

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

Adherence to the notice and hearing requirements of the permanent rule making process did not allow for having the rule in place by the required July 1, 2022, effective date of the legislation. The rule is necessary for applicants to be able to take advantage of the apprenticeship path to licensure.

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:

David S. Tuttle

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Agency contact, if any:

David S. Tuttle

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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:

Jonathan S. Care

Title:

Board Chair

E-Mail: jcare@jcarelaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SESSION LAW 2022-1
SENATE BILL 219**

AN ACT TO REVISE THE EDUCATION REQUIREMENTS FOR LICENSURE OF A PROFESSIONAL LAND SURVEYOR, TO MAKE VARIOUS TECHNICAL CHANGES, TO CLARIFY THE DESIGN-BUILD AND DESIGN-BUILD BRIDGING STATUTES, TO PROHIBIT WAIVER OF FUTURE CLAIMS FOR PROGRESS PAYMENTS ON CONSTRUCTION CONTRACTS, TO REQUIRE ATTORNEYS' FEES IN CERTAIN LIEN CLAIMS, AND TO DEFINE THE TERM "SUPPLIER" AS USED IN A PROVISION OF THE ALCOHOL CONTROL LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 89C-3 reads as rewritten:

"§ 89C-3. Definitions.

The following definitions apply in this Chapter:

- ...
- (4) ~~Land surveyor intern.— A person who complies with the requirements for education, experience, and character and has passed an examination on the fundamentals of land surveying as provided in this Chapter.~~
- (4a) Land surveyor apprenticeship. – A program of on-the-job learning that allows individuals to prepare for the land surveying profession through supervised experience combined with land surveyor-related classroom instruction as approved by the Board.

...."

SECTION 1.(b) G.S. 89C-13 reads as rewritten:

"§ 89C-13. General requirements for licensure.

...

(b) Land Surveyor Applicant. – The evaluation of a land surveyor applicant's qualifications shall involve a consideration of the applicant's education, technical, and land surveying experience, exhibits of land surveying projects with which the applicant has been associated, and recommendations by references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board determines it necessary. Educational credit for institute courses, correspondence courses, or other courses shall be determined by the Board.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for licensure as a professional land surveyor:

- (1) ~~To be certified as a land surveyor intern, an applicant shall (i) pass the fundamentals of land surveying examination and make application to the Board, (ii) be of good character and reputation, (iii) submit three character references to the Board, one of whom is a professional land surveyor, (iv) comply with the requirements of this Chapter, and (v) satisfy one of the following requirements related to education and experience:~~
- a. ~~Be a graduate of a surveying curriculum of four years or more or other equivalent curriculum in surveying approved by the Board.~~



- b. ~~Have rightful possession of an associate degree in surveying technology approved by the Board, a record satisfactory to the Board of four years of progressive practical experience, two years of which shall have been under a practicing professional land surveyor, and have satisfactorily passed a written and oral examination as required by the Board.~~
 - e. ~~Have graduated from high school or completed a high school equivalency certificate with a record satisfactory to the Board of 10 years of progressive, practical experience, six years of which shall have been under a practicing licensed land surveyor, and have satisfactorily passed any oral and written examinations required by the Board.~~
- (1a) To be licensed as a professional land surveyor, an applicant shall (i) be of good character and reputation, (ii) submit five character references to the Board, three of whom are professional land surveyors or individuals acceptable to the Board, with personal knowledge of the applicant's land surveying experience, (iii) comply with the requirements of this Chapter, and (iv) meet one of the following requirements:
- a. ~~Rightful possession of a bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of two years or more of progressive practical experience, one year of which shall have been experience under a practicing professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, surveyor. Upon passing the first examination (Fundamentals of Land Surveying) and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An Surveying) and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, an applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.~~
 - b. ~~Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of ~~four~~ five years or more of progressive practical ~~experience~~, ~~three years of which shall have been experience~~ under a practicing ~~licensed~~ professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, ~~eight years of progressive practical experience, four years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any written and oral examination required by the Board, all of which shall~~~~

determine and indicate that the applicant is competent to practice land surveying. If the applicant has not successfully completed the first examination on or before January 1, 2013, the applicant may apply to the Board to take the first examination after obtaining the associate degree and completing four years of practical experience, two years of which shall have been under a practicing professional land surveyor at the first regularly scheduled examination thereafter. surveyor. Upon passing the first examination (Fundamentals of Land Surveying) and successfully completing the practical experience required under this subdivision, the applicant may apply to the Board to take the second examination (Principles and Practice of Land Surveying). An Surveying) and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, an applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

...

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of ~~seven nine years or more~~ of progressive practical experience, ~~six years of which shall have been experience~~ under a practicing licensed professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, ~~16 years of progressive practical experience, nine years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. If the applicant has not successfully passed the first examination on or before January 1, 2013, the applicant may be qualified by the Board to take the first examination upon graduation from high school or the completion of a high school equivalency certificate and successfully completing 10 years of progressive practice experience, six of which shall have been under a practicing licensed land surveyor.~~ surveyor. Upon passing the first examination (Fundamentals of Land Surveying) and the second examination (Principles and Practice of Land Surveying) and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, an applicant who successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

d1. Graduation from a high school or the completion of a high school equivalency certificate, completion of a Land Surveyor Apprenticeship, and a record satisfactory to the Board of seven years or more of progressive practical experience under a practicing professional land surveyor. Upon passing the first examination (Fundamentals of Land Surveying) and the second examination (Principles and Practice of Land Surveying) and satisfactorily passing

any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying, an applicant who successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

...."

SECTION 1.(c) G.S. 89C-10 reads as rewritten:

"§ 89C-10. Board powers.

...
(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a licensee is confidential until the Board issues a citation to the licensee. The investigation of a nonlicensee is confidential until the Board approves any action authorized under this Chapter against the nonlicensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and later sit in deciding on any matter which may directly involve punitive action for the testimony.

...
(g1) The Board shall review and promulgate rules establishing continuing education requirements for surveying apprenticeships and encourage the workforce development of the profession.

...."

SECTION 1.(d) G.S. 89C-11 reads as rewritten:

"§ 89C-11. Secretary; duties and liabilities; expenditures.

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as "Fund of the Board of Examiners for Engineers and Surveyors" and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of this ~~fund on the warrant signed by the secretary of the Board.~~ fund. At no time shall the total of ~~warrants~~ such certified expenses issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of Examiners for Engineers and Surveyors, conditioned upon the faithful performance of the duties assigned. The premium on the bond is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the majority approval of the Board."

SECTION 1.(e) G.S. 89C-17 reads as rewritten:

"§ 89C-17. Expirations and renewals of certificates.

Certificates for licensure of corporations and business firms that engage in the practice of engineering or land surveying shall expire on the last day of the month of June following their issuance or renewal and shall become invalid on that date unless renewed. All other certificates for licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require any evidence necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to

exceed seventy-five dollars (\$75.00). The secretary of the Board shall notify by mail or email every person licensed under this Chapter of the date of expiration of the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be sent by email or mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month immediately following the month of expiration, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed seventy-five dollars (\$75.00). Failure on the part of any licensee to renew the certificate annually in the month immediately following the month of expiration, as required above, shall deprive the licensee of the right to practice until reinstatement of the license. The license may be reinstated at anytime during the first 12 months immediately following the date the license became invalid by payment of a reinstatement fee of one hundred dollars (\$100.00) in addition to the established renewal fee. Failure of a licensee to reinstate the license during the first 12 months immediately following the date the license became invalid shall require the individual, prior to resuming practice in North Carolina, to submit an application on the prescribed form, and to meet all other requirements for licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all licensees who have not effected their renewal by the first day of the month immediately following the renewal period. The Board may adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that the applicant has maintained active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement."

SECTION 1.(f) G.S. 89C-22 reads as rewritten:

"§ 89C-22. Disciplinary action – Charges; procedure.

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violations of this Chapter, the rules of professional conduct, or any rules adopted by the Board against any Board licensee. The charges shall be in writing ~~and shall be sworn to by the person or persons making them and~~ or submitted electronically and shall be filed with the Board.

...."

SECTION 1.(g) This section becomes effective July 1, 2022, and applies to applications for licensure on or after that date.

SECTION 2.(a) G.S. 143-128.1A reads as rewritten:

"§ 143-128.1A. Design-build contracts.

(a) Definitions for purposes of this section:

(1) Design-builder. – As defined in G.S. 143-128.1B.

(1g) Design professional. – As defined in G.S. 143-128.1B.

(1p) First-tier subcontractor. – As defined in G.S. 143-128.1B.

(2) Governmental entity. – As defined in G.S. 143-128.1B.

(3) Licensed contractor. – As defined in G.S. 143-128.1B.

(4) Licensed subcontractor. – A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the project requires that it be licensed in accordance with Article 2 or Article 4 of Chapter 87 of the General Statutes.

- (5) Unlicensed subcontractor. – A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the project does not require that it be licensed in accordance with Article 2 or Article 4 of Chapter 87 of the General Statutes.

(b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which the design-build method is appropriate for a project, and such criteria shall, at a minimum, address all of the following:

- (1) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications for a design-builder.
- (2) The time constraints for the delivery of the project.
- (3) The ability to ensure that a quality project can be delivered.
- (4) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.
- (5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (c) of this section.
- (6) The criteria utilized by the governmental entity, including a comparison of the advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1).

(c) A governmental entity shall issue a public notice of the request for qualifications that includes, at a minimum, general information on each of the following:

- (1) The project site.
- (2) The project scope.
- (3) The anticipated project budget.
- (4) The project schedule.
- (5) The criteria to be considered for selection and the weighting of the qualifications criteria.
- (6) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority- and women-owned business participation and small business participation.
- (7) Other information provided by the owner to potential design-builders in submitting qualifications for the project.
- (8) A statement ~~providing that directing~~ each design-builder shall to submit in its response to the request for qualifications an explanation of its project team selection, which selection. The governmental entity may specify which one of the following project team selection options shall be used or, if not specified, the response shall consist of either of the following:
 - a. A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design-builder proposes to use for the project's design and construction. If this project team selection option is used, the design-builder may self-perform some or all of the work with employees of the design-builder and, without bidding, also enter into negotiated subcontracts to perform some or all of the work with

subcontractors, including, but not exclusively with, those identified in the list. In submitting its list, the design-builder may, but is not required to, include one or more unlicensed subcontractors the design-builder proposes to use. If this project team selection option is used, the design-builder may, at its election and with or without the use of negotiated subcontracts, accept bids for the selection of one or more of its first-tier subcontractors.

- b. ~~An~~A list of the licensed contractors and design professionals whom the design-builder proposes to use for the project's design and construction and an outline of the strategy the design-builder plans to use for open contractor and subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes. If this project team selection option is used, the design-builder may also self-perform some of the work with employees of the design-builder, but shall not enter into negotiated contracts with first-tier subcontractors.

(d) Following evaluation of the qualifications of the design-builders, the three most highly qualified design-builders shall be ranked. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the governmental entity shall again solicit for design-builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then begin negotiations with the highest-ranked design-builder under G.S. 143-64.31 even though fewer than three responses were received. If the governmental entity deems it appropriate, the governmental entity may invite some or all responders to interview with the governmental entity.

(e) The design-builder shall be selected in accordance with Article 3D of this Chapter. Each design-builder shall ~~certify~~certify, in the response to the request for qualifications in subsection (c) of this section, to the governmental entity that each ~~licensed~~ design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

(f) The design-builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design-builder shall obtain written approval from the governmental entity prior to changing key personnel as listed in sub-subdivision (c)(8)a. or (c)(8)b. of this section after the contract has been awarded. For purposes of this subsection, "key personnel" shall mean either of the following:

- (1) For the project team selection option under sub-subdivision (c)(8)a. of this section, the licensed contractors, licensed subcontractors, and design professionals identified in the response to the request for qualifications.
- (2) For the project team selection option under sub-subdivision (c)(8)b. of this section, the licensed contractors and design professionals identified in the response to the request for qualifications."

SECTION 2.(b) G.S. 143-128.1B reads as rewritten:

"§ 143-128.1B. Design-build bridging contracts.

(a) Definitions for purposes of this section:

- (1a) Costs of the subcontractor work. – The sum total amount of all first-tier subcontract packages bid or proposed to be bid under subsection (f) of this section.
- (1) Design-build bridging. – A design and construction delivery process whereby a governmental entity contracts for design criteria services under a separate agreement from the construction phase services of the design-builder.

- (2) Design-builder. – An appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and general contracting services where services within the scope of the practice of professional engineering or architecture are performed respectively by a licensed engineer or licensed architect and where services within the scope of the practice of general contracting are performed by a licensed general contractor.
- (3) Design criteria. – The requirements for a public project expressed in drawings and specifications sufficient to allow the design-builder to make a responsive bid proposal.
- (4) Design professional. – Any professional licensed under Chapters 83A, 89A, or 89C of the General Statutes.
- (5) First-tier subcontractor. – A subcontractor who contracts directly with the design-builder, excluding design professionals.
- (5g) General conditions. – A specific list compiled by the government entity that identifies items for which the design-builder is to be compensated but are not ascribable to any particular on-site construction activity. This term shall not include either of the following:
 - a. Construction work to be bid pursuant to subsection (f) of this section.
 - b. Design services of a design professional.
- (6) Governmental entity. – Every officer, board, department, commission, or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State or for any county, municipality, or other public body.
- (7) Licensed contractor. – A person or entity whose scope of work proposed for the project requires that it be licensed in accordance with the provisions of Article 1 of Chapter 87 of the General Statutes.

(b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which engaging a design criteria design professional is appropriate for a project, and such criteria shall, at a minimum, address all of the following:

- (1) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for proposals for a design-builder.
- (2) The time constraints for the delivery of the project.
- (3) The ability to ensure that a quality project can be delivered.
- (4) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.
- (5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (d) of this section.
- (6) The criteria utilized by the governmental entity, including a comparison of the advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1).

(b1) The governmental entity, as a criterion in subsection (b) of this section, shall not require the design-builder to provide the costs of the subcontractor work in the design criteria package.

(c) On or before entering into a contract for design-build services under this section, the governmental entity shall select or designate a staff design professional, or a design professional who is independent of the design-builder, to act as its design criteria design professional as its representative for the procurement process and for the duration of the design and construction. If the design professional is not a full-time employee of the governmental entity, the governmental entity shall select the design professional on the basis of demonstrated competence and qualifications as provided by G.S. 143-64.31. The design criteria design professional shall develop design criteria in consultation with the governmental entity. The design criteria design professional shall not be eligible to submit a response to the request for proposals nor provide design input to a design-build response to the request for proposals. The design criteria design professional shall prepare a design criteria package equal to thirty-five percent (35%) of the completed design documentation for the entire construction project. The design criteria package shall not require the design-builder to include the costs of the subcontractor work in its response and shall include all of the following:

- (1) Programmatic needs, interior space requirements, intended space utilization, and other capacity requirements.
- (2) Information on the physical characteristics of the site, such as a topographic survey.
- (3) Material quality standards or performance criteria.
- (4) Special material requirements.
- (5) Provisions for utilities.
- (6) Parking requirements.
- (7) The type, size, and location of adjacent structures.
- (8) Preliminary or conceptual drawings and specifications sufficient in detail to allow the design-builder to make a proposal which is responsive to the request for proposals.
- (9) Notice of any ordinances, rules, or goals adopted by the governmental entity.
- (10) The list of general conditions prepared by the governmental entity for which the design-builder is to provide a fixed fee in accordance with sub-subdivision (10)a. of subsection (d) of this section. For this purpose, as examples, general conditions could include without exclusion the following: on-site construction office and storage trailers; electrical and other utility services during construction; on-site construction superintendent, construction supervisors, and clerical staff; trash collection; security; and other temporary measures. Unless expressly dictated by the contract, the inclusion or exclusion of any particular item in the list shall not be construed to control the means and methods used by the design-builder or eliminate any discretion on whether to use a given item in the prosecution of the work. The inclusion or exclusion of any particular item in the list shall have no bearing on the actual amounts for which the design-builder is to be compensated under the executed contract documents.
- (11) The form of the contract to be entered into by the successful design-builder to whom the project is awarded pursuant to subsection (e) of this section. The form of the contract may, upon discretion of the governmental entity, allow for multiple phases, termination for convenience and rights arising therefrom, and the subsequent setting of guaranteed maximum prices.

(12) A statement directing each design-builder to submit in its response to the request for qualifications an explanation of its proposed plan for its good-faith compliance with G.S. 143-128.2.

(d) A governmental entity shall issue a public notice of the request for proposals that includes, at a minimum, general information on each of the following:

- (1) The project site.
- (2) The project scope.
- (3) The anticipated project budget.
- (4) The project schedule.
- (5) The criteria to be considered for selection and the weighting of the selection criteria.
- (6) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority- and women-owned business participation and small business entities.
- (7) The thirty-five percent (35%) design criteria package prepared by the design criteria design professional.
- (8) Other information provided by the owner to design-builders in submitting responses to the request for proposals for the project.
- (9) A statement providing that each design-builder shall submit in its request for proposal response an explanation of its project team selection, which shall consist of a list of the licensed contractor and ~~licensed~~ design professionals whom the design-builder proposes to use for the project's design and construction.
- (10) A statement providing that each design-builder shall submit in ~~its request for proposal~~ a separate sealed envelope with all envelope, contemporaneously with the response to the request for proposals, the design-builder's fixed fees, excluding the costs of the subcontractor work, for designing and constructing the project in accordance with requirements set forth by the government entity's criteria and the terms and conditions set forth in the form of the contract under subdivision (11) of subsection (c) of this section for each of the following:
 - a. ~~The design-builder's price for providing the general conditions of the contract identified in the request for proposal.~~
 - b. ~~The design-builder's proposed fee for general construction services.~~ services not otherwise provided for in this subdivision.
 - c. ~~The design-builder's fee for design services.~~ services necessary to complete the project.

(e) Following evaluation of the qualifications of the design-builders, the governmental entity shall rank the design-builders who have provided responses, grouping the top three without ordinal ranking. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the governmental entity shall again solicit for design-builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then make its selection. From the grouping of the top three design-builders, the governmental entity shall select the design-builder who is the lowest responsive, responsible bidder based on the cumulative amount of fees provided in accordance with subdivision (d)(10) of this section and taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract. Each design-builder shall certify to the governmental entity that each ~~licensed~~ design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

(f) The design-builder shall accept bids based upon the provisions of this Article from first-tier subcontractors for all construction work under this section.

(g) The design-builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design-builder shall obtain written approval from the governmental entity prior to changing key personnel, as listed under subdivision (d)(9) of this section, after the contract has been awarded."

SECTION 2.(c) This section becomes effective March 1, 2022, and applies to contracts entered into, amended, or renewed on or after that date.

SECTION 3.(a) Article 1 of Chapter 22B of the General Statutes is amended by adding a new section to read:

"§ 22B-5. Waiver of liens or claims as a condition of progress payment invalid.

(a) Provisions in lien waivers, releases, construction agreements as defined in G.S. 22B-1(f)(1), or design professional agreements as defined in G.S. 22B-1(f)(5) purporting to require a promisor to submit a waiver or release of liens or claims as a condition of receiving interim or progress payments due from a promisee under a construction agreement or design professional agreement are void and unenforceable unless limited to the specific interim or progress payment actually received by the promisor in exchange for the lien waiver.

(b) This section does not apply to the following:

(1) Lien waivers or releases for final payments.

(2) Agreements to settle and compromise disputed claims after the claim has been identified by the claimant in writing regardless of whether the promisor has initiated a civil action or arbitration proceeding."

SECTION 3.(b) This section becomes effective March 1, 2022, and applies to liens attached on or after that date.

SECTION 4.(a) G.S. 44A-35 reads as rewritten:

"§ 44A-35. Attorneys' fees.

(a) In any suit brought or defended under the provisions of Article 2 or Article 3 of this Chapter, the presiding judge or arbitrator may allow a reasonable attorneys' fee to the attorney representing the prevailing party. This attorneys' fee is to be taxed as part of the court costs and be payable by the losing party upon a finding that there was an unreasonable refusal by the losing party to fully resolve the matter which constituted the basis of the suit or the basis of the defense. costs with the final judgment or arbitration award.

(b) The court or arbitrator shall determine the prevailing party based on the principal amount in controversy between the parties as of the commencement of the trial, arbitration, or hearing resulting in a judgment or arbitration award, considering all relevant facts and circumstances.

(c) If a party serves (i) an offer of judgment in accordance with G.S. 1A-1, Rule 68, or (ii) a written settlement offer, so that the offer is received at least 30 days before the commencement of the trial, arbitration, or hearing resulting in a judgment or award resolving all matters in controversy between the parties, the last offer shall be deemed to be that party's monetary position for purposes of determining the amount in controversy.

(d) In determining the amount of reasonable attorneys' fees and expenses under this section, the court or arbitrator may consider all relevant facts and circumstances, including, without limitation, the following:

(1) The amount in controversy and the results obtained.

(2) The reasonableness of the time and labor expended, and the billing rates charged, by the attorneys.

(3) The novelty and difficulty of the questions raised in the action.

(4) The skill required to perform properly the legal services rendered.

(5) The relative economic circumstances of the parties.

- (6) Settlement offers made prior to the commencement of the trial, arbitration, or hearing.
- (7) Offers of judgment pursuant to Rule 68 of the North Carolina Rules of Civil Procedure and whether judgment finally obtained was more favorable than such offers.
- (8) Whether a party unjustly exercised superior economic bargaining power in the conduct of the action or withheld payment of undisputed amounts.
- (9) The timing of settlement offers.
- (10) The extent to which the party seeking attorneys' fees prevailed in the action.
- (11) The amount of attorneys' fees awarded in similar cases.

(e) A party may submit evidence relating to an award of attorneys' fees by affidavit or declaration. The court or arbitrator may admit other evidence, including, without limitation, live or deposition testimony. A party may submit expert testimony to support an award, but the court or arbitrator shall not require expert testimony.

(f) For purposes of this section, "prevailing party" is ~~a the party plaintiff or third party plaintiff who obtains a judgment of at least fifty percent (50%) of the whose monetary amount sought in a claim or is a party defendant or third party defendant against whom a claim is asserted which results in a judgment of less than fifty percent (50%) of the amount sought in the claim defended. Notwithstanding the foregoing, in the event an offer of judgment is served in accordance with G.S. 1A-1, Rule 68, a "prevailing party" is an offeree who obtains judgment in an amount more favorable than the last offer or is an offeror against whom judgment is rendered in an amount less favorable than the last offer.~~ position at the commencement of the trial, arbitration, or hearing is closest to the amount of the judgment or arbitration award. The court or arbitrator shall determine the prevailing party based upon the principal amount in controversy between the parties as of the commencement of the trial, arbitration, or hearing resulting in a judgment or arbitration award, considering all relevant facts and circumstances."

SECTION 4.(b) This section becomes effective March 1, 2022, and applies to any claim arising on or after that date.

SECTION 5. G.S. 18B-1119 reads as rewritten:

"§ 18B-1119. Supplier's financial interest in wholesaler.

(a) A supplier or an officer, director, employee or affiliate of a supplier may not acquire, possess, or otherwise maintain an ownership interest in ~~a its~~ wholesaler except as expressly authorized by this Chapter.

(b) Repealed by Session Laws 2018-100, s. 7(b), effective June 26, 2018.

(c) A supplier or an officer, director, employee or affiliate of a supplier may have a security interest in the inventory or property of its wholesaler to secure payment for such inventory or other loans for other purposes.

(d) For purposes of this section, "supplier" means a manufacturer, bottler, importer, or owner of one or more brands of malt beverages, unfortified wine, or fortified wine distributed by its wholesaler. The term "supplier" does not include a wholesaler that meets either of the following criteria:

- (1) The wholesaler also possesses a wine importer permit or a malt beverages importer permit issued pursuant to this Chapter.
- (2) The wholesaler is an importer in another state, provided such malt beverages, unfortified wine, or fortified wine are transferred to it through an unaffiliated and independent third party."

law. **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
2022. In the General Assembly read three times and ratified this the 19th day of January,

s/ Ralph Hise
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:11 a.m. this 26th day of January, 2022

TEMPORARY RULE
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Board of Examiners for Engineers and Surveyors

RULE CITATION: 21 NCAC 56 .0601

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (3)(A) and (B), to be clear, your regulated public is aware of these programs and understands their requirements, correct?

In (3)(A)(C), you use "hours" on lines 26 and 27, but "college semester credit hours" on line 32. Please be consistent.

In (3)(C)(i), line 28, what are "higher" mathematics?

In (3)(C)(i), line 28, are you requiring college algebra in addition to the other "higher mathematics" courses listed?

In (3)(C)(i), line 28, what does it mean for a course to "emphasize" concepts and principles?

In (3)(C)(i), lines 29-31, is this list of courses the exclusive list that will satisfy the requirement? If so, I think it would be clearer to state that the 12 hours must come from one or more of these classes.

In (3)(C)(ii), line 33, please define "qualified".

In your History Note, it should say "Temporary Amend. Eff." with the proposed effective date of July 1, 2022.

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

Brian Liebman
Commission Counsel
Date submitted to agency: June 3, 2022

1 21 NCAC 56 .0601 is proposed for amendment under temporary procedures as follows:
2

3 **SECTION .0600 - PROFESSIONAL LAND SURVEYOR**
4

5 **21 NCAC 56 .0601 REQUIREMENTS FOR LICENSING**

6 (a) Education. The terms used by the Board for the specific education requirements to be eligible to be licensed as a
7 Professional Land Surveyor are defined as follows:

8 (1) "B.S. in surveying or other equivalent curriculum." These degrees shall contain a minimum of 45
9 semester hours, or their quarter-hour equivalents. Of the 45 semester hours, a minimum of 12
10 semester hours of surveying fundamentals, 12 semester hours of applied surveying practice, and 12
11 semester hours of advanced or theoretical surveying courses are required. The remainder of the
12 required surveying courses may be elective-type courses in any of the categories; and

13 (2) "Associate degree in surveying technology." This degree shall contain a minimum of 20 semester
14 hours, or quarter-hour equivalents. Courses shall be in surveying fundamentals, applied surveying
15 practice and advanced or theoretical surveying courses, including courses in surveying practices,
16 subdivision design and planning, surface drainage, and photogrammetry which must be completed
17 with a passing grade.

18 (3) "Land Surveyor Apprenticeship." The applicant shall have completed one of the following
19 programs:

20 (A) Certified Survey Technician Program (CST) of the National Society of Surveyors (NSPS)
21 levels I through IV.

22 (B) "Technologist" Certification Program of the American Society for Photogrammetry and
23 Remote Sensing (ASPRS)

24 (C) Based upon the Surveying Education Standard of the National Council of Examiners for
25 Engineering and Surveying (NCEES) by obtaining college semester credit hours, as modified to
26 require the following 39 hours:

27 (i) 12 hours in mathematics beyond basic mathematics, but the credits include college
28 algebra or higher mathematics. These courses must emphasize mathematical concepts
29 and principles rather than computation. Mathematics courses may include college
30 algebra, trigonometry, analytic geometry, differential and integral calculus, linear
31 algebra, numerical analysis, probability and statistics, and advanced calculus.

32 (ii) 27 college semester credit hours of surveying science and surveying practice. Courses
33 shall be taught by qualified surveying faculty. Examples of surveying courses are basic
34 surveying, route surveying, geodesy, geographic information systems, land development
35 design and planning, global positioning systems, photogrammetry, mapping, legal
36 principles of land surveying, boundary law, professional surveying and mapping, and
37 remote sensing. Graduate-level surveying courses can be included to fulfill curricular

1 (B) Physical Requirement. The map submitted shall be a clean, clear, legible print of an original
2 map in the file of a Professional Land Surveyor.

3 (2) Specific Requirements. The details that shall be evaluated are those applicable to the particular
4 project as described in the Standards of Practice for Land Surveying in North Carolina as set forth
5 in Section .1600 of this Chapter, and as described in G.S. 47-30. In addition, the exhibit shall contain
6 a statement that the field work, calculation, and mapping were performed by the applicant under the
7 supervision of a Professional Land Surveyor, attested to by that Professional Land Surveyor.

8 (3) Requirements for Comity Applicant. The map submitted by an applicant under comity may be a
9 representative map of an actual survey of a project or work performed in the state of licensure that
10 is modified to meet the requirements in Subparagraph (c)(2) of this Rule and shall be evaluated in
11 accordance with the requirements applicable to the particular project as described in the Standards
12 of Practice for Land Surveying in North Carolina as set forth in Section .1600 of this Chapter, and
13 as described in G.S. 47-30.

14
15 *History Note: Authority G.S. 47-30; 89C-10; 89C-13;*
16 *Eff. February 1, 1976;*
17 *Readopted Eff. September 29, 1977;*
18 *Amended Eff. August 1, 2014; July 1, 2009; August 1, 2000; August 1, 1998; November 2, 1992;*
19 *April 1, 1989; December 1, 1984; January 1, 1982;*
20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 27,*
21 *2019; Amended Eff. July 1, 2020*
22 *Amended Eff. _____.*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: NC Board of Examiners for Engineers and Surveyors
2. Rule citation & name: 21 NCAC 56 .0608 Surveyor Intern
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: March 29, 2022 b. Proposed Temporary Rule published on the OAH website: April 4, 2022 c. Public Hearing date: April 12, 2022 d. Comment Period: April 5, 2022 - April 28, 2022 e. Notice pursuant to G.S. 150B-21.1(a3)(2): https://www.ncbels.org/news/temporary-rules/ (Emailed to interested parties) f. Adoption by agency on: May 11, 2022 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]: July 1, 2022 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 type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2022-1, ss. 1.(a) - 1.(c) (S.B. 219) An act to revise the education requirements for licensure of a professional land surveyor, . . . Effective date: July 1, 2022 <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:
Explain: The Session Law, in the process of providing for applicants for licensure to have the additional apprenticeship path to licensure beginning July 1, 2022, removed language addressing the land surveyor intern to address specifically, and only, the qualifications for licensure as a professional land surveyor. This proposed rule, 21 NCAC 56.0608, continues the long established granting of the Surveyor Intern Certificate, as a recognition for applicants and has been recognized by employers in the surveying profession. To continue to encourage workforce development of the surveying profession the Board is adopting this new rule. It is in response to the Legislative charge and authority to the Board in the new paragraph in Section 1.(c) of the session law: "(g1) The Board shall review and promulgate rules establishing continuing education requirements for surveying apprenticeships and encourage the workforce development of the profession."

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

Adherence to the notice and hearing requirements of the permanent rule making process did not allow for having the rule in place by the July 1, 2022, effective date and the granting of the Surveyor Intern Certificate would end. Without adoption prior to July 1, 2022, applicants would be deprived of being granted the Certificate that has been long-time respected in the surveying community for the representation of certain qualifications that have been met, but short of licensure.

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:

David S. Tuttle

Phone:

(919) 791-2000 Ext. 111

E-Mail:

dstuttle@ncbels.org

Agency contact, if any:

David S. Tuttle

Phone:

(919) 791-2000 Ext. 111

E-Mail: dstuttle@ncbels.org

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:

Jonathan S. Care

Title:

Board Chair

E-Mail: jcare@Jcarelaw.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

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TEMPORARY RULE
REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Board of Examiners for Engineers and Surveyors

RULE CITATION: 21 NCAC 56 .0608

DEADLINE FOR RECEIPT: Friday, June 10, 2022.

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 email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

I have concerns about the statutory authority for this Rule. I am not sure that the language added to 89C-10(g1), "...promulgate rules . . . encourag[ing] the workforce development of the profession" allows for the creation by Rule of a certification that previously existed and was explicitly deleted from Ch. 89C in the same bill. Are there other sources of statutory authority? Can you elaborate on your interpretation of (g1)?

Also, just for my own curiosity, what does this certification entitle the holder to do?

In (a)(5)(A), line 11, is "sScience" supposed to be lowercase or uppercase?

In (c), line 25, is this an application form or a certification form? Please choose one name for the form.

In (c), line 25, the name of the examination in the statute is "Fundamentals of Land Surveying examination." Please correct here.

In (d)(4), p.2, lines 2 and 3, please add oxford commas following "applicant" and "character".

In (e), line 11, are you saying the applicant may be interviewed by the Board as a whole, or by individual members only?

In your History Note, please add "Temporary Adoption Eff. July 1, 2022."

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

Brian Liebman
Commission Counsel
Date submitted to agency: June 3, 2022

1 21 NCAC 56 .0608 is proposed for adoption under temporary procedures **with changes** as follows:

2
3 **21 NCAC 56 .0608 SURVEYOR INTERN**

4 (a) General. To obtain the optional certification as a Surveyor Intern, an applicant shall:

- 5 (1) pass the fundamentals of land surveying examination and make application to the Board on a form
- 6 prescribed and furnished by the Board,
- 7 (2) be of good character and reputation,
- 8 (3) submit three character references to the Board, one of whom is a professional land surveyor,
- 9 (4) comply with the requirements of this rule, and
- 10 (5) satisfy one of the following requirements related to education and experience:
 - 11 (A) Have a bachelor of sScience degree in surveying or other equivalent curricula, approved
 - 12 by the Board and a record satisfactory to the Board of one year of progressive practical
 - 13 experience under a practicing professional land surveyor.
 - 14 (B) Have an associate degree in surveying technology approved by the Board and a record
 - 15 satisfactory to the Board of two years of progressive practical experience under a practicing
 - 16 professional land surveyor.
 - 17 (C) Have graduated from high school or completed a high school equivalency certificate and a
 - 18 record satisfactory to the Board of five years of progressive practical experience, under a
 - 19 practicing professional land surveyor.
 - 20 (D) Graduation from a high school or the completion of a high school equivalency certificate,
 - 21 completion of a Land Surveyor Apprenticeship, and a record satisfactory to the Board of
 - 22 three years of progressive practical experience under a practicing professional land
 - 23 surveyor.

24 (b) Request. The application form may be requested from the Board office or obtained from the website.

25 (c) Application Form. Surveyor Intern Certification Form. After passing the fundamentals of surveying examination
26 an applicant may make application to the Board to become certified as a "Surveyor Intern." This form requires the
27 applicant to set forth personal history, educational background, surveying experience, character references and exhibit.
28 A passport-type photographic quality portrait that is adequate for current identification purposes is ~~also~~ required.

29 (d) Reference Forms:

- 30 (1) Persons applying to be certified as a Surveyor Intern shall submit to the Board names of individuals
- 31 who are familiar with the applicant's work, character and reputation. The names shall be submitted
- 32 by the applicant on the application form.
- 33 (2) Persons applying for certification as a Surveyor Intern must submit three references, one of whom
- 34 shall be a Professional Land Surveyor.
- 35 (3) In addition to the applicant submitting names to the Board of such individuals, those individuals
- 36 shall submit to the Board their evaluations of the applicant on reference forms supplied them by the
- 37 applicant.

1 (4) The reference form requires the individual evaluating the applicant to state the evaluating
2 individual's profession, knowledge of the applicant and information concerning the applicant's land
3 surveying experience, character and reputation.

4 (5) The Board shall provide the reference forms to the applicant along with the application for licensure.
5 The reference forms shall then be distributed by the applicant to the persons listed on the application
6 as references. The applicant shall ensure that the individuals listed as references return the forms to
7 the Board prior to the filing deadline for the examination applied for by the applicant.

8 (e) ~~Fees. Surveyor Intern Certification Form. Once the applicant passes the examination on the fundamentals of~~
9 ~~surveying and makes application to the Board to become certified as a "Surveyor Intern" the application fee of one~~
10 ~~hundred dollars (\$100.00) is payable.~~

11 (f) Personal Interview. During the application process, the applicant may be interviewed by Board members if the
12 members have questions regarding the applicant's education, experience or character, based upon the information
13 submitted in the application.

14
15 *Authority G.S. 89C-10; 89C-13; 89C-14; 89C-15;*