

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-16-.05

Rule Title: Disciplinary Hearings

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-16-.05 Disciplinary Hearings

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:
Remove negotiated settlements language

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)

(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, notwithstanding any other provisions of these rules to the contrary. 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, Code of Ala. 1975, Section 41-22-13. 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.

(3) Other. The hearing shall be conducted in compliance with the provisions of the Alabama Administrative Procedure Act, Code of Ala. 1975, Chapter 22, Title 41. 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.~~

~~(5)~~ Cease and Desist. In addition to or in lieu of the sanctions provided in this chapter, the board may issue an order to any individual or firm engaged in any activity, conduct, or practice constituting a violation of this chapter, directing the individual or firm to cease and desist from the activity, conduct, or practice, or the performance of any work then being done or about to be commenced.

Author: Rick Huett (Executive Director), Bonnie Kelly and Griffin Pritchard, Alabama State Board of Registration for Professional Engineers and Land Surveyors.

Statutory Authority: Code of Ala. 1975, §§34-11-35, 41-22-13, 41-22-16(c), 41-22-19(d), 34-11-11, 34-11-16.

History: Filed September 22, 1982. **Amended:** Filed November 14, 1984; September 15, 1987; March 5, 1990; July 13, 1992.

Amended: Filed September 23, 1998; effective October 28, 1998.

Amended: Filed June 18, 2002; effective July 23, 2002.

Amended: Filed June 19, 2008; effective July 24, 2008.

Amended: Filed June 22, 2012; effective July 27, 2012.

Amended: Filed July 30, 2014; effective September 3, 2014.

Amended: Filed November 16, 2018; effective December 31, 2018. **Amended:** Published ; effective .