

- SUBJECT:** Continuing the Texas Board of Professional Engineers
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 7 ayes — Smith, Kuempel, Geren, Gooden, Miles, Price, S. Thompson
0 nays
2 absent — Guillen, Gutierrez
- SENATE VOTE:** On final passage, March 26 — 31-0
- WITNESSES:** *(On House companion bill, HB 1676:)*
For — *(Registered, but did not testify: Joe Luke, The Structural Engineers Association of Texas; Jennifer McEwan, Texas Society of Professional Engineers; Steve Stagner, American Council of Engineering Companies of Texas)*

Against — None

On — James Randall; *(Registered, but did not testify: Lance Kinney, Texas Board of Professional Engineers; Steven Ogle and Joe Walraven, Sunset Advisory Commission)*
- BACKGROUND:** The Texas Board of Professional Engineers licenses professional engineers, certifies engineers-in-training, registers engineering firms, and investigates complaints of illegal or incompetent practice by licensed and unlicensed persons, taking disciplinary action when necessary.

The nine-member, governor-appointed board includes six engineers and three public members. The board had 29 employees in fiscal 2011. As of that year, the board had licensed a total of 55,407 professional engineers, had certified a total of 13,154 engineers-in-training, and had registered a total of 8,927 firms.

As a self-directed, semi-independent agency, the board funds itself through licensing fees instead of receiving legislative appropriations. In

fiscal 2011, the board collected \$7.4 million in professional fees, \$3.2 million in licensing and other fees, \$51,000 in administrative penalties and \$1.4 million in exam fees. The board spent \$2.8 million on operating expenses, taken from the administrative penalties and licensing fees, and sent \$7.8 million to the general revenue fund, a portion of which is deposited in the Foundation School Fund.

The board last underwent Sunset review in 2002-03. Unless continued, the board's authority will expire September 1, 2013.

Occupations Code, sec. 1001.206 (a) requires an increase of \$200 in the fee for a license renewal or issuance of a reciprocal license for engineers.

DIGEST:

SB 204 would continue the Texas Board of Professional Engineers (TBPE) until September 1, 2025.

TBPE, or a panel composed of three board members, would be required to temporarily suspend the license, certificate, or registration of a person if the board or panel determined that the person's continued practice constituted an imminent threat to the public welfare.

The board could suspend a license, certificate, or registration without a hearing so long as action was taken to initiate proceedings for a State Office of Administrative Hearings (SOAH) hearing at the same time as the suspension and if a hearing was held as soon as practicable. SOAH would be required to hold the hearing within 14 days following the date of the temporary suspension to determine if there was probable cause for the board's determination. A final hearing would be held no later than 61 days after the suspension.

The board would be allowed to issue a cease-and-desist order to a person not licensed, certified, or registered by the board who was violating a statute or rule relating to the practice of engineering.

SB 204 would increase the board's maximum administrative penalty amount from \$3,000 to \$5,000 per violation.

The board would adopt policies and guidelines for the exam procedure, including exam admission, administration, and national exam requirements. It would post online policies for the board's exam procedures or those of any national organization selected by the board to

administer an exam. The exam no longer would have to be an eight-hour written examination.

SB 204 would require the board to obtain criminal background checks for all applicants for initial or renewed licensure. Applicants would be required to submit a complete and legible set of fingerprints to the board or the Department of Public Safety (DPS) for the purpose of conducting criminal history checks. The board could contract with DPS to administer a criminal history check and authorize DPS to collect the costs incurred in performing this check from the applicant. Applicants for renewed certification would not have to submit their fingerprints if they already had done so for initial or renewed licensure. The criminal history background check requirement would apply only to applications for licenses or renewals filed on or after January 1, 2014.

The bill would require that the \$200 fee increase required by Occupations Code sec. 1001.206(a) be collected at the time of license issuance or renewal.

The board would adopt rules to implement the changes made by SB 204 by December 1, 2013.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

SB 204 appropriately would authorize TBPE to continue in its current form as an independent agency until 2025. Because of its self-directed, semi-independent (SDSI) agency status, any reorganization in which the board's functions were absorbed by another agency would cost the state at least \$373,900 in the board's annual remittance to general revenue, which is required under the SDSI Act.

SB 204 would make a number of changes to bring the board in line with standard practice for licensing followed by other state agencies. Other agencies require applicants for licensure to submit fingerprints for background checks, are able to issue administrative penalties of \$5,000, and are authorized to issue cease-and-desist orders or to temporarily suspend licenses. The board should have access to these more effective enforcement actions to sanction engineers whose offenses were sufficiently grave to merit summary suspension or to discipline license holders who committed a series of less serious violations.

By changing the exam requirements, the bill would give the board the flexibility needed to continue administering these exams. At present, applicants for the professional engineering license must take three exams, two of which are administered by the National Council of Examiners for Engineering & Surveying (NCEES). Some of these tests will switch to a computer-based format in the near future. Removing the statutory requirement that tests be eight-hour written exams would give the board the flexibility to continue to rely on NCEES tests after they no longer were administered in hard-copy form.

The board already has the statutory authority to run background checks on license holders. However, the current system does not allow DPS to search for out-of-state infractions and does not allow for a thorough check on engineers originally from other states. Background checks using fingerprints enable a more accurate identification of the person in question and a more thorough check of law enforcement records. Thirty-six other agencies already require license holders to submit fingerprints for background checks, and SB 204 would allow TBPE to use this more stringent method of checking for criminal histories among the engineers it licenses.

Collecting the professional fee at the time of license issuance or renewal is only fair. At present, an applicant who submits the professional fee to the board might never receive a license if he or she failed the licensing examinations. SB 204 would tie the professional fee to the actual granting of the license, a reasonable change that would stop the board from placing an undue financial burden on applicants.

OPPONENTS
SAY:

The functions of the TBPE should be absorbed into the Texas Department of Licensing and Regulation (TDLR). TDLR has a good track record of administering licensing programs, reducing license holders' costs, and eliminating duplication among its licensing programs, which promotes efficiency.

The board should not have the authority to summarily suspend an engineer's license without first conducting a hearing. This is a serious step that should require the safeguards of due process before the board could take the drastic step of immediate suspension.

At present, about 80 percent of the board's renewals occur online. Requiring renewal applicants to submit fingerprints would make this

streamlined renewal process more difficult for both the board and for the license holders, some of whom have held licenses for decades and have not committed a crime. Submitting fingerprints would be intrusive and unnecessary because the current method of performing background checks works well.

NOTES:

SB 204 would have a negative impact of \$88,000 to general revenue related funds in fiscal 2014-15, according to the LBB's fiscal note, due to the board no longer collecting the \$200 professional fee from applicants who did not pass the examination or receive a license. Because one-quarter of this fee is deposited to Foundation School Fund, with the rest flowing to general revenue, \$22,000 of this total would represent a loss to the Foundation School Fund.

The House companion bill, HB 1676 by Price, was left pending in the House Licensing and Administrative Procedures Committee after a March 26 hearing.