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LEGISLATURE AMENDS THE PRACTICE ACT

The 70th Texas Legislature has passed Senate Bills 604 and 605 to amend The Texas Engineering Practice Act (Art. 3271a, Vernon's Civil Statutes) by making changes to Sections 4(d), 8, 11, 12, 12a, 14, 15, 16, 16.1, 20, 21, 22a, and 23. Some changes are major while others are quite minor. With only two exceptions, all changes are effective on September 1, 1987. Sections 12 and 12a pertaining to registration requirements and to Engineer-In-Training, respectively, will not be effective until September 1, 1992.

The substantial changes are summarized as follows:

POWERS AND DUTIES OF BOARD

Section 8(a) will provide in part that "In addition to any other powers and duties, the Board shall have the authority and power to make and enforce all rules and regulations and bylaws consistent with this Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state . . ."

Also, this Section will provide for the Board to file injunctive suits in a District Court of Travis County against individuals for violation of any provision of the Act or any rule or regulation of the Board.

GENERAL REQUIREMENTS FOR REGISTRATION

Section 12 (effective in 1992) will read as follows:

"(a) The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as a professional engineer:

"(1) graduation from an approved curriculum in engineering that is approved by the Board as of satisfactory standing, passage of the examination requirements prescribed by the Board, and a specific record of an additional four (4) years or more of active practice in engineering

work, of a character satisfactory to the Board, indicating that the applicant is competent to be placed in responsible charge of such work; or

"(2) graduation from an engineering or related science curriculum at a recognized institution of higher education, other than a curriculum approved by the Board under Subdivision (1) of this subsection, passage of the examination requirements prescribed by the Board, and a specific record of at least eight (8) years of active practice in engineering work of a character satisfactory to the Board and indicating that the applicant is competent to be placed in responsible charge of such work.

"(b) Provided, that no person shall be eligible for registration as a professional engineer who is not of good character and reputation; and provided further, that any engineer registered under this Act shall be eligible to hold any appointive engineering position with the State of Texas.

"(c) In considering the qualifications of applicants, responsible charge of engineering teaching may be construed as responsible charge of engineering work. The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as foreman or superintendent shall not be deemed to be active practice in engineering work.

"(d) Any person having the necessary qualifications prescribed in this Act to entitle him to registration shall be eligible for such registration though he may not be practicing at the time of making his application."

ENGINEER-IN-TRAINING

Section 12a will be renumbered as Section 12.1 (effective in 1992). It will eliminate a specified work experience, reduce the valid certification period to eight years, but require graduation either from an engineering curriculum approved by the Board as of satisfactory standing or an engineering or related science curriculum at a recognized institution of higher

education, and passage of the Board's eight hour written examination in the fundamentals of engineering.

EXAMINATIONS

Section 14(a) pertaining to examination fees will no longer permit any free examinations but will provide in part as follows: "On payment of the examination fee, oral or written examinations shall be administered to qualified applicants . . ." "The Board may permit reexamination of an applicant on payment of an appropriate reexamination fee in an amount set by the Board."

CERTIFICATES, SEALS

Section 15 will be subdivided in three subsections, with the first unnumbered paragraph becoming Subsection (a) with no change in language.

The second paragraph will become Subsection (b) and will read as follows: "Each registrant hereunder shall upon registration obtain a seal of the design authorized by the Board, bearing the registrant's name and the legend 'Registered Professional Engineer'. Plans, specifications, plats, and reports issued by a registrant must include the registrant's seal affixed to the document. It shall be unlawful for any one to affix a seal on any document if the certificate of the registrant named thereon has expired or has been suspended or revoked, unless said certificate shall have been renewed or reissued."

A new Subsection (c) is added as follows: "This Act applies to all engineering practiced in this state that is not exempted under this Act. A public official of this state or of a political subdivision of this state who is charged with the enforcement of laws, ordinances, codes, or regulations that affect the practice of engineering may only accept plans, specifications, and other related documents prepared by registered engineers, as evidenced by the seal of the engineer. A public official shall report

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violations of this Act to the proper authorities.

EXPIRATIONS AND RENEWALS

Section 16, Subsection (a), will read in part as follows: "such notice shall be mailed at least one month in advance of the date of expiration of said certificate to the last address *provided by the registrant* to the Board.

Also, Subsection (e) will read: "If a person's certificate of registration has been expired for two years or longer, the person may not renew the certificate of registration. The person may obtain a new certificate of registration by complying with the requirements and procedures for obtaining an original certificate of registration that are *in effect at the time the person applies*."

EXEMPTIONS

Section 20 will have the following preamble: "The following persons shall be exempt from the registration provisions of this Act, provided that such persons are not directly or indirectly represented or held out to the public to be legally qualified to engage in the practice of engineering:

Subsections (a), (b), and (e) are significantly changed to read as follows:

(a) A person not a resident of and having no established place of business in this state if that person: (1) *has filed an application* for registration as a professional engineer with the Board and the application is *pending Board action*; (2) is legally qualified to practice engineering in another jurisdiction whose requirements for practice are at least as strict as those required by this state; and (3) affixes the person's seal from the jurisdiction in which the person is legally qualified to practice on all work completed while the application for registration to practice in this state is pending.

(b) A person who has recently become a resident of this state if that person (1) *has filed an application* for registration as a professional engineer with the Board and the application is *pending Board action*; (2) is legally qualified to practice engineering in another jurisdiction whose requirements for practice are at least as strict as those required by this state; and (3) affixes the person's seal from the jurisdiction in which the person is legally qualified to practice on all work completed while the application for registration to practice in this state is pending.

(e) A person doing the actual work of installing, operating, repairing, or

servicing locomotive or stationary engines, steam boilers, Diesel engines, internal combustion engines, refrigeration compressors and systems, hoisting engines, electrical engines, air conditioning equipment and systems, or mechanical and electrical, electronic or communications equipment and apparatus; this Act may not be construed to prevent any citizen from identifying himself in the name and trade of any engineers' labor organization with which he may be affiliated; however, *this exemption may not be construed* to permit any person other than a registered professional engineer to affix his signature to engineering plans, or specifications, and *may not be construed* to permit a person to use the term 'engineer' or 'engineering' in any manner prohibited by this Act.

RECIPROCITY

Section 21 will be retitled 'Registration by Nonresidents' and read as follows: 'A person who holds a valid certificate of registration or license issued to him by proper authority of any state or territory or possession of the United States, the District of Columbia, or any foreign country *may apply for registration* in this state.

VIOLATIONS AND PENALTIES

Section 23 will provide in part that any person who violates any provision of the Act commits an offense, and such offense is a *Class A misdemeanor* which includes a maximum of a \$2,000 fine and/or one year in jail.

RATIONALE FOR AMENDING THE ACT

Section 8(a) of the Act had not been changed appreciably since 1965 and was somewhat inconsistent with modern licensing enactments. The Board has lacked the specific or even implied authority to regulate the practice of engineering. The Act itself regulated the practice while the Board regulated licensees. Notwithstanding that the Board could purportedly "insure strict compliance with and enforcement" of the Act, it was believed without direct authority to make rules and regulations binding on other than its own registrants to achieve that end. Except as might possibly be provided in other general or special laws bearing on the practice of engineering, it is believed that the Board should regulate such professional practice within the intent, guidelines, and limitations imposed by the Act. The amendment should facilitate that

end. Further, in an effort to lessen the state's financial burden of filing and prosecuting injunctive suits in distant county jurisdictions and filing appeals to reverse the results of 'home town' District Court decisions, the amendment to establish venue in Travis County (Austin) would be advantageous to the state.

When the first engineering regulatory law was passed in 1937, the legislative intent was to protect the health, safety, and welfare of the public by registering and licensing only those persons qualified to practice engineering. Section 12, Subsection (a) of the Act, as originally written and currently exists, permits registration based on education and experience without further examination. However, the great and rapid advancement of technology dictates that a comprehensive and uniform method of determining the qualifications of applicants for registration be established to meet today's engineering needs and better protect the public. At this time, professional engineering registration authorities in the 49 other states, the District of Columbia, and four U.S. territories require examinations for registration in addition to the education and experience qualifications.

Therefore, effective in 1992, Subsection 12(a)(1) will require examinations and an approved engineering degree. This will bring our Texas registration requirements into uniformity with all other similar licensing authorities, provide an additional requirement to aid in assuring the public that only qualified persons are registered to practice in this state, and assist Texas registrants in acquiring registration in other states.

Also in 1992, to further upgrade the method of determining qualifications for professional registration, the current Subsection 12(b) requirements, which do not include a college degree, will be changed. The subsection will be renumbered as 12(a)(2) and require graduation from an engineering or related science curriculum at a recognized institution of higher education in addition to eight years of active practice in engineering work. The engineering degree in this subsection is not a degree approved by the Accreditation Board for Engineering and Technology (ABET) referred to in Subsection 12(a)(1), above.

To be consistent with the above changes to Section 12 for professional registration in 1992, Section 12a pertaining to certification of Engineer-In-Training was also amended. It will require no less than graduation from an engineering or related

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science curriculum at a recognized institution of higher education. Certification will be good for eight years which coincides with the minimum experience required for registration under Subsection 12(a)(2). Note that this Section will be renumbered as 12.1 to eliminate confusion with Subsection 12(a).

Subsection 14(a) pertaining to examination fees has permitted applicants who apply for registration under Section 12, Subsection (b), and who paid the established application fee, to take the two written examinations twice each, if necessary, without the payment of additional fees. The amendment will as of September 1, 1987, eliminate any 'gratis' examinations and establish that a fee will be charged for each and every examination administered.

Section 15 pertaining to certificates of registration and professional seals had not been updated since the original 1937 enactment. It has only required engineers to seal their engineering documents when filed with public authorities. This limited use of the official seal to certify licensed, professional authorship falls short of the legislative intent that members of the public be able to identify those duly authorized to practice engineering and fix responsibility for work done or services or acts performed if the recipient/client is not provided with sealed work when it is issued by the licensee. Many engineering documents never reach any public authorities for scrutiny, approval, or filing, and those that do often go through the hands of other interested persons who have a right to know that a qualified state-regulated and licensed engineer is responsible for the contents. The amendment to seal documents upon issuance by the licensee is consistent with the allied practices of architecture and public surveying in this state and many others.

A new Subsection 15(c) was included to compliment the broader regulatory powers of the Board under Section 8(a) of the Act. It is a long overdue and vital link between the compliance and sealing provisions of the Act and the duties and responsibilities of the various governmental authorities who directly affect the proper application of professional engineering within their respective jurisdictions. Without any specific statutory language for officials to take cognizance of the Act's legal effects and elicit their assistance in preventing violations, unlicensed practices would continue beyond the Board's knowledge and capability to assure strict compliance and enforcement. The Board

has the power and authority to enforce the Act, but it has no capacity to police the various industries and business sectors throughout the state which use or perform engineering services. The provisions of Section 15(c) will give public officials a statutory means of requesting assurance of registered engineer involvement as evidenced by a seal properly affixed to engineering documents submitted.

Section 20 contained 12 enumerated exemptions to the Act, but it was unclear what provisions of the Act were not to be applied. Therefore, the preamble was amended to state in positive terms that certain persons were exempt from the registration provisions, provided they were not represented to the public as legally qualified to engage in engineering.

Engineers under Subsection 20(a) who do not reside in Texas and who are not applicants for registration are beyond the administrative jurisdiction of the Board, the service jurisdiction of our civil courts, and any misdemeanor interest of our county attorneys. However, an applicant can be denied registration for cause, or once he becomes registered, he can have his certificate suspended or revoked for cause, any of which actions are usually grounds for similar actions in the home states. The amendment to eliminate the 60-day exemption from Texas registration, and the new requirement to file an application for registration in all instances will provide the Board with greater control over the qualifications and conduct of engineers who wish to compete with resident licensees and practice in this state.

Subsection (e) has been the most confusing and troublesome to apply in a given situation where it is only assumed that engineering services are not actually being performed and thus no license is required. In these instances the public should not be left with the impression that engineering services are being offered or performed by registered engineers. The current lead-in phrase "Nothing in this Act shall be construed to apply to persons" is ambiguous by comparison with the overall intent of the Act. The amendment, in consonance with the amended preamble to Section 20, clarifies the exemption from registration and the prohibition against misrepresentation.

Section 21 entitled 'reciprocity' is confusing and implies virtual 'rubber stamp' reciprocal registration to licensees of other states. It also includes references to the certificates of registration of two nonexistent national entities. It further forecloses eligibility to seek a Texas license if an out-of-state license was issued under

requirements which do not now coincide with Texas requirements. The amendment will clearly permit out-of-state licensees to make application for Texas licensure by simply qualifying as anyone else with all current requirements of the Act.

Section 23 deals with violations and penalties and contains outdated phrases as to forms of punishment and the role the Board plays in enforcing the Act. The amendment clearly establishes a violation of the Act as a Class A misdemeanor, tending to increase the public's and the court's appreciation for the engineering profession and the seriousness of unlicensed practices. Also, the Board is charged with the duty of enforcement of the Act.

Other minor revisions were required to clarify and unify terms and remove outdated provisions in Sections 4(d), 8(b), 11, 14, 16, 16.1, and 22a of the Act.

The most important change to the Act which will probably have an impact on the greatest number of registrants is the new requirement in Section 15 to affix their seal on engineering documents "when issued" Board Rule 131.138 will be changed accordingly, to be effective September 1, 1987.

SEVERAL RULES TO BE REVISED

Five Board rules were considered for revision at the July meeting, to be effective on September 1, 1987. The following rules, as published in the 1987 Roster of Engineers, are involved:

- 131.71 Reference Statements
- 131.72 Professional Engineer References
- 131.101(6) Examination Fees
- 131.138(8), (9), and (10) Seals
- 131.152(j) Work of Another Engineer

The adopted rule changes will be published in the next Newsletter; however, notice should be taken now that because of the amendment to Section 15 of the Act, seals will be required on engineering documents when "issued" and not just "when filed with public authorities."

QUESTION: WHEN IS H.V.A.C. DESIGN NOT ENGINEERING?

Answer: As of May 12, 1987, when the Attorney General decided that the 1983 Air Conditioning Contractor License Law serves as an exception to The Texas
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Engineering Practice Act with regard to the "design" of HVAC systems.

Opinion No. JM-693 states in summary that "The Engineering Practice Act, article 3271a, V.T.C.S. does not apply to design work done by licensed air conditioning contractors under article 8861, V.T.C.S. the Air Conditioning Contractor License Law.

For those unfamiliar with Art. 8861, it permits state licensed contractors to design, install, construct, maintain, service, repair, alter, or modify any heating, ventilating, or air conditioning product, system, or equipment under a Class A or B License, the latter restricted to 25 tons of cooling and 1,500,000 BTU of heating capacity.

The Contractor Law was enacted to provide one state license as a convenient, voluntary alternative to the municipal licenses required by the various jurisdictions in which the contractor does business. (Municipal licenses are for contracting, not for the practice of engineering.) This Board and the Texas Department of Labor and Standards which administers Art. 8861, have agreeably interpreted and applied our respective statutes as mutually exclusive; that is, each type of licensee could not perform the other's functions without being so licensed. Section 6(c) of Art. 8861, and Sections 1.2

2(4), 19, 20(e), and 20(f) of Art. 3271a controlled such interpretations.

The opinion was in response to a request from State Representative Mark M. Stiles, District 21, regarding 'the distinction' between *designing* as in the Contractor Law and *engineering* as in the Engineering Practice Act, suggesting that contractors should not have to get an engineer's seal on work which they have competently designed under their state contractor's license.

The opinion notes an apparent conflict due to the expansive definition of practice of engineering, requiring the two statutes to be construed as though they were one law. JM-693 acknowledges that "practice of engineering" is sufficiently broad to include the design of air conditioning systems and as a matter of law, absent the Contractor Law, the design of such systems would fall within the Engineering Act.

At this point the opinion seems to conclude that there is no distinction between designing HVAC systems and engineering, thus the ultimate legislative intent is that the most recent specific law dealing with HVAC systems takes precedence over the general engineering law. The Board is of the opinion that this conclusion was reached without due consideration of Art. 3271a in its entirety, and by effectively negating the following provision in Art. 8861:

Section 6(c). 'A person licensed under this Act may not perform or offer or attempt to perform any act, service, or function that is defined as the practice of engineering by The Texas Engineering Practice Act, as amended (Article 3271a, Vernon's Texas Civil Statutes)'

Therefore, the Board is preparing a brief in support of a request that the Attorney General reconsider Opinion No. JM-693 and its conclusion that Art. 8861 is an unqualified exception to Art. 3271a.

As a matter of further interest, Art. 8861 has just been broadened by the 70th Legislature to incorporate the design, etc. of commercial refrigeration and process cooling and heating. It is unknown at this time exactly what affect the amended Art. 8861 will have on these aspects of mechanical engineering.

NEW BOARD MEMBERS

Governor Bill Clements has appointed Jose Novoa, P.E. Dallas, to replace Dillard S. Hammett, P.E. who resigned. Mr. Novoa is president of Albert H. Halff Associates, Inc. Also appointed was E. David Dorchester, P.E. Midland, who is a Regional Engineering Manager with Texas Utilities Electric. He replaces Frank B. Harrell, P.E. whose term has expired. Mr. Harrell had been a Member of the Board since 1973.

FROM
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