

PROPOSED RULEMAKING

ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]

Practice and Procedure

The Environmental Hearing Board (Board) proposes to amend Chapter 1021 (relating to practice and procedure) by amending and adding new procedural rules to read as set forth in Annex A.

The proposed procedural rules have the following objectives:

(1) To provide the regulated community, the Department of Environmental Protection (Department) and persons challenging Department actions with more specific guidance on how to represent their interests before the Board.

(2) To improve the rules of practice and procedure before the Board.

The Board considered the recommendations of the Rules Committee at its meeting on December 4, 2019, and voted to adopt all but one recommendation as set forth in Section E of this preamble.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Maryanne Wesdock, Senior Counsel, Environmental Hearing Board, Suite 310, 301 Fifth Avenue, Pittsburgh, PA 15222, (412) 565-5245, mwesdock@pa.gov.

C. *Statutory Authority*

The Board has the authority under section 5(c) of the Environmental Hearing Board Act (act) (35 P.S. § 7515(c)) to adopt regulations pertaining to practice and procedure before the Board.

D. *Background and Purpose*

The purpose of this proposed rulemaking is to improve practice and procedure before the Board. These proposed amendments are based on the recommendations of the Board's Rules Committee, a nine-member advisory committee created by section 5(a) and (c) of the act to make recommendations to the Board on its rules of practice and procedure. Under section 5(c), regulations "shall be promulgated by the Board upon a majority affirmative vote on the recommended regulations."

E. *Summary of Proposed Regulations*

§ 1021.21. *Representation*

The existing rule explains the pro hac vice procedure for corporate parties. Proposed § 1021.21(b) explains that corporate parties may be represented by an attorney in good standing and admitted to practice before the highest court of another state on a motion pro hac vice filed by a Pennsylvania attorney. Because any party, not corporate parties, may be represented by an out-of-State attorney on a motion pro hac vice, the Rules Committee recommends deleting this language from subsection (b) and creating a new paragraph at subsection (d) to explain that any party may be represented by an out-of-state attorney with the filing of a motion pro hac vice.

The Rules Committee also recommends deleting the language "admitted to practice before the Supreme Court of Pennsylvania" from subsection (b) since, as noted, a party may be represented by an attorney admitted to practice before the highest court of another state on a motion pro hac vice.

Previous subsection (d) is proposed to be relettered to (e).

Former subsection (d), now (e), is proposed to be amended to reflect the addition of a new subsection. Instead of stating that subsections (a) through (c) supersede 1 Pa. Code §§ 31.21—31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings), it states that subsections (a) through (d) supersede those sections.

§ 1021.32. *Filing*

Proposed § 1021.32(c)(11), dealing with electronic filing, is being amended to delete the reference to WordPerfect since the Board's electronic filing system no longer supports WordPerfect. In addition, a comment is being added to this rule to notify attorneys and pro se appellants who register for electronic filing that they may not file electronically until their registration is approved by the Board; when registration occurs during non-business hours, approval of the registration will not occur until the next business day.

§ 1021.34. *Service by a party*

Proposed § 1021.34(a) is being amended to correct an incorrect reference to § 1021.51(h) (relating to commencement, form and content). The correct reference should be § 1021.51.

§ 1021.35. *Date of service*

Proposed § 1021.35(b)(3) is being amended to change the reference from "days" to "calendar days" to eliminate a potential inconsistency when read in conjunction with the Board's rule on computation of time, § 1021.13 (relating to computation of time). Under § 1021.13, periods of time are calculated to exclude Saturdays, Sundays and legal holidays when the final day in a period of time falls on one of those days. Subsection (b)(3) in its current form provides that documents served by mail are deemed served "3 days" after the document is mailed for purposes of calculating an applicable response time. The change in subsection (b)(3) to "3 calendar days" makes it clear that, if a motion is served by mail on a Wednesday, the 30-day response time begins to run from Saturday, and not the following Monday (or Tuesday if there is a Monday legal holiday). "Calendar days" resolves the ambiguity that could cause confusion over when a response is due to a motion served by mail, while honoring the intent of the rule to allow time for a document to travel by mail and ensuring that motion practice is not needlessly prolonged.

§ 1021.51. *Commencement, form and content*

Proposed § 1021.51(c) is being amended to state that the notice of appeal must be signed by the appellant(s) when the appellant is not represented by an attorney. The existing rule states that it must be signed by a "party." However, since the only party that may sign a notice of appeal is an appellant, the Rules Committee recommends using the term "appellant" rather than "party."

The Rules Committee also recommends replacing the term "attorney of record" with "attorney." At the time a notice of appeal is filed there is no attorney "of record" since the notice of appeal is the document that initiates an appeal.

§ 1021.53a. *Nunc pro tunc appeals*

The current rule states as follows:

The Board upon written request and for good cause shown may grant leave for the filing of an appeal nunc pro tunc; the standards applicable to what constitutes good cause shall be the common law standards applicable in analogous cases in courts of common pleas in this Commonwealth.

Based on the recommendations of the Rules Committee, proposed § 1021.53a is being substantially amended to set forth the procedure for seeking leave to file an appeal nunc pro tunc and for responding to a request to appeal nunc pro tunc.

Discussions on this topic began at the Rules Committee meeting of November 9, 2017. At that meeting, a member of the Rules Committee raised a comment regarding § 1021.53a, noting that the existing version of the rule discusses what the Board considers in granting an appeal nunc pro tunc, but it provides no direction on what type of document should be filed to request leave to appeal nunc pro tunc. Nor does the rule state whether the Department may file a response in opposition. At the Rules Committee meeting of September 18, 2018, it was reported that since 2010 the Board had issued 21 opinions dealing with requests to appeal nunc pro tunc. The Rules Committee agreed that clearer, more comprehensive guidelines on the nunc pro tunc procedure would be helpful.

The drafter of the rule researched other courts' procedures for filing nunc pro tunc appeals, particularly courts of common pleas. The drafter's research indicated that not many courts have formal, written instructions. However, the drafter discovered that the Chester County Court of Common Pleas has a rule that provided a good model for the drafting of the Board's rule. In drafting the rule, the individual relied on the Chester County rule, the Board's rule on supersedeas petitions in § 1021.61 (relating to general) and the Board's general rule on motions in § 1021.91 (relating to general).

Discussions continued on this topic for several meetings until a final draft of the rule was approved by the Rules Committee at its meeting of March 14, 2019. To see the discussion and evolution of the proposed nunc pro tunc rule, one may view the minutes of Rules Committee meetings from November 9, 2017, to March 14, 2019, available on the Board's web site at <https://ehb.courtapps.com/public/rulesCommitteeMinutes.php>.

The proposed amendments to § 1021.53a would add subsections (b) through (i) containing the following requirements:

(b) A person seeking to appeal nunc pro tunc shall file a petition to appeal nunc pro tunc. If filed after a dispositive motion that seeks to dismiss an appeal as untimely, the filing of the petition stays the deadlines for filing a response or reply concerning the motion. The Board will issue deadlines for filing a response and reply if the Board grants the petition and the dispositive motion addresses issues in addition to untimeliness.

(c) The petition to appeal nunc pro tunc shall comply with the requirements set forth for "motions" in § 1021.91 (relating to general), and, in addition, shall include the following:

(1) The specific facts that the potential appellant would attempt to prove at hearing to show that nunc pro tunc relief is warranted.

(2) The specific facts that the potential appellant would attempt to prove showing that it acted promptly in seeking nunc pro tunc relief.

(3) Copies of all documents and a list of all witnesses that the potential appellant relies upon in support of the petition to appeal nunc pro tunc.

(4) Any legal authority and theories the potential appellant relies upon in seeking nunc pro tunc relief.

(5) A sworn affidavit of the person or persons having knowledge of the facts that the facts are verified as true and correct, or an unsworn written statement of such person or persons, that the facts are verified as true and correct subject to the penalties for unsworn falsification to authorities, under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(6) If the petition to appeal nunc pro tunc is not supported by an affidavit or verification as set forth in paragraph (5), an explanation of why the affidavit or verification was omitted.

(d) Responses to petitions to appeal nunc pro tunc shall comply with the requirements set forth for "responses" in § 1021.91. Unless otherwise ordered by the Board, the response shall be filed within 15 days of the date of service of the petition.

(e) A memorandum of law in support of the petition or response may be filed with the petition or response.

(f) The potential appellant may not file a reply unless the Board orders otherwise.

(g) The Board may schedule a hearing on whether nunc pro tunc relief is appropriate.

(h) If the petition to appeal nunc pro tunc is granted, the notice of appeal will be treated as though it were timely filed.

(i) If the petition to appeal nunc pro tunc is denied, the notice of appeal will be dismissed as untimely.

§ 1021.94a. *Summary judgment motions*

Proposed § 1021.94a(h) is being amended to require a table of contents for briefs longer than 30 pages.

§ 1021.106. *Voluntary Mediation*

Proposed § 1021.106(d) is being amended to require that the report of the mediator must set forth whether the mediation has been successful or has a likelihood of success if allowed to continue. The existing rule requires the mediator's report to set forth "the history of mediation activities." The Rules Committee felt that the existing language is vague. Based on feedback from the Board's Judges regarding what should be contained in a mediator's report, the Rules Committee recommended deleting "the history of mediation activities" and replacing it with "whether the mediation has been successful or has a likelihood of success if the mediation process continues to proceed."

§ 1021.131. *Post hearing briefs*

Proposed § 1021.131(a) is being amended to require a table of contents in post hearing briefs.

§ 1021.141. *Termination of proceedings*

A majority of the Rules Committee recommended adding the following language to § 1021.141(b), related to settlement agreements: "Findings contained in a settlement agreement shall supersede Findings set forth by the Department of Environmental Protection in the action

that is the subject of the appeal.” The vote of the Rules Committee was not unanimous, with one member voting against the proposed amendment. At its December 4, 2019 meeting, by a vote of 4-1, the Board voted not to approve the proposed amendment; rather, it remanded the matter to the Rules Committee for further review and discussion.

In summary, the Board concurred with the recommendations of the Rules Committee set forth in the previous paragraphs of this preamble. It did not concur with the recommendation of the Rules Committee as set forth in § 1021.141 and remanded the proposal to the Rules Committee for further review.

F. *Benefits, Costs, Compliance and Paperwork*

Benefits

The proposed amendments are likely to provide a benefit to parties appearing before the Board because they will further clarify the Board’s rules of practice and procedure.

Costs

The proposed amendments will have no measurable fiscal impact on the Commonwealth, political subdivision or the private sector.

Compliance

The proposed amendments will have no impact on compliance costs for parties participating in matters before the Board.

Paperwork

The proposed amendments will require no additional paperwork.

H. *Sunset Review*

These regulations will be reviewed on an ongoing basis by the Board’s Rules Committee to determine whether the regulations effectively fulfill the goals for which they were intended. The Rules Committee meets six times a year in alternating months (January, March, May, July, September and November).

I. *Public Meeting on Proposed Rules*

In accordance with 65 Pa.C.S. § 704 (relating to open meetings), a quorum of the Judges of the Board voted to adopt the previously-described proposed rules at a public meeting held on December 4, 2019, at 2:15 p.m. at the Board’s Harrisburg Office, Hearing Room 2, Second Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 6, 2021, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act

(71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

K. *Public Comment Regarding Proposed Amendments*

The Board invites interested persons to submit written comments, suggestions or objections regarding the proposed amendments to Maryanne Wesdock, Senior Counsel, Environmental Hearing Board, Suite 310, 301 Fifth Avenue, Pittsburgh, PA 15222, mwesdock@pa.gov within 30 days of the date of publication in the *Pennsylvania Bulletin*.

THOMAS W. RENWAND,
Chairperson and Chief Judge

Fiscal Note: 106-13. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART IX. ENVIRONMENTAL HEARING BOARD
CHAPTER 1021. PRACTICE AND PROCEDURE
PRELIMINARY PROVISIONS
REPRESENTATION BEFORE THE BOARD**

§ 1021.21. Representation.

(a) Parties, except individuals appearing on their own behalf, shall be represented by an attorney in good standing at all stages of the proceedings subsequent to the filing of the notice of appeal or complaint.

(b) Corporations shall be represented by an attorney of record [**admitted to practice before the Supreme Court of Pennsylvania. Corporations may also be represented by an attorney in good standing and admitted to practice before the highest court of another state on a motion pro hac vice filed by the Pennsylvania attorney of record**].

(c) Individuals may appear in person on their own behalf; however, they are encouraged to appear through counsel and may be required to appear through counsel if the Board determines that they are not merely appearing on their own behalf.

(d) Parties may be represented by an attorney in good standing and admitted to practice before the highest court of another state on a motion pro hac vice filed by a Pennsylvania attorney.

[(d)] (e) Subsections [(a)—(c)] (a)—(d) supersede 1 Pa. Code §§ 31.21—31.23 (relating to appearance in person; appearance by attorney; and other representation prohibited at hearings).

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DOCUMENTARY FILINGS

FILING AND SERVICE OF DOCUMENTS

§ 1021.32. Filing.

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(c) *Electronic filing*

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(11) Documents may be electronically filed in [**WordPerfect format,**] Microsoft Word format, PDF format or other formats as the Board may permit. The electronic filing provider automatically converts uploaded documents not already in PDF format to PDF format. A

document may exceed page limitation rules if the additional pages result solely from the electronic conversion by the electronic filing provider.

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(f) *Format of filing.* Failure to comply with subsection (c)(5), (d)(5) or (e)(4) will not result in dismissal of a filing, but the Board may request that the party resubmit the document in proper form.

Comment: Attorneys and pro se appellants who register for electronic filing may not file electronically until they receive a confirmation e-mail advising them that they have been approved for electronic filing. If registration occurs during non-business hours, the confirmation will not occur until the next business day. Until such confirmation occurs, a registrant must file by means other than electronic filing to ensure timely filing.

§ 1021.34. Service by a party.

(a) Notices of appeal shall be served as provided in [§ 1021.51(h)] § 1021.51 (relating to commencement, form and content). Complaints filed by the Department will be served as provided in § 1021.71(b) (relating to complaints filed by the Department).

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§ 1021.35. Date of service.

(a) For electronic service, the date of service of a document is the date that the electronic filing provider transmits the notice of electronic filing. For other types of service, the date of service is the date the document served is mailed, delivered in person or transmitted to the party's facsimile line.

(b) For the sole purpose of computing the deadlines under this chapter for responding to documents:

(1) Documents served by electronic service shall be deemed served, for purposes of responding, when notice of the electronic filing is transmitted to registered users in the proceeding, provided the transmission is complete before 4:30 p.m. Eastern Time on a business day. Otherwise, documents served by electronic service shall be deemed served the next business day.

(2) Documents served by facsimile shall be deemed served, for purposes of responding, when transmission of the facsimile is complete, provided the transmission is complete before 4:30 p.m. Eastern Time on a business day. Otherwise, documents served by facsimile shall be deemed served the next business day.

(3) Documents served by mail shall be deemed served 3 **calendar** days after the date of actual service.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 33.34 (relating to date of service).

**FORMAL PROCEEDINGS
APPEALS**

§ 1021.51. Commencement, form and content.

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(c) The notice of appeal must set forth the name, mailing address, e-mail address and telephone number of the appellant. The notice of appeal shall be signed by at least one attorney [**of record**] in the attorney's individual name or [**if a party is not represented by an attorney, shall be signed by the party**] **by the appellant(s).**

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§ 1021.53a. Nunc pro tunc appeals.

(a) The Board upon written request and for good cause shown may grant leave for the filing of an appeal nunc pro tunc; the standards applicable to what constitutes good cause shall be the common law standards applicable in analogous cases in courts of common pleas in this Commonwealth.

(b) **A person seeking to appeal nunc pro tunc shall file a petition to appeal nunc pro tunc. If filed after a dispositive motion that seeks to dismiss an appeal as untimely, the filing of the petition stays the deadlines for filing a response or reply concerning the motion. The Board will issue deadlines for filing a response and reply if the Board grants the petition and the dispositive motion addresses issues in addition to untimeliness.**

(c) **The petition to appeal nunc pro tunc shall comply with the requirements set forth for "motions" in § 1021.91 (relating to general), and, in addition, shall include the following:**

(1) The specific facts that the potential appellant would attempt to prove at hearing to show that nunc pro tunc relief is warranted.

(2) The specific facts that the potential appellant would attempt to prove showing that it acted promptly in seeking nunc pro tunc relief.

(3) Copies of all documents and a list of all witnesses that the potential appellant relies upon in support of the petition to appeal nunc pro tunc.

(4) Any legal authority and theories the potential appellant relies upon in seeking nunc pro tunc relief.

(5) A sworn affidavit of the person or persons having knowledge of the facts that the facts are verified as true and correct, or an unsworn written statement of such person or persons, that the facts are verified as true and correct subject to the penalties for unsworn falsification to authorities, under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(6) If the petition to appeal nunc pro tunc is not supported by an affidavit or verification as set forth in paragraph (5), an explanation of why the affidavit or verification was omitted.

(d) Responses to petitions to appeal nunc pro tunc shall comply with the requirements set forth for "responses" in § 1021.91. Unless otherwise ordered by the Board, the response shall be filed within 15 days of the date of service of the petition.

(e) A memorandum of law in support of the petition or response may be filed with the petition or response.

(f) The potential appellant may not file a reply unless the Board orders otherwise.

(g) The Board may schedule a hearing on whether nunc pro tunc relief is appropriate.

(h) If the petition to appeal nunc pro tunc is granted, the notice of appeal will be treated as though it were timely filed.

(i) If the petition to appeal nunc pro tunc is denied, the notice of appeal will be dismissed as untimely.

MOTIONS

§ 1021.94a. Summary judgment motions.

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(h) Length of brief in support of and in opposition to summary judgment. Unless leave of the Board is granted, the brief in support of or in opposition to the motion may not exceed 30 pages. If the Board grants leave to file a brief in excess of 30 pages, the brief shall contain a table of contents.

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PREHEARING PROCEDURES AND PREHEARING CONFERENCES

§ 1021.106. Voluntary mediation.

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(d) At the end of the initial stay, the parties shall jointly file a report, prepared and signed by the mediator, [which sets forth the history of mediation activities conducted] setting forth whether the mediation has been successful or has a likelihood of success if the mediation process continues to proceed. The parties may request an additional stay if necessary to complete the mediation process.

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POSTHEARING PROCEDURES

§ 1021.131. Posthearing briefs.

(a) The initial posthearing brief of each party shall contain a table of contents, proposed findings of fact (with references to the appropriate exhibit or page of the transcript), an argument with citation to supporting legal authority, and proposed conclusions of law.

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[Pa.B. Doc. No. 21-599. Filed for public inspection April 16, 2021, 9:00 a.m.]

STATE REGISTRATION BOARD OF PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

[49 PA. CODE CH. 37]

Licensure by Endorsement

The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) proposes to amend Chapter 37 (relating to State Registration Board for Professional Engineers, Land Surveyors and Geologists) by amending § 37.1 (relating to definitions) and adding §§ 37.20 and 37.20a (relating to licensure by endorsement; and provisional endorsement licensure) to read as set forth in Annex A.

Effective Date

The amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 3111 of 63 Pa.C.S. (relating to licensure by endorsement) requires licensing boards and commissions to issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth provided the applicant meets the following criteria: holds a current license, certificate, registration or permit from

another state, territory or country whose licensing requirements are substantially equivalent to or exceed the requirements in this Commonwealth; demonstrates competency; has not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth, unless the board or commission determines such conduct is not an impediment to granting the license, certificate, registration or permit; is in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit, unless the board or commission determines such conduct is not an impediment to granting the license, certificate, registration or permit; and the applicant pays fees, as established by regulation. Additionally, 63 Pa.C.S. § 3111 authorizes boards and commissions to issue a provisional license, certificate, registration, or permit while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration. Additionally, section 4(l) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P.S. § 151(l)) authorizes the Board to adopt and promulgate administrative rules and regulations, not inconsistent with the act, as are deemed necessary and proper by the Board to carry into effect the powers conferred by the act.

The act of July 1, 2020, (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41).

Background and Need for the Amendments

This proposed rulemaking is needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license to applicants who meet the requirements for licensure by endorsement as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S. § 3111, the Board must determine whether standards for licensure are substantially equivalent to or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods of competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years preceding the date of the application, and must establish, by regulation, the expiration of provisional endorsement license. This proposed rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license. The Board determined that its existing fee for certification, licensure or registration of \$50 as set forth under § 37.17 (relating to schedule of fees) is a fair and sufficient fee for a licensure by endorsement application; therefore, the Board is adopting this existing fee and not proposing a separate fee for licensure by endorsement.

Description of the Proposed Amendments

The Board proposes to amend § 37.1 by adding a definition of the term "jurisdiction" consistent with 63 Pa.C.S. § 3111.

The Board proposes to add § 37.20 which requires an applicant to satisfy six criteria required for licensure by endorsement. The first criterion, as set forth in proposed subsection (a)(1), requires an applicant to provide proof of

a current license, certification, registration or permit in good standing to practice in another jurisdiction whose standards are substantially equivalent to those established by the Board under sections 4.2—4.4 of the act (63 P.S. § 151.2—151.4) regarding procedures for licensing as a professional engineer, professional geologist and professional land surveyor and §§ 37.31—37.49. Proposed subsection (a)(1) further requires an applicant to submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit. This proposed rulemaking would also require that the copy of the applicable law, regulation or other rule include the enactment date. Additionally, because 63 Pa.C.S. § 3111 is applicable to territories and other countries that use languages other than English, where the applicable law, regulation or other rule is in a language other than English, the Board would require, at the applicant's expense, translation of the applicable law, regulation or other rule by a professional translation service.

Proposed subsection (a)(2) requires demonstration of competency. Under this provision, an applicant must provide proof of competency by demonstrating either experience in the practice of the profession or completion of professional development hours. To demonstrate competency by experience, an applicant must demonstrate active engagement in the practice of engineering, geology or land surveying, as applicable, for at least 2 of the 5 years immediately preceding the date of the application in the jurisdiction that issued the license, certificate, registration or permit. To demonstrate competency through completion of continuing education (referred to as professional development hours under the act), an applicant must submit proof of completion of 24 hours professional development hours which meets the requirements of section 4.5 of the act (63 P.S. § 151.5) regarding continuing professional competency requirements. Professional development hours must be completed during the 24 months immediately preceding the date of the application. The Board proposes completion of the professional development hours within 24 months immediately preceding the date of the application because a 24-month limitation correlates with the Board's biennial renewal requirements.

Proposed subsection (a)(3) and (4) incorporates the statutory prohibitions in 63 Pa.C.S. § 3111 pertaining to conduct that would constitute grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice the profession or occupation, and prior discipline by the jurisdiction that issued the license. As authorized by 63 Pa.C.S. § 3111(a)(3) and (4), § 37.20(c) gives the Board the discretion to determine that an act prohibited by § 37.20(a)(3) or (4) are not impediments to the granting of a license, certification, registration or a permit.

Proposed subsection (a)(5) provides for payment of an application fee, as required by 63 Pa.C.S. § 3111(a)(5). The applicable fee for licensure by endorsement under 63 Pa.C.S. § 3111 is the initial application fee in § 37.17 of the Board's current fee schedule of \$50.

Finally, proposed subsection (a)(6) requires applicants to apply for licensure in accordance with Chapter 37 in the manner and format prescribed by the Board.

In proposed § 37.20(b), the Board may require a personal interview or additional information to assist the Board in determining eligibility and competency. When a personal interview is necessary, to the extent practicable,

the Board intends to offer flexibility in the manner in which an interview is conducted to include video teleconferencing.

In proposed § 37.20(c), the Board may in its discretion determine that an act prohibited under section 4(g) of the act or disciplinary action by a jurisdiction are not impediments to licensure. Also, consistent with 63 Pa.C.S. § 3111(a)(3) and (4), proposed § 37.20(c) authorizes the Board, in its discretion, to determine that an act prohibited under section 4(g) of the act or disciplinary action by a jurisdiction are not impediments to the granting of a license, certification, registration or a permit by endorsement under 63 Pa.C.S. § 3111.

Consistent with 63 Pa.C.S. § 3111(b), proposed § 37.20a(a) provides that the Board, in its discretion, may issue a provisional endorsement license while an applicant is satisfying remaining requirements under 63 Pa.C.S. § 3111 and proposed § 37.20.

Proposed § 37.20a(b) sets the expiration of a provisional endorsement license at 1 year, unless the Board determines that an expiration date of less than 1 year is appropriate. Additionally, upon a written request, the Board may extend the term of the license upon a showing of good cause.

Proposed § 37.20a(c) sets forth reasons for which a provisional endorsement license will be terminated by the Board, including when the Board denies a license or the provisional endorsement licensee fails to comply with the terms of a provisional endorsement license.

Finally, proposed § 37.20a(d) clarifies that while an individual may reapply for a license by endorsement under proposed § 37.20, the Board will not issue a subsequent provisional endorsement license to an applicant who previously held a provisional endorsement license that expired or was terminated.

Lastly, under proposed § 37.20a(e), the Board makes clear that holders of provisional endorsement licenses must follow the rules governing the proper use of a registrant's seal as set forth under section 7 of the act (63 P.S. § 154) and §§ 37.57—37.59 (relating to registration number; seal; and use of seal).

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The costs to the Board related to processing applications for licensure by endorsement will be recouped through fees paid by applicants. Applicants who apply for licensure by endorsement will be impacted by the \$50 certificate, licensure or registration application fee in § 37.17 and may incur expenses relating to completing professional development hours if they choose to demonstrate competency in this manner. Applicants who demonstrate competency through experience will have to pay the \$50 initial application fee.

Sunset Date

The Board continuously monitors the cost effectiveness of the Board regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 6, 2021, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee (HPLC) and

the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to the Board Counsel, State Registration Board for Professional Engineers, Land Surveyors and Geologists, P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail at RA-STRegulatoryCounsel@pa.gov within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference 16A-4715 (Licensure by Endorsement), when submitting comments.

JAMES SZALANKIEWICZ, PE, PLS,
President

Fiscal Note: 16A-4715. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

GENERAL PROVISIONS

§ 37.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Hearing examiner—An individual appointed by the Board, with the approval of the Governor, to conduct hearings as may be required under the act in accordance with the act and this chapter.

Jurisdiction—A state, territory or country.

NCEES—The National Council of Examiners for Engineering and Surveying.

* * * * *

(*Editor's Note:* The following sections are proposed to be added and printed in regular type to enhance readability.)

§ 37.20. Licensure by endorsement.

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement), an applicant must satisfy all of the following conditions:

(1) Has a current license, certification, registration or permit in good standing to practice professional engineering, geology or land surveying in another jurisdiction whose standards are substantially equivalent to or exceed

those established under sections 4.2 through 4.4 of the act (63 P.S. §§ 151.2—151.4) and §§ 37.31—37.49.

(i) An applicant must submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license.

(ii) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(iii) The copy of the applicable law, regulation or other rule must include the enactment date.

(2) Demonstrates competency by one of the following:

(i) Experience in the practice of professional engineering, geology or land surveying by demonstrating, at a minimum, that the applicant has actively engaged in the practice of professional engineering, geology or land surveying in the jurisdiction that issued the license, certificate, registration or permit for at least 2 of the last 5 years immediately preceding the filing of the application with the Board.

(ii) Completion of 24 professional development hours that meet the requirements of section 4.5 of the act (63 P.S. § 151.5), regarding continuing professional competency requirements, during the 24 months immediately preceding the date of the application.

(3) Has not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certification, registration or permit to practice professional engineering, geology or land surveying under section 4(g) of the act (63 P.S. § 151(g)) and § 37.81 (relating to misconduct).

(4) Has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(5) Has paid the certification, licensure or registration fee as set forth in § 37.17 (relating to schedule of fees).

(6) Has applied for licensure in accordance with this chapter in the manner and format prescribed by the Board.

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be requested to submit additional information, including supporting documentation relating to competency and experience. The applicant may request the interview to be conducted by video teleconference for good cause shown.

(c) *Prohibited acts.* Notwithstanding subsection (a)(3) and (4), the Board may, in its discretion, determine that an act prohibited under section 4(g) of the act or § 37.81, or disciplinary action by a jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 37.20a. Provisional endorsement license.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement) and § 37.20 (relating to licensure by endorsement).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the

provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon a written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates as follows:

(1) The provisional endorsement license terminates when the Board denies the license.

(2) Failure to comply with the terms of a provisional endorsement license will result in termination of the

provisional endorsement license.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 37.20 after expiration or termination of a provisional endorsement license; however, the individual may not be issued a subsequent provisional endorsement license.

(e) *Use of seal.* An individual issued a provisional endorsement license shall follow the rules governing the proper use of a registrant's seal under section 7 of the act (63 P.S. § 154) and §§ 37.57—37.59 (relating to registration number; seal; and use of seal).

[Pa.B. Doc. No. 21-600. Filed for public inspection April 16, 2021, 9:00 a.m.]