AN ACT

relating to the continuation and functions of the Texas Board of Professional Engineers and to the regulation of the practice of engineering.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (e), Section 1001.004, Occupations Code, is amended to read as follows:

(e) This chapter does not:

(1) prevent a person from identifying the person in the name and trade of any engineers' labor organization with which the person is affiliated;

(2) prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal, subject to the board's disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering;

(3) repeal or amend a law affecting or regulating a licensed state land surveyor; or

(4) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

SECTION 2. Sections 1001.005 and 1001.051, Occupations Code, are amended to read as follows:
Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board of Professional Engineers is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2015 [2003].

Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under this subchapter applies only to a person who does not offer [is not directly or indirectly represented] to the public to perform [be legally qualified to engage in the practice of] engineering services.

SECTION 3. Section 1001.057, Occupations Code, is amended to read as follows:

Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS ENTITY [OR AFFILIATE]. (a) This chapter shall not be construed to apply to the activities of a private corporation or other business entity, or the activities of the full-time employees or other personnel under the direct supervision and control of the business entity, on or in connection with [A regular full-time employee of a private business entity is exempt from the licensing requirements of this chapter if]:

(1) reasonable modifications to existing buildings, facilities, or other fixtures to real property not accessible to the general public and which are owned, leased, or otherwise occupied by the entity [the employee performs services exclusively for the business entity or an affiliate of that entity]; or

(2) activities related only to the research, development, design, fabrication, production, assembly,
integration, or service of products manufactured by the entity [the
employee's services.]

[(A) are on or in connection with property.]

[(i) owned or leased by the business entity
or affiliate; or]

[(ii) in which the business entity or
affiliate has an interest, estate, or possessory right; or]

[(B) affect exclusively the property, products,
or interests of the business entity or affiliate; and]

[(3) the employee does not have the final authority to
approve, or the ultimate responsibility for, engineering designs,
plan, or specifications relating to the property or products that
are to be]

[(A) incorporated into a fixed work, system, or
facility on the property of another; or]

[(B) made available to the public].

(b) [This exemption includes the use of a job title or
personnel classification by the employee if the employee does not
use.]

[(1) the title or classification in connection with an
offer to the public to perform engineering services; and]

[(2) a name, title, or word that tends to convey the
impression that a person not licensed under this chapter is
offering to the public to perform engineering services.]

[(e)] A person who claims an exemption under this section
and who is determined to have directly or indirectly represented
the person as legally qualified to engage in the practice of
engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

(c) This exemption does not prohibit:

(1) a licensed professional engineer who intends to incorporate manufactured products into a fixed work, system, or facility that is being designed by the licensee on public property or the property of others from requiring the manufacturer to have plans or specifications signed and sealed by a licensed professional engineer; or

(2) the board from requiring, by rule, that certain manufactured products delivered to or used by the public must be designed and sealed by a licensed professional engineer, if necessary to protect the public health, safety, and welfare.

(d) For purposes of this section, "products manufactured by the entity" also includes computer software, firmware, hardware, semiconductor devices, and the production, exploration, and transportation of oil and gas and related products.

SECTION 4. Subsections (b) and (c), Section 1001.058, Occupations Code, are amended to read as follows:

(b) [This exemption includes the use of a job title or personnel classification by the employee if the employee does not use

[(1) the title or classification in connection with an offer to the public to perform engineering services, and

[(2) a name, title, or word that tends to convey the impression that a person not licensed under this chapter is
offering to the public to perform engineering services.

[(e)] A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

SECTION 5. Subchapter B, Chapter 1001, Occupations Code, is amended by adding Section 1001.066 to read as follows:

Sec. 1001.066. CERTAIN NASA-RELATED ACTIVITIES. This chapter does not:

(1) apply to a business entity or the business entity's employees to the extent that the entity's products or services consist of space vehicles or space services provided to, or space technology transfer programs required by, the National Aeronautics and Space Administration; or

(2) prohibit the use of the term "engineer" or "engineering" in a job title or personnel classification by an employee described by Subdivision (1) to the extent that the use of the title or classification is related to activities described by that subdivision.

SECTION 6. Subsection (b), Section 1001.101, Occupations Code, is amended to read as follows:

(b) Appointments to the board shall be made without regard to the race, color, disability [creed], sex, religion, age, or national origin of the appointee.

SECTION 7. Subsection (a), Section 1001.102, Occupations
Code, is amended to read as follows:

(a) A person may not be [is not eligible for appointment as]
a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a [an
occupational] regulatory agency in the field of engineering;

(2) is employed by or participates in the management
of a [an-agency-or] business entity or other organization regulated
by or receiving money from the board [related to the field of
engineering]; [or]

(3) owns or controls, directly or indirectly, more
than a 10 percent [has a financial] interest [other than as a
consumer] in a business entity or other organization regulated by
or receiving money from the board; or

(4) uses or receives a substantial amount of tangible
goods, services, or money from the board other than compensation or
reimbursement authorized by law for board membership, attendance,
or expenses [related to the field of engineering].

SECTION 8. Section 1001.103, Occupations Code, is amended
to read as follows:

Sec. 1001.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

(a) In this section, "Texas trade association" means a cooperative
and voluntarily joined statewide association of business or
professional competitors in this state designed to assist its
members and its industry or profession in dealing with mutual
business or professional problems and in promoting their common
interest.

(a-1) A person may not be a [A] member [or employee] of the
board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of engineering [industry]; or

(2) the person's spouse [related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a person who] is an officer, manager [employee], or paid consultant of a Texas trade association in the field of engineering [industry].

(b) A person may not be [serve as] a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 9. Section 1001.106, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [appointment] the qualifications required by Sections 1001.101 and [Section] 1001.102;

(2) does not maintain during service on the board the qualifications required by Sections 1001.101 and [Section]
1001.102;
(3) is ineligible for membership under Section 1001.102 or [violates a prohibition established by Section 1001.103; [ex]
(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during [held in] a calendar year without an excuse approved by a majority vote of the board[, excluding meetings held while the person was not a member].

c If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 10. Section 1001.108, Occupations Code, is amended to read as follows:

Sec. 1001.108. OFFICERS. The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The board shall elect annually from its members [a presiding officer] an assistant
presiding officer[\textsuperscript{r}] and a secretary.

SECTION 11. Subchapter C, Chapter 1001, Occupations Code, is amended by adding Section 1001.112 to read as follows:

Sec. 1001.112. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and
(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 12. Subchapter D, Chapter 1001, Occupations Code, is amended by adding Sections 1001.153 through 1001.156 to read as follows:

Sec. 1001.153. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that
all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b). The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Sec. 1001.156. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to board employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SECTION 13. Section 1001.203, Occupations Code, is amended to read as follows:

Sec. 1001.203. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board by rule shall prescribe standards for compliance with Subchapter A, Chapter 2254,
Government Code [may restrict competitive bidding].

(b) Except as provided by Subsection (a), the [The] board may not adopt rules [a rule] restricting advertising or competitive bidding by a license holder [person licensed under this chapter] except to prohibit false, misleading, or deceptive practices [by the person].

(c) In its rules to prohibit false, misleading, or deceptive practices, the [The] board may not include [in its rules to prohibit false, misleading, or deceptive practices] a rule that:

(1) restricts the [person's] use of any medium for advertising;

(2) restricts the use of a license holder's [person's] personal appearance or [use of the person's] voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder [person]; or

(4) restricts the license holder's [person's] advertisement under a trade name.

SECTION 14. Subchapter E, Chapter 1001, Occupations Code, is amended by adding Section 1001.2035 to read as follows:

Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules and guidelines as necessary to comply with Chapter 53.

SECTION 15. Subsection (a), Section 1001.204, Occupations Code, is amended to read as follows:

(a) The board shall establish the following [reasonable and necessary] fees in amounts reasonable and necessary to cover the
costs of administering [for the administration of] this chapter [in amounts not to exceed]:

1. license fee $50
2. annual renewal fee $75
3. reciprocal license fee $50
4. duplicate license fee $5
5. engineer-in-training certificate fee $15
6. roster of engineers fee $10
7. examination fee $200
8. registration fee for engineering firm and
9. inactive status fee $100

SECTION 16. Subsection (c), Section 1001.206, Occupations Code, is amended to read as follows:

(c) The fee increase imposed by Subsection (a) does not apply to an engineer who:

1. meets the qualifications for an exemption under Section 1001.057 or 1001.058 but does not claim that exemption;
2. is disabled as described by Section 1001.205; or
3. is on inactive status as provided by Section 1001.355.

SECTION 17. Section 1001.210, Occupations Code, is amended to read as follows:

Sec. 1001.210. CONTINUING EDUCATION PROGRAMS. (a) The board shall recognize, prepare, or administer continuing education programs for its license holders. A license holder must participate in the programs to the extent required by the board to
keep the person's license.

(b) The board may not require a license holder to obtain more than 15 hours of continuing education annually. The board shall permit a license holder to certify at the time the license is renewed that the license holder has complied with the board's continuing education requirements.

(c) The board shall permit a license holder to receive continuing education credit for educational, technical, ethical, or professional management activities related to the practice of engineering, including:

(1) successfully completing or auditing a course sponsored by an institution of higher education;

(2) successfully completing a course certified by a professional or trade organization;

(3) attending a seminar, tutorial, short course, correspondence course, videotaped course, or televised course;

(4) participating in an in-house course sponsored by a corporation or other business entity;

(5) teaching a course described by Subdivisions (1)-(4);

(6) publishing an article, paper, or book on the practice of engineering;

(7) making or attending a presentation at a meeting of a technical or engineering management society or organization or writing a paper presented at such a meeting;

(8) participating in the activities of a professional society or association, including serving on a committee of the
organization; and

(9) engaging in self-directed study.

(d) A license holder may not receive more than five continuing education credit hours annually for engaging in self-directed study [persons regulated by the board under this chapter. Participation in the programs is voluntary].

SECTION 18. Subchapter E, Chapter 1001, Occupations Code, is amended by adding Sections 1001.214, 1001.215, and 1001.216 to read as follows:

Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to find information about the board on the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the board's planning processes.

Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:
(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Sec. 1001.216. JOINT ADVISORY COMMITTEE ON THE PRACTICE OF ENGINEERING AND ARCHITECTURE. (a) The Joint Advisory Committee on the Practice of Engineering and Architecture is an advisory committee to the board and to the Texas Board of Architectural Examiners. The advisory committee consists of:

(1) three members of the board and one practicing architectural engineer appointed by the board; and

(2) three members of the Texas Board of Architectural Examiners and one practicing architect appointed by that board.
(b) Members of the advisory committee serve staggered six-year terms with the terms of one or two members appointed by the board and one or two members appointed by the Texas Board of Architectural Examiners expiring each odd-numbered year.

(c) The advisory committee shall meet at least twice a year.

(d) The advisory committee shall work to resolve issues that result from the overlap between activities that constitute the practice of engineering and those that constitute the practice of architecture. The advisory committee shall assist each agency in protecting the public rather than advancing the interests of either agency or the profession it regulates.

(e) The advisory committee shall issue advisory opinions to the board and to the Texas Board of Architectural Examiners on matters relating to the practice of engineering and the practice of architecture, including:

(1) opinions on whether certain activities constitute the practice of engineering or the practice of architecture;

(2) specific disciplinary proceedings initiated by either agency; and

(3) the need for persons working on particular projects to be licensed by the board or registered by the Texas Board of Architectural Examiners.

(f) If the advisory committee issues an advisory opinion to the board or the Texas Board of Architectural Examiners on a matter, that agency shall notify the committee of the final action taken with regard to the matter. The advisory committee shall consider the action taken by the agency on the matter in any advisory opinion.
subsequently issued by the committee on a related matter.

(q) The board and the Texas Board of Architectural Examiners
shall enter into a memorandum of understanding regarding the
advisory committee that includes the composition and purpose of the
committee.

SECTION 19. Section 1001.251, Occupations Code, is amended
by adding Subsection (c) to read as follows:

(c) The board shall maintain on the board's Internet
website:

(1) information regarding the procedure for filing a
complaint with the board; and

(2) a form that a person may use to file a complaint
with the board.

SECTION 20. Sections 1001.252 and 1001.253, Occupations
Code, are amended to read as follows:

Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT
INVESTIGATION AND DISPOSITION [COMPLAINTS]. (a) The board shall
adopt rules that permit the board to receive and investigate a
confidential complaint against a license holder or other person who
may have violated this chapter. The board shall maintain the
confidentiality of the complaint during the investigation.

(b) The board by rule shall specify:

(1) the manner by which a person may contact the board
for assistance in filing a complaint;

(2) the place at which a complaint must be filed;

(3) the proper form of a complaint; and

(4) the information that must be included in a
complaint.

(c) The board's procedures must permit a member of the public who desires to file a complaint to:

(1) speak to an investigator on the staff of the board if the person desires to do so; or

(2) easily and conveniently access the board's complaint process without being required to speak to an investigator on the staff of the board if the person does not desire to speak to an investigator.

(d) The board shall consider any written grievance against a license holder or other person filed with the board as a complaint.

(e) A complaint must include information sufficient for the board to determine whether it has the authority to resolve the complaint. A complaint that contains sufficient information for the board to commence an investigation is not required to include all of the information necessary for the board to determine the validity of the complaint.

(f) On receipt of a complaint, the board shall determine whether the board has the authority to resolve the complaint. If the board does not have the authority to resolve the complaint, the board shall dismiss the complaint. If the board has the authority to resolve the complaint, the board shall initiate a disciplinary proceeding against the person who is the subject of the complaint.

(g) The board by rule shall prescribe a method for prioritizing complaints for purposes of complaint investigation. In establishing priorities:

(1) a complaint that alleges an action that could
potentially harm the public takes precedence over a complaint that
does not allege an action that could potentially harm the public;
and

(2) with regard to complaints that do not allege an
action that could potentially harm the public, a complaint filed by
a member of the public takes precedence over a complaint filed by
the staff of the board.

(h) The board's staff is responsible for conducting all
phases of complaint investigation, including gathering evidence
necessary to determine the validity of the complaint.

(i) The board may employ or contract with advisors,
consultants, engineers, or other persons to provide technical
assistance in investigations and disciplinary proceedings. Except
for an action involving fraud, conspiracy, or malice, a person
whose services are obtained by the board under this subsection is
immune from civil liability and may not be subjected to a suit for
damages for any investigation, report, recommendation, statement,
evaluation, finding made, or other action taken in the course of
performing the person's official duties.

(j) The board's staff shall regularly report to the board on
each complaint dismissed by board staff, including:

(1) the name of the complainant;

(2) the name of the person who is the subject of the
complaint;

(3) the basis of the complaint; and

(4) the reason for the dismissal of the complaint.

(k) Except as provided by Subsection (1), a complaint filed
with the board is public information.

    (l) For any frivolous complaint, the license holder's name
and other personal information on the complaint is not public
information and must be redacted.

    (m) In this section, "frivolous complaint" means a
complaint that the executive director and investigator, with board
approval, determined:

    (1) was made for the purpose of harassment; and

    (2) does not demonstrate harm to any person.

Sec. 1001.253. COMPLAINT INFORMATION. (a) The board
shall:

    (1) assign a number to each complaint filed with the
board; and

    (2) ensure that each phase of the processing of a
complaint is appropriately documented.

(b) The board shall maintain a [keep an information] file on
[about] each written complaint [relating to a license holder] filed
with the board. The file must include:

    (1) the name of the person who filed the complaint;

    (2) the date the complaint is received by the board;

    (3) the subject matter of the complaint;

    (4) the name of each person contacted in relation to
the complaint;

    (5) a summary of the results of the review or
investigation of the complaint; and

    (6) an explanation of the reason the file was closed,
if the board closed the file without taking action other than to
investigate the complaint.

(c) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(d) The [(b) If a written complaint relating to a license holder is filed with the board, the] board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

SECTION 21. Subchapter F, Chapter 1001, Occupations Code, is amended by adding Sections 1001.254 and 1001.255 to read as follows:

Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS.

(a) The board shall develop and maintain a complaint tracking system to monitor the processing of complaints filed with the board.

(b) The board shall include with the board's annual financial report under Section 2101.011, Government Code, a statistical analysis of the complaints filed with the board during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by board staff;

(4) the number of complaints filed by persons other
than board staff;

(5) the average length of time required to resolve a complaint;

(6) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action, the disciplinary action taken, and whether the disciplinary action taken was imposed by stipulation, agreed settlement, consent order, default, or order following a contested case hearing; and

(7) the number of complaints filed that are unresolved, the number of those complaints filed by board staff, the number of those complaints filed by persons other than board staff, and the average length of time that the unresolved complaints have been on file.

Sec. 1001.255. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

SECTION 22. Section 1001.301, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsections (f) and (g) to read as follows:

(b) Except as provided by Subsection (f), a [A] person may not, unless the person holds a license issued under this chapter, directly or indirectly use or cause to be used as a professional,
business, or commercial identification, title, name, representation, claim, asset, or means of advantage or benefit any of, or a variation or abbreviation of, the following terms:

(1) "engineer";
(2) "professional engineer";
(3) "licensed engineer";
(4) "registered engineer";
(5) "registered professional engineer";
(6) "licensed professional engineer"; or
(7) "engineered."

(c) Except as provided by Subsection (f), a [A] person may not directly or indirectly use or cause to be used an abbreviation, word, symbol, slogan, or sign that tends or is likely to create an impression with the public that the person is qualified or authorized to engage in the practice of engineering unless the person holds a license and is practicing under this chapter.

(f) Notwithstanding the other provisions of this chapter, a regular employee of a business entity who is engaged in engineering activities but is exempt from the licensing requirements of this chapter under Sections 1001.057 or 1001.058 is not prohibited from using the term "engineer" on a business card, cover letter, or other form of correspondence that is made available to the public if the person does not:

(1) offer to the public to perform engineering services; or
(2) use the title in any context outside the scope of the exemption in a manner that represents an ability or willingness
to perform engineering services or make an engineering judgment
requiring a licensed professional engineer.

(g) Subsection (f) does not authorize a person to use a term
listed in Subsections (b)(2)-(6) or a variation or abbreviation of
one of those terms.

SECTION 23. Section 1001.303, Occupations Code, is amended
to read as follows:

Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant
for a license under this chapter must submit an [a--sworn]
application on a form prescribed and provided by the board.

(b) The application must contain:

(1) personal information about the applicant, as
required by board rule;

(2) a description of the applicant's education;

(3) a detailed summary of the applicant's actual
engineering work;

(4) a description of any engineering license or
registration previously issued to the applicant and any denial,
revocation, or suspension of an engineering license or registration
held by the applicant;

(5) a description of any criminal offense of which the
applicant has been convicted; and

(6) at least three [five] references from engineers
[individuals] having personal knowledge of the applicant's
character, reputation, [and] general suitability for a license, and
[of whom at least three must be engineers having personal knowledge
of the applicant's] engineering experience.
SECTION 24. Section 1001.304, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), and its subsequent amendments.

SECTION 25. Sections 1001.306, 1001.310, and 1001.311, Occupations Code, are amended to read as follows:

Sec. 1001.306. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the board shall notify the person of the results of the examination not later than the 30th day after the date the examination is administered.

(a-1) If the examination is graded or reviewed by a testing service,

(1) the board shall notify the person of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and

(2) if[—]

[(b) If the] notice of the examination results of an examination will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day.

(b) The board may require a testing service to notify a person of the results of the person's examination.

(c) If requested in writing by a person who fails a
licensing examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The board by rule may adopt standards and procedures for issuing a temporary or provisional license under this chapter.

(b) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as an engineer for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to the practice of engineering; and

(3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(c) The board may waive the requirement of Subsection (b)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be
licensed under Section 1001.311(b); or

(2) the provisional license holder meets the following requirements:

(A) the provisional license holder passes an examination that tests the provisional license holder's knowledge and understanding of the laws and rules relating to the practice of engineering in this state;

(B) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter; and

(C) the provisional license holder satisfies any other licensing requirements under this chapter.

(e) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(f) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person who holds a license or certificate of registration issued by another state or a foreign country may apply for a license in this state.

(b) The board may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license
issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

SECTION 26. Subsection (b), Section 1001.351, Occupations Code, is amended to read as follows:

(b) The board by rule may adopt a system under which licenses and registrations expire on various dates during the year. For the year in which the license or registration expiration date is changed, the board shall prorate license or registration fees on a monthly basis so that each license or registration holder pays only that portion of the license or registration fee that is allocable to the number of months during which the license or registration is valid. On renewal of the license or registration on the new expiration date, the total license or registration renewal fee is payable [and shall adjust renewal dates accordingly].

SECTION 27. Sections 1001.352 and 1001.353, Occupations Code, are amended to read as follows:

Sec. 1001.352. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day [one month] before the [expiration] date [of] a person's license is scheduled to expire, the board shall send [mail to the person at the last address the person provided to the board] written notice of the impending [licensee] expiration to the person at the person's last known address according to the records of the board [date and the amount of the annual renewal fee for the license].

Sec. 1001.353. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the
expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally [the] required renewal fee and any applicable increase in fees as required by Section 1001.206 [a penalty fee set by the board].

(c) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee and any applicable increase in fees as required by Section 1001.206 for each delinquent year or part of a year [all unpaid renewal fees and a penalty fee set by the board].

(d) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license [that are in effect at the time the person applies].

SECTION 28. Subchapter H, Chapter 1001, Occupations Code, is amended by adding Sections 1001.354 and 1001.355 to read as follows:

Sec. 1001.354. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination.
(b) The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

Sec. 1001.355. INACTIVE STATUS. (a) An engineer may request inactive status at any time before the expiration date of the person's license. A license holder on inactive status may not practice engineering.

(b) A license holder on inactive status must pay an annual fee set by the board.

(c) A license holder on inactive status is not required to:

(1) comply with the continuing education requirements adopted by the board; or

(2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder on inactive status must:

(1) file with the board a written notice requesting reinstatement to active status;

(2) pay the fee for the annual renewal of the license and the fee increase required by Section 1001.206; and

(3) provide evidence satisfactory to the board that the person has complied with the continuing education requirements adopted by the board.

SECTION 29. Section 1001.405, Occupations Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding the other provisions of this section, the board by rule may provide that a business entity that has not previously registered with the board and that is engaged in the
practice of engineering in violation of Subsection (b) is not
subject to disciplinary action for the violation if the business
entity registers with the board not later than the 30th day after
the date the board gives written notice to the business entity of
the registration requirement. This subsection does not apply to a
business entity whose registration has expired.

SECTION 30. Section 1001.406, Occupations Code, is amended
to read as follows:

Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a
[public] university recognized by the American Association of
Colleges and Universities who has a degree from an engineering
program accredited by the Accreditation Board for Engineering and
Technology (ABET) has the right to:

(1) disclose any college degree received by the
person; and

(2) use the term "graduate engineer" on the person's
stationery or business cards or in personal communications of any
character.

(b) A graduate engineer who is employed in a firm registered
under this chapter and who is working under the direct supervision
of a licensed professional engineer may use the term "engineer" on
the person's stationery or business cards or in personal
communications of any character.

SECTION 31. Subchapter J, Chapter 1001, Occupations Code,
is amended by adding Sections 1001.4525, 1001.4526, and 1001.4527
to read as follows:

Sec. 1001.4525. PROBATION. (a) If a person's license
suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are
the basis of the probation;

(2) limit practice to the areas prescribed by the
board; or

(3) continue or review professional education until
the person attains a degree of skill satisfactory to the board in
those areas that are the basis of the probation.

(b) The board by rule shall adopt written guidelines to
ensure that probation is administered consistently.

Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection
(b), the board may order a person licensed or registered under this
chapter to pay restitution to a consumer as provided in an agreement
resulting from an informal settlement conference instead of or in
addition to imposing an administrative penalty under this chapter.

(b) The amount of restitution ordered as provided in an
agreement resulting from an informal settlement conference may not
exceed the amount the consumer paid to the person for a service
regulated by this chapter. The board may not require payment of
other damages or estimate harm in a restitution order.

Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board
member who participated in the investigation of a complaint or in
informal settlement negotiations regarding the complaint:

(1) may not participate in the discussion of or vote on
the matter at a board meeting related to the complaint; and

(2) shall state at the meeting why the member is
prohibited from participating in the discussion of or voting on the
matter.

(b) A statement under Subsection (a) (2) shall be entered into the minutes of the meeting.

SECTION 32. Chapter 1001, Occupations Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. ADVISORY OPINIONS

Sec. 1001.601. BOARD ADVISORY OPINIONS. (a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion about an interpretation of this chapter or the application of this chapter to a person in regard to a specified existing or hypothetical factual situation. The board shall respond to requests for opinions within 180 days or affirmatively state its reason for not responding to the request.

Sec. 1001.602. MAINTENANCE OF OPINIONS; SUMMARY. The board shall:

(1) number and classify each advisory opinion issued under this subchapter; and

(2) annually compile a summary of the opinions in a single reference document that is available on the Internet.

Sec. 1001.603. ATTORNEY GENERAL'S OPINIONS. The authority of the board to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

Sec. 1001.604. RELIANCE ON ADVISORY OPINION. It is a defense to prosecution or to imposition of a civil penalty that a person reasonably relied on a written advisory opinion of the board relating to:
(1) the provision of the law the person is alleged to have violated; or

(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

SECTION 33. (a) Not later than January 1, 2004, the Texas Board of Professional Engineers shall adopt the rules required by Section 1001.2035, Occupations Code, as added by this Act.

(b) Not later than September 1, 2005, the Texas Board of Professional Engineers shall adopt the written guidelines required by Section 1001.4525, Occupations Code, as added by this Act.

(c) The Texas Board of Professional Engineers is not required to issue an advisory opinion under Subchapter M, Chapter 1001, Occupations Code, as added by this Act, before January 1, 2004.

SECTION 34. (a) This Act takes effect September 1, 2003.

(b) The changes in law made by Sections 1001.102 and 1001.103, Occupations Code, as amended by this Act, and Section 1001.112, Occupations Code, as added by this Act, in the prohibitions on or qualifications of members of the Texas Board of Professional Engineers do not affect the entitlement of a member serving on the Texas Board of Professional Engineers immediately before September 1, 2003, to continue to serve and function as a member of the Texas Board of Professional Engineers for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2003.

(c) The change in law made by Section 1001.108, Occupations Code, as amended by this Act, does not affect the entitlement of a
person who was serving as presiding officer of the Texas Board of Professional Engineers immediately before September 1, 2003, to continue to serve and function in that capacity for the remainder of the person's term as presiding officer. That change in law applies only to the designation of a presiding officer of the board after that person's term as presiding officer expires.

(d) The changes in law made by this Act to Chapter 1001, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Professional Engineers on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.
I hereby certify that S.B. No. 277 passed the Senate on April 22, 2003, by a viva-voce vote; May 21, 2003, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 24, 2003, House granted request of the Senate; May 31, 2003, Senate adopted Conference Committee Report by a viva-voce vote.

I hereby certify that S.B. No. 277 passed the House, with amendments, on May 8, 2003, by a non-record vote; May 24, 2003, House granted request of the Senate for appointment of Conference Committee; May 31, 2003, House adopted Conference Committee Report by a non-record vote.

Approved:

20 JUN'03

RICK PERRY
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
JUN 2 O'CLOCK

S.B. NO. 277