



# Conflict of Interest

## 2023 PEPS Conference

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**THE STATE OF TEXAS**

***TEXAS ENGINEERING AND LAND SURVEYING  
PRACTICE ACTS AND RULES CONCERNING  
PRACTICE AND LICENSURE***



TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
1917 S. INTERSTATE 35  
AUSTIN, TX 78741-3702  
Email: [info@pels.texas.gov](mailto:info@pels.texas.gov)  
Website: <https://pels.texas.gov>





## 2 CFR § 1.33 Conflicts of interest.

- No engineer, attorney, appraiser, inspector or other person performing services for a State or a governmental instrumentality in connection with a project shall have, directly or indirectly, a financial or other personal interest, other than his employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with such project.

## 23 CFR §172.7(b)(4) Conflicts of interest.

- (i) A contracting agency shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of engineering and design related services contracts under this part and governing the conduct and roles of consultants in the performance of services under such contracts to prevent, identify, and mitigate conflicts of interest in accordance with 2 CFR 200.112, 23 CFR 1.33 and the provisions of this paragraph (b)(4).
- (iv) A contracting agency may provide additional prohibitions relative to real, apparent, or potential conflicts of interest.
- (v) To the extent permitted by State or local law or regulations, the standards of conduct required by this paragraph shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the contracting agency's officers, employees, or agents, or by consultants or their agents.
- (vi) A contracting agency shall promptly disclose in writing any potential conflict of interest to FHWA.



OFFICE of the SECRETARY of STATE

## Texas Administrative Code

### Titles

<a href="#">TITLE 1</a>	<a href="#">ADMINISTRATION</a>
<a href="#">TITLE 4</a>	<a href="#">AGRICULTURE</a>
<a href="#">TITLE 7</a>	<a href="#">BANKING AND SECURITIES</a>
<a href="#">TITLE 10</a>	<a href="#">COMMUNITY DEVELOPMENT</a>
<a href="#">TITLE 13</a>	<a href="#">CULTURAL RESOURCES</a>
<a href="#">TITLE 16</a>	<a href="#">ECONOMIC REGULATION</a>
<a href="#">TITLE 19</a>	<a href="#">EDUCATION</a>
<a href="#">TITLE 22</a>	<a href="#">EXAMINING BOARDS</a>
<a href="#">TITLE 25</a>	<a href="#">HEALTH SERVICES</a>
<a href="#">TITLE 26</a>	<a href="#">HEALTH AND HUMAN SERVICES</a>
<a href="#">TITLE 28</a>	<a href="#">INSURANCE</a>
<a href="#">TITLE 30</a>	<a href="#">ENVIRONMENTAL QUALITY</a>
<a href="#">TITLE 31</a>	<a href="#">NATURAL RESOURCES AND CONSERVATION</a>
<a href="#">TITLE 34</a>	<a href="#">PUBLIC FINANCE</a>
<a href="#">TITLE 37</a>	<a href="#">PUBLIC SAFETY AND CORRECTIONS</a>
<a href="#">TITLE 40</a>	<a href="#">SOCIAL SERVICES AND ASSISTANCE</a>
<a href="#">TITLE 43</a>	<a href="#">TRANSPORTATION</a>

[HOME](#) [TEXAS REGISTER](#) [TEXAS ADMINISTRATIVE CODE](#) [OPEN MEETINGS](#)



## Title 43 TAC §10.6 Conflict of Interest

a) For the purposes of this chapter, a conflict of interest is a circumstance arising out of existing or past activities, business interests, contractual relationships, or organizational structure of an entity, in which:

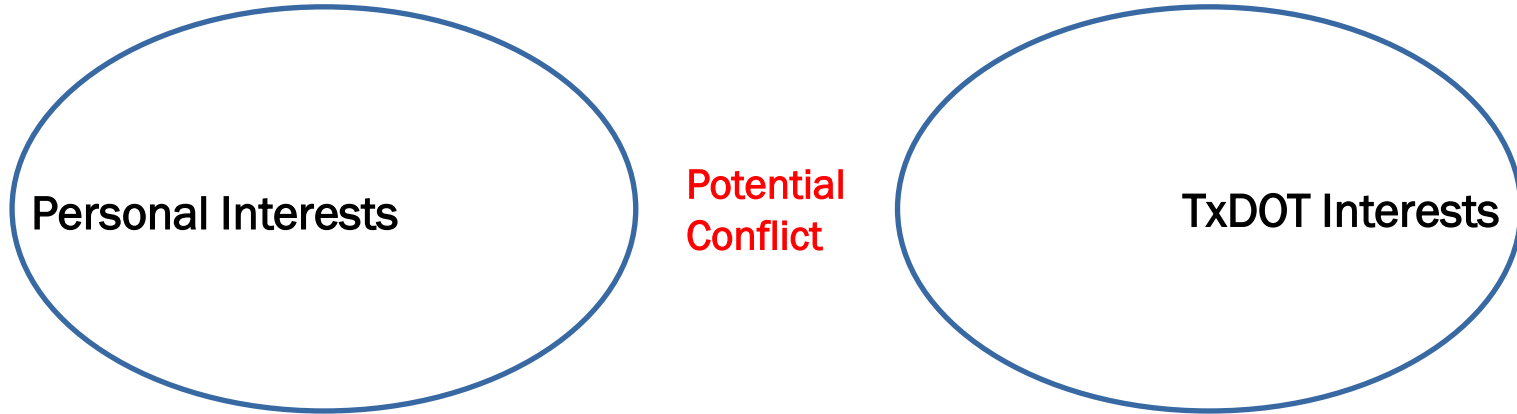
- (1) the entity is or may be unable to give impartial assistance or advice to the department;
- (2) the entity's objectivity in performing the scope of work sought by the department is or may be otherwise impaired;
- (3) the entity has an unfair competitive advantage;
- (4) the entity's performance of services on behalf of the department or participation in an agreement with the department provides or may provide an unfair competitive advantage to a third party; or
- (5) there is a reasonable perception or appearance of impropriety or unfair competitive advantage benefiting the entity or a third party as a result of the entity's participation in an agreement with the department.



## Title 43 TAC §10.101:

- Entities must disclose to TxDOT in writing the existence of a conflict of interest involving an agreement between the entity and the department and adequately remedy the conflict:
  - Before the effective date of the agreement; or
  - If the conflict of interest arises after the effective date of the agreement, within five working days after the date that the entity knows or should have known of the conflict;
  
- Entities must timely notify TxDOT and adequately address:
  - Any behavior that affects the entity's responsibility to TxDOT and that is also a violation of law or TxDOT's rules
  
- Entities must refrain from committing acts indicating a lack of moral or ethical integrity, including:
  - Offering, giving, or agreeing to give a benefit to a TxDOT employee
  - Submitting an offer below anticipated costs, with an expectation of increasing the contract amount after award
  - Disclosing or receiving bid or proposal information to give anyone a competitive advantage in the award of a TxDOT contract
  - Making false or misleading statements to obtain a benefit





# Conflict of Interest – Let's break it down



## Title 43 TAC §10.6:

A circumstance arising out of existing or past activities, business interests, contractual relationships, or organizational structure of an entity, in which:

1. The entity is or may be unable to give impartial assistance or advice to the department;
2. The entity's objectivity in performing the scope of work is or may be otherwise impaired;
3. The entity has an unfair competitive advantage;
4. The entity's performance provides or may provide an unfair competitive advantage to a third party; or
5. There is a reasonable perception or appearance of impropriety or unfair competitive advantage.

**Example:** A TxDOT consultant performed work for a utility provider in the same ROW corridor as the TxDOT project.

**Example:** Project manager for a TxDOT project was the spouse of the engineer who oversaw the design of a project.

**Example:** CEI for a TxDOT project was close friends with Area Engineer overseeing the project.



## Quality Assurance Conflict

- Engineering firm contracted to provide QA testing for TxDOT
- Engineering firm also contracted out to Prime contractors for QC testing
- Investigation found firm was performing QA and QC testing on same stockpile of material on two separate occasions
- Allegation of conflict was submitted through TxDOTWatch

## Engineering Services Conflict

- Engineering firm provided simultaneous subcontracted services on same contract
- Engineering firm was providing construction phase services and construction engineering inspections one same federally funded project
- Conflict was identified by Area Office



- A former TxDOT employee may not work on a “particular matter” (e.g. specific contract, claim, application, investigation or proceeding) in which the former employee participated while employed at TxDOT.
- A former TxDOT employee in this category may work for the for-profit entity but may not work on “particular matters” that involved them while they worked at TxDOT.

Example: A contractor hired a former TxDOT employee and assigned the employee to work on projects the employee participated on while at TxDOT.



A for-profit entity may not hire a former TxDOT employee who, while at TxDOT, participated in a procurement or contract negotiation for a contract awarded to the entity, unless more than two years have passed since the contract was signed.

Example: A contractor hired a former TxDOT employee, who was on the evaluation team for a contract awarded to that entity, within two years of contract signing.



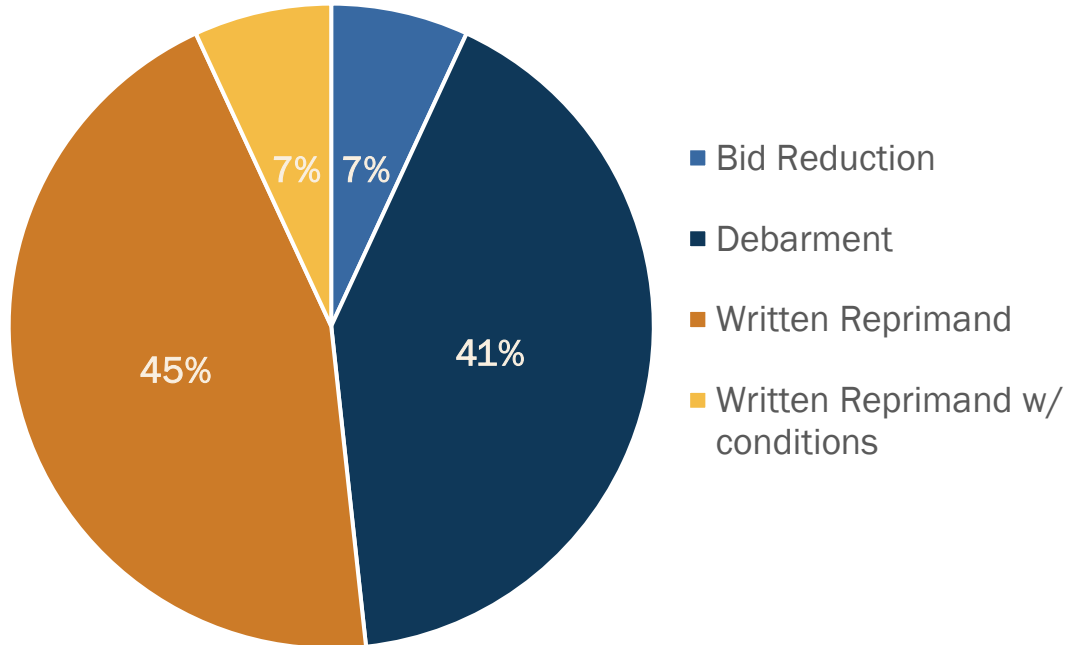
- May request a determination of whether hiring a former TxDOT employee would violate revolving door provisions by contacting TxDOT's General Counsel Division or Compliance Division.
- Contact Information
  - General Counsel Division: 512-463-8630
  - Compliance Division: 512-465-7509; [compliance@txdot.gov](mailto:compliance@txdot.gov)





## Sanctions levied during last three years

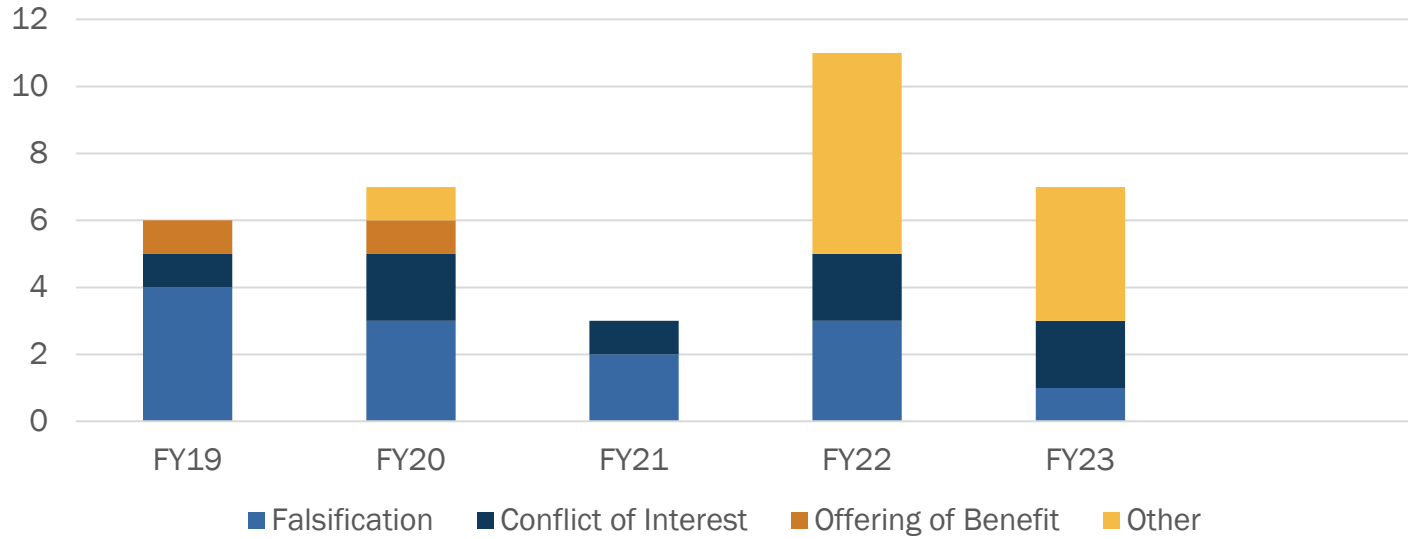
Total



- TxDOT's Sanction Committee is responsible for reviewing evidence of the violation, considering factors identified in Texas Administrative Code, and providing a recommendation for sanction to the Executive Director.
- Before imposing a sanction, the Executive Director will consider the following factors:
  - Seriousness and willfulness of the act of omission
  - has the entity committed similar acts or omissions
  - has the entity fully compensated TxDOT for any damages suffered
- Any mitigating factors:
  - Adoption of an internal ethics and compliance program
  - Cooperation with TxDOT's investigation
  - Disassociation from individuals and firms that have been involved in the ethical violation

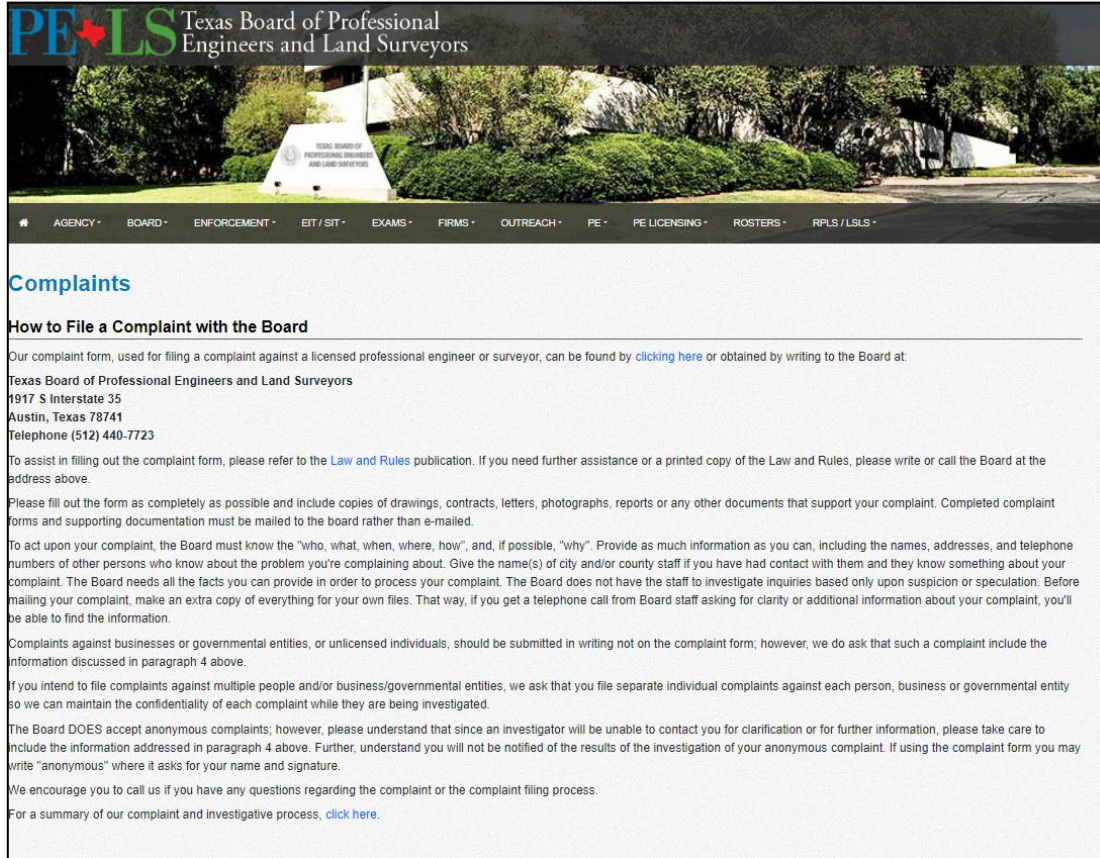


# Sanction for Ethical Violation



Sanctions are not related to performance and are in addition to other contract remedies TxDOT may impose

# Other Consequences



**PE & LS** Texas Board of Professional Engineers and Land Surveyors

AGENCY • BOARD • ENFORCEMENT • EIT / SIT • EXAMS • FIRMS • OUTREACH • PE • PE LICENSING • ROSTERS • RPLS / LSLS

## Complaints

### How to File a Complaint with the Board

Our complaint form, used for filing a complaint against a licensed professional engineer or surveyor, can be found by [clicking here](#) or obtained by writing to the Board at:

Texas Board of Professional Engineers and Land Surveyors  
1917 S Interstate 35  
Austin, Texas 78741  
Telephone (512) 440-7723

To assist in filling out the complaint form, please refer to the [Law and Rules](#) publication. If you need further assistance or a printed copy of the Law and Rules, please write or call the Board at the address above.

Please fill out the form as completely as possible and include copies of drawings, contracts, letters, photographs, reports or any other documents that support your complaint. Completed complaint forms and supporting documentation must be mailed to the board rather than e-mailed.

To act upon your complaint, the Board must know the "who, what, when, where, how", and, if possible, "why". Provide as much information as you can, including the names, addresses, and telephone numbers of other persons who know about the problem you're complaining about. Give the name(s) of city and/or county staff if you have had contact with them and they know something about your complaint. The Board needs all the facts you can provide in order to process your complaint. The Board does not have the staff to investigate inquiries based only upon suspicion or speculation. Before mailing your complaint, make an extra copy of everything for your own files. That way, if you get a telephone call from Board staff asking for clarity or additional information about your complaint, you'll be able to find the information.

Complaints against businesses or governmental entities, or unlicensed individuals, should be submitted in writing not on the complaint form; however, we do ask that such a complaint include the information discussed in paragraph 4 above.

If you intend to file complaints against multiple people and/or business/governmental entities, we ask that you file separate individual complaints against each person, business or governmental entity so we can maintain the confidentiality of each complaint while they are being investigated.

The Board DOES accept anonymous complaints; however, please understand that since an investigator will be unable to contact you for clarification or for further information, please take care to include the information addressed in paragraph 4 above. Further, understand you will not be notified of the results of the investigation of your anonymous complaint. If using the complaint form you may write "anonymous" where it asks for your name and signature.

We encourage you to call us if you have any questions regarding the complaint or the complaint filing process.

For a summary of our complaint and investigative process, [click here](#).


- Texas Board of PE&LS has the licensure authority to investigate and make determinations regarding violations of their own code of conduct.
- Board has multiple disciplinary actions available.
  - Suspension of License
  - Administrative Penalty (\$\$)
  - Letter of Reprimand
  - Restitution
  - Required training
- Most recent action of Conflict of Interest
  - One Year Probated Suspension contingent upon successful completion of the TTU Engineering Ethics Basic Course and remittance of an Administrative Penalty of \$2,000.



# Anthony Thomas

Compliance Division

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