



TEXAS STATE BOARD OF
REGISTRATION
FOR PROFESSIONAL ENGINEERS

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**STATE BOARD
INCLUDED
IN BUDGETARY CUTS**

The Texas State Board of Registration for Professional Engineers has been included in the Governor's request for a 13% spending cut for the remainder of the current biennium ending August 31, 1987. Although the Board is a special fund agency which uses no general revenues, the "bottom line" is yet to be determined as a result of either this year's special legislative sessions or next year's regular session.

While serving as an important communications medium between the Board and its registrants, these official newsletters may be considered a non-essential service and fall victim to budgetary cuts. If so, notification of matters affecting the Texas Engineering Practice Act, the Board's rules of practice and procedure, and other pertinent information will have to be disseminated by other means, such as the Texas Register. Although newsletters were anticipated to be published twice each year, fiscal restraints may reduce or eliminate this service.

**MANY RULES ARE
DUE FOR REVISION**

Through the assistance of consultant Woodrow W. Mize, P.E., the Board has made an extensive review of all existing rules of practice and procedure. Most of the current rules under the heading of General will be redesignated as By-laws. Numerous other changes and additions were proposed for adoption by the Board on July 17, but they will have to be approved by the Attorney General's Office before being released for publication.

Several terms have been defined for clarification and rules have been added for the processing of complaints in

general and criminal convictions of registrants in particular. The Code of Responsibility for Professional Engineers with its seven Canons and related Ethical Considerations will no longer appear as such. The former Disciplinary Rules are being recodified with new numbers to coincide with the existing rule numbering system.

As mentioned elsewhere in this publication, notice of specific rule changes to each registrant by means of the newsletter may be prevented by budgetary cuts. However, by law the proposed rules will be published in the Texas Register as official public notice of intended Board action. When the rules are adopted, a similar notification of final action will also be published in the Texas Register.

**RESOLUTION TO AMEND
THE ACT**

At its recent July meeting, the Board made the following resolution:

"WHEREAS, It is the duty of the Texas State Board of Registration for Professional Engineers to protect the health, safety, and welfare of the public by registering and licensing only those persons qualified to practice engineering; and,

"WHEREAS, Section 12, Subsection (a) of the Texas Engineering Practice Act permits registration based on education and experience without further examination; and,

"WHEREAS, This provision has remained unchanged since the original passage of the Act in 1937; and,

"WHEREAS, The great and rapid advancement of technology requires a comprehensive and uniform method of determining the qualifications of applicants for registration to meet today's engineering needs; and,

"WHEREAS, This mobile and far reaching society dictates the need for

multi-state registration for an engineer to meet the requirements of his clients and employers; and,

"WHEREAS, Similar professional engineering licensing authorities in all other states and territories of the United States require written examinations for registration; therefore, be it

"RESOLVED That the Texas State Board of Registration for Professional Engineers endeavors to amend Section 12, Subsection (a) to include requiring examinations prescribed by the Board as an additional qualification for registration as a professional engineer; and, be it

"RESOLVED That this amendment, if enacted, shall apply only to those applicants seeking registration on or after an effective date established by the Legislature when the amendment is passed; and, be it further

"RESOLVED That this amendment, if enacted, shall enhance, not diminish, the current in-depth review and evaluation of an applicant's applied engineering experience, education, and reference verifications."

Since considerable planning, review, and discussion will be required to effect this amendment, it is not anticipated that any such efforts will be made during this upcoming 1987 Legislative Session. Current engineering students are highly encouraged to take the Fundamentals of Engineering (EIT) Examination when the opportunity is afforded to them in preparation for subsequently taking the Principles and Practice Examination as a part of future registration requirements.

**TEXAS BOARD HOSTS
SOUTHERN
COUNTERPARTS**

In early May, members and staff of the Texas Board were hosts to their
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counterpart officials from the 12 other engineering registration boards comprising the Southern Zone of the National Council of Engineering Examiners (NCEE). The Palacio Del Rio Hotel next to San Antonio's famed riverwalk was the site of this annual conference on matters of comity among the licensing jurisdictions. The Southern Zone includes the 11 contiguous states south from Oklahoma to North Carolina, with the addition of Puerto Rico and the U.S. Virgin Islands.

Dr. John E. Breen, Ph.D., P.E., Professor of Civil Engineering, The University of Texas at Austin, was the guest speaker at the awards luncheon. His presentation was timely and related to the topic of one of our feature articles on building codes. Dr. Breen compared modern building codes and design practices with the old "Code of the West." Some of his remarks included: "Working with our partners in the industry, engineers must provide a rational code framework that will allow innovation while protecting the worker's life and the owner's investment. We must renew our efforts to modernize codes so that they are a moving force, not the drag, in safe, economical, and quality construction." "Codes must be simple, clear, safe, fair, and enforced. If we fail to do our part, we can look forward to a tightening noose because while gunslingers are in short supply, there is no shortage of posses and vigilantes in a modern media world. It sometimes seems that if they can't find a rustler, the nearest engineer will do. We must act responsibly but we must beat them to the draw."

FRANK B. HARRELL, P.E. HONORED AT NCEE CONFERENCE

During the awards luncheon at the Southern Zone conference of NCEE in San Antonio (see related article), Texas Board Member Frank B. Harrell, P.E., was presented with the Zone's Distinguished Service Award for outstanding service to the engineering profession. Contributions were noted to the Board, NCEE, the Zone, and to the advancement of professional registration.

Mr. Harrell has served on this Board for the past 13 years, holding the office of Chairman, Vice-Chairman, and Secretary twice each. He never missed a Board meeting until July, 1986, when he was recuperating from a hospitalized injury.

NEW ATTORNEY ASSIGNED TO BOARD

The Board is currently being represented by Assistant Attorney General George L. Warner. He replaces Robert W. Gauss who retired from state employment in April of this year. Mr. Gauss had served this agency continuously for the past 14 years and was the successful prosecutor for the Board in the landmark suit against Wichita Engineering Co. in 1973.

COURT ACTIONS

Russell Rentfro, Jr., and RHL Associates were permanently enjoined on March 18, 1986, by the 113th District Court in Houston for violations of the Texas Engineering Practice Act. Mr. Rentfro had misrepresented himself as a Texas registered engineer, performed engineering services, and affixed a replica of an official engineer's seal to numerous engineering design drawings. RHL Associates had been held out to the public as a consulting engineering firm.

Duane Arnold Rhodes and Affiliated Inspections of Dallas, Inc., were enjoined on June 10, 1986, by the 101st District Court in Dallas for misrepresentations which imply the legal capacity to practice engineering in this state. Mr. Rhodes had placed his California quality engineer seal on building foundation reports and was holding himself and his company out to the public as being professional engineers.

Lonnie D. Strange of Austin was found in contempt of court on May 8, 1986, and received a suspended sentence of three months in jail and a \$500 fine. Mr. Strange had violated provisions of a 1983 injunction obtained against him by the Board for illegally representing himself as a Texas registered engineer and possessing an official-looking engineer's seal.

Thom D. Parrish of Arlington was permanently enjoined on June 13,

1986, by the 352nd District Court in Fort Worth for misrepresenting himself as an engineer. Mr. Parrish had gained employment as an engineer with a consulting firm by claiming to be a licensee in Colorado, Alabama, and Louisiana and an applicant for licensure in Texas. None of his claims were supported by fact.

DISCIPLINARY ACTION

On April 16, 1986, the Board suspended the license of Mr. G. W. Thompson, P.E., Austin, for six months with the last three months probated. The licensee was found guilty of falsifying a construction certificate which was not in conformance with the design plans and specifications.

ATTORNEY GENERAL RULES AGAIN ON COMPETITIVE BIDDING

In 1984 the Attorney General issued Opinion No JM-155 which states in summary that "Article 664-4, V.T.C.S., (the Professional Services Procurement Act), does not prohibit the inclusion on a questionnaire submitted to engineers or architects being considered for employment of any question designed to elicit information regarding professional fees which such engineers or architects would find appropriate for the project being considered." Stated elsewhere in the opinion, the act "does not prohibit the inclusion of a question designed to elicit information regarding fair and reasonable fees or cost estimates."

The Board subsequently proposed to amend Disciplinary Rule (DR) 5.4 restricting competitive bidding by engineers by provisions which paralleled the federal Brooks Act. On review by the Attorney General's Office, the Board was advised that it did not have the authority to make such a rule without further explanation.

A request for clarification and guidance on the proposed rule resulted in Opinion No. JM-457, issued on March 24, 1986. This opinion reaffirmed the conclusions reached in JM-155 that while the procurement "Act expressly prohibits the awarding of contracts for certain professional ser-

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vices on the basis of competitive bids, it clearly requires an agency to award such contracts 'on the basis of demonstrated competence and qualifications for the type of professional services to be performed and *at fair and reasonable prices*. 'Therefore, the imposition of fees must be *one* factor considered by any agency in awarding a contract for such professional services; however, it cannot be the *only* factor to be considered.

Opinion No. JM-457 pointed out with respect to the Brooks Act that the state procurement act 'does not contemplate a bifurcated process; rather, the act requires that political subdivisions must award contracts for professional services in a one-step process to a professional who is selected on the basis of demonstrated competence and qualifications. and at fair and reasonable prices. Further, 'the rulemaking power of administrative agencies does not permit the promulgation of rules which are inconsistent with the expression of the legislature's intent in statutes other than those under which the rules are promulgated.

As a result of the strong position taken in JM-457, the Board has been advised by counsel to take no further action to modify the current provisions of DR 5.4 until such time as the Professional Services Procurement Act may be amended.

EXAMINATION POLICY REVISED

At its July 1986 meeting, the Board revised its policy concerning students eligible to take the Fundamentals of Engineering (EIT) Examination for record purposes. Under the new policy, the Fundamentals of Engineering Examination will be offered to undergraduate and graduate students currently enrolled in engineering degree programs approved by the Texas College and University System Coordinating Board. To be eligible, undergraduate students must be at the senior level in their respective programs. Graduate students must either hold a bachelor degree in engineering approved by the College Coordinating Board or the Accreditation Board for

Engineering and Technology or have completed a minimum of twenty semester hours of graduate level engineering courses to qualify to take the exam. The Fundamentals Exam will be administered to students at their respective schools on Saturday, April 11, 1987.

In addition, the Fundamentals Exam will be offered to qualified graduate engineers, P.E.s, and registration applicants under Section 12(b). These examinees will also test on Saturday, April 11, 1987, at sites established in Austin, Dallas, and Houston.

The Principles and Practice Examination will be offered to qualified P.E.s and registration applicants under Section 12(b) on Saturday, April 11, 1987, at the Austin, Dallas, and Houston testing sites. On this date only the following engineering disciplines will be available for testing: chemical, civil/sanitary/structural, electrical, mechanical, and combined.

The above conditions are subject to final confirmation by the Board at its October 1986 meeting and are contingent upon the availability of adequate funds. For additional information, please contact the examinations department.

BOARD APPROVED DEGREES RESCINDED

At its July meeting, the Board rescinded the list of engineering degrees which had been previously approved in accordance with Board Rule 131.91(a)(2). This in effect will permit only bachelor degrees in engineering which have been approved by the Accreditation Board for Engineering and Technology (ABET) or the Engineer's Council for Professional Development (ECPD) to meet the educational requirements of registration under Section 12, Subsection (a) of the Act.

Additionally, the Board voted to consider as ABET/ECPD approved those engineering degrees which were conferred not more than two years prior to the published date of the actual ABET/ECPD approval. Note that Board Rule 131.91(a)(3) concerning acceptance of the combination of certain non-engineering bachelor degrees, in addition to ABET/ECPD approved advanced degrees, to meet the educa-

tional requirements of Section 12, Subsection (a) remains in effect.

"WHO NEEDS BUILDING CODES?"

'We all do—whether in our homes, offices, schools, stores, factories or places of entertainment. We rely on the safety of structures that surround us in our everyday living. The public need for protection from disaster due to fire, structural collapse and general deterioration underscores the need for modern codes and their administration. So states the Council of American Building Officials in its informative pamphlet entitled *Building Codes — How do they help you?*

A building code 'is the government's official statement on building safety. Technically, it is a compendium of laws and ordinances setting minimum safety standards and arranged in a systematic manner (codified) for easy reference. It embraces all aspects of the building construction—fire and structural items as well as the plumbing, electrical and mechanical systems. 'All people are impacted in a building construction project — architects and engineers, contractors and subcontractors, the manufacturers and distributors of building materials and, finally, the user or occupant of the building.

The *Standard Building Code* and the *Uniform Building Code* are the two prevalent codes being administered in Texas by a relatively small but dedicated contingent of municipal building officials and inspectors. A significant amount of engineering is incorporated into the various codes; however, the codes are not meant to replace the engineer and his professional judgments as to how a particular design should not only meet the minimum standards of a code but if, how, and why the minimums should be exceeded in any given situation. For this very reason, engineers must be familiar with the codes and comply with them or expect their documents to be rejected by the code compliance officials.

Be mindful that clients and public officials alike must necessarily place reliance on the engineer to prepare

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and seal his designs in complete compliance with state laws, local ordinances, and adopted codes. If everyone does their part the system will work as intended to protect the public's health, safety, and welfare.

INNOVATIVE CODE PROPOSAL SPARKS LIVELY DEBATE

The National Council of Architectural Registration Boards (NCARB) earlier this year proposed an innovative but apparently controversial change to the 1985 *Standard Building Code* (SBC). In effect, it would neatly bridge any gap that might exist between the respective state professional licensing laws and the professional design and seal requirements of the SBC.

The affected part is Section 103.2.3 of Appendix A in the 1985 SBC which currently reads as follows:

'Designers Name. All drawings, specifications, and accompanying data shall bear the name and address of the designer. For buildings or structures of Group E Educational, Group I Institutional and Group A Assembly Occupancy, and all buildings or structures three stories or more in height or 5000 sq ft or more in area, except one and two family dwellings, such designer shall be an architect or engineer legally registered under the laws of this state regulating the practice of architecture or engineering and shall affix his official seal to said drawings, specifications and accompanying data.

The additional provisions proposed by NCARB are as follows:

'For any other buildings or structures, the submission shall bear the certification of the applicant that some specific state law exception permits its preparation by a person not so registered. Any permit issued based on drawings, specifications, accompanying data or certifications which do not conform to these requirements shall be invalid.

Reasons for the proposed change are reflected as follows:

'An official seal on building permit submissions should be the clear rule. The burden of showing that a specific state law exception permits buildings or structures other than those listed in the first paragraph to be designed by a person not registered under the architecture or engineering laws should be on the applicant. The building official's job will be easier since the office can always require a seal unless there is certification of an exception. With a seal requirement as the clear rule, there is less opportunity for mistakenly granted permits. By providing for the invalidity of permits inadvertently issued based on plans that should have been sealed, the building owner and construction lender are given added incentives to be sure that all plans filed are properly sealed as required. The number of permits mistakenly issued based on plans that were not sealed should therefore decline.

This Board agrees with the proposal and rationale and is interested in its adoption for several reasons. First, the

provisions of Sections 19 and 20(f) of the Texas Engineering Practice Act differ from the SBC as to when engineers are required. Additionally, the Act stops short of placing a statutory duty on local officials to require engineering plans and specifications filed for all nonexempt buildings to be prepared and sealed by engineers before construction permits are issued. Further, Texas law only exempts certain engineering performed by licensed architects.

It has been reported that the SBCCI Code Revision Committee, after extensive floor debate, did not approve the change at its July meeting. However, the item can be raised again from the floor at the annual meeting in October at Orlando, Florida, or brought back to the committee next year. NCARB reports its intention to propose similar changes to the *Uniform Building Code* and the *Basic Building Code* in due course.

Some SBCCI attendees argued that the change would conflict with Florida law and some opined that the need for such a change was only a regional problem. The latter argument seems illogical if a national organization like NCARB would propose such changes to the three most widely used codes in the country.

The Board would encourage the engineering profession in Texas to lend its support for NCARB's proposed change to the SBC. If Sections 19 and 20(f) of the engineering Act don't work at the municipal level, they won't work effectively anywhere!

FROM
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