

**SPECIAL MEETING OF THE NEW MEXICO BOARD OF
LICENSURE FOR PROFESSIONAL ENGINEERS
AND PROFESSIONAL SURVEYORS held at
9:00 a.m., Friday, May 28, 2021,
Virtual/Telephonic Meeting**

Members Present – Paul Brasher, PE, Board Chair
Cliff Spirock, PS, Vice Chair
Augusta Meyers, Public Member
Dr. Walter Gerstle, PE
Karl Tonander, PE
David Cooper, PS

Members Absent – Ron Bohannon, PE
Julie Samora, PE

Others Present – Perry Valdez, BLPEPS, Executive Director
Miranda Gonzales, Administrative Manager
Valerie Joe, AAG, Legal Counsel
Earl Burkholder, PEPS
Loren Risenhoover, PS

1. Convene, Roll Call and Introduction of Audience

Prior to convening the meeting Mr. Brasher read the meeting script regarding the virtual meeting protocols. He convened the meeting at 9:09 a.m., roll call was taken and a quorum noted.

Audience introductions made at this time. Mr. Burkholder and Mr. Risenhoover introduced themselves.

2. Meeting Notification

Mr. Valdez informed the Board the meeting was noticed on the Board's website.

3. Approval of Agenda

MOTION by Mr. Spirock to approve the agenda as amended combining items 5. h. and i. as one item, **SECONDED** by Ms. Meyers,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously.**

4. Old Business

a. **E. Burkholder – Email Request Regarding Ethical Standards for Board**

Mr. Valdez introduced the item and Mr. Burkholder's email request.

Mr. Burkholder stated he has always been interested in the activities of the Board. He explained that in 2016 the issue regarding the basis of bearing came up during a public meeting, before the New Mexico Minimum Standards of Surveying were adopted. Mr. Burkholder expressed his opinion at the time about the adopted change and the Board published what has acknowledged to be a defective wording on the basis of bearing. Mr. Burkholder said he was very grateful the Board has listened to the issue and has taken the steps to correct the problem.

Mr. Burkholder elaborated on the ethical standard question and how it derived from the basis of bearing issue and was separate. He said at the time he raised the question; he was not aware of any competent surveyor who would vote to approve the defective Minimum Standards. Mr. Burkholder stated it was asked of him if he was calling the Board members incompetent, he responded, that he was. He noted that the Board members are dedicated individuals and he considered himself a friend to each one. Mr. Burkholder commented that the reaction of the Board and the Board members to correct a known problem did not set well with the ethical standards as promulgated by the various societies. He said maybe his request was premature since the basis of bearing issue was being resolved. Mr. Burkholder said he promoted the question if the Board of Licensure was exempt from the professional canons of ethics with regard to operating in one's area of competence. He remarked there was some discussion about what the Engineering and Surveying Practice Act said, he was requested to provide copies of the professional canons of ethics, which he did. Mr. Burkholder made a specific request if the Board was exempt from professional canons of ethics with regard to practice outside of one's area of minimal competence. He said he was asked at that meeting, what it was he wanted, he responded that he wanted a 'yes or no' answer. Mr. Burkholder stated, regarding ethical practice we all learned things some time and we need to acknowledge where we get our information from, we all learn, and learn from each other. He commented the reason he has pressed it with the Board was because the attitude of the Board was the privileged position of the Board left them exempt from known professional canons of ethics, that they could do whatever they pleased. Mr. Burkholder continued commenting, that it was not fair and was being blunt. He said that was the question he was asking for an answer to, he continued saying, if the answer was 'yes' the Board is exempt then 'Thank you', however if the answer were 'no' then he left it to the Board to respond.

Mr. Spirock responded he appreciated Mr. Burkholder providing the canons of ethics from the various societies. He articulated that it was up to the individuals and their own personal knowledge to look at the canons of ethics he was referring to. Mr. Spirock said as Board members we took an oath, and it was given when appointed to the Board. He explained it was the ethical standard which he personally was following. Mr. Spirock said that a seat on the Board was to protect the life, health, safety, and welfare of the public.

Mr. Brasher stated none of the Board members had the attitude they were above any ethical standards, he said each would reject the notion they were above the ethical standards in their respective professions. Mr. Brasher noted the issue of the basis of bearings would be coming up very soon and a rule hearing would be scheduled for resolving the issue.

b. Scholarship Disbursements – For Fiscal Year 2021

Mr. Valdez explained to the Board that a vote was needed for the scholarship disbursements to the Universities for Fiscal Year 2021. He advised the Board that this would allow sufficient time for staff to process the disbursements before the end of the fiscal year. He informed the Members the disbursements voted on last year were in their meeting packets.

Mr. Brasher reported the amounts disbursed last year were,

UNM: \$23,333 for engineering

NMSU: \$15,000 for Surveying/Geomatics and \$23,333 for engineering

NMTECH: \$23,333 for engineering

CNM: \$15,000 for surveying

Mr. Valdez reminded the Board that CNM discontinued their surveying program, however per the Engineering and Surveying Practice Act and Rules they offer a related science pathway for surveying licensure.

Mr. Brasher asked Mr. Valdez if feedback was received on how the money was spent. Mr. Valdez responded the information was received but he did not have the information readily available. He offered to present the information at the June meeting. Mr. Brasher inquired if the information showed if it was successfully accomplished. Mr. Valdez replied the information received from some of the Universities, it showed it was successful.

Mr. Tonander noted that CNM did not disburse any of the money and deficient in disbursing the funds. Mr. Valdez acknowledged that was the case. He informed the Board that Ms. Thompson-Martinez and he communicated with CNM and informed them the funds could be disbursed for the related science

path with an intent the individual pursued a surveying degree from NMSU. He noted he had not followed up with CNM, but he would before the next meeting. Mr. Brasher asked if CNM understood about the alternative pathway. Mr. Valdez responded that after the discussion with CNM, they were aware of the alternative pathway and would be working to awarding a scholarship.

Mr. Brasher inquired as to the Universities and if they provided a report. Mr. Valdez answered yes, that UNM and NMTECH each provided a report. He said NMSU had not at the time they requested one, however he would verify with Ms. Thompson-Martinez if it was provided.

Mr. Brasher asked what was being asked of the Board. Mr. Valdez responded the Board is required to approve the scholarship disbursements for Fiscal Year 2021. He added this process would have to be done each year as a requirement for the Department of Finance and Administration.

Mr. Spirock stated there was a formula which was required to be approved annually.

MOTION by Mr. Spirock to the current formula was 30,000 dollars for surveying and 70,000 dollars for engineering. He recommended the formula remain the same for this fiscal year, **SECONDED** by Dr. Gerstle.

Discussion: Mr. Cooper expressed his concern being disbursed to CNM. He explained that with the surveying program discontinued, no one would continue with the surveying program. Mr. Cooper articulated that the surveying program at CNM leads to an Associates degree which would transfer to NMSU, to continue toward the bachelor's degree in Geomatics. He stated he did not have confidence that a student who received the scholarship at CNM on a related path would continue at NMSU in the Geomatics program.

Mr. Spirock reminded the Board that it was discussed at other meetings to disburse scholarship funding to other schools for the related science path for surveying licensure.

Mr. Cooper did not support the full amount of 15,000 dollars to CNM, but a lower amount. He suggested more scholarship funding to NMSU.

Dr. Gerstle restated what Mr. Cooper said to verify his opinion. Mr. Cooper responded that Dr. Gerstle understood what he said. Mr. Cooper expounded on this describing the issue of someone taking courses that may not transfer into the Geomatics program.

Mr. Spirock agreed with Mr. Cooper; however, he was concerned it would preclude other institutions and gravitate to NMSU. He elaborated other institutions may not have definitive programs, but still could provide a student the opportunity to surveying courses directing the student toward NMSU. Mr. Spirock presented the option of offering the scholarship funding to other institutions. He said offering the funding to “CNM and other institutions” which may offer a directed program toward surveying.

Mr. Tonander responded saying he did not think the funding could be implemented with “CNM and other institutions” as Mr. Spirock suggested. He said the scholarship funding would have to be earmarked for a specific institution. Mr. Tonander said Mr. Spirock had a good thought but did not think it could be budgeted and implemented.

Mr. Tonander continued stating since CNM did not disburse the scholarship funding provided to them. He suggested lowering the amount disbursed to CNM until they demonstrate they were good stewards and fiduciaries of the scholarship funding. Mr. Tonander stated he would reallocate the funding to NMSU as Mr. Cooper suggested.

Mr. Brasher also agreed with Mr. Cooper. Mr. Brasher stated CNM could disburse the funding they currently have and prove the stewardship of the funding. Mr. Brasher stated he would be in favor of providing the total 30,000 dollars to NMSU.

MOTION by Dr. Gerstle to reallocate the 15,000 from CNM to NMSU, and approve the disbursements as follows,

UNM: \$23,333

NMTECH: \$23,333

NMSU: \$30,000 Surveying/Geomatics program and \$23,333 Engineering program

Mr. Brasher reminded Dr. Gerstle of the motion made by Mr. Spirock. Mr. Brasher asked Mr. Spirock if he would agree to the amended motion. Mr. Spirock conceded to the amendment.

SECONDED by Ms. Meyers,

Discussion: Mr. Cooper asked why Eastern New Mexico University and Western New Mexico University were not provided any scholarship funding. Mr. Brasher responded both Universities did not offer any engineering or surveying program. Mr. Cooper stated the same reason should apply to CNM, he clarified that he was not opposed to providing scholarship funding to CNM but just

wanted to make the point for not funding CNM. Mr. Spirock requested some outreach be done to other institutions so they could be included in the future.

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

5. **NM Administrative Code (NMAC) Proposed Rule Changes**

a. **12.8.2.7 and 12.8.2.9 – Basis of Bearing**

Mr. Spirock presented the proposed changes stating the draft language contained two options. He said one option was the NMPS suggested language which modified the language to the basis of bearing pertaining to boundary surveys. Mr. Spirock explained option two was the existing language removing the term 'elevation', creating a basis of bearing definition. He pointed out the definition would be applied to all types of surveys so each survey would be required to show the basis of bearing, excluding unclassified surveys and improvement location reports. Mr. Spirock clarified those unclassified surveys would be required to contain the basis of bearing only if the surveyor deemed it necessary for future retracement.

MOTION by Mr. Spirock to approve the proposed language in option two as part of the upcoming rules hearing as a final draft, **SECONDED** by Dr. Gerstle,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper abstained from the vote.

The motion **PASSED**.

b. **16.39.1.17 – Status of Licensure**

Mr. Valdez presented the proposed changes. He reported the proposed change inserts language regarding the Intern Certification status, that it would no longer be active once someone obtained a professional license. Mr. Valdez explained the certification would be superseded by the professional license.

Mr. Valdez stated the next proposed change was additional language to the retired status and inactive status requirements. He informed the Board a licensee would not be able to request neither retired nor inactive status if they had any pending complaints, litigation, or has completed any imposed disciplinary action.

Mr. Valdez provided the final proposed change. He explained that the present requirement for someone who maintained an inactive status more than six years, and was not licensed in another jurisdiction, are required to take the PE exam, or the PS and state specific exams. Mr. Valdez said the proposed change eliminated the exam requirement and replaced the language with requiring an inactive licensee to reinstate their license after six years of inactive status.

MOTION by Mr. Spirock to approve the proposed language as the final draft language for the upcoming rules hearing, **SECONDED** by Mr. Cooper,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

Mr. Valdez noted the proposed language shown on the screen was not the language approved by the Professional Engineering Committee (PEC) at their May 21, 2021 meeting. He placed the corrected language on the screen.

Mr. Brasher explained the approved PEC language broke out the retired and inactive status requirements. He read the changed language,

“the licensee does not have any pending complaints;
the licensee does not have any pending litigation; and
the licensee has completed any imposed disciplinary actions.”

MOTION by Mr. Spirock reconsider the previous motion that was on the agenda, 5. b. 16.39.1.17 – Status of Licensure, to replace the language in the document titled 16.39.1.17 Status of Licensure-PEC approved 5-21-21, for approval, **SECONDED** by Ms. Meyer,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

c. 16.39.3.11 – Practice of Engineering

Mr. Valdez presented the change approved by the PEC at their May 21, 2021 meeting. He stated the change moved the language from section 16.39.3.12. I. to section 16.39.3.11. F.

MOTION by Mr. Spirock to approve the language as presented in the document 16.39.11-Practice of Engineering-PEC approved 5-21-21 as the final draft proposal for the upcoming rule hearing and to include the words “Engineering and Surveying” to the name ‘Practice Act’, **SECONDED** by Dr. Gerstle,

Roll Call Vote:

Voting ‘Aye’: Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

d. 16.39.3.13 – Endorsements

Mr. Brasher introduced the proposed change, by stating a new paragraph was added to the conditions of endorsement of licensure. Mr. Brasher read the proposed language, “has been actively licensed for the contiguous ten years immediately preceding application to New Mexico, and has not received any form of disciplinary action related to the practice of engineering or professional conduct from any jurisdiction within the five years preceding application to New Mexico, and has not had the applicant's professional license suspended or revoked at any time from any jurisdiction; (2019 law).”

Mr. Tonander explained the proposed language was copied from the Engineering and Surveying Practice Act and placed the language into the rules.

MOTION by Mr. Tonander to approve the proposed language, **SECONDED** by Ms. Meyers,

Roll Call Vote:

Voting ‘Aye’: Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

e. 16.39.6.7 and 16.39.6.8 – Military Service Members, Spouses and Veterans

Mr. Brasher stated the proposed changes to the two sections were for military service members, their spouses, and veterans.

Mr. Valdez presented the proposed language, which was approved at the PEC May 21, 2021 meeting. He reported there were additions to the definitions section. Mr. Valdez articulated that there was language added to the definition of ‘Recent Veteran’, and three new definitions, ‘Spouse, Child, and Licensing Fee’. He noted changes were made to the New Mexico Uniform Licensing Act (ULA) and therefore the rules needed to be updated.

Mr. Valdez noted the next proposed change to section 16.39.6.8. He informed the Board the language of “the occupational or professional” was stuck and proposed for removal to clean up the language which was copied directly from the ULA when the section was initially adopted. Mr. Valdez said the next proposed change defined the approved documentation an applicant was to provide when applying. He added there were two new sub-parts, C and D, which were adopted at the 2021 Legislature and incorporated into the ULA.

MOTION by Mr. Spirock to approve the language of the PEC version as the final draft language for the upcoming rules hearing, **SECONDED** by Ms. Meyers,

Roll Call Vote:

Voting ‘Aye’: Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

- f. **16.39.3.7.2 – New Definitions for Electronic Seals, Signatures, and Transmittal**
Mr. Valdez presented the approved changes from the PEC. He informed the Board the PEC struck majority of the definitions except for sub-sections D and H. Mr. Valdez pointed out that sub-section H partially stricken and left with one sentence. He also said the PEC decided not to create a new section of the rules, 16.39.3.7.2 but to move the language into the existing section 16.39.3.7 of definitions.

Mr. Tonander asked if the proposed rules which will be used for the rule hearing will have the definitions moved into the correct section. Mr. Valdez responded they would.

Ms. Joe recommended to have a cleaner version to see how it would fit within the existing section of 16.39.3.7. Mr. Valdez prepared a draft version for presentation.

MOTION by Mr. Tonander to approve the proposed language for 16.39.3.7, **SECONDED** by Mr. Spirock,

Roll Call Vote:

Voting ‘Aye’: Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

g. Seal of License

1) 16.39.3.12

Mr. Valdez presented the proposed changes the PEC approved at their May 21, 2021 meeting. He read the change, "If the document contains more than one licensee and is electronically transmitted as specified under the preceding paragraph, each signature must contain an independent electronic signature."

MOTION by Mr. Tonander to approve the proposed language for 16.39.3.12, **SECONDED** by Mr. Spirock,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

2) 16.39.5.11

Mr. Valdez presented the proposed language indicating the surveying section contained a portion of what the previous section, just discussed, had. He read the proposed language, "If the document contains more than one licensee and is electronically transmitted as specified under the preceding paragraph, each signature must contain an independent electronic signature and be transmitted with an independent (each signature) or collective Security Procedure with advisories sent to all other licensees signing the document."

Mr. Valdez informed the Board the PEC struck the language after "...an independent electronic signature..." from their definitions. Mr. Tonander pointed out the term 'security procedure' was not defined and removed from the previous proposed language. Mr. Brasher asked if the definition would need to be added to the surveying definitions. Mr. Valdez responded that was correct.

Mr. Tonander said it may help the other Members to know why the PEC struck the language of 'security procedure'. Mr. Brasher explained 'security procedure' was removed because it would be difficult to describe what the procedure could be, so it would be left to the licensee to decide what security procedure to use. He said the PEC thought it would be going to deep to describe. Mr. Tonander added it would prove difficult to implement the procedure and to name a program.

Mr. Spirock recommended striking the language such as the PEC did.

Mr. Cooper said the language should be identical for both professions.

MOTION by Mr. Spirock to approve the proposed language as amended, **SECONDED** by Dr. Gerstle,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

h. 16.39.5.7 – Definitions and 16.39.5.8 – Application – Surveyor Intern and Professional Surveyor

Mr. Spirock explained the proposed change was to clean up the language to the intern certification experience requirement to be in line with the Engineering and Surveying Practice Act. He said the definition for 'NCEES' was also added to the definition section of 16.39.5.7. Mr. Spirock informed the Board of the proposed strikethrough of "subsequent to certification as a surveying intern" regarding to the experience of those with a related science degree. He explained it would allow the Professional Surveying Committee (PSC) to evaluate those applicants with a broken experience record or with subsequent experience.

Mr. Spirock clarified there were applicants who may have had sufficient experience before their certification and were told to wait. He said this proposed language striking "subsequent" remedied this issue and would allow the applicant to have their experience prior to certification.

Mr. Valdez asked Ms. Joe if the Board could approve the proposed language since the Engineering and Surveying Practice Act (Act) indicated those who have graduated from a related science program require the experience subsequent to certification. Ms. Joe responded the language could refer to the Act. Mr. Brasher asked if the language were not in the rules what did that mean. Ms. Joe answered it would still apply but it is just not very clear and would have to be referred back to the Act. Mr. Spirock and Mr. Brasher liked the idea of referring to the Act.

Mr. Tonander voiced his opinion, it seemed as though the change would devalue the surveying degree. He continued stating the language separated the requirement for the surveying degree from the related science degree. Mr. Tonander said it appeared this removed the separation between the two degrees and made them equivalent. He asked Mr. Spirock if that was the intent.

Mr. Spirock answered it was his intent to make it easier for the PSC to review an applicant's experience, before and after intern certification. Mr. Tonander indicated the experience could count if the applicant had a surveying degree but not if they had a related science degree. He continued stating that this would be the same as an engineering technology degree and the years of experience required after intern certification. Mr. Tonander indicated if the change were to become part of the Act, then it would not matter if the applicant had a surveying degree or a related science degree because when the applicant could earn their experience would be the same requirement for both degrees.

Mr. Spirock responded the Act could not be trumped by the rule, as was noted by Ms. Joe. He said the revision to the proposed language provided clarification for the rule and if changes to the Act come up, then he would propose the same change. Mr. Tonander asked Mr. Spirock if he found the surveying degree and a related science degree equivalent. Mr. Spirock replied that more thought on the subject was necessary.

Mr. Spirock added there were more applications coming in which are not clear cut.

Mr. Brasher asked Mr. Valdez questions regarding the requirements for surveying licensure. Mr. Valdez responded to Mr. Brasher's questions.

Ms. Joe provided the language for placement in the change, "pursuant to the Engineering and Surveying Practice Act, NMSA 1978, Section 61-23-27.4 (A)." Mr. Spirock expressed his approval of the change.

Dr. Gerstle made known an error in the existing language on the last sentence of subsection G. and requested a correction. Mr. Valdez corrected the subsection citation from 61.39.5.8 to 16.39.5.8. Ms. Joe commented that the sentence was awkward. There was discussion regarding the sentence and its relevance.

Mr. Spirock suggested leaving the sentence without any changes. Mr. Brasher asked if the sentence were redundant or if it were necessary. Mr. Valdez indicated the engineering section contained the same sentence.

Mr. Cooper stated that he and Mr. Spirock both had someone working many years with them. He asked Mr. Spirock if the proposed language meant as soon as someone earned their four-year degree and passed the Fundamentals of Surveying (FS) exam, they could submit an application to take the Principles and Practice of Surveying (PS) exam. Mr. Spirock responded the PSC could review the curriculum being a balance of education and experience. He did not want another shackle on the process hindering the Committee.

Mr. Cooper responded to his own question, that it would allow someone to take and pass the FS exam, and then immediately apply for the PS exam. He asked Mr. Spirock if he concurred with his response. Mr. Spirock said he did. Mr. Cooper asked if the modification to the language allow for that. Mr. Spirock responded it would not because the Act would not allow it. He indicated Ms. Joe's proposed language would be in place when the Act's language were changed and they would not need to make a change in the rules again.

Mr. Cooper disagreed because the Act specified the applicant's experience shall, at a minimum, include three years of increasingly responsible experience. He said it was not indicated if it was before or after. Mr. Valdez read the section regarding the requirement for the related science degree. Mr. Cooper acknowledged what Mr. Valdez read and retracted his comment.

Mr. Spirock commented that if the Act were opened, he would request the language be revised removing the word 'subsequent'.

Mr. Valdez provided a recommendation of changing the language to match that of the engineering technology requirement. He suggested changing the experience earned to after the awarding the degree instead of the intern certification.

Mr. Spirock recommended approving the amended language as presented by Ms. Joe and what Mr. Valdez updated the proposed language to.

Mr. Brasher was not in favor of adopting a rule anticipating a future change in the Act. Mr. Brasher asked if Dr. Gerstle or Mr. Tonander had any comment.

Dr. Gerstle was in favor of the change.

MOTION by Mr. Spirock to approve the draft language for 16.39.5.7 and the amended language for 16.39.5.8 of "pursuant to the Engineering and Surveying Practice Act, NMSA 1978, Section 61-23-27.4 (A)" and the correction to the NMAC citation, **SECONDED** by Dr. Gerstle,

Discussion: Mr. Tonander said he was fine with the proposed change but expressed his concern regarding the change being contemplated with the Act.

Roll Call Vote:

Voting 'Aye': Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

Voting 'Nay': Mr. Brasher

The motion **PASSED**.

i. Proposed Industrial Exemption Language

1) 16.39.3.11

2) 16.39.5.10

Mr. Tonander introduced the proposed change. He said the proposed draft was developed to resolve two issues. Mr. Tonander stated there were several questions, in general, posed to the Board on the extent to which the industrial exemption applied to Federal and Sovereign lands, as well as how far industrial exemption extended or how far it should be extended.

Mr. Tonander presented the second issue. He said a recent development also prompted the draft language, a letter from the National Transportation Safety Board (NTSB). Mr. Tonander briefly explained the reason for the NTSB letter addressed to Governor Michelle Lujan Grisham and copied to Mr. Valdez. He said it stemmed from the 2019 gas pipeline explosion in Massachusetts. Mr. Tonander said the NTSB recommended that licensed professional engineers' approval be required on natural gas projects.

Mr. Tonander explained the draft document provided to the Board. He said there may be other agencies involved such as the Pipeline Safety Bureau from the Public Regulation Commission.

Mr. Tonander explained each of his suggestions:

Suggestion 1 – an advisory opinion regarding Federal/Sovereign Reservations,

Suggestion 2a – to codify the existing interpretation of industrial exemption as an advisory opinion,

Mr. Tonander explained the draft language added the following to the existing interpretation:

“The exemption applies solely to those employed by the business. Any other individual or firm that provides engineering or surveying services to the business and who is not an employee of that business is subject to the Act and is required to be appropriately licensed.”

He said the PEC had seen instances of a violation of this when reviewing applications.

Suggestion 2b – an attempt to reduce the scope of Industrial Exemption as an Advisory

Mr. Tonander said it was the same language as 2a, with the exception of the added language:

The exemption applies solely to those employed by the business, and only within the boundaries of the property owned and operated by that business.

Likewise, any professional practice that occurs beyond the limits of the property owned and operated by that business is considered within public space and is subject to the Act.

He said the additional language would tighten up the definition of industrial exemption.

Suggestion 2c – an attempt to reduce the scope Industrial Exemption as an Advisory and add supporting language within the Rules,

Mr. Tonander read the proposed draft language to the rules,

“In the case of an engineer employed by a business entity who performs only the engineering services involved in the operation of the business entity’s business, the extent to which the practice of engineering can be completed without licensure is limited to only the legal boundaries of the property owned or leased by that business, not including easements. Practice beyond these extents is considered within public space and is subject to the Act.”

He explained this language would be added to sections 16.39.3.11. and 16.39.5.10.

Suggestion 2d – an attempt to reduce the scope Industrial Exemption specifically limited to natural gas pipeline engineering, and

Suggestion 2e – an attempt to reduce the scope Industrial Exemption and limits regarding natural gas pipeline engineering.

Mr. Tonander pointed out there were several options and said the Board needed to decide what it wanted to do and the direction it wanted to follow. He stated there are advisory opinions, rules, and generality or pipeline safety.

Mr. Tonander recommended an advisory opinion and then a rule. Mr. Brasher expressed his opinion to codify the language in the rules.

Mr. Spirock recommended the Board consider Suggestion 2c, pages 5 through 7 of the presented pdf document.

Mr. Tonander accepted Mr. Spirock's recommendation. He asked if the language was correct and understood correctly from a surveying perspective. Mr. Spirock recommended the language remained and presented to the public for their comment during the public rule hearing.

Mr. Cooper asked if it was necessary to be specific about not including easements. He said it was redundant language and did not need to be included.

Mr. Brasher recessed for a short break at 12:01 p.m.

At 12:10 p.m. the meeting reconvened.

There was further discussion regarding the easement language.

Mr. Cooper recommended fine tuning the language before presenting it at the rule hearing. Ms. Joe asked if this item could be tabled until the Board decided when a rule hearing would be scheduled.

Mr. Brasher asked Mr. Valdez for a timeline for the rule hearing. Mr. Valdez responded a rule hearing in October or November would provide sufficient time to prepare the proposed rules and make any changes to the proposed rules. Ms. Joe suggested mid-October or early November because of the holidays.

MOTION by Mr. Spirock to table the proposed draft language until the June 18, 2021 Full Board meeting, **SECONDED** by Mr. Cooper,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

6. Rule Hearing

a. Brief Rule Hearing Process Timeline

Mr. Valdez provided a brief rule hearing process timeline. He said he would use the material Mr. Spirock provided for justifications of the proposed changes. Mr. Valdez stated the only changes left to consider and approve are the industrial exemption and criminal conviction language.

b. Schedule Rule Hearing

Mr. Brasher suggested tentatively scheduling the rule hearing for October 8th.

Mr. Spirock asked who would chair the rule hearing and the Full Board meeting. Mr. Valdez responded the Full Board Chair would chair both meetings. Mr. Valdez explained the Full Board meeting would follow immediately after the rule hearing. He said the Board has the option of scheduling the Full Board meeting for another day to adopt the rules.

MOTION by Mr. Spirock to tentatively schedule the rule hearing between the period of October 8th through 22nd, 2021, **SECONDED** by Dr. Gerstle,

Roll Call Vote:

Voting 'Aye': Mr. Brasher, Mr. Spirock, Ms. Meyers, Dr. Gerstle, Mr. Tonander, Mr. Cooper

The motion **PASSED unanimously**.

7. **Next Scheduled Meeting Date:** June 18, 2021 – Santa Fe or Virtual

8. **Adjourn**

Meeting adjourned at 12:42 p.m.

Submitted by:

Perry Valdez, Executive Director

Approved by:

Paul Brasher, Board Chair

_____ **Approved Date**