

**Board of Electricity  
Meeting Minutes  
October 14, 2008**

**Minnesota Room – Department of Labor and Industry  
443 Lafayette Road North, Saint Paul 55155  
[DLI.CCLDBOARDS@State.MN.US](mailto:DLI.CCLDBOARDS@State.MN.US)**

**Members Present:**

Douglas Fingerson  
Jim Freichels  
Kim Huxford  
Daniel Klein  
Timothy Malooly  
John McConnell  
Dick Owen  
John Schultz (DLI Commissioner's Designee)  
Tom Seanger  
Andy Toft

**Staff Present:**

Wendy Legge  
Annette Trnka

**Visitors:**

John Ploetz  
Dan McConnell  
Gary Thaden  
Jim Nimlos  
Russ Ernst  
David Fisch  
Bill Heaney

**Members Available by Teleconference:**

None

**Members Absent:**

Willy Hoskins  
Joe Vespa

**I. Call To Order**

The meeting was called to order by Chair Freichels at 9:01 a.m. and role was taken.

**II. Approval of Meeting Agenda**

Freichels said that the SONAR would be discussed under IV(B) and IV(C). A motion was made by Seanger, seconded by Fingerson, to approve the meeting agenda as amended. All voted in favor and the motion passed.

**III. Approval of Previous Meeting Minutes**

Wendy Legge pointed out several corrections that should be made to the Minutes of the September 11, 2008 meeting. A motion was made by Schultz, seconded by Huxford, to accept the previous Meeting Minutes as amended. The vote was unanimous and the motion passed. Malooly was not present for this vote.

#### **IV. Regular Business**

##### A. Expense Approval

A motion was made by Huxford, seconded by Fingerson, to approve the Expense Reports and Per Diems. The vote was unanimous, and the motion passed. Malooly was not present for this vote. Malooly arrived at 9:11 a.m.

##### B. Electrical Licensing

- i. Chapter 3800 – Legge went through the changes that she suggested after this draft was done by the Revisor. Seanger made a motion to accept the 10-07-08 Revisor's Draft of Chapter 3800 with marked changes presented at the Board meeting, seconded by Owen. The vote was Freichels, Fingerson, Seanger, Toft, McConnell, Huxford, Owen, Klein and Schultz voted Aye. Malooly opposed.

##### C. Continuing Education

Update on SONAR – Legge asked if any of the Board members had any further changes or recommendations for the SONAR.

Seanger made a motion, seconded by Toft, that the Board has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

Malooly stated that the educational courses would most likely take place during the business day and employees would be entitled to be paid for their time, along with the cost of the classes, which would be a burden on small businesses, although he wasn't aware of what the exact cost would be or if it would exceed \$25,000. Legge asked if there's any small business or small city, specifically, that would exceed \$25,000 in the first year after the rule takes effect. Malooly feels it's important to state for the record that this rule is adding a burden upon small business, and he opposes this rule. He said he couldn't state with authority that it would exceed \$25,000, however, it would place a burden upon small business, and he wants to go on record that he continues to oppose the continuing education rule for unlicensed registered workers.

Schultz stated that for the SONAR, the Board doesn't have to identify what the costs of enforcing the rule would be, just whether the cost for any small business or small city would exceed \$25,000 in the first year. Freichels stated that it wasn't required that businesses pay the wages of the employee while they take the required courses. Gary Thaden stated his understanding is that the unlicensed individual needs to take the classes, but that the employer is not required to pay for the training or wages, although the employer may decide to pay for it. Seanger asked with the ratio in statute for unlicensed employees to licensed workers, if the amount of unlicensed employees would be relatively small. Freichels answered that with high voltage employees that would be true, but not necessarily true for low voltage employees, as ratio only applies for certain areas such as hazardous locations doing certain work. Seanger stated that even if you had 50 unlicensed employees, using an average of \$200 a day for wages, it comes to \$10,000, which is well below \$25,000.

The Aye vote was Freichels, Fingerson, Seanger, Toft, McConnell, Huxford, Owen, Klein and Schultz. Malooly was opposed.

D. Board of Electricity Authority

- i. Questions/Answers with Bernard Johnson (Assistant Attorney General on BOE Authority) Bernard Johnson from the Attorney Generals office was introduced by Chair as the legal counsel for the previous Board of Electricity. Mr. Johnson stated that his memo dated September 5, 2008 speaks for itself and asked if there are any questions regarding the content of his memo.

Freichels stated that the Board wants to know if the Board has any authority over technical program content. Toft stated that the previous Board of Electricity determined what qualified for licensure. Now it's being called "pre-licensure," yet someone who attends a two-year technical program receives one year's credit toward the four year requirement for electrical licensing, which the Board has no say over. However, if they worked four years in the industry, the Board looks at those four years. If the applicant goes to trade school, the Board doesn't get to look at the one year's credit given to the applicant, only the three years credit that's given in the field. Toft asked what the difference is, other than it's addressed in statute that the Board doesn't have authority over this; it's still a qualification for electrical licensing. Toft stated that the past Board of Electricity spent a tremendous amount of time with their task advisory committee going over the qualifications of the technical colleges in trying to get those colleges on an equal basis of what was being offered and for the same amount of credit. Toft asked how that authority could be given back to the Board.

Johnson responded that this is two separate areas, but they do merge. The first question is "Does the Board have rule making authority over technical program approval?" He stated that the memo states that the Board does have that authority and could amend or modify the rules. Johnson went on to say that the Board does have rulemaking authority over continuing education and licensing and registration. He states that it's a logical extension to take the stance that if the Board has the authority to regulate who is licensed; then the Board would therefore have authority over what continuing courses those licensees have to take, and therefore it's logical that the Board would also have the authority over approving the programs that train the people that become licensees in the industry. Johnson states that going back to when those rules were adopted in 2002, the Board of Electricity was the entity that formed and adopted those rules. Since that time the Board of Electricity was absolved by the Commissioner of Labor and Industry and then the Board was subsequently created again. Johnson stated that looking at the Board of Electricity's entire history is why it was determined that the Board has authority over sections 3800.3820 to 3800.3885. If changes should be made to those rules, that's the Board's decision.

Malooly said he wants to clarify what Mr. Johnson stated and asked if the Board has authority over the course work that might be required. Johnson states that the program approval rules are rules that approve a program that certify that a person is competent to practice and competent to take the examination. Johnson cannot debate the substance of the rules that exist right now, nor the substance of any

proposed changes the Board might want to make to the rules. But as to which entity, the Board of Electricity or the Commissioner of Labor and Industry, has the authority to make those changes, Mr. Johnson feels the authority lies with the Board of Electricity.

Seanger asked who has the authority to review and approve the courses that are submitted. Seanger stated that the previous Board of Electricity had that authority, but it doesn't appear that this Board has that authority. Johnson stated when the Board of Electricity transferred authority to the Department of Labor and Industry, there was a transfer of powers; whether that power was transferred back to the new Board of Electricity that was formed, that's the question. Mr. Johnson stated that one thing that could be done is take it before the Legislature for clarification and to put it in statute who has that authority.

Johnson stated that for the Attorney General's office to review whether the Board has the authority over course content the AG's office would have to receive the request from the Board and he wouldn't have an answer for that question today.

Legge stated that she is representing the Department of Labor and Industry regarding this issue. She passed out a memo she had prepared on behalf of the Department summarizing their view as to why the Department has the authority over rules 3800.3820 to 3800.3885. The current Board was not just a transfer of power from the previous Board of Electricity. Legge stated that the statute that created this Board gives very limited powers to the Board. The only powers the Board has are the powers that are listed specifically in statute. The statute gives two specific powers for rulemaking, which are to adopt rules that regulate licensure or registration of electrical business, etc.; and adopt rules that regulate continuing education. Legge stated that technical program rules are not continuing education rules. People who take courses as a part of technical programs have not even applied for their licenses. Technical program rules aren't telling an applicant what they need to do to get licensed; those rules tell the educator how their program can be approved. Under the statute every power that the old Board of Electricity had, that is not specifically given to the new Board of Electricity, stays with the Commissioner of Labor and Industry. Legge states that it is crystal clear in statute that the Commissioner has the authority to approve courses, as stated in Minn. Stat. § 326.242, subd. 2(b) (to be renumbered 326B.33) and Minn. Stat. § 326.242, subd. 3d(b) (to be renumbered 326B.33) with respect to journeyman license and power limited technician license. Legge stated that if the Board goes forward with rulemaking which includes the disputed section of rules, the Department reserves the right to oppose the rules on the grounds that the Board does not have the authority to move forward with them.

Schultz stated the Department doesn't necessarily have intent to modify or abolish the rules over content in technical programs. It is the Department's intent to make sure that the law is followed.

Johnson stated that clearly there's a difference of opinion on the interpretation of who has authority over these rules. Mr. Johnson said the best way to resolve this

issue would be to go before the Legislature to have them decide who has the authority over these rules, the Department or the Board; and having the Legislature clarify the statute would avoid the rulemaking procedure, which is costly and lengthy.

Legge stated that the decision was made that the Board's rules would remain in Chapter 3800 and the Department's rules would be moved to Chapter 3801. However, a decision does have to be made regarding which are the Department's rules and which are Board rules. One option would be to have the Board agree with the Department that the Department has authority over the rules relating to technical program content. Schultz stated that if the authority isn't specifically given to the Board in statute, then by default the authority goes to the Commissioner.

Gary Thaden stated if the Board agrees that the Department has the authority over these rules and has no issue with the rules as they exist, it may lessen the Board's concern with who has the authority over the rules. If, however, the Department should want to change the rules, and the Board should disagree with the rules as proposed by the Department, the Board could at that time oppose the proposed rules. The Administrative Law Judge would give the Board, as the experts appointed by the Governor, great deference if the Board chose to intervene with the change of the rules. Mr. Thaden also stated that the Board has the ability to change the rules on licensure and he would argue that also gives the Board the ability to determine how much credit to give for any Department-approved course. He went on to state that the Board could change the rules to state that zero hours of credit for any Department-approved course. If the Board took that course, the rules would have to be amended and the Department would have the ability to intervene on that rulemaking process and the Judge may say that the Board and the Department should come together and solve the issue. Mr. Thaden concluded by stating the Board could take reassurance that this may not be a large problem after all.

Toft stated that it comes back to the rules and how they are applied. Technical colleges were required to be approved in 2002 and they needed to re-apply on a regular basis. Toft wanted to know if the Commissioner is in charge of the approval of the technical college programs, when the last time the courses were reviewed for course procedures and the amount of contact hours that they have to follow. Schultz stated that with the reorganization, there have been challenges, and the review has been one of them. Schultz stated that there is a new position created, and one of the primary tasks of the position is to administer the rules over the technical college program approval. It is hopeful that this position will be filled within the next four to six weeks in spite of the hiring freeze. Schultz stated that this issue hasn't received the attention that everyone would like, but it has not been forgotten. Schultz stated the next step will be to post the position and go through the hiring process.

Malooly stated he feels the Board should support the Department and do whatever the Board can do to assist within the Board's powers to enforce existing laws, deliver a good education and so on.

Freichels thanked Bernie Johnson for his assistance.

Schultz made a motion to identify that rules 3800.3820 to 3800.3885 are the Department's authority and to move those rules over to Chapter 3801, seconded by Freichels.

Freichels stated that he feels that if the Board is truly adamant about having authority over these rules, it should be done at the Legislative level and not in rules, otherwise there will always be contention on this issue. Toft asked if the Board did pursue a statute change to give the authority over these rules to the Board, would the Department block the Board. Schultz stated that it would depend on what the legislative change would include. The Department has the responsibility to ensure that the Board is operating within the authority that the Legislature has granted it. Schultz went on to state that the Department is not looking to amend or abolish these rules.

Schultz stated that voting in favor means only that the way the Statute is written as it is right now gives the Department authority over these rules, not whether the Board feels that it's right from a principal standpoint.

The vote was unanimous and the motion passed.

E. Enforcement

- i. Review 3<sup>rd</sup> Quarter Electrical Enforcement Activity Report – The report on Electrical Enforcement Activity by Violation Code provided by the Department of Labor and Industry was reviewed and discussed.

The meeting took a break at 10:30 a.m. The meeting reconvened at 10:45 a.m.

## **V. Special Business**

A. Reciprocal agreement(s)

- i. Review Update on South Dakota's ICC exam – Schultz stated he doesn't have an update at this point, because the state of South Dakota is without an executive director right now and it appears that the South Dakota Legislature is drafting a bill that would impact their licensing as well as their inspection programs. Schultz was at the Western Section of the International Association of Electrical Inspectors meeting which was held last month in Rapid City, South Dakota. He met with a Board member and the Executive Director of the North Dakota Electrical Board, and a Board Member of South Dakota Electrical Commission. The Executive Director from the Nebraska Electrical Division didn't have an opportunity to review the draft agreement, so it's unknown what their response will be.

In the discussion that North Dakota and South Dakota participated in there was one minor change that they would like to see in the draft Agreement. Under item 3, it currently states "The applicant must have acquired the license in the qualifying state through examination deemed equivalent to the master electrician or electrical contractor license examination in the application state..." They wanted to have "by the application state" added, so it would read "The applicant must have acquired the

license in the qualifying state through examination deemed equivalent by the application state to the master electrician or electrical contractor license examination in the application state....” Schultz stated that was a reasonable request.

Schultz stated that he believes that North Dakota was going to have their next Board meeting in the next week and hasn't heard anything back from Nebraska. The drafts are with the individual states and this Board wouldn't have to move forward with all three states at one time.

- ii. Review new Multi-State Agreement – Possibly Take Action – Schultz stated the Minutes from the Multi-State meeting in Sitka, Alaska have not been published yet. In the first paragraph on page four of The National Electrical Reciprocal Alliance draft agreement regarding membership application, it states that an applicant can be approved with a 4/5 vote of the voting members present. This means that if a majority of 80% of the voting members vote on accepting a state making application for membership, the membership is approved. As an example, Minnesota was the only state that didn't vote to approve Texas for their recent membership application. Under the draft agreement, Texas would be a part of the Reciprocal Agreement, and Minnesota would either have to also accept Texas, or withdraw from the Multi-State Agreement. Schultz stated he has concerns regarding this provision as he feels it's inappropriate, and expects that many of the other states will have the same concern. In February there's going to be a teleconference and vote on whether this document should be approved by the existing member states. Schultz stated that before this February teleconference, the Board needs to discuss and decide on changes they feel the agreement needs, or even make a decision on whether the Board wants Minnesota to be a part of the Multi-State Agreement.

Freichels said that in his review of the Agreement, he didn't see anything that addresses the issue of the ICC exam. Schultz states that the Agreement doesn't address that issue and although the issue was discussed in Alaska, no conclusion was arrived at. Seanger stated that if Texas was accepted in the Reciprocal Agreement, Texas applicants would still have to meet Minnesota's criteria. Schultz stated that isn't the case with this Agreement. The previous Agreement discussed with North Dakota, South Dakota and Nebraska is for the Master level. Schultz said that there's nothing that says the Department and the Board couldn't enter into agreements with other states on an individual agreement basis, on any of the classification levels, which is the alternative instead of participating in a multi-state agreement. Iowa has recently adopted state-wide licensing and inquired last week about some of the licensing rules in Minnesota. It is likely that Iowa will explore a reciprocal agreement with Minnesota in the future. Wisconsin is also in the process of implementing state-wide electrical licensing and may also be interested in a reciprocal agreement.

Toft stated that the current Multi-State Reciprocal Agreement requires a 100% agreement on any state entering the agreement and the current proposed agreement does not. Regarding page 7 of 9, Article 22 reflects what applicants must hold from

the licensing state a journeyman certificate or a master electrician certificate that allows individuals to work as a journeyman electrician; Toft asked if he carried a master's license and not a journeyman's license – under the multi state agreement, if he would be accepted in their state as a journeyman. Schultz stated that the reason it was worded the way it is, is because the master license in some states is not a practitioner license and will not allow the individual to work with the tools the same way a journeyman would. The intent of this language is to allow the master license to reciprocate to the journeyman license where it includes the scope of work of the journeyman. Owen had concern that the new agreement states that the representative for the individual state be physically present at these meetings, not allowing for teleconference, and wondered if that was feasible or practical. Schultz agreed with that concern and said there are other areas of the document that also cause concern. Schultz stated that it is important for the Board to review the document carefully and document any areas of concerns they have that need to be addressed.

## **VI. Committee Reports**

There are no Committee reports.

## **VII. Complaints**

There have been no complaints directed to the Board.

## **VIII. Open Forum**

John Ploetz with the Minnesota Electrical Association stated his organization had raised concerns at the last meeting of whether the Department would be able to timely process the master licenses coming up at the end of February. Mr. Ploetz wanted to thank Mr. Schultz, Mr. Wilkins and other members of the Department in working with them and putting together an outline on how those license renewals can be processed in a timely manner. One piece that has already been put up on the Department's website is a listing of master electricians, journeymen and power limited technicians who have completed their continuing education. Schultz stated that as of yesterday, not only can you identify whether you have met your own continuing education, but you can also verify whether an individual is licensed. Schultz stated that only the license holders are on that list and their name and license numbers are listed. Freichels asked if that's something that will be done for unlicensed registered individuals in the future as well. Schultz stated that the continuing education requirements for unlicensed individuals is not effective yet, but anticipates that when those rules go into effect, the same type of information will be made available for that group.

## **IX. Board Discussion**

Owen stated that he occasionally gets comments from contractors and contract inspectors about delays in information as the Department's computer database was in process of being updated and asked about the status. Schultz stated that it's still in process. Schultz stated that the processing of REIs is improving and the Department has added one more staff person, so instead

of having two employees doing the data input on REIs, there are now three. He went on to state that in the longer term and possibly by the end of the year or shortly after, the Department will be contracting with a developer for a global IT system for the entire division that involves plan review and inspection of all the different disciplines to file online, pay online, schedule online and check status of inspections online. It will require inspectors, for example, to be using tablets synchronizing daily. This project has been under exploration for the last few months. The request for proposals will be completed and posted in the next month to six weeks.

Toft asked if the Department was returning to paper licenses rather than the plastic licenses and the answer was yes. Schultz stated that all of the division licenses are now in one database and the printing of licenses is outsourced. Until there is clear direction from the Statewide Licensing Initiative, enhancements of any licensing system are on hold and in the meantime the licenses will be paper.

Freichels asked Malooly if he had a chance to review and sign his expense report for the Chair to sign. Malooly made a motion to accept his expense report, seconded by Klein. The vote was unanimous and the motion passed.

## **X. Announcements**

### A. Next Regularly Scheduled Meetings

- i. Friday, November 7, 2008, 9:00 a.m. – Minnesota Room, DLI (Possible date to be determined by the Board.) Legge stated one issue for discussion would be what date for a hearing on the rules could be. Legge stated that the whole Board doesn't need to decide a date, as the Board has given authority to Freichels to choose the date for the hearing.

Schultz asked if a Board meeting is needed in November or if the meeting could be deferred to December. After discussion, it was decided that the meeting will not be held in November, and that Vespa and Hoskins should be notified.

- ii. Tuesday, December 9, 2008, 9:00 a.m. – Minnesota Room, DLI

## **XI. Adjournment**

A motion was made by Fingerson, seconded by Klein, to adjourn the meeting of the Board of Electricity, the vote was unanimous and the motion passed. Board adjourned at 11:24 a.m.

Respectfully Submitted,

*Douglas Fingerson*

Douglas Fingerson