



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

**1. Rule-Making Agency:**

Board of Landscape Architects

**2. Rule citation & name:**

21 NCAC 26 .0309 Exemptions and Extension of Time

**3. Action:**

☐

Adoption

☒

Amendment

☐

Repeal

**4. Was this an Emergency Rule:**

☒

Yes

☐

No

Effective date: May 6, 2020

**5. Provide dates for the following actions as applicable:**

a. Proposed Temporary Rule submitted to OAH: April 30 2020

b. Proposed Temporary Rule published on the OAH website: May 1 2020

c. Public Hearing date: May 12, 2020

d. Comment Period: May 5, 2020 - May 30, 2020

e. Notice pursuant to G.S. 150B-21.1(a3)(2): April 30, 2020

f. Adoption by agency on: July 22, 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]: August 28, 2020

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.**

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A serious and unforeseen threat to the public health, safety or welfare.

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The effective date of a recent act of the General Assembly or of the U.S. Congress.

Cite:

Effective date:

☐

A recent change in federal or state budgetary policy.

Effective date of change:

☐

A recent federal regulation.

Cite:

Effective date:

☐

A recent court order.

Cite order:

☐

State Medical Facilities Plan.

☐

Other:

**Explain:**

On March 10, 2020, the Governor of North Carolina, by issuing Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. The COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. 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. On March 12, 2020, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services. On March 14, 2020, the Governor of North Carolina issued Executive Order No. 117 that prohibited mass gatherings, closed schools, and urged social distancing. On April 23, 2020 the Governor extended the effective date on these various Executive Orders through at least May 8, 2020. This rule amendment will extend the continuing education deadline for license renewal since most course offerings would not be in compliance with the Governor's Executive Orders.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

COVID-19 is a respiratory disease that can result in serious illness or death. The COVID-19 virus, previously unidentified in humans, spreads easily from person to person. Once an outbreak of the COVID-19 begins, it is difficult to contain. 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. Since mass gatherings are being restricted during this worldwide pandemic, those applying to the Board for license renewal, will be unable to comply in many instances.

Executive Order No. 116, declared a state of emergency to coordinate a response and enact protective measures to help prevent the spread of COVID-19. In subsequent Orders, the Governor of North Carolina and the NC Department of Health and Human Services recommended high risk persons stay at home, that schools implement plans for distance or e-learning, that employers and employees use teleworking technologies, and that mass gatherings should cancel, postpone, and modify these events or offer online streaming services, then prohibited mass gatherings, closed schools, and urged social distancing. This rule amendment allows an extension of time to complete continuing education requirements.

**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:**

Jeffrey P. Gray

**Phone:**

(919) 828-0731

**E-Mail:**

jgray@bdixon.com

**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:**

Christine Lockwood Hilt

**Title:**

BLA Chair

**E-Mail:** chilt@clhdesignpa.com

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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TEMPORARY RULES  
REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Landscape Architects

RULE CITATION: 21 NCAC 26 .0309

**DEADLINE FOR RECEIPT: Wednesday, August 12, 2020**

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:

*In the Temporary Rulemaking Findings of Need form, Box 5(a), please confirm this date, as the OAH online posting says it was submitted on April 29.*

*In Box (5)(d), this comment period is not the same as the comment period you published on the OAH website. The comment period on your form complies with the APA, so I am only asking – I take it your regulated public knew of the correct dates of the public comment period?*

*In the Rule:*

*In (c), line 16, please make “national” lowercase.*

*Also on line 16, replace “which” with “that”*

*On line 17, what is “active participation”? Is it the term used in Rule .0307 of this Section? If so, then shouldn’t the rest of the language also mirror that rule, and state “active participation in Board approved continuing education”?*

*And please insert a comma after “education”*

*On line 17, you state it “may” be extended. Under what circumstances will it not be waived? Do you mean “shall”? Or do you want to use the language from other temporary rules and state “the Board may extend the compliance period if requested by the licensee up to 90 days...”?*

*On line 19, what do you mean by “conditionally”?*

*And so that I’m clear – are you expecting to keep the September 30 date in any permanent rule?*

*On line 20, what is this portal? Does the regulated public know?*

*Also, please make “online” one word without a hyphen.*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: August 5, 2020

*The History Note is missing the emergency amendment. The full History Note will look like this:*

*History Note: Authority G.S. 89A-3.1(6); 89A-5; 93B-15;  
Eff. March 1, 2015;  
Emergency Amendment Eff. May 6, 2020;  
Temporary Amendment Eff. August 28, 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: August 5, 2020

21 NCAC 26 .0309 is amended under temporary procedures as follows:

**21 NCAC 26 .0309            EXEMPTIONS AND EXTENSION OF TIME**

(a) A registrant shall be exempt from the continuing education requirements for any of the following reasons:

- (1) New registrants by way of examination or comity for the current registration year.
- (2) A licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 90 consecutive days in a year or as provided by G.S. 93B-15(b), whichever is greater.
- (3) A licensee experiencing physical disability or illness if supporting documentation is approved by the Board. Such documentation shall be in the form of a sworn statement by the registrant, a statement from a physician, or medical records which show that the disability or illness, prevented registrant's participation in a course that the registrant had enrolled, or prevented registrant's participation in the continuing education program for at least 90 consecutive days in a year.
- (4) A licensee with emeritus status from the Board.

(b) In order to return to active practice, registrants who have received an exemption shall complete continuing education requirements for each exempted year, not to exceed two years.

(c) During a National or State declared state of emergency which restricts or prohibits a licensee from obtaining by active participation approved Board continuing education the Board may extend the compliance period up to 90 days beyond the effective period of the state of emergency. Any license renewed in reliance on this exemption shall be issued conditionally and shall automatically expire on September 30, 2020 or on the 90<sup>th</sup> day, whichever is later, if compliance is not documented in the licensee's secure on-line portal by that date.

*History Note: Authority G.S. 89A-3.1(6); 89A-5; 93B-15;*

*Eff. March 1, 2015.*

*Amended Eff. August 28, 2020.*