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HOUSE BILL 295

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

Jimmie C. Hall

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO PROFESSIONAL LICENSURE; CHANGING MEMBERSHIP OF  
CERTAIN LICENSING BOARDS; EXTENDING SUNSET DATES OF CERTAIN  
BOARDS; INCREASING PENALTIES FOR UNLICENSED ACTIVITIES OF  
CERTAIN PROFESSIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** A new section of the Professional Athletic  
Competition Act is enacted to read:

"~~[NEW MATERIAL]~~ UNLICENSED ACTIVITY--DISCIPLINARY  
PROCEEDINGS--CIVIL PENALTY.--A person who is not licensed to  
engage in a professional athletic competition activity  
regulated by the board is subject to disciplinary proceedings  
by the board as provided in the Uniform Licensing Act. The  
provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the  
board may impose a civil penalty in an amount not to exceed two

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1 thousand dollars (\$2,000) against a person who engages in a  
2 professional athletic competition activity regulated by the  
3 board without a license. In addition, the board may assess the  
4 person for administrative costs, including investigative costs  
5 and the cost of conducting a hearing."

6 SECTION 2. Section 60-2A-30 NMSA 1978 (being Laws 1980,  
7 Chapter 90, Section 30, as amended) is amended to read:

8 "60-2A-30. TERMINATION OF AGENCY LIFE--DELAYED  
9 REPEAL.--The New Mexico athletic commission is terminated on  
10 July 1, [~~2017~~] 2023 pursuant to the Sunset Act. The commission  
11 shall continue to operate according to the provisions of the  
12 Professional Athletic Competition Act until July 1, [~~2018~~]  
13 2024. Effective July 1, [~~2018~~] 2024, Chapter 60, Article 2A  
14 NMSA 1978 is repealed."

15 SECTION 3. Section 61-14A-19 NMSA 1978 (being Laws 1993,  
16 Chapter 158, Section 27) is amended to read:

17 "61-14A-19. PENALTIES.--[~~Any~~]

18 A. A person who violates [~~any~~] a provision of the  
19 Acupuncture and Oriental Medicine Practice Act is guilty of a  
20 misdemeanor and upon conviction shall be punished as provided  
21 in Section 31-19-1 NMSA 1978.

22 B. In addition to criminal penalties, a person who  
23 engages in acupuncture or oriental medicine without a license  
24 is subject to disciplinary proceedings by the board. The  
25 provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the

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1 board may impose a civil penalty in an amount not to exceed two  
2 thousand dollars (\$2,000) against such person and may assess  
3 the person for administrative costs, including investigative  
4 costs and the cost of conducting a hearing. The fine shall be  
5 deposited to the credit of the current school fund."

6 SECTION 4. Section 61-14A-22 NMSA 1978 (being Laws 1993,  
7 Chapter 158, Section 30, as amended) is amended to read:

8 "61-14A-22. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--  
9 The board of acupuncture and oriental medicine is terminated on  
10 July 1, [2017] 2023 pursuant to the Sunset Act. The board  
11 shall continue to operate according to the Acupuncture and  
12 Oriental Medicine Practice Act until July 1, [2018] 2024.  
13 Effective July 1, [2018] 2024, Chapter 61, Article 14A NMSA  
14 1978 is repealed."

15 SECTION 5. Section 61-15-3 NMSA 1978 (being Laws 1979,  
16 Chapter 362, Section 3, as amended) is amended to read:

17 "61-15-3. BOARD OF EXAMINERS FOR ARCHITECTS CREATED--  
18 TERMS--QUALIFICATIONS.--

19 A. [~~There is created a~~] The "board of examiners for  
20 architects" is created consisting of seven members appointed by  
21 the governor for staggered terms of three years each. [~~Six~~]  
22 Five of the members shall be architects having ten years or  
23 more experience in the profession, five years of which shall  
24 have been in responsible charge of architectural projects, and  
25 shall have been registered as architects in New Mexico for at

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1 least five years. One of these [~~six~~] five architects shall be  
2 in architectural education in an accredited college of  
3 architecture. The sixth and seventh [~~member~~] members shall be  
4 [~~a~~] public [~~member~~] members who [~~is a~~] are voting [~~member~~]  
5 members. The public [~~member~~] members of the board shall not  
6 have been licensed as [~~an architect~~] architects, nor shall [~~the~~  
7 ~~public member~~] they have any significant financial interest,  
8 whether direct or indirect, in the occupation regulated.

9 B. Each member of the board shall be at least  
10 thirty years of age, a citizen of the United States and a  
11 resident of New Mexico for at least five years prior to the  
12 date of appointment.

13 C. Members of the board shall be appointed for  
14 staggered terms of three years each made in such a manner that  
15 the terms of not more than two members expire on June 30 of  
16 each year. Each member shall serve until [~~his~~] a successor has  
17 been appointed and qualified. A vacancy shall be filled for  
18 the unexpired term by appointment by the governor of a person  
19 having similar qualifications as the member that [~~he~~] the  
20 person replaces. Each member of the board whose term has not  
21 expired on the effective date of this section shall serve out  
22 [~~his~~] the member's unexpired term.

23 D. Each member of the board shall receive a  
24 certificate of appointment from the governor and, before  
25 beginning [~~his~~] the member's term of office, shall file with

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1 the secretary of state the constitutional oath of office. The  
2 governor may remove any member from the board for the neglect  
3 of any duty required by law, for incompetence or, if the member  
4 is a licensed architect, for any improper or unprofessional  
5 conduct as defined by [~~regulations~~] rules of the board.

6 E. The board shall elect a [~~chairman~~] chair, a vice  
7 [~~chairman~~] chair and a secretary and any other officers it  
8 deems necessary."

9 SECTION 6. Section 61-15-13 NMSA 1978 (being Laws 1979,  
10 Chapter 362, Section 10, as amended) is amended to read:

11 "61-15-13. TERMINATION OF AGENCY LIFE--DELAYED  
12 REPEAL.--The board of examiners for architects is terminated on  
13 July 1, [~~2017~~] 2023 pursuant to the provisions of the Sunset  
14 Act. The board shall continue to operate according to the  
15 provisions of the Architectural Act until July 1, [~~2018~~] 2024.  
16 Effective July 1, [~~2018~~] 2024, the Architectural Act is  
17 repealed."

18 SECTION 7. Section 61-23-5 NMSA 1978 (being Laws 1987,  
19 Chapter 336, Section 5, as amended) is amended to read:

20 "61-23-5. STATE BOARD OF LICENSURE FOR PROFESSIONAL  
21 ENGINEERS AND PROFESSIONAL SURVEYORS--MEMBERS--TERMS.--

22 A. [~~There is created~~] The "state board of licensure  
23 for professional engineers and professional surveyors" [~~that~~  
24 ~~shall consist of five~~] is created and consists of four  
25 licensed professional engineers, at least one of whom shall be

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1 in engineering education, three licensed professional surveyors  
2 and [~~two~~] three public members.

3 B. The members of the board shall be appointed by  
4 the governor for staggered terms of five years. The appointees  
5 shall have the qualifications required by Section 61-23-6 NMSA  
6 1978. The appointments shall be made in such a manner that the  
7 terms of not more than two members expire in each year. Each  
8 member of the board shall receive a certificate of appointment  
9 from the governor. Before the beginning of the term of office,  
10 the appointee shall file with the secretary of state a written  
11 oath or affirmation for the faithful discharge of official  
12 duty. A member of the board may be reappointed but may not  
13 serve more than two consecutive full terms. A member shall not  
14 be reappointed to the board for at least two years after  
15 serving two consecutive full terms. The board may designate  
16 any former board member to assist it in an advisory capacity.

17 C. Each member may hold office until the expiration  
18 of the term for which appointed or until a successor has been  
19 duly qualified and appointed. In the event of a vacancy for  
20 any cause that results in an unexpired term, if not filled  
21 within three months by official action, the board may appoint a  
22 provisional member to serve until the governor acts. Vacancies  
23 on the board shall be filled by appointment by the governor for  
24 the balance of the unexpired term."

25 SECTION 8. Section 61-23-32 NMSA 1978 (being Laws 1987,

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1 Chapter 336, Section 32, as amended) is amended to read:

2 "61-23-32. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--

3 The state board of licensure for professional engineers and  
4 professional surveyors is terminated on July 1, [~~2017~~] 2023  
5 pursuant to the Sunset Act. The board shall continue to  
6 operate according to the provisions of the Engineering and  
7 Surveying Practice Act until July 1, [~~2018~~] 2024. Effective  
8 July 1, [~~2018~~] 2024, the Engineering and Surveying Practice Act  
9 is repealed."

10 SECTION 9. Section 61-27B-6 NMSA 1978 (being Laws 2007,  
11 Chapter 115, Section 6) is amended to read:

12 "61-27B-6. PRIVATE INVESTIGATIONS ADVISORY BOARD--  
13 CREATED--MEMBERS.--

14 A. The "private investigations advisory board" is  
15 created.

16 B. The superintendent of regulation and licensing  
17 shall appoint members to the advisory board to assist in the  
18 conduct of the examination process for licensees and  
19 registrants and to assist the department in other manners as  
20 requested by the superintendent or provided for in rules of the  
21 department.

22 C. The advisory board members shall consist of at  
23 least the following:

24 (1) [~~two~~] one private [~~investigators~~]  
25 investigator;

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- 1 (2) one private patrol operator;  
2 (3) one polygraph examiner; and  
3 (4) ~~[one member]~~ two members of the public.

4 D. Members of the advisory board shall be  
5 reimbursed pursuant to the Per Diem and Mileage Act and shall  
6 receive no other compensation, perquisite or allowance for each  
7 day spent in the discharge of their duties.

8 E. The public ~~[member]~~ members of the advisory  
9 board or ~~[the public member's spouse]~~ their spouses shall not:

10 (1) have been licensed pursuant to the Private  
11 Investigations Act ~~[the Private Investigators and Polygraphers~~  
12 ~~Act]~~ or any prior similar statutory provisions; or

13 (2) have a direct or indirect financial  
14 interest in a private investigation company, private patrol  
15 company, polygraph business or a related business."

16 SECTION 10. Section 61-27B-27 NMSA 1978 (being Laws 1993,  
17 Chapter 212, Section 14, as amended) is amended to read:

18 "61-27B-27. HEARING--PENALTIES.--

19 A. A person who is denied a license or registration  
20 or who has a license or registration suspended or revoked shall  
21 be entitled to a hearing before the department if within twenty  
22 days after the denial, suspension or revocation a request for a  
23 hearing is received by the department. The procedures of the  
24 Uniform Licensing Act shall be followed pertaining to the  
25 hearing to the extent that they do not conflict with the

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1 provisions of the Private Investigations Act.

2 B. In accordance with the provisions of the Uniform  
3 Licensing Act, and in addition to other penalties provided by  
4 law, the department may impose the following:

5 (1) for a violation of the Private  
6 Investigations Act, a civil penalty not to exceed one thousand  
7 dollars (\$1,000) for each violation; and

8 (2) against a person who is found by the  
9 department to be engaging in a practice regulated by the  
10 department without an appropriate license or registration,  
11 civil penalties not to exceed [~~one thousand dollars (\$1,000)~~]  
12 two thousand dollars (\$2,000)."

13 SECTION 11. Section 61-27B-36 NMSA 1978 (being Laws 2007,  
14 Chapter 115, Section 35, as amended) is amended to read:

15 "61-27B-36. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--  
16 The private investigations advisory board is terminated on July  
17 1, [2017] 2023 pursuant to the Sunset Act. The board shall  
18 continue to operate according to the provisions of the Private  
19 Investigations Act until July 1, [2018] 2024. Effective July  
20 1, [2018] 2024, Chapter 61, Article 27B NMSA 1978 is repealed."

21 SECTION 12. Section 61-28B-20 NMSA 1978 (being Laws 1999,  
22 Chapter 179, Section 20, as amended) is amended to read:

23 "61-28B-20. ENFORCEMENT--ADMINISTRATIVE VIOLATIONS AND  
24 REMEDIES.--

25 A. The board may take, after providing a person due

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1 process pursuant to the Uniform Licensing Act, corrective  
2 action identified in Subsection B of this section following a  
3 finding that an applicant or licensee:

4 (1) committed fraud or deceit in obtaining a  
5 certificate or permit;

6 (2) lost a certificate or permit through  
7 cancellation, revocation, suspension or refusal of renewal in  
8 any other state for cause, as defined by board rule;

9 (3) failed to maintain compliance with the  
10 requirements of the 1999 Public Accountancy Act and board rules  
11 for issuance or renewal of a certificate or permit or failed to  
12 report material changes to the board, as required by board  
13 rule;

14 (4) lost the authorization to practice in any  
15 state or before any federal agency through revocation or  
16 suspension of that authorization;

17 (5) committed dishonest, fraudulent or grossly  
18 negligent acts in the practice of public accountancy or in the  
19 filing or failure to file the applicant's or licensee's own  
20 income or other federal, state or local tax returns;

21 (6) violated a provision of the 1999 Public  
22 Accountancy Act or a rule promulgated by the board pursuant to  
23 that act;

24 (7) violated a rule of professional conduct  
25 promulgated by the board pursuant to the 1999 Public

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1 Accountancy Act;

2 (8) has been convicted of a felony or of a  
3 crime an element of which is dishonesty or fraud under the laws  
4 of the United States, of New Mexico or of any other state, or  
5 of any other jurisdiction, if the acts involved would have  
6 constituted a crime under the laws of New Mexico;

7 (9) performed a fraudulent act while holding a  
8 certificate or permit issued pursuant to the 1999 Public  
9 Accountancy Act or prior law; or

10 (10) participated in any conduct reflecting  
11 adversely upon the applicant's or licensee's fitness to engage  
12 in practice.

13 B. After a finding by the board that an applicant  
14 or licensee has committed a violation identified in Subsection  
15 A of this section, the board may take, with or without terms,  
16 conditions and limitations, one or more of the following  
17 corrective actions:

18 (1) deny an application or revoke a  
19 certificate or permit issued pursuant to the 1999 Public  
20 Accountancy Act or corresponding provisions of prior law;

21 (2) suspend a certificate or permit for a  
22 period of not more than five years;

23 (3) reprimand, censure or limit the scope of  
24 practice of a licensee;

25 (4) impose an administrative fine not

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1 exceeding ten thousand dollars (\$10,000); or

2 (5) place the licensee on probation.

3 C. In lieu of or in addition to a remedy  
4 specifically provided in Subsection B of this section, the  
5 board may require of a licensee:

6 (1) a quality review conducted in such a  
7 fashion as the board may specify;

8 (2) satisfactory completion of such continuing  
9 professional education programs as the board may specify;

10 (3) correction of the violation identified;

11 and

12 (4) any other suitable remedial action as  
13 determined by the board.

14 D. In a proceeding in which a remedy provided by  
15 Subsection B or C of this section is imposed, the board may  
16 also require the respondent to pay the costs of the proceeding.

17 E. The provisions of Section 61-1-3.2 NMSA 1978  
18 notwithstanding, the board may impose a civil penalty in an  
19 amount not to exceed two thousand dollars (\$2,000) against a  
20 person who engages in public accountancy without a license. In  
21 addition, the board may assess the person for administrative  
22 costs, including investigative costs and the cost of conducting  
23 a hearing."

24 SECTION 13. Section 61-28B-29 NMSA 1978 (being Laws 1999,  
25 Chapter 179, Section 29, as amended) is amended to read:

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1           "61-28B-29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--  
2 The New Mexico public accountancy board is terminated on July  
3 1, [~~2017~~] 2023 pursuant to the provisions of the Sunset Act.  
4 The board shall continue to operate according to the provisions  
5 of the 1999 Public Accountancy Act until July 1, [~~2018~~] 2024.  
6 Effective July 1, [~~2018~~] 2024, the 1999 Public Accountancy Act  
7 is repealed."

8           **SECTION 14.** Section 61-30-22 NMSA 1978 (being Laws 1990,  
9 Chapter 75, Section 22, as amended) is amended to read:

10           "61-30-22. CIVIL AND CRIMINAL PENALTIES--INJUNCTIVE  
11 RELIEF.--

12           A. Any person who violates any provision of the  
13 Real Estate Appraisers Act is guilty of a misdemeanor and shall  
14 be punished by a fine of not more than one thousand dollars  
15 (\$1,000) or by imprisonment for not more than six months or  
16 both.

17           B. In the event any person has engaged in or  
18 proposes to engage in any act or practice violating a provision  
19 of the Real Estate Appraisers Act, the attorney general or the  
20 district attorney of the judicial district in which the person  
21 resides or the judicial district in which the violation has  
22 occurred or will occur shall, upon application of the board,  
23 maintain an action in the name of the state to prosecute the  
24 violation or to enjoin the proposed act or practice.

25           C. The board may impose a civil penalty in an

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1 amount not to exceed one thousand dollars (\$1,000) for each  
2 violation of the Real Estate Appraisers Act and assess  
3 administrative costs for any investigation and administrative  
4 or other proceedings against a real estate appraiser trainee, a  
5 state licensed residential real estate appraiser or a state  
6 certified real estate appraiser [~~or~~]. The provisions of  
7 Section 61-1-3.2 NMSA 1978 notwithstanding, the board may  
8 impose a civil penalty not to exceed two thousand dollars  
9 (\$2,000) against any person who is found, through an  
10 administrative proceeding, to have acted without a license.  
11 Appeals from decisions of the board shall be taken as provided  
12 in Section 39-3-1.1 NMSA 1978."

13 SECTION 15. Section 61-30-24 NMSA 1978 (being Laws 1993,  
14 Chapter 269, Section 21, as amended) is amended to read:

15 "61-30-24. TERMINATION OF AGENCY LIFE--DELAYED  
16 REPEAL.--The real estate appraisers board is terminated  
17 effective July 1, [~~2017~~] 2023. The Real Estate Appraisers Act  
18 shall continue in effect until July 1, [~~2018~~] 2024. Chapter  
19 61, Article 30 NMSA 1978 is repealed effective July 1, [~~2018~~]  
20 2024."

21 SECTION 16. Section 61-32-6 NMSA 1978 (being Laws 1993,  
22 Chapter 204, Section 6, as amended) is amended to read:

23 "61-32-6. BOARD POWERS.--

24 A. In addition to any other authority provided by  
25 law, the board has the power to:

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1 (1) adopt, in accordance with the provisions  
2 of the Uniform Licensing Act, and file, in accordance with the  
3 State Rules Act, rules necessary to carry out the provisions of  
4 the Funeral Services Act;

5 (2) adopt rules implementing continuing  
6 education requirements;

7 (3) conduct hearings upon charges relating to  
8 the discipline of licensees and take administrative actions  
9 pursuant to Section 61-1-3 NMSA 1978;

10 (4) establish reasonable fees to carry out the  
11 provisions of the Funeral Services Act;

12 (5) provide for investigations necessary to  
13 determine violations of the Funeral Services Act;

14 (6) establish committees as the board deems  
15 necessary for carrying out the provisions of the Funeral  
16 Services Act;

17 (7) apply for injunctive relief to enforce the  
18 provisions of the Funeral Services Act or to restrain any  
19 violation of that act; and

20 ~~[(8) impose a fine not to exceed five thousand~~  
21 ~~dollars (\$5,000) for each violation, in addition to other~~  
22 ~~administrative or disciplinary costs, and all fines shall be~~  
23 ~~deposited in the funeral services fund; and~~

24 ~~(9)]~~ (8) conduct criminal background checks on  
25 applicants for licensure.

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1           B. No action or other legal proceedings for damages  
2 shall be instituted against the board, any board member or  
3 employee of the board for any act performed in good faith and  
4 in the intended performance of any power or duty granted under  
5 the Funeral Services Act or for any neglect or default in the  
6 good faith performance or exercise of any such power or duty."

7           **SECTION 17.** Section 61-32-23 NMSA 1978 (being Laws 1993,  
8 Chapter 204, Section 23, as amended) is amended to read:

9           "61-32-23. FEES AND FINES.--The board shall establish by  
10 [~~regulation~~] rule a schedule of reasonable fees and fines for  
11 applications, examinations, licenses, inspections, renewals,  
12 penalties, reinstatements and necessary administrative fees.  
13 All fees collected shall be deposited in accordance with  
14 Section 61-32-26 NMSA 1978. All fines collected shall be  
15 deposited in the current school fund."

16           **SECTION 18.** Section 61-32-26 NMSA 1978 (being Laws 1993,  
17 Chapter 204, Section 26, as amended) is amended to read:

18           "61-32-26. FUND ESTABLISHED.--

19           A. There is created in the state treasury the  
20 "funeral services fund".

21           B. All [~~money~~] fees and costs received or collected  
22 by the board or the department pursuant to provisions of the  
23 Funeral Services Act shall be deposited with the state  
24 treasurer for credit to the funeral services fund. The state  
25 treasurer shall invest the fund as other state funds are



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1 invested. All balances in the fund at the end of any fiscal  
2 year shall remain in the fund and shall not revert to the  
3 general fund.

4 C. Money in the funeral services fund is  
5 appropriated to the board and shall be used only for the  
6 purpose of carrying out the provisions of the Funeral Services  
7 Act."

8 SECTION 19. Section 61-32-30.1 NMSA 1978 (being Laws  
9 2003, Chapter 420, Section 11, as amended) is amended to read:

10 "61-32-30.1. UNLICENSED ACTIVITY--CIVIL PENALTY.--The  
11 provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the  
12 board may impose a fine in an amount not to exceed two thousand  
13 dollars (\$2,000) and costs [~~as set forth in the Funeral~~  
14 ~~Services Act~~] on a person who is found to have acted without a  
15 license in violation of the Funeral Services Act by a court or  
16 an administrative proceeding as provided for in the Funeral  
17 Services Act."

18 SECTION 20. Section 61-32-31 NMSA 1978 (being Laws 1993,  
19 Chapter 204, Section 31, as amended) is amended to read:

20 "61-32-31. TERMINATION OF AGENCY LIFE--DELAYED  
21 REPEAL.--The board of funeral services is terminated on July 1,  
22 [~~2017~~] 2023 pursuant to the provisions of the Sunset Act. The  
23 board shall continue to operate according to the provisions of  
24 Section 12-9-18 NMSA 1978 until July 1, [~~2018~~] 2024. Effective  
25 July 1, [~~2018~~] 2024, the Funeral Services Act is repealed."

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1           SECTION 21.   TEMPORARY PROVISION--BOARD PUBLIC MEMBERS.--

2   In carrying out the statutory requirement to replace  
3   professional members with public members on the board of  
4   examiners for architects, the state board of licensure for  
5   professional engineers and professional surveyors and the  
6   private investigations advisory board, the governor shall  
7   appoint a public member to replace the applicable professional  
8   member whose term first expires after the effective date of  
9   this act.  If a vacancy occurs in an applicable professional  
10   member position prior to the expiration of that term, the  
11   governor shall appoint a public member, and that position shall  
12   become a public member position.

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