

MINUTES
REGULAR QUARTERLY BOARD MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
SOUTH INTERSTATE 35
AUSTIN, TX 78741
May 26, 2016 – 10:00 AM

Call to Order. Daniel O. Wong, Ph.D., P.E., Presiding Officer called the Texas Board of Professional Engineers meeting to order at 10:00 am on May 26, 2016, at Texas Board of Professional Engineers, 1917 S. Interstate 35 in Austin, Texas. A quorum was present. (Note: all votes are unanimous unless noted)

1. Roll Call and Welcome Visitors.

Daniel O. Wong, Ph.D., P.E.	Chair
Lamberto “Bobby” Ballí, P.E.	Vice-Chair
Sam Kannappan, P.E.	Secretary
Edward Summer, Ph.D.	Treasurer (absent)
Albert Cheng	Public Member
Sina Nejad, D.Eng. P.E., P.Eng.	Member
Catherine Norwood, P.E.	Member
Elvira Reyna	Public Member
Kyle Womack, P.E.,	Member

A quorum was present. Ms. Veena Mohan, Assistant Attorney General and Mr. Ted Ross, Assistant Attorney General, were present to provide legal counsel to the Board. Mr. Edmundo Gonzalez, P.E., and Mr. Jose I. Guerra, P.E. Emeritus Board Members, were present.

The following staff members were present:

Lance Kinney, Ph.D., P.E.	Executive Director
David Howell, P.E.	Deputy Executive Director
C.W. Clark, P.E.	Director of Compliance & Enforcement
Jeff Mutscher	Director of Finance
Robert Opiela, P.E.	Director of Licensing
Morgen Cuming, JD	Staff Attorney
Dorothy Gonzales	Executive Assistant

Visitors: Terry Bilderback, P.E., Texas Society of Professional Engineers (TSPE); Kent O’Brien, P.E., Texas Department of Transportation (TxDOT); Marc Young, P.E.; Trish Smith, Executive Director, TSPE; Randy Rutherford, P.E.; Albert Alaniz, P.E.; Luciana Milano; Peyton McKnight, American Council for Engineering Companies (ACEC); Rick Guerra, P.E., TSPE; Amy Casto, ACEC; Doug Bell, P.E., TSPE; Lester Johnson; Jarrett Hill, Office of the Governor; Mr. James Greer, P.E., Past Board Member.

2. Public Comment. None.

3. Consent Agenda.

(The following items may be acted upon under Consent Agenda and are marked with an asterisk* on the Regular Quarterly Board Meeting Agenda)

- February 10, 2016 Licensing Committee Minutes **(See agenda item #5)**
- February 11, 2016, Policy Advisory Opinion Committee Minutes **(See agenda item #6)**
- February 11, 2016, Regular Quarterly Board Meeting Minutes **(See agenda item #4)**
- Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments **(See agenda item #16)**

- Licensing Applications. (See agenda item #21)

It was MOVED/SECONDED (Ballí /Kannappan) to approved the Consent Agenda as submitted. A vote was taken and the MOTION PASSED.

Discuss and Possibly Approve Board Minutes:

4. *(Consent Agenda) Discuss and possibly approve minutes of the February 11, 2016, Regular Quarterly Board Meeting.

Discuss and Possibly Accept Committee Minutes:

5. *(Consent Agenda) February 11, 2016, Licensing Committee Minutes
6. *(Consent Agenda) February 11, 2016, Policy Advisory Opinion Committee Minutes

Agenda items 4-6 were approved under Consent Agenda.

Agenda item #19 taken out of order, see below.

Agenda item #20 taken out of order, see below.

Discuss and Possibly Act on the following agenda items (7-23):

7. Board Members' Activity Reports.

- | | |
|-------------|-----------|
| • Ballí | • Summers |
| • Kannappan | • Womack |
| • Nejad | • Wong |
| • Reyna | |

Dr. Wong commented that the Board Activity reports are included as exhibit for review.

8. Emeritus Members' Activity Reports.

- | | |
|------------|------------|
| • Gonzalez | • Nadkarni |
| • Guerra | |

Dr. Wong commented that the Emeritus Board Activity reports are included as exhibits for review. He invited Emeritus Members to share current experiences. Mr. Gonzalez added that during one of his outreach presentations, Professional Engineers expressed concern and disagreement with the Decoupling. Board staff commented that the required experience for licensure did not change.

9. Finance and Budget.

• **FY16 2nd Quarter Budget.**

Mr. Mutscher reviewed the second quarter budget report. He explained that at this time the Board was experiencing a positive variance from actual to budget in both revenue and expenses.

• **FY2017 Proposed Draft Budget.**

Mr. Mutscher described the zero based budgeting process used each year by evaluating each line item for both revenue and expenses. Estimates for revenue items collected in the coming year are based on the known populations in our database and historical payment data. All line item expenses are reviewed as to what actual costs are expected to be to achieve future goals in the upcoming year. We are hoping to decrease the fund balance so that we stay in a desirable range. Mr. Mutscher explained the higher fund balance at this point and time. He explained that the expense line item depends on timing. One big expense is the replacing of the roof which will probably go into next fiscal year expenses therefore increasing the predicted fund balance for this year. Mr. Mutscher reminded Board members that he will present the final budget for adoption in August. The Board has also arranged for an Internal Audit as part of its best practices.

10. Performance Measures Report.

Mr. Howell reviewed the performance measures report with Board members which was included as an exhibit. He added that the Board has 34 performance measures and can modify as needed. Some measures are required by statute, SDSI requires some reporting, and some are developed by staff.

Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:

11. Licensing Committee.

• Personal Appearances from Licensing Applicants.

Dr. Nejad reported that the Committee recommends the following be considered and approved by the Board:

- Approve licensure in Texas for Mr. Mostaque Khan and Mr. Zachary Bergeron.
- Approve Mr. John Makar, Mr. Kelechi Emelogu, Mr. Travis James to take the PE exam.
- Approve Mr. Julio Chavarria for waiver of FE exam and to sit for the PE exam upon successfully completing the Level I Ethics course from Texas Tech.
- Approve Mr. Gabriel Tobin to take the PE exam after successful completion of the Level I Ethics course from Texas Tech being submitted to staff.
- Approve Mr. Nathan Fuller to take the PE exam after successful completion of the Level I Ethic Course from Texas Tech be provided to staff.
- Approve Mr. Eric Guthrie, Mr. Muhammed Islam, Mr. Justin Paris be licensed in Texas after successful completion of the Level I Ethics from Texas Tech course be submitted to staff.
- Approve Mr. Ghassan Naddaf's application be placed on hold and require that he attain 2 additional years of experience, 2 additional references showing proof of character and professional, return to the Licensing Committee, and successful completion of the Level III Ethics Course from Texas Tech.
- Approve Mr. Elvis Dakwa to deny licensure, applicant gain 1 additional year of experience with two favorable PE references from current employer and knowledge of applicant's experience.

It was MOVED/SECONDED (Nejad/Ballí) to approve the Licensing Committee's recommendations as presented. A vote was taken and the MOTION PASSED.

• Discuss and possibly approve the following rule proposals to be posted in the Texas Register.

• Engineers-in-Training.

- § 133.41, Experience Evaluation
- § 133.43, Supplemental Experience Record

It was MOVED/SECONDED (Nejad/Ballí) to approve the Licensing Committee's recommendation to post § 133.41, Experience Evaluation, and § 133.43, Supplemental Experience Record, in the Texas Register for comment. A vote was taken and the MOTION PASSED.

• International temporary license to include S. Korea applicants in accordance with Mutual Recognition Agreement.

- § 133.27, Application for Temporary License for Engineers Currently Licensed Outside the United States.

It was MOVED/SECONDED (Nejad/Ballí) to approve the Licensing Committee's recommendation to post § 133.27, Application for Temporary License for Engineers Currently Licensed Outside the United States, in the Texas Register for comment. A vote was taken and the MOTION PASSED.

• International Licensure.

- Mutual Recognition Agreement (MRA) with S. Korea.
- Mutual Recognition Agreement (MRA) with Spain.
- Mutual Recognition Agreement (MRA) with México.
- Mutual Recognition Agreement (MRA) with Canada.

Dr. Kinney reported on the successful signing of the MRA with S. Korea at the Capitol. He added that discussions with Spain are still in the works. Negotiations with México have restarted. A draft MRA has been sent for their review and suggestions. Engineers Canada reached out to the Board to renew the MRA signed in 2010. The only recommended changes by Engineers Canada are a name change of their organization. The MRA with Canada is included as an exhibit for the Board to consider and approve.

It was MOVED/SECONDED (Nejad/Womack) to approve the revised MRA with Canada as submitted. A vote was taken and the MOTION PASSED.

12. Enforcement Committee Meeting.

- **Staff Attorney Reports.**
 - SOAH Litigation
 - Suits Against the Board
 - Status of Court Cases (Injunctions)

Ms. Cuming reviewed the staff attorney report included as an exhibit with Board members. The SOAH litigations listed were separate agenda items and were discussed and voted on, see agenda item #20.

13. General Issues Committee Meeting.

- **Discuss and possibly adopt the following rule proposals.**

- Texas Board of Professional Engineer, 4 year Rule Review
 - Chapter 131: Organization and Administration
 - Subchapters A, B, C, D, E, F, G
 - Chapter 133: Licensing
 - Subchapters A, B, C, D, E, F, G, H
 - Chapter 135: Firm Registration
 - Chapter 137: Compliance and Professionalism
 - Subchapters A, B, C, D
 - Chapter 139: Enforcement
 - Subchapters A, B, C, D, E

Mr. Howell shared that all state agencies are required to do a quadrennial review of all their rules. The packet included was proposed in February and posted in Texas Register for comment. If needed, changes to certain rules will be proposed during the August meeting. The review has been completed and proposing adoption.

It was MOVED/SECONDED (Ballí/Reyna) to adopt the Rule Review rule proposal for adoption as submitted. A vote was taken and the MOTION PASSED.

- **Structure and charges of TBPE Advisory Committees.**

Dr. Kinney reported that three advisory committee meetings have occurred once a year. The committees meet separately and then together at one joint meeting. The membership attendance has been declining. Dr. Kinney has discussed with committee chairs and recommends making one advisory committee including all the sectors together with representative spots being identified to include societies' and organizations representatives. The meetings will include webinars as well as face to face. All the Chairs were in favor of trying this new format for at least one year to measure the success. There will be subcommittees and can meet if needed. Mr. Ballí added that he agreed with the changes, and asked that the Board members be kept informed. No motion required. Staff was directed to move forward.

14. Policy Advisory Opinion Committee.

- **Discuss and possibly accept the Policy Advisory Opinion Request regarding the Extent of Jurisdiction For Projects Outside of Texas and consider the Response Letter to EAOR#40.**

Mr. Womack reported that the Committee considered primarily the EAOR#40 about the ability of the Board to regulate the practice of engineering for projects outside of Texas. Staff researched and prepared the attached response letter as part of the Policy Advisory Opinion process. Staff's recommendation cites the statute and rules that apply

It was MOVED/SECONDED (Womack/Norwood) to accept the response letter as submitted. A vote was taken and the MOTION PASSED.

Discuss and Possibly Act on Reports or Items reported by the Executive Director:

15. Executive Director's Report.

- **Activity Report.** Dr. Kinney stated that his activity report was included as an exhibit for review. He reported that TSPE in conjunction with TBPE made a licensing video and shared it with the Board for their review. Ms. Trish Smith, TSPE Executive Director, introduced the video and added that the video project is an education effort for the upcoming engineers. She also gave a brief report on the success of their Math Counts project.
- **Strategic Plan/JTE.** Dr. Kinney reported that the agency is continuing to work toward this in the coming year.
- **NCEES Southern Zone & Annual Meeting.** Dr. Kinney reported that a delegation of the Board attended the Southern Zone meeting. He added that the NCEES annual meeting registration is now open. He reminded the Board that NCEES funds two delegates as well as all new Board members.
- **Outreach.** Dr. Kinney shared that the outreach numbers have been increasing. The Board has Ethics webinars scheduled in the coming week. He added that we are sharing our webinar success stories with other state boards.
- **Kudos.** Kudos for staff are included as an exhibit for review.

Discuss and Possibly Act on Enforcement/Disciplinary Matters:

16. *(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments.

Report to full Board pursuant to Board rule §139.21

Agenda item 16 was approved under Consent Agenda.

17. Agreed Board Order.

Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are not listed)

1. D-36216 – Reyna

It was MOVED/SECONDED (Womack/Norwood) to approve Board Order D-36216 as submitted. A vote was taken and the MOTION PASSED 9-1; Mrs. Reyna abstained from voting

Practice Violations

2. Stephen Paul Blake, P.E. – D-35916 – Nejad

It was MOVED/SECONDED (Womack/Norwood) to approve Board Order D-35916 as submitted. A vote was taken and the MOTION PASSED 9-1; Dr. Nejad abstained from voting.

18. Consent Orders.

Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are not listed)

1. D-36314
2. D-36315
3. D-36329

Non-Practice Violations

4. Saeid Bassari, P.E. – D-36320
5. Barry Lee Houseal – D-36371
6. Alan Wayne Lankford, P.E. – D-36301
7. Dorian Earl Ross – D-36406 (Revocation Order)

Practice Violations

8. Clyde E. Israel – D-36307
9. Bhupendrakumar V. Patel, P.E. – D-36299

Sanctions Against Non-License Holders

10. Thomas W. Keiss – B-35745, B-36305 & B-36308

Firm Registration/Sole Proprietorship

11. Diversified Engineering Services, Inc. – B-36170

It was MOVED/SECONDED (Nejad/Ballí) to approve the Consent Orders as submitted. A vote was taken and the MOTION PASSED.

19. Discuss and possibly act on reconsideration of Consent Orders for:

- **Randy Rutherford, P.E. - D-35638.**

Mr. Rutherford addressed the Board in February 2016 during public comment to share that he had not completed the Ethics class as agreed in the original Agreed Board Order. This time he requested to be on the agenda to inform the Board that he has completed the Ethics class, and to request the Board lift the suspension so that he may continue his business. The Board discussed the situation with Mr. Rutherford.

It was MOVED/SECONDED (Ballí/Kannappan) to lift Mr. Rutherford's suspension and extend his probationary period for an additional year, instead of ending in 2017, it will end in 2018. A vote was taken and the MOTION PASSED.

- **Albert C. Alaniz III, P.E. - D-36015.**

Mr. Alaniz addressed the Board and requested additional time to complete the Ethics Class and lift his suspension as originally agreed to in the Agreed Board Order. The Board discussed the situation with Mr. Alaniz.

It was MOVED/SECONDED (Ballí/Kannappan) to lift the suspension and extend his probation until April 2018, and Mr. Alaniz has 30 days from May 25, 2016, to complete and submit proof of successful completion of the Ethics Class to staff.

Mr. Ballí withdrew his motion. After further discussion with Mr. Alaniz, the Board agreed on the following action.

It was MOVED/SECONDED (Ballí/Womack) to lift the suspension as of May 25, 2016, include an additional year of probated period, ending November 2018, 30 days to successfully complete the Ethics class and submit required paperwork to staff; failure to successfully complete the Ethics class in the 30 days, would result in his license being suspended. A vote was taken and the MOTION PASSED.

20. SOAH Final Orders.

- **James Albert Babb, P.E. #56440 – Cases #D-35247 & #D-35495 [SOAH Docket No. 460-15-4426]**

Ms. Cuming provided a summary of the case. On July 7, 2015 the Administrative Law Judge (ALJ) granted the Board's motion to consolidate the hearing with Docket No. 454-15-3902, Texas Department of Insurance vs. James A. Babb, P.E. The two state agencies held a joint hearing on August 10-13, 2015. On January 19, 2016, the ALJ filed a Proposal for Final Decision (PFD) recommending Mr. Babb be issued a formal reprimand, his engineering license be suspended

with all but the first three months be probated, contingent on his payment of a \$5,000.00 administrative fee and successful completion of the Level II Engineering Ethics course from Texas Tech University. On January 28, 2016, the Board filed exceptions to limit his probated suspension of his license to two years, with all but the first three months being probated. On February 19, 2016 the ALJ accepted the Board's exceptions. Mr. Babb's appointment as qualified windstorm inspector has been revoked and he has been removed from the TDI's windstorm inspector list.

It was MOVED/SECONDED (Womack/Cheng) to adopt the SOAH final order for Mr. Babb as submitted. A vote was taken, and the MOTION PASSED.

- **Bryan D. Hull – Case #B-34417 [SOAH Docket No. 460-16-0549]**
Mr. Hull forged the signature of a PE on a federal document and pled guilty to a felony. On January 2015 the Board filed the original complaint for violating the Act and Rules. On March 4, 2016, the ALJ granted the motion and recommended an administrative penalty of \$18,600.00, and issuance of a Cease and Desist order.

It was MOVED/SECONDED (Norwood/Womack) to adopt the SOAH final order for Mr. Hull as submitted. A vote was taken, and the MOTION PASSED.

- **Curtis Elbert Thiele, P.E. #46938 – Case #D-35335 [SOAH Docket No. 460-15-4952]**
The Board did not receive Mr. Thiele's Proposal for Decision from the ALJ. No action taken.
- **Tire Engineers – Case #B-35363 [SOAH Docket No. 460-16-0550]**
At this time Ms. Veena Mohan, Attorney General Counsel joined Staff Attorney Morgen Cuming, and Mr. Ted Ross, Attorney General Counsel provided counsel to the Board in this case. Ms. Cuming reported that this case was initiated from complaints of Tire Engineers displaying a "Tire Engineers" sign outside of their business and provided a summary of the case. On February 25, 2016, the ALJ issued an order granting in part and denying in part the Board's motion for summary disposition. All of the Board's factual allegations were accepted, the hearing would only concern the appropriate sanction, if any. Ms. Mohan explained that the final order incorporates the proposal for decision that was issued on this case and includes the amendments that the judge approved.

It was MOVED/SECONDED (Ballí/Norwood) to adopt the SOAH final order for Tire Engineers as submitted. A vote was taken, and the MOTION PASSED.

Discuss and Possibly Act on Licensing Applications requiring board ruling:

21. *(Consent Agenda) Licensing Applications.

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

- Approved for Exams
- Approved for Licensure
- Firms Approved
- Not Approved for Licensure
- Waivers – FE
- Waivers—PE
- Waivers—Both

Agenda item 21 was approved under Consent Agenda.

Discuss and Possibly Act on Other Matters

22. Issues to consider for future meeting.

Dr. Nejad asked the Chair for staff to consider and look into having Board meetings other than in Austin.

23. Farewell to outgoing Board members and welcoming new Board members.

Dr. Wong thanked Mr. Greer for his service to the Board. His knowledge and respect of the engineering profession does not go unrecognized. Dr. Wong and Dr. Kinney presented Mr. Greer with a flag flown over the Capital and a service award plaque. Mr. Greer thanked everyone for their kindness and opportunity to serve on the Board. He especially thanked Dr. Kinney and all the staff for representing our Board well, and all the positive changes that have occurred.

Adjourn.

It was MOVED/SECONDED (Ballí/Kannappan) to adjourn the meeting at 12:45pm. A vote was taken and the MOTION PASSED.

Date Board approved the minutes as submitted:

August 18, 2016