

SUBJECT: Administrative penalties for Engineering Practice Act violations

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Kubiak, Brimer, Dear, Goolsby, Pickett, Torres, Yarbrough
0 nays
2 absent — Wilson, D. Jones

SENATE VOTE: On final passage, April 28 — voice vote

WITNESSES: (On House companion bill, HB 2184):
For — Gerhardt Schulle, Jr., Texas Society of Professional Engineers
Against — Stephanie Stromberg, Independent Electrical Contractors
On — John R. Speed

DIGEST: SB 784 would authorize the Texas Board of Professional Engineers to impose administrative penalties against a licensed person or any other person who violates the Texas Engineering Practice Act, VACS art 3271a, or rule adopted under the act.

Amount of penalty. The penalty for a violation could be in an amount up to \$3,000, and each day of violation would constitute a separate violation. The amount of the penalty would be based on:

- the seriousness of the violation, including the hazard created to the health, safety or economic welfare of the public;
- the economic harm to property or the environment;
- the history of previous violations;
- the amount necessary to deter future violations;
- efforts to correct the violation; and
- any other matter that justice may require.

The board could include in the amount of penalty the actual costs of investigating and prosecuting the violation.

Proceedings. All proceedings would be subject to the Administrative Procedure Act, Chapter 2001 of the Government Code.

Determination of violation. The director of the board could hold informal conferences or a peer review, or subpoena witnesses and records to determine whether a violation has occurred. The director could issue to the board chairman a report that states the facts on which the determination of a violation is based and the director's recommendation on the amount of penalty.

Notice. Within 14 days after the date the report is issued, the director would have to give written notice of the report to the person. The notice could be given by certified mail. The notice would have to include a brief summary of the alleged violation and a statement of the amount of the recommended penalty. The notice would also have to inform the person of a right to a hearing on the violation and the amount of the penalty.

Acceptance of determination. Within 20 days after receipt of notice, the person could in writing accept the determination and recommended penalty. If the person accepted the determination and penalty, the board would approve the determination and impose the penalty.

Hearing. Within 20 days after receipt of notice, the person could make a written request for a hearing on either or both the violation and the amount of penalty. If the person requested a hearing or failed to respond timely, the director would have to set a hearing held by an administrative law judge of the State Office of Administrative Hearings.

The administrative law judge would make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision. Based on the findings of fact, conclusions of law and the proposal for a decision, the board by order could find that a violation has occurred and impose a penalty, or could find that no violation occurred. The notice of the board's order would have to include a statement of the right of the person to judicial review of the order.

Payment of Penalty. The person would need to pay the penalty within 30 days after the board's order became final, or within 30 days would have to pay the penalty and file a petition for judicial review contesting either or both the violation or the penalty, or within 30 days would have to file the petition for judicial review without paying the penalty.

The latter could only be done if the person within the 30-day period stayed enforcement of the penalty by paying it into escrow or giving a supersedeas bond, or by sworn affidavit stating financial inability to pay. The director of the board could contest such an affidavit, and the court would hold a hearing on the facts alleged in the affidavit. The person who filed the affidavit would have the burden of proving inability to pay. If the penalty was not paid or stayed, the director could refer the matter to the attorney general for collection.

Judicial review. Judicial review could be instituted by filing a petition as set forth in the Administrative Procedure Act, and would be under the substantial evidence rule. If the court upheld the finding of a violation, it could uphold or reduce the amount of penalty and order the person to pay.

Remittance of payment. After the judgment of the court became final, the person's penalty payment would be remitted with interest. Interest would be paid at a rate charged on loans to depository institutions by the New York Federal Reserve Bank and would be paid for the period beginning on the date the penalty was paid. A supersedeas bond would be released if the penalty was not upheld, and would be released after payment if the amount of the penalty was reduced.

Penalties collected. Penalties would be remitted to the comptroller for deposit in the general revenue fund, except that the portion of the penalty that represented the costs of the investigation and prosecution by the board would be remitted to the board.

Eliminating registration. SB 784 would amend current law so that engineers would not have to be registered as well as licensed. SB 784 would also change the name of the board from the State Board of Registration for Professional Engineers to the Texas Board of Professional Engineers.

Effective date. The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

The administrative penalties authorized by SB 784 would provide a greater deterrent to those people who engage in the practice of engineering without a license, and would provide greater flexibility for disciplining licensed engineers. Although the Texas Board of Professional Engineers has been in existence since 1937, over half of all cases resulting in disciplinary action have occurred since 1988. This staggering increase requires that enforcement methods improve.

Currently, the board can file misdemeanor criminal cases with local jurisdictions that might result in limited fines assessed or injunctions issued to prevent non-licensed persons from practicing engineering. Both punishments have proven ineffective in preventing future occurrences, and trying to get through the court backlog for Class A misdemeanor charges can be daunting.

In addition, the board can only either reprimand or suspend the license of a licensed engineer for wrongdoing. Both of these punishments have proven ineffective in preventing future occurrences. A reprimand is not effective, but suspending a license could cause a dramatic loss of income for a relatively minor infraction. The board needs more flexibility in dealing with the different kinds of violations of the act. Other states, such as Louisiana, have authorized administrative penalties by their engineering boards, and other Texas agencies also have that authority.

**OPPONENTS
SAY:**

SB 784 would give the board the opportunity to unfairly protect the engineering profession to the detriment of certain electricians. For protectionist reasons only, the board could assess fines against an electrician doing work that the board feels only an electrical engineer should do. Although the electrician could request judicial review of such a decision, the cost of judicial review would make it cost prohibitive.

If the board is given the discretionary authority to keep electricians out of certain areas of practice, the public would suffer the higher prices charged by engineers for work that could be safely and effectively done by electricians. The present system requires the board to have a completely neutral judge decide whether the person is really practicing unlawfully.

The present law protects the public and electricians and should not be changed.