



# TEXAS COUNCIL OF ENGINEERING COMPANIES

## TEXAS CEC BILL TRACKING REPORT

### 82nd LEGISLATIVE SESSION BILLS PASSED

*May 30, 2011*

#### I. MAJOR ISSUES

**Water Development Bonds** (SJR 4 by Hinojosa/SP: Ritter): Proposes a constitutional amendment that, if adopted, would allow the Water Development Board to issue bonds on a continuing basis, provided that the aggregate amount outstanding at any time does not exceed \$6 billion. The amendment will be on the statewide ballot on November 8, 2011.

**Issuance of Additional Proposition 12 Bonds** (HB 1 by Pitts/SP: Ogden): The state's general appropriations act provides debt service for the issuance of bonds for an additional \$3 billion in projects. This amount is further allocated to \$300 million for work on the most congested segments in the four most populated metropolitan areas, \$500 million for a set of bridge projects, \$600 million for urban and metropolitan mobility projects, \$200 million for system connectivity, and \$1.4 billion for safety and rehabilitation projects. (See Attachment A for more detail and a list of bridge projects.)

**TxDOT Design-Build Authority** (SB 1420 by Hinojosa/SP: Harper-Brown): The TxDOT Sunset bill authorizes TxDOT to use design-build procedures for up to three projects per year, each with a construction cost estimate of greater than \$50 million. (See Attachment A for a detailed description.)

**Regional Mobility Authority Design-Build and Design-Build-Finance** (SB 1420 by Hinojosa/SP: Harper-Brown): The TxDOT Sunset bill also authorizes regional mobility authorities to use design-build and design-build-finance for two projects each per year, using procedures very similar to those authorized for TxDOT.

**Comprehensive Development Agreements** (SB 1420 by Hinojosa/SP: Harper-Brown): The TxDOT Sunset bill also authorized TxDOT (and in some cases RMAs) to develop several new comprehensive development agreements. These are listed in Attachment A. Environmental clearance prior to August 31, 2013 is required, as well as development of a financing plan. In addition, certain reforms to the CDA procurement process are made, including a prohibition on bid-shopping by developers after selection.

**Exemptions from Dam Safety Regulations** (HB 2694 by Smith/SP: Huffman): A floor amendment to the TCEQ Sunset bill would have exempted from dam safety regulations all dams impounding less than 1,000 acre-feet, regardless of hazard or location. TEXAS CEC worked to limit this exemption in the final version of the bill to only low or significant hazards dams impounding less than 500 acre-feet and located outside incorporated areas or in counties of less than 215,000 population. This keeps all high-hazard dams and others in more populated areas within the regulatory structure. The provision also includes a four-year sunset provision.

**CCN Reform** (SB 573 by Nichols/SP: Creighton): Provides significant changes to the process for expedited release from a CCN for a landowner of 25 acres or more who is not receiving water or sewer service. The bill applies to counties with 1 million or more population and adjacent counties to those, plus Smith County. The TCEQ may award compensation to be paid to the decertified utility. The bill also revises provisions that apply to other parts of the state to put time limits (180 days) on a municipality's requirement to respond to a request for service. Also prohibits a municipality from extending a CCN beyond its ETJ without a landowner's consent.

**Transportation Reinvestment Zones** (HB 563 by Pickett/SP: Nichols): Cleanup bill for TRIZ statute decoupling TRIZs from pass-through toll program for cities and counties. Authorizes the use of both property tax and sales tax increments. Provides that the base year may be established as the year an ordinance establishing the zone is passed or some future year. Money remaining after the transportation project is paid for may be used for other purposes by the municipality. Specifically authorizes assigning revenue to a public or private entity developing a project. Also provides that if a project is subject to supervision by the department, at the request of a sponsor the department shall delegate responsibility for development, design, letting, construction, and project oversight to the city or county, with execution of a development agreement with the department. A city or county that uses a TRZ may not be penalized with any reduction of traditional transportation funding.

**Engineering and Architecture in Building Design** (HB 2284 by Hardcastle/SP: Deuell): Provides greater definition to the roles of engineers and architects in the area of building design while providing a grandfathering process for engineers who have been performing comprehensive building design. (See Attachment B for detail.)

**Tort Reform** (HB 274 by Creighton/SP: Huffman): Makes a number of changes in civil justice statutes:

- Requires the Supreme Court to develop rules providing for the dismissal of cases that have no basis in law or fact. According to tort reform groups, Texas, unlike 42 other states does not have a "motion to dismiss" practice. This provision is "loser pays" in that it requires a trial court to award costs to a prevailing party when it grants or denies a motion to dismiss.
- Requires the Supreme Court to develop rules for expedited handling of claims less than \$100,000.
- Removes the requirement that both parties must agree to a mid-case appeal of a question of law that controls the outcome of the case.

## II. BUSINESS AND PROFESSIONAL ISSUES

**Engineering in Evaluation of Oil and Gas Resources** (HB 2067 by Callegari): Allows a professional engineer licensed in another state to conduct certain evaluations of oil and gas resources without being licensed in Texas if the activities do not involve design and construction on the surface or

threaten public health, and if the state where the PE is licensed has a reciprocal relationship with Texas on similar activities. Evaluations covered included quantification of reserves, production forecasts, and economic forecasts.

**Indemnification Provisions in Construction Contracts** (HB 2093 by Thompson): Prohibits many broad based indemnity provisions in construction contracts. This provision does not apply to municipal contracts but existing provisions of law limiting indemnity agreements between local government entities and engineers are not changed.

### III. TRANSPORTATION ISSUES

**TxDOT Sunset Bill** (SB 1420 by Hinojosa/SP: Harper-Brown): In addition to the design-build and CDA changes noted above, the Sunset bill includes various provisions related to planning process, performance measures, other.

**Expedited Environmental Review** (SB 548 by Nichols/SP: Pickett, also included in TxDOT Sunset bill): Requires revisions of MOUs between TxDOT and state review agencies to limit review periods to no more than 45 days. Requires TxDOT to develop standards for processing environmental review documents for highway projects addressing required content, review deadlines, and other issues. Provides that an environmental document may be prepared only if the project is in the financially constrained portion of the state plan; however, a local sponsor may develop a document for a project not in the plan if it pays a fee to cover the cost of review. If a document is prepared by a local sponsor, the sponsor must prepare a detailed scope of work in cooperation with the department. A local sponsor must provide notice that it is preparing a document. When submitting a document, the sponsor must include a statement that the document is administratively complete and ready for technical review. The department must confirm within 20 days. The department must confirm the classification of a project within 30 days of receiving a notice. For a programmatic categorical exclusion, the decision must be issued within 90 days of receipt of documentation. For an environmental assessment, the department must submit comments within 90 days of receiving a draft and render decision within 60 days of submission of revised document. For a project that requires an EIS, decision must be issued within 120 days of submission. Authorizes the department or other entities to enter into an agreement with a state or federal agency to pay the costs of expediting review. The department is also allowed to prioritize review if it lacks adequate resources. Requires TxDOT to establish a certification program for district environmental professionals.

**Toll Road Primacy** (SB 19 by Nichols/SP: Smith): Grants a local toll entity (LTE) the first right to develop a toll project as a public project. LTE must initiate design with 180 days of environmental clearance and construction within two years. Second option is public project by the department. Third is private project by local toll entity and fourth is private project by department. The department and LTE may alter the deadlines by agreement. If an LTE exercises an option, the department must allow the LTE to use state right-of-way, subject to reimbursement of costs.

**Grand Parkway Terms and Conditions** (SB 1719 by Williams/SP: Fletcher): Provides that any authority for TxDOT to enter into a CDA for Grand Parkway (SH 99) does not affect the obligation of the department to comply with terms and conditions of an agreement entered pursuant to market valuation study/waiver.

**Consolidated County Transportation Authorities** (SB 1422 by Nelson/SP: Solomons): Among other provisions, allows a municipality to participate consolidated county transportation authorities (Denton County?) through tax increment financing in a designated public transportation financing area.

**Repeal of Trans-Texas Corridor Authority** (HB 1201 by Kolkhorst/SP: Hegar): Deletes all references to the TTC and makes sure it is dead, dead, dead.

#### **IV. CITY/COUNTY ISSUES**

**Municipal Management Districts** (SB 1234 by West/SP: Coleman): Among other provisions, authorizes municipal management districts to design, finance, build and maintain roads.

#### **V. WATER/ENVIRONMENT/NATURAL RESOURCES**

**TCEQ Sunset Bill** (HB 2694 by Wayne Smith/SP: Huffman): Requires the Commission in the dam safety program to focus on the most hazardous dams in the state. Certain dams are exempted (see above). Allows the Commission to enter into agreements with dam owners to reevaluate the adequacy of a dam or spillway, including timelines for compliance. Requires revisions to the agency's compliance history process, including the establishment of standards and classifications. Extends fees for petroleum storage tank remediation fund. Allows the agency to contract through the state-lead program without new procurement with engineers, others who have been involved with sites currently in the responsible party lead program (these sites are being transferred to state-lead). Establishes special provisions for hearings for electrical generation facilities that are reducing emissions. Requires water rights holders to maintain monthly water use information. Authorizes emergency orders suspending water rights uses or reallocating available uses. Increases regulatory assessment on public utilities and retail providers. Abolishes the On-Site Wastewater Research Council with its powers transferred to the Commission.

**Rural Water Assistance Fund Uses** (SB 360 by Fraser/SP: Creighton): Expands the sources of revenue that can go into the fund and expands what the fund can be used for. Uses include wholesale or retail water or sewer infrastructure, development of wellfields, desalination projects, acquisition of facilities from other utilities, and planning, design and permitting costs. The fund may be used for low-interest loans, negative interest loans, grants, and other purposes. Loans to nonprofit water or sewer service corporations are allowed.

**Management of Groundwater by Districts** (SB 737 by Hegar/SP: Price): Requires groundwater districts in issuing permits to manage production to achieve an applicable desired future condition and consider modeled water availability and other factors.

**Groundwater Districts and Owner's Rights** (SB 332 by Fraser/SP: Ritter): Provides that the landowner owns the groundwater below the surface of his land as real property. This right provides for production without waste but does not entitle the right to produce a specific amount of water. This does not prohibit regulation by groundwater districts or require proportional allocation.

## VI. PROCUREMENT

**Comprehensive Procurement Statute** (HB 628 by Callegari/SP: Jackson): Consolidates a number of alternate project delivery statutes into a new Chapter 2267, Government Code, and makes a number of other changes. This bill includes language that authorizes TxDOT to contract with adjacent landowners to pay for improvements to the highway system that improve access. This is a common practice but late in the session some questions arose about the statutory authority. This confirms the authority.

**Local Government Contracts with Private Entities for Civil Works Projects** (HB 2729 by Callegari/SP: Watson): Provides that a local government entity may contract with a private entity to act as the local governmental entity's agent in the design, development, operation, maintenance, financing, and construction, including inspection and oversight, of a civil works project. The local government must make the selection on the basis of experience and qualifications and enter into a project development agreement. The private entity is specifically required to comply with engineering and architecture laws, professional services procurement, and all laws related to procurement that apply to the governmental entity.

**Public-Private Partnerships** (SB 1048 by Jackson/SP: J. Davis): Establishes a process under which a governmental entities may contract with private entities to construct, finance, and operate a variety of facilities, including ports, pipelines, parking garages, hospitals, schools, and other public works. State highways are not included. The bill provides for solicited or unsolicited proposals. Before considering a proposal the governmental entity must adopt guidelines including criteria for selection, financial review, timeline, and other issues. A proposal may be approved if it is in the public interest, subject to the execution of comprehensive agreement. The entity may contract with the private party for services to be provided in exchange for service payments. The contracting person has the power to develop the project, collect payments, and assess user fees approved by the governmental entity. The comprehensive agreement must address plan review, inspection, insurance, termination, lease payments, business terms, and other issues. The contracting person is required to design and construct the project in conformance with design-build procedures in state law (Local Government Code, Education Code, etc.). The governmental entity and the contracting person must comply with the Professional Services Procurement Act.

A Partnership Advisory Commission is created within the legislative branch to review proposals.

**Change Order Delegation** (HB 679 by Button): Raises change order threshold to \$50K for certain local governmental entities (including water districts) and allows for the delegation of such change order approval to a designated employee.

## VII. MISCELLANEOUS

**Eminent Domain** (SB 18 by Estes/SP: Geren): Establishes more restrictive procedures for the use of eminent domain. A governmental entity initiating condemnation must authorize it in a public meeting. An entity, including a private entity, that is authorized to use eminent domain must submit a letter to the comptroller by 12/31/12 a letter stating the statutory authority that it relies on. Allows acquisition of property by eminent domain through lease. An acquiring entity must make a bona fide offer to acquire the property voluntarily that is equal to or greater than appraisal. Special commissioners must be real property owners. Allows repurchase at the price paid if planned use is not fulfilled (current

law provides for current value). Entities not subject to Open Records Act are nonetheless required to produce certain information upon request. Includes in the calculation of injury or benefit a material effect on direct access. Provision of a relocation assistance services is made mandatory. Expands right of repurchase if there is not actual progress toward public use.

**Green Building Standards** (HB 51 by Lucio/SP: Hinojosa): Applies high-performance and sustainable design standards to certain university and state buildings. Modifies design standards adopted by the State Energy Conservation Office to require certification under high performance evaluation systems. Specifically provides that a contract between a state agency and a design professional must provide that any service by the design professional to certify energy and water conservation standards is an extra service and not a basic service. Also provides that a contract may not disallow certain federal tax credits for which the design professional might be eligible.

**Economic Development Corporations** (HB 3302 by Reynolds): Allows certain Type A corporations to undertake any project that a Type B corporation can take on.

**Geospatial Data Products** (HB 1147 by Smith/SP: Wentworth): Requires governmental entities to include notices on geospatial data products that are created or hosted by the entity, that appear to represent property boundaries, and were not produced using information from an on-the-ground survey conducted by a registered land surveyor. Notice must say it is for informational purposes only and may not have been prepared for or be suitable for legal, engineering or surveying purposes.

**Ports** (HB 2770 by Smith/SP: Williams): Omnibus revisions to port statute. One provision puts Port of Houston under Sunset review, although it cannot be abolished.

## **BILLS/ISSUES THAT DID NOT PASS**

- Changes to Qualifications-Based Selection
- Prohibitions on government competition with the private sector
- Exemptions from local drainage fees
- Structural engineering licensure
- Consolidation of professional licensing agencies
- Exemption of local officials and employees from disciplinary proceedings under Engineering Practice Act
- Exemption of construction by volunteer fire departments in rural areas from Engineering Practice Act
- Increases in motor fuel tax, indexing, or shifts in revenues from general revenue to highway fund.

## Attachment B

### HIGHLIGHTS OF TxDOT SUNSET BILL AND APPROPRIATIONS ACT SB 1420 and HB 1

**Total Appropriation in HB 1:** \$10.487 billion FY12, \$9.314 billion FY13

**Authorized FTEs:** 12,203

**Proposition 12 Bonds:** \$3 billion for new projects:

- \$300 million to acquire right-of-way, conduct planning and feasibility studies, and outsource engineering work for the most congested roadway segments in the four most congested areas in the state. TTI to play a role in determining which projects have the greatest impact and identifying funding options.
- \$600 million to fund metropolitan and urban mobility projects, distributed by formula
- \$200 million for statewide connectivity
- \$1.4 billion for rehabilitation and safety projects, distributed by formula
- \$500 million to develop and construct the following bridge projects
  - IH 30/Trinity River (Dallas County)
  - IH 35E NB & SB/Trinity River and Brazos Street (Dallas County)
  - IH 10/Neches River (Orange County)
  - Elysian St./IH 10 (Harris County)
  - SH 276/Lake Tawakoni (Hunt County)
  - IH 345 NB & SB/IH 30, US 75 & DART (Dallas County)
  - US 67 NB & SB/US 277 (Tom Green County)
  - SH 6/Brazos River (Knox County)
  - SH 203/Red River (Collingsworth County)

If expenditures for these projects are less than \$500 million, Commission can allocate remainder to other bridge projects

**Plan/Design/Manage Appropriation:** Plan/design/manage (in-house) - \$308 million FY12, \$298 million FY13. Contracted plan/design/manage - \$355 million FY12, \$372 million FY13

**Contract Rail Plan/Design Appropriation:** \$5.4 million FY12, \$1.7 and UB FY13

**Contracted Plan/Design/Manage SH 121 Appropriation:** \$17 million FY12, \$12 million FY13

**Total Debt Service:** \$798 million FY12, \$920 million FY13

**Total New Project Letting:** Intent of the Legislature expressed that \$8.56 billion in new multi-year contracts for improvement, rehab and preservation during the biennium.

## **Comprehensive Development Agreements:**

- Department authorized to use a CDA only for
  - SH 99 (Grand Parkway) project
  - IH 35E managed lanes project in Dallas and Denton Counties from IH 635 to US 380
  - North Tarrant Express project in Dallas and Tarrant Counties, including
    - SH 183 from SH 121 to SH 161 (Segment 2E)
    - IH 35W from IH 30 to SH 114 (Segments 3A, 3B, 3C)
    - IH 820 from SH 183 North to south of Randol Mill Road (Segment 4)
  - SH 183 managed lanes in Dallas County from SH 161 to I 35E
  - SH 249 project in Harris and Montgomery Counties from Spring-Cypress Road to FM 1774
  - Highway 288 project in Harris and Brazoria Counties
- The department or a regional mobility authority may use a CDA for
  - Loop 1 MoPac improvement project from FM 734 to Cesar Chavez St.
  - US 183 project from Springdale Road to Patton Avenue
  - A project consisting of the construction of the Outer Parkway project from US 77/83 to FM 1847 and the South Padre Island Second Causeway
- Other than SH 99, these authorizations expire 8/31/15
- Before proceeding on any of those listed, the department (or an authority) must obtain environmental clearance by 8/31/13 and present a full financial plan for the project.
- Special provisions for North Tarrant Express project - the department is not required to use any further procurement process to enter into related facility agreements with the developer of NTE
- Reforms to CDA procurement:
  - A private entity proposing on a project must identify companies that will play key project roles, including lead design, QA/QC, task leaders for geotechnical, hydraulics and hydrology, structural, etc.
  - No changes may be made to the team after selection except for failure to perform or negotiate in good faith. Cost savings from changes accrue to the state.
  - Technical solutions presented with a proposal must be responsive to, and have demonstrated resources to be able to fulfill, all technical requirements for the project.
  - All teaming agreements and subconsultant agreements must be in place prior to the execution of the CDA.
- Restrictions on appropriated funds in HB 1 (General Appropriations Act) for contracts with private participants
  - No guarantee on investment
  - Nothing that would reduce the risk to a private participant as a result of action taken by the department or the State
  - No limits on other department facilities
  - Must contain a buyback provision
  - No possible financial liability to the state

## **Design-Build for TxDOT**

- Design-build contract defined as distinct from CDA and may not grant a leasehold or right to operate or retain revenue.
- TxDOT authorized to enter into up to three DB contracts per year each with a construction cost estimate of at least \$50 million. (The three projects per year limitation expires 8/31/15.)
- Money disbursed to pay for engineering costs of design-build contract does not count toward the department's minimum outsourcing requirements.
- Procurement process:
  - The department must select or designate an engineer or GEC, independent of the design-builder, to act as its representative.
  - The department shall provide or contract for, independently of the design-builder, the inspection, construction engineering and testing, and verification testing necessary for the acceptance of the facility. The engineering services must be selected through QBS. This does not preclude a design-builder from providing QA/QC.
  - A request for qualifications must be issued providing information, criteria for evaluation, relative weight. Interviews allowed.
  - At least two proposers must be shortlisted.
  - A request for technical and price proposals must be issued providing available cost estimate, material requirements, schematic design approximately 30 percent complete, known utilities, QC/QA requirements, available geotechnical information, instructions for technical proposal, criteria, and weighting.
  - Weighting of price proposal must be a minimum of 70 percent.
  - Technical proposal must include feasibility, proposed solutions to anticipated problems, conceptual engineering design, other issues. A process for allowing alternate technical proposals must be provided.
  - The cost proposal must include total cost to deliver and number of days.
  - Deadline of 180 days after issuance of RFP.
  - Technical and cost proposals opened and scored separately.
  - If only one proposal is received, an independent evaluation must confirm that no anti-competitive procedures were used.
  - Negotiations in order of ranking.
  - Unless identified in the RFP, the department must assume risks associated with changes in scope, unforeseen site conditions, environmental clearance, cost of property acquisition.
  - A mandatory stipend of 0.25% of contract price must be paid. After payment, department may use design elements at its own risk. A partial stipend must be paid in the event of cancellation of a procurement after advertising.

## **Design-Build for Regional Mobility Authorities**

- Amends Chapter 370, Transportation Code, to authorize the use of design-build contracts, separate from comprehensive development agreements, by regional mobility authorities. The process is largely similar to the one provided for TxDOT (see above). RMAs are limited to two design-build contracts each year.

## **Transportation Planning**

- 24-year plan is required with specific long-term goals and priority corridors and projects.
- A project information reporting system is required, with status, funding, benchmarks, timelines. Annual reporting on completion rates is required.
- A transportation improvement reporting system is required.
- Annual report on transportation goals is required.
- Unified transportation program covering a period of ten years must identify annual target funding levels and projects the department intends to develop or construct.
- Annual funding and cash flow forecast required.
- List of major transportation projects is required.
- Formulas required for allocations to rehabilitation, metro mobility, connectivity, CEMAQ, enhancements, other categories.
- Four-year work program required with list of all projects proposed to be implemented. Work program is used to measure performance of districts and employees.

## **Environmental Review**

- Requires revisions of MOUs between TxDOT and state review agencies to limit review periods to no more than 45 days.
- Requires TxDOT to develop standards for processing environmental review documents for highway projects addressing required content, review deadlines, and other issues. The standards may provide for prioritization of review of documents if resources are inadequate.
- Provides that an environmental document may be prepared only if the project is in the financially constrained portion of the state plan; however, a local sponsor may develop a document for a project not in the plan if it pays a fee to cover the cost of review.
- If a document is prepared by a local sponsor, the sponsor must prepare a detailed scope of work in cooperation with the department. A local sponsor must provide notice that it is preparing a document. When submitting a document, the sponsor must include a statement that the document is administratively complete and ready for technical review. The department must confirm within 20 days.
- The department must confirm the classification of a project within 30 days of receiving a notice. For a programmatic categorical exclusion, the decision must be issued within 60 days of receipt of documentation. For a categorical exclusion, the decision must be issued within 90 days. For an environmental assessment, the department must submit comments within 90 days of receiving

a draft and render decision within 60 days of submission of revised document. For a project that requires an EIS, decision must be issued within 120 days of submission.

### **Other Provisions**

- Commission – the rural member must be from a county with a population of less than 150,000.
- The department is required to establish an internal compliance office.
- Authorizes the department or other entities to enter into an agreement with a state or federal agency to pay the costs of expediting review.
- Requires TxDOT to establish a certification program for district environmental professionals.
- Sunset date is set at 8/31/15.

## **Attachment B**

### **HB 2284**

#### **ENGINEERING AND ARCHITECTURE IN BUILDING DESIGN**

HB 2284 is an effort to define the roles of engineers and architects in the building design area. It defines certain tasks as engineering, other tasks as architecture, and other tasks as within the scope of both professions. It also establishes a process for grandfather those engineers who have been engaging in comprehensive building design prior to the passage of the bill. It limits engineers, other than those grandfathered, from performing comprehensive building design.

#### **Limitation on Comprehensive Building Design By Engineers**

An engineer may not prepare or provide a comprehensive set of plans for a building designed for human use and occupancy, unless

- the engineer is grandfathered to practice comprehensive building design (see below);
- the plans and specifications are prepared under the supervision of an architect; or
- the building is
  - part of a construction project intended for engineering use; or
  - a structure incidental to a construction project intended for engineering use.

#### **Tasks Considered as Within the Practices of Both Engineering and Architecture**

The bill provides that the following tasks are recognized as within the practice of both engineering and architecture:

- site plans depicting the location and orientation of the building on the site based upon a determination of the interrelationship of the intended use with the environment, topography, vegetation, climate, geographic aspects, and the legal aspects of site development, including setback requirements, zoning and other legal restrictions as well as surface drainage;
- the depiction of the building systems such as structural, mechanical, electrical, and plumbing systems in plan views, in cross sections depicting building components from a hypothetical cut line through a building, and in the design of details of components and assemblies specifically including any part of a building exposed to water infiltration or fire-spread considerations;
- life safety plans and sheets, including accessibility ramps, with code analyses; and
- roof plans and details depicting the design of roof system materials, components, drainage, slopes, directions, and location of roof accessories and equipment, not involving structural engineering calculations.

#### **Tasks That May Be Performed By Either an Engineer or Architect**

- programming for construction projects, including identification of economic, legal, and natural constraints and determination of the scope of functional elements;
- recommending and overseeing appropriate construction project delivery systems;

- consulting, investigating, and analyzing the design, form, materials, and construction technology used for the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary, subject to whether the issues are architectural or engineering tasks ;

### **The Practice of Engineering**

The bill specifically provides that engineers have responsibility for the engineering aspects of building design (except for projects otherwise exempt from Engineering Practice Act). “Engineering plans and specifications” are defined as

- plans for a structural, mechanical, electrical, fire suppression, electronic or geotechnical systems in a building;
- sizing and specifications of a building’s structural elements and connections;
- foundation design;
- hydrologic management calculations and design of surface water control and detention necessary for compliance with ordinances and regulations;
- design of building drain and waste system plumbing, fresh water plumbing, grey water systems and mechanical aspects of moving water in and out of a structure, other than simple roof drainage;
- evaluation of structural framing members prior to the addition of roof-mounted equipment or heavier roof covering;
- design of changes in roof pitch by the addition of structural framing members;
- evaluation and repair of damaged roof structural framing;
- electrical power and signal and control systems;
- shop drawings by manufacturers or fabricators of materials and products to be used in the building components designed by the engineer; and
- specifications listing the nature and quality of materials and products for construction of elements of the building designed by an engineer.

### **The Practice of Architecture**

“Architectural plans and specifications” are defined as:

- floor plans and details depicting the design of internal and external walls, including simple foundations, the design of the internal spaces of the building, and the design of vertical circulation systems including accessibility ramps, stair systems, elevators and escalators, which plans implement programming, regulatory, and accessibility requirements;
- general cross sections and detailed wall sections depicting building components from a hypothetical cut line through a building to include the building's mechanical, electrical, plumbing or structural systems;

- reflected ceiling plans and details depicting the design of the location, materials, and connections of the ceiling to the structure and the integration of the ceiling with electrical, mechanical, lighting, sprinkler and other building systems;
- finish plans or schedules depicting surface materials on the interior and exterior of the building;
- interior and exterior elevations depicting the design of materials, locations and relationships of components and surfaces;
- partition, door, window, lighting, hardware and fixture schedules;
- manufacturer or fabricator drawings that are integrated into and become part of the construction documents; and
- specifications describing the nature, quality, and execution of materials for construction of the elements of the building depicted in the plans prepared by the architect.

### **Grandfathering**

Engineers may be recognized to practice architecture by submitting prior to January 1, 2012 documentation of three projects meeting certain thresholds which were adequately and safely built and for which the engineer developed architectural plans and specifications. The TBAE makes the initial decision within 120 days, which may be appealed to the State Office of Hearings Examiners. The decision of the SOAH administrative law judge is final, but may be appealed to district court. The law takes effect September 1, 2011, except that an engineer who makes application to TBAE for grandfathering may continue to practice under the old law until the final decision of the SOAH ALJ.