

NEVADA STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
Minutes of the Legislative Committee Meeting
Held virtually (zoom), Monday, April 16, 2020

Committee Chairman Angelo Spata, PE, called the meeting to order at 1:32pm. Committee members joined via video conferencing Karen Purcell, PE, Brent Wright, SE; Michael Kidd, PLS; Matthew Gingerich, PLS; Tracy Larkin-Thomason, PE; Patty Mamola, PE, Executive Director. Also connected were Christopher MacKenzie, Board Counsel; Murray Blaney, Operations/Compliance; and Louisa Kern, Administrative Assistant.

1. Meeting conducted by Committee Chair Angelo Spata, call to order and roll call to determine presence of quorum

Committee members, participating board members, and staff introduced themselves.

2. Public Comment Period

There was no public comment.

3. Approval of February 18, 2020, Legislative Committee meeting minutes

LGC 20-5 Mr Kidd made a motion to approve the February 18, 2020 Legislative Committee meeting minutes with the noted edit. Motion was seconded by Ms Purcell.
Motion passed unanimously.

4. Discuss potential changes to Nevada Administrative Code chapter 625 related to mandated ten-year review, refer to attached addendum A

Mr Spata reviewed the status of regulations as part of the 10-year review update. He noted many had no recommended changes and that a number of the proposed amendments had already been before the board and received approval to move forward in the review process. Mr Spata said the remainder fell into three categories: consideration of additional proposed revisions by the committee; under review by board counsel (and to be presented to the committee for consideration of possible proposed amendments); and under review/discussion by the committee. He said he would like to move through the list to discuss and hear updates on status.

Mr Spata asked for an update from Mr MacKenzie on the items he was reviewing.

Mr MacKenzie said a draft of proposed revisions to **NAC 625.646, NAC 625.6465, NAC 625.647, NAC**

625.6475, and **NAC 625.648** relating to advisory committees had been sent to staff for review and discussion.

Ms Mamola said she and staff had not yet had time to review and discuss with Mr MacKenzie. She said a meeting would be set and an update given at the next committee meeting (ACTION Item)

Mr MacKenzie said he is still working on proposed revisions to **NAC 625.550** and the regulations related to disciplinary action – **NAC 625.640**, **NAC 625.642**, **NAC 625.645**, and **NAC 626.64x** – but hoped to have them available for review at the next meeting. (ACTION Item)

Ms Mamola said the proposed amendments to **NAC 625.210** and **NAC 625.240** had been approved by the board at its last meeting pending approval of the Administrative Procedures Oversight Committee (APOC) to reduce application fees. She added that the fee reductions were considered and approved by APOC at its meeting this morning.

Ms Mamola said the proposed amendments to **NAC 625.425** had been brought back to the committee for consideration following recommendations made by the board. Ms Mamola reviewed the regulation edits and asked if the committee had any comments regarding the amendments. Mr MacKenzie proposed an edit to section 3(e). Ms Mamola agreed and said the change would be made before the item would be sent back to the board for consideration. (ACTION Item)

Mr Spata said let's move to 625.610 which is Stamps & Seals to documents and it'll take me a moment to scroll down to that. If anybody has any comments or questions or maybe Patty could tell us which changes are there?

Ms Mamola said next item, **NAC 625.610**, relates to stamps, seals and signatures on documents, and the revision of original plans. She said that proposed amendments had been sent out to the digital signature taskforce members for comment and the feedback received is included in the latest revision. She said additional comments were received relating to section 13 as shown in the committee materials – revisions to original plans – and based on those staff has proposed the amended text. Ms Mamola asked for any comments from the committee.

Mr Spata asked for clarification, if a licensee proposing to revise plans had to meet one of the (a), (b), (c), or (d) requirements of the section or all. Mr MacKenzie responded that all would need to be met.

Mr Kidd – *Once a set of plans are approved and that approval process is complete, and you have an engineer coming in to revise something on those plans. Why does there need to be a connection to the original company or engineer? If it's clear that the engineer is revising something and is taking responsibility for that revision?*

Mr Spata – *That was going to be like my question because right now it seems like we have to get that consent no matter what and I know that's what started this discussion was that that's not always practical.*

Ms Mamola – *There is some confusion between approved plans that have been built, as-built plans, plans that have been submitted for a permit, and plans that have been approved and haven't been built. For plans that haven't been built, and you're going to make a change, you need to go back to the engineer of record, unless you can't for some reason.*

Mr Kidd – *I agree with what you're saying, that the window of construction is relatively short compared to the life of those plans. So I think there could be some clarification here to give some freedom, you know after it's built, it's done and there's a revision that needs to be made for some reason there should be an easy path to make that revision with a clear acceptance of responsibility by the revising engineer.*

Ms Mamola – *I hear what you're saying, but I think that's what this says here in section 13.*

Mr Spata – *Where I've seen issues in the past, when you want to make a change to a professional engineer's design, you sign and seal that change for a particular item and they are with a different firm - what I'm seeing here is you're not allowed to do that without going to the original firm.*

Mr Kidd – *I don't think there's any reason to have to reach back to that original engineering firm after construction is complete and something's coming up to be revised.*

Mr Spata – *I'm saying even when it's in the field being constructed at some level.*

Ms Mamola – *I think field changes are different. You shouldn't need the original engineer's permission because when you're making those field changes, it'll become part of the as-built records. And we have had issues with that. I don't think you can fix this to address that nuance. And the reason I say it's a nuance, it's because there definitely are some field changes that absolutely need to go back to the engineer of record for approval, but there are others (field changes) that should absolutely be able to be done by the engineer in the field.*

Mr Spata – *Absolutely, but right now the way I read this, they don't have that option.*

Mr Wright – *As I understand it, the whole reason for this is so that somebody doesn't change a design, professionals design, without their approval and knowledge. I would not want somebody changing my design that doesn't have any understanding or background of what the design is, because they can put their stamp on it all they want, I'm still going to be liable and it may endanger the public, so I don't think that somebody should, under any circumstances, be allowed to change a design, a professionals design, without their approval or knowledge.*

Mr Spata – *I don't 100% agree with that, I agree with that in some fashion but not completely.*

Ms Mamola said the item would be forwarded for discussion by the full board. (ACTION Item)

Ms Mamola said items **NAC 625.611** and **NAC 625.613** had minor revisions after being presented to the board, so if the committee is in agreement with the edits the item will be sent back to the board. (ACTION Item)

Mr Spata said the next series of regulations **NAC 625.510**, **NAC 625.520**, **NAC 625.530**, and **NAC 625.540**, relate to code of conduct, and at the board's direction, they were sent back to the committee to discuss the proposed options.

Ms Mamola said based on board discussion, the options to be discussed are the possible repeal and replacement with NCEES model rules or a hybrid where some model rules could be added to our current regulations where clarity may be lacking.

Mr Spata asked for comments. A discussion ensued and the general consensus was to have staff review NCEES text against the current regulations and propose amendments incorporating model rules for review.

Mr Spata asked for a committee member to work with staff on the proposed amendments. Ms Purcell volunteered. Ms Mamola said staff would draft amendments and schedule a meeting to review with Ms Purcell and Mr MacKenzie, and then present the revision to the committee at the next meeting. **(ACTION Item)**

Mr Spata said next item for discussion is the proposed amendments to the regulations related to continuing education – **NAC 625.430, NAC 625.470, NAC 625.480, and NAC 625.490**

Mr Spata – *At our last board meeting we went through this item and gained input from all the board members. We reserved that discussion for the board meeting because we knew that everybody was going to have an input on that. I know we've gotten public feedback on that as well as a survey. So, I guess I wanted to see what the next actions are, maybe it's part of this meeting to try to sort through what we want to present back to the board based on the feedback from the board meeting. I noticed the version, at least the version that came out with this agenda was not edited considering any of that input. I don't know if that's true or Brent if you want to take over this agenda item and facilitate it.*

Mr Wright – *It's my understanding, based on our last meeting, that this [explanation of survey] was going to be reviewed by the committee before it was sent out. Obviously, it wasn't, I just had some concerns that what was sent out didn't accurately reflect what I thought we [the board] had discussed. And also, one of the key graphs that showed percentage of respondents that either felt there was no danger or maybe improvement was kind of buried in the back of the report, so I think Patty you made that change after it had already been sent out. So that was my comment on that. The only other thing is that it didn't, seem to me that there was an adequate explanation of what I thought we [the board] discussed, we are simply questioning whether or not it should be mandated by the board and if it should be, how much. I don't think it was very clear, that is just my opinion.*

Mr Spata – *There were kind of two actions, I guess, one was to send out that clarification, but I don't think there was any request for further information from the public. As I understood it, the next steps were for this committee to rewrite and vote on something to put forward to the board that they can all agree on, and then take back to the public. I understood those two actions. I think today we should be going through and understanding what everybody's comments and feedback were to develop an action to rewrite this or leave it as it is based on the feedback, we got both from the board and the public. Maybe we can go around the committee and see what everybody thinks as far as this document because there was a bit of a range of opinion within the board at the last board meeting.*

Mr Wright – *I don't know if anything needs to be changed on that document, as I understand there still needs to be some workshops and there'll be plenty of other opportunities for the board to make sure that whatever message that needs to be conveyed is conveyed and that any misunderstandings are cleared up. So, I don't know that it needs to be changed. I don't know if it would do any good.*

Mr Spata – *But the board has to approve it, and I didn't hear anything in that board meeting that would indicate that we had a positive vote on proposed changes, again maybe I misread that.*

Ms Mamola - *We included the excerpt from the board meeting minutes, the draft, for you to refresh your memories on the board's discussion, and you are right. There was no vote. So, we have no board consensus on if they want to move forward with this language or some other language, and that's the next step. So, this committee needs to decide are we good with this language in the way it's written now and ifso, we'll take it to the board May 14th, and we will have to take a vote at that time. And if it fails, the board will have to decide, do we leave it alone or do we send it back to this committee for further work with some direction from the board.*

Mr Spata - *I don't know that I'm in disagreement with any of the edits we made, I would support it. But I guess I didn't hear as we went around the horn with everybody that all board members would support it, which is why I thought it came back to us today and why we didn't vote on it in that meeting. And maybe other board members that are on the call have different opinions on what we have here. I guess if this group feels that this is the one that goes forward, we could decide that right now - with any edits. Let's go around the committee for input.*

Mr Kidd - *I'm good with it going to the board, I think we all kind of have an idea how we feel and I'm good with it going to the board for a vote or have a discussion and going to vote.*

Ms Purcell - *I'm not sure, I haven't convinced myself yet that what we're proposing is doing what's best for public protection. Because it is such a drastic change. I think that's probably why I'm hesitating a little bit. Again, I'm on the fence either way. I'm not completely sold one way or another, so if I had to vote today, I'm not really sure how I would vote.*

Mr Gingerich – *I am in support of the current requirements for PDHs. That doesn't mean that I won't be opposed to a modification of them, more clarity on what those look like, perhaps even a few less, but three is just way too low for me.*

Mr Spata asked Mr Gingerich if he had any proposed changes to the language.

Mr Gingerich – *I definitely agree there needs to be focus on ethics, that needs to be a component and should be specified as to what and how many. In terms of a number of units, I'm hesitant to put a number out there, but it's certainly more than three. I would say quite a few more than three.*

Ms Purcell – *Related to content, the 1-hour that's related to the laws and rules adopted under NRS and NAC 625, how do we foresee our licensees getting that one hour.*

Mr Wright – *My thought would be, it would be tied to the 25 question laws and rules test that they're taking when they first get licensed in Nevada. So, the idea would be that as we go throughout the year*

and you see that maybe there needs to be more emphasis on some law or rule or regulation that we would tailor, we would modify the test and tailor it to those things. We've seen recently that a lot of licensees aren't aware of the requirement for signing contracts, for example, and maybe for contracts that have schedules in them. There are different things like that, so it would be a reasonably small job to just modify that as needed and administer it.

Ms Larkin-Thomason – I thoroughly agree with putting some emphasis on ethics and the laws, because I think that's something that, well ethics should just be part of you anyway, but the laws are something that change. People do become complacent to them. I am good with reducing it, but three just seems very drastic and I'm finding it hard to justify that to the public. Maybe eight, seven, ten, because it is a big jump going from 15 to 3 a year. I do agree with having the emphasis on ethics and the laws.

Mr Spata – The value and benefit of us mandating that, which is the question, right? If we are mandating something less, maybe it's something more defined. I'm fine with the three and I'm not against where it is at 15. What I am against is keeping it loose to where it is more meaningless as it might currently be perceived today.

Mr Wright – It seems like the feeling is that there needs to be a certain minimum number of PDHs beyond those required for ethics and Nevada laws and rules. It seems to me like it's still tied to the belief that somehow there needs to be state-mandated continuing education sufficient to be competent, professionals won't do it on their own. Because I don't know what other reason there could be other than the fear that maybe we're going to look bad to other states or somebody, that there is no evidence, no reports that show that continuing education mandated by the government moves the needle one way or the other. There's also no evidence that shows that the lack of mandated continuing education moves the needle one way or the other. I'm just having a hard time seeing what the hesitation is if it's just other than, it feels weird because it's always been this way, when it could arguably be an unnecessary regulation. It's just my opinion.

Mr MacKenzie – I don't disagree with anything that Mr Wright said, but you're going to have to take this to the legislative commission and you have a bunch of legislators who are going to have to approve this and they're going to have to be given definitive proof as to, you can't say, I personally think you are going to have a hard time saying there's no proof that this helps, you are going to have to show proof that this doesn't help. Because they're out there, you know, they're envisioning themselves as protecting the consumer and suddenly, the engineers and land surveyors don't want to do what they most likely perceive as something that makes you more legitimate as professionals. I'm not saying that's the case, but are you going to be able to sway people that aren't in the practice to understand why you're going to go from 30 to 3 and how that is good for the public. So just keep that in mind. I think it could be an ugly public meeting and politically, I want you to please keep that in mind.

Mr Wright – I would just say that would likely be the case. Although I think it's a terrible reason to do it, it is a real reason. I mention that when I made comments before, that the last thing I want to do is to have those that are not engineers, and not in the business, to somehow see this is diminishing the level of the profession. So that's a valid point that he brings up and if that's the case that would have a lot of weight in my opinion to not make any change, not because I think it's a good reason, but because it is a real reason.

Mr Kidd – *I understand Mr Wright's opinion, I understand where he's coming from, but I don't agree. I think a better recommendation coming from the committee would be along the lines of reducing the required PDHs but making them more focused. I don't know, where that number ends up, whether it's 10 a year, 12 per year, 8 per year. Whatever that is, I think that's what gets flushed out by the committee and going to the board for a discussion. I think that sets the stage for a much better discussion with the board. If coming from the Legislative Committee, the recommendation is reducing but making what's required more focused.*

Mr Wright – *Is that going to be a lot more palatable to legislators if instead of going to three, we went to, I don't know what the number is, but they're highly focused. Is that something you think could be a possibility?*

Mr MacKenzie – *I think if you're justifying that we're making this a better and more efficient process, that we're making it better for engineers and land surveyors. That's at least the pitch that can be made and then and it may be easier to sell, for what it's worth.*

Mr Wright – *I would agree, and I would support that, I think it's an improvement over what we have. It's not as good as it could be, but I would support something like that.*

Ms Mamola – *If we were to go to 12 a year, or whatever that number is, and include 3 on ethics and one on state laws, law and any other refinements that you all think might be appropriate, that could be a direction to go in.*

Ms Spata asked for the opinion of the committee members about the number of PDHs required and the areas of focus.

Ms Purcell – *Whether that 12 per year is the right number or 24 every renewal cycle is the right number, but I do like the idea of the more focused and I do like the requirement of having at least two in ethics and one related to the laws for sure.*

Mr Gingerich – *I agree with Ms Purcell.*

Ms Larkin-Thomason – *I also agree. I would be comfortable going down a few more but like I said we can talk numbers, but I agree with where it's headed.*

Mr Spata – *Based on the current categories we'll have to probably do a re-write and make it more focused - if it's pre-approved or discipline specific. I would go with the 15 with more focus because if you look at all the categories and how much can be done, where it's just attending meetings and things, I think 15 with added focus with three of those being what's already listed would be reasonable. I would support that. So, would the next step be to maybe redraft this, then maybe just get together just prior to the next board meeting so we can agree before we put in front of the board.*

Mr Spata asked Mr Wright to oversee the re-write.

Mr Wright – *I do have a couple thoughts; I just don't want to see us doing something stupid. I am a novice when it comes to the political workings and that's a major consideration here. And I wonder even though it's not my first choice, if the easiest least controversial, least painful, most highly likely way, successful*

thing to do would be to maybe not worry right now about reducing the number of PDHs, there were a few that were adamantly opposed to any PDHs, most people didn't really care about that, most people would likely think it's not tragic if we keep 30 PDHs, maybe we ought to, in the interest of improving public safety, making a couple of changes that we know will or we feel strongly will help, and that is just what was said, requiring ethics and laws and rules and then leave everything else the same. I think it'd be a mistake to do what Florida does where you pre-approve vendors, that is going to be an administrative nightmare. That way at least we are at least moving the needle in a positive direction, there's a huge difference of opinion on whether or not mandating PDHs is good or bad, that we leave that alone, but address something that I think would make a difference. Wouldn't be my first choice, but that would be easy to do, relatively non-controversial and probably be almost a slam dunk, that would be my suggestion.

Mr Spata – *And certainly not making it any looser than it is today.*

Ms Larkin-Thomason – *I would agree that would definitely be a selling point. But I think that you could reduce it a little bit I would not see the legislature opposing the focus on ethics. I agree with that. I think that'd be pretty much a slam dunk. I think you could get some reduction with the added focus. Whether you go down to 12, 10. Whatever that magic number is, you could do that. I would say try, my recommendation would be if the board agrees on it, is go for some reduction with added focus.*

Mr Spata asked if there any other comments from committee

Mr Kidd – *No, I think I am good with where it's heading.*

Mr Gingerich – *I'm fine as well. Thank you.*

Ms Purcell – *I'm good with where it's going as well. I think that I'm not opposed to 15 and I'm not opposed to a number in between there or leaving it. I'm good with the direction that it's going.*

Ms Mamola suggested that Mr Wright, Mr MacKenzie and staff review and propose edits and present back to the Legislative Committee for consideration before the next board meeting. (ACTION Item). Mr Spata agreed.

Mr Wright – *Just so I am clear, we talked about no reduction, we talked about reducing to three and we've talked about keeping it at 15 and we talked about Florida has it at 24. Just wondering, in light of, especially what Chris has said about getting thru the legislature. What should be our target? I mean if we go less, say 24, there's no precedent. Right? We are lone ranger's out there all by ourselves except for Arizona, Wyoming, and California. So, is it good? Is it worth it? Sounds like it, sounds like at some point if we're going to try to push it, we might as well just push it all the way and it doesn't seem like that makes sense. So is there a wise number we should go to and is 15 wise or is it a long shot just as 3 is, is 24 also a long shot? I don't know. I'm just wondering.*

Mr Spata – *I was looking at it to put some definition around what's more focused, and as far as the number, I guess what I'm hearing here loosely, I'm not putting words in anybody's mouth, but we got support from leaving the number alone and then depending on how how focused it would be, most of us, it sounds like are willing to go down to maybe as much as half of where we're at today, which is 15, but it*

seemed like everybody starts squirming in their chair if we are talking anything more than that. And so what I was suggesting, I guess, and you know we can certainly figure it out right now was going someplace in between those two numbers for the purposes of discussion with the full board and then it hopefully just becomes a debate on what that number is, but what I'm hearing in this group, I think we got some reasonableness depending on the language that is yet to be written.

Ms Mamola – My only comment is, politically it's going to be tough to go lower, to Mr Wright's point it's going to be tough to go lower than any other state in the nation, because that's one of the questions legislators are going to ask is what are other states doing and you can point to states that do nothing and then, the lowest out there is Florida at 12, but they pre-approve providers and I don't want to open that door that we get in the boat of pre-approving providers, that would be a nightmare. So, I think it's going to be tough to go below 12 a year, politically, because you're going to have to defend it. Where did you get that number? And why?

Mr Spata – As far as a number, as a starting point, probably not lower than 24 is what I am hearing.

Mr Wright – It just seems like if we don't do something that we feel has a good chance of passing, we are just wasting our time and we may as well do nothing. I think, 24 is a magic number and that is probably what we ought to go for and if that is too low then maybe we ought to just go to focusing 3 PDHs on what we care about and the rest is unchanged and maybe that's a good starting point as 24. I would not volunteer that Florida is 24, and by the way, they pre-approve.

5. Discuss potential changes to Nevada Administrative Code chapter 329 related to perpetuation of corners

Mr Kidd reported that there were no proposed amendments to NAC 329. He added that the 329 regulations needed to be included in the next printed version of chapters 625 and 329. (ACTION Item)

6. Consider the following changes to Nevada Revised Statute 625, 327:

- **NRS 625.040—practice of land surveying, consider changes that may be needed for future national exam changes**

Mr Kidd said there would be no changes recommended until the modularized exam system is approved by NCEES – and that appears to be 5 or 6 years out.

Mr Spata asked if it was appropriate to remove the item from the committee's future agendas. Mr Kidd said it would be ok to remove. (ACTION Item)

- **NRS 625.270—qualifications of applicant for licensure as a professional land surveyor**

Ms Mamola said this item relates to the professional land surveyor experience summary sheet which is part of the Nevada application form for PLS licensure. It is currently not referenced in statute or regulation.

Mr Spata said the regulations would need to be updated or the form removed.

Mr Kidd said he believed the form had some value but was unsure if it rose to a level requiring an amendment to the regulations.

Mr Spata asked Mr Kidd to make a determination on the need for the professional land surveyor experience summary form. (ACTION Item)

- **NRS 625.500—utility company exemption**

Ms Mamola said we don't have a liaison in the governor's office, and she needed to find out from the Public Utilities Commission what they're doing with this and see how best to support each other. She added that she hadn't heard anything from the governor's office, so we don't know what's going to happen with this. Ms Mamola said she would continue to try to get information from the Public Utilities Commission. (ACTION Item)

- **NRS 625.530—public works exemption from using a licensed professional engineer**

Ms Mamola said this item was on hold and that we need more information about the public agencies position. The board decided we're not going to lead but would be prepared to react if agencies move to modify, therefore no action at this time.

- **NRS 625.398—professional development hours**

Mr Spata said there was no proposed change to the statute but asked if there was any further comment regarding continuing education. There was none.

- **NRS 625.175—discipline specific vs PE state (discipline specific language added in 1975, AB 604— Committee on Judiciary)**

Ms Purcell said this item is still on-going. We are gathering the legislative history and doing research on other states and are also planning to talk with other boards at future NCEES meetings

- **NRS 327—Nevada Coordinate System; Geographic Names**

Mr Kidd reported that recommended language is expected in the next couple of months from the Nevada Association of Land Surveyors. He added that an initial request had been made for the board to carry the bill draft.

Mr Spata asked Ms Mamola to prepare an action item list from the meeting and add as an agenda item on future agendas – so all actionable items can be accounted for. (ACTION Item)

Ms Mamola said she would. She added that the next committee meeting would be scheduled for the first week of May. Meeting invites would be sent out once a date was set. (ACTION Item)

7. Public Comment Period

There was no public comment

8. Adjourn

Mr Spata adjourned the meeting at 2:54pm.

Respectfully,

Patty Mamola
Executive Director