

## **BILL ANALYSIS**

Senate Research Center  
82R30557 SLB-F

C.S.H.B. 2284  
By: Hardcastle (Deuell)  
Business & Commerce  
5/21/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

There is concern that state law does not address the overlap between the professions of engineering and architecture leading to a dispute regarding the scope of the practice of engineering. C.S.H.B. 2284 seeks to remedy this situation by clarifying the statutes at issue and creating an administrative review process that allows an engineer to engage in the practice of architecture under certain conditions.

C.S.H.B. 2284 amends current law relating to the practice of architecture and engineering.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter A, Chapter 1001, Occupations Code, by adding Section 1001.0031, as follows:

Sec. 1001.0031. PRACTICES OF ENGINEERING AND ARCHITECTURE. (a) Provides that the practice of engineering does not include, and engineers are prohibited from engaging in or offering to engage in, except as provided by Subsection (d) or (e), the practice of architecture as defined by Sections 1051.001(7)(A) (relating to establishing and documenting certain projects intended to be constructed or altered), (B) (relating to preparing, or supervising and controlling the preparation of certain plans and specifications), and (C) (relating to observing the construction, modification, or alteration of work to evaluate certain things), as that definition existed on April 1, 2011, and by Section 1051.0016(a).

(b) Prohibits an engineer from preparing or providing a complete, comprehensive set of building plans for a building designed for human use or occupancy unless:

(1) the plans and specifications as described by Section 1051.001(7)(A) or (B) are prepared by, or under the supervision of, an architect;

(2) the building is part of a project described by Section 1051.601(b) (relating to prohibiting an engineer from performing certain actions) or a building described by Section 1051.606(a)(4) (relating to preparing architectural plans and specifications or observing or supervising construction); or

(3) the engineer has received administrative approval by the Texas Board of Architectural Examiners (TBAE) to practice architecture under Section 1051.607.

(c) Provides that an engineer is responsible for the engineering plans and specifications of a building unless the work is exempt under Section 1001.053

(Public Works) or 1001.056 (Construction or Repair of and Plans for Certain Buildings). Defines, in this section, "engineering plans and specifications."

(d) Provides that the preparation of engineering plans and specifications for the following tasks is within the scope of practice of both engineering and architecture:

(1) site plans depicting the location and orientation of a building on the site based on a determination of the relationship of the intended use with the environment, topography, vegetation, climate, and geographic aspects; and the legal aspects of site development, including setback requirements, zoning and other legal restrictions, and surface drainage;

(2) the depiction of the building systems, including structural, mechanical, electrical, and plumbing systems, in plan views, cross-sections depicting building components from a hypothetical cut line through a building, and the design of details of components and assemblies, including any part of a building exposed to water infiltration or fire-spread considerations;

(3) life safety plans and sheets, including accessibility ramps and related code analyses; and

(4) roof plans and details depicting the design of roof system materials, components, drainage, slopes, and directions and location of roof accessories and equipment not involving structural engineering calculations.

(e) Authorizes the following activities to be performed by either an engineer or an architect:

(1) programming for construction projects, including identification of economic, legal, and natural constraints; and determination of the scope of functional elements;

(2) recommending and overseeing appropriate construction project delivery systems;

(3) consulting with regard to, investing, and analyzing the design, form, materials, and construction technology used for the construction, enlargement, or alteration of a building or its environment; and

(4) providing expert opinion and testimony with respect to issues within the responsibility of the engineer or architect.

SECTION 2. Amends Subchapter A, Chapter 1051, Occupations Code, by adding Section 1051.0016, as follows:

Sec. 1051.0016. PRACTICES OF ARCHITECTURE AND ENGINEERING. (a) Defines, in this chapter, "architectural plans and specifications."

(b) Provides that the preparation of architectural plans and specifications for the following tasks is within the scope of practice of both engineering and architecture:

(1) site plans depicting the location and orientation of a building on the site based on a determination of the relationship of the intended use with the environment, topography, vegetation, climate, and geographic aspects; and the legal aspects of site development, including setback requirements, zoning and other legal restrictions, and surface drainage;

(2) the depiction of the building systems, including structural, mechanical, electrical, and plumbing systems, in plan views, cross-sections depicting building components from a hypothetical cut line through a building, and the design of details of components and assemblies, including any part of a building exposed to water infiltration or fire-spread considerations;

(3) life safety plans and sheets, including accessibility ramps and related code analyses; and

(4) roof plans and details depicting the design of roof system materials, components, drainage, slopes, and directions and location of roof accessories and equipment not involving structural engineering calculations.

(c) Authorizes the following activities to be performed by either an engineer or an architect:

(1) programming for construction projects, including identification of economic, legal, and natural constraints; and determination of the scope of functional elements;

(2) recommending and overseeing appropriate construction project delivery systems;

(3) consulting with regard to, investing, and analyzing the design, form, materials, and construction technology used for the construction, enlargement, or alteration of a building or its environment; and

(4) providing expert opinion and testimony with respect to issues within the responsibility of the engineer or architect.

SECTION 3. Amends Subchapter F, Chapter 1051, Occupations Code, by adding Section 1051.308, as follows:

Sec. 1051.308. **INTERN DEVELOPMENT PROGRAM.** Requires TBAE to allow a graduate student engineer enrolled in an accredited architectural professional degree program in this state to enroll concurrently in the intern development program required by TBAE rules before an applicant may take the examination under this chapter.

SECTION 4. Amends Subchapter L, Chapter 1051, Occupations Code, by adding Section 1051.607, as follows:

Sec. 1051.607. **LIST OF ENGINEERS PERMITTED TO ENGAGE IN PRACTICE OF ARCHITECTURE.** (a) Requires TBAE to maintain a list of engineers licensed under Chapter 1001 (Engineers) who are authorized to engage in the practice of architecture based on an administrative finding of experience under this section. Requires TBAE to post the list on TBAE's Internet website.

(b) Prohibits an engineer from engaging or offering to engage in the practice of architecture unless:

(1) the engineer is listed under Subsection (a); and

(2) the engineer is in good standing with the Texas Board of Professional Engineers (TBPE).

(c) Requires TBAE to list each engineer who:

(1) applies for placement on the list not later than April 1, 2012;

(2) was licensed to practice engineering under Chapter 1001 before January 1, 2011; and

(3) provides to TBAE documentation of at least three projects that were prepared by the engineer, were adequately and safely built before January 1, 2011, and are described by Section 1051.703(a) (relating to an architectural plan or specification that may be prepared only by an architect) or were not exempt under Section 1051.606(a)(4).

(d) Provides that documentation that is sufficient to satisfy the requirement of Subsection (c)(3) includes plans, specifications, photographs, and other records establishing that the architectural design work was performed by the engineer. Provides that the documentation is subject to verification by TBAE. Requires TBAE to complete the verification not later than the 120th day after the date TBAE receives the documentation.

(e) Requires TBAE to issue written confirmation to each engineer listed under this section that, notwithstanding the requirements of Section 1051.701 (Registration Required), the engineer is authorized to lawfully engage and offer to engage in the practice of architecture without a license under this chapter.

(f) Authorizes the engineer, if the board declines to list an engineer who applies under this section, to request a contested case hearing to be conducted under Chapter 2001 (Administrative Procedure), Government Code. Requires that the motion for rehearing required by Chapter 2001, Government Code, be filed with the State Office of Administrative Hearings. Provides that the decision of the administrative law judge in the contested case is final and may be appealed in a Travis County district court.

(g) Requires TBAE and TBPE to pay equally the costs of a contested case.

(h) Provides that TBPE has exclusive regulatory oversight over an engineer listed under Subsection (a).

SECTION 5. Amends Section 1051.703(b), Occupations Code, as follows:

(b) Provides that this section does not prohibit an owner of a building from contracting with an architect or engineer, rather than choosing an architect or engineer, as the prime design professional for a building construction, alteration, or addition project. Provides that designation as the prime design professional does not expand the scope of practice of an architect or engineer beyond the scope of practice that the architect or engineer is authorized to practice under Chapter 1001 or 1051 (Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting only Architects).

SECTION 6. (a) Requires TBPE and TBAE to establish a joint task force of members of each board and license and registration holders regulated by each board to make recommendations to the boards regarding whether certain activities should be within the scope of practice of architecture or engineering, or both.

(b) Provides that this section expires August 31, 2013.

SECTION 7. Authorizes an engineer who applies for listing under Section 1051.607, Occupations Code, as added by this Act, to continue to practice under the law as it existed immediately before the effective date of this Act until the date the application is finally approved or denied, or if appealed after denial, a final decision is entered by an administrative law judge, and the former law is continued in effect for that purpose.

SECTION 8. Repealer: Section 1001.216 (Joint Advisory Committee on the Practice of Engineering and Architecture), Occupations Code.

Repealer: Section 1051.212 (Joint Advisory Committee on the Practices of Engineering Architecture, and Landscape Architecture), Occupations Code.

SECTION 9. Effective date: September 1, 2011.