

1 HB232
2 182222-1
3 By Representatives Sessions and Harper
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 that
13 rules of the board requiring that a qualification-based
14 selection process which is the same, or substantially similar,
15 to that already adopted by the state pursuant to subdivision
16 (3) of Section 41-16-72, shall be utilized even when the
17 underlying contract is of a private nature or not otherwise
18 prescribed by subdivision (3) of Section 41-16-72, properly
19 prioritizes public health, life, safety, property, and
20 welfare, even though the rules may be, or appear to be,
21 anti-competitive or have an anti-competitive effect.

22 (b) Subject to subsection (c), rules adopted by the
23 board pursuant to this section or Section 34-11-35, may define
24 and regulate the practice of engineering and land surveying in
25 a way that prioritizes public health, life, safety, property,
26 and welfare, even if the rule is anti-competitive or has an
27 anti-competitive effect. Without limiting the foregoing, the

1 board may adopt, maintain, and enforce a rule which has the
2 effect of requiring that a qualification-based selection
3 process the same, or substantially similar, to that described
4 in subdivision (3) of Section 41-16-72, be used regardless of
5 whether the underlying contract is one prescribed by
6 subdivision (3) of Section 41-16-72, and regardless of whether
7 the underlying contract is of a public or private nature.

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

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

19 Section 3. Nothing in this act shall be construed to
20 constrict or expand the current duties or responsibilities of
21 the members of the State Board of Licensure for Professional
22 Engineers and Land Surveyors in any context outside of federal
23 or state antitrust immunity beyond that which existed before
24 the ruling of the Supreme Court of the United States in N.C.
25 State Board of Dental Examiners vs. FTC, 135 S.Ct 1101 (2015).

1 Section 4. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.