

BILL ANALYSIS

Senate Research Center

C.S.S.B. 623
By: Ratliff
State Affairs
3-26-97
Committee Report (Substituted)

DIGEST

Currently, engineers in the State of Texas are required to be registered with the State Board of Registration for Professional Engineers. The board has not undergone sunset review since the early 1980s and is scheduled for sunset review in 2003.

C.S.S.B. 623 is a "cleanup" bill designed to update the definition and allowable enforcement action of the Texas Engineering Practice Act. These changes are proposed to make the current statute more consistent with the national model law of the National Council of Examiners for Engineering and Surveying and the practices of other state agencies, which includes instituting administrative penalties for certain violations.

PURPOSE

As proposed, C.S.S.B. 623 sets forth the procedures for the regulation of the practice of engineering and provides certain penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the the Texas Board of Professional Engineers in SECTIONS 11, 12, 21, 23, 24, and 25 (Sections 12(e), 13(e), 20A, 22(e), 22A(c), and 22C(d) Article 3271a, V.T.C.S.) of this bill

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.1, Article 3271a, V.T.C.S. (The Texas Engineering Practice Act), to provide that the privilege of practicing engineering be entrusted only to those persons duly licensed and practicing, rather than licensed, registered, and practicing, under the provisions of this Act. Makes a conforming change.

SECTION 2. Amends Section 1.2, Article 3271a, V.T.C.S., to make conforming changes.

SECTION 3. Amends Section 1.3, Article 3271a, V.T.C.S., to make a conforming change.

SECTION 4. Amends Sections 2(1), (3) and (4), Article 3271a, V.T.C.S., to redefine "board," "engineer," and "practice of engineering." Defines "licensed engineer," "design coordination," and "engineering surveys."

SECTION 5. Amends Section 3, Article 3271a, V.T.C.S., as follows:

Sec. 3. New heading: TEXAS BOARD OF PROFESSIONAL ENGINEERS--APPOINTMENT OF MEMBERS--TERMS. Creates the Texas Board of Professional Engineers (board), rather than a State Board of Registration for Professional Engineers, which is required to administer the provisions of this Act.

SECTION 6. Amends Section 3a, Article 3271a, V.T.C.S., to make a conforming change.

SECTION 7. Amends Section 4(d), Article 3271a, V.T.C.S., to authorize the board by majority vote to limit the participation of general public members in the evaluation of applications for licensure,

rather than registration, except in certain situations.

SECTION 8. Amends Sections 8(a) and (b), Article 3271a, to provide that the violation by any engineer of any provision of this Act or any rule or regulation of the board is required to be sufficient cause to suspend or revoke the license, rather than certificate of registration, of or to issue a formal or informal reprimand to such engineer. Requires the board to have the right to institute an action in its own name in a district court of Travis County against any individual person, firm, partnership, or other entity to enjoin any violation of any provision of this Act or any rule or regulation of the board and certain other conditions. Prohibits the board from promulgating rules restricting advertising by a license holder, rather than registrants, except to prohibit false, misleading, or deceptive practices by the license holder.

SECTION 9. Amends Section 10(a), Article 3271a, V.T.C.S., to make conforming changes.

SECTION 10. Amends Section 11, Article 3271a, V.T.C.S., as follows:

Sec. 11. New heading: ROSTER OF LICENSED ENGINEERS. Makes conforming changes.

SECTION 11. Amends Section 12, Article 3271a, V.T.C.S., as follows:

Sec. 12. New heading: GENERAL REQUIREMENTS FOR LICENSURE. Authorizes the board to adopt rules providing for the waiver of all or part of the examination requirement under this Act to permit the issuance or reissuance of a license to an applicant. Requires the board to find that the applicant possesses sufficient qualifications to justify the waiver of all or part of the examination requirement and that issuance or reissuance of the license to the applicant does not pose a threat to the public health, safety, or welfare before the board is authorized to waive the requirement. Makes conforming changes.

SECTION 12. Amends Sections 13, Article 3271a, V.T.C.S., by amending Subsection (a), (b), and (d) and by adding Subsection (e), to require the board to establish reasonable and necessary fees for the administration of this Act in an amount not to exceed \$120, rather than \$100, for an examination fee, among other fees. Authorizes the board, by rule, to adopt reduced licensure and annual renewal fees for licensed engineers who are disabled and who are not currently engaged in the active practice of engineering. Defines "disabled." Requires a licensed engineer entitled to reduced fees under this subsection because the engineer is not engaged in the active practice of engineering to notify the board of the resumption of active practice not later than a certain date. Makes conforming changes.

SECTION 13. Amends Sections 13B(a) and (c), Article 3271a, V.T.C.S., to provide that Subsection (a) does not apply to a licensed professional engineer who is disabled for purposes of Section 13(e) of this Act. Makes conforming changes.

SECTION 14. Amends Section 14(a), Article 3271a, V.T.C.S., to make a conforming change.

SECTION 15. Amends Section 15, Article 3271a, V.T.C.S., as follows:

Sec. 15. New heading: LICENSES, SEALS. Requires each license holder upon licensure to obtain a seal of the design authorized by the board, bearing the license holder's name and the legend "Licensed Professional Engineer" or "Registered Professional Engineer." Makes conforming changes.

SECTION 16. Amends Section 16, Article 3271a, V.T.C.S., to make conforming changes.

SECTION 17. Amends Section 16.1, Article 3271a, V.T.C.S., to make conforming changes.

SECTION 18. Amends Section 17, Article 3271a, V.T.C.S., to make a conforming change.

SECTION 19. Amends Section 18, Article 3271a, V.T.C.S., to prohibit any person, persons, or business entity from holding itself out to the public or any member thereof as being engaged in the

practice of engineering unless any and all services are performed or done by a licensed engineer or under the direct supervision of a licensed engineer who is a regular full-time employee of the firm, partnership, association, corporation, or other business entity. Provides that this section does not prohibit a licensed engineer from performing engineering services on a part-time basis. Makes conforming changes.

SECTION 20. Amends Section 19(a), Article 3271a, V.T.C.S., to make a conforming change.

SECTION 21. Amends Section 20, Article 3271a, V.T.C.S., to delete provisions requiring certain persons to be exempted from the licensure provisions of this Act. Provides that this Act or a rule adopted under this Act does not prevent, limit, or restrict a person licensed as an architect, landscape architect, or interior designer under the laws of this state from performing an act, service, or work that is within the definitions of the person's practice as an architect under Article 248a, V.T.C.S., as a landscape architect under Article 249c, V.T.C.S., or as an interior designer under Article 249e, V.T.C.S. Provides that this Act does not apply to a regular full-time employee of a private corporation or other private business entity who is engaged in certain practices in accordance with plans and specifications that bear the seal of a licensed engineer. Provides that this exemption includes the use of job titles and personnel classifications by the employee that are not in connection with any offer of engineering services to the public. Makes conforming and nonsubstantive changes.

SECTION 22. Amends Article 3271a, V.T.C.S., by adding Section 20A, as follows:

Sec. 20A. TEMPORARY OR PROVISIONAL LICENSE. Authorizes the board to adopt rules providing standards and procedures for the issuance of a temporary or provisional license under this Act.

SECTION 23. Amends Section 21, Article 3271a, V.T.C.S., as follows:

Sec. 21. New heading: LICENSURE BY NONRESIDENTS. Makes conforming changes.

SECTION 24. Amends Section 22, Article 3271a, V.T.C.S., as follows:

Sec. 22. New heading: DENIAL, REVOCATION, SUSPENSION, PROBATION, REPRIMAND, RE-ISSUANCE, AND REFUSAL OF LICENSE; STATUS REVIEW. Authorizes the board to adopt rules permitting the board to review the status of a license holder who the board believes may have been issued a license through fraud or error or who may constitute a threat to the public health, safety, or welfare. Authorizes the board to suspend or revoke a license held by a person whose status is reviewed under this subsection. Makes conforming and standard recodification changes.

SECTION 25. Amends Section 22A, Article 3271a, V.T.C.S., to require the board to adopt rules that permit the board to receive and investigate confidential complaints against license holders or any other person who may have violated this Act. Require the board to maintain the confidentiality of the complaint during the investigation of the complaint. Requires the board to protect the anonymity of a person who makes an anonymous complaint and maintain the confidentiality of the complaint during the investigation of the complaint.

SECTION 26. Amends Article 3271a, V.T.C.S., by adding Section 22C, as follows:

Sec. 22C. Authorizes the board to impose an administrative penalty against a person licensed under this Act or any other person or entity that violates this Act or a rule or order adopted under this Act. Authorizes the Board to include in the amount of the administrative penalty the actual costs of investigating and prosecuting the violation. Sets forth the requirements for the amount of the penalty. Requires the board to adopt rules of procedure for the assessment of an administrative penalty by the board. Requires the rules adopted under this section to conform to the requirements of Chapter 2001, Government Code. Authorizes a person who acts under Subsection (e)(3), within the 30-day period, to stay enforcement of the penalty or to request the court to stay the enforcement of the penalty by performing certain actions. Sets forth the procedures for enforcement and collection of a penalty under

this section. Requires a penalty collected under this section to be remitted to the comptroller for deposit in the general revenue fund, except that a certain portion of the penalty is required to be remitted to the board as reimbursement for performance of the board's regulatory functions. Provides that proceedings under this section are subject to Chapter 2001, Government Code.

- SECTION 27. Amends Section 23(a), Article 3271a, V.T.C.S., to make conforming changes.
- SECTION 28. Amends Section 26, Article 3271a, V.T.C.S., to make conforming changes.
- SECTION 29. Makes application of this Act prospective.
- SECTION 30. Makes application of this Act prospective.
- SECTION 31. Effective date: September 1, 1997.
Makes application of this Act prospective.
- SECTION 32. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 4.

Amends Section 2(4), Article 3271a, V.T.C.S., to redefine "practice of engineering" and "design coordinator."

SECTION 8.

Amends Section 8(a), Article 3271a, V.T.C.S., to require the board to have the right to institute an action in its own name in a district court of Travis County against any individual person, firm, partnership, or other entity to enjoin any violation of any provision of this Act or any rule of regulation of the board and certain other conditions.

SECTION 13.

Amends Section 13B(c), to provide that Subsection (a) does not apply to a licensed professional engineer who meets the qualifications for an exemption from licensure under Sections 20(e) and (f), rather than Sections 20(g) and (h), of this Act but does not claim that exemption.

SECTION 21.

Amends Section 20, Article 3271a, V.T.C.S., to provide that this Act or a rule adopted under this Act does not prevent, limit, or restrict a person licensed as an architect, landscape architect, or interior designer under the laws of this state from performing an act, service, or work that is within the definitions of the person's practice as an architect under Article 248a, V.T.C.S., as a landscape architect under Article 249c, V.T.C.S., or as an interior designer under Article 249e, V.T.C.S. Provides that this Act does not apply to a regular full-time employee of a private corporation or other private business entity who is engaged in certain practices in accordance with plans and specifications that bear the seal of a licensed engineer. Provides that this exemption includes the use of job titles and personnel classifications by the employee that are not in connection with any offer of engineering services to the public.

SECTION 25.

Amends Section 22A, Article 3271a, V.T.C.S., to delete the word anonymous from the

description of the confidential complaints against license holder or any other person who may have violated this Act. Requires the board to maintain the confidentiality of the complaint during the investigation of the complaint.

Deletes proposed SECTIONS 29 and 30, renumbers the following sections, and adds new SECTION 30 and 31 to make application of this Act prospective.

SECTION 31.

Adds new SECTION 32 to provide that Act this takes effect September 1, 1997. Makes application of this Act prospective.