

BILL ANALYSIS

Senate Research Center
83R3946 MAW-D

S.B. 204
By: Nichols
Business & Commerce
2/28/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this bill is to enact the recommendations of the Sunset Advisory Commission regarding the Texas Board of Professional Engineers (TBPE), which regulates professional engineers, engineers-in-training, and engineering firms. To fulfill its mission of protecting the public, TBPE licenses professional engineers and registers engineering firms, investigates complaints, and takes disciplinary actions against individuals who violate TBPE's statutes or rules.

TBPE is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the legislature. Sunset concluded that Texas has an ongoing need for the functions of TBPE, but that changes to TBPE's licensing and regulatory functions are needed to ensure effective regulation.

TBPE is governed by Chapter 1001 of the Occupations Code.

This legislation addresses issues differently from current law by:

- continuing TBPE for 12 years;
- requiring TBPE to adopt policies governing the testing process and administration, and removing a specific testing requirement that limits flexibility in how future testing is administered;
- requiring TBPE to conduct fingerprint criminal background checks, through the Department of Public Safety of the State of Texas (DPS), to review complete federal and state criminal histories on all applicants and current licensees;
- prohibiting TBPE from collecting the \$200 professional fee before applicants satisfy the licensing requirements as a professional engineer;
- increasing TBPE's administrative penalty authority from \$3,000 to \$5,000 per violation per day;
- authorizing TBPE to issue summary suspension orders where an individual or a firm presents an immediate harm to the public welfare; and
- granting cease-and-desist authority to TBPE for the unlicensed practice of engineering.

As proposed, S.B. 204 amends current law relating to the continuation and functions of the Texas Board of Professional Engineers, and changes a fee.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Professional Engineers in SECTION 10 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1001.005, Occupations Code, as follows:

Sec. 1001.005. APPLICATION OF SUNSET ACT. Provides that the Texas Board of Professional Engineers (TBPE) is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter,

TBPE is abolished and this chapter expires September 1, 2025, rather than September 1, 2013.

SECTION 2. Amends Section 1001.206(a), Occupations Code, to require that the fee increase authorized under this chapter be collected at the time of the issuance or renewal of the license.

SECTION 3. Amends Section 1001.304, Occupations Code, by adding Subsection (e) to require TBPE to adopt policies and guidelines detailing the procedures for an examination process, including examination admission, examination administration, and national examination requirements and post on TBPE's Internet website the policies that reference the examination procedures of TBPE or, if applicable, the national organization selected by TBPE to administer the examination.

SECTION 4. Amends Section 1001.309(b), Occupations Code, to require TBPE to consider as minimum evidence that an applicant is qualified for certification or enrollment as an engineer-in-training if the applicant complies with certain education and character requirements and has passed TBPE's examination in the fundamentals of engineering, rather than TBPE's eight-hour written examination.

SECTION 5. Amends Subchapter G, Chapter 1001, Occupations Code, by adding Section 1001.3035, as follows:

Sec. 1001.3035. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) Requires TBPE to require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by TBPE, to TBPE or to the Department of Public Safety of the State of Texas (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI).

(b) Prohibits TBPE from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires TBPE to conduct a criminal history check of each applicant for a license using information provided by the individual under this section and made available to TBPE by DPS, the FBI, and any other criminal justice agency under Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(d) Authorizes TBPE to enter into an agreement with DPS to administer a criminal history check required under this section and authorizes DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history check.

SECTION 6. Amends Subchapter H, Chapter 1001, Occupations Code, by adding Section 1001.3535, as follows:

Sec. 1001.3535. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) Requires an applicant renewing a license issued under this chapter to submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 1001.3035.

(b) Prohibits TBPE from renewing the license of a person who does not comply with the requirement of Subsection (a).

(c) Provides that a license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under Section 1001.3035 for the initial issuance of the license or this section as part of a prior license renewal.

SECTION 7. Amends Subchapter J, Chapter 1001, Occupations Code, by adding Section 1001.4528, as follows:

Sec. 1001.4528. EMERGENCY SUSPENSION. (a) Requires TBPE or a three-member panel of TBPE members designated by TBPE to temporarily suspend the license, certificate, or registration of a person if TBPE or the panel determines from the evidence or information presented to it that continued practice by the person would constitute a continuing and imminent threat to the public welfare.

(b) Authorizes a license, certificate, or registration to be suspended under this section without notice or hearing on the complaint if action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings (SOAH) simultaneously with the temporary suspension and a hearing is held as soon as practicable under this chapter and Chapter 2001 (Administrative Procedure), Government Code.

(c) Requires SOAH to hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. Requires that a final hearing on the matter be held not later than the 61st day after the date of the temporary suspension.

SECTION 8. Amends Section 1001.502(a), Occupations Code, to prohibit the amount of an administrative penalty from exceeding \$5,000, rather than \$3,000, for each violation.

SECTION 9. Amends Subchapter L, Chapter 1001, Occupations Code, by adding Section 1001.5511, as follows:

Sec. 1001.5511. CEASE AND DESIST ORDER. Authorizes TBPE, if it appears to TBPE that a person who is not licensed, certified, or registered under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of engineering, after notice and opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in the activity.

SECTION 10. (a) Requires TBPE, not later than December 1, 2013, to adopt rules necessary to implement the changes in law made by this Act to Chapter 1001, Occupations Code.

(b) Makes application of Sections 1001.3035 and 1001.3535, Occupations Code, as added by this Act, prospective to January 1, 2014.

(c) Makes application of Section 1001.502(a), Occupations Code, as amended by this Act, prospective.

SECTION 11. Effective date: September 1, 2013.