

MINUTES

BOARD OF PROFESSIONAL GEOLOGISTS GENERAL BUSINESS MEETING

Department of Business and Professional Regulation
Board Conference Room
Tallahassee, Florida

July 29-30, 2003

CALL TO ORDER

Ms. Blackledge called the meeting to order July 29, 2003 at 1:00 p.m.

MEMBERS PRESENT:

Dawn Blackledge, PG, Chair
Tom Scott, Ph.D., PG, Vice-Chair
Harry "Skip" Hutton, PG
Tom Kwader, Ph.D., PG
Gabrielle Enos, PG

MEMBER(S) NOT PRESENT:

Valerie Francisco, PG

Ms. Blackledge advised the board that Ms. Francisco would be attending the second day of the meeting.

OTHERS PRESENT:

Juanita Chastain, Executive Director
Christa Patterson, Government Analyst
Erica Glover, Board Counsel
Eric Hurst, Prosecuting Attorney
Michael Murphy, Bureau Chief
Leanne Acebo, Deputy Secretary
Mark Whitten, Deputy Division Director Regulations
Ken Oliver, Bureau Chief
Jon Epstein, Director for Service and Testing
Diane Carr, Secretary
Jerry Wilson, Deputy Division Director, Professions
Jim Varnado, Division Director
Candice Jones, Legislative Affairs
Ken Walling, Customer Contact Administrator
Mr. Rambo, Investigator
Leon Biegalski, Special Counsel to the Secretary
Jon Arther, FAPG

Robert Skrob, FAPG
John Knap, Program Lead, DBPR
Pam Nobles, Chair, Board of Professional Surveyors and Mappers

REVIEW AND APPROVAL OF THE MAY 14-15, 2003 GENERAL BUSINESS MEETING MINUTES

The board reviewed the May 14-15, 2003 minutes and made the following motion.

MOTION: Dr. Kwader made a motion to approve the minutes with corrections.
SECOND: Mr. Hutton seconded the motion and it passed unanimously.

COPY OF THE 2003 LEGISLATIVE PROPOSAL – Legislative Affairs Office

Ms. Chastain introduced Ms. Leanne Acebo, Deputy Secretary to the board. Ms. Acebo welcomed the board to Tallahassee and she thanked the board for allowing her and her staff time to address the board. Ms. Acebo introduced Department staff present at the meeting.

Ms. Blackledge advised the board that at the last meeting the board requested a status of their 2003 proposed legislative package. Ms. Blackledge asked Ms. Jones to provide the board with the current status of their legislative package.

Ms. Jones advised the board that the Department did not submit a 2003 legislative package and therefore the board's proposal was not considered during the 2003 legislative session. Ms. Jones stated that the Secretary was currently in the process of reviewing legislative proposals for the 2004 legislative session. Ms. Jones advised the board that the State is struggling fiscally and that any proposals the Secretary does take in from the board, she will be reviewing for financial impact.

Ms. Enos shared her concerns with Ms. Jones regarding the lack of communication the legislative office has had with the board. Ms. Enos stated someone from the Department should have notified the board. Ms. Enos stated that the board was not contacted until after the fact.

Ms. Blackledge asked Ms. Jones if the Department was planning on submitting a legislative package. Ms. Jones replied that she would know by the end of August.

Ms. Jones encouraged the board to communicate with their Associations and to get their input and contact their legislator's.

Dr. Kwader asked Ms. Jones to provide an explanation of why the board's proposal was not submitted during the 2003 legislative session. Ms. Jones replied that the Department did not submit a 2003 legislative package.

Ms. Blackledge stated she was concerned that the Department was not going to have a 2004 legislative package and that the board should request that FAPG submit the proposal on behalf of the board.

Dr. Kwader stated that the association FAPG did not have enough support to submit the board's package. Dr. Kwader stated he was upset that the Department could not commit to submitting the board's proposed language.

Mr. Hutton stated that it appeared to him that the Department was hesitant to submit any proposed legislation that would draw attention to them because they are worried about losing money in the budget process. Ms. Jones replied that was not the case.

Ms. Jones stated she could not promise that the board's proposed language would be submitted but the Secretary is reviewing each board's proposal.

Ms. Blackledge asked Ms. Jones if other boards had submitted proposed language to the Department. Ms. Jones replied other licensure boards have submitted proposed legislative language to be included in the Department's legislative package.

Ms. Blackledge thanked Ms. Jones for addressing the board.

DIVISION OF PROFESSIONAL REGULATON PRESENTATION

Mr. Whitten and Mr. Biegalski addressed the board and did an overview of geology complaint statistics. It was reported that the Department had received 9 complaints, 8 complaints were found to have legal sufficiency, 5 investigations were completed, 1 sweep conducted, and 1 case is still in the investigative process. Mr. Whitten introduced Mr. Rambo to the board and advised the board that he has been assigned to handle the geology complaints. Mr. Varnado stated that Mr. Randy Edelstein has been contacted and asked to assist Mr. Rambo with licensed and unlicensed activity cases. Mr. Varnado advised the board that he had invited Mr. Edelstein to the meeting but due to prior commitments Mr. Edelstein could not attend.

Mr. Hutton stated he was pleased with the improvement. Mr. Whitten advised the board that they could contact Mr. John Knap with suggestions on ways to approach unlicensed activity.

Ms. Blackledge asked Mr. Rambo if he handled any other profession besides geology. Mr. Rambo replied that he handles other professions.

Mr. Whitten reviewed with the board the complaint process. Ms. Blackledge stated that the board has reviewed this process at past board meetings but still had questions.

Ms. Blackledge advised Mr. Varnado that the board was concerned that the department's staff was closing complaints and that consultants were not being used during the legally sufficient stage of the complaint process. Mr. Biegalski advised the board that attorneys were used during the initial process. Mr. Varnado assured the board that consultants are utilized whenever necessary. Mr. Varnado advised the board to contact Mr. John Knap if they had any suggestions on how to approach unlicensed activity.

Ms. Blackledge advised the board that in their agenda materials was an unlicensed activity case report submitted by Mr. GW Harrell.

Ms. Enos asked the board if they had a chance to read and review case number 2000-04286. Not all members had a chance to review the information. Ms. Blackledge asked

each member to review the case materials that evening for discussion the next day. Ms. Glover advised the board that she felt it was not appropriate for the board to discuss cases that have already been through the legal process.

The board shared their concerns regarding the length of time it has taken to obtain unlicensed activity case information. Ms. Blackledge advised the board that she did not want the board to go against Ms. Glover's advice and she asked Ms. Glover if it would be okay if the board discussed the issue of who can conduct phase 1 of ESA's. Ms. Glover advised the board that they could discuss phase 1 of ESA's.

Ms. Enos asked Mr. Knap if the unlicensed activity office had any more geology unlicensed activity brochure's. Mr. Knap replied that the Department was in the process of ordering copies of the brochure and he would provide the board with a copy of the brochure prior to ordering more. Ms. Acebo asked the board to contact their office if they had any suggestions or questions.

Ms. Blackledge asked Ms. Acebo if she would provide the board with a board member appointment update. Ms. Acebo asked members to forward their applications to the Secretary's office and they would monitor the progress. Ms. Enos stated Mr. Don McNeill had applied two years ago.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION PRESENTATION

Customer Contact Center

Mr. Epstein and Mr. Walling addressed the board and reviewed the statistical information provided to the board in a written report.

Central Intake and Licensure

Mr. Murphy addressed the board and did an overview of the central intake and licensure section of the Department. Mr. Murphy asked the board to contact him if they had any questions, suggestions, or concerns. His number is (850)-488-9401.

Finance and Accounting

Mr. Oliver reviewed the financial report with the board. After discussion, it was noted that the financial report in the board's agenda materials had been amended. Mr. Oliver handed out the amended financial report to the board. Mr. Oliver also handed out information on cost allocation methodology.

Dr. Kwader asked if Mr. Oliver had brought information on the board's trust fund balance. Mr. Oliver stated he would provide statistics for the last 5 years. Mr. Oliver stated he would provide Ms. Chastain with the information. Mr. Oliver advised the board that there would be a cash sweep and he was unsure how Secretary Carr was going to allocate the funds.

The board discussed the unlicensed activity funds and the ways the funds could be used. Mr. Oliver advised the board that the unlicensed activity fund account could only

be used for regulation of unlicensed activities and could not be transferred to the operational funds.

Mr. Oliver advised the board that if they had questions or suggestions to contact him at (850) 921-0890.

DISCUSSION OF PRIVATIZATION

Ms. Blackledge advised the board that the discussion of privatization was discussed at the last meeting and tabled for further discussion. Ms. Blackledge stated that the Board of Professional Surveyors and Mappers had an analysis completed and this information was included in their agenda materials. Ms. Blackledge stated that the Surveyors and Mappers board voted at their July 2003 meeting to support legislative language to privatize.

Ms. Blackledge advised the board that Ms. Nobles, Chair, for the Board of Professional Surveyors and Mappers was present at the meeting to address questions the board may have on the way their board approached the discussion to support legislative language for privatization. Ms. Blackledge thanked Ms. Nobles for attending the meeting.

Ms. Nobles addressed the board with an overview of the process their board completed. Ms. Nobles stated that the Board of Professional Surveyors and Mappers was approached by the Florida Surveyors and Mappers Society with the concept of privatizing the board functions. Ms. Nobles stated that it was the consensus of the board to consider privatization and that FSMS hired Harris Management to complete an analysis. Ms. Nobles stated that the society approached privatization with a total rewrite of the board's statutes and opted not to go through Chapter 455, F.S. Ms. Nobles stated that one of the issues that prompted the board to consider privatization was unlicensed activity. Ms. Nobles stated that if Secretary Diane Carr, was in place last year the board probably wouldn't have gone this far. Ms. Nobles stated that there has been improvement in the Department since Ms. Carr's appointment as Secretary.

Ms. Blackledge asked Ms. Nobles who was going to submit their legislative proposal. Ms. Nobles stated that FSMS has a House and Senate sponsor already in line. Ms. Blackledge asked Ms. Nobles how did their board come to the decision that it was in the best interest of the board to privatize. Ms. Nobles stated that one of the board's biggest issue was unlicensed activity, however for the past year it has improved.

Ms. Blackledge asked Mr. Biegalski if the board did not use Chapter 455, F.S., does this allow the board to outsource more functions. Mr. Biegalski replied it would depend on the outcome of the rewrite of their statutes. Mr. Biegalski stated that if the board does not use Chapter 455, F.S., Management Privatization Act, it would allow the board to contract out instead of the Department contracting with an outside vendor. Mr. Biegalski stated this would cut out a majority of the Departments oversight. Mr. Biegalski advised the board again that it would depend on the outcome of the rewrite.

Ms. Nobles stated that the board is only considering contracting with the Department's Bureau of Testing. Ms. Nobles stated that even though the board had voted to support the proposed legislation, it still has to go through a FSMS general membership vote.

Dr. Scott stated that he was unsure if the Florida Association of Professional Geologists would have the money to complete an analysis and the funds to support legislative language for a rewrite. Dr. Scott stated that if the board opened Chapter 492, F.S. for new language there would be someone out there that would want additional changes.

Ms. Blackledge stated that before the board moves forward with proposed legislative language, they would need to know if the geology community was in support of privatization. Ms. Blackledge stated that for the past two years it has been frustrating to work with the Department on disciplinary issues, unlicensed activity issues, and proposed legislation.

Ms. Blackledge asked Mr. Biegalski if he knew of any profession that used the section of Chapter 455, F.S., to privatize. Mr. Biegalski replied no. Ms. Nobles stated the section in 455, F.S. was only a couple of years old. Mr. Biegalski agreed and stated that the section only applied to the Department.

Mr. Skrob stated that he had a background with the history of the Management Privatization Act. Mr. Skrob's stated that the American Society of Architects of Florida lobbied to get that bill past in cooperation of the Department's Secretary Henderson. The Board of Architects and Interior Design worked to implement that section of the statute and the Department identified and hired a vendor. Prior to presenting the contract to the board for approval Secretary Binkley-Seyer made changes to the contract and with consideration of those changes the board rejected the contract. Mr. Skrob advised the board that he was the contract holder selected and that the Secretary made it very clear that the Department had control of the funds and would dictate how the board and vendor were going to conduct business. Mr. Skrob stated that the board went back and modified their practice act for the board to have authority over their budget. Mr. Skrob stated that the board also obtained authority to prosecute unlicensed activity. Mr. Skrob stated that the board made a deal with Ms. Binkley-Seyer to only privatize the prosecution and unlicensed activity functions so that the Secretary could continue to implement the Departments re-engineering program. Mr. Skrob stated that the board contract has been in place for at least 7 months.

Ms. Blackledge stated that it is frustrating that the board is held accountable and responsible for the budget but the board does not have authority over the budget. Ms. Blackledge stated that if the board goes into the red the board had no control over the expenses and she feels that is wrong.

Ms. Blackledge asked the board for direction on how to proceed. Dr. Scott stated that it was very important that the board continue to work with the Department to support the board's legislative language to obtain disciplinary authority before proceeding with privatization. Mr. Hutton stated he felt it was important to continue consideration of privatization and that this may give the Department the motivation to improve.

Mr. Hutton and Dr. Scott stated that they would like to see the board continue researching the possibilities of privatization. Ms. Enos agreed and stated that they needed an affective lobbying pull. Mr. Skrob stated that he felt the board should consider the same legislative language that the Board of Surveyors and Mappers has considered.

Ms. Acebo asked the board to share their input on suggestions of improvement. Mr. Biegalski stated that the communication with the board and Department had improved over the past 6 months. Ms. Nobles stated that she agreed that the communication had improved.

Ms. Enos suggested that FAPG contact FSMS to obtain additional information. Dr. Scott asked if FAPG was interested in championing the issue. Mr. Author from FAPG stated that they recently conducted a survey of membership for other legislative issues and privatization was not one of the issues. Mr. Author stated that he would like to poll the members regarding the issue of privatization prior to approaching FSMS. Mr. Auther stated that he would need more education on the issue of privatization prior to polling the members.

Ms. Blackledge stated that the board should concentrate their efforts on disciplinary authority. Ms. Blackledge stated that she had the opportunity to speak with Secretary Diane Carr and feels she is moving the Department in the right direction. Ms. Blackledge stated that the board should table discussion of privatization for the next six to nine months and continue to work with the Department on improvements.

MOTION: Ms. Enos made a motion to ask FAPG to approach FSMS to discuss privatization issues to see if possibly the two organizations could have a working relationship.

SECOND: Mr. Hutton seconded the motion.

Dr. Scott asked a question. Dr. Scott stated that he thought Mr. Auther would need to inform the membership of what the pros and cons are with this issue before FAPG approaches FSMS. Ms. Enos stated she thought that would be part of the FAPG process. Ms. Blackledge stated she would like to know if the FAPG membership was in support of the issue.

Ms. Blackledge asked Mr. Auther if he could provide a report at the next meeting. Mr. Auther stated he could provide a report at the October 2003 meeting.

Ms. Acebo thanked the board for allowing the Department time to address the board. Ms. Acebo advised the board that after listening to discussion, she identified three areas of concern by the board and they were: board member appointments, more board input with budget issues, and investigations. Ms. Acebo asked the board to allow the Department time to assist the board in these areas. The board agreed to allow a maximum timeframe of 12 months. Ms. Blackledge thanked everyone for attending.

Mr. Biegalski asked the board to clarify their legislative goal. It was the consensus of the board to move forward with the request for disciplinary authority as a priority.

REPORTS

Chair Report – Dawn Blackledge

No report

Board Counsel Report – Erica Glover

Ms. Glover advised the board that she provided the board with a copy of Chapter 481.205, F.S. and Chapter 471.038, F.S. Ms. Blackledge asked Ms. Patterson to include this information on the next agenda with the FAPG report.

Prosecuting Attorney Report – Eric Hurst

Mr. Hurst handed out his prosecuting attorney's report and reviewed the report with the board.

Finance Report – Dawn Blackledge

The board reviewed the financial report and felt the board was in a good financial posture.

Communication – Gabrielle Enos

Ms. Enos reported that the newsletter is in draft format and she was working with Ms. Patterson on article information. Ms. Enos invited members to provide information for the newsletter.

Ms. Enos passed out statistical reports for the last ASBOG examination and the board noted that 50% of Florida candidates pass the examination.

Executive Director's Report

Ms. Chastain reported that the board member appointments had already been addressed and she did not have anything else to report.

NEW/OLD BUSINESS

Review and discussion of traditional tasks performed by Florida Professional Geologists.

The board reviewed and discussed traditional tasks performed by geologists and Dr. Scott stated that he had received some suggestions and comments, but had not had the opportunity to prepare a draft for the board to review. Dr. Scott stated that he would provide the board with a draft for discussion at the October 2003 meeting.

The meeting adjourned at 5:05 p.m., to reconvene July 30, 2003 at 9:00 a.m.

Ms. Blackledge called the meeting to order July 30, 2003 at 9:00 a.m.

MEMBERS PRESENT:

Dawn Blackledge, PG, Chair
Tom Scott, Ph.D., PG, Vice-Chair
Harry "Skip" Hutton, PG
Tom Kwader, Ph.D., PG
Gabrielle Enos, PG
Valerie Francisco, PG

MEMBERS NOT PRESENT:

None

OTHERS PRESENT:

Jim Varnado, Division Director
Christa Patterson, Government Analyst
Erica Glover, Board Counsel
Eric Hurst, Prosecuting Attorney

TASK FUNCTION FORM

The board reviewed the task function form. Ms. Blackledge stated that all tasks have been completed or tabled to the October 2003 meeting.

APPLICATION REVIEW

The board reviewed applications and after review the following motions were made.

MOTION: Dr. Scott made a motion to approve Spectrum Data's certificate of authorization application.

SECOND: Dr. Kwader seconded the motion and the motion passed.

Ms. Enos opposed the motion and the motion passed.

MOTION: Ms. Enos made a motion to approve Leonard Burgess, Howard Frank, and Robert Simmons for licensure by endorsement.

SECOND: Mr. Hutton seconded the motion and it passed unanimously.

MOTION: Dr. Kwader made a motion to deny James Reid for licensure by endorsement. Mr. Reid did not provide verification that he had taken and passed a licensure examination.

SECOND: Dr. Scott seconded the motion and it passed unanimously.

MOTION: Dr. Kwader made a motion to approve Cindy Bevier, Stephanie Hertz, Hillol Guha, Sandra Will, Jill Ann Hood, James Oliver Maxwell Jr., Jay Odaffer, Mark Richter, Jennifer Sue Steadman, Lynn Yuhr, and Nemeck Frank for licensure by examination.

SECOND: Ms. Francisco seconded the motion and it passed unanimously.

The board requested that staff revise the application form to include the signature of the responsible geologist. Ms. Patterson revised the form and the board approved.

The board reviewed the 2003 legislative proposal approved at the October 2002 meeting and the board made revisions with that were suggested by the Department. Below is the revised language.

492.113 Disciplinary proceedings.--

(1) The following acts constitute grounds for which the disciplinary actions in subsection (3) may be taken:

(a) Violation of any provision of s. 492.112 or any other provision of this chapter.

- (b) Attempting to procure a license to practice geology by bribery or fraudulent misrepresentation.
 - (c) Having a license to practice geology revoked, suspended, or otherwise acted against, including the denial of licensure by the licensing authority of another state, territory, or country.
 - (d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of geology or the ability to practice geology.
 - (e) Making or filing a report or record that the licensee knows to be false, willfully failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records include only those that are signed in the capacity of a licensee.
 - (f) Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
 - (g) Committing an act of fraud or deceit, negligence, incompetence, or misconduct in the practice of geology.
 - (h) Violation of chapter 455.
 - (i) Practicing on a revoked, suspended, inactive, or delinquent license.
 - (j) Affixing or permitting to be affixed his or her name to geological papers, reports, or documents that were not prepared by him or her or under his or her responsible supervision, direction, or control.
 - (k) Violating a rule of the department or the board or any order of the department or the board previously entered in a disciplinary hearing.
- (2) The board ~~department~~ shall specify, by rule, what acts or omissions constitute a violation of subsection (1).
- (3) When the board ~~department~~ finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:
- (a) Denial of an application for licensure.
 - (b) Revocation or suspension of a license.
 - (c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.
 - (d) Issuance of a reprimand.
 - (e) Placement of the licensee on probation for a period of time and subject to such conditions as the board ~~department~~ may specify.
 - (f) Restriction of the authorized scope of practice by the licensee.
- (4) The department shall reissue the license of a disciplined geologist or business upon certification by the board ~~department~~ that the disciplined person has complied with all of the terms and conditions set forth in the final order.
- History.--ss. 13, 19, ch. 87-403; s. 4, ch. 91-429; s. 293, ch. 94-119; s. 524, ch. 97-103; s. 157, ch. 98-166; s. 218, ch. 2000-160; s. 63, ch. 2000-356.

MOTION: Mr. Hutton made a motion to approve the revised 2003 legislative language.

SECOND: Ms. Enos seconded the motion and it passed unanimously.

Ms. Blackledge asked Ms. Glover to forward final legislative language to Ms. Patterson.

The board discussed the practice of phase 1 reports. Ms. Enos stated that there were many companies in Florida doing phase 1 reports and the companies does not have geologists on staff to sign and seal the document. Ms. Enos stated that the phase 1

report ends up as a public record. It was the consensus of the board that phase 1 is a geology report and that it should be signed and sealed by licensed geologists. The board discussed if there was any way to prepare a phase 1 report without it being a geology conclusion. Mr. Hutton stated that he felt that the board should create a mailing list of certified agencies effected. Ms. Enos stated she would create a list. After discussion the board asked Ms. Blackledge to draft a letter to the issue of phase 1 reports for the board to review at the October 2003 meeting. Ms. Blackledge stated that Ms. Glover should have the opportunity to review the letter. It was the consensus of the board that this letter would be an education campaign.

Ms. Patterson advised the board that the meeting location for October 29, 2003 would be Jacksonville, Florida. Ms. Patterson stated that the meeting would be held at the same location as the ASBOG Annual meeting. Ms. Enos asked that a staff person attend the administrator workshop and that all members try to participate and attend the ASBOG Annual meeting.

Dr. Kwader advised the board that Ken Oliver, Bureau Chief of Finance and Accounting provided him with a copy of the board's six -year projection. The board reviewed the projections and noted that the administrative cost had increased. The board requested that the Department give an explanation of the cost increase.

There being no other business the meeting adjourned at 12:20 p.m.