

Burgos, Alexander N

Subject: FW: [External] Landscape Contractors Request for Changes

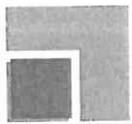
From: Deborah R. Nowell <dnowell@hedrickgardner.com>
Sent: Wednesday, March 8, 2023 11:16 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Anna Baird Choi <achoi@hedrickgardner.com>; ckirven@nclclb.com; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Landscape Contractors Request for Changes

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Brian,

Thanks for confirming receipt and yes, please send on for filing.

Deborah R. Nowell | Accounting Coordinator
Hedrick Gardner Kincheloe & Garofalo LLP
4131 Parklake Ave., Suite 300 | Raleigh, NC 27612
Phone: 919-341-2722 | Fax: 919-832-9425
dnowell@hedrickgardner.com | www.hedrickgardner.com



HEDRICK GARDNER
KINCHELOE GAROFALO

Burgos, Alexander N

Subject: FW: [External] Landscape Contractors Request for Changes

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Wednesday, March 8, 2023 11:08 AM
To: Deborah R. Nowell <dnowell@hedrickgardner.com>
Cc: Anna Baird Choi <achoi@hedrickgardner.com>; ckirven@ncclb.com; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Landscape Contractors Request for Changes

Good morning!

Thanks for sending this over. I am confirming receipt, and also that with the changes, I will recommend approval to the Commission at next week's hearing.

If you don't have any objections, I'll send this over to Dana and Alex for filing as the final version.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Landscape Contractors Request for Changes
Attachments: 21 NCAC 28B .0402.docx

From: Deborah R. Nowell <dnowell@hedrickgardner.com>
Sent: Wednesday, March 8, 2023 10:12 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Anna Baird Choi <achoi@hedrickgardner.com>; ckirven@nclclb.com
Subject: FW: [External] Landscape Contractors Request for Changes

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Brian,

Anna asked me to send to you the attached Rule 21 NCAC 28B .0402 with technical changes made per the comments below.

Please confirm you did receive this email and if everything is good with you re: the changes made.

Thanks,

Deborah R. Nowell | Accounting Coordinator
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21 NCAC 28B .0402 is amended with changes as published in 37:11 NCR 876-877 as follows:

21 NCAC 28B .0402 CONTINUING EDUCATION UNITS

(a) A licensee shall complete in-person seven continuing education units (CEUs) during the year preceding renewal. At least three of the seven CEUs must be technical credits and at least two of the seven CEUs must be business credits. If the information provided by the licensee or continuing education provider to the Board as required by this Section is unclear, the Board may request additional information from a licensee or continuing education provider in order to assure compliance with continuing education requirements.

(b) For the purposes of this Rule:

- (1) "technical credits" are defined as credits relating to the subject matter of landscape contracting as described in G.S. 89D-11(3) and Rules .0502 through .0511 in this Subchapter. The rules shall be grouped as follows:
- (A) Group A: topics covered in Rules .0502, .0503, .0510, and .0511 in this Subchapter;
 - (B) Group B: topics covered in Rules .0504 and .0506 in this Subchapter;
 - (C) Group C: topics covered in Rules .0507 through .0509 in this Subchapter;
 - (D) Group D: topics covered in Rule .0505; and
- (2) "business credits" are defined as credits relating to general business practices, including business planning, contracts, liability exposure, human resources, basic accounting, financial statements, and safety.

~~(e)~~ Beginning with renewals filed after August 1, 2022, a licensee shall obtain one technical credit in at least two groups described in Subparagraph (b)(1) of this Rule in each licensing year. A licensee shall obtain at least one technical credit in each of the distinct groups described in Subparagraph (b)(1) of this Rule during a consecutive three-year period.

~~(d)~~(c) CEUs shall be determined as follows:

Type of Qualifying Activity	Minimum time required for 1 CEU
Live course	50 minutes
Online course	50 minutes
Trade Shows, Field Days, and Tours	4 hours
Green Industry Board Member Service	5 hours maximum 1 hour (3 technical and 2 business)
Teaching or instructing	1 hour
In-house or Green Industry training	1 hour
NC Landscape Contractors Licensing Board Service	5 hours maximum 1 hour (3 technical and 2 business)

Green Industry Board members and NC Landscape Contractors Licensing Board members may earn no more than five hours per CE year (three technical credits and two business credits) for Green Industry or Landscape Licensing board service.

~~(e)~~(d) No more than two CEU credits shall be given for qualifying teaching or instructing in one year.

~~(f)~~(e) Credit shall not be given in increments of less than .5 CEUs. Breaks in courses shall not be counted towards CEU credit.

~~(g)~~(f) Requests for pre-approval as set forth in Rule .0405 of this Subchapter shall be submitted at least 45 days prior to the first day of the course or event.

~~(h)~~(g) All continuing education shall be taken in-person by the individual receiving credit.

~~(i)~~(h) A licensee shall not take the same CEU course within two consecutive licensing years.

~~(j)~~(i) A licensee licensed less than 12 months shall not be subject to continuing education requirements for the initial renewal date as set forth in this Rule.

History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);

Temporary Adoption Eff. January 1, 2016;

Eff. September 1, 2016;

Amended Eff. April 1, 2023; July 1, 2021; June 1, 2019.

Burgos, Alexander N

Subject: FW: [External] Landscape Contractors Request for Changes

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, March 6, 2023 11:07 AM
To: Anna Baird Choi <achoi@hedrickgardner.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Landscape Contractors Request for Changes

Anna,

That sounds good. Thanks for making the changes.

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
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From: Anna Baird Choi <achoi@hedrickgardner.com>
Sent: Monday, March 6, 2023 10:51 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Landscape Contractors Request for Changes

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Brian,

Thanks. I was out on Friday but we've made these edits, I'm running them by the Board and I anticipate they will be filed before COB today.

As for the reference to "Green Industry," we plan to leave it in but I will let the Board know that we need to amend .0405. I agree with you; I don't see any basis on which the Codifier could make this revision.

Anna

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Hedrick Gardner Kincheloe & Garofalo LLP.
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HEDRICK GARDNER
KINCHELOE GAROFALO

Burgos, Alexander N

Subject: FW: [External] Landscape Contractors Request for Changes

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, March 3, 2023 3:22 PM
To: Anna Baird Choi <achoi@hedrickgardner.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Landscape Contractors Request for Changes

Hey Anna,

See below, with my comments in bold. I think if you make these changes, you'll be good.

In (a), line 6, please use the active tense, and specify who is providing information to the Board. We will revise to read “If the information provided by the licensee or continuing education provider to the Board as required . . . “

I think this would work, but please note line 7 where you say “the Board may request additional information from a licensee.” This is why I asked – wasn’t sure if you were requesting info from the licensee or from someone else in addition. Make sure you make changes to both places.

In (b)(1)(A)-(D), I don’t understand the groupings here. What function are they serving, particularly in the absence of the now deleted paragraph (c)? The Board was going to roll out the grouped requirements on August 1, 2022 (see the current (c) that the Board is deleting) but decided that the regulated public needed more time to understand the requirements. Thus, the Board is deleting the implementation but leaving the groupings to inform the regulated public.

OK.

In the table under (c), I’m not sure I understand the entries for “Green Industry Board Member Service” and “NC Landscape Contractors Licensing Board Service”. If I understand the function of the table correctly, it appears you’re saying 5 hours of service equals 1 hour of CEU credit. If so, I don’t understand the reference to “maximum” and “3 technical and 2 business”. Agreed – this is confusing. The right side of the table for each of these should be simply “1 hour” and the text currently in the boxes should be a ?new paragraph? beneath the table that reads as follows:

Green Industry Board members and NC Landscape Contractors Licensing Board members may earn no more than five hours per CE year (3 technical credits and 2 business credits).

Sounds good to me. I don’t think you need a new lettered paragraph, but just add a line of text under the table, so it is all part of (c).

The other interpretation I came up with is that 5 hours of service on each kind of board satisfies the 3 technical and 2 business hour requirement from (a), but that doesn’t comport with the rest of the table.

Also, with respect to the table under (c), what is a “Green Industry”? Is this defined elsewhere? I see it in R. 0405, but it’s limited to “this Rule”. It is defined the same as in rule .0405. Rule .0405 should read in this “subchapter” instead of “rule.” I presume we need to file a notice of text to amend rule .0405?

Yes. The only way you could fix it without going through rulemaking would be via 150B-21.5(a), and I don't think changing "rule" to "subchapter" fits with any of the amendments allowed there. You should probably run it past the Codifier to be sure.

Thanks, and have a great weekend.

Brian

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From: Anna Baird Choi <achoi@hedrickgardner.com>
Sent: Monday, February 27, 2023 2:37 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Subject: [External] Landscape Contractors Request for Changes

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Brian,

Good afternoon. Please see the attached and my comments in red. Let me know if these edits/this information will address your questions.

Thanks,
Anna

Anna Baird Choi | Partner
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Landscape Contractors' Licensing Board

RULE CITATION: 21 NCAC 28B .0402

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 (a), line 6, please use the active tense, and specify who is providing information to the Board. We will revise to read “If the information provided by the licensee or continuing education provider to the Board as required . . . “

In (b)(1)(A)-(D), I don't understand the groupings here. What function are they serving, particularly in the absence of the now deleted paragraph (c)? The Board was going to roll out the grouped requirements on August 1, 2022 (see the current (c) that the Board is deleting) but decided that the regulated public needed more time to understand the requirements. Thus, the Board is deleting the implementation but leaving the groupings to inform the regulated public.

*In the table under (c), I'm not sure I understand the entries for “Green Industry Board Member Service” and “NC Landscape Contractors Licensing Board Service”. If I understand the function of the table correctly, it appears you're saying 5 hours of service equals 1 hour of CEU credit. If so, I don't understand the reference to “maximum” and “3 technical and 2 business”. Agreed – this is confusing. The right side of the table for each of these should be simply “1 hour” and the text currently in the boxes should be a new paragraph? beneath the table that reads as follows:
*Green Industry Board members and NC Landscape Contractors Licensing Board members may earn no more than five hours per CE year (3 technical credits and 2 business credits).**

The other interpretation I came up with is that 5 hours of service on each kind of board satisfies the 3 technical and 2 business hour requirement from (a), but that doesn't comport with the rest of the table.

Also, with respect to the table under (c), what is a “Green Industry”? Is this defined elsewhere? I see it in R. 0405, but it's limited to “this Rule”. It is defined the same as in rule .0405. Rule .0405 should read in this “subchapter” instead of “rule.” I presume we need to file a notice of text to amend rule .0405?

Brian Liebman
Commission Counsel

Date submitted to agency: February 24, 2023

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: February 24, 2023

Burgos, Alexander N

Subject: FW: Landscape Contractors' Licensing Board - March 2023 RRC Request for Changes
Attachments: 2023.03 - Landscape Contractors Request for Changes.docx

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, February 27, 2023 9:23 AM
To: nclclb@nclclb.com
Cc: Anna Baird Choi <achoi@hedrickgardner.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: Landscape Contractors' Licensing Board - March 2023 RRC Request for Changes

Good morning,

It's come to my attention that I put the wrong citation in the request for changes document I sent out on Friday. Attached, please find a new document with the citation corrected, and no other changes made.

Sorry for any confusion!

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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From: Liebman, Brian R
Sent: Friday, February 24, 2023 3:05 PM
To: nclclb@nclclb.com
Cc: Anna Baird Choi <achoi@hedrickgardner.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Landscape Contractors' Licensing Board - March 2023 RRC Request for Changes

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Board for the March 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, March 16, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Friday, March 10, 2023.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

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(984)236-1948
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