

# Idaho Board of Licensure of Professional Engineers And Professional Land Surveyors

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## **BOARD MEMBERS**

William J. Ancell, P.E., Chair, Boise

Gary L. Young, P.E./L.S., Vice-Chair, Twin Falls

James H. Milligan, P.E., Secretary, Moscow

David K. Bennion, P.E., Member, Boise

John W. Howe, P.L.S., Member, Coeur d'Alene

## **BOARD STAFF**

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## **INTRODUCTION**

This NEWS BULLETIN is distributed a minimum of twice per year by the Idaho State Board of Licensure of Professional Engineers and Professional Land Surveyors to inform the public and the State's Professional Engineers and Professional Land Surveyors of those events which significantly affect the professions.

## **BOARD ISSUES DISCUSSION PAPER ON BOARD COMPOSITION**

At its meeting on June 11-13, 2009 the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors discussed the issue of having one regulatory board for both the engineering and land surveying professions versus two separate boards. The Board also discussed the desirable non-statutory criteria for board member nomination. The result of those discussions was the enclosed paper. The Board would appreciate feedback regarding the content of the paper.

## **DISCUSSION PAPER ON BOARD COMPOSITION AND DESIRABLE NON-STATUTORY CRITERIA FOR BOARD MEMBER NOMINATION**

In response to recent discussions regarding the composition and qualifications for members of the Board of Licensure of Professional Engineers and Professional Land Surveyors, the Board has prepared this discussion paper on the issue. The Board welcomes feedback on the contents of the document.

Recent discussions have centered on two main issues. The first is whether or not there should be separate boards to regulate the professions of engineering and land surveying in Idaho. The second is the issue of the desirable attributes of the engineer members of the Board in relation to practice discipline, geographic representation, and practice sector.

In regard to the first issue, Idaho Code Section 54-1203 currently states, in regard to the Board of Licensure of Professional Engineers and Professional Land Surveyors,

“It shall consist of five (5) persons duly licensed as provided by this chapter, appointed by the governor from among nominees recommended by any organized and generally recognized state engineering society in this state for the professional engineer members or any organized and generally recognized state land surveying society in this state for the professional land surveyor member. The board shall be comprised of four (4) persons licensed as professional engineers and one (1) person licensed as a professional land surveyor.”

Idaho Code Section 54-1204 goes on to state,

“Members of the board shall be citizens of the United States and residents of this state, and they shall have been engaged for at least twelve (12) years in the practice of engineering for the professional engineer members or land surveying for the professional land surveyor member, shall have been in responsible charge for at least five (5) years of important professional engineering or professional land surveying work, and shall be licensed under the provisions of this chapter. Responsible charge of engineering or land surveying teaching may be construed as responsible charge of important professional engineering or professional land surveying work.”

Prior to 1978 there was no requirement that one of the five board members be a land surveyor, because prior to that, any person licensed as a professional engineer was allowed to practice land surveying. Legislative changes in 1978 required engineers to submit evidence of competency in order to continue to be allowed to practice land surveying. Persons granted that privilege are referred to as “combined license holders” and their designation is traditionally “P.E./L.S.”

According to the National Council of Examiners for Engineering and Surveying, there are 40 jurisdictions which have licensure boards that regulate both the profession of engineering and land surveying. Of these 40 jurisdictions there are 26 jurisdictions which have boards that regulate only the professions of engineering and surveying via one board and 14 which have a single board that regulates not only engineering and surveying but other professions including architecture, landscape architecture, interior design, geology and others. There are 14 additional jurisdictions which have separate independent boards for the professions of engineering and surveying. (Note 1. Illinois has a PE board, a structural engineering board, and a surveying board. Note 2. Nebraska and Tennessee each have one board which regulates both engineering and architecture, but not surveying).

A discussion of the pro's and con's of a board that regulates both professions versus separate boards for each profession might be considered subjective rather than objective. What is perceived as a negative by one person might be perceived as a positive by another. Recognizing that problem, the following table notes some of the pro's and con's of a combined board versus separate boards that have been expressed by various participants in the discussion to date.

| <b>Combined Board Independent of Bureau of Occupational Licensing</b> |   | <b>Separate Boards Assuming PLS Board is under Bureau of Occupational Licensing</b> |  |
|---|---|---|--|
| <b>Pro</b>  | <b>Con</b>  | <b>Pro</b>  | <b>Con</b>   |
| "Turf" battles taken care of within one agency                        |   |   | "Turf" battles more difficult to settle between agencies than within an agencies |
| Less duplication of services  |   |   | Duplication of services  |
| Less expensive membership cost in NCEES                               |   |   | Duplication of cost of membership in NCEES                                       |
|   | PLS's feel they do not have a significant voice   |   |  |
|   | PE's feel that PLS's are overrepresented  |   |  |
|   | Only one PLS required by law so that Board Member has no one with whom to collaborate                     |   |  |
| Less costly per licensee  |   |   | More expensive per licensee  |
| PE's and PLS's investigating the technical aspects of complaints      |   |   | Non PE's and PLS's investigating the technical aspects of complaints             |
|   | Fewer combined or dual licensed individuals to fill PE position and serve as collaborator with PLS member |   |  |
| Board has control over administrative staff                           |   |   | Board must rely on BOL for administrative support                                |
|   | PLS matters are decided by Board that may have only one PLS   | Each profession regulates itself  |  |

In regard to the second issue, beyond the above Idaho Code citations, there are no requirements that any of the professional engineer members also be licensed to practice professional land surveying, that there be a diversity of practice disciplines, that there be breadth of geographic representation, or that there be a mix of representation from various practice sectors. In reality, though not required by law, the Board has generally been made up of persons from various engineering disciplines, from the geographic spectrum of the state, and from the public, private, and educational sectors.

Probably the most important factor to consider when nominating a new Board member to an engineer position on the Board under the current law is the fact that only one member of the Board is required to be a professional land surveyor. While any one Board member's thoughts and opinions are important, it is always a good idea to have a colleague with whom to discuss policy and other important matters. In practice, ever since 1978, when the separate position for the professional land surveyor member was created, at least one of the engineer members of the Board was also a land surveyor, thus the land surveyor member always had someone with whom to discuss and weigh technical matters. As the number of "combined" license holders dwindles (they were only issued for a one year time period in 1979) it is more and more difficult to find a willing candidate for the Board who has a combined license. Under the current law an engineer may become licensed separately as a professional land surveyor, and some have done so, but again, there are not many in that pool of potential candidates. With the civil engineering curricula throughout the country de-emphasizing surveying, the number of professional engineers who also qualify for and seek licensure as professional land surveyors will not likely grow rapidly, or at all, in the future. Perhaps we should consider a statutory requirement that one of the engineer members also be licensed as a land surveyor, or, alternatively, add an additional land surveyor position to the Board. Discussion has also occurred in the past and initiated again recently over the pro's and con's of having a member of the public, licensed neither as an engineer nor as a land surveyor, serve on the Board. Many other jurisdictions have public member positions and California even has a law which requires that the majority of the Board members be unlicensed public members. The Idaho Board has had the pleasure of working with many public members through its activities with the National Council of Examiners for Engineering and Surveying. Some persons have expressed a concern that the pace of Board meetings might be impeded with the presence of a public member since many issues would have to be discussed from a very basic beginning point in order that the public member understand the matter, as opposed to engineers and surveyors having the fundamental background of the issue in most cases.

In regard to the engineer positions that become vacant, some consideration should be given to discipline of practice, geographic representation, and whether the candidate comes from the public, the private or the educational practice areas. Diverse technical matters come before the Board and a representation of civil as well as mechanical, electrical, chemical, and other practice disciplines with fewer practitioners is valuable. Perfect balance is probably impossible, but the opportunity to serve on the Board should be available to all disciplines and sectors of practice and the Board should ideally not be comprised of members from only one or two of these areas. In general, the practice areas of consulting (private practice), construction, industry, government and education need to be considered. For the last quarter century or so there has been at least one member of the Board who comes from academia. Since education is one of the legs of "the three-legged stool" of licensing (education, experience, examination), the educator position is often heavily relied upon by the other Board members to advise on such matters.

### **RULE CHANGES BEFORE THE LEGISLATURE**

The Board has undertaken the rule making process and will have pending rules before the Idaho Legislature for review when they convene in January 2010. The first set of changes are to the Board's Rules of Procedure. In anticipation of the likelihood of conversion of the examinations to computer-based rather than paper-and-pencil, the Board has proposed changes which would provide more flexibility in accepting examinations offered at different frequencies, of different durations and of different organization than current examinations. The rules would be amended to clarify that an individual must first be licensed especially qualified in a "base" discipline

before taking the examination in structural engineering. In addition, the changes reflect the fact that that Board no longer directly administers examinations and clarifies the Board's right to publish disciplinary actions. The second chapter of rules with pending changes are the Rules of Professional Responsibility. Definitions for "deceit" and "incompetence" would be added, and the definition of "misconduct" would be modified. The rule would also clarify the standard of care of licensees and certificate holders and clarify licensees obligations relating to reports, statements and testimony. See the Administrative Bulletin at

<http://adm.idaho.gov/adminrules/bulletin/bul/09bul/09aug.pdf> and  
<http://adm.idaho.gov/adminrules/bulletin/bul/09bul/09nov.pdf> and

for additional information.

### **BOARD PROPOSES AMENDMENTS TO STATUTES**

The Board intends to have two bills before the Idaho Legislature in the upcoming session. One bill is intended to update the chapter of Idaho Code relating to the use of coordinates on surveys. The bill will eliminate obsolete references as well as create an optional single zone area which will include the entire state. The second bill will update terminology in several sections of the licensing law, provide more flexibility in examinations in anticipation of eventual conversion of paper-and-pencil exams to computer-based, eliminate the requirement for references in order to be assigned to a fundamentals examination, provide for staggered renewals of business entity certificates of authorization rather than all renewed in July, and provide for the transfer of responsible charge from one licensee to another when necessary.

### **CHANGES IN NCEES STRUCTURAL EXAMINATION COMING**

Beginning in April of 2011, the examination for licensing as a professional engineer especially qualified in structural engineering offered by the National Council of Examiners for Engineering and Surveying (NCEES) will be a total of 16 hours offered over two days. The entire 16 hours of examination will have to be passed in order for a passing score to be reported by NCEES to the jurisdiction. Previously the examination was offered as an 8 hour "Structural I" examination and a separate 8 hour "Structural II" examination. Each could be taken separately without the requirement that the other be taken. Some jurisdictions granted licensure upon passage of Structural I only, while others required passage of both; some required passage of a "base" discipline prior to the structural exams, which is what Idaho currently requires; and still others used the Structural II exam and a state-prepared "Structural III" exam. Adoption of the single 16 hour exam by NCEES should lead to more uniform licensing requirements in the various jurisdictions.

### **MASTER'S DEGREE OR EQUIVALENT BEING DISCUSSED BY NCEES**

The NCEES Model Law is intended to be a document to be emulated by the various jurisdictions when considering adoption or changes to the jurisdictional licensing laws. After considerable discussion, the Model Law was revised by NCEES a few years ago to require education beyond a bachelor degree in order to qualify for assignment to the professional engineer licensing examination. The basic reasons for the additional education requirement were the declining number of credit hours required to earn a bachelor degree and the increasing size of the body of knowledge contained within the disciplines. The concept has gone by several names including "B Plus 30" and more recently "Master's or Equivalent." The requirement was initially scheduled to go into effect in the Model Law in 2015, but is now scheduled for a 2020 effective date. The details which remain to be solidified include what courses and which course providers will be considered satisfactory. Member Boards such as the Idaho Board are not bound by the requirements of the Model Law, as it is only a guide. The Board would appreciate input from licensees regarding the matter.

## **BOARD VOTES TO GRANT PDH'S FOR CFedS PROGRAM**

The Board reviewed the Certified Federal Surveyors (CFedS) Program, which is jointly administered by the Department of the Interior's Bureau of Land Management and the American Congress on Surveying and Mapping (ACSM). The program has seven courses and a final examination. The Board voted to allow ten (10) Professional Development Hours (PDH's) for each of the seven courses, and an additional 50 PDH's for passing the examination. Information about the program is available on the internet at <http://www.cfed.org>.

## **DISCIPLINARY ACTIONS**

The following final formal actions have been taken by the Board since publication of NEWS BULLETIN No. 43 in April of 2009

**Docket No. 09.01 – IN THE MATTER OF RICHARD G. GREEN, P.L.S.** A developer hired an out-of-state surveyor who was licensed in Idaho to perform land surveying for a subdivision in the jurisdiction which employed Mr. Green. Mr. Green encouraged the developer to retain a "local" surveyor. Mr. Green required the out-of-state surveyor to use Mr. Green's coordinates for the location of a particular canal running through the subject property, even though Mr. Green's coordinates were taken from a map, and not an on-site survey as were the calculations performed by the out-of-state surveyor. Mr. Green failed to communicate in writing all discrepancies he claimed with the work of the out-of-state surveyor. Ultimately, the out-of-state surveyor was terminated from the project, and within two months from the time a "local" surveyor was retained, the project was approved by the jurisdiction. Mr. Green's conduct violated IDAPA 10.01.02.007.04, actions in regard to other registrants or certificate holders; IDAPA 10.01.02.005.04, obligation to communicate discovery of discrepancy in writing; and IDAPA 10.01.02.005.02, standard of care regarding Mr. Green's requirement that the out-of-state surveyor use information not a part of a ground survey. Mr. Green admitted that the facts and violations could be found to be sufficient grounds for discipline and stipulated to an admonishment, an administrative penalty of \$1,000 payable to the General Fund of the State of Idaho, and completion, at his own expense, a course in Surveying Ethics.

**Docket No. 09.14 – IN THE MATTER OF RONALD L. CURREN, P.L.S.** On September 2, 2009, the Washington Board revoked Mr. Curren's license to practice professional land surveying for professional misconduct stemming from errors, acts or omission in connection with land surveying activities that would have been violations of the Idaho Rules of Professional Responsibility for Land Surveyors had they occurred in Idaho. Following a hearing, the Idaho Board voted to revoke Mr. Curren's Idaho license to practice land surveying.

**Docket No. 09.18 – IN THE MATTER OF ANTONE R. THOMPSON, P.E.** Mr. Thompson's Utah professional engineer license was suspended by the Utah Division of Occupational and Professional Licensing, and such suspension was on appeal before the Utah authorities. Mr. Thompson agreed that the suspension of his license by the State of Utah is considered sufficient cause for the denial, suspension or revocation of his license in Idaho pursuant to IDAPA 10.01.02.010.03, action by other jurisdictions. Without admitting any wrongdoing, Mr. Thompson admitted that the facts and violations could be found to be sufficient grounds for discipline and stipulated to voluntarily surrender his license to practice as a professional engineer in the State of Idaho. If Mr. Thompson's Utah license is reinstated he may reapply for his Idaho license subject to the Board's approval and the Board's approval is not guaranteed.

**Docket No. 09.22 – IN THE MATTER OF RONALD G. JOHNSON, P.E.** Mr. Johnson agreed that there was a pending investigation into his conduct, and that there may be evidence that his actions might support violations of IDAPA and Idaho Code dealing with his conduct as a licensee, and representations concerning his credentials. Without admitting any wrongdoing, Johnson admitted that the facts and violations could be found to be sufficient grounds for discipline and stipulated to voluntarily surrender his license to practice as a professional engineer in the State of Idaho.

**Docket No. 09.23 – IN THE MATTER OF SCOTT A. SPAULDING, P.E.** Mr. Spaulding prepared his own stand-alone structural drawings, based upon original drawings provided by his original client, the owner of a residential project. The owner hired a contractor to construct the building, who allegedly did not use the construction plans as designed and who ultimately abandoned the job and was sued by the owner. Among other problems, the owner asserted that the contractor poured the porch footings in February 2006 on frozen earth in snow-filled excavations that had been left open for nearly a month. As a result, when the ground began to thaw, the footings failed through settlement and were literally pulling the porches off the building. The owner then redesigned the posts and beams, but was required by the County Building Official to have the plans “engineered.” This time Mr. Spaulding made minor additions to the plans which had been prepared by the owner, sealed, signed and dated them. Finally, the contractor retained Mr. Spaulding to do expert witness evaluations and actually testify in the lawsuit on behalf of the contractor, and against his former client, the owner. In his court testimony, Mr. Spaulding relied on information from the contractor in testifying that in a hypothetical proposed by the contractor’s attorney, it would be acceptable to pour footings in a excavation with one inch of frost because the heat of hydration of the concrete would melt the frost. Mr. Spaulding did not confirm the fact that the footings were not poured under these conditions prior to stating that opinion. This conduct violated IDAPA 10.01.02.008.02, for accepting compensation from multiple parties on the same project without having notified both parties in writing and receiving permission from both parties. Further, Mr. Spaulding’s conduct in this matter constituted a violation of IDAPA 10.01.02.007.02, for expressing opinions on less than adequate knowledge of the facts in issue; and Idaho Code Section 54-1215(3)(d) and IDAPA 10.01.02.006.03, use of seal and signature under licensee’s responsible charge as defined by Idaho Code Section 54-1202(12). Mr. Spaulding admitted that the facts and violations could be found to be sufficient grounds for discipline, and stipulated to a reprimand, an administrative penalty of \$2,000 payable to the General Fund of the State of Idaho, and completion, at his own expense, of a course in Engineering Ethics.

**Docket No. 09.27 – IN THE MATTER OF REX L. HARRISON, P.E.** Following a hearing the Board found that Mr. Harrison was in violation of Idaho Code Section 54-1215(3)(d), as defined by Idaho Code Section 54-1202(12), for the signing, sealing and dating of drawings for work that was not under Mr. Harrison’s responsible charge. The Board admonished Mr. Harrison for his conduct.

**Docket No. 10.06 – IN THE MATTER OF JOSE U. BARNES, P.E.** Mr. Barnes agreed that the revocation of his professional engineering license by the State of Texas and the State of Oklahoma as a result of his indictment, guilty plea and conviction of mail fraud in Texas is considered sufficient cause for the denial, suspension or revocation of his license to practice as a professional engineer in Idaho. As a result, he agreed to a revocation by the Board of his license to practice engineering in Idaho.

### **SURRENDER OF LICENSES**

**JIM MARKLEY, P.E., P.L.S.** Following an audit of his Continuing Professional Development records, Mr. Markley chose to surrender his professional land surveyor license.

**WILLIAM MERRITT, P.E./L.S.** Following an audit of his Continuing Professional Development records, Mr. Merritt chose to surrender the professional land surveyor portion of his combined license.

### **FORMER BOARD MEMBER DARRELL G. MAHER, P.L.S PASSES AWAY**

Former Board Member Darrell G. Maher, P.L.S., passed away on November 1, 2009 at his home in St. Maries, Idaho. Darrell was a Board Member from 1989 to 1994 and was a tireless advocate of the need for additional education for professional land surveyors. A native of Minnesota, he served in the Navy, then obtained a degree in Forest Engineering from Oregon State University. He lived in Coeur d’Alene, Hayden Lake and St. Maries, Idaho and was an active community member. He taught surveying at North Idaho Community College

and was Benewah County Surveyor for many years, in addition to being in private professional land surveying practice. We extend our condolences to his wife Nancy and their sons Patrick and Marc and daughter Shannon.

**IN MEMORY OF THOSE RECENTLY DECEASED**

Joseph R. Bennie, LS 819, Fallbrook, CA  
James A. Bondurant, AgE 1256, Kimberly, ID  
Ronald J. Brown, LS 7160, Craigmont, ID  
Merril W. Conitz, LS 709, CE 1301, Moscow, ID  
John Wesley Coryell, EE 1051, Wilmont, SD  
Robert G. Downer, CE, LS 2692, Boise, ID  
Patrick J. Flanagan, CE/LS 2997, Boise, ID  
Darrell G. Maher, PLS 703, St. Maries, ID  
Paul Winfield Masten, CE 10769, Lynwood, WA  
Daniel McCrea, EE 11150, Boise, ID  
John L. Oneida, CE 1548, Fresno, CA  
Elmer Vernon Peterson, CE 1034, Meridian, ID  
William Boyd Rood, CE 1484, Emmett, ID  
Harold David Rueb, CE, SE 7955, Pleasant Hill, CA  
Rodney Kevin St. Clair, CE 4261, Boise, ID  
Kevin M. Whittier, EE 4853, Twin Falls, ID