

MINUTES
LICENSING COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
VIA VIDEOCONFERENCE
November 18, 2020—1:00 PM

Discuss and Possibly Act on the Following Agenda Items:

1. Preliminary Matters:

A. Call to Order.

Ms. Catherine Norwood, P.E., Chair, called the Licensing Committee meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 1:00 p.m. via Videoconference. (NOTE: all votes are unanimous unless noted.)

B. Roll Call.

Ms. Bodden called the roll. It was noted for the record that a quorum was present.

The following Committee members were present:

Catherine Norwood, P.E.	Chair
Lamberto Ballí, P.E.	Member
Albert Cheng	Public Member
Coleen Johnson, R.P.L.S.	Member

Veena Mohan, Assistant Attorney General and General Counsel for the Board, was present via Videoconference to provide legal counsel to the Board.

The following staff members were present:

Lance Kinney, Ph.D., P.E.	Executive Director
Rick Strong, P.E.	Director of Licensing and Registration
Michael Sims, P.E.	Director of Compliance and Enforcement
Elissa Mazza	Staff Attorney
Janet Sobieski	Director of Operations
Mason Schoolfield	Lead Systems Developer
Clif Bond	Senior Investigator
Cristabel Bodden	Executive Assistant

C. Excuse absent Committee members.

All Committee members were present.

D. Welcome Visitors.

Visitors: Ademola Adejokun, P.E., Board Member; Mark Neugebauer, R.P.L.S., L.S.L.S., Board Member and R. Kyle Womack, P.E., Retired, Advisory Member, were present via Videoconference.

Personal Appearances: Christopher Degutis; Edwin Flagg; Steve Herron; Milan Nikolich and Paul Virgilio were present via Videoconference.

Ms. Norwood stated that the Surveying pass/fail exam results would not be read at this meeting or at the Board meeting tomorrow.

E. Public Comment.

There were no public comments.

2. August 19, 2020 Licensing Committee Meeting Minutes.

It was MOVED/SECONDED (Ballí/Johnson) to approve the August 19, 2020 Licensing Committee minutes as submitted. A vote was taken and the MOTION PASSED.

3. Applications for Licensure: Personal Interviews Cases.

Mr. Strong read the Criminal History Record Check question for the Committee members and attendees and relayed that the question appears in its entirety on both versions of the application.

• **Degutis, Christopher.**

This applicant applied for licensure. He came before the Committee due to a reported incident. The applicant has completed all court requirements. The Committee and applicant discussed his experience and lessons learned.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, to allow licensure in Texas. A vote was taken and the MOTION PASSED.

• **Flagg, Edwin.**

This applicant applied for licensure. He came before the Committee due to an unreported incident. The applicant has completed all court requirements. The Committee and applicant discussed his experience and lessons learned.

It was MOVED/SECONDED (Ballí/Cheng) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, to allow licensure in Texas upon the successful completion of the 30-hour Basic Level Ethics course from Texas Tech Murdough Center for Engineering Ethics. A vote was taken and the MOTION PASSED.

• **Herron, Steve.**

This applicant applied for licensure. He came before the Committee due to an unreported incident. The applicant has completed all court requirements. The Committee and applicant discussed his experience and lessons learned.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, to allow licensure in Texas upon the successful completion of the 30-hour Basic Level Ethics course from Texas Tech Murdough Center for Engineering Ethics. A vote was taken and the MOTION PASSED.

- **Nikolich, Milan.**

This applicant applied for licensure. He came before the Committee due to an unreported incident. The applicant has completed all court requirements. The Committee and applicant discussed his experience and lessons learned.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, to allow licensure in Texas upon the successful completion of the 30-hour Basic Level Ethics course from Texas Tech Murdough Center for Engineering Ethics. A vote was taken and the MOTION PASSED.

- **Virgilio, Paul.**

This applicant applied for re-licensure. He came before the Committee due to an unreported incident. The applicant has completed all court requirements. The Committee and applicant discussed his experience and lessons learned.

It was MOVED/SECONDED (Johnson/ Ballí) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, to allow licensure in Texas upon the successful completion of the 30-hour Basic Level Ethics course from Texas Tech Murdough Center for Engineering Ethics. A vote was taken and the MOTION PASSED.

4. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 134, Subchapter A - Surveyor-In-Training.

- **§134.1 – Surveyor-In-Training Designation.**
- **§134.3 – Surveyor-In-Training Application and Certification.**
- **§134.5 – Surveyor-In-Training Experience Requirements.**

Dr. Kinney stated that Chapter 134, Subchapter A – Surveyor In Training rules are registration and licensing rules for Surveyors, had gone through the rulemaking process and were ready for adoption. These rules have been reviewed by the Surveying Advisory Committee, were previously proposed to the Board, have been reviewed by the Governor’s Office, were posted on the Texas Register for public comment, and had public rule hearings and no comments were received.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 134, A – Surveyor In Training rules as presented. A vote was taken and the MOTION PASSED.

5. Adopt or Propose Amendment to Add 22 Tex. Admin. Code Chapter 134, Subchapter B – Professional Surveyor Registration.

- **§134.11 – Types of Surveyor License and Registration.**

Dr. Kinney stated that Chapter 134, Subchapter B – Professional Surveyor Registration rule is a registration and licensing rule for Surveyors, has gone through the rulemaking process and was ready for adoption. This rule has been reviewed by the Surveying Advisory Committee, was previously proposed to the Board, has been reviewed by the Governor’s Office, was posted on the Texas Register for public comment, and had rule hearings and no comments were received.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 134, Subchapter B – Professional Surveyor Registration rule as presented. A vote was taken and the MOTION PASSED.

6. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 134, Subchapter C – Land Surveyor Application Requirements.

- **§134.21 – Application for Standard Registration.**
- **§134.23 – Application from Standard Registration Holders.**
- **§134.25 – Application from Out-of-State Registration Holders.**
- **§134.27 – Application for Licensed State Land Surveyor.**
- **§134.29 – Application for Temporary License for Military Spouses Who Are Licensed or Registered in Another State.**

Dr. Kinney stated that Chapter 134, Subchapter C – Land Surveyor Application Requirements rules are registration and licensing rules for Surveyors, had gone through the rulemaking process and were ready for adoption. These rules have been reviewed by the Surveying Advisory Committee, were previously proposed to the Board, have been reviewed by the Governor’s Office, were posted on the Texas Register for public comment, and had rule hearings and no comments were received.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 134, Subchapter C – Land Surveyor Application Requirements rules as presented. A vote was taken and the MOTION PASSED.

7. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 134, Subchapter D – Education.

- **§134.31 – Educational Requirements for Applicants.**
- **§134.35 – Proof of Educational Qualifications – Accredited / Approved Programs.**
- **§134.37 – English Translation.**

Dr. Kinney stated that Chapter 134, Subchapter D – Education rules are registration and licensing rules for Surveyors, had gone through the rulemaking process and were ready for adoption. These rules have been reviewed by the Surveying Advisory Committee, were previously proposed to the Board, have been reviewed by the Governor’s Office, were posted on the Texas Register for public comment, and had rule hearings and no comments were received.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 134, Subchapter D – Education rules as presented. A vote was taken and the MOTION PASSED.

8. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 134, Subchapter E – Experience.

- **§134.41 – Supplementary Experience Record.**
- **§134.43 – Experience Evaluation.**

Dr. Kinney stated that Chapter 134, Subchapter E – Experience rules are registration and licensing rules for Surveyors, had gone through the rulemaking process and were ready for adoption. These rules have been reviewed by the Surveying Advisory Committee, were previously proposed to the Board, have been reviewed by the Governor’s Office, were posted on the Texas Register for public comment, and had rule hearings and no comments were received.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 134, Subchapter E – Experience rules as presented. A vote was taken and the MOTION PASSED.

9. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 134, Subchapter F – Reference Documentation.

- **§134.51 – Reference Providers.**
- **§134.53 – Reference Statements.**
- **§134.55 – Reference Communication.**

Dr. Kinney stated that Chapter 134, Subchapter F – Reference Documentation rules are registration and licensing rules for Surveyors, had gone through the rulemaking process and were ready for adoption. These rules have been reviewed by the Surveying Advisory Committee, were previously proposed to the Board, have been reviewed by the Governor’s Office, were posted on the Texas Register for public comment, and rule hearings were held, and no comments were received.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 134, Subchapter F – Reference Documentation rules as presented. A vote was taken and the MOTION PASSED.

10. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 134, Subchapter G – Examinations.

- **§134.61 – Surveying Examinations Required for a Registration to Practice as a Professional Surveyor.**
- **§134.65 – Examination on the Fundamentals of Surveying.**
- **§134.67 – Examination on the Principles and Practice of Surveying.**
- **§134.68 – Licensed State Land Surveyor Examination.**
- **§134.69 – Waiver of Examinations.**
- **§134.71 – Examination for Record Purposes.**
- **§134.73 – Examination Results and Analysis.**
- **§134.75 – Examination Irregularities.**

Dr. Kinney stated that Chapter 134, Subchapter G – Examinations rules involves the various exam requirements for the surveying exams. and this was the revision of the surveying rules and putting the rules in a new format.

A few public comments were received specifically related to the RPLS exam, the possible change from the RPLS to the NCEES PS exam, and rule §134.67. The RPLS exam is currently developed and delivered by this agency and we do not use the national NCEES PS exam at this time for initial registration as an RPLS. Written public comments were received as well as written and oral testimony during rule hearings and included citations of rules §134.61 and §134.73. After reviewing the comments and verbal recommendations, the focus of the rule is rule §134.67. Therefore, no change is recommended to rules §134.61 and §134.73.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 134, Subchapter G – Examinations rules as presented except for rule §134.67 – Examination on the Principles and Practice of Surveying. A vote was taken and the MOTION PASSED.

Dr. Kinney stated the rule §134.67 – Examination on the Principles and Practice of Surveying is related to the RPLS and PS exam. The rule as proposed would allow the Board as early as January 1, 2021, to switch over and use the NCEES PS exam in conjunction with a state-specific exam to qualify for registration instead of the current RPLS exam.

The rule was permissive and allowed the Board to make the change at any time after that date and that was the plan before COVID. Commentary that came in stated that they did not think that it is appropriate to move to the national exam at this time as it may not contain enough Texas specific content and does contain items that are not appropriate for surveying practice in Texas. There was also resistance to going to the NCEES PS exam at all and a desire to continue with the current RPLS exam process.

The NCEES PS exam is a nationwide that is given in every state except Texas. NCEES is currently working toward a new modular version where each state could adopt individual pieces and that is currently targeted for 2023. It looks like with COVID it may take a little longer and there will be a delay so some folks stated that they think a move to this modular exam would be appropriate once it is ready, but should be delayed for now.

Dr. Kinney stated that others commented that they think this move is timely and appropriate and that we can use the national exam in addition to a state-specific exam that will test the Texas pieces.

Dr. Kinney stated that the comments are included in the exhibit provided to the Committee.

Dr. Kinney stated that the Survey Advisory Committee looked at the rules during development, and again after receiving the public comments. The main focus of the commentary affected subsections (h) and (i). Therefore, no changes are recommended to (a)-(g).

The committee felt that an appropriate change to section (h) was regarding to starting an exam conversion as early as January 1, 2021. Given the comments, some commenters interpreted this to mean the exams *would begin* starting January 1, 2021, and not that they *could start as early as*

January 1, 2021. This is not the case and that is not the intent of the rule language. Also, given COVID and other exam development issues, there would be a delay in implementation anyway. Therefore, the committee recommended doing away with the specific date in the rule.

Other feedback expressed concern as to what the 'trigger' would be for exam conversion. The current rule language does not indicate how the Board would make that decision. The rule right now just says the Board may do this, but it does not say what action the Board would take.

Some of the feedback was also related to making sure examinees are aware of the timeline and what they need to do to switch exam types. For example, they have been studying to one exam and they need to have ample time to do that. Course providers and educators would also need time to make the change.

The Survey Advisory Committee therefore recommended to provide additional language to clarify that the Board would need to vote to make the exam change

Due to these changes, and in consultation with our AG counsel, it is recommended that we withdraw the current rule and re-propose an amended rule with the new revised language to address the issues discussed.

Since we would need to re-propose the rule, Dr. Kinney stated that we need to have the old exam rule continue to be in place until the new rule is adopted. He will work with the General Issues Committee to not repeal the exam rule until this new rule is adopted.

It was MOVED/SECONDED (Johnson/Ballí) to not recommend the adoption of Rule §134.67 – Examination on the Principles and Practice of Surveying. A vote was taken and the MOTION PASSED.

It was MOVED/SECONDED (Johnson/Ballí) to re-propose for public comment Rule §134.67 – Examination on the Principles and Practice of Surveying as amended. A vote was taken and the MOTION PASSED.

Mr. Cheng asked if you could quantify the NCEES module, what percent would you say is missing Texas relevant information.

Ms. Johnson replied that it would not cover everything, and we will always have a state specific exam to cover Texas issues. Ms. Johnson can see Texas possibly adopting 2 of the 5 modules.

11. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 134, Subchapter H – Review Process of Applications and Registration Issuance.

- **§134.81 – Receipt and Processing of Applications by the Board.**
- **§134.83 – Executive Director Review, Evaluation, and Processing of Applications.**
- **§134.87 – Final Action on Applications.**
- **§134.89 – Processing of Administratively Withdrawn Applications.**
- **§134.91 – Reconsideration of Denied Applications.**

- **§134.93 – Personal Interviews of Applicants.**
- **§134.95 – Application Files.**
- **§134.97 – Issuance of Registration.**

Dr. Kinney stated that Chapter 134, Subchapter H – Review Process of Applications and Registration Issuance had gone through the rulemaking process and were ready for adoption. These rules have been reviewed by the Surveying Advisory Committee, were previously proposed to the Board, have been reviewed by the Governor’s Office, were posted on the Texas Register for public comment, and had rule hearings and no comments were received.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 134, Subchapter H – Review Process of Applications and Registration Issuance rules as presented. A vote was taken and the MOTION PASSED.

12. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 136, Firm Registration.

- **§136.1 – Authority.**
- **§136.3 – Application for a Certificate of Registration.**
- **§136.5 – Renewal and Good Standing.**

Dr. Kinney stated that Chapter 136, Firm Registration had gone through the rulemaking process and were ready for adoption. These rules have been reviewed by the Surveying Advisory Committee, were previously proposed to the Board, have been reviewed by the Governor’s Office, were posted on the Texas Register for public comment and rule hearings were held and several comments were received.

Dr. Kinney stated that there are no substantive amendments to Chapter 136; the comments received that cited the Chapter 136 rules were actually concerned with a rule in Chapter 138 related to registration of firm branches. The only amendment recommended is a minor error related to the editing process. The error states that you have to supply information related to the practice of professional *engineering*; this rule chapter is clearly about surveying firms and will change the word to *surveying* during the adoption process.

Dr. Kinney stated that Ms. Mohan concurs that it is very obvious from the context that this is about surveying firms.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 136, Firm Registration rules as amended with the minor non-substantive change made by Dr. Kinney. A vote was taken and the MOTION PASSED.

13. Extend Time for Emergency Rule Amendment 22 Tex. Admin. Code Chapter 133, Subchapter G – Examinations.

- **§133.67 – Examination on the Principles and Practice of Engineering – (Emergency Rule for Extension of Exam Deadline).**

Dr. Kinney stated that Chapter 133, Subchapter G – Examinations rule is engineering related. At the last Board meeting, we passed an emergency rule related to extending examinees time frame to complete the PE exam by a year due to COVID and the April exam being canceled. The rationale was that where there is a time limit in the rules that require an applicant to complete the PE exam within a certain amount of time. Through no fault of the examinees, one of the exam chances was taken away due to nation-wide exam cancelation which would cause some applicants to time-out.

The board previous passed the emergency rule, which run for 120 days and then expire, unless voted to extended for an additional 60 days. The original Emergency Rule was filed August 20th and will expire December 17th. Since we do not have a meeting at that time, we are requesting the Board to approve extending it an additional 60 days which would push into February.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board extend the emergency rule by 60 days. A vote was taken and the MOTION PASSED.

14. Propose Amendment to 22 Tex. Admin. Code Chapter 133, Subchapter G – Examinations.

- **§133.67 – Examination on the Principles and Practice of Engineering.**

Dr. Kinney stated that Chapter 133, Subchapter G – Examinations rule is related to the same rule as the previous agenda item, but is not an extension of the emergency rule, but the proposal of a permanent rule to address this issue long-term. The rule would be proposed now, it would go through the regular posting on the Texas Register and TBPELS website, and it could be adopted at the February meeting which would put this extension into our permanent rules.

It was MOVED/SECONDED (Ballí/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 133, Subchapter G – Examinations rules as proposed. A vote was taken and the MOTION PASSED.

15. Texas Board of Professional Engineers and Land Surveyors’ Land Surveying Exam

Update.

Mr. Strong provided an update on exams. The surveying exams were held on October 16th and were very successful. The primary goal was to ensure the safety of the examinees, the proctors, the people at the facility, and all the exam developers without any kind of issues related to the pandemic. The exam team did an excellent job including 12 members of the TBPELS staff.

The Norris Conference Center in Austin was exceptional in the way they spaced everyone out and did social distancing. They let the exam team come in the night before to stage everything and put it all together. There were 114 people that showed up for the exam. We were also able to do an ADA accommodations room.

Mr. Strong stated that there were 75 RPLS exams, 34 Reciprocal exams, and 5 LSLs exams. Mr. Strong stated that they did temperature checks as they came in the door.

Mr. Strong stated that they are still going through the finalization on the exam grading process. They have all the calibrations and exam grading done as of yesterday and now they will begin notifying the individuals via email.

Mr. Strong stated that exam development continues because we will do the same thing in April. We have already reserved the Norris Conference Center again. There are 30 examinees that postponed from October 2020 to April 2021. Those individuals that did not pass would want to take the exam again, then new applicants so we are looking at over 100 people again in April 2021.

Mr. Strong stated that we did a survey to get feedback on the exam process and exam experience with the COVID restrictions. Forty-seven people responded and the agency received an overall score of 4.54 out of 5.

No action was required on this agenda item.

16. Licensing Director's Report.

- **Engineer Results and Statistics: Licensing Application and Examination Report.**

Mr. Strong reviewed the report with the Committee members and provided application and exam results. Results from NCEES will not be in until early December 2020.

No action was required on this agenda item.

- **Surveyor Results and Statistics: Registration Application and Examination Report.**

Mr. Strong reviewed the report with the Committee members and provided application and exam statistics.

No action was required on this agenda item.

- **Update to Criminal Conviction Policy for Applicants.**

Dr. Kinney stated that this item is the policy related to Occupation Code 53 and criminal background checks. This policy is for applicants and has been updated to include surveyors, who will start the background check process on September 1st. This has been approved previously for PE applicants, and it is now a requirement for our RPLS applicants as well.

This policy will be posted on the website and posted on the register. Note that it is not a rule, but a requirement of Occupations Code 53.

It was MOVED/SECONDED (Norwood/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt the criminal conviction policy for applicants as amended. A vote was taken and the MOTION PASSED.

17. Issues for consideration for future Committee meetings.

No issues were presented or addressed for future consideration at the next Committee meeting.

18. Adjourn.

It was MOVED/SECONDED (Johnson/Cheng) to adjourn the meeting at 3:05 p.m. A vote was taken and the MOTION PASSED.

Date Committee approved minutes:

February 24, 2021

Date Board approved minutes:

February 25, 2021