



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: The North Carolina Landscape Contractors' Licensing Board	
2. Rule citation & name: 21 NCAC 28B .0406	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: April 16, 2020	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: April 7, 2020 b. Proposed Temporary Rule published on the OAH website: April 14, 2020 c. Public Hearing date: April 20, 2020 d. Comment Period: April 15, 2020 through May 6, 2020 e. Notice pursuant to G.S. 150B-21.1(a3)(2): April 7, 2020 f. Adoption by agency on: May 28, 2020 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<b>Explain:</b> In accordance with Executive Order No. 116 declaring that a state of emergency exists and to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19, previously unidentified in humans, spreads easily from person to person is a respiratory disease that can result in serious illness or death. The World Health Organization, the Center for Disease Control and Prevention, and the United States Department of Health and Human Services have declared COVID-19 a public health threat and emergency and have encouraged social distancing to reduce infection rates. The North Carolina Landscape Contractors' Licensing Board seeks to assist licensed landscape contractors who are unable to locate a sufficient number of hours of in person continuing education classes that are required by 21 NCAC 28B .0400 by granting a one-time extension of the annual requirement set forth in that rule under the authority of G.S. 87D-20(b). In addition, the North Carolina Landscape Contractors' Licensing Board seeks to actively support the social isolation efforts that have been directed by the Federal and State Government for its licensed landscape contractors by this action.	



**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?** The public health threat posed by COVID-19 requires immediate action to limit mass gatherings, increase social distancing, and limit exposure of high risks individuals. It is in the public's interest to immediately adopt rules that limit the Commission's regulated audience's exposure to COVID-19 and allow for relaxed requirements during the time of this public health emergency.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

**9. Rule-making Coordinator:** Calvin M. Kirven

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**Agency contact, if any:**

**Phone:**

**E-Mail:**

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

**Typed Name:** Chris Mitchell

**Title:** Board Chairman

**E-Mail:** CMitchell@ewingirrigation.com

**RULES REVIEW COMMISSION USE ONLY**

**Action taken:**

**Submitted for RRC Review:**

☐ Date returned to agency:

TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Landscape Contractors' Licensing Board

RULE CITATION: 21 NCAC 28B .0406

**DEADLINE FOR RECEIPT: Tuesday, June 16, 2020**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*On the Temporary Rulemaking Findings of Need Form, Form 0500:*

*In Box 2, please insert the rule name.*

*In the Rule:*

*In (a), "one year" should be hyphenated.*

*What authority are you relying upon for this extension to go beyond December 31, 2020? G.S. 89D-20 states:*

**§ 89D-20. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before the first day of August of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration if (i) the applicant pays the required renewal fee and late renewal fee, (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting after notice of revocation, and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: June 12, 2020

(b) As a condition of license renewal, a licensee shall meet the continuing education requirements set by the Board. **Each licensee shall complete seven continuing education units per year.** The Board may suspend a licensee's license for 30 days for failure to obtain continuing education units required by this subsection. Upon payment of a reinstatement fee, submission to the Board of proof of the continuing education units required by this subsection, and payment of the license renewal fee and late renewal fee, the licensee's license shall be reinstated. Failure to request a reinstatement of the license and failure to pay the reinstatement fee, renewal fee, and late renewal fee shall result in the forfeiture of a license. Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter. (2014-103, s. 3(b).)

*If you are interpreting "year" to mean a calendar year, rather than a licensure year, then doesn't the law require that the individual take seven hours of CE by December 31, 2020?*

*In (b), what are you saying? It appears here you are creating a waiver and allowing 2020 credits to be applied to 2021. Where is your authority to do that?*

*If the intent is to require the reporting of 14 hours of CE by July 31, 2021 to reflect an extension of time to complete the CE, then I think that can be more clearly stated here.*

*In (c), line 9, "Rule" should be capitalized. (But not "rules" in "rules of this Subchapter" on lines 9 and 10.)*

*In the History Note, do not cite to G.S. 150B-19(6). That does not confer rulemaking authority.*

*Please change your History Note so that it looks like this:*

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b); ~~150B-19(6)~~;  
Emergency Adoption Eff. April 16, 2020;  
Temporary Adoption Eff. June 26, 2020.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: June 12, 2020

21 NCAC 28B .0406 is adopted under temporary procedures as follows:

**21 NCAC 28B .0406      EMERGENCY EXTENSIONS OF CONTINUING EDUCATION  
REQUIREMENTS: LICENSED LANDSCAPE CONTRACTORS**

(a) All active licensees shall be granted a one year extension of all continuing education requirements for the license year ending July 31, 2020.

(b) The Board shall accept Board-approved continuing education credits previously obtained in compliance for the license year ending July 31, 2020 and shall apply those credits to the license year ending July 31, 2021.

(c) This rule does not affect any other licensure renewal requirements set forth in G.S. 89D and the rules set forth in this Subchapter.

*History Note:      Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b); 150B-19(6)*