



NON-CIRCULATING

TEXAS STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS

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OFFICIAL NEWSLETTER

AUGUST, 1981

IMPORTANT CHANGES AFFECT ENGINEERS ON SEPTEMBER 1

LEGISLATURE AMENDS
THE PRACTICE ACT

On June 18, Governor Clements signed into law SB. 402 which provides for some significant changes to the Texas Engineering Practice Act, effective September 1, 1981. The bill incorporated virtually all of the "Sunset" recommendations, including some minor items added in committee, but specifically reversed the "Sunset" provision which would have prohibited the board from making a rule against competitive bidding by registered engineers. The major amendments are summarized below by topic, but particular attention should be paid to the first item covered.

EXPIRATIONS AND RENEWALS. Section 16 of the act will provide that "If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by submitting to an examination to be determined by the board and complying with the requirements and procedures for obtaining an original license."

This section also calls for greatly increased *late* renewal fees, amounting to \$25 for one day to 90 days; \$50 for 91 days to one year; and \$50 for over one year but less than two years, plus the first year's renewal fee of \$16. Note that a period of "90 days" is specified and not "three months." Remember, too, these are *penalty* fees over and above the current annual renewal fee; and of course, after two years of expiration a license *cannot* be renewed.

BOARD POWERS. Disciplinary action available to the board will include the issuance of formal and infor-

mal reprimands to engineers (currently limited to suspensions and revocations of licenses). This provision will allow some flexibility to the board in dealing with minor infractions, which have been dismissed in the past because the circumstances did not warrant the severity of a suspension or revocation of a license.

The board is specifically permitted to make a rule to prohibit competitive bidding by licensees, which supports Disciplinary Rules (DR) 5.4 and 5.6 promulgated within the Code of Responsibility in 1973. The board will be limited in its rules concerning advertising to merely prohibit false, misleading, or deceptive practices by licensees.

PUBLIC MEMBERS. Three public members will now be appointed by the governor to serve along with the currently authorized six professional engineer members, for terms of two, four and six years respectively. These new members are not permitted to be associated in any way with the field of engineering, and they will be limited on their evaluations of applications for licensure due to the technical aspects of the engineering experience records.

COMPLAINTS AND MANDATORY ACTION. Section 22 of the Act was substantially amended to eliminate the requirement that the board act on sworn information submitted by a knowledgeable resident of the state when any gross negligence, incompetence, or misconduct in the practice of engineering is alleged against a licensee. The preface of this section will read: "The Board shall revoke, suspend, or refuse to renew a registration, shall reprimand a registrant, may prohibit any suspension of any registrant

who is found guilty of" the offense(s) charged. Suspensions and revocations must be preceded by notice and opportunity of a hearing as governed by the Administrative Procedure and Texas Register Act, as amended.

Section 22 will further provide that the board keep a file about each complaint registered against a licensee, and in written complaints the board will notify all parties of the status on a quarterly basis until disposed, unless such notice would jeopardize an undercover investigation. Information of interest to consumers about the Board's functions and complaint procedures will be available.

PROPOSED
RULE CHANGES

With the amendment of the Engineering Practice Act, various board rules will be changed, and some new rules instituted. Coupled with these changes, the board is adopting a new codification of its rules according to the Texas Administrative Code numbering scheme (Art. 6252-13b, V.T.C.S.). The proposed rules will be published in the Texas Register, and final promulgation is expected at the October 7-8 Board meeting in Austin. On July 15, the board proposed the following changes to its rules of practice and procedure:

GENERAL. Organization of the Board (131.2) will provide for five members to constitute a quorum, and for elected officers each year to assume office at the outset of the first meeting conducted after July 1. The Secretary of the Board (131.6) is no longer required by Section 22 of the Act to handle complaints filed against registrants.

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Board policy is expected to continue, however, whereby either the Secretary of the Board or one selected member only will be exposed to details of a complaint situation so as not to prejudice the remaining members who would adjudicate the results of a formal hearing or other disciplinary situation.

Assistant Executive Director (131.16) is no longer a line item position in the Board's appropriation for employees. This position is now designated as a classified engineer's position and will be filled by a registered P.E. This engineer will be an Assistant to the Executive Director and continue to be the second responsible staff employee of the Board.

Definitions (131.18) will include the following: Registration — The granting of an initial license by an agency to an individual. Re-registration — The subsequent licensing by an agency of a former registrant whose expired certificate was not renewable by operation of law.

APPLICATION FOR REGISTRATION. Authority (131.15) will include the following: "Applications for re-registration will also be considered under provisions of section 16(e) of the Act when an expired license is not renewable by operation of law, and will be processed in accordance with all applicable board rules."

EDUCATION. Transcripts (131.94) will cover a topic and policy not previously adopted in rule form. It will read as follows: "An official transcript bearing the seal of the institution involved must be provided to the board for each school from which a degree or credits are claimed on an application, regardless of the section of the Act under which application is being made. The applicant is responsible for ordering and paying for all such transcripts, which are to be forwarded directly to the board office by the respective registrars. Normally, if a legible transcript has been received and accepted for an application, a similar transcript need not be submitted to support any subsequent application from the same applicant."

EXAMINATIONS. Applicability (131.101) will reflect that the \$50 application fee is an established fee, not statutory, and that after an applicant

has twice failed to pass an examination, the third and each additional examination will cost \$75, which is a statutory maximum.

Examination for Record Purposes (131.102) is completely changed to read as follows: "(A) The board may administer examinations for record purposes as a convenience to the public. The examinations will only be administered when, in the opinion of the board, sufficient funds, adequate space, and suitable proctors are available. (B) Examination sites, persons eligible to take the examinations, and any other criteria under which the examinations will be given will be determined for each examination date and may vary from one examination date to another. (C) The board will determine the conditions for giving each examination as soon as the available funds, examination sites, and acceptable proctors are available. In event the above requirements cannot be established 120 days prior to the examination date, the examination will not be given.

BOARD REVIEW OF APPLICATION. Initial Review (131.111) and Approved Applications (131.112) will both be modified to specify that certain review and approval actions will be accomplished by the engineer board members.

Rejected Application (131.114) will be altered to read as follows: "An application for registration is rejected when by quorum vote, the board decides that the applicant should not be registered for reasons other than failing to meet the requirements of Section 12(a) or (b), or Section 21 of the Act."

Personal Appearances for Rejected Applicants (131.118) will be completely revised to read as follows: "If the board proposes to reject an application, the applicant will be notified by personal service, or registered or certified mail. The applicant may, within 30 days after notification, request a personal appearance to present oral arguments before the board and show compliance with all requirements of law for registration and licensure. Although such appearance is a matter of due process, it shall not be construed as a contested case hearing. Such requests shall be made in writing and shall contain mitigative information to justify the board's reconsideration of the pro-

posed rejection. The applicant will be scheduled to appear at the next regular board meeting. If the applicant fails to appear at the date and time scheduled, the board will make its final decision on the application based on information available in the file at that time."

REGISTRATION. Certificates of Registration (131.133) will be modified to distinguish metallurgical and mining as separate, major branches of engineering practice by assigning the code letter "I" to mining engineering and "J" to metallurgical engineering.

Expirations and Renewals (131.134) will be modified to incorporate the new restrictions on renewals and the higher late (penalty) renewal fees. The basic premise that the certificate of registration is a license, renewable annually on an established quarterly basis, and which becomes invalid until properly renewed, remains the same. New provisions will read:

"(1) An unexpired license may be renewed by paying to the board before the expiration date of the license the required annual renewal fee. (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 amount of the renewal fee will become effective at the beginning of the calendar year following such action. * * * (4) Late renewals will be effected as follows: (A) a license expired for not more than 90 days may be renewed by payment of the set annual renewal fee plus a fee equal to one-half of the current application fee for a license. (B) A license expired for more than 90 days but less than one year may be renewed by payment of the renewal fee which was due at expiration, plus a fee equal to the current application fee for a license. (C) A license expired for one year but less than two years may be renewed by payment of the renewal fee which was due at expiration, plus the renewal fee which was set for the first anniversary of that expiration, plus a fee equal to the current application fee for a license. (5) A license which has been expired for two years may not be renewed, but the former registrant may apply for a new certificate of registration as provided in the Act and applicable board rules."

Disciplinary Actions (131.137) will
(Continued on next page)

replace the rule formerly entitled Revocation of Certificates of Registration, and will be as follows: "(a) Under the authority and provisions of Sections 8 and 22 of the Act, the board must take disciplinary action against a registrant who is found guilty of a violation of law, rules, or conduct. In such case, the board may: (1) Revoke a certificate of registration. (2) Suspend a license. (3) Probate a suspended license. (4) Refuse to renew a certificate of registration. (5) Issue a formal or informal reprimand. (b) An individual whose license has expired is not construed to be a registrant and subject to the disciplinary actions provided herein, unless and until such time as the board at its discretion accepts the fees required to renew his expired license. (c) In defining misconduct in the practice of professional engineering, the board will consider among other things the Code of Responsibility for Professional Engineers."

Engineer's Seals (131.138) will be modified in two instances. These include the board's discouragement of using decal and other seal replicas, and the added requirement of including the date along with the responsible engineer's signature when he seals documents as required by the Act.

Re-registration (131.139) is a new rule and will be as follows:

"(a) A person whose certificate of registration has been expired for two or more years may obtain a new certificate of registration by submitting to examination by the board and complying with the legal requirements for obtaining an original license. Such examination will take into consideration pertinent data which produced the previous registration, the length of license expiration and activities during the unlicensed period.

"(b) The applicant will: (1) Prepare an official application form and submit it with the current application fee. (2) Provide a supplementary experience record for the last two years of licensed practice before the previous license expired. (3) Account for activities during the unlicensed period. (4) Arrange for submission of current reference statements to cover the supplementary experience record and the intervening period since the previous license expired. (5) Have transcripts

submitted for any degrees or college credits being claimed which were earned since the previous application for registration.

"(c) The board will: (1) Process the application under procedures established for an original license, except as otherwise might be provided herein. (2) Recognize official board records which previously confirmed any approved engineering degrees and successful passing of written examinations, as stipulated in Sections 12(a) and (b) of the Act. (d) Upon its evaluation of the above, the board may administer additional oral or written examinations to substantiate current professional engineering competency and suitability for re-registration. (e) A new certificate of registration and serial number will be issued if the application is approved."

CODE OF RESPONSIBILITY FOR PROFESSIONAL ENGINEERS. This topic of board rules will be redesignated as PROFESSIONAL CONDUCT AND ETHICS. The code itself will become the title of Rule 131.151, and the preface which contains the authority for the rule will remain the same. Within the Code, Canon V, Disciplinary Rule (DR) 5.2 will be reworded to provide that "The engineer shall not solicit professional employment by advertising which is false or deceptive." DR 5.3 will be unchanged as it provides for misleading representations by engineers. DR 6.1(a), (b), (c) and (d) will include the violation of a general board rule as an infraction which would subject a registrant to disciplinary action.

COMPLIANCE AND ENFORCEMENT. Authority (131.161) will be redesignated as General, and reflect as follows: "In carrying out its responsibilities to insure strict compliance with and enforcement of the Act, the board will make inquiries into situations which allegedly violate or abridge the requirements of the act and board rules dealing with the practice of engineering, and those representations which imply the legal capacity to offer or provide engineering services to the public. Situations which are considered by the board to pose or have caused serious harm to the public, or cannot be readily resolved through voluntary compliance, will be disposed of by administrative, civil or criminal proceedings as

authorized by law."

Deliberate Violation (131.164) will be modified to provide that any engineer who deliberately becomes a party to the circumvention of the preceding rule 131.163 by trying to legitimize an engineering business through an association unacceptable to the Board, "shall be subject to legal and disciplinary actions available to the Board."

Multiple Offices (131.166) have been reworded to provide as follows: "If an engineer or engineering firm maintains offices in more than one locality, each main and branch office must be staffed with a licensed professional engineer in responsible charge if the practice of engineering and solicitation of business is to be allowed as intended by Sections 1.2, 8 and 18 of the Act. Exceptions to this rule are project offices established for on-site investigation, inspection of construction or installation for individual projects, and field locations established solely as a base for technicians to gather data and information for subsequent engineering testing, evaluations and reporting at the principal office where the responsible engineer is assigned; providing, however, that such excepted facilities are appropriately identified and represented as 'project' or 'field' offices, and no offer to provide engineering services is made or misleadingly implied through any signs, listings or claims in connection with such facilities."

Business Names (131.167) is a new rule to provide for the timely reporting of each engineer's business association. It will read as follows: "(a) Individual licensees and properly constituted business entities are authorized by law to engage in the practice of engineering; however, the board does not certify or register engineering firms, per se, and such businesses acquire their legitimate engineering status only through the licenses of their individual members as stipulated by board rule 131.162. (b) Each registrant is personally responsible to notify the board of his professional engineering association, as each change occurs and independent of such current information required on the annual license renewal application. (c) By written communication, each registrant will submit the following information

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mation to the Board: (1) Full, legal trade or business name. (2) Physical location of the business operations by street address, office number, city, state, and Zip Code. (3) Status of business (corporation, assumed name partnership or single proprietorship, or self-employment through use of own name). (4) Legal relationship (principal, executive officer or full-time employee) and position of responsibility. (5) Telephone number of the business office."

NEWSLETTER

The NEWSLETTER is published periodically for the information of registrants and, through them, those interested in registration. Selection of contents is dictated by important new matters and those which have presented problems to the Board and to many registrants. Your inquiries and comments are solicited. Persons who do not maintain a current license will normally not receive the NEWSLETTER, so recipients are urged to share their copies with anyone they know who doesn't hold a current license, especially this issue which contains important information which might affect many non-current registrants.

NEW ASSISTANT TO THE EXECUTIVE DIRECTOR

Mr. Lee Shellberg, P.E. has been hired by the Board as the assistant to the Executive Director. Lee's title is Di-

rector of Special Programs, and he will aid in the administration of the Board office and implementation of the Texas Engineering Practice Act. He holds a B.S.M.E. degree from the University of Texas, and has worked as a consultant in the mechanical and civil fields. He has also served as Resident Engineer for the Texas Department of Health in the Austin area.

TEXAS SUPREME COURT RULES FOR STATE BOARD

On June 3, 1981, the Texas Supreme Court declined to hear the appeal of an injunction against Plastic Engineering and Sales Corporation of Fort Worth, thereby leaving the decision of the Second Court of Civil Appeals to stand in favor of the Board of Registration. The instant case became the third in a series of appealed injunctions involving the board since 1971. The previous citations are *Tackett vs. State Board* (466 SW2d 332), and *State Board vs Wichita Engineering* (504 SW2d 606). In both the *Wichita* and the *Plastic* cases, Assistant Attorney General Robert W. Gauss represented the State Board with the assistance of Charles M. Babb, attorney for the Texas Society of Professional Engineers. Both cases involved the constitutionality of the state's police powers in applying Section 18 of the Texas Engineering Practice Act to the respective firms which did not have registered engineers on their staffs.

EXAMINATION DATES

The next two examinations are scheduled for October 31, 1981, and April 17, 1982.

CHECK YOUR POCKET CARD!

License expiration dates are shown on each year's pocket card. Renewal of the license is a personal responsibility, and late renewals will be more costly. Expirations can be very costly! Make certain the Board has your correct mailing address. Examine your next renewal form closely.

ET CETERA:

Engineer Board members Fred Benson and R. L. Reid will complete their six-year terms of appointment in September, this being the second such term for Mr. Reid. Their reappointment or replacement by the governor is unknown at this time.

The Board has requested an Attorney General's Opinion on the exact effective date of the two-year period of expiration for a license which will not be eligible for renewal under new provisions of Section 16 in the amended Act. The question is whether the period is retroactive to September 1, 1979, or whether the period starts on September 1, 1981, when the new provisions become law. If the opinion is not issued before the latter date, the Board will have to delay processing any renewals received after August 31, 1981, for licenses which have already been expired for two years.

FROM
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