

BILL ANALYSIS

Senate Research Center

S.B. 277
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Government Organization
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Enrolled

DIGEST AND PURPOSE

The Texas Board of Professional Engineers (TBPE) was established to license professional engineers, enforce the Texas Engineering Practice Act, resolve complaints, and register engineering firms. S.B. 277 continues TBPE for the standard 12-year period and strengthens the enforcement process to enhance public protection.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Professional Engineers is modified in SECTION 13 (Section 1001.203, Occupations Code), and granted in SECTION 3 (Section 1001.057, Occupations Code), SECTION 14 (Section 1001.2035, Occupations Code), SECTION 20 (Section 1001.252, Occupations Code), SECTION 24 (Section 1001.304, Occupations Code), SECTION 29 (Section 1001.405, Occupations Code), and SECTION 31 (Section 1001.4525, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1001.004(e), Occupations Code, to provide that this chapter does not prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal, subject to the Texas Board of Professional Engineers' (TBPE) disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering.

SECTION 2. Amends Sections 1001.005 and 1001.051, Occupations Code, as follows:

Sec. 1001.005. Continues TBPE for the standard 12-year period until September 1, 2015.

Sec. 1001.051. Provides that an exemption under this subchapter applies only to a person who does not offer, rather than one who is not directly or indirectly represented, to the public to perform, rather than being legally qualified to engage in the practice of, engineering services.

SECTION 3. Amends Section 1001.057, Occupations Code, as follows:

Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS ENTITY.

(a) Requires the Act to not be construed to apply to the activities of a private corporation or other business entity, or the activities of the full-time employees or other personnel under the direct supervision and control of the business entity, on or in connection with certain conditions.

(b) Deletes the original text of Subsection (b) and redesignates former Subsection (c) as (b). Prohibits a person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 from claiming an exemption until the 10th anniversary of the date the person made that representation.

(c) Provides that this exemption does not prohibit certain actions from occurring by either a licensed professional engineer or TBPE.

(d) Defines “products manufactured by the entity” for the purposes of this section.

SECTION 4. Amends Sections 1001.058 (b) and (c), to make a conforming change.

SECTION 5. Amends Subchapter B, Chapter 1001, Occupations Code, by adding Section 1001.066, as follows:

Sec. 1001.066. CERTAIN NASA-RELATED ACTIVITIES. Provides that this chapter does not apply to certain entities or prohibit the use of the term “engineer” or “engineering” in certain circumstances.

SECTION 6. Amends Section 1001.101(b), Occupations Code, to update standard Sunset language requiring appointments to TBPE to be nondiscriminatory.

SECTION 7. Amends Section 1001.102(a), Occupations Code, to update standard Sunset language prohibiting certain persons from membership on TBPE.

SECTION 8. Amends Section 1001.103, Occupations Code, to update standard Sunset language relating to membership and employee restrictions.

SECTION 9. Amends Section 1001.106, Occupations Code, by amending Subsection (a) and adding Subsection (c), to update standard Sunset language relating to grounds for removal of a TBPE member.

SECTION 10. Amends Section 1001.108, Occupations Code, to require the governor to designate a member of TBPE as the presiding officer of TBPE to serve in that capacity at the will of the governor. Deletes a reference to “presiding officer” from text.

SECTION 11. Amends Subchapter C, Chapter 1001, Occupations Code, by adding Section 1001.112, as follows:

Sec. 1001.112. TRAINING. Applies standard Sunset language relating to training of TBPE members.

SECTION 12. Amends Subchapter D, Chapter 1001, Occupations Code, by adding Sections 1001.153 through 1001.156, as follows:

Sec. 1001.153. DIVISION OF RESPONSIBILITIES. Applies standard Sunset language to require TBPE to develop policies that clearly separate the policy-making responsibilities of TBPE members and management responsibilities of TBPE staff.

Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. Updates standard Sunset language requiring information on standards of conduct to be provided to members of TBPE and TBPE staff.

Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. Applies standard Sunset language requiring the executive director to develop an equal employment opportunity program.

Sec. 1001.156. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM. Applies standard Sunset language requiring training on participation in the state employee incentive program.

SECTION 13. Amends Section 1001.203, Occupations Code, as follows:

- (a) Requires TBPE by rule to prescribe standards for compliance with Subchapter A, Chapter 2254 (Professional and Consulting Services), Government Code.
- (b) Provides that except as provided by Subsection (a), TBPE may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.
- (c) Provides that in its rules to prohibit false, misleading, or deceptive practices, TBPE may not include certain rules.

SECTION 14. Amends Subchapter E, Chapter 1001, Occupations Code, by adding Section 1001.2035, as follows:

Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires TBPE to adopt rules and guidelines as necessary to comply with Chapter 53 (Consequences of Criminal Conviction).

SECTION 15. Amends Section 1001.204(a), Occupations Code, to require TBPE to establish certain fees in amounts reasonable and necessary to cover the costs of administering this chapter.

SECTION 16. Amends Section 1001.206(c), Occupations Code, to provide that a certain fee increase does not apply to an engineer who is on inactive status.

SECTION 17. Amends Section 1001.210, Occupations Code, as follows:

- (a) Require TBPE, rather than authorizes it, to recognize, prepare, or administer continuing education programs for its license holders. Requires a license holder to participate in the programs to the extent required by TBPE to keep the person's license.
- (b) Prohibits TBPE from requiring a license holder to obtain more than 15 hours of continuing education annually. Requires TBPE to permit a license holder to certify at the time the license is renewed that the license holder has complied with TBPE's continuing education requirements.
- (c) Requires TBPE to permit a license holder to receive continuing education credit for certain activities related to the practice of engineering.
- (d) Prohibits a license holder from receiving more than five continuing education credit hours annually for engaging in self-directed study.

SECTION 18. Amends Subchapter E, Chapter 1001, Occupations Code, by adding Sections 1001.214, 1001.215, and 1001.216, as follows:

Sec. 1001.214. TECHNOLOGY POLICY. Applies standard Sunset language requiring TBPE to develop and implement a technology policy.

Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. Applies standard Sunset language requiring TBPE to develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures.

Sec. 1001.216. JOINT ADVISORY COMMITTEE ON THE PRACTICE OF ENGINEERING AND ARCHITECTURE. (a) Provides that the Joint Advisory Committee on the Practice of Engineering and Architecture is an advisory committee to TBPE and to the

Texas Board of Architectural Examiners (TBAE). Provides that the advisory committee consists of certain individuals.

(b) Provides that members of the advisory committee serve staggered six-year terms with the terms of one member appointed by TBPE and one member appointed by TBAE expiring each odd-numbered year.

(c) Requires the advisory committee to meet at least twice a year.

(d) Requires the advisory committee to work to resolve issues that result from the overlap between activities that constitute the practice of engineering and those that constitute the practice of architecture. Requires the advisory committee to assist each agency in protecting the public rather than advancing the interests of either agency or the profession it regulates.

(e) Requires the advisory committee to issue advisory opinions to TBPE and to TBAE on matters relating to the practice of engineering and the practice of architecture, including certain factors.

(f) Requires an agency, if the advisory committee issues an advisory opinion to TBPE or TBAE on a matter, to notify the committee of the final action taken with regard to the matter. Requires the advisory committee to consider the action taken by the agency on the matter in any advisory opinion subsequently issued by the committee on a related matter.

(g) Requires TBPE and TBAE to enter into a memorandum of understanding regarding the advisory committee that includes the composition and purpose of the committee.

SECTION 19. Amends Section 1001.251, Occupations Code, by adding Subsection (c), to require TBPE to maintain on TBPE's Internet website certain information.

SECTION 20. Amends Sections 1001.252 and 1001.253, Occupations Code, as follows:

Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. Includes standard Sunset language regarding complaints and disposition.

Sec. 1001. 253. COMPLAINT INFORMATION. Updates standard Sunset language requiring information to be maintained on complaints.

SECTION 18. Amends Subchapter F, Chapter 1001, Occupations Code, by adding Sections 1001.254 and 1001.255, as follows:

Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS. (a) Requires TBPE to develop and maintain a complaint tracking system to monitor the processing of complaints filed with TBPE.

(b) Requires TBPE to include with TBPE's annual financial report under Section 2101.011, Government Code, a statistical analysis of the complaints filed with TBPE during the preceding year, including certain information.

Sec. 1001.255. PUBLIC PARTICIPATION. Applies standard Sunset language providing for public testimony meetings of the policymaking body.

SECTION 22. Amends Section 1001.301, Occupations Code, by amending Subsections (b) and (c)

and adding Subsection (f), as follows:

(b) Makes a conforming change.

(c) Makes a conforming change.

(f) Provides that notwithstanding the other provisions of this chapter, a regular employee of a business entity who is engaged in engineering activities but is exempt from the licensing requirements of this chapter under Sections 1001.057 or 1001.058 is not prohibited from using the term "engineer" on a business card, cover letter, or other form of correspondence that is made available to the public if the person does not perform certain actions. Provides that this subsection does not authorize a person to use a term listed in Subsections (b)(2)-(6) or a variation or abbreviation of one of those terms.

SECTION 23. Amends Section 1001.303, Occupations Code, to update standard Sunset language relating to an application for licensure.

SECTION 24. Amends Section 1001.304, Occupations Code, by adding Subsection (d), as follows:

(d) Requires TBPE by rule to ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), and its subsequent amendments.

SECTION 25. Amends Sections 1001.306, 1001.310, and 1001.311, Occupations Code, to update standard Sunset language requiring notice regarding examination results to persons seeking TBPE licensure.

Sec. 1001.310. Updates standard Sunset language regarding temporary or provisional licensure.

Sec. 1001.311. Updates standard Sunset language regarding the application of a nonresident for licensure.

SECTION 26. Amends Section 1001.351(b), Occupations Code, to require TBPE, for the year in which the license or registration expiration date is changed, to prorate license or registration fees on a monthly basis so that each license or registration holder pays only that portion of the license or registration fee that is allocable to the number of months during which the license or registration is valid. Provides that on renewal of the license or registration on the new expiration date, the total license or registration renewal fee is payable.

SECTION 27. Amends Sections 1001.352 and 1001.353, Occupations Code, to update standard Sunset language regarding the notice of license expiration and the procedure for renewal.

SECTION 28. Amends Subchapter H, Chapter 1001, Occupations Code, by adding Sections 1001.354 and 1001.355, as follows:

Sec. 1001.354. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) Authorizes a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application to obtain a new license without reexamination.

(b) Requires the person to pay to TBPE a fee that is equal to two times the normally required renewal fee for the license.

Sec. 1001.355. INACTIVE STATUS. (a) Authorizes an engineer to request inactive status

at any time before the expiration date of the person's license. Prohibits a license holder on inactive status from practicing engineering.

(b) Requires a license holder on inactive status to pay an annual fee set by TBPE.

(c) Provides that a license holder on inactive status is not required to comply with continuing education requirements or take an examination for reinstatement to active status.

(d) Sets forth requirements for a license holder on inactive status to return to active status.

SECTION 29. Amends Section 1001.405, Occupations Code, by adding Subsection (g), to authorize TBPE by rule, notwithstanding the other provisions of this section, to provide that a business entity that has not previously registered with TBPE and that is engaged in the practice of engineering in violation of Subsection (b) is not subject to disciplinary action for the violation if the business entity registers with TBPE not later than the 30th day after the date TBPE gives written notice to the business entity of the registration requirement. Provides that this subsection does not apply to a business entity whose registration has expired.

SECTION 30. Amends Section 1001.406, Occupations Code, as follows:

Sec. 1001.406. GRADUATE ENGINEERS. (a) Provides certain rights for a graduate of a university with certain credentials and qualifications.

(b) Authorizes a graduate engineer who is employed in a firm registered under this Act and who is working under the direct supervision of a licensed professional engineer to use the term "engineer" on the person's stationery or business cards or in personal communications of any character.

SECTION 31. Amends Subchapter J, Chapter 1001, Occupations Code, by adding Sections 1001.4525-1001.4527, as follows:

Sec. 1001.4525. PROBATION. (a) Authorizes TBPE, if a person's license suspension is probated, to require the person to perform certain tasks.

(b) Requires TBPE by rule to adopt written guidelines to ensure that probation is administered consistently.

Sec. 1001.4526. RESTITUTION. (a) Authorizes TBPE, subject to Subsection (b), to order a person licensed or registered under this chapter to pay restitution to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) Provides that the amount of restitution ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the person for a service regulated by this chapter. Provides that the board may not require payment of other damages or estimate harm in a restitution order.

Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) Provides that a TBPE member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not participate in the discussion of or vote on the matter at a board meeting

related to the complaint; and

(2) must state at the meeting why the member is prohibited from participating in the discussion of or voting on the matter.

(b) Requires a statement under Subsection (a)(2) to be entered into the minutes of the meeting.

SECTION 32. Amends Chapter 1001, Occupations Code, by adding Subchapter M, as follows:

SUBCHAPTER M. ADVISORY OPINIONS

Sec. 1001.601. BOARD ADVISORY OPINIONS. (a) Requires TBPE, on its own initiative or at the request of any interested person, to prepare a written advisory opinion about an interpretation of this chapter or the application of this chapter to a person in regard to a specified existing or hypothetical factual situation. Requires TBPE to respond to requests for opinions within 180 days or affirmatively state its reason for not responding to the request.

Sec. 1001.602. MAINTENANCE OF OPINIONS; SUMMARY. Requires TBPE to number and classify each advisory opinion issued under this subchapter and annually compile a summary of the opinions in a single reference document that is available on the Internet.

Sec. 1001.603. ATTORNEY GENERAL'S OPINIONS. Provides that the authority of TBPE to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

Sec. 1001.604. RELIANCE ON ADVISORY OPINION. Provides that it is a defense to prosecution or to imposition of a civil penalty that a person reasonably relied on a written advisory opinion of TBPE relating to the provision of the law the person is alleged to have violated or a fact situation that is substantially similar to the fact situation in which the person is involved.

SECTION 33. (a) Requires TBPE, not later than January 1, 2004, to adopt the rules required by Section 1001.2035, Occupations Code, as added by this Act.

(b) Requires TBPE, not later than September 1, 2005, to adopt the written guidelines required by Section 1001.4525, Occupations Code, as added by this Act.

(c) Provides that TBPE is not required to issue an advisory opinion under Subchapter M, Chapter 1001, Occupations Code, as added by this Act, before January 1, 2004.

SECTION 34. (a) Effective date: September 1, 2003.

(b) Provides that the changes in law made by Sections 1001.102 and 1001.103, Occupations Code, as amended by this Act, and Section 1001.112, Occupations Code, as added by this Act, in the prohibitions on or qualifications of members of the Texas Board of Professional Engineers do not affect the entitlement of a member serving on the Texas Board of Professional Engineers immediately before September 1, 2003, to continue to serve and function as a member of the Texas Board of Professional Engineers for the remainder of the member's term. Provides that those changes in law apply only to a member appointed on or after September 1, 2003.

(c) Provides that the change in law made by Section 1001.108, Occupations Code, as amended by this Act, does not affect the entitlement of a person who was serving as presiding officer of the Texas Board of Professional Engineers immediately before September 1, 2003, to continue to serve and function in that capacity for the remainder of the person's term as

presiding officer. Provides that that change in law applies only to the designation of a presiding officer of the board after that person's term as presiding officer expires.

(d) Makes application to the changes in law made by this Act to Chapter 1001, Occupations Code, prospective.