

APA-1

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control: 330
Department or Agency: Alabama State Board of Registration for Professional Engineers and Land Surveyors
Rule No.: 330-X-2-.01
Rule Title: Definitions Of Terms
Intended Action: Amend

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

To what degree?: N/A

Is the increase in cost more harmful to the public than the harm that might result from the absence of the proposed rule? NA

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

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an 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 proposed 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 Procedure Division of the Legislative Services Agency.

Signature of certifying officer

William R. Huett
Rick Huett

REC'D & FILED

Date

Tuesday, October 15, 2024 OCT 15, 2024

LEGISLATIVE SVC AGENCY

APA-2

ALABAMA STATE BOARD OF REGISTRATION FOR
PROFESSIONAL ENGINEERS AND LAND SURVEYORS

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama State Board of Registration for Professional
Engineers and Land Surveyors

RULE NO. & TITLE: 330-X-2-.01 Definitions Of Terms

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:
Remove restrictive terms from definitions

TIME, PLACE AND MANNER OF PRESENTING VIEWS:
11:00 A.M., 100 N. Union Street, Ste 382, Montgomery, AL 36104, or email, or
virtual attendance.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:
Thursday, December 5, 2024

CONTACT PERSON AT AGENCY:
Rick Huett,
rick.huett@bels.alabama.gov

William R. Huett

Rick Huett

(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

330-X-2-.01 Definitions Of Terms.

(1) Section 34-11-1, Code of Ala. 1975, provides for definitions of the following terms: Board, engineer or professional engineer, engineer intern, practice of engineering, land surveyor or professional land surveyor, land surveyor intern, practice of land surveying, practice and offer to practice, and responsible charge.

(2) The terms "consultation," "investigation," "evaluation," and "planning" as used in the definition of the practice of engineering set forth in Section 34-11-1(7), Code of Ala. 1975, shall include, but are not limited to, services provided by testing laboratories involving the selection of proper tests to be performed (consultation and planning) when done for the purpose of developing design criteria or for the purpose of determining cause of failures (investigation) and analyses to provide recommendations for the foundation and materials to be used in the design or judgment which relate to the acceptability of structural or foundation construction (evaluation). Testing and inspection do not constitute the practice of engineering (1) when they are performed in accordance with previously written standards or specifications or satisfy the standards setting forth the methods and techniques to be followed by the testing agency and no judgment is required other than a comparison of the materials in place with the previously specified standards or (2) when testing or inspection data are collected in conformance with a specific standard.

Any attempt to determine the structural integrity or capacity of a building, or any sub-system thereof, other than detection of problems by visual inspection or normal operation of the user's controls, constitutes the practice of engineering.

(3) The term "gross negligence" as used in Section 34-11-11(a) (2), Code of Ala. 1975, ~~shall mean~~ means the practice of engineering or land surveying by a licensee characterized by the reckless disregard for the rights, safety, or welfare of others, which could result in injury or loss of life or damage to property or financial loss.

(4) The term "incompetency" as used in Section 34-11-11(a) (2), Code of Ala. 1975, ~~shall mean~~ means the practice of engineering or land surveying by a licensee who is either incapable of exercising ordinary care and diligence, or who lacks the ability and skill necessary to properly perform the duties he or she undertakes, or who is not qualified by experience and/or education to perform adequately and competently.

(5) The term "misconduct" as used in Section 34-11-11(a) (2), Code of Ala. 1975, ~~shall mean~~ means the practice of engineering or land surveying by a licensee who performs any acts, causes omissions or makes any assertions or representations which are fraudulent, deceitful, or misleading,

or which in any manner whatsoever discredits or tends to discredit the profession of engineering or land surveying.

(6) The term managing agent of the firm as used in Section 34-11-9, Code of Ala. 1975, and Section 330-X-15.01 of the Administrative Code ~~shall also be construed to mean~~ means "the engineer" or "land surveyor" which is defined as the senior technical person who is a licensed professional engineer or licensed professional land surveyor and who makes significant technical and/or contractual judgments on behalf of the firm which would affect the firm's professional reputation and liability. and Section 330-X-15.01 of the Administrative Code shall also be construed to mean "principal engineer" or "principal land surveyor" which is defined as the designated person who is a licensed professional engineer or licensed professional land surveyor and who makes significant technical and/or contractual judgments on behalf of the firm which would affect the firm's professional reputation and liability. The managing agent's responsibilities include overall supervision of the firm's licensed and subordinate personnel providing engineering or surveying work in Alabama and the institution and adherence of policies of the firm.

(7) The term "Certification" when used in conjunction with the sealing of documents ~~shall mean~~ means a statement signed, sealed, and dated by a licensed professional engineer or licensed professional land surveyor representing that the engineering or land surveying services addressed therein, as defined in Section 34-11-1, Code of Ala. 1975, have been performed by the licensed professional engineer or licensed professional land surveyor based on knowledge and information in accordance with commonly accepted procedures consistent with acceptable standards of practice, and is not a guaranty or warranty, either expressed or implied.

(8) The acronym NCEES as used in Chapter 330-X means the National Council of Examiners for Engineering and Surveying.

(9) The term "jurisdiction" ~~shall mean~~ means any state, district, or territory of the United States.

(10) The term "Signature" ~~shall mean~~ means handwritten or digital as follows:

(a) A handwritten message identification containing the name of the person who applied it; or

(b) A digital signature associated with an electronic document must have reasonable security measures in place which include but are not limited to:

1. Unique to the person using it,
2. Capable of verification, and
3. Under the sole control of the person using it.
5. A digital signature that uses a process approved by the board will be presumed to meet the criteria set forth in subsections (b)1. through (b)4. above.

(11) The term "Inactive" ~~shall mean~~ means a licensee or firm who is not engaged in the engineering or land surveying practice which requires licensure in Alabama. No licensee or firm granted inactive status may practice or offer to practices engineering or surveying in Alabama as defined in Code of Ala. 1975, Section 34-11-1(12).

(12) The term "Professional Engineer, Retired" or "Professional Land Surveyor, Retired," shall mean a person who is retired from the profession of engineering or land surveying in Alabama and has been approved to use the title by the board.

(13) The term "Expired License" ~~shall mean~~ means a license that has not been renewed as of the deadline for renewing. A license not renewed will remain in expired status for a maximum of two years.

(14) The term "restricted" ~~shall mean~~ means a license or certificate that is limited in a manner specified by the Board.

(15) The term "Responsible Charge" ~~shall mean~~ means direct control, personal supervision of, and legal responsibility for the engineering work or land surveying work performed. This responsible charge shall be of such a nature that the client may reasonably presume that the licensed engineer or land surveyor which he has employed is the provider of the professional services. The licensed professional engineer or licensed professional land surveyor providing such control and supervision shall have made decisions on technical matters of policy and design and shall have exercised his or her professional judgment in all engineering or land surveying matters that are embodied in the design and the plans, specifications, land surveys, or other documents involved in the work. By applying his or her seal, and/or signature, and date to the final documents, the licensee signifies compliance with the requirements of these definitions and the Rules of Professional Conduct (Code of Ethics) and accepts responsibility therefore.

(16) The term "surrender" ~~shall mean~~ means the voluntary relinquishment of a license or certificate and shall have the same force and effect as a revocation.

(17) The term "testimony" as used in Sections 34-11-1(7) and 34-11-1(8), Code of Ala. 1975, ~~shall mean~~ means a declaration made by a witness under oath or affirmation related to engineering and surveying activities in the State of Alabama.

(18) The term "supervision of construction" as it relates to an engineer ~~shall mean~~ means the general oversight of an engineering project as it relates to the implementation of a design during construction.

(19) The terms "Roster Designation" ~~shall mean~~ means a licensee that has met the requirements outlined in Section 330-X-10-.05 of the Administrative Code and been granted the designation by the Board.

~~(20)~~ "Roster Designation This designation" is not required to practice or to offer to practice engineering.

~~(21)~~ The term "structural engineering" shall mean ~~(20)~~ The term "structural engineering" means the practice of analyzing and designating the structural elements and systems in structures. Engineering Geo-Structures that are located by the earth or whose resistance is derived from the earth such as temporary and permanent earth retaining systems, shallow and deep foundations, underpinning or structures affected by excavations, shafts, and tunnels, embankments, dams and levees, and soil and rock slopes do not exclusively require structural engineering. Structural engineering applies the principles of math and physics in order to create structures that protect life and property using common construction materials such as concrete, steel, and timber as well as innovative materials such as glass, aluminum, polymers and carbon fiber.

~~(22)~~ (21) Standard of Care: The standard of care for all Professional Engineers and Professional Land Surveyors will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.

~~(23)~~ (22) Branch Office - any location other than the firm's principal office location identified by any means to the public or customers as a location at which engineering or surveying services may be offered and/or performed where final engineering or land surveying designs or decisions are made under the responsible charge of a licensed individual.

~~(24)~~ (23) Home Office - is not required to be identified as a branch office unless one of the following occurs:

- (a) Office advertises on signage, print or other media.
- (b) The address is shown on the firm's website.
- (c) Solicitations for work are made from the location.
- (d) The address is shown on final design drawings or reports.

If the Home Office performs any of the listed actions, it must meet all "Branch" office requirements.

Author: William R. Huett (Executive Director), Bonnie Kelly

Statutory Authority: Code of Ala. 1975, §§34-11-1, 34-11-7, 34-11-8, 34-11-9, 34-11-35.

History: Filed September 22, 1982. **Amended:** Filed November 14, 1984; March 5, 1990. **Amended:** Filed September 13, 1994; effective October 18, 1994. **Amended:** Filed September 23, 1998; effective October 28, 1998. **Amended:** Filed April 29, 2003; effective June 3, 2003. **Amended:** Filed December 15, 2004; effective January 19, 2005. **Amended:** Filed October 30, 2006; effective December 4, 2006. **Amended:** Filed June 22, 2012; effective July 27, 2012. **Amended:** Filed April 19, 2013; effective May 24, 2013. **Amended:** Filed August 5, 2015; effective September 9, 2015. **Amended:** Filed November 16, 2018;

effective December 31, 2018. **Amended:** Published March 31, 2021; effective May 15, 2021. **Amended:** Published November 30, 2022; effective January 14, 2023. Amended: Published ; effective.