

1 HB231
2 182221-1
3 By Representatives Sessions and Weaver
4 RFD: Boards, Agencies and Commissions
5 First Read: 14-FEB-17

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8 SYNOPSIS: Under existing law, the State Board of
9 Licensure for Professional Engineers and Land
10 Surveyors is responsible for regulating the
11 practices of engineering and land surveying in the
12 state.

13 This bill would provide legislative intent.

14 This bill would clarify the rule making
15 authority of the board regarding state and federal
16 antitrust laws.

17 This bill would also establish that
18 anti-competitive rules which prioritize public
19 health, life, safety, property, and welfare are
20 permissible.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 To add Section 34-11-35.1 to the Code of Alabama
27 1975, relating to the powers and duties of the State Board of

1 Licensure for Professional Engineers and Land Surveyors; to
2 provide legislative intent; to clarify the rule making
3 authority of the board regarding state and federal antitrust
4 laws; and to establish that anti-competitive rules which
5 prioritize public health, life, safety, property, and welfare
6 are permissible.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 34-11-35.1 is added to the Code
9 of Alabama 1975, to read as follows:

10 §34-11-35.1.

11 (a) In addition to the powers provided to the board
12 by Section 34-11-35, the Legislature finds and declares all of
13 the following:

14 (1) The power to adopt rules regulating the practice
15 of engineering and land surveying in the state includes the
16 power to prohibit unlicensed persons from practicing
17 engineering or land surveying and the power to regulate how
18 licensed persons practice.

19 (2) The primary goal of the provision of engineering
20 and land surveying in the state is to prioritize public
21 health, life, safety, property, and welfare.

22 (3) The board is in the best position to determine
23 the engineering and land surveying practices that prioritize
24 public health, life, safety, property, and welfare.

25 (4) Prioritizing public health, life, safety,
26 property, and welfare may sometimes be at odds with the goals

1 of state and federal antitrust laws which include prioritizing
2 competition and efficiency.

3 (5) It is the intent of the Legislature, by passage
4 of the act adding this section, to immunize the board and the
5 members of the board from liability under state and federal
6 antitrust laws for the adoption of a rule that prioritizes
7 public health, life, safety, property, and welfare, and may be
8 anti-competitive.

9 (b) Subject to subsection (c), rules adopted by the
10 board pursuant to this section or Section 34-11-35, may define
11 and regulate the practice of engineering and land surveying in
12 a way that prioritizes public health, life, safety, property,
13 and welfare, even if the rule is anti-competitive.

14 (c) A rule adopted pursuant to this section or
15 Section 34-11-35 may supplement or clarify a statutory
16 definition, but may not conflict with any statute that defines
17 the practice of engineering or land surveying.

18 Section 2. Nothing in this act shall be construed to
19 constrict or expand the current rights and privileges of any
20 individual governed by the State Board of Licensure for
21 Professional Engineers and Land Surveyors beyond that which
22 existed before the ruling of the Supreme Court of the United
23 States in *N.C. State Board of Dental Examiners vs. FTC*, 135
24 S.Ct 1101 (2015).

25 Section 3. Nothing in this act shall be construed to
26 constrict or expand the current duties or responsibilities of
27 the members of the State Board of Licensure for Professional

1 Engineers and Land Surveyors in any context outside of federal
2 or state antitrust immunity beyond that which existed before
3 the ruling of the Supreme Court of the United States in N.C.
4 State Board of Dental Examiners vs. FTC, 135 S.Ct 1101 (2015).

5 Section 4. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.