

MINUTES
ENFORCEMENT COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
VIA VIDEOCONFERENCE
November 19, 2020—10:00 AM

Discuss and Possibly Act on the Following Agenda Items:

1. Preliminary Matters:

A. Call to Order.

Mr. Lamberto Ballí, P.E., Chair, called the Enforcement Committee meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 10:06 a.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:

Lamberto Ballí, P.E.	Chair
Coleen Johnson, R.P.L.S.	Member
Catherine Norwood, P.E.	Member
Dr. Marguerite McClinton Stoglin	Public 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
Jeff Mutscher	Chief Financial Officer
Janet Sobieski	Director of Operations
Mason Schoolfield	Lead Systems Developer
Cristabel Bodden	Executive Assistant

C. Excuse absent Committee members.

All Committee members were present.

D. Welcome Visitors.

Albert Cheng, Board Member; Edmundo Gonzalez, P.E., R.P.L.S., Advisory Member; Mike Grogan, R.P.L.S., L.S.L.S., General Land Office; Victor Mendez, R.P.L.S., Texas Society of Professional Surveyors Board Member; Dr. Sina K. Nejad, P.E., P.Eng., Board Member; Mark Neugebauer, R.P.L.S., L.S.L.S., Board Member; Govind Nadkarni, P.E., Advisory Member;

Catherine Norwood, P.E., Board Member and R. Kyle Womack, P.E., Retired, Advisory Member, were present via Videoconference.

E. Public Comment.

There were no public comments.

2. August 19, 2020 Enforcement Committee Meeting Minutes.

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

3. Adopt or Propose Amendments to Add 22 Tex. Admin. Code Chapter 138, Subchapter A – Individual and Surveyor Compliance.

- **§138.1 – License and Registration Holder Designations.**
- **§138.5 – Notifications of Name Change, Address Change, Employer Change, and Criminal Convictions.**
- **§138.7 – License or Registration Expiration and Renewal.**
- **§138.9 – Renewal for Expired License or Registration.**
- **§138.11 – Expiration and Licensed or Registered in Another Jurisdiction.**
- **§138.13 – Inactive Status.**
- **§138.14 – Voluntary Surrender of License or Registration.**
- **§138.15 – Replacement of Printed Licenses or Certificates.**
- **§138.17 – Continuing Education.**

Dr. Kinney stated that Chapter 138, Subchapter A – Individual and Surveyor Compliance rules 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 (Norwood/McClinton Stoglin) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 138, Subchapter A – Individual and Surveyor Compliance rules as presented. A vote was taken and the MOTION PASSED.

4. Adopt or Propose Amendments to 22 Texas Administrative Code Chapter 138, Subchapter B – Sealing Requirements.

- **§138.31 – Seal Specifications.**
- **§138.33 – Sealing Procedures.**
- **§138.35 – Electronic Seals and Electronic Signatures.**
- **§138.37 – Sealing Misconduct.**

Dr. Kinney stated that Chapter 138, Subchapter B – Sealing Requirements rules 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 (Norwood/McClinton Stoglin) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 138, Subchapter B – Sealing Requirements rules as presented. A vote was taken and the MOTION PASSED.

5. Adopt or Propose Amendments to 22 Texas Administrative Code Chapter 138, Subchapter C – Professional Conduct and Ethics.

- **§138.51 – General Practice.**
- **§138.53 – Surveyor Standards of Compliance with Professional Services Procurement Act.**
- **§138.55 – Surveyors Shall Protect the Public.**
- **§138.57 – Surveyors Shall Be Objective and Truthful.**
- **§138.59 – Surveyors' Actions Shall Be Competent.**
- **§138.61 – Surveyors Shall Maintain Confidentiality of Clients.**
- **§138.63 – Surveyor's Responsibility to the Profession.**
- **§138.65 – Action in Another Jurisdiction.**

Dr. Kinney stated that Chapter 138, Subchapter C – Professional Conduct and Ethics rules 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 (Norwood/McClinton Stoglin) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 138, Subchapter C – Professional Conduct and Ethics rules as presented. A vote was taken and the MOTION PASSED.

6. Adopt or Propose Amendments to 22 Texas Administrative Code Chapter 138, Subchapter D – Firm and Governmental Entity Compliance.

- **§138.73 – Firm Record Modifications.**
- **§138.75 – Registration Renewal and Expiration.**
- **§138.77 – Firm Registration Compliance.**
- **§138.79 – Standards for Compliance with Professional Services Procurement Act.**

Dr. Kinney stated that Chapter 138, Subchapter D – Firm and Governmental Entity Compliance rules 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 on three of the four rules.

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 Chapter 134, Subchapter D – Firm and Governmental Entity Compliance rules as presented except for rule §138.77 – Firm Registration Compliance. A vote was taken and the MOTION PASSED.

Dr. Kinney stated there was much public comment and discussion on rule §138.77 – Firm Registration Compliance. The Survey Advisory Committee discussed all the comments and feedback received. The written comments received were included in the Board packets.

The commentary has to do with whether or not firm branches need to have a separate RPLS associated with them. The rule as proposed did not have that requirement while the previous surveying rule did. The minimum statutory requirement is for a firm to have at least one professional and this is similar for engineers and surveyors. You must have at least one professional associated with the firm.

Traditionally and in the old surveying rules, each branch office needed to have an RPLS associated with it. So, if you had a firm with three branches, you needed to have an RPLS for the primary office and then one for each branch as well. So, you had to have multiple RPLS's and they had to be assigned to those branches. Each branch was registered as its own firm and paid firm registration and renewal fees.

The proposal that was made after review was to make it such that you only needed a minimum of one RPLS to register the firm. You could of course have RPLS's associated with each branch or you could register each branch as a separate firm if you so chose. However, that was not going to be a requirement.

From the feedback in the written testimony as well as from the two rule hearings, there are a number of surveyors that believe we should maintain the status quo or have different options, such as: an RPLS assigned to each branch, a requirement for some sort of physical presence from an RPLS in each branch or keep it as a business practice decision for each surveying firm to make. The possible enforcement difficulty to verify physical locations and where a person works was also discussed.

There was very long fruitful discussion with the Surveying Advisory Committee on this rule. The Survey Advisory Committee (SAC) reviewed all the rules, the statute, comments, and options. The SAC took a vote on the proposal. There are seven members and six were in favor of continuing with the rule as proposed, which would be a minimum of one RPLS and not require branches to register separately or have a specific RPLS associated with them. One individual on the SAC felt that we should not proceed with the rule as proposed and have an RPLS associated with branches.

One thing that the SAC did do was recommend a minor modification of the rule as proposed. This is considered non-substantive and something that can be included during the adoption process. It switches from a firm shall provide at least one full-time active registration holder and that "the" active registration holder performs all work to that all surveying work must be done by "an" active registration holder. The first option is that it could be construed that to require that the RPLS that registered the firm has to do all the work even though there may be other registered RPLS employees, while the second option provides that a RPLS that works for the firm must perform professional surveying. Similar language is in the engineering firm rules and also needs to be clarified.

Also, Dr. Kinney noted that members of TSPS have varying opinions on this rule, but TSPS has taken no official position at this time.

Ms. Johnson stated that this is the most contentious proposed rule change for the surveyors, and there are varying opinions. She pointed out that the Surveying Advisory Committee is made up of members that represent geographic locations around the state and is made up of employees of both large and small surveying firms as well as a public agency member and an Assistant Professor at a University. So, the makeup of the committee and the opinions are varied. As Dr. Kinney mentioned, the vote was 6 to 1 for this proposed rule as amended. She opined that the current rule does not say that the RPLS assigned needs to be physically in that branch office. She recognized that the engineers have always been able to have just one firm registration for the headquarters, but they could also register branch offices if they wished. She also emphasized that an RPLS is registered to perform work across the state and not just at a local area or specific office

Ms. Johnson stated she plans to vote with the Surveying Advisory Committee and vote for the change.

Ms. Norwood stated that she thought location requirement would be difficult to enforce and we are in licensing business not the policing business. She noted that engineers are allowed to operate this way. She stated that the board should align rules when possible. She also opined that the previous rule is overreaching on the part of the board as it relates to how an RPLS operates their business. If we trust them enough to register them, and they are required to operate within the rules, then we need to allow them to practice how they best seem fit and if they have got a branch and they put out some bad surveys, then that is going to be on them, and they are going to get to answer an enforcement action. That is just part of being a registered professional and she stated we need to treat them as registered professionals and allow them to run their businesses as they see fit. She stated that she understands that some may be worried about some of the smaller offices in remote or rural areas of the state. She stated she lives in Midland and works for a small engineering firm and they commonly and successfully go up against big engineering firms. It has not been a problem. So, she appreciates the work of the

Survey Advisory Committee and intends to vote with them. She stated that they put a great deal of time, effort, and thought into it and appreciates their work.

Ms. Johnson wanted to reiterate that some of the surveyors did state that they have seen RPLS's come into their area and provide what they considered unprofessional or substandard surveys. So again, that should be captured through the enforcement process that we have. If that is happening, we are all professionals. We should act professionally, and they are responsible. The signing RPLS is responsible.

Mr. Ballí stated that if there is some way for professionalism to be defined by region, then present that to us but it is just that I think it is impossible. He opined that it is a commerce issue and a professionalism issue that we need to be able to enforce and he thinks we have the teeth to enforce that in terms of quality of work. He opined that the technology is great and getting even greater to where you can remotely manage work.

Mr. Ballí is a liaison to the SAC and stated that the SAC did take these things into consideration. He stated he thinks we are moving in the right direction.

Mr. Gonzalez stated that as long as he has worked with the Board, he is the only one that is both a professional engineer and a licensed surveyor and he has the two disciplines in his office and deals with them daily. He supports what Ms. Johnson is saying. It is the right thing to do. With the technology now for example, he does not physically put my foot on every property that his company surveys but I will always do research and verify the work, including finding out about the job before starting work. First, it is to see exactly what the property looks like before our surveyors even give a proposal to do the survey of that particular tract of land. Secondly, it is just to get an idea how much work effort it is going to take so we can give a proposal. He stated with the technology now, he thinks it is a little bit easier to oversee work. He always checks their field notes and I always check their drawing and their metes and bounds.

Mr. Ballí added that the point is to provide quality work to protect the general public.

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 rule with the minor amendment rule §138.77 – Firm Registration Compliance. A vote was taken and the MOTION PASSED.

7. Adopt or Propose Amendments to 22 Texas Administrative Code Chapter 138, Subchapter E – Professional and Technical Standards.

- **§138.83 – Precision and Accuracy.**
- **§138.85 – Boundary Construction.**
- **§138.87 – Monumentation.**

- **§138.89 – Certification.**
- **§138.91 – Survey Drawing/Written Description/Report.**
- **§138.93 – Subdivision Plat.**
- **§138.95 – Descriptions Prepared for Political Subdivisions.**
- **§138.97 – Easement Depiction.**

Dr. Kinney stated that these were rules that were rules taken straight over from the previous surveying rules and they have to do with very specific technical issues, precision accuracy, boundary construction, etc. We did receive a couple of comments on two specific rules; §138.83 – Precision and Accuracy and §138.87 – Monumentation. The comments are included in the packet.

In summary, the comments were basically a request to roll back the previous surveying rules to a 2013 version that had other language that the previous surveying board had already decided to change and have been in place for a number of years. The Survey Advisory Committee did discuss the comments and it was not seen that it was appropriate to roll back the rules to something from several years ago. The previous board had decided that these were the appropriate rules and they had been operating with these rules for a number of years. So, acknowledging those public comments, the Survey Advisory Committee did not recommend any change.

It was MOVED/SECONDED (Norwood/McClinton Stoglin) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 138, Subchapter E – Professional and Technical Standards rules as written. A vote was taken and the MOTION PASSED.

8. Adopt or Propose Amendment to 22 Tex. Admin. Code Chapter 139, Subchapter A – General Enforcement Authority.

- **§139.1 – General.**

Dr. Kinney stated that Chapter 139, Subchapter A – General Enforcement Authority rule was related to the Enforcement process. These are not new rules but modifications to add to land surveying to the current enforcement process rules. The rule 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 (Johnson/Norwood) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 139, Subchapter A – General Enforcement Authority rule as written. A vote was taken and the MOTION PASSED.

9. Adopt or Propose Amendments to 22 Tex. Admin. Code Chapter 139, Subchapter B – Complaint Process and Procedures.

- **§139.11 – Complaints – General.**
- **§139.13 – Filing a Complaint.**
- **§139.17 – Investigating a Complaint.**
- **§139.19 – Final Resolution of a Complaint.**
- **§139.21 – Reporting Complaint Status to the Board.**
- **§139.23 – Technical Consultants.**

Dr. Kinney stated that Chapter 139, Subchapter B – Complaint Process and Procedures rules were related to the Enforcement process, and they are not new rules but modifications to add land surveying. They have 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 a rule hearing, and no comments were received.

It was MOVED/SECONDED (Johnson/Norwood) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 139, Subchapter B – Complaint Process and Procedures rules as written. A vote was taken and the MOTION PASSED.

10. Adopt or Propose Amendments to 22 Tex. Admin. Code Chapter 139, Subchapter C – Enforcement Proceedings.

- **§139.31 – Enforcement Actions for Violations of the Acts or Board Rules.**
- **§139.33 – Informal Settlement Conferences.**
- **§139.35 – Sanctions and Penalties – Engineering.**
- **§139.37 – Sanctions and Penalties – Surveying.**

Dr. Kinney stated that Chapter 139, Subchapter C – Enforcement Proceedings rules were related to the Enforcement process, they are not new rules but modifications to add to land surveying, 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 (Johnson/Norwood) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 139, Subchapter C – Enforcement Proceedings rules as written. A vote was taken and the MOTION PASSED.

11. Adopt or Propose Amendments to 22 Tex. Admin. Code Chapter 139, Subchapter D – Special Disciplinary Provisions for License or Registration Holders.

- **§139.41 – License or Registration Holder with Renewable, Expired License or Registration.**

- **§139.43 – License or Registration Holder with Criminal Convictions.**
- **§139.45 – Restitution.**
- **§139.47 – Probation.**
- **§139.49 – License or Registration Suspension/Revocation Based on Status Review.**
- **§139.51 – License or Registration Suspension Based on Delinquent Child Support.**

Dr. Kinney stated that Chapter 139, Subchapter D – Special Disciplinary Provisions for License or Registration Holders rules were related to the Enforcement process, they are not new rules but modifications to add to land surveying, 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 (Johnson/Norwood) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 139, Subchapter D – Special Disciplinary Provisions for License or Registration Holders rules as written. A vote was taken and the MOTION PASSED.

12. Adopt or Propose Amendment to 22 Tex. Admin. Code Chapter 139, Subchapter E – Hearings.

- **§139.63 – Extensions of Time.**

Dr. Kinney stated that Chapter 139, E – Hearings rule was related to the Enforcement process, and it is not a new rule but modifications to add to land surveying. They have gone through the rulemaking process and are 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 a rule hearing and no comments were received.

It was MOVED/SECONDED (Johnson/Norwood) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 139, Subchapter E – Hearings rule as written. A vote was taken and the MOTION PASSED.

13. Adopt or Propose Amendment to 22 Texas Administrative Code Chapter 137, Subchapter C – Professional Conduct and Ethics.

- **§137.63 – Engineer's Responsibility to the Profession.**

Dr. Kinney stated that this is a rule that was proposed at the previous meeting. This is an engineering rule. It was proposed in the Texas Register, reviewed by the Governor's Office, posted for public comment and no comments were received. In summary, the rule has some clean-up language based on a discussion with the Attorney General’s Office about responsibility to the profession and professional correspondence.

It was MOVED/SECONDED (Norwood/Ballí) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board adopt Chapter 137, Subchapter C – Professional Conduct and Ethics, rule §137.63 – Engineer's Responsibility to the Profession as published. A vote was taken and the MOTION PASSED.

14. Propose Amendment to 22 Texas Administrative Code Chapter 138, Subchapter E – Professional and Technical Standards.

• **§138.81 – Introduction.**

Dr. Kinney stated that in all of the rule proposals related to the surveying merger, rule §138.81, was accidentally left out. It is an introductory section to the surveying rules. It does not have particularly a lot of content nor is it really an actionable rule as it is just an intro paragraph to the rule section. However, need to submit if for completeness purposes.

It was MOVED/SECONDED (Norwood/Johnson) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, that the Board propose for publication Chapter 138, Subchapter E – Professional and Technical Standards, rule §138.81 – Introduction. A vote was taken and the MOTION PASSED.

15. Compliance & Enforcement Report.

• **Update on Compliance & Enforcement Department.**

Mr. Sims provided an update on Compliance and Enforcement activities and staff. He relayed that there were two current openings for Investigators and we had a posting up for several months but have not received a lot of activity on the position. So, we have pulled it down and reposted it hoping to get some additional interest. It has been posted three or four weeks. At this point, we have gotten approximately 18 applicants and several have made it through HR screening. He stated he is working to find a qualified candidate to come and join that the team because we have been for probably operating short-handed by two investigators for nine months.

• **Status of Compliance & Enforcement caseload.**

Mr. Sims stated that case processing for the first quarter of fiscal year 2021, 141 cases were opened, 106 cases were closed and part of that is that there are 80 firm issue cases referred from the Secretary of State for potential companies having engineering in their title. We got a little behind with COVID and I think they are getting caught back up and the 80 in one quarter is a pretty high number. So, this will level off a little bit.

As of Friday, last week, there are 252 pending cases and we are prepared to present 16 Consent and Agreed Board Orders at the Board meeting later this morning. If the Board adopts those, it will close out 16 additional cases.

Mr. Sims reported that during this quarter, they have closed out five of the pre-merger surveying cases. Assuming that all the Consent Orders are adopted at the Board meeting, there will be 12

still pending out of the original 50 cases that came over with the merger. All of the remaining cases are in process.

- **Status of Continuing Education audit(s).**

Mr. Sims reported that the June PE renewal quarter audit has been closed out. It resulted in one enforcement referral. The audit of September renewals is underway. Of the 250 engineers that are audited each quarter, there are about 50 of those still pending that the group is working to close those out. The audit of the December PE renewals and then the audit of the RPLS renewals will both start in January. He will provide an update on the status of those in February.

- **Update to Criminal Conviction Policy for Registrants and Licensees.**

Mr. Sims stated that the criminal history fingerprinting check for RPLS is underway. He believes that as of last week about 50% of the RPLS population have submitted their fingerprints to date. So, there are another 50% that need to get that done by the end of December.

Dr. Kinney stated that he wanted to remind any surveyors watching the meeting that the paper surveying invoices are going out for those that have not renewed online and RPLS have to complete the background check prior to renewing.

Dr. Kinney provided an update on the Update to Criminal Conviction Policy for Registrants and Licensees. This is the same policy the board has used for engineering renewals and have included land surveyors. There is also a clarifying change as recommended by the AG Office.

It was MOVED/SECONDED (Norwood/McClinton Stoglin) to recommend to the Board at its Regular Quarterly Board meeting on November 19, 2020, to adopt the Criminal Conviction Policy for Registrants and Licensees with the revision as outlined by the Executive Director and direct staff to work with the Attorney General's Office to wordsmith this document. A vote was taken and the MOTION PASSED.

- **Fiscal Year 2020 Performance Measures.**

Mr. Sims stated that updated Performance Measures for fiscal year 2020 are available for the Committee in the exhibit. There are 10 existing measures that we track for engineers and we essentially adopted those same 10 measures for surveying. On the engineering side, we have 5-year trends but we do not have that on the surveying side at this point. We have some historical data, but we cannot independently verify its accuracy that came over pre-merger. At this point, we are just reporting 2020 data on the surveying side and will add data going forward.

- **Overview of the Calculation of Sanctions for Violating the Acts or Board Rules.**

Mr. Sims provided an overview of the calculation of sanctions as requested by Mr. Ballí in the previous Committee meeting. The report is available as an exhibit.

16. Issues for consideration for future Committee meetings.

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

17. Adjourn.

It was MOVED/SECONDED (Ballí/McClinton Stoglin) to adjourn the meeting at 11:00 a.m. A vote was taken and the MOTION PASSED.

Date Board approved minutes:

February 25, 2021