



State of Washington

PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17A

Ken Fuller and the Washington State
Board of Registration for Professional
Engineers and Land Surveyors
(BORPELS)

Respondent.

PDC Cases 57847 & 67383

Report of Investigation

I.

Background, Complaint and Allegations

- The Washington State Board of Registration for Professional Engineers and Land Surveyors (BORPELS) is a small state agency that relied on Department of Licensing to carry out its administrative and other functions. BORPELS received funding to operate as an agency through appropriations made to DOL, but DOL did not have control over the staff members hired or assigned to assist BORPELS in carrying out its functions, including the hiring of BORPELS Executive Director position. BORPELS board members are appointed by the Governor.
- Eric D. Peterson, Senior Assistant Attorney General for the Department of Licensing (DOL) on behalf of BORPELS, stated that during the 2019 Legislative Session, legislation was proposed (HB 1176 and SB 5443) that if approved BORPELS would become an independent state agency with responsibility for its own administrative and overhead costs including assistance with the budget. He added Governor Inslee “had appointment authority for BORPELS members under both the prior and new law, and during the 2019 Legislative Session, both bills were supported by Mr. Fuller, BORPELS board members, and DOL.
- On September 30, 2019, Cody Hart filed a complaint against Ken Fuller, BORPELS Executive Director may have violated RCW 42.17A.635 by indirectly lobbying the legislature outside of authorized channels for public agency lobbying
- On December 12, 2019, the PDC opened a formal investigation into Ken Fuller and BORPELS concerning the allegations listed in the complaint and held an Initial Hearing (Case Status Review Hearing) pursuant to RCW 42.17A.755 and WACs 390-37-060 and 390-37-071.

II.

Findings

- RCW 42.17A.635(2) states “Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying....” “(3) Any agency, not otherwise expressly authorized by law, may expend public funds for lobbying, but such lobbying activity shall be limited to: (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency.”
- Staff’s review of the response from Mr. Peterson on behalf of BORPELS found that Mr. Fuller and several BORPELS board members met with Legislators and testified in support of House Bill 1176 and Senate Bill 5443 during the first quarter of the 2019 Legislative Session. Those in-person legislative contacts appeared to have exceeded the four-day exemption for direct lobbying activities found in RCW 42.17A.635, and those meetings with Legislators and the testimony that was provided in support of HB 1176 and SB 5443 was reportable on the Lobbying by State and Local Government Agencies report (L-5 report).
- Those activities involved Mr. Fuller, who met with Legislators and/or testified in support of HB 1176 and SB 5443, and four BORPELS Board members, James Wanlger, Aaron Blaisdell, Ivan VanDeWege, and Marjorie Lund, BORPELS Board member, who also either met with Legislators or testified in support of the two bills.
- Mr. Peterson stated that BORPELS board members only serve in a part-time capacity and do not receive a salary. BORPELS board member receive up to \$50 as per diem for each day they attend an official BORPELS meeting or perform duties that are approved by the BORPELS chair. He added that BORPELS prorates the \$50 per diem that is based on an eight-hour day, and the members “are not issued state email addresses nor equipment.”
- Mr. Peterson stated that all of the 18 Respondents communications were to provide information or advocacy for official agency business including supporting HB 1176 and SB 5443 as explained in the response. He stated that only a few, including Mr. Fuller made communications with employees of other agencies or BORPELS stakeholders, and that only Mr. Fuller “sent relevant emails to stakeholders, among other recipients, on State time and using State equipment.”
- Mr. Peterson stated that “all actions were taken openly and in good faith; there is no systematic or ongoing problem; there is no material impact on the public from any impermissible indirect conduct since the direct lobbying of legislators was clearly lawful.” He stated that the Respondents involved had “no experience with lobbying law and procedures; the Respondents' activity in question was minimal (or in some cases, nonexistent)... and the Respondents derive no personal benefit from the legislation at issue as it instead clarifies BORPELS's operations.”
- Mr. Peterson provided as further evidence of Mr. Fuller's good faith “that: a) he sought information and guidance from Tod Ayers, a DOL human resources employee, concerning his role in the legislative process (see complaint, pg. 35); and, b) the plan for soliciting others' support and actions was suggested to him by Cliff Webster, a prominent lobbyist.

- Mr. Peterson stated that a “purpose of the campaign disclosure laws is to prevent secrecy or misleading the public or legislators. Nothing was secretive or misleading here.” The complainant provided a series of emails from Ken Fuller Executive Director of the Washington State Board of Registration for Professional Engineers and Land Surveyors (BORPELS) as part of the Department of Licensing soliciting support for Senate Bill 5443 during the 2019 Legislative Session. Those emails are detailed below.

Failure to timely file L-5 Reports, PDC Staff Generated Complaint (PDC Case 67383)

- RCW 42.17A.635(5) requires each state agency that has expended public funds to lobby the Washington State Legislature or a state agency to file with the PDC quarterly statements providing lobbying information undertaken by the agency for the quarter just completed.
- On December 16, 2019, BORPELS submitted four paper-filed L-5 reports disclosing \$2,080 in agency public funds were expended during calendar year 2019, however the L-5 reports filed for the third and fourth quarters of 2019 contained no reportable public agency lobbying activities had been undertaken.
- The two L-5 reports disclosed reportable public agency lobbying activity undertaken by BORPELS between January 1 through June 30, 2019 in support of House Bill 1176, Senate Bill 5443, and meeting with the Governor’s Office for the HB 1176 bill signing. The two L-5 reports filed by BORPELS disclosed the following:
 1. 2019 First Quarter (January 1 through March 31, 2019): The L-5 report for the first quarter of the 2019 Legislative Session disclosed that BORPELS spent a total of \$549.83 in public agency funds that included \$265.63 for Ken Fuller, BORPELS Executive Director, for the time he spent meeting with Legislators or testifying in support of HB 1176 and SB 5443.

In addition, four BORPELS Board members, James Wengler, Aaron Blaisdell, Ivan VanDeWege, and Marjorie Lund, met with Legislators or testified in support of HB 1176 and SB 5443 during the first quarter of 2019. The per diem and travel reimbursements costs for the board members public agency lobbying activities totaled \$284.20. The L-5 report for the first quarter of 2019 was required to have been filed by BORPELS no later than April 30, 2019 and the information was filed 234 days late.

2. 2019 Second Quarter (April 1 through June 30, 2019): The L-5 report for the second quarter of the 2019 Legislative Session disclosed that BORPELS spent a total of \$837.24 in public agency funds, that included \$240 for Mr. Fuller for the time he spent testifying before the House Appropriations committee and meeting with Governors Staff for HB 1176 bill. Mr. Fuller attributed an additional \$465 in travel costs for him to return early from a conference in Boise to attend the HB 1176 bill signing.

In addition, the L-5 report disclosed that Mr. VanDeWege, a BORPELS Board member, was reimbursed \$132.24 for his per diem and travel costs to meet with the Governor’s staff for the HB 1176 bill signing. The L-5 report for the second quarter of 2019 was required to have been filed by BORPELS no later than July 31, 2019 and the information was filed 142 days late.

- On April 24, 2020, the PDC received a completed Statement of Understanding (SOU) and a \$150 civil penalty payment from BORPELS. The \$150 civil penalty assessed against BORPELS in this matter was done in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule).
- By completing the SOU, BORPELS acknowledged a violation of RCW 42.17A.635 by failing to timely file two L-5 reports as required for a state agency engaged in public agency lobbying activities.

Use of public funds to engage in an indirect lobbying effort (PDC Case 57847):

- Mr. Fuller sent out a number of emails using his BORPELS computer, state email address, and on state time to individuals and organizations outside the permitted agency communication channels, that contained “calls to action” and indirect lobbying appeals to contact legislators in violation of RCW 42.17A.635. While some of the emails were also sent or cc’d to BORPELS Board members, PDC staff’s focus of this allegation was on the recipients outside the agency’s normal communication channel, as detailed below:

March 11, 2019 email:

Mr. Fuller sent out an email using his BORPELS/DOL computer, his BORPELS state email address, and on state time to 13 individuals or organizations that included the Executive Director for the WA On-site Sewage Association, at least three Chief Land Surveyors for the cities of Bellevue, Seattle and Vancouver, an Associate Professor for the University of Washington, several land surveyors or land surveying companies.

The email provided the names of all House members of the Consumer Protection and Business Committee, the telephone numbers, and an email hyperlink stating: “Great work so far and thank you all for your help. Our bill moved forward to the house (Into the Consumer Protection and Business Committee), we could use a few personal emails to the committee requesting it to be voted out and onto the floor. If we could get 30 or so professionals to send personal emails and phone calls to the chair Steve Kirby and a few emails to each of the committee members stressing the importance of this legislation it would be very helpful...”.

March 14, 2019 email:

Mr. Fuller sent out an email using his BORPELS/DOL computer, his BORPELS state email address, and on state time to a list of similar individuals or organizations as the March 11, 2019 email was distributed to. The email stated “it would be great if each committee member were to get letters via emails, from the public including you, asking for their support in this important bill. “Keeping it very simple and in their own words.”

The email indicated that SB 5443 statutorily fixes that statute concerning the AG’s findings that BORPELS “has the authority and standing to operate as a separate State agency” and that BORPELS “is self-funded thru license fees.” The email encouraged recipients to contact members of the legislature to voice their support, as well as to encourage other people within their networks to likewise contact members of the legislature to voice their support.

Mr. Fuller stated that “the point of my email is that we would like to have the full committee (13 members) vote positive on moving this out to the floor which may allow us to bypass the appropriations committee.” He added “It would be best for a brief email giving your background and history with a strong request to support. Chairman Kirby is a supporter.”

March 26, 2019 email:

Mr. Fuller sends out an email to Cliff Webster, contract lobbyist for BORPELS, and four other individuals or organizations listed in the earlier emails... “This year BORPELS decided to pursue a legislative fix to our budget authority complexities with DOL. The Bill is SB 5443 and has been gaining support (passed the Senate 44/4/1) and made it thru our first house committee (13/0) to move onto House Appropriations Committee.... “I realize this email comes with a bit of a shock, but I would appreciate you all sending emails to the Chair Tim Ormsby and a few of the legislators on the committee requesting their support.”

April 8, 2019 emails:

Mr. Fuller sends out an email at 11:10 am to all seven BORPELS Board members and 11 individuals or organizations stating “Out hearing before the House Appropriation Committee this Saturday apparently did not go well. We had one person testify in the “con” and the House members are uncomfortable with that. Could you call a few of the members of the Appropriations committee and let them know of your surrpot and ask them to vote this on the floor? The Committee names and phone numbers are attached in a excel sheet.”

Mr. Fuller sends out an email at 4:22 pm to all seven BORPELS Board members and 11 individuals or organizations with the Subject line “SB 5443 is needing Immediate help” and in the body of the email stating “It is our understanding the bill is under real threat of not getting pulled out of committee. Could you make a real effort of attempting to call or email and the get the work (word) out for others to do the same... Today, Please. It if is not pulled today we are done... Mr. Fuller sends out an email at 5:39 pm to all seven BORPELS Board members and 11 individuals or organizations stating

“We could use your help to just email quick two liners to the committee addresses on the excel sheet to as many of the committee members reiterating the request to Support SSB 5443 and to move it onto the floor of the House.”

April 22-23, 2019 email:

Mr. Fuller sent out and received several emails to and from BORPELS Board members and individuals or organizations concerning contacting Governor Inslee and urging he sign HB 1176 into law. Those emails included a question if there was a sample letter and Mr. Fuller stated in an email suggesting an outline stating “Dear Governor Inslee, I am writing you to request your support and signature of HB 1176 as amended. This legislative would greatly assist the Board...” As part of the email string, a BORPELS Board member asked “Is it possible to email the general membership to ask them to contact the Governor’s Office asking him to support and sign HB 1176.”

- On February 5, 2020, Mr. Peterson submitted an email stating that Mr. Fuller estimated that “he spent 20 hours during the 2019 legislative session preparing and sending emails to non-BORPELS members requesting that they contact legislators or the Governor’s office to express support for pending legislation (i.e., SB 5443 and HB 1176). He stated that this includes direct emails with non-BORPELS members, and courtesy copies to non-BORPELS members of emails that were primarily directed to BORPELS members, and includes the time spent developing those communications (e.g., compiling legislative member lists and preparing sample communications for others’ adaptation).”
- Mr. Peterson stated that Mr. Fuller further estimated that “he had 2 hours of phone conversations in this same time period requesting that non-BORPELS members contact legislators or the Governor’s office in support of the pending legislation. I believe this is the limit of what, for sake of argument, the PDC could consider indirect lobbying.” He also stated that Mr. Fuller “provided general information and answered others’ questions about the impact of the legislative proposals, but this was not connected with any request for legislative support and thus is not indirect lobbying.”
- While communicating with staff about completing a proposed SOU to resolve the allegations Mr. Peterson provided the following paragraph from Mr. Fuller stating:

“I understand the complaint...also alleged that I acted improperly by directly lobbying legislators and the Governor’s office in support of HB 1176 and SB 5443. All such direct lobbying was for official purposes and through official channels and was thus lawful. “The complaint filed also alleged that I engaged in a grass roots lobbying campaign... My conduct did not amount to such a violation, because no covered expenditures were made to present a program to the public within the meaning of the section. Last, the complaint filed alleged that I personally benefited from the proposed legislation and abused my authority to negotiate with private organizations in exchange for their legislative support.”

“There is no merit to these allegations. I hereby enter this (SOU) with respect to indirect lobbying violations in consideration of and with the understanding that the PDC will close the complaint with no findings of violation with respect to the other complaint allegations. Concurrent herewith, I am also executing a Statement of Understanding as it relates to the failure of BORPELS to timely file lobbying reports for Q1/2019 and Q2/2019, which the PDC raised on its own initiative in the course of investigating the complaint.”

- On April 24, 2020, the PDC received a completed Statement of Understanding (SOU) and a \$150 civil penalty payment from Mr. Fuller. The \$150 civil penalty assessed against Mr. Fuller in this matter was done in accordance with WAC 390-37-143 (Brief Enforcement Penalty Schedule). By completing the SOU, Mr. Fuller acknowledged violations of RCW 42.17A.635 by engaging in an indirect lobbying campaign using BORPELS funds and resources.

III.

Scope

3.1 PDC staff reviewed the following documents:

- The complaint, complaint exhibits, and supplemental complaint information filed against Ken Fuller, and BORPELS board members by Cody Hart.
- BORPEL L-5 reports filed, 2019 legislation concerning BORPELS, and information available on BORPELS website.
- Ken Fuller and BORPELS responses, email exchanges and telephone calls between PDC staff and Eric D. Peterson, Senior Assistant Attorney General for the Department of Licensing (DOL) on behalf of BORPELS.

IV.

Statutes and Rules

- 4.1 **RCW 42.17A.635(2)** states that “unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying. However, this does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties.”

Subsection(5) requires each state agency that has expended public funds to lobby the Washington State Legislature or a state agency to file with the PDC quarterly statements providing lobbying information undertaken by the agency for the quarter just completed.

Respectfully submitted this 27th day of April 2020.

s/ _____
Electronically Signed Kurt Young
PDC Compliance Officer

List of Exhibits

- Exhibit #1** October 30, 2019, initial response from BORPELS by Eric D. Peterson, Senior Assistant Attorney General for the Department of Licensing (DOL) on behalf of BORPELS.
- Exhibit #2** Additional responses provided by Eric D. Peterson on behalf of BORPELS.



Bob Ferguson
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October 30, 2019

Public Disclosure Commission
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Sent via email only to pdcc@pdcc.wa.gov

Public Disclosure Commission:

Thank you for the extension to submit this response, which is on behalf of Respondents James Wengler (Case No. 58006), Doug Hendrickson (Case No. 58005), Marjorie Lund (Case No. 58004), Aaron Blaisdell (Case No. 58003), Ivan VanDeWege (Case No. 58001), Nirmala Gnanapragasam (Case No. 58000), and Ken Fuller (Case No. 57847). Please place this response in each complaint file. The complaints were each filed by Cody Hart, and are summarized by Public Disclosure Commission staff as alleging violations of RCW 42.17A.635 for indirectly lobbying the legislature outside of authorized channels and .640 for failure to report a grass roots lobbying campaign. Each complaint attached the same 83 pages of various records.

Respondents Wengler, Hendrickson, Lund, Blaisdell, VanDeWege, and Gnanapragasam are members of the Board of Registration for Professional Engineers and Land Surveyors (BORPELS) and are collectively referred to herein as BORPELS members. The BORPELS members serve only part time on the board and do not receive a salary. Rather, under RCW 43.03.240, they receive up to \$50 for each day during which they attend an official meeting or perform prescribed duties approved by the BORPELS chair, and BORPELS prorates this \$50 payment based on an eight-hour day. BORPELS members are not issued state email addresses nor equipment. BORPELS members can claim reimbursement for certain expenses. (Here, some did not. And those that did were authorized to do so, as further described below.)

Respondent Fuller is the Executive Director of BORPELS. During the 2019 legislative session, he used an email address and equipment of the Department of Licensing (DOL), and his salary was paid by DOL, but he was likely a BORPELS employee. Up through this legislative session, BORPELS relied on DOL to carry out administrative and other functions, and BORPELS received its funding through appropriations made to DOL. But DOL did not have control over staff assigned to assist BORPELS in carrying out its functions, including the BORPELS Executive Director position. *See Formal AGO Op. 1986 No. 14.*

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As evidenced by the discussion in the AGO opinion and the attachments to the complaints, there has long been ambiguity in the relationship between BORPELS and DOL. The complaints generally allege impropriety in actions taken to support legislation in 2019 that aimed to resolve that ambiguity and clarify BORPELS's operations and processes. House Bill 1176 was ultimately passed by the Legislature and signed by the Governor.

Communications with Legislators

RCW 42.17A.635(2) generally provides that public funds may not be used directly or indirectly for lobbying. "However, this does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties." RCW 42.17A.635(2). Moreover, RCW 42.17A.635(3) provides that "[a]ny agency . . . may expend public funds for lobbying, but such lobbying activity shall be limited to (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency."

No BORPELS members nor its Executive Director violated provisions on direct lobbying.

As further detailed below, some BORPELS members communicated directly with legislators by meeting with them, or by emailing them or communicating with them via portals on the legislators' websites—all in their capacity as BORPELS members. Respondent Hendrickson did not communicate with any legislators concerning the matters alleged; he was asked to do so, but he ultimately did not contact any legislators. The BORPELS Executive Director, in his capacity as such, met with and emailed legislators directly. These communications, which took place throughout the 2019 legislative session, and which related to pending legislation affecting BORPELS (i.e., Senate Bill 5443, House Bill 1176), were through proper official channels. The communications requested legislative action—i.e., passage of legislation desired by BORPELS. Enactment of this legislation was deemed necessary for efficient conduct of public business. A key reason for BORPELS's support for the legislation was to clarify BORPELS's authority over various matters, including staffing and budget—as the past relationship with DOL was "somewhat confusing and inefficient," as emails attached to the complaints described. *See, e.g.,* complaints, pg. 33. The communications with legislators were also in the proper performance of official duties. The BORPELS members did so in their capacities as BORPELS members, and the BORPELS Executive Director acted because he was generally directed by BORPELS—by motion in an open public meeting—to work on supporting the legislation. Specifically, minutes from a December 2018 BORPELS meeting include that BORPELS would "pursue to the appropriate measures to establish itself as an independent state agency separate from the DOL.

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This will include but not be limited to . . . making appropriate RCW changes . . . The above activities will move forward to effect the changes required in the 2019 legislative session.” The meeting minutes are attached hereto. Hence, the activities of all Respondents concerning contacts to legislators were authorized under RCW 42.17A.635(2).

The Respondents’ direct communications with legislators additionally meet the exception criteria in RCW 42.17A.635(3). There were limited agency funds expended on direct lobbying of legislators, as follows:

- Respondent Wengler sent emails to 13 legislators urging their support of SB 5443, using his personal computer and private email account, at no cost to the State. And, he testified before a legislative committee one day in February, charging his per diem to BORPELS for preparation and testimony, totaling \$62.50, and his mileage, for \$157.76.
- Respondent Hendrickson did not communicate with any legislators in this matter and as such did not incur associated costs to the State.
- Respondent Blaisdell sent emails to three legislators urging their support of SB 5443, using his personal computer and private email account, at no cost to the State. And, he testified before legislative committees in February and March on three days, charging his per diem to BORPELS for a total of \$75 in February, and \$50 in March for preparation and testimony, and his mileage in February, for \$38.28.
- Respondent VanDeWege sent emails to five legislators urging their support of SB 5443 and similarly indicated support through web portals for members of the House of Representatives, using his personal computer and private email account, at no cost to the State. And, he testified before a legislative committee for one day in February, charging his mileage to BORPELS, for \$126.44, and met with the Governor’s staff in May before the bill was signed, charging his mileage to BORPELS, for \$132.24.
- Respondent Lund called staff for two legislators, urging support of SB 5443, using her personal phone, at no cost to the State. And, she testified before a legislative committee for one day in March, charging her per diem to BORPELS for preparation and testimony, for a total of \$50.
- Respondent Gnanapragasam sent emails to six legislators in March urging their support of SB 5443, using her personal computer and private email account, for which time she reported per diem and received \$15.63.
- Respondent Fuller did not charge any relevant expenses to the State. In February-March, he met on two or three days in-person with Sen. Kevin VanDeWege; on one of those days he also met in-person with Rep. Amy Walen; and he testified on three days at committee hearings on SB 5443 and HB 1176. The only thing that could potentially be viewed as a public expense in connection with his limited direct communication with legislators is his salary, which was paid for his performance of the full range of duties associated with being the BORPELS Executive Director, including education, outreach, licensing, regulatory enforcement, policy and rule development, staffing and budget issues, and more.

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But these limited expenditures are lawful under RCW 42.17A.635(3)—i.e., “[a]ny agency . . . may expend public funds for lobbying”—because the communications were: (a) to provide information on matters pertaining to official agency business; and (b) to advocate the official position or interests of BORPELS. The legislation clearly pertained to BORPELS business. And support for the legislation was BORPELS’s official position, as confirmed by majority vote in an open public meeting. Either (a) or (b) makes the Respondents’ direct lobbying conduct lawful under the statute, including when public funds are expended. Both are met here.

In sum, all of the Respondents’ communications directly with legislators were lawful.

Communications with Agencies

As to Respondents’ communications with others besides legislators, some Respondents engaged in communications with employees of other agencies. This is not unlawful, as “[a]ny agency . . . may expend public funds for lobbying, but such lobbying activity shall be limited to (a) providing information or communicating on matters pertaining to official agency business to any . . . employee of any agency or (b) advocating the official position or interest of the agency to any . . . employee of any agency,” RCW 42.17A.635(3), and “requests, recommendations, or other communication between or within state agencies or between or within local agencies” are exempted from lobbying for purposes of reporting, under RCW 42.17A.635(5)(d)(iv). All Respondents’ communications were to provide information or advocacy for official agency business, as explained above.

Communication with Stakeholders

As to Respondents’ communications with members of the public, RCW 42.17A.635(2) provides in part: “Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used . . . indirectly for lobbying.” Without waiving other defenses (should it become necessary), to the extent that any communications to targeted stakeholder organizations or members of the professional engineering, land surveying, and on-site wastewater designing licensee communities urging their support of legislation can be viewed as prohibited conduct if at public cost, this is still not a violation as to the Respondent BORPELS members here because there generally was no proof of such conduct in the complaints, and for any emails that were sent by BORPELS members to stakeholders in the community, they did not involve any use of public funds. Again, the BORPELS members were not paid salaries, and they used private email accounts and their personal equipment and time for any such communications. Only Respondent Fuller, the BORPELS Executive Director, sent relevant emails to stakeholders, among other recipients, on State time and using State equipment.

To the extent that the Public Disclosure Commission is concerned about any conduct here, it should take into account the relevant circumstances, including that: all actions were taken openly

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and in good faith; there is no systematic or ongoing problem; there is no material impact on the public from any impermissible indirect conduct since the direct lobbying of legislators was clearly lawful; the Respondents have no experience with lobbying law and procedures; the Respondents' activity in question was minimal (or in some cases, nonexistent); no unlawful contributions are even at issue here; and the Respondents derive no personal benefit from the legislation at issue as it instead clarifies BORPELS's operations. *See* RCW 42.17A.750(1)(d).

As further evidence of Respondent Fuller's good faith, in particular, the complaint documents reveal that: a) he sought information and guidance from Tod Ayers, a DOL human resources employee, concerning his role in the legislative process (*see* complaint, pg. 35); and, b) the plan for soliciting others' support and actions was suggested to him by Cliff Webster (*see, e.g.,* complaint, pgs. 2, 25), a prominent lobbyist, *see* <https://www.carneylaw.com/team/clifford-a-webster/>. A purpose of the campaign disclosure laws is to prevent secrecy or misleading the public or legislators. Nothing was secretive or misleading here.

Alleged Failure to Report Grass Roots Lobbying

RCW 42.17A.640 imposes certain filing obligations for sponsors of grass roots lobbying campaigns. The Public Disclosure Commission's website explains that grass roots lobbying involves a program addressed to the "general public," a substantial portion of which is intended, designed, or calculated primarily to influence state legislation, and it gives examples of typical expenditures associated with such campaigns. They include: "newspaper advertisements to support proposed legislation, hiring a person to organize public meetings in order to influence action on issues being considered by the legislature, creating or maintaining website, purchasing e-mail lists, or hiring someone to conduct other online activities, and hiring signature gatherers to circulate petitions for an initiative to the legislature." *See*

<https://www.pdc.wa.gov/learn/publications/lobbyist-instructions/grass-roots-lobbying>.

Importantly, this criteria is not met here, and nothing in the examples resembles the present facts. No Respondent "present[ed] a [grass roots lobbying] program to the public" within the meaning of RCW 42.17A.640. This should end the inquiry on this issue.

However, to the extent that the Public Disclosure Commission would consider the additional clauses of RCW 42.17A.640 here, obligations for reporting by sponsors of grass roots lobbying campaigns apply only to persons who have made expenditures "exceeding one thousand dollars in the aggregate within any three-month period or exceeding five hundred dollars in the aggregate within any one-month period" intended, designed, or calculated primarily to influence legislation. RCW 42.17A.640(1). As described above, the total costs with respect to BORPELS members' conduct are \$475.61 for February, \$100 for March, and \$132.24 for May, which are well under the one-month and three-month limits. And, these costs were incurred to reimburse BORPELS members for their time and travel for direct lobbying of legislators, which is permissible under these facts; the costs were not for a grass roots lobbying campaign, nor an alleged conspiracy to conduct one. To the extent that Respondent Fuller's salary could be viewed

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as an expenditure in excess of the limits, his salary was not paid “primarily to influence legislation” within the meaning of RCW 42.17A.640, but instead was for his performance of the full range of duties associated with being the BORPELS Executive Director, including education, outreach, licensing, regulatory enforcement, policy and rule development, staffing and budget issues, and more. No expenditure here is at all similar to what the Public Disclosure Commission’s website refers to as typical for a grass roots lobbying campaign. The Respondents did not violate RCW 42.17A.640.

Supplemental Complaint re: Respondent Fuller

On October 28, 2019, the complainant submitted additional narrative in follow-up to the complaint against Respondent Fuller. The supplemental narrative alleges wrongdoing in connection with a professional organization’s support for proposed legislation. Yet, the quotes referenced do not establish the facts alleged (i.e., an agreement that an on-site designer should be appointed to serve on BORPELS, in exchange for the organization’s support, and that the Governor somehow also agreed). There was no such agreement, and the statutes would not allow it. RCW 18.43.030 provides in relevant part that BORPELS shall consist of seven members, and: “Five members of the board shall be registered professional engineers licensed under the provisions of this chapter. Two members shall be registered professional land surveyors licensed under this chapter.” The complainant’s supplemental allegation is unfounded and unworthy of further consideration by the Public Disclosure Commission.

The supplemental narrative also references the BORPELS members, claiming that the legislative proposals “personally benefited each board member and allows control of agency funds previously not available to them and in doing so, also provides the Governor more control since he appoints the Board.” Yet, BORPELS has long been an independent agency but relied upon DOL for certain administrative and other functions, including assistance with management of BORPELS’s budget, which BORPELS under the newly enacted legislation will be responsible for on its own. The law change provides BORPELS with more direct control of its agency funds, but this does not amount to personal benefit for BORPELS members or the BORPELS Executive Director because the BORPELS funds are for agency purposes. Further, concerning the allegation of Governor control, the Governor had appointment authority for BORPELS members under both the prior and new law. *See* RCW 18.43.030. The attempt to buttress the complaints against the BORPELS members is unavailing and unworthy of further consideration.

CONCLUSION

The complaints against the Respondent BORPELS members should be dismissed with no further action. The same should be true of the complaint against Respondent Fuller, or, at worst, the complaint should be otherwise resolved without imposition of penalties and without warranting further time spent on investigation of the matter.

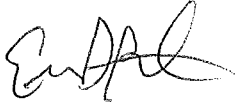
ATTORNEY GENERAL OF WASHINGTON

October 30, 2019

Page 7

I am happy to provide further information required by the Public Disclosure Commission for its consideration of the complaints. Thank you for your consideration of the matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric D. Peterson", written in a cursive style.

ERIC D. PETERSON

Senior Assistant Attorney General

Licensing and Administrative Law Division

Encl.: Minutes from Dec. 6, 2018, BORPELS Special Meeting



STATE OF WASHINGTON
**BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**
SPECIAL BOARD MEETING MINUTES

DATE: December 6, 2018

TIME: 8:00 a.m.

LOCATION: Radisson Hotel SeaTac Airport
18118 International Blvd.
Seattle, WA 98188

BOARD MEMBERS

James Wengler, PLS, CFedS, Chair
Ivan VanDeWege, PE, Vice Chair
Stephen Shrope, PE, SE
Nirmala Gnanapragasam, Ph.D, PE
Doug Hendrickson, PE
Marjorie Lund, PE, SE
Aaron Blaisdell, PLS

STAFF MEMBERS

Ken Fuller, PE, Executive Director
Jennifer Lingle, Administrative Assistant
Jill Short, Investigations & Compliance Manager
Elizabeth Lagerberg, AAG Advisor
Meg McCann, Deputy Director
Jennifer Clawson, Assistant Director
Sieng Bonham, Budget Manager
Beau Perschbacher, Policy and Legislative Director
Rick Storvick, Board Staff
Sarah Pittman, Board Staff
Vonna Rakestraw, Board Staff

GUESTS

Tom Barger, PLS, LSAW

OPEN SESSION

1. Call to Order 8:00 a.m.

1.1. Introductions

Board members, staff, and guests introduced themselves.

1.2. Approval of Order of Agenda

Recommendation to amend agenda to add 4.2.4 2018-08-0007-00ENG, 4.2.5 2018-05-0007-00ENG, and 4.2.6 2018-08-0013-00ENG.

MOTION: Mr. Blaisdell made a MOTION to accept the agenda as amended. Mr. VanDeWege seconded the MOTION and it passed.

1.3. Approval of Draft Minutes: October 18, 2018

MOTION: Mr. Hendrickson made a MOTION to approve the October 18, 2018 minutes. Ms. Lund seconded the MOTION; and it passed.

1.4. Review Communication

None.

1.5. Public Comment Opportunity

None.

2. Interagency Relations

2.1. DOL Budget & Legislation Process

Ms. Bonham gave a presentation to the Board that included breakdowns for the Engineer and Land Surveyor budget for the current biennium. Justin Leppa, Budget Forecasting Officer, will attend the next board meeting to give more details to the board.

Ms. Clawson let the Board know that DOL is committed with sharing information and authority the Board needs. DOL is currently working on time studies and performance measures on how staff's time is spent. DOL is wanting to work with the Board on what is needed in the position description for the Executive Director.

Mr. Perschbacher gave a legislation update on the RCW 18.43 suggested language changes on Professional Engineer requirements.

Ms. McCann re-introduced herself to Board as her new position with DOL as Deputy Director. She also let the Board know that DOL is in process of changing the Mission Statement to more of a Purpose State and to focus more on why we do what we do. She also agreed with Ms. Clawson on doing a better job working with the Board.

MOTION: Mr. VanDeWege made a MOTION that the board finds the language in bill Z-0047.3/19 third draft acceptable. Ms. Gnanapragasam seconded the motion and it passed unanimously.

Action Item: Ms. Bonham will e-mail the presentation to the Board.

2.2. Interagency agreement BORPELS plan forward

Mr. Fuller gave an update on the ongoing team meetings with DOL's executive group, Mr. Wengler, Ms. Gnananapragasam, and Mr. VanDeWege. He mentioned the team is discussing two options; One, remaining under DOL's agency umbrella with an interagency agreement requiring certain authority over the budget and staffing; and, secondly, pursuing legislative action to amended RCW's 18.43, 18.210 and 18.235, which will allow BORPELS to establish itself as a small agency. Mr. Fuller stated he is working with DOL on the possible language and action on the first option and DOL has agreed to at least remain neutral on the legislative option. Mr. Fuller committed to completing the BORPLES "ask" letter by the end of the week and transmitting it to Jennifer Clawson and DOL for their review and proposal. DOL has committed to a response and proposal by the end of the year.

MOTION: Mr. VanDeWege made a MOTION to eliminate confusion in authority, and establish control and accountability over; the engineers account (the 024 account), BORPELS staff, and the Executive Director's position, the BORPELS will pursue the appropriate measures to establish itself as an independent state agency separate from the DOL. This will include but not be limited to acquiring an agency number and making appropriate RCW changes. The budget and HR functions for the Executive Director will be administered by DES Small Agency Financial Services. A contract or interagency agreement will be established with DOL to provide licensing, investigation, and administrative functions. The above activities will move forward to effect the changes required in the 2019 legislative session; however, if the Director of DOL provides a solution to issues previously raised by BORPELS by December 31, 2018, and the solution is approved by the BORPELS, BORPELS will cease the pursuit of a separate state agency at this time. Ms. Lund seconded the motion and it passed.

3. Committee Reports

3.1. Exam/Qualifications Committee

Ms. Lund delivered the committee's report.

Reviewed the following:

- WAC 196-26A-040 & WAC 196-30-030
 - Specified board information requested
 - Attest to reading Chapter 58.09 RCW & WAC 332-130
 - Add 5yr expired requirement

- If expired 5 or more years a renewal application must be submitted and will be required to retake the law exam and obtain a passing score.
- Adding professional development hours (PDH) for PLS & On site to 15 hours

Ms. Rakestraw and Mr. Fuller provided a report on the status of the R3 upgrade and the psychometrician.

Recommend approval of the On-Site cut score of 65/100 which resulted in 8 passing.

Recommending PLS 2hr exam only be given 2 times a year, until new exam is created

Staff & committee members are working on amending the On Site law review exam

MOTION: Mr. Shrope made a MOTION to accept the Exam/Qualifications Committee report. Mr. Blaisdell seconded the MOTION; and it passed.

3.2. Practice Committee

Mr. Blaisdell delivered the committee's report.

Total complaints received since the last meeting: 11

3 - Engineering Complaints

3 - Surveying Complaints

2 - Unlicensed Engineering Complaint

1 - Unlicensed Surveying Complaint

2 - Corporation Complaints

There are currently 3 individuals on compliance monitoring (Leigh McIntire, OS; Edward Snyder, PLS; and Bruce Studeman, PLS). All three individuals are currently in compliance with the terms of their board orders. Mr. Studeman has met the terms of his order and will be removed from compliance monitoring.

MOTION: Mr. VanDeWege made a MOTION to accept the Practice Committee report. Mr. Hendrickson seconded the MOTION; and it passed.

3.3. Surveying Committee

Mr. Hendrickson delivered the committee report.

Discussion was held regarding:

- Bellingham Technical College review. No further contact since October meeting, the school is presently clarifying contact hours of students with licensed Land Surveyors
- A land surveyor for Renton Tech was struck by a vehicle in October/November and other persons are working course content delivery at this time.
- Yakima Valley Community College is starting up a survey curriculum.
- Exam question development: On feedback from Danis in question development, this committee recommends that board members refrain from positioning as question writers and remain in a position of vetting and approval.
- Monument Letter issuance: Status report indicates that of approximately 20,000 electronic versions issued roughly 10% bounced back as undeliverable and about 30 generated questions of verification of validity of source (questioning if spam mail).
 - Email addresses to be deployed to listserv.
 - Discussion of a letter from the County Road Administration Board and a follow on meeting regarding a MOU with the counties and DNR for working around the specific requirements of the Monument recovery process. Further discussion and action in the future with the DNR taking lead.
- New issuance of RCW 64.90
 - Dealing with common ownership interest.
 - Conditions appear to allow Land Surveyor licenses to record maps without seals and signatures required by survey law.
 - Basal issue of acceptance by counties of such maps as recorded surveys.

3.4. Executive Committee

Mr. Wengler delivered the committee report.

Discussion was made regarding:

- Budget.
- Interagency Agreement.

3.5. Outreach Education Task Force

Ms. Lund delivered the report.

Discussion was made regarding:

- Goals
 - Finance for next biennium
 - Mission
- Looking at 3 different groups
 - Licensing track
 - Current stakeholders
 - Public

EXECUTIVE SESSION: Mr. Wengler, Board Chair, announced the purpose and an estimated 20 minutes for Executive Session. At the conclusion of the 20 minutes the Board took a break, and reconvened open session.

OPEN SESSION RECONVENES

4. Disciplinary Activity

4.1. New Board Orders

No business.

4.2. Recommended closures

4.2.1. 2017-11-0010-00ENG

Mr. Wengler recommended the case be closed.

MOTION: Ms. Lund made a MOTION to accept the case manager's recommendation for closure. Mr. Hendrickson seconded the MOTION, and it passed. Mr. Wengler abstained.

4.2.2. 2017-12-0001-00ENG

Mr. Wengler recommended the case be closed.

MOTION: Mr. VanDeWege made a MOTION to accept the case manager's recommendation for closure. Mr. Blaisdell seconded the MOTION, and it passed. Mr. Wengler abstained.

4.2.3. 2017-03-0003-00ENG

Mr. VanDeWege recommended the case be closed.

MOTION: Mr. Hendrickson made a MOTION to accept the case manager's recommendation for closure. Ms. Gnanapragasam seconded the MOTION, and it passed. Mr. VanDeWege abstained.

4.2.4. 2018-08-0007-00ENG

Mr. Shrope recommended the case be closed.

MOTION: Mr. Blaisdell made a MOTION to accept the case manager's recommendation for closure. Mr. Hendrickson seconded the MOTION, and it passed. Mr. Shrope abstained.

4.2.5. 2018-05-0007-00ENG

Mr. Blaisdell recommended the case be closed.

MOTION: Ms. Lund made a MOTION to accept the case manager's recommendation for closure. Ms. Gnanapragasam seconded the MOTION, and it passed. Mr. Blaisdell abstained.

4.2.6. 2018-08-0013-00ENG

Ms. Gnanapragasam recommended the case be closed.

MOTION: Mr. Hendrickson made a MOTION to accept the case manager's recommendation for closure. Mr. VanDeWege seconded the MOTION, and it passed. Ms. Gnanapragasam abstained.

3.3. Disciplinary Report

Packet item only; no action.

5. New Business

5.1. Complaint Response- Quick Response

Ms. Short gave information on how New Mexico handles their complaint process and what they do to speed up the process.

Action Item: Present steps on how we can expedite cases.

Action Item: Present process on how New Mexico handles complaints at Board Workshop.

6. Old Business

6.1. Review Prior Action Items List

Ms. Lingle reviewed the master action item list with the Board.

6.2. Outreach Calendar

The Board shared upcoming outreach opportunities.

6.3. ^FDANIS Job Task Analysis Survey Results

Discussion was made during the Committee meetings.

7. Executive Director's Report

7.1. Program Operations

- Mr. Fuller informed the Board that he was meeting with new Pro-Tem member Dan Clark on December 17th.
- Mr. Fuller gave an update on the data package for the R3 clean-up.
- There have been some DOL staff changes within the Regulatory Boards Section. Amairani Padilla and Troy Lincoln have left the agency. Keith Peterson is the new Investigator.

7.2. Financial Report

The Financial Report was reviewed.

7.3. Travel

Mr. Fuller and Mr. Shrope will attend the NCEES Regional meeting in Atlanta, GA in February 2019.

Ms. Gnanapragasam, Mr. Wengler, and Mr. Blaisdell showed interest in attending Western Zone in Boise Idaho in May 2019.

7.4. Other Items

No business.

8. Assistant Attorney General's Report

Ms. Lagerberg gave a brief update on the Shasta McKinnley and Tappel Fishery cases.

9. Other Business

9.1. Any Other Business

No business.

9.2. Additional Public Comment

None.

9.3. Action Items from this Meeting

Action items were reviewed and will be added to the master action items list.

9.4. Agenda Items for Next Meeting

- DOL Budget Presentation
- Workshop

10. Adjourn Meeting: 1:33 p.m.

Next meeting: February 5, 2019 11:00 a.m. – Committee Meetings
February 5, 2019 1:00 p.m. – Workshop
February 6, 2019 8:00 a.m. – Special Board Meeting
Radisson Hotel Seattle Tacoma Airport
18118 International Blvd.
Seattle, WA 98188

Respectfully Submitted:



Ken Fuller, PE, Executive Director

PDC Exhibit #2

BORPELS/Ken Fuller Responses from Eric Peterson, Senior AAG

PDC Case 57847

Tue 1/28/2020 12:07 PM

Mr. Young, thank you for your voicemail update last week. As to the draft Statement of Understanding, I suggest a few edits:

- In the first paragraph, where it says “BORPELS, a division of the Department of Licensing,” I suggest replacing this with: “BORPELS, a separate board that—at the time—was affiliated for certain administrative purposes with the Department of Licensing...”
- As to the disclosures of reported expenses for Q1/2019, the draft Statement of Understanding says BORPELS spent a total of \$549.83, which represented \$265.63 for Ken Fuller’s salary, and per diem/travel costs for BORPELS members totaling \$284.20. I understand that BORPELS has now filed an amended report for Q1/2019, linked here, updating the BORPELS member per diem/travel totals to be \$559.98, and updating Mr. Fuller’s salary attributable to lobbying to be \$270.01, which brings the total of reported expenditures for this quarter to \$829.99. For accurate info, I believe the draft should match the amended report. The initial report contained inadvertent errors.
- And as to the disclosures of reported expenses for Q2/2019, the draft Statement of Understanding says BORPELS spent \$837.24 in total, which included \$240 for Ken Fuller’s salary, and travel costs for Mr. Fuller of \$465 and for BORPELS member Ivan VanDeWege of \$132.24. I understand that BORPELS has also now filed an amended report for Q2/2019, linked here, updating the travel costs for Mr. Fuller to be \$225. In the initial report, the \$240 attributed to Mr. Fuller’s salary had been double-counted to also appear as travel costs; the total travel costs are now corrected to be \$357.24. The amended report also calculates Mr. Fuller’s salary attributable to lobbying as \$260.42. Hence, I believe the total reported expenditures for this quarter should be \$617.66, as reflected in the amended report.

You had provided the draft Statement of Understanding as a PDF document. Can you please incorporate edits consistent with the above and send another copy? With these edits, I anticipate that Mr. Fuller can promptly sign the Statement of Understanding and submit the \$150 payment from BORPELS to the PDC.

Thank you for your attention to this matter. Please call if you have questions or concerns.

Eric D. Peterson
Senior Assistant Attorney General
Licensing and Administrative Law Division Chief

Wed 2/5/2020 2:35 PM

Mr. Young, At your request, I spoke with Ken Fuller about the issues in your email.

He estimates that he spent 20 hours during the 2019 legislative session preparing and sending emails to non-BORPELS members requesting that they contact legislators or the Governor’s office to express support for pending legislation (i.e., SB 5443 and HB 1176).

This includes direct emails with non-BORPELS members, and courtesy copies to non-BORPELS members of emails that were primarily directed to BORPELS members, and includes the time spent developing those communications (e.g., compiling legislative member lists and preparing sample communications for others' adaptation).

Mr. Fuller also estimates that he had 2 hours of phone conversations in this same time period requesting that non-BORPELS members contact legislators or the Governor's office in support of the pending legislation. I believe this is the limit of what, for sake of argument, the PDC could consider indirect lobbying.

Mr. Fuller also provided general information and answered others' questions about the impact of the legislative proposals, but this was not connected with any request for legislative support and thus is not indirect lobbying.

I hope that this information enables us to resolve the pending complaint. I look forward to hearing from you.

Mr. Fuller is prepared to execute the revised Statement of Understanding and have BORPELS submit payment on the lobbying report issues. I hope we can soon resolve all outstanding matters without further time and expense.

Thank you for your consideration.

Eric D. Peterson
Senior Assistant Attorney General
Licensing and Administrative Law Division Chief