



Oregon

**State Board of Examiners for
Engineering & Land Surveying**

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RULES & REGULATIONS COMMITTEE

Minutes of Meeting

February 14, 2014

Members present:

Ken Hoffine, Chair

William Boyd

Jason Kent

Staff present:

Mari Lopez, Administrator

Jenn Gilbert, Executive Assistant

Joy Pariente

Others present:

Katharine Lozano, Assistant Attorney General

Carl Tappert (Observer)

The meeting of the Rules and Regulations Committee was called to order at 8 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

Public Comment

There was no public comment.

Unfinished Business

OAR 820-001-0025 – Purchasing and Contracting

OAR 820-001-0030 – Source Selection

OAR 820-001-0035 – Notice of Intent to Award

OAR 820-001-0040 – Protests of Contract Award

AAG Lozano summarized the purpose for establishing the rules. She explained that the purchasing and contracting rule originally in place for OSBEELS was not the most effective procedure for a small, semi-independent organization. She said when Department of Justice Public Contracts Manual is adopted, the adopting agency also adopts the Department of Administrative Services (DAS) policies attached to those rules. Many of these additional policies add layers of requirements to purchasing and contracting procedures that are unnecessary when dealing with the types of purchases made by OSBEELS. Additionally, unlike other professions, testimony and professional review are considered the practice of engineering, land surveying and photogrammetry, which may create issues when OSBEELS contracts with professionals for assistance in law enforcement cases. Committee members wanted to ensure OSBEELS has a tiered contracting process, requires board approval for all purchases over a certain amount, has a contract award protest process for certain contracts, , and that OSBEELS

utilizes qualifications-based selections for professional engineering, land surveying and photogrammetric service contracts.

AAG Lozano emphasized that the language presented captured the qualifications-based nature for professional service contracts and allows for Board delegation of contract approval by the appropriate Committee for timeliness. She explained that this delegation would avoid any negative impacts on law enforcement cases due to waiting for a full Board meeting to occur prior to contract approval and professional review of a regulatory matter. There was no further discussion.

OAR 820-001-0030 is based on the Model Rule regarding source selection. The Committee discussed the monetary point at which solicitation for bids is required. While the draft language proposed a \$20,000 limit, Mr. Hoffine and Mr. Tappert both suggested a \$10,000 limit to be consistent with contracts above \$10,000 requiring Board approval. Mr. Tappert said it is better for the Board if all contracts being reviewed are presented with multiple prices and service options for consideration.

AAG Lozano pointed out that the request for proposal process also requires the Board to determine in advance the exact scope of services required and the desired outcome. She mentioned that there have been problematic outcomes in the past when a contract was awarded before the details of the contract's scope of work and deliverables had been carefully considered and articulated by the requesting agency. The Committee also discussed the definition for information technology (IT) services, as used in the purchasing and contracting rules. Mr. Boyd said he believes the IT services being addressed refer to programming and development of systems. Ms. Lopez added that maintenance of IT systems is also included in IT services. Mr. Tappert asked if these services included software purchases. He explained that standard software purchases shouldn't be considered IT services requiring requests for proposals (RFP). The Committee determined to clarify the rule by adding that the IT services referenced are those involving personal services contracts or any goods requiring professional services to install or use.

Mr. Tappert asked how this rule will impact the necessary licensee database update. Ms. Lopez said she's attending an upcoming Semi-Independent Board Administrators (SIBA) meeting on March 18, 2014 where DAS will be providing semi-independent agencies considerations for database replacements. She said she will gather information about the options provided and report back to the Board. Mr. Boyd asked if the purchasing and contracting rules being discussed also apply to DAS procurements. AAG Lozano said there are no DAS-specific exemptions in the rule, but those can be added, if needed. There was no further discussion. Mr. Boyd also asked how RFPs are drafted by OSBEELS. He said when he worked at the Construction Contractors Board, there were situations where no bid could be accepted because the requirements were unclear in the RFP and the process would have to start over. Ms. Lopez said that OSBEELS uses Business Transaction Services at the Department of Justice (DOJ) to draft RFPs. AAG Lozano said she supports the continued use of these services.

Regarding OAR 820-001-0035, AAG Lozano explained she didn't want to impose a timeline which would restrict negotiations. She said there is no way to gauge how long it will take to coordinate contract terms agreeable to all parties. Rather, the timeline provided in rule addresses the requirements for notification of interested parties following the awarding of the contract. This avoids companies not receiving the contract from being left in limbo. There was no further discussion.

There was no additional discussion regarding OAR 820-001-0040. The Committee determined to send OAR 820-001-0025, OAR 820-001-0030, OAR 820-001-0035 and OAR 820-001-0040, as

amended, to the Special Board Meeting later in the day for consideration. There was no further discussion.

Staff update: The Board voted to begin the permanent rulemaking process on these rules during the February 14, 2014 Special Board Meeting.

New Business

House Bill 4044

The Committee discussed potential OSBEELS interest in House Bill 4044. Ms. Lopez explained that Water Resources Department (WRD) and the Oregon State Board of Geologist Examiners (OSBGE) had concerns about the bill's references to "qualified hydrologists" and wanted to get OSBEELS' opinion on the situation. AAG Lozano pointed out that hydrology is not a licensed profession in Oregon. Mr. Kent explained that hydrology is an area under the purview of civil engineering, but an individual can be a competent hydrologist without being a licensed engineer. AAG Lozano asked Ms. Lopez what concerns the other agencies have regarding this bill. Ms. Lopez said the main concern is about unlicensed practice. AAG Lozano said, unless the Board believes the tasks described in the bill are better suited to a certified water right examiner (CWRE) than to a hydrologist, she doesn't see a reason for OSBEELS to get involved. Initially, the Committee determined to issue no comment on the bill. However, following a later discussion on Senate Bill 1572, the **Committee determined to present both bills for discussion during the March 2014 Board meeting.** There was no further discussion.

House Bill 4057

This bill calls for a report regarding the status of the implementation of programs to accommodate military and veteran education and experience in the application review processes of licensing boards. The Board has already started the rulemaking process on rules to accommodate military applicants through acceptance of alternative credential evaluations. Ms. Lopez pointed out that there is no way to provide a list of names of individuals using the new credential evaluation options, as this information is not part of the OSBEELS database. However, Mr. Tappert said reporting the Board's new rules should fulfill the requirements of demonstrating compliance with Oregon Revised Statute (ORS) 342.195. There was no further discussion.

House Bill 4119

The text of this bill was provided for informational purposes. There was no additional discussion.

Senate Bill 1521

The Committee considered the text in Senate Bill 1521. Although engineers are exempt from the proposed rules pertaining to commercial interior design licensure, Committee members had some concerns regarding the reference to "nonstructural" plans. It is not clear in this bill which plans are considered nonstructural. This is an issue because plans would be going to building officials as part of the permitting process and there is no way for the building officials to determine if the removal of a wall or insertion of a window would be considered structural or nonstructural. Building Codes Division (BCD) requires that plans come from a "licensed design professional" and, according to this bill, commercial interior designers would be able to submit plans. Mr. Tappert said this creates a substantial life/safety concern. The bill would also require a Board

member to be part of a work group focused on creating a board for commercial interior design licensure.

Ms. Lopez suggested that a PE Board member should be available to testify regarding OSBEELS' concerns because they would be better able to answer practice-focused questions than Staff. She also suggested contacting the engineering professional organizations for input on this topic. **The Committee determined to present this bill for discussion during the March 2014 Board meeting.** There was no further discussion.

Senate Bill 1572

This bill again addressed the issue of the practice of hydrology in Oregon. This bill calls for determining measurements between surface water sources and existing or proposed well locations by "using the global positioning system coordinates of the proposed or existing well and the ordinary high water mark." Mr. Hoffine asked who would be responsible for making these measurements and determining the coordinates. Mr. Tappert pointed out that the bill allows a hydrologist to make the report, but it doesn't specify if the hydrologist would be performing the above referenced tasks, which are considered the practice of land surveying. **The Committee determined to present this bill for discussion during the March 2014 Board meeting.** There was no further discussion.

OAR 820-010-0219

Due to the transition to computer-based testing and recent statutory changes now being complete and the subsequent updates to OAR 820-010-0225 and 820-010-0026, OAR 820-010-0219 is no longer relevant. The Committee determined to send this rule to the Special Board Meeting later in the day for consideration. There was no further discussion.

Staff update: The Board voted to suspend this rule as a temporary rule and begin the permanent repeal process during the February 14, 2014 Special Board Meeting.

OAR 820-010-0225 – Educational Qualifications to Take the Fundamentals of Engineering (FE) Examination for Enrollment as an Engineering Intern (EI)

Amendments to this rule included implementation of language from OAR 820-010-0219 regarding students applying to sit for the examination prior to graduation and the clarification of the associated deadline for providing proof of graduation. Applicants now have 10 months after sitting for the examination to provide official transcripts demonstrating proof of timely degree conferral. The Committee determined to send this rule to the Special Board Meeting later in the day for consideration. There was no further discussion.

Staff update: The Board voted to adopt this rule as a temporary rule and begin the permanent rulemaking process on this rule during the February 14, 2014 Special Board Meeting.

OAR 820-010-0226 – Educational Qualifications to Take the Fundamentals of Land Surveying (FLS) Examination for Enrollment as a Land Surveying Intern (LSI)

Amendments to this rule are the same as the changes referenced above for OAR 820-010-0225. This rule also references application requirements for students in senior standing in accredited engineering programs who want to sit for the FLS prior to graduation. Mr. Hoffine pointed out that California allows students to sit for the FLS in their junior year of college and Oregon accepts the intern designation from California. Ms. Gilbert pointed out that OSBEELS accepts their FLS passing score, but the individual cannot be granted licensure in Oregon without

meeting all requirements for registration, regardless of when they were allowed to sit for the examination in other states. AAG Lozano said allowing junior year students to sit for fundamentals exams in Oregon would require statutory changes. The Committee determined to send this rule, as amended, to the Special Board Meeting later in the day for consideration. There was no further discussion.

Staff update: The Board voted to adopt this rule as a temporary rule and begin the permanent rulemaking process on this rule during the February 14, 2014 Special Board Meeting.

OAR 820-010-0227 and OAR 820-010-0228 – Educational and Experience Qualifications to Take the Fundamentals of Engineering (FE) Examination/Fundamentals of Land Surveying (FLS) for Enrollment as an Engineering Intern (EI)/ Land Surveying Intern (LSI) and Application Based on Non-Accredited Degrees

Amendments to these rules allow for the consideration of military training or experience during the application process, if evidenced by a Joint Services Transcript. The Committee determined to recommend the Board adopt OARs 820-010-0227 and 820-010-0228, as amended, to the Special Board Meeting later in the day for consideration. There was no further discussion.

Staff update: The Board voted to adopt this rule as a temporary rule and begin the permanent rulemaking process on this rule during the February 14, 2014 Special Board Meeting.

OAR 820-010-0420 – Nature of Examination for Engineering Intern (EI)

Amendments to this rule update the nature of the examination, which has changed since the transition to computer-based testing. The Committee determined to recommend the Board adopt OAR 820-010-0420, as amended, to the Special Board Meeting later in the day for consideration. There was no further discussion.

Staff update: The Board voted to adopt this rule as a temporary rule and begin the permanent rulemaking process on this rule during the February 14, 2014 Special Board Meeting.

OAR 820-010-0520 – Registrants or Certificate Holders Not Qualified to Practice

Discussion on changes to this rule was postponed until the April 2014 Committee meeting.

AAG Lozano informed the Committee that Arlen Porter Smith's challenge of OSBEELS' rules had been dismissed by the Oregon Court of Appeals. There was no further discussion.

The meeting adjourned at 9:40 a.m.