

STATE OF NEVADA BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
Minutes of the Administrative Procedures Oversight Committee Meeting
Virtual Meeting held (via Zoom), Wednesday, November 4, 2020 at 2:00pm

Committee members participating were committee chair Michael Kidd, PLS; Karen Purcell, PE; Brent Wright, PE/SE; and Thomas Matter, public member. Also joining were Patty Mamola, Executive Director; Chris MacKenzie, Board Legal Counsel; Nicola Neilon, CPA; with Casey Neilon; Murray Blaney, Operations/Compliance; Jake Wolf, Compliance Investigator; and Louisa Kern, Administrative Assistant.

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

Those participating in the committee meeting introduced themselves.

2. Public Comment Period

There was no public comment.

3. Approval of April 16, 2020, Administrative Procedures Oversight Committee meeting minutes.

APOC 20-3 A motion was made by Ms Purcell, seconded by Mr Wright, to approve the April 16, 2020 APOC meeting minutes. The motion passed.

4. Discuss options for employee health insurance and possible discontinuation with Public Employees Benefit Program.

Ms Mamola said this item was now a moot point as board staff could not be removed from the Public Employee Benefits Program. She said herself, Mr MacKenzie and Ms Neilon had explored all the possibilities of moving away from the program – but apparently, we do not fit the criteria to be able to leave.

Mr MacKenzie said the program has a build-in protection mechanism against smaller agencies extracting themselves – where the threshold is set at three-hundred employees to be considered for leaving.

5. Discuss Nevada Revised Statute 622.234 related to written internal controls for board expenditures.

Ms Mamola said this relates to a new law that has come in effect relating to controls for board expenditures. The new law requires that two board members review board expenses monthly and sign an attestation related to that review. Ms Mamola continued to say currently we require two signatures on checks – one being board chair. When the chair signs the checks, they review the associated invoices and documentation relating to the expense. She added to meet the new requirement a second board member will need to also review the monthly expenses.

Ms Mamola said she had Mr MacKenzie review the new law and assist in coming into compliance. Mr MacKenzie has drafted an attestation form to be signed by the board members participating in the expense reviews.

Ms Mamola asked if Mr Matter as the public member would be willing to join the board chair in reviewing the monthly expenditures. Mr Matter said he would.

Ms Mamola said staff would collate the expense documentation and forward to the two board members, along with the attestation form, each month. She said the new requirement would be memorialized in the board's financial and personnel policy. (ACTION Item)

Ms Mamola said a second requirement of the new law was that boards are to review financial statements quarterly. She added we are already compliant as the full board views the financials at each bi-monthly board meeting.

6. Discuss public records request form and possible associated fees for public records requests.

Ms Mamola said this item relates to fees associated with public records requests. She said typically the fee structures were built around copying and mailing out information requested, but with all our information and files being electronic that fee system is now obsolete.

Ms Mamola said any cost incurred would relate to staff time formatting documents related to any request, and most of that time would involve redacting personal information that is not for public view.

Mr Kidd asked if guidance was given on what was considered public information.

Mr MacKenzie said for the most part there is but it's hard to anticipate everything that someone may want to request. Board staff has an obligation to protect personal information contained in the board files.

Ms Mamola said if requests do come in and there is a question beyond personal information about whether the information can or should be released, staff confers with Mr MacKenzie for advice.

Ms Mamola said the fee being proposed is the first hour of staff time is free – which should account for 99% of requests – and then any additional staff time beyond one hour is charged at \$25.00 per hour, with the requester being notified ahead of time.

7. Discuss Casey Neilon's draft financial audit report for fiscal year 2019-2020.

Ms Neilon –

The report is presented in draft form so if your committee has any comments or changes that you would like to make before this gets finalized for the board. We can make those changes for board presentation next week. But if there are no changes, we can issue it in final form after this meeting

after you've accepted it.

We are proposing to issue an unmodified opinion, that is what's always been considered to be an unqualified opinion, and it is the highest level of assurance that auditors can provide on a set of financial statements. That means that your financial statements are materially correct in all respects.

We audit under government auditing standards and that requires us to look at compliance with laws and regulations and internal controls and to provide any issues that come to our attention in a report. We do not have any issues that we are reporting.

Relating to health insurance as mentioned earlier, when we were auditing the benefits, we looked at the payments to the public employees benefit program, and our firm audits the public employees benefit program and we are actually in the process of auditing that right now, I realized your board was allocated three hundred and ten thousand dollars of the state O-PEBP liability. O-PEBP is other post-employment benefit. So, what that means is that the state subsidizes a portion of certain retiree's health insurance. And under the government accounting standards, you are required to allocate that liability on the basis of the relative contribution of proportions and that is what the state has done. So, what they have done is entirely in accordance with government accounting standards. However, where that impacts you is your employees are not entitled to benefit from that subsidy.

In talking with Ms Mamola about it, no past employees would be able to benefit from that subsidy and your current employees wouldn't either. One of the requirements to benefit from that is that your state retiree would need to be participating in one of the state retirements programs. There are also some time limitations as well. So, the situation that we found ourselves in is that you have this liability and it's appropriately calculated. It's appropriately allocated to you. However, it's a liability for benefits that your staff won't receive.

We did do some research on this because there's no benefit to your board or your employees, so we really wanted to make sure that we were interpreting that standard correctly. And so, I did actually put in a consultation with the government accounting standards Board, and they called me back and were very helpful walking through everything and they did agree that it is required to be reported on your financial statement. I did also coordinate with your prior auditor because we were putting a prior period adjustment on the financial statements with this liability on the books. We needed to let them know that we were essentially changing where they left off last year. So, we did advise them of that. They told me that they were aware of the issue that they felt it wasn't material.

So, Patty had asked me to coordinate with PEBP to answer a few questions. The response that I received was that they would have to consult with their actuary, but it sounds as though Chris actually has done the research that says that they can't exit the program. So, where we stand is essentially, we have a prior period adjustment of two hundred and eighty-three thousand four hundred eighty-seven dollars and that's to put the net effect of prior years' liabilities onto your financial statements. That does not impact the day-to-day fund financial statements that you receive that Ms Mamola keeps in QuickBooks that you receive at your board meetings. It does not impact your operations or any of the reporting that you have to administer the board with.

The impact is seen in the adjustment's column. Those are the adjustments that take your day-to-

day financial statements that are created on the modified accrual basis of accounting and takes them to a government-wide basis, which is the statement of activities and it impacts those numbers. And so, you can see that we've got adjustments in that column that provide a different basis of accounting and that is where this liability and the associated amounts that go with it gets reported, my understanding is that nobody is going to ask you to pay out that three hundred and ten thousand dollars. They're not going to come to you and say we need a contribution of three hundred and ten thousand dollars. And in fact, when we were going through the legislative committee hearings a couple of years ago they had specifically told us when they were trying to justify the fund balances of various boards that we couldn't include funding this particular liability as a reason for maintaining additional reserves. So even, you know, the governor's finance office and the legislative committees aren't really looking at that as a liability that they would necessarily collect from you. How that number gets paid is based on the REGI assessment for the PEBP monthly contribution. And so that is 2.34% of your payroll. And so, every month when you make the PEBP payment this two-point three four percent gets added, that goes into the O PEBP fund at the state of Nevada and is used to retire that liability down. So, it's really an accounting issue rather than it is necessarily a true monetary impact to the board. But I don't know if I confused everybody totally or if that helps explain it more.

Mr Kidd asked if the liability being described is something that is behind us or is this something that stays with us and just continues to be there because we cannot leave PEBP

Ms Neilon -

It continues to stay there. So, it will go up and down each year depending upon the O PEBP fund at the state of Nevada. So, everybody that participates in this O PEBP program pays in 2.34% of their payroll. Each year, there's an actuarial report that's prepared that determines what that liability, the liability to the state is and the difference between the amount that they have on hand and the liability they have is allocated between each of the participants and each participant's reports their share on their planning and financial statements. So, it's going to go up and down depending upon that actuarial assessment each year.

Ms Mamola said, hypothetically, if we spent down all of our reserves and we were at zero revenue, what happens if we're carrying this as a liability on our books and we have no monies to cover that liability.

Ms Neilon -

It really wouldn't impact. I mean essentially as I said, you know, nobody's going to come to you and say I need a check for \$310,000. What happens is they fund; they determine what that REGI assessment is on an annual basis and everybody pays in their percentage. So, it's really an unfunded liability of the state that is just required to be reported. So, it's unfunded at the state level as well. And it really doesn't impact your day-to-day operation.

Ms Mamola said would the board be subject to criticism by the governor's finance office if we were showing negative on our books because of the liability?

Ms Neilon -

I do not believe so, as I mentioned, you know, when we had all of the hearings, when all the boards were presenting to the governor's finance office. They actually wouldn't allow us to count that liability as a reason for retaining excess reserves. From a day-to-day impact it really isn't going to have an issue on how the financials that you receive are presented, it's when we take it from your general fund to the statement of activities that it has the impact.

Mr Kidd asked if the movement from the general fund is caught up now or if it would continue to happen annually.

Ms Neilon –

We did a catch-up adjustment this year of 284 thousand dollars. And so that catch-up adjustment has taken into account all the prior year impacted this and so each year from here on out there will be an adjustment up or down, but for example, I mean we're seeing here on page 20 the budgetary comparison. It doesn't go into here at all. Because you budget for the two-point three four percent that you would be paying each month. The impact of the liability doesn't get recorded here or reported here on your budgetary comparison. It just happens at that government-wide level at the first, you know the top layer of your financial statements if you will.

Ms Purcell asked if it shows up as a liability than on the balance sheet.

Ms Neilon –

It shows up as a liability. So, on the statement of activities, so you can see if we go back to page 7 of the financial statements, similar to the financial statements that you get at each board meeting or each APOC meeting. You get a balance sheet that is your fund financial statement. That's the, you have one fund. It's the general fund and you get a balance sheet for that. It does not show up on that balance sheet. It only shows up when we do the year-end conversion to the statement of activity. And that's the third column on page 7.

I think I might have hung you up on that item because it is such a significant change from what has happened in prior years and I did, you know want to make sure that you knew that we did everything we could to try and find a way to not report this. And I think you know, unfortunately because you can't exit, you are stuck with this going forward too.

For the current period your fund balance, which is what you operate from was 1 million five hundred and seventy-seven thousand that is down from last year, that was 1.6 million last year. So, it is down a little bit, there was a deficit of revenues over expenditures of 35,000 this year, and the difference is really from a line-item standpoint on the budgetary comparison schedule, your budget had actually called for a deficit of two hundred and three thousand dollars. So, we're actually a hundred and sixty-eight thousand dollars better than budget, a hundred and fourteen thousand of that came on the revenue side. More application fees, more renewal fees and then we had some savings in the operating expenses. So primarily in the database website design, lobbying and office supplies. So, while there was a deficit in the current year, it was actually less than was projected.

So aside from that I just wanted to share with you that Ms Mamola and her staff were great to work

with, they were very responsive. We did not have any concerns with the documentation that we received. We did have some journal entries that we provided to Patty to be recorded in the books and records, but Patty and her staff were a pleasure to work with. Gave us absolutely everything we needed when we asked for it. And so, I thank them for their assistance.

Ms Mamola said the journal entries have not been made yet. Those will adjust the end year financials and so I was waiting until the report gets finalized and then I will make those journal entries and provide those updated financial records for you at that time. (ACTION Item)

Ms Neilon –

We're ready to finalize as soon as we get the okay from you that there's no changes that you consider necessary.

8. Consider requiring third-party verification of digital signatures for licensees of the board and possible role of the board in the verification process including cost participation.

Ms Mamola said the digital signature task force (DSTF) has been working on digital signatures, electronic submittals, how do we protect the public and still allow engineers to be able to digitally sign or sign their documents and submit them to public agencies. Through the process we became aware of the myriad of issues that agencies and professionals were facing to get this to work. Previously the board's position had been hands off, where after writing the regulation it was left to let the free market figure out the implementation. The DSTF has experienced the frustration of actually getting the process to work. If you just imagine that magnified by eleven or twelve thousand licensees and the numerous agencies trying to figure out how to implement digital signatures– I think the committee really began to understand the level of frustration. Without guidance, each agency had to adopt their own system, where each had their own requirements for signing and sealing electronic submittals. This was not practical and very confusing to professionals. Everything really came to a head with the pandemic.

Ms Mamola said after becoming aware of the extent of the issues through the DSTF, it was decided the board should play the lead role to help facilitate a working solution for all parties. The Electronic Submittal and Digital Signature guide was drafted and vetted by the committee, agencies and a number of professionals. It was finalized and circulated late October 2020 and feedback has been very positive.

Ms Mamola said since the forming of the DSTF we have been hearing from a number of agencies that they would like digital signatures to have a third-party verification component. She added that the board had discussed the third-party requirement a number of years ago but decided not to pursue until the agencies supported the board to do so. Ms Mamola said individual agencies can require it on their own, but a number are asking for the board to consider adding the requirement to its regulations.

Ms Mamola said the reasoning on bring this to APOC is the consideration of possibly subsidizing in some way the third-party verification process to encourage early adoption by licensees.

Mr Kidd asked if the process would involve selecting a specific vendor.

Ms Mamola said a specific vendor or vendors would likely be identified after a board RFP is sent out. She said staff had been doing research and identified a number of vendors that an RFP could be sent to. Any selection would be based on criteria outlined in the request for proposal.

Ms Purcell said for her personally, having her signature third-party verified adds a comfort level of safety and security, knowing nobody can impersonate her digital signature. Self-verified signatures can be created by anybody and are not as secure.

Ms Mamola said digital signatures or digital IDs without verification are not a whole lot more secure than just an image of a signature. She added that building departments and agencies like the NDEP are concerned with additional requirements by Federal agencies they deal with and the Secretary of State's office when it comes to electronic submittals and digital signatures. And if moving toward with third-party verification we will need to consider state approved vendor requirements.

Mr Wright said that over half of his firm's submittals are now electronic. He said the digital signature third-party verification set-up process, for his vendor at least, is cumbersome, but once it is in place the actual digital signing works fine.

Mr Matter asked if there was an estimate of how many licensees already have third-party verified digital signatures.

Ms Mamola said she did not have an estimate but thought the total number of licensees actually submitting to agencies would be in the 20-30% range of our 12,000+ active professionals.

Mr Matter asked what is the cost estimate for setting up third party verification.

Ms Mamola said the cost varied and we are still trying to determine what that would cost. She added the subscription varied – but generally the cost to an individual would be around \$75-150 per annum. Ms Mamola said a ballpark working figure for a board subsidy would be in the \$200-300K range.

Mr Kidd said that cost to individuals and firms would likely be offset by savings in paper, printing and shipping costs of hard copy submittals.

Ms Purcell said the first step would be to draft an RFP to get an idea of what set up costs would be – and what would then be involved with a possible subsidizing of those costs by the board.

Ms Mamola said any draft of criteria for the RFP would be presented to the committee before being finalized and sent to vendors.

Mr Kidd said the committee would make the recommendation to the board that an RFP be generated and to identify what a possible board subsidy amount should be considered.

9. Discuss migration of the board’s website from current platform to new platform.

Ms Mamola said the content management system that nvbpels.org works on is no longer being supported by the provider, CraftCMS. We are seeking approval to move the site to a new base platform, WordPress. Ms Mamola said the estimated expense is around \$1,800.00 and is within the current budget for website/database maintenance and improvement.

Mr Kidd asked if there would be any additional hardware cost in the platform move.

Ms Mamola said it was only software related and the hosting would be cloud based.

Mr Kidd said if the expense was available in the budget and no augmentation required, then the moving ahead with the migration would make sense. The committee agreed.

10. Discuss eliminating fee for processing Business Name Requests.

Ms Mamola said this item relates to asking the committee to eliminate the fee for Business Name Request processing. The current fee is \$25.00 and payment has to be made by check. In all, on average we process on average 80 – 90 requests per year, and most are reviewed and approved at the staff level.

Ms Mamola added that the staff time in managing the checks takes longer than the actual approval procedure, and moving to online payment for this item, which is not necessarily related to licensure or firm registration, requires a separate payment portal that would cost more to implement than the revenue being brought in.

Mr Kidd said it make sense to eliminate the fee. Ms Purcell agreed.

11. Open discussion of items related to Administrative Oversight Procedures Committee.

No additional items were put forward for discussion.

12. Public Comment Period

There was no public comment.

13. Adjourn

Mr Kidd thanked the committee for their participation and adjourned the meeting at 3:02pm.

Respectfully,

Patty Mamola
Executive Director