

**TEXAS WATER WELL DRILLERS BOARD**

**Staff Report**

**to the**

**Sunset Advisory Commission**

Legislative Budget Board  
Program Evaluation  
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## FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Texas Water Well Drillers Board, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Other Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Other Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

## I. SUMMARY AND CONCLUSIONS

The need for the identification and protection of the state's underground water resources was recognized by the legislature through the creation of the Water Well Drillers Board in 1965. The board has the responsibilities of determining qualifications for licensure of all persons drilling water wells for compensation and enforcing standards of conduct for drilling through the revocation or suspension of licenses.

The Water Well Drillers Board is currently composed of two non-voting, ex officio members of state agencies which also regulate water well drilling and six appointed water well drillers. Board per diem and travel expenses are appropriated directly to the agency from the general revenue fund and license fees are deposited in that fund. Administrative services are provided by the Department of Water Resources.

Review of agency operations reveals that procedures have been implemented by the board which help ensure effective protection of the state's groundwater. While agency actions have contributed to this protection goal, certain concerns were noted with regard to the efficiency and effectiveness of agency functions. In the area of administration, agency operations were generally efficient. However, the statutorily required involvement of the Department of Water Resources in the allocation of most administrative resources available to the board creates an additional and complicating step in implementing changes in a timely fashion. In addition, the agency's statutory fee structure falls significantly short of bringing in revenues sufficient to cover the cost of operation. Finally, a large number of the

annual renewal applications of drillers are submitted late, thereby inefficiently diverting limited staff resources from ongoing administrative and investigative functions.

With respect to the board's licensing activity, the agency does screen applicants to ensure a minimum level of driller competency. It appears, however, that the statutory examination function does not operate as an effective screen. Instead, the board uses a comparatively restrictive two-year experience requirement coupled with other qualifications as its main screening device.

In the area of enforcement, the board has not developed standards of conduct for water well drillers as authorized by statute. Enforcement activity of the board indicates that such standards are apparently needed to provide the board with a clear and direct basis of authority to deal with consumer-related complaints.

### **Need to Regulate**

As with other regulated activities, regulation of water well drillers should be performed by the state only when there is a continuing need to protect the public's health, safety, or welfare. Analysis of the state's efforts to protect groundwater in Texas indicates that the need for which regulation was originally imposed continues to exist.

Review of practices in Texas and other states indicates that water well drilling can be regulated without a board composed of driller members. Although driller members do provide knowledge of drilling valuable for both license qualification and enforcement functions, a driller board is not necessary for adequate regulation.

## Alternatives

If the legislature determines that the regulatory function should be continued, the following alternatives could be considered.

1. **CONTINUE THE BOARD AND ITS FUNCTIONS WITH MODIFICATIONS.**

This approach would maintain an independent board to perform licensing and enforcement activities. The review indicates that if a separate board were maintained, the regulation provided by the state would be improved by the following changes:

a) amend the agency's statute to provide for the appointment to the board of at least two members from the general public and to give the two ex officio members voting privileges;

b) modify the current funding mechanism to appropriate funds necessary for agency operations directly to the board;

c) increase the agency's fee schedule so that revenues generated are sufficient to cover costs of administering the act;

d) establish penalties for late renewal of licenses;

e) modify present procedures to ensure that the examination determines qualified applicants for licensure and that experience requirements are not restrictive;

f) promulgate rules establishing standards of conduct for water well drilling.

2. **ABOLISH THE TEXAS WATER WELL DRILLERS BOARD AND TRANSFER THE REGULATORY FUNCTIONS TO THE DEPARTMENT OF WATER RESOURCES.**

This approach would eliminate the independent Water Well Drillers Board but maintain the licensing and enforcement functions. The Department of Water Resources could perform the regulatory and administrative functions using personnel currently providing staff support to the Water Well Drillers Board. At this time, the department has enforcement procedures

relating to other areas of groundwater protection that could be expanded to include water well drilling. Adoption of this alternative would reduce costs presently associated with board members per diem and travel expenses. Additionally, it would discontinue regulation by members of the affected industry. If the legislature adopts this alternative, the structural and substantive changes contained in the preceding alternative in subsection c, d, e, and f should be made.

## II. BACKGROUND

### Historical Perspective

The state's current involvement with water well drillers began in 1913 with the creation of the Texas Board of Water Engineers. Though given no regulatory control over the drilling of water wells, the agency requested copies of logs related to completed water wells. These logs, which recorded the locations of water tables and underground formations encountered during drilling, provided most of the agency's early data on groundwater in the state.

Due to the voluntary nature of the activity, very few logs were actually acquired in the first 40 years of the Texas Board of Water Engineer's existence. The drought of the 1950's, however, underscored the need to collect more complete groundwater information to aid in the protection of water resources. To assist in this effort, the board recommended to the legislature in 1955-56 that the agency be furnished with a driller's log of every well drilled for any purpose except domestic and livestock water supply. The board commented further, "it may be that some form of drillers' license law would be necessary to accomplish that purpose."

In response to the need to protect and identify ground water resources, the Fifty-seventh Legislature (1961) passed legislation which: 1) created the Water Well Drillers Board as an advisory body to the Board of Water Engineers, and 2) required that water well drillers be registered annually and submit logs within 60 days of completion of any water well. Authority to enforce the regulatory provisions of the act was vested solely in the Board of Water Engineers.

In 1965, the legislature determined that the basic public need of protecting the groundwater, as well as other problems associated with water well drilling,



required further legislative attention. Such attention was necessary for the following reasons: first, research completed in the early 1960's indicated that improper water and oil drilling techniques were a continuing threat to groundwater quality; second, the problem of drillers from other jurisdictions practicing improper techniques in Texas was drawing increasing consumer concern; third, water well logs were often not submitted, and those received were frequently inadequate; and finally, many drillers were dissatisfied with their limited role in the regulation of their industry.

The approach taken by the legislature to help resolve these concerns was to repeal the advisory board registration law, which offered no protection for either groundwater or the consumer since no minimum standards were required. In its place, the Fifty-ninth Legislature established the Board of Water Well Drillers and authorized it to establish minimum driller qualifications, develop standards of conduct, and provide for licensing examinations and hearings. The Act also established an organizational arrangement enabling the regulatory board to have its administrative functions performed by the Water Commission (the Commission was the successor to the Board of Water Engineers).

Although the 1965 law has been amended six times since its passage, the basic structure of the board has not changed in the 14 years since it was established as an independent board. Administrative functions originally performed by the Water Commission and by its successor, the Water Development Board, are now performed by the Department of Water Resources. At the present time the board, composed of six licensee members and two ex-officio members, regulates the activities of over 1100 water well drillers within the state.

During the 1978-79 biennium, board assistance from the Department of Water Resources included three full-time positions and other staff on a part-time basis as necessary. For the same period expenses of approximately \$135,000 were incurred by the Department of Water Resources and \$11,000 by the Water Well Drillers Board itself in administering the Water Well Drillers Act. Total revenues generated by fees during this period totaled \$62,900.

### **Comparative Analysis**

To determine the pattern of regulation of water well drilling within the United States, a survey of the 50 states was conducted to determine how this has been addressed in other states.

The need to regulate water well drilling is currently expressed through licensing requirements imposed by 37 of the 50 states surveyed. From the standpoint of organizational patterns, 16 states, including Texas, meet this expressed need through an independent board or commission whose members are appointed by the chief executive. Eight states possess boards with only advisory duties. In 21 states, the function is carried out through a governmental department charged with other administrative and regulatory functions.

In those states which utilize independent boards and commissions, 19 require that appointees be confirmed by the legislature; and membership in 13 states is limited to persons who are licensed members of the occupation. In Texas, appointees are confirmed by the legislature and membership is limited to persons who are licensed members of the occupation. Thirty-six percent of the states, as does Texas, utilize independent governing bodies limiting the responsibilities of the membership to that of policy-making as distinguished from the role of full-time administrators.

A majority of the states, including Texas, indicate that the regulatory body, regardless of organizational form, was totally supported by appropriations from general tax revenues. Fourteen states indicated that these bodies were solely supported by fees and charges of the agency.

Eleven of the state boards which regulate water well drilling require experience prior to licensure. In all states but two, licensees are required to renew their licenses annually. Texas licenses for a one-year period. Enforcement activities in 16 states involve investigation of complaints from consumers and others engaged in water well drilling. Hearings are conducted by the regulatory agency in 16 states. In Texas, hearings are conducted by the agency.

States which regulate water well drilling indicated the necessity of performing the basic functions of administration, testing, license issuance, and enforcement.

### III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

#### Organization and Objectives

The Water Well Drillers Board consists of six drillers appointed by the governor for six-year terms with the advice and consent of the senate, and two ex officio members from the Department of Water Resources and the State Department of Health. Although the board's act provides for nine board members, one ex officio position was eliminated through the consolidation of the Water Development Board, the Water Quality Board, and the Water Rights Commission in 1977. To be qualified for appointment to the board, a driller must be a citizen of the state and must have practiced as a water well driller for at least ten years. Five of the driller members are selected from the major geographic areas of the state and the sixth from the state at large. No two board members may be employed by, or own an interest in, the same business. Statutorily required duties of the board include preparing and grading examinations, passing upon qualifications of applicants, causing licenses to be issued, promulgating rules and regulations, holding hearings for revocation or suspension of a license, and bringing action against persons who violate board rules and regulations.

The legislature, through the enactment of the Water Well Drillers Act, mandated the Water Well Drillers Board to regulate all persons who engage in the

drilling, boring, casing, or construction of water wells for compensation. The only exceptions provided in the Act are for persons drilling on their own property, persons working under the direct supervision of licensed water well drillers, and persons drilling in counties proclaimed by the governor to be drought disaster areas. The Act provides not only for the licensure of water well drillers, but also for the identification of drilling rigs, the submission of well log reports, and the plugging of wells with injurious water. Implementation of this statutory duty is to be accomplished through the licensure of qualified, knowledgeable water well drillers and through the enforcement of the law.

Administrative services for the board are designated by the Act to be performed by the Department of Water Resources. Staff of the department presently assisting the board consists of three full-time employees: a geologist, an investigator, and a secretary. Although the amount of assistance provided to the board is determined by the department, the Act specifies certain services which are to be furnished. Specifically designated activities include printing and proctoring examinations, administering license renewals, keeping a register of licensees, printing forms and information, maintaining records and accounts, and providing secretarial, legal, and investigative services to the board. These services are funded from appropriations made to the Department of Water Resources, through the Data and Engineering Services Activity.

Board per diem and travel is funded exclusively from general revenue funds appropriated specifically to the board in the General Appropriations Act. Fees, the amounts of which were fixed by the Water Well Drillers Act at the time of initial passage, are collected for examination (\$10), initial licensure (\$25), and license renewal (\$25) and are deposited in the State Treasury to the credit of the general revenue fund.

### **Evaluation of Agency Activities**

As with most other licensing agencies, the operations of the Water Well Drillers Board can be broken down into three basic activities: administration, licensing, and enforcement. Below, each of these activities were reviewed to determine the degree to which agency objectives have been met. To make this determination, the evaluation focused on whether the board has complied with statutory provisions, whether these provisions facilitate accomplishment of the objectives, whether agency organization, rules, and procedures are structured in a manner that contributes to cost-effective accomplishment of the agency's task, and whether procedures provide for fair and unbiased decision-making.

#### **Administration**

The general objective of any administration activity is to provide for the efficient operation of all agency functions. The review of the board indicated that distinctions between staff and board duties were clearly defined, and that the tasks of staff members were clearly laid out. Additionally, procedures in the areas of accounting, mail processing, and general file maintenance were adequate, thus contributing to efficient management. While agency management is basically efficient, the review determined three areas of concern that relate generally to the topic of agency administration.

The first area concerns the control over financial and staff resources available to the board. With respect to travel and per diem funds, the board exercises a degree of control over both amounts requested and methods of expenditure. This control results from the board's authority to submit a budget request and to receive direct appropriations of travel and per diem funds. Staff

and other services necessary for the board's operation, however, are provided through the Department of Water Resources, with direct control left to the department over the amount of assistance to be made available.

This type of control creates a potential for inefficiency in that certain administrative decisions or goals of the board must be approved by a second agency. The involvement of this second agency presents an additional and significant complicating step in implementing administrative changes in a timely fashion.

The problems that can result from such divided administrative control are exemplified in the board's consideration of an additional investigator for the 1980-81 biennium. A board resolution to the Department of Water Resources requesting additional staff support was made late in the budgetary process. In response to this request, a representative of the department appeared before the board and explained that the request for additional staff fell outside guidelines for preparing its budget submission. As a result of this explanation, the board rescinded its resolution. If the board had had responsibility for the direct submission of its own budget request, such administrative problems resulting from differing goals of two agencies could be avoided.

The second concern in the general area of administration relates to the efficiency of the agency's funding mechanism. As a general proposition, it can be stated that the fee structure of a licensing agency exists to offset the cost of agency operations. A fee schedule is structured with high efficiency when revenues generated accomplish the goal of completely covering these costs.

The fee schedule set in the board's statute resulted in revenues of approximately \$63,000 in the 1978-79 biennium. However, expenditures associated with

the board's operation totalled approximately \$147,000 in that same period, representing a significant departure from meeting a target of self-sufficiency. It should be noted that a number of other states have attempted to defray operating costs in this licensing area by setting significantly higher average fees per license than charged in Texas.

The final concern relates to the processing of late license renewals. The agency's statute requires that water well driller licenses be renewed annually. Renewal applications are sent out two months in advance of license expiration. The law provides that a licensee who does not submit a renewal application by the expiration date has a one-year grace period for late license renewal at no additional cost, after which time the original licensing process must be started over. A driller is prohibited by statute from practicing in the occupation during this one year grace period.

Staff of the board indicated that in fiscal year 1979 approximately 200 of 1,058 licensees filed late renewal applications throughout the one year grace period. Though the basic policy of allowing late renewals is common to many of the state's licensing agencies, the number of such renewals experienced by the board creates an inefficiency in the allocation of the board's limited staff resources. As substantiated by the agency, instead of being able to deal with late renewals on an infrequent and timely basis, administrative resources must be frequently diverted from their ongoing functions to process late renewals. Additionally, a large amount of the one staff investigator's time must be channeled to determining whether drillers with expired licenses have actually ceased drilling as required by statute. With reduced numbers of late renewals, the investigator's time could be more efficiently spread among a reduced number of enforcement concerns.



## Licensing

The general objective of the licensing activity of the Water Well Drillers Board is to ensure the minimum competency of drillers in order to protect the groundwater of the state. To accomplish this purpose, the board is directed by statute to give an examination to prospective licensees. In addition, the board is authorized to set qualifications for applicants. With regard to these qualifications, the board has adopted rules requiring that, before taking the examination, an applicant must have two years of water well drilling experience under a licensed driller or comparable experience, and four letters of recommendation: one from a licensed driller, two from well equipment suppliers, and one from a banker.

Review of the licensing activity indicates that the board has screened applicants on the basis of familiarity with drilling skills in an effort to address the general objective of ensuring a minimum level of competency. Additionally, procedures developed to carry out the licensing function are well organized and operate smoothly. Data on the total number of licensees presented in Exhibit III-1 below indicates that there has been a slight increase in numbers of licensees.

### Water Well Drillers Board

#### EXHIBIT III-1

#### Number of Licenses Issued

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979*</u>
By Examination	64	66	73	115
By Reciprocity	2	1	0	0
By Renewal	<u>968</u>	<u>970</u>	<u>987</u>	<u>1,012</u>
Total	1,034	1,037	1,060	1,127
Percent Increase		.2%	2%	6%

\*Through July 31, 1979

Two concerns were noted in how the board has structured its process for screening out unqualified applicants. The first of these concerns relates to the examination process. The board's statute provides that:

The Board shall design written examinations in such a manner as to disqualify any person lacking in the necessary knowledge of drilling, completion and plugging methods and techniques of ground water formations to the extent that the performance by such person of services as a water well driller would create a serious risk of polluting fresh water.

Review of the testing process through July 1979 indicated that only two to five percent of first time examinees failed to pass the examination. After that month minor changes were made in the test, and the grade required for passing was raised from 70 to 75. Given only a few month's data at this time, the effect of these changes on the pass/fail ratio is unclear.

The board's past failure rate of between two and five percent is low compared to that of many state licensing agencies. A sample of such agencies indicates that failure rates generally range from ten to 25 percent. It is conceivable that such a low rate results from the effectiveness of the board's experience requirement as a disqualifying factor, thereby calling into question the need for an examination. However, if such is not the case, the low failure rate raises a question as to the merits of the test as a screening factor.

The second area of concern deals with the requirement of two years experience which is set by the board. As a general concept, it can be stated that an agency should use its rulemaking power to regulate only to the extent necessary to ensure a level of competency that protects the public. By exercising such restraint, unnecessary government interference in the operation of an occupational

area is avoided.

The review indicated that the board's requirements concerning experience and letters of recommendation are the primary screening factors in ensuring minimum competency. In fiscal year 1979, one out of every five of all applicants failed to meet all licensing requirements, with almost all of this group disqualifying on the basis of requirements other than examination.

While effective methods are necessary to insure minimum competency, a question can be raised as to the need for requiring two years or comparable drilling experience in this occupational area. It would appear that, given the existence of an effective examination process, such a requirement is excessive. Research indicates that this belief is shared in several of the states regulating water well drillers. Six states screen applicants solely on the basis of an examination, while two states provide an examination as well as require one year of drilling experience.

### **Enforcement**

The basic objective of the enforcement activity of the Water Well Drillers Board is to protect the public by identifying and, where necessary, taking appropriate action against persons not complying with the provisions of the act or board rules. From the review it appears that agency enforcement activities have been effective in reducing unlicensed drilling. With respect to driller submission of required reports, the Department of Water Resources reports that agency efforts have produced adequate compliance with water well log and injurious water reporting requirements. Also, the board has often been successful in obtaining voluntary compliance and redress from violators, thereby effecting a more satisfactory solution than license suspension or revocation. While generally

positive results have been obtained in these areas, the review identified one enforcement concern that hampers effective enforcement.

This concern relates to the board's use of its enforcement authority. The statute authorizes the agency to revoke or suspend a driller's license for certain specific offenses such as failure to keep and submit well logs or making misstatements of fact on such logs, failure to inform the well owner that injurious water has been encountered and the well must be plugged, or for being an incompetent driller. In addition, the statute authorizes the board to develop and enforce rules in several areas, including the development of standards of conduct. Such standards generally outline the bounds of acceptable occupational practice.

The review of the enforcement area showed that the agency has not developed standards of conduct. However, the development of well structured standards could appreciably strengthen the board's efforts in the enforcement area, particularly with regard to consumer concerns.

Examination of the agency's complaint files as reflected in Exhibit III-2 showed that 42 consumer-related complaints were submitted for the board's consideration in the last four fiscal years. Review of the 29 complaints submitted in the last two fiscal years showed that almost half were viewed by the board as being outside its authority. Properly structured standards would have given the board a clear and direct basis for effectively dealing with many of these complaints.

Water Well Drillers Board

EXHIBIT III-2

Source and Disposition of Complaints  
1976-1979

<u>DISPOSITION</u>	<u>SOURCE</u>			<u>TOTAL</u>
	<u>Consumer</u>	<u>Licensee</u>	<u>Dept. of Water Resources</u>	
License Revoked	1	0	0	1
License Suspended	5	0	0	5
Legal Action	1	2	3	6
Warning Issued	7	5	9	21
Reconciliation Reached	18	8	9	35
No Action Required	8	3	1	12
Number Pending	<u>2</u>	<u>2</u>	<u>2</u>	<u>6</u>
Total	42	20	24	86

Summary

The Water Well Drillers Board consists of six drillers appointed by the governor with the advice and consent of the Senate, and two ex officio members from the Department of Water Resources and the State Department of Health. The board is directed by statute to license all persons who engage in the drilling of water wells for compensation. The act also requires the submission of water well logs by drillers and the plugging of wells with injurious water.

As provided for in statute, administrative services for the board are performed by the Department of Water Resources. The staff currently assigned to the board consists of a geologist, an investigator, and one secretary. While most

administrative costs are borne by the Department, board per diem and travel is appropriated directly to the board from the general revenue fund.

The operations of the board can be broken down into three activities: administration, licensing, and enforcement. With regard to administration, the agency generally meets the objective of efficient management. However, three concerns were identified in the review. First, the Department of Water Resources exercises direct control over the allocation of most administrative resources available to the board. The involvement of a second agency in this manner presents an additional and complicating step in implementing administrative changes in a timely fashion. Second, the agency's statutory fee structure falls significantly short of bringing in revenues sufficient to cover the cost of operation. Third, approximately one-fifth of annual license renewal applications are submitted late in the one-year grace period following the renewal deadline. Because of this large number of late renewals, an excessive amount of the staff's limited time is diverted from other activities to provide special processing and to insure that drillers with expired licenses have actually ceased drilling as required by statute.

In the licensing activity, the agency has addressed the objective of screening applicants to insure a minimum level of driller competency. The review showed, however, that the examination process does not appear to function as an effective screen, accounting for the disqualification of only two to five percent of first-time examinees. In contrast, the board's two-year experience requirement coupled with other less significant qualifications accounts for the elimination of another 15 to 18 percent of applicants. Given the less restrictive nature of the examination as a screening device, the balance between the examination and experience requirements should be reviewed to provide a more effective means of determining

competence.

In the area of enforcement, the board is authorized by statute to develop and enforce standards of conduct for water well drillers. The development of well structured standards could appreciably strengthen the board's effectiveness in dealing with consumer-related complaints by providing a clear and direct basis of authority which is apparently lacking in that area.

#### **IV. OTHER ALTERNATIVES AND CONSTRAINTS**

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

##### **Existence of Like Functions**

Regulation of water well drilling in Texas extends beyond the authority of the Water Well Drillers Board because other government agencies are involved in the protection of groundwater. If a water well is developed as a public water supply, the well must conform to construction standards of the Department of Health. However, since the Water Well Drillers Board has no authority for developing well construction standards, there is no duplication of requirements in this regard.

If a well is to be drilled within an underground water conservation district, then a driller must also comply with requirements applicable to that district which may include obtaining drilling permits, meeting certain well construction standards and submitting water well logs. There are presently four underground water conservation districts covering 29 counties. All of these require submission of water well logs. Dual reporting requirements have been eliminated through agreement between one conservation district and the board on a common form for well logs. However, differing well log forms are still required by the other underground water conservation districts and the Water Well Drillers Board.



Other activities within the state are also directed to the protection of underground water resources. For instance, at present, some counties require a permit to drill a well. Although the Water Well Drillers Board does not require permits, and there is no duplication of activities, these activities are closely related to the protection offered by the board.

Water well drillers must also comply with regulations by the Department of Water Resources for those wells encountering undesirable water zones. Because the Department of Water Resources provides the staff support for the Water Well Drillers Board, coordination between the two agencies is good, but their separate authorities do represent a governmental overlap to the regulated drillers.

#### **Alternative Approaches in Other States**

In 21 other states, the responsibility for regulation of water well drillers has been placed in agencies providing other similar functions. Michigan, for example, regulates the drilling of all water wells (both public and private) within its Department of Public Health. Hawaii, on the other hand, has combined the regulation of water well drilling with other licensing functions in its Department of Regulatory Agencies. Pennsylvania utilizes a third pattern found in several other states, combining regulation of water well drilling with other functions related to the protection of water quality in its Department of Environmental Resources.

#### **Potential Benefits**

In Texas, two organizational alternatives offer potential benefits. First, transfer of the functions of the Water Well Drillers Board to the Department of Water Resources would be logical, because staff support to the board is provided by the department and because most water-oriented data and expertise are presently

located there. The main advantage of such a transfer would be consolidation of an additional water-related function within the agency having primary responsibility for the development of water policy in the state. A second alternative would be to merge the Water Well Drillers Board with the Department of Health. Such a merger would provide access to trained personnel familiar with well construction techniques and would provide a network of laboratories for testing the quality of well water throughout the state.

### **Alternative Methods of Regulation**

Independent of the type of organizational structure used, a variety of regulatory methods are used by other states for groundwater protection. Two regulatory methods, found in a number of states, have not been used in Texas because of the strong legal framework establishing landowner control of the water beneath the ground surface. One of these, used in Michigan, requires compliance with drilling standards. Drilling standards may be directed toward general drilling procedures or toward specific standards for well construction. General procedures may include requirements establishing distances of wells from contamination sources, procedures for avoiding commingling of waters of different quality, protection of wells from surface drainage, disinfection, and water quality sampling. Specific construction requirements may include standards for casing materials, screens and perforations, grouting procedures, and pumping tests. The other regulatory method found frequently in other states, including Pennsylvania, but not presently used for water well drilling in Texas is a permitting system similar to that used by the Railroad Commission for oil and gas drilling. Such regulatory procedures generally follow the development of a well from its planning to its plugging and may involve such requirements as preconstruction notification, well

log report submission, and notification of abandonment. Some states, including Iowa, neither license drillers nor regulate drilling beyond the construction of large volume or public water wells.

### Summary

In conclusion, there are several agencies in Texas besides the Water Well Drillers Board which regulate the activity of water well drilling. The Department of Health regulates drilling of public supply wells, both underground water conservation districts and some counties place requirements on drilling, and the Department of Water Resources regulates drilling in the area of undesirable groundwater. Many other states have placed regulation of water well drilling in agencies with other similar functions. In Texas, combination with either the Department of Water Resources or the Department of Health would produce benefits. Alternative regulatory methods used by other states to protect groundwater include application of drilling standards, water well permitting systems, and regulation limited to public supply wells.

## V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict-of-interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

### Conflict of Interest

Board members, as appointed state officers, are subject to statutory standards of conduct and conflict of interest provisions (Article 6252-9b., V.A.C.S.). The board is composed of two ex officio members and six registered water well drillers.

Review indicates that not all board members have complied with conflict of interest provisions which require the filing of an affidavit by every appointed board member who has a substantial interest in a business entity which is subject to regulation by a regulatory agency. A financial disclosure affidavit has not been filed by one of the six registered water well driller board members although all driller members possess a financial interest in a regulated business entity. Agency staff indicate that failure to file required affidavits may have resulted from board members' lack of knowledge of the filing requirement and further indicated that steps would be taken to insure the proper documents were filed. The agency self-evaluation report states that all new members will be provided with copies of the conflict-of-interest statute.

The board's law places no restrictions on the involvement of board members with private water well associations. Two board members presently serve as officers of the state association. While no problems resulting from these overlapping memberships were identified in the review, the possibility of conflicts between the goals of persons involved in regulating an industry and the goals of promoting and preserving an industry exists within such a relationship.

### **Open Meetings - Open Records**

Review indicates that the agency has complied with the Open Meetings Law with one exception. An informal meeting was held on December 12, 1978 to discuss confidentiality of well logs at which a quorum of the board was present. Notice of this emergency meeting was not posted. The agency is currently complying with provisions of the General Appropriations Act requiring that board minutes be filed with the state budget offices, although minutes were not filed prior to July 1979.

All agency files maintained for the board by the Department of Water Resources are open except examination files and certain water well log reports. Pursuant to the board's law, well logs are held as confidential by the board if the well owner so requests and examination papers may be reviewed by examinees if a request is made within six months<sup>of</sup> notification of exam results.

### **Employment Policies**

Procedures regarding equal employment opportunities developed by the Department of Water Resources pertain to staff assisting the board. At present, however, the board's staff is not working under an approved Affirmative Action

Plan. Since the merging of the three water agencies into the Department of Water Resources, a new plan has not been submitted.

### Summary

In conclusion, the board has not fully complied with the filing requirements related to conflict of interest provisions. Steps have been taken to insure compliance. Board members hold office in state and national water well associations which provides the possibility of conflicts between goals of the regulating body and the persons regulated. The board has complied with the Open Meetings Act with one exception, failure to provide proper notice for an emergency meeting held, and has complied with provisions of the Open Records Act. The staff of the board operates under the personnel policies of the Department of Water Resources. The staff is not operating under an Affirmative Action Plan at this time since the new agency has not yet submitted such a plan for review.

## **VI. PUBLIC PARTICIPATION**

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in the rules and decisions of the agency can be judged on the basis of agency compliance with statutory provisions on public participation, the availability of information concerning rules and agency operations, special efforts made by the agency to involve the public in its operations, and the existence of public members on the board.

The review indicated that rule changes have occurred infrequently, with only two changes of a procedural nature being made in the last four years. Notification requirements found in the board's statute and general state law have been properly addressed by the board. Additionally, in its support of agency activities, the Department of Water Resources has made board rules available to the public on request and free of charge.

### **Agency Activities**

While the agency has complied with applicable statutes and made necessary rule information and driller rosters easily available to the public on request, additional efforts to involve or educate the public in board activities have been minimal. No material has been prepared to provide an overview of the purposes and procedures of the board to the public at large, and no special notification efforts have been made to public-oriented groups regarding board meetings or rule changes.

### **Public Membership**

Review of the statutory composition of the board also indicates the absence of any members from the general public. The lack of such members impedes the ability of any board to fairly and effectively represent the point of view of the general public in the development of rules and the deliberation of other matters. This drawback is even more significant for a small board such as the Water Well Drillers, whose regulatory activities are not readily visible to the public.

### **Summary**

In conclusion, the board could be more effective in involving and educating the public as to its operations by making available descriptive information on agency operations. In addition, public involvement in the area of rulemaking and other activities of the agency could be significantly improved by amending current statutes to provide for public membership on the board.



## VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

### Past Legislative Action

Only two major legislative changes have occurred to the Water Well Drillers Act since enabling legislation was enacted in 1965 establishing a separate Water Well Drillers Board. Amendments in 1969 repealed the bonding requirement which had been severely limited by an Attorney General's opinion. The opinion concluded that the bond could not cover damages caused by actions outside the areas in which the board has statutory authority to revoke or suspend a license, thereby precluding use of the bond for damages caused by faulty materials or workmanship. This same legislation (H.B. 248, Sixty-first Legislature) also broadened the board's authority in the area of rule-making. The most significant change gave the board authority to promulgate all reasonable rules and regulations necessary for enforcement of its act.

In 1971, violation of the Act was changed from a misdemeanor crime with fines (ranging from \$25 through \$1,000) to a cause for civil action with penalties up to \$1,000 a day per violation (S.B. 700, Sixty-second Legislature). This change enabled the Attorney General to assist the board in prosecution. Previously, enforcement was only by district attorneys for whom other criminal matters would

frequently take priority, thereby delaying enforcement of the Act. These changes, affecting both licensees and the public were recommended by the board.

### **Proposed Legislative Action**

Other legislation has been proposed but was defeated. Senate Bill No. 936 was introduced in the Sixty-sixth Legislature (1979) to abolish the board and require only registration, without applicant screening and without submission of well logs by water well drillers. Neither the board nor the Texas Water Well Association testified regarding the bill.

In its self-evaluation report, the board recommends that consideration be given to changing the enabling statute to give the board jurisdiction over plugging abandoned water wells. The effect of such a change would enlarge the jurisdiction of the board beyond its present scope of regulating only the drilling of wells. Although the board has thus identified an area presently unregulated by the state, and for which legislative precedent exists (the Edwards Underground Water District was given similar authority by the Sixty-sixth Legislature); it would entail greatly increased responsibility for the board.

### **Summary**

In conclusion, only two major legislative changes have been enacted since the board was established in 1965. Amendments in 1969 repealed the bonding requirement and broadened rule-making authority. Criminal penalties for violations of the Act were changed to civil penalties in 1971. One bill, introduced in 1979, would have made several major changes in regulation, including abolishing the board, had it been enacted. The board has recommended in its self-evaluation report that it be given jurisdiction over plugging abandoned wells. This would significantly increase their role in regulation of water well drilling.