

MINUTES
POLICY ADVISORY OPINION COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
VIA VIDEOCONFERENCE
February 25, 2021—9:00 AM

Discuss and Possibly Act on the Following Agenda Items:

1. Preliminary Matters:

A. Call to Order.

Mr. Rolando Rubiano, P.E., Chair, called the Policy Advisory Opinion Committee meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 9:00 a.m. via Videoconference. (NOTE: all votes are unanimous unless noted.)

B. Recitation of the Pledge of Allegiance.

Mr. Rubiano led the recitation of the Pledge of Allegiance.

C. Roll Call.

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

The following Committee members were present:

Rolando Rubiano, P.E.	Chair
Ademola Adejokun, P.E.	Member
Lamberto Ballí, P.E.	Member
Catherine Norwood, P.E.	Alternate 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
Michael Sims, P.E.	Director of Compliance and Enforcement
Rick Strong, P.E.	Director of Licensing and Registration
Mason Schoolfield	Lead Systems Developer
Cristabel Bodden	Executive Assistant

D. Excuse absent Committee members.

The following Committee member was absent:

Kiran Shah	Public Member
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It was MOVED/SECONDED (Ballí/Norwood) to excuse Mr. Shah from the Policy Advisory Opinion Committee meeting. A vote was taken and the MOTION PASSED.

E. Welcome Visitors.

Albert Cheng, Board Member; Edmundo Gonzalez, P.E., R.P.L.S., Advisory Member; Coleen Johnson, R.P.L.S., Board Member; Govind Nadkarni, P.E., Advisory Member; Dr. Sina K. Nejad, P.E., P.Eng., 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.

F. Public Comment.

There were no public comments.

2. November 18, 2020 Policy Advisory Opinion Committee Meeting Minutes.

It was MOVED/SECONDED (Ballí/Adejokun) to approve the November 18, 2020, Policy Advisory Opinion Committee meeting minutes as submitted. A vote was taken and the MOTION PASSED.

3. Policy Advisory Opinion Request Regarding the Use of and Sealing Procedure for Digital Three-Dimensional Models (Policy Advisory Request No. 50).

Mr. Sims discussed Policy Advisory Request No. 50 regarding the use of and sealing procedure for digital three-dimensional models.

Mr. Sims stated that staff proposed a final draft that is included in the Board exhibits with a few non-substantive edits to clarify the language and asked that the committee adopt the final response. Once adopted, it will be published on our website in the policy advisory section and on the Texas Register.

It was MOVED/SECONDED (Rubiano/Adejokun) to recommend to the Board to adopt the Committee's response to Policy Advisory No. 50 as included in this Board packet. A vote was taken and the MOTION PASSED.

4. Policy Advisory Opinion Request Regarding whether the Installation of Fiber Optic Lines by a Telecommunications Provider Qualifies for the Public Works or Telephone Company Exemptions in the Texas Engineering Practice Act (Policy Advisory Request No. 53).

Mr. Sims discussed Policy Advisory Request No. 53 regarding whether the Installation of Fiber Optic Lines by a Telecommunications Provider Qualifies for the Public Works or Telephone Company Exemptions in the Texas Engineering Practice Act.

Mr. Sims stated that in the November 2020 Policy Advisory Committee meeting, the Committee approved publishing a draft response to solicit feedback from stakeholders. No feedback was received.

Mr. Sims stated that feedback on agenda item # 5 could impact the response to this request and asked that no action be taken at this time.

It was MOVED/SECONDED (Ballí/Norwood) to table Policy Advisory No. 50. A vote was taken and the MOTION PASSED.

5. Policy Advisory Opinion Request Regarding the Application of the Exemption for Employees of Certain Utilities or Affiliates to the Crossing of Transit Corridors (Policy Advisory Request No. 55).

Mr. Sims discussed Policy Advisory Request No. 55 regarding the Application of the Exemption for Employees of Certain Utilities or Affiliates to the Crossing of Transit Corridors.

The request was originally submitted by Mr. José Castellanos, P.E., Metropolitan Transit Authority of Harris County Metro Houston on September 16, 2020. Mr. Castellanos seeks guidance from the Board on how the exemption for the employees of certain utilities or affiliates covered under section 1001.058 of the act applies to a utility company seeking to have its infrastructure cross a transportation easement.

When utilities or cable companies need to cross a corridor via underground or aerial crossings, Metro establishes lease agreements with the various companies. Metro further requires that the plans for such crossings be signed and sealed by a professional engineer licensed in the state of Texas.

Based on the request, Mr. Sims understands that Metro owns a transit corridor that is 500 feet wide and approximately 26 miles long. In addition, Metro intends to one day build a light transit system within this corridor. When this happens, Metro establishes agreements with various companies and requires that the plans for such crossings be signed and sealed by a professional engineer licensed in this state.

It is staff's understanding that a utility company has argued that section §1001.058 of the act exempts them from having to provide plans signed and sealed by a professional engineer.

Staff feel that questions posed are adequately addressed by the existing language in the act. A proposed response is included in the exhibits and staff are seeking permission to publish this draft response in the register and on the Board's website to solicit feedback from stakeholders.

Depending on the feedback, staff will adjust the response as needed and bring it back at the next Committee meeting for final adoption.

It was MOVED/SECONDED (Ballí/Norwood) to authorize staff to post the draft response in the Texas Register for public comment and input. A vote was taken and the MOTION PASSED.

6. Policy Advisory Opinion Request Regarding the Application of the Texas Engineering Practice Act to Predominant Use Studies Involving the Use of Natural Gas or Electricity by a Business Entity (Policy Advisory Request No. 56).

Mr. Sims discussed Policy Advisory Request No. 56 regarding the Application of the Texas Engineering Practice Act to Predominant Use Studies Involving the Use of Natural Gas or Electricity by a Business Entity.

Mr. Sims stated that this request was received from John Turner, P.E., seeking guidance on issues involving predominant use studies which are discussed in Texas Administrative Code Chapter 34 code 3.295 relating to natural gas and electricity. These rules are part of the Comptroller's rules.

Predominant use is not directly defined in the Comptroller's rules, but it is discussed specifically in 34 Texas Administrative Code 3.295(f) and (g).

Predominant use studies are conducted to determine taxability of natural gas or electricity used by a business entity and the potential eligibility for sales tax exemptions. Per 34 Texas Administrative Code 3.295(g)(1), the kilowatt rating or BTU rating duty factor and electrical or natural gas computations of a predominant use study must be certified by a registered engineering. Furthermore, the business and the engineer must also certify the study per the relevant part of the Texas Administrative Code.

Agency staff discussed the content and use of these studies with Comptroller's staff. Based on staff's understanding, the Comptroller's rules and the actual knowledge and skills needed to complete a predominant use study would not meet the definition of the "practice of engineering" as defined in the Act. As such, to complete these studies, the actual study itself would not meet the definition of the practice of engineering.

To solicit feedback, Mr. Sims asked the Committee permission to publish the draft response to solicit feedback from both the Comptroller and any interested parties and bring it back in May for final adoption.

It was MOVED/SECONDED (Ballí/Norwood) to authorize staff to post the draft response in the Texas Register for public comment and input. A vote was taken and the MOTION PASSED.

7. Policy Advisory Opinion Request Regarding the Requirements of an Engineer to Sign and Seal Amended Engineering Plans and the Ability of a Governmental Entity to Accept Unsealed Revised Plans (Policy Advisory Request No. 57).

Mr. Sims provided an update on Policy Advisory Request No. 57 regarding the Requirements of an Engineer to Sign and Seal Amended Engineering Plans and the Ability of a Governmental Entity to Accept Unsealed Revised Plans.

Mr. Sims stated that additional work was needed on this request to propose a response and can have something ready at the next Committee meeting.

It was MOVED/SECONDED (Ballí/Adejokun) to table Policy Advisory No. 57. A vote was taken and the MOTION PASSED.

8. Issues for consideration for future Committee meetings.

Mr. Rubiano asked that the Board have an in-person strategy meeting. He stated that the Board is getting a lot of questions where the practice of engineering and surveying is interacting with entities and exempt industries and he would like an opportunity to discuss with the Board to have a broader strategic approach to managing how we can follow up on our mission statement.

9. Adjourn.

It was MOVED/SECONDED (Ballí/Norwood) to adjourn the meeting at 9:59 a.m. A vote was taken and the MOTION PASSED.

Date Committee approved minutes:
Date Board approved minutes:

May 26, 2021
May 27, 2021