

No. 1983-87

AN ACT

SB 966

Amending the act of May 23, 1945 (P.L.913, No.367), entitled, as amended, "An act relating to and regulating the practice of the profession of engineering; including civil engineering, mechanical engineering, electrical engineering, mining engineering, chemical engineering, surveying and constituent parts and combinations thereof as herein defined; providing for the licensing and registration of persons practicing said profession, and the certification of engineers in training, and the suspension and revocation of said licenses, registrations and certifications for violation of this act; prescribing the powers and duties of the State Registration Board for Professional Engineers, the Department of State and the courts; prescribing penalties; and repealing existing laws," reestablishing the State Registration Board for Professional Engineers; providing for certain land surveyors; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 4(i) and (j) of the act of May 23, 1945 (P.L.913, No.367), known as the Professional Engineers Registration Law, amended December 13, 1979 (P.L.534, No.120), are amended and the section is amended by adding a subsection to read:

Section 4. General Powers of Board.—The board shall have power—

* * *

(i) Suspension and Revocation of Licenses; Registrations and Certificates; Reinstatements.—To suspend or revoke the license and registration of any professional engineer or professional land surveyor or the certificate of any engineer-in-training, who is found guilty by the board, by a majority vote of all its members, of the practice of any fraud, deceit or misrepresentation in obtaining his license, certification or registration, or of gross negligence, incompetency or misconduct in the practice of engineering, or in the practice of land surveying, or of violation of the code of ethics of the engineering profession, and to reinstate *suspended* licenses, registrations and certificates in any cases where a majority of all the members of the board shall determine the same to be just and proper. *Unless ordered to do so by a court, the board shall not reinstate the license, certificate or registration of a person to practice as a professional engineer or professional land surveyor or an engineer-in-training which has been revoked, and such person shall be required to apply for a license, certificate or registration after a period of five years in accordance with section 2 if he desires to practice at any time after such revocation.* Misconduct in the practice of engineering or land surveying shall include, but not be limited to conviction for a criminal offense such as extortion, bribery or fraud or entry of a plea of nolo contendere to a charge thereof for conduct relating to the practice of engineering or land surveying, or has violated any provision of this act or any regulation promulgated by the board. For the purposes of this subsection, the code of ethics is as follows:

It shall be considered unprofessional and inconsistent with honorable and dignified bearing for any professional engineer or professional land surveyor:

(1) To act for his client or employer in professional matters otherwise than as a faithful agent or trustee, or to accept any remuneration other than his stated recompense for services rendered.

(2) To attempt to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone.

(3) To attempt to supplant another engineer or land surveyor after definite steps have been taken toward his employment.

(4) To compete with another engineer or land surveyor for employment by the use of unethical practices.

(5) To review the work of another engineer or land surveyor for the same client, except with the knowledge of such engineer or land surveyor, or unless the connection of such engineer or land surveyor with the work has terminated.

(6) To attempt to obtain or render technical services or assistance without fair and just compensation commensurate with the services rendered: Provided, however, the donation of such services to a civic, charitable, religious or eleemosynary organization shall not be deemed a violation.

(7) To advertise in self-laudatory language, or in any other manner, derogatory to the dignity of the profession.

(8) To attempt to practice in any field of engineering in which the registrant is not proficient.

(9) To use or permit the use of his professional seal on work over which he was not in responsible charge.

(10) To aid or abet any person in the practice of engineering or land surveying not in accordance with the provision of this act or prior laws.

The board shall appoint, with the approval of the Governor, such hearing examiners as shall be necessary to conduct hearings as may be required under this subsection.

The board shall have the power to adopt and promulgate rules and regulations setting forth the functions, powers, standards and duties to be followed by the hearing examiners.

The hearing examiners shall have the power to conduct hearings in accordance with the regulations of the board, and to issue subpoenas requiring the attendance and testimony of individuals or the production of, pertinent books, records, documents and papers by persons whom they believe to have information relevant to any matter pending before the examiner. Such examiner shall also have the power to administer oaths.

The hearing examiner shall hear evidence submitted and arguments of counsel, if any, with reasonable dispatch, and shall promptly record his decision, supported by findings of fact, and a copy thereof shall immediately be sent to the board and to counsel of record, or the parties, if not represented.

If application for review is made to the board within twenty days from the date of any decision made as a result of a hearing held by a hearing examiner, the board shall review the evidence, and if deemed advisable by the board,

hear argument and additional evidence. As soon as practicable, the board shall make a decision and shall file the same with its finding of the facts on which it is based and send a copy thereof to each of the parties in dispute.

(j) **Financial Requirements of Board.**—(1) To [consult annually with the Commissioner of Professional and Occupational Affairs on the financial requirements of the board] submit annually to the Department of State an estimate of the financial requirements of the board for its administrative, investigative, legal and miscellaneous expenses.

(2) To submit annually to the House and Senate Appropriations Committees, fifteen days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the department.

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(o) **Status of Complaints.**—The board shall submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.

Section 2. The act is amended by adding a section to read:

Section 4.1. State Registration Board for Professional Engineers.—

(a) The State Registration Board for Professional Engineers shall consist of the Commissioner of Professional and Occupational Affairs, the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, two members appointed by the Governor who shall be persons representing the public at large and five members appointed by the Governor, all of whom shall be registered professional engineers. The professional members of the board shall be so selected that not more than two of them shall specialize in any one of the five major disciplines of engineering: civil, mining and metallurgical, mechanical, electrical and chemical. Each member of the board shall be a citizen of the United States and a resident of this Commonwealth. Each professional member shall have been engaged in the practice of the profession of engineering for at least ten years and shall have been in responsible charge of engineering work for at least five years.

(b) The terms of members of the board shall be six years, or until his successor has been appointed and qualified but not longer than six months beyond the six-year period. In the event that any of said members shall die or resign during his term, his successor shall be appointed in the same way and with the same qualifications and shall hold office for the unexpired term.

(c) Five members of the board shall constitute a quorum.

(d) The board shall select annually a president from among its members.

(e) Each member of the board, except the Commissioner of Professional and Occupational Affairs and the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, shall receive sixty dollars per diem when actually attending to the work of the board. Members shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties.

(f) The board is subject to evaluation, review and termination within the time and in the manner provided in the act of December 22, 1981 (P.L.508, No.142), known as the "Sunset Act."

(g) A member of the board who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of a family member.

Section 3. Sections 9, 10 and 11 of the act, amended December 13, 1979 (P.L.534, No.120), are amended to read:

Section 9. Fees.—*(a) The fee for an applicant for licensure as a professional engineer or professional land surveyor, including examination, and for examination or certification, or both, as an engineer-in-training, shall be as fixed by [law.] the board by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues generated by fees, fines and civil penalties imposed in accordance with the provisions of this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the "Regulatory Review Act," such that the projected revenues will meet or exceed projected expenditures.*

(b) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board are inadequate to meet the minimum enforcement efforts required, then the bureau, after consultation with the board, shall increase the fees by regulation, subject to review in accordance with the "Regulatory Review Act," such that adequate revenues are raised to meet the required enforcement effort.

(c) All persons now qualified and engaged in the practice of engineering and land surveying, or who shall hereafter be licensed by the board, shall register, biennially, with the board and pay the fee for each biennial registration. All fees collected under the provisions of this act shall be received by the board and shall be paid into the Professional Licensure Augmentation Account.

Section 10. Status of Existing Licensees and Registrants Preserved.—Any person, licensed or legally authorized to practice as a professional engineer or surveyor in this Commonwealth at the time this act takes effect, shall thereafter continue to possess the same rights and privileges with respect to the practice of engineering or land surveying without being required to be licensed anew under the provisions of this act, subject, however, to the following:

(a) Any person licensed to practice as a professional engineer at the time of the effective date of this act, upon application to the board within two years of the effective date of this act, shall be granted a certificate of registration to practice land surveying.

(a.1) Any person licensed to practice as a professional engineer limited to the practice of surveying at the time of the effective date of this act may continue the practice of land surveying thereunder and upon application to the

board at any time shall be granted a certificate of registration to practice land surveying.

(b) All actions shall be subject to the power of the board as provided in this act to suspend or revoke the license of any such person for any of the causes set forth in this act, and subject to the power of the board to require any such person to register biennially with the board as provided in this act.

Section 11. Penalties.—(a) Whoever shall engage in the practice of engineering or the practice of land surveying without being licensed and registered as required by this act, or exempted therefrom, as provided in this act, or shall present or attempt to use, as his own, the license or certificate of registration of another, or shall give any false or forged evidence of any kind to the board, or to any member thereof, in order to obtain a license or registration as a professional engineer or professional land surveyor or a certificate as an engineer-in-training, or shall use any expired, suspended or revoked certificate of registration, or shall otherwise violate the provisions of this act, shall be guilty of a summary offense and upon conviction thereof for a first offense, shall be sentenced to pay a fine not exceeding five hundred dollars, or suffer imprisonment, not exceeding three months, or both and for a second or subsequent offense shall be guilty of a felony, and upon conviction thereof, shall be sentenced to pay a fine of not less than two thousand dollars but not more than five thousand dollars or to imprisonment for not less than one year but not more than two years, or both.

(b) *In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of four members, whichever is greater, may levy a civil penalty of up to one thousand dollars on any current licensee who violates any provision of this act or on any person who practices the profession of an engineer without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

(c) *All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account.*

Section 4. Section 425 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

Section 5. This act reestablishes the State Registration Board for Professional Engineers in accordance with the procedures set forth in section 7(a) of the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 6. The presently confirmed members of the State Registration Board for Professional Engineers constituted under section 425 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, as of December 31, 1983, shall continue to serve as board members until their present terms of office expire.

Section 7. Each rule and regulation of the board in effect on December 31, 1983, shall remain in effect after such date until repealed or amended by the board.

Section 8. This act shall take effect January 1, 1984.

APPROVED—The 22nd day of December, A. D. 1983.

DICK THORNBURGH