



North Dakota State Board of Registration for Professional Engineers and Land Surveyors

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To: Legislative Rules Committee

Date: June 11, 2009

Re: Questionnaire NDAC Section 28-02.1-13 Rule Change

1. Whether the rules resulted from statutory change made by the Legislative Assembly?

The proposed rule change to NDAC 28-02.1-13 is not a result of statutory change made by the North Dakota Legislative Assembly.

2. Whether the rules are related to any federal statute or regulation?

The rule change to NDAC 28-02.1-13 is not related to any federal statute or regulation.

3. A description of the rulemaking procedure followed in adopting the rules, e.g. the type of public notice given and the extent of public hearings held on the rules.

The proposed rule change was first discussed at a meeting of the State Board of Registration held on October 21, 2008. At that time the Board members agreed that some of the language is confusing and indicated that a hearing should be held to consider possible changes to the language in paragraphs 2 & 3 of the rule. A hearing was set for 2:00 p.m. on January 8, 2009 in Room 2160 at the Ramada Inn in Bismarck. A short notice and full notice of the intent to amend administrative rules were then prepared and the Notice of the Hearing was advertized in all of the required state's newspapers on December 16, 2008 and on December 20, 2008 by the Bottineau Courant. The date of the Bottineau publishing was less than the 20 day period, however the State Board of Registration met the requirements of NDCC 28-32-10 (a). The State Board of Registration contacted the Presidents of the North Dakota State Professional Engineers Society, the North Dakota Society of Professional Land Surveyors and the North Dakota American Council of Engineering Companies with information on the proposed rule change and the date of the hearing. In addition, details of the proposed rule and hearing information were

posted to the State Board's web page. The hearing was held on January 8, 2009 in accordance with the details set out in the hearing notice. Two individuals were present at the hearing but neither of the two offered any oral or written testimony. One other individual was scheduled to appear at the hearing but adverse weather conditions prevented his appearance. He later offered written testimony. The date for receiving written comments had been set for February 9, 2009. The State Board met in special session on March 20, 2009 to consider final changes to NDAC 28-02.1-13-01 and the final language was drafted. Mr. Sean M. Fredricks, attorney for several water user districts and resource boards attended the March 20th meeting to listen to the discussion. The rule change information package was submitted to the ND Attorney General office for compliance review and later to the ND Legislative Council.

4. **Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any changes made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearing on the rules?**

Letters and emails were received from Sean Fredricks, attorney for several North Dakota water district users and resource boards, Ken Link, professional land surveyor, Todd Norton, professional land surveyor and Francis Zeigler, Director of the ND DOT. Mr. Fredricks explained that the water district users and water district resource boards he represents support a change to the monument requirements as set forth by NDAC, Section 28-02.1-13-01. At present, monuments are required to be placed to mark legal descriptions and conveyances of property which includes easements. The water entities are concerned that having to permanently monument all easements results in excessive costs for water projects. They suggested that the easements need not be monumented but that they be retraceable from established monuments. The change to the administrative rules would allow the easement to be marked but not be monumented as long as the easement could be located at a later date. The water entities maintain that these changes would result in substantial project savings. These suggestions are part of the final rule change as adopted by the State Board. Mr. Link suggested that monuments must be set whenever there is a change of direction in rights of way or when rights of way cross section lines. Mr. Link's comments were partially accepted by the State

Board as they apply to rights of way. Mr. Norton's comments are in agreement with the State Board's action. He believes that monumenting every corner results in confusion between easement corners and property corners. Mr. Zeigler commented that permanent easements must be retracedable in each section of land they cross and be retracedable from existing monuments or monuments placed at the time of the easement conveyance. Mr. Zeigler's comments were included into the final draft and the State Board considers "permanent" as an instrument having a term of five years or more.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules?

The total costs associated with the hearing are \$ 2,189.14. (Publishing - \$ 1,374.44; ND Attorney General Review - \$ 229.70; Legal Costs - \$ 585.00).

6. Provide an explanation of the subject matter of the rules and reasons for adopting the rules.

NDAC Section 28-02.1-13 describes the requirements for registrants when they prepare or assist in the preparation of documents used to convey real property and any interest therein. This section restates the requirement that when any registrant prepares or assists in the preparation of a document that conveys property or describes easements and rights of way that the registrant perform a survey. It sets the requirements for monumentation of these interests. Much of this was due to the increase in oilfield exploration and the resultant rights of way and easements. Rules were established to indicate when monumenting of these corners was required. Due to the amount of monumented corners in some areas, it was felt there was confusion between property corners and easement and rights of way corners. It was further felt that some of the confusion could be lessened and the interests of the public could be protected by changing the rule to omit the corner monument requirement for easements and also for rights of way when these rights of way corners could be retraced by using other established corner monuments. This could result in significant savings for large projects especially for water projects where large numbers of easements and rights of way are concerned. Special consideration is given in the final rule for monumenting rights of way corners when they cross

section lines or intersections thereof. The State Board of Registration's goal in this regard was above all – to protect the public but at the same time, make the costs of compliance reasonable.

7. **Whether a regulatory analysis was required by NDCC Section 28-32-08 and whether that regulatory analysis was issued.**

A regulatory analysis was required and it was prepared pursuant to NDCC 28-32-08. A copy of the regulatory analysis is attached.

8. **Whether a regulatory analysis or economic impact statement of impact on small entities was required by NDCC Section 28-32-08.1 and whether that regulatory analysis or impact statement was issued?**

No regulatory analysis was required pursuant to NDCC 28-32-08.1 because the ND State Board of Registration is an occupational or professional licensing authority exempted pursuant to Sub Section 5 of NDCC 28-32-08.1.

9. **Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09?**

There was no regulatory taking and accordingly, no constitutional taking assessment was prepared.

10. **If these rules were adopted as emergency rules under NDCC Section 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the governor's approval of the emergency statutes of the rules.**

This rule change was not adopted as an emergency rule change.

REGULATORY ANALYSIS

The following is a regulatory analysis prepared pursuant to N.D.C.C. § 28-32-08 for an amendment to administrative rule N.D.A.C. § 28-02.1-13-01 proposed by the North Dakota State Board of Registration for Professional Engineers and Land Surveyors (the "Board").

No regulatory analysis is required by N.D.C.C. § 28-32-08.1 because the Board is an occupational or professional licensing authority exempted by Subsection 5 of N.D.C.C. § 28-32-08.1.

The persons who will probably be affected by the proposed amendments to the rule are registered land surveyors and those persons who employ registered land surveyors in connection with the acquisition of easements. In theory, registered land surveyors will bear the costs of the proposed rule; those persons who acquire easements will benefit from the proposed amendment to the rule.

The probable economic impact of the proposed amendment to the rule is hard to estimate. The proposed amendment to the rule will nearly eliminate the requirement for a survey in the acquisition of easements, and will eliminate the requirement to set all monuments from such survey. A reasonable estimate is that this could result in saved survey costs of thousands of dollars per mile of easement on a single project. The total

probable impact could therefore be very significant. However, it appears that the rule, as it currently exists prior to amendment, is not necessarily being followed by all persons acquiring easements; and therefore the actual economic impact on the regulated community may not be substantial.

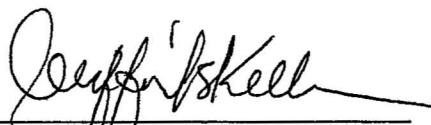
The Board has no way to estimate the total number of projects that would result in the acquisition of easements, and therefore require a survey in absence of the amendment to the rule, in any given year. In addition, the reduced costs for surveying on any such project would depend on the scope of the project. It is not practicable to try to prepare a quantification of economic data.

There are no probable additional costs to the Board from the implementation and enforcement of the amendment to the administrative rule. The amendment to the administrative rule may reduce costs to the Board as it will eliminate any unreimbursed costs arising from the enforcement of the rule as it is now written.

There will be no anticipated affect on state revenues from the amendment to the proposed rule.

There are no alternative methods for achieving the purpose of the proposed amendment to the administrative rule; accordingly none were seriously considered.

Dated this 8th day of December, 2008



Clifford E. Keller,
Executive Secretary