Coping With The Texas Engineering Practice Act

The Texas Engineering Practice Act (Texas Occupations Code §§1001.001, et seq.) (“Act”), governs the livelihood of professional engineers in Texas. The Act defines the practice of engineering so broadly that it includes virtually anything requiring engineering judgment. The Act is intended to protect public health, safety, and welfare, and to fix responsibility for engineering work or services. The Act makes it clear that the practice of engineering in Texas is a privilege that may be suspended or revoked.

**Exceptions & Exclusions**

Despite its broad reach, the Act has exceptions and exclusions. The Act does not prohibit a person from testifying or providing evidence before an administrative or judicial tribunal regarding the negligence, incompetency or misconduct of an engineer. Also, the Act does not apply to “a person who does not offer to the public to perform engineering services.” For example, the employees or subordinates of an engineer are exempt from the Act’s licensing requirements if the person’s practice does not include responsible charge of design or supervision. Small public works projects are exempt. County road maintenance or improvements are exempt. Federal officers and employees are exempt. Persons installing, operating, repairing or servicing mechanical, electrical or other equipment are exempt as long as they do not sign an engineering plan or specification or use the term “engineer” or “engineering.”

Persons who do not offer engineering services to the public may without violating the Act erect, construct, enlarge, alter or repair, or prepare drawings and specifications for a private dwelling or apartments not exceeding eight units for each one-story building or four units for each two-story building. Persons employed by private corporations do not violate the Act by making reasonable modifications to existing buildings, facilities, or other real property fixtures provided that they do not represent that they are legally qualified to practice engineering.

Architects, landscape architects, and interior designers, each licensed under other Texas laws, are exempt from the Act.

(Continued as “The Act” on page 2)
If caught, the Board may allow an unregistered entity to register without discipline within thirty days of the Board’s notice to register.

The state or a political subdivision may not construct a public work involving engineering and public health, welfare, or safety unless: an engineer has prepared engineering plans, specifications, and estimates; and engineering construction will be performed under an engineer’s direct supervision.

-Board Powers

The Board may in the appropriate case issue any of the following disciplinary measures: (1) deny an application for a license; (2) revoke, suspend, or refuse to renew a license; (3) probate the suspension of a license; or (4) formally or informally reprimand a license holder.

A person is subject to disciplinary action for: (1) a violation of the Act; (2) fraud or deceit in obtaining a license; (3) retaliation by an applicant against an individual who has served as a reference for that applicant; (4) gross negligence, incompetency, or misconduct in the practice of engineering; or (5) failure to timely provide plans or specifications to the Texas Department of Licensing and Regulation.

Upon suspension or probation, the Board may require the person to: (1) report regularly on relevant matters; (2) limit practice to Board prescribed areas; or (3) undertake specified professional education.

The Disciplinary Actions

The Board may suspend or revoke a license while the status is reviewed.

A person affected by Board action is entitled to a hearing. A person whose license has been revoked may file suit to annul or vacate the Board’s order in district court where the person resides or where allegedly offending conduct has occurred.

The Board may impose an administrative penalty on violators. An administrative penalty may not exceed $3,000 for each violation. However, each day a violation continues or occurs is a separate violation. The amount of the penalty is based on a number of factors including the seriousness of the violation; economic harm to property or the environment; the history of previous violations; the amount necessary to deter a future violation; and efforts or resistance to

The Editor’s Corner

The Construction Report is published periodically by Quilling, Selander, Cummiskey & Lownds, P.C., to highlight construction matters of interest to at least the Editor, Brian W. Erikson. The information we provide is a community service and is not intended to displace the legal judgment of real (expensive) attorneys. We invite your comments. Write us c/o Brian W. Erikson, 2001 Bryan Street, Suite 1800, Dallas, Texas 75201. Call us at (214) 880-1844.

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The Board may order a violator to pay restitution to an aggrieved consumer, but not more than the amount paid for engineering services. The order cannot include other damages or estimated harm.

The Board may review a license holder’s status if the Board believes that the license: (1) may have been issued through fraud or error; or (2) may threaten the public health, safety, or welfare.

The Editor’s Corner (Continued as “The Act” on page 3)
efforts to correct the violation.

The Board may assess within the penalty the actual costs of investigating and prosecuting the violation. The person fined has 30 days to pay and/or seek judicial review.

If the person does not pay the administrative penalty, and enforcement is not otherwise stayed, the Board may refer the matter to the Texas Attorney General for collection. The Texas Attorney General is the Board’s legal advisor.

A court may uphold or reduce the amount of the administrative penalty, and order an appropriate refund or otherwise issue equitable relief.

The Board may sue to enjoin a person from violating the Act or the Board’s rules. Suit must be filed in Travis County district court.

A person commits a Class A misdemeanor and criminal penalties may be imposed if the person: (1) practices engineering without being licensed or exempted from the Act’s licensing requirement; (2) violates the Act; (3) presents or attempts to use as the person’s own the license or seal of another; or (4) gives false evidence of any kind to the Board or a Board member in obtaining a license.

Public officials are required to report violations of the Act to the proper authorities.

The Board is required to compile an annual summary of its opinions in a single reference document available on the Internet. The posting lists the results of formal investigations. Having now read this report, hopefully your name will not be among those disciplined.

A jury consists of twelve persons chosen to decide who has the better lawyer.

- Robert Frost (1874-1963)
## Rules for the Texas Board of Professional Engineers

The Texas Board of Professional Engineers has rules to implement the Texas Engineering Practice Act.

Chapter 139 lists the Enforcement Rules, and details the complaint filing process. A complaint may be filed at the Board’s website: [http://www.tbpe.state.tx.us](http://www.tbpe.state.tx.us).

Upon receipt, the Board assigns a complaint number, and reviews the complaint for sufficiency. If the Board determines that a potential violation exists, the Board staff proceeds with an investigation. If the Board staff concludes that the complaint lacks merit, the Board staff recommends that the executive director close the investigation and dismiss the complaint. If the executive director concurs, the Board notifies the complainant, and closes the investigation.

If a potential violation exists, and the Board has authority and jurisdiction over the complaint, the Board staff initiates disciplinary proceedings against the violator. In processing complaints, the Board’s highest priority is reserved for those matters that could potentially harm the public. Such complaints include those alleging incompetence, gross negligence, plan stamping, or practicing without a license. The Board staff is required to return a preliminary determination to the executive director and complainant within 45 days of receiving a high priority complaint.

Rule 139.17 concerns complaint investigations. The rule requires the Board staff to investigate complaints and provides authority to subpoena information. The rule allows the respondent an opportunity to respond to the complaint. If the Board intends to dismiss the complaint, the Board staff will inform the complainant of the rationale prior to reporting the dismissal to the Board. A complaint withdrawal does not terminate or disrupt an ongoing investigation. At least quarterly during the complaint investigation, the Board is required to notify the parties involved as to the complaint’s status, unless notice would jeopardize an undercover investigation.

Rule 139.19 concerns the final resolution of a complaint. Once an investigation is completed, the

(Continued as “Board Rules” on page 3)