

APA -1
6/93

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Board of Licensure for Professional

Control 330 Department or Agency Engineers & Land Surveyors

Rule No. 330-X-16-.05

Rule Title: Disciplinary Hearings

 New; X 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. Dinger
Date 5/30/2014

ALABAMA STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

NOTICE OF INTENDED ACTION

RULE NO. & TITLE: 330-X-16-.05, Disciplinary Hearings

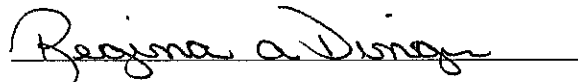
INTENDED ACTION: Amend

SUBSTANCE OF AMENDMENT: The Board proposes to amend an existing rule to delete references to specific standards, codes, and guidelines that are accepted and standards of practice. The list was not all inclusive and it was determined to reference in general instead of listing only some by name.

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 July 14, 2014.

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

**BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

**CHAPTER 330-X-16
DISCIPLINARY ACTION**

330-X-16-.05 Disciplinary Hearings.

(1) Conduct of Hearing.

(a) **Hearing Officer.** The Board may, in its discretion, and subject to the applicable provisions of the Alabama Administrative Procedures Act appoint a person to act as Hearing officer at disciplinary hearings. In the event a Hearing officer is appointed to preside at the hearing, he or she shall rule on all questions of evidence and procedure, not withstanding any other provisions of these rules to the contrary.

(1) The Board may, in its discretion and subject to the applicable provisions of the Alabama Administrative Procedures Act, appoint a Hearing officer to hear the evidence and submit a recommendation to the Board, including recommended finding of facts and conclusions of law at disciplinary hearings. The Board will consider the Hearing officer's recommendations and the Board shall issue an appropriate administrative order approving, modifying or rejecting the Hearing officer's recommendation.

(b) **Plea.** The respondent shall plead either "guilty" or "not guilty" to the charges.

(c) **Opening Statement.** Each side shall be permitted to make a short opening statement.

(d) The Board shall present its evidence, followed by the respondent, followed by rebuttal by the State. Each witness called may be examined in the following manner:

1. Direct examination.
2. Cross examination.
3. Examination by Board.
4. Re-direct examination.
5. Re-cross examination.
6. Re-examination by Board.

(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 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, July 24, 2008 and July 27, 2012.