

BILL ANALYSIS

H.B. 1789
By: Chisum
Licensing & Administrative Procedures
Committee Report (Amended)

BACKGROUND AND PURPOSE

The Texas Board of Professional Engineers was created in 1937, after an explosion at the New London School killed nearly 300 students and teachers. The Board's main functions include: licensing Professional Engineers; enforcing the Texas Engineering Practice Act, including investigating and resolving complaints; and registering engineering firms.

As part of the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the Board raises revenue from licensing fees to support agency functions and operates outside the appropriations process. In fiscal year 2002, the Board operated with a budget of \$1.5 million, and a staff of 25 FTEs.

The Board is subject to the Sunset Act and will be abolished on September 1, 2003, unless continued by the Legislature. The Sunset review found that while regulation of engineers who offer their services to the public is needed, the Board should make improvements to its enforcement process to strengthen this regulation and enhance public protection.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Professional Engineers in SECTION 11 (Section 1001.203, Occupations Code); SECTION 12 (Section 1001.2035, Occupations Code); SECTION 17 (Section 1001.252(b) and (g)); SECTION 21 (Section 1001.304, Occupations Code); SECTION 26 (Section 1001.405, Occupations Code); SECTION 27 (Section 1001.4525, Occupations Code) of this bill.

ANALYSIS

SECTION 1. HB 1789 updates the Board's sunset review date to 2015 to provide for the standard 12-year review.

SECTION 2. The Bill clarifies that the terms "engineer" and "engineering" can be used by individuals other than licensed Professional Engineers who are operating within the scope of their duties for their employer.

SECTION 3. The Bill clarifies that the Board should direct its enforcement authority to ensure that only licensed individuals use the Professional Engineer designation and offer services to the public.

SECTION 4. The Bill updates standard Sunset language requiring impartial appointments to the Board.

SECTION 5. The Bill updates standard Sunset language requiring one-third of Board members to be public members without financial ties to the agency or the regulated industry.

SECTION 6. The Bill updates standard Sunset language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association.

SECTION 7. The Bill updates standard language specifying the grounds for removing a Board member.

SECTION 8. The Bill adds standard Sunset language to give the Governor authority to designate the Board's presiding officer.

SECTION 9. The Bill adds standard Sunset language requiring members of the Board to complete training before assuming their duties.

SECTION 10. The Bill adds standard Sunset language requiring the Board to separate its policymaking duties from the agency's management functions and language requiring the executive director to inform Board members and employees of the qualifications and responsibilities for office. It adds standard Sunset language requiring the Board to have a current equal employment opportunity policy and language requiring the executive director to inform employees about the State Employee Incentive Program.

SECTION 11. The Bill modifies standard Sunset language requiring the Board to adopt rules for compliance with the Professional Services Procurement Act, but otherwise prohibits the Board from adopting rules that restrict competitive bidding or advertising except to prohibit false, misleading, or deceptive practices.

SECTION 12. The Bill requires the Board to adopt rules to comply with Occupations Code, Chapter 53, regarding criminal convictions.

SECTION 13. The Bill requires the Board to set fee amounts and removes the fee caps specified in statute.

SECTION 14. The Bill updates standard Sunset language requiring the Board to develop continuing education programs for licenses.

SECTION 15. The Bill adds standard Sunset language requiring the Board to make effective use of technology in its delivery of services and provision of information to the public and language requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution. It requires the Board to form a joint practice committee with the Texas Board of Architectural Examiners.

SECTION 16. The Bill requires the Board to maintain information regarding filing a complaint with the Board and a form a person may file a complaint with the Board on the Board's internet website.

SECTION 17. The Bill requires the Board to establish the process for filing a complaint in rule and to make this information available to the public via the Board's Web site and the Board to establish a simple, accessible process for accepting, opening, and investigating complaints. The Bill clarifies that complaints be required only to provide enough information for the Board to determine jurisdiction, and that Board staff is responsible for conducting all phases of investigations, including gathering needed evidence. The Bill requires the Board to develop a system to prioritize complaints and to focus on those complaints that could harm the public. It authorizes the Board to use advisors and consultants to provide technical assistance on enforcement cases and grants these technical experts immunity from civil liability for any damage caused in the performance of their duties. The Bill requires agency staff to report administratively dismissed complaints to the Board and requires the Board to track detailed statistics about complaints received and resolved each year and provide this information in its annual financial report. It adds standard Sunset language requiring the Board to maintain information on written complaints and notify the parties about policies for and status of complaints.

SECTION 18. The Bill requires the Board to provide the number, type, and age of all open cases as of the end of each fiscal year and the Board to maintain documentation on all complaint files and adds standard Sunset language requiring the Board to give the public a reasonable opportunity to present issues under the Board's jurisdiction.

SECTION 19. The Bill clarifies that the terms “engineer” and “engineering” can be used by individuals other than licensed Professional Engineers who are operating within the scope of their duties for their employer.

SECTION 20. The Bill removes the requirement that applications for licensure be made under oath and notarized and eliminates the requirement that applicants must submit separate character references as a qualification for licensure.

SECTION 21. The Bill requires the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

SECTION 22. The Bill updates standard Sunset language requiring the Board to notify applicants of exam results within a reasonable time, and to provide an analysis of exam performance to an applicant who failed a licensing exam. It adds standard Sunset language allowing the Board to issue provisional licenses to qualified applicants licensed in other states and language allowing the Board to license applicants with valid licenses from other states that have similar licensing requirements.

SECTION 23. The Bill adds standard Sunset language allowing the Board to adopt a staggered license renewal system.

SECTION 24. The Bill updates standard Sunset language establishing a method for license renewal and a time-frame and penalty structure for delinquent renewals.

SECTION 25. The Bill updates standard Sunset language establishing a renewal time-frame.

SECTION 26. The Bill authorizes the Board to establish a 30-day grace period for firms to register with the Board.

SECTION 27. The Bill adds standard Sunset language authorizing the Board to use a full range of penalties for violations of state laws or agency rules and requires the Board to adopt written guidelines for probation in rule. It authorizes the Board to order restitution as part of an agreement resulting from an informal settlement conference and specifies that the amount of restitution may not exceed the amount the consumer paid to the licensee and that the Board may not require payment of other damages or estimate harm. The Bill requires Board members to rescue themselves from voting on disciplinary actions in cases in which they participated in investigations or informal hearings.

SECTION 28. The Bill requires the Board to adopt the rules by September 1, 2005.

SECTION 29. This Act takes effect September 1, 2003.

EFFECTIVE DATE

September 1, 2003

EXPLANATION OF AMENDMENTS

Amendment #1 amends Sections 1001.057, 1001.058, 1001.301, and 1001.406, Occupations Code, to clarify the existing exemption for private corporations and their full-time employees from engineering licensing requirements for purposes of modifying existing structures that are not accessible to the public, and for activities related to services or products manufactured by the corporation. It does not prohibit a professional engineer working for a private manufacturer from requiring the manufacturer to have plans sealed by a professional engineer. The board may require a professional engineer to design and seal certain

products delivered to or used by the public. Full-time employees of an exempt corporation may call themselves “engineer” on cards and correspondence if they do not perform engineering services to the public or imply that they can make engineering judgments requiring a professional engineer license. Graduate engineers with a degree from an accredited engineering program may work under the supervision of a professional engineer in a firm registered by the board and call themselves “engineer” on stationery, cards, or in personal communications.

Amendment #2 adds Section 1001.065, Occupations Code, to prohibit a state agency or political subdivision from requiring a person who is exempt from the engineering licensing requirements to employ, pay for the services of a licensed engineer; or to obtain the seal of a licensed professional engineer on plans, designs, specifications, reports, or inspections.