

NEVADA STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS Minutes of the Legislative Committee Meeting Held virtually (zoom) at 10:00am Wednesday, March 10, 2021

Participating were Committee Chair Angelo Spata, PE; Karen Purcell, PE, Brent Wright, SE; Michael Kidd, PLS; and Patty Mamola, Executive Director. Also connected were Christopher MacKenzie, Board Counsel; Susan Fisher, Board Liaison; and Murray Blaney, Operations/Compliance.

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

2. Public comment period.

There was no public comment.

3. Approval of November 4, 2020, Legislative Committee meeting minutes.

LGC 21-1 Mr Wright made a motion, seconded by Ms Purcell, to approve the November 4, 2020 Legislative Committee meeting minutes. The motion passed unanimously.

4. Discuss work of the PLS Standards of Practice Subcommittee.

Mr Kidd reported the committee has realized the full regulation review is a bigger item than was originally anticipated. The decision has been made to take a step back and start by doing a gap analysis.

Ms Mamola said that staff is going to evaluate the current statutes and directly associated regulations and report back to the committee. The plan is then to consider where regulatory gaps are and what regulations may be needed to fill those gaps.

5. Consider proposed regulation changes as drafted by the Nevada Legislative Counsel Bureau, LCB file number R140-20RP1.

Mr Spata said the item is to consider proposed regulation changes as drafted by the Nevada Legislative Counsel Bureau, file number R140-20RP1. He asked if there were any comments from the committee members. There were none.

Mr Spata said he would recommend on behalf of the legislative committee that the proposed regulations be approved at tomorrow's board meeting.

Ms Mamola said if the board votes to approve the language the regulations would move forward for consideration at a public adoption hearing to be scheduled later in April.

6. Consider proposed regulation changes as drafted by the Nevada Legislative Counsel Bureau, LCB file number R141-20P.

Ms Mamola said R141-20P had not yet come back from the LCB after a request for revisions. She added

the LCB are busy with the legislative session, so we may not have the file back for a couple of months. When it is returned, a Legislative Committee meeting will be scheduled for the committee to consider the revisions.

7. Discuss next steps in the regulatory process for adopting regulations.

Ms Mamola said the process, pending board approval tomorrow, would move on to an adoption hearing. Comments on the regulations, assuming there are no revisions requested at the hearing, would be added to the Informational Statement that accompanies the adopted regulations submitted to the Secretary of State and then back to the LCB. Ms Mamola said there have been a couple of minor changes in the submittal process that Mr MacKenzie identified, and they will be addressed before we present the regulations to the state. She added that any adopted regulations are in effect immediately, and the revised regulations will be posted on the board's website and licensees will be notified via an eblast.

8. Consider six-month grace period for completing required professional development hours for June 2021 and December 2021 license renewals.

Ms Mamola said this item was added to the agenda because we have had a number of inquiries from licensees concerned about meeting the requirement. She added the 2021 renewal groups are most impacted by the pandemic related to the loss of seminars and conferences, and if we've given a grace period to the last two groups of renewals, in the sense of fairness, the board should grant the grace period to the most impacted group of renewals.

Mr Spata asked for comments. There were none. He said he would recommend on the committee's behalf that the board grant the professional development accrual 180-day grace period.

9. Consider updating regulations to include language about minimum standard for submittals to a public entity.

Ms Mamola said this topic has been discussed at a few of the board's committees where the issue is plans are getting submitted that are missing key information to be able to either survey the design or construct the design. It was suggested at the Public Outreach committee that it be discussed by LegComm and to consider if there is a need for regulation to address that specific issue.

Ms Mamola said for example in private development, often you'll see that the plans omit elevation information -it's like a schematic drawing missing key details of how-to-build. So, surveyors, and even contractors, are having to ask for the CAD drawings so that they know how to put the project together. She continued to say, she understood there is pressure from developers to do designs for a lesser cost, and at times the only way you can do that is if you eliminate some of those plan's sheets that might be needed to construct.

Mr Spata said, relating to the example used, Utah was adopting regulations where CAD items be signed and sealed and not plan sheets – although he did not recall the exact initiative.

Mr Kidd said he believed there could be relatively easy guidelines the board could outline on basic

information required for either a plan set or a map submittal, and that would really assist the agencies. There is basic information that is not on a first submittal, and sometimes it's not included in a second and third submittal as well, where the elemental information is not addressed. Some rudimentary guidelines for either a map or a set of plans would really help the community.

Mr Spata said, playing devil's advocate, would those be guidelines or requirements be better coming from those agencies that are reviewing those plans. Additionally, there are also many differences between various agencies. Having these guidelines stated by the board might be seen as over-reaching.

Ms Mamola said, having worked for a state agency and in overseeing the permitting processes, there can be considerable political pressure on agencies and governments to process and do things faster, quicker, better. I have no doubt that some have even questioned why do you need all that stuff in a submittal - why do you make people jump through so many hoops and we need to get rid of this stuff because you're holding up project construction and that project would benefit our community. It puts the agencies in a difficult position when they have this checklist that they are making people comply with for submittals.

Ms Mamola added to Mr Spata's point, we absolutely need to be sensitive to not over-regulating because our politicians are looking at that as well. We did quick research on laws in a couple of other states. California has something as simple in their laws that says something like the submittal must be complete per the agency's requirements, which means they have to follow the agencies, we could do something as simple as that. Whereas Florida has pages and pages of items that are required in a submittal package for each discipline, and that's too much but there's a reason Florida did that. Ms Mamola said we could do a little, a lot, or something in-between. The agencies have reached out to for some support, so it's sounding like we're going to need to do something. We just need to decide what it will look like.

Mr Wright said we need to be very careful because what constitutes a complete, correct, and sufficient submittal as it can be very subjective. It would be impossible for us as a board to get into that quagmire. What Ms Mamola said is a wise way to do it, and I agree with Mr Spata, where the agencies are the ones that need to set the standard for what's an acceptable submittal and what isn't. They know what they need to be able to give approval, we don't. He continued, but if the board maybe provided some teeth for the agencies to point to a regulation that said the engineers must comply in their submittal with the requirements that are set forth by the agencies, then agencies can say we have these requirements, and you are required to comply. We then don't have to get in the minutiae of trying to determine what constitutes a complete submittal.

Ms Purcell said she agreed with Mr Wright. Something simple that states you are required to be in compliance with the elements of the individual agency.

Mr Kidd said he also agreed with that approach.

Mr Spata said anything more than that and he would have trouble testifying in support from the standpoint, as a board we are looking out for the health, welfare and safety of the public and sometimes agency requirements aren't necessarily doing that.

Mr Wright said what it sounds like the agencies are asking for, is just some way so that when they get the pressure put on them they can point to the regulation and say that we're just doing what we are required to do by the board of engineers.

Mr Kidd said he can speak from the perspective of one agency, and that it goes beyond that, and we are also trying to correct the behavior of the underperformers. I think it's one of the pitfalls of our peers on the board is all of them seem to be high performers in their profession. There's a lot of people that the agencies deal with that are the complete opposite of that. And we're looking for a little bit of help and trying to correct some of that behavior.

Mr Spata said the question would be if they felt those professionals are really jeopardizing the community then they could report them.

Mr Wright said it seems like there is already a mechanism in place to do that. But it's the agency that's in the best position to determine if a submittal is deficient or minimally competent or minimally acceptable and if they're getting submittals that are substandard according to requirements they have, then it seems like they should be the ones that need to report it to the board, but I don't know what more we could do beyond that or what we should do.

Mr Kidd said the agencies reached out asking for a little bit of assistance from the board and if the result is there's some small language that can be added that assists with that, great. If the discussion gets to the board and it's decided that everything is going to stay the same, it is. Then that is the outcome from the board and that's just the way it is.

Mr Spata said the next steps would be to take it to the board for discussion. He added he could report on it at tomorrow's meeting, but it would likely need to be added to a future agenda for any board consideration on action.

10. Discuss legislative session report from board's government liaison, Susan Fisher.

Ms Fisher –

We had our hearing yesterday on our bill, which is Assembly Bill 173, and it went very well, and I felt we had some good questions. There was one question from Assemblywoman Considine, a new legislator from Southern Nevada and so I followed up with her last night just to make sure that she understood the answer and if she had any additional questions and we've had a little bit of exchange back and forth and as recently as this morning, and Patty gave some additional information to answer her questions and it all seemed to go well and she indicated that she supports the bill. I don't think we're going to have any problem at all getting out of committee on the assembly side and hopefully the same on the senate side

There are a couple of other bills that we have on the tracking list because they may impact regulatory boards in some way. There's not anything that's a major concern for us. We're going to be having a big dump of bills in the near future because it's going slow now. A lot of committee hearings are being held without legal counsel because they've all been pulled into bill drafting as next Monday is the legislator's deadline to introduce legislation. And then the 22nd is when the committee bills need to be introduced -

so, except for silver bullets that the Speaker of the House and Senate Majority Leader may pull out, and I'm sure there'll be some of those, but there shouldn't be anything that would impact us.

11. Discuss Nevada Senate Bill 155 related to State Engineer and Department of Water Resources.

Ms Mamola said this item relates to a bill proposing the head executive at the Department of Water Resources no longer be titled the State Engineer so that position can be held by somebody other than a licensed professional engineer. So, it's about eliminating the requirement that that head of that agency be a licensed professional engineer. It could be a licensed professional engineer, but it could also be anybody that they deem has the right qualifications for that position. Ms Mamola added I have had several calls about this and wanted to get input from LegComm on the issue. She continued, as some background, it sounds like the Department of Water Resources, is in a difficult position. They are struggling to find a qualified engineer to fill the position at the pay grade that the state offers and so they want to have the ability to have somebody else fill that administrative position as long as there's an engineer on staff below. Ms Mamola said the board might want to consider taking a position on the bill – even if it is a neutral position.

Ms Fisher said she learned recently there is someone in the division, a deputy director, that they are wanting to move into that position who is not a PE but has been a longtime employee. She added there is opposition building on this bill.

Mr MacKenzie said historically the Department of Water Resources has always recruited from within for the next state engineer and I don't think they have anybody necessarily in the queue to come up. He added it has been a very long time since they've had an outside person coming to take the State Engineer position because of the unique nature of Nevada water law. The preference is for somebody that's had a long-running education under Nevada water law from within the department that they groom for the position, and I imagine they just don't have that person now and probably the most qualified person internally is not an engineer.

Mr Spata asked the committee for their input on the proposed bill.

Mr Wright said if the proposed language was to make it easier to accommodate finding someone to operate as the state engineer, and if the person in that role is not licensed, as the board of engineering we would be opposed to that.

Mr Kidd said it appears they're changing language to adjust the title from State engineer to Administrator to remove that conflict.

Ms Purcell asked if the individual shoulder tapped for the position would still have the same responsibilities as the state engineer.

Ms Mamola said they would, or someone under the new division head would have the engineering responsibility and the title.

Mr Spata questioned whether they would be involved in engineering decisions or just administrating the organization.

Ms Purcell said she was not in favor of changing this language and eliminating that requirement. It appears they are trying to change this law to accommodate one particular person and it may not be in the best interest in the health, safety and welfare of the public to eliminate the PE requirement.

Ms Mamola said former board chair Roland Westergard, who served in this role as a state engineer, is concerned by the proposed changes from the interest of public safety.

Mr Spata said this is about the internal operations of the agency. A state engineer position will still likely exist but with an administrative department head over them. Where one role is technical and the operational.

Ms Mamola said the concern would be that engineering decisions could be overruled by an administrator without engineering knowledge and the potential impacts those decisions could have on public safety and Nevad'a precious water resource.

Mr Spata said the information we are missing is what the roles and responsibilities of the positions are. It would be helpful to get that understanding before considering our options.

Mr Kidd said from his understanding, the state engineer is probably the most political engineering position in the state.

Mr MacKenzie agreed and said it is politically charged job with considerable pressures that have likely resulted in a degree of turnover in the position.

Mr Spata said we would bring the issue to the board's attention during the legislative committee report at the meeting tomorrow to see what position the board would take. He asked Ms Mamola to contact Mr Westergard to get more information about the responsibilities of the state engineer position.

Ms Mamola said she would connect with Mr Westergard to see if he would be available to call into the board meeting to provide context.

12. Discussion on status of committee and staff assignments.

Ms Mamola reviewed the list of assignments and asked the committee if they had any questions. There were none.

13. Public comment period.

There was no public comment.

14. Adjourn

Mr Spata thanked the committee for their participation and adjourned the meeting at 10:55am.

Respectfully,

Patty Mamola
Executive Director