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OFFICIAL NEWSLETTER

JANUARY 1992

LEGISLATIVE CHANGES
TO THE PRACTICE ACT

The Texas Engineering Practice Act was amended by the 72nd Legislature in the following manner: Section 3a now provides for 'Sunset' review of the Board in year 2003, instead of 1993. Section 13(b) now permits a maximum annual renewal fee of \$75. Section 13A was rescinded and replaced with Section 13B: Subsection (a) increased the normal registration, annual renewal, and reciprocal registration fees by \$200. Subsection (b) provides that of each fee increase collected, \$50 goes to the foundation school fund and \$150 to the general revenue fund. Subsection (c) provides that the \$200 increase does not apply to a registered professional engineer who meets the qualifications for an exemption from registration under Section 20(g) or (h) of the Act but who does not claim that exemption.

\$200 FEE EXCEPTION EXPLAINED

Many questions have been raised about the exception from paying the \$200 fee increase for license renewals as now provided in Sec. 13B(c) of the Act. The exception is for a registered engineer who is a full-time employee of a private corporation, privately owned public utility, or other private business entity, who would otherwise be exempt from having to be registered by virtue of §20(g) and (h) of the Act, and that registrant is engaged solely and exclusively in performing engineering services for such corporation, utility or entity on property owned or leased by those entities.

The \$200 exception does not extend to retirees of entities described in §20(g) and (h), nor apply to those exempted registrants who "moonlight" engineering services outside of their regular full-time employment, nor engineers in consulting firms, nor public employees (federal/military, state, county, city), nor employees of educational institutions, nor to

other registrants who may not be actively practicing engineering.

In connection with the \$200 additional fee, the Board has requested three Attorney General Opinions. The first concerns the applicability of the fee to registrants aged 65 and older. The second request concerns the general constitutionality of the fee increase, especially with the exclusive exception for registrants of Sec. 20(g) and (h) entities. The third request is to determine if the \$200 fee applies to the initial registration of applicants from Sec. 20(g) and (h) organizations.

REMINDER: Those registrants who choose not to renew their licenses due to the \$200 increase and allow them to expire should realize that if a license is expired for two years or more it cannot be renewed. A new registration may be sought by means of a new application which meets the requirements of the Act at the time. After September 1, 1992, specified college degrees and examinations will be required.

RULE CHANGES

Since publication of the December 1990 Newsletter, the following rule changes have become effective:

RULE 131.17: National Council. The name is correctly reflected now as the National Council of Examiners for Engineering and Surveying.

RULE 131.18: Definitions. 'Professional Engineering Services' Services which must be performed by or under the direct supervision of a registered engineer and which require the application of engineering principles, or the interpretation of engineering data. These engineering services may be in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects including: consultation; planning; designing; construction; alteration or repair of real property; or other

engineering or incidental services which engineering professionals (and individuals in their employ) may logically or justifiably perform, such as studies, investigations, mapping, testing, evaluations, program management, conceptual designs, plans and specifications, value engineering, soil engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

The above definition was necessary to clarify the services provided by the profession and those items that are subject to competitive bidding prohibitions under the state's Professional Services Procurement Act and the federal Brooks Act.

APPLICANTS for professional registration or Engineer-in-Training Certification should be certain they are aware of detailed changes to the following seven rules, if applicable:

RULE 131.81: pertaining to experience evaluation of applicants for registration was amended in paragraphs (9)(A), (10) and 14(A) to correctly identify the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology, Inc. (ABET), referred to as EAC/ABET.

RULE 131.91: pertaining to approved courses in engineering as used in the Act was amended in Section (a)(1) and (3)(A) to correctly identify EAC/ABET.

RULE 131.92: pertaining to foreign degrees was changed in part as follows: subsection (a) permits applicants having engineering degrees accredited by the ABET counterpart organizations in Australia, Canada, Ireland, New Zealand and the United Kingdom may apply under the Act, §12(a).

Subsection (b) requires complete certified copies or documented proof of all engineering degrees, showing the type of engineering degree awarded, date awarded, branch of engineering, dates attended, and scores,

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grades or honors awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

RULE 131.101: pertaining to engineering examinations has been completely reorganized and now contains nine subsections dealing with the basic need for examinations for registration under §12(b), exemptions, passing the fundamentals of engineering exam before being eligible to take the principles and practice exam, scheduling of exams, limitations on attempts to pass exams, payment of fees, exams to be written in English, and reapplication after one year if additional education or experience indicate possible passage.

RULE 131.102: pertaining to examinations for record purposes has been extensively amended for college students and graduates to take the fundamentals of engineering exam. Only registrants, and Board-approved applicants for registration under §12(b), may take the principles and practice exam for record purposes.

RULE 131.103: pertaining to applicants for Engineer-in-Training certification, was modified to include in paragraph (3) those persons who have graduated from a curriculum in an engineering or an engineering-related program, other than a curriculum approved by the board [for registration under §12(a) of the Act], and have passed the fundamentals of engineering examination.

RULE 131.104: relating to the Engineer-in-Training Certificate was expanded to clarify that although the certificate has an expiration date, the records of the board will indicate that an individual has passed the fundamentals of engineering examination and the records will be maintained indefinitely and will be made available as requested by the individual or another licensing jurisdiction.

RULE 131.120: pertaining to criminal convictions was changed in part as follows:

'(e) The application of any applicant deemed ineligible for registration because of a prior criminal conviction will be proposed for rejection and the applicant will be provided the following information in writing: (1) the reason for rejecting the application; (2) notice of the administrative procedure used to conduct an informal conference to show compliance with all requirements of law for registration as a professional engineer, as provided by §131.224 of this title (relating to Show Cause Orders and Complaints), and similar to the proceedings established for registrants under §131.137 of this title (relating to Disciplinary Actions); and. "

RULE 131.133: pertaining to certificates of registration was amended to remove

"ceramic" engineering from subsection (b) and add it to subsection (c), since a principles and practice examination for ceramic engineering is no longer available from NCEES.

RULE 131.134: pertaining to expirations and renewals was amended in part as follows:

'(2) The amount of the annual renewal fee is set by the board and by law may vary from year to year. Board action to change the renewal fee will become effective for the fiscal year following such action.

A new paragraph (3) was added: "The board may consider reduced annual renewal fees for registered engineers who are at least 65 years of age."

The remaining paragraphs were renumbered and paragraphs (5)(A) through (C) were all changed to delete a statutory penalty fee for late renewal based on the application fee, to authorize "a penalty fee set by the board.

The following paragraph was added: '(7) In strict accordance with the provisions of the Texas Education Code, §57.491, pertaining to the loan default proceedings of the Texas Guaranteed Student Loan Corporation (TGSLC), if a licensee's name has been provided by the TGSLC as being in default of a loan, the board shall not renew the license of the licensee on the second renewal date following such notification, unless the TGSLC certifies that the individual has entered into a repayment agreement with TGSLC, or is not in default on a loan. Such licensee shall be provided an opportunity for a hearing, similar to that provided by §131.137 of this title (relating to Disciplinary Actions), before any action concerning the nonrenewal of a license is taken under this paragraph. A defaulted loan shall not bar the board's issuance of an initial license if the applicant is otherwise qualified for licensure; however, the board shall not renew said license unless the TGSLC certifies the individual has satisfied the requirements of §57.491.

RULE 131.137: pertaining to disciplinary actions was amended in part as follows:

'(a) Under the authority and provisions of the Texas Engineering Practice Act, §8 and §22, the board must take disciplinary action against a registrant who is found censurable for a violation of law, rules, or conduct. In such case, the board may:

"(5) issue a formal or informal reprimand. A formal reprimand will take the form of a board order while an informal reprimand may be no less than an oral or written admonishment from the board. All actions of the board are properly recorded and available upon request as public information. In addition,

all actions enumerated in this subsection, except an informal reprimand, will be published in the board newsletter and transmitted to the National Council of Examiners for Engineering and Surveying.

Subsection (f)(2) was amended by deleting the requirement for the approval of one board member before the executive director can offer a consent order to a registrant as an informal disposition of his case.

Subsection (g)(3) was also amended to read as follows: 'Any registrant whose certificate of registration has been revoked under the provisions of this subsection will be advised in writing of the right to apply for reinstatement of registration (not as a first-time applicant under the Act, §12, or as a reregistrant under the Act, §16). Reinstatement will be considered by the board in accordance with the contested case procedures of subsection (f) of this section. The application criteria are established in §131.120 of this title (relating to Criminal Convictions), and Texas Civil Statutes, Article 6252-13c, §4(a)-4(c)(7).

RULE 131.151: relating to professional responsibility was expanded to read as follows: "The engineer shall not prepare, complete, revise, alter, sign, or seal any designs, plans, specifications, reports, analyses, or orders, or in any manner participate in any engineering practice, judgment, or decisions which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in any utility, structure, building, machine, equipment, process, product, device, work, or project endangering the property, lives, safety, health, or welfare of the general public.

RULE 131.155: pertaining to professional practice and reputation was amended in subsection (d) to read as follows: 'A registrant shall not submit or request, orally or in writing, a competitive bid to perform engineering services, whether as prime contractor, subcontractor, or a consultant, under a contract subject to the provisions of the Texas Professional Services Procurement Act, Article 664-4, V.T.C.S. (which includes but is not limited to any state agency, political subdivision, county, municipality, district, authority, or publicly-owned utility of the State of Texas), or its federal counterpart, the Brooks Act, 40 U.S.C., §§541-544.

'(1) For purposes of this section, the board considers competitive bidding to perform engineering services to include the submission of any monetary cost information in the initial step of selecting qualified engineers. Cost information or other information from which cost can be derived must not be submit-

ted until the second step of negotiating a contract at a fair and reasonable cost.”

RULE 131.171: Complaints, General. ‘(a) Complaints alleging violations of the Act or board rules must be made in good faith and be accompanied by sufficient information or factual evidence to establish probable cause. The board is not responsible for proving the basis of a complaint.

RULE 131.224: pertaining to show cause orders and complaints was amended by adding subsection (c): ‘Rejection of an application for initial registration, based on prior criminal convictions, is not effective unless, prior to the institution of board action, the board gave notice by personal service or by registered or certified mail to the applicant of facts relative to his proposed ineligibility for registration under §131.120 of this title (relating to Criminal Convictions), and the applicant was given an opportunity to show compliance with all requirements of law for registration as a professional engineer.

PROPOSED RULE CHANGE:

Subsection (c) of **RULE 131.54** pertaining to general application information for registration is proposed to be amended relative to applicants who may have to take a Test of English as a Foreign Language (TOEFL) and a Test of Spoken English (TSE) as natives of countries in which the primary language is other than English. The following sentence will be added: ‘An applicant may request exemption from the TOEFL and TSE requirements for other reasons by submitting substantiating evidence and documentary proof of his English proficiency which is satisfactory to the executive director.’”

DISCIPLINARY ACTIONS

Since the last Newsletter, the following actions by the Board against registrants are being reported:

The licenses of Wilfrido R. Hinojosa and David P. Lowry were revoked for criminal convictions by consent orders. The licenses of Rodney D. Black and William E. Bruce were suspended for two years with one year probated. Walter J. Denby received a one-year probated suspension, and William J. Hannigan received an eight-month probated suspension by consent orders. Formal reprimands were issued by agreed or consent orders to Alan R. Latta, James P. Budarf, Joe P. Hill, and Ray C. Ward.

PROFESSIONAL DEVELOPMENT PROGRAM

The Murdough Center for Engineering Professionalism at Texas Tech University has produced an Independent Study and Research Program (ISRP) in engineering ethics and professionalism which may be taken at one of several levels of participation.

The basic level ISRP is available at a cost of \$130, requiring written assignments, a final exam, and earning two continuing education units (CEU). The advanced level ISRP costs \$330, requires several written assignments, term project paper, final exam, and earns six CEU’s. The Self Study Level ISRP costs \$100 but offers no CEU’s or formal verification of course completion. Enrollees are expected to complete the basic level program in not more than four months and the advanced level program within one year.

The Board, as a part of several disciplinary actions, has assessed the requirement for registrants to take and pass the basic or the advanced course.

Registrants wishing to participate on a voluntary self improvement basis may contact the Murdough Center at Box 4089, MS 1023. Texas Tech University, Lubbock, TX 79409.

INJUNCTIVE MATTERS

Since publication of the last Newsletter the Board has taken the following legal actions: Paul E. Todd of Houston was enjoined from further use of a forged certificate of registration. Joseph F. Long of Houston has been filed on for the same violation, but has not been located for service; an agreed order against H. Dwight MacDonald of Houston for practicing and using a forged seal is awaiting the judge’s signature; All-Pan, Inc., and David J. Ott, both of Houston, were enjoined from practicing and using forged engineer seals; and Leach Equipment & Engineering, Inc. of El Paso was enjoined from using the term ‘engineering’ in its name. An injunction against architect Robert L. Koimn of Corpus Christi for practicing engineering without a license was withdrawn due to a technical legal prohibition imposed after he filed for bankruptcy.

FOUNDATION DESIGNS WITHOUT SOILS REPORTS

It has been brought to the Board’s attention that many design engineers are issuing foundation designs based on their presumption of soils conditions at the site, while warning

owners/contractors by annotations on the drawings that they should obtain a soils report to verify the design, after the fact, before construction. Reportedly, the warnings are unwittingly overlooked, or are conveniently ignored for economic reasons. Some resulting foundations are alleged to have failed under such circumstances, raising the question of the engineer’s responsibility to public health, safety and welfare.

A somewhat similar topic was addressed in an article appearing in the April 1990 Newsletter regarding post-tensioned foundations. FHA and Post-Tension Institute standards require site specific detailed geotechnical studies for foundation designs. The article concluded that ‘to do otherwise is at worst in violation of Board rules, and at least obviates the need for professional services since it infers that the practice of engineering is a ‘cook-book’ process, rather than the learned art that it is.

In response to the latest inquiries about this practice, the Board concluded that the engineer is ultimately responsible for his design and the basis for it. Board Rule §131.151 could apply to any registrant who used his professional judgment not to have the benefit of a site specific geotechnical report prior to designing a foundation for a particular site.

Earlier this year §131.151 was modified and its text appears elsewhere in this publication under the heading of **RULE CHANGES**. A key phrase in the rule to consider the practices, judgments or decisions of the engineer is when measured by generally accepted engineering standards or procedures.

While it may seem unreasonable for an ethical rule not to be any more specific to address this concern, it is virtually impossible to devise rules for every commission or omission of a professional engineer’s conduct. Foundation failures in any particular instance are included in the realm of business and the courts regarding contracts, torts, deceptive trade practices, consumer protection, and implied warranties.

Board rules are not meant to be a basis for action involving civil liability; however, a registered engineer’s judgment in any specific instance is certainly subject to consideration by the Board as gross negligence, incompetence, or misconduct in the practice of engineering. Upon receipt of a viable complaint, the Board would apply Rule §131.151 pursuant to Sections 8(a) and 22 of The Texas Engineering Practice Act.

CONTROL SYSTEMS ENGINEERING

The National Council of Examiners for Engineering and Surveying (NCEES) has advised that a Principles and Practice Examination in control systems engineering will be available in October, 1992.

ARCHITECT BOARD FILES OPINION REQUEST

On September 20, 1991, the Texas Board of Architectural Examiners filed a request with the Attorney General for an opinion as to the proper interpretation of Section 16 of Article 249a, V.T.C.S. The request was accepted and is identified as RQ-186.

The reported issue is 'whether the plain language of Section 16 prohibits an individual, other than one licensed as an architect, from preparing the plans and specifications for the type of public works covered by Section 16. [a new building intended for education, assembly, or office occupancy whose construction costs exceed One Hundred Thousand Dollars (\$100,000.00)]

The request points out that Section 10(b) 'does not prevent a licensed engineer from performing work that constitutes the practice of engineering'; and that Section 10(g) also 'specifies that licensed engineers may perform certain, specific acts'; however, 'that exception does not include the general design of buildings'; and, 'Most important, although some engineers have training in the technical

aspects of planning and constructing buildings, they ordinarily are not trained in how people use buildings.

This Board has filed a brief for the Attorney General's consideration in construing that certain, qualified engineers are exempt from registration as architects to perform the general design of buildings under the provisions of §§10(b) and (g), and 16(c) of the Architects Act. The Texas Society of Professional Engineers is expected to file a brief in this matter.

There is no anticipated date when an official opinion may be issued.

STAFF EMPLOYEE COMPLETES 20 YEARS

Ms. Maria DeLeon has been recognized by her fellow staff employees for completing 20 years of service with the Board on October 5, 1991. Maria now holds the distinction of being the most tenured among the numerous employees and appointees in the agency's 54-year history.

1992 BOARD MEETINGS

The Board has tentatively scheduled to hold its 1992 meetings on January 22-23 in Austin; April 22-23 in McAllen; July 22-23 in Austin; and October 21-22 in El Paso. While the Board must conduct its business according to a published agenda, the public and local registrants are always welcome to attend.

EXAMINATIONS INNOVATION

The Board anticipates adopting a policy to require all applicants for registration to take and pass the Fundamentals of Engineering Examination before submitting their application to the Board for processing. This should coincide with the September 1, 1992 requirement that every applicant must not only possess an appropriate college degree but pass the appropriate examinations before being considered for registration.

1992 EXAMINATION DATES

Examinations will be administered on April 11 and on October 31, 1992, with an application deadline of February 11 for the Spring exam, and September 15 deadline for the Fall exam.

MANY ENGINEERS LET THEIR LICENSE EXPIRE

In late August of this year, the Board mailed out 10,015 license renewal notices to those registrants whose licenses were to expire on September 30. This is the first quarter for license renewals after the \$200 increase was levied by the 72nd Legislature. Of that number 1,752 registrants (17.5%) have chosen not to renew their licenses. At that rate, the ranks of registered engineers will be depleted by about 8,000 during the first year of the biennial budget. This represents a significant loss. On September 1, 1991, when the increase became effective, Texas had 45,380 licensed engineers in good standing.

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