

MINUTES
ENFORCEMENT COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
IN-PERSON AND VIA VIDEOCONFERENCE
February 10, 2022—9:00 AM

1917 S. Interstate 35
Austin, Texas 78741

Discuss and Possibly Act on the Following Agenda Items:

1. Preliminary Matters

A. Call to Order

Ms. Coleen Johnson, R.P.L.S., Chair, called the Enforcement Committee meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 9:01 a.m. in-person and via videoconference. (NOTE: all votes are unanimous unless noted.)

B. Recitation of the Pledge of Allegiance

Ms. Johnson 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:

Coleen Johnson, R.P.L.S.	Chair
Karen Friese, P.E.	Member
Catherine Norwood, P.E.	Member
Dr. Marguerite McClinton Stoglin	Public Member

Melissa Juarez, Assistant Attorney General and General Counsel for the Board was present 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
Cristabel Bodden	Executive Assistant

D. Excuse absent Committee members

All Committee members were present.

E. Welcome Visitors

Dr. Sina K. Nejad, P.E., P.Eng., Board Member; Mark Neugebauer, R.P.L.S., L.S.L.S., Board Member; and Rolando Rubiano, P.E., Board Member, were present.

F. Public Comment

There were no public comments

2. Propose Amendments to 22 Texas Administrative Code (Tex. Admin. Code) Chapter 133, Subchapter C – Professional Engineer License Application Requirements

• **§ 133.23 – Applications From Former Standard License Holders**

Mr. Sims stated that this rule amendment and all others on the agenda will be published for public comment assuming Committee and Board approval.

Mr. Sims stated that with this amendment, a statement will be added to the rule to clearly state that previous enforcement actions may be considered in evaluating an application for license holders whose previous license has expired and become non-renewable.

3. Propose Amendments to 22 Tex. Admin. Code Chapter 133, Subchapter H – Review Process of Applications and License Issuance

• **§ 133.97 – Issuance of License**

Mr. Sims stated that this amendment incorporates direction received from the Board last year to eliminate the seal imprint review process and will therefore remove the requirement that new licensees submit a seal imprint as part of the licensing process.

Mr. Sims stated that a new rule is also being proposed to have it be a violation of board rules to use a non-compliant seal. Instead of staff reviewing the seal imprint up front, the new rule will put it on the licensees to obtain a seal as communicated to them when they receive the notice that they have been licensed and if and when we get evidence of an improper seal, staff will address it at that point.

4. Propose Amendments to 22 Tex. Admin. Code Chapter 134, Subchapter C – Land Surveyor Application Requirements

• **§ 134.23 Application From Standard Registration Holders**

Mr. Sims stated that with this amendment, a statement will be added to the rule to clearly state that previous enforcement actions may be considered in evaluating an application for license holders whose previous license has expired and become non-renewable.

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

- **§ 134.97 – Issuance of Registration**

Mr. Sims stated that this amendment incorporates direction received from the Board last year to eliminate the seal imprint review process and will therefore remove the requirement that new registrants submit a seal imprint as part of the licensing process.

Mr. Sims stated that a new rule is also being proposed to have it be a violation of board rules to use a non-compliant seal. Instead of staff reviewing the seal imprint up front, the new rule will put it on the licensees to obtain as seal as communicated to them when they receive the notice that they have been licensed and if and when we get evidence of an improper seal, staff will address it at that point.

6. Propose Amendments to 22 Tex. Admin. Code Chapter 135, Firm Registration

- **§ 135.3 – Application for a Certificate of Registration**

Mr. Sims stated that this amendment clarifies information that the Board already collects on the firm registration form. There are a couple of things on the form that are not in the rules so those items are being added to the rule so that the form and rule will be consistent. Lastly, rule language is mirroring language in statute to make clear that firm registration is not required for governmental entities, state agencies, cities, counties, and any public institutes of higher education.

7. Propose Amendment to 22 Tex. Admin. Code Chapter 136, Surveying Firm Registration

- **§ 136.3 Application for a Certificate of Registration**

Mr. Sims stated that this amendment clarifies information that the Board already collects on the firm registration form. There are a couple of things on the form that are not in the rules so those items are being added to the rule so that the form and rule will be consistent. Lastly, rule language is mirroring language in statute to make clear that firm registration is not required for governmental entities, state agencies, cities, counties, and any public institutes of higher education.

8. Propose Amendments to 22 Tex. Admin. Code Chapter 137, Subchapter A – Individual and Engineer Compliance

- **§ 137.1 – License Holder Designations**
- **§ 137.12 – Suspended License**
- **§ 137.14 – Voluntary Surrender of License**

- **§ 137.17 – Continuing Education Program**

Mr. Sims stated these are amendments to the rules of practice and will clean-up the language to mirror the language that already exists in statute.

Mr. Sims stated that Rule 137.12 – Suspended License is a new rule staff is proposing to clearly state that an engineer cannot offer or practice while their license is suspended. In the existing rules, all that is clearly said is that you cannot sign and seal with a suspended license. There was a potential loophole in that rules did not clearly state you cannot also offer or practice while your license is suspended.

Mr. Sims stated that the amendments to 137.14 – Voluntary Surrender of License is incorporating some flexibility when one can voluntary surrender his or her license. The existing rules state that you cannot surrender a license if you have a pending enforcement case. Staff is looking to build in a little flexibility where you can surrender if the case is related to notification or continuing education issues and there is no threat to public health or safety.

Mr. Sims stated that for Rule 137.17 – Continuing Education Program, staff are clarifying some things that they get common questions on to try and improve the rules and the clarity for our licensees.

9. Propose Amendments to 22 Tex. Admin. Code Chapter 137, Subchapter B – Sealing Requirements

- **§ 137.31 – Seal Specifications**
- **§ 137.33 – Sealing Procedures**
- **§ 137.37 – Sealing Misconduct**

Mr. Sims stated that these rules are shifting away from the requirement that a new licensee submit their seal up front and then adding a new rule that use of a non-compliant seal is a violation of Board rules.

Mr. Sims stated that an additional clarification is to address that the existing rules never explicitly said using a fake or fraudulent seal is a violation of Board rules.

10. Propose Amendments to 22 Tex. Admin. Code Chapter 137, Subchapter C – Professional Conduct and Ethics

- **§ 137.55 – Engineers Shall Protect the Public**
- **§ 137.57 – Engineers Shall Be Objective and Truthful**

Mr. Sims stated that with Rule 137.55 – Engineers Shall Protect the Public on professional conduct and ethics, staff feel the current wording is unenforceable. It has language that people

shall “strive” to do a certain behavior which is not really an enforceable standard and the rules themselves are somewhat redundant based on other rules. There is already a rule that you have to comply with existing federal, state, and local standards so that would catch these issues if you are not doing it under that rule so staff are proposing to strike this rule entirely.

Mr. Sims stated that with Rule 137.57 – Engineers Shall Be Objective and Truthful, staff proposes to shift to rule language that is more enforceable.

11. Propose Amendments to 22 Tex. Admin. Code Chapter 137, Subchapter D – Firm and Governmental Entity Compliance

- **§ 137.77 – Firm Registration Compliance**

Mr. Sims stated that Rule 137.77 – Firm Registration Compliance is being amended to be consistent with language that is in the Surveyor rules. The current language could be interpreted that in order for a firm to be registered, it must employ an engineer and that same engineer has to supervise all engineering work done by the firm. The amendment clarifies that the individual that made the firm legal does not have to supervise all engineering work, just an engineer in the firm has to supervise all the engineering work.

12. Propose Amendments to 22 Tex. Admin. Code Chapter 138, Subchapter A – Individual and Surveyor Compliance

- **§ 138.1 – License Holder Designations**
- **§ 138.5 – Notification of Name Change, Address Change, Employer Change and Criminal Convictions**
- **§ 138.12 – Suspended License or Registration**
- **§ 138.14 – Voluntary Surrender of License or Registration**
- **§ 138.17 – Continuing Education**

Mr. Sims stated that with these proposed amendments, the Surveying rules is to clean up the language and clearly state that you cannot practice on a suspended license and building in some flexibility on the ability to surrender a license in certain cases and the also clarifying continuing education standards.

13. Propose Amendments to 22 Tex. Admin. Code Chapter 138, Subchapter B – Sealing Requirements

- **§ 138.31 – Seal Specifications**
- **§ 138.33 – Sealing Procedures**
- **§ 138.37 – Sealing Misconduct**

Mr. Sims stated that with these proposed amendments the seal review upfront would be eliminated and would add a new rule that using a non-authorized seal is a violation of Board rules.

14. Propose Amendments to 22 Tex. Admin. Code Chapter 138, Subchapter C – Professional Conduct and Ethics

- **§ 138.57 – Surveyors Shall Be Objective and Truthful**
- **§ 138.61 – Surveyors Shall Maintain Confidentiality of Clients**

Mr. Sims stated that these proposed amendments affect professional conduct and ethics. In Rule 138.57 – Surveyors Shall Be Objective and Truthful, the amendment would update language to make the rule enforceable.

Mr. Sims stated that Rule 138.61 – Surveyors Shall Maintain Confidentiality of Clients is only a clean-up from when we adopted the surveying rules.

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

- **§ 139.17 – Investigating a Complaint**

Mr. Sims stated that the proposed amendments update the language in the existing Board rules to be consistent with the language in statute.

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

- **§ 139.35 – Sanctions and Penalties - Engineering**
- **§ 139.37 – Sanctions and Penalties - Surveying**

Mr. Sims stated that these amendments update the enforcement sanction tables

It was MOVED/SECONDED (McClinton Stoglin/Norwood) to recommend to the Board that the rules presented in agenda items 2-16 be approved for publication in the Texas Register and posted on the Texas Board of Professional Engineers and Land Surveyors website. A vote was taken and the MOTION PASSED.

17. Discussion about Licensed State Land Surveyor Seals

Mr. Sims stated that one of the rules adopted last year dealt with how licensed state land surveyors (LSLS) signed and sealed their license state land surveying work. After these rules were adopted, members of the LSLS community expressed concerns about the new rule.

The new rule states that state licensed land surveyors must seal their LSLS work with both the RPLS seal and their LSLS seal. This is a change on how things were previously done as LSLS work was only sealed with the LSLS seal.

Mr. Sims stated that the LSLS community reached out to express concerns on this change and are seeking to go back to the original protocol. Staff looked at the issues and see three resolutions to the issue and are seeking guidance from the Committee on which way to go and move forward with a resolution.

Mr. Sims stated that the three potential resolutions are that we can leave the current rules in place where work is sealed with both the RPLS and LSLS seals. The second would be to return to only seal with an LSLS seal but staff see potential issues in that the seal is not uniquely identifiable to a licensed state land surveyor (there is no name or number on the LSLS seal). The third resolution is the one the LSLS community concurs with - only the LSLS seal has to be on the state surveying work but the LSLS shall make clear that their name and license number are on the work product as well.

The Committee gave staff direction to explore the third option and to bring possible amendments back to the Committee at a future meeting.

18. Compliance & Enforcement Director's Report

- **Update on Compliance & Enforcement Department**

Mr. Sims provided an update on Compliance and Enforcement activities and staff. A new investigator started in January, but they also lost a previously hired Investigator. There is still an opening for an Investigator II position.

- **Status of Compliance & Enforcement caseload**

Mr. Sims stated that during the time period from November 2021 and January 2022, there are 142 new complaints and 138 cases were closed during this time period. There are 379 pending cases.

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

Mr. Sims stated that the September 2021 quarterly audit of PE renewals has been completed since the last Board meeting and there was 100% compliance. We are currently in the midst of December renewals and 60% of the engineering audits have been completed and about 80% of the Surveying audits have been completed.

- **Overview of Investigative and Enforcement Process**

Mr. Sims presented an overview of the Enforcement process.

19.Future Committee Meetings: Agenda items, dates, locations, and other arrangements

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

20.Adjourn

It was MOVED/SECONDED (Friese/McClinton Stoglin) to adjourn the meeting at 9:58 a.m. A vote was taken and the MOTION PASSED.

Date Committee approved minutes:

May 12, 2022

Date Board approved minutes:

May 12, 2022