

Idaho Board of Licensure of Professional Engineers And Professional Land Surveyors

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NEWS BULLETIN

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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.

CPD CARRY-FORWARD FOR NEW LICENSEES

In response to an inquiry, the Board has voted to allow a licensee to carry-forward up to 30 Professional Development Hours earned during the renewal biennium in which they are initially licensed, even though they are exempt from the requirement to comply with the Continuing Professional Development rules until their first renewal.

CPD FOR THOSE WORKING OVERSEAS

In response to an inquiry, the Board has voted to allow license holders who are employed outside the United States to delay the timeframe required for fulfilling the Continuing Professional Development requirements to the end of the six (6) month period beginning upon their return to the United States.

BOARD OFFICE MOVED TO MERIDIAN

Effective July 1, 2010 the Board office address is 1510 E. Watertower Street, Suite 110, Meridian, Idaho 83642. The office is conveniently located just west of Locust Grove between I-84 and Franklin Road. Our telephone number ((208) 373-7210) and fax number ((208) 373-7213) as well as the email addresses listed above remain the same. Please stop by to visit us in our new quarters.

PROPOSED RULE CHANGES FOR CONSIDERATION BY THE 2011 LEGISLATURE

The Board will have a number of Pending Rules before the 2011 session of the Idaho Legislature. The rule changes include

- Elimination of the requirement that an applicant first be licensed in a "base" discipline and have an additional two (2) years of experience before being assigned to the examination in structural engineering. By eliminating these requirements an individual will be able to be licensed as a professional engineer especially qualified in structural engineering by taking and passing the 16 hour NCEES Structural Engineering examination.
- A provision that will allow the Board to share the details of investigations with law enforcement agencies and with other licensing bodies following final disposition of the matter
- A provision that will require licensees to respond to inquiries from the Board within 20 days

QUALIFICATION BASED SELECTION FACILITATOR COUNCIL

The Qualifications Based Selection (QBS) Facilitator Council is a coalition of several design and professional service organizations formed to bring information about QBS to public entities in Idaho. QBS is required for all state agencies and political subdivisions of the state seeking to contract with professional engineers, professional land surveyors, architects, landscape architects, and construction managers. On selections for professional engineering and land surveying services that are required pursuant to Idaho Code Section 67-2320, a licensee, in response to solicitations described shall not submit information that constitutes a bid for services requested. For more information on the QBS Facilitator Council, visit their website at <http://idahoqbs.com>

LEGAL COUNSEL EVALUATION OF PUBLIC DISCLOSURE LAWS AS IT RELATES TO ADMINISTRATIVE HEARINGS

The Board has determined that it would be in the best interests of all parties involved in a complaint against a land surveyor or engineer to hold disciplinary hearings in executive session whenever the Board sits in its quasi-judicial capacity. In order to more fully elucidate how the board arrived at its decision, the following analysis is offered.

In beginning this analysis, one starts with the Open Meeting Laws, Idaho Code § 67-2340 to § 67-2345.

The first section reads, in its entirety:

“67-2340.FORMATION OF PUBLIC POLICY AT OPEN MEETINGS. The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.”

The first question that may be raised is whether a hearing to determine whether to take action on an individual’s license is “formation of public policy” or a private matter between the license holder and the board. The statute is silent as to the definition of the term “public policy.” The Idaho Supreme Court has attempted to clarify this issue as follows:

“The Act does not contain any definition of ‘policy,’ and the definition of ‘decision’ does not include that word. Whether or the Act applies depends upon the body making the decision and the formalities required for it to make that decision. The decision must be made by a governing body or a public agency, and that body must be required to make the decision by majority vote with a quorum present.”

Safe Air for Everyone v. State Dept. Of Agriculture, 145 Idaho 164, 166, 177 P.3d 378 (2008).

Open meetings are required when “decisions” are being made.

“67-2342.GOVERNING BODIES -- REQUIREMENT FOR OPEN PUBLIC MEETINGS. (1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.”

Decisions are defined as:

“67-2341.OPEN PUBLIC MEETINGS -- DEFINITIONS. As used in this act:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative

actions necessary to carry out a decision previously adopted in a meeting held in compliance with sections 67-2342 through 67-2346, Idaho Code.”

Neither the statutory definitions or the case holding seem to fit well with a disciplinary hearing. The statutory scheme is explained by § 67-2341(2) as follows:

“(2) "Deliberation" means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.”

The Open Meeting Act contains a section allowing for executive sessions as follows:

“67-2345.EXECUTIVE SESSIONS -- WHEN AUTHORIZED. (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

* * *

(d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;”

Records exempt from disclosure under Idaho Code § 9-340C include:

“9) Unless otherwise provided by agency rule, information obtained as part of an inquiry into a person's fitness to be granted or retain a license, certificate, permit, privilege, commission or position, private association peer review committee records authorized in title 54, Idaho Code. Any agency which has records exempt from disclosure under the provisions of this subsection shall annually make available a statistical summary of the number and types of matters considered and their disposition.”

There is no Board rule that opens “information obtained as part of an inquiry” to the public.

Putting all the statutes together with the court decision, the Board has concluded the following:

First, should the Board engage a hearing officer to preside at a disciplinary hearing (as opposed to the full Board) such hearing is not subject to the Open Meeting Law for the reason that it is not a meeting of the Board at all. The Board must meet in order to determine whether to accept the findings of a hearing officer. It will do so in executive session to examine the “information obtained as part of the inquiry.” In other words, it will examine the hearing record in executive session. It will make the final decision as to discipline in an open meeting.

Second, as to disciplinary hearings held before the full Board, the board will hold the hearings in executive session. This is so because it is axiomatic that the board will be examining information obtained as part of an inquiry into a person's fitness to retain a license. In addition, it would be impractical to attempt to hold an open disciplinary hearing when it would be necessary to go into executive session to examine every exhibit offered at the hearing. Any discussions with Board counsel regarding the law and how it should be applied to the facts of the case will also be in executive session for the reasons that the Board will be examining information obtained as part of an inquiry into a person's fitness to hold a license, and because the discussions are privileged under the attorney-client relationship. Once the Board has examined the evidence and been advised of the law, the final decisions by the Board regarding discipline will be made in open session.

The final disciplinary order of the Board is a public record. This is so because the order is not information obtained as part of an inquiry. It is instead an official decision generated by the Board after a vote in open session.

The Board believes that this policy squares with the Open Meeting and Public Records laws, in that the privacy rights of the accused surveyor or engineer are protected during the inquiry and hearing, whereas the decision making by the Board is open to the public as are the final documents reflecting the Board's decision.

PROPOSED LEGISLATION FOR 2011

The Board is considering legislation for the 2011 session of the Idaho Legislature which would amend a number of sections of Idaho Code relating primarily to the practice of land surveying, but which have some implications for those who practice professional engineering. The purposes of the contemplated amendments and the rationale behind them are as follows:

- We want to have consistent definitions of terms in five chapters of Idaho Code that relate to surveying. **Rationale:** consistency is necessary whether we are dealing with plats, records of survey, corner records, or any other aspect of Idaho Code.
- We want to require professional land surveyors to monument corners when they perform a land survey and to record the survey if certain conditions are met. **Rationale:** surveyors who perform land surveys should be required to provide evidence of their work product.
- We want to require perpetuation of original evidence of the location of a public land survey corner with monumentation meeting current statutory requirements. **Rationale:** original evidence monumentation standards did not require magnetic detectability.
- We want to allow the setting of witness corners or reference points in lieu of reestablishing the original monument at its original location after it has been disturbed by construction. **Rationale:** there are situations in which it is not possible or safe to occupy or monument the position of a corner set originally.
- We want to continue to protect property controlling corners and accessories to corners, and to add the requirement to protect points set in control surveys and benchmarks. **Rationale:** like property controlling corners and accessories to corners, points set in control surveys and benchmarks are valuable public properties which need to be protected in the event construction activities might disturb or destroy them.
- We want to clarify the requirements of a Highway Right-of-Way plat. **Rationale:** numerous ambiguities exist regarding the requirements of monumentation and appropriateness of using a highway right-of-way plat.
- We want to correct an error in the requirement that surveys be conducted to a predetermined minimum accuracy. **Rationale:** The current standard has been understood by practitioners, but contained a technicality that is subject to ambiguity.

POSSIBLE RULE AMENDMENTS FOR CONSIDERATION BY THE 2012 LEGISLATURE

The Board is considering several possible amendments to Administrative Rules and would appreciate hearing comments on them. The possible amendments would be promulgated during 2011 for consideration by the 2012 session of the Idaho Legislature. The draft language of the amendments is presented below along with a rationale for the amendment in *italics*.

**POSSIBLE AMENDMENTS TO IDAPA 10, TITLE 1, CHAPTER 1 (RULES OF PROCEDURE) TO
ADOPT THE NCEES EDUCATIONAL EQUIVALENT STANDARDS**

Rationale: Idaho has, for many years, had prescriptive course requirements for those applicants for the FE and PE exams and for license by comity who did not possess a degree from an approved program. The National Council of Examiners for Engineering and Surveying (NCEES) has recently adopted a more comprehensive list of prescriptive course requirements for applicants with such credentials. The Idaho Board would like to adopt the NCEES standards so that our applicants are judged by the same standards as other candidates throughout the country.

017. EXAMINATIONS.

01. Special or Oral Examination. Examinations for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern will be held on dates and at times and places to be determined by the Board. Special oral or written examinations may be given by the Board as necessary. (3-29-10)

02. Eligibility for Examinations, Educational Requirements. The application for licensure as a professional engineer, professional land surveyor or certification as an engineer intern or land surveyor intern, together with the written examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before being assigned to any examination. (3-29-10)

a. In regard to educational requirements, the Board will consider as unconditionally approved only those engineering programs which are accredited by the Engineering Accreditation Commission (EAC) of ABET, Inc. Non-EAC/ABET accredited engineering programs, related science programs, and engineering technology programs will be considered by the Board on their specific merits, but are not considered equal to engineering programs accredited by EAC/ABET. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. (3-29-10)

b. An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed ~~a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses~~ the following before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for assignment to the examination for certification as an Engineer Intern or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer: ; ()

(i) 32 college semester credit hours of higher mathematics and basic sciences. The credits in mathematics must be beyond algebra and trigonometry and must emphasize mathematical concepts and principles rather than computation. Courses in calculus and differential equations are required. Additional courses may include linear algebra, numerical analysis, probability and statistics and advanced calculus. The credits in basic sciences must include courses in chemistry and calculus-based general physics with a minimum of a two semester (or equivalent) sequence in one or the other. Additional basic sciences courses may include life sciences (biology), earth sciences (geology, ecology), and advanced chemistry or physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements. Basic

engineering science courses or sequence of courses in this area are acceptable for credit but may not be counted twice. ()

(ii) 16 college credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics, professional ethics, social responsibility. No more than 6 credit hours of languages other than English or other than the applicant's native language are acceptable for credit. English and foreign language courses in literature and civilization may be considered in this area. Courses which instill cultural values are acceptable, while routine exercises of personal craft are not. ()

(iii) 48 college credit hours of engineering science and engineering design. Courses shall be taught within the college / faculty of engineering having their roots in mathematics and basic sciences but carry knowledge further toward creative application of engineering principles. Examples of approved engineering science courses are mechanics, thermodynamics, heat transfer, electrical and electronic circuits, materials science, transport phenomena, and computer science (other than computer programming skills). Courses in engineering design stress the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. Graduate level engineering courses can be included to fulfill curricular requirements in this area. Engineering technology courses cannot be considered to meet engineering topic requirements. ()

iv. Standard, regularly scheduled courses from accredited university programs, (on campus, correspondence, video, etc.) are normally acceptable without further justification other than transcript listing. The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to insure that the above requirements are met. (7-1-93)

v. Graduate level engineering courses, i.e. courses which are available only to graduate students, are normally not acceptable since the Board believes graduate engineering courses may not provide the proper fundamental foundation to meet the broad requirements of professional engineering. (7-1-93)

Editorial Note: The remainder of Rule 017 would remain unchanged and is not reproduced here.

019. LICENSEES OR CERTIFICATE HOLDERS OF OTHER STATES AND BOARDS.

01. Interstate Licensure Evaluation. Each application for Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, territories or foreign countries, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law. Graduates of programs accredited by organizations signatory to the "Washington Accord" and graduates from programs evaluated by ABET as being substantially equivalent to EAC/ABET programs shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. Individuals who have passed examinations considered by the Board to be of comparable difficulty and duration as those utilized by the Board shall be considered to have satisfied the examination requirement for issuance of a license as a professional engineer or professional land surveyor. (5-8-09)

a. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for an minimum of ten (10) years and has not had any disciplinary action against them and there is none pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this

state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (5-8-09)

b. An applicant who was originally licensed in another jurisdiction after June 30, 1996 and who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed ~~the following a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses~~ before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code: ; ()

(i) 32 college semester credit hours of higher mathematics and basic sciences. The credits in mathematics must be beyond algebra and trigonometry and must emphasize mathematical concepts and principles rather than computation. Courses in calculus and differential equations are required. Additional courses may include linear algebra, numerical analysis, probability and statistics and advanced calculus. The credits in basic sciences must include courses in chemistry and calculus-based general physics with a minimum of a two semester (or equivalent) sequence in one or the other. Additional basic sciences courses may include life sciences (biology), earth sciences (geology, ecology), and advanced chemistry or physics. Computer skills and/or programming courses may not be used to satisfy mathematics or basic science requirements. Basic engineering science courses or sequence of courses in this area are acceptable for credit but may not be counted twice. ()

(ii) 16 college credit hours in a general education component that complements the technical content of the curriculum. Examples of traditional courses in this area are philosophy, religion, history, literature, fine arts, sociology, psychology, political science, anthropology, economics, professional ethics, social responsibility. No more than 6 credit hours of languages other than English or other than the applicant's native language are acceptable for credit. English and foreign language courses in literature and civilization may be considered in this area. Courses which instill cultural values are acceptable, while routine exercises of personal craft are not. ()

(iii) 48 college credit hours of engineering science and engineering design. Courses shall be taught within the college / faculty of engineering having their roots in mathematics and basic sciences but carry knowledge further toward creative application of engineering principles. Examples of approved engineering science courses are mechanics, thermodynamics, heat transfer, electrical and electronic circuits, materials science, transport phenomena, and computer science (other than computer programming skills). Courses in engineering design stress the establishment of objectives and criteria, synthesis, analysis, construction, testing, and evaluation. Graduate level engineering courses can be included to fulfill curricular requirements in this area. Engineering technology courses cannot be considered to meet engineering topic requirements. (3-30-07) ()

Editorial Note: The remainder of Rule 019 would remain unchanged and is not reproduced here.

DRAFT AMENDMENTS TO IDAPA 10, TITLE 1, CHAPTER 1 (RULES OF PROCEDURE) TO ELIMINATE THE REFERENCE REQUIREMENT FOR ENGINEER INTERN AND LAND SURVEYOR INTERN APPLICANTS

Rationale: The statutory requirement of references for assignment to the FE and FS examinations was eliminated this year, so the supporting administrative rule requiring references needs to be eliminated.

016. APPLICATION FOR LICENSURE OR CERTIFICATION.

Editorial Note: Only subsection 06 of this rule is contemplated for amendment. The remaining subsections would remain the same and are not reproduced here.

06. Minimum Standards -- References. An applicant may not be admitted to the examination until satisfactory replies have been received from a minimum of five (5) of his references for professional engineers or land surveyors ~~and three (3) references for engineer interns and land surveyor interns.~~ It shall be the responsibility of each applicant to furnish their references with the forms prescribed by the Board. ~~(5-8-09)~~ (____)

DRAFT AMENDMENTS TO IDAPA 10, TITLE 1, CHAPTER 2 (RULES OF PROFESSIONAL RESPONSIBILITY) TO CHANGE FROM 60 TO 20 DAYS THE RESPONSE TIME FOLLOWING NOTIFICATION OF DISCOVERY OF DISCREPANCY

Rationale: The Board is concerned that the time to respond to the discovery of a discrepancy is excessive and would like to reduce it from sixty (60) days to twenty (20) days. By way of comparison, a defendant in a law suit in civil court has twenty (20) days in which to respond.

005. RESPONSIBILITY TO THE PUBLIC.

Editorial Note: Only subsection 04 of this rule is contemplated for amendment. The preceding subsections would remain the same and are not reproduced here.

04. Obligation to Communicate Discovery of Discrepancy. If a Licensee or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another Licensee or Certificate Holder, which may impact the health, property and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the Licensee or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication shall reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Licensee or Certificate Holder whose work is believed to contain the discrepancy shall respond in writing within ~~sixty~~ twenty (620) calendar days to any question about his work raised by another Licensee or Certificate Holder. Failure to respond on the part of the Licensee or Certificate Holder whose work is believed to contain the discrepancy shall be considered a violation of these rules and may subject the Licensee or Certificate Holder to disciplinary action by the Board. The discoverer shall notify the Board in the event a response satisfactory to the discoverer is not obtained within sixty (60) days. ~~(5-8-09)~~ (____)

DRAFT AMENDMENTS TO IDAPA 10, TITLE 1, CHAPTER 2 (RULES OF PROFESSIONAL RESPONSIBILITY) TO ELIMINATE THE REFERENCE TO STATUTE OF LIMITATIONS

Rationale: Statutes of Limitations exist regarding civil liability for work by a licensee, but there are not currently any statute of limitations for administrative actions, which the Board would like to initiate.

011. RULE AND STATUTE VIOLATIONS.

01. Affidavits for Rule and Statute Violations. Any person who believes that a Licensee or Certificate Holder by his actions, or failure to properly act, is guilty of fraud, deceit, negligence, incompetence, misconduct, or violation of these rules, or any applicable statute, may file a written affidavit with the Executive Director of the Board which shall be sworn to or affirmed under penalty of perjury, signed and in which the

alleged rule and statute violations shall be clearly set forth and that the applicable Licensee or Certificate Holder, or both, should be considered for the appropriate disciplinary action by the Board. Following the receipt of such affidavit, the Board may investigate, hold hearings and adjudicate the charges. ~~Proceedings shall be exempt from all statutes of limitations.~~ The Board will not accept an affidavit more than four (4) years after discovery of the matter by the complainant. (3-29-10) ()

02. Investigation of Statute or Rule Violations. The Board may, at its own discretion, initiate investigation of alleged or possible statute or rule violations that have come to its attention. (5-3-03)

DRAFT AMENDMENTS TO IDAPA 10, TITLE 1, CHAPTER 4 (RULES OF CONTINUING PROFESSIONAL DEVELOPMENT) TO ALLOW A DELAY IN EARNING PDH'S IF OUT-OF-COUNTRY

Rationale: Licensees employed out of the country often do not have access to continuing professional development offerings that they would have if they were in the country. The Board would like to give those employed off-shore the opportunity to obtain the continuing professional development requirements when they return to the United States.

009. EXEMPTIONS.

A Licensee may be exempt from the continuing professional development requirements for one (1) of the following reasons: (7-1-99)

Editorial Note: Only subsection 07 is being added to Rule 009 and the first six subsections are not duplicated here.

07. Licensees residing outside the United States of America. Licensees employed and residing outside the United States may delay the time required for fulfilling the continuing professional development requirements for a maximum of two (2) biennia or four (4) calendar years until the end of the six (6) month period beginning upon their return to the united states. ()

POSSIBLE STATUTORY AMENDMENTS FOR CONSIDERATION BY THE 2012 LEGISLATURE

The Board is considering several possible amendments to various statutes and would appreciate hearing comments on them. The possible amendments would be prepared in final form in the summer of 2011 for consideration by the 2012 session of the Idaho Legislature. The draft language of the amendments is presented below along with a rationale for the amendment in *italics*.

DRAFT AMENDMENTS TO TITLE 54, CHAPTER 12, IDAHO CODE TO ASSIGN ONLY IDAHO RESIDENTS, FULL-TIME IDAHO EMPLOYEES, OR STUDENTS AT IDAHO COLLEGES OR UNIVERSITIES TO EXAMINATIONS FOR INITIAL CERTIFICATION OR LICENSURE

Rationale: The Board has experienced an increase in the number of inquiries from individuals who, for a number of reasons, cannot be assigned to examinations in their jurisdiction of residence. These individuals do not appear to have any intention of practicing in Idaho, and appear to intend to use the professional title in the other jurisdiction if they are assigned to the exam in Idaho and pass. Limiting those eligible for assignment to the examination will eliminate this problem. (Editorial Note: In the event this legislation passes, the Board would need to promulgate a rule amendment to eliminate IDAPA 10.01.01.016.04 in its entirety.)

54-1212. GENERAL REQUIREMENTS FOR EXAMINATION AND LICENSE. Except as herein otherwise expressly provided, no license as a professional engineer or professional land surveyor, or certification as an

engineer intern or land surveyor intern, shall be issued until an applicant has successfully passed an examination given by or under the supervision of the board, nor shall a license as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, be issued to an applicant having habits or character that would justify revocation or suspension of his license or certificate, as provided in section 54-1220, Idaho Code. Except for military personnel stationed in Idaho or persons employed full-time in Idaho, only Idaho residents and students enrolled at Idaho universities and colleges will be assigned to examinations for initial certification or licensure. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for assignment to an examination:

Editorial Note: The remainder of this section would remain the same and is not duplicated here.

DRAFT AMENDMENTS TO TITLE 54, CHAPTER 12, IDAHO CODE TO ALLOW THE BOARD TO POSTPONE ACTION FOR PENDING DISCIPLINARY ACTION OR EXAM IRREGULARITY

Rationale: The Board is hesitant to assign an applicant to an examination or issue a license to them if there are pending disciplinary actions in another jurisdiction which could result in the filing of a disciplinary action in Idaho that could result in action against the license or certificate. The Board seeks statutory authority to withhold score results if there is an examination irregularity involving the applicant. The Board also seeks statutory authority to investigate examination irregularities and invalidate an examination score if the irregularity is substantiated.

54-1212.GENERAL REQUIREMENTS FOR EXAMINATION AND LICENSE.

Editorial Note: The following paragraph would be added at the end of Idaho Code Section 54-1212. The remainder of the section would remain unchanged.

The Board may postpone acting on an application for assignment to any examination if disciplinary or criminal action related to the applicants practice has been taken or is pending in any other jurisdiction. The Board may postpone release of scores to applicants on any examination if there is any unresolved examination irregularity involving the applicant. The Board may investigate and adjudicate the validity of examination irregularities and if the examination irregularities are substantiated, the board may invalidate the score of the applicant.

54-1219.COMITY LICENSURE -- FEE. The board, upon application therefor and the payment of a fee of not to exceed a maximum of one hundred fifty dollars (\$150), may issue a license as a professional engineer or professional land surveyor to any person who holds a license issued to the applicant by the proper authority of any state, territory or possession of the United States, the District of Columbia, or of a foreign country, provided that, in the opinion of the board, the applicant possesses the education, experience and examination credentials, or their equivalents, that were specified in the applicable licensing chapter in effect in this state at the time such license was issued, provided that a professional land surveyor applicant must successfully pass a land surveying examination as prepared and administered by the board, and provided such state, territory, possession or country will license, without examination and upon substantially the same condition, to applicants holding licenses issued by the board under this chapter. In the event the applicant has been licensed and has practiced as a professional engineer or professional land surveyor in another jurisdiction for a minimum of eight (8) years, has no outstanding disciplinary action, and is in good standing under a licensing system which, in the opinion of the board, maintains substantially equivalent professional standards as required under this chapter, the board may, in its discretion, waive the requirement for satisfaction of prescriptive credentials in education and examination. The Board may postpone acting on an application for a license by comity if disciplinary or criminal action related to the applicants practice has been taken or is pending in any other jurisdiction.

DRAFT AMENDMENTS TO TITLE 54, CHAPTER 12, IDAHO CODE TO ELIMINATE THE REQUIREMENT THAT APPLICATIONS BE SUBMITTED UNDER OATH

Rationale: The Board ultimately wants to allow digital submittal of applications. Submitting applications "under oath" is complicated, and unnecessary, for such applications and the Board wants to eliminate the statutory requirement.

54-1213. APPLICATIONS AND FEES. Applications for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern, shall be on forms prescribed and furnished by the board. The application ~~shall be made under oath, and~~ shall show the applicant's education and a detailed summary of his engineering or land surveying experience. An applicant for licensure as a professional engineer or professional land surveyor shall furnish not less than five (5) references, of whom three (3) or more should be professional engineers or professional land surveyors, as applicable, having personal knowledge of the applicant's engineering or land surveying experience. Applications for certificates of authorization shall be made in accordance with section 54-1235, Idaho Code.

The maximum application fee for professional engineers or professional land surveyors seeking to be licensed by examination shall not exceed one hundred dollars (\$100). The application fee shall accompany the application. The examination fee, which shall be separate from the application fee, shall be paid by the applicant directly to the entity designated by the board.

The maximum application fee for an applicant who seeks a certificate as an engineer intern or land surveyor intern shall not exceed fifty dollars (\$50.00). The application fee shall accompany the application. The examination fee, which shall be separate from the application fee, shall be paid by the applicant directly to the entity designated by the board.

The maximum application fee for business entities seeking a certificate of authorization shall be two hundred dollars (\$200). The application fee shall accompany the application.

The amount of the license fee or certificate fee shall be fixed by the board prior to June 30 of any year and shall continue in force until changed.

Should the board deny the issuance of a certificate or license to any applicant, the application fee paid shall be retained as a processing fee.

DRAFT AMENDMENTS TO TITLE 54, CHAPTER 12, IDAHO CODE TO ALLOW THE BOARD TO WAIVE THE FE AND THE PE EXAMS FOR A CANDIDATE WITH AN EARNED DOCTORAL DEGREE

Rationale: The purpose of the certification and licensing examinations is to test for minimum competence. Current Idaho Code already mandates waiver of the requirement to pass the FE exam for an applicant with an earned doctoral degree. An applicant who has earned a doctoral degree has taken comprehensive examinations for admission to the doctoral degree program, and then has defended the original research contained in the dissertation for that degree. The Board believes that passage of the comprehensive examinations for admission to the program is the equivalent of passage of the FE exam in terms of demonstrating minimum competence, and that preparation of and defense of the dissertation is the equivalent of passage of the PE exam in terms of demonstrating minimum competence. The addition of an interview with the Board will assure the Board that the candidate understands ethics, the need to practice within their area of competence, etc.

54-1223. SAVING CLAUSE -- EXEMPTIONS. (1) This chapter shall not be construed to affect:

(a) The practice of any other profession or trade for which a license is required under any law of this state or the United States.

(b) The work of an employee or a subordinate of a person holding a license under this chapter, provided such work does not include final engineering design or land surveying decisions and is done under the direct responsibility, checking, and supervision of, and verified by, a person holding a license under this chapter.

(c) Any individual teaching upper division engineering subjects that are classified as engineering design for any college or university in this state as of July 1, 1988, and any such individual employed after July 1, 1988, for a period of five (5) years from the date of employment with any college or university in this state.

(d) An individual doing surveying work for himself, or through a business entity, on property owned or leased by the individual or business entity, or in which the individual or business entity has an interest, estate or possessory right and which affects exclusively the property or interests of the individual or business entity; provided, that all land surveying maps, plats or plans filed with any county recorder's office in the state of Idaho for the purpose of illustrating or defining boundaries of property ownership, shall be made by a licensed professional land surveyor as provided in this chapter.

(e) An individual doing survey work for himself, or through a business entity with respect to the location, amendment, or relocation of a mining claim.

(f) The practice of engineering by employees of a business entity as long as the services provided by them are for internal business entity use only.

(2) The board, at its discretion, may exempt an exceptional individual who has twelve (12) or more years of appropriate experience in engineering from the requirement for satisfactory completion of an examination in the fundamentals of engineering.

(3) An applicant for licensure as a professional engineer either by examination or by comity who has earned a bachelor degree in engineering from an approved engineering program and has, in addition, earned a ~~docterate~~ doctoral degree in engineering from a college or university which offers an approved undergraduate program in the same discipline as the doctorate degree earned, shall be exempt from the requirement for satisfactory completion of an examination in the fundamentals of engineering and may, at the discretion of the Board, be exempt from the requirement for satisfactory completion of an examination in the principles and practice of engineering so long as the experience requirements of Idaho Code Section 54-1212 are met. Such an applicant shall submit to an interview with the Board. Honorary ~~docterate~~ doctoral degrees and degrees conferred on the basis of life experiences and the like are not considered earned degrees for purposes of this subsection.

(4) In addition to, and notwithstanding other provisions of this chapter, in circumstances of emergency creating conditions of imminent and substantial danger to the public health, safety or environment through the provision of engineering services, the prosecuting attorney or the attorney general may institute a civil action for an immediate injunction to halt the provision of engineering services.

(5) A professional engineer licensed in Idaho may review the work of a professional engineer who is licensed in another jurisdiction of the United States or a foreign country on a project that is a site adaptation of a standard design plan to determine that the standard design plan meets the standard of care and is applicable to the intended circumstance, with or without modification. The Idaho professional engineer shall demonstrate responsible charge, as defined in this chapter, by performing professional services related to his assignment including developing or obtaining a complete design record with design criteria and calculations, performing necessary code research and developing any necessary and appropriate changes to the standard design plan necessary to properly apply the standard design to the intended circumstance. The nonprofessional services, such as drafting, need not be redone by the Idaho professional engineer, but must clearly and accurately reflect the Idaho professional engineer's work. The burden is on the Idaho professional engineer to show such compliance. The Idaho professional engineer shall have control of and responsibility for the entire work product, shall seal, sign and date it as required in this chapter, and shall be in possession of all original documents or certified copies of documents related to the professional engineer's work for the project.

(6) In the event a licensee in responsible charge of a project leaves employment, is transferred, is promoted, becomes incapacitated, dies or is otherwise not available to seal, sign and date final documents, the duty of responsible charge of the project shall be accomplished by the successor licensee by becoming familiar with and reviewing, in detail, and retaining the project documents to date. Subsequent work on the project must

clearly and accurately reflect the successor licensee's responsible charge. The successor licensee shall seal, sign and date all work product in conformance with section 54-1215, Idaho Code.

**DRAFT AMENDMENTS TO TITLE 50, CHAPTER 13, IDAHO CODE TO ALLOW A
PROFESSIONAL LAND SURVEYOR IN THE SAME BUSINESS ENTITY TO PLACE INTERIOR
MONUMENTS AFTER RECORDING OF PLAT**

Rationale: Current Idaho Code would require the governing body to have the County Surveyor or a contracted Professional Land Surveyor set the interior monuments if the original surveyor is not available or refuses to set them. This amendment would allow the original contracted business entity to designate another of its licensed employees to complete the work, thus eliminating the need for the governing body to undertake extraordinary steps to assure that the monuments are set.

50-1332.SETTING INTERIOR MONUMENTS AFTER RECORDING OF PLAT -- BOND OR CASH DEPOSIT REQUIRED -- RELEASE OF BOND -- RETURN OF CASH DEPOSIT -- PAYMENT FOR SURVEY WORK -- COUNTY SURVEYOR PERFORMING SURVEY WORK. (1) If the interior monuments for a subdivision are to be set on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish, prior to recording the plat, to the governing body of the city or county which approved the plat, either a bond or cash deposit, at the option of the governing body, in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior monumentation. The estimated cost of performing such work will be determined by the professional land surveyor signing the plat.

(2) If the person subdividing the land described in subsection (1) of this section pays the professional land surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within two (2) months after such notice, shall release the bond or return the cash deposit upon a finding that such payment has been made. Upon written request from the person subdividing the land, the governing body may pay the professional land surveyor from moneys within a cash deposit or bond held by it for such purpose and return the excess amount of the cash deposit, if any, to such person.

(3) In the event of the ~~death, disability, or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the~~ inability, refusal, or failure of such professional land surveyor to set such the interior monuments for a subdivision, the governing body may direct the county surveyor in his official capacity or contract with a professional land surveyor in private practice to set such monuments and reference such monuments for recording as provided in section 50-1333, Idaho Code. Payment of the fees of a county surveyor or professional land surveyor in private practice performing such work shall be made as otherwise provided in this section. In the event the professional land surveyor signing the plat performed his services through a contract between the person subdividing the land and a business entity possessing a certificate of authorization as required in this chapter, and the professional land surveyor is unable, refuses, or fails to set the interior monuments for a subdivision, a substitute professional land surveyor employed by the same business entity may assume responsible charge for the remainder of the project and set the monuments as provided in this chapter, and the governing body shall not direct the county surveyor or contract with a professional land surveyor in private practice to set such monuments.

(4) In the event any interior monument cannot be placed at the location shown on the plat, the professional land surveyor shall place a witness corner or reference monument and he shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show the location of any witness corner or reference monument in relation to the platted location of the corner. In the event the professional land surveyor signing the plat does not set the interior monuments for a subdivision, the substitute professional land surveyor shall file a record of survey as provided in chapter 19, title 55, Idaho Code to show which monuments were set by which professional land surveyor.

DISCIPLINARY ACTIONS

The following final formal actions have been taken by the Board since publication of NEWS BULLETIN No. 45 in June of 2010.

Docket No. FY 10.21 – IN THE MATTER OF BRIAN R. FORMUSA, P.E. Mr. Formusa signed a Stipulation and Consent Order in which he admitted he failed to sign, seal and date a report he prepared. His client relied upon the contents of the report in making demands of subcontractors to repair their work. The report was used to identify problems with boiler installations in a series of condominiums and proposed corrective actions which included replacement of boilers. Mr. Formusa was admonished by the Board and ordered to pay a \$250 fine to the State of Idaho General Fund.

Docket No. FY 10.22 - IN THE MATTER OF JOHN MICHAEL STEARNS, P.L.S. Mr. Stearns signed a Stipulation and Consent Order in which he admitted to failing to maintain records of Continuing Professional Development in violation of IDAPA 10.01.04.008.03 and to failing to make a complete, objective and truthful statement in accordance with IDAPA 10.01.02.007.01 in that he signed a renewal form to the Board stating that he had complied with the rules, including the Rules for Continuing Professional Development, but had not for the audit period July 1, 2006 through June 30, 2008. Mr. Stearns was admonished by the Board, ordered to pay a \$500 fine to the State of Idaho, General Fund, and agreed to complete thirty (30) Professional Development Hours not later than October 31, 2010. Mr. Stearns failed to comply with the terms of the Stipulation and Consent Order and his license to practice in Idaho as a professional land surveyor was suspended effective November 2, 2010

Docket No. FY 10.25 – IN THE MATTER OF MARKELL BATEMAN, P.E. Mr. Bateman signed a Stipulation in which he admitted that he performed work on behalf of Engineering System Solutions as subcontracted with Trane US, Inc. (Trane) in the contract Trane had with the Idaho Falls School District 91 (“IFSD”) in June 2008. Mr. Bateman was hired by Trane to create preliminary drawings for preliminary construction budget purposes. Originally, Bateman provided to IFSD final drawings for a portion of the entire project that were not stamped and signed as final. Subsequently, those drawings were sealed, signed and dated. Mr. Bateman’s conduct was in violation of Idaho Code Section 54-1215 (3) (b) in that the final drawings, presented to a client or any public or governmental agency were not sealed, signed and dated. Mr. Bateman was admonished by the Board and was ordered to pay a \$250 fine to the State of Idaho, General Fund.

Docket No. FY 10.25 – IN THE MATTER OF KELDEN BOREN, P.E. Mr. Boren signed a Stipulation in which he admitted that he performed work on behalf of Engineering System Solutions as subcontracted with Trane US, Inc. (Trane) in the contract Trane had with the Idaho Falls School District 91 (“IFSD”) in June 2008. Mr. Boren was hired by Trane to create preliminary drawings for preliminary construction budget purposes. Originally, Boren provided to IFSD final drawings for a portion of the entire project that were not stamped and signed as final. Subsequently, those drawings were sealed, signed and dated. Mr. Boren’s conduct was in violation of Idaho Code Section 54-1215 (3) (b) in that the final drawings, presented to a client or any public or governmental agency were not sealed, signed and dated. Mr. Boren was admonished by the Board and was ordered to pay a \$250 fine to the State of Idaho, General Fund.

Docket No. FY 10.25 – IN THE MATTER OF JUSTIN JUDY, P.E. Mr. Judy signed a Stipulation in which he admitted he performed work on behalf of Engineering System Solutions as subcontracted with Trane US, Inc. (Trane) in the contract Trane had with the Idaho Falls School District 91 (“IFSD”) in June 2008. Mr. Judy was hired by Trane to create preliminary drawings for preliminary construction budget purposes. Originally, Judy provided to IFSD final drawings for a portion of the entire project that were not stamped and signed as final. Subsequently, those drawings were sealed, signed and dated. Mr. Judy’s conduct was in violation of Idaho Code Section 54-1215 (3) (b) in that the final drawings, presented to a client or any public or governmental agency were not sealed, signed and dated. Mr. Judy was admonished by the Board and was ordered to pay a \$250 fine to the State of Idaho, General Fund.

IN MEMORY OF THOSE RECENTLY DECEASED

Doyle G. Abrahamson, LS 10524, Aurora, CO
Nadine Colette Adkins, CE 7857, Rancho Cordova, CA
William D. Arms, EE 550, Boise, ID
Arnold Justin Bahr, PE/LS 2246, Boise, ID
Lyman Frazer Bush, CE/SE 2672, Puyallup, WA
Walter Huntington, CE 1319, Heyburn, ID
Richard G. Lang, CE 11668, Carlsbad, CA
David J. Milan, CE 4007, Hayden, ID
Gregory Kent Miller, CE/SE 3772, Idaho Falls, ID
Young J. Paik, CE 2787, Palos Verdes Estates, CA
Walter A. Paroni, MinE 6049, Post Falls, ID