

**REVISED PROPOSED REGULATION OF THE STATE BOARD
OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

LCB File No. R141-20

July 28, 2021

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-4 and 6-10, NRS 625.140; § 5, NRS 625.140 and 625.460.

A REGULATION relating to professions; authorizing the State Board of Professional Engineers and Land Surveyors to designate a Board Liaison to work in conjunction with the Executive Director of the Board; requiring certain notices to be submitted to the Board within 60 days, instead of 30 days, after certain disciplinary actions are taken; revising the conditions of probation that the Board may require; revising provisions relating to the establishment of advisory committees; revising provisions relating to the duties of the Executive Director of the Board that relate to advisory committees; revising provisions relating to the evaluation and investigation of a complaint by an advisory committee; providing that such evaluations and investigations are not subject to the Open Meeting Law under certain circumstances; revising provisions relating to conferences held with an advisory committee; repealing certain provisions relating to advisory committees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Professional Engineers and Land Surveyors to adopt all regulations, not inconsistent with the constitution and laws of this State, which are necessary for the proper performance of the duties of the Board, the regulation of the proceedings before it and the maintenance of a high standard of integrity and dignity in the profession. (NRS 625.140)

Existing law authorizes any person to file with the Board a charge concerning a violation of any provision governing professional engineers and land surveyors. Existing law authorizes the Board to dismiss charges that are unfounded or trivial. (NRS 625.420) Otherwise, existing law provides that the Board will hold a hearing on the charges at a time and place fixed by the Board. (NRS 625.430) Existing regulations require: (1) a written report to be prepared by the staff of the Board after investigating the charge; and (2) the Executive Director of the Board to provide a recommendation to the Board of possible action to be taken after the Executive Director has reviewed the written report. (NAC 625.640) **Sections 1 and 3** of this regulation require the Executive Director, in consultation with a member of the Board designated as the Board Liaison, to, upon completion of reviewing the written report: (1) on behalf of the Board, dismiss the complaint; or (2) negotiate a settlement with the respondent, subject to the approval

of the Board. If the Executive Director attempts to negotiate a settlement with the respondent and a settlement cannot be reached, **section 3** requires the Executive Director, in conjunction with the Board Liaison, to determine whether to recommend that the Board schedule the matter for a disciplinary hearing.

Existing law authorizes the Board to take disciplinary action against a professional engineer or land surveyor and certain other persons for certain disciplinary actions taken by another state or territory, the District of Columbia, a foreign county, the Federal Government or any other governmental entity. (NRS 625.410) Existing regulations require a professional engineer or land surveyor who has been disciplined by another jurisdiction or governmental entity to notify the Board in writing of such disciplinary action within 30 days after the date on which the disciplinary action is imposed and state whether the disciplinary action is final or on appeal. (NAC 625.642) **Section 4** of this regulation provides that such notice must be submitted to the Board within 60 days after the date on which the disciplinary action is imposed.

Existing law authorizes the Board, if the Board finds that a person who is charged with violating any provision governing professional engineers and land surveyors is guilty of the charge, to take certain actions, including placing the professional engineer or land surveyor, or an applicant for licensure as a professional engineer or land surveyor, on probation for such periods as the Board deems necessary. (NRS 625.460) Existing regulations authorize the Board, if it places such persons on probation, to require certain conditions of the probation, including any condition deemed appropriate by the Board. (NAC 625.645) **Section 5** of this regulation authorizes the Board to require any condition deemed appropriate by the Board to facilitate the probation.

Existing regulations authorize the Board to establish an advisory committee composed of professional engineers, land surveyors or other persons. (NAC 625.646) **Section 6** of this regulation authorizes the Executive Director to establish such an advisory committee in conjunction with the Board Liaison. Existing regulations authorize an advisory committee to: (1) provide technical assistance in the evaluation and disposition of certain complaints; (2) participate in the evaluation of candidates for licensure by comity; or (3) provide assistance in any area that the Board deems necessary. (NAC 625.646) **Section 6** instead authorizes an advisory committee to: (1) provide technical assistance in the evaluation and investigation of certain complaints; (2) participate in the evaluation of candidates for licensure by endorsement; and (3) provide assistance in any area that the Executive Director or Board Liaison deems necessary. Existing regulations provide that members of an advisory committee: (1) serve at the pleasure of the Board; (2) are prohibited from participating in proceedings in which a member of the Board similarly situated would be required to abstain; and (3) are entitled to travel expenses and subsistence allowances, but are not entitled to compensation for services rendered to the Board. (NAC 625.646) **Section 6** instead provides that members of an advisory committee: (1) are selected by and serve at the pleasure of the Executive Director, in conjunction with the Board Liaison; (2) are prohibited from participating in proceedings in which a public officer or employee would be precluded from participating pursuant to existing law; and (3) are entitled to travel expenses and subsistence allowances, but are not entitled to compensation for services rendered to the Executive Director or Board Liaison. (NRS 281A.420) Existing regulations provide that each member of the Board is a nonvoting, ex officio member of any advisory committee and may attend any meeting of an advisory committee and that the Board is not bound

by any recommendation made by an advisory committee. (NAC 625.646) **Section 6** removes these provisions.

Sections 7, 8 and 9 of this regulation make conforming changes in accordance with **section 6** and also make changes relating to the evaluation and investigation of complaints against respondents. Specifically, **section 7** requires the Executive Director to set the time and place of a conference between an advisory committee and the respondent and provide written notice of the conference to the respondent. **Section 7** additionally authorizes such a conference to be held in person, via videoconference or over the telephone. Existing law provides that the provisions relating to the Open Meeting Law do not apply to proceedings relating to an investigation conducted to determine whether to proceed with disciplinary action against a licensee, unless the licensee requests that the proceedings be conducted pursuant to the Open Meeting Law. (NRS 622.320) **Section 7** clarifies that a conference held for the evaluation and investigation of a complaint is not subject to the provisions of the Open Meeting Law under certain circumstances. **Section 8** requires an advisory committee to submit to the Executive Director a report containing written findings as to the standard of care that applies to the respondent and whether the respondent violated certain provisions of existing law. (NRS 625.410) **Section 8** requires the Executive Director to provide a copy of the report to the Board Liaison and provides that the Executive Director and the Board Liaison are not bound by the report. **Section 9** provides that the refusal of a respondent to participate in a conference with the advisory committee is considered information relevant in a subsequent disciplinary hearing of the complaint before the Board.

Existing regulations set forth certain actions the Board may take as a result of the respondent: (1) declining to participate in a review of the complaint; (2) accepting or rejecting an advisory committee's recommendations; or (3) failing to notify the Board that he or she accepts the advisory committee's recommendation. (NAC 625.648) **Section 10** of this regulation repeals these provisions.

Section 1. Chapter 625 of NAC is hereby amended by adding thereto a new section to read as follows:

“Board Liaison” means a member of the Board who is designated by the Board to work in conjunction with the Executive Director.

Sec. 2. NAC 625.010 is hereby amended to read as follows:

625.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 625.011 to 625.019, inclusive, ***and section 1 of this regulation*** have the meanings ascribed to them in those sections.

Sec. 3. NAC 625.640 is hereby amended to read as follows:

625.640 1. Any person who is aggrieved by the alleged professional misconduct or incompetence of a person subject to the jurisdiction of the Board may file a complaint with it pursuant to NRS 625.420, and the Board may attempt to reach a settlement before holding a disciplinary hearing.

2. Upon receipt of a complaint, a member of the Board's staff shall initiate an investigation. Upon completion of the investigation, the member of the Board's staff shall submit a written report containing the results of the investigation to the Executive Director.

3. The Executive Director shall ~~{;}~~, *in conjunction with the Board Liaison:*

(a) Review the written report submitted pursuant to subsection 2; ~~{and}~~

(b) Upon completion of the review : ~~{; recommend to the Board that:}~~

(1) ~~{The}~~ *On behalf of the* Board , dismiss the complaint; *or*

(2) ~~{The Executive Director negotiate}~~ *Negotiate* a settlement with the respondent, subject to the approval of the Board; *and*

~~{(3) The Board schedule the matter for a disciplinary hearing; or~~

~~—(4) The Board refer the matter to an advisory committee for further review.}~~

(c) If the Executive Director, in conjunction with the Board Liaison, attempts to negotiate a settlement with the respondent pursuant to paragraph (b) and a settlement cannot be reached, determine whether to recommend to the Board that the Board schedule the matter for a disciplinary hearing.

Sec. 4. NAC 625.642 is hereby amended to read as follows:

625.642 1. A licensee who has been disciplined by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency shall notify the Board in writing of such disciplinary action.

2. The written notice must set forth the grounds, terms and effective date of the disciplinary action.

3. The licensee shall submit the written notice to the Board within ~~30~~ 60 days after the date on which the disciplinary action is imposed and state whether the disciplinary action is final or on appeal.

4. Failure to provide the written notice required pursuant to this section is an aggravating factor in any disciplinary action taken by the Board against the licensee.

Sec. 5. NAC 625.645 is hereby amended to read as follows:

625.645 1. If the Board determines that probation is an appropriate disciplinary sanction pursuant to NRS 625.460, it may require as conditions of probation:

(a) That the licensee notify the Board concerning each project on which the licensee is working;

(b) The supervision of the licensee by an independent professional selected by the Board;

(c) The payment of all costs of the Board, not to exceed \$5,000 per violation; and

(d) Any other conditions deemed appropriate by the Board ~~to~~ *to facilitate the probation.*

2. Any notification required pursuant to subsection 1 must include:

(a) The name of the client;

(b) The name of the project;

(c) The location of the project;

(d) The type and scope of work involved;

(e) The size of the project; and

(f) The amount of the fee to be paid to the licensee.

Sec. 6. NAC 625.646 is hereby amended to read as follows:

625.646 1. The ~~{Board}~~ *Executive Director, in conjunction with the Board Liaison*, may establish an advisory committee composed of professional engineers, land surveyors or other persons to:

- (a) Provide technical assistance in the evaluation and ~~{disposition}~~ *investigation* of a complaint regarding the action or inaction of a licensee;
- (b) Participate in the evaluation of candidates for licensure by ~~{comity}~~ *endorsement*; or
- (c) Provide *any* assistance in any area that the ~~{Board}~~ *Executive Director or the Board Liaison* deems necessary.

2. Members of an advisory committee:

(a) ~~{Serve}~~ *Are selected by and serve* at the pleasure of the ~~{Board}~~ *Executive Director, in conjunction with the Board Liaison*.

(b) Are prohibited from participating in any proceeding in which a ~~{member of the Board similarly situated}~~ *public officer or employee* would be ~~{required to abstain}~~ *precluded from participating pursuant to NRS 281A.420*.

(c) Are entitled to travel expenses and subsistence allowances, but are not entitled to compensation for services rendered to the ~~{Board}~~ *Executive Director or Board Liaison*.

~~{3. Each member of the Board is a nonvoting, ex officio member of any such advisory committee and may attend any meeting of such an advisory committee.~~

~~{4. The Board is not bound by any recommendation made by an advisory committee.}~~

Sec. 7. NAC 625.6465 is hereby amended to read as follows:

625.6465 If the ~~{Board}~~ *Executive Director, in consultation with the Board Liaison*, establishes an advisory committee for the evaluation and ~~{disposition}~~ *investigation* of a complaint ~~{, the}~~ :

1. *The* Executive Director shall:

~~1.1~~ (a) Select *one to* five persons to serve as the members of the advisory committee from a list *compiled by the Executive Director* of volunteers ~~[approved by the Board, three]~~ *that are deemed qualified by the Executive Director, a majority* of whom, if practicable, must be from the same discipline as the respondent . ~~†~~

~~2.1~~ (b) Designate one member to act as the chair . ~~†~~

~~3.1~~ (c) Schedule ~~[an informal]~~ *a* conference between the advisory committee and the respondent . ~~†~~

~~4.~~ ~~Provide written notice of the time and place of the informal conference to each member of the advisory committee, the respondent and any witnesses requested by the respondent or the staff of the Board to appear at the informal conference;~~

~~5.1~~ *The Executive Director shall set the time and place of the conference, give the respondent reasonable written notice of the conference, as required by NRS 233B.121, and give the respondent an opportunity to call witnesses. Such conferences are not contested cases, as defined in NRS 233B.032.*

(d) Serve the decision and recommendation of the advisory committee on the respondent within a reasonable period . [; and

6. Inform the Board of the recommended disposition of the complaint.

2. *A conference between the advisory committee and the respondent may be held in person, via videoconference or over the telephone.*

3. *Pursuant to subsection 1 of NRS 622.320, the provisions of NRS 241.020 do not apply to a conference between the advisory committee and the respondent that is held for the*

evaluation and investigation of a complaint unless the respondent requests that those provisions apply.

Sec. 8. NAC 625.647 is hereby amended to read as follows:

625.647 1. If the ~~{Board}~~ *Executive Director, in conjunction with the Board Liaison,* establishes an advisory committee for the evaluation and ~~{disposition}~~ *investigation* of a complaint, the advisory committee shall:

(a) Review the complaint and the written report submitted pursuant to subsection 2 of NAC 625.640 to determine *the standard of care that applies to the respondent and examine* whether there is probable cause to believe that the respondent violated NRS 625.410;

(b) Hold ~~{an informal}~~ *a* conference with the respondent and any other person who may assist in resolving the complaint;

(c) Attempt to arrive at ~~{a}~~ *terms for the* resolution of the complaint with the respondent; and

(d) Within 15 days after the conclusion of the ~~{informal}~~ conference, submit to the Executive Director a report containing written ~~{recommendations regarding the disposition of the complaint.}~~ *findings as to the standard of care that applies to the respondent and whether the respondent violated NRS 625.410.*

2. ~~{In addition to}~~ *The Executive Director shall provide a copy of* the report required by paragraph (d) of subsection 1 ~~{, within 15 days after the conclusion of the informal conference, the chair of the advisory committee shall submit}~~ to the Board ~~{a report which contains a summary of the informal conference and recommendations regarding the disposition of the complaint.}~~ *Liaison.*

3. The *Executive Director and the Board* ~~is~~ *Liaison are* not bound by ~~any recommendation made by an~~ *the report submitted by the* advisory committee ~~regarding the disposition of the complaint.~~ *pursuant to paragraph (d) of subsection 1.*

4. ~~The recommendation of an advisory committee pursuant to this section must be entered into evidence at any disciplinary action subsequently held before the Board concerning the complaint reviewed by the advisory committee.~~

~~5. The Board may give the weight deemed appropriate by the Board to the recommendation of an advisory committee pursuant to this section.~~

~~6. The Board may accept or reject, in whole or in part, the recommendation of an advisory committee pursuant to this section.~~ *Upon receiving the report required by paragraph (d) of subsection 1, the Executive Director, in conjunction with the Board Liaison, shall continue with the review of the written report submitted pursuant to subsection 2 of NAC 625.640.*

Sec. 9. NAC 625.6475 is hereby amended to read as follows:

625.6475 1. At ~~an informal~~ *a* conference held pursuant to NAC 625.647:

(a) The chair of the advisory committee shall:

(1) Rule on the admissibility of all evidence.

(2) Accept all evidence which is relevant to the complaint.

(b) The advisory committee is not bound by the formal rules of evidence.

(c) The findings of the advisory committee must be supported by substantial evidence.

~~(d) All evidence considered by the advisory committee in its review of a complaint is admissible in a disciplinary action~~

2. The refusal of a respondent to participant in a conference is information relevant in a subsequent disciplinary hearing of the complaint before the Board.

~~{2.}~~ 3. If the Board schedules the matter for a disciplinary hearing, the Board will conduct a hearing de novo of the charges contained in the complaint. During the hearing de novo, the Board may review the evidence considered by the advisory committee concerning the complaint ~~{1.}~~, *unless a valid objection is made to the review of the evidence.*

~~{3.}~~ 4. An advisory committee may continue ~~{an informal}~~ a conference for good cause shown.

5. If a respondent refuses to participate in a review of the complaint by an advisory committee, the Executive Director, in consultation with the Board Liaison, shall proceed with the review pursuant to NAC 625.640.

Sec. 10. NAC 625.648 is hereby repealed.

TEXT OF REPEALED SECTION

625.648 Evaluation and disposition of complaint: Actions of respondent. (NRS 625.140)

1. If a respondent declines to participate in a review of the complaint by an advisory committee, the Executive Director shall refer the complaint to the Board for any further action that it deems appropriate.

2. If the respondent accepts the recommendations of the advisory committee which reviewed the complaint, the respondent must enter into an agreement with the Board regarding

the resolution of the complaint within 15 days after he or she is served with the recommendations by the Executive Director. Such an agreement is not effective until the respondent has signed the agreement and the Board has approved it.

3. If the respondent rejects the recommendation of the advisory committee, the Board will take any further action that it deems appropriate.

4. If the respondent fails to notify the Board that he or she accepts the recommendation of the advisory committee, the Board will take any further action that it deems appropriate.