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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Pettigrew/Small</u>	<b>LAST UPDATED</b> <u>3/11/23</u>	<b>ORIGINAL DATE</b> <u>2/23/23</u>
<b>SHORT TITLE</b> <u>Engineer &amp; Surveyor Licensure</u>	<b>BILL NUMBER</b> <u>House Bill 411/aHF1#1</u>	<b>ANALYST</b> <u>Anderson</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	(\$150.0)	(\$150.0)	Recurring	BLPEPS Other State Funds
	No fiscal impact	\$150.0	\$150.0	Recurring	BLPEPS Scholarship Fund
<b>Total</b>		\$0.0	\$0.0		

Relates to House Bill 201  
 Relates to appropriation in the General Appropriation Act

### Sources of Information

LFC Files

#### Responses Received From

Board of Licensure for Professional Engineers and Surveyors (BLPEPS)  
 New Mexico State University (NMSU)  
 Office of the Attorney General (NMAG)

## SUMMARY

### Synopsis of HFI#1 Amendments to House Bill 411

The House Floor Amendment to House Bill 411 amends Section 6 (A) clarifying that no New Mexico architect shall represent themselves as a “professional” engineer. Section 6 (B) provides further exemptions to entities from the Engineer and Surveying Practice Act, including employers offering engineering services to the public, provided the services are limited to legal property boundaries employing engineers. NMAG has proved analysis on the amendment as related to the bill’s lack of definition of “an affiliated business” and concern regarding the potential for loopholes:

It is not clear if the addition of “an affiliated business” could provide a loophole that could make the industrial exemptions for engineering and surveying more broad than initially intended. Perhaps a definition of affiliated business could be provided or perhaps not include the term “an affiliated business.”

Section 11 has been amended exemptions for surveyors employed by or affiliated with a business. The section provides further exemptions to entities from the Engineer and Surveying Practice Act, including employers offering surveying services which are limited to the legal boundaries of property owned.

### **Synopsis of Original House Bill 411**

House Bill 411 extends the repeal date for the Board of Licensure for Professional Engineers and Surveyors from July 1, 2023, to July 1, 2030.

The bill amends and updates the Engineering and Surveying Practice Act to align definitions with language adopted by the National Council for Examination of Engineers and Surveyors; set educational, assessment, and experience qualifications for different licenses; update terminology; create consistency across statutes; outline the conditions for licensing reciprocity; and clarify the process for license denial.

The bill also expands the uses of the board's scholarship program to include materials and student supports and increases the amount that can be spent annually on the scholarship fund from \$100 thousand to \$250 thousand.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed.

### **FISCAL IMPLICATIONS**

The LFC Sunset Subcommittee reviewed the board in August 2022. The subcommittee recommended a 100 percent increase in the board's scholarship program from the board's cash balance, a recommendation adopted by the full LFC. The board is an enterprise agency that generates revenue as other state funds and receives no general fund.

### **SIGNIFICANT ISSUES**

The Board of Licensure for Engineers and Surveyors sunsets in FY24 and the LFC Sunrise Sunset Subcommittee moved to extend the sunset date of the board by six years, to July 1, 2029, pending appointments to fill four board vacancies. The board reported all board vacancies have since been appointed. The sunset extension is also proposed in House Bill 201.

The board says the revisions to the definitions to align with national council is "key" to licensing mobility. The Board of Licensure for Professional Engineers and Surveyors (BLPEPS) said HB411 amends the term "engineer" to align with nationally adopted language developed by the National Council for Examination of Engineers and Surveyors (NCEES) and the changes reflect recent federal case law removing the word "engineer" as a protected term.

However, there have been lawsuits against states that have implemented this change to statute, citing violation of first amendment rights. The NMAG stated:

Currently, the ESPA utilizes the phrase "qualified persons" rather than the term "engineer" in its declaration of policy. NMSA 1978, Section 61-23-2 ("[O]nly *qualified persons* be permitted to engage in the practices of engineering and surveying."). The board then decides whether a person is qualified. Accordingly,

if the legislators chose to remove the definition of “engineer,” it does not appear that it would prohibit the Board of Licensure for Professional Engineers and Professional Surveyors from enforcing the unlicensed practice of engineering pursuant to ESPA.

NMAG referenced of a case from Oregon State:

In Oregon, the U.S. District Court ordered that the word “engineer” be removed from the Oregon state statute as follows: “~~Engineer~~, ‘professional engineer’ or ‘professional engineer’ means an individual who is registered in this state and holds a valid certificate to practice engineering in this state ....” See *Jalstrom v. Aldridge*, 366 F. Supp. 3d 1205, 1222 (D. Or. 2018), Or. Rev. Stat. Section 672.002(2). Also, Or. Rev. Stat. Section 672.007(1)(b) (“A person who is practicing or offering to practice engineering if the person . . . [t]hrough the use of some other title that implies that the person is ~~an engineer~~ or a registered professional engineer[.]). This case involved a person who was challenging a red light ticket who had completed education in engineering but was not a licensed engineer in any state of the United States. Further, in *Jarlstrom v. Aldridge*, the court stated “there is no fixed meaning to the title ‘engineer.’ On the contrary, there are many different types of engineers...” *Id.* at 1220. Some examples are custodial engineers, television engineer, environmental engineering technician and ferry engineer that do not require professional engineering expertise or licensure. *Id.* at 1220, *N.C. State Bd. Of Registration for Prof’l Eng’rs & Land Surveyors v. Int’l Bus. Mach. Corp.*, 31 N.C. App. 599, 604, 230 S.E.2d 552 (1976).

## PERFORMANCE IMPLICATIONS

New Mexico State University said HB 411 may impact the institution in various ways:

The bill is amended to revise the certification requirements for engineer interns and licensure requirements for professional engineers and professional surveyors. These revisions that relate to education, experience, etc. will need to be satisfied by NMSU graduates to become certified and licensed.

The bill is amended to raise the amount of funding for the Engineering and Surveying University Support Program from \$100k to \$250 in the aggregate. This increase expands the use of funding beyond scholarships to include equipment and related materials and will provide financial resources and educational opportunities to support NMSU students on their path towards certification and licensure, and ultimately practice in New Mexico.

Furthermore, the University Support Program will contribute to much needed modernization of equipment for NMSU students pursuing engineering, engineering technology, and surveying careers.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 411 relates to the Sunset omnibus bill, House Bill 201. HB201 extends the life of six boards pursuant to the provisions of the Sunset Act with periods of extension of six years, which includes the Board of Professional Engineers and Surveyors. HB201 amends §61-23-32 NMSA 1978 to extend the board’s sunset to July 1, 2030.

## TECHNICAL ISSUES

Section 4 language might be updated to clarify the application process. An alternative to the added language might be, “that may impede the ability of the applicant to perform professionally as determined by board rules provided as part of the application process.”

An abbreviated reciprocity requirement for surveyor licenses might be considered. The 15-year requirement may be an inordinate length of time for the purpose of obtaining New Mexico reciprocity.

Section 9 language might be updated to clarify denial criteria regarding surveyor licensing applications. An alternative the added language might state: “that may impede the ability of the applicant to perform professionally as determined by board rules provided as part of the application process.”

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