

SUBJECT: Continuing the Board of Professional Engineers

COMMITTEE: Licensing and Administrative Procedures — favorable, as amended

VOTE: 7 ayes — Flores, Hamilton, Eissler, Goolsby, Homer, D. Jones, Wise

0 nays

2 absent — Raymond, Driver

WITNESSES: For — Durward Curlee, Professional Roofing Standards Council; Gerhardt Schulle, Jr., Texas Society of Professional Engineers; Steve Stagner, Texas Council of Engineering Companies; Michael R. Wilkinson, Metroplex Technology Business Council and Paragon Innovations; (*On committee amendment:*) Hector Rivero, Dupont and Texas Chemical Council

Against — Ken Rigsbee, Texas Society of Professional Engineers; John Speed, American Society of Civil Engineers

On — James McLane; Brenda Bradley Smith, Texas Board of Professional Engineers

BACKGROUND: The Board of Professional Engineers comprises nine members, including six engineers and three public members, appointed by the governor with advice and consent of the Senate. The board's duties include licensing professional engineers; registering engineering business associations; investigating and resolving complaints of illegal or incompetent practice of engineering by licensed and unlicensed people; enforcing the Engineering Practice Act; and taking disciplinary action when necessary. The board licenses more than 48,000 professional engineers and registers more than 5,000 firms.

The 76th and 77th Legislatures created the Self-Directed, Semi-Independent (SDSI) pilot project, effective September 1, 2001, allowing more fiscal autonomy for the board. The board deposits its collected fees, fines, and other money into a trust fund in the treasury and withdraws funds as needed to meet its budget, which it adopts independent of legislative appropriation and oversight. The board may not charge any cost, including salaries, to general

revenue. Accordingly, the board employed no state workers and spent no state money in fiscal 2003.

Occupations Code, sec. 1001.004(c)1, effective June 1, 2003, states that the practice of engineering is a privilege entrusted only to a person licensed and practicing under the conditions of the Engineering Practice Act. A person may not engage in the practice of engineering without a license issued under the act. Sec. 1001.302 requires a person to obtain an engineering degree, pass the board's engineering examination, and practice as an engineer for four or eight years to become eligible for an engineering license.

The practice of engineering means performing, offering to perform, or attempting to perform any public or private service or creative work that requires engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to perform the work adequately.

Only professional engineers licensed under the act (PEs) may represent themselves as "engineers" or make professional use of the term. A person may not use or cause to be used an abbreviation, word, symbol, slogan, or sign that would create an impression with the public that the person is qualified or authorized to engage in the practice of engineering, unless the person is so authorized and is practicing under the act's provisions.

Sec. 1001.057 exempts from these restrictions certain full-time employees of private business entities. To qualify for this exemption, an employee must:

- perform services exclusively for the business entity or an affiliate of that entity;
- provide services on or in connection with property owned or leased by the business or in which the business has a property interest, or that affect exclusively the property, products, or interests of the business entity or affiliate; and
- not have the final authority or ultimate responsibility for engineering designs, plans, or specifications relating to the property or products that are to be incorporated into a fixed work, system, or facility on another's property or made available to the public.

The in-house engineer exemption from licensing allows an employee to use the title “engineer” as long as the employee does not use it in offering engineering services to the public. The employee still may not use the title if it tends to convey to the public that the person is offering engineering services. The same exemption applies to qualifying employees of certain utilities or their affiliates.

In Opinion No. JC-525 (July 9, 2002), the attorney general determined that the Engineering Practice Act prohibits an in-house employee of a private corporation, though classified internally as an “engineer” or under a similar title, from using the title of “engineer” on a business card, cover letter, or other correspondence to the public. The opinion cited the act’s stipulation that its exemptions apply only to people who do not represent themselves to the public as legally qualified to engage in the practice of engineering.

The Board of Professional Engineers will expire September 1, 2003, unless continued by the Legislature.

DIGEST:

HB 1789, as amended, would continue the Board of Professional Engineers until September 1, 2015. It would amend current provisions relating to restrictions on using the title “engineer” and practicing as an engineer. It also would create an advisory committee and would make changes in the board’s administrative practices.

**“Engineer” title and practice.** HB 1789 would amend the exemption provisions of Occupations Code, sec. 1001.057 to stipulate that the Engineering Practice Act would not apply to the activities of a private business or of its full-time employees, nor to other personnel under the direct supervision and control of the business, in connection with:

- reasonable modifications to buildings, facilities, or other fixtures to real property not accessible to the general public that are owned, leased, or otherwise occupied by the business; or
- research, development, design, fabrication, production, assembly, integration, or service of products manufactured by the business entity, including computer software, firmware, hardware, semiconductor devices, and gas and oil exploration, production, and transportation.

This exemption would not prohibit:

- a PE who intended to incorporate manufactured products into a fixed work, system, or facility that was being designed by the licensee on another's property from requiring the manufacturer to have plans signed and sealed by a licensed PE; or
- the board from requiring by rule that certain manufactured products consumed by the public be designed and sealed by a licensed PE, if necessary to protect public health, safety, and welfare.

HB 1789 would repeal provisions that allow conditional use of the title "engineer" by employees of certain utilities and their affiliates who do not use the term in offering engineering services to the public or to convey the impression that the non-PE is offering engineering services to the public. The utility employee still would have to meet existing requirements, including full-time employment by the utility, to use publicly the title of engineer.

A regular employee of a business entity who was engaged in engineering but exempt from the act's licensing requirements could use the term "engineer" on a business card, cover letter, or other correspondence made to the public, as long as the employee did not offer engineering services or use the title in any context that represented an ability or willingness to perform engineering services or make an engineering judgment requiring a PE license.

A graduate of an accredited engineering program, employed by a firm registered under the act and working under the supervision of a licensed PE, could use the title "engineer" on the graduate's stationary, business cards, and personal communications. If the person was not employed by a registered firm, the person could use the term "graduate engineer" for these purposes.

In regard to a person who was exempt from licensing requirements under the act, no agency or political subdivision could require the person to employ, pay for, or reimburse the agency or subdivision for supervision, inspection, or engineering services of a licensed or registered engineer. Nor could an agency or subdivision require the person to obtain the seal of a licensed or registered engineer on any plan, design, specification, report, or inspection.

**Advisory board.** HB 1789 would create an advisory committee to the Board of Professional Engineers and the Board of Architectural Examiners. The advisory committee would comprise three members of each board serving staggered terms. It would have to work to resolve issues resulting from the overlap of the practices of architecture and engineering and would have to issue advisory opinions to both boards. The opinions would address whether a practice was engineering or architecture, the propriety of discipline in cases initiated by either board, and the possible need for registration with either board before performing an activity that could require regulation by one board or the other. If the advisory committee issued an advisory opinion to either board on a matter, the notified board would have to notify the committee of the final action taken about the matter, and the advisory committee would have to consider the action taken by the board on the matter in issuing any future advisory opinion. Both boards would have to enter an agreement about the advisory committee that would include an understanding of its composition and purpose.

**Administration.** HB 1789 would repeal specific fines and would authorize the Board of Professional Engineers to charge fees in amounts reasonable and necessary to cover the costs of administering the act. The board and its staff would have to execute and comply with several new procedures for handling complaints. The bill would shield from civil liability, with few exceptions, a person employed or contracted by the board to serve as a consultant or in other capacities to provide technical assistance in investigations and disciplinary proceedings.

The bill would add standard sunset language governing conflicts of interest, training and removal of a board member, equal employment law and policy, technology policy, information maintenance, examination, licenses from other jurisdiction, license renewal, probation, and restitution.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

HB 1789, as amended, would update anachronistic provisions of the Texas Engineering Practices Act to allow defense, technology, and other modern industries to operate without the hindrance of outdated regulations that govern the practice of engineering.

For example, Lockheed Martin in Texas contracts with teams of engineers in Japan, Korea, and England to collaborate on the Joint Strike Fighter (JSF). These engineers should be allowed to visit Texas to serve as final authorities on their design plans, because no Texas-licensed PE working on the project may have the expertise to do so. HB 1789 properly would amend the law to allow out-of-state engineers, unlicensed by Texas, to act as final authority on appropriate aspects of the JSF and other complex projects.

HB 1789 would give Texas businesses and their engineers needed flexibility in using the term “engineer.” These businesses must satisfy contractual and regulatory obligations calling for certification only by people who bear the title of engineer. Also, industry standards have changed in regard to use of the term engineer. Certain computer programmers now commonly call themselves “software engineers.” No amount of regulatory protection can reverse this evolution in language.

The bill would provide protections against an attempt by any business to use nonengineers for engineering purposes. The board could adopt rules to require a PE to design a product intended for consumers. Businesses could still demand PE certifications for designs they received from others.

Businesses that need engineering services have no incentive to contract with unskilled workers who lack engineering degrees. Poorly designed products and substandard engineering services do not create profits for companies, only the potential for legal liability.

**OPPONENTS  
SAY:**

HB 1789 would go too far in allowing nonengineers to practice engineering in Texas, to the detriment of public health and welfare. The bill would permit unqualified nonengineers to perform functions that typically have been reserved for those who satisfy rigorous licensing standards. The bill explicitly would allow nonengineers to perform complex “integration” work and would authorize them to service products. These areas require applying mathematics and theory to a pattern of unique facts and making customized design and installation decisions that often involve dangerous substances and equipment. Physics, chemistry, and electricity all play roles in providing services offered by engineers, and state licensing of engineers properly ensures that only qualified decision-makers may participate.

In contrast, HB 1789 would allow any category of worker to perform engineering services for businesses. Similarly, it would allow utility and private employees to represent themselves as engineers to state regulators, regardless of their licensed status.

The conditions and protections offered by HB 1789 would not safeguard adequately public health and welfare. Engineers produce a large share of their products for other businesses, not for sale to consumers directly. Thus, the board could not require licensing under the bill's "public safety" exception. Also, this exception would apply only to products, not services, leaving more of the market unprotected from people acting as engineers.

**OTHER  
OPPONENTS  
SAY:**

While the functions and duties of the Board of Professional Engineers should be continued, the state does not need a separate agency to perform them. The state could realize administrative savings by consolidating this and other professional licensing and regulatory boards under a single agency.

**NOTES:**

The committee amended the original bill by changing the provisions relating to exempting employees of private businesses from the Engineering Practice Act and from prohibitions against using the term "engineer."

The companion bill, SB 277 by Ellis, passed the Senate by voice vote on April 22 and was reported favorably, without amendment, by the House Licensing and Administrative Procedures Committee on May 1, making it eligible for consideration in lieu of HB 1789.

Legislation enabling the SDSI pilot program for the Board of Professional Engineers expires September 1, 2003, and the Sunset Advisory Commission has recommended allowing the program to expire. HB 1 by Heflin, the general appropriations bill for fiscal 2004-05, would bring the board back into the state budget with total funding for fiscal 2004-05. HB 1947 by Flores, which would continue the SDSI program until 2009, was reported favorably, without amendment, by the House Appropriations Committee on May 6.

HB 2 by Swinford would abolish the Board of Professional Engineers and assign its powers, duties, and assets to a Department of Professional Licensing. HB 2 was reported favorably, as substituted, by the House Government Reform Committee on May 1.

