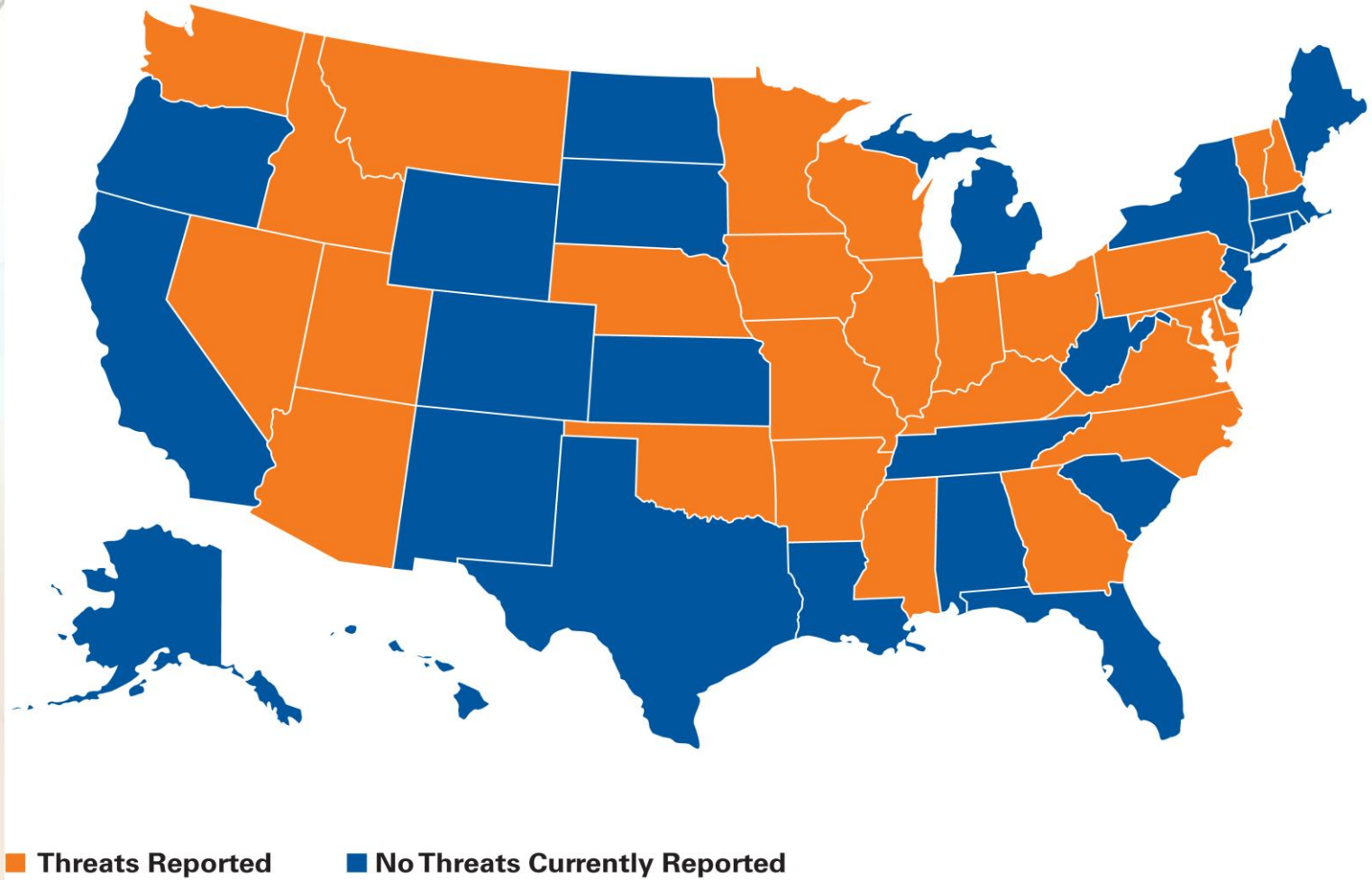


Licensure Under Attack



Today's Panelists



Mark Golden, CAE, FASAE
National Society of Professional Engineers
Executive Director



Jerry Carter
National Council of Examiners for Engineering and Surveying
Chief Executive Officer



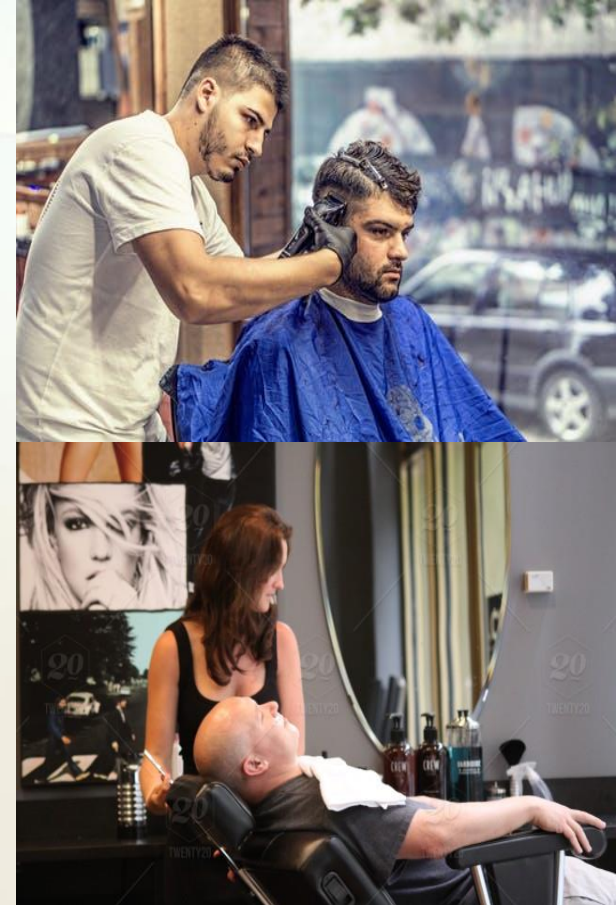
Melissa Cornelius
Arizona Board of Technical Registration
Executive Director

What We'll Address Today

- Concerted national effort to undermine licensure on a state-by-state basis
- The types of threats and how they can impact the PE
- The growing threat in 2016 and 2017
- What to expect in 2018
- Q&A Session

The Origins of the Attacks on Occupational Licensure

- The debate over the role of government in regulating occupations and professions has recently come to the forefront. According to the Bureau of Labor Statistics, occupational licensing directly affects nearly 30% of U.S. workers. Barbers, cosmetologists, florists, interior designers, naturopaths, manicurists ... and the list goes on.
- While the work of professional engineers—like that of doctors, registered architects, and attorneys—clearly affects the public health, safety, and welfare, it is common for state legislatures to categorize highly educated and trained PEs with barbers and cosmetologists in the debate over eliminating occupational licenses.



The Origins of Attacks on Licensure

- Powerful organizations, such as the American Legislative Exchange Council (ALEC) and the Institute for Justice (IJ), as well as others, have been introducing model legislation to undermine and eliminate licensure in the states for several years.
- Model legislation does not properly protect the licensure system for learned professions, such as engineering, which requires a regulatory system to ensure that public safety is paramount.



The Origins of Attacks on Licensure

- The common narrative is that all licensure requirements are barriers to entry and should be removed.
- A more informed examination shows that those professions that are necessary to protect the public health, safety, and welfare need licensing requirements to ensure that only technically and professionally qualified individuals are practicing in their fields.
- PEs conceptualize, plan, design and construct bridges, tunnels, buildings, waste-water treatment facilities, plants, factories, processing centers, and many other public and private development projects.
- The narrative around licensure needs to change and recognize the vital role played by our regulatory system in protecting the public health, safety, and welfare.



Threat to the PE License: Indiana 2015

- Although the model legislation often introduced in state legislatures does not specifically target professional engineers, the broad legislation itself can, in fact, result in the elimination of the PE license. This was first made clear in the state of Indiana in 2015.
- Model legislation enacted in 2014 created the Indiana Job Creation Commission. The JCC was charged with examining all professional licensing boards and proposing future actions for each board in a report to then governor Pence. In its draft report, the JCC proposed the elimination of the PE license in Indiana.
- As the result of extensive advocacy efforts by the Indiana Society of Professional Engineers and NSPE, the Indiana Job Creation Commission rescinded its troubling recommendation. However, the proposal to eliminate the PE license for an entire state shows how easily this can happen in any state. PEs need to be vigilant and proactive, and educate policymakers about the necessity of engineering licensure.



The Threat Grows: 2016 and 2017

- Indiana was just the start. 2016 and 2017 were a watershed period for these attacks on licensure. Legislation and/or regulations have now been introduced in 26 states, and that number will absolutely grow in the 2018 session.
- NSPE has been vigorously tracking and opposing, in partnership with our state societies, any effort to undermine or potentially eliminate the PE license. NSPE has created an interactive map for everyone to use that shows the latest threats.
- It is important to note, though, that there is not just a single bill that needs to be monitored and defeated. Rather, NSPE has identified several different types of bills and regulations that are most commonly being used to bring this issue to your state.

Types of Threats to the PE: Legislative

- “Right to Engage in a Lawful Occupation Act”
- Eliminates specific occupational licenses (NOT professional engineering)
- Eliminates the PE licensing board
- Requires the review and analysis of licensure requirements, resulting in recommendations to remove any unnecessary or overly burdensome requirements
- Increases state oversight of occupational regulatory boards

Types of Threats to the PE: Regulatory

- Executive orders requiring review and analysis of licensure requirements, resulting in recommendations to remove any unnecessary or overly burdensome licensing requirements.
- **Key Takeaway: There are an unprecedented number of threats that can directly or indirectly impact the future of engineering licensure.**



Federal Threats to Licensure

The New HOPE Act: S. 945/H.R. 2155

- The legislation amends the Carl D. Perkins Career and Technical Education Act of 2006 to require state leadership activities funded by the Act to include consulting and coordinating with other state agencies for the identification, consolidation, or elimination of licenses or certifications that pose an unnecessary barrier to entry for aspiring workers and provide limited consumer protection.



Federal Threats to Licensure

The Restoring Board Immunity Act: S. 1649/H.R. 3446

- The legislation purports to: “help States combat abuse of occupational licensing laws by economic incumbents, to promote competition, to encourage innovation, to protect consumers, and to facilitate the restoration of antitrust immunity to State occupational boards, and for other purposes.”
- A careful assessment of the legislation, however, demonstrates that it would upend the licensure process and create enormous additional bureaucracy, ironically, in an effort to mandate state-level regulation.



State in the Spotlight: Arizona

**Melissa Cornelius, Executive Director
Arizona Board of Technical Registration**



NATIONAL SOCIETY OF
PROFESSIONAL ENGINEERS

February 8, 2015

Executive Order 2016-03: Internal Review of Administrative Rules; Moratorium to Promote Job Creation and Customer-Service-Oriented Agencies

- Whereas, burdensome regulations inhibit job growth and economic development;
- Whereas, small businesses and startups are especially hurt by regulations;
- A State agency shall not conduct any rulemaking except as permitted by this Order.
- A State agency shall not conduct any rulemaking, without the prior written approval of the Office of the Governor.



2016 Legislative Session

- **HB 2613: Regulatory Boards, Licensing, Revisions (introduced on last day, 2-8-16)**
- 91-page bill sponsored by seven representatives and four senators proposed deregulation of citrus fruit pickers, athletic trainers, geologists, landscape architects, assayers, cremationists, and yoga instructors.
- Ancillary bill to consolidate health regulatory boards.



May 18, 2016 Letter from the Governor to the President of the AZ Senate

“It will likely rattle some of the incumbent special interests at the Capitol, but we must pass Legislation next session that aggressively addresses needed reforms of our boards and commissions, including increasing transparency, providing appropriate accountability, and protecting the state from liability. In the meantime, I have directed my staff to explore all other options at my disposal to shine a light on this dark corner of state government.”



Executive Order 2016-05

June 29, 2016

State Government Units; Professional Lobbyist Contract; Prohibition

- Whereas, the expenditure of public dollars, by state governmental units, on professional lobbyists to lobby the Arizona State Legislature, at the expense of taxpayers, professional license fee-payers, and rate-payers is unnecessary and unjustified;
- Whereas, professional lobbyists representing state governmental units often spend public dollars in efforts to expand the regulatory authority of government and impose additional transaction costs for those in the regulated community;
- The Director (of the Department of Administration) shall terminate all existing contracts between a state governmental unit and professional lobbyists.
- No state governmental unit shall contract for professional lobbyists in regard to legislation pending before the Arizona State Legislature.

Governor's State of the State Address January 9, 2017

“Arizonans will move forward by rolling up our sleeves and rolling back more regulations that are standing in the way of job growth. To do that, we need to hear directly from the people making the decisions-our job creators. So I’m calling on owners and operators of Arizona businesses — large and small — please, go to our new website — Redtape.az.gov — and help us find these job-killing regulations hidden all throughout government.”



State of the State Quotes Cont.

- **“One great success we’ve had is chipping away at onerous licensing requirements**-often designed to keep out competition or stifle new, exciting ideas. Because of our reforms, new yoga instructors everywhere are cheering, ‘Namaste.’”
- **“There’s much more work left to do in this area.** But who would’ve thought, of all the issues we tackled last year-consolidating boards and commissions, and reducing licensing requirements, would be the most contentious?”
- **“Turns out Washington, D.C. isn’t the only swamp that needs draining.** The special interests and lobbyists descended twisting arms, turning up the heat, clouding the facts. In a perverse irony, some were even funded with taxpayer dollars. So we fired those lobbyists.”
- **“Let’s help those most affected by these (licensing) barriers:** Arizonans who are struggling to get by and looking to start a new career. Maybe they’ve gone to night school, to learn a new trade or skill. Perhaps they want to be a barber, or general contractor, or X-Ray technician. Why stand in their way? With another tax, another fee-sometimes hundreds of dollars-before they can start earning a living. So for citizens who are living in poverty, I propose the state waive their licensing fee so they can build a better life.”



RedTape.AZ.GOV

January 9, 2017

- “Regulation Rollback — a new program aimed at freeing Arizona’s businesses from the burden of harmful and outdated regulations standing in the way of economic growth and job creation.”
- “empowering Arizonans to make recommendations about how to update our state’s regulatory system”
- “Governor Ducey’s goal is to eliminate a total of 500 of these regulations by the end of 2017.”



Executive Order 2017-02

January 11, 2017

- Whereas, burdensome regulations inhibit job growth and economic development;
- Whereas, all government agencies of the State of Arizona should promote customer-service-oriented principles-and undertake a critical and comprehensive review of administrative rules and take action to reduce the regulatory burden, administrative delay, and legal uncertainty associated with government regulation;
- A State agency shall not conduct any rulemaking without the prior written approval of the Office of the Governor.
- All directors of state agencies shall engage their respective regulated or stakeholder communities to solicit comment on which rules the regulated community believes to be overly burdensome and not necessary to protect consumers, public health, or public safety. Each agency shall submit a report regarding the aforementioned information to the Governor's Office no later than September 1, 2017.



2017 Legislative Session

SB 1437: The Right to Earn a Living Act

- Rules, regulations, practice or policy or decision preventing any person from using an occupational title or working in a lawful profession, occupation or trade.

HB 2372: Waiving Licensing Fees

- An agency shall waive any fee charged for an initial license for any individual applicant whose family income does not exceed two hundred percent of the federal poverty guidelines if the individual is apply for that specific license in this state for the first time.



April 5, 2017, Letter from the Governor to the Secretary of State

- *“Evidenced by the numerous stories covered by the media over the past several years, occupational licensing boards are in desperate need of root-and-branch reform.”*
- *“All too often, occupational licensing boards create fiefdoms demanding individuals face burdensome training requirements, excessive fees and fines, and arbitrary investigations.”*



Executive Order 2017-03

March 29, 2017

- Aimed at reducing Arizona's regulatory system by seeking information from state boards about overly burdensome licensing requirements.
- Requiring agencies to conduct an internal review of training requirements, continuing education, fees, and processes for each type of license issued and compare them to the same in other states.
- *"If twenty-four or fewer states require a license for this profession, the report shall include the Board's justification for why that profession should be licensed with specific reference to potential harm to individuals in the State of Arizona."*
- *"The report shall also include whether applicants with a criminal history are barred from being licensed, for how long they are barred, and why the Board believes the bar is necessary."*



NC Board of Dental Examiners v. Federal Trade Commission

- The North Carolina Board of Dental Examiners issued cease-and-desist orders to nondentists offering teeth-whitening services and teeth-whitening product manufacturers.
- The board warned that the practice of dentistry without a license constituted a crime.
- In 2010, the FTC filed a complaint alleging that the board's actions were anticompetitive and unlawful.



U.S Supreme Court: 2015 Decision

- The U.S. Supreme Court ruled 6–3 that a state licensing board composed primarily of active market participants has state action immunity from antitrust law only when it is actively supervised by the state.
- Immunity exists only if
 - The challenged restraint on competition is clearly articulated and affirmatively expressed as state policy;
 - The policy is actively supervised by the state.



Implications of the Supreme Court Decision

- Regulatory reforms initiated by various governors/legislatures
- Deregulation of various professions
- Review by attorney general of sanctions issued by state board
- Realignment of state boards into one agency

What Lies Ahead

- Anticipate increased attacks on licensure, both as legislative and regulatory initiatives.
- Expect new states to introduce these initiatives.
- PEs must be vigilant and consistently oppose any threats that could undermine or eliminate the PE license.



Q&A Session

- Learn more at: www.nspe.org/ThreatsToPE
- Panelists will answer questions submitted during the webinar



Additional Resources

- Reports on State PE Laws and Rules:
 - Continuing Education Requirements for Professional Engineers
 - Defining the Practice of Engineering
 - Education and Experience Requirements for Professional Engineers
 - Exemptions to Engineering Licensure Laws
 - State Licensing Fees for Professional Engineers
- To access these reports, visit
<https://www.nspe.org/reports-state-pe-laws-and-rules>



Thank You



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