

SUNSET AUDIT REPORT

Board of Technical Professions

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
December 1980**

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The Kansas Legislature created the Legislative Division of Post Audit in 1971 and charged it with the responsibility of auditing State agencies. The Division is headed by an appointed Legislative Post Auditor, and it reports the results of its work to the Legislative Post Audit Committee, a bipartisan legislative committee.

Through its audit work, the Division provides the Legislature with information for evaluating the work of State agencies. This information helps the Legislature decide what should be done to bring high-quality services to Kansans in the most effective and economical manner.

Legislative Post Audit performs its work in the following ways:

1. By law, the Division reviews the financial affairs and operations of each State agency at least once every two years, including appropriate agency controls, receipts, expenditures, and other records and systems. The Division also reviews other aspects of an agency's operations to determine whether the State's laws, policies, and programs are being carried out effectively, efficiently, and economically.
2. At the direction of the Legislative Post Audit Committee, the Division reviews and assesses particular State programs to determine how effectively and efficiently a program is meeting its goals and whether legislative intent is being fulfilled.
3. Under the Kansas sunset law, the Division evaluates those State agencies the Legislature must decide whether to abolish or retain. The Division's sunset audits are based on criteria set forth in the law, and the Legislature uses the findings to help in its decisions.
4. At the direction of the Legislative Post Audit Committee, the Division conducts audits of special topic areas. Under the Committee's rules, these special audits are reviews of particular problems and are to take no more than 40 hours of staff time.

The Legislative Post Audit Act directs the Division to conduct its audit work "according to accepted auditing standards." As its professional guidelines, the Division uses the publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, issued in 1972 by the Comptroller General of the United States in consultation with state and local finance officials and such related professional organizations as the American Institute of Certified Public Accountants.

Legislative Post Audit presents its findings in four kinds of reports—financial and compliance audit reports, performance audit reports, sunset audit reports, and special audit reports. The reports often contain recommendations that range from relatively small adjustments in agency operations to full-scale revampings of major programs. These recommendations are referred to the Legislative Post Audit Committee for consideration. Through the independence given to the Division by the Committee and by the provisions of law, and through the independent and rigorous nature of its audit and review procedures, Legislative Post Audit strives to produce findings and recommendations that are impartial, objective, and useful to the Legislature and the people of Kansas.

LEGISLATIVE DIVISION OF POST AUDIT

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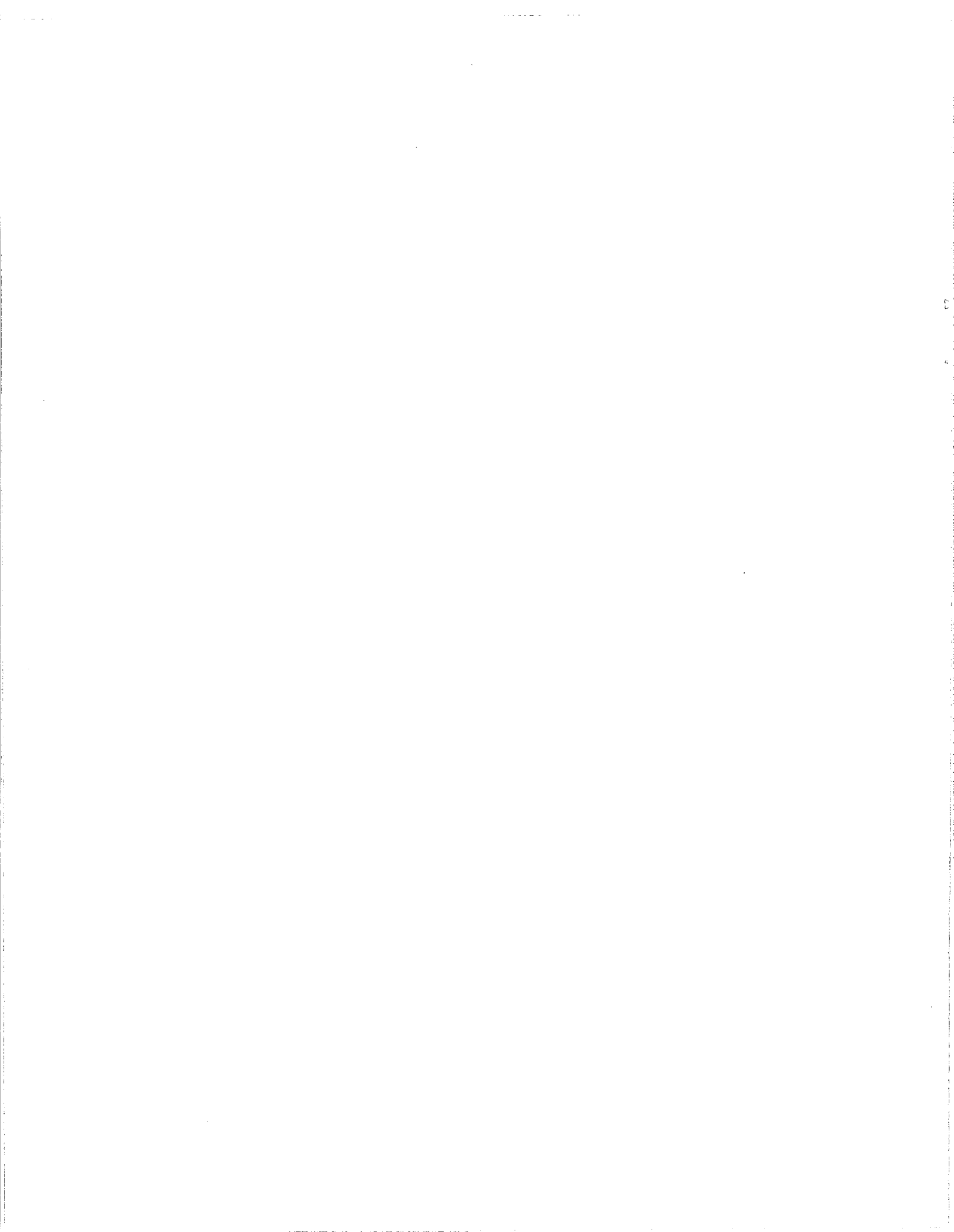
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SUNSET AUDIT REPORT

KANSAS STATE BOARD OF TECHNICAL PROFESSIONS

November 20, 1980

Legislative Division of Post Audit
State of Kansas
Topeka



FOREWORD

This sunset performance audit addresses two main questions: Should State regulation of the four technical professions--engineering, architecture, landscape architecture, and land surveying--be continued? And should regulation be continued in its present form? This report concludes that State regulation should be continued over engineers, architects, and land surveyors, but not over landscape architects.


In their review of the current literature and of complaints received by the Board, the auditors found evidence that possible harm to the public exists even when engineers, architects, and land surveyors are regulated. Complaints disclosed a potential for public harm from financial loss and from unsafe buildings as a result of incompetence. Without regulation, it is possible that these problems could increase. The harm caused by practitioners who perform substandard work or who do not have the necessary knowledge and skills can potentially result in economic loss to clients and also, at least for engineering and architecture, can potentially result in loss of life to the public. Although licensing cannot prevent significant harm from occurring, it does ensure that individuals practicing these professions have demonstrated an acceptable level of knowledge and competency. These factors led Legislative Post Audit to conclude that regulation is needed for the practice of engineering, architecture, and land surveying because of the potential harm to the public's health, safety, or welfare.

However, the auditors did not find examples of demonstrated harm to the public from the practice of landscape architecture. The Board files that were reviewed contained only one complaint involving landscape architecture. This complaint did not allege harm and concerned practicing without a license. In addition, auditors found that the Board has never held any disciplinary hearings against landscape architects. The auditors also found that approximately one-third of the 220 licensees received their licenses under a grandfather clause when the license law was adopted in 1968. Because the auditors found no harm to the public when more than one-third of the licensees have not taken the licensing examination, this further suggests there may not be a need for regulation of landscape architects. In addition, unlike the other three technical professions, close to one-third of the 50 states do not license or regulate landscape architects. In two of the states without regulation, landscape architects are no longer regulated as a result of sunset legislation. Finally, a number of exemptions are contained within the license law. For example, nurserymen or state and federal government employees who practice landscape architecture are not required to be licensed. Based on these findings, the report concludes that there is no need to continue State licensing and regulation of landscape architects.

Another important concern in evaluating regulatory activity under the Kansas Sunset Law is whether regulation meets the needs of the public, not the needs of the groups being regulated. During their review, the auditors found two aspects of regulatory activity that do not appear to totally protect the public. First, the Board does not consistently investigate all complaints (especially those involving negligence and incompetence) and in some instances places an unnecessary burden on the public with a restrictive complaint-filing procedure. Second, the Board's public member is not involved in Board decisions on all matters. In addition, having one public member on the nine-member Board may not provide a balance between the professions and the public. The report contains recommendations for improving the handling of complaints and for revising the Board structure.

In recommending that the regulatory function over engineers, architects, and land surveyors be re-established, the report presents options available to the Legislature for consolidating those functions. These options would include re-establishing the Board of Technical Professions to handle the regulation of the three professions, or creating an occupational licensing agency for all State-licensed occupations. In considering these options the Legislature will be able to assess whether the current regulatory structure is meeting the Legislature's goals or whether some form of consolidation might meet those goals more efficiently and with greater accountability. If the regulatory function over engineers, architects, and land surveyors is re-structured, the recommended changes in the areas of complaint-handling and board representation would also apply to the new regulatory structure.

The supervisor for this audit was Donna Mikols, and she was assisted by audit team member James Scudamore. Throughout the audit, officials of the Board of Technical Professions have been cooperative and courteous. Their assistance during the audit is appreciated.


RICHARD E. BROWN
Legislative Post Auditor

Summary of Matters for Legislative Attention

Audit Findings and Conclusions

The Kansas Sunset Law abolishes the Board of Technical Professions on July 1, 1981, unless it is continued by an act of the Legislature. The law also requires the Legislative Division of Post Audit to complete a performance audit of the Board before it is scheduled to be abolished.

The sunset audit addresses two main questions with regard to the regulation of engineers, architects, landscape architects, and land surveyors:

1. Should the Board of Technical Professions be re-established?
2. As an alternative to re-establishing the Board in its present form, should the Board's regulatory functions be revised or should they be consolidated into another board or agency?

The Legislative Division of Post Audit reviewed the activities of the Board using the criteria set forth in the Kansas Sunset Law as the basis for drawing its conclusions. In brief, these criteria call for the Division to assess the need for State regulation, to determine whether the Board serves the general public or the people it regulates, and to determine whether the industries could be regulated in a less restrictive manner while still protecting the public.

Legislative Post Audit concluded that regulation of the practices of engineering, architecture, and land surveying should be continued and that the practice of landscape architecture should no longer be regulated. The Division's conclusions were based on the following:

There is possible harm to the public if engineers, architects, and land surveyors are not regulated. The auditors found that possible harm to the public exists even when engineers, architects, and land surveyors are regulated. Complaints disclosed a potential for public harm from financial loss and from unsafe buildings as a result of incompetence. Without regulation, it is possible that these problems could increase.

There is no evidence that the public will be harmed if landscape architects are not regulated. The auditors did not find examples of demonstrated harm to the public from the practice of landscape architecture. The Board files that were reviewed contained only one complaint

involving landscape architecture. This complaint did not allege that any harm to the public had occurred, but concerned practicing without a license. In addition, auditors found that the Board has not held any disciplinary hearings against landscape architects. The auditors also found that approximately one-third of the 220 licensees received their licenses under a grandfather clause when the license law was adopted in 1968. Because the auditors found no harm to the public when more than one-third of the licensees have not taken the licensing examination, this further suggested there may not be a need for regulation of landscape architects. In addition, unlike the other three technical professions, 16 states do not license or regulate landscape architects. In two of these states, recent sunset reviews have brought about the elimination of regulation of landscape architects. Finally, a number of exemptions are contained within the license law. For example, nurserymen or state and federal government employees who practice landscape architecture are not required to be licensed. Based on these findings, Legislative Post Audit concluded that there was no need to continue State licensing and regulation of landscape architects.

Some aspects of regulation do not serve to protect the public and should be changed. The auditors found that two aspects of the Board's regulatory activity do not appear to totally protect the public. First, the Board does not consistently investigate all complaints (especially those involving negligence and incompetence) and in some instances places an unnecessary burden on the public with a restrictive complaint-filing procedure. Second, the Board's public member is not involved in Board decisions on all matters.

The benefits of regulation outweigh its costs. The auditors found that the cost of State regulation of the four professions was less than one percent of the industry's total volume of business and did not appear to significantly increase to costs of services to the public. However, because the regulation of landscape architecture does not appear to be necessary, any costs associated with that regulation may be unwarranted.

Less restrictive alternatives for regulation for engineers, architects, and land surveyors could not be found. The auditors found that eliminating regulation of engineering, architecture, and land surveying by the Board in favor of regulation by the professions themselves would not be less restrictive. Options may be available, however, for creating a larger occupational licensing agency that would handle the regulatory functions of licensing, examining, inspecting, disciplining, and handling complaints and consumer affairs of other State-licensed occupations in Kansas.

Recommendations and Agency Response

The draft report was sent to the Board of Technical Professions for its review. This procedure is followed in the preparation of all audit reports. It

offers an opportunity for the agency to point out any errors of fact, to provide information pertaining to the audit's findings, and to indicate its agreement or disagreement with the recommendations. The full text of the Board's response will be found in Appendix D.

Recommendation: Discontinuing the Regulatory Function Over Landscape Architects

1. The Legislature should take no action to re-establish the State's regulatory function over the practice of landscape architecture.

Agency response. The Board disagreed with the recommendation and said the practice of landscape architecture should be regulated for the protection of the public and that protection is effective through the administration of the present licensing law.

Recommendation: Re-Establishing the Regulatory Function Over Engineers, Architects, and Land Surveyors

2. The Legislature should act to re-establish the State's regulatory function over the practices of engineering, architecture, and land surveying.

Agency response. The Board agreed that the State should continue to regulate the practices of engineering, architecture, and land surveying.

Recommendation: Improving Complaint-Handling Activities

3. To improve the handling of complaints:
 - a. All written and signed complaints concerning the practices of engineering, architecture, and land surveying should be thoroughly investigated.
 - b. The complaint-filing procedure should be revised to reduce the burden on complainants.

Agency response. The Board, in agreement with the recommendation, said it has adopted new policies and procedures for improving the handling of inquiries and complaints. According to the Board, letters of inquiry are now accepted in lieu of formal complaints, practitioners who are the subject

of complaints are immediately notified with an opportunity for response, and more efforts are being made to settle inquiries and complaints informally. However, the Board apparently still requires that formal complaints be notarized. Legislative Post Audit would point out that requiring complaints to be notarized places an unnecessary burden on complainants.

Recommendation: Revising Board Representation

4. In re-establishing regulatory functions over the practices of engineering, architecture, and land surveying, the Legislature should consider one of the following options for revising Board representation:
 - a. Including two public members and no more than one member representing each of the professions regulated by the Board.
 - b. Adding three public members to the current Board.

Agency response. The Board expressed disagreement with both options of the recommendation, stating that the present membership (three licensed engineers, three licensed architects, one licensed landscape architect, and one licensed land surveyor) affords ample opportunity for public representation. Commenting on the first option, the Board stated that handling the volume of architectural and engineering applications would be a hardship for one member from each of those professions. Commenting on the second option, the Board stated that adding three public members to the Board would increase costs of Board salaries and operations.

Recommendation: Considering Options for Re-Establishing the State's Regulatory Function Over Engineers, Architects, and Land Surveyors

5. In re-establishing the regulatory functions over engineering, architecture, and land surveying, the Legislature should consider the options of placing these functions under one of the following:
 - a. The Board of Technical Professions.
 - b. A newly created occupational licensing agency that would perform all regulatory functions and administrative duties for State-licensed occupations in Kansas.

Agency response. The Board said it agreed with the first option, noting the overlapping nature of the professions regulated by the Board. It did not comment on the second option.

Additional Audit Finding

After Legislative Post Audit received the Board's response to the draft report, an additional issue was brought to the auditors' attention. This matter has since been incorporated into the report (Apparent Violations of Law section) on pages 25 and 26. Briefly, a landscape architect--who is not a Board member--contacted the Division to express concerns over the recommendation that landscape architects no longer be licensed. One of the individual's concerns was that the individual would not be able to continue to be a shareholder or an officer in the professional corporation with which the individual is associated. As the auditors studied this issue, they found that under the professional corporations law, landscape architects are not allowed to form or to be shareholders in professional corporations. Therefore, it appears that the architectural corporation in which the landscape architect is a shareholder and an officer may be violating the law.

Agency response. At a December 1, 1980 meeting of the Legislative Post Audit Committee, the chairman of the Board of Technical Professions distributed a handout which included a response to the additional findings. In its response, the Board recommended that legislation be introduced that would include the landscape architects within the listing of eligible professions in K.S.A. 17-2707.

Matters Remaining for Legislative Consideration

The decision to abolish, re-establish, or restructure the Board of Technical Professions rests with the Legislature. Under the provisions of the Kansas Sunset Law, the Board will automatically be abolished on July 1, 1981, unless legislative action is taken.

The Board of Technical Professions objected to three recommendations: eliminating the licensing of landscape architects, considering other options for Board representation, and considering other options for re-establishing the State's regulatory function over engineers, architects, and land surveyors. Legislative Post Audit maintains, however, that these recommendations merit careful consideration by the Legislature. During the audit, the auditors found no evidence of demonstrated harm to the public caused by landscape architects. Thus, there appears to be no justification for licensing and regulating landscape architects. Moreover, by considering the options for revising the Board's structure the Legislature can assess whether the Board could achieve a better balance between public

representation and professional representation. Finally, consideration of the options raised in the report for re-establishing the regulatory function can give the Legislature an opportunity to assess whether the current regulatory structure is meeting its goals or whether some form of consolidation might meet those goals more efficiently and with greater accountability.

The Board indicated agreement with the recommendation to improve complaint-handling activities. However, the new policies and procedures adopted by the Board still apparently require that formal complaints be notarized. Such a requirement still places an unnecessary burden on the complainants, and thus does not fully meet the intent of the recommendation.

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CHAPTER I

INTRODUCTION

The Kansas Sunset Law abolishes the Board of Technical Professions on July 1, 1981, unless it is continued by an act of the Legislature. The law requires Legislative Post Audit to complete a performance audit of the agency and submit a report to the Legislative Post Audit Committee nine months before it is scheduled for termination. The sunset performance audit for the Board of Technical Professions is presented in this report.

Sunset Audit Methods

The Sunset Law requires that sunset audits address a set of factors set out in the Law and any other factors the Legislative Post Audit Committee directs, such as the performance audit factors specified in the Legislative Post Audit Act. These two sets of factors, restated as questions, can be found in the box on the next page.

Based on these factors, Legislative Post Audit developed a set of tests and analyses for use in each sunset performance audit. These tests and analyses include the following:

- Determining the Legislature's intent in creating the program and the functions the agency should perform in accordance with that intent.
- Determining whether a need for the State program or activity exists.
- Determining and comparing the costs of regulation and the value of the regulatory activities.
- Comparing the regulatory activity in Kansas with that of other states.
- Reviewing the frequency of, and reasons for, complaints against those persons or businesses regulated by the agency.
- Determining if the agency effectively protects the public by ensuring that only qualified individuals or businesses are allowed to offer services in the State.

SUNSET AUDITING

Legislative Post Audit asks the following questions for each agency or program audited under the Kansas Sunset Law. The first six questions are based on factors set out in the Sunset Law. The remaining three questions are based on the performance audit factors in the Legislative Post Audit Act. Answers to each of these questions may not appear in every sunset audit report, depending on the size and nature of the agency being audited and the relevance of the auditors' findings in each area. More detailed information about the tests and analyses Legislative Post Audit uses in auditing each agency under the Sunset Law can be found in Appendix A.

Is There a Need for State Regulation?

1. Would the absence of regulation by the State agency or office significantly harm or endanger the public health, safety, or welfare?

Does State Regulation Protect the Public?

2. Are all facets of the regulatory process designed solely for the public's protection, and is such protection the primary effect of that regulation?
3. Is there a reasonable relationship between the State agency's exercise of the police power and the protection of the public health, safety, or welfare?

Is Regulation Worth Its Cost?

4. Does the regulation by the State agency or office directly or indirectly increase the costs of goods or services involved and, if so, by how much?
5. Is any increase in cost to the public more harmful than the harm that could result from the absence of regulation by the State agency or office?

Are Alternative Methods of Protection Available?

6. Is there another less restrictive method of regulation available that could adequately protect the public?

Effectiveness of the Regulatory Program

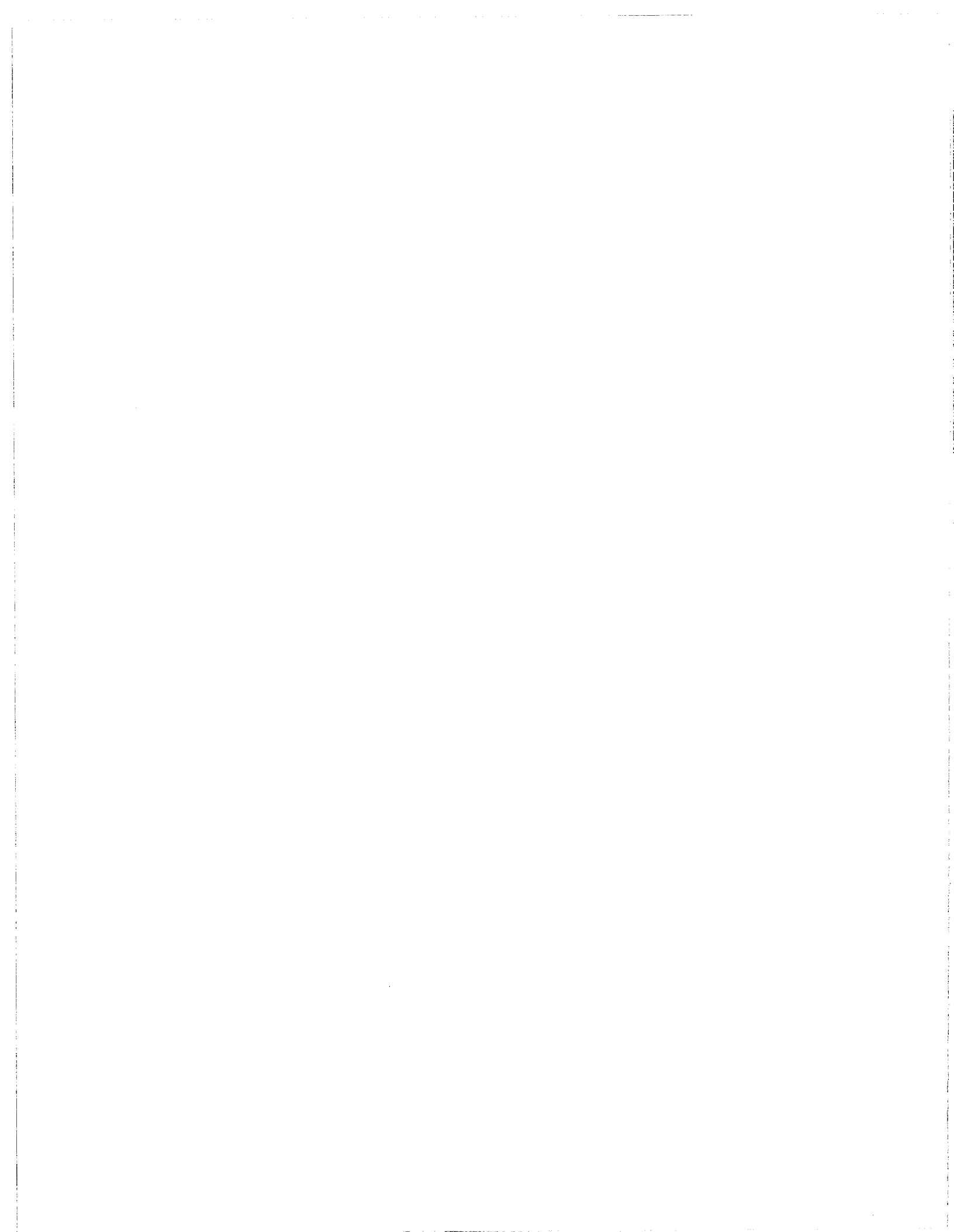
7. Are the responsible agencies carrying out only those activities authorized by the Legislature?
8. Is the program being efficiently and effectively implemented in accordance with the Legislature's intent?
9. Is reorganization needed to accomplish the goals of the program?

--Determining whether the general public has adequate input to the regulatory process.

Appendix A contains a more complete and detailed list of the tests and analyses Legislative Post Audit used in conducting the sunset performance audit.

In conducting the sunset performance audit of the Board of Technical Professions, the auditors reviewed statutes and administrative regulations pertaining to the Board and to the regulation of engineering, architecture, land surveying, and landscape architecture. They then compared Kansas' regulatory program and requirements with other states' programs and requirements. The auditors also examined records kept by the Board, including complaint files, Board minutes, and applications for certification and registration. In addition, they surveyed Kansas licensees by mail.

Chapter II discusses the development and legislative intent of the regulation of engineering, architecture, land surveying, and landscape architecture and the current Board operations. Chapter III covers the sunset analysis of the Board of Technical Professions.



CHAPTER II

LEGISLATIVE HISTORY AND PROGRAM DEVELOPMENT

The State Board of Technical Professions was created in 1976 to regulate engineers, architects, landscape architects, and land surveyors. Prior to the establishment of the Board, these professions were regulated by separate boards. Individuals in the four technical professions are best known for the roles they play in the commercial and public building industries. Land surveyors locate the land boundaries of a construction project as well as other properties; engineers deal with the mechanical, electrical, and design aspects of many types of commercial and public building projects (including public works projects such as sewer systems); architects plan and design building projects; and landscape architects develop the land areas for preservation and enhancement. The history of the regulation of each profession is discussed separately below.

Engineering

Engineering became the first of the four technical professions to be regulated by the State when the Legislature established the Registration and Examining Board for Professional Engineers in 1931. The law limited the use of the title "registered professional engineer" to persons so designated by the Board. The law, however, did not otherwise limit or restrict the practice of engineering in Kansas. Bills expanding the law to make licensing mandatory to practice engineering were introduced but did not pass in every session between 1939 and 1945. In 1946, the Kansas Legislative Council conducted a study of the matter, noting in that study, "In recent years, the professional engineers of Kansas have expressed a desire (for mandatory licensing)." The study concluded that there were three reasons for licensing:

- protecting the public health, safety, and welfare
- raising standards required for registration
- encouraging other states to allow reciprocal registration for Kansas engineers

The last reason was of considerable concern at the time; some neighboring states had refused reciprocity to Kansas engineers because of State registration standards. In 1947, the Legislature passed the Professional Engineers' License Act and established the State Board of Engineering Examiners. The law prohibited the unlicensed practice of engineering and established education and experience requirements for licensure. Engineering practice was defined as any service or creative work for which adequate education, training, and experience in mathematical, physical, and engineering sciences was required. In 1953, the Board initiated an engineer-in-

training program. This allowed individuals who had completed their education in engineering, but who lacked the requisite years of experience, to take the examination in the fundamentals of engineering. After completing four years of experience, applicants then had to pass another examination in the principles and practices of engineering to become licensed professional engineers.

Architecture

Architects were first licensed in Kansas in 1949, when the State Board for the Examination and Registration of Architects was established. The law prohibited the unlicensed practice of architecture and established education requirements for licensure. The practice of architecture was defined as the rendering of service by consultation, planning, or designing of buildings; or the responsible administration of construction projects. The act excluded architectural services involving structures accommodating fewer than eight families, small business projects, rural buildings, and other similar structures.

The new Board identified its goals as raising registration requirements to standards set by the National Council of Architectural Registration Boards and establishing procedures which would give Kansas architects reciprocity with other states. The Board indicated that the achievement of these goals would serve to protect the public by ensuring the safety of life and property of Kansans. In 1963, the Legislature revised these procedures by requiring that all architects have three years of experience before becoming eligible to apply for a license.

Land Surveying

In 1968, the Legislature passed the Land Surveyor Registration Act, making it unlawful for anyone but a licensed engineer, architect, or land surveyor to practice the occupation. The law was administered by the Board of Engineering Examiners; a new board was not established. The occupation was defined in the law as the application of math, law, and methods of land measurement for the location of land boundaries and land monuments. The act was narrowly defined, primarily covering surveys to convey an interest in land (a property deed). The law called for the passing of an examination to determine competence, but allowed for open licensing (without examination) of persons practicing land surveying until July 1, 1969.

Landscape Architecture

In 1968, the Legislature established the State Board for the Registration and Examination of Landscape Architects. The act limited the practice of landscape architecture to persons licensed by the Board. The practice of

landscape architecture was defined as including the development of land areas for preservation and enhancement, the design of land forms and non-habitable structures for aesthetics, the arrangement of plant material, and soil conservation, drainage, and grading. The law called for the passing of an examination to determine competence but, like the Land Surveyor Registration Act, allowed for open licensing (without examination) of persons practicing landscape architecture until July 1, 1969.

Establishment of the Board of Technical Professions

In 1976, legislation was introduced to abolish the State Board for the Examination and Registration of Landscape Architects and transfer its functions to the State Board for the Examination and Registration of Architects. During a hearing on this legislation, the Director of the Budget called not only for the merger of these two boards, but also for the inclusion of the State Board of Engineering Examiners. The Budget Director maintained that such a merger was logical and necessary because of "obvious functional similarities of the three agencies; obvious budgetary advantages of consolidating; and savings from increased administrative efficiency and the combination of administrative functions." The merger was opposed by all three boards and various professional associations, who argued that the merger would jeopardize reciprocity, would not lead to meaningful savings, and would create a situation in which members of one profession would be asked to judge the professional competence of persons in another profession.

The new Board was granted authority to continue all licensing requirements and practice restrictions that had previously been in place. In addition, the new Board assumed all powers, duties, and functions of the old boards. The Board has nine members comprising representatives from each of the four professions and a representative of the general public.

Board Operations

To carry out its regulatory activities, the Board has the following major functions:

- evaluating the qualifications of applicants for licensure
- administering examinations
- issuing licenses and biennial permits to practice
- publishing listings of licensed architects, engineers, landscape architects, and land surveyors with current permits to practice
- handling complaints from consumers and from within the industry
- enforcing laws and regulations and bringing about any needed changes

The Board's nine members are appointed by the Governor to staggered three-year terms. Three members must be engineers, three architects, one a landscape architect, one a land surveyor, and one member must represent the general public. To carry out the daily operations of the office, Board members appoint an Executive Secretary and employ one secretary and one clerk.

The Board administers six types of examinations: engineer-in-training, professional engineer, land surveyor, qualifying architect, professional architect, and landscape architect. Except for one part of the land surveyor exam, national examinations are given and graded by organizations other than the Board. Based on the test scores, these organizations set minimum passing scores. The final determination to pass or fail an individual rests with the Board; however, the Board follows the national passing score. In fiscal year 1979, the Board administered 944 examinations, of which 736 (78 percent) were passed. The percentages of applicants passing examinations ranged from 58 percent for land surveyor to 83 percent for engineer-in-training and professional engineer, as shown in the figure to the left.

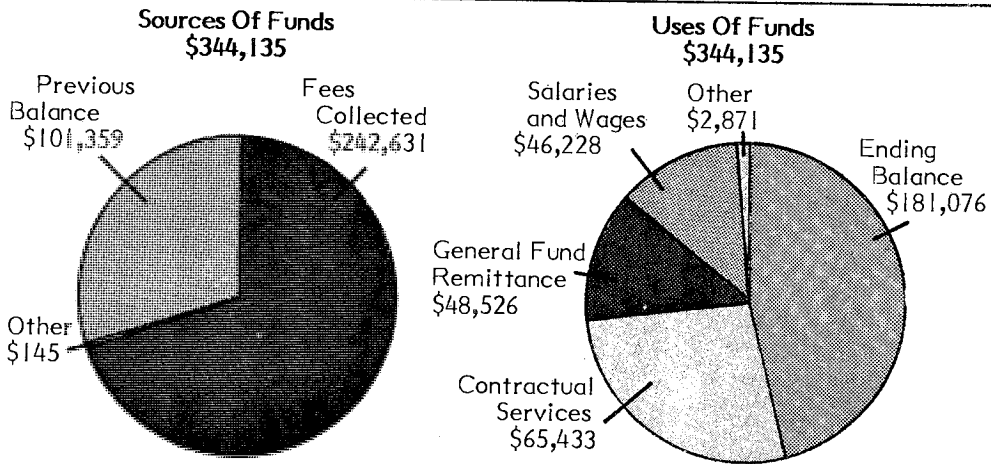
FISCAL YEAR 1979 EXAMINATION PASSING RATES BOARD OF TECHNICAL PROFESSIONS			
Title	Exams Taken	Exams Passed	Percent Passed
Engineer-In-Training	496	412	83%
Professional Engineer	199	166	83
Land Surveyor	31	18	58
Qualifying Architect	103	62	60
Professional Architect	66	46	70
Landscape Architect	<u>49</u>	<u>32</u>	<u>65</u>
Total	<u>944</u>	<u>736</u>	<u>78%</u>

The final determination to pass or fail an individual rests with the Board; however, the Board follows the national passing score. In fiscal year 1979, the Board administered 944 examinations, of which 736 (78 percent) were passed. The percentages of applicants passing examinations ranged from 58 percent for land surveyor to 83 percent for engineer-in-training and professional engineer, as shown in the figure to the left.

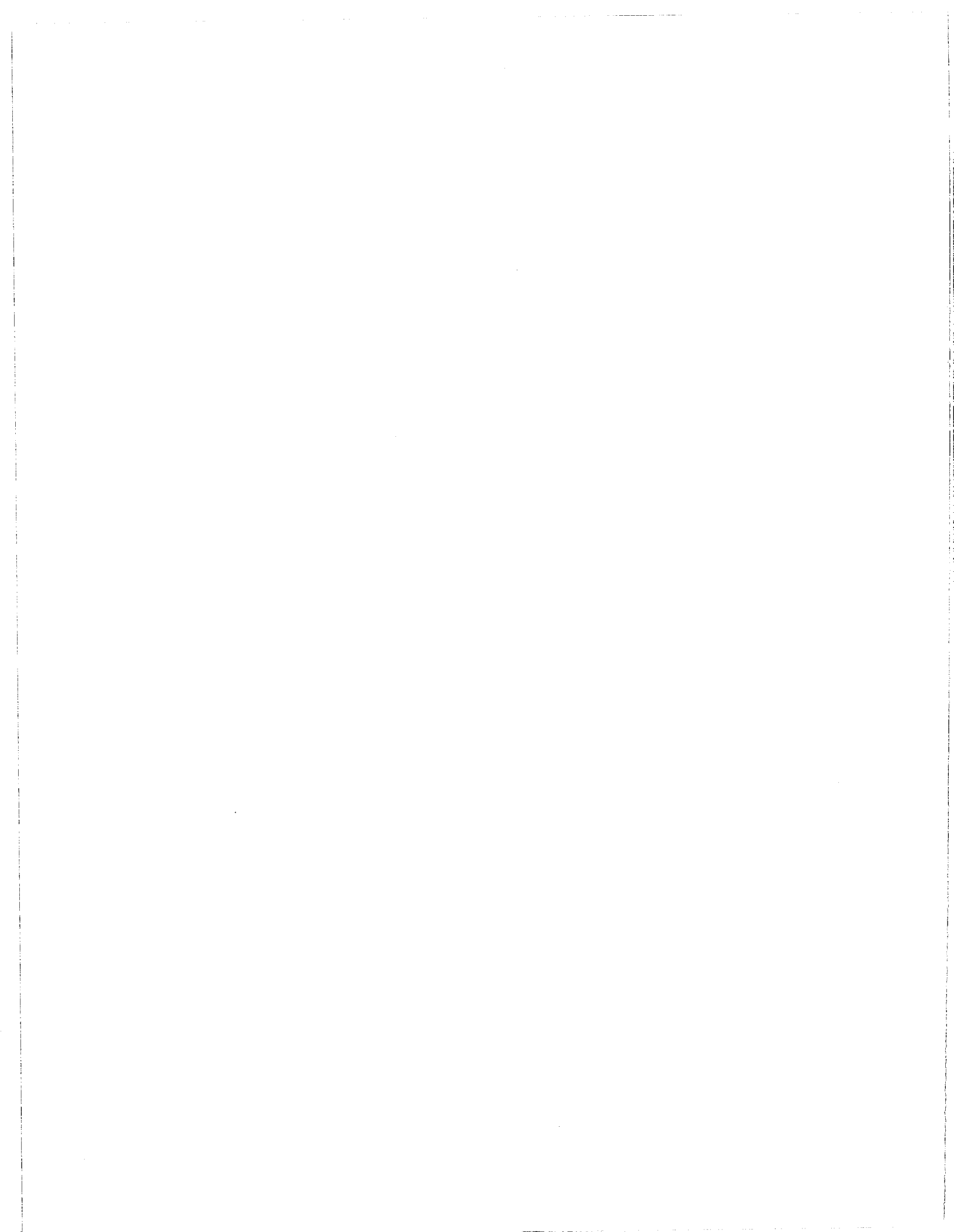
During fiscal year 1979, the Board issued 8,595 licenses and 5,582 engineer-in-training certificates, received and investigated 13 complaints, and held nine disciplinary hearings. The details of the Board's licensing activities are summarized in the figure below. The figure on the next page summarizes the Board's sources and uses of funds.

Fiscal Year 1979 Licensing Activities Board of Technical Professions			
Title	Number of Licenses		
	New Licenses	Renewed Licenses	Total Licenses
Professional Engineer	305	5,520	5,825
Architect	93	1,830	1,923
Landscape Architect	28	192	220
Land Surveyor	<u>26</u>	<u>601</u>	<u>627</u>
Total	<u>452</u>	<u>8,143</u>	<u>8,595</u>

**FISCAL YEAR 1979 SOURCES AND USES OF FUNDS
BOARD OF TECHNICAL PROFESSIONS**



In fiscal year 1979, the Board of Technical Professions had a total of \$344,135 in operating funds. The Board remitted \$48,526 to the General Fund to reimburse the State for such centrally performed services as accounting, auditing, budgeting, and purchasing. The Board spent \$65,433 for contractual services, \$46,228 in salaries and wages, and \$2,871 for other expenses.



CHAPTER III

SUNSET ANALYSIS OF THE BOARD OF TECHNICAL PROFESSIONS

The Kansas Sunset Law has five primary purposes--to bring about an evaluation of the need for certain agencies and programs, to determine whether the agency or program serves the general public or the group it regulates, to determine if there is a reasonable relationship between the exercise of the State's police power and the protection of the public, to determine if the benefits of the agency or program are worth the cost, and to determine whether the profession could be regulated in a less restrictive manner while still protecting the public. Legislative Post Audit designed its review to address these purposes, and its findings are reported in this chapter.

Does Kansas Need to Regulate the Four Technical Professions?

To assess whether there is a need for State regulation of the practice of engineering, architecture, land surveying, and landscape architecture, the Kansas Sunset Law requires that Legislative Post Audit consider whether the absence of regulation of any of the four professions would significantly harm or endanger the public health, safety, or welfare. The auditors' review of each of the four technical professions is discussed in the following section.

Potential Harm in the Absence of Regulation

In reviewing current literature on the four professions, the auditors could not find examples of significant harm to the public from land surveying and landscape architecture. However, they did find examples in which inappropriate architectural and engineering practices and errors have caused significant harm to the public through loss of life and property. The literature attributed some of the more notable structure failures, such as those to stadiums and dams, to a combination of architectural, engineering, and construction errors. One article reported that over the last 10 years, at least 500 sizable structure failures have occurred annually.

The literature also cited increases nationally in building-casualty claims paid by insurance companies, further indicating the significance of

the potential for harm from architectural and engineering practices. One article noted that, in the last ten years, these claims have increased from an estimated \$32 million per year to \$235 million. In addition, the liability insurance premiums paid by engineers and architects increased from an estimated \$25 million annually to \$175 million.

All 50 states regulate engineers, land surveyors, and architects; 34 states regulate landscape architects. Because all 50 states regulate engineers, land surveyors, and architects, the auditors could not compare problems that exist in regulated states with problems existing in states without regulation. To determine the type and magnitude of problems related to those professions in Kansas, and to determine whether any such problems could cause harm serious enough to warrant State regulation, the auditors reviewed complaints filed with the Board and disciplinary actions taken by the Board. Their review helped the auditors determine the possible harm that exists even when regulation is present. They also surveyed practitioners by mail to get their opinions as to the potential for harm in the absence of regulation.

The record of complaints made by consumers against a regulated industry or occupation provides an indication of the potential harm that exists. In reviewing the Board of Technical Professions' complaint file, the auditors found a total of 58 complaints filed over the last seven years. (This includes two complaints filed with the separate boards before they were combined.) The auditors reviewed a random sample of 41 complaints (71 percent of the total). Of these complaints, 20 (49 percent) involved engineering, 13 (32 percent) involved architecture, seven (17 percent) involved land surveying, and one (1 percent) involved landscape architecture. These complaints are discussed in the following sections.

Engineering complaints. When the auditors reviewed the 20 engineering complaints in their sample, they found that eight were filed by other licensees, six were initiated by the Board, five were initiated by engineering professional societies, and one was filed by a member of the public. These complaints can be categorized as follows:

- **improper use of the title "engineer"** (for example, use of the title "engineer" in a telephone directory listing, in an advertisement, or on a business card by persons not licensed by the State) (10 complaints)
- **practicing engineering without a license** (for example, a firm designing a grain elevator without a licensed engineer on the staff) (5 complaints)
- **misconduct or incompetency** (for example, failing to notify another Board licensee of an error or alleged misleading statements regarding an interpretation of a uniform building code) (2 complaints)

- **miscellaneous** (for example, hiring a non-licensed engineer as a county engineer or problems with competitive bidding on a project) (3 complaints)

In four of these twenty complaints, the Board found that no law or procedure had been violated or the Board took no action on the matter. In the remaining 16 complaints, however, the Board found that violations had occurred. Of these, nine involved improper use of the title engineer, four involved practicing without a license, and three were in the miscellaneous areas mentioned above.

The auditors examined these complaints in depth to determine if any harm had actually occurred to the public. Some, like the improper use of a title or practicing without a license, alleged no harm and did not appear, with one exception, to have been significant as far as the public's protection was concerned. The one exception concerned the construction of a grain elevator. The Board initially found that a firm had not hired a licensed engineer for a grain elevator construction project. The Board directed the firm to hire a licensed engineer. During the Board's review, a Board member noted that the plans for the elevator did not contain a minimum strength analysis needed to ensure the safety of persons working in the elevator.

In their review of the 20 complaints, the auditors identified one other situation with potential for harm to the public. This case involved the design of a city community center. A consulting engineer called in by the building's general contractor felt that the structural support for the roof of this building did not meet the minimum specified in the local building code and was potentially unsafe.

Architecture complaints. Of the 41 complaints reviewed by the auditors, 13 involved architecture. Six of these were initiated by the Board, five were filed by other licensees, and one each was filed by a public official and a member of the public. These complaints can be categorized as follows:

- **improper use of the title "architect"** (for example, use of the title "architect" in a newspaper story, in a Chamber of Commerce listing, on a business card, or in a firm's name by individuals not licensed by the State) (9 complaints)
- **practicing without a license** (for example, a licensed engineer practicing architecture) (1 complaint)
- **miscellaneous** (for example, problems with inadequate or improper plans and specifications, members of a board of directors of an architectural firm who were not licensed architects, or problems with the competitive bid process) (3 complaints)

In six of these 13 cases, the Board found that no law or procedure had been violated, or the Board took no action because it determined that it had no jurisdiction over the matter. In the remaining seven complaints, however, the Board found that violations had occurred. Of these, five involved improper use of the title architect, one involved practicing without a license, and one was in the miscellaneous area mentioned above.

Again, the auditors examined these complaints in depth to determine if any harm had actually resulted to the public. Some, like the improper use of a title or practicing without a license, alleged no harm and did not appear, at least in these instances, to have been significant as far as the public's protection was concerned. For example, a licensed professional engineer prepared the plans and specifications on a project and the Board found this to be a violation of practicing architecture without a license. The Board dropped any further action in the matter after receiving assurance from the engineer that he would refrain from any similar action in the future. For the remaining valid complaint, no harm to the public appeared to have occurred, either. In that complaint, the Board found that members of a board of directors of an architectural firm were not all licensed architects. The Board considered the matter to be resolved when all non-architects resigned their positions as directors.

Land surveying complaints. Of the 41 complaints reviewed by the auditors, seven involved land surveying. Four of these complaints were initiated by other licensees and the remaining three were filed by members of the public. The complaints can be categorized as follows:

- **negligence in the practice of land surveying** (for example, conducting an inaccurate or incomplete survey) (4 complaints)
- **improper use of the title "land surveyor"** (for example, use of the title on a firm's stationery by persons not licensed by the State) (1 complaint)
- **practicing without a license** (for example, staking property lines or locating property points by an unlicensed individual) (1 complaint)
- **ethics violations** (for example, a county engineer receiving money from private citizens for survey work) (1 complaint)

In four of these seven complaints, the Board found that no law or procedure had been violated or the complaint had been withdrawn. In the remaining three complaints, however, the Board found that violations had occurred. Of these, one involved the use of the title "land surveyor," one concerned professional ethics, and one involved negligence by a land surveyor.

The auditors examined these complaints in depth to determine if any harm had actually resulted to the public. The complaint concerning the

improper use of a title concerned a firm's stationery, which listed the firm's two partners as land surveyors when only one was a licensed surveyor. The Board found this to be misleading and improper, and the firm removed the partners' names from the stationery. This complaint did not allege that harm had occurred and did not appear to have been significant as far as the public's protection was concerned.

In the second valid complaint, the Board found an individual who was both a county surveyor and a county engineer guilty of violating the rules of professional conduct for accepting compensation for survey work without fully disclosing all circumstances to clients. In three separate instances, individuals thought they had hired the surveyor to survey property in his capacity as county engineer and county surveyor, not as a private surveyor. In these instances, there did not appear to be any harm to the public other than the fees not being paid to the county.

In the third valid complaint, a land surveyor was found to be guilty of negligence in the practice of land surveying. Apparently as a result of this negligence, a member of the public lost a court case over a dispute in a property boundary. The land surveyor concluded that the property line should be moved 25 feet, thus depriving the individual of a 25-foot strip of property half a mile in length. This was upheld by the court. After the court decision, another survey found that the first survey was in error and that the property line should not have been moved. The Board found that the original survey did not include a search for the original cornerstones subsequently found in the second survey, and reprimanded the surveyor for negligence. In this case, the harm was apparently significant.

Landscape architecture complaints. Of the 41 complaints reviewed by the auditors, one involved landscape architecture. This complaint involved a question of whether the plans and specifications for a project needed a seal of a landscape architect in addition to those of the engineers and architects. The former Kansas State Board of Landscape Architects brought a lawsuit against the engineering and architectural firm for the unlawful practice of landscape architecture. The firm's position was that the landscaping performed was an incidental component of the project and that licensed engineers and architects are permitted to seal plans and specifications which include landscaping that is incidental to the project. The county court ruled in favor of the firm.

The Board then appealed the decision to the district court. Before the case was heard, the Kansas Engineering Society wrote the former Board of Engineering Examiners asking that it give serious thought to intervention as a friend of the Court. When the separate Boards were merged into the Board of Technical Professions, the newly formed Board decided not to pursue the matter and asked that the legal proceedings be dropped, and the case was dismissed. The auditors found no indication of alleged harm or no indication that this case was significant as far as the public's protection was concerned.

Disciplinary actions taken by the Board. Another measure of the potential harm to the public is the seriousness of disciplinary actions taken by the Board. The Board has the authority to initiate proceedings on its own motion or on the complaint of any person against a licensee. After notice and a hearing, the Board may revoke or suspend any practitioner's license. The Board, however, is not authorized to award damages or charge penalties.

The auditors' review of Board files showed that in fiscal year 1979 the Board held nine disciplinary hearings. Of these, six were held against licensed engineers for their involvement in an alleged bribery conspiracy. All six were reprimanded by the Board and four were placed on six-month probation.

The other disciplinary hearings were against two licensed architects and a land surveyor. The Board found one of the architects not guilty of conspiring with a contractor so that this contractor would receive the bid on a project and all others would be excluded. The Board revoked the license of the other architect who had been found guilty in a district court for conspiracy to commit bribery for the purpose of obtaining an architectural contract. Approximately four months later, the Board restored the license to comply with a court order which found the revocation to be unduly harsh and excessive punishment. The land surveyor was found negligent in conducting a survey and was reprimanded by the Board.

The Board held no disciplinary hearings against landscape architects in fiscal year 1979. In addition, the auditors found that no hearings have been held against landscape architects since the Board was established on July 1, 1976.

The auditors also reviewed the Board's disciplinary actions taken before and since fiscal year 1979 and found that the Board has taken disciplinary action against practitioners on only three other occasions. Two architects had their licenses suspended for six months during fiscal year 1978 and one land surveyor was reprimanded in fiscal year 1980.

Survey of licensees. The auditors also surveyed a random sample of 825 of the 8,595 licensed engineers, architects, land surveyors, and landscape architects in Kansas to obtain their views as to what harm would occur if the licensing of these professions were eliminated. The auditors also wanted to ensure that no problem areas were overlooked. (A summary of these survey results is available from Legislative Post Audit upon request.)

Approximately 50 percent--410 licensees--responded to the survey. Of the practitioners responding to the questions about the effects of eliminating the licensing of engineers, 33 percent indicated that the profession would be open to unqualified persons. Another 30 percent felt harm would

occur, but did not specifically describe the harm. For architects, 43 percent responded that there would be an increase in inferior and dangerous structures and that this could lead to possible loss of life or property. Thirty percent felt there would be an increase in unqualified practitioners. For land surveyors, the majority responding--43 percent--felt that unqualified individuals would practice, and 31 percent felt that there would be an increase in inaccurate survey work. The primary concern of the landscape architects (29 percent of those responding) was that the public would be unable to identify qualified practitioners. An additional 27 percent felt that the quality of landscape architecture services would decline.

Need for continued regulation. The auditors found that potential for harm exists from the practices of engineering, architecture, and land surveying even with regulation, as evidenced by the current literature and the complaints received by the Board. The harm caused by practitioners who perform substandard work or who do not have the necessary knowledge and skills can potentially result in economic loss to clients and also, at least for engineering and architecture, can potentially result in loss of life to the public. Although licensing cannot prevent significant harm from occurring, it does ensure that individuals practicing these professions have demonstrated an acceptable level of knowledge and competency. These factors led Legislative Post Audit to conclude that regulation is needed for the practices of engineering, architecture, and land surveying because of the potential for harm to the public's health, safety, or welfare.

However, the auditors did not find examples of demonstrated harm to the public from the practice of landscape architecture. The Board files that were reviewed contained only one complaint involving landscape architecture. This complaint did not allege harm and concerned practicing without a license. A court found the charge to be invalid. In addition, auditors found that the Board has never held any disciplinary hearings against landscape architects.

In fiscal year 1979, there were 220 landscape architects licensed in Kansas. The auditors found, however, that only about 50 percent of the licensees reside in Kansas. In addition, 56 percent of those residing out of State were found to live in states other than those bordering Kansas. The auditors also found that approximately one-third of the 220 licensees received their licenses under a grandfather clause when the license law was adopted in 1968. These individuals were required to demonstrate to the Board that they were currently practicing as landscape architects and did not have to pass an examination or meet the education requirements to be licensed. Because the auditors found no harm to the public when more than one-third of the licensees have not taken the licensing examination, this further suggests there may not be a need for regulation of landscape architects.

In addition, unlike the other three technical professions, not all 50 states license or regulate landscape architects--34 states license landscape

architects and of those, only 23 regulate the practice of landscape architecture. (The remaining 11 states are under "title acts," restricting only the use of the title of landscape architect.) Furthermore, in two of the states without regulation, landscape architects are no longer regulated as a result of sunset legislation.

The lack of potential for significant harm to the public is further illustrated by the number of exemptions contained within the license law. The following individuals are not required to be licensed:

- individuals whose occupation is growing and marketing nursery stock
- individuals who use the title nurseryman or gardener
- nurserymen who engage in preparing and executing planting plans
- individuals who practice site development planning in accordance with the practice of engineering or architecture
- individuals who plan or plant their own property
- state and federal government employees who practice landscape architecture

Based on these findings, Legislative Post Audit concluded that the potential for harm to the public's health, safety, or welfare would not be significant if the practice of landscape architecture were not regulated.

Does State Regulation Protect the Public's Health, Safety, and Welfare?

The primary purpose of regulation is to protect the public. Studies have shown, however, that regulatory agencies may become sympathetic to--even dominated by--the industries they regulate. These agencies may create policies and take actions that benefit the industry rather than the public. To address this concern, the Sunset Law calls for Legislative Post Audit to determine whether all facets of the regulatory process are designed solely to protect the public, whether such protection is the primary effect of regulation, and whether there is a reasonable relationship between the State's exercise of its police power in this regulatory activity and the protection of the public.

The auditors reviewed the Board's rules and regulations, statutory requirements, and its complaint-handling, examination, and licensing activities to determine whether the Board's functions served to protect the public or the profession being regulated. During their review, the auditors found that the Board's licensing requirements appeared reasonable and that its

examination and licensing activities were handled equitably and fairly. However, the auditors did find two areas in which improvements were needed in certain Board actions and regulations. The areas in question primarily involved the Board's inconsistent handling of complaints and the unequal composition of the Board's membership. Each of these areas reviewed by the auditors is discussed below.

Licensure Requirements

To become licensed in Kansas, engineers, land surveyors, architects, and landscape architects must meet several education, experience, and examination requirements set out by statute or by the regulations adopted by the Board. The statutes allow applicants for licensure to substitute combinations of work experience and education to meet the requirements for licensure. For example, an applicant for licensure as a professional engineer with eight years of satisfactory experience does not have to meet the education requirement, and graduation from a four-year school in a curriculum other than engineering may be substituted for two of the eight years of experience required. The basic education and experience licensure requirements for the four professions are summarized in the figure below.

BASIC EDUCATION AND EXPERIENCE REQUIREMENTS KANSAS TECHNICAL PROFESSIONS	
<u>License</u>	<u>Requirements</u>
Professional Engineer	Engineering degree and 4 years experience
Land Surveyor	Engineering degree and 2 years experience; or graduation from accredited 2-year surveying curriculum and 2 years experience
Professional Architect	Architecture degree and 3 years experience
Landscape Architect	Landscape architecture degree and 2 years experience

To determine if any of the licensing requirements are unnecessarily restrictive, the auditors compared the licensing requirements in Kansas with those of other states. For three of the technical professions--engineers, architects, and land surveyors--the auditors found that the education and experience requirements are generally the same and that all applicants are required to pass the same national examinations. Kansas licensing requirements, therefore, do not appear unnecessarily restrictive for these three professions.

The auditors did find variations among other states' licensing requirements and regulation of landscape architects. Unlike the other three technical professions, all 50 states do not license or regulate landscape architects--34 states license landscape architects and of those, only 23 regulate the practice of landscape architecture. (The remaining 11 states are under "title acts," restricting only the use of the title of landscape architect.) Kansas, one of the 23 states which regulate the practice, therefore would appear to be more restrictive than about half the other states. However, most of the 34 states licensing landscape architects require more experience for licensure than Kansas. Nineteen states require three years of experience, 13 states including Kansas require two years of experience, and 2 states require one year of experience.

The auditors also reviewed the Board's licensing activities to determine whether those activities were fair and equitable. When individuals apply to the Board to take an examination, the Board evaluates their education and experience. As discussed previously, education and experience requirements are set by law. Yet, the Board has a great deal of discretion in determining what constitutes satisfactory education and experience. In fiscal year 1979, the Board approved 88 percent of the applications received. The Board determined that the remaining applicants (12 percent) did not satisfactorily meet the education or experience requirements. However, rather than being denied, these applications are held "pending"--needing some additional education or experience to meet the licensing requirements. The auditors reviewed the pending applications and found that, in all cases, the Board informed the individuals as to the reasons their applications were not approved and the additional education or experience necessary to meet the requirements. In addition, the auditors found no apparent inconsistencies between approvals and pending applications.

Inconsistent Actions on Complaints

The auditors did find inconsistencies in the manner in which the Board handled complaints. In their review of their sample of 41 complaints, the auditors found that the Board appeared to more actively pursue some types of complaints than others. Generally, the complaints pursued more actively were those alleging the misuse of a professional title or practicing without a license. These complaints did not suggest that any harm to the public had occurred or that any potential for such harm existed. Yet, in other complaints alleging harm, such as those regarding negligence, the Board appeared more reluctant to actively pursue the matters. Of the 41 complaints sampled, seven alleged negligence, misconduct, or incompetence. Although these types of complaints comprise a relatively small percentage, they do show the greatest potential for public harm. The examples summarized below illustrate the inconsistencies found among the auditors' sample.

In the first example, the Board resolved a complaint, but appeared to ignore a problem that surfaced when the complaint was handled. The complaint involved the roof of a city community center under construction. First, the general contractor for the building project felt that the architects and engineers who designed the building had recommended a roof design for snow loads that did not meet city codes and would be potentially unsafe. The contractor hired a consulting engineer who examined the situation, agreed with the contractor, and reported this to the city. The architects and engineers who drew the plans then filed a complaint with the Board of Technical Professions, alleging that the consultant made misleading statements regarding their interpretation of the city's building code and that the consultant's competence and integrity were in question. The city called in the International Conference of Building Officials, a professional organization which examines building plans for a fee. Conference officials agreed that the building did not meet the building code's minimum requirements. In the interim, the consulting engineer had to hire an attorney to defend himself before the Board of Technical Professions. When the Board received the Conference report, it closed the case against the consulting engineer. The Board apparently did not consider following up the complaint by taking action against the firm that had designed the building in question.

In another complaint, a mechanical contractor wrote to the Board complaining that the plans for a new church of which he was a member contained design errors, inadequate specifications, and no seal from a Board licensee. The letter, which listed several deficiencies in the plans, was discussed at a Board meeting. During the discussion, one Board member stated that he did ". . .not want to be involved in a free plan-checking service for anyone who asks" and that if the allegations were correct, the complainant should file a civil suit. The minutes also noted that one Board member mentioned that the Board can only discipline but cannot award damages if clients are not getting what they are paying for. The Board wrote the complainant that it would not take any action but if a formal complaint were filed, the matter would be pursued further. Board records did not show that a formal complaint was ever received.

A third case, which involved practicing without a license rather than negligence, brought considerably more action on the Board's part and is typical of the way in which such complaints are handled. In that case, the Board filed a complaint against a Kansas licensed professional engineer for practicing architecture without a license. The complaint did not suggest any concern on the Board's part over the design of the structure, only that the plans were not stamped with the seal of a licensed architect. During its investigation of the matter, which took approximately one year, the Board wrote several letters to the engineer, reviewed the plans for the project, met with the engineer twice (he had to travel to Kansas from his home in Colorado), consulted with the Attorney General's Office, and asked the city where the project was located if it would take any action in the matter. (The city responded that as far as it was concerned there was no problem--

the plans were acceptable under the building code.) Finally, the Board determined that the engineer had practiced architecture without a license. The Board did not take any further action after requesting assurance from the engineer that he would refrain from any similar actions in the future. The auditors contacted the engineer, who said that resolving the matter cost him approximately \$700. He commented that the Board did not act promptly, that the Board was indecisive, and that the Board would not give clear direction on what should be done. He also indicated that at one point the Board sent a letter suggesting that the matter had been dropped and then he heard from the Board again four months later.

In finding inconsistencies in the Board's handling of complaints, the auditors also noted a pattern in the Board's formal complaint filing procedures. The auditors found that the Board requested formal complaints for five of the seven cases sampled involving negligence, misconduct, or incompetence. However, the Board generally did not request or file a formal complaint in the remaining cases, most of which did not suggest that any harm to the public had occurred.

Steps in Filing a Complaint. . .

To file a formal complaint with the Board, the following steps must be taken:

1. The complainant must submit the complaint, signed and notarized.
2. The Board must send the complainant a copy of the statutes.
3. The complainant must specify the charges and the statute which prohibits the action.
4. The complainant must substantiate the charges with exhibits.

To file a formal complaint with the Board, the complainant must first submit the complaint, signed and notarized. Then, the Board sends the complainant a copy of the statutes and asks that the complainant specify the charges and the statute which prohibits the action stated in the charges. Finally, the complainant is requested to substantiate the charges with exhibits. While this procedure may be one way of screening invalid complaints, the auditors determined that the current procedure seems restrictive in that it places such burdens on complainants. Through its procedures, the Board could be discouraging individuals with legitimate concerns.

The auditors also reviewed the timeliness of the Board's complaint-handling procedures, again examining the random sample of 41 complaints from the 58 complaints received by the Board during the last seven years. The auditors found that 25 of the 41 complaints (61 percent) were resolved in less than 90 days. In addition, the Board, which meets approximately once every two months, resolved 10 of these cases (24 percent) within 30 days, often by corresponding with the Executive Secretary. Only 2 of the 41

complaints (5 percent) were under investigation for more than one year. These cases involved a complaint against a Kansas-licensed engineer based out-of-State for practicing architecture without a license and the lawsuit against an engineering and architectural firm for the unlawful practice of landscape architecture, which was later appealed. It would therefore appear that, except for unusual situations, the Board generally resolves complaints in a timely manner. It should be noted, however, that included among the totals of resolved complaints are those that the Board did not actively pursue. For example, the complaint from the mechanical contractor who complained about deficiencies in the plans for a new church was "resolved" within 30 days--the point at which the Board decided not to pursue the complaint until a formal complaint was submitted.

Based on these findings, Legislative Post Audit concluded that, although the Board resolves most complaints in a timely manner, the Board's inconsistent actions on complaints and its restrictive complaint-filing procedure do not serve to protect the public. The public would be better served and protected if the Board investigated all complaints (except anonymous complaints) in a consistent manner, and eased the burden on the complainant.

Unequal Representation on Board

The auditors also found that the public could be better served

FILING FORMAL COMPLAINTS: SOME EXAMPLES

The following are two examples of complaints to which the Board responded with a request for a formal complaint. One complainant did not pursue a formal complaint because of the anticipated cost involved, and the other complainant filed a formal complaint, despite apparent discouragement by the Board.

In the first example, an individual representing an out-of-State firm contacted the Board with a complaint against a land surveyor. The Board requested a formal complaint, but the complaint was never submitted. The auditors contacted the complainant to find out why the matter was dropped. According to the complainant, the firm felt that it would be too costly to pursue a formal complaint. The firm's complaint concerned a surveyor whom the firm's architect had found to have completed an unsatisfactory survey. The firm, which had already paid the surveyor, called the surveyor back to redo the survey. The surveyor's second attempt was also unsatisfactory, so the firm hired another surveyor at a fee of \$1,200 to complete the survey.

In the other instance, a property owner complained to the Board that a land surveyor had completed an inaccurate survey. Another more accurate survey had apparently been completed by another surveyor. The Board responded with a letter requesting a formal complaint. In this letter the Board said: "We would like to point out to you that discrepancies between surveys is not particularly unusual and does not necessarily indicate incompetency on the part of one or the other of the surveyors." Despite the Board's statement, the property owner filed the formal complaint. The Board then held a hearing on the matter and reprimanded the surveyor for negligence.

if the structure of the Board were changed to achieve a better balance between the professions and public. The State Board of Technical Professions currently comprises nine members appointed by the Governor for three-year overlapping terms. Board members are required to be U.S. citizens and Kansas residents. In addition, three members are required to be licensed engineers, three licensed architects, one a licensed landscape architect and one a licensed land surveyor. The ninth member represents the general public.

Regulatory boards composed entirely of members of a regulated profession are often criticized for using their powers to promote the interests of the profession rather than those of the public. The inclusion of one public member on the Board of Technical Professions helps the Board avoid criticism that it might use its powers to promote the industry. However, having one public member on the nine-member Board may not provide a balance between the professions and the public. The Board could become dominated by the professions. While the presence of one public member on a board can potentially have a positive impact on the regulatory process, the impact of public membership is likely to be much more significant with two or more public members. Several state legislatures have acted in the past few years to increase public membership on regulatory boards from one to two or more. A common argument against public membership, on the other hand, is that a lack of technical expertise may prevent a public member from choosing the most effective course of action. However, the Board of Technical Professions' activities, most of which involve review of applications for examination, do not appear to require technical expertise of all Board members. The Board does not perform the more technical function of developing examinations, for example. Additional information concerning public membership on regulatory boards may be found in Appendix C.

The auditors also found that the current way the Board operates appears to limit the role of the public member in Board decisions. For the purpose of reviewing applications for examination and licensure, the Board divides into two sections: the three architects and the one landscape architect are in one section and the three engineers and the one land surveyor are in the other. Because both sections generally meet simultaneously, the public member cannot participate in both sections in a meaningful way. The minutes of the 1979 Board meetings showed that the public member attended only one of these section meetings but attended all of the meetings of the full Board.

Based on these factors, Legislative Post Audit concluded that to ensure that the public is adequately represented in Board decisions, and to ensure that the Board's membership achieves a balance between the professions and the public, the Board should meet with all members on all matters, and the Board's structure should be revised to achieve a better balance between public representation and professional representation. Several options could be considered to achieve more equal public represen-

tation. First, the Board could include two public members and one member representing each profession regulated by the Board. This would reduce the total Board membership to five or six persons, depending on whether the practice of landscape architecture would continue to be regulated. Another option would be to add several public members to the current board structure. The large size of the Board under this option, however, may prove unwieldy in the decision-making process.

Apparent Violations of Law

After Legislative Post Audit received the agency's response to the draft sunset audit report of the Board of Technical Professions, an additional issue was brought to the auditors' attention. A landscape architect--not a Board member--who apparently had received a copy of the draft report sent to the Board for its review, contacted Legislative Post Audit to express his concerns over the recommendation that landscape architects no longer be licensed. One of the concerns raised by the landscape architect was that if landscape architects were not licensed, he would no longer be able to be a shareholder or an officer in the professional corporation with which he is associated.

To fully understand how this individual, and any others in similar situations, would be affected if the licensing requirements were eliminated, the auditors reviewed Kansas law covering professional corporations. They found that, under the law, landscape architects are not allowed "to incorporate a professional corporation." The other professionals regulated by the Board (architects, engineers, and land surveyors) are allowed to form professional corporations. This led Legislative Post Audit to question how the landscape architect could be associated with a professional corporation and to examine the professional corporation with which the landscape architect is associated. This examination pointed to several apparent violations of law.

The corporation was originally incorporated in 1968 by five licensed architects. The articles of incorporation stated that the purpose of the corporation was "To render architectural services and any services ancillary thereto and in that capacity to make, conduct, supervise, research, survey and investigate into all matters and things in the field of science and technology." As required by the law, a certificate was filed by the Secretary of State by the Kansas Registration and Examining Board of Architects (now the Board of Technical Professions). The certificate stated that each incorporator was duly licensed to practice architecture and approved the proposed corporate name. Over the next several years the name of the corporation was changed three times. In both 1970 and 1971, the name of one of the original incorporating architects was removed from the corporate name. The law requires that whenever an amendment is filed to change the name of a corporation, a certificate approving the name change must be submitted by the regulating board. No such certificates for these two changes are on file with the Secretary of State.

The first two name changes only involved dropping names of the original incorporators, and the lack of certificates may be a relatively minor matter. The third name change, however, raises a serious question about the legal status of the corporation. In 1975, when the third change was made, another one of the original incorporators was removed from the corporate name. At the same time, another name was added--this individual was a landscape architect. Although the individual was not a licensed architect, the name change was approved by the State Registration and Examining Board of Architects.

Name changes to professional corporations are significant, not only because the law requires that they be approved by the appropriate regulatory board to ensure that all incorporators are duly licensed to practice that profession, but also because a name change indicates that shares in the corporation have been transferred or issued to other individuals. The law requires that shares be held only by "qualified persons" and defines a qualified person as an individual licensed to practice the same type of profession which any professional corporation is authorized to practice.

From the review of the law, Attorney General opinions, the articles of incorporation for this corporation, the amendments to the articles, and other records, Legislative Post Audit has identified several apparent violations of the professional corporation law. These are as follows:

1. When the amendments to the articles of incorporation were filed to change the name of the corporation in 1970 and 1971, a certificate should have been required by the Secretary of State before the amendments were approved. That certificate should have stated that each incorporator is duly licensed to practice the profession and that the proposed corporate name has been approved by the board regulating the profession.
2. The corporation should not have issued or transferred shares to a landscape architect, who is not a qualified person as defined by the professional corporation law.
3. When the corporation name was changed in 1975 to include the landscape architect, the State Registration and Examining Board of Architects should not have approved the name, since one of the individuals was not a licensed architect.
4. When this amendment was filed, the Secretary of State should have required that a certificate be submitted stating that each incorporator is duly licensed to practice architecture before approving the change.
5. The annual report submitted by the corporation to the Secretary of State says that each officer, director, and shareholder is a qualified person, although one individual apparently is not a qualified person as defined by the professional corporation law.

In addition to the possible violations of the law concerning professional corporations, it appears that the landscape architect may be violating the State's Architects' Registration Act. Under this law, it is unlawful to call or represent oneself as a licensed architect unless duly licensed under the provisions of the Act. The use of the landscape architect's name in the name of the architectural corporation would appear to be a violation of this law.

Is Regulation Worth Its Cost?

To assess whether the benefits of regulation justify its costs, the Kansas Sunset Law calls for analyses in two areas: a determination of the degree to which regulation increases the cost of goods and services, and a determination of whether the increased cost is more harmful than an absence of regulation. To address these areas, the auditors first identified costs that could be most directly related to the activities of regulation. The most direct administrative costs are examination, permit, and reciprocal certificate fees paid by members of the technical professions.

During fiscal year 1979, fee receipts for the Board of Technical Professions totaled \$242,631. Current Board fees include \$15 per year for license renewals, \$10 application fees for architects and landscape architects, and examination fees which range from \$20 for each of the two engineering exams to \$125 for the landscape architecture exam.

To determine whether these charges had a significant impact on the cost of services to consumers, the auditors attempted to compare the total fee receipts of \$242,631 with the four industries' total volume of business. However, the only information available was from the Department of Economic Development for 1977, which showed that the total 1977 payroll for engineering and architectural services alone was \$34.2 million. This figure is three years old, does not include total profits, and excludes land surveying and landscape architecture, but the fees paid by all licensees amount to less than one percent of this amount. Consequently, direct administrative costs do not appear to significantly affect the cost of goods and services to the public.

In their survey of engineers, architects, landscape architects, and land surveyors, the auditors asked several questions concerning the effect of Kansas laws and regulations on the costs associated with regulation. The majority of the practitioners responding--87 percent--said they did not feel the costs involved in becoming licensed discouraged individuals from seeking licensure. They also responded that they did not feel the regulatory requirements increased their cost of practicing; 88 percent indicated that if the regulatory requirements were repealed, their costs would not be significantly reduced.

Taken together, these factors led Legislative Post Audit to conclude that the cost of regulating engineers, architects, landscape architects, and land surveyors did not appear to significantly increase the public's costs for goods and services. However, because the potential for harm in the absence of regulation of landscape architects is not significant, any costs transmitted to the public because of regulation may be unwarranted.

Alternative Methods of Regulation

One of the requirements of the Kansas Sunset Law is to determine whether there are alternatives for regulating the four professions that are less restrictive but still effective in protecting the public from harm. As discussed in previous sections of this report, Legislative Post Audit concluded that the potential harm in the absence of regulation of engineering, architecture, and land surveying existed, and that there was a need for regulation. However, Legislative Post Audit concluded that there was no potential for harm in the absence of regulation of landscape architecture, and that there was not a need for regulation. In considering alternative methods of regulation for engineering, architecture, and land surveying, the auditors attempted to determine whether regulation that is less restrictive could be provided other than through the Board of Technical Professions. They examined the feasibility of allowing professional organizations to regulate their own members and of combining the Board's regulatory functions with other State boards.

Regulation by Professional Organizations

The auditors examined the possibility of transferring the Board of Technical Professions' regulatory functions to professional organizations having similar responsibilities to those of the Board. In their analysis, the auditors found organizations which perform functions similar to those of the Board--two national councils, which are confederations of all State boards; and two national professional organizations and their State affiliates.

National councils. The National Council of Engineering Examiners and the National Council of Architectural Registration Boards are confederations of all state boards which license the three professions--engineering, architecture, and land surveying--for which the auditors concluded there was a potential for harm in the absence of regulation.

The National Council of Engineering Examiners is a confederation of all State boards, including the Board of Technical Professions, which have been established to carry out state license laws. The Council's objectives include improving engineering and land surveying registration laws, seeking uniformity of standards and practices in engineering and land surveying

registration, defining nationally recognized qualifications for professional engineering and land surveying registration. The Council prepares the licensing examinations and has developed a Model Law which provides state legislatures a written guide of preferred or recommended practices for engineering and land surveying laws.

The Council has also adopted a Records Program. For registered engineers who anticipate seeking registration in more than one state, the National Council will compile a record of their education, training, experience, and registration. The Council acts as a clearinghouse by forwarding this information to state boards. The Council will also evaluate these qualifications and issue certificates to individuals who have met the Council's recommended standards.

The National Council of Architectural Registration Boards is an organization of State architectural licensing and registration boards. The objectives of the Council include promoting high standards of architectural practice, fostering the enactment of uniform laws, and improving the standards for examination of applicants for State registration. The Council also conducts a certification program by verifying and maintaining a record of an applicant's education, training, experience, examination, and registrations. The Council examines an applicant's record and if certain standards (similar to licensing requirements) are met, it will issue a Council certificate. The record and certificate are used to facilitate reciprocal licensing and registration in the states. The Council will forward the information to state boards and recommend that the qualified individual be licensed as an architect without further examination.

Professional associations. The auditors found that the Kansas Engineering Society, the State affiliate of the National Society of Professional Engineers, has adopted rules of professional conduct for professional engineers and land surveyors who are members of the Society. The Society's stated goals include to advance and protect the public welfare, to maintain high ethical standards and practices, to encourage maximum development of Kansas resources for the benefit of its citizens, and to promote high standards of engineering education. Although there are various categories of membership, overall membership in the Society is open to licensed professional engineers from any state, graduates from approved four-year engineering curriculums with 12 years of experience, individuals who have passed the fundamentals of engineering examination in any state, or graduate engineers actively pursuing an engineering career.

The Society's Professional Policies, to which members must adhere, cover employment practices for public and government projects, collective bargaining, ethics and practices, telephone listings, and other areas. In addition, the Society's Ethics and Practices Committee is responsible for investigating unprofessional conduct of engineers and illegal practices, and for cooperating with the Board of Technical Professions to ensure proper enforcement of the License Law.

The auditors found that the American Institute of Architects and its local affiliate, the Kansas Society of Architects, has adopted a Code of Ethics and Professional Conduct for architects who are members of the Institute. The Institute's stated purpose is to promote architecture to the profession and the public. Membership in the Institute is open to any licensed architect. Associate memberships are open to persons without architectural licenses who are employed under the supervision of a licensed architect or who are employed in circumstances that would constitute credit toward licensing.

The Institute's Code of Ethics and Professional Conduct, to which members must adhere, covers canons of conduct, ethical standards, and rules of conduct. The rules of conduct are mandatory, and their violation is subject to disciplinary action by the Institute. The rules cover such areas as advertising, discrimination, competence, integrity, and professional conduct.

Although the responsibilities of these organizations are in many respects similar to those of the Board, these organizations do not have the authority of the Board to enforce laws or regulations. Unlike the professional organizations, the Board can revoke or suspend licenses. The professional organizations also do not perform any of the necessary administrative functions performed by the Board, such as administering examinations, licensing, and handling complaints. For these organizations to provide the same level of regulation, all practitioners would be required to be members, and all functions of the Board would have to be transferred to the organizations. Based on these factors, Legislative Post Audit concluded that regulation of engineering, architecture, and land surveying could not be made less restrictive by eliminating the Board in favor of professional organizations.

Consolidation

One of the questions raised during the sunset process is whether reorganizing agencies under review would better meet the Legislature's goals in establishing regulatory functions. In recent years, interest has grown in the consolidation of all types of regulatory agencies. Often, common threads run through regulatory agencies--such as licensing, inspecting, and examining activities, or the regulation of similar types of people or professions. Some of the reasons for increased interest in consolidation include concern over the proliferation of agencies, concern that regulation on an industry-by-industry basis alone may become too intertwined with the interests of the industry and neglect those of the public, and concern that more efficient or effective regulation and administration can be provided.

Legislative Post Audit did not explore all possibilities for consolidating the regulatory functions of the Board of Technical Professions with other agencies that have similar regulatory functions or that have other factors in

common. However, the Legislature may want to consider the issue of consolidation at the same time it considers re-establishing the regulation of engineering, architecture, and land surveying. The options include creating a separate board to handle the functions and administrative duties of regulating these and other professions, or creating a larger occupational licensing agency that would perform all regulatory functions and administrative duties for State-licensed occupations in Kansas.

Conclusions

For the following reasons, Legislative Post Audit concluded that the practice of landscape architecture should no longer be regulated and that regulation of the practices of engineering, architecture, and land surveying should be continued with some changes:

1. Possible harm to the public in the absence of regulation. Possible harm to the public exists now from the practice of engineering, architecture, and land surveying, even with regulation. Complaints disclosed a potential for public harm from financial loss and from unsafe buildings as a result of incompetence. Without regulation, it is possible that these problems could increase. However, the auditors found no examples of harm that would occur if the practice of landscape architecture were no longer regulated.
2. Protection of the public. Two aspects of the regulatory activity do not appear to totally protect the public. First, the Board does not consistently investigate all complaints (especially those involving negligence and incompetence) and in some instances places an unnecessary burden on the public with a restrictive complaint-filing procedure. Second, the public member is not involved in Board decisions on all matters.
3. Costs. The cost of State regulation of the four professions, less than one percent of the industry's total volume of business, does not appear to significantly increase the costs of services to the public. Because the regulation of landscape architecture is not needed, any costs associated with that regulation are unwarranted.
4. Lack of less restrictive regulatory alternatives. Eliminating regulation of engineering, architecture, and land surveying by the Board in favor of regulation by the professions themselves would not be less

restrictive. Options may be available, however, for consolidating the regulatory functions with the regulatory function of other professions, or for creating a larger occupational licensing agency that would handle the regulatory functions of licensing, examining, inspecting, disciplining, and handling complaints and consumer affairs of other State-licensed occupations in Kansas.

Recommendations

1. The Legislature should take no action to re-establish the State's regulatory function over the practice of landscape architecture.
2. The Legislature should act to re-establish the State's regulatory function over the practices of engineering, architecture, and land surveying.
3. To improve the handling of complaints:
 - a. All written and signed complaints concerning the practices of engineering, architecture, and land surveying should be thoroughly investigated.
 - b. The complaint-filing procedure should be revised to reduce the burden on complainants.
4. In re-establishing regulatory functions over the practices of engineering, architecture, and land surveying, the Legislature should consider one of the following options for revising Board representation:
 - a. Including two public members and no more than one member representing each of the professions regulated by the Board.
 - b. Adding three public members to the current Board.
5. In re-establishing the regulatory functions over engineering, architecture, and land surveying, the Legislature should consider the options of placing these functions under one of the following:
 - a. The Board of Technical Professions.
 - b. A newly created occupational licensing agency that would perform all regulatory functions and administrative duties for State-licensed occupations in Kansas.

APPENDIX A

TESTS AND ANALYSES USED TO MAKE A DETERMINATION OF THE SUNSET PERFORMANCE FACTORS

Sunset Factor 1

Whether the absence of regulation by the State agency or office would significantly harm or endanger the public health, safety, or welfare.

Test and Analyses

- Determine the number of persons or entities directly regulated by the agency and any significant changes in this number over time.
- Determine the number of complaints filed over time against those individuals or entities which are regulated.
- Relate the number of complaints to the population of the State, users of the service, and number of licensees to determine the magnitude of any problems.
- Determine if the users of services lack the knowledge necessary to evaluate the qualification of those offering services.
- Determine if a high degree of independent judgment is required of practitioners; and how much skill and experience is required in making these judgments.
- Determine the harm to the public which might occur if complaints filed with the agency were not resolved.
- Determine the "value" to the public of the agency's enforcement and licensing functions.
- Determine the harm to the public prior to State regulation or in states without regulation.

Sunset Factor 2

Whether all facets of the regulatory process are designed solely for the purpose of the protection of the public and have such protection as a primary effect.

Tests and Analyses

- Determine the composition of all advisory boards to ensure general public representation.
- Document what the agency has done to encourage public input into the regulatory process.
- Determine if controls are sufficient to prevent unauthorized individuals or entities from operating in the State.
- Review regulation procedures, tests, and qualifications to determine if they are relevant and valid criteria for evaluating applicants desiring to provide services covered by regulation.
- Determine the frequency of and reasons for complaints made by the public against those entities or individuals regulated by the agency. A high level of complaints might indicate that unqualified individuals are allowed to become certified to provide the regulated services.
- Review enforcement procedures utilized by the agency to determine if there is a follow-up and resolution of complaints.
- Determine the types of disciplinary action taken against those individuals and companies whom complaints have been filed against.
- Determine the extent to which the agency has recommended statutory changes to the Legislature which would benefit the public as opposed to the persons regulated.
- Determine if the agency has taken all actions necessary to protect the public.

Sunset Factor 3

Whether there is a reasonable relationship between the exercise of the police power of the State by the State agency or office and the protection of the public health, safety, or welfare.

Tests and Analyses

- Based on audit findings concerning harm that would result without regulation and alternative methods of regulation, determine whether the regulation is reasonable or unnecessarily restrictive.

- Determine the reason for refusals of applications for licensing; determine if the refusals are based on valid criteria.
- Review complaints made by those regulated which might indicate that the standards or criteria used in the regulatory process are invalid or unjustified.
- Determine if there are any artificial barriers to entry such as:
 - a) excessive fees
 - b) unreasonable age, education, or residency requirements
 - c) unnecessary experience requirements

Sunset Factor 4

Whether the regulation by the State agency or office has the effect of directly or indirectly increasing the cost of any goods or services involved, and, if so, to what degree.

Tests and Analyses

- Determine the costs to those regulated (i.e., license fees, testing fees, taxes, etc.).
- Determine the indirect costs to those regulated (i.e., training requirements, meetings, tests, paperwork-records, etc.).
- Compare the total costs of regulation to the total dollar volume of business done and/or the total cost of doing business by those regulated to determine if the cost of regulation is significant enough to increase the price charged for goods or services.
- Determine the degree to which the regulation restricts the supply of practitioners, thereby increasing the costs of goods or services.
- Determine if a less restrictive method of regulation would decrease the costs of goods and services.
- Determine if the agency restricts competition by prohibiting or restricting advertising.

Sunset Factor 5

Whether the increase in cost is more harmful to the public than the harm which could result from the absence of regulation by the State agency or office.

Tests and Analyses

- Compare the "value" of complaints resolved by the agency and the "value" of other regulatory activities with any costs due to regulation to determine whether the protection provided by regulation is greater than or equal to the cost of regulation. Consideration should be given to non-quantitative factors such as:
 - a. the deterrent effect of regulation
 - b. the effect of regulation on the competency of practitioners

Sunset Factor 6

Whether there is another less restrictive method of regulation available which could adequately protect the public.

Tests and Analyses

- Compare the regulatory activity in Kansas with that of other states.
- Determine if there is another agency or body which is already providing regulatory services or can adequately provide the same regulatory services.
- Determine if the following laws or standards could adequately protect the public without the agency:
 - a. unfair and deceptive trade practice laws
 - b. civil remedies such as injunctions and cease and desist orders
 - c. criminal laws such as prohibitions against false pretense, deceptive advertising, and cheating
 - d. standards such as construction codes or product safety standards

Performance Audit Factor 1

Whether any State agency is carrying out only those activities or programs authorized by the Legislature.

Tests and Analyses

- Determine the intent of the Legislature in creating the agency and the functions to be performed by the agency in accordance with that intent.

- Review statutes, regulations, legislative committee minutes, legislative studies, Attorney General opinions, and court decisions relevant to the agencies.
- Analyze the information to determine:
 - a. what circumstance or need led to the creation of the agency.
 - b. what functions the agency was originally created to perform.
 - c. how and why the agency's functions have changed over time due to statutory changes, legal opinions, etc.
- Compare current agency programs and activities to those authorized by the Legislature.
- Note any discrepancies between the activities performed by the agency and the activities authorized by the Legislature, and determine what changes need to be made to bring all programs and activities into compliance with Legislative intent.

Performance Audit Factor 2

Whether the programs and activities of a State agency, or a particular program of activity, are being efficiently and effectively operated.

Tests and Analyses

- Evaluate the agency's expenditures for regulation.
- Compare the agency's expenditures by activity over several years to determine if costs have increased for the various aspects of regulatory activity.
- Compare agency regulatory expenditures to those in other states with similar programs.
- Review application and complaint files to determine:
 - a. if applications are being processed on a timely basis
 - b. if complaints are processed and resolved within a reasonable time span
- Review agency operations for:
 - a. duplication of efforts or activities
 - b. wasteful practices (for example, underutilized equipment or personnel)

Performance Audit Factor 3

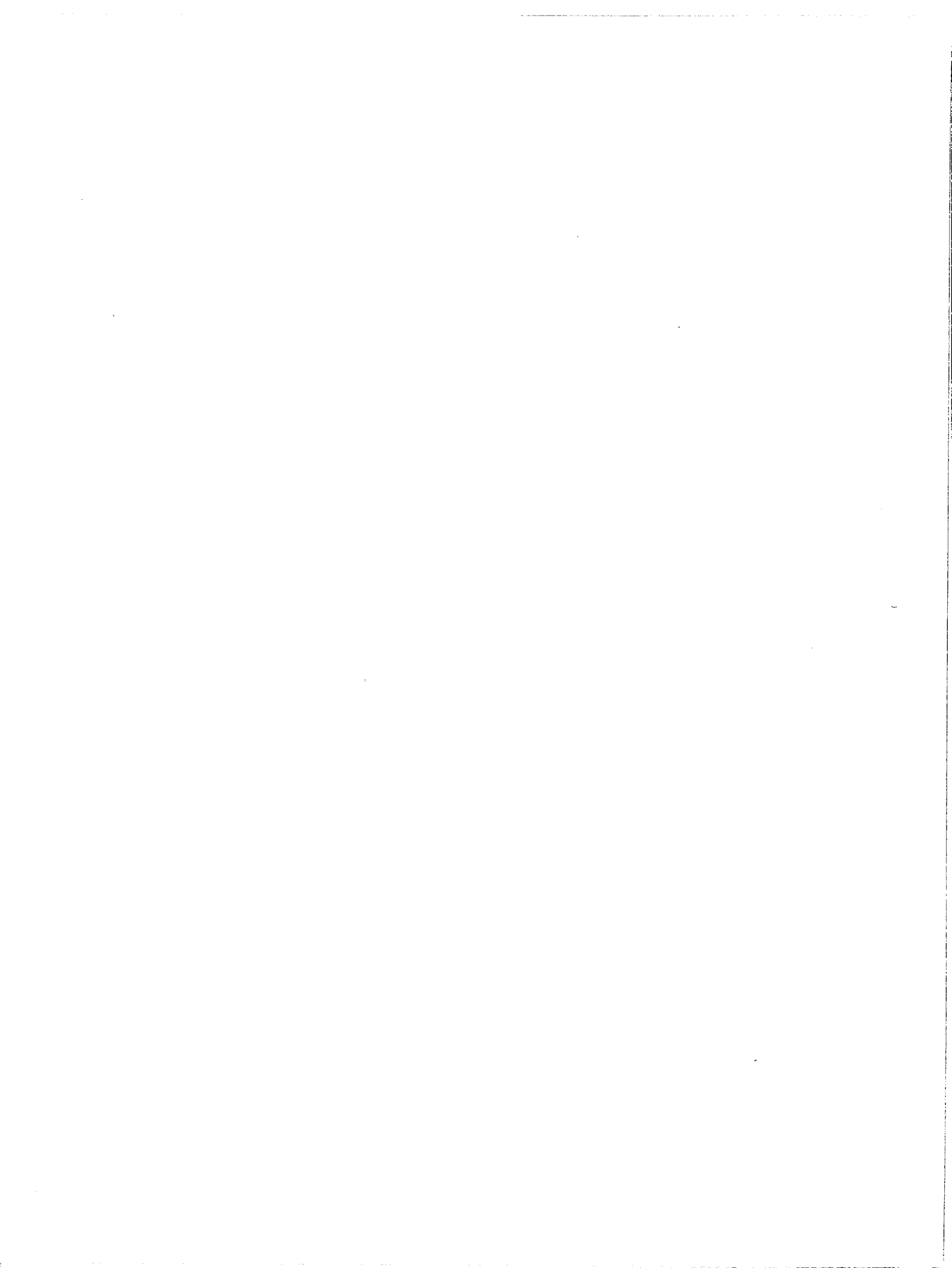
Whether any reorganization of a State agency or agencies is needed or justified to accomplish the results of programs or activities authorized by the Legislature.

- Based on the findings from tests and analyses conducted under performance audit factors 1 and 2, make a determination of the most efficient and effective organizational structure of the functions under review.

APPENDIX B

BOARD MEMBERS AND MANAGEMENT RESPONSIBILITIES
BOARD OF TECHNICAL PROFESSIONS

	<u>Status as of</u> <u>June 30, 1979</u>	<u>Status as of</u> <u>September 1, 1980</u>
Robert M. McCulley	Vice-Chairman	Chairman
Frank E. Smith	Member	Vice-Chairman
Gail E. Bierly	Member	Secretary
Henry M. Neely	Chairman	Member
Doug Flatt	Secretary	--
C. James Balderson	Member	Member
Roy E. Calvin	Member	--
Joe W. Carmichael	--	Member
Gustave E. Fairbanks	--	Member
Daniel D. Metz	Member	--
Jan Montgomery	--	Member
Craig A. Roberts	Member	Member
Jean Martin, Executive Secretary		



APPENDIX C

PUBLIC MEMBERSHIP ON REGULATORY BOARDS

Regulatory boards composed entirely or predominantly of members of the regulated profession or industry are often criticized for using their powers to promote the interests of the profession or industry rather than those of the public. This can be done by setting unnecessarily restrictive entry requirements or promulgating rules that unduly restrict competition. An industry-dominated board may also be less forceful than a board dominated by public members in exercising its enforcement authority to protect the public. Further, an industry representative's view of what is in the best interests of the public may not be the same as that of a public member.

Although the public member concept is not new, it appears to be gaining wider acceptance in states throughout the country. This is in some cases due to sunset activity. For example, in Texas in a bill recently passed by the Legislature involving 18 occupational licensing boards, up to three public members were placed on boards with nine total members. One or two public members were placed on smaller boards. In other states public membership is not new, but the number of public members has been increased. For example, in 1971 the New Jersey Legislature required that one public member be placed on each of these boards. In 1977, the California Legislature passed the Public Member Bill, which provided for a majority of public members on all state boards except the health-related boards and accountancy, where one-third were public members.

Positive and Negative Effects of Public Representation

It does not appear that any comprehensive studies related to public membership on regulatory boards have ever been conducted. However, Legislative Post Audit contacted officials who have been active in this area in other states, representatives of consumer advocate groups, and other persons noted as having extensive knowledge or experience regarding public membership to attempt to answer these questions:

1. What effect does public membership have on the regulatory process?

2. What problems have been encountered as a result of public membership on regulatory boards?
3. How can these problems be overcome?

Effect of Public Representation

Advocates of public membership often cited the following reasons why public members on regulatory boards can improve the regulatory process:

1. Board is more representative of the public.
2. Provides better public participation in the government decision-making process.
3. Reduces potential for board decisions favoring industry over public interest.
4. Expands range of talent and perspectives for board decisions.
5. Improves public confidence and trust in government.
6. Decreases potential for board domination by the regulated industry.

These and other improvements in the regulatory process have been observed by officials in other states. For example, one state official stated that the mere presence of a public member has resulted in more openness of the board's activities to the public. Meetings have been made more accessible by holding them at times more convenient to the public, such as in the evening. More public hearings have been held. Several state officials stated that regulatory boards have been more responsive to the public as a result of public membership. The handling of complaints has been improved. More forceful disciplinary action also appears to result from the presence of public members.

There are also potential problems associated with public membership on regulatory boards, such as the following:

1. Board activity can be impeded if technical issues are not understood by lay members.
2. Lack of knowledge may prevent lay member from choosing most effective course of action.
3. Lack of economic self-interest can result in reduced enthusiasm for board participation by public member.

4. Public membership on a board may antagonize regulated profession or industry.

One state official said a board in his state was critical of public membership because too much time had to be spent explaining technical issues to the public member. Another official said public membership can antagonize the regulated profession or industry by implying that in the past, an industry-dominated board did not act in the best interests of the public.

Additional Considerations Relating to Public Membership on Regulatory Boards

Most of the persons contacted by the auditors agreed that decisions relating to public membership on State regulatory boards should involve more than simply deciding whether to place public members on a board. Once the decision has been made to place public members on a regulatory board, other important questions should be addressed:

1. How many public members are needed?
2. Who should be appointed and how should appointments be made?
3. Is training for public members needed?

How many public members? The number of public members on regulatory boards varies from state to state. There does not appear to be any "right" or "best" number. However, the experience in other states provides a basis for discussion. While the presence of one public member on a board can potentially have a positive impact on the regulatory process, this is viewed by some state officials only as tokenism. The impact of public membership on the regulatory process is likely to be much more significant with two or more public members. Several state legislatures have acted in the past few years to increase public membership on regulatory boards from one to two or more. California appears to be the exception in providing for a majority of public members. One state official felt that boards like California's may not be able to establish credibility with the profession and that such credibility was needed if the regulatory process was to be effective.

How should they be appointed? Many of the persons contacted by the auditors felt the appointment process was critical in determining the impact of public membership on the regulatory process. The following ideas were mentioned as important to the appointment process:

- There should be an independent screening committee to provide a list of potential appointees, such as the Department of Consumer Affairs in Massachusetts.

- The public member should be interested in the activities of the Board.
- The public members should not have any connections to the regulated profession or industry.
- The public member should be available to attend meetings and to perform other duties required of a public board member.

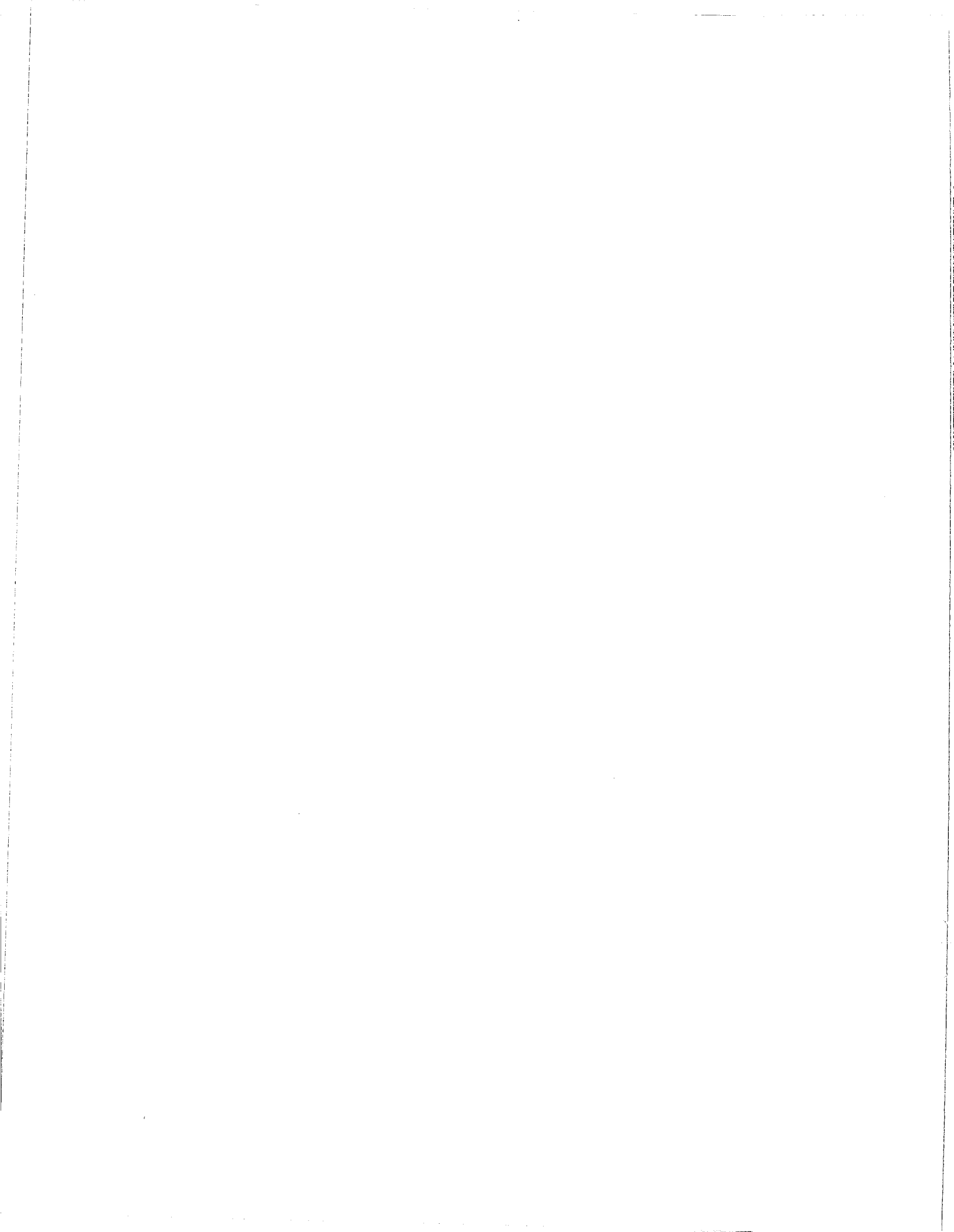
Massachusetts serves as a good example of how the appointment process can be used to provide a wide range of perspectives on regulatory boards. Described below are several appointments made in that state in the past several years.

- The public member appointed to the Board of Registration of Nursing Home Administrators was an 81-year-old man who is president and founder of the Council of Older Americans.
- The public member appointed to the Waste Water Treatment Facilities Operator Board was a person with a doctor's degree in microbiology who was involved in the study of urban pollution from sewage.
- The public member appointed to the State Pharmacy Board was a retired Clerk of the Superior Court in New York City. He chaired the hearings conducted by the Board.
- The public member appointed to the Board of Registration of Plumbers was an engineering student.
- The public member appointed to the Board of Registration of Professional Engineers and Land Surveyors was a law student.

Is Training Needed? Some state officials felt the need for training public members was as important as the appointment process in determining the impact of the public member on the regulatory process. One state official said public members were often overwhelmed by the technical aspects of board decisions. Several officials said public members do not understand their role as a public board member. These observations point to the need to train or orient public members. A public member needs to be introduced to the serious issues that his particular board deals with. Also, there appears to be a need to train public members on their role, which is not necessarily to deal with technical decisions. Rather, their role is to deal with broader policy issues and to look at the impact of the board's decisions on the general public.

Several states are taking active roles in training or orienting public regulatory board members. A training program has been developed for this purpose by the State of Maryland. The program, funded by a grant from the

Department of Health, Education, and Welfare, has been used in Maryland and Wisconsin and 12 other states have shown an interest in it. Other programs have been in use in California and Massachusetts.



APPENDIX D

AGENCY RESPONSE



KANSAS STATE BOARD OF TECHNICAL PROFESSIONS
Suite 1105—535 Kansas Ave. (913) 296-3053 Topeka, Kansas 66603

November 3, 1980

Richard E. Brown
Legislative Post Auditor
Division of Post Audit
Mills Building
BUILDING MAIL

RECEIVED

NOV 3 1980

DIVISION OF POST AUDIT

Dear Mr. Brown:

This board has received and reviewed the draft report resulting from the sunset audit of the State Board of Technical Professions. As requested, we are submitting clarifications, comments and responses to the recommendations of the report.

On the whole, we found the data in the report to be accurate if not totally inclusive of all pertinent information. In some instances, we feel the conclusions drawn from this incomplete data are inaccurate and require that we respond negatively to several recommendations of the report. We hope the following clarifications will substantiate our responses to those recommendations.

CLARIFICATIONS

The board found three areas of the report which they believe should be specifically clarified. They are:

1. Chapter III - Need for continued regulation

The report states that the auditors "did not find examples of demonstrated harm to the public from the practice of landscape architecture." This statement was based on the low number of inquiry and complaint files of the board regarding landscape architecture. The impact of the boards regulations should not be guaged by numbers of registrants or complaints. In fact, page 34, Appendix A, Sunset factor 2, of the report states that "a high level of complaints might indicate that unqualified individuals were allowed to be certified."

Determination of whether there is a potential harm to the public from the practice of a profession should be based on typical practice procedures. Though we feel this is an area that can best be defined by those in the practice of the profession, it should be pointed out that the common area of misconception

regarding the practice of landscape architecture is in equating it with horticulturists and nurserymen. In actuality, the practice of landscape architecture includes the need for knowledge and abilities in both the engineering and architectural professions AS WELL AS those of horticulture.

The landscape architect must use his skills in hydrology to prevent drastic drainage deficiencies that could cause harm to the public and damage to property. Such deficiencies could become as much a hazard to the public as the cave-in of a structure.

Legislative Post Audit response. Drastic drainage deficiencies that could cause harm to the public and damage to property can occur for a variety of reasons, including inadequate zoning regulations or poor site development by individuals who are exempted from licensing requirements. These deficiencies are not unique to the practice of landscape architecture. Further, the Council of Landscape Architectural Registration Boards, a national organization of state registration boards, has indicated that this rationale is inadequate in justifying continued regulation of landscape architects. In a memorandum outlining a strategy for responding to sunset legislation, the Council discussed the historic rationale to justify a landscape architect's skills as protective of the public's health, safety, and welfare. These include knowledge of plants, understanding construction and materials related to outdoor equipment, elements, and road and walk systems as well as understanding the properties of natural surface and subsurface drainage. However, the memorandum points out that the historic justifications "... can hardly be claimed as unique or exclusive to the landscape architect." It further states that other licensed professions lay claim to the skills identified with landscape architecture, and that non-licensed occupations such as nurserymen also have assumed control over many aspects of small scale site design. The memorandum concludes that a major implication of the elimination of the regulation of landscape architects will be its impact on America's environment and that this implication is the most important in defending the continuation of licensure of landscape architects.

Further, the report does not include data as to the qualifications of the original licensees of landscape architecture. Of the 121 original licensees, 98 had college or university degrees in Landscape Architecture; 4 had college or university degrees in Architecture; 9 had college or university degrees in other areas and 10 had no college or university degrees.

ALL licensees showed proof to the board of current practice of the profession. Eighty-two (82) are still registered with this board. Eighteen (18) licenses were denied under the original grandfather clause because they did not meet the requirements of the law. Seven (7) of these denied applicants had college degrees. This information indicates that licensing was not a "rubber stamp" procedure and that licensing was and is restricted to truly qualified candidates.

The board attributes the low number of complaints regarding the practice of landscape architecture to the intelligent determinations of previous boards in approving only qualified candidates original licensure under the grandfather clause and to the excellent examination process now used to qualify candidates for entrance into the practice of landscape architecture.

Legislative Post Audit response. Legislative Post Audit would point out that, although many of those licensed under the grandfather clause apparently had the appropriate educational background to be licensed under the current requirements, none of these individuals were required to pass an examination. If they had, based on the experience of those seeking licensure in fiscal year 1979 when all applicants met the educational requirements, approximately 35 percent would not have been licensed. The report points out that because the auditors found no harm to the public when more than one-third of the licensees have not taken the licensing exam, this further suggests there is not a need to license landscape architects.

The reference in this section to the high percentage of non-resident licensees in landscape architecture by this board should be clarified. As noted in the report, not all states license landscape architects. Because Kansas is one of those 34 states which does recognize the need for licensing, to not allow non-residents to become licensed in this state would be depriving qualified practitioners from other states the ability to do landscape architectural work in this state, simply because they were unable to obtain the proper licensing in their own state. This could be a restraint of trade and could create a lack of competition that would result in higher prices to the consumer. Non-resident licensing is an example of the effectiveness of the present protection of the public, provided through regulation of the profession by the board.

Legislative Post Audit response. The audit report does not suggest that out-of-state landscape architects should no longer be licensed in Kansas. In pointing out that the auditors found no examples of demonstrated harm to the public from the practice of landscape architecture, the report also points out that 50

percent of the licensees reside in other states. The auditors randomly contacted eight of the approximately 100 out-of-state licensees to determine if they practice in Kansas. One indicated that he practiced in Kansas routinely. The others responded that they had not practiced in Kansas for between three and ten years, for several years, or had never practiced in Kansas.

The reference in this section to the exemption clauses within the registration act of landscape architecture is further evidence that the auditors, like the general public, are not aware of what the practice of landscape architecture involves. Because it is the knowledge and skills in hydrology that would most affect the public health, safety and welfare, those individuals who practice only in the realm of horticulture are exempted from the registration requirements. An overly restrictive act, where there was no potential harm to the public, could create as much harm to the consumer as non-regulation. The exemptions are yet another example, then, of the effectiveness of the present protection of the public provided through regulation of the profession by the board.

Legislative Post Audit response. Legislative Post Audit would point out that the exemptions in the law are more extensive than addressing individuals who only practice in the field of horticulture. These exemptions include engineers or architects who practice site development planning, individuals who plan or plant their own property, and state and federal government employees who practice landscape architecture. Many of these individuals can be involved in major construction and site development projects that may also require knowledge and skills in hydrology, yet they are not required to be licensed landscape architects.

2. Chapter III - Unequal Representation on Board

The report states that the board divides into sections for the review and evaluation of applications for examination and licensure and that the sections meet simultaneously. The result, according to the report, is that the public member cannot participate in both sections in a meaningful way. This information may be misleading.

The sections do not always meet simultaneously. Section meetings are held on an as-needed basis and generally correspond to forthcoming dates of the various professional examinations. The original decision of the board to use this "section" method of reviewing and evaluating applications was based on a need for

conservation of time and budgetary allowances for board meetings. By allowing those members of the board who are most familiar with the technical aspects of their respective professions to review those applications and make recommendations to the full board, many hours and dollars have been saved.

No actions of the sections are final without the approval of the full board. The sections recommend decisions to the full board. All action taken at the recommendation of the sections is with the consent of the full membership. For this reason, the previous public member of the board chose not to often participate in the section meetings.

Since the appointment of a new public member in July, 1980, the board has had three section meetings. None have been held simultaneously and the public member attended two of those section meetings as well as the full board meetings where actions were finalized at the recommendations of the sections.

Legislative Post Audit response. The audit report has been revised to clarify that the sections do not always meet simultaneously.

The auditors recognize that all final Board decisions are made by the full Board and that decisions concerning applicants for licensure are based on the recommendations of the sections. It is important to note, however, that the Board's minutes show that the review and discussion of individual applicants occurs during the section activities. The minutes also show that the action of the full Board in these matters is apparently a formality with no detailed discussion of applicants and their qualifications occurring. To participate in all Board actions in any meaningful way, the public member should have full opportunity to participate in all section activities. When sections meet simultaneously, the public member does not have this opportunity.

3. Chapter III, Is Regulation Worth Its Costs?

Though 88% of the responding professionals indicated that if the regulatory requirements of their profession were repealed, their costs would not be significantly reduced, no mention is made of the costs that might be incurred to the other professions, should one profession have its regulatory requirements repealed.

The professional practice of landscape architecture is often in conjunction with an engineering and/or architectural project and, therefore, has a direct effect on those regulated practices.

Because it has been indicated by the survey of the Post Audit that the cost of regulating landscape architects did not appear to significantly increase the public's costs for goods and services, a better question that might have been considered by the review may have been, Is Non-Regulation Worth Its Costs?

COMMENTS

Comments of the board are offered on the four conclusions presented by the Legislative Division of Post Audit.

Chapter III - Conclusions

1. Possible harm to public in absence of regulation

Though the auditors found no examples of harm that could occur if the practice of landscape architecture were no longer regulated, the board has clarified potential harm based on typical practice procedures. Further clarification on this basis could be provided through testimony of practicing professionals.

Legislative Post Audit response. The auditors surveyed all licensed landscape architects and asked them to describe what harm to the public would occur if they were not required to be licensed. Their responses did not provide clarification of the potential harm to the public that could occur if licensing were eliminated. Of the 91 landscape architects responding to the question, only 12 described any harm to the public that could occur. Examples of the types of harm described included unsafe streets, property damage, unsafe sidewalks, improper drainage, unsafe sundecks, and trees too close to power lines. The remaining 79 responded in one or more of the following categories: the public would be unable to identify qualified practitioners, the profession would be open to unqualified practitioners, the quality of services to the public would decline, the profession would be hurt, the environment would be harmed, unspecified harm would occur, or no harm to the public would occur. Because a significant majority of the landscape architects did not describe any specific harm that could occur, the auditors found no reason from the survey results to alter their finding.

2. Protection of the public

(a) Consistent investigation of all complaints

The board agrees with and recognizes this need

(b) Public Member involvement in board decisions

Clarification of procedures of section and full board meetings should satisfy the committee that this conclusion is unfounded.

3. Costs

In the determination of the need for landscape architectural regulation, the costs resulting to the practices of the other professions if non-regulation of landscape architecture occurred, should be considered.

4. Lack of restrictive regulatory alternatives

The board cannot envision that consolidation with any or all other occupational licensing boards could produce greater protection to the public than is already being provided.

RESPONSES

Following are responses and plans for implementation (where pertinent) to the five recommendations of the Legislative Division of Post Audit.

1. The practice of landscape architecture does require regulation for the protection of the public and that protection is effective through the administration of the present licensing law by the State Board of Technical Professions.
2. Agreed
3. (a) Agreed
(b) Agreed

Plan for implementation:

The board has recognized the need for improving the handling of inquiries and complaints. New policies and procedures have been adopted by the board that have implemented same. Briefly, they include the following premises:

- 1) Complaint forms are still used but inquirers are informed they may write a letter of inquiry to the board in lieu of filing a formal complaint.
- 2) All inquiries and complaints are initially investigated by the executive secretary through correspondence.

Basic form letters covering the various types of inquiries and complaints commonly received have been approved by the board.

- 3) Immediate notification to and opportunity for response is afforded the practitioner complained against.
- 4) If a formal complaint is not submitted, and during the investigation the board determines there is a need for formal hearing, the board may file the complaint on their own motion or may request that the complainant do so.
- 5) Every effort is made to settle all inquiries and complaints informally.

Legislative Post Audit response. *Legislative Post Audit would point out that even though new policies and procedures for handling complaints have been adopted by the Board, according to the Board's Executive Secretary, formal complaints are still required to be notarized. The auditors determined that this requirement appears restrictive because placing such a burden on complainants could discourage some individuals with legitimate complaints.*

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4. The present membership of the board affords ample opportunity for public representation. Because of the volume of architectural and engineering applications, it would be a hardship to expect one board member from each of those professions to do the work that is now handled by three. Adding three additional public members to the board would increase costs of board salaries and operations.

Legislative Post Audit response. *Legislative Post Audit cannot agree with the Board's contention that the present membership "affords ample opportunity for public representation." One public member cannot adequately represent the public's interest when the Board divides into two sections that meet simultaneously.*

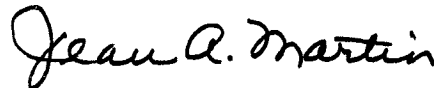
The two options presented in the report for adding more public members to the Board call either for a five- or six-member Board with two public members, or the addition of three public members to the current Board structure. Under the first option, it may no longer be necessary to divide the Board into separate sections because the group would be smaller and could consider all Board related matters--such as reviewing applications for licensure--as a whole. Under the second option, the Board may want to divide into two sections but at least two

public members could be represented for each section meeting. The auditors presented these two options so that the Board could be structured in a more effective manner. In addition, while it is true that implementing the second option would increase board salaries, the Board had a fund balance of more than \$180,000 at the end of FY 1979, and thus could easily absorb the additional cost. The auditors determined that three more public members on the Board in fiscal year 1979 would have increased per diem, travel, and subsistence payments by approximately \$4,000. This additional cost does not seem excessive to ensure the public is adequately represented in all Board decisions.

5. Agree with option (a). Because of the overlapping nature of the practice of the four professions regulated by this board, the consolidation of the individual boards into the Board of Technical Professions has worked well and provides adequate protection to the public.

Mr. Brown, due to time requirements for response to your report, these comments and responses are necessarily brief. If the committee requires additional information prior to the assignment of this review to a standing committee of the legislature, please do not hesitate to contact me.

STATE BOARD OF TECHNICAL PROFESSIONS



Jean A. Martin
Executive Secretary

/jm

cc: All board members

LEGISLATIVE DIVISION OF POST AUDIT
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