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TEXAS STATE BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS

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OFFICIAL NEWSLETTER

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IN MEMORY

The Board is saddened to report the untimely death of former Board Member R. L. "Bob" Reid, P.E., of Houston, who passed away on September 14, 1990. Bob was appointed to the Board in October, 1969, and served until November 17, 1981. He will be fondly remembered by his fellow Board Members and staff personnel who had the opportunity to know and work with him.

PROFESSIONAL
DEVELOPMENT PROGRAM
ADVANCES

"The privilege of practicing engineering is entrusted to professional engineers to protect the public health, safety and welfare. Acceptance of professional and technical responsibilities and the ability to function ethically are key requirements of a true professional, whether the profession be medicine, law, engineering or any other."

Thus reads the predication of a brochure which briefly describes the Board's professional development program. As reported in the last two Official Newsletters, this project has been initiated through the assistance of the Murdough Center for Engineering Professionalism at Texas Tech University.

Key elements of the program are, 1) develop course materials on professionalism and ethics which may be used in engineering schools in Texas, 2) compile references which will be made available for access on a state-wide basis and may include electronic assessing capability, 3) develop discipline-specific packages of materials which will be available to professors who seek to include professionalism and ethics instruction in their technical courses, 4) develop workshops targeted at engineering educators to provide them information and materials which will expedite the teaching and presentation of engineering ethics concepts, 5) communicate among engineering schools and professional societies through meetings, newsletters and other publications, 6) maintain an active Advisory

Council on Professional Development which has representatives from all Texas engineering colleges offering ABET accredited degree programs, the Texas Society of Professional Engineers, the Consulting Engineers Council of Texas, and industry, 7) develop a resource for use as an educational program in professional development for society meetings and seminars, and 8) to ensure continuity, generate development plans and future funding requirements to meet the needs of subsequent phases of the program.

On October 19-20, with and at the Murdough Center, the Board co-hosted a national leadership conference for all state engineering registration board chairmen. The principle objectives were to share with other states the preliminary results of our efforts to establish a program on professionalism and ethics for engineers and to seek their input and support, and to discuss national issues relating to engineering that are of common interest to all states; including 1) the education system, 2) engineering needs of the nation, 3) international engineering practice, and 4) technology's contribution to commerce.

The National Council of Examiners for Engineering and Surveying (NCEES) and the National Society of Professional Engineers/Professional Engineers in Education (NSPE/PEE) are co-sponsors of some elements of the program. The National Institute for Engineering Ethics (NIEE) has endorsed the program.

Board Chairman Dave Dorchester, P.E., serves on the NCEES standing committee on professionalism and ethics.

ATTORNEY GENERAL
RULES ON DESIGN/BUILD
CONCEPT FOR PUBLIC WORKS

On July 24, 1990, Texas Attorney General Jim Mattox issued Opinion No. JM-1189 addressing the legality of public entities to award a "design/build" contract for the construction of public buildings on the basis of competitive bids.

In response to questions posed by Montgomery County, and by this Board, the

comprehensive 12-page opinion concluded substantially that a commissioners court is prohibited by the Professional Services Procurement Act (Art. 664-4, Texas Civil Statutes), from awarding a "design/build" contract for the construction of a public work on the basis of competitive bidding where architectural or engineering services comprise a component of the contract.

Further, while neither of the two statutes which regulate the practices of architecture and engineering requires the preparation of architectural and engineering plans and specifications prior to the invitation of bids by a county for a construction contract, absent a provision to the contrary, such a requirement is implicit in competitive bidding statutes which regulate contracting for construction of public works.

This opinion, therefore, applies to any state agency, political subdivision, county, municipality, district, authority, or publicly owned utility. Traditional design and construction services would prevail for public work projects, leaving design/build as an innovation in the private business sector.

Your attention is directed to another article in this publication pertaining to a recent change in Board Rule 131.155(d) which restricts competitive bidding for engineering services on public work projects.

BOARD CONDUCTS SURVEY

The Board is currently conducting a survey of registrants as they remit their annual license renewal cards. On the reverse side are the following two questions: (1) Would you be willing to pay \$1.00 per year higher renewal fee to receive quarterly important information about engineering and recent rule and statute changes? and (2) In the future, would you be willing to pay a higher renewal fee to help fund a professional development program to promote professionalism and ethics for practicing engineers and engineering students, and faculty? - \$3, \$5, other.

(Continued on next page)

The Board has been gratified by the favorable responses thus far, to include the enthusiasm displayed by the submission of contributions. The money is being returned.

PLEASE BE ADVISED THAT NO MONEY IS BEING REQUESTED OR ACCEPTED DURING THE SURVEY.

The survey data will be used in an effort to illustrate the need to the Legislature to authorize sufficient appropriations for continuing the professional development program, and to allow publication of more than one Newsletter per fiscal year. Therefore, please make a conscientious effort to complete the survey.

Results thus far indicate that a clear majority of our registrants favor spending a few more dollars for these items. Sixty-five percent have responded favorably to the first question, and fifty-seven percent have responded favorably to the second question.

RULE CHANGES

The following 14 Board Rules have been amended since the publication of Newsletter No. 16 in April, 1990, while three additional rules are being proposed for amendment as indicated at the end of this article.

RULE 131.53: This rule pertains to the submission of applications and was amended to provide that both incomplete application forms and forms not accompanied by the proper fee shall be returned to the applicant.

RULE 131.54: This rule pertains to general application information, and subsection (a) states that the executive director may accept an application prior to the receipt of supplemental documents such as transcripts of degrees over which the applicant has no control as to time of submission to the board. Subsection (c) was amended to exempt foreign students from the test of English as a foreign language (TOEFL) and the test of spoken English (TSE) if they have successfully completed at least six semesters of full-time academic work toward an advanced engineering degree in the United States.

RULE 131.55: This rule pertains to applications from non-residents and subsection (c) was amended to read as follows: "a non-resident applicant or other applying under the Act, §21, must furnish with the application a copy of their pocket card or other verification that the license in the state of original registration and other states (no more than two pocket cards are required) is current and valid and, in addition, include with the application copies of proof or verification that the applicant has

taken and passed the engineering examinations."

RULE 131.56: This rule pertains to a national Certification of Qualification and was amended to correctly identify the issuing organization as the National Council of Examiners for Engineering and Surveying (NCEES).

RULE 131.71: This rule pertains to reference statements and subsection (a) was significantly amended to read as follows: "The applicant, as a part of his application for registration, shall send a copy of the board's reference statement form and a copy of the portion of the applicant's supplementary experience record (SER) that the reference is to verify to a minimum of five references. The reference should complete the reference statement, sign the copy of the SER signifying that he agrees with the information written by the applicant, place the reference statement and signed SER in an envelope, seal and sign across the sealed flap of the envelope, and cover the signature with transparent tape. The reference should then return the sealed envelope back to the applicant. The applicant must enclose all of the sealed reference envelopes with his application when he submits it to the office of the board. An application received without the references, or with envelopes that have evidence of tampering, shall be considered an incomplete application and returned to the applicant. At least one reference statement should be provided concerning the work done for each employer. References need not be provided for experience gained 15 or more years prior to the date of the application unless specifically requested by the board. The reference should have personal knowledge of the applicant's work for which he is providing a reference statement. Accurate statements of fact from responsible sources concerning the applicant's technical abilities and performance are necessary as are frank and candid appraisals of his character, reputation, and suitability for professional registration."

RULE 131.72: This rule pertains to professional engineer references and was amended to include the following: "Professional engineers who provide reference statements and are registered in a state other than Texas shall include a copy of their pocket card or other verification to indicate that their license is valid."

RULE 131.81: This rule pertains to experience evaluation and was amended in its preamble and paragraphs (1),(5) and (12) to read: "The evaluation of the engineering experience claimed by an applicant for registration under the Texas Engineering Practice Act (the Act), §12(a), (b), or §21, will include, but not be restricted to, the following:

"(1) Experience must have been progressive and of an increasing standard of quality and responsibility and must be described in sufficient detail in the applicant's supplementary experience record that it will be apparent to the board that the applicant has met these parameters."

"(5) Military experience, to be acceptable, must have been gained in engineering work of a character satisfactory to the board. A copy of discharge papers (DD Form 214) or other evidence of military service must be provided if the applicant served in any military unit after receiving an engineering degree and/or if any engineering is claimed during military service."

"(12) Applicants who claim foreign engineering experience must have, in addition to other experience, at least two years of engineering experience in the United States and show that they have learned to use the United States standards, codes, and other engineering procedures in their engineering practice."

RULE 131.93: This rule pertains to transcripts and was amended to require that an applicant submit an official transcript from each school from which a degree or 15 or more semester hours of credit are claimed on the application.

RULE 131.101: This rule's title has been modified and its preamble and paragraph (5) amended to read as follows: "Examinations for the Texas Engineering Practice Act, §12(b) Registration. The following will apply for persons required to apply under the Texas Engineering Practice Act, §12(b)." No changes were made to paragraphs (1)-(4). "(5) Failure to pass either examination within the schedule will cause the application to be not approved." No changes to paragraphs (6)-(9).

RULE 131.105: This rule pertains to examination analysis and was amended simply to correctly identify the National Council of Examiners for Engineering and Surveying (NCEES).

RULE 131.111: This rule pertains to the initial review of applications and was amended to delete a reference to Rule 131.81(12) which was concurrently amended to delete the "hold" category of an application.

RULE 131.112: This rule pertains to approved applications and subsection (d) was added to provide as follows: "If, on the basis of the initial review of applicants applying under the Act, §21 (non-residents or those registered in other jurisdictions), the executive director or his designated representative recommends that such an applicant be granted registration, the applicant will be granted registration and a record of the action will be made a part of the minutes of the next regular board meeting. If,

after the initial review, the executive director or his designated representative does not recommend that the applicant be granted registration, the procedures in subsections (b) and (c) of this section will be followed.

RULE 131.133: This rule pertains to certificates of registration and subsection (b) was amended to delete paragraph (17) the designation of "(X) control systems" since an appropriate examination is not available from NCEES. (See related article on control systems elsewhere in this publication.) A proposal has also been made to amend subsection (b) by removing paragraph (3), the designation of "(D) ceramic," since an examination is no longer available from NCEES.

RULE 131.138: This rule pertains to engineers' seals and paragraph (5)(B) was amended to read as follows: "A CADD-generated engineering document shall not be issued bearing a CADDSEAL unless the document also bears the registrant's original signature and date, or the following notation displayed prominently near the CADDSEAL: 'The seal appearing on this document was authorized by (example) John H. Doe, P.E. 01123, on _____, 19__."

PROPOSED AMENDMENTS:

RULE 131.92: This rule pertains to foreign degrees and subsection (a)(2) is being amended to read as follows: "Applicants having degrees accredited by the ABET counterpart organizations in Australia, Canada, Ireland, New Zealand and the United Kingdom may apply under §12(a).

RULE 131.134: This rule pertains to expirations and renewals of registration and paragraph (6) is being added to provide as follows: "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 non-renewal 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 131.155: This rule pertains to professional practice and reputation (including competitive bidding), and subsection (d) is proposed to be changed 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 consultant, under a contract subject to the provisions of the Texas Professional Services Procurement Act, Article 664-4, Texas Civil Statutes (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 United States Code §§541-544."

ARCHITECTS AND ENGINEERS

In order to clarify and define the relationships between the practices of engineering and architecture, the two Boards which regulate these respective professions have officially adopted the following Joint Policy Statement:

"The Texas Board of Registration for Professional Engineers and the Texas Board of Architectural Examiners were both created by the Legislature to protect the health, safety and welfare of the public.

"Questions have arisen which indicate there is a need to define the relationship between the practices of engineering and architecture.

"It is the policy of both Boards that clients, both public and private, have the option to choose a member of either profession as the prime professional on their building projects.

"The professionals in each profession are enjoined by their respective practice acts to practice only in the area of their expertise and if the particular project requires the services of another professional, that professional's services shall be obtained.

"It is, therefore, the sole responsibility of both professional engineers and professional architects to obtain whatever additional professional services they need for the project at hand.

"It shall be the responsibility of each respective Board, to regulate the practice of engineering and architecture in Texas to protect the health, safety and welfare of the public. If either Board determines that a member of the profession other than the one they regulate is practicing outside the area of his or her expertise, the Board shall immediately notify the Board regulating the offending member and supply information to support their allega-

tion. Each Board has the responsibility to pursue any appropriate action to cause an unqualified person to cease and desist from practicing in violation of its respective statute. If either Board determines that one of its registered professionals is practicing outside the area of his or her expertise, it shall be the duty of that Board to appropriately discipline the offender."

BOARD REVERSES AN INTERPRETATION OF THE ACT

As reported in the last Newsletter, one of the Board's interpretations of Section 20(h) of the Act, pertaining to "the property of others" was under attack by the privately owned public utilities. The Board had originally stated that "the property of others" included "all public rights of way and other easements on private property.

After two public hearings and consideration of numerous legal briefs, and on advice of legal counsel, the conclusion is that the intent of the legislature in enacting Section 20(h) was not for public rights of way and other legal easements on private property to be construed as the property of others.

Therefore, unlicensed regular full time employees of a privately owned public utility, engaged solely and exclusively in performing services for such utility, may be responsible for the engineering designs, plans or specifications of the utility's facilities owned, constructed, and maintained in public rights of way and legal easements.

The affected utilities have been notified by letter of this interpretation.

CONTROL SYSTEMS ENGINEERING

For nearly two years, Texas members of the Instrument Society of America (ISA) appealed to the Board to recognize control systems engineering for record and examination purposes. Earlier this year, when an appropriate examination was available through the State of California, the Board approved the addition to Rule 131.133 of the code "X" to represent control systems engineering. Subsequently, however, NCEES discontinued its agreement with California to supply the examination. Therefore, the Board has officially requested NCEES, in cooperation with ISA, to develop and offer a national examination for control systems. Initial response from NCEES has been favorable, although it will likely take up to two years before the examination will be available.

PERSONNEL CHANGES

Mr. Fred C. Herber, Jr., P.E., is the new Deputy Executive Director for the Board, effective June 1, 1990. Mr. Herber transferred to the Board after serving about 26 years with the Texas Department of Highways and Public Transportation. He succeeds Mr. H. Edwin Crow, P.E., who has reverted to part-time service as Assistant to the Executive Director. Stanley M. Gilbert retired January 31, 1990, as Director of Enforcement Programs, but continues to serve as a part-time Assistant to the Executive Director.

DISCIPLINARY ACTIONS

The Board disposed of three disciplinary matters since the last Newsletter: It revoked the registration of William C. Morgan, Jr. P.E., for his felony conviction and incarceration for possession of a schedule II controlled substance with intent to distribute. It issued formal reprimands to Michael D. Alexander, P.E., and to Oscar D. Graham, P.E. for practicing engineering and sealing documents while their licenses were expired.

REVISED APPLICATION AND REFERENCE PROCEDURES

To save the Board considerable time, effort and money, the application and reference procedures have been revised by placing more responsibility on the applicant and his references. The first significant change requires each prospective applicant to submit a 9"x12" postage-paid, self-addressed envelope to the Board for the return mailing of the application forms and instructions. Proper postage

will have to be quoted upon request since it varies with the application package content and class of mail desired.

Additionally, the applicant must submit to the Board a complete application package, to include the necessary reference statements, but excluding the college transcript over which he has no control. Further, a copy of a current pocket card must accompany the reference statement from an out-of-state registered reference, and accompany the application from an out-of-state registrant (see changes to Rule 131.54, 131.55, 131.71, and 131.72).

HUD CLARIFIES NEED FOR "STRUCTURAL ENGINEER" ON FOUNDATION REPAIRS

The Fort Worth Regional Office of the U.S. Department of Housing and Urban Development issued a memorandum on October 4, 1990, changing an earlier directive which required the services of a "structural engineer," per se, for the acceptance of properties with or requiring foundation repairs. HUD now recognizes that many states do not in fact register engineers by a specific branch of expertise, but permit the practice of engineering within the individual licensees' competence by training or experience.

HUD and direct endorsement lenders are to assure that the accepted reports completely and thoroughly document the engineer's evaluation processes and procedures so as to determine if the examinations are adequate and appropriate for determining the need for repairs and, where required, that the repairs are appropriate for the identified conditions.

Direct endorsement lenders will have the primary responsibility for determining the adequacy of the engineer's reports. The HUD Field Offices are to monitor the reports to see if the reports accepted by the lenders are in fact complete and acceptable.

The HUD memorandum concludes that where engineers consistently submit incomplete reports, improper justification for proposed work, inappropriate recommendations, or lack understanding of soil mechanics and structural engineering principles and practices, their work shall no longer be accepted and they should be reported to the state registration board. Likewise, any engineer falsely certifying to the acceptable completion of foundation repairs should be barred from further participation and reported to the state registration board.

1991 EXAMINATION DATES

Examinations will be administered on April 13 and on October 26, 1991, with an application deadline of February 13 for the Spring exam. September 11 is the tentative deadline to apply for the Fall exam.

BOARD MEETINGS IN 1991

The Board has tentatively scheduled to conduct its 1991 quarterly meetings in Austin on January 23-24 and July 24-25; in College Station on April 23-24; and in San Antonio on October 23-24. The public is always invited.

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