

Minutes of the
Florida Board of Professional Engineers
Rules Committee
March 17, 2009
1:00 p.m. – Tallahassee

1. Call to Order.

Mr. Burke called the meeting to order at 1:04 p.m.

2. Roll Call.

Board Members Present:

John C. Burke, P.E.
David Charland, P.E.
Paul Tomasino, P.E.
Jonathan Earle, Ph.D., P.E.
Dann Wallis
Paul Halyard

Staff Present:

Carrie Flynn
Zana Raybon
Patrick Creehan
John Rimes
Wendy Gregory

3. Guests Present

Dennis Barton
Buddy Dewar
Brian Foster

4. Discuss proposal to exempt continuing education requirement for engineers licensed by endorsement within the biennium.
(Attachment #4)

Ms. Flynn explained that this was discussed at a recent Board meeting. This language is to add a new exemption for endorsement candidates from CE. There was discussion of removing exemption for any licensee.

After further discussion, revisions were made to the proposed language.

Upon Motion by Mr. Wallis to approve the language as revised, seconded by Dr. Earle, the motion passed.

The revised language is as follows:

61G15-22.009 Exemptions From Required Continuing Education Reporting Requirements.

(1) New licensees who have achieved initial licensure by examination or endorsement in the second year of a biennium, pursuant to Section 471.013, F.S., shall be exempt from meeting continuing education for their first renewal period after initial licensure.

(2) Any licensee whose license is placed in retired status shall be exempt thereafter.

(3) Any licensee whose license is placed in inactive status, for so long as it remains inactive.

Mr. Flury advised the Committee that they needed to determine whether changing this rule would have any impact on small businesses.

Upon Motion by Mr. Charland that the proposed rule revision had no impact on small businesses, seconded by Mr. Wallis, the motion passed.

5. Discuss amendment to Rule 61G15-18.012 to delete the language regarding compensation to Board members "...when grading, proctoring or reviewing examinations given by FEMC."
(Attachment #5)

Mr. Flury explained that this revision was before the Committee because the Board no longer gives examinations.

Upon motion to approve the revision is by Mr. Charland, seconded by Dr. Earle, the motion passed.

The revised language is as follows:

61G15-18.012 Other Board Business for Which Compensation is Allowed.

The following are considered to be other business involving the Board as required by Section 455.207(4), F.S.:

(1) All joint Board or Committee meetings required by statutes, Board rule or Board action.

(2) Meetings of Board members with FEMC staff or contractors of FEMC at FEMC's or the Board's request. Any participation or meeting of members noticed or unnoticed will be on file in the Board office.

(3) Where a Board member has been requested by the Secretary of the Department to participate in a meeting.

(4) Probable Cause Panel Meeting.

(5) Any telephone conference calls.

~~(6) All activity of Board members, if authorized by the Board, when grading, proctoring or reviewing examinations given by FEMC.~~

(6) All participation in Board authorized meetings with professional associates of which the Board is a member or invitee. This would include all meetings of national associations of registration Boards of which the Board is a member as well as Board authorized participation in meetings of national or professional associations or organizations involved in educating, regulating or reviewing the profession over which the Board has statutory authority.

~~(8)~~ (7) Any and all other activities which are Board approved and which are necessary for Board members to attend in order to further protect the public health, safety and welfare, through the regulation of which the Board has statutory authority.

Upon Motion by Mr. Tomasino that the proposed rule revision had no impact on small businesses, seconded by Mr. Wallis, the motion passed.

6. Review Rule 61G15-19.001(6)(c)(1) for possible reference error to section 455.301-.309, Florida Statutes.
(Attachment #6)

Mr. Flury explained that this revision was before the Board for informational purposes. He further explained that the change was technical in nature and required no action by the Committee.

The revised language is as follows:

61G15-19.001 Grounds for Disciplinary Proceedings.

(6) A professional engineer shall not commit misconduct in the practice of engineering. Misconduct in the practice of engineering as set forth in Section 471.033(1)(g), F.S., shall include, but not be limited to:

(a) Expressing an opinion publicly on an engineering subject without being informed as to the facts relating thereto and being competent to form a sound opinion thereupon;

(b) Being untruthful, deceptive, or misleading in any professional report, statement, or testimony whether or not under oath or omitting relevant and pertinent information from such report, statement or testimony when the result of such omission would or reasonably could lead to a fallacious conclusion on the part of the client, employer or the general public;

(c) Performing an engineering assignment when not qualified by training or experience in the practice area involved;

1. All professional engineer asbestos consultants are subject to the provisions of Sections ~~455.301-.309~~ 469.001-.014, F.S., Chapter 471, F.S., and Rule 61G15-19, F.A.C., and shall be disciplined as provided therein.

7. Discuss engineers with disabilities which may prevent the engineer from meeting the Board's rule regarding signing and sealing engineering documents.

Ms. Gregory explained that this matter was before the Committee because of a disciplinary case at the last Board meeting. After discussion, Mr. Rimes offered to find language and work with Mr. Flury and bringing language that would fit this Board. Mr. Burke advised Mr. Rimes and Mr. Flury to work on this language and bring it back to the Committee.

8. Review and discuss amendments to Rule 61G15-31.001-012 (Structural Responsibility Rules).
(Attachment #8)

Mr. Burke explained that the Rules Committee did not work on the structural responsibility rules. Mr. Charland worked with FES and was part of a large committee that worked on these rules together. The proposed revisions are in your attachments. The executive summary at the beginning is the essence of the changes that took place. A lot of the changes are cleaning up language. The biggest issue is the aluminum section that was added.

Mr. Rimes advised Mr. Burke that he forwarded some of this language to Mr. Dudley and initially there was negative response. He went on to explain that the second sentence regarding aluminum structure needs to be made clearer because as it reads now it could be misconstrued. Frankly, some of the requirements we are listing that engineers have to do will cause a lot of engineers in the State to be subject to discipline. It is a potentially controversial issue.

Mr. Burke asked the committee whether they were ready to begin the rule making process. The committee advised that they were ready.

Upon Motion by Mr. Tomasino to take these revisions to the April Board meeting after Mr. Rimes makes revisions, seconded by Dr. Earle, the motion passed.

Mr. Flury advised that we can open the rule for development in April after the meeting.

9. Discuss Fire Protection System Rules
(Attachment #9)

Mr. Burke briefly explains why this matter is before the committee. At the February Board Meeting, the full Board reviewed correspondence from Brian Foster. Mr. Foster expressed concern regarding how fire protection design was being delegated to engineers. Mr. Foster and Mr. Dewar have been following this for a long while. Fire protection is unique. There are not enough qualified fire protection engineers out there and that is what is causing these problems. In Florida, we revised our responsibility rules and fire protection was one of those rules, and are in fact, just about to finalize the latest revisions. We attempted to provide language which would give uniformity among all of the responsibility rules. Mr. Foster wrote a letter to the Board and then me, Mr. Rimes and Mr. Foster had a conference call and came up with some language. Mr. Dewar has also reviewed this and responded.

Mr. Dewar addressed the Board. He explained that we have the design concepts coming from engineers that are intended to protect owners. If the contractor doesn't have the oversight it would be wrong. There is a need for that oversight and there are not enough engineers to do this. The engineer provides the concepts which provide the base information for the layout technician who works for the contractor to follow that engineer's direction. They don't make decisions, they just follow. They may be referred to NFPA, but that is the work product of the contractor. What is happening is that they are performing design functions when they aren't qualified. When this issue was worked on in the late 1990's there was a lot of discussion. There was one issue which required all documents used for bid purposes to be sealed. That was one solution that is no longer in the law and is one Mr. Dewar would recommend. Because of those concerns, our guys are not turning them in. Mr. Dewar opined that 40% of fire protection designs are inadequate. If Mr. Foster reviewed them he would probably see more problems. We can't let the contractor make those decisions, the engineers need to do that.

Dr. Earle asked why the language regarding sealing of bid documents was removed. Mr. Dewar was unsure. There were some concerns about how that language would affect other disciplines within the profession. If that was the concern, we could enumerate and specificity that fire protection system documents shall be signed and sealed.

Mr. Burke asked Mr. Rimes and Mr. Flury if there was anything that would prevent the Board from modifying the rules and requiring that bid documents have to be sealed the same as permit documents? Mr. Rimes said we could do that but it would take away preliminary review and probably would not work.

Mr. Foster addressed the Board and provided his qualifications. All he does is fire protection and is certified as a fire inspector. The insufficient documents being discussed end up on my desk. There is a failure by the engineering community to comply with the rule requirements. Some of the biggest firms do incomplete specifications and put in this request that the shop drawings come back signed and sealed by another engineer. We've created a culture of plan stamping. We know who these people are. Mr. Foster's approach is to see if we can come up with some language that will help reduce the number of engineers from practicing outside their area of expertise; also, to close the loophole allowing plans stampers with a ready source of income.

Mr. Dewar suggested that the rule could require that documents offered for bid must be signed and sealed. In doing that, you are telling them they are retaining any risk they have. If you let them get away with it the behavior will continue. Hold the engineer responsible. Mr. Foster indicated that it is a parallel issue. One engineer requiring another engineer to seal documents for the part of the work the engineer would have established as the engineer of record.

Dr. Earle expressed concern that we had statutes related to this and something must have happened for those statutes to be changed. He inquired whether we addressed the reasons for the change in the statutes. There must have been complaints or concerns.

Mr. Burke asked Mr. Dewar and Mr. Foster to work with Mr. Rimes himself to come up with some language. Whatever we do we want to do, do it right. Mr. Rimes asked whether the focus should be on the limitation of and further implication of what the delegation of or the potentiality of sealing and signing the bid documents. Mr. Burke said to work on both.

10. Review and discuss comments to Rule 61G15-22.010, F.A.C.
(Attachment #10)

Mr. Burke advised the Committee that for 10., and 11., these comments are provided for information purposes. There will be a public hearing on Rule 61G15-22.010, F.A.C., at the April Board meeting.

11. Review and discuss comments to Rule 61G15-18.001, F.A.C.
(Attachment #11)

12. Review and discuss comment to Rule 61G15-30.007, F.A.C.
(Attachment #12)

Mr. Rimes explained the comment on this rule and the confusion regarding prime professional vs. engineer of record.

After further discussion, Mr. Flury was directed to respond to this comment.

13. Review and discuss Rule 61G15-21.007, F.A.C.
(Attachment #13)

Ms. Flynn explained that this rule is before the Committee because of an issue with people failing both examinations for licensure. Before this change, they were not allowed to repeat courses. For the fundamentals, if they failed it then they missed something and should be allowed to go back and repeat a course.

After further discussion, it was determined that no action would be taken on this proposed revision.

14. Review Rule 61G15-37.001 regarding the FEMC webpage and Administrative Complaints
(Attachment #14)

Mr. Flury explained that the only action on this rule was a determination of whether there would be an impact on small businesses

Upon Motion by Mr. Wallis that the proposed change does not have an impact on small business and a SERT is not needed, seconded by Mr. Charland, the motion passed.

15. Review and discuss question 19 in the Study Guide on Laws and Rules
(Attachment #15)

Question 19 was discussed. Although the answer is correct pursuant to the Statute, it was determined that a new question should be prepared. Further, the study guide question should come from information provided in the Winter 2009 newsletter.

16. Review Section 287.055, F.S. for possible rule development requiring engineers to comply with the CCNA
(Attachment #16)

Mr. Burke explained that this came up out of an email from Charlie Geer about what Texas Board was doing in regards to consultants competitive negotiation act. I think there would be a problem with enforcing a rule of this nature. Mr. Flury indicated that under the misconduct rules there are definitions. The ability to prosecute is different. Mr. Rimes indicated that when there is a bid protest and that protest ends up in litigation and that is a forum where it could be proven that someone is in violation of the CCNA where there is a finding by an administrative court that it has happened.

After discussion, it was determined that the Committee would not promulgate a rule.

17. Review and discuss comment to Rule 61G15-23.001
(Attachment #17)

Mr. Burke suggested that we contact FES and ask them to take a survey of all engineers to determine what the population prefers. Mr. Rimes suggested that we could offer both types of seals.

Ms. Flynn suggested touching base with NCEES and in find out what State was the last to go through the process of changing from embossed seals to rubber stamps. Mr. Barton offered to look into that for us and believes there are only about eight (8) states left that do not allow rubber stamps.

It was the consensus of the Committee to research this matter and bring the findings back to the Committee.

18. Old Business.

19. New Business.

a. Date, Time and Location of Next Rules Committee

April 14, 2009 @ 1:00 p.m.

FBPE Offices

Cancel this meeting and set a new date in May or June.