CERTIFICATION OF ENROLLMENT

SENATE BILL 5266

Chapter 247, Laws of 1997

55th Legislature
1997 Regular Session

ENGINEERS AND LAND SURVEYORS--REGULATION

EFFECTIVE DATE: 7/27/97 - Except section 4 which becomes effective on 7/1/98.

Passed by the Senate April 21, 1997
YEAS 45  NAYS 0

BRAD OWEN
President of the Senate

Passed by the House April 10, 1997
YEAS 95  NAYS 0

CLYDE BALLARD
Speaker of the House of Representatives

CERTIFICATE

I, Mike O'Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SENATE BILL 5266 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O’CONNELL
Secretary

Approved May 2, 1997

FILED
May 2, 1997 - 3:06 p.m.

GARY LOCKE
Governor of the State of Washington

Secretary of State
State of Washington
SENATE BILL 5266

AS AMENDED BY THE HOUSE

Passed Legislature - 1997 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By Senators Horn, Fraser, Newhouse and Schow; by request of Department of Licensing

Read first time 01/21/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to regulating engineers and land surveyors; amending RCW 18.43.035, 18.43.110, and 18.43.130; adding a new section to chapter 18.43 RCW; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. Sec. 1. A new section is added to chapter 18.43 RCW to read as follows:

Upon request of the board, and with approval of the director, the board chair shall appoint up to two individuals to serve as pro tem members of the board. The appointments are limited, as defined by the board chair, for the purpose of participating as a temporary member of the board on any combination of one or more committees or formal disciplinary hearing panels. An appointed individual must meet the same qualifications as a regular member of the board. While serving as a board member pro tem, an appointed person has all the powers, duties, and immunities of a regular member of the board and is entitled to the same compensation, including travel expenses, in accordance with RCW 18.43.030. A pro tem appointment may not last for more than one hundred eighty days unless approved by the director.
Sec. 2. RCW 18.43.035 and 1986 c 102 s 2 are each amended to read as follows:

The board may adopt and amend bylaws establishing its organization and method of operation, including but not limited to meetings, maintenance of books and records, publication of reports, code of ethics, and rosters, and adoption and use of a seal. Four members of the board shall constitute a quorum for the conduct of any business of the board. The board may employ such persons as are necessary to carry out its duties under this chapter. It may adopt rules (and regulations) reasonably necessary to administer the provisions of this chapter. It may conduct investigations concerning alleged violations of (the provisions of) this chapter or the rules adopted by the board. In making such investigations and in all proceedings under RCW 18.43.110, the chairman of the board or any member of the board acting in his place may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, records, papers or documents so required to be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with (the provisions of) this chapter and imposing such other terms and conditions as the court may deem equitable. The board shall submit to the governor such periodic reports as may be required. A roster, showing the names and places of business of all registered professional engineers and land surveyors may be published for distribution, upon request, to professional engineers and land surveyors registered under this chapter and to the public.

Sec. 3. RCW 18.43.110 and 1989 c 175 s 62 are each amended to read as follows:

The board shall have the exclusive power to fine and reprimand the registrant and suspend or revoke the certificate of registration of any registrant who is found guilty of:

The practice of any fraud or deceit in obtaining a certificate of registration; or
Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered engineer or land surveyor.

Any person may prefer a complaint alleging fraud, deceit, gross negligence, incompetency, or misconduct against any registrant and the complaint shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the board. A registrant against whom a complaint was made must be immediately informed of such complaint by the board.

All procedures related to hearings on such charges shall be in accordance with provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

If, after such hearing, a majority of the board vote in favor of finding the violations had occurred, the board shall revoke or suspend the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the board vote in favor of such issuance. A new certificate of registration to replace any certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the superior court of the county in which such person resides, and after full hearing, said court shall make such decree sustaining or revoking the action of the board as it may deem just and proper.

Fines imposed by the board shall not exceed one thousand dollars for each offense.

In addition to the imposition of civil penalties under this section, the board may refer violations of this chapter to the appropriate prosecuting attorney for charges under RCW 18.43.120.

Sec. 4. RCW 18.43.130 and 1991 c 19 s 6 are each amended to read as follows:

This chapter shall not be construed to prevent or affect:
(1) The practice of any other legally recognized profession or trade; or

(2) The practice of a person not a resident and having no established place of business in this state, practicing or offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year: PROVIDED, Such person has been determined by the board to be legally qualified by registration to practice the said profession in his or her own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this chapter. The person shall request such a determination by completing an application prescribed by the board and accompanied by a fee determined by the director. Upon approval of the application, the board shall issue a permit authorizing temporary practice; or

(3) The practice of a person not a resident and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty days in any calendar year the profession of engineering or land surveying, if he or she shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter: PROVIDED, That such person is legally qualified by registration to practice engineering or land surveying in his or her own state or country in which the requirements and qualifications of obtaining a certificate of registration are not lower than those specified in this chapter. Such practice shall continue only for such time as the board requires for the consideration of the application for registration; or

(4) The work of an employee or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person practicing lawfully under provisions of this section: PROVIDED, That such work does not include final design or decisions and is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under the provisions of this section; or

(5) The work of a person rendering engineering or land surveying services to a corporation, as an employee of such corporation, when such services are rendered in carrying on the general business of the corporation and such general business does not consist, either wholly
or in part, of the rendering of engineering services to the general public: PROVIDED, That such corporation employs at least one person holding a certificate of registration under this chapter or practicing lawfully under the provisions of this chapter; or

(6) The practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for (said) the government of the United States; or

(7) Nonresident engineers employed for the purpose of making engineering examinations; or

(8) The practice of engineering or land surveying, or both, in this state by a corporation or joint stock association: PROVIDED, That

(a) (Such) The corporation (shall file) has filed with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether such corporation is qualified in accordance with (the provisions of) this chapter to practice engineering or land surveying, or both, in this state;

(b) (Such) For engineering, the corporation (shall file) has filed with the board a certified copy of a resolution of the board of directors of the corporation (which) shall designate a person holding a certificate of registration under this chapter as responsible for the practice of engineering by (said) the corporation in this state and shall provide that full authority to make all final engineering decisions on behalf of (said) the corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the person so designated in (said) the resolution. For land surveying, the corporation has filed with the board a certified copy of a resolution of the board of directors of the corporation which shall designate a person holding a certificate of registration under this chapter as responsible for the practice of land surveying by the corporation in this state and shall provide full authority to make all final land surveying decisions on behalf of the corporation with respect to work performed by the corporation in this state be granted and delegated by the board of directors to the person so designated in the resolution. If a corporation offers both engineering and land surveying services, the board of directors shall designate both a licensed engineer and a licensed land surveyor. If a person is
licensed in both engineering and land surveying, the person may be designated for both professions. The resolution shall further state that the bylaws of the corporation shall be amended to include the following provision: "The designated engineer or land surveyor, respectively, named in the resolution as being in responsible charge, or an engineer or land surveyor under the designated engineer or land surveyor’s direct supervision, shall make all engineering or land surveying decisions pertaining to engineering or land surveying activities in the state of Washington." However, the filing of the resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(c) Such corporation shall file with the board a designation in writing setting forth the name or names of a person or persons holding certificates of registration under this chapter who shall be in responsible charge of each project and each major branch of the engineering activities in which the corporation shall specialize in this state. In the event there shall be a change in the person or persons in responsible charge of any project or major branch of the engineering activities, such changes shall be designated in writing and filed with the board within thirty days after the effective date of such changes. If there is a change in the designated engineer or designated land surveyor, the corporation shall notify the board in writing within thirty days after the effective date of the change. If the corporation changes its name, the corporation shall submit a copy of its amended certificate of authority or amended certificate of incorporation as filed with the secretary of state within thirty days of the filing;

(d) Upon the filing with the board the application for certificate for authorization, certified copy of resolution(7) and an affidavit (and designation of persons), the designation of a designated engineer or designated land surveyor, or both, specified in subparagraphs (a), (b), (c) of this subsection, a certificate of incorporation or certificate of authorization as filed with the secretary of state, and a copy of the corporation’s current Washington business license, the board shall issue to the corporation a certificate of authorization to practice engineering or land surveying, or both, in this state upon a determination by the board that:
(i) ((The bylaws of the corporation contain provisions that all engineering decisions pertaining to any project or engineering activities in this state shall be made by the specified engineer in responsible charge, or other responsible engineers under his or her direction or supervision)) The designated engineer or designated land surveyor, or both, hold a certificate of registration in this state in accordance with this chapter and the certificate is in force;

(ii) ((The application for certificate of authorization states the type, or types, of engineering practiced, or to be practiced by such corporation;)) The designated engineer or designated land surveyor, or both, are not designated in responsible charge for another corporation or a limited liability company; and

(iii) ((A current certified financial statement accurately reflecting the financial condition of the corporation has been filed with the board and is available for public inspection;)

(iv) The applicant corporation has the ability to provide through qualified engineering personnel, professional services or creative work requiring engineering experience, and that with respect to the engineering services which the corporation undertakes or offers to undertake such personnel have the ability to apply special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects;

(v) The application for certificate of authorization states the professional records of the designated person or persons who shall be in responsible charge of each project and each major branch of engineering activities in which the corporation shall specialize;

(vi) The application for certificate of authorization states the experience of the corporation, if any, in furnishing engineering services during the preceding five year period and states the experience of the corporation, if any, in the furnishing of all feasibility and advisory studies made within the state of Washington;

(vii) The applicant corporation meets such other requirements related to professional competence in the furnishing of engineering services as may be established and promulgated by the board in furtherance of the objectives and provisions of this chapter; and
Upon a determination by the board based upon an evaluation of the
foregoing findings and information that the applicant corporation is
possessed of the ability and competence to furnish engineering services
in the public interest) The corporation is licensed with the secretary
of state and holds a current unified business identification number and
the board determines, based on evaluating the findings and information
in this section, that the applicant corporation possesses the ability
and competence to furnish engineering or land surveying services, or
both, in the public interest.

The board may ((in the)) exercise ((of)) its discretion to refuse
to issue or it may suspend ((and/)) or revoke a certificate of
authorization issued to a corporation ((where)) if the board ((shall))
finds that any of the officers, directors, incorporators, or the
stockholders holding a majority of stock of such corporation has
committed misconduct or malpractice as defined in RCW 18.43.105 or has
been found personally responsible for misconduct or malpractice under
((the provisions of subsections)) (f) and (g) ((hereof)) of this
subsection.

((The certificate of authorization shall specify the major branches
of engineering of which the corporation has designated a person or
persons in responsible charge as provided in subsection (8)(c) of this
section.

(e) In the event a corporation, organized solely by a group of
engineers, each holding a certificate of registration under this
chapter, applies for a certificate of authorization, the board may, in
its discretion, grant a certificate of authorization to such
corporation based on a review of the professional records of such
incorporators, in lieu of the required qualifications set forth in this
subsection. In the event the ownership of such corporation shall be
altered, the corporation shall apply for a revised certificate of
authorization, based upon the professional records of the owners, if
exclusively engineers or, otherwise, under the qualifications required
by subparagraphs (a), (b), (c), and (d) hereof.)) (e) Engineers or land
surveyors organized as a professional service corporation under chapter
18.100 RCW are exempt from applying for a certificate of authorization
under this chapter.

(f) Any corporation authorized to practice engineering under this
chapter, together with its directors and officers for their own
individual acts, are responsible to the same degree as an individual
registered engineer, and must conduct its business without misconduct or malpractice in the practice of engineering as defined in this chapter.

(g) Any corporation (which has been duly) that is certified under ((the provisions of)) this chapter ((and has engaged in the practice of engineering shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board shall find that the corporation has committed misconduct or malpractice as defined in RCW 18.43.105. In such case any individual engineer holding a certificate of registration under this chapter, involved in such malpractice or misconduct, shall have his or her certificate of registration suspended or revoked also)) is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, and 18.43.120.

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the ((responsible charge)) direct supervision of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under ((the provisions of)) this subsection (8) ((of this section)) there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

(9) The practice of engineering and/or land surveying in this state by a partnership((: PROVIDED, That

(a) A majority of the members of the partnership are engineers or architects or land surveyors duly certificated by the state of Washington or by a state, territory, possession, district, or foreign country meeting the reciprocal provisions of RCW 18.43.100: PROVIDED, That at least one of the members is a professional engineer or land surveyor holding a certificate issued by the director under the provisions of RCW 18.43.070; and

(b) Except where all members of the partnership are professional engineers or land surveyors or a combination of professional engineers and land surveyors or where all members of the partnership are either professional engineers or land surveyors in combination with an architect or architects all of which are holding certificates of
qualification therefor issued under the laws of the state of Washington, the partnership shall file with the board an instrument executed by a partner on behalf of the partnership designating the persons responsible for the practice of engineering by the partnership in this state and in all other respects such person so designated and such partnership shall meet the same qualifications and shall be subject to the same requirements and the same penalties as those pertaining to corporations and to the responsible persons designated by corporations as provided in subsection (3) of this section.

For each certificate of authorization issued under the provisions of this subsection (9) of this section there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086) if the partnership employs at least one person holding a valid certificate of registration under this chapter to practice engineering or land surveying, or both. The board shall not issue certificates of authorization to partnerships after July 1, 1998. Partnerships currently registered with the board are not required to pay an annual renewal fee after July 1, 1998.

(10) The practice of engineering or land surveying, or both, in this state by limited liability companies: Provided, That

(a) The limited liability company has filed with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the limited liability company is qualified under this chapter to practice either or both engineering or land surveying in this state.

(b) The limited liability company has filed with the board a certified copy of a resolution by the company manager or managers that shall designate a person holding a certificate of registration under this chapter as being responsible for the practice of engineering or land surveying, or both, by the limited liability company in this state and that the designated person has full authority to make all final engineering or land surveying decisions on behalf of the limited liability company with respect to work performed by the limited liability company in this state. The resolution shall further state that the limited liability company agreement shall be amended to include the following provision: "The designated engineer or land surveyor, respectively, named in the resolution as being in responsible
charge, or an engineer or land surveyor under the designated engineer
or land surveyor’s direct supervision, shall make all engineering or
land surveying decisions pertaining to engineering or land surveying
activities in the state of Washington." However, the filing of the
resolution shall not relieve the limited liability company of
responsibility or liability imposed upon it by law or by contract.

(c) The designated engineer for the limited liability company must
hold a current professional engineer license issued by this state.
The designated land surveyor for the limited liability company must
hold a current professional land surveyor license issued by this state.

If a person is licensed as both a professional engineer and as a
professional land surveyor in this state, then the limited liability
company may designate the person as being in responsible charge for
both professions.

If there is a change in the designated engineer or designated land
surveyor, the limited liability company shall notify the board in
writing within thirty days after the effective date of the change. If
the limited liability company changes its name, the company shall
submit to the board a copy of the certificate of amendment filed with
the secretary of state’s office.

(d) Upon the filing with the board the application for certificate
of authorization, a certified copy of the resolution, an affidavit from
the designated engineer or the designated land surveyor, or both,
specified in (b) and (c) of this subsection, a copy of the certificate
of formation as filed with the secretary of state, and a copy of the
company’s current business license, the board shall issue to the
limited liability company a certificate of authorization to practice
engineering or land surveying, or both, in this state upon
determination by the board that:

(i) The designated engineer or designated land surveyor, or both,
hold a certificate of registration in this state under this chapter and
the certificate is in force;

(ii) The designated engineer or designated land surveyor, or both,
are not designated in responsible charge for another limited liability
company or a corporation;

(iii) The limited liability company is licensed with the secretary
of state and has a current unified business identification number and
that the board determines, based on evaluating the findings and
information under this subsection, that the applicant limited liability
company possesses the ability and competence to furnish either or both engineering or land surveying services in the public interest.

The board may exercise its discretion to refuse to issue, or it may suspend or revoke a certificate of authorization issued to a limited liability company if the board finds that any of the managers or members holding a majority interest in the limited liability company has committed misconduct or malpractice as defined in RCW 18.43.105 or has been found personally responsible for misconduct or malpractice under the provisions of (f) and (g) of this subsection.

(e) Engineers or land surveyors organized as a professional limited liability company are exempt from applying for a certificate of authorization under this chapter.

(f) Any limited liability company authorized to practice engineering or land surveying, or both, under this chapter, together with its manager or managers and members for their own individual acts, are responsible to the same degree as an individual registered engineer or registered land surveyor, and must conduct their business without misconduct or malpractice in the practice of engineering or land surveying, or both.

(g) A limited liability company that is certified under this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, and 18.43.120.

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a limited liability company under its certificate of authorization shall be prepared by or under the direct supervision of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under this subsection (10) there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

NEW SECTION. Sec. 5. Section 4 of this act takes effect July 1, 1998.

Passed the Senate April 21, 1997.
Passed the House April 10, 1997.
Approved by the Governor May 2, 1997.
Filed in Office of Secretary of State May 2, 1997.