

THE STATE OF TEXAS

TEXAS ENGINEERING PRACTICE ACT

AND RULES CONCERNING

THE PRACTICE OF ENGINEERING

AND

PROFESSIONAL ENGINEERING LICENSURE



TEXAS BOARD OF PROFESSIONAL ENGINEERS

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AUSTIN, TEXAS 78741-3702

GUIDE TO PERTINENT INFORMATION

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The Board's e-mail address is peboard@tbpe.state.tx.us

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Note: Rules changed since 01-01-2000 are marked with a solid bar in the margin.

The Texas Engineering Practice Act

(Texas Civil Statutes, Article 3271a)

Senate Bill 74, Acts Regular Session, 45th Texas Legislature
Senate Bill 81, Acts Regular Session, 57th Texas Legislature
Senate Bill 74, Acts Regular Session, 59th Texas Legislature
Senate Bill 512, Acts Regular Session, 59th Texas Legislature
Senate Bill 831, Acts Regular Session, 63rd Texas Legislature
House Bill 532, Acts Regular Session, 64th Texas Legislature
Senate Bill 641, Acts Regular Session, 65th Texas Legislature
Senate Bill 54, Acts Regular Session, 65th Texas Legislature
Senate Bill 402, Acts Regular Session, 67th Texas Legislature
Senate Bill 813, Acts Regular Session, 69th Texas Legislature
Senate Bill 604, Acts Regular Session, 70th Texas Legislature
Senate Bill 605, Acts Regular Session, 70th Texas Legislature
House Bill 61, Acts 2nd Called Session, 70th Texas Legislature
Senate Bill 737, Acts Regular Session, 71st Texas Legislature
House Bill 180, Acts Regular Session, 71st Texas Legislature
House Bill 1531, Acts Regular Session, 71st Texas Legislature
House Bill 2519, Acts Regular Session, 71st Texas Legislature
House Bill 11, Acts 1st Called Session, 72nd Texas Legislature
House Bill 222, Acts 1st Called Session, 72nd Texas Legislature
House Bill 39, Acts 2nd Called Session, 72nd Texas Legislature
Senate Bill 842, Acts Regular Session, 73rd Texas Legislature
Senate Bill 623, Acts Regular Session, 75th Texas Legislature
House Bill 1544, Acts Regular Session, 76th Texas Legislature
Senate Bill 1797, Acts Regular Session, 77th Texas Legislature

Section 1. This Act shall be known and may be cited as "The Texas Engineering Practice Act."

Section 1.1. In recognition of the vital impact which the rapid advance of knowledge of the mathematical, physical and engineering sciences as applied in the practice of engineering is having upon the lives, property, economy and security of our people and the national defense, it is the intent of the Legislature, in order to protect the public health, safety and welfare, that the privilege of practicing engineering be entrusted only to those persons duly licensed and practicing under the provisions of this Act and that there be strict compliance with and enforcement of all the provisions of this Act, and, in order that the state and members of the public may be able to identify those duly authorized to practice engineering in this state and fix responsibility for work done or services or acts performed in the practice of engineering, only licensed persons shall practice, offer or attempt to practice engineering or call themselves or be otherwise designated as any kind of an "engineer" or in any manner make use of the term "engineer" as a professional, business or commercial identification, title, name, representation, claim or asset, and all the provisions of this Act shall be liberally construed and applied to carry out such legislative intent. In furtherance of such intent and purpose of the Legislature, the practice of engineering is hereby declared a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of the other learned professions in this state. There is specifically reserved to graduates of all public universities recognized by the American Association of Colleges and Universities the right to disclose any college degrees received by such individual and use the word Graduate Engineer on his stationery, business cards, and personal communications of any character.

Section 1.2. PROHIBITED ACTS AND CONDUCT.

- (a) From and after the effective date of this Act, unless duly licensed in accordance with the provisions of this Act, no person in this state shall:
- (1) Practice, continue to practice, offer or attempt to practice engineering or any branch or part thereof.
 - (2) Directly or indirectly, employ, use, cause to be used or make use of any of the following terms or any combinations, variations or abbreviations thereof as a professional, business or commercial identification, title, name, representation, claim, asset or means of advantage or benefit: "engineer," "professional engineer," "licensed engineer," "registered engineer," "registered professional engineer," "licensed professional engineer," "engineered."
 - (3) Directly or indirectly, employ, use, cause to be used or make use of any letter, abbreviation, word, symbol, slogan, sign or any combinations or variations thereof, which in any manner whatsoever tends or is likely to create any impression with the public or any member thereof that any person is qualified or authorized to practice engineering unless such person is duly licensed under and practicing in accordance with the

provisions of this Act.

- (4) Receive any fee or compensation or the promise of any fee or compensation for performing, offering or attempting to perform any service, work, act or thing which is any part of the practice of engineering as defined by this Act.
 - (b) Within the intent and meaning and for all purposes of this Act, any person, sole proprietorship, firm, partnership, association or corporation which shall do, offer or attempt to do any one or more of the acts or things set forth in Subsection (a) of this section shall be conclusively presumed and regarded as engaged in the practice of engineering.

Section 1.3. Every person licensed by the Board to engage in the practice of engineering shall in the professional use of his name on any sign, directory, listing, contract, document, pamphlet, stationery, letterhead, advertisement, signature, or any other such means of professional identification, written or printed, use one of the following legally required identifications: Engineer, Professional Engineer or P.E.

Section 2. DEFINITIONS. As used in this Act the term:

- (1) "Board" shall mean the Texas Board of Professional Engineers, provided for by this Act.
- (2) "Certificate of Registration" shall mean a license issued by the State of Texas granting its licensee the privilege of practicing engineering in accordance with the provisions of this Act.
- (3) "Engineer," "professional engineer," "registered engineer," "registered professional engineer," "licensed professional engineer" or "licensed engineer" shall mean a person who has been duly licensed by the Board to engage in the practice of engineering in this state.
- (4) "Practice of engineering" or "practice of professional engineering" shall mean any service or creative work, either public or private, the adequate performance of which requires engineering education, training or experience in the application of special knowledge or judgment of the mathematical, physical, or engineering sciences to such services or creative work.

To the extent the following services or types of creative work meet this definition, the term includes consultation, investigation, evaluation, analysis, planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction and other engineering uses, and mapping; design, conceptual design, or conceptual design coordination of engineering works and systems; development or optimization of plans and specifications for engineering works and systems; planning the use or alteration of land and water or the design or analysis of works or systems for the use or alteration of land and water; performing engineering surveys and studies; engineering for construction, alteration, or repair of real property; engineering for preparation of operating and maintenance manuals; and engineering for review of the construction or installation of engineered works to monitor compliance with drawings and specifications.

The activities included in the practice of engineering include services, designs, analyses, or other work performed for a public or private entity in connection with utilities, structures, buildings, machines, equipment, processes, systems, works, projects, and industrial or consumer products or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature and include other professional services necessary for the planning, progress, and completion of any engineering service.

In this subdivision:

- (A) "Design coordination" includes the review and coordination of technical submissions prepared by others, including the work of other professionals working with or under the direction of an engineer with due professional regard for the abilities of all professional parties involved in a multidisciplinary effort.
- (B) "Engineering surveys" includes all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of an engineered project, but does not include the surveying of real property and other activities regulated under the Professional Land Surveying Practices Act (Article 5282c, Vernon's Texas Civil Statutes).
- (5) "Practice engineering" or "practicing engineering" shall mean performing or doing, or offering or attempting to do or perform any service, work, act or thing within the scope of the practice of engineering.

Section 3. TEXAS BOARD OF PROFESSIONAL ENGINEERS—APPOINTMENT OF MEMBERS—TERMS. The Texas Board of Professional Engineers is hereby created whose duty it shall be to administer the provisions of this Act. The Board shall consist of six (6) professional engineers and three (3) representatives of the general public, who shall be appointed by the Governor of the State, without regard to the race, creed, sex, religion, or national origin of the appointees and with the advice and consent of the Senate. At the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the State and he shall serve for a term of six (6) years or until his successor shall be appointed and qualified. Before entering upon the duties of his office each member of the Board shall take the Constitutional Oath of office and the same shall be filed with the Secretary of State.

Section 3a. SUNSET PROVISION. 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 Act expires September 1, 2003.

Section 4. QUALIFICATIONS OF MEMBERS OF BOARD.

- (a) Each professional engineer member of the Board shall be a citizen of the United States and a resident of this State for a period of 10 years prior to appointment, and shall have been engaged in the practice of the profession of engineering for at least 10 years, two years of which may be

credited for graduation from an approved engineering school. Responsible charge of engineering teaching and the teaching of engineering shall be considered as the practice of professional engineering as defined by this Act for the purposes of this section and for all other purposes in regard to the administration and enforcement of this Act. A person is eligible for appointment as a public member if the person and the person's spouse:

- (1) are not licensed by an occupational regulatory agency in the field of engineering;
 - (2) are not employed by and do not participate in the management of an agency or business entity related to the field of engineering; and
 - (3) do not have, other than as consumers, a financial interest in a business entity related to the field of engineering.
- (b) A member or employee of the Board may not be an officer, employee, or paid consultant of a trade association in the engineering industry. A member or employee of the Board may not be related within the second degree by affinity or within the second degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the regulated industry.
- (c) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the Board or act as the general counsel to the Board.
- (d) The Board by majority vote may limit the participation of general public members in the evaluations of applications for licensure except in those instances in which the evaluations take place at an official meeting of the Board.

Section 5. COMPENSATION AND EXPENSES OF BOARD MEMBERS. Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as prescribed by the General Appropriations Act. All per diem and expenses incurred hereunder shall be paid from the "Professional Engineers' Fund" as provided in this law. No money shall ever be paid for the administration of this Act from the General Funds of the State.

Section 6. REMOVAL OF MEMBERS OF BOARD-VACANCIES.

- (a) Vacancies in the membership of the Board shall be filled for the unexpired term by appointment by the Governor as provided in this Act.
- (b) It is a ground for removal from the Board if a member:
- (1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 4 of this Act for appointment to the Board;
 - (2) does not maintain during the service on the Board the qualifications required by Subsection (a) of Section 4 of this Act for appointment to the Board;
 - (3) violates a prohibition established by Subsections (b) or (c) of Section 4 of this Act; or
 - (4) does not attend at least one-half of the regularly scheduled meetings held in a calendar year, excluding meetings held while the person was not a member.
- (c) If a ground for removal of a member from the Board exists, the Board's actions taken during the existence of the ground for removal are not invalid for that reason.

Section 7. ORGANIZATION AND MEETINGS OF THE BOARD.

- (a) The Board shall hold at least two (2) regular meetings each year. Special meetings shall be held at such time as the by-laws of the Board may provide. The Board shall elect or appoint annually from its own membership the following officers: a Chairman, a Vice-Chairman, and a Secretary. A quorum of the Board shall consist of not less than five (5) members.
- (b) The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).
- (c) The director of the Board or his designee shall develop an intraagency career ladder program, one part of which shall be the intraagency posting of each job opening with the Board in the nonentry level position. The intraagency posting shall be made as least ten (10) days before any public posting is made.
- (d) The executive head of the Board or his designee shall develop a system of annual performance evaluations of the Board's employees based on measurable job tasks. Any merit pay authorized by the executive head shall be based on the system established under this subsection.

Section 8. POWERS AND DUTIES OF BOARD; VIOLATIONS OF RULES AND REGULATIONS; ACTIONS AND PROCEEDINGS.

- (a) In addition to any other powers and duties, the Board shall have the authority and power to make and enforce all rules and regulations and bylaws consistent with this Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and may establish standards of conduct and ethics for engineers in keeping with the purposes and intent of this Act and to insure strict compliance with and enforcement of this Act. The violation by any engineer of any provision of this Act or any rule or regulation of

the Board shall be a sufficient cause to suspend or revoke the license of or to issue a formal or informal reprimand to such engineer. In addition to any other action, proceeding or remedy authorized by law, the Board shall have the right to institute an action in its own name in a district court of Travis County against any individual person, sole proprietorship, firm, partnership, or other entity to enjoin any violation of any provision of this Act or any rule or regulation of the Board and in order for the Board to sustain such action it shall not be necessary to allege or prove, either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. Either party to such action may appeal to the appellate court having jurisdiction of said cause. The Board shall not be required to give any appeal bond in any cause arising under this Act. The Attorney General shall represent the Board in all actions and proceedings to enforce the provisions of this Act.

- (b) The Board may promulgate rules restricting competitive bidding. The Board may not promulgate rules restricting advertising by a license holder except to prohibit false, misleading, or deceptive practices by the license holder. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:
 - (1) restricts the person's use of any medium for advertising;
 - (2) restricts the person's personal appearance or use of his personal voice in an advertisement;
 - (3) relates to the size or duration of an advertisement by the person; or
 - (4) restricts the person's advertisement under a trade name.
- (c) The Board may recognize, prepare, or administer continuing education programs for persons regulated by the Board under this Act. Participation in the programs is voluntary.
- (d) The Board may request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for inspection and copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of alleged violations of this Act. If a person fails to comply with a subpoena issued under this subsection, the Board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the Board may be held. The court, if it determines that good cause exists for the issuance of the subpoena, shall order compliance with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as contempt.

Section 8a. In any proceeding for injunction as provided in Section 8 above the defendant may assert and prove as a complete defense to such action that he was deprived of certification by the Board by action or proceedings of the Board which were

- (1) arbitrary or capricious
- (2) contrary to legal requirements
- (3) conducted without due process of law.

Section 9. RECEIPTS AND DISBURSEMENTS. The Secretary of the Board shall receive and account for all moneys derived under the provisions of this Act, and shall pay the same weekly to the State Treasurer who shall keep such moneys in a separate fund to be known as the "Professional Engineers' Fund." Such fund shall be paid out only by warrant of the State Comptroller upon the State Treasurer, upon itemized vouchers, approved by the Chairman and attested by the Secretary of the Board. All moneys in the "Professional Engineers' Fund" are hereby specifically appropriated for the use of the Board in the administration of this Act. The Secretary of the Board shall give a surety bond to the Governor of the State of Texas in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars. The premium on said bond shall be paid out of the "Professional Engineers' Fund." The Secretary of the Board shall receive such salary as the Board shall determine in addition to the compensation and expenses provided for in this Act. The Board shall employ such clerical or other assistants as are necessary for the proper performance of its work, and may make expenditures of this fund for any purpose which in the opinion of the Board is reasonably necessary for the proper performance of its duties under this Act. Under no circumstances shall the total amount of warrants issued by the State Comptroller in payment of the expenses and compensation provided for in this Act exceed the amount of the "Professional Engineers' Fund." Provided further, that the salaries paid herein shall not be in excess of salaries paid for similar work in other departments.

Section 10. RECORDS AND REPORTS.

- (a) The Board shall keep a record of its proceedings and register of all applications for licensure, which register shall show (a) the name, age and residence of each applicant; (b) the date of application; (c) the place of business of such applicant; (d) his educational and other qualifications; (e) whether or not an examination was required; (f) whether the applicant was rejected; (g) whether a license was granted; (h) the date of the action of the Board; and (i) such other information as may be deemed necessary by the Board.

The records of the Board shall be available to the public at all times and shall be prima facie evidence of the proceedings of the Board set forth therein, and a transcript thereof, duly certified by the Secretary of the Board under Seal, shall be admissible in evidence with the same force and effect as if the original was produced.

- (b) On or before January 1 of each year, the Board shall file with the Governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the Board in the preceding year.
- (c) The financial transactions of the Board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Section 11. ENGINEER ROSTER.

- (a) The Board shall prepare and publish a roster of persons or business entities licensed, registered, certified, or enrolled by the Board. The roster shall include names, business addresses, and other identifying information required by Board Rule.
- (b) The Board shall make the roster available to the public without cost in an online computer database format.
- (c) The Board shall provide a physical copy of the roster on request and may charge a reproduction and shipping fee for providing a physical copy of the roster.

Section 12. GENERAL REQUIREMENTS FOR LICENSURE. (a) The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for licensure as a professional engineer:

- (1) graduation from an approved curriculum in engineering that is approved by the Board as of satisfactory standing, passage of the examination requirements prescribed by the Board, and a specific record of an additional four (4) years or more of active practice in engineering work, of a character satisfactory to the Board, indicating that the applicant is competent to be placed in responsible charge of such work; or
 - (2) graduation from an engineering or related science curriculum at a recognized institution of higher education, other than a curriculum approved by the Board under Subdivision (1) of this subsection, passage of the examination requirements prescribed by the Board, and a specific record of at least eight (8) years of active practice in engineering work of a character satisfactory to the Board and indicating that the applicant is competent to be placed in responsible charge of such work.
- (b) Provided, that no person shall be eligible for licensure as a professional engineer who is not of good character and reputation; and provided further, that any engineer licensed under this Act shall be eligible to hold any appointive engineering position with the State of Texas.
 - (c) In considering the qualifications of applicants, engineering teaching may not be construed as active practice in engineering work. The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as foreman or superintendent shall not be deemed to be active practice in engineering work.
 - (d) Any person having the necessary qualifications prescribed in this Act to entitle him to licensure shall be eligible for such licensure though he may not be practicing at the time of making his application.
 - (e) The Board may 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. Before the Board may waive the requirement, the Board must 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.

Section 12.1. CERTIFICATION OF ENGINEER-IN-TRAINING. (a) The term "Engineer-in-Training," as used in this Section shall mean a person who complies with the requirements for education and character, and has passed an examination in the fundamental engineering subjects, as provided in Sections 12 and 14 of this Act.

- (b) The following shall be considered as minimum evidence that the applicant is qualified for certification as an Engineer-in-Training:
 - (1) A graduate of an engineering curriculum approved by the Board as of satisfactory standing who has passed the Board's eight (8) hour written examination in the fundamentals of engineering shall be certified or enrolled as an Engineer-in-Training, if he is otherwise qualified; or
 - (2) A graduate of an engineering or related science curriculum at a recognized institution of higher education, other than a curriculum approved by the Board under Subdivision (1) of this subsection, who passes the Board's eight (8) hour written examination in the fundamentals of engineering shall be certified or enrolled as an Engineer-in-Training, if he is otherwise qualified.
- (c) The fee for Engineer-in-Training certification or enrollment shall be established by the Board and shall accompany the application.
- (d) The certification or enrollment of an Engineer-in-Training shall be valid for a period of eight (8) years.

Section 13. APPLICATIONS; FEES.

- (a) Applications for licensure shall be on forms prescribed and furnished by the Board, be sworn, and contain:
 - (1) statements showing personal information about the applicant, as required by Board rule, and describing the applicant's education;
 - (2) a detailed summary of the applicant's actual engineering work;
 - (3) a statement describing any earlier professional engineering registrations or licenses by or denials, revocations, or suspensions of professional engineering registrations or licenses of the applicant;
 - (4) a statement describing any criminal offenses of which the applicant has been convicted; and
 - (5) not less than five (5) references from individuals with personal knowledge of the applicant's character, reputation, and general suitability for licensure, of whom three (3) or more shall be licensed engineers having personal knowledge of the applicant's engineering experience.

(b) The Board shall establish reasonable and necessary fees for the administration of this Act in amounts not to exceed:

1. License fee	\$ 50
2. Annual renewal fee	75
3. Reciprocal license fee	50
4. Duplicate license	5
5. Engineer-in-training certificate	15
6. Roster of engineers	10
7. Examination fee	200
8. Registration fee for engineering firm	100

(c) The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

(d) The Board by rule may adopt reduced licensure and annual renewal fees for licensed engineers who are at least 65 years of age.

(e) The Board by rule may 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. For purposes of this subsection, an individual is "disabled" if the individual has a mental or physical impairment that substantially limits the ability of the individual to earn a living as a licensed engineer, other than an impairment caused by a current condition of addiction to the use of alcohol or an illegal drug or controlled substance. A licensed engineer entitled to reduced fees under this subsection because the engineer is not engaged in the active practice of engineering shall notify the Board of the resumption of active practice not later than the 15th day after the date the engineer resumes active practice.

Section 13B. INCREASE IN FEES.

(a) Each of the following fees imposed by or under another section of this Act is increased by \$200:

- (1) license fee;
- (2) annual renewal fee; and
- (3) reciprocal license fee.

(b) Of each fee increase collected, \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited to the credit of the general revenue fund. This subsection applies to the disposition of each fee increase regardless of any other provision of law providing for a different disposition of funds.

(c) Subsection (a) does not apply to a licensed professional engineer who:

- (1) meets the qualifications for an exemption from licensure under Section 20(a)(5) or (6) of this Act but who does not claim that exemption; or
- (2) is disabled for purposes of Section 13(e) of this Act.

Section 14. EXAMINATIONS.

(a) On payment of the examination fee, oral or written examinations shall be administered to qualified applicants at such time and place as the Board shall determine. The scope of the examinations and the methods of procedure shall be prescribed by the Board with special reference to the applicant's ability to design and supervise engineering works, which shall insure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for licensure in professional engineering. The Board may permit reexamination of an applicant on payment of an appropriate reexamination fee in an amount set by the Board.

(b) Within 30 days after the day on which an examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination within two weeks after the day that the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.

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

(d) The Board may administer written examinations for record purposes as a convenience to the public and may charge an appropriate fee.

Section 15. LICENSES, SEALS.

(a) The Board shall issue a license upon payment of the license fee as provided for in this Act, to any applicant, who, in the opinion of the Board, has satisfactorily met all the requirements of this Act. The license shall authorize the practice of professional engineering. A license shall show the full name of the license holder, shall have a serial number, and shall be signed by the Chairman and the Secretary of the Board under seal of the Board. The issuance of a license by this Board shall be evidence that the person named therein is entitled to all rights and privileges of a licensed professional engineer, while the said license remains unrevoked or unexpired.

- (b) Each license holder hereunder shall upon licensure 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." Plans, specifications, plats, and reports issued by a license holder must include the license holder's seal affixed to the document. It shall be unlawful for anyone to affix a seal on any document if the license of the license holder named thereon has expired or has been suspended or revoked, unless said license shall have been renewed or reissued.
- (c) This Act applies to all engineering practiced in this state that is not exempted under this Act. A public official of this state or of a political subdivision of this state who is charged with the enforcement of laws, ordinances, codes, or regulations that affect the practice of engineering may only accept plans, specifications, and other related documents prepared by a licensed engineer, as evidenced by the seal of the engineer. A public official shall report violations of this Act to the proper authorities.

Section 16. EXPIRATIONS AND RENEWALS.

- (a) It shall be the duty of the Board to notify every person licensed under this Act of the date of the expiration of his license and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said license to the last address provided by the license holder to the Board.
- (b) A person may renew an unexpired license by paying to the Board before the expiration date of the license the required renewal fee.
- (c) If a person's license has been expired for not longer than 90 days, the person may renew the license by paying to the Board the required renewal fee and a penalty fee as set by the Board.
- (d) If a person's license has been expired for longer than 90 days but less than two years, the person may renew the license by paying to the Board all unpaid renewal fees and a penalty fee as set by the Board.
- (e) If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license that are in effect at the time the person applies.

Section 16.1. EXPIRATION DATES OF LICENSES AND REGISTRATIONS. The board by rule may adopt a system under which licenses and registrations expire on various dates during the year, and the dates for reinstatement shall be adjusted accordingly.

Section 17. SOLE PROPRIETORSHIPS, FIRMS, PARTNERSHIPS, CORPORATIONS AND JOINT STOCK ASSOCIATIONS.

- (a) A sole proprietorship, firm, co-partnership, corporation, or joint stock association may engage in the practice of professional engineering in this State, provided:
 - (1) the entity is registered with the Board; and
 - (2) such practice is carried on by only professional engineers licensed in this State.
- (b) To be registered under this section, an entity must file an application with the Board on a form provided by the Board. In addition to any other information required by Board rule, the application must list the name and address of each:
 - (1) officer or director of the entity; and
 - (2) person licensed to practice engineering who engages in the practice of engineering on behalf of the entity.
- (c) The registration of an entity issued under this section is valid for one year and may be renewed by filing an updated application under Subsection (b) of this section.

Section 18.

- (a) No sole proprietorship, firm, partnership, association, corporation or other business entity shall hold itself out to the public or any member thereof as being engaged in the practice of engineering under any assumed, trade, business, partnership or corporate name or employ, use, cause to be used or make use of in any manner whatsoever any such words or terms as "engineer," "engineering," "engineering services," "engineering company," "engineering, inc.," "professional engineers," "licensed engineer," "registered engineer," "licensed professional engineer," "registered professional engineer," "engineered," or any combinations, abbreviations or variations thereof, or in combination with any other words, letters, initials, signs or symbols on, in or as a part of, directly or indirectly, any sign, directory, listing, contract, document, pamphlet, stationery, letterhead, advertisement, signature, trade name, assumed name, corporate or other business name unless such firm, partnership, association, corporation or other business entity is actually and actively engaged in the practice of engineering or offering engineering services to the public, and any and all services, work, acts or things performed or done by it which constitute any part of the practice of engineering are either personally 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.
- (b) This section does not prohibit a licensed engineer from performing engineering services on a part-time basis.

Section 19. PUBLIC WORK.

- (a) It is unlawful for this state or for any of its political subdivisions, including any county, city, or town, to engage in the construction of any public

work involving professional engineering, where public health, public welfare or public safety is involved, unless the engineering plans and specifications and estimates have been prepared by, and the engineering construction is to be executed under the direct supervision of a licensed professional engineer.

(b) This Act shall not apply to:

- (1) a public work that involves structural, electrical, or mechanical engineering and for which the contemplated expenditure for the completed project does not exceed \$8,000;
- (2) a public work that does not involve structural, electrical or mechanical engineering and for which the contemplated expenditure for the completed project does not exceed \$20,000; and
- (3) road maintenance or betterment work undertaken by the commissioners court of a county.

Section 20. EXEMPTIONS.

(a) The following persons shall be exempt from the licensure provisions of this Act, provided that such persons are not directly or indirectly represented or held out to the public to be legally qualified to engage in the practice of engineering:

- (1) an employee or a subordinate of a person holding a license under this Act; provided, his practice does not include responsible charge of design or supervision;
- (2) officers and employees of the Government of the United States while engaged within this state in the practice of the profession of engineering for said Government;
- (3) a person doing the actual work of installing, operating, repairing, or servicing locomotive or stationary engines, steam boilers, Diesel engines, internal combustion engines, refrigeration compressors and systems, hoisting engines, electrical engines, air conditioning equipment and systems, or mechanical and electrical, electronic or communications equipment and apparatus; this Act may not be construed to prevent any citizen from identifying himself in the name and trade of any engineers' labor organization with which he may be affiliated, however, this exemption may not be construed to permit any person other than a licensed professional engineer to affix his signature to engineering plans, or specifications and may not be construed to permit a person to use the term "engineer" or "engineering" in any manner prohibited by this Act;
- (4) a person, firm, partnership, joint stock association or private corporation, erecting, constructing, enlarging, altering or repairing, or drawing plans and specifications for: any private dwelling, or apartments not exceeding eight units per building for one story buildings, or apartments not exceeding four units per building and having a maximum height of two stories, or garages or other structures pertinent to such buildings; or private buildings which are to be used exclusively for farm, ranch or agricultural purposes, or used exclusively for storage of raw agricultural commodities; or other buildings, except public buildings included under Section 19 of this Act, having no more than one story and containing no clear span between supporting structures greater than 24 feet on the narrow side and having a total floor area not in excess of five thousand square feet; provided that on unsupported spans greater than 24 feet on such buildings only the trusses, beams, or other roof supporting members need to be engineered or pre-engineered; provided that no representation is made or implied that engineering services have been or will be offered to the public;
- (5) any regular full time employee of a private corporation or other private business entity who is engaged solely and exclusively in performing services for such corporation and/or its affiliates; provided, such employee's services are on, or in connection with, property owned or leased by such private corporation and/or its affiliates or other private business entity, or in which such private corporation and/or its affiliates or other business entity has an interest, estate or possessory right, or whose services affect exclusively the property, products, or interest of such private corporation and/or its affiliates or other private business entity; and, provided further, that such employee does not have the final authority for the approval of, and the ultimate responsibility for, engineering designs, plans or specifications pertaining to such property or products which are to be incorporated into fixed works, systems, or facilities on the property of others or which are to be made available to the general public. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public;
- (6) any regular full time employee of a privately owned public utility or cooperative utility and/or affiliates who is engaged solely and exclusively in performing services for such utility and/or its affiliates; provided, that such employee does not have the final authority for the approval of, and the ultimate responsibility for engineering designs, plans or specifications to be incorporated into fixed works, systems or facilities on the property of others or which are to be made available to the general public. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public;
- (7) qualified scientists engaged in scientific research and investigation of the physical or natural sciences, including the usual work and activities of meteorologists, seismologists, geologists, chemists, geochemists, physicists and geophysicists; or
- (8) persons employed by an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003, Education Code, who are performing research or instructional work within the scope of their employment by the institution.

(b) Nothing in this Act shall be construed or applied so as to prohibit or in any way restrict any person from giving testimony or preparing exhibits or

documents for the sole purpose of being placed in evidence before any administrative or judicial tribunal of competent jurisdiction.

- (c) Nothing in this Act shall apply to any agricultural work being performed in carrying out soil and water conservation practices.
- (d) This Act shall not be construed as applying to operating telephone companies and/or affiliates or their employees in respect to any plans, designs, specifications, or services which relate strictly to the science and art of telephony. This exemption includes the use of job titles and personnel classifications by such persons not in connection with any offer of engineering services to the public, providing that no name, title, or words are used which tend to convey the impression that an unlicensed person is offering engineering services to the public.
- (e) 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 definition of the person's practice as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as a landscape architect under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, Vernon's Texas Civil Statutes), or as an interior designer under Article 249e, Revised Statutes.
- (f) This Act does not apply to a regular full-time employee of a private corporation or other private business entity who is engaged in erecting, constructing, enlarging, altering repairing, rehabilitating, or maintaining an improvement to real property in accordance with plans and specifications that bear the seal of a licensed engineer. 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.
- (g) A person who claims an exemption from this Act under Subsection (a)(5) or (6) of this section who is determined to have directly or indirectly held the person out as legally qualified to engage in the practice of engineering may not claim an exemption under this section until the 10th anniversary of the date the person held the person out as qualified to engage in the practice of engineering.

Section 20A. TEMPORARY OR PROVISIONAL LICENSE. The Board may adopt rules providing standards and procedures for the issuance of a temporary or provisional license under this Act.

Section 21. LICENSURE BY NONRESIDENTS. A person who holds a valid certificate of registration or license issued to him by proper authority of any state or territory or possession of the United States, the District of Columbia, or any foreign country may apply for licensure in this state.

Section 22. DENIAL, REVOCATION, SUSPENSION, PROBATION, REPRIMAND, RE-ISSUANCE AND REFUSAL OF LICENSE; STATUS REVIEW.

- (a) The Board shall revoke, suspend, or refuse to renew a license, shall reprimand a license holder, may deny an application for licensure, or may probate any suspension of any license holder who is determined by the Board to be censurable for:
 - (1) The practice of any fraud or deceit in obtaining a license;
 - (2) Any gross negligence, incompetency, or misconduct in the practice of professional engineering as a licensed professional engineer;
 - (3) Any documented instance of retaliation by an applicant against an individual who has served as a reference for that applicant;
 - (4) A violation of this Act or a Board rule; or
 - (5) A failure to timely provide plans and specifications to the Texas Department of Licensing and Regulation as required by Article 9102, Revised Statutes.
- (b) Any person who may feel himself aggrieved by reason of the revocation of his license by the Board, as herein above authorized, shall have the right to file suit in the district court of the county of his residence, or of the county in which the alleged offense relied upon as grounds for revocation took place, to annul or vacate the order of the Board revoking the license.
- (c) If the Board proposes to suspend or revoke a person's license, the person is entitled to a hearing before the Board. Proceedings for the suspension or revocation of a license are governed by Chapter 2001, Government Code.
- (d) The Board for reasons it may deem sufficient, may re-issue a license to any person whose license has been revoked, provided six (6) or more members of the Board vote in favor of such re-issuance. A new license, to replace any license revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the Board.
- (e) The Board may 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. The Board may suspend or revoke a license held by a person whose status is reviewed under this subsection.

Section 22A. INFORMATION ABOUT COMPLAINTS.

- (a) The Board shall keep an information file about each complaint filed with the Board relating to a license holder.
- (b) If a written complaint is filed with the Board relating to a license holder, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.

- (c) The Board shall 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. The Board shall maintain the confidentiality of the complaint during the investigation of the complaint.

Section 22B. CONSUMER INFORMATION. The Board shall prepare information of consumer interest describing the regulatory functions of the Board and describing the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make information available to the general public and appropriate state agencies.

Section 22C. ADMINISTRATIVE PENALTY.

(a) The Board may 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. The Board may include in the amount of the administrative penalty the actual costs of investigating and prosecuting the violation.

(b) The penalty for a violation may be in an amount not to exceed \$3,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the economic harm to property or the environment caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter future violations;
- (5) efforts or resistance to efforts to correct the violation; and
- (6) any other matter that justice may require.

(d) The Board shall adopt rules of procedure for the assessment of an administrative penalty by the Board. Rules adopted under this section must conform to the requirements of Chapter 2001, Government Code.

(e) Within 30 days after the date the Board's order becomes final as provided by Section 2001.144, Government Code, the person shall:

- (1) pay the amount of the penalty;
- (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
- (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within the 30-day period, a person who acts under Subsection (e)(3) of this section may:

- (1) stay enforcement of the penalty by:
 - (A) paying the amount of the penalty to the court for placement in an escrow account; or
 - (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the Board's order is final; or
- (2) request the court to stay enforcement of the penalty by:
 - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
 - (B) giving a copy of the affidavit to the executive director by certified mail.

(g) On receipt by the director of a copy of an affidavit under Subsection (f)(2) of this section, the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(h) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(i) Judicial review of the order of the Board:

- (1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and
- (2) is under the substantial evidence rule.
- (j) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.
- (k) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.
- (l) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund, except that the portion of the penalty that represents the costs of the Board in investigating and prosecuting the violation shall be remitted to the Board as reimbursement for performance of the Board's regulatory functions.
- (m) All proceedings under this section are subject to Chapter 2001, Government Code.

Section 23. VIOLATIONS AND PENALTIES.

- (a) Any person who shall practice, or offer to practice, the profession of engineering in this State without being licensed or exempted from licensure in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the license or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining a license, or any person who shall violate any of the provisions of this Act, commits an offense. An offense under this subsection is a Class A misdemeanor.
- (b) The Board is charged with the duty of enforcement of this Act, and any member of the Board may present to a prosecuting officer complaints relating to violations of any of the provisions of this Act; and the Board through its members, officers, counsel and agents may assist in the trial of any cases involving alleged violation of said statutes, subject to the control of the prosecuting officers.
- (c) The Attorney General or his assistants shall act as legal adviser to the Board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

Section 24. INVALID PORTIONS. If any article, section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act and such section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 25. REPEAL OF CONFLICTING LEGISLATION WITH PROVISIO. All laws or parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. Provided, however, that this Act shall not be construed as repealing or amending any law affecting or regulating licensed state land surveyors; and such licensed state land surveyors in performing their duties as such shall not be subject to the provisions of this Act; nor shall this Act be construed to affect or prevent the practice of any other legally recognized profession by the members of such profession licensed by the State or under its authority.

Section 26. CONFIDENTIALITY OF CERTAIN INFORMATION. A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the Board relating to an applicant for licensure under this Act is privileged and confidential and may be used only by the Board or employees or agents of the Board who are directly involved in the application or licensure process. The information is not subject to discovery, subpoena, or other disclosure.

Chapter 131. PRACTICE AND PROCEDURE

Subchapter A. BYLAWS AND DEFINITIONS

§131.1. Headquarters of the Board. The Texas Board of Professional Engineers (board) shall be headquartered in Austin.

§131.2. Organization of the Board.

(a) The board shall elect from its own membership a chairman, vice chairman, and secretary. These officers shall serve from September 1 through August 31 and shall be elected annually at the board meeting immediately prior to September 1.

(b) The board as a whole may act as an executive committee.

(c) The board may transact official business only when in session with a quorum present and shall not be bound in any way by any statement or action on the part of any individual member except when such statement or action is in pursuance of specific instructions of the board. No order or decree shall be adopted by the board except in open meeting and in accordance with the Texas Open Meetings Act.

§131.3. Chairman of the Board. The chairman shall be the executive officer of the board. When present, the chairman shall preside at all meetings. The chairman shall appoint such committees required by rule and may appoint any additional committees as needed. The chairman shall perform all other duties usually pertaining to the office of chairman and permitted by law, and shall have the authority to delegate any of those duties to the executive director. The chairman shall have the authority to review the performance of the executive director and initiate alterations in the executive director's job requirements or employment status. The chairman shall select and determine the agenda for meetings of the full board and may delegate that authority to the executive director.

§131.4. Vice Chairman of the Board. The vice chairman, in the absence of the chairman, shall perform the duties of the chairman as specified in §131.3 of this title (relating to Chairman of the Board) except that the vice chairman shall not sign certificates of registration. In the event the office of the chairman shall become vacant, the vice chairman shall serve until a successor has been elected.

§131.5. Pro Tem Chairman of the Board. In the absence of the chairman and vice chairman from a regular or special meeting of the board, the remaining members, providing there is a quorum, shall elect a presiding officer who shall serve until the conclusion of the meeting or until the arrival of the chairman or vice chairman.

§131.6. Secretary of the Board. The secretary of the board is charged with carrying out the duties prescribed in the Act, §§7, 9, 10, and 15, except those duties prescribed in the Act, §9 and §10, which may be delegated to the executive director.

§131.7. Vacancies in the Board. If for any reason a vacancy shall occur in the board, the chairman shall prepare a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in the office of the chairman, the vice chairman shall serve as the board chairman until such time as the board shall elect from its own membership a new chairman.

§131.8. All Meetings Open to the Public. All official meetings of the board and its standing committees shall be held in accordance with the Texas Open Meetings Act (Texas Civil Statutes, Article 6252-17).

§131.9. Regular Board Meetings. Regular board meetings shall be held at least four times per fiscal year (September 1 - August 31) at any place, date, and time determined by the board. Five members of the board shall constitute a quorum.

§131.10. Special Board Meetings. Special meetings may be called at any time by order of the chairman, or shall be called on the written request of any other three members of the board.

§131.11. Rules of Order. In its deliberations, the board shall be governed by the current edition of Robert's Rules of Order Newly Revised.

§131.12. Order of Business.

(a) Meetings of the board should include but are not limited to the following items of business:

- (1) roll call and introduction of visitors and guests;
- (2) reading and/or approval of minutes of previous meeting;
- (3) executive director's report;
- (4) enforcement report;
- (5) reports and recommendations from committees;
- (6) communications and public comment;
- (7) personal interviews and examination of applications;

- (8) old business;
 - (9) new business;
 - (10) issues from board members for future meetings;
 - (11) adjournment.
- (b) The chairman or executive director of the board may delete and/or rearrange the order of business where required by law or to be more efficient in the conduct of business.
- (c) The executive director shall prepare a meeting agenda and distribute it to each board member prior to the meeting. The public may attend board meetings in accordance with the Texas Open Meetings Act, but shall limit any comments and involvement permitted by the chairman to subjects on the agenda or to agenda items designated for general public comment. Time and topical limits may be imposed upon individuals by the chairman or executive director.

§131.13. Fiscal Matters. The fiscal year of the board shall begin September 1 and close the following August 31. The fiscal year shall be designated to correspond with the calendar year in which it closes.

§131.14. Seal of the Board. The seal of the board shall be an embossed circular seal consisting of two concentric circles. The diameter of the inner circle shall be approximately 60% of the size of the outer circle which shall be the official seal of the State of Texas. The area between the two circles shall contain the wording "Texas Board of Professional Engineers." The executive director shall be the custodian of the seal. The seal may be reproduced in other sizes provided the dimensions remain proportionate.

§131.15. Executive Director. The executive director shall be employed by the board to be the administrator of the board office. The executive director shall be a licensed professional engineer, and shall faithfully execute all directives of the Texas Board of Professional Engineers that are within the scope of the board's legal authority. The executive director shall have sole authority to employ a staff within the budget authorized; perform all supervisory functions including employee evaluations, promotions, disciplinary actions and terminations; and develop and implement all agency policies and procedures concerning the operation of the agency office. The executive director shall be evaluated by the chairman as needed. The executive director serves at the pleasure of the board and employment may be terminated at any time by a negative vote of confidence from a simple majority of the full board.

§131.16. Minutes of Board Meetings. In addition to the distribution required by law, copies of the official minutes of each meeting of the board shall be distributed to such persons as the board may direct and to such private citizens as may make a formal written request. An official copy of all board minutes shall remain on file in the board office, available to any citizen desiring to examine them.

§131.17. National Council. The board shall affiliate with the National Council of Examiners for Engineering and Surveying. Each board member shall become a member of the council and the executive director and other staff members designated by the board shall be associate members of the council.

§131.18. Definitions. In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a particular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

- (1) Act-The Texas Engineering Practice Act.
- (2) Administrative Act-The Administrative Procedure Act.
- (3) Agency or Board-Texas Board of Professional Engineers.
- (4) Applicant-A person making application for an engineering license or a firm making application for a certificate of registration.
- (5) Application-The forms, information, and fees necessary to obtain a license as a professional engineer or a certificate of registration for a firm.
- (6) Certificate of Registration-The annual certificate issued by the board to a firm providing professional engineering services in this state.
- (7) Complainant-Any party who has filed a complaint with the board against any party subject to the jurisdiction of the board.
- (8) Contested case—A proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.
- (9) Direct supervision-Critical watching, evaluating, and directing of engineering activities with the authority to review, enforce, and control compliance with all engineering design criteria, specifications, and procedures as the work progresses. Direct supervision will consist of an acceptable combination of: exertion of significant control over the engineering work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons. Engineers providing direct supervision of engineering under the Texas Engineering Practice Act, §18(b), shall be personally present during such work.

- (10) **Engineering**-The profession in which a knowledge of the mathematical, physical, engineering, and natural sciences gained by education, experience, and practice is applied with judgment to develop ways to utilize, economically, the materials and forces of nature for the benefit of mankind.
- (11) **Firm**-Any entity that engages or offers to engage in the practice of professional engineering in this state. This includes sole proprietorships, firms, co-partnerships, corporations, partnerships, or joint stock associations.
- (12) **Gross negligence**-Any willful or knowing conduct, or pattern of conduct, which includes but is not limited to conduct that demonstrates a disregard or indifference to the rights, health, safety, welfare, and property of the public or clients. Gross negligence may result in financial loss, injury or damage to life or property, but such results need not occur for the establishment of such conduct.
- (13) **Incompetence**-An act or omission of malpractice which may include but is not limited to recklessness or excessive errors, omissions or failures in the license holder's record of professional practice; or an act or omission in connection with a disability which includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in the provision of professional services.
- (14) **Intervenor**-Any party otherwise not defined.
- (15) **License**—The legal authority granting the holder to actively practice engineering upon the payment of the annual renewal fee. Also, a certificate issued by the board showing such authority.
- (16) **License Holder**-Any person whose license to practice engineering is current.
- (17) **Licensure**-The granting of an original certificate and license to an individual.
- (18) **Misconduct**-The violation of any provision of the Texas Engineering Practice Act and board rules. A conviction of a felony or misdemeanor that falls under the provisions of Texas Civil Statutes, Article 6252-13c and Article 6252-13d, will also be misconduct under the Texas Engineering Practice Act.
- (19) **Party**-Each person or agency named or admitted as a party to a proceeding under the Administrative Procedure Act.
- (20) **Person**-Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
- (21) **Petitioner**-Any party requesting the adoption of a rule by the board.
- (22) **Pleading**-Written allegations filed by parties concerning their respective claims.
- (23) **Professional engineering**-Professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.
- (24) **Professional engineering services**-Services which must be performed by or under the direct supervision of a licensed engineer and which meet the definition of the practice of engineering as defined in the Texas Engineering Practice Act, §2. A service shall be conclusively considered a professional engineering service if it is delineated in that section; other services requiring a professional engineer by contract, or services where the adequate performance of that service requires an engineering education, training, or experience in the application of special knowledge or judgment of the mathematical, physical or engineering sciences to that service shall also be conclusively considered a professional engineering service.
- (25) **Protestant**-Any party opposing an application or petition filed with the board.
- (26) **Registration**-A certificate issued by the board granting authority for a firm to engage or offer to engage in providing professional engineering services in this state.
- (27) **Resident**-An individual physically residing at a Texas address or who is practicing engineering in Texas exclusively on a Texas facility owned by the individual's employer.
- (28) **Respondent**-Any party against whom any complaint has been filed with the board.
- (29) **Responsible charge**-An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.
- (30) **Responsible supervision**-An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.

§131.19. Requests for Information. The executive director shall be the official custodian of all board records and shall process and respond to all requests for information in the manner prescribed by law.

§131.20. Committees.

(a) The board chairman shall appoint the following standing committees as stated in paragraphs (1) and (2) of this subsection, composed of four board members at least one of whom is a public member. The board chairman shall appoint a committee chairman to serve concurrently with the board chairman's term.

- (1) Licensing Committee. The committee shall meet no less than twice during the chairman's term to evaluate issues and possibly develop proposed actions for the full board on licensing issues. The committee may participate in activities such as evaluating rules concerning licensing of engineers; conducting personal interviews of applicants; evaluating applications; participating in national and international engineering licensing activities on the board's behalf; providing general guidance to the executive director on licensing issues; and evaluating any other issue indirectly or directly relating to engineering licensing.
- (2) Enforcement Committee. The committee shall meet no less than twice during the chairman's term to evaluate issues and possibly develop proposed actions for the full board on enforcement issues. The committee may participate in activities such as evaluating rules concerning enforcement of the Texas Engineering Practice Act (Act); reviewing the progress of major enforcement cases or groups of cases; suggesting sanctions for violations of the Act; participation in national and international engineering law enforcement activities on the board's behalf; providing general guidance to the executive director on enforcement issues; and evaluating any other issue indirectly or directly relating to engineering law enforcement.

(b) The board chairman shall appoint a General Issues Committee that shall meet no less than twice during the chairman's term to evaluate issues and possibly develop proposed actions for the full board on issues of importance to the board and the profession. Such issues might include engineering ethics, professionalism in practice, legislation, board management, engineering business issues, education, and continuing professional competency. The committee shall be composed of three board members at least one of whom is a public member, and one of whom is the vice chairman of the board. The vice chairman of the board shall be the committee chairman for a period concurrent with the board chairman's term.

- (1) The committee chairman and the board chairman may appoint ad hoc committees composed of committee members, other board members, and other persons to address particular issues.
- (2) The committee chair shall establish a specific purpose and duration for each ad hoc committee. Ad hoc committees previously appointed may be reappointed in part or in whole for a specific purpose and duration.
- (3) Ad hoc committees shall be limited to investigating and evaluating issues assigned, and making a report to the General Issues Committee with recommendations concerning possible board positions, actions or inactions. The General Issues Committee shall receive the report of each ad hoc committee publicly, and shall recommend appropriate action, if any, to the full board.

§131.21. Self-Directed Semi-Independent Agency Project. In keeping with the intent of its participation in the Self-Directed Semi-Independent Agency Project Act (Texas Civil Statutes, Title 132, Article 8930), the board shall adopt, monitor and update policies required under this Act.

§131.22. Employee Training.

- (a) The board may provide training and educational programs for its administrators and employees as a part of staff development and continuing education. These programs shall be offered in order for the staff to keep abreast of changes in technologies, legal developments, offered in order for the staff to keep abreast of changes in technologies, legal developments, human resource issues, and to further enhance the employees' knowledge, skills, and abilities, and to provide continuing professional competency education for the engineering staff members.
- (b) Employees may be approved to attend workshops, seminars, conferences, and other special programs or activities that directly benefit the employee and the agency. The approval decision shall be made in advance and shall be at the discretion of the executive director. Any membership fees, dues, and travel associated with an employee's attendance at these functions shall be paid for by the board as long as there is a direct benefit to the board and the activity is part of the agency's official business.
- (c) The board may reimburse an employee for college course work contingent upon the availability of funds and if the executive director determines that the course work has a direct benefit to the employee's duty assignment and to the agency. Introductory college courses which fulfill degree requirements, if not job related, are not eligible courses. Prior approval by the executive director shall be required and reimbursement shall be limited to the current state tuition rate. The maximum reimbursement shall not exceed three hundred dollars (\$300) per semester. An employee shall not be reimbursed until the employee provides documentation that the course work has been completed in a satisfactory manner. An employee must continue employment with the board for at least one year after the course work has been completed; otherwise, the employee will be required to reimburse the agency.
- (d) The board may pay the license fees of employees who are required to provide services as part of their duty assignments. The board will not pay for driver's license fees or other license fees where the license considered a basic personal resource.

BOARD RULES

§131.31. Purpose.

The board shall promulgate and adopt rules as authorized and required by statute, which are necessary for the performance of its duties. Such rules shall establish standards of conduct and ethics for engineers, ensure strict compliance with and enforcement of the provisions of the Act, ensure uniform standards of practice and procedure, including fees for services, and provide for public participation, notice of the agency actions, and a fair and expeditious determination of causes before the board.

§131.32. Amendments, Deletions, and Additions of Rules. Proposed amendments, deletions, or additions to the board rules of practice and procedure may be submitted by the staff or any board member. Board action to accept or amend the proposal shall require five affirmative votes. A proposal or amended proposal, as accepted by the board, can be promulgated as an amendment, deletion, or addition to board rules by following the procedures set out in the Administrative Procedure and Texas Register Act, §5 (Texas Civil Statutes, Article 6252-13a, §5).

§131.33. Petition for Adoption of Rules. Any interested person can request the board to adopt, delete, or amend a rule by filing a petition with the executive director, accompanied by any fee required by statute or board rules. The petition must be filed with the executive director at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. Such a petition will include, but need not be limited to, the following:

- (1) *Identity Information.* Full name and complete mailing address and telephone number of the petitioner on whose behalf the petition is filed.
- (2) *Reference.* Reference to the rule which it is proposed to make, change or amend, or delete, so that it may be identified, prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any. The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.
- (3) *A suggested effective date.* The desired effective date should be stated.
- (4) *Justification.* Justification for the proposed action in narrative form with sufficient particularity to fully inform the board and any interested party of the facts upon which the petitioner relies, including the statutory authority for the promulgation of the proposed rule.
- (5) *Desired effect of proposal.* Include a brief statement detailing the desired effect to be achieved by the proposed rule, change, or amendment or deletion.
- (6) *Summary.* A concise summary of the proposed rule, change, or amendment.
- (7) *Signatures.* Signatures on the petition of the petitioner and/or the attorney or representative of the petitioner.

§131.34. Petition Decision by Board. Within 60 days after submission of a petition requesting the adoption of a rule the board either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with §131.32 of this title (relating to Amendments, Deletions, and Addition of Rules) and by law.

§131.35. Suspension of Rules. In any case in which a public emergency or imperative public necessity so requires, the board may suspend the operation of these rules to the extent authorized by law.

§131.36. Invalid Portions and Saving Provisions.

- (a) If any subcategory, rule, section, subsection, sentence, clause, or phrase of these rules is for any reason held invalid, such decision shall not affect the validity of the remaining portions of these rules. The board hereby declares that it would have adopted these rules and such subcategories, rules, sections, subsections, sentences, clauses, or phrases thereof irrespective of the fact that any one or more of the subcategories, rules, sections, subsections, sentences, clauses, or phrases be declared invalid.
- (b) Since individual board rules are adopted, changed, or deleted periodically, each rule herein will apply only to acts occurring on or after the effective date of the rule. An act occurring before the effective date of one or more of these rules will be governed by the rules existing before the effective date, which rules are continued in effect for this purpose as if these rules were not in force. Any proceeding pending before the board on the effective date of one or more of these rules is governed by the rules existing before the effective date of these rules, which rules are continued in effect for this purpose as if these rules were not in force.

§131.37. Effective Date. The effective date of each rule or subdivision of each rule shall be that date published as the effective date of the rule or subdivision of the rule in the Texas Register as a result of the rule making procedures set out in the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a, §5).

§131.38. Rules Identification and Format. The board reserves the right to revise the format of these rules of practice and procedure to comply with statutory requirements and such required revision shall not invalidate any portion or change the effective date of the rules of practice and procedure as adopted by the board.

Subchapter B. APPLICATION FOR LICENSE

§131.51. Authority. The Texas Board of Professional Engineers shall receive, evaluate and process all applications for a professional engineer license issued under the authority of the Texas Engineering Practice Act (Act). Applications for an original license shall be accepted from all persons who assert through the application process that, to the best of their knowledge, they meet the minimum qualifications of the Act, §12. Applications from nonresidents holding a valid license issued by a proper authority in another public jurisdiction shall be accepted from all persons who assert through the application process that, to the best of their knowledge, they meet the minimum qualifications of the Act, §12. The board has the authority under the Act to issue a license to applicants that, subsequent to review and evaluation, are found to have met all requirements of the Act and board rules. The board has the authority under the Act to deny a license to any applicant found not to have met all requirements of the Act and board rules. Applications that do not demonstrate the qualifications required shall be subject to non-approval. The board may also, at its discretion, select the sections or subsections under which the application shall be accepted and processed.

§131.52. Applications for a Professional Engineer License.

- (a) The board may issue a license only to applicants who submit sufficient evidence that they have credentials meeting the minimum requirements set forth in Texas Engineering Practice Act (Act), §12(a)(1) or (2).
- (b) All persons must pass the Fundamentals of Engineering examination or believe to the best of their knowledge that they are eligible for a waiver from the Fundamentals of Engineering examination before submitting an application.
- (c) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited bachelor of science degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a score of at least 550 and passage of the Test of Spoken English (TSE) with a score of at least 45, or other evidence such as significant academic or work experience in English acceptable to the executive director.
- (d) Applicants requesting waivers of all or part of the examinations, the TOEFL, the TSE, or a commercial evaluation of non-accredited degrees shall submit the requests and supporting reasoning to the executive director in writing.
- (e) Applications for a license shall be submitted on forms prescribed by the board, sworn under oath and accompanied by the current application fee.
- (f) In addition to the application form, applicants shall submit their:
 - (1) social security number, as required under Texas Family Code, §231.302;
 - (2) supplementary experience record;
 - (3) official transcript(s) of qualifying degree(s);
 - (4) number of reference statements required under §131.71(b) of this title (relating to References), or are required to meet §131.81(a)(3) of this title (relating to Experience Evaluation) or §131.101(g) of this title (relating to Engineering Examinations Required for a License To Practice as a Professional Engineer) if those sections are applicable;
 - (5) current application fee;
 - (6) verification of examination(s);
 - (7) verification of a current license, if applicable;
 - (8) a completed Texas Ethics of Engineering Examination;
 - (9) scores of TOEFL and TSE, if applicable;
 - (10) a commercial evaluation of a non-accredited degree;
 - (11) statement describing criminal convictions, if any;
 - (12) written requests for waivers, if applicable.
- (g) Applicants shall indicate a primary branch of engineering under which experience has been gained. Applicants seeking permission to take the Principles and Practice of Engineering examination shall indicate a primary branch for which there is an available National Council of Examiners for Engineering and Surveying (NCEES) examination as denoted, or other Board approved examination, or for which the Board will issue a license under applicable examination waiver rules. The branches and their corresponding alphabetical code are:
 - (1) (AGR) agricultural (NCEES);
 - (2) (CHE) chemical (NCEES);
 - (3) (CIV) civil (NCEES);

- (4) (CSE) control systems (NCEES);
- (5) (ELE) electrical, electronic, computer, communications (NCEES);
- (6) (ENV) environmental (NCEES);
- (7) (FIR) fire protection (NCEES);
- (8) (IND) industrial (NCEES);
- (9) (MEC) mechanical (NCEES);
- (10) (MIN) mining/mineral (NCEES);
- (11) (MET) metallurgical (NCEES);
- (12) (MAN) manufacturing (NCEES);
- (13) (NUC) nuclear (NCEES);
- (14) (PET) petroleum (NCEES);
- (15) (SDE) naval architecture/marine engineering (NCEES);
- (16) (STR) structural (NCEES);
- (17) (A/A) aeronautical/aerospace;
- (18) (BIO) biomedical;
- (19) (CRM) ceramic;
- (20) (ESG) engineering sciences/general;
- (21) (GEO) geological;
- (22) (OCE) ocean;
- (23) (TEX) textile;
- (24) (SAN) sanitary;
- (25) (SWE) software;
- (26) (BAR) building architectural;
- (27) (OTH) other.

- (h) Applications shall be accepted for processing on the date the application and fee are received. Applicants shall be notified by the board at the earliest possible opportunity of deficiencies found during initial review of their application. Applications shall be held no more than forty-five (45) days from the date of notification for applicants to correct those deficiencies. Failure to correct the deficiencies may be cause for administrative withdrawal of the application. Upon request of the applicant, thirty-day (30) extensions may be granted by the executive director for submitting deficient information.
- (i) Once an application is accepted, the fee shall not be returned, and the application and all submissions shall become a permanent part of the board records.
- (j) An applicant who is a citizen of another country and is physically present in this country shall show sufficient documentation to the board to verify the immigration status for the determination of their eligibility for a professional license in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

§131.53. Applications - General.

- (a) Upon receipt of applications at the board office in Austin, Texas, the board shall initiate a review of the credentials submitted. Applicants shall be either approved or non-approved to take the Principles and Practice of Engineering examination; or if they have met all examination/waiver requirements, applicants shall be issued or denied a license. The board shall issue a license to applicants who have been granted permission, taken and passed the Principles and Practice of Engineering examination.
- (b) All applications must be submitted on paper and on forms prescribed by the board with original signatures, notaries, and seals.

- (c) In the event that information bearing on the suitability of an applicant is discovered after submission of an application but prior to issuance of a license, the board may rescind or alter any previous decision, or hold the application in abeyance, or may non-approve an application until the suitability of the applicant is adequately established.
- (d) Any transcripts, reference statements, evaluations, experience records or other similar documents submitted to the board in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the executive director authorizes its use.
- (e) Upon completion of all processes, including passage or waiver of examinations, applicants whose applications have been approved shall be issued a license and applicants whose applications have been non-approved shall be denied a license.

§131.54. Applications from Former Texas License Holders.

- (a) Persons whose original license has been expired for two or more years may be reissued a license provided they apply for a new license and meet current requirements.
- (b) The applicant shall:
 - (1) prepare a new application form in its entirety and submit it with the current application fee;
 - (2) complete all sections of the new application form and list all employment engagements;
 - (3) provide a supplementary experience record for all employment engagements from the date the license expired describing at least the last four years of experience;
 - (4) provide a professional engineer reference, conforming to §131.71(b) of this title (relating to References), §131.81(a)(3) of this title (relating to Experience Evaluation), and §131.101(g) of this title (relating to Engineering Examinations Required for a License to Practice as a Professional Engineer) for each engineering engagement since the license expired verifying a supplementary experience record describing at least the last four years of engineering experience;
 - (5) provide a written request for a waiver of examinations, if applicable;
 - (6) submit transcripts for engineering degrees conferred after issuance of original license;
 - (7) pass the Texas Ethics of Engineering Examination with each new application filed.
- (c) Any transcripts, reference statements, evaluations, experience records or other similar materials submitted to the board in previous applications may be included in a current application provided the applicant requests its use in writing at the time the application is filed and the executive director authorizes its use.
- (d) Any license issued to a former Texas license holder shall be assigned a new serial number.

§131.55. Certification of Qualifications. The National Council of Examiners for Engineering and Surveying certifications may be accepted as verification of an original transcript from a U.S. school, or to verify licenses held, or to verify examinations taken. Other uses of the certification may be granted by the executive director on a case-by-case basis.

Subchapter C. REFERENCES

§131.71. References.

- (a) Applicants shall provide references to verify all engineering experience claimed to meet the minimum years of experience required under the Texas Engineering Practice Act, §12(a)(1) or (2), unless more experience is being verified to meet the requirements of §131.81(a)(3) of this title (relating to Experience Evaluation) or §131.101(g) of this title (relating to Engineering Examinations Required for a License To Practice as a Professional Engineer). Experience that is unsupported by references may not be considered.
- (b) Applicants for a license shall provide at least five references to the board, unless more references are required to meet the requirements of §131.81(a)(3) of this title (relating to Experience Evaluation) or §131.101(g) of this title (relating to Engineering Examinations Required for a License to Practice as a Professional Engineer). At least three of these references shall be currently licensed professional engineers who have personal knowledge of the applicant's engineering experience. One or more of the professional engineer references shall verify all engineering claimed to meet the minimum years of experience required. References on file with the board from previous applications may be used with the approval of the executive director. Professional engineers who have not worked with or directly supervised an applicant may review and judge the applicant's experience and may serve as a licensed engineer reference; such review shall be noted on the reference statement. Professional engineers serving as references shall not be compensated.
- (c) All references shall be individuals with personal knowledge of the applicant's character, reputation, and general suitability for holding a license. If possible, references should include individuals who directly supervised the applicants.

(d) Professional engineers who provide reference statements and who are licensed in a jurisdiction other than Texas shall include a copy of their pocket card or other verification to indicate that their license is current and valid.

(e) The board members and staff may, at their discretion, consider any, all or none of the responses from references.

§131.72. Reference Statements.

(a) The applicant shall send the board's reference statement form and a complete copy of the applicable portion(s) of the supplementary experience record to each reference.

(b) For a reference statement to be considered complete, the reference shall:

(1) accurately complete the reference statement in detail;

(2) review and evaluate all applicable portions of the supplementary experience record;

(3) signify agreement or disagreement with the information written by the applicant and add any comments or concerns on the reference statement.

(c) For a reference statement to be considered secure, the reference shall place the completed reference statement and signed supplementary experience record in an envelope. After sealing the envelope, the reference's signature shall be placed across the sealed flap of the envelope and covered with transparent tape. The reference shall return the sealed envelope to the applicant.

(d) Applicants shall enclose all of the sealed reference envelopes with the application when submitted to the board.

§131.73. Reference Communication. Additional references may be required of the applicant when the executive director finds it necessary to adequately verify the applicant's experience or character. The board and/or staff may at their discretion communicate with any reference or seek additional information.

Subchapter D. ENGINEERING EXPERIENCE

§131.81. Experience Evaluation.

(a) Applicants shall submit a supplementary experience record to the board as a part of the application. The supplementary experience record is a written summary documenting all of the applicant's engineering experience used to meet the requirements of §131.91 of this title (relating to Educational Requirements for Applicants).

(1) The supplementary experience record shall be written by the applicant, shall clearly describe the engineering work that the applicant personally performed, and shall delineate the role of the applicant in any group engineering activity.

(2) The supplementary experience record should provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the engineering work personally performed by the applicant.

(3) Professional engineer references must be provided to verify enough of the supplementary experience record to cover at least the minimum amount of time needed by the applicant for issuance of a license. Applicants applying under the Texas Engineering Practice Act (Act), §12(a)(1) shall provide references for at least four years of engineering experience; applicants applying under the Act, §12(a)(2) shall provide references for at least eight years of engineering experience. Applicants seeking a waiver from the Fundamentals of Engineering examination or the Principles and Practice of Engineering examination requirement shall provide supplementary experience records and references for an additional eight years of experience beyond that listed in this subsection and shall conform to §131.71(b) of this title (relating to References) and §131.101(g) of this title (relating to Engineering Examinations Required for a License To Practice as a Professional Engineer).

(4) Parts of the supplementary experience record that are to be verified by references shall be written in sufficient detail to allow the board reviewer to document the minimum amount of experience required and to allow the reference to recognize and verify the quality and quantity of the experience claimed.

(b) The board shall evaluate the character and quality of the experience found in the supplementary experience record and shall determine if the work is satisfactory to the board for the purpose of issuing a license to the applicant. The board shall evaluate the supplementary experience record for evidence of the applicant's competency to be placed in responsible charge of engineering work of a similar character.

(1) Satisfactory engineering work shall be of a nature such that its adequate performance requires engineering education, training, or experience. The application of engineering education, training and experience must be demonstrated through the application of the mathematical, physical, and engineering sciences. Such work must be fully described in the supplementary experience record. Satisfactory engineering experience shall include an acceptable combination of design, analysis, implementation, and/or communication experience, including the following types of engineering activities:

(A) design, conceptual design, or conceptual design coordination for engineering works, products or systems;

- (B) development or optimization of plans and specifications for engineering works, products, or systems;
 - (C) analysis, consultation, investigation, evaluation, planning or other related services for engineering works, products, or systems;
 - (D) planning the use or alteration of land, water, or other resources;
 - (E) engineering for program management and for development of operating and maintenance manuals;
 - (F) engineering for construction, or review of construction;
 - (G) performance of engineering surveys, studies, or mapping;
 - (H) engineering for materials testing and evaluation;
 - (I) expert engineering testimony;
 - (J) any other work of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature that requires engineering education, training or experience for its adequate performance.
- (2) In the review of engineering experience, the board shall consider additional elements unique to the history of the applicant. Such elements should include, at a minimum:
- (A) whether the experience was sufficiently complex and diverse, and of an increasing standard of quality and responsibility;
 - (B) whether the quality of the engineering work shows minimum technical competency;
 - (C) whether the submitted materials indicate good character and reputation;
 - (D) whether the experience was gained in accordance with the provisions of the Act;
 - (E) whether the experience was gained in one dominant branch;
 - (F) whether non-traditional engineering experience such as sales or military service provides sufficient depth of practice; and
 - (G) whether short engagements have had an impact upon professional growth.
- (3) Engineering experience may be considered satisfactory for the purpose of licensing provided that:
- (A) the experience is gained during an engagement longer than three months in duration;
 - (B) the experience, when taken as a whole, meets the minimum time;
 - (C) the experience is not anticipated and has actually been gained at the time of application;
 - (D) the experience includes at least two years of experience in the United States, not including time claimed for educational credit, or otherwise includes experience that would show a familiarity with US codes and engineering practice;
 - (E) the time granted for the experience claimed does not exceed the calendar time available for the periods of employment or education claimed.
- (c) A total of one year of experience credit may be granted for each post-baccalaureate engineering degree earned by applicants, not to exceed two years, provided the degree is from an engineering program approved by one of the organizations listed in §131.91(1)(A) of this title (concerning Educational Requirements for Applicants) where either the graduate or undergraduate degree in the same discipline is accredited or equivalent.

Subchapter E. EDUCATION

§131.91. Educational Requirements for Applicants.

Applicants for a license shall have earned one of the following degrees or degree combinations listed in this section:

- (1) Accredited degrees, under the Texas Engineering Practice Act (the Act), §12(a)(1), as described in subparagraphs (A) and (B) of this paragraph:
 - (A) all engineering degree programs approved by:
 - (i) The Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, United States (EAC/ABET);

- (ii) The Institution of Engineers, Australia (IEAust);
 - (iii) The Canadian Engineering Accreditation Board of the Canadian Council of Professional Engineers (CEAB);
 - (iv) The Institution of Engineers of Ireland (IEI);
 - (v) The Institution of Professional Engineers New Zealand (IPENZ);
 - (vi) The Engineering Council, United Kingdom (ECUK) (Graduates of UK programs must have a diploma showing graduation with honors.); and
 - (vii) Consejo de Acreditacion de la Ensenanza de la Ingenieria, Mexico (Council of Accreditation for Engineering Education, C.A.);
- (B) a bachelor's degree in engineering or one of the mathematical, physical, or engineering sciences, plus a graduate degree in engineering, provided that:
- (i) the graduate degree is obtained from a college having an engineering program approved by one of the organizations listed in subparagraph (A) of this paragraph where either the graduate or undergraduate degree in the same discipline is accredited; and
 - (ii) the combination of the degrees is acceptable to the Board as equivalent in EAC/ABET approved curricula content, and the combination of degrees contain sufficient design curricula to provide minimal competency in the use of engineering algorithms and procedures.
- (2) Non-accredited bachelor or graduate degrees acceptable to the board, under the Act, §12(a)(2) as described in subparagraphs (A) and (B) of this paragraph:
- (A) a bachelor of engineering technology program that is accredited by the Technology Accreditation Commission of the Accreditation Board for Engineering and Technology (TAC/ABET);
 - (B) other bachelor or graduate degrees in engineering, mathematical, physical, or engineering science approved by the executive director. Such degree programs must include, as a minimum, the courses listed in clauses (i) and (ii) of this subparagraph or these courses must be taken in addition to the bachelor or graduate degree program:
 - (i) eight semester hours (12 quarter hours) of mathematics beyond trigonometry, including differential and integral calculus; and
 - (ii) 20 semester hours (30 quarter hours) of engineering sciences which include subjects such as mechanics, thermodynamics, electrical and electronic circuits, and others selected from material sciences, transport phenomena, computer science and comparable subjects depending on the discipline or branch of engineering. Course work should incorporate hands-on laboratory work as described in the EAC/ABET criteria, and shall contain a sufficient design program to provide minimal competency in the use of engineering algorithms and procedures.
- (3) Other degree programs submitted to the board by the conferring institutions and approved by the board as meeting the requirements of paragraphs (1) or (2) of this section.

§131.92. Degrees from Non-Accredited Programs.

- (a) Applicants using degrees from non-accredited programs to qualify for licensure under the Texas Engineering Practice Act (the Act), §12(a)(2), must furnish at their own expense, an evaluation of all such degrees from a commercial evaluation service approved by the board. The degree evaluation must be sent directly to the board by the evaluation service and shall include an equivalency transcript (detailed evaluation of courses in semester hours with grades following the standard practice recommended by the National Council for the Evaluation of Foreign Educational Credentials).
- (b) A commercial evaluation may be waived by the executive director if sufficient resources are available for the board to evaluate it , if the degree program has been deemed substantially equivalent by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (EAC/ABET) or an EAC/ABET-accredited institution, or if the degree program does not contain curricula that is deemed by the executive director to be an integral part of the applicant's engineering education.
- (c) Upon receipt or waiver of a commercial evaluation, the executive director shall evaluate the curricula of non-accredited programs under the standards of §131.91 of this title (relating to Educational Requirements for Applicants).

§131.93. Transcripts.

- (a) An official transcript (including either grades or mark sheets and proof that the degree was conferred) shall be provided for the degree(s) utilized to meet the educational requirements for certification or licensure. Official or notarized copies of transcripts of all other engineering or mathematical, physical, or engineering science degrees shall also be submitted to the board. Applicants utilizing non-accredited degree(s) for licensure shall also provide a transcript from each school where more than 15 semester hours were earned towards the degree. Official transcripts shall be forwarded directly to the board office by the respective registrars. The applicant is responsible for ordering and paying for all such

transcripts. Additional academic information including but not limited to grades and transfer credit shall be submitted to the board at the request of the executive director.

- (b) If transcripts cannot be transmitted directly to the board from the issuing institution, the executive director may recommend alternatives to the Licensing Committee for its approval. Such alternatives may include validating transcripts in the applicant's possession through a board-approved commercial evaluation service.
- (c) The commercial evaluation of a degree will not be accepted in lieu of an official transcript.

§131.94. English Translation. All documents supporting the application written in language other than English shall be accompanied by a certified English translation.

Subchapter F. EXAMINATIONS

§131.101. Engineering Examinations Required for a License to Practice as a Professional Engineer.

- (a) Written examinations prescribed by the board shall consist of experience and knowledge examinations and an ethics of engineering examination for the purpose of determining the applicant's qualifications to design and supervise engineering works, ensuring the safety of life, health, and property.
 - (1) All examinations shall be in the English language.
 - (2) Experience and knowledge examinations shall be an eight-hour Fundamentals of Engineering examination and Principles and Practice of Engineering examination prepared by the National Council of Examiners for Engineering and Surveying (NCEES).
 - (A) Examinations shall be held in Austin or places designated by the board as scheduled by NCEES.
 - (B) Examinations may be scheduled by obtaining the necessary forms from the board office and submitting it to the board with the appropriate fee.
 - (C) Engineering students may schedule the Fundamentals of Engineering examination at their participating school through the engineering dean's office.
 - (D) Individuals who plan to take an examination must have their completed examination scheduling form and the appropriate fee in the board office by the close of regular business on the date established by the examination policy adopted by the board.
 - (E) The Principles and Practice of Engineering examination is open only to licensed engineers and to applicants who have received board approval to take it.
 - (F) Examination fees shall be not be refunded.
 - (3) The Texas Ethics of Engineering Examination shall be open book and shall be prepared and administered by the board. Each applicant must satisfactorily complete this examination and submit it with the application.
- (b) The board shall adopt an examination policy at least once a year which shall include at least the following as listed in paragraphs (1)-(4) of this subsection:
 - (1) the places where the examinations shall be held;
 - (2) the dates of the examinations and the deadline date for an examinee to schedule an examination;
 - (3) fees for each examination;
 - (4) types of examinations offered.
- (c) An undergraduate student who is within two full-time regular semesters (not including summer sessions) of graduating and who is enrolled in an EAC/ABET-accredited engineering program, a TAC/ABET-accredited four year baccalaureate technical program, or an engineering-related science program of four years or more that has been approved by the board, may take the Fundamentals of Engineering examination at their school provided the school administers the examination as prescribed by the board.
- (d) A graduate student may take the Fundamentals of Engineering examination at their school provided the school administers the examination as prescribed by the board, that student is enrolled in an EAC/ABET-accredited graduate degree program or in a graduate program at an institution which has an EAC/ABET-accredited undergraduate degree program in that discipline, and the student has:
 - (1) a baccalaureate degree that is EAC/ABET-accredited;
 - (2) an engineering or engineering-related science program degree that has been approved by the board; or

- (3) a non-engineering related curriculum or other degree in which the student has provided evidence acceptable to the executive director as meeting the minimum requirements of Texas Engineering Practice Act (Act), §12(a)(1) or (2).
- (e) Persons who appear to meet the educational requirements for a license and who have not passed the Fundamentals of Engineering examination while in college may apply to the board to take the examination in Austin or at other sites designated by the board.
- (f) It is the intent of the board to utilize the examination as an integral part of the licensing process; all applicants are expected to have passed the examinations or to offer sufficient evidence of their qualifications in the absence of passage of the examinations. The board may waive the Fundamentals of Engineering examination for any applicant with at least four years of creditable experience and who holds at least the educational credentials described in paragraph (3)(A) of this subsection. The board may or may not waive one or both of the experience and knowledge examinations for applicants who do not pose a threat to the public health, safety, or welfare; request a waiver in writing at the time the application is filed; have not taken and failed the Principles and Practice of Engineering examination within the previous four years; and meet one of the following requirements listed in paragraphs (1)-(3) of this subsection:
- (1) persons who have 12 or more years of engineering experience and meet the educational requirements of the Act, §12(a)(1); or
 - (2) persons who have 16 years of engineering experience and meet the educational requirements of the Act, §12(a)(2); or
 - (3) persons who have:
 - (A) a Ph.D. degree in engineering from a recognized college or university that offers an EAC/ABET-approved undergraduate or master's degree program in a related branch of engineering or a Ph.D. degree in engineering or other related field of science or mathematics that is individually assessed and approved by the board during the evaluation process; and
 - (B) taught in an EAC/ABET program for at least six years, or have at least six years of experience consisting of an acceptable combination of other creditable engineering experience or EAC/ABET teaching experience.
- (g) Applicants requesting a waiver from any examination(s) shall file any additional information needed to substantiate the eligibility for the waiver with the application. Applicants requesting a waiver from the Principles and Practice of Engineering examination and who have never been licensed in any jurisdiction shall provide at least nine references, five of which shall be from licensed professional engineers. The board shall review all elements of the application to evaluate waiver request(s) and may grant a waiver(s) to qualified applicants.
- (h) Applicants providing an official verification from an NCEES member board certifying that they have passed at least the eight-hour examination in that state shall not be required to take that examination again.
- (i) The following shall apply to the Principles and Practice of Engineering examination.
- (1) The following individuals may register to take the Principles and Practice of Engineering examination:
 - (A) license holders who wish to take the examination for record purposes;
 - (B) applicants for a license approved by the board;
 - (C) other persons who have been approved or directed by the board to take the examination.
 - (2) Applicants approved to take the Principles and Practice of Engineering examination:
 - (A) shall be advised of the first examination date for which they are eligible;
 - (B) shall be solely responsible for timely registration for the examination and any payment of examination fees;
 - (C) shall have no more than four consecutive examination opportunities, including the examination given on the date of the first available examination, to pass the examination. No extensions shall be granted under any circumstances.
 - (3) Applications for applicants who do not pass the examination within the allotted time shall be non-approved.
 - (4) After an application has been non-approved for not passing the examination, an applicant may immediately apply for a license under the law and rules in place when submitting the new application.
 - (5) The Principles and Practice of Engineering examination(s) will be offered according to the availability by the NCEES.

§131.102. Examination for Record Purposes. The board may administer examinations for record purposes. The Principles and Practice of Engineering examination may not be taken for record purposes unless an individual is licensed as a professional engineer or has been given permission by the board to take the examination.

§131.103. Examination Analysis.

- (a) In accordance with the Texas Engineering Practice Act, §14(c), a written analysis will be provided to anyone failing an examination:

- (1) provided the analysis has not been previously given to the applicant with the written notice of failure; and
 - (2) provided a written request is received in the board office during the period the actual examination is retained in the board files.
- (b) No further review or regrading is available for the Fundamentals of Engineering or multiple-choice type Principles and Practice of Engineering examinations.
- (c) Further, privileges of viewing the Principles and Practice of Engineering examination results or requesting regrading, as permitted by the uniform examination procedures set out by the National Council of Examiners for Engineering and Surveying (NCEES), may also be available:
- (1) only at the dates and times made available by the board in the letter of failure notice; and
 - (2) provided that any costs associated with regrading by NCEES will be paid by the examinee.

§131.104. Examination Irregularities.

- (a) The examinations will be administered in accordance with the National Council of Examiners for Engineering and Surveying (NCEES) policies and procedures. An examinee who does not abide by the NCEES policies and procedures will be subject to dismissal from the remainder of the examination. Cheating on examinations will not be tolerated. Examination proctors who conclusively observe that an examinee is giving or receiving assistance, compromising the integrity of the examination, or participating in any other form of cheating during an examination shall require the examinee to surrender all examination materials. The examinee involved shall leave the room and shall not be permitted to return. Evidence of cheating found after the examination shall also be a cause for action. The executive director shall be informed of such instances of suspected cheating at the earliest possible opportunity and will determine appropriate action. The results of all examinations where the executive director has determined that cheating has occurred will be disallowed.
- (b) If the executive director determines that an examinee has cheated, the examinee will be barred from taking any examination in Texas for a period of two years. Any application for registration pending or approved for examination will be automatically proposed for rejection and will be evaluated or re-evaluated on that basis. Any examination taken and passed in another state during the two-year period will not be acceptable for registration purposes in Texas. Any subsequent examinations administered to the examinee will be given at the site and time determined by the executive director.
- (c) A licensed professional engineer suspected of cheating shall be charged with violating the Texas Engineering Practice Act, §22 and the applicable board rules.

Subchapter G. BOARD REVIEW OF APPLICATION

§131.111. Reviewing, Evaluating and Processing Applications.

All references to the executive director in this section shall allow for the delegation of authority by the executive director to other staff members. The following list of activities as shown in this section shall be conducted in order:

- (1) application is received at the board office in Austin, Texas;
- (2) the executive director shall review it for completeness;
- (3) the executive director shall accept the application as complete for processing and evaluating, or shall accept the application and notify the applicant at the earliest possible time of deficient information and give the applicant forty-five (45) days to complete it. If the applicant does not submit all documents required in the time allowed for such submittals, the application shall be administratively withdrawn;
- (4) the executive director shall review and evaluate the qualifications found in the application and issue a recommendation of approval, non-approval or personal interview;
- (5) the executive director may approve the application without further board action unless the applicant:
 - (A) is requesting a waiver of examinations; or
 - (B) is recommended for a license with reservation by one or more references;
- (6) The application shall be circulated among the professional engineer board members if any of the conditions listed in paragraph (5)(A) or (B) of this section are not met or if the executive director requests an application be reviewed by board members.
 - (A) The application is approved if the first reviewing board member agrees with an executive director recommendation of approval.
 - (B) Circulation shall continue until a majority vote is cast if an application receives a recommendation of non-approval or personal appearance by the executive director or the first board member.

(7) The board shall either approve or non-approve the application.

(A) The board shall approve an applicant to:

(i) take the Principles and Practice of Engineering examination; or

(ii) issue a license to an applicant who has passed the Principles and Practice of Engineering examination or who has had that examination waived.

(B) The board shall non-approve an application if any of the following occur:

(i) the application has been administratively withdrawn for a period of six months;

(ii) a majority of the professional engineer board members voted to non-approve an application on the basis that the applicant does not meet the requirements of the Texas Engineering Practice Act, §12(a)(1) or (2); or

(iii) the applicant did not pass the Principles and Practice of Engineering examination in the prescribed time.

(8) The applicant shall be advised in writing of the board's action.

(9) When the process is complete and a decision has been reached, the board shall complete the consideration of the application through the issuance or denial of a license and confirm such action in the regular order of business at the next quarterly board meeting.

§131.112. Processing of Administratively Withdrawn Applications.

(a) To reactivate an administratively withdrawn application, the applicant must submit:

(1) a reactivation fee as set by the board;

(2) a new application complete with signatures; and

(3) supplementary experience records for the time period since the application was first submitted.

(b) If the application has been administratively withdrawn for a period of six months, the application shall be recommended for non-approval.

§131.113. Reconsideration of Non-Approved Applications or Examination Waivers.

(a) Reconsideration is not available to persons whose application is non-approved because of the failure to pass the Principles and Practice of Engineering examination, the failure to possess an acceptable education, the failure to claim the required creditable experience, or the failure of the applicant who is not licensed in another jurisdiction to establish Texas residency.

(b) If the application is voted non-approved because of the merits of the application, the completeness or incompleteness of the application, or if the board did not grant a request to waive one or more examinations, then the applicant may initiate a request that the application be reconsidered provided:

(1) the request is in writing;

(2) the request includes additional information bearing on the deficiency of the original application;

(3) the request is received at the board office by the close of business on or before the 60th calendar day from the date of the letter notifying the applicant of non-approval; and

(4) no previous reconsideration has been given during this application.

(c) If a valid request for reconsideration is received, the application shall repeat the process of application review. Applicants whose applications or requests for an examination waiver are non-approved under reconsideration may request a personal interview.

§131.114. Personal Interviews of Applicants.

(a) A personal interview with the Licensing Committee of the board or the board's designated representative may be scheduled by the executive director to:

(1) obtain additional information or clarify submitted information at the board's invitation, or to;

(2) reconsider a non-approved application or a denial of an examination waiver request resulted from §131.113 of this title (relating to Reconsideration of Non-Approved Applications or Examination Waivers) at the applicant's request, provided that:

- (A) a written request has been submitted and received at the board's office by the close of business on or before the 60th calendar day from the date of the notification of non-approval or denial;
 - (B) the personal interview is not to be construed as a hearing, but is held to obtain additional information in support of an application; and
 - (C) the executive director may excuse and reschedule an applicant for a personal interview for cause. The executive director may also withdraw an invitation or permission for a personal interview for any reason including a previous failure to appear.
- (b) The Licensing Committee or the board's designated representative shall make recommendations to the full board at the next available board meeting.
- (c) Another personal interview with the full board may be scheduled with a written request in accordance with subsection (a)(2)(A-C) of this section. This interview with the full board shall constitute the last administrative appeal available to the applicant.

§131.115. Application Files.

- (a) Applications that have been through the complete administrative process for approval or non-approval shall be microfilmed.
- (b) One microfilm copy shall be kept in the board office file and one copy shall be kept in the permanent State Archive file.
- (c) All documents incidental to the complete application may be retained at the discretion of the board.

§131.116. Issuance of License.

- (a) A license as a professional engineer shall be issued upon the approval of the application by the board.
- (b) The fee which accompanied the application is applied toward the required licensing fee for the first partial year of licensure.
- (c) The new license holder shall be assigned a serial number issued consecutively in the order of approval.
- (d) The applicant shall be advised by the executive director of:
 - (1) the approval;
 - (2) the serial number;
 - (3) instructions to obtain a seal;
 - (4) the instructions to return a recent, wallet-size, portrait photograph.
- (e) The applicant shall:
 - (1) obtain a seal(s);
 - (2) place the seal imprint(s) on the form provided by the board and return it to the board office;
 - (3) furnish a wallet-size portrait photograph for the board's files.
- (f) Any applicant who fails to furnish an acceptable seal impression or portrait within a period of 60 days after the notice is mailed shall be in violation of the Texas Engineering Practice Act, §22 and board rules and shall be subject to sanctions.
- (g) The printed license shall bear the signature of the chairman and the secretary of the board, bear the seal of the board, and bear the full name and license number of the license holder.
- (h) The printed license shall be uniform and of a design approved by the board. Any new designs for a printed license shall be made available to all license holders upon request and payment of a replacement certificate fee.
- (i) A license issued by the board is as a professional engineer, regardless of branch designations or specialty practices. Practice is restricted only by the license holder's professional judgment and applicable board rules regarding professional practice and ethics.
- (j) The records of the board shall indicate a branch considered by the board or license holder to be dominant.

Subchapter H. LICENSING

Division 1. Professional Engineer License

§131.131. Regular and Temporary Licenses. Unless requested by the applicant or license holder, all licenses issued by the board shall be considered regular licenses. Regular licenses are fully renewable annually until such time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal. If the license holder requests that the license be temporary, the holder's regular license shall be converted to temporary status and may only be renewed twice. A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a regular license is subject. The executive director shall be authorized to convert a regular license to a temporary license at the time the regular license is issued provided a request for such has been received.

§131.132. Provisional Licenses. The board does not issue provisional licenses at this time.

§131.133. Professional Designations. License holders may publicly represent themselves as any type of engineer. The term "licensed professional engineer" and "registered professional engineer" and variations of those terms are interchangeable and may be used at the license holders discretion. Certificates, seals, and other official documentation showing earlier terminology shall be considered valid for all purposes.

§131.134. Expirations and Renewals. The license to practice engineering under the provisions of the Act must be renewed by the license holder annually; otherwise, the license shall become invalid until the date the board receives the license holder's renewal and penalty fee. Each license holder shall advise the board in writing of each change of mailing address as it occurs. The board will mail a renewal notice to the last recorded address of each license holder in compliance with the Act, §16(a). It is the sole responsibility of the license holder to pay the required renewal fee together with any applicable penalty at the time of payment, regardless of whether the renewal notice is received. Stipulations with reference to expirations and renewals of licenses are set out in the Act, §16 and §16.1. The following will apply to renewals.

- (1) An unexpired license may be renewed by payment to the board before the expiration date of the license the required annual renewal fee. Payment may be made by personal, company, or other checks drawn on a United States bank payable in United States currency without penalty.
- (2) The amount of the annual renewal fee shall be set by the board.
- (3) The board may consider reduced annual renewal fees for registered engineers who are at least 65 years of age.
- (4) Licenses will expire according to the following schedule.
 - (A) Licenses originally approved in the first quarter of a calendar year will expire on December 31.
 - (B) Licenses originally approved in the second quarter of a calendar year will expire on March 31.
 - (C) Licenses originally approved in the third quarter of a calendar year will expire on June 30.
 - (D) Licenses originally approved in the fourth quarter of a calendar year will expire on September 30.
- (5) Late renewals will be effected as follows.
 - (A) A license expired for not more than 90 calendar days may be renewed by payment of the set annual renewal fee, plus a penalty fee set by the board.
 - (B) A license expired for more than 90 calendar days but less than one year may be renewed by payment of the renewal fee which was due at expiration, plus a penalty fee set by the board.
 - (C) A license expired for one year but less than two years may be renewed by payment of the renewal fee which was due at expiration, plus the renewal fee which was set for the first anniversary of that expiration, plus a penalty fee set by the board.
- (6) A license which has been expired for two years may not be renewed, but the former license holder may apply for a new license as provided in the Act and applicable board rules.
- (7) 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 license holder's name has been provided by the TGSLC as being in default of a loan, the board shall not renew the license of the license holder 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 license holder shall be provided an opportunity for a hearing, similar to that provided by §131.167 of this title (relating to Disciplinary Actions), before any action concerning the nonrenewal 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.

§131.135. Replacement Certificates. Only one license will be issued to each license holder. A new license to replace any certificate lost, destroyed, or mutilated, may be issued, subject to the rules of the board, on payment of the established fee and verification of the status of the original license. A license holder requesting a replacement license under this section will, if possible, surrender to the board any remaining portions of his

original license and shall file with his request a sworn affidavit setting out the reasons for his request so that the board records will reflect the reason for issuance of a new license. Replacement licenses will reflect the assigned serial number of the license holder.

§131.136. New Design Certificates. In the event the board redesigns the license for professional engineers, a license holder may obtain a license of the new design upon payment of a fee to be established by the board.

§131.137. Engineer-in-Training. Individuals who meet the requirements of the Texas Engineering Practice Act, §12.1, including successful passage of the Fundamentals of Engineering examination are eligible to apply for engineer-in-training certification.

§131.138. Engineer-in-Training Certificates. A certificate as an engineer-in-training expires eight years from the date of issuance. This certification does not entitle an individual to practice as a professional engineer. The fee for engineer-in-training certification will be established by the board. To become enrolled as an engineer-in-training, a certificate may be issued to an eligible individual who requests the certificate, submits an official transcript in accordance with §131.93 of this title (relating to Transcripts), and pays the established fee. Although the certificate has an expiration date, the records of the board will indicate that an individual has passed the Fundamentals of Engineering examination and these records will be maintained in the file indefinitely and will be made available as requested by the individual or another licensing jurisdiction. The certificate may be renewed. Official transcripts will be kept on file and an EIT may request its use when filing the professional engineer application.

Division 2. REGISTRATION OF FIRMS

§131.141. Authority. The Texas Board of Professional Engineers shall receive, evaluate, and process all applications for a certificate of registration issued under the authority of the Texas Engineering Practice Act (Act). Applications for the certificate of registration shall be accepted from all firms offering to engage or engaging in the practice of professional engineering for the public in this state. The board has the authority under the Act to issue an annual certificate of registration to applicants that, subsequent to review and evaluation, are found to have met all requirements of the Act and board rules. The board has the authority under the Act to deny a certificate of registration to any applicant found not to have met all requirements of the Act and board rules.

§131.142. Application for a Certificate of Registration.

- (a) The board may issue a certificate of registration only to applicant firms having submitted sufficient information to meet the requirements set forth in the Act, §17 and this section.
- (b) The authorized official of the firm shall complete the form furnished by the board including but not limited to the following:
 - (1) the name, address, and communication number of the firm;
 - (2) the name, position, address, communication numbers of each officer or director;
 - (3) the name, address, current Texas professional engineer license number of each full-time engineer performing engineering for the public in Texas on behalf of the firm;
 - (4) the name, location, and communication numbers of each subsidiary or branch office offering engineering services to the public in Texas;
 - (5) an affidavit attesting to the correctness and completeness of the application; and
 - (6) an annual registration fee as determined by the board.

§131.143. Renewal and Expiration.

- (a) The certificate of registration shall be valid until the last day of the twelfth month following the date of issuance of the certificate of registration and may be renewed by filing an updated application and paying the annual registration fee set by the board.
- (b) No engineering services are to be offered or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.
- (c) Notification in writing shall be given to the board within fifteen (15) calendar days of:
 - (1) any change of the firm name;
 - (2) any change in the president or chief executive officer or lack of professional engineers of the firm;
 - (3) the dissolution of the firm; or
 - (4) the firm no longer offers to provide or is providing engineering services to the public in Texas.

- (d) An expired certificate of registration may be renewed by filing an updated application, payment of the renewal fee, plus a penalty fee set by the board. The board may waive the penalty fee if the officer of the firm attests in writing that no engineering services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.
- (e) The penalty fee for the renewal of a certificate of registration may also include administrative penalties under the Act, §22c and §131.167(i) of this title (relating to Disciplinary Actions).
- (f) Notice in writing to the board by the firm shall be given that the firm no longer offers or is providing engineering services to the public in Texas or the firm may be subject to administrative penalties.
- (g) The application fee and renewal fee will not be refunded.

Subchapter I. PROFESSIONAL CONDUCT AND ETHICS

§131.151. Engineers Shall Protect the Public.

- (a) Engineers shall be entrusted to protect the health, safety, property, and welfare of the public in the practice of their profession. The public as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with the engineering work of the license holder.
- (b) Engineers shall not perform any engineering function which, when measured by generally accepted engineering standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public. Any act or conduct which constitutes incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be censurable by the board.
- (c) Engineers shall notify involved parties or the board of any engineering decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an engineer's judgment, any risk to the public remains unresolved, that engineer shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities.
- (d) Engineers should strive to adequately examine the environmental impact of their actions and projects, including the prudent use and conservation of resources and energy, in order to make informed recommendations and decisions.

§131.152. Engineers Shall Be Objective and Truthful.

- (a) Engineers shall issue statements only in an objective and truthful manner. Engineers should strive to make affected parties aware of the engineers' professional concerns regarding particular actions or projects, and of the consequences of engineering decisions or judgments that are overruled or disregarded.
- (b) The issuance of oral or written assertions in the practice of engineering, which are fraudulent, deceitful, or misleading or on which in any manner whatsoever tend to create a misleading impression constitutes misconduct.
- (c) The engineer shall disclose a possible conflict of interest to a potential or current client or employer upon discovery of the possible conflict.
- (d) A conflict of interest exists when an engineer accepts employment when a reasonable probability exists that the engineer's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. An engineer may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. An engineer in a conflict of interest employment shall maintain the interests of the client and other parties as provided by §131.154 of this title (relating to Engineers Shall Maintain Confidentiality of Clients) and other rules and statutes.
- (e) Engineers shall only issue work conforming with the board's sealing rules. However, an engineer, as a third party, may alter, complete, correct, revise, or add to the work of another engineer when engaged to do so by a client, provided:
 - (1) the client furnishes the documentation of such work submitted to the client by the first engineer;
 - (2) the first engineer is notified in writing by the second engineer of the engagement immediately upon acceptance of the engagement; and
 - (3) any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second engineer. The second engineer then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original engineer's design.

§131.153. Engineers' Actions Shall Be Competent.

- (a) Engineers shall practice only in their areas of competence, in a careful and diligent manner, and in conformance with standards, laws, codes, and rules and regulations applicable to engineering practice.

- (b) The engineer shall not perform any engineering assignment for which the engineer is not qualified by education or experience to perform adequately and competently. However, an engineer may accept an assignment which includes phases outside of the engineer's area of competence if those other phases are performed by legally qualified consultants, associates, or employees.
- (c) The engineer shall not express an engineering opinion in deposition or before a court, administrative agency, or other public forum which is contrary to generally accepted scientific and engineering principles without fully disclosing the basis and rationale for such an opinion. Engineering opinions which are rendered as expert testimony and contain quantitative values shall be supported by adequate modeling or analysis of the phenomena described.

§131.154. Engineers Shall Maintain Confidentiality of Clients.

- (a) Engineers shall act as faithful agents for their employers or clients.
- (b) The engineer may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety or welfare of the public.
- (c) The engineer shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of a third party.
- (d) The engineer shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the engineer's employees and associates.

§131.155. Engineers' Responsibility to the Profession.

- (a) Engineers shall engage in professional and business activities in an honest and ethical manner. Engineers should strive to promote responsibility, commitment, and ethics both in the education and practice phases of engineering. They should attempt to enhance society's awareness of engineers' responsibilities to the public and encourage the communication of these principles of ethical conduct among engineers.
- (b) The engineer shall:
 - (1) endeavor to meet all of the applicable professional practice requirements of federal, state, and local statutes, codes, regulations, rules, or ordinances in the performance of engineering services;
 - (2) exercise reasonable care or diligence to prevent the engineer's partners, associates, and employees from engaging in conduct which, if done by the engineer, would violate any provision of the Texas Engineering Practice Act, general board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services; and
 - (3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or board rules.
 - (4) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include but are not limited to intentional misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party.
- (c) The engineer shall not:
 - (1) aid or abet, directly or indirectly, any unlicensed person, or business entity in the unlawful practice of engineering;
 - (2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;
 - (3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;
 - (4) give, offer or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment;
 - (5) accept compensation or benefits from more than one party for services pertaining to the same project or assignment;
 - (6) solicit professional employment in any false or misleading advertising;
 - (7) submit or request, orally or in writing, a competitive bid to perform engineering services for a political subdivision of the State of Texas unless specifically authorized by state law.

(A) For purposes of this section, the board considers competitive bidding to perform engineering services to include the submission of any monetary cost information in the initial step of selecting qualified engineers. Cost information or other information from which cost can be derived must not be submitted until the second step of negotiating a contract at a fair and reasonable cost.

(B) This section does not prohibit competitive bidding in the private sector.

§131.156. Action in Another Jurisdiction.

(a) The engineer shall not practice or offer to practice engineering in any other jurisdiction in violation of the laws regulating the practice of professional engineering in that jurisdiction. A finding by such jurisdiction of illegal practice or offer to practice is misconduct and will subject the engineer to disciplinary action in Texas.

(b) Any disciplinary actions taken by another jurisdiction on a matter which would constitute a violation of the Texas Engineering Practice Act or board rules shall be sufficient cause for disciplinary action by this board. A certified copy of the board Order or Final Action from another jurisdiction shall be sufficient evidence to take disciplinary action in this state.

Subchapter J. COMPLIANCE AND ENFORCEMENT

§131.161. General. The board will conduct inquiries into situations which allegedly violate the requirements of the Texas Engineering Practice Act and board rules concerning the practice of engineering, representations which imply the legal capacity to offer or perform engineering services for the public, and situations which are considered by the board to pose or have caused harm to the public. Situations that represent a repeat offense, a danger, or nuisance to the public or cannot be reasonably resolved through voluntary compliance, will be disposed of by administrative, civil, or criminal proceedings as authorized by law.

§131.162. Firm Compliance.

(a) The board shall not consider any firm, partnership, association, corporation, or other business entity as being in compliance with the Texas Engineering Practice Act (Act), §17 and §18, unless a licensed professional engineer is a regular full-time employee of the firm, partnership, association, corporation or other business entity. The engineer shall provide to the board evidence of such employment upon its request. This section does not prohibit a licensed professional engineer from performing consulting engineering services on a part-time basis as an individual. An engineering firm shall provide that at least one full-time engineer employee directly supervises all engineering work performed in branch, remote, or project offices.

(b) In accordance with §17 of the Act and §131.141 of this title (relating to Authority), all sole proprietorships, firms, partnerships, corporations and joint stock associations offering engineering services to the public must be registered by the board. Effective October 1, 2000, any qualifying entity under §17 of the Act that offers consulting engineering services to the public and does not hold a current certificate of registration with the board shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in §22C of the Act and §131.167(i) of this title (relating to Disciplinary Actions).

§131.163. Engineer Compliance. Any engineer who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §131.162 of this title (relating to Firm Compliance) shall be subject to legal and disciplinary actions available to the board. Engineers shall perform or directly supervise the engineering work of any subordinates as provided by §131.18 of this title (relating to Definitions). Under no circumstances shall engineers work in a part-time arrangement with a firm not otherwise in full compliance with §131.162 of this title (relating to Firm Compliance) in a manner that could enable such firm to offer or perform professional engineering services.

§131.164. Business Names. License holders shall personally and immediately notify the board in writing of each change in their professional engineering association or employment. The notification shall be signed and shall include full legal trade or business name of the association or employment, physical location and mailing address of the business, status of business (corporation, assumed name, partnership, or self-employment through use of own name), legal relationship and position of responsibility within the business, telephone number of the business office, effective date of this change; and reason for this notification (changed employment or retired; firm went out of business or changed its name or location, etc.).

§131.165. A License Holder's Responsibility to the Board. A license holder whose license is current or is expired but renewable under the Texas Engineering Practice Act (Act), §16, is subject to all provisions of the Act and board rules including those governing license holders. The license holder shall promptly answer all inquiries concerning matters under the jurisdiction of the board, and shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct subject to any of the penalties provided under the Act, §22.

§131.166. Engineers' Seals.

(a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed by the professional engineer named and to delineate the scope of the engineer's work. The engineer shall utilize the designation "P.E." or the titles set forth in the Texas Engineering Practice Act (Act), §1.3. Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a 2-inch seal) to be of the design shown in this subsection. Computer-generated seals may be of a reduced size provided that the engineer's name and number are clearly legible.



- (b) All seals obtained and used by license holders may contain any given name or initial combination except for nicknames, provided the surname currently listed with the board appears on the seal and in the usual written signature.
- (c) Engineers shall only seal work done by them or performed under their direct supervision, except as provided in subsection (m) of this section concerning standards. Upon sealing, engineers take full professional responsibility for that work.
- (d) It shall be misconduct to knowingly sign or seal any engineering document or product if its use or implementation may endanger the health, safety, property or welfare of the public.
- (e) It shall be misconduct or an unlawful act for a license holder whose license has been revoked, suspended, or has expired, to sign or affix a seal on any document or product.
- (f) All seals obtained and used by license holders shall be capable of leaving a permanent ink or impression representation on the engineering work, or shall be capable of placing a computer-generated representation in a computer file containing the engineering work. If not accompanied by an original signature and date, computer-generated seals shall be accompanied by the following text or similar wording: "The seal appearing on this document was authorized by (Example: Leslie H. Doe, P.E. 0112) on (date)."
- (g) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas is prohibited. Signature reproductions, including but not limited to rubber stamps or computer-generated signatures, shall not be used in lieu of the engineer's actual signature.
- (h) Engineers shall take reasonable steps to insure the security of their physical or computer-generated seals at all times. In the event of loss of a seal, the engineer will immediately give written notification of the facts concerning the loss to the executive director.
- (i) Engineers shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any engineering work as outlined in subsection (j) of this section before such work is released from their control. Preliminary documents released from their control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."
- (j) The engineer shall sign, seal and date the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding. All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E." or other terms allowed under the Act, §1.3. A seal may be added on such work if required or at the engineer's discretion. Electronic correspondence of this type shall be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms allowed under the Act, §1.3.
- (k) Work performed by more than one engineer shall be sealed in a manner such that all engineering can be clearly attributed to the responsible engineer or engineers. When sealing plans or documents on which two or more engineers have worked, the seal of each engineer shall be placed on the plan or document with a notation describing the work done under each engineer's responsible charge.
- (l) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.
- (m) When an engineer elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:
 - (1) individually sealed by the engineer; or
 - (2) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing its use.

(n) Alteration of a sealed document without proper notification to the responsible engineer is misconduct or an offense under the Act.

§131.167. Disciplinary Actions.

- (a) Under the authority and provisions of the Texas Engineering Practice Act (Act), §8 and §22, the board shall take disciplinary action against a license holder who is found censurable for a violation of law or rules. A disciplinary action may be composed of any one or combination of the following listed in paragraphs (1)-(6) of this subsection:
- (1) revocation of a license;
 - (2) suspension of a license;
 - (3) probation of a suspended license;
 - (4) refusal to renew a license;
 - (5) issuance of a formal or informal reprimand;
 - (6) assessment of an administrative penalty under the Act, §22C.
- (b) All disciplinary actions issued by the board will take the form of a board order. All disciplinary actions shall be permanently recorded and made available upon request as public information. Except for an informal reprimand, all disciplinary actions shall be published in the board newsletter, may be released in a press release, and shall be transmitted to the National Council of Examiners for Engineering and Surveying.
- (c) A license holder whose license has expired for nonpayment of renewal fees continues to be subject to all provisions of the Act and board rules governing license holders until the license is revoked by the board or becomes non-renewable under the Act, §16(e).
- (d) Upon determination that sufficient probable cause exists to indicate that a violation of law or rules may have occurred, the executive director shall notify the license holder, hereafter referred to in this section as “respondent”, by personal service or by certified or registered mail of the alleged violation. The respondent shall be afforded an opportunity to present rebuttals, arguments and evidence to the board prior to the initiation of disciplinary proceedings. If a respondent does not respond, the board may proceed with a contested case hearing.
- (e) If, after evaluation of the respondent’s response a violation appears evident, the executive director shall initiate disciplinary action. Before proceeding with the formal contested case hearing process, the respondent shall have an opportunity to resolve the allegations informally.
- (1) The license holder may request an informal conference to present additional evidence and discuss particulars of the allegation. Upon receipt of such a request the executive director shall schedule a conference at the board office or other location, and shall appoint an informal conference committee composed of one board member, the executive director, and legal counsel; the committee may meet and act provided that no more than one committee member is absent. Other persons designated by the respondent or the executive director may be present as resources or as legal counsel to respondent. The informal conference committee shall hear the particulars of the allegations, and shall recommend:
 - (A) dismissal by the executive director;
 - (B) a proposal for an agreed board order for disciplinary actions that will be presented to the board for acceptance or rejection; or
 - (C) scheduling of a formal hearing.
 - (2) The executive director may also offer the respondent a consent order that will be presented to the board for acceptance or rejection. If the respondent declines such an offer, or if the board rejects it, the procedures in paragraphs (1) or (3) of this subsection will be followed.
 - (3) Any board action under this subsection which is not informally disposed by agreed or consent order, will be considered a contested case and will be handled in accordance with applicable law and board rules.
- (f) Criminal convictions shall be handled as shown in paragraphs (1)-(3) of this subsection:
- (1) The board shall follow the requirements of Texas Civil Statutes, Article 6252-13c, and shall revoke the license of any license holder incarcerated as a result of a felony conviction, or violation of felony probation or parole, or revocation of mandatory supervision subsequent to being licensed as a professional engineer.
 - (2) The board may take any of the actions set out in subsection (a) of this section when a license holder is convicted of a misdemeanor or a felony without incarceration if the crime directly relates to the license holder’s duties and responsibilities as a professional engineer.
 - (3) Any license holder whose license has been revoked under the provisions of this subsection may apply for a new license upon release from incarceration, but the application shall be subject to additional scrutiny relating to the incarceration. Such scrutiny shall be in accordance with Texas Civil Statutes, Article 6252-13c.

(g) The board, the executive director, an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the factors listed in paragraphs (1)-(9) of this subsection:

- (1) the seriousness of the acts or omissions;
- (2) the number of prior disciplinary actions taken against the respondent;
- (3) the severity of penalty necessary to deter future violations;
- (4) efforts or resistance to correct the violations;
- (5) any hazard to the health, safety, property, or welfare of the public;
- (6) any actual damage, physical or otherwise, caused by the violations;
- (7) any economic benefit gained through the violations;
- (8) the economic harm to property or the environment caused by the violation;
- (9) any other matters impacting justice and public welfare.

(h) The following is a table of suggested sanctions the board may levy against license holders for specific infractions of the Act or rules; the minimum administrative penalty will be \$100 per violation:

INFRACTION	CITATION	SUGGESTED SANCTION
Fraud or deceit in obtaining a license	Section 22(a)(1), (e); Section 22C; Section 23(a)	Revocation/\$3,000.00
Gross negligence; Sealing work endangering the public	Section 22(a)(2), (4); Section 22C; 131.151(a), (b); 131.153(a), (b); 131.166(d)	Revocation/\$3,000.00
Incompetence	Section 22(a)(2), (4); Section 22C; 131.153(a), (b)	3 year suspension/\$3,000.00
Misrepresentation; Conflict of interest	Section 22(a)(2), (4); Section 22C; 131.152(a), (b), (c); 131.155(b)(3); 131.155(c)(6)	2 year suspension/\$2,500.00
Improper solicitation and/or acceptance	Section 22(a)(2), (4); Section 22C; 131.155(c)(4), (5), (6)	2 year suspension/\$2,500.00
Reveal confidences and private information	Section 22(a)(2), (4); Section 22C; 131.154(a), (b), (c), (d)	1 year suspension/\$1,500.00
Attempt to injure reputation of another; Retaliation against a reference/complainant	Section 22(a)(2), (3), (4); Section 22C; 131.155(c)(2), (3)	1 year suspension/\$1,500.00
Aiding and abetting unlicensed practice, or other assistance; "Plan Stamping"; Enter into a business relationship which is in violation of 131.162 (Firm Compliance)	Section 22(a)(2), (4); Section 22C; 131.155(c)(1); 131.163; 131.166(c)	3 year suspension/\$3,000.00
Failure to report violations of others; Failure to consider societal and environmental impact of actions; Failure to prevent violation of laws, codes or ordinances	Section 22(a)(2), (4), (5); Section 22C; 131.151(c), (d); 131.155(b)(1), (2)	1 year suspension/\$1,500.00
Competitive bidding	Section 22(a)(2), (4); Section 22C; 131.155(c)(7)	1 year suspension/\$1,500.00
Action in another jurisdiction	Section 22(a)(2), (4); Section 22C; 131.156(a), (b)	Board's discretion
Failure to return seal imprint and/or portrait; Failure to report change of address or employment; Failure to respond to Board communications	Section 22(a)(2), (4); Section 22C; 131.116(e), (f); 131.134; 131.164; 131.165	6 month suspension/\$1,000.00
Practice or affix seal with expired or suspended license	Section 1.2; Section 15(b); Section 22(a)(2), (4); Section 22C; 131.166(e)	1 year suspension/\$1,500.00
Failure to safeguard seal; Failure to seal, sign, or date work; alter work of another; other seal infractions	Section 22(a)(2), (4); Section 22C; Section 15(b); 131.166(a), (b), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n); 131.152(e)	1 year suspension/\$1,500.00
Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional engineer	Section 22(a)(2), (4); Section 22C; 131.167(f)(2)	Board's discretion
Felony conviction with incarceration	Section 22(a)(4); Section 22C; 131.167(f)(1)	Revocation/\$3,000.00

(i) The following is a table of suggested sanctions that may be imposed against unlicensed individuals for specific infractions of the Act; the minimum administrative penalty will be \$100 per violation:

INFRACTION	CITATION	SUGGESTED SANCTION	
		First Occurrence	Subsequent Occurrences
Use of "Engineer" title	Section 1.1; Section 1.2; Section 8; Section 22C; Section 23	Voluntary compliance through Cease and Desist Order	Injunctive / Criminal and \$1,000.00
Use of "P.E." designation, or claim to be a "Professional Engineer"	Section 1.2; Section 8; Section 22C; Section 23	Cease and Desist Order and \$1,500.00	Injunctive / Criminal and \$3,000.00
Offer or attempt to practice engineering (e.g., solicitation, proposal, contract, etc.)	Section 1.1; Section 1.2; Section 8; Section 18; Section 22C; Section 23	Cease and Desist Order and \$1,500.00	Injunctive / Criminal and \$3,000.00
Representation of ability to perform engineering (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.)	Section 1.1; Section 1.2; Section 8; Section 18; Section 22C; Section 23	Voluntary compliance	Cease and Desist Order and \$500.00
Use of word "engineer" or any variation or abbreviation thereof under any assumed, trade, business, partnership, or corporate name	Section 1.1; Section 1.2; Section 8; Section 18; Section 22C; Section 23	Voluntary compliance and \$500.00	Injunctive / Criminal and \$3,000.00
Unlicensed practice of engineering	Section 1.1; Section 1.2; Section 8; Section 17; Section 18; Section 22C; Section 23	Cease and Desist Order and \$2,000.00	Injunctive / Criminal and \$3,000.00

§131.168. Actions Against Non-License Holders. Under the authority and provisions of the Texas Engineering Practice Act, §§8 and 22C, the board shall investigate complaints and take action against non-license holders or firms who are found to be censurable for a violation of the law. The following investigative process and resulting action listed in paragraphs (1)-(3) of this section will be followed by the board to ensure affected individuals and/or firms are afforded due process of law:

- (1) Upon receipt of a formal or staff initiated complaint, the information will be evaluated to determine if the evidence provides sufficient probable cause that a violation may have occurred.
- (2) If sufficient probable cause does not exist, an investigation will not be initiated.
- (3) If sufficient probable cause is found, then an investigation will be initiated by the board staff to determine if a violation of law has occurred. The board's investigative process will be as follows:
 - (A) The individual or firm will be advised of the complaint and the specific section of the Act which appears to be violated. If the initial evidence is sufficiently strong, the executive director may offer the respondent a consent order that, if accepted, will be presented to the board for acceptance or rejection. The consent order shall include an administrative penalty not inconsistent with §131.167(i) of this title (relating to Disciplinary Actions) and a compliance requirement. The respondent shall be fully informed of the range of penalties allowed under criminal, civil and administrative proceedings.
 - (B) The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Act, or to accept the consent order.
 - (C) If, after evaluation of the respondent's response a violation appears evident, the respondent will be afforded the opportunity to resolve the allegations informally in the same manner prescribed for license holders in §131.167(e) of this title (relating to Disciplinary Actions).
 - (D) Any board action under this subsection which is not informally disposed by agreed or consent order, will be considered a contested case and will be handled in accordance with applicable law and board rules.

Subchapter K. COMPLAINTS

§131.171. General.

- (a) Complaints alleging violations of the Texas Engineering Practice Act (Act) or board rules must be made in good faith and be accompanied by sufficient information and factual evidence for the executive director to determine if probable cause exists. The board is not responsible for proving the basis of a complaint. If probable cause cannot be found, the executive director shall dismiss the allegation without further action.
- (b) Complaints shall normally be submitted in writing along with copies or originals of all supporting evidence; however, the executive director may initiate an inquiry based on any information establishing probable cause.
- (c) The board may proceed or not proceed with an investigation, regardless of any civil or criminal actions with any of the parties involved. Withdrawal of a complaint shall not impact an on-going investigation.
- (d) The board will receive and investigate confidential complaints against license holders or any other person who may have violated this Act. The board shall maintain the confidentiality of the complaint during the investigation of the complaint. The investigation phase of the complaint shall be considered complete for the purposes of maintaining confidentiality when formal charges have been filed.

§131.172. Complaints Against License Holders.

- (a) The provisions of the Texas Engineering Practice Act (TEPA) and the provisions of the Administrative Procedure Act (APA) shall apply to the conduct of all investigations and administrative actions in the board's processing of a complaint. In addition, the board may promulgate other procedural rules not inconsistent with TEPA or APA.
- (b) Complaints shall be submitted on complaint forms provided by the board or in a written format that includes the following information listed in paragraphs (1)-(5) of this subsection:
 - (1) description of the alleged violation;
 - (2) supporting information and factual evidence;
 - (3) names and addresses of witnesses;
 - (4) sources of other pertinent information; and
 - (5) the section(s) part of the Act or the board rule(s) alleged to have been violated.
- (c) Upon determination that a violation of the Act or board rules has occurred, the board will take one of the actions set forth in the Act, §22 and §22C. In addition, the board may refer injunctive or criminal actions against a license holder to the proper authorities.

§131.173. Complaints Against Unlicensed Persons, or Firms, Partnerships and Other Entities.

- (a) Complaints alleging violations of the Texas Engineering Practice Act (Act) or board rules should be submitted in writing, but need not be on complaint forms.
- (b) The executive director may accept an oral complaint if the allegation can be substantiated by documents readily available to the board.
- (c) Upon determination that a violation of the Act or board rules has occurred, the board may take one or more of the following actions:
 - (1) enter into an agreement of voluntary compliance; or
 - (2) file an injunctive suit to obtain compliance; or
 - (3) file a criminal complaint with the appropriate prosecuting authority as provided by the Act, §23; or
 - (4) impose an administrative penalty against any person or entity as provided under the Act, §22C.

Subchapter L. HEARINGS-CONTESTED CASES

§131.181. State Office of Administrative Hearings.

- (a) Formal Contested case hearings will be conducted for the board by the State Office of Administrative Hearings (SOAH), as authorized by Texas Civil Statutes, Article 6252-13f. Hearings will be conducted in accordance with the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), the rules and regulations of the SOAH, and the Texas Engineering Practice Act and board rules.
- (b) An administrative law judge (judge) assigned to the SOAH will perform the duties and responsibilities as described in §§131.181-131.224 of this title (relating to Hearings-Contested Cases).
- (c) The judge shall consider any applicable board rules and policies in conducting the hearing. If there is any conflict between the rules of the SOAH and these board rules, these rules will control unless otherwise specifically stated in the SOAH rules. This subsection does not apply if the rules of the board are contrary to or are otherwise precluded by statutory or other controlling law, including Texas Civil Statutes, Article 6252-13f.

§131.182. Board Responsibilities. The board will conduct sufficient investigation of complaint matters within its jurisdiction and attempt to resolve cases through authorized informal dispositions in accordance with §131.167(e) of this title (relating to Disciplinary Actions). However, when agreements are not reached or approved, the board must refer contested cases to the State Office of Administrative Hearings for formal hearings. The board shall not attempt to influence the findings of facts or the judge's application of the law in any contested case other than by proper evidence and legal argument. The board may, however, change a finding of fact or conclusion of law made by the judge, or vacate or modify an order issued by the judge, only for reasons of policy and must state in writing the reason and legal basis for the change.

§131.183. Jurisdiction; Request for Hearing or Law Judge.

- (a) The State Office of Administrative Hearings (SOAH) acquires jurisdiction over a case when the board files a written request for setting of hearing form or request for assignment of an administrative law judge form. A request for setting of hearing or for assignment of an administrative law judge shall be considered filed on the date the request form is received by the SOAH.
- (b) The board shall submit to the SOAH one of the following accompanied by copies of all pertinent documents (including but not limited to the complaint, petition, application, or other document describing board action giving rise to a contested case), along with a written statement of applicable rules and policies: (1) request for setting of hearing; or, (2) request for assignment of a judge. If the board requests a setting for hearing, the SOAH will provide the board with the date, time, and place of such setting. If the board requests an assignment of a judge, the SOAH will assign a judge to consider motions and other prehearing matters. After a cause has been set for hearing pursuant to a request for setting of hearing or has been assigned a judge pursuant to a proper request, any party may move for appropriate relief, including but not limited to discovery and evidentiary rulings, continuances, and settings, which will be ruled on by the SOAH.

§131.184. Filings.

- (a) Originals or duplicate originals of all notices, pleadings, motions, answers, affidavits and all other filings in a contested case, made in accordance with the Administrative Procedure and Texas Register Act, the Texas Rules of Civil Evidence, or other applicable law, shall be filed with the State Office of Administrative Hearings (SOAH) at the time the SOAH acquires jurisdiction or at the time the instrument is issued and delivered if that time is later than the time the SOAH acquires jurisdiction.
- (b) Pursuant to the SOAH rules, a copy of all filings shall be sent by mail or otherwise delivered to all parties or their representative of record.
- (c) A certificate of service, signed by the person making the filing, showing the manner of service, stating that the filing has been served on all other parties and identifying those parties shall be contained in or attached to all filings. The certificate is prima facie evidence of service. The following form of certificate will be sufficient in this connection: I hereby certify that I have this ____ day of _____, 19____, served copies of the foregoing pleading, upon all other parties to this proceeding, by (here state the manner of service). Signature.
- (d) If a filing does not contain a required certificate of service, or otherwise show service on all other parties:
 - (1) the SOAH may return the filing to the filing party; or
 - (2) the SOAH may send a notice to all parties stating that the filing does not show service on all parties and will not be considered unless and until SOAH is notified that all parties have been served with the filing; or
 - (3) the SOAH may, in the interest of economy of effort, send a copy of the filing to all parties.
- (e) In computing any period of time prescribed or allowed by board rules, by order of the board, or by any applicable statute, the period shall begin on the day after the act or event considered, and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal state holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal state holiday.

§131.185. Stipulations; Agreements.

- (a) The parties, by stipulation, may agree to any substantive or procedural matter.
- (b) A stipulation may be filed in writing or entered on the record at the hearing.

- (c) The judge may require additional development of stipulated matters.
- (d) No stipulation or agreement between the parties and their attorneys or representatives with regard to any matter involved in any proceeding before the board or the State Office of Administrative Hearings shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This subsection does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law.

§131.186. Service. Unless otherwise required by law, service of the following documents shall be made by personal delivery to the party or to the party's representative by certified mail, return receipt requested, hand delivery or via facsimile to the party's address of record:

- (1) notices of hearing;
- (2) default orders;
- (3) prehearing orders;
- (4) proposal for decisions; and
- (5) decisions and orders of the board.

§131.187. Conduct and Decorum.

- (a) Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the administrative law judge, and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.
- (b) Unless otherwise prohibited by federal or state law, all proceedings before the board or conducted by the State Office of Administrative Hearings are open to the public. The judge may remove persons whose conduct impedes the orderly progress of the hearing, and restrict attendance because of the physical limitations of the hearing facility.

§131.188. Classification of Parties. Parties to proceedings before the board and the State Office of Administrative Hearings are applicants, protestants, petitioners, complainants, respondents, and intervenors. Regardless of errors as to designations in their pleadings, the parties shall be accorded their true status in the proceeding.

§131.189. Appearances in Person or by Representative; Waivers; Default.

- (a) An individual may represent himself or herself.
- (b) A party may be represented by an attorney authorized to practice law in the State of Texas, or other representative when authorized by law.
- (c) A party's representative shall enter his or her appearance with the State Office of Administrative Hearings (SOAH).
- (d) A party's representative of record shall be copied on all notices, pleadings, and other correspondence.
- (e) A party's attorney of record remains the attorney of record in the absence of a formal withdrawal and an order approving such withdrawal is issued by a judge.
- (f) A hearing before the judge is not necessary if all parties agree to the admission of the evidence and waive their right to appear.
- (g) A party may waive the right to appear at the hearing unless prohibited by law.
- (h) A waiver shall be in writing and filed with the SOAH.
- (i) If, after receiving notice of a hearing, a party fails to attend a hearing, the judge may proceed in that party's absence and, where appropriate, may issue a proposal for decision against the defaulting party.
- (j) A waiver may be withdrawn by a party on written notice received by the SOAH no later than seven days before the scheduled hearing. The judge may permit withdrawal of a waiver subsequent to that time on a showing of good cause or in the interest of justice. When a waiver is permitted by law, failure of a party to appear personally or by representation after filing written notice of waiver, may not result in a finding of default.

§131.190. Classification of Pleadings. Pleadings filed in contested cases shall be protests, petitions, complaints, answers, replies, motions for rehearing, and other motions. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

§131.191. Form and Content of Pleadings.

- (a) Pleadings shall be typewritten or printed upon paper 8-1/2 inches wide and 11 inches long with an inside margin at least 1 inch wide, and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible.
- (b) All pleadings for which no official form is prescribed shall contain:
- (1) the name of the party seeking to bring about or prevent action by the board;
 - (2) a concise statement of the facts relied upon by the pleader;
 - (3) a prayer stating the type of relief, action, or order desired by the pleader;
 - (4) any other matter required by statute; and
 - (5) a certificate of service, as required by §131.184(c) of this title (relating to Filings).
- (c) Each application, petition, or complaint which is intended to institute a proceeding before the board shall be accompanied by any filing fee prescribed by law and these sections.

§131.192. Discovery.

- (a) Parties to an administrative hearing before the State Office of Administrative Hearings (SOAH) shall have the discovery rights provided in the Administrative Procedure and Texas Register Act, the Texas Engineering Practice Act and board rules.
- (b) Requests for issuances of subpoenas or commissions should be directed to the board.
- (c) All discovery requests should be initially directed to the party from which discovery is being sought.
- (d) All disputes with respect to any discovery matter shall be filed with and resolved by the SOAH.
- (e) All parties will be afforded a reasonable opportunity to file objections or move for a protective order with respect to the issuance of a subpoena or commission.
- (f) Copies of discovery requests and documents filed in response thereto shall be filed with all parties, but should not be filed with the SOAH unless directed by the judge or when in support of a motion to compel, motion for protective order, or motion to quash.

§131.193. Motions; Amendments.

- (a) Unless otherwise provided by these sections:
- (1) a party may move for appropriate relief before or during a hearing;
 - (2) a party shall submit all motions in writing or orally at a hearing;
 - (3) written motions shall:
 - (A) be filed no later than 15 days before the date of the hearing, provided, for good cause stated in the motion the judge may permit a written motion subsequent to the time;
 - (B) state concisely the question to be determined;
 - (C) be accompanied by any necessary supporting documentation, and if based on matters which do not appear of record, they shall be supported by affidavit; and
 - (D) be served on each party.
 - (4) An answer to a written motion shall be filed on the earlier of:
 - (A) seven days after receipt of the motion; or
 - (B) on the date of the hearing.
 - (5) On written notice to all parties or with telephone consent of all parties, the judge may schedule a conference to consider a written motion; or
 - (6) The judge may reserve ruling on a motion until after the hearing; or
 - (7) The judge may issue a written decision or state the decision on the record; or
 - (8) If a ruling on a motion is reserved, the ruling shall be in writing and may be included in the judge's proposed decision; and

(9) The filing or pendency of a motion does not alter or extend any time limit otherwise established by these rules.

- (b) Continuances may be granted by the State Office of Administrative Hearings in accordance with the Administrative Procedure and Texas Register Act, the Texas Engineering Practice Act and board rules, and applicable case law. Motions for continuance shall be in writing or stated in record, and shall set forth the specific grounds upon which the party seeks the continuance.
- (c) Unless made during a prehearing or hearing, for all motions for continuance, cancellation of a scheduled proceeding or extension of an established deadline filed fewer than ten days before the date or deadline in question, the movant must contact the other party(ies) and must indicate in the motion whether it is opposed by any party(ies). Further, if a continuance to a date certain is sought, the motion must include a proposed date or dates (preferably a range of dates) and must indicate whether the party(ies) contacted agrees on the proposed new date(s).
- (d) Any pleading may be amended at any time up to seven days prior to hearing and thereafter with approval of the judge; provided, that the complaint or petition upon which notice has been issued shall not be amended so as to broaden the scope.

§131.194. Prehearing Conferences and Orders.

- (a) When appropriate, the judge may hold a prehearing conference to resolve matters preliminary to the hearing.
- (b) A prehearing conference may be convened to address the following matters:
 - (1) issuance of subpoenas;
 - (2) factual and legal issues;
 - (3) stipulations;
 - (4) requests for official notice;
 - (5) identification and exchange of documentary evidence;
 - (6) admissibility of evidence;
 - (7) identification and qualification of witnesses;
 - (8) motions;
 - (9) discovery disputes;
 - (10) order of presentation;
 - (11) scheduling;
 - (12) settlement conferences; and
 - (13) such other matters as will promote the orderly and prompt conduct of the hearing.
- (c) Among other matters, as stated in subsection (b) of this section, an administrative law judge may order:
 - (1) that the parties discuss the prospects of settlement or stipulations and are prepared to report thereon at the prehearing conference;
 - (2) that the parties file and be prepared to argue preliminary motions at the prehearing conference;
 - (3) that the parties be prepared to specify the controlling factual and legal issues in the case at the prehearing conference; and
 - (4) that the parties make a plain and concise statement of undisputed facts and issues at the prehearing conference.
- (d) At the discretion of the judge, all or part of the prehearing conference may be recorded or transcribed.
- (e) The judge may, after the office acquires jurisdiction, issue an order requiring a prehearing statement of the case. The parties shall, within 14 days of service, file a statement specifying the parties present position on any or all of the following as required by the judge:
 - (1) the disputed issues or matters to be resolved;
 - (2) a brief statement of the facts or arguments supporting the party's position in each disputed issue or matter;
 - (3) a list of facts or exhibits to which a party will stipulate; and
 - (4) a description of the discovery, if any, the party intends to engage in and an estimate of the time needed to complete discovery. Parties shall supplement this statement on a timely basis.

(f) The judge may issue a prehearing order reciting the actions taken or to be taken with regard to any matter addressed at the prehearing conference. The prehearing order shall be a part of the case record. If a prehearing conference is not held, the judge may issue a prehearing order to regulate the conduct of the proceedings.

§131.195. Notice of Hearing.

(a) The board shall be responsible for providing notice to all parties as required under the Administrative Procedure and Texas Register Act, §13, and other applicable law.

(b) A judge may issue notice of date, time, and place for hearings.

§131.196. Certificates of Registration. When the grant, denial, renewal, revocation, probation, reprimand or suspension of a certificate of registration is required by statute to be preceded by notice and opportunity for hearing, the provisions of these sections concerning contested cases apply.

§131.197. Conduct of Hearings.

(a) On a genuine issue in a contested case, each party is entitled to:

- (1) call witnesses;
- (2) offer evidence;
- (3) cross-examine any witness called by a party; and
- (4) make opening and closing statements.

(b) Once the hearing is begun the parties may be off the record only when the judge permits. If the discussion off the record is pertinent, then the judge will summarize the discussion for the record.

(c) Objections shall be timely noted in the record. See Texas Rules of Civil Evidence, §103.

(d) The judge may continue a hearing from time to time and from place to place. If the time and place for the proceeding to reconvene are not announced at the hearing, a notice shall be mailed stating the time and place of hearing.

(e) The judge may question witnesses and/or direct the submission of supplemental data.

(f) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

§131.198. Formal Exceptions. Formal exceptions to rulings of the judge during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the judge the action he desires.

§131.199. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Matters Before the Board. Motions for postponement, continuance, withdrawal, or dismissal of matters which have been duly set for hearing, shall be in writing, shall be filed with the judge and distributed to all interested parties, under a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding. Failure to comply with the above, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the judge may result in the dismissal of the matter in issue, with prejudice to refile. Depending on the circumstances, motions for withdrawal or dismissal may be ruled on by the judge or, at his discretion, by the board.

§131.200. Place and Nature of Hearings. All hearings conducted in any proceeding shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the board or the State Office of Administrative Hearings shall designate another place of hearing in accordance with applicable law.

§131.201. Administrative Law Judge.

(a) The judge shall have the authority and duty to:

- (1) conduct a full, fair, and impartial hearing;
- (2) take action to avoid unnecessary delay in the disposition of the proceeding; and
- (3) maintain order.

(b) The judge shall have the power to regulate the course of the hearing and the conduct of the parties and authorized representative, including the power to:

- (1) administer oaths;

- (2) take testimony;
 - (3) rule on questions of evidence;
 - (4) rule on discovery issues;
 - (5) issue orders relating to hearing and prehearing matters, including orders imposing sanctions that the board may impose;
 - (6) admit or deny party status;
 - (7) limit irrelevant, immaterial and unduly repetitious testimony and reasonably limit the time for presentations;
 - (8) grant a continuance;
 - (9) request parties to submit legal memoranda, proposed findings of fact and conclusions of law; and
 - (10) issue proposals for decision pursuant to the Administrative Procedure and Texas Register Act, §15.
- (c) A judge shall disqualify himself or herself or shall recuse himself or herself on the same grounds and under the same circumstances as specified in Texas Rules of Civil Procedure, §18b.
 - (d) A substitute judge may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as are necessary and proper to conclude the hearing and render a proposal for decision.

§131.202. Order of Proceedings.

- (a) A case shall be called to order by the judge.
- (b) The judge shall explain briefly the purpose and nature of the hearing.
- (c) The judge may allow the parties to present preliminary matters.
- (d) The judge shall state the order of presentation of evidence.
- (e) Witnesses shall be sworn or put under affirmation to tell the truth.

§131.203. Reporters and Transcript.

- (a) The proceedings, or any part of them, must be transcribed on written request of any party. Such written request must be received by the State Office of Administrative Hearings (SOAH) not less than 10 calendar days before the scheduled date of the hearing. The cost of the original transcript shall be assessed 1/2 to the party requesting the transcription, the remaining 1/2 to the other parties equally. The original transcript shall be delivered to the SOAH. The cost of copies of the transcript will be paid by the requesting party.
- (b) Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding, unless the SOAH shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the SOAH. If suggested corrections are not objected to, the judge will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the judge, who shall then determine the manner in which the record shall be changed, if at all.

§131.204. Telephone Hearings.

- (a) The judge may, with consent of the parties, conduct all or part of the hearing by telephone, video, or other electronic means, if each participant in the hearing has an opportunity to participate in, hear, and, except when a telephone is used, see the entire proceeding.
- (b) All substantive and procedural rights apply to telephone hearings, subject only to the limitations of the physical arrangement.
- (c) Documentary evidence. For a telephone hearing documentary evidence to be offered shall be mailed by the proponent to all parties and the office at least five days before the hearing.
- (d) Default. For a telephone hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than 10 minutes after the scheduled time for hearing:
 - (1) failure to answer the telephone; or
 - (2) failure to free the telephone for a hearing; or
 - (3) failure to be ready to proceed with the hearing as scheduled.

§131.205. Dismissal, Settlement without Hearing.

- (a) The State Office of Administrative Hearings may entertain motions for dismissal without a hearing for the following reasons: failure to prosecute; unnecessary duplication of proceedings or res adjudicata; withdrawal; moot questions or stale petitions; or lack of jurisdiction.
- (b) Upon request of any party and approval by the judge, or in the judge's discretion, a conference may be held to address settlement possibilities. Settlement discussions shall not be made a part of the case record.

§131.206. Rules of Evidence.

(a) The judge may limit testimony or any evidence which is irrelevant, immaterial, or unduly repetitious. In accordance with the Administrative Procedure and Texas Register Act, the rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The judge shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) Exclusion of witnesses.

- (1) Upon request by any party, the judge shall exclude witnesses other than parties from the hearing room, except when testifying.
- (2) The judge may order the witness, parties, attorneys, and all other persons present in the hearing room not to disclose to any witness excluded under this subsection the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness' absence.
- (3) A party that is not a natural person may designate an individual to remain in the hearing room, even though the individual may be a witness.

§131.207. Documentary Evidence. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the judge may limit those admitted to a number which are typical and representative, and may, at his discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the judge shall require that all parties of record or their representative be given the right to examine the documents from which such abstracts were made.

§131.208. Official Notice.

- (a) The judge may take official notice of a fact that is judicially noticeable in accordance with the Administrative Procedure and Texas Register Act.
- (b) In addition, notice may be taken of generally recognized facts within the area of the board's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the board and its staff may be utilized in evaluating the evidence.

§131.209. Prepared or Prefiled Testimony. In all contested proceedings and after service of copies upon all parties of record at such time as may be designated by the judge, the prepared, written testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

§131.210. Limitations on Number of Witnesses. The judge shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§131.211. Exhibits. Exhibits of documentary character shall be of such size as described in §131.191 of this title (relating to Form and Content of Pleadings), as not unduly to encumber the files and records of the board. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

- (1) Tender and service. The original of each exhibit offered shall be tendered to the reporter for identification; one copy shall be furnished to the judge, and one copy to each other party of record or his attorney or representative.
- (2) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, the judge shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the judge with his ruling, and shall be included in the record for the purpose only of preserving the exception.
- (3) After hearing. Unless specifically directed by the judge, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the judge allows an exhibit to be filed after the conclusion of the hearing, copies of the late-filed exhibit shall be served on all parties of record.

§131.212. Offer of Proof. When testimony is excluded by ruling of the judge, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for the record. The judge may ask such questions of the witness as he deems necessary to satisfy himself that

the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§131.213. Depositions. The taking and use of depositions in any proceeding shall be governed by the Administrative Procedure and Texas Register Act, §14.

§131.214. Subpoenas. Under the Administrative Procedure and Texas Register Act, §14, following written request by a party or on its own motion:

- (1) subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a proceeding may be issued by the board, any member thereof, the executive director, or, during the course of a hearing, by the judge;
- (2) motions for subpoenas to compel the production of books, papers, accounts, or documents shall be addressed to the board, shall be verified and shall specify as nearly as may be the books, papers, accounts, or documents desired and the material and relevant facts to be proved by them. If the matter sought is relevant, material, and necessary and will not result in harassment, imposition, or undue inconvenience or expense to the party to be required to produce the same, the board, any member thereof, or the judge may issue a subpoena, compelling production of books, papers, accounts, or documents as deemed necessary; and
- (3) such subpoenas shall be issued only after a showing of good cause and deposit of sums sufficient to insure payment of expenses incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act, except that the mileage and per diem fees for nonparty deponents and witnesses shall be in the amount by law for employees of the State of Texas for intrastate mileage and per diem.

§131.215. Proposals for Decision.

- (a) The judge shall prepare a proposal for decision which shall contain:
 - (1) findings of fact and conclusions of law, separately stated, and
 - (2) if appropriate, a proposed order.
- (b) The judge may amend the proposal for decision pursuant to exceptions, briefs and replies to exceptions and briefs without the proposal for decision again being served on the parties.
- (c) The judge shall submit the proposal for decision to the board with a copy to each party and his attorney of record.
- (d) Upon the expiration of the 20th day following the time provided for the filing of exceptions and briefs as described in §131.216 of this title (relating to Filing of Exceptions, Briefs, and Replies), the proposal for decision may be adopted by written order of the board, unless exceptions and briefs shall have been filed in the manner required.
- (e) If deemed warranted, the judge may direct a party to draft and submit a proposal for decision which shall include proposed findings of fact and a concise and explicit statement of the underlying facts supporting such proposed findings developed from the record.

§131.216. Filing of Exceptions, Briefs, and Replies. Any party of record may, within 20 days after the date of service of a proposal for decision, file exceptions and briefs to the proposal for decision, and replies to such exceptions and briefs may be filed within 15 days after the date for filing of such exceptions and briefs. A request for extension of time within which to file exceptions, briefs, or replies shall be filed with the board's executive director and the judge, and a copy thereof shall be served on all other parties of record by the party making such request. The judge shall promptly notify the parties of his action upon the same and allow additional time only in extraordinary circumstances where the interests of justice so require.

§131.217. Form and Content of Briefs, Exceptions, and Replies. Briefs, exceptions, and replies shall conform as nearly as may be possible to the size and form of pleadings as described in §131.191 of this title (relating to Form and Content of Pleadings). The points involved shall be concisely stated. The evidence in support of each point shall be abstracted or summarized and/or briefly stated in the form of proposed findings of fact. Complete citations to the page number of the record or exhibit referring to evidence shall be made. The specific purpose for which the evidence is relied upon shall be stated. The argument and authorities shall be organized and directed to each point properly proposed as a finding of fact in a concise and logical manner. Briefs shall contain a table of contents and authorities. Briefs, prior to the issuance of a proposal for decision, may be filed only when requested or permitted by the judge.

§131.218. Oral Argument. Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only at the sound discretion of the board. A request for oral argument shall be stated in a separate pleading filed with the board.

§131.219. Final Decisions and Orders. All final decisions and orders of the board shall be in writing and shall be signed by a majority of the board members. A final decision shall include findings of fact and conclusions of law, separately stated. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

§131.220. Administrative Finality.

- (a) A decision is final, in the absence of a timely motion for rehearing, and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If the board includes a member who:

- (1) receives no salary for his work as a board member; and
 - (2) resides outside Travis County, the board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication.
- (b) If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

§131.221. Motions for Rehearing. Except as provided in §131.220 of this title (relating to Administrative Finality), a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 20 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the board within 30 days after the date of rendition of the final decision or order, and board action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The board may by written order extend the period of time for filing the motions and replies and taking board action, except that an extension may not extend the period for board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may by agreement, with the approval of the board, provide for a modification of the times provided in this section.

§131.222. Rendering of Final Decision or Order. The final decision or order must be rendered within 60 days after the date the hearing is finally closed. Because a contested case is heard by a judge with the State Office of Administrative Hearings other than a majority of the members of the board, the board may prescribe a longer period of time within which the final order or decision of the board shall be issued, normally in keeping with the scheduled quarterly meetings of the board. The extension, if so prescribed, shall be announced at the conclusion of the hearing by the judge after consultation with the board's executive director.

§131.223. The Record.

- (a) The record in a contested case shall include:
- (1) all pleadings, motions, and intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and rulings on them;
 - (5) proposed findings and exceptions;
 - (6) any decision, opinion, or report by the judge presiding at the hearing; and
 - (7) all staff memoranda or data submitted to or considered by the judge or members of the board who are involved in making the decision.
- (b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.

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