

APA-1
6/93

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 330 Department or Agency Board of Licensure for Professional Engineers & Land Surveyors

Rule No. 330-X-16-.06

Rule Title: Discipline

_____ New; XX Amend: _____ Repeal; _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, safety, or welfare? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

.....
Does the proposed rule have any economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

.....
Certification of Authorized Official

I certify that the attached rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama, 1975 and that it conforms to all applicable filing requirements of the Administrative Procedures Division of the Legislative Reference Service.

Signature of certifying officer: Regina A. Dumas
Date 4/17/12

ALABAMA STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 330-X-16-.01 Complaints
330-X-16-.05 Disciplinary Hearings
330-X-16-.06 Discipline
330-X-16-.07 Reissuance of Licensure or Certification
after Revocation or Suspension

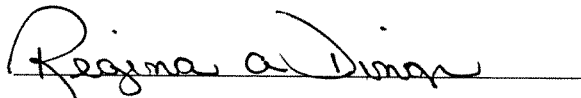
INTENDED ACTION: Amend

SUBSTANCE OF AMENDMENT: The Board proposes to amend existing rules to update the information required on a complaint form, to clarify the process for negotiated settlements, to correct the title of two sections, and to add the process for the reissuance of a license or certification that has been surrendered.

TIME, PLACE, MANNER OF PRESENTING VIEWS: A public hearing will be held only if requested by an interested party. A written request should be submitted to the agency contact person listed below. Interested persons may present their views in writing to the Alabama Board of Licensure for Professional Engineers and Land Surveyors, 100 N. Union Street, Suite 382, Post Office Box 304451, Montgomery, Alabama 36130-4451.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written comments concerning these changes must be received by the Alabama Board of Licensure for Professional Engineers and Land Surveyors no later than June 6, 2012.

CONTACT PERSON AT AGENCY: Regina A. Dinger, Executive Director; Alabama Board of Licensure for Professional Engineers and Land Surveyors; P.O. Box 304451, Montgomery, AL 36130-4451; (334) 242-5568.



Regina A. Dinger, Executive Director
Alabama State Board of Licensure for
Professional Engineers and Land Surveyors

(e) Closing Argument. Each side shall be permitted to make a short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.

(f) The Board may request one or both sides to prepare within seven days a proposed order of the Board for the Board's consideration including findings of fact, official notice, and conclusions of law. Underlying facts of record which support the findings should be cited.

(g) Order. Following completion of the hearing or upon receipt of the Hearing officer's recommendations, findings of facts and conclusions of law, the Board shall issue an order within 30 days, which shall include findings of fact, official notice taken, and conclusions of law stated separately. A copy of the order shall be delivered by certified mail, return receipt requested, and first class mail, postage prepaid, to the respondent or if represented by counsel, to his or her counsel of record.

(2) Evidence. Evidence shall be admitted in accordance with the Alabama Administrative Procedure Act, Section 41-22-13, Code of Alabama 1975. Relevant Federal, State, and local codes as well as relevant engineering and land surveying society codes, guidelines, and standards may be admitted into evidence in disciplinary proceedings before the Board to set forth standards generally accepted by the professions. These would include relevant engineering or land surveying codes and standards such as, current editions of the National Electrical Code, American Society of Mechanical Engineers' Codes, Standard Building Code, and the Alabama Society of Professional Land Surveyors' Standards of Practice for Surveying in the State of Alabama dated May 7, 2002.

(3) Other. The hearing shall be conducted in compliance with the provisions of the Alabama Administrative Procedure Act, Chapter 22, Title 41, Code of Alabama 1975. If the accused person or corporation fails or refuses to appear, the Board may proceed to hear and determine the validity of the charges.

(4) Negotiated Settlements. The Board attorney, in cooperation with the Investigative Committee, is hereby authorized to negotiate settlements with any respondent wishing to do so. In the event that the ~~Board attorney~~ Investigative Committee and the respondent have reached tentative agreement on a negotiated settlement prior to the date set for hearing of the charges, such agreement shall be presented to the Board at the first available opportunity. The Board may either accept or reject the tentative agreement of negotiated settlement and if accepted, the respondent shall be notified and no hearing held. If the Board rejects the tentative agreement of negotiated settlement, the charges shall be heard by the Board within a reasonable time.

Author: Board

Statutory Authority: Section 41-22-13, Section 41-22-16(c); Section 41-22-19 (d); Section 34-11-11; Section 34-11-16; Section 34-11-35, Code of Alabama 1975

Effective date: September 10, 1982. Amended: December 19, 1984, October 20, 1987, April 9, 1990, August 17, 1992, October 28, 1998, July 23, 2002, and July 24, 2008.

330-X-16-.06 Discipline Disciplinary Actions.

(1) Upon a finding that the respondent has violated any enumerated provision of Sections 34-11-11, 34-11-15, 34-11-16, or any rule adopted pursuant to Section 34-11-35, the Board shall

impose any or all of the disciplinary penalties set forth in Code of Alabama 1975, Section 34-11-11.

(2) Stay of Execution of Order. The Board may, in its discretion, permanently or temporarily stay the execution of its order to censure, place on probation, fine, revoke, or suspend a licensee respondent's license, certification, or certificate of authorization. The Board may, in its discretion, permanently or temporarily stay the execution of its order to fine a non-licensee respondent. The stay may be conditioned on any provision the Board deems appropriate under all the circumstances of a particular case.

(3) Consideration. In determining whether a license, certification or certificate of authorization should be revoked or suspended, and whether execution of the order should be stayed, and upon what conditions, the Board shall consider all relevant factors.

(4) The Board shall not accept voluntary surrender of a license, certification or certificate of authorization to avoid possible disciplinary actions by the Board.

Author: Board

Statutory Authority: Section 34-11-11; Section 34-11-35, Code of Alabama 1975

Effective date: September 10, 1982. Amended: December 19, 1984, October 20, 1987, October 28, 1998, and January 16, 2009.

330-X-16-.07 Reissuance of Licensure or Certification after Revocation, Surrender, or Suspension.

(1) Revocation or Surrender. Any person, corporation, partnership, or firm whose license, certification, or certificate of authorization has been revoked or surrendered may apply, when permitted by Law, to the Board for reissuance of the license, certification, or certificate of authorization.

(a) In the application for reissuance, the applicant should state why the license, certification, or certificate of authorization should be reissued and should specifically set forth any changed circumstances which would justify reissuance.

(b) Upon receipt of such application the Board shall grant the applicant a hearing on reissuance, at which time the applicant may appeal to the Board to reissue his or her license, certification, or certificate of authorization.

(2) Suspension. Any person, corporation, partnership, or form whose license, certification, or certificate of authorization has been suspended may apply, when permitted by Law, to the Board for reissuance of the license, certification, or certificate of authorization.

(a) Thirty days prior to the completion of the suspension, the Board will send a notification to the suspended person, corporation, partnership, or firm outlining the necessary actions that need to be taken in order for the license, certification, or certificate of authorization to be reissued.

(b) If all conditions for reissuance of a license or a certificate of authorization have been met, but a request for reissuance is not received within thirty days after completion of the suspension period, the status of the license or certificate of authorization will be changed to lapsed.