

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes amendments to 22 Texas Administrative Code, Chapter 131, regarding the licensing of professional engineers, and specifically §131.2, relating to Definitions. This proposed change is referred to as "proposed rule."

BACKGROUND AND SUMMARY

The rules under 22 Texas Administrative Code, Chapter 131 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act.

SECTION-BY-SECTION SUMMARY

The proposed rule updates the name of one of the accrediting agencies. The North Central Association was dissolved in 2014 and replaced by the Higher Learning Commission (HLC).

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Rick Strong, P.E., Director of Licensing and Registration for the Board, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Mr. Strong has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rule.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Strong has determined that the proposed rule will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Strong has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be improved clarity for the definitions.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Strong has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because no new requirements are part of the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Since the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities,

preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rule is in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule does not increase the number of individuals subject to the rule's applicability.
7. The proposed rule does not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rule is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rule is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@pels.texas.gov.

STATUTORY AUTHORITY

The proposed rule is proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

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§131.2. Definitions.

In applying the Texas Engineering Practice Act, the Professional Land Surveying Practices 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) ABET - ABET, Inc., formerly the Accreditation Board for Engineering and Technology.
- (2) Acts - The Texas Engineering Practice Act, Texas Occupations Code Chapter 1001, and the Professional Land Surveying Practices Act, Texas Occupations Code Chapter 1071.
- (3) Advisory Opinion - A statement of policy issued by the board that provides guidance to the public and regulated community regarding the board's interpretation and application of Chapter 1001, Texas Occupations Code, and/or board rules related to the practice of engineering.
- (4) Agency or Board - Texas Board of Professional Engineers and Land Surveyors.
- (5) ANSAC/ABET - Applied and Natural Science Accreditation Commission of ABET. Previously the Applied Science Accreditation Commission (ASAC) of ABET.
- (6) Applicant - A person applying for a license or registration to practice professional engineering or land surveying or a firm applying for a certificate of registration to offer or provide professional engineering or land surveying services.
- (7) Application - The forms, information, and fees necessary to obtain a license, registration, or certification issued by the Board.
- (8) Complainant - Any party who has filed a complaint with the board against a person or entity subject to the jurisdiction of the board.
- (9) Construction estimate - As used in §1071.004, a depiction of a possible easement route for planning purposes.
- (10) Contested case - A proceeding, including but not restricted to rate making 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 pursuant to the Administrative Procedure Act, Chapter 2001, Texas Government Code.

(11) Direct supervision - The control over and detailed professional knowledge of the work prepared under the engineer or land surveyor's supervision. Direct Supervision entails that the engineer or land surveyor personally makes decisions or personally reviews and approves proposed decisions prior to their implementation and has control over the decisions either through physical presence or the use of communications devices. Direct Supervision entails that a land surveyor be able to give instructions for research of adequate thoroughness to support collection of relevant data, the placement of all monuments, and the preparation and delivery of all surveying documents.

(12) EAC/ABET - Engineering Accreditation Commission of ABET.

(13) EAOR number - An engineering advisory opinion request file number assigned by the executive director to a pending advisory opinion in accordance with this chapter.

(14) Electronic Seal - For the purposes of this Chapter, an electronic seal is a digital representation of a licensee or registrant's seal including, but not limited to, a digital scan of a physical seal.

(15) Electronic Signature - For the purposes of this Chapter, an electronic signature is a digital representation of a licensee or registrant's signature including, but not limited to, a digital scan of a physical signature.

(16) 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.

(17) Engineering Act - The Texas Engineering Practice Act, Texas Occupations Code Chapter 1001.

(18) ETAC/ABET - Engineering Technology Accreditation Commission of ABET.

(19) Firm - Any business entity that engages or offers to engage in the practice of professional engineering or land surveying in this state. The term includes but is not limited to companies, corporations, partnerships, or joint stock associations, and for engineering also includes sole practitioners and sole proprietorships.

(20) Good Standing - (License or Registration) - A license or registration that is current, eligible for renewal, and has no outstanding fees or payments.

(21) Gross negligence - Any deliberate conduct, or pattern of conduct, whether by act or omission 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.

(22) License - The legal authority permitting the holder to actively practice engineering or land surveying. Also, a certificate issued by the board showing such authority.

(23) License Holder - Any person whose license or registration to practice engineering or land surveying is current.

(24) Misconduct - The violation of any provision of the Texas Engineering Practice Act, the Professional Land Surveying Act, or board rules.

(25) NAFTA - North American Free Trade Agreement. NAFTA is related to the practice and licensure of engineering through mutual recognition of registered/licensed engineers by jurisdictions of Canada, Texas, and the United Mexican States.

(26) NCEES - National Council of Examiners for Engineering and Surveying.

(27) Person - Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than a governmental agency.

(28) 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.

(29) Professional Engineering Services - Services which meet the definition of the practice of engineering as defined in the Act, §1001.003, and which are required by statute or rule to be performed by or under the direct supervision of a licensed engineer. 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 are also considered a professional engineering service.

(30) Professional Surveying - The practice of land, boundary, or property surveying or other similar professional practices.

(31) Recognized institution of higher education--An institution of higher education as defined in §61.003, Education Code; or in the United States, an institution recognized by one of the six regional accrediting associations, specifically, the New England Association of Schools and Colleges, the Higher Learning Commission[North Central Association Commission on Accreditation and School Improvement], the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, or the Middle States Association of Colleges & Schools; or, outside the United States, an institution recognized by the Ministry of Education or the officially recognized government education agency of that country; or a program accredited by ABET.

(32) Registration - The legal authority permitting the holder to actively practice engineering or land surveying. Also, a certificate issued by the board showing such authority.

(33) Respondent - The person or party that is the subject of a complaint filed with the board.

(34) Responsible charge - Synonymous with the term "direct supervision"; used interchangeably with "direct supervision".

(35) 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.

(36) Seal - An embossed, stamped, or electronic design authorized by the Board that authenticates, confirms, or attests that a person is authorized to offer and practice engineering or land surveying services to the public in the State of Texas and has legal consequence when applied.

(37) Sole Practitioner - A firm that consists of an individual license holder with no other employees.

(38) Supervision of Engineering Construction - As used in §1001.407 of the Act, includes the periodic observation of materials and completed work to determine general compliance with plans, specifications and design and planning concepts. Supervision of engineering construction does not include the construction means and methods; responsibility for the superintendence of construction processes, site conditions, operations, equipment, personnel; or the maintenance of a safe place to work or any safety in, on or about the site.

(39) Surveying Act - the Professional Land Surveying Practices Act, Texas Occupations Code Chapter 1071.

(40) Surveying Report - Survey drawing, written description, and/or separate narrative depicting the results of a land survey performed and conducted pursuant to this Act.