

2016 Operational Planning Minutes

April 14, 2016

215 Centennial Mall South, 5th Floor Large Conference Room, Lincoln, NE

CALL TO ORDER

The meeting was held at 215 Centennial Mall South, 5th Floor Large Conference Room, Lincoln, Nebraska. Chair Kester called the meeting to order at 8:42 a.m. and noted the location of the Public Meeting Statutes. Notice of the meeting was published in the Lincoln Journal Star in compliance with the Open Meetings Act.

Roll Call: Krista Kester, Chair; Roger Helgoth, Vice-Chair; Jennifer Klein, Secretary; Mark Champion; Michael Konzett; Lenora Isom; Tom Laging. Absent: Daniel Linzell.

Staff Present: Jon Wilbeck, Interim Executive Director (IED)/Compliance Officer (CO); Sandra Weaver, Administrator (AD); Jean Lais, Administrative Assistant (AA); Tanna Dittmar, Public Information Officer (PIO).

Public in Attendance

James Ohmberger, IT Manager, Enterprise Computing, Office of the OCIO
Ann Tanner, Commercial Lease Coordinator, State Building Division
Rich Lombardi, Legislative Liaison, American Communications Group

1. Database Switch to GL Solutions

IED Wilbeck reported on the status of a request to switch to a licensing software platform offered by GL Solutions. Governor Ricketts signed LB956 giving the Board an additional \$75,000 appropriation in FY 2016-17 for implementation of a new database. IED Wilbeck and James Ohmberger met with State Purchasing. A RFP may be necessary to secure a contract since the State of Nebraska has a \$50,000 limit before a RFP or competitive bidding is required. IED Wilbeck will talk to other Boards for their input concerning the vendor's responsiveness and continue to investigate options.

James Ohmberger emphasized the importance of discussion with other states using GL Solutions to help determine if the software can meet the Board's needs. GL Simple Software offered by GL Solutions would give the same functionality that the current database has. Once the system is implemented, a fixed amount of projects to add functionality to the database would be included per year. Mr. Ohmberger described the difference between a task and a project and stated it would be beneficial to combine tasks into a single project. Judgement will be needed to keep the price affordable. Other improvements could be scheduled and implemented for a one time add-on fee. GL staff would make changes to the database so the Board would no longer need IT staff. The OCIO will assist with contract language and work directly with GL Solutions. The agreement will be reviewed by the OCIO, State Purchasing, and the Board. The RFP process and the contract could be written so other State agencies would be able to utilize GL Solutions without going through another RFP process. Data and credit card security standards and reliability stats of GL Solutions have been requested. Mr. Ohmberger stated that he as well as State Purchasing would work with the Board through the RFP process to ensure the contract and services are at the level of quality needed.

Board members commented as follows:

- Ensure database has what is needed for processes before it goes live
- Ensure staff has input prior to entering into the contract
- Require GL Solutions to supply training materials and technical resources

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- Ensure all coding is done by GL or OCIO
- Look for opportunities to exchange information
- Contact Steve Matthews, Chief Technology Officer for NCEES, and possibly a resource from NCARB, if available, to discuss database needs

Action Motion by Konzett, second by Klein to negotiate a contract with vendor GL Solutions to replace the Board's current licensing and examinee database, subject to arriving at agreeable terms with the vendor, the Board, OCIO, and State Purchasing. Voting Yes: Helgoth, Isom, Klein, Laging, Champion, Konzett, Kester. Voting No: None. Absent: Linzell.

2. Building Lease Expiration

IED Wilbeck handed out the updated lease requisition. A draft of possible tenant improvements was provided by Champion. The cost of office renovations was estimated at \$10-15K. IED Wilbeck reported meeting with Rob McMaster at the Lincoln Community Foundation. The Foundation would like the Board to retain its office after the current lease expires in November of this year and was generally agreeable with the changes in the space. The Foundation would require the Board to incur the cost of renovations. Staff will work with the building manager to mitigate the temperature issues. Switching from paper to electronic records was suggested to save space. AA Lais indicated this issue was being considered and achieved records are currently being scanned.

Ann Tanner, the Commercial Lease Coordinator from the State Building Division stated the RFP process would make the rental rate more competitive. She assured the Board that an agency can decide whether a bid is accepted from another lessor. Site visits and a scoring process usually provides the space desired. If the Board office is moved to another location, relocation costs would need to be considered since they are usually incurred by the agency. Ms. Tanner stated it would be put into the RFP to ask the lessor to pay for expenses or to bid both ways. The lease could contain two five-year renewal periods, with a projected 2 % increase for each renewal period. Ms. Tanner stated she would stay with the Board through the RFP process until a lease is obtained and stressed the importance of being happy with leased office space.

3. Legislative Matters

Lombardi distributed a final legislative report containing key bills with priority status, other bills and interim studies, and a list of 2016 legislative candidates. All bills passed on Final Reading have been sent to the Governor, who has five days, excluding Sunday, to sign or veto each bill.

The Board expressed interest in participating in LR490, an interim study to examine the enforcement of state and local building codes. The study has been referred to the Urban Affairs Committee. Building codes are a top priority of the Committee. Lombardi will investigate to see if the study is active.

LR546, an interim study to examine whether Nebraska's occupational licensing boards are exposed to liability under antitrust laws was introduced and referred to the Judiciary Committee. LR546 will

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continue to be monitored. IED Wilbeck will send Lombardi information concerning *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.

The Board reviewed a list of issues relating to exemptions. Questions reviewed and considered were as follows:

Whether to amend the statutory language of §§ 81-3453(2) and 81-3449(2) to allow the existing exemption levels in the exemption matrix (Rule 10.3).

Chair Kester stated the first issue would be exemption levels and the need to keep them consistent in statutes and rules. The lowest exemption limit in the rules is 1,000 square feet for assembly and education. All of the primary stakeholders (PEC, including NSPE and SEAoN, ACEC, and AIA) favor changes in the matrix and support changing the statutory provision.

Concern was voiced about opening up the statutes. Lombardi stated statute is volatile and the Board would need to consider if stakeholders have enough power to change it and whether current law jeopardizes public health and welfare. The Board also had concerns with Rule 10.3.6 which allows buildings up to 4,999 square feet to be completed without the involvement of licensed professionals and how smaller numbers could be justified.

It was suggested that the Board meet with other stakeholders including general contractors for commercial work, state regulatory agencies, utilities and natural resource districts, public power, electrical board, tradesmen, consumer interest bankers, home builders, etc.

If we are to amend the statute, what amendment to press.

The statutory limit could be reduced or eliminated entirely. Chair Kester stated discussion seemed to be for leaving all exemptions alone except institutional exemptions. The work involved in changing other exemptions appears to be too large.

What changes to press in the exemption matrix, if any.

Primary stakeholders generally recognize the need to work with the other industry participants (e.g. home builders, contractors, building officials) who will enter the discussion and push back against any "zero" exemptions.

Focusing on 20 person occupancy was discussed. Isom noted the state building code is the 2012 IBC, so the Board's laws would need to match. Institutional exemptions could be focused on with an end goal of a maximum building area less than 1,000 square feet. The square footage could be reduced in rules, with statute referring to the matrix in the rules. Discussion with stakeholders could be limited to statute.

The legislative session will end officially on April 20th. An opportunity to sponsor a bill will be introduced to a senator, yet to be identified.

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Whether to include “good Samaritan” immunity in Rule 10.7 or as a separate statutory exemption.

The ACEC and AIA have been attempting to get a “good Samaritan” immunity statute passed by the legislature without success. The Board asked Lombardi if it would be a good idea to include “good Samaritan” immunity in Rule 10.7 or as a separate statutory exemption. Lombardi strongly advised against introduction of any legislation that would lead the Board into public policy.

Whether to resurrect the issue of cross-discipline practice.

It was noted that AIA was against cross-discipline practice for architects when the subject was last addressed. Many outstate architects are also against cross-discipline practice.

Whether to amend § 81-3453(7) to tighten the provision relating to political subdivisions who employ licensed professionals.

An issue was raised concerning the current practice of local NRDs contracting engineering services to other political subdivisions. A suggestion was made to change statutory language to (1) require that only a “competent” licensee may perform the particular service and (2) require the NRD (or other political subdivision) to obtain a Certificate of Authorization to practice. The Board agreed this was a business issue and not an exemption issue.

Whether to amend § 81-3453(8) to clarify that the exemption applies to “licensed trades” such as electricians, plumbers, and fire protection contractors.

Since § 81-3453(8) is somewhat vague, it was questioned whether a proposed revision should be made. The Board was in consensus to leave the statute as is.

Whether to press the “early examination” issue again.

NSPE representatives voiced concern when the Board attempted to propose a statute revision allowing the PE examination to be taken any time after passage of the FE and graduation. The membership did offer to consider a compromise to allow the exam to be taken two years after graduation and still require four years of experience before licensure. IED Wilbeck presented at the Northeast Chapter NSPE meeting and was surprised to learn many members in attendance appeared to support early examination as proposed by the Board. Dialogue will be attempted again at a later date.

Whether to return to “Professional Engineer”-only license status for P.E.s, and to explore the idea of “designating” licensees as competent to practice in specific disciplines.

The Board discussed a proposal to allow a professional engineer (with the exception of Professional Structural Engineers) to be licensed as a “Professional Engineer” with discipline specific categories listed below their name on the seal. Samples of seals were reviewed. A professional engineer who wants an additional discipline designation status would need to complete a form provided by the Board, listing their experience in the requested discipline with sufficient education, experience, and references. Board staff would contact references for verification and recommendation of applicants.

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This proposal could ease comity concerns with other, non-discipline-specific states and allow each P.E. to more specifically define their practice when they are doing work outside of the discipline of their original licensure. Comity with other states will not change as incoming P.E.s will still need to show a base discipline and can add other disciplines as desired with sufficient background information.

Professional Structural Engineers would stay as is, but this proposal would allow, for example, a Professional Engineer who practices structural to be called structural. A structural-licensed civil engineer who is not listed as Civil would be allowed to put structural under their name on the seal but would still not be considered a full structural engineer designated as a Professional Structural Engineer on their seal.

Architects could similarly add disciplines to the architect seal. A list of disciplines will need to be made (Hospital, Prison, Education, Religious, Residential, Government, Military, Event Assembly, etc.) Having a discipline on the architect's seal would not restrict any architect from practicing in areas that they are competent. This option would allow them to show an experience level for each specific discipline. Some may consider this just a marketing tool but from the Board's aspect it should not matter if each applying architect sufficiently demonstrates enough experience per discipline. This will not be subject to firm use by only each individual architect. A firm may then be allowed to state they have specific disciplines architects working for them.

It was reported the subject of returning to a "Professional Engineer" discipline came out of a recent PEC meeting. NSPE had provided a position paper stating applicants should be licensed as "engineers." Prior to 1998, licensees in Nebraska held a stamp without a professional engineering discipline. Former Board member Choobineh would know the history of the issue. Isom commented as a Building Official, the discipline is helpful because it often raises a flag about the professional engineer's expertise.

Chair Kester noted the Board's difference in opinion on licensure status and asked members to continue consideration of the subject. The matter will be delved into at a later date.

A Legislative Ad Hoc Committee will be appointed by Chair Kester at the Board meeting on April 15th.

4. Plan Stamping + Direct Supervision

IED Wilbeck noted Neb. Rev. Statute § 81-3411 defines direct supervision as "...full professional knowledge and control over work being done..." Defining what "full professional knowledge and control" means is critical. Creating a checklist for a professional to use was proposed. The Board reviewed what other states use to define plan stamping. One key matrix of responsible charge is "does the architect or professional engineer have the ability to change the drawings before it becomes a final product"? Chair Kester noted the problem was twofold. A check list to review is needed as well as a way to enforce it. The comfort level when disciplining licensees for "plan

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stamping” is higher if the Board has a list of desirables that the respondent may produce. If work is sealed that one does not have direct supervision of, than it is “plan stamping” and a violation.

The Board will:

- Define best practices
- List best practice evidence of authority over work
- Put set of best practices in the rules

Conzett noted that NCARB’s March 2005 publication, “Signing and Sealing Technical Documents” was an excellent background document.

5. Temporary Construction Activities

Chair Kester stated an Ad Hoc Committee would be appointed to cover the issue of temporary construction. Klein noted one of the Enforcement Committee charges was to determine if there were licensees involved in the construction of temporary construction equipment. A list was developed and a survey was created that was never sent out. IED Wilbeck submitted a tower crane stakeholder contact list. The Ad Hoc Committee will pick up where the Enforcement Committee ended with some adaptation. The Board will need to determine if a licensee in the State needs to be overseeing these activities. Federal laws should be reviewed to determine if anything can be done on the State level or if it is preempted. Conzett stated the SPCC rule set a precedent where a Nebraska licensee is used. The Temporary Construction Ad Hoc Committee could review Rules 10.5.1 and 10.5.3.

6. Coordination with Other Agencies

IED Wilbeck submitted a list of entities for the Board so existing issues and roles could be contemplated. The Board discussed the possibility of strengthening the safeguarding of health, safety and welfare by building relationships with other agencies. The first meeting with the Fire Marshall will be 60 days after the legislative session ends. Wilbeck will meet with Doug Holbein, Manager of the Plans Division. Connections will be made two days before meeting. It was noted the memorandum with the Fire Marshal gives the Board a comfort level but not the public. More communication could be given to groups that interface with licensees. IED Wilbeck emphasized the need to continue to visit building departments.

Helgoth stated the Compliance Officer should increase visitation in counties with 2nd class or below cities. Attending meetings and joining a panel or discussion at conferences could be a possibility. Isom suggested attending the Nebraska Planning and Zoning Association (NPZA) meeting to build relationships with planning and zoning officials.

Chair Kester reminded the Board and staff that zoning officials, cities, and other entities cannot be given instructions on what to do.

Helgoth left the meeting at 1:00 p.m.

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7. NCARB's Integrated Path to Licensure

Laging reported NCARB has been working on the Integrated Path to Architectural Licensure (IPAL) for quite a few years. IPAL provides students the opportunity to complete requirements for licensure while earning their degree. The initiative encourages accredited programs to incorporate the Intern Development Program (IDP), as well as the opportunity to take the Architect Registration Examination into curricula. There are no requirement changes, but the process is shortened. It is the college's responsibility to make sure experience is equivalent to the IDP program. Laging emphasized there is financing pressure on students and many are graduating with large debt. Working often prevents them from giving as much attention to their classwork that is needed to complete the program. An estimation of approximately 30% of the students could possibly finish the IPAL program. Obtaining experience during college would be helpful. The program is difficult and a student would need to work hard. Since some students are in school six years before working in an office, this experience would be a plus. It was noted that there are more architects in Nebraska per capita than most states. IED Wilbeck noted school proposals have to demonstrate partnership between the institution, licensing board, and firms/practitioners. The Board's responsibility is the exam and to see that the work experience is credible. Architect members of the Board were in favor of the program.

It was noted that examination after graduation in Neb. Rev. Stat. § 81-3448 (a) would need to be changed if the Board chooses to allow the option for the Integrated Path to Architectural Licensure. The law will be reviewed at a later date. The Board will need to be favorable toward other state licensees that have taken this path when applying for licensure in Nebraska. Direct registration for the examination with NCARB may be an option.

8. Budget Overview

An overview of the budget process was provided for the Board. The 2017-2019 Biennial Budget instructions will be issued in May or June 2016. The next fiscal year begins on July 1, 2016. Agencies will be required to have a preliminary completion of the agency and program narrative screens for operation expenditure requests by August 1, 2016. The deadline for Biennial Budget Requests is September 15, 2016.

Staff will bring budgeting updates to the next Board meetings. A method will be devised to highlight newly added issues such as GL Solutions. Since the September Board meeting is scheduled the day after the budget submittal, the date will be revisited at the April 15th Board meeting for a possible change.

9. Committee/Task Force Assignments

Because of climbing per diem expenditures, Chair Kester suggested getting away from standing committees and going to ad hoc committees to address issues and bring recommendations back to the Board. The continuing education event is on hold unless professional societies drop their commitment to sponsor the event. Kester asked members to think about which committee they would like to serve. Appointments will be made at the Board meeting on April 15th for the following Ad Hoc committees:

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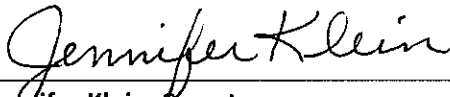
- Legislative
- Temporary Construction
- Direct Supervision + Plan Stamping

Klein commented the Board may need to be more hands on if the database change keeps staff occupied.

Staff was given direction at the last meeting to make sure the professional organizations have plans for the continuing education event. Discussion will take place at the April 15th meeting.

Adjournment

The meeting was adjourned at 1:52 p.m.



Jennifer Klein, Secretary