



**Idaho Society of
Professional Engineers**

A state society of the National Society of Professional Engineers

24 February 2016

Honorable Fred Wood, Chairman and Members
House Health and Welfare Committee
Idaho Legislature
State Capitol
P.O. Box 83720
Boise Idaho 83720-0038

Subject: **House Bill Numbers 480 and 482**

Honorable Chairman Wood and Members:

The Idaho Society of Professional Engineers is an organization that welcomes all professional engineers in the state of Idaho. We have been active in Idaho for 106 years.

The subject bills impact the membership and/or staff of over thirty trade and professional boards in Idaho.

We have only very recently become aware of the subject legislation. First notice provided to us was a little over two weeks ago. There has been very little time to review the legislation and allow statewide stakeholders to provide comment and input on the impact of the legislation. We are not aware of any prior contact with stakeholders in the state to be involved with the creation of, or have input on, this legislation. The impacts are huge and should be properly vetted with all stakeholders. We have no choice at this time to react to a situation that, in our opinion, has substantial consequences to the general public and the regulation of engineering in Idaho.

It appears this legislative action springs from a decision of the Federal Supreme Court. Our organization has been aware of the Supreme Court North Carolina decision (North Carolina State Board of Dental Examiners v. the Federal Trade Commission) since last spring, but had no idea how Idaho may react to it until February 8th of this year. In addition, the Idaho Attorney General only issued an opinion on this subject on 13 January 2016.

I personally have met with staff in the governor's office to discuss the proposed legislation. However it became clear there was simply not enough time to carefully consider the full impact and no changes resulted from that meeting.

Due to the very short time notice given on this significant legislation, **we respectfully respect that no action be taken on this issue this year.** All states in the union are probably impacted by the Supreme Court decision, but we are not aware of any that have reacted with such short public notice on proposed legislation.

If action must occur, we offer the following very quickly created observations.

The current law (Idaho Code Section 54-1203) requires the Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors to consist of five Idaho licensed professional engineers and two Idaho licensed professional land surveyors. The positions are filled by the governor from nominations forwarded from elections of a state engineering organization for the engineering board members and from elections of a state land surveying organization for the land surveying board members.

There is currently no public member on the board. The proposed legislation adds a public member. We want to state that we have no objection to adding a public member to the licensure board. We believe the addition is good. However we do have a concern with how nominations for the professional engineer and professional land surveyor positions are proposed to be filled.

The duties of the licensure board include tasks that require certain expertise to be able to perform at a high level to protect the Idaho public. All members must be well qualified and have an excellent understanding of the highly technical nature of engineering or land surveying and the standard of care industry practitioners must meet.

As a specific example regarding membership qualifications on the board, we strive to maintain at least one board member that is an educator to be able to assist the board with decisions on if license applicant's educational requirements meet the minimum requirements set by the legislature in law. Additionally that member must work with the National Council of Examiners for Engineering and Surveying to maintain Idaho's compliance with national educational requirements.

Board member qualifications are key to assure the protection of the public in Idaho. Who better qualified to assure the best individuals with high ethical values are candidates for the board than individuals that practice with them? Again, engineers and land surveyors do not place members on the board, the governor does.

The proposed legislation creates a scenario where any resident in Idaho may make a board position nomination to the governor with only the qualifications listed in Idaho Code 54-1204. We feel we go further – we offer the best of the best. And that person is not always a member of the state organization offering the nomination. Again, we look for the best of the best, not just being a member of the organization.

The proposed legislation also creates a potential conflict between existing professional organizations in Idaho as a land surveyor organization may make nominations for engineer members, and an engineering organization may make nominations for land surveyor members. Why create this overlap and source of possible conflict when the governor holds the power to place the member?

We cannot speak for a land surveying organization in Idaho, but strongly feel it best to keep the engineering position nomination with engineers in the state and the land surveying position nomination with land surveyors of the state. The public member nomination should come from the public. With all this said, proper oversight is still held by the governor, as the board member positions must be governor appointees.

And we understand the inclusion of new wording in Idaho Code Section 54-1206 that provides for board members serving at the pleasure of the governor. This provides additional oversight by the governor.

With the above discussion in mind, we offer the following substitute for Idaho Code Section 54-1203. We have included sections 54-1204 and 54-1206 below, but they are identical to the proposal before you today and only included to provide context.

54-1203. IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS. A board to be known as the "Idaho board of licensure of professional engineers and professional land surveyors" is a division of the Idaho department of self-governing agencies and shall administer the provisions of this chapter. It shall consist of seven (7) persons ~~duly licensed as provided by this chapter,~~ appointed by the governor from among nominees recommended by any organized and generally recognized state engineering society in this state for the professional engineer members, ~~or any organized and generally recognized state land surveying society in this state for the professional land surveyor members,~~ and any individual residing in this state for the public member. The board shall be comprised of ~~five~~four (54) persons licensed as professional engineers, ~~and two~~ (2) persons licensed as professional land surveyors and one (1) person who shall be a member of the general public with an interest in the rights of consumers of professional engineering and professional land surveying services. The members of the board shall have the qualifications required by section 54-1204, Idaho Code. ~~The members of the present board shall continue to serve for the balance of their respective terms of appointment.~~ Each member of the board shall take, subscribe and file the oath required by chapter 4, title 59, Idaho Code, before entering upon the duties of the office. On the expiration of the term of any member, a successor shall be appointed in like manner by the governor for a term of five (5) years. Any appointment to complete a term that has not expired, because of resignation, removal or inability of a member to serve for any reason, shall be for the unexpired portion of the term. A member of the board shall hold office until the expiration of the term for which he was appointed and until his successor has been appointed and qualified. A member, after serving two (2) consecutive full terms in addition to any unexpired portion of a term, shall not be reappointed for a period of two (2) years. The board, on its own initiative, may appoint any former member as an emeritus member for special assignment to assist the board in the administration of this chapter.

54-1204. QUALIFICATION OF MEMBERS OF BOARD. Members of the board shall be citizens of the United States and residents of this state; and except for the public member, they shall have been engaged for at least twelve (12) years in the practice of engineering for the professional engineer members or land surveying for the professional land surveyor members, shall have been in responsible charge for at least five (5) years of important professional engineering or professional land surveying work, and shall be licensed under the provisions of this chapter. Responsible charge of engineering or land surveying teaching may be construed as responsible charge of important professional engineering or professional land surveying work.

54-1206. REMOVAL OF BOARD MEMBERS AND FILLING VACANCIES. The Board members shall serve at the pleasure of the governor ~~may remove any member of the board for misconduct, incompetency, neglect of duty, or for any reason prescribed in the Idaho Code for removal of state officials.~~ Vacancies in the membership of the board shall

be filled for the unexpired term by appointment by the governor as provided in section 54-1203, Idaho Code.

The above allows board candidates for engineering members to come from a state engineering organization, board candidates for land surveying members to come from a state land surveying organization, and board candidates for public member position to come from a resident in the state. Placement of all board positions is still completely controlled by the governor.

The above is a quickly assembled suggestion that should be carefully considered. Our preference is that we allow more time to work through this change of code and postpone any action. We are sure many constituents in the state still may not be aware of the proposed legislation.

Our goal remains the protection of the public in Idaho - help us assure that occurs.

Yours Truly,

Joseph D. Canning, PE/PLS
Secretary-Treasurer
Idaho Society of Professional Engineers