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H.B. No. 1789

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Texas Board of  
3 Professional Engineers and to the regulation of the practice of  
4 engineering.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Sections 1001.005 and 1001.051, Occupations  
7 Code, are amended to read as follows:

8 Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board  
9 of Professional Engineers is subject to Chapter 325, Government  
10 Code (Texas Sunset Act). Unless continued in existence as provided  
11 by that chapter, the board is abolished and this chapter expires  
12 September 1, 2015 [~~2003~~].

13 Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under  
14 this subchapter applies only to a person who does not offer [~~is not~~  
15 ~~directly or indirectly represented~~] to the public to perform [~~be~~  
16 ~~legally qualified to engage in the practice of~~] engineering  
17 services.

18 SECTION 2. Section 1001.057(c), Occupations Code, is  
19 amended to read as follows:

20 (c) A person who claims an exemption under this section and  
21 who is determined to have offered to the public to perform [~~directly~~  
22 ~~or indirectly represented the person as legally qualified to engage~~  
23 ~~in the practice of~~] engineering services may not claim an exemption  
24 until the 10th anniversary of the date the person made that offer

1 ~~[representation]~~.

2 SECTION 3. Section 1001.058(c), Occupations Code, is  
3 amended to read as follows:

4 (c) A person who claims an exemption under this section and  
5 who is determined to have offered to the public to perform ~~[directly~~  
6 ~~or indirectly represented the person as legally qualified to engage~~  
7 ~~in the practice of]~~ engineering services may not claim an exemption  
8 until the 10th anniversary of the date the person made that offer  
9 ~~[representation]~~.

10 SECTION 4. Section 1001.101(b), Occupations Code, is  
11 amended to read as follows:

12 (b) Appointments to the board shall be made without regard  
13 to the race, color, disability ~~[creed]~~, sex, religion, age, or  
14 national origin of the appointee.

15 SECTION 5. Section 1001.102(a), Occupations Code, is  
16 amended to read as follows:

17 (a) A person may not be ~~[is not eligible for appointment as]~~  
18 a public member of the board if the person or the person's spouse:

19 (1) is registered, certified, or licensed by a ~~[an~~  
20 ~~occupational]~~ regulatory agency in the field of engineering;

21 (2) is employed by or participates in the management  
22 of a ~~[an agency or]~~ business entity or other organization regulated  
23 by or receiving money from the board ~~[related to the field of~~  
24 ~~engineering]~~; ~~[or]~~

25 (3) owns or controls, directly or indirectly, more  
26 than a 10 percent ~~[has a financial]~~ interest ~~[other than as a~~  
27 ~~consumer]~~ in a business entity or other organization regulated by

1 or receiving money from the board; or

2 (4) uses or receives a substantial amount of tangible  
3 goods, services, or money from the board other than compensation or  
4 reimbursement authorized by law for board membership, attendance,  
5 or expenses [~~related to the field of engineering~~].

6 SECTION 6. Section 1001.103, Occupations Code, is amended  
7 to read as follows:

8 Sec. 1001.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)  
9 In this section, "Texas trade association" means a cooperative and  
10 voluntarily joined statewide association of business or  
11 professional competitors in this state designed to assist its  
12 members and its industry or profession in dealing with mutual  
13 business or professional problems and in promoting their common  
14 interest.

15 (a-1) A person may not be a [A] member [or employee] of the  
16 board and may not be a board employee employed in a "bona fide  
17 executive, administrative, or professional capacity," as that  
18 phrase is used for purposes of establishing an exemption to the  
19 overtime provisions of the federal Fair Labor Standards Act of 1938  
20 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

21 (1) the person is an officer, employee, or paid  
22 consultant of a Texas trade association in the field of engineering  
23 [~~industry~~]; or

24 (2) the person's spouse [~~related within the second~~  
25 ~~degree by affinity or consanguinity, as determined under Chapter~~  
26 ~~573, Government Code, to a person who~~] is an officer, manager  
27 [~~employee~~], or paid consultant of a Texas trade association in the

1 field of engineering [~~industry~~].

2 (b) A person may not be [~~serve as~~] a member of the board or  
3 act as the general counsel to the board if the person is required to  
4 register as a lobbyist under Chapter 305, Government Code, because  
5 of the person's activities for compensation on behalf of a  
6 profession related to the operation of the board.

7 SECTION 7. Section 1001.106, Occupations Code, is amended  
8 by amending Subsection (a) and adding Subsection (c) to read as  
9 follows:

10 (a) It is a ground for removal from the board that a member:

11 (1) does not have at the time of taking office  
12 [~~appointment~~] the qualifications required by Sections 1001.101 and  
13 [~~Section~~] 1001.102;

14 (2) does not maintain during service on the board the  
15 qualifications required by Sections 1001.101 and [~~Section~~]  
16 1001.102;

17 (3) is ineligible for membership under Section  
18 1001.102 or [~~violates a prohibition established by Section~~]  
19 1001.103; [~~or~~]

20 (4) cannot, because of illness or disability,  
21 discharge the member's duties for a substantial part of the member's  
22 term; or

23 (5) is absent from more than half of the regularly  
24 scheduled board meetings that the member is eligible to attend  
25 during [~~held in~~] a calendar year without an excuse approved by a  
26 majority vote of the board [~~, excluding meetings held while the~~  
27 ~~person was not a member~~].

1        (c) If the executive director has knowledge that a potential  
2 ground for removal exists, the executive director shall notify the  
3 presiding officer of the board of the potential ground. The  
4 presiding officer shall then notify the governor and the attorney  
5 general that a potential ground for removal exists. If the  
6 potential ground for removal involves the presiding officer, the  
7 executive director shall notify the next highest ranking officer of  
8 the board, who shall then notify the governor and the attorney  
9 general that a potential ground for removal exists.

10        SECTION 8. Section 1001.108, Occupations Code, is amended  
11 to read as follows:

12        Sec. 1001.108. OFFICERS. The governor shall designate a  
13 member of the board as the presiding officer of the board to serve  
14 in that capacity at the will of the governor. The board shall elect  
15 annually from its members [~~a presiding officer,~~] an assistant  
16 presiding officer[~~7~~] and a secretary.

17        SECTION 9. Subchapter C, Chapter 1001, Occupations Code, is  
18 amended by adding Section 1001.112 to read as follows:

19        Sec. 1001.112. TRAINING. (a) A person who is appointed to  
20 and qualifies for office as a member of the board may not vote,  
21 deliberate, or be counted as a member in attendance at a meeting of  
22 the board until the person completes a training program that  
23 complies with this section.

24        (b) The training program must provide the person with  
25 information regarding:

26                (1) this chapter;

27                (2) the programs operated by the board;

1           (3) the role and functions of the board;

2           (4) the rules of the board, with an emphasis on the  
3 rules that relate to disciplinary and investigatory authority;

4           (5) the current budget for the board;

5           (6) the results of the most recent formal audit of the  
6 board;

7           (7) the requirements of:

8                   (A) the open meetings law, Chapter 551,  
9 Government Code;

10                   (B) the public information law, Chapter 552,  
11 Government Code;

12                   (C) the administrative procedure law, Chapter  
13 2001, Government Code; and

14                   (D) other laws relating to public officials,  
15 including conflict-of-interest laws; and

16           (8) any applicable ethics policies adopted by the  
17 board or the Texas Ethics Commission.

18           (c) A person appointed to the board is entitled to  
19 reimbursement, as provided by the General Appropriations Act, for  
20 the travel expenses incurred in attending the training program  
21 regardless of whether the attendance at the program occurs before  
22 or after the person qualifies for office.

23           SECTION 10. Subchapter D, Chapter 1001, Occupations Code,  
24 is amended by adding Sections 1001.153-1001.156 to read as follows:

25           Sec. 1001.153. DIVISION OF RESPONSIBILITIES. The board  
26 shall develop and implement policies that clearly separate the  
27 policy-making responsibilities of the board and the management

1 responsibilities of the executive director and the staff of the  
2 board.

3 Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT  
4 INFORMATION. The executive director or the executive director's  
5 designee shall provide to members of the board and to board  
6 employees, as often as necessary, information regarding the  
7 requirements for office or employment under this chapter, including  
8 information regarding a person's responsibilities under applicable  
9 laws relating to standards of conduct for state officers or  
10 employees.

11 Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY;  
12 REPORT. (a) The executive director or the executive director's  
13 designee shall prepare and maintain a written policy statement that  
14 implements a program of equal employment opportunity to ensure that  
15 all personnel decisions are made without regard to race, color,  
16 disability, sex, religion, age, or national origin.

17 (b) The policy statement must include:

18 (1) personnel policies, including policies relating  
19 to recruitment, evaluation, selection, training, and promotion of  
20 personnel, that show the intent of the board to avoid the unlawful  
21 employment practices described by Chapter 21, Labor Code; and

22 (2) an analysis of the extent to which the composition  
23 of the board's personnel is in accordance with state and federal law  
24 and a description of reasonable methods to achieve compliance with  
25 state and federal law.

26 (c) The policy statement must:

27 (1) be updated annually;

1           (2) be reviewed by the Commission on Human Rights for  
2 compliance with Subsection (b)(1); and

3           (3) be filed with the governor's office.

4           Sec. 1001.156. INFORMATION ON STATE EMPLOYEE INCENTIVE  
5 PROGRAM. The executive director or the executive director's  
6 designee shall provide to board employees information and training  
7 on the benefits and methods of participation in the state employee  
8 incentive program under Subchapter B, Chapter 2108, Government  
9 Code.

10           SECTION 11. Section 1001.203, Occupations Code, is amended  
11 to read as follows:

12           Sec. 1001.203. RULES       RESTRICTING       ADVERTISING       OR  
13 COMPETITIVE BIDDING. (a) The board by rule shall prescribe  
14 standards for compliance with Subchapter A, Chapter 2254,  
15 Government Code [~~may restrict competitive bidding~~].

16           (b) Except as provided by Subsection (a), the [~~The~~] board  
17 may not adopt rules [~~a rule~~] restricting advertising or competitive  
18 bidding by a license holder [~~person licensed under this chapter~~]  
19 except to prohibit false, misleading, or deceptive practices [~~by~~  
20 ~~the person~~].

21           (c) In its rules to prohibit false, misleading, or deceptive  
22 practices, the [~~The~~] board may not include [~~in its rules to prohibit~~  
23 ~~false, misleading, or deceptive practices~~] a rule that:

24           (1) restricts the [~~person's~~] use of any medium for  
25 advertising;

26           (2) restricts the use of a license holder's [~~person's~~]  
27 personal appearance or [~~use of the person's~~] voice in an



1 advertisement;

2 (3) relates to the size or duration of an  
3 advertisement by the license holder [~~person~~]; or

4 (4) restricts the license holder's [~~person's~~]  
5 advertisement under a trade name.

6 SECTION 12. Subchapter E, Chapter 1001, Occupations Code,  
7 is amended by adding Section 1001.2035 to read as follows:

8 Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL  
9 CONVICTION. The board shall adopt rules and guidelines as  
10 necessary to comply with Chapter 53.

11 SECTION 13. Section 1001.204(a), Occupations Code, is  
12 amended to read as follows:

13 (a) The board shall establish the following [~~reasonable and~~  
14 ~~necessary~~] fees in amounts reasonable and necessary to cover the  
15 costs of administering [~~for the administration of~~] this chapter [~~in~~  
16 ~~amounts not to exceed~~]:

- 17 (1) license fee; [~~...\$50~~]
- 18 (2) annual renewal fee; [~~...\$75~~]
- 19 (3) reciprocal license fee; [~~...\$50~~]
- 20 (4) duplicate license fee; [~~...\$5~~]
- 21 (5) engineer-in-training certificate fee; [~~...\$15~~]
- 22 (6) roster of engineers fee; [~~...\$10~~]
- 23 (7) examination fee; and [~~...\$200~~]
- 24 (8) registration fee for engineering firm. [~~...\$100~~]

25 SECTION 14. Section 1001.210, Occupations Code, is amended  
26 to read as follows:

27 Sec. 1001.210. CONTINUING EDUCATION PROGRAMS. The board

1 shall [~~may~~] recognize, prepare, or administer continuing education  
2 programs for its license holders. A license holder must  
3 participate in the programs to the extent required by the board to  
4 keep the person's license [~~persons regulated by the board under~~  
5 ~~this chapter. Participation in the programs is voluntary~~].

6 SECTION 15. Subchapter E, Chapter 1001, Occupations Code,  
7 is amended by adding Sections 1001.214-1001.216 to read as follows:

8 Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop  
9 and implement a policy requiring the executive director and board  
10 employees to research and propose appropriate technological  
11 solutions to improve the board's ability to perform its functions.  
12 The technological solutions must:

13 (1) ensure that the public is able to find information  
14 about the board on the Internet;

15 (2) ensure that persons who want to use the board's  
16 services are able to:

17 (A) interact with the board through the Internet;  
18 and

19 (B) access any service that can be provided  
20 effectively through the Internet; and

21 (3) be cost-effective and developed through the  
22 board's planning processes.

23 Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE  
24 DISPUTE RESOLUTION POLICY. (a) The board shall develop and  
25 implement a policy to encourage the use of:

26 (1) negotiated rulemaking procedures under Chapter  
27 2008, Government Code, for the adoption of board rules; and

1           (2) appropriate alternative dispute resolution  
2 procedures under Chapter 2009, Government Code, to assist in the  
3 resolution of internal and external disputes under the board's  
4 jurisdiction.

5           (b) The board's procedures relating to alternative dispute  
6 resolution must conform, to the extent possible, to any model  
7 guidelines issued by the State Office of Administrative Hearings  
8 for the use of alternative dispute resolution by state agencies.

9           (c) The board shall designate a trained person to:

10           (1) coordinate the implementation of the policy  
11 adopted under Subsection (a);

12           (2) serve as a resource for any training needed to  
13 implement the procedures for negotiated rulemaking or alternative  
14 dispute resolution; and

15           (3) collect data concerning the effectiveness of those  
16 procedures, as implemented by the board.

17           Sec. 1001.216. JOINT ADVISORY COMMITTEE ON THE PRACTICE OF  
18 ENGINEERING AND ARCHITECTURE. (a) The Joint Advisory Committee on  
19 the Practice of Engineering and Architecture is an advisory  
20 committee to the board and to the Texas Board of Architectural  
21 Examiners. The advisory committee consists of:

22           (1) three members of the board appointed by the board;  
23 and

24           (2) three members of the Texas Board of Architectural  
25 Examiners appointed by that board.

26           (b) Members of the advisory committee serve staggered  
27 six-year terms with the terms of one member appointed by the board

1 and one member appointed by the Texas Board of Architectural  
2 Examiners expiring each odd-numbered year.

3 (c) The advisory committee shall meet at least twice a year.

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

10 (e) The advisory committee shall issue advisory opinions to  
11 the board and to the Texas Board of Architectural Examiners on  
12 matters relating to the practice of engineering and the practice of  
13 architecture, including:

14 (1) opinions on whether certain activities constitute  
15 the practice of engineering or the practice of architecture;

16 (2) specific disciplinary proceedings initiated by  
17 either agency; and

18 (3) the need for persons working on particular  
19 projects to be licensed by the board or registered by the Texas  
20 Board of Architectural Examiners.

21 (f) If the advisory committee issues an advisory opinion to  
22 the board or the Texas Board of Architectural Examiners on a matter,  
23 that agency shall notify the committee of the final action taken  
24 with regard to the matter. The advisory committee shall consider  
25 the action taken by the agency on the matter in any advisory opinion  
26 subsequently issued by the committee on a related matter.

27 (g) The board and the Texas Board of Architectural Examiners

1 shall enter into a memorandum of understanding regarding the  
2 advisory committee that includes the composition and purpose of the  
3 committee.

4 SECTION 16. Section 1001.251, Occupations Code, is amended  
5 by adding Subsection (c) to read as follows:

6 (c) The board shall maintain on the board's Internet  
7 website:

8 (1) information regarding the procedure for filing a  
9 complaint with the board; and

10 (2) a form that a person may use to file a complaint  
11 with the board.

12 SECTION 17. Sections 1001.252 and 1001.253, Occupations  
13 Code, are amended to read as follows:

14 Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT  
15 INVESTIGATION AND DISPOSITION [COMPLAINTS]. (a) The board shall  
16 adopt rules that permit the board to receive and investigate a  
17 confidential complaint against a license holder or other person who  
18 may have violated this chapter. The board shall maintain the  
19 confidentiality of the complaint during the investigation.

20 (b) The board by rule shall specify:

21 (1) the manner by which a person may contact the board  
22 for assistance in filing a complaint;

23 (2) the place at which a complaint must be filed;

24 (3) the proper form of a complaint; and

25 (4) the information that must be included in a  
26 complaint.

27 (c) The board's procedures must permit a member of the

1 public who desires to file a complaint to:

2 (1) speak to an investigator on the staff of the board  
3 if the person desires to do so; or

4 (2) easily and conveniently access the board's  
5 complaint process without being required to speak to an  
6 investigator on the staff of the board if the person does not desire  
7 to speak to an investigator.

8 (d) The board shall consider any written grievance against a  
9 license holder or other person filed with the board as a complaint.

10 (e) A complaint must include information sufficient for the  
11 board to determine whether it has the authority to resolve the  
12 complaint. A complaint that contains sufficient information for  
13 the board to commence an investigation is not required to include  
14 all of the information necessary for the board to determine the  
15 validity of the complaint.

16 (f) On receipt of a complaint, the board shall determine  
17 whether the board has the authority to resolve the complaint. If  
18 the board does not have the authority to resolve the complaint, the  
19 board shall dismiss the complaint. If the board has the authority  
20 to resolve the complaint, the board shall initiate a disciplinary  
21 proceeding against the person who is the subject of the complaint.

22 (g) The board by rule shall prescribe a method for  
23 prioritizing complaints for purposes of complaint investigation.  
24 In establishing priorities:

25 (1) a complaint that alleges an action that could  
26 potentially harm the public takes precedence over a complaint that  
27 does not allege an action that could potentially harm the public;

1 and

2 (2) with regard to complaints that do not allege an  
3 action that could potentially harm the public, a complaint filed by  
4 a member of the public takes precedence over a complaint filed by  
5 the staff of the board.

6 (h) The board's staff is responsible for conducting all  
7 phases of complaint investigation, including gathering evidence  
8 necessary to determine the validity of the complaint.

9 (i) The board may employ or contract with advisors,  
10 consultants, engineers, or other persons to provide technical  
11 assistance in investigations and disciplinary proceedings. Except  
12 for an action involving fraud, conspiracy, or malice, a person  
13 whose services are obtained by the board under this subsection is  
14 immune from civil liability and may not be subjected to a suit for  
15 damages for any investigation, report, recommendation, statement,  
16 evaluation, finding made, or other action taken in the course of  
17 performing the person's official duties.

18 (j) The board's staff shall regularly report to the board on  
19 each complaint dismissed by board staff, including:

20 (1) the name of the complainant;

21 (2) the name of the person who is the subject of the  
22 complaint;

23 (3) the basis of the complaint; and

24 (4) the reason for the dismissal of the complaint.

25 Sec. 1001.253. COMPLAINT INFORMATION. (a) The board  
26 shall:

27 (1) assign a number to each complaint filed with the

1 board; and

2 (2) ensure that each phase of the processing of a  
3 complaint is appropriately documented.

4 (b) The board shall maintain a [keep an information] file on  
5 [about] each written complaint [relating to a license holder] filed  
6 with the board. The file must include:

7 (1) the name of the person who filed the complaint;

8 (2) the date the complaint is received by the board;

9 (3) the subject matter of the complaint;

10 (4) the name of each person contacted in relation to  
11 the complaint;

12 (5) a summary of the results of the review or  
13 investigation of the complaint; and

14 (6) an explanation of the reason the file was closed,  
15 if the agency closed the file without taking action other than to  
16 investigate the complaint.

17 (c) The board shall provide to the person filing the  
18 complaint and to each person who is a subject of the complaint a  
19 copy of the board's policies and procedures relating to complaint  
20 investigation and resolution.

21 (d) The [(b) If a written complaint relating to a license  
22 holder is filed with the board, the] board, at least quarterly and  
23 until final disposition of the complaint, shall notify the parties  
24 to the complaint of the status of the complaint unless the notice  
25 would jeopardize an undercover investigation.

26 SECTION 18. Subchapter F, Chapter 1001, Occupations Code,  
27 is amended by adding Sections 1001.254 and 1001.255 to read as



1 follows:

2 Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS. (a)

3 The board shall develop and maintain a complaint tracking system to  
4 monitor the processing of complaints filed with the board.

5 (b) The board shall include with the board's annual  
6 financial report under Section 2101.011, Government Code, a  
7 statistical analysis of the complaints filed with the board during  
8 the preceding year, including:

9 (1) the number of complaints filed;

10 (2) a categorization of complaints filed according to  
11 the basis of the complaint and the number of complaints in each  
12 category;

13 (3) the number of complaints filed by board staff;

14 (4) the number of complaints filed by persons other  
15 than board staff;

16 (5) the average length of time required to resolve a  
17 complaint;

18 (6) the number of complaints resolved and the manner  
19 in which they were resolved, including:

20 (A) the number of complaints dismissed and the  
21 reasons for dismissal; and

22 (B) the number of complaints resulting in  
23 disciplinary action, the disciplinary action taken, and whether the  
24 disciplinary action taken was imposed by stipulation, agreed  
25 settlement, consent order, default, or order following a contested  
26 case hearing; and

27 (7) the number of complaints filed that are

1 unresolved, the number of those complaints filed by board staff,  
2 the number of those complaints filed by persons other than board  
3 staff, and the average length of time that the unresolved  
4 complaints have been on file.

5 Sec. 1001.255. PUBLIC PARTICIPATION. The board shall  
6 develop and implement policies that provide the public with a  
7 reasonable opportunity to appear before the board and to speak on  
8 any issue under the jurisdiction of the board.

9 SECTION 19. Section 1001.301, Occupations Code, is amended  
10 by amending Subsections (b) and (c) and adding Subsection (f) to  
11 read as follows:

12 (b) Except as provided by Subsection (f), a [A] person may  
13 not, unless the person holds a license issued under this chapter,  
14 directly or indirectly use or cause to be used as a professional,  
15 business, or commercial identification, title, name,  
16 representation, claim, asset, or means of advantage or benefit any  
17 of, or a variation or abbreviation of, the following terms:

- 18 (1) "engineer";
- 19 (2) "professional engineer";
- 20 (3) "licensed engineer";
- 21 (4) "registered engineer";
- 22 (5) "registered professional engineer";
- 23 (6) "licensed professional engineer"; or
- 24 (7) "engineered."

25 (c) Except as provided by Subsection (f), a [A] person may  
26 not directly or indirectly use or cause to be used an abbreviation,  
27 word, symbol, slogan, or sign that tends or is likely to create an

1 impression with the public that the person is qualified or  
2 authorized to engage in the practice of engineering unless the  
3 person holds a license and is practicing under this chapter.

4 (f) Notwithstanding the other provisions of this chapter, a  
5 person who is exempt from the licensing requirements of this  
6 chapter is not prohibited from using the term "engineer" or a  
7 variation or abbreviation of that term as a professional, business,  
8 or commercial identification, title, name, representation, claim,  
9 asset, or means of advantage or benefit, including on a business  
10 card, cover letter, or other form of correspondence that is made  
11 available to the public, if the person does not offer to the public  
12 to perform engineering services. This subsection does not  
13 authorize a person to use a term listed in Subsections (b)(2)-(6) or  
14 a variation or abbreviation of one of those terms.

15 SECTION 20. Section 1001.303, Occupations Code, is amended  
16 to read as follows:

17 Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant  
18 for a license under this chapter must submit an [~~a sworn~~]  
19 application on a form prescribed and provided by the board.

20 (b) The application must contain:

21 (1) personal information about the applicant, as  
22 required by board rule;

23 (2) a description of the applicant's education;

24 (3) a detailed summary of the applicant's actual  
25 engineering work;

26 (4) a description of any engineering license or  
27 registration previously issued to the applicant and any denial,

1 revocation, or suspension of an engineering license or registration  
2 held by the applicant;

3 (5) a description of any criminal offense of which the  
4 applicant has been convicted; and

5 (6) at least three [~~five~~] references from engineers  
6 [~~individuals~~] having personal knowledge of the applicant's  
7 character, reputation, [~~and~~] general suitability for a license, and  
8 [~~of whom at least three must be engineers having personal knowledge~~  
9 ~~of the applicant's~~] engineering experience.

10 SECTION 21. Section 1001.304, Occupations Code, is amended  
11 by adding Subsection (d) to read as follows:

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

16 SECTION 22. Sections 1001.306, 1001.310, and 1001.311,  
17 Occupations Code, are amended to read as follows:

18 Sec. 1001.306. EXAMINATION RESULTS. (a) Not later than the  
19 30th day after the date a person takes a licensing examination under  
20 this chapter, the [~~The~~] board shall notify the person [~~each~~  
21 ~~examinee~~] of the results of the [~~an~~] examination [~~not later than the~~  
22 ~~30th day after the date the examination is administered~~].

23 (a-1) If the [~~an~~] examination is graded or reviewed by a  
24 [~~national~~] testing service:

25 (1) [~~7~~] the board shall notify the person [~~each~~  
26 ~~examinee~~] of the results of the examination not later than the 14th  
27 day after the date the board receives the results from the testing

1 service; and

2 (2) if [~~-~~

3 [~~(b) If the~~] notice of the examination results [~~of an~~  
4 ~~examination~~] will be delayed for longer than 90 days after the  
5 examination date, the board shall notify the person [~~each examinee~~]  
6 of the reason for the delay before the 90th day.

7 (b) The board may require a testing service to notify a  
8 person of the results of the person's examination.

9 (c) If requested in writing by a person who fails a  
10 licensing [~~the~~] examination administered under this chapter, the  
11 board shall furnish [~~provide to~~] the person with an analysis of the  
12 person's performance on the examination.

13 Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The  
14 board by rule may adopt standards and procedures for issuing a  
15 temporary or provisional license under this chapter.

16 (b) The board may issue a provisional license to an  
17 applicant currently licensed in another jurisdiction who seeks a  
18 license in this state and who:

19 (1) has been licensed in good standing as an engineer  
20 for at least two years in another jurisdiction, including a foreign  
21 country, that has licensing requirements substantially equivalent  
22 to the requirements of this chapter;

23 (2) has passed a national or other examination  
24 recognized by the board relating to the practice of engineering;  
25 and

26 (3) is sponsored by a person licensed by the board  
27 under this chapter with whom the provisional license holder will

1 practice during the time the person holds a provisional license.

2 (c) The board may waive the requirement of Subsection (b)(3)  
3 for an applicant if the board determines that compliance with that  
4 subsection would be a hardship to the applicant.

5 (d) A provisional license is valid until the date the board  
6 approves or denies the provisional license holder's application for  
7 a license. The board shall issue a license under this chapter to  
8 the provisional license holder if:

9 (1) the provisional license holder is eligible to be  
10 licensed under Section 1001.311(b); or

11 (2) the provisional license holder meets the following  
12 requirements:

13 (A) the provisional license holder passes an  
14 examination that tests the provisional license holder's knowledge  
15 and understanding of the laws and rules relating to the practice of  
16 engineering in this state;

17 (B) the board verifies that the provisional  
18 license holder meets the academic and experience requirements for a  
19 license under this chapter; and

20 (C) the provisional license holder satisfies any  
21 other licensing requirements under this chapter.

22 (e) The board must approve or deny a provisional license  
23 holder's application for a license not later than the 180th day  
24 after the date the provisional license is issued. The board may  
25 extend the 180-day period if the results of an examination have not  
26 been received by the board before the end of that period.

27 (f) The board may establish a fee for provisional licenses

1 in an amount reasonable and necessary to cover the cost of issuing  
2 the license.

3       Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person  
4 who holds a license or certificate of registration issued by  
5 another state or a foreign country may apply for a license in this  
6 state.

7       (b) The board may waive any prerequisite to obtaining a  
8 license for an applicant after reviewing the applicant's  
9 credentials and determining that the applicant holds a license  
10 issued by another jurisdiction that has licensing requirements  
11 substantially equivalent to those of this state.

12       SECTION 23. Section 1001.351(b), Occupations Code, is  
13 amended to read as follows:

14       (b) The board by rule may adopt a system under which  
15 licenses and registrations expire on various dates during the year.  
16 For the year in which the license or registration expiration date is  
17 changed, the board shall prorate license or registration fees on a  
18 monthly basis so that each license or registration holder pays only  
19 that portion of the license or registration fee that is allocable to  
20 the number of months during which the license or registration is  
21 valid. On renewal of the license or registration on the new  
22 expiration date, the total license or registration renewal fee is  
23 payable [~~and shall adjust renewal dates accordingly~~].

24       SECTION 24. Sections 1001.352 and 1001.353, Occupations  
25 Code, are amended to read as follows:

26       Sec. 1001.352. NOTICE OF LICENSE EXPIRATION. Not later  
27 than the 30th day [~~one month~~] before the [~~expiration~~] date [~~of~~] a

1 person's license is scheduled to expire, the board shall send ~~[mail~~  
2 ~~to the person at the last address the person provided to the board]~~  
3 written notice of the impending ~~[license]~~ expiration to the person  
4 at the person's last known address according to the records of the  
5 board ~~[date and the amount of the annual renewal fee for the~~  
6 ~~license]~~.

7           Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is  
8 otherwise eligible to renew a license may renew an unexpired  
9 license by paying the required renewal fee to the board before the  
10 expiration date of the license. A person whose license has expired  
11 may not engage in activities that require a license until the  
12 license has been renewed.

13           (b) A person whose license has been expired for 90 days or  
14 less may renew the license by paying to the board a renewal fee that  
15 is equal to 1-1/2 times the normally ~~[the]~~ required renewal fee ~~[and~~  
16 ~~a penalty fee set by the board]~~.

17           (c) A person whose license has been expired for more than 90  
18 days but less than two years may renew the license by paying to the  
19 board a renewal fee that is equal to two times the normally required  
20 renewal fee ~~[all unpaid renewal fees and a penalty fee set by the~~  
21 ~~board]~~.

22           (d) A person whose license has been expired for two years or  
23 more may not renew the license. The person may obtain a new license  
24 by complying with the requirements and procedures, including the  
25 examination requirements, for obtaining an original license ~~[that~~  
26 ~~are in effect at the time the person applies]~~.

27           SECTION 25. Subchapter H, Chapter 1001, Occupations Code,



1 is amended by adding Section 1001.354 to read as follows:

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

7 (b) The person must pay to the board a fee that is equal to  
8 two times the normally required renewal fee for the license.

9 SECTION 26. Section 1001.405, Occupations Code, is amended  
10 by adding Subsection (g) to read as follows:

11 (g) Notwithstanding the other provisions of this section,  
12 the board by rule may provide that a business entity that has not  
13 previously registered with the board and that is engaged in the  
14 practice of engineering in violation of Subsection (b) is not  
15 subject to disciplinary action for the violation if the business  
16 entity registers with the board not later than the 30th day after  
17 the date the board gives written notice to the business entity of  
18 the registration requirement. This subsection does not apply to a  
19 business entity whose registration has expired.

20 SECTION 27. Subchapter J, Chapter 1001, Occupations Code,  
21 is amended by adding Sections 1001.4525-1001.4527 to read as  
22 follows:

23 Sec. 1001.4525. PROBATION. (a) If a person's license  
24 suspension is probated, the board may require the person to:

25 (1) report regularly to the board on matters that are  
26 the basis of the probation;

27 (2) limit practice to the areas prescribed by the

1 board; or

2 (3) continue or review professional education until  
3 the person attains a degree of skill satisfactory to the board in  
4 those areas that are the basis of the probation.

5 (b) The board by rule shall adopt written guidelines to  
6 ensure that probation is administered consistently.

7 Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection  
8 (b), the board may order a person licensed or registered under this  
9 chapter to pay restitution to a consumer as provided in an agreement  
10 resulting from an informal settlement conference instead of or in  
11 addition to imposing an administrative penalty under this chapter.

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

17 Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board  
18 member who participated in the investigation of a complaint or in  
19 informal settlement negotiations regarding the complaint:

20 (1) may not participate in the discussion of or vote on  
21 the matter at a board meeting related to the complaint; and

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

25 (b) A statement under Subsection (a)(2) shall be entered  
26 into the minutes of the meeting.

27 SECTION 28. (a) Not later than January 1, 2004, the Texas

1 Board of Professional Engineers shall adopt the rules required by  
2 Section 1001.2035, Occupations Code, as added by this Act.

3 (b) Not later than September 1, 2005, the Texas Board of  
4 Professional Engineers shall adopt the written guidelines required  
5 by Section 1001.4525, Occupations Code, as added by this Act.

6 SECTION 29. (a) This Act takes effect September 1, 2003.

7 (b) The changes in law made by Sections 1001.102 and  
8 1001.103, Occupations Code, as amended by this Act, and Section  
9 1001.112, Occupations Code, as added by this Act, in the  
10 prohibitions on or qualifications of members of the Texas Board of  
11 Professional Engineers do not affect the entitlement of a member  
12 serving on the Texas Board of Professional Engineers immediately  
13 before September 1, 2003, to continue to serve and function as a  
14 member of the Texas Board of Professional Engineers for the  
15 remainder of the member's term. Those changes in law apply only to  
16 a member appointed on or after September 1, 2003.

17 (c) The change in law made by Section 1001.108, Occupations  
18 Code, as amended by this Act, does not affect the entitlement of a  
19 person who was serving as presiding officer of the Texas Board of  
20 Professional Engineers immediately before September 1, 2003, to  
21 continue to serve and function in that capacity for the remainder of  
22 the person's term as presiding officer. That change in law applies  
23 only to the designation of a presiding officer of the board after  
24 that person's term as presiding officer expires.

25 (d) The changes in law made by this Act to Chapter 1001,  
26 Occupations Code, relating to the investigation of a complaint  
27 apply only to a complaint filed with the Texas Board of Professional

1 Engineers on or after the effective date of this Act. A complaint  
2 filed with the board before the effective date of this Act is  
3 governed by the law as it existed immediately before that date, and  
4 the former law is continued in effect for that purpose.

COMMITTEE AMENDMENT NO. 1

Amend H.B. 1789 as follows:

(1) Strike SECTION 2 of the bill (page 1, line 18, through page 2, line 1) and substitute the following:

SECTION 2. Section 1001.057, Occupations Code, is amended to read as follows:

Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS ENTITY [~~OR AFFILIATE~~]. (a) This chapter shall 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 [~~A regular full-time employee of a private business entity is exempt from the licensing requirements of this chapter if~~]:

(1) reasonable modifications to existing buildings, facilities, or other fixtures to real property not accessible to the general public that are owned, leased, or otherwise occupied by the entity [~~the employee performs services exclusively for the business entity or an affiliate of that entity~~]; or

(2) activities related only to the research, development, design, fabrication, production, assembly, integration, or service of products manufactured by the entity [~~the employee's services~~]:

~~[(A) are on or in connection with property:~~

~~[(i) owned or leased by the business entity or affiliate, or~~

~~[(ii) in which the business entity or~~

1 ~~affiliate has an interest, estate, or possessory right; or~~

2 ~~[(B) affect exclusively the property, products,~~  
3 ~~or interests of the business entity or affiliate; and~~

4 ~~[(3) the employee does not have the final authority to~~  
5 ~~approve, or the ultimate responsibility for, engineering designs,~~  
6 ~~plans, or specifications relating to the property or products that~~  
7 ~~are to be:~~

8 ~~[(A) incorporated into a fixed work, system, or~~  
9 ~~facility on the property of another; or~~

10 ~~[(B) made available to the public].~~

11 (b) ~~[This exemption includes the use of a job title or~~  
12 ~~personnel classification by the employee if the employee does not~~  
13 ~~use:~~

14 ~~[(1) the title or classification in connection with an~~  
15 ~~offer to the public to perform engineering services; and~~

16 ~~[(2) a name, title, or word that tends to convey the~~  
17 ~~impression that a person not licensed under this chapter is~~  
18 ~~offering to the public to perform engineering services.~~

19 ~~[(c)]~~ A person who claims an exemption under this section  
20 and who is determined to have directly or indirectly represented  
21 the person as legally qualified to engage in the practice of  
22 engineering or who is determined to have violated Section 1001.301  
23 may not claim an exemption until the 10th anniversary of the date  
24 the person made that representation.

25 (c) This exemption does not prohibit:

26 (1) a licensed professional engineer who intends to  
27 incorporate manufactured products into a fixed work, system, or

1 facility that is being designed by the licensee on public property  
2 or the property of others from requiring the manufacturer to have  
3 plans signed and sealed by a licensed professional engineer; or

4 (2) the board from requiring by rule that certain  
5 manufactured products delivered to or used by the public must be  
6 designed and sealed by a licensed professional engineer, if  
7 necessary to protect the public health, safety, and welfare.

8 (d) For purposes of this section, "products manufactured by  
9 the entity" also includes computer software, firmware, hardware,  
10 semiconductor devices, and the production, exploration, and  
11 transportation of oil and gas and related products.

12 (2) Strike SECTION 3 of the bill (page 2, lines 2-9) and  
13 substitute the following:

14 SECTION 3. Sections 1001.058(b) and (c), Occupations Code,  
15 are amended to read as follows:

16 (b) ~~[This exemption includes the use of a job title or~~  
17 ~~personnel classification by the employee if the employee does not~~  
18 ~~use:~~

19 ~~[(1) the title or classification in connection with an~~  
20 ~~offer to the public to perform engineering services; and~~

21 ~~[(2) a name, title, or word that tends to convey the~~  
22 ~~impression that a person not licensed under this chapter is~~  
23 ~~offering to the public to perform engineering services.~~

24 ~~[(c)]~~ A person who claims an exemption under this section  
25 and who is determined to have directly or indirectly represented  
26 the person as legally qualified to engage in the practice of  
27 engineering or who is determined to have violated Section 1001.301

1 may not claim an exemption until the 10th anniversary of the date  
2 the person made that representation.

3 (3) Strike SECTION 19 of the bill (page 18, line 9, through  
4 page 19, line 14) and substitute the following:

5 SECTION 19. Section 1001.301, Occupations Code, is amended  
6 by amending Subsections (b) and (c) and adding Subsection (f) to  
7 read as follows:

8 (b) Except as provided by Subsection (f), a [A] person may  
9 not, unless the person holds a license issued under this chapter,  
10 directly or indirectly use or cause to be used as a professional,  
11 business, or commercial identification, title, name,  
12 representation, claim, asset, or means of advantage or benefit any  
13 of, or a variation or abbreviation of, the following terms:

- 14 (1) "engineer";  
15 (2) "professional engineer";  
16 (3) "licensed engineer";  
17 (4) "registered engineer";  
18 (5) "registered professional engineer";  
19 (6) "licensed professional engineer"; or  
20 (7) "engineered."

21 (c) Except as provided by Subsection (f), a [A] person may  
22 not directly or indirectly use or cause to be used an abbreviation,  
23 word, symbol, slogan, or sign that tends or is likely to create an  
24 impression with the public that the person is qualified or  
25 authorized to engage in the practice of engineering unless the  
26 person holds a license and is practicing under this chapter.

27 (f) Notwithstanding the other provisions of this chapter, a



1 regular employee of a business entity who is engaged in engineering  
2 activities but is exempt from the licensing requirements of this  
3 chapter under Section 1001.057 or 1001.058 is not prohibited from  
4 using the term "engineer" on a business card, cover letter, or other  
5 form of correspondence that is made available to the public if the  
6 person does not:

7           (1) offer to the public to perform engineering  
8 services; or

9           (2) use the title in any context outside the scope of  
10 the exemption in a manner that represents an ability or willingness  
11 to perform engineering services or make an engineering judgment  
12 requiring a license as a professional engineer.

13 This subsection does not authorize a person to use a term listed in  
14 Subsections (b)(2)-(6) or a variation or abbreviation of one of  
15 those terms.

16           (4) Add a new SECTION \_\_\_\_ to read as follows:

17           SECTION \_\_\_\_ . Section 1001.406, Occupations Code, is amended  
18 to read as follows:

19           Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a  
20 [~~public~~] university recognized by the American Association of  
21 Colleges and Universities who has a degree from an engineering  
22 program accredited by the Accreditation Board for Engineering and  
23 Technology (ABET) has the right to:

24           (1) disclose any college degree received by the  
25 person; and

26           (2) use the term "graduate engineer" on the person's  
27 stationery or business cards or in personal communications of any

1 character.

2 (b) A graduate engineer who is employed in a firm registered  
3 under this chapter and who is working under the direct supervision  
4 of a licensed professional engineer may use the term "engineer" on  
5 the person's stationery or business cards or in personal  
6 communications of any character.

7 78R11493 E

Flores

8 COMMITTEE AMENDMENT NO. 2

9 Amend H.B. No. 1789 as follows:

10 (1) On page 2, line 10, insert the following:

11 SECTION 4. Subchapter B, Chapter 1001, Occupations Code, is  
12 amended by adding Section 1001.065 to read as follows:

13 Sec. 1001.065. PROFESSIONAL ENGINEERING REQUIREMENTS. No  
14 agency or political subdivision of this state may impose upon a  
15 person who is exempt from the licensing requirements of this  
16 chapter an obligation:

17 (1) to employ, pay for, or reimburse the agency or  
18 political subdivision for the supervision, inspection, or  
19 engineering services of a licensed or registered engineer; or

20 (2) to obtain the seal of a licensed or registered  
21 engineer upon any plan, design, specification, report, or  
22 inspection.

23 (2) Renumber the subsequent sections accordingly.

24 78R11492 E

Jones of Lubbock