

FILED
Court of Appeals
Division II
State of Washington
12/20/2019 2:28 PM

NO. 53614-5-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

FISHERIES ENGINEERS, INC., a Washington Corporation,
PAUL TAPPEL, an individual and professional engineer,

Appellants,

v.

THE STATE OF WASHINGTON, GOVERNOR JAY INSLEE, in his
official capacity, ATTORNEY GENERAL BOB FERGUSON, in his
official capacity, and BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS & LAND SURVEYORS, an agency of
the State of Washington,

Respondents.

BRIEF OF RESPONDENTS

ROBERT W. FERGUSON
Attorney General

JONATHAN E. PITEL, WSBA No. 47516
RACHEL LUMEN, WSBA No. 47918
ELIZABETH THOMPSON-LAGERBERG,
WSBA No. 25159
Assistant Attorneys General
Attorneys for Respondent
OID No. 91029
1125 Washington Street SE
PO Box 40110, Olympia, WA 98504-0110
(360) 586-2780
E-mail: LALolyEF@atg.wa.gov

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	COUNTERSTATEMENT OF ISSUES ON APPEAL.....	2
III.	COUNTERSTATEMENT OF THE CASE	2
	A. Overview of Regulatory Board Authority and the Uniform Regulation of Business and Professions Act.....	2
	B. The Board of Registration for Professional Engineers	3
	C. Tappel Submitted a Forest Practices Application to the Department of Natural Resources, Which Was Denied.....	5
	D. After His Application Was Rejected, Mr. Tappel Filed a Complaint with the Board.....	6
	E. The Board Declined to Take Action on Tappel’s Complaint.....	6
	F. Tappel Filed an Action in Superior Court.....	8
	G. The Superior Court Granted Summary Judgment for the State Defendants	8
IV.	ARGUMENT	9
	A. Standard of Review.....	10
	B. Tappel Lacks Standing Under Either the Uniform Declaratory Judgment Act or the Administrative Procedure Act.....	10
	1. Tappel did not establish either that his asserted interests fall within the zone of interest or an injury in fact.....	12

a.	The interests Tappel asserts do not fall within the zone of interests covered by the engineering registration act.....	13
b.	Tappel suffered no cognizable injury from the Board’s decision.....	17
C.	State Defendants Are Immune from Suit Under RCW 18.235.190.....	22
D.	The Engineering Registration Act Does Not Require the Board to Prosecute Every Unlicensed Individual Who Uses the Word “Engineer” in Their Title	28
1.	The engineering registration act does not bar every use of the word “engineer” in occupational titles.....	29
2.	The Board has properly exercised its discretion to look at the conduct of individuals to determine if they are engaged in the unlicensed practice of professional engineering.....	34
3.	Reading the engineering registration act as barring every use of the word “engineer” in an occupational title would run afoul of the First Amendment.....	36
V.	CONCLUSION	40

TABLE OF AUTHORITIES

Federal Cases

<i>Anderson v. Creighton</i> , 483 U.S. 635, 646 n. 6, 107 S. Ct. 3034, 3042 n. 6, 97 L. Ed. 2d 523 (1987).....	22
<i>Express Oil Change, L.L.C. v. Miss. Bd. of Licensure for Prof'l Eng'rs & Surveyors</i> , 916 F.3d 483 (5th Cir. 2019)	38

Washington Cases

<i>Am. Legion Post No. 32 v. City of Walla Walla</i> , 116 Wn.2d 1, 7, 802 P.2d 784 (1991).....	17
<i>Anderson v. Dussault</i> , 181 Wn.2d 360, 368, 333 P.3d 395 (2014).....	10
<i>Bavand v. OneWest Bank, FSB</i> , 196 Wn. App. 813, 834, 385 P.3d 233 (2016).....	18
<i>Bernsen v. Big Bend Elec. Co-op, Inc.</i> , 68 Wn. App. 427, 434, 842 P.2d 1047 (1993).....	28
<i>Branson v. Port of Seattle</i> , 152 Wn.2d 862, 875, 101 P.3d 67 (2004).....	12
<i>Brevick v. City of Seattle</i> , 139 Wn. App. 373, 381, 160 P.3d 648 (2007).....	27
<i>Bruce v. Byrne-Stevens & Assocs. Engineers, Inc.</i> , 113 Wn.2d 123, 126, 776 P.2d 666 (1989).....	26
<i>Casebere v. Clark Cty. Civil Serv. Comm'n Sheriff's Office</i> , 21 Wn. App. 73, 76, 584 P.2d 416 (1978).....	16
<i>City of Burlington v. Liquor Control Bd.</i> , 187 Wn. App. 853, 878, 351 P.3d 875 (2015).....	10, 12, 14

<i>Dutton v. Wash. Physicians Health Program,</i> 87 Wn. App. 614, 616-20, 943 P.2d 298 (1997).....	25
<i>Frank v. Washington,</i> 94 Wn. App. 306, 311, 972 P.2d 491 (1999).....	35
<i>In re Personal Restraint of Matteson,</i> 142 Wn.2d 298, 307, 12 P.3d 585 (2000).....	37
<i>Janaszak v. State,</i> 173 Wn. App. 703, 711, 297 P.3d 723 (2013).....	passim
<i>Jevne v. Pass, LLC,</i> 3 Wn. App. 561, 564, 566, 416 P.3d 1257 (2018).....	11
<i>King v. Snohomish Cty.,</i> 146 Wn.2d 420, 424, 47 P.3d 563 (2002).....	27
<i>Knight v. City of Yelm,</i> 173 Wn.2d 325, 336, 267 P.3d 973 (2011).....	11
<i>KS Tacoma Holdings, LLC v. Shorelines Hearings Bd.,</i> 166 Wn. App. 117, 127, 272 P.3d 876 (2012).....	13, 21
<i>Mahoney v. Tingley,</i> 85 Wn.2d 95, 100, 529 P.2d 1068 (1975).....	27
<i>Martin v. TX Engineering, Inc.,</i> 43 Wn. App. 865, 870, 719 P.2d 1360 (1986).....	13, 14, 16
<i>Michak v. Transnation Title Ins. Co.,</i> 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003)	10
<i>Newman v. State,</i> 156 Wn. App. 132, 141, 231 P.3d 840 (2010).....	21, 35
<i>Ongom v. Dep't of Health,</i> 159 Wn.2d 132, 138-39, 148 P.3d 1029 (2006)	21
<i>Raymond v. Fleming,</i> 24 Wn. App. 112, 114-15, 600 P.2d 614 (1979).....	27

<i>St. Joseph Hospital & Health Care v. Department of Health,</i> 125 Wn.2d 733, 887 P.2d 891 (1995).....	15
<i>State v. Rice,</i> 174 Wn.2d 884, 855-56, 279 P.3d 849 (2012)	36
<i>State v. Westling,</i> 145 Wn.2d 607, 611-12 & n.2, 40 P.3d 669 (2002)	23
<i>To-Ro Trade Shows v. Collins,</i> 144 Wn.2d 403, 415, 27 P.3d 1149 (2001).....	16, 19
<i>Trepanier v. City of Everett,</i> 64 Wn. App. 380, 382, 824 P.2d 524 (1992).....	17, 19
<i>Wash. State Liquor Control Bd v. Wash. State Personnel Bd.,</i> 88 Wn.2d 368, 378, 561 P.2d 195 (1977).....	35

Other State Cases

<i>Jarlstrom v. Alridge,</i> 366 F. Supp. 3d 1205 (D. Oregon 2018)	37
<i>Missouri Bd. for Architects, Prof'l Eng'rs, & Land Surveyors</i> <i>v. Earth Resources Engineering, Inc.,</i> 820 S.W.2d 505, 508-09, (Missouri 1991)	38
<i>N. C. State Bd. of Registration for Prof'l Eng'rs & Land Surveyors</i> <i>v. Int'l Bus. Machs. Corp.,</i> 31 N.C. App. 599 (N.C. Ct. App. 1976)	38, 39
<i>N.M. Bd. of Licensure for Prof'l Eng'rs & Prof'l Surveyors</i> <i>v. Turner,</i> 303 P.3d 875, 882 (N.M. Ct. App. 2013)	38
<i>Snell v. Engineered Sys. & Designs, Inc.,</i> 669 A.2d 13, 18-19, 24 Media L. Rep 1001 (Del. 1995).....	38

Statutes

Laws of 1935, ch. 167 at 556-70.....	3
Laws of 1947, ch. 283, § 2.....	39
Laws of 2019, ch. 442, §§ 3, 5, 8, 9, 10, 11, 12, 13, 14, 19, 23.....	3
RCW 18.130	24
RCW 18.130.100	26
RCW 18.130.300	23, 24, 25, 26
RCW 18.130.300(1).....	24, 25
RCW 18.235	2
RCW 18.235.010(1).....	23
RCW 18.235.020	3, 11
RCW 18.235.020(2)(b)	23
RCW 18.235.020(2)(b)(iii)	3
RCW 18.235.090	28
RCW 18.235.100	3
RCW 18.235.110	3
RCW 18.235.130	3
RCW 18.235.130(15).....	3
RCW 18.235.150(1).....	3, 20, 35, 36
RCW 18.235.150(2).....	3
RCW 18.235.150(8).....	11

RCW 18.235.190	passim
RCW 18.43	passim
RCW 18.43.010	4, 14
RCW 18.43.010 (2018).....	15
RCW 18.43.020 (2018).....	29, 30
RCW 18.43.020(1) (2018)	30
RCW 18.43.020(2) (2018)	3, 30
RCW 18.43.020(5) (2018)	30
RCW 18.43.020(5)(b) (2018)	32
RCW 18.43.020(7) (2018)	3, 30
RCW 18.43.020(10).....	29
RCW 18.43.040	1, 4
RCW 18.43.040(1).....	3
RCW 18.43.040(1)(a)	4
RCW 18.43.040(1)(a)(iii)-(iv) (2018).....	31
RCW 18.43.040(1)(b)	4
RCW 18.43.105(5).....	4
RCW 18.43.110	4
RCW 18.43.110 (2018).....	20, 36
RCW 18.43.120	35
RCW 18.43.120 (2018).....	34

RCW 18.43.130	40
RCW 18.43.130 (2018).....	32
RCW 18.43.130(4) (2018)	32
RCW 34.05.530	20
RCW 34.05.530(2).....	14
RCW 34.05.570	11
RCW 34.05.570(2).....	11, 28
RCW 34.05.570(3).....	28
RCW 34.05.570(4).....	28
RCW 66.08.100	23
RCW 69.50	23
RCW 69.51A.....	23
RCW 70.38	15
<u>Rules</u>	
RAP 2.5(a)	10

I. INTRODUCTION

Without standing and contrary to the regulatory scheme created by the Legislature, licensed professional engineer¹ Paul Tappel and his company² ask this Court to compel the Board of Registration for Professional Engineers and Land Surveyors, the Attorney General, and the Governor to civilly discipline every state employee who uses the word “engineer” in their occupational title. CP 27. But the Board has discretion to determine whether or not to prosecute alleged violations of the licensing requirements, and it has properly exercised that discretion here. Further, the Board’s decision to prosecute only those who engage in conduct that amounts to the practice of professional engineering without a license—and not all those who use the word “engineer” in their title—is a proper interpretation of Washington’s engineering registration act.

The Court should affirm the grant of summary judgment on three independent grounds. First, Tappel lacked standing to bring this suit because he is not within the zone of interests the engineering statutes are designed to protect, and he has not suffered an injury in fact. Second, under RCW 18.235.190, the Board and the State are immune from “any action”

¹ In Washington, professional engineers are registered by the state, but registered engineers are colloquially referred to as “licensed” to practice. RCW 18.43.040.

² While Mr. Tappel and Fisheries Engineers, Inc., are distinct entities and are both plaintiffs in this case, for ease of reference, this brief will collectively refer to them as “he” or “Tappel.”

based on official acts performed in the course of the Board's duties. Third, the court below correctly determined that none of the activities Tappel complains of violate the engineering licensing statutes and that the Board correctly exercised its discretion in declining to pursue Tappel's complaints.

II. COUNTERSTATEMENT OF ISSUES ON APPEAL

- A. Do Plaintiffs have standing to require the Board to bring charges against individuals whom the Board has determined are not engaged in unlicensed conduct, when Tappel is not within the zone of interests the law is designed to protect and has not established an injury in fact?
- B. Are Defendants immune from this suit when the Legislature has provided for absolute statutory immunity from any civil action through RCW 18.235.190?
- C. Can Tappel compel the Board to bring charges against individuals who have not violated the licensing requirements, and the Board has decided should not be the subject of disciplinary action?

III. COUNTERSTATEMENT OF THE CASE

A. Overview of Regulatory Board Authority and the Uniform Regulation of Business and Professions Act

In Washington, the Uniform Regulation of Business and Professions Act (URBP), chapter 18.235 RCW, tasks the Department of Licensing and assorted boards and commissions with the regulation of various professions. The URBP sets forth procedural requirements for disciplinary authorities, addresses their scope of authority, and sets forth actions and activities that constitute "unprofessional conduct" for all professions regulated under that

chapter. *See* RCW 18.235.020-100, .130. The URBP authorizes the disciplinary authorities to investigate and discipline individuals and businesses that engage in “unprofessional conduct,” which includes “[e]ngaging in unlicensed practice” of a profession regulated under the chapter. RCW 18.235.130(15) (definition of “unprofessional conduct,” which includes unlicensed practice); RCW 18.235.150(1) (investigative authority), .150(2) (sanction authority); RCW 18.235.110 (sanction authority). Relevant here, the URBP applies to the Board of Registration for Professional Engineers and Land Surveyors. RCW 18.235.020(2)(b)(iii).

B. The Board of Registration for Professional Engineers

Washington’s engineering registration act, chapter 18.43 RCW, dates to 1935. Laws of 1935, ch. 167 at 556-70. CP 243. At that time, “professional engineer” meant someone practicing in the areas of “civil, electrical, mechanical, structural and/or hydraulic engineering.” Laws of 1935, ch. 167 at 556-70. CP 243. Today, the engineering registration act recognizes two general categories of licensees—professional engineers and professional land surveyors—and one specific sub-category: structural engineers. Former RCW 18.43.020(2), (7) (2018); .040(1).³

³ The engineering registration act was amended effective July 28, 2019, *see* Laws of 2019, ch. 442, §§ 3, 5, 8, 9, 10, 11, 12, 13, 14, 19, 23. All references herein are to chapter 18.43 RCW, as codified in 2018, when Tappel filed this action. A copy of chapter 18.43 RCW as codified in 2018 is attached as Appendix A.

The obligation of the Board of Registration for Professional Engineers and Land Surveyors is to “safeguard life, health, and property, and to promote the public welfare,” by administering and maintaining minimum qualifications for registered professional engineers and land surveyors. RCW 18.43.010. To that end, the Board administers a test of minimum competency and reviews and approves or denies the application of potential professional engineers. RCW 18.43.040. In addition to requiring successful completion of the competency examination, the Board requires professional engineers to have a minimum of eight years of experience before licensure, which can be a combination of education and practical experience. RCW 18.43.040(1)(a). The Board also certifies “engineers-in-training,” who are license applicants who have completed their undergraduate education (or who are in the last year of undergraduate school) and taken the first phase of the minimum competency examination. RCW 18.43.040(1)(b).

In addition to registering professional engineers, the Board also has the exclusive authority to monitor the profession for unprofessional conduct. RCW 18.43.110. Like the URBP, the engineering registration act makes the unlicensed practice of professional engineering “unprofessional conduct.” RCW 18.43.105(5).

C. Tappel Submitted a Forest Practices Application to the Department of Natural Resources, Which Was Denied

This action has its origins in the rejection of an incomplete forest practices application.⁴ CP 21-23, 57, 60-65. In 2017, Tappel submitted a culvert design for approval to the Department of Natural Resources (DNR) on behalf of a client. CP 21-23, 60-65. Dean Warner, a DNR employee whose job classification was “Natural Resource Engineer 3,” reviewed the application for compliance with DNR’s statutory and regulatory application requirements. CP 61, 63. As a “Natural Resource Engineer 3,” Mr. Warner did not provide professional engineering services; his job was to assist private landowners in complying with the requirements for forest practices permit applications. CP 61. Mr. Warner reviewed Tappel’s application with Channing Syms, a registered professional engineer employed by the Department of Fish and Wildlife. CP 63.

Mr. Warner was supervised by Mark Stevens, a registered professional engineer, whose job duties included directly overseeing the work of Natural Resource Engineers 3, such as Mr. Warner. CP 61. Mr. Warner prepared a memo combining his and Mr. Syms’s concerns regarding Tappel’s application and provided that memo to Mr. Stevens. CP

⁴ The application concerned the design of a culvert. However, the project was subject to review under the Family Forest Fish Passage Program, which is a part of the Forest Practice’s program. CP 62. Forest Practices includes hydraulic projects that include water crossing structures. CP 62.

63. Mr. Stevens performed the final review of Tappel's application. CP 63-

64. This multi-level review resulted in the rejection of Tappel's application because the application failed to include information required on the application "checklist."⁵ CP 63-64.

D. After His Application Was Rejected, Mr. Tappel Filed a Complaint with the Board

After DNR rejected his forest practices application, Tappel submitted a complaint to the Board about Mr. Warner's use of the word "engineer" in his occupational title. CP 57, 309. Tappel asserted that the Board had a duty to stop such individuals from using the title "engineer" and to stop State agencies from using the title "engineer" in their position descriptions unless the employees were licensed "professional engineers." CP 57, 309.

E. The Board Declined to Take Action on Tappel's Complaint

The Board sought additional information from DNR about Mr. Warner's duties and his interactions with Tappel. After receiving that information, the Board informed Tappel that it would not pursue a case

⁵ This supervisor-subordinate interaction occurs in other state job classifications and in other state agencies. For instance, the Department of Ecology includes a class of positions titled "Environmental Engineers." CP 102-16. That class of positions includes a range from "Environmental Engineer 1" through "Environmental Engineer 6." *Id.* Ranges "1" and "2" in that job classification are not permitted to perform final engineering work or approve engineering plans: instead, they work under the supervision of a registered professional engineer, i.e., a supervisor in the Environmental Engineer 3, 4, 5, or 6 classification. CP 102-16.

against Warner. CP 57, 60-65, 309. It further explained that the Board would “not pursue investigations against the use of titles unless the titles used are professional engineer, structural engineer or professional land surveyor. It will provide the same response to all future complaints on this issue.” CP 57.⁶ Additionally, the Board stated that “[the person complained of] appears to have followed the supervisory structure of his organization which is outside the Board’s authority,” and “these decisions are final and are not subject to appeal to the Board.” CP 57.

Consistent with its obligations, the Board has issued and continues to issue Cease and Desist Orders to those who use occupational titles such as “professional engineer,” “civil engineer,” “mechanical engineer,” or “structural engineer” in individual and company advertising, websites, or letterheads, where the public might be misled into engaging that person or company to provide professional engineering services. *See, e.g.*, CP 308-10; *see, also*, https://www.dol.wa.gov/business/disciplinary/disciplinary_el.html (noting a fine of \$15,000 against an individual for unlicensed

⁶ At the time, Board Policy No. 32 (since repealed) was in effect. CP 48. Under that policy, the Board determined it was a violation of the registration act for an unlicensed individual to use the terms “professional consulting engineer, practicing engineer, (or other common derivatives thereof).” CP 48. That policy also recognized that use of the term “engineer” was not, in and of itself, necessarily a violation of the regulatory Act. CP 48. Policy 32 was repealed on October 18, 2018. CP 48. The Board repealed Policy No. 32 because the Board was investigating each individual complaint and made charging decisions on a case-by-case basis. CP 309-10; *see also* CP 57-58.

practice). In other cases, the Board has determined that there is no violation, depending on the facts and circumstances of the case. CP 310.

F. Tappel Filed an Action in Superior Court

Tappel then filed a Petition for Declaratory Judgment and Other Relief in superior court, asking the court to declare: (1) that Board Policy 32 (since repealed) was invalid and (2) that it is impermissible for any person who is not a licensed professional engineer to use the word “engineer” in an occupational title. CP 26-27. Tappel also asked the court to issue a permanent injunction: (1) barring the Board’s use of the since-repealed Policy 32; (2) directing the Board to prosecute any individual using the word “engineer” in their occupational title who is not a licensed professional engineer; (3) directing the Attorney General to prosecute any individual using the word “engineer” in their occupational title who is not a licensed professional engineer; and (4) barring every state agency from using the word “engineer” in the title of any employee who is not a licensed professional engineer. CP 27-28.

G. The Superior Court Granted Summary Judgment for the State Defendants

The parties both filed dispositive motions; Tappel moving for summary judgment, and the Board moving for dismissal on multiple grounds, including, *inter alia*: lack of standing under the Administrative

Procedure Act (APA), failure to exhaust administrative remedies, and immunity. CP 177-195. At the hearing on the cross-motions, the trial court requested supplemental briefing on whether the requested relief should be construed as a petition for a writ of mandamus.⁷ CP 449-506. Ultimately, the Court assumed without deciding that Tappel had standing to bring the suit and that a petition for declaratory judgment was the proper procedural posture. VRP 24. The Court granted summary judgment for the State Defendants. CP 507-09.

IV. ARGUMENT

This Court should affirm summary judgment for State Defendants on multiple, independent grounds. First, Tappel lacks standing to bring this suit because the interests he asserts are not within the zone of interests protected by the engineering registration act, and he has not articulated any injury in fact. Second, even if Tappel had standing to bring this suit, the Defendants are immune from this action under RCW 18.235.190. Third, and finally, there is no basis in law for the relief Tappel seeks, and no facts that support Tappel's claims. The Board properly determined that unlicensed conduct charges are not warranted against individuals simply because the

⁷ While the trial court requested additional briefing regarding writs of mandamus, Tappel did not request a writ and has not raised the issue on appeal.

word “engineer” appears in their job titles. The trial court appropriately granted summary judgment.

A. Standard of Review

On appeal, this Court reviews summary judgment orders de novo, applying the same standard, and engaging in the same inquiry, as the trial court. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003). “Summary judgment is proper if, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.” *Janaszak v. State*, 173 Wn. App. 703, 711, 297 P.3d 723 (2013).

Additionally, this Court may affirm the trial court on any basis supported by the record. RAP 2.5(a). While the trial court assumed that Tappel had standing to bring this suit in reaching its decision, this Court should affirm dismissal because Tappel lacked standing. The Court reviews issues of standing de novo. *City of Burlington v. Liquor Control Bd.*, 187 Wn. App. 853, 878, 351 P.3d 875 (2015). Issues of statutory construction are also reviewed de novo. *Anderson v. Dussault*, 181 Wn.2d 360, 368, 333 P.3d 395 (2014).

B. Tappel Lacks Standing Under Either the Uniform Declaratory Judgment Act or the Administrative Procedure Act

Standing is a jurisdictional issue. *Knight v. City of Yelm*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011). Standing may even be raised *sua sponte*, by an appellate court, and it is the petitioner's burden to establish standing. *Jevne v. Pass, LLC*, 3 Wn. App. 561, 564, 566, 416 P.3d 1257 (2018)^{¶¶}. Tappel has never clearly identified under which law he brought this suit, variously referring to the APA and the UDJA.⁸ But, while Tappel fails to specify whether he is seeking relief under the APA or the Uniform Declaratory Judgment Act (UDJA), he lacks standing under either statute.

Tappel fails both tests for the same reason: he has not established either that the interests asserted are within the zone of interests protected by

⁸ In the original "Petition for Declaratory Judgment and Other Relief," Tappel sought both declaratory and injunctive relief. CP 27-28. The Petition cited the APA for jurisdiction and venue and asked the court to declare the Board's Policy No. 32 invalid and to enjoin the Board from further applying it. CP 10-11. But the APA does not offer a plaintiff injunctive relief. *See* RCW 34.05.570. While the APA does offer declaratory relief, that relief is available only upon a petition to challenge an agency rule, which Tappel has never filed. RCW 34.05.570(2). And, on appeal, Tappel has not argued for relief under the APA. *See* Opening Br. of Appellants.

Tappel did not cite the Uniform Declaratory Judgment Act (UDJA) as grounds for relief in the Petition. CP 9-28. However, in the motion for summary judgment, Tappel abandoned his claims under the APA and sought declaratory relief under either the UDJA or the URBP. CP 165-66, 173-74. Tappel has since appropriately abandoned any claim to relief under the URBP. The URBP permits any person to move for injunctive relief against any person practicing a profession without a license for which a license is required by the chapters specified in RCW 18.235.020. RCW 18.235.150(8). There is no contention that the Board is a person who is practicing a profession, thus the injunctive relief under 18.235.150(8) does not apply here.

the engineering registration act or that he has an injury in fact that may be redressed through this action.

1. Tappel did not establish either that his asserted interests fall within the zone of interest or an injury in fact

While couched differently, the standing tests applied to UDJA and APA claims are much the same. For the UDJA, Washington applies a two-part test to determine whether a party has standing to bring a suit. *Branson v. Port of Seattle*, 152 Wn.2d 862, 875, 101 P.3d 67 (2004). First, the court inquires whether the interests asserted by the plaintiff are within the “zone of interests” protected by the statute or constitutional guaranty in question. *Id.* Second, the party bringing the suit must have “suffered from an injury in fact, economic or otherwise.” *Id.* at 876. “Both tests must be met by the party seeking standing.” *Id.*

The APA addresses the same two issues. Collectively the first and third elements of the APA test (prejudice and redressability) are referred to as the “injury in fact” elements, while the second element (asserted interest) is the “the zone of interest requirement.” *City of Burlington*, 187 Wn. App. at 873 n.16 (“the two-part standing test under the UDJA is nearly identical to the APA two-part standing test. . . . In order to establish a justiciable controversy based on harm, the APA and UDJA standing test both require

a litigant to satisfy the same two-part test—“zone of interest” and “injury in fact.”).

Tappel cannot meet the requirements to show standing under either test. First, Tappel’s interest in the occupational titles other people use does not fall within the zone of interests protected by the professional engineer licensing statutes or considered by the Board when it makes licensing determinations. *Martin v. TX Engineering, Inc.*, 43 Wn. App. 865, 870, 719 P.2d 1360 (1986). Second, Tappel has not established an injury in fact. Tappel’s claim, that his license as a professional engineer is somehow intrinsically diminished if individuals who are not licensed professional engineers use the word “engineer” in their occupational title, is too abstract to establish an injury in fact. Tappel’s bare assertion that a client canceled a contract *because* the word “engineer” appeared in Mr. Warner’s job title is too speculative to establish an injury in fact for standing.

a. The interests Tappel asserts do not fall within the zone of interests covered by the engineering registration act

It was Tappel’s burden to show the interests asserted are within the zone of interests that the statute was enacted to protect. *KS Tacoma Holdings, LLC v. Shorelines Hearings Bd.*, 166 Wn. App. 117, 127, 272 P.3d 876 (2012). He failed to do so.

The Legislature has described the purpose of the licensing statute in RCW 18.43.010:

In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he or she is qualified so to practice and shall be registered as hereinafter provided. . . .

RCW 18.43.010 (emphasis added) (2018). Or, put another way, the registration requirements set forth minimum competency standards “to ensure that the uninformed public is not rendered services by an incompetent engineer.” *Martin*, 43 Wn. App. at 870.

Yet Tappel complains that the failure of Respondents to prosecute individuals who use the term “engineer” to describe their jobs denigrates the profession of engineering and affects the “privilege and distinction” of the title “engineer” and the manner in which professional engineers interact with their clients. CP 11–12. But the purpose of the statute is not to protect the profession of engineering itself—it is to protect the public from incompetent or unqualified engineers. *Martin*, 43 Wn. App. at 870. As the *Martin* court noted, “[r]egistration requirements are focused on establishing minimum competency standards upon which the public may rely.” *Id.*

This goes directly to the Board’s consideration of the interests at stake under RCW 34.05.530(2). *City of Burlington*, 187 Wn. App. at 863

("[T]he underlying question is whether the legislature intended the agency to consider the applicant's interests when taking the action it took."). When making licensing and prosecutorial decisions, the Board considers whether the safety of the public will be endangered by the licensure or continued licensure of a particular professional engineer. It is *not* concerned with what impact—if any—the licensing of a professional engineer will have on currently licensed engineers or the market for engineers. RCW 18.43.010 (2018).

Tappel misreads *St. Joseph Hospital & Health Care v. Department of Health*, 125 Wn.2d 733, 887 P.2d 891 (1995), for the proposition that the assertion of any economic interests render Tappel within the zone of interests of the engineering statute. CP 204-205. In fact, *St. Joseph* illustrates the significant difference between a petitioner whose interests are protected by a statutory scheme and Tappel's interests here.

That case dealt with a specific market regulatory regime—the certificate of need program created by the State Health Planning and Resources Development Act, chapter 70.38 RCW. *St. Joseph Hosp.*, 125 Wn.2d at 735-36. That program, which prevents healthcare providers from opening care centers in a specific market unless the Department of Health grants an application, is designed to control health care costs by ensuring more efficient use of existing health services and equipment. *Id.* at 736.

Thus, the very purpose of that statutory scheme is to set the market for care centers. Accordingly, other licensees are within the law's zone of interest, with the right to administrative relief from the Department of Health's licensing decisions. *Id.* at 737.

In contrast, here, the purpose of the engineering registration act is *not* to govern competition within the professional engineering market; it is to protect the public from unqualified engineers. *Martin*, 43 Wn. App. at 870. Accordingly, any alleged harm to Tappel's engineering license that results from the Board declining to prosecute unlicensed individuals who use the term "engineer" in their occupational title is not within the zone of interest chapter 18.43 RCW is designed to protect. *See also To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 415, 27 P.3d 1149 (2001) ("To-Ro's potential financial interest as a show promoter clearly does not coincide with the statute's aim of protecting consumers from fraudulent or abusive conduct by vehicle dealers.").

Tappel additionally relies on his generalized interest as a member of the public to ensure engineers are appropriately licensed. CP 207-208. But, "[i]t is well settled that a person whose only interest in a legal controversy is one shared with citizens in general has no standing to invoke the power of the courts to resolve the dispute." *Casebere v. Clark Cty. Civil Serv. Comm'n Sheriff's Office*, 21 Wn. App. 73, 76, 584 P.2d 416 (1978).

Standing requires “a unique right or interest that is being violated, in a manner special and different from the rights of other taxpayers.” *Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991). It is not sufficient that a plaintiff “disagrees with a discretionary decision” of the agency. *Id.* (citing *In re Bellingham*, 52 Wn.2d 497, 499, 326 P.2d 741 (1958)). Tappel must have a more particularized interest than the average member of the public.

b. Tappel suffered no cognizable injury from the Board’s decision

In addition to failing to show his interests are within the zone of interests protected by the engineering registration act, Tappel cannot show any injury in fact. The abstract reputational harms Tappel alleges are too generalized and unsupported by any evidence to establish standing.

To show an injury in fact, Tappel must demonstrate that he will be “specifically and perceptibly harmed” by the action. *Trepanier v. City of Everett*, 64 Wn. App. 380, 382, 824 P.2d 524 (1992). Conjectural or hypothetical injuries are not sufficient for standing. *Trepanier*, 64 Wn. App. at 383.

The first injury Tappel asserts is a generalized injury: that because he is a licensed professional engineer, if any unlicensed individual uses the word “engineer” in their occupational title, it “intrinsically diminishes” the

worth of that license. CP 207. This assertion of a generalized injury fails for two reasons: (1) it is unsupported by any evidence beyond a conclusory statement; and (2) in Washington, the law is clear: members of the public have no cognizable interest in the Board's disciplinary decisions and cannot assert an injury on the basis of the Board's decisions.

Mr. Tappel's claim of an injury to the value of his license rests on the bare, conclusory statement that as a professional engineer, his "rights and privileges to bear this distinguished title are intrinsically diminished when other unlicensed individuals are permitted to hold themselves out with the same title." CP 205. But Mr. Tappel provides no evidence that the value of his license has been diminished: no evidence that there is less demand for professional engineers; no evidence that the prices for engineering services have been depressed. Nor has Tappel provided any basis—or reasoning—for believing the title of a state employee, who does not hold their work out to the public, would impact the value of his license. Thus, Tappel's alleged injury is speculative and abstract.

Further, even if Tappel had evidence of a specific financial injury, he cannot show that it is "fairly traceable to the challenged conduct and likely to be redressed by the requested relief." *Bavand v. OneWest Bank, FSB*, 196 Wn. App. 813, 834, 385 P.3d 233 (2016) (internal quotations omitted). Tappel claims that his culvert design was rejected, leading his

client to cancel a \$12,000 contract, *because* a DNR employee who reviewed the application had the word “engineer” in his title. CP 205. But no admissible evidence supports this claim, and the alleged injury is not fairly traceable to the challenged conduct—that is, the Board’s decision not to prosecute everyone who uses the title “engineer” without a license. *See Trepanier*, 64 Wn. App. at 383-84. Here, the final review of Tappel’s application was in fact performed by a licensed professional engineer, who made the final decision to reject the application. Importantly, Tappel has not shown that the application was improperly rejected, resulting in the claimed injury.⁹ Even if it were, the appropriate remedy is through the APA process.

Additionally, any claimed injury resulting from an agency’s licensing decisions regarding a third party is too indirect and uncertain for standing. *See To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 412-13, 27 P.3d 1149 (2001). In *To-Ro Trade Shows*, a trade show promoter sued the Department of Licensing for declaratory and injunctive relief after the Department imposed licensing requirements on R.V. dealers who wished to participate in the promoter’s shows. *Id.* at 484-86. The plaintiff claimed that the licensing requirement caused it to have to close down an exhibit,

⁹ And, it is certainly more reasonable to believe that Tappel’s clients decided not to continue a relationship with a contractor who failed to submit a complete forest practice application than because a DNR employee used the title “engineer.”

resulting in a financial loss. *Id.* 407-08. The court rejected the asserted injury as insufficient for standing because the harm was not “direct and substantial.” *Id.* at 413-14. The Department of Licensing’s decision to prohibit unlicensed vehicle dealers from operating in the State—thereby precluding the participation of an out-of-state, unlicensed dealer in To-Ro’s trade show—did not cause To-Ro a sufficient direct and substantial injury to allow it to seek declaratory and injunctive relief. *Id.*

Similarly here, the Board’s decision *not* to require the licensure of individuals who use the word “engineer” in their occupational titles does not cause Tappel a direct and substantial injury necessary to establish standing for declaratory and injunctive relief against the Board. Tappel’s argument that any licensee, or member of the public, has an interest in the discipline of others would lead to the conclusion that any licensee could challenge any of the Board’s charging decisions. But that is not what the URBP or the Administrative Procedure Act permits. Instead, a person must be actually injured—an “aggrieved party”—in order to challenge a decision of the Board. RCW 34.05.530.

Moreover, the scope of any disciplinary proceeding is within the Board’s discretion. RCW 18.43.110 (2018) (“The board shall have the exclusive power to discipline the registrant and sanction the certificate of registration of any registrant.”); RCW 18.235.150(1) (“The disciplinary

authority *may* investigate complaints concerning practice by unlicensed persons. . . .”), (2) (“The disciplinary authority *may* issue a notice of intent to issue a cease and desist order to any person whom the disciplinary authority has reason to believe is engaged or is about to engage in the unlicensed practice of a profession. . . .”).

Deciding whether to charge a person with a violation of the law is a prosecutorial function that resides with the regulatory Board. *Newman v. State*, 156 Wn. App. 132, 141, 231 P.3d 840 (2010). Even those who formally file complaints with the Board have no legally cognizable injury when the Board declines to prepare statements of charges. *Id.* at 143 (dog owners “fail[ed] to show that they suffered a legally cognizable injury when the Board declined to prepare a statement of charges.”). Complainants have no legal interest to compel a disciplinary proceeding. *Id.* at 143-44. This is because the legal interests at stake in a professional disciplinary proceeding are those of the license holder, or respondent, not the complainant or the general public. *Ongom v. Dep’t of Health*, 159 Wn.2d 132, 138-39, 148 P.3d 1029 (2006).

Finally, the claimed injury is not redressable by the relief Tappel seeks. *See KS Tacoma Holdings, LLC*, 166 Wn. App. at 134-35. Again, if the application was improperly denied, Tappel could have appealed that decision. If Tappel’s clients improperly broke their contract, they are the

appropriate party from which to seek redress. But Tappel's loss of a contract cannot be redressed by prohibiting Mr. Warner—and every other unlicensed person in the state who uses the word “engineer” in their occupational title—from using the title “engineer.” Tappel has not provided any evidence that the Board's enforcement against state employees would change the permitting decision or his client's decision.

Tappel lacks standing, and the Court should affirm summary judgment.

C. State Defendants Are Immune from Suit Under RCW 18.235.190

Summary judgment was appropriately granted to the State Defendants, as they are immune from suit under a statutory grant of absolute immunity under RCW 18.235.190 of the URBP. Unlike a mere defense to liability, the affirmative defense of immunity entitles the holder not to stand trial or even face the burdens of litigation. *Anderson v. Creighton*, 483 U.S. 635, 646 n. 6, 107 S. Ct. 3034, 3042 n. 6, 97 L. Ed. 2d 523 (1987); *Harlow v. Fitzgerald*, 457 U.S. 800, 815-17, 102 S. Ct. 2727, 2736-38, 73 L. Ed. 2d 396 (1982).

Again, Tappel has never clarified the law under which this suit was brought. But the URBP immunizes the Board, its staff, and the State from

suit under the UDJA for conduct performed in the course of their duties.

RCW 18.235.190 provides:

The director, members of the boards or commissions, or individuals acting on their behalf are immune from suit in *any* action, civil or criminal, based on any disciplinary actions or other official acts performed in the course of their duties.

RCW 18.235.190 (emphasis added). The statute provides immunity from suit in “*any* action, civil or criminal, based on *any* disciplinary proceedings or other official acts performed in the course of their duties.”¹⁰ The modifier “any” means “every” and “all.” *State v. Westling*, 145 Wn.2d 607, 611-12 & n.2, 40 P.3d 669 (2002). And that immunity extends to the Board, to the State, and to its officers. *See Janaszak*, 173 Wn. App. at 719 (“Therefore we hold that the absolute immunity of RCW 18.130.300 extends to the State and the Department.”); RCW 18.235.010(1) (“Board means those boards specified in RCW 18.235.020(2)(b).”).

By its plain terms, the statute precludes Tappel’s suit for declaratory and injunctive relief, seeking to compel the Board to perform certain acts. The Board’s decision not to take prosecutorial action based on a complaint

¹⁰ By contrast, if the Legislature intended to simply immunize the Board from suits for damages, it understood how to do so. *See* RCW 66.08.100 (“Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the board or any employee of the board in the performance of his or her duties and in the administration of this title or chapter 69.50 or 69.51A RCW.”).

amounts to “disciplinary actions or other official acts performed in the course of [its] duties.” RCW 18.235.190. And the Attorney General—as legal representative of the Board—is an “individual[] acting on [the Board’s] behalf.” *Id.* Under RCW 18.235.190, State Defendants are immune from all actions, for declining to issue statements of charges against all individuals using the word “engineer” in their professional titles.

While there are no cases addressing the specific immunity provided in RCW 18.235.190, there are cases exploring a similar statute, RCW 18.130.300, which protects from suit the official acts of members of boards and commissions that regulate health professions under chapter 18.130 RCW. RCW 18.130.300(1) provides:

The secretary, members of the boards or commissions, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary proceedings or other official acts performed in the course of their duties.

The language in this statute is nearly identical to RCW 18.235.190.

In *Janaszak*, the Dental Quality Assurance Commission investigated complaints against a dentist for pursuing sexual relationships with his patients, imposed summary practice restrictions on the dentist, and published notice of the disciplinary action on the Department of Health’s website. *Janaszak*, 173 Wn. App. at 709-10. Eventually, the Commission withdrew the restrictions and charges against the dentist. *Id.* The dentist then

sued the State, the Department, the Commission, and the Department's investigator, among others, and asserted multiple claims, including violation of the Uniform Disciplinary Act (UDA)—the analogue of the URBP in regulation of the health professions—and negligence. *Id.* at 710-12. The trial court dismissed the suit on summary judgment. *Id.* at 710.

On appeal, the Court recognized that, “On its face, this statute [RCW 18.130.300(1)] grants absolute immunity for acts performed in the course of a covered individual's duties.” *Id.* at 714. In addition, the Court determined that the dentist presented no genuine issue that the investigator's actions exceeded the scope of her duties for the Department. *Id.* at 715. Because the investigator acted within the scope of her statutory duties, RCW 18.130.300 protected the defendants—including the State, the Department of Health, the Commission, and the Director of the Department—from the dentist's UDA and negligence claims.¹¹ *Id.* at 715, 717, 726. *See also Dutton v. Wash. Physicians Health Program*, 87 Wn. App. 614, 616-20, 943 P.2d 298 (1997) (affirming summary judgment in favor of the Medical Disciplinary Board and its members based on RCW 18.130.300 where a physician sued the Board after it suspended his medical license based on his claimed impairment).

¹¹ The court disposed of the dentist's other claims on other grounds. *See Janaszak*, 173 Wn. App. at 720-27.

The Court further likened the statutory immunity provided under RCW 18.130.300 to the immunity afforded prosecutors and judges; it exists to protect the integrity of a uniform disciplinary process for licensed professionals by guaranteeing the independence of those engaged in that process by allowing them to conduct their duties without fear of suit:

Analogous to the immunity afforded prosecutors and judges, the immunity afforded by RCW 18.130.300 exists not to protect individuals but to protect the integrity of a uniform disciplinary process for health care professionals. It guarantees the independence of these individuals and allows them to protect the adequacy of professional competence and conduct without fear of suit.

Janaszak, 173 Wn. App. at 719; *see also Bruce v. Byrne-Stevens & Assocs. Engineers, Inc.*, 113 Wn.2d 123, 126, 776 P.2d 666 (1989) (discussing the purpose and benefits of witness immunity).

Just as under RCW 18.130.300, “the absolute immunity” under RCW 18.235.190 protects the Board and the State from suit. *Janaszak*, 173 Wn. App. at 719. And, like RCW 18.130.100, RCW 18.235.190 protects the independence and discretion afforded disciplinary authorities covered by the URBP, including the Board. This action rests on the official acts of the Board and its staff, specifically the disciplinary process and decision making of the Board. The Board is immune from *any* actions based on its official acts, and that immunity extends to the other State defendants.

Although the Board asserted common law immunity, and not statutory immunity, below, it has not waived its statutory immunity protection. Waiver “is designed to prevent a defendant from ambushing a plaintiff during litigation either through delay in asserting a defense or misdirecting the plaintiff away from a defense for tactical advantage.” *King v. Snohomish Cty.*, 146 Wn.2d 420, 424, 47 P.3d 563 (2002). Thus, “Courts have concluded that a defendant waives an affirmative defense if (1) assertion of the defense is inconsistent with defendant’s prior behavior or (2) the defendant has been dilatory in asserting the defense.” *Brevick v. City of Seattle*, 139 Wn. App. 373, 381, 160 P.3d 648 (2007). Neither consideration applies here.

First, the Board has asserted that it was immune from suit and entitled to dismissal throughout the course of this litigation. CP 193-94. That posture of the case, the Board’s assertion of common-law immunity, and the Board’s motion to dismiss are not inconsistent with an assertion of statutory immunity. *See Mahoney v. Tingley*, 85 Wn.2d 95, 100, 529 P.2d 1068 (1975) (“Where a failure to plead a defense affirmatively does not affect the substantial rights of the parties, the noncompliance will be considered harmless). Nor was the Board dilatory in raising its immunity. The Board’s motion to dismiss was filed within three months of the filing of the Board’s Answer. *Cf. Raymond v. Fleming*, 24 Wn. App. 112, 114-15,

600 P.2d 614 (1979) (finding that raising the defense of insufficient service of process nearly a year after filing of the complaint, after multiple continuances and without filing an answer was so dilatory as to constitute waiver of the defense). *But see Bernsen v. Big Bend Elec. Co-op, Inc.*, 68 Wn. App. 427, 434, 842 P.2d 1047 (1993) (finding that failure to plead a defense prior to trial did not constitute waiver, when the defense was tried by the implied or express consent of the parties.). So the Board was not dilatory in presenting its defenses, nor was its behavior in the course of litigation inconsistent with asserting its immunity.

Finally, the statutory immunity does not preclude all challenges of the Board's actions. Instead, it limits challenges to the processes set forth under the APA. An aggrieved party who has been subject to discipline under the URBP may appeal that discipline under RCW 34.05.570(3). RCW 18.235.090. The Board's rules may be challenged under the provisions of the APA, RCW 34.05.570(2), and the Board's other actions may be challenged pursuant to RCW 34.05.570(4), so long as the petitioner satisfies the procedural requirements of the APA. It merely precludes original actions—such as this—against the Board for actions taken in the course of its duties.

D. The Engineering Registration Act Does Not Require the Board to Prosecute Every Unlicensed Individual Who Uses the Word “Engineer” in Their Title

Even if Tappel has standing and the Board and State are not immune, the trial court appropriately determined that the Board’s actions were not contrary to law. It does not follow that because *within chapter 18.43 RCW* the word “engineer” means “professional engineer,” every person’s use of the title “engineer” means they are claiming to be a licensed “professional engineer” as defined by RCW 18.43.020(10). Instead, the Board considers each individual complaint and determines whether that person has improperly conveyed they are *engaged in the practice* of professional engineering without a license and has, therefore, committed unprofessional conduct.

1. The engineering registration act does not bar every use of the word “engineer” in occupational titles

Tappel is not entitled to relief because the engineering registration act does not preclude the use of the word “engineer” in the occupational titles of all non-licensed people. Tappel incorrectly attempts to equate the words “engineer” and “professional engineer” based on the definitions in RCW 18.43.020 (2018). But those definitions are more limited than Tappel admits.

RCW 18.43.020 (2018) sets out definitions that “apply throughout this chapter”—i.e., chapter 18.43 RCW. RCW 18.43.020(1) (2018) defines “engineer” to mean “a professional engineer as defined in this section.” And a “professional engineer” under RCW 18.43.020(2) (2018) is “a person who by reason of his or her special knowledge . . . is qualified to practice engineering in this section.” Thus whenever the word “engineer” is used in chapter 18.43 RCW, it means “professional engineer” as defined in RCW 18.43.020(2) (2018). This *does not* mean, as Tappel suggests, that any person who uses the word “engineer” in their everyday occupational title is representing to the public that they are a “professional engineer” or is practicing engineering as defined in RCW 18.43.020(5) (2018). Opening Br. of Appellants 18-19.¹²

The engineering registration act specifically defines three types of licensees: professional engineer at RCW 18.43.020(2) (2018), professional land surveyor at RCW 18.43.020(7) (2018), and structural engineering at

¹² It should be noted that the scope of Tappel’s requested relief has consistently shifted. At first, Tappel sought an injunction barring the use of “Engineer” in any title. CP 26. After Defendants illustrated the unconstitutionality of Tappel’s requested relief, the relief was shifted to those who have “engineer” in their title and do work that might be construed as related to professional engineering. CP 327-28. When the trial court inquired as to the scope of relief requested, Tappel assented to relief against state employees who have a title that includes “engineer.” VRP 8. It is unclear what relief Tappel currently seeks. See Pet’r’s Br. 24, (“Appellants specifically challenge the Board’s failure to enforce the statute against individuals—like the “Forest Practices Engineer” with WDNR—who actually engage in and offer engineering services, as defined under the statute, *and* use “Engineer in their title.”).

RCW 18.43.040(1)(a)(iii)-(iv) (2018). Use of one of those titles is a *per se* representation that the person is licensed.

Thus the Board may properly conclude that a person who publicly identifies him or herself as a “professional engineer” is representing that they are a licensed “professional engineer.” There are also potential circumstances where an individual may unavoidably indicate they are a “professional engineer” through the use of other titles, e.g., “licensed engineer,” or “registered engineer.” But, it does not necessarily follow that every person who uses the word “engineer” in a title is also conveying that they are professional engineers as defined by the Act. Instead, the Board looks, on an individual basis, to the alleged conduct and title together to determine if a person is improperly conveying the impression they are licensed, consistent with the act. CP 57, 309-310.

Under the engineering registration act:

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering, or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

Former RCW 18.43.020(5)(b) (2018). The act enumerates two means by which a person may hold themselves out as “practicing engineering:” (1) through conduct which meets the requirements of the practice of engineering; or (2) by presenting themselves in a manner which indicates that they are licensed as a professional engineer.

The Board communicated to Tappel that there is a difference between taking actions against titles alone as opposed to interpreting a combination of a title and conduct. CP 57 (explaining that the Board would “not pursue investigations against the use of titles unless the titles used are professional engineer, structural engineer or professional land surveyor.”).

In its letter to Tappel the Board indicated that it would take action against those titles specifically defined in statute. But those are not the titles of which Tappel complains. Opening Br. of Appellant 25. And the Board properly determined that Mr. Warner and other state employees were not engaged in the unlicensed practice of engineering.

This is because the licensing requirements have carved out a range of behavior that is not considered the “practice of engineering,” i.e., does not require a license. RCW 18.43.130 (2018). One of those provisions, pertinent to the issues raised here, is former RCW 18.43.130(4) (2018):

This chapter shall not be construed to prevent or affect: (4)
The work of an employee or 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.

This exception to the license requirement for professional engineers describes Mr. Warner's role at the Department of Natural Resources. Mr. Warner worked under the supervision of Mr. Stevens, a licensed professional engineer. CP 63. He worked alongside Mr. Syms, another licensed professional engineer. *Id.* After working with Mr. Syms, Mr. Warner produced a memo regarding his concerns that was provided to Mr. Stevens, who reviewed Tappel's application, Mr. Warner's memo, and other information before making the final decision to deny Tappel's application. *Id.* Indeed, Tappel agrees that none of Mr. Warner's actions violate any portion of the licensing requirements. CP 330-31; VRP 23:10-14 ("... we take no issue with the fact that the forest practices engineer is absolutely entitled to perform the work that he's doing because he does fall within one of those exceptions and he reports up the food chain to an actual professional engineer.").

In short, Tappel agrees that the work of Mr. Warner and similarly situated individuals falls within an exception to the licensing requirement for professional engineers; he simply insists that having the word

“engineer” in their job title is itself a violation that the Board must prosecute. But the Board has properly determined that when a person is legally performing work that does not require a license, it will not consider the person to be engaging in the unlicensed practice of professional engineering merely because that person’s job title includes the word “engineer.”

2. The Board has properly exercised its discretion to look at the conduct of individuals to determine if they are engaged in the unlicensed practice of professional engineering

Tappel insists that the Board has no discretion to look beyond a person’s occupational title to the alleged conduct in determining whether to issue cease and desist letters or pursue discipline. But Tappel ignores the multiple statutory provisions that make regulatory decisions discretionary and instead relies on RCW 18.43.120 (2018), which states, in relevant part, “It shall be the duty of all officers of the state or any political subdivision thereof, to enforce the provisions of this chapter.” CP 209. That reliance is misplaced.

Tappel asserts that the phrase “shall be the duty” makes the Board’s and other state officials’ duties mandatory. CP 18-19. But the statute places

the authority—and the discretion—to enforce the law in the Board. RCW 18.235.150(1), (2). The decision of whether or not to pursue discipline “is vested with the Board, which must determine that ‘there is reason to believe’ that unprofessional conduct has occurred before it is required to prepare a statement of charges.” *Newman*, 156 Wn. App. at 144 (interpreting RCW 18.130.090, the analogous provision in the Uniform Disciplinary Act). Tappel misapprehends the meaning of RCW 18.43.120, which identifies who shall have the discretion and authority to enforce the statute. It does not mean that those officials must follow Tappel’s interpretation of the Act. And, even if Tappel’s interpretation were correct, the Board is not *required* to take action against any person or in response to any complaint.

Moreover, the “word ‘shall’ in a statute may be construed as directory rather than mandatory depending upon legislative intent.” *Wash. State Liquor Control Bd v. Wash. State Personnel Bd.*, 88 Wn.2d 368, 378, 561 P.2d 195 (1977). “‘Shall’ is interpreted as directory, rather than mandatory, when a literal reading would frustrate the legislative intent.” *Frank v. Washington*, 94 Wn. App. 306, 311, 972 P.2d 491 (1999) (citing *State ex rel. Royal v. Bd. of Yakima Cty. Com’rs.*, 123 Wn.2d 451, 458-59, 869 P.2d 56 (1994)). Interpreting “shall” in RCW 18.43.120 as mandating prosecutions, rather than directing the Board (and State) to enforce the chapter when warranted, would undermine the legislature’s use of the word

“may” in the specific provisions providing the Board discretion in its disciplinary decisions. *See e.g.*, RCW 18.43.110 (2018) (“The board shall have the exclusive power to discipline the registrant and sanction the certificate of registration of any registrant.”); 18.235.150(1) (“The disciplinary authority *may* investigate complaints concerning practice by unlicensed persons. . . .”), (2) (“The disciplinary authority *may* issue a notice of intent to issue a cease and desist order to any person whom the disciplinary authority has reason to believe is engaged or is about to engage in the unlicensed practice of a profession. . . .”). It also would frustrate the legislature’s intent of creating a specialized regulatory body that can make informed decisions about whether to pursue prosecution. A similarly absurd result would occur if the statute required action by the Attorney General or the Governor, even if the Board chose not to act. *See e.g. State v. Rice*, 174 Wn.2d 884, 855-56, 279 P.3d 849 (2012) (holding that a statute reading that prosecuting attorneys “shall file a special allegation” was directory rather than mandatory).

3. Reading the engineering registration act as barring every use of the word “engineer” in an occupational title would run afoul of the First Amendment

Finally, Tappel’s reading of the engineering registration act would render it unconstitutional. And a court must, where possible, “construe a

statute so as to uphold its constitutionality.” *In re Personal Restraint of Matteson*, 142 Wn.2d 298, 307, 12 P.3d 585 (2000).

Courts across the country have concluded that it would be a violation of the First Amendment for a regulatory agency to prosecute every individual who used the word “engineer” to describe themselves or their position. In fact, the only authority upon which Tappel relies, *Jarlstrom v. Alridge*, 366 F. Supp. 3d 1205 (D. Oregon 2018), held just that, explaining: “Courts have long recognized that term ‘engineer’ has a generic meaning separate from ‘professional engineer,’ and that the term has enjoyed widespread usage in job titles in our society to describe positions which require no professional training.” *Jarlstrom*, 366 F. Supp. at 1220. That Court held that construing Oregon’s licensing statute to assume that any use of the word “engineer” was a statutory violation would run afoul of the First Amendment. *Id.* at 1221 (citing *Snell v. Engineered Sys. & Designs, Inc.*, 669 A.2d 13, 16-19 (Del. 1995)).

Other jurisdictions that have addressed this issue have reached the same conclusion. The Missouri Supreme Court rejected a petition to enjoin a corporation from using the word “engineering” in its corporate name, explaining, “Engineer is synonymous with such terms as conductor, driver, handler, operator, and pilot. A complete restriction of the use of the words ‘engineer’ and ‘engineering,’ without more would be an overly broad

interpretation of the plain language of the statute, far exceeding the intent of the legislature.” *Missouri Bd. for Architects, Professional Engineers, and Land Surveyors v. Earth Resources Engineering, Inc.*, 820 S.W.2d 505, 508-09, (Missouri 1991); *see also N. C. State Bd. of Registration for Prof’l Eng’rs & Land Surveyors v. Int’l Bus. Machs. Corp.*, 31 N.C. App. 599 (N.C. Ct. App. 1976) (holding that the use of the term “Customer Engineer” on a business card did not constitute the offering to practice engineering or the representation of professional engineering licensure); *Express Oil Change, L.L.C. v. Miss. Bd. of Licensure for Prof’l Eng’rs & Surveyors*, 916 F.3d 483 (5th Cir. 2019) (the use of the term “Tire Engineers” was protected by the First Amendment); *Snell v. Engineered Sys. & Designs, Inc.*, 669 A.2d 13, 18–19, 24 Media L. Rep 1001 (Del. 1995) (under the First Amendment, the term “engineered” was not inherently misleading in all cases); *N.M. Bd. of Licensure for Prof’l Eng’rs & Prof’l Surveyors v. Turner*, 303 P.3d 875, 882 (N.M. Ct. App. 2013) (Board violated the First Amendment when it brought an unlicensed practice action against a person for using the term “unengineered rip-rap” in a public report regarding an engineering project).

Washington’s engineering registration act encompasses these constitutional limitations. For more than 70 years, the Act has excluded from the definition of engineering “work ordinarily performed by persons

who operate or maintain machinery or equipment.” *See* Laws of 1947, ch. 283, § 2. Of course, since 1947 the number of occupations referred to as engineers has only grown. *See North Carolina State. Bd.*, 31 N.C. App. at 604-05 (noting the growth of the word engineer in state job titles that are not professional engineers, including “television engineer, environmental engineering technician, engineering design technician and ferry engineer.”).

And that growth predated the explosion of engineering titles in the technology sector, where a search of positions at a single company, Amazon, yielded the following results: Application Engineer, Reliability Engineer, Innovation and Design Engineer, Systems Engineer, Automation Engineer, Security Engineer, Controls Engineer, System Performance Engineer, Data Center Structural Field Engineer, among more than 2000 results. *See* https://www.amazon.jobs/engb/search?offset=0&result_limit=10&sort=relevant&distanceType=Mi&radius=24km&latitude=&longitude=&loc_group_id=&loc_query=&base_query=engineer&city=&country=®ion=&county=&query_options= (last accessed on November 1, 2019).

Nor does Tappel’s newly advanced limitation on his interpretation save his request from relief from constitutional infirmity. Opening Br of Appellant 24-25. The relief Tappel requests is that the Court “direct[] the Board to interpret and enforce chapter 18.43 RCW as written, specifically to preclude use of the title Engineer by anyone who is not a Professional

Engineer or otherwise permitted to use the title under the exceptions in RCW 18.43.130.” CP 27. But then Tappel asserts that the use of the word “engineer” in a title is alone sufficient to be a violation of the engineering registration act, even if the person using that title is otherwise—as Tappel admits—not engaged in unlicensed conduct. Opening Br. of Appellants 28; CP 27-28, 169. Tappel’s complaint is about words, not conduct, and Tappel cannot avoid his claims’ constitutional defects.

The Board is cognizant of the limits—both statutory and constitutional—on its authority to regulate conduct. So, when an individual expressly refers to themselves using a title that cannot help but convey that they are licensed under the act, i.e. “professional engineer,” “structural engineer,” or “professional land surveyor”—titles that are explicitly set forth in the regulatory statutes—then the Board may take action against the person using that *title*. But, absent such a use of a title that clearly implies the individual is licensed as professional engineer when they are not, then the Board looks to the actions of the individual, not the mere words in that individual’s title or position description. CP 309. And unless that individual’s conduct, combined with the use of the word “engineer,” warrants charges of unlicensed activity, the Board will not bring unprofessional conduct charges based on a single word. Nor can it be compelled to do so by a member of the public or the court.

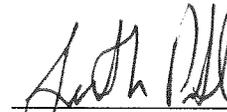
V. CONCLUSION

The Board has appropriately exercised its discretion not to prosecute individuals who use the word “engineer” in their job title, but who are not performing work that requires a professional engineering license. Tappel’s interpretation of the engineering registration act ignores the plain text of the

statute. Moreover, Tappel lacks standing to bring this suit, and the State Defendants are immune from it. This Court should affirm the trial court.

RESPECTFULLY SUBMITTED this 20th day of December 2019.

ROBERT W. FERGUSON
Attorney General



JONATHAN E. PITEL,
WSBA No. 47516
Assistant Attorney General
Attorneys for Respondent

PROOF OF SERVICE

I, Linda Estep, certify that I sent a copy of this document—**Brief of Respondent**—for filing and service on all parties or their counsel of record on the date below as follows:

Electronic Service per Agreement

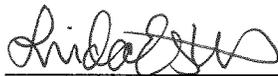
Rochelle Nelson
Alan David Schuchman
Skellenger Bender PS
RNelson@skellengerbender.com
ASchuchman@skellengerbender.com
KDoyle@skellengerbender.com

Electronically Filed with

The Court of Appeals Division II

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 20 day of December 2019, at Olympia, Washington.



LINDA ESTEP, Legal Assistant

Appendix A

Chapter 18.43 RCW
ENGINEERS AND LAND SURVEYORS

Sections

18.43.010	General provisions.
18.43.020	Definitions.
18.43.030	Board of registration—Members—Terms—Qualifications— Compensation and travel expenses.
18.43.033	Pro tem board members—Limits—Duties.
18.43.035	Bylaws—Employees—Rules—Periodic reports and roster.
18.43.040	Registration requirements.
18.43.050	Application—Registration fees.
18.43.060	Examinations.
18.43.070	Certificates and seals.
18.43.075	Retired status certificate.
18.43.080	Expiration and renewals of certificates—Fees—Continuing professional development.
18.43.100	Registration of out-of-state applicants.
18.43.105	Disciplinary action—Prohibited conduct, acts, conditions.
18.43.110	Discipline of registrant—Board's power—Unprofessional conduct—Reissuance of certificate of registration.
18.43.120	Violations and penalties.
18.43.130	Excepted services—Fees.
18.43.150	Disposition of fees.
18.43.170	Registration suspension—Noncompliance with support order—Reissuance.
18.43.180	Uniform regulation of business and professions act.
18.43.190	Military training or experience.
18.43.900	Short title.

Actions or claims for engineering and surveying services, limitations upon:
RCW 4.16.300 through 4.16.320.

*Noncompliance with surveys and monuments recording law—Grounds for
revocation:* RCW 58.09.140.

Public contracts for engineering services: Chapter 39.80 RCW.

Surveys and monuments recording law: Chapter 58.09 RCW.

18.43.010 General provisions. In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he or she is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in the provisions of this chapter, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description tending to convey the impression that he or she is a professional engineer or a land surveyor, unless such a person has been duly registered under the provisions of this chapter. [2011 c 336 § 480; 1947 c 283 § 1; Rem. Supp. 1947 § 8306-21. Prior: 1935 c 167 § 2; RRS § 8306-2.]

False advertising: Chapter 9.04 RCW.

18.43.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Engineer" means a professional engineer as defined in this section.

(2) "Professional engineer" means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as defined in this section, as attested by his or her legal registration as a professional engineer.

(3) "Engineer-in-training" means a candidate who: (a) Has satisfied the experience requirements in RCW 18.43.040

for registration; (b) has successfully passed the examination in the fundamental engineering subjects; and (c) is enrolled by the board as an engineer-in-training.

(4) "Engineering" means the "practice of engineering" as defined in this section.

(5)(a) "Practice of engineering" means any professional service or creative work requiring engineering education, training, and experience and the application of 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.

(b) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

(c) The practice of engineering does not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

(6) "Land surveyor" means a professional land surveyor.

(7) "Professional land surveyor" means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and principles and practices of land surveying, which is acquired by professional education and practical experience, is qualified to practice land surveying and as attested to by his or her legal registration as a professional land surveyor.

(8) "Land-surveyor-in-training" means a candidate who: (a) Has satisfied the experience requirements in RCW 18.43.040 for registration; (b) successfully passes the examination in the fundamental land surveying subjects; and (c) is enrolled by the board as a land-surveyor-in-training.

(9) "Practice of land surveying" means assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries, and monuments of land after they have been established, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

(10) "Board" means the state board of registration for professional engineers and land surveyors, provided for by this chapter.

(11) "Significant structures" include:

(a) Hazardous facilities, defined as: Structures housing, supporting, or containing sufficient quantities of explosive substances to be of danger to the safety of the public if released;

(b) Essential facilities that have a ground area of more than five thousand square feet and are more than twenty feet in mean roof height above average ground level. Essential facilities are defined as:

- (i) Hospitals and other medical facilities having surgery and emergency treatment areas;
 - (ii) Fire and police stations;
 - (iii) Tanks or other structures containing, housing, or supporting water or fire suppression material or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
 - (iv) Emergency vehicle shelters and garages;
 - (v) Structures and equipment in emergency preparedness centers;
 - (vi) Standby power-generating equipment for essential facilities;
 - (vii) Structures and equipment in government communication centers and other facilities requiring emergency response;
 - (viii) Aviation control towers, air traffic control centers, and emergency aircraft hangars; and
 - (ix) Buildings and other structures having critical national defense functions;
- (c) Structures exceeding one hundred feet in height above average ground level;
- (d) Buildings that are customarily occupied by human beings and are five stories or more above average ground level;
- (e) Bridges having a total span of more than two hundred feet and piers having a surface area greater than ten thousand square feet; and
- (f) Buildings and other structures where more than three hundred people congregate in one area. [2007 c 193 § 2; 1995 c 356 § 1; 1991 c 19 § 1; 1947 c 283 § 2; Rem. Supp. 1947 § 8306-22. Prior: 1935 c 167 § 1; RRS § 8306-1.]

Additional notes found at www.leg.wa.gov

18.43.030 Board of registration—Members—Terms—Qualifications—Compensation and travel expenses. A state board of registration for professional engineers and land surveyors is hereby created which shall exercise all of the powers and perform all of the duties conferred upon it by this chapter. After July 9, 1986, the board shall consist of seven members, who shall be appointed by the governor and shall have the qualifications as hereinafter required. The terms of board members in office on June 11, 1986, shall not be affected. The first additional member shall be appointed for a four-year term and the second additional member shall be appointed for a three-year term. On the expiration of the term of any member, the governor shall appoint a successor for a term of five years to take the place of the member whose term on said board is about to expire. However, no member shall serve more than two consecutive terms on the board. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

Five members of the board shall be registered professional engineers licensed under the provisions of this chapter. Two members shall be registered professional land surveyors licensed under this chapter. Each of the members of the board shall have been actively engaged in the practice of engineer-

ing or land surveying for at least ten years subsequent to registration, five of which shall have been immediately prior to their appointment to the board.

Each member of the board shall be a citizen of the United States and shall have been a resident of this state for at least five years immediately preceding his or her appointment.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and, in addition thereto, shall be reimbursed for travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060.

The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as hereinabove provided. [2011 c 336 § 481; 1986 c 102 § 1; 1984 c 287 § 35; 1975-'76 2nd ex.s. c 34 § 37; 1947 c 283 § 3; Rem. Supp. 1947 § 8306-23.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Additional notes found at www.leg.wa.gov

18.43.033 Pro tem board members—Limits—Duties. 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. [1997 c 247 § 1.]

18.43.035 Bylaws—Employees—Rules—Periodic reports and roster. 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 reasonably necessary to administer the provisions of this chapter. 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. [2002 c 40 § 224; 1997 c 247 § 2; 1986 c 102 § 2; 1977 c 75 § 10; 1959 c 142 § 1; 1959 c 297 § 1.]

Additional notes found at www.leg.wa.gov

18.43.040 Registration requirements. (1) The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a

professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, respectively:

(a)(i) As a professional engineer: A specific record of eight years or more of experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering; and successfully passing a written or oral examination, or both, in engineering as prescribed by the board.

(ii) Graduation in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing shall be considered equivalent to four years of such required experience. The satisfactory completion of each year of such an approved engineering course without graduation shall be considered as equivalent to a year of such required experience. Graduation in a curriculum other than engineering from a school or college approved by the board shall be considered as equivalent to two years of such required experience. However, no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications. The board may, at its discretion, give credit as experience not in excess of one year, for satisfactory postgraduate study in engineering.

(iii) Structural engineering is recognized as a specialized branch of professional engineering. To receive a certificate of registration in structural engineering, an applicant must hold a current registration in this state in engineering and have at least two years of structural engineering experience, of a character satisfactory to the board, in addition to the eight years' experience required for registration as a professional engineer. An applicant for registration as a structural engineer must also pass an additional examination as prescribed by the board.

(iv) An engineer must be registered as a structural engineer in order to provide structural engineering services for significant structures. The board may waive the requirements of this subsection (1)(a)(iv) until December 31, 2010, if:

(A) On January 1, 2007, the engineer is registered with the board as a professional engineer; and

(B) Within two years of January 1, 2007, the engineer demonstrates to the satisfaction of the board that the engineer has sufficient experience in the duties typically provided by a professional structural engineer regarding significant structures.

(b)(i) As an engineer-in-training: An applicant for registration as a professional engineer shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as an engineer-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required engineering experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of engineering subjects, including mathematics and the basic sciences.

(ii) At any time after the completion of the required eight years of engineering experience, as defined in this section, the applicant may take the second stage of the examination upon submission of an application for registration and pay-

ment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of his or her greater experience, to apply his or her knowledge and experience in the field of his or her specific training and qualifications.

(c)(i) As a professional land surveyor: A specific record of eight years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying as prescribed by the board.

(ii) Graduation from a school or college approved by the board as of satisfactory standing, including the completion of an approved course in surveying, shall be considered equivalent to four years of the required experience. Postgraduate college courses approved by the board shall be considered for up to one additional year of the required experience.

(d)(i) As a land-surveyor-in-training: An applicant for registration as a professional land surveyor shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as a land-surveyor-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required land surveying experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of land surveying subjects, including mathematics and the basic sciences.

(ii) At any time after the completion of the required eight years of land surveying experience, as defined in this section, the applicant may take the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of greater experience, to apply knowledge and experience in the field of land surveying.

(iii) The first stage shall be successfully completed before the second stage may be attempted. Applicants who have been approved by the board to take the examination based on the requirement for six years of experience under this section before July 1, 1996, are eligible to sit for the examination.

(2) No person shall be eligible for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, who is not of good character and reputation.

(3) Teaching, of a character satisfactory to the board shall be considered as experience not in excess of two years for the appropriate profession.

(4) The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be practice of engineering.

(5) Any person having the necessary qualifications prescribed in this chapter to entitle him or her to registration shall be eligible for such registration although the person may not be practicing his or her profession at the time of making his or her application. [2007 c 193 § 1; 2000 c 172 § 1; 1995

c 356 § 2; 1991 c 19 § 2; 1947 c 283 § 7; Rem. Supp. 1947 § 8306-24. Prior: 1935 c 167 § 2; RRS § 8306-2.]

Additional notes found at www.leg.wa.gov

18.43.050 Application—Registration fees. Application for registration shall be on forms prescribed by the board and furnished by the director, shall contain statements made under oath, showing the applicant's education and detail summary of his or her technical work and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of the applicant's engineering experience.

The registration fee for professional engineers shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. The fee for engineer-in-training shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate.

The registration fee for professional land surveyors shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. The fee for land-surveyor-in-training shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate.

Should the board find an applicant ineligible for registration, the registration fee shall be retained as an application fee. [1995 c 356 § 3; 1991 c 19 § 3; 1985 c 7 § 42; 1975 1st ex.s. c 30 § 46; 1947 c 283 § 8; Rem. Supp. 1947 § 8306-25. Prior: 1935 c 167 § 6; RRS § 8306-6.]

Additional notes found at www.leg.wa.gov

18.43.060 Examinations. When oral or written examinations are required, they shall be held at such time and place as the board shall determine. If examinations are required on fundamental engineering subjects (such as ordinarily given in college curricula) the applicant shall be permitted to take this part of the professional examination prior to his or her completion of the requisite years of experience in engineering work. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that the applicant has passed the examination in fundamental engineering subjects and that his or her name has been recorded as an engineer-in-training.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works so as to insure the safety of life, health and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing an examination may apply for reexamination. Subsequent examinations will be granted upon payment of a fee to be determined by the director as provided in RCW 43.24.086. [1991 c 19 § 4; 1961 c 142 § 2; 1947 c 283 § 9; Rem. Supp. 1947 § 8306-26. Prior: 1935 c 167 § 7; RRS § 8306-7.]

[Title 18 RCW—page 136]

18.43.070 Certificates and seals. The director of licensing shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In case of a registered engineer, the certificate shall authorize the practice of "professional engineering" and specify the branch or branches in which specialized, and in case of a registered land surveyor, the certificate shall authorize the practice of "land surveying."

In case of engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training." In case of land-surveyor-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental surveying subjects required by the board and has been enrolled as a "land-surveyor-in-training." All certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chair and the secretary of the board and by the director of licensing.

The issuance of a certificate of registration by the director of licensing shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer or a registered land surveyor, while the said certificate remains unrevoked and unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional engineer" or "registered land surveyor." Plans, specifications, plats, and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his or her direct supervision and that to his or her knowledge and belief the same was prepared in accordance with the requirements of the statute. It shall be unlawful for anyone to stamp or seal any document with said seal or facsimile thereof after the certificate of registrant named thereon has expired or been revoked, unless said certificate shall have been renewed or reissued. [2011 c 336 § 482; 1995 c 356 § 4; 1991 c 19 § 5; 1959 c 297 § 4; 1947 c 283 § 10; Rem. Supp. 1947 § 8306-27. Prior: 1935 c 167 §§ 8, 13; RRS § 8306-8, 13.]

Additional notes found at www.leg.wa.gov

18.43.075 Retired status certificate. The board may adopt rules under this section authorizing a retired status certificate. An individual certificated under this chapter who has reached the age of sixty-five years and has retired from the active practice of engineering and land surveying may, upon application and at the discretion of the board, be exempted from payment of annual renewal fees thereafter. [1995 c 356 § 5.]

Additional notes found at www.leg.wa.gov

18.43.080 Expiration and renewals of certificates—Fees—Continuing professional development. (1) Certificates of registration, and certificates of authorization and renewals thereof, shall expire on the last day of the month of December following their issuance or renewal and shall

become invalid on that date unless renewed. It shall be the duty of the administrator of the division of professional licensing to notify every person, firm, or corporation registered under this chapter of the date of the expiration of his or her certificate and the amount of the renewal fee that shall be required for its renewal for one year. Such notice shall be mailed at least thirty days before the end of December of each year. Renewal may be effected during the month of December by the payment of a fee determined by the director as provided in RCW 43.24.086. In case any professional engineer and/or land surveyor registered under this chapter shall fail to pay the renewal fee hereinabove provided for, within ninety days from the date when the same shall become due, the renewal fee shall be the current fee plus an amount equal to one year's fee.

(2) Beginning July 1, 2007, the department of licensing may not renew a certificate of registration for a land surveyor unless the registrant verifies to the board that he or she has completed at least fifteen hours of continuing professional development per year of the registration period. By July 1, 2006, the board shall adopt rules governing continuing professional development for land surveyors that are generally patterned after the model rules of the national council of examiners for engineering and surveying. [2005 c 29 § 1; 1985 c 7 § 43; 1981 c 260 § 4. Prior: 1975 1st ex.s. c 30 § 47; 1975 c 23 § 1; 1965 ex.s. c 126 § 1; 1961 c 142 § 3; 1959 c 297 § 5; 1947 c 283 § 11; Rem. Supp. 1947 § 8306-28; prior: 1935 c 167 § 10; RRS § 8306-10.]

18.43.100 Registration of out-of-state applicants.

The board may, upon application and the payment of a fee determined by the director as provided in RCW 43.24.086, issue a certificate without further examination as a professional engineer or land surveyor to any person who holds a certificate of qualification of registration issued to the applicant following examination by proper authority, of any state or territory or possession of the United States, the District of Columbia, or of any foreign country, provided: (1) That the applicant's qualifications meet the requirements of the chapter and the rules established by the board, and (2) that the applicant is in good standing with the licensing agency in said state, territory, possession, district, or foreign country. [1991 c 19 § 7; 1985 c 7 § 44; 1975 1st ex.s. c 30 § 48; 1959 c 297 § 6; 1947 c 283 § 13; Rem. Supp. 1947 § 8306-30. Prior: 1935 c 167 § 5; RRS § 8306-5.]

18.43.105 Disciplinary action—Prohibited conduct, acts, conditions. In addition to the unprofessional conduct described in RCW 18.235.130, the board may take disciplinary action for the following conduct, acts, or conditions:

- (1) Offering to pay, paying or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;
- (2) Being willfully untruthful or deceptive in any professional report, statement or testimony;
- (3) Attempting to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone;
- (4) Failure to state separately or to charge separately for professional engineering services or land surveying where

other services or work are also being performed in connection with the engineering services;

(5) Violation of any provisions of this chapter;

(6) Conflict of interest—Having a financial interest in bidding for or performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an engineer except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding engineering work for which retained, employed, or called upon to perform;

(7) Nondisclosure—Failure to promptly disclose to a client or employer any interest in a business which may compete with or affect the business of the client or employer;

(8) Unfair competition—Reducing a fee quoted for prospective employment or retainer as an engineer after being informed of the fee quoted by another engineer for the same employment or retainer;

(9) Improper advertising—Soliciting retainer or employment by advertisement which is undignified, self-laudatory, false or misleading, or which makes or invites comparison between the advertiser and other engineers;

(10) Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing professional engineering or land surveying. [2002 c 86 § 225; 1961 c 142 § 4; 1959 c 297 § 2.]

Additional notes found at www.leg.wa.gov

18.43.110 Discipline of registrant—Board's power—Unprofessional conduct—Reissuance of certificate of registration. The board shall have the exclusive power to discipline the registrant and sanction the certificate of registration of any registrant.

Any person may file a complaint alleging unprofessional conduct, as set out in RCW 18.235.130 and 18.43.105, against any registrant. The complaint shall be in writing and shall be sworn to in writing by the person making the allegation. A registrant against whom a complaint was made must be immediately informed of such complaint by the board.

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.

In addition to the imposition of disciplinary action under RCW 18.235.110, the board may refer violations of this chapter to the appropriate prosecuting attorney for charges under RCW 18.43.120. [2002 c 86 § 226; 1997 c 247 § 3; 1989 c 175 § 62; 1986 c 102 § 3; 1985 c 7 § 45; 1982 c 37 § 1; 1975 1st ex.s. c 30 § 49; 1947 c 283 § 14; Rem. Supp. 1947 § 8306-31. Prior: 1935 c 167 § 11; RRS § 8306-11.]

Additional notes found at www.leg.wa.gov

18.43.120 Violations and penalties. Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of the chapter, or any person presenting or

attempting to use as his or her own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant, or any person who shall attempt to use the expired or revoked certificate of registration, or any person who shall violate any of the provisions of this chapter shall be guilty of a gross misdemeanor.

It shall be the duty of all officers of the state or any political subdivision thereof, to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the board, and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [2011 c 336 § 483; 1986 c 102 § 4; 1947 c 283 § 15; Rem. Supp. 1947 § 8306-32. Prior: 1935 c 167 § 14; RRS § 8306-14.]

Forgery: RCW 9A.60.020.

18.43.130 Excepted services—Fees. 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 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) The corporation 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 this chapter to practice engineering or land surveying, or both, in this state;

(b) For engineering, the corporation has filed with the board a certified copy of a resolution of the board of directors of the corporation that shall designate a person holding a certificate of registration under this chapter as responsible for the practice of engineering by the corporation in this state and shall provide that full authority to make all final engineering decisions on behalf of 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 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) 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 and an affidavit, the designation of a designated engineer or designated land surveyor, or both, specified in (b) 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 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 designated engineer or designated land surveyor, or both, are not designated in responsible charge for another corporation or a limited liability company; and

(iii) 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 exercise its discretion to take any of the actions under RCW 18.235.110 with respect to a certificate of authorization issued to a corporation if the board finds that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of such corporation has engaged in unprofessional conduct as defined in RCW 18.43.105 or 18.235.130 or has been found personally responsible for unprofessional conduct under (f) and (g) of this subsection.

(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 unprofessional conduct in the practice of engineering as defined in this chapter and RCW 18.235.130.

(g) Any corporation 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, 18.43.120, and chapter 18.235 RCW.

(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 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 (8) 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 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 survey-

ing, 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 take any of the actions under RCW 18.235.110 with respect to 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 engaged in unprofessional conduct as defined in RCW 18.43.105 or 18.235.130 or has been found personally responsible for unprofessional conduct 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 unprofessional conduct 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, 18.43.120, and chapter 18.235 RCW.

(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. [2002 c 86 § 227; 1997 c 247 § 4; 1991 c 19 § 6; 1985 c 7 § 46; 1975 1st ex.s. c 30 § 50; 1965 ex.s. c 126 § 2; 1961 c 142 § 5; 1959 c 297 § 7; 1947 c 283 § 16; Rem. Supp. 1947 § 8306-33. Prior: 1935 c 167 § 2; RRS § 8306-2.]

Additional notes found at www.leg.wa.gov

18.43.150 Disposition of fees. All fees collected under the provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, and 18.43.130 and fines collected under RCW 18.43.110 shall be paid into the professional engineers' account, which account is hereby established in the state treasury to be used to carry out the purposes and provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100,

[Title 18 RCW—page 140]

18.43.110, 18.43.120, 18.43.130, and all other duties required for operation and enforcement of this chapter. During the 2013-2015 and 2015-2017 fiscal biennium [biennium], the legislature may transfer moneys from the professional engineers' account to the state general fund such amounts as reflect the excess fund balance of the fund. [2016 sp.s. c 36 § 913; 2013 2nd sp.s. c 4 § 954; 1991 c 277 § 2; 1985 c 57 § 5; 1965 ex.s. c 126 § 3.]

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Additional notes found at www.leg.wa.gov

18.43.170 Registration suspension—Noncompliance with support order—Reissuance. The board shall immediately suspend the registration of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for membership during the suspension, reissuance of the certificate of registration shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order. [1997 c 58 § 821.]

***Reviser's note:** 1997 c 58 § 886 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Additional notes found at www.leg.wa.gov

18.43.180 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 228.]

Additional notes found at www.leg.wa.gov

18.43.190 Military training or experience. An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the board determines that the military training or experience is not substantially equivalent to the standards of this state. [2011 c 351 § 5.]

18.43.900 Short title. This chapter shall be known and may be cited as the "Professional Engineers' Registration Act". [1947 c 283 § 19.]

Chapter 18.44 RCW ESCROW AGENT REGISTRATION ACT

Sections	
	DEFINITIONS
18.44.011	Definitions.
	LICENSING
18.44.021	License required—Exceptions.

(2018E)

AGO/LICENSING AND ADMINISTRATIVE LAW DIV

December 20, 2019 - 2:28 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53614-5
Appellate Court Case Title: Fisheries Engineers Inc. et al., Appellants v. State of Washington et al.,
Respondents
Superior Court Case Number: 18-2-04658-8

The following documents have been uploaded:

- 536145_Briefs_20191220142638D2332149_1963.pdf
This File Contains:
Briefs - Respondents
The Original File Name was RespondentsBrief.pdf

A copy of the uploaded files will be sent to:

- KFollendorf@Cairncross.com
- LALOLyEF@atg.wa.gov
- Rachel.Lumen@atg.wa.gov
- aschuchman@cairncross.com
- elizabeth1@atg.wa.gov
- rnelson@cairncross.com

Comments:

Sender Name: Linda Estep - Email: LindaE@atg.wa.gov

Filing on Behalf of: Jonathan Erick Pitel - Email: jonathan.pitel@atg.wa.gov (Alternate Email:
LalOlympiaCal@atg.wa.gov)

Address:
1125 Washington St. SE
PO Box 40110
Olympia, WA, 98504-0110
Phone: (360) 753-2702

Note: The Filing Id is 20191220142638D2332149