

NEVADA STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
Minutes of the Interim Board Meeting
Held virtually, Thursday, February 9, 2023, at 9:15AM

Board members participating were chairman Michael Kidd, PLS; Vice Chair Thomas Matter, public member; Angelo Spata, PE; Matthew Gingerich, PLS; Brent Wright, PE/SE; Karen Purcell, PE; Robert Fyda, PE; Greg DeSart, PE. Also joining were Patty Mamola, Executive Director; Chris MacKenzie, Board Counsel; Murray Blaney, Operations/Compliance; and Jasmine Bailey, Licensing Specialist. Board member Lynnette Russell, PE was absent.

1. Meeting conducted by Chair Michael Kidd, call to order and roll call of board members to determine presence of quorum—board members Thomas Matter, Karen Purcell, Angelo Spata, Brent Wright, Matt Gingerich, Robert Fyda, and Greg DeSart. Lynnette Russell was absent.

It was determined a quorum was present.

2. Pledge of Allegiance.

3. Public comment.

There was no public comment.

4. Consideration of initial licensure applicant requests to waive certain requirements of Nevada Revised Statutes and Nevada Administrative Code Chapter 625.

There were none to be considered.

5. Board approval of non-appearance applications for initial licensure. Refer to Addendum A for list of applicants.

The Board reviewed nine applications in the board packet for initial licensure and recommendations were made.

23-13 A motion was made by Mr Fyda, seconded by Mr Gingerich to approve the initial license applications contained in the board packet with recommendations noted. The motion passed unanimously. Ms Russell was absent for the vote.

6. Consideration of delegation of appearing on behalf of the Board in front of the Legislature to the Executive Director.

23-14 A motion was made by Ms Purcell, seconded by Mr DeSart to approve the delegation of

appearing on behalf of the Board in front of the Legislature to the Executive Director
The motion passed unanimously. Ms Russell was absent for the vote.

7. Discussion and possible action on Legislative Committee report, Chair Greg DeSart.

a. Schedule for complying with Governor Lombardo Executive Orders

Mr DeSart said the timeline presented for consideration relates to the requirements and reports to comply with the Executive Orders issued by Governor Lombardo.

b. Governor Lombardo Executive Order 2023-003

Mr DeSart summarized Governor Lombardo Executive Order 2023-003. He stated staff has identified 11 regulations to be repealed and 3 regulations to be updated/improved.

i. List of proposed regulations to be repealed and updated

Mr DeSart said the Legislative Committee is recommending the board approve the regulations that staff has recommended to be repealed and/or updated. He asked that we wait for a motion until we complete discussions of both executive orders.

c. Governor Lombardo Executive Order 2023-004

Mr DeSart summarized Governor Lombardo Executive Order 2023-004. He stated that essentially the order is to provide a report that recommends how the licensing process can be sped up to get workers to work sooner in Nevada. The report is due April 1, 2023.

i. Draft Report

Mr DeSart said the draft report is provided for board approval. The Legislative Committee felt the report was comprehensive, very thorough. The committee reached consensus on all regulation recommendations in the report with exception of NAC 625.310 which proposes eliminating the state specific exam for land surveyors. He said the committee agreed to have the board discuss and decide how it wanted to move forward.

d. Proposed regulations to be repealed and updated

Mr DeSart said he would like to open the discussion with NAC 625.310. He called on Matt Gingerich

and Michael Kidd to start the conversation because they're the surveyors and they have the opinions we want to listen to and decide how to proceed.

Mr Kidd: *So, I'll throw out a couple of things for consideration relative to the state specific exam. And then, we'll get Matt's point of view. One of the requirements in the executive order, section four. It states in section three the items we need to report back on. It is asking for any recommended revisions to the current regulatory construct that would expedite licensure for new workers. And I personally don't take the jump directly to let's do away with the state specific exam. I think there's some alternatives there that could be considered, or at least what we recommend or report or ask back to them. I think the Western states were successful in getting NCEES to agree that there was a shortfall with the public land survey system portion of the national exam. And NCEES is moving forward with a separate module, that's probably four or five years out, that's going to be a separate exam. The latching on to the three-legged stool that is education, examination and experience. I think the examination part or some kind of evaluation of a new applicant still has a place. I think an easy transition to make with our regulations could be transitioned to the applicants required to fill out, whether it's an examination or questionnaire or whatever you want to call it. But they're required to fill that out when they submit their application to Nevada for licensure as a PLS, that being open book, whether you have open book or you're using the internet for your source material, that process is probably an afternoon's worth of work to answer those questions, and just to give some perspective, to me this is similar to if the structural exam didn't have any concrete related questions or if the geotechnical exam didn't really take into consideration soils classification. So, where it's like, no, we don't really need to do it, we don't need an examination on that because they had a class in college and that should cover it. I think the three-legged stool approach is still valid with what we do for licensure.*

Mr Gingerich: *There was a lot of discussion in the legislative meeting with regards to this particular item and, you know, I struggled with it. I'm not sure I'm done struggling with it, but I've kind of come to grips with things and, you know, my biggest concerns are, you know, we've always had the state-exam, right? It's always been a part of the fabric for getting licensed as a surveyor, the national exam there is some things that are missing like Michael alluded to, the public land survey system that's an important part of what we do, what I do as a surveyor here in Nevada. I guess, you know, kind of hearing the discussion at this legislative meeting, I did get some insight into, you know, the national test does cover a good majority of the stuff that Nevada land surveyors deal with. And, you know, is this an overburden to put on surveyors that are trying to practice in the state. And if you come with reciprocity, do you need to really be tested twice if you're working in California, do you need to sit for another exam to test your ability to practice surveying in Nevada. And I have a hard time answering you do. I mean, I think there's some differences obviously in our state law but for the most part, if you're going to do a parcel map here in Nevada, you better pick up the regulations before you do that and study those. And that I think is important that the people that are licensed here in Nevada need to make sure they're doing. So, the reciprocity aspect, I could get my head around. I was comfortable*

moving toward not having a state-exam for reciprocity applicants. I had further discussion with staff afterwards to get my head around what else was at stake. And, I think for new licensees, we do have a fairly high threshold that other states don't, we have a four-year degree requirement. It's maybe a third of the states may be less than a third have a degree requirement for land surveyors. And I think virtually every survey program in college requires those people to go through a course in the public land survey system. So, I feel pretty comfortable that if you've got a degree, you've been prepared at least academically to practice on the public lands. Certainly, you know, mentorship and all that stuff is still pretty critical. But I guess I've gotten to a point where I've taken a step back. I'm not sure that what we're asking people to do is, I mean, that looking at what the governor wants to streamline things. I know we're hurting for surveyors in the state. It's hard to keep that bar up. So, I guess I can be on board with eliminating the state-exam. There's some uneasiness, but I think I'm in a position thinking about it a little further with stepping back and considering further, I'm more comfortable with it.

Mr DeSart said it would be useful if staff could talk a little bit about the logic used to make this recommendation and the current timeline for getting these exams taken for surveyors

Ms Mamola said we pulled the licensing data to look at the lag time between the time professionals are approved to be licensed and when they actually get licensed. After an applicant is approved to be licensed, the applicant must take/pass a state-specific exam and then pay the licensing fee. For engineers that lag time is nine days and we're trying to get a handle on now whether it's because stuff hits their spam filter or they just are busy and don't get to back to us, what we're finding is they're busy and don't get back to us. In any case, the nine days delays the licensing process. For land surveyors, the average lag time between the time they get approved and the time they get licensed is 7.25 months, seven and a quarter months. The median, if you throw out the outliers, the highs and the lows, the average is 4.75 months, that's considerable lag time. And in Nevada, you're not allowed to offer services until such time as you're licensed. Not just provide, but you can't even offer services. So that's considerable lag time for land surveyors.

Mr DeSart asked Ms Mamola why the considerable difference in lag time between the engineers and land surveyors.

Ms Mamola said the engineers take a 24-question open-book/take-home exam on NRS and NAC chapter 625 whereas the land surveyors take a 75 question open-book proctored exam on public land survey system, and all Nevada statutes and regulations related to the practice of land surveying. The Nevada specific land surveyor exam.

Mr DeSart asked what makes that exam take more time?

Ms Mamola said no one wants to fail that exam. So of course, they're going to prepare, study, and those people are working full-time, so they're squeezing in their studying with their full-time job, and they don't want to take the exam until they're ready. And of course, you don't want to disappoint your

boss if you don't pass it that first time. If you got to take it a second time, and we've had a few have to take it a couple times, it really slows the process.

Mr DeSart said we have quite a few different viewpoints and perspectives on this regulation. And, because of that, the committee wasn't comfortable making a recommendation on this particular regulation. Everything else, I think the committee's comfortable with recommending, as presented

Mr Wright asked if there was a concern about licensees not taking the state exam and if they will be unfamiliar with Nevada specific laws and rules.

Ms Mamola suggested having land surveyors sign an acknowledgement in the application process that they're aware of all the statutes and regulations, such as NRS 278, 327 329, they need to be familiar with to practice in Nevada. We will also send a letter to the land surveyors to remind them Nevada is a PLSS state and also remind them of all the statutes and regulations they need to be familiar with to practice. Also the study guide that we now provide to our PLS exam takers is available on our website and is a great resource, and we can include that in the letter.

Mr Wright said that's a good solution.

Ms Purcell asked if we send a letter, will it be similar to the letter we send engineers saying stay within your area of expertise, like transportation or road design versus geotechnical or water.

Ms Mamola replied, yes.

Mr Kidd asked Mr Desart if he was complete with the legislative committee report and how he would like to proceed for taking board action.

Mr DeSart said suggested we have two motions, one for everything except NAC 625.310 and another just for NAC 625.310.

Mr Kidd then asked for a motion for everything except NAC 625.310.

23-15 A motion was made by Mr DeSart, seconded by Mr Gingerich to approve the proposed regulation repeals and updates as proposed by staff in the supporting documents for the board meeting. The motion passed unanimously. Ms Russell was absent for the vote.

Mr Matter said staff did a great job pulling together a response to the Governor's executive orders. He said the Governor's executive order exempted anything related to public safety. He asked if we were missing something.

Mr DeSart replied that yes, the committee discussed that in reality everything we do is related to public safety.

Mr Matter said that's my question, are we reducing the competency of the individuals that are going to be potentially performing the work, whether it's engineering or surveying, are we making it too easy.

Ms Mamola said we need to be cognizant, and NCEES always emphasizes this, the standard for licensing is minimal competency. It's not proficiency, it's not mastery, it's minimal competency. And, we do require the national exams and those are what we use to determine minimal competency. So, anything over and above needs to be justified, we would need to defend our rationale for anything over and above the national exams.

Mr Kidd said he sees a gap in the examination portion of the three-legged stool (education, examinations, experience). He said he believed NCEES has acknowledged that gap and they're addressing. He said if there's an option, other than just doing away with the state exam for land surveying, such as making the exam part of the application process, that it would be an afternoon's worth of work to take the exam. He said he didn't see it as overly burdensome. He said he felt we were still complying with the Governor's executive order if we retained the land surveyor state exam and required it as part of the application process.

Ms Purcell asked about the process. She said no matter what we decide as a board today, it still has to go through the public process. And if the outcome of the public meeting is different than what we are proposing as a board, we have an opportunity to change our mind. If we vote today to remove the state exam for land surveying and during the public process the public wants us to keep that exam, we have the opportunity then to change our mind.

Ms Mamola said that feedback would be put in the report to the governor's office. As part of the report, he has requested stakeholder feedback.

Ms Purcell said to clarify, because we vote one way today, that doesn't necessarily mean that it's a for sure thing. We have the opportunity to revisit depending upon comments or depending upon comments from the governor's office.

Ms Mamola replied yes.

Mr MacKenzie said this creates its own internal conflict, part of the executive order says you can't make any regulatory changes, but they're asking for input. So, whether this process could even be a basis for making these regulatory changes in the future is unclear. So even if we went through this whole process, the board decides, it goes into the report and then whatever they're going to do at the governor's level, you might have to come back and go through the whole process again to make it a regulatory change. So, that's an unanswered question. He said, so, this isn't a final decision on the board's part by any means.

Mr DeSart said staff have taken a lot of time and really studied these executive orders and did a good job of putting together proposed changes. He asked Ms Mamola if the board would still be complying with the intent of both executive orders, if we didn't propose this change to NAC 625.310.

Ms Mamola said yes, but it would put us in a very difficult position because we have to defend that position. They could ask, why are you willing to do it for engineers and not land surveyors? Or maybe we don't do it for either, but how do you defend that action in our licensing process when we know the state exams create a lag time in licensing. She said she believed they're going to be smart enough to realize that state specific exams are a barrier. It does look protectionist on the surface without looking at it in detail. And so, you have to be able to defend requiring state exams. And I think you'd have to write that in the report. And right now, as staff, we were struggling with how to defend retaining state exams.

Mr Gingerich said Mr DeSart asks a good question. He said he met with staff and discussed reasons why he thought we needed the state land surveying exam, some of which we talked about today. He said what I come back to is that our requirements are good right now with the degree requirement. He said that provides an increased comfort level. He said the nature of professional surveying has moved from one largely based on mentorship to one that is an academic base because there's so much independent work that's done on your own, out in the field without supervision. There are one-man survey crews everywhere. You see them, that's just the nature of the technology. If we lost that degree requirement, to me that would be a huge setback with regards to professional licensure for surveyors. He said the state exam requirement is not critical with the degree requirement being in place. He said the degree is required by statute, not by regulations. So, it would take a lot more effort to undo that requirement.

Mr DeSart said we did propose this, which would be consistent with eliminating the state exam for engineers, we are doing it essentially at the request of the governor's executive order. He said the governor has directed this board and all boards to think this through and propose repealing and updating regulations that impede licensure, there's a logic to why we're proposing it to comply with the order. He said, so, and in my mind there's range of opinions, differences of opinion, we put this out for public comment and get that feedback. He said to Mr MacKenzie's point, this doesn't necessarily mean that we're initiating the process of creating the change, it means that we're initiating the process of getting feedback on this change. And, so in that sense, and in the context of Mr Gingerich's comments, he supported leaving this in our proposed changes.

Mr Kidd asked for a motion.

23-16 A motion was made by Mr DeSart, seconded by Ms Purcell to include the proposed changes to NAC 625.310 to eliminate the state exams for licensing engineers and land surveyors as proposed by staff in the supporting documents for the board meeting. The motion passed with one vote in opposition. Ms Russell was absent for the vote.

Mr DeSart said there was one additional comment he's like to make in his committee report to the board. He said the proposed changes to the land survey standards of practice regulations are extensive. He said, he thought in the context of the executive order, we can't introduce new or changes to regulations. He said we will discuss at an upcoming industry event and get feedback but won't take formal action until such time as the governor allows.

Mr Gingerich clarified that there are five land surveying regulations proposed to be repealed that are included in the report to the governor.

8. Public comment.

There was no public comment.

9. Adjournment.

Mr Kidd thanked the board members for their participation and adjourned the meeting at 10:00 am.

Respectfully,

Patty Mamola
Executive Director