

SURVEYING ADVISORY COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Via Webinar

November 13, 2020 – 9 –11:30 a.m.

Attendees:

- Jon Hodde, RPLS – Chair
- Manny Carrizales, RPLS
- Mary Chruszczak, RPLS
- Davey Edwards, PhD, RPLS, LSLS
- Paul Kwan, RPLS
- Stan Piper, RPLS, LSLS
- Heather Welch-Westfall, RPLS
- Lamberto Balli, PE – Board Liaison
- Coleen Johnson, RPLS – Board Liaison
- Mark Neugebauer, RPLS, LSLS – Board Liaison
- Lance Kinney, PhD, PE – TBPELS Executive Director
- Michael Sims, PE – TBPELS Director of Compliance & Enforcement
- Rick Strong, PE – TBPELS Director of Licensing & Registration

The purpose of the meeting was to discuss comments provided to TBPELS in response to surveyor rule postings, either submitted in writing or via testimony at either of two rule hearings held by the agency. The SAC will then discuss the rules and comments and make a recommendation to the board on each rule.

TSPS Hearing Request, September 17, 2020

Rules Mentioned (No commentary included in request):

§131.7(f) – related to 5 voting members of Board for a quorum

§131.15 – related to including Surveying Advisory Committee (SAC) as a standing committee

§131.101 – related to advisory opinions (engineering but not surveying)

§134.61 – related to surveying exams

§134.73 – related to surveying exams

§136.1 – related to surveying firm registration

No SAC action on these. Simply a report of the initial request letter for a hearing from TSPS.

Commentary from the Public (names refer to the individual that made the comment; email or testimony is noted)

§131.15 – Freeman (testimony) – feels that Surveying Advisory Committee (SAC) should be listed as standing board committee.

- Staff Comments: Standing Board Committees are committees of the board, made up of board members. The SAC is not made up of board members, and is actually an advisory committee as set out in §1001.216. This is included in proposed rule 131.15(d).
RECOMMEND NO CHANGE TO PROPOSED RULE.

SAC Comments: The committee discussed that there is a difference between a standing committee of the board (that has board members) and advisory committees. They proposed some clarifying language in response to the comments that may help the public better understand the requirements regarding the appointment of the SAC.

- Currently Proposed:
- (d) Advisory Committees. The ~~[chair or]~~ board may appoint ~~[convene the following]~~ committees in an advisory capacity in accordance with §1001.216.[:]

SAC Revision:

(d) Advisory Committees. In accordance with §1001.216, the ~~[chair or]~~ board shall ~~[may]~~ appoint a Surveying Advisory Committee ~~[convene the following]~~ and may appoint other advisory committees. [:]

TBPELS staff will check with the AG Representative as to whether this is a substantive change requiring reposting or if this change can be made at the time of rule adoption.

§§134.61 and 134.73 – Freeman (written & testimony), Leamons (written & testimony), O'Hara (testimony – against change). Feels that the Board should not move to the NCEES Principles and Practice of Surveying (PS) Exam, either in general or at least until 'new' modular version is developed and available from NCEES. Mr. O'Hara disagrees and feels that the PS exam plus a suitable Texas specific exam would be fine.

- Staff Comments: The actual rule that would allow TBPELS to move to the NCEES PS exam is **§134.67(g), (h), and (i)**. As can be seen below, these two rules would simply *allow* the board to begin to utilize the NCEES PS exam no sooner than January 1, 2021. It does not mandate the change. This move would be done via policy and only transitioned once the Board approved (once a Texas specific exam was finalized and with ample communication to examinees, etc.) At the current time, this would not be until at least after the April 2021 examination cycle. RECOMMEND NO CHANGE TO PROPOSED RULE.

§134.67 EXAMINATION ON THE PRINCIPLES AND PRACTICE OF SURVEYING

(g) The board may develop an examination to meet the requirements of this section (relating to Examination on the Principles and Practice of Surveying).

(h) Starting January 1, 2021, the national NCEES Principles and Practice of Surveying examination, in conjunction with a state-specific Texas Land Surveying examination, may be used to meet the requirements of this section (relating to Examination on the Principles and Practice of Surveying).

(i) The state-specific Texas Land Surveying examination shall be developed by the board to supplement the NCEES Principles and Practice of Surveying examination and cover any topic areas specific to the professional practice of land surveying in Texas that are not covered by the NCEES Principles and Practice of Surveying examination. The state-specific Texas Land Surveying examination shall not exceed four hours in duration.

The SAC discussed this item at length, recognizing the comments from the surveying community concerning a move to the PS exam and concerns that the NCEES exam would not sufficiently test Texas surveyors. Comments were also discussed about the NCEES move to a modular exam and the possible implementation date of 2023 or 2024 or this change. Some members noted that the Texas state specific exam would be the place where Texas knowledge should be tested and that out-of-state licensees already use this process (PS+state specific) and they are sufficiently qualified. The SAC reiterated that they want to keep all exams and practice at a high level to protect the public. Also, the board should not move to the PS + state specific model until a sufficient state-specific exam is ready and approved. Examinees should also have sufficient time to prepare for the transition and for the new exams.

After review of the currently proposed rule language, the SAC recommended changes based on two things: the date in the rule is based on when the board *may* convert to the PS exam; however, that is not the date when the board will necessarily make that change. Some may be confused that this means the exams will definitely start on January 1, 2021. This is no the case – the Texas exam is not complete and may not be until some time later in 2021. Second, the SAC felt it was important to include language that clarified that the *Board* will decide when to move to the PS exam. They concurred that giving the board the flexibility in the rule was appropriate.

Currently proposed:

(h) Starting January 1, 2021, the national NCEES Principles and Practice of Surveying examination, in conjunction with a state-specific Texas Land Surveying examination, may be used to meet the requirements of this section (relating to Examination on the Principles and Practice of Surveying).

SAC Revision:

(h) The board may approve the national NCEES Principles and Practice of Surveying examination, in conjunction with a state-specific Texas Land Surveying examination, to meet

the requirements of this section (relating to Examination on the Principles and Practice of Surveying).

§§136.1, 136.3, 138.77 – Freeman (written & testimony), Leamons (written & testimony), Mertz (written), Strong (written), Piper (testimony) – relating to requiring surveying firm branches to have an RPLS assigned to each branch. The rule as proposed would *not* require an RPLS to be assigned to each branch office; rather, only that a surveying firm have at least one RPLS for the firm and that all work be done under an RPLS. The commenters feel this is not adequate for coverage and to guarantee that quality work is done by an RPLS as there needs to be access to a person in the office and to visit the worksites. See documentation for more complete commentary.

- Staff Comments: The current (previous) surveying rule DOES require that each branch have an RPLS. During the rule review and re-write process, it was noted that engineering firms do not need a PE at each branch office. This was discussed at length with the SAC, who decided to recommend the rule change that an RPLS would NOT be required at each branch office, and that professional practice requirements set the standard that all work must be performed by or overseen by an RPLS and must be signed and sealed by an RPLS. The actual business arrangements would be determined by the surveying firm itself.

Staff does not have a recommendation. The rule could remain as proposed (no RPLS branch requirement) or edited to require an RPLS be *assigned* to each branch. Staff does not feel that a requirement that an RPLS be present or reside at/near the surveying firm would be a good choice due to the difficulty in proving whether an RPLS was physically present at any particular time or sufficiency of proximity to a firm.

The SAC spent a long time discussing and debating this issue as it is important to the surveying community and there has been much formal and informal discussion on this topic. Different scenarios were discussed from the comments submitted and from personal experience. It was pointed out that it is very important that surveying be done by qualified individuals and that it can be difficult to remotely supervise a crew from a long distance. It was also noted that the minimum statutory requirements for firm registration is to have one RPLS per firm; and while it is good business (and some say professional practice) to have a surveyor per branch office, there are many different business arrangements currently. The ultimate goal for the board is to make sure work is done correctly and accurately, and that is evidenced via sealing and supervision requirements. The Board cannot make business decisions or guidance for all business scenarios. Ultimately, if a surveyor makes an error due to insufficient oversight or supervision, that is their risk and that is when the board can take action through the enforcement process.

The committee also discussed the size of Texas, the number of RPLS available, and other issues such as travel, availability, working from remote offices, what requirements could be put in place, which were reasonable and which were not enforceable, etc. Ultimately, the

SAC reviewed the proposed language and decided to leave it as it is with a minor edit (see below). Since it is a contentious issue, the committee took a roll call vote with PASSED (6-1, Piper voting nay) to accept the proposed language with the minor edit.

Currently Proposed:

(b) A firm shall provide that at least one full-time active registration holder is employed with the entity and that the active registration holder performs or directly supervises all surveying work and activities that require a registration that is performed in the primary, branch, remote, or project office(s).

SAC Revision:

(b) A firm shall provide that at least one full-time active registration holder is employed with the entity and that **an** active registration holder performs or directly supervises all surveying work and activities that require a registration that is performed in the primary, branch, remote, or project office(s).

§138.83 – McMinn (written & testimony) – related to accuracy of instruments and measurements. Mr. McMinn commented that in previous versions of the surveying rules (§663.15 – amended in 2013) a specific set of tolerances was included.

Staff Comment: The current version of §663.15 does *not* have these tolerances and this rule was copied over to §138.83. The preamble for the 2013 rule amendment reads as follows:

"The amended rule is proposed to eliminate specific positional tolerance requirements which were determined by surveying means and methods that the Board now considers outmoded. The proposed amendment acknowledges that more current methods and equipment, such as GPS, for example, are presently employed by land surveyors to attain accuracy and precision in measurement."

Based on the above rationale - RECOMMEND NO CHANGE TO PROPOSED RULE.

The SAC discussed the comments received and the board rule as proposed. They also considered the previous rationale for the rule change, and felt the current version was most appropriate and to not reverse the previous changes made in 2013. NO CHANGE RECOMMENDED.

§138.87(b)– McMinn (written & testimony), Mardock (written) – regarding sufficient quantity of monuments to be set. The commenters feel that the board should consider the previous rule language (§663.17(b)) from 2012.

Staff Comment: The current version of §663.17 has been copied over to the new rule §138.87 with only one minor change of 'must' to 'shall'. The preamble for the 2013 rule amendment reads as follows:

"The amended rule adds the requirement of an adequate quantity of monuments that the Board expects a land surveyor to leave as physical monuments on which the public can reasonably rely in identifying the property or premises being surveyed. The amendments also emphasize the importance of a land surveyor selecting monumentation that is adequate to withstand the forces of nature in the location where it is placed. The rule amendments eliminate redundant terms all of which are considered to constitute property or boundary corners. The proposed amendments eliminate redundant requirements contained in other rules or clarified by definitions contained in the Board's rules. The proposed amendments require any metes and bounds description to be tied by relative position to a boundary corner identified in a recorded document which describes the property to be affected by the easement."

In addition, here is the previous language that was marked out:

~~(b)When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Act, §1071.002(6) or (8)), the land surveyor shall set, or leave as found, an adequate quantity of monuments of a ~~sufficient,~~ stable and reasonably permanent nature ~~[survey markers]~~ to represent or reference the property or boundary corners ~~[, angle points, and points of curvature or tangency].~~~~

~~—(1)All survey markers shall be shown and described with sufficient evidence of the location of such markers on the land surveyors' drawing, written description or report. ~~[surveyors' plat. If the land surveyor shall prepare a written description of the surveyed premise, he/she shall include in that written description:]~~~~

~~—(A)reference to and a description of the survey markers as shown on the plat; and~~

~~—(B)the seal and signature of a registered or licensed land surveyor.]~~

~~—(2)In addition, the land surveyor may furnish an electronic copy of a written description provided that the text is verbatim to that on the certified document retained in the land surveyor's file.]~~

The old rule language does not seem to enhance the rule language; therefore, STAFF RECOMMENDS NO CHANGE TO PROPOSED RULE.

The SAC discussed the comments received and the board rule as proposed. They also considered the previous rationale for the rule change, and felt the current version was most appropriate and to not reverse the previous changes made in 2013. NO CHANGE RECOMMENDED.

§138.87(d)– McMinn (written & testimony) – regarding requiring monument caps to be embossed with RPLS or Firm #.

Staff Comment: This language is not in the current or previous rule language. While this may be helpful, the cost vs advantage, as well as 'new' vs previous markers may make this proposed change challenging. RECOMMENDS NO CHANGE TO PROPOSED RULE.

The SAC discussed the comments received and the board rule as proposed. The SAC felt that there are many options for how to indicate who set a particular monument, and rules should not be adopted that were too prescriptive. Not all specific options could be included in the rule and the current language is sufficient. NO CHANGE RECOMMENDED.