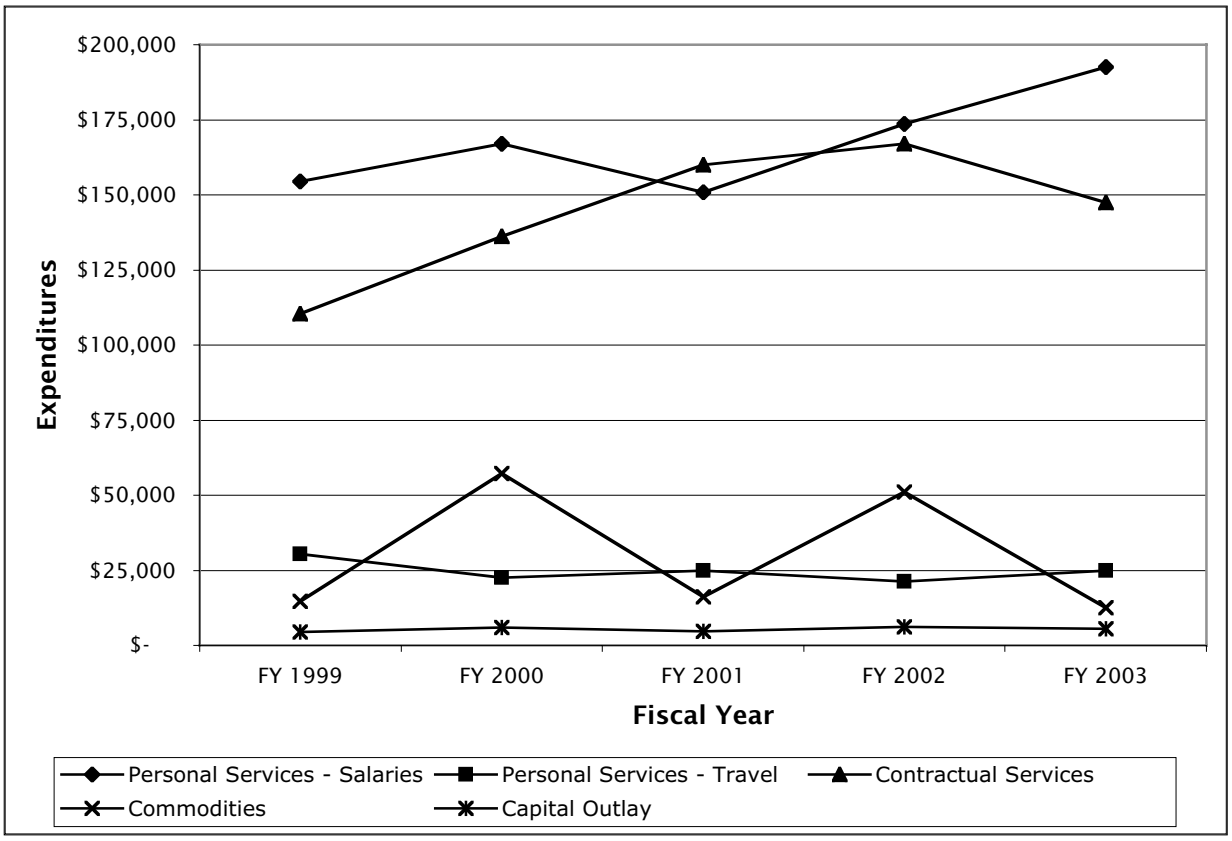
	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
*Beginning Cash**	$615,565	$682,394	$722,056	$283,679	$258,102
Special Fund Revenue (Fees)	381,419	398,825	418,447	393,545	419,766
Total Expenditures	314,590	359,163	356,824	419,122	382,727
Transfer to Budget Contingency Fund**			$500,000		
Ending Cash	$682,394	$722,056	$283,679	$258,102	$295,141

* For FY 1999, PEER computed the beginning cash balance by subtracting the 1998 lapse period expenditures from the Cash Balance – Unencumbered as of June 30, 1998, identified on the agency's FY 2000 budget request.

**The Legislature transferred $500,000 to the Budget Contingency Fund in FY 2001.

SOURCE: Mississippi Executive Resource Library and Information Network (MERLIN) Revenue Report for the Board of Registration for Professional Engineers and Land Surveyors for FY 1999 – FY 2003; Mississippi Statewide Automated Accounting System Expenditure Report for the Board of Registration for Professional Engineers and Land Surveyors; and FY 2000 budget request of the Board of Registration for Professional Engineers and Land Surveyors.

Exhibit 4: Board of Registration for Professional Engineers and Land Surveyors Expenditures By Major Object for FY 1999 – FY 2003



SOURCE: *Mississippi Statewide Automated Accounting System* Expenditure Report by Major Object Code for the Mississippi Board of Registration for Professional Engineers and Land Surveyors for FY 1999 – FY 2003.

Conclusions

Does Mississippi need a Board of Registration for Professional Engineers and Land Surveyors?

Risk factors associated with the engineering and land surveying professions create a need for state government to protect the public. Proper regulation by a competent board diminishes the professions' potential risks to the public.

State government is responsible for protecting the public's health, welfare, and safety. When potential risks to these exist, measures such as establishing a board to regulate a profession are available to diminish or eliminate the potential for risk.

Risks to the Public

The nature of the practice of engineering and land surveying presents risks to the public if practitioners are not properly trained and regulated.

Regulation of engineers is necessary because lack of proficiency when constructing buildings or systems could directly affect human life and health.

The risks to the public that the professions of engineering and land surveying present are different, but each necessitates licensing and oversight by the state. The practice of all types of engineering is essential to and integral in the development of the built environment. Engineering expertise and services literally undergird all types of buildings that people live and work in, many of the systems that deliver life-supporting services such as water and power, and transportation systems by which people and goods move in our society. Inadequate or erroneous engineering knowledge as the basis for constructing any of these buildings or systems, whether of a public or a private nature, would put human life and health directly at risk. Oversight of the practitioners of the engineering profession is thus necessary to assure, as much as possible, that they bring adequate, appropriate, and current knowledge to bear in their practice.

Widespread surveying inaccuracies could engage enormous judicial resources and time to remedy.

Likewise, for the land surveying profession, real property and its conveyance are essential elements of American society and its economy. Property transactions begin with and depend upon the accurate establishment of land boundaries. The profession of land surveying is the one charged with the accurate establishment of land

boundaries for all kinds of property transactions, both private and public. Such transactions, to which land surveying is an essential and integral part, may not be directly threatening to the life and health of persons. But inadequate or inaccurate land surveying could involve elements of the judicial system in remedying the errors. Widespread surveying inaccuracies could engage enormous judicial resources and time to remedy. In cases where property transactions are primarily economic transactions, such complexity and delays would have costs. In some cases, such as the determination of rights of way for highways and other transportation or power systems, large numbers of people and/or businesses could be inconvenienced or dislocated if surveying were erroneous. For all of these reasons, the risks land surveying presents to the public also warrant state licensing and oversight.

Need for Regulation

State regulation of the engineering and land surveying professions is necessary to reduce or eliminate risk to the public.

The typical regulatory functions of licensure and enforcement provide a safeguard against risk for the public. Without the safeguards of licensure and enforcement in place, the likelihood of untrained practitioners in these professions injuring persons (either physically or economically) without accountability could increase.

As with other regulatory boards, the Board of Registration for Professional Engineers and Land Surveyors should protect the public by screening licensees by applying criteria of minimal professional competence, requiring continuing education and knowledge of laws and regulations, and enforcing applicable laws and regulations. Under the current regulatory scheme, as outlined in Mississippi law, the board's regulatory functions do not duplicate those of any other state regulatory body.

What are the board's responsibilities in regulating the practices of engineering and land surveying?

The board's responsibilities in regulating the practices of engineering and land surveying consist of registering (licensing) professionals and enforcing applicable laws and regulations.

The Board of Registration for Professional Engineers and Land Surveyors exists as a separate state agency whose purpose is to protect the public's health, safety, and welfare as it is affected by the practice of engineering and surveying. The state's regulation of these practices should ensure that professionals in each field meet and maintain certain qualifications and competency requirements, act in a professional and competent manner, and comply with laws and regulations governing the professions. Failure to perform these duties could result in negative outcomes such as lack of engineering or surveyor competence or unscrupulous practice.

Although the board is named the "Board of *Registration* for Professional Engineers and Land Surveyors," the major regulatory duties of the board are licensure and enforcement. The licensure function includes processing of applications, test validation and administration, communication with the candidates regarding the establishment and maintenance of the official registry of practitioners, reporting of examination results, collection of fees, and establishment and maintenance of a registration roster of qualified practitioners (issuance of licenses). The enforcement function includes developing policies, making copies of applicable laws and regulations available to practitioners, ensuring that engineers and land surveyors receive the required amount of continuing education annually, processing and investigating complaints, and invoking appropriate disciplinary measures.

Does the board's licensing process provide assurance of competency of professionals?

The Board of Registration for Professional Engineers and Land Surveyors provides assurance to the public of applicants' competency to practice their profession by requiring passage of national licensure examinations that are developed and administered in accordance with accepted professional testing guidelines. The board also requires completion of continuing education requirements. However, the only examination developed by the board, the state examination for professional land surveyors, has not been developed or administered in accordance with accepted professional testing guidelines.

A major function of the Board of Registration for Professional Engineers and Land Surveyors is to license practitioners who want to practice in Mississippi. Licensing should involve a fair process that assures competency to practice. State law requires that the board determine whether the engineer or surveyor meets certain standards pertaining to general qualifications, education, and testing.

Initial Application Procedure

The Board of Registration for Professional Engineers and Land Surveyors maintains a roster of five categories of professional practitioners: Engineer Intern, Professional Engineer, Land Surveyor Intern, Professional Land Surveyor, and Retired Engineer or Land Surveyor. Exhibit 5, page 16, lists licensure requirements for the first four categories (i.e., active practitioners).

For the active practitioners, the licensure process involves the following steps:

(1) the applicant files an application for the appropriate category of licensure with the board, which includes education information (including arranging for submission of official transcript[s], documentation of appropriate experience, and letters of reference);

(2) the applicant pays the appropriate application fee;

(3) the staff verifies the accuracy of the application materials;

(4) the board reviews each application and votes to accept or reject each application (see discussion in next paragraph);

Exhibit 5: Requirements for Licenses Issued by the Board of Registration for Professional Engineers and Land Surveyors

Type of Professional	Education Requirements	Experience Requirements	Examination Requirements	Additional Requirements
Engineer Intern	ABET (Accreditation Board for Engineering and Technology) accredited B.S. degree in engineering or an acceptable equivalent; **or** a B. S. degree in engineering, engineering technology, or a related science that is not ABET-accredited *plus* a graduate degree in a curriculum that is ABET-accredited at the undergraduate level	none	pass the Fundamentals of Engineering examination	meet other requirements of statute and rules and regulations (e.g., meet submission deadlines, have a complete application, be a Mississippi resident, pay appropriate fees)
Professional Engineer	ABET-accredited B. S. degree in engineering, or an acceptable equivalent; **or** a B.S. degree in engineering, engineering technology, or a related science that is not ABET-accredited *plus* a graduate degree in a curriculum that is ABET-accredited at the undergraduate level	four years of qualifying engineering experience verified by Professional Engineer references	pass the Fundamentals of Engineering examination; pass the Principles and Practice of Engineering examination	meet other requirements of the statute and the rules and regulations
Land Surveyor Intern	(a) education-based license: 62 hours of approved courses (the board requires a grade point average of 2.0 or higher on a 4.0 scale in the technical courses of surveying, mathematics, physics, graphics, and computer science)	(b) experience-based license: three years of qualifying surveying experience verified by Professional Land Surveyor references and substantiated by acceptable survey exhibits	(a & b) pass the Fundamentals of Land Surveying examination	(a &b) meet other requirements of the statute and rules and regulations
Professional Land Surveyor	(a) education-based license: 62 hours of approved courses (the board requires a grade point average of 2.0 or higher on a 4.0 scale in the technical courses of surveying, mathematics, physics, graphics, and computer science)	(a) education-based license: three full years of qualifying experience verified by Professional Land Surveyor references and substantiated by acceptable exhibits; (b) experience-based license: seven full years of qualifying surveying experience verified by Professional Land Surveyor and substantiated by acceptable survey exhibits	(a & b) pass the Fundamentals of Land Surveying examination; pass the Principles and Practice of Land Surveying examination: pass the Mississippi Section examination	none

SOURCE: MISS. CODE ANN. §§ 73-13-23 and 73-13-77; the board's website; and the board's rules and regulations.

(5) accepted applicants receive citation to the appropriate examination and study materials for it (applicants for the professional categories will only be accepted after passage of the fundamentals examination and the requisite experience); and,

(6) the applicant takes and passes the appropriate examination(s). (See discussion of examination procedure, page 18.)

The board uses several screening methods to verify qualifications to practice, such as checking formal education credentials (transcripts), references, years of experience, character, and scores on the qualifying examinations. The board's staff reviews each applicant's submitted materials three separate times for completeness, accuracy, and the nature of the character information before presenting the applicant to the full board for a vote on acceptance or rejection of candidacy. The board applies the elements of its code of ethics to its decision of whether to accept an applicant for examination on the basis of character (Rule 17.06 and 17.07, Rules and Regulations; see Appendix, page 31).

Continuing Education and License Renewal

The board requires all professional engineer and surveyor registrants to obtain continuing education credits periodically as a condition of license renewal. The credits are given in professional development hours, or PDH units, and the requirements are:

- professional engineers--fifteen PDH units annually;
- professional land surveyors—twelve PDH units annually and two PDH units of Minimum Standards training every three years;
- dual registrants--eighteen PDH units annually, with at least one third of the units in each profession; and,
- every registrant is required to obtain two PDH units of ethics training every three years.

The board requires all professional engineer and surveyor registrants to obtain continuing education credits periodically as a condition of license renewal.

The board's rules enumerate the sources offering continuing education and the types of records to be submitted by registrants as evidence.

Comity Registration

State law provides a means whereby practitioners who were licensed in another state but who now work in Mississippi (comity applicants) may become licensed in Mississippi. MISS. CODE ANN. § 73-13-35 and 73-13-87 (1972) state that a professional engineer or land surveyor from another state shall be registered if the individual is of good moral character and meets the requirements enumerated above for professional engineers or land surveyors.

Examinations

As shown in Exhibit 5, page 16, the Board of Registration for Professional Engineers and Land Surveyors requires applicants for licensure to pass one or more national examinations. Applicants for Professional Land Surveyor licensure must also pass the Mississippi Section examination (see page 19 for discussion).

Since October 2003, the National Council of Examiners for Engineers and Surveyors has administered four standard national exams to Mississippi applicants twice a year.

Since October 2003, the National Council of Examiners for Engineers and Surveyors (NCEES), under contract with Mississippi's Board of Registration for Professional Engineers and Land Surveyors, has administered all of these tests to applicants twice a year. The board retains the functions of screening and verifying applicants' credentials, overseeing the NCEES test administration, notifying the applicants of examination results, and of establishing and maintaining the registry of successful applicants. The board uses the NCEES-recommended cutoff scores for each examination.

The national examinations that the board requires for licensing have been validated by the National Council of Examiners for Engineers and Land Surveyors.

The Board of Registration for Professional Engineers and Land Surveyors uses four standard national examinations in licensing professionals:

- Fundamentals of Engineering;

- Principles and Practice of Engineering (offered by discipline—e.g., civil, electrical);
- Fundamentals of Land Surveying; and,
- Principles and Practice of Land Surveying.

See Exhibit 5, page 16, for examination requirements for each category of licensure.

These tests were developed by the National Council of Examiners for Engineers and Land Surveyors (NCEES), the national professional licensing organization, and each examination has been validated with regard to content, relevancy of problems, and scoring. The board accepts applicants' passage of these examinations as assurance of knowledge of and competency in practicing their respective professions.

The state examination that the board requires for professional land surveyors has not been developed or administered in accordance with accepted professional testing guidelines.

The board requires applicants for land surveyor licensure to pass the Mississippi Section examination.

As shown in Exhibit 5, page 16, the Board of Registration for Professional Engineers and Land Surveyors requires applicants for Professional Land Surveyor licensure to pass a state examination, the Mississippi Section test, in addition to national examinations. This test was developed by a committee of professional practitioners in Mississippi. It tests plane surveying, Mississippi rules and regulations, Mississippi statutes, Mississippi registration law, general surveying knowledge, Mississippi minimum standards, and general land office issues.

The Mississippi Section examination has not been developed or administered in accordance with accepted professional testing guidelines.

Development of the Mississippi Section exam--
Approximately ten years ago, the Board of Registration for Professional Engineers and Land Surveyors formed a committee of twelve professional land surveyors, including two board members, senior officers of the Mississippi Association of Professional Surveyors, and two veteran Mississippi State University professors of engineering and surveying. This committee worked to develop test questions intended to measure minimum competency in Mississippi-specific knowledge (see description of test content in previous paragraph). They met to refine questions and composed them into three

versions of the examination, given in rotation at each six-month test date. The format of the test is the same in all three versions. 70% is the minimum passing score. Examinees who fail the test are given a diagnostic sheet summarizing their performance by subject matter to assist them in preparing for future examinations.

The board's Mississippi Section exam for professional land surveyors needs improvement in order to meet professional testing standards in the elements of test development, test administration, and statistical analysis and research.

Comparison of the Mississippi Section exam to accepted professional testing guidelines--In order to ensure the public that licensees are fully knowledgeable of state-specific information regarding the practice of land surveying, development of an examination to test this knowledge should follow guidelines such as those of the Council on Licensure, Enforcement, and Regulation (CLEAR). CLEAR provides standard professional testing guidelines for state regulatory boards. These guidelines cover the actions associated with the elements of test development, administration, statistical analysis and research, scoring and reporting, and examination security. Such standards reflect principles of fairness that make the process uniform for each examinee.

PEER compared the above-noted elements of the Mississippi Section examination to CLEAR's testing standards and determined that improvement is needed to meet professional testing standards in the elements of test development, test administration, and statistical analysis and research. The analysis found that the Mississippi Section examination:

- *fully met the scoring and reporting standard.*

  The CLEAR criterion in this element is: ensure that tests are graded and test results are reported to applicants in a fair and uniform manner.

  The test administration procedures for which the Board of Registration for Professional Engineers and Land Surveyors contracts (and oversees) with NCEES ensure that tests are graded (by NCEES) and results reported to examinees (by the board's staff) in a fair and uniform manner. The board's rules and regulations specify that examination results will be supplied by first class mail to the address of record of each examinee.

- *fully met the examination security standard.*

  The CLEAR criteria in this element are: (1) ensure secrecy of test questions in advance; (2) maintain test materials in secure locations; (3) ensure examinees have no access to tests during printing, storage, transportation, and distribution.

The board's staff is responsible for the security of the state examination. Copies of the Mississippi Section are locked in the board's business office to which only the Executive Director and Secretary have keys. Staff members copy the necessary number of Mississippi Section examinations just prior to the testing date, ship them to the NCEES office just prior to testing date, and NCEES mails them back after grading. The use of three versions of this examination is an additional step in test security. NCEES administers the Mississippi Section examination for the board under contract and has primary responsibility for test security during the examination process and the grading period.

- *partially met the test development standard.*

  The CLEAR criteria in this element include: (1) analyze skills and knowledge required for land surveying competency; (2) ensure test includes questions on each necessary skill; (3) set a valid passing score based on entry-level knowledge and skills; and (4) develop oral, practical, and essay examinations with standard answers that can be consistently graded.

  The board's committee responsible for the Mississippi Section examination developed questions that test skills and knowledge required for the practice of land surveying, using the same types of questions on three versions of the examination that can be consistently graded. The test covers seven areas of knowledge and requires a minimum passing score of 70% to demonstrate competency.

  While three versions of the test are useful for test security, the use of multiple versions introduces the necessity of ensuring equivalency among them. However, the test developers did not document whether the three versions are equivalent and if so, how they determined such. Also, the three versions of the test have not been revised since they were originally developed ten years ago. Good test development requires that the subject matter be periodically reexamined and updated to reflect the current environment.

  The board should obtain independent verification that the Mississippi Section examination measures what it purports to measure and that all of the questions employed are directly linked to land surveying competency in Mississippi.

- *partially met the test administration standard.*

  The CLEAR criteria in this element include: (1) provide applicants with detailed information on testing times and dates, test content, test site conditions, grading procedures, and disclosure of test scores to applicants; and (2) develop a written plan for accommodating candidates with disabilities which complies with the Americans with Disabilities Act.

  The Board of Registration for Professional Engineers and Land Surveyors does a thorough job on its website, in its rules and regulations, and through its staff in providing applicants with detailed information about testing times, dates, places, and testing procedures. The board's website directs applicants to the NCEES website for "detailed information about the [national] exams." However, the board has not posted information about the Mississippi Section examination on its website. The board's staff responds to calls and inquiries about the state exam by mailing or faxing a handout that includes sample questions, book citations, and references to Mississippi's law and regulations. While responding to calls is helpful, the information about test content for the state exam is not as accessible as information about the national examinations. The board's staff intends to revise the website in the near future and could include information about the state examination there.

  The board's Rules and Regulations (#11.20) specify a plan for accommodating candidates with disabilities. After receiving written information about the nature of the disability, the board determines what, if any, modifications in examination administration will be made.

- *did not meet the statistical analysis and research standard.*

  The CLEAR criterion for this element is to analyze test results to determine which test questions need revision to ensure that the test is measuring appropriate knowledge and skills.

  The concern of this standard is test effectiveness, which could be defined as whether the test is successful in qualifying competent professional practitioners. The board has not analyzed results of its Mississippi Section test and thus does not meet the CLEAR criterion in this element of professional testing standards.

Does the Board of Registration for Professional Engineers and Land Surveyors fairly and consistently enforce professional regulatory requirements?

The board fairly and consistently enforces professional regulatory requirements through a thorough, comprehensive complaint and disciplinary process. However, in using consent orders to settle disciplinary cases, the board should only use such to implement penalties authorized in state law. Also, the board's current practice of not publicizing information on disciplinary sanctions limits the public's and practitioners' awareness of rules infractions and their consequences.

Enforcement of engineering and land surveying law (contained in MISS. CODE ANN. Section 73-13-1 through 73-13-105 [1972]) and the board's rules and regulations is greatly dependent on how well the board administers processes for receiving and handling complaints against practitioners and the uniformity with which the board takes disciplinary action against violators.

PEER examined the board's complaint and disciplinary processes, focusing primarily on two questions: (1) Does the board have a formal, written complaint process? and if so, (2) Do the board and its staff comply with the elements of this process in the disposition of complaints and administration of discipline?

Complaint and Disciplinary Processes

State law and the board's rules and regulations have set up a comprehensive complaint and disciplinary process with appropriate penalties. In handling disciplinary proceedings, the board has used consent orders to settle approximately one-third of its cases. Although the board has achieved the desired outcomes and avoided lengthy formal hearings or litigation by using consent orders, the board should only use such to implement disciplinary remedies authorized in state law.

Complaint Procedure

The board's rules and regulations provide a comprehensive complaint and disciplinary process.

MISS. CODE ANN. Section 73-13-15 [1972] requires the Board of Registration for Professional Engineers and Land Surveyors to enforce professional standards outlined in the statute. Professional conduct is clearly defined in state law and in the board's rules and regulations, which are mailed as a printed pamphlet to every registrant and are also available on the board's website.

The board's published *Rules and Regulations* (its policies and procedures), Section 18.0 entitled "Disciplinary Actions," provide a comprehensive complaint and disciplinary process. One part of regulatory enforcement is complaint-driven, as the board investigates complaints that come to it from outside sources. Another part of regulatory enforcement is initiated by the board's staff through annual verification of registrants' continuing education requirements by investigating a one percent sample (about eighty cases) of their PDH claims. If PDH claims are inaccurate, the board's staff initiates disciplinary proceedings against the offending member (typically issuing a letter of education or admonition). Over the last five years, the number of complaints processed by the board has ranged annually from seven to forty-three, averaging about twenty-eight complaints per year (see Exhibit 6, page 25).

Over the last five years, the number of complaints processed by the board has averaged about twenty-eight per year.

The board's complaint procedure begins with a written, signed complaint, except in the case of presentation of evidence of a violation of law or regulation. The board assigns the investigation to a board member (engineer members investigate engineer complaints; land surveyor members investigate land surveyor complaints). The designated board member investigates the charge, with the aid of the Attorney General's Office staff when legal assistance is needed. The board contracts with an independent expert investigator to aid in investigating the case if there is a need to do so, based on the complexity of the matter; two such contracts were used in the last five years.

Disciplinary Actions

State law specifies the reasons for which the board shall take disciplinary action and the disciplinary actions that the board may take.

MISS. CODE ANN. § 73-13-37 and 73-13-89 (1972) enumerate the reasons for which the board shall take disciplinary action against any person practicing engineering or land surveying (including non-licensed persons). The reasons included in state law range from failure to adhere to board regulations to unprofessional and unethical conduct to personal substance abuse.

MISS. CODE ANN. Section 73-13-37 (1972) authorizes the board to proceed, after preliminary investigation, either informally or formally, with disciplinary action. The board member in charge of the investigation determines, based on the preliminary investigation, whether the case will proceed by letter of admonition, a consent order (see discussion on page 26), an informal conference, or a formal disciplinary hearing.

The board's staff communicates information about the initial investigation and its result to the respondent member either in person or by registered or certified mail. If the case proceeds to a formal disciplinary hearing, the board's procedures detail the required elements of such a proceeding: pre-hearing discovery, methods of discovery, conduct of the hearing, and appropriate discipline.

Exhibit 6: Disposition of Investigations, 1999 – 2003

	No Disciplinary Action		*Disciplinary Action Taken*				
Year	Investigate; no action	License voluntarily retired	Informal Conference	Letter of Admonition/ Education	Consent Order	Civil Injunction Sought	Total
1999	18	0	10	5	8	2	43
2000	20	0	3	4	3	1	31
2001	5	0	6	6	5	0	22
2002	14	2	3	4	12	0	35
2003	2	0	2	1	1	1	7
Total	59	2	24	20	29	4	138

SOURCE: Annual Reports of the Board of Registration for Professional Engineers and Land Surveyors, 1999-2003.

Disciplinary actions the board may take allowed by CODE Section 73-13-37 (4) include:

- issue a public or private reprimand;
- require the guilty party to complete a course, approved by the board, in ethics;
- suspend or revoke the certificate of the accused, if the accused is a registrant; or,
- in lieu of or in addition to such reprimand, course completion, suspension or revocation, assess and levy upon the guilty party a monetary penalty of not less than one hundred dollars nor more than five thousand dollars for each violation.

The board's Executive Director reports that about half of the disciplinary cases that come to the board are obvious in nature, usually involving the violation of minimum standards of practice governing land surveying. Many of the rest involve ethical issues in practice.

Disposition of Cases

The board deals with an average of twenty-eight investigations per year. Of those cases resulting in discipline, approximately one-third are settled by a consent order.

The Board of Registration for Professional Engineers and Land Surveyors and its staff have dealt with 138 disciplinary cases over the last five years, an average of 28 cases per year. The caseload has varied from 43 cases in 1999 to 7 cases in 2003. Of the 138 total cases, preliminary investigation has led to no further action in 59 (43 percent) of them. Of the remainder, 77 (56 percent) have resulted in one of four types of disciplinary action. Of those cases resulting in discipline, the largest group, 29 cases (38 percent), were settled by a consent order.

The board also uses monetary fines as a penalty. The board has levied $4,810 in fines over the last five years. Usually the board waives the fines if respondents will obtain further education in a recommended subject.

Use of Consent Orders

By using consent orders, the board has used an administrative means to settle cases and avoid lengthy formal hearings or litigation. However, in at least one case in the last two years, the board has used a consent order to implement a disciplinary action not authorized by statute.

As noted above, of those cases resulting in discipline by the board during the last five years, 38 percent were settled by a consent order.

In a consent order, the accused agrees with the accuracy and validity of the complaint and agrees to abide by the remedy assigned by the board.

A "consent order" is similar to a settlement in a civil action, in that the accused agrees with the accuracy and validity of the complaint against him or her and agrees to abide by the remedy for the violation assigned by the board. By using a consent order in over a third of its cases requiring a disciplinary remedy, the board has used an administrative means to settle cases and avoid lengthy formal hearings or litigation.

The board implements consent orders in the following manner. The initial investigation is carried out according to the board's disciplinary procedures. Then, in an informal hearing, the board uses a minimum standards checklist as an educational tool. The point of the hearing is to determine the minimum standards error, discuss and learn from the error, convey the minimum standards checklist (and further education, if appropriate) to the professional so that such errors will not be made again, and have the professional and the board agree to a remedy. The accused is always informed of the right to

take the matter to a formal hearing before the full board. Thus the board saves time and resources and serves its educational purpose and the number of such cases has declined in the last five years.

In one consent order, the board's resolution involved ending a business relationship between two individuals, which is not one of the disciplinary actions authorized by statute.

When PEER reviewed a sample of files of disciplinary cases from the last two years, one was an ethical issue involving a business relationship between a registered and a non-registered surveyor. The board's resolution involved ending the business relationship, which is not one of the disciplinary actions authorized by statute (see list of statutory disciplinary actions the board may take allowed by MISS. CODE ANN. Section 73-13-37 [4], page 25).

PEER does not criticize the board's use of consent orders, but they should always be used to implement a disciplinary remedy given to a board in state law. When the Legislature establishes a comprehensive scheme of regulation, including permissible remedies for violations of agency rules, any agency's actions that extend beyond the permissible remedies constitute a usurpation of the Legislature's prerogative.

Conclusion Regarding the Board's Complaint and Disciplinary Process

The board's complaint and disciplinary process is comprehensive and well managed. However, the board should only use consent orders to implement disciplinary remedies authorized in state law.

PEER's review of the board's rules and regulations and selected disciplinary case files establishes that the board does have a thorough disciplinary process and that the board complies with this process in dealing with the disciplinary cases examined. Concerning the quality of the board's recordkeeping and documentation necessary for an effective disciplinary system, the files examined were accurate and complete, containing material from the initial complaint recorded on the board's complaint form and signed by the complainant to notification of the accused by registered letter of charges and disciplinary process to the information on the lead board member's investigation with review of the evidence about the complaint. The files included responses from the accused persons, and information about the dispensation or remedy of each case. This examination finds the statutes, board rules and regulations, and the board's disciplinary practices to be thorough, accurate, and sufficient for an effective complaint and disciplinary process.

PEER would caution the board that when using consent orders to settle cases, that they only be used to implement a disciplinary remedy given to the board in state law.

Publicizing Disciplinary Actions

The board's current practice of not publicizing information on disciplinary sanctions limits the public's and practitioners' awareness of rules infractions and their consequences.

Five years ago, the board stopped reporting disciplinary cases and their resolutions in the newsletter due to concerns about the potential for defamation of character charges.

The one element of the disciplinary process that the board should add for greater effectiveness is provision of public information about sanctions in disciplinary cases. The Executive Director reports that until five years ago, this information was routinely included in the board's periodic newsletter to all registrants. At that time, the Attorney General's Office became concerned about potential for defamation of character charges against the board because of the potential for inaccurate summaries of the disciplinary cases in the newsletter. The reporting on disciplinary cases and their resolutions was then dropped from the newsletter, with no alternative means of publicizing the results taking its place.

The Executive Director reports that the board is again interested in using the newsletter to registrants for this purpose. As the board expands its website, this medium could also be used as a means of publicizing disciplinary cases and their resolution.

Recommendations

Examination for Licensure

1. The Board of Registration for Professional Engineers and Land Surveyors should ensure that the Mississippi Section examination for land surveyor candidates meets professional testing standards by:

   (a) establishing the equivalency of the three versions of the Mississippi Section examination or using one validated version of this examination;

   (b) periodically reviewing the Mississippi Section examination to determine needed updates;

   (c) posting information (now available in handout) about the content of the Mississippi Section examination to the board website; and,

   (d) analyzing Mississippi Section examination results to achieve full test validation and measure of test effectiveness.

Complaint and Disciplinary Processes

2. In using consent orders for disciplinary cases, the Board of Registration for Professional Engineers and Land Surveyors should use them to implement only those disciplinary remedies given to the board in state law.

3. The Board of Registration for Professional Engineers and Land Surveyors should use its newsletter and website to publicize the results and sanctions invoked in disciplinary cases. The board's staff should work with cooperating attorneys from the state Attorney General's Office to assure accuracy of case summaries transmitted for public information.

Appendix: The Board of Registration for Professional Engineers and Land Surveyors' Code of Ethics; Board Rule 17.07 on Character and Reputation

The Board of Registration for Professional Engineers and Land Surveyors' *Rules and Regulations* promulgates a code of ethics by Rule 17.06:

> *The registrant shall contribute to the maintenance, integrity, independence and competency of the engineering and/or land surveying profession as follows:*
>
> 1. *The registrant shall not violate any provision of Mississippi Law regulating the practice of engineering and land surveying;*
>
> 2. *The registrant shall not participate, directly or indirectly, in any plan, scheme or arrangement attempting or having as its purpose the violation of any provision of the Law regulating the practice of engineering and land surveying;*
>
> 3. *The registrant shall exercise reasonable care to assure that his partners, associates, and employees do not engage in conduct which, if done by him, would violate any provision of Law regulating the practice of engineering and land surveying;*
>
> 4. *The registrant shall not engage in any illegal conduct involving moral turpitude;*
>
> 5. *The registrant shall not engage in any conduct that discredits or tends to discredit the profession of engineering and/or land surveying;*
>
> 6. *The registrant shall not permit or allow himself, his professional identification, seal, firm, or business name, or his services to be used or made use of, directly or indirectly, or in any manner whatsoever, so as to make possible or create an opportunity for the unauthorized practice of engineering and/or land surveying by any person, firm or corporation in this state;*
>
> 7. *The registrant shall not perform any acts, allow omissions or make any assertions or representations which are fraudulent, deceitful, or misleading, or which in any*

manner whatsoever tend to create a misleading impression;

8. *The registrant shall not knowingly associate with or permit or allow the use of his name, firm name or professional identification or seal in any business venture, project, or enterprise which he knows or has reason to believe is involved in professional practices which violate any provision of the Law regulating the practice of engineering and/or land surveying;*

9. *The registrant shall not knowingly associate with or permit or allow the use of his name, firm name or professional identification or seal in any business venture, project, or enterprise which he knows, or has reason to believe involves trade, business or professional practice of a fraudulent, deceitful or dishonest nature;*

10. *The registrant shall not injure or attempt to injure the professional reputation of another registrant. This shall not relieve a registrant of the obligation to expose unethical or illegal conduct to the proper authorities or preclude an honest appraisal of registrants considered for employment;*

11. *The registrant shall not aid or abet, directly or indirectly, any nonregistrant in the practice of engineering and/or land surveying;*

12. *The registrant shall be personally and professionally responsible and accountable for the care, custody, control and use of his engineer's and/or land surveyor's seal, his professional signature and identification. A seal which has been lost, misplaced or stolen shall, upon discovery of its loss, be reported immediately to the Board, which may invalidate the registration number of said seal, if it deems this necessary, and issue another registration number to said registrant;*

13. *The registrant shall not, directly or indirectly, use or make use of any property, facility or service of any governmental body, agency or department for the benefit of any private business or activity in which the registrant may also be engaged;*

14. *The registrant shall not, directly or indirectly, use or make use of any property, facility or service of his client or employer for his own benefit;*

15. *The registrant shall not practice or offer to practice engineering and/or land surveying in any governmental jurisdiction in which to do so would be in violation of the Laws regulating the practice of professional engineering and/or professional land surveying in that jurisdiction.*

. . . . . .

Rules and Regulations promulgates standards of character and reputation by Rule 17.07:

> *The registrant shall be responsible for maintaining good character and reputation. Suspension of a certificate of registration by another jurisdiction, becoming a habitual drunkard, being grossly immoral, or addicted in the use of narcotics, being finally adjudged insane, or incompetent by a court of competent jurisdiction or being convicted of a felony or misdemeanor involving moral turpitude shall be grounds for a disciplinary hearing which may result in revocation of his certificate of registration.*

MISSISSIPPI BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS & SURVEYORS

Post Office Box 3
JACKSON, MISSISSIPPI 39205
(601) 359-6160

RECEIVED
AUG 2 2004
PEER COMMITTEE

July 30, 2004

The PEER Committee
P. O. Box 1204
Jackson, MS 39215-1204

Ladies and Gentlemen:

Thank you for the opportunity to respond to the recommendations cited in your recent review of our agencies operations.

Recommendation 1: The Board of Registration for Professional Engineers and Land Surveyors should ensure that the Mississippi Section examination for land surveyor candidates meets professional testing standards by:

(a) establishing the equivalency of the three versions of the Mississippi Section examination, or using one validated version of this examination;

(b) periodically reviewing the Mississippi Section examination to determine needed updates;

(c) posting information (now available in handout) about the content of the Mississippi Section examination to the board website; and,

(d) analyzing Mississippi Section examination results to achieve full test validation and measure of test effectiveness.

Response: The Board agrees with this recommendation. Approximately two years ago we requested additional questions for this exam from our state surveying society. While there has been some work done on this project, no new questions have been submitted to the Board yet; this PEER recommendation will provide the needed momentum.

We intended to post the exam information on our web site once the "revamping" of the entire site was completed. This project was just completed this week. The exam information will be posted shortly.

We have already made two possible contacts (one local and one national) regarding your recommendations (a) and (d); we hope to begin this process later this fiscal year.

Recommendation 2: In using consent orders for disciplinary cases, the Board of Registration for Professional Engineers and Land Surveyors should use them to implement only those disciplinary remedies given to the board in state law.

Response : In consultation with the Assistant Attorney General assigned to our agency, in the future we will make every effort to ensure that our consent orders fully comply with the authority granted to us by law.

Recommendation 3: The Board of Registration for Professional Engineers and Land Surveyors should use its newsletter and website to publicize the results and sanctions invoked in disciplinary cases. The board's staff should work with cooperating attorneys from the state Attorney General's Office to assure accuracy of case summaries transmitted for public information.

Response: The Board agrees with the recommendation. As a matter of fact, it was an agenda item at a meeting earlier this year; at that time the Board directed the staff to include disciplinary case summaries in the next newsletter publication.

The Board takes this opportunity to advise the PEER Committee of our financial situation. In late FY02 the legislature mandated a transfer of $500,000 in our special fund to the Budget Contingency Fund. Again, in late FY04 the legislature mandated an additional transfer of $106,647 in our special fund to the Budget Contingency Fund.

The remainder in our special fund is only enough to continue **routine** operations. It is not only a matter of non-budgeted items (your recommendations #1 and #3), we now have cash-flow concerns. If a deficit appropriation was needed in

order to implement these recommendations, there are no additional monies available in our special fund.

Please know that we will make *every effort* to implement your recommendations using our remaining funds.

On behalf of the Board,

Rosemary Brister

Rosemary Brister
Executive Director

PEER Committee Staff

Max Arinder, Executive Director
James Barber, Deputy Director
Ted Booth, General Counsel

Evaluation
David Pray, Division Manager
Linda Triplett, Division Manager
Larry Whiting, Division Manager
Antwyn Brown
Pamela O. Carter
Kim Cummins
Barbara Hamilton
Kelly Kuyrkendall
Karen Land
Sara Miller
Joyce McCants
Charles H. Moore
John Pearce
Brad Rowland
Sara Watson
Candice Whitfield

Editing and Records
Ava Welborn, Editor and Records Coordinator
Tracy Bobo
Sandra Haller

Administration
Mary McNeill, Accounting and Office Manager
Terry Littlefield
Gale Taylor

Data Processing
Larry Landrum, Systems Analyst

Corrections Audit
Louwill Davis, Corrections Auditor