

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control _____ Department or Agency Alabama Board of Licensure for
Professional Engineers and Land Surveyors

Rule No. 330-X-2

Rule Title: Definitions

_____ New X Amend _____ Repeal _____ Adopt by Reference _____

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer _____

Rick Smith

Date _____

8/9/18

(DATE FILED)
(STAMP)

APA-2

(Agency Name)
(Agency Division, if applicable)

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Licensure for Professional
Engineers and Land Surveyors (BELS)

RULE NO. & TITLE: 330-X-2: Definitions

INTENDED ACTION: Update and amend Administrative Code language
and numbering as a result of Act 2018-550's passage.

SUBSTANCE OF PROPOSED ACTION: Clarify and better define language
that will appear throughout the Administrative Code.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written comments
concerning changes to Administrative Code are welcome and should
be emailed in advance of the public hearing to Executive Director
Rick Huett (rick.huett@bels.alabama.gov). Public Hearings are
scheduled for September 10, 2018 beginning at 2 p.m. and November
14, 2018 beginning at 9 a.m. inside the BELS' office (Suite 382)
located at 100 North Union Street, Montgomery, Alabama.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Nov. 14, 2018.

CONTACT PERSON AT AGENCY: Rick Huett: rick.huett@bels.alabama.gov
334-242-5568
P.O. Box 304451
Montgomery, Alabama 36130



Rick Huett
Executive Director

ADMINISTRATIVE CODE
(Rules and Regulations)

CHAPTER 330-X-2
DEFINITIONS

330-X-2-.01 Definitions of Terms.

- (1) Section 34-11-1, Code of Ala. 1975, provides for definitions of the following terms: Board, engineer or professional engineer, engineer intern, practice of engineering, land surveyor or professional land surveyor, land surveyor intern, practice of land surveying, practice and offer to practice, and responsible charge.
- (2) The terms "consultation," "investigation," "evaluation," and "planning" as used in the definition of the practice of engineering set forth in Section 34-11-1(7), Code of Ala. 1975, shall include, but are not limited to, services provided by testing laboratories involving the selection of proper tests to be performed (consultation and planning) when done for the purpose of developing design criteria or for the purpose of determining cause of failures (investigation) and analyses to provide recommendations for the foundation and materials to be used in the design or judgment which relate to the acceptability of structural or foundation construction (evaluation). Testing and inspection do not constitute the practice of engineering (1) when they are performed in accordance with previously written standards or specifications or satisfy the standards setting forth the methods and techniques to be followed by the testing agency and no judgment is required other than a comparison of the materials in place with the previously specified standards or (2) when testing or inspection data are collected in conformance with a specific standard.

Any attempt to determine the structural integrity or capacity of a building, or any subsystem thereof, other than detection of problems by visual inspection or normal operation of the user's controls, constitutes the practice of engineering.

- (3) The term "gross negligence" as used in Section 34-11-11(a)(2), Code of Ala. 1975, shall mean the practice of engineering or land surveying by a licensee characterized by the reckless disregard for the rights, safety, or welfare of others, which could result in injury or loss of life or damage to property or financial loss.
- (4) The term "incompetency" as used in Section 34-11-11(a)(2), Code of Ala. 1975, shall mean the practice of engineering or land surveying by a licensee who is either incapable of exercising ordinary care and diligence, or who lacks the ability and skill necessary to properly perform the duties he or she undertakes, or who is not qualified by experience and/or education to perform adequately and competently.
- (5) The term "misconduct" as used in Section 34-11-11(a)(2), Code of Ala. 1975, shall mean the practice of engineering or land surveying by a licensee who performs any acts, causes omissions or makes any assertions or representations which are fraudulent,

deceitful, or misleading, or which in any manner whatsoever discredits or tends to discredit the profession of engineering or land surveying.

- (6) The term "~~principal officer~~" managing agent of the firm as used in Section 34-11-9, Code of Ala. 1975, and Section 330-X-15.01 of the Administrative Code shall also be construed to mean "~~principal the~~ engineer" or "~~principal~~ land surveyor" which is defined as the designated person who is a licensed professional engineer or licensed professional land surveyor and who makes significant technical and/or contractual judgments on behalf of the firm which would affect the firm's professional reputation and liability. The ~~principal's~~ managing agent's responsibilities include overall supervision of the firm's licensed and subordinate personnel providing engineering or surveying work in Alabama and the institution and adherence of policies of the firm.
- (7) The term "Certification" when used in conjunction with the sealing of documents shall mean a statement signed, sealed, and dated by a licensed professional engineer or licensed professional land surveyor representing that the engineering or land surveying services addressed therein, as defined in Section 34-11-1, Code of Ala. 1975, have been performed by the licensed professional engineer or licensed professional land surveyor based on knowledge and information in accordance with commonly accepted procedures consistent with acceptable standards of practice, and is not a guaranty or warranty, either expressed or implied.
- (8) The acronym NCEES as used in Chapter 330-X means the National Council of Examiners for Engineering and Surveying.
- (9) The term "jurisdiction" shall mean any state, district, or territory of the United States.
- (10) The term "Signature" shall mean handwritten or digital as follows:
 - (a) A handwritten message identification containing the name of the person who applied it; or
 - (b) A digital signature that is an electronic authentication process attached to or logically associated with an electronic document. The digital signature must be:
 - 1. Unique to the person using it,
 - 2. Capable of verification,
 - 3. Under the sole control of the person using it, and
 - 4. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.
- 5. A digital signature that uses a process approved by the board will be presumed to meet the criteria set forth in subsections (b)1. through (b)4. above.

(11) The term "Inactive" ~~Licensee~~ shall mean a licensee or firm who is not engaged in the engineering or land surveying practice which requires licensure in Alabama. No licensee or firm granted inactive status may practice or offer to practice engineering or surveying in Alabama as defined in Section 34-11-1(612), Code of Ala. 1975.

(12) The term Professional Engineer, Retired or "Professional Land Surveyor, Retired," ~~"Retired Licensee"~~ shall mean a person who is retired from the profession of engineering or land surveying in Alabama and has been approved to use the title by the board.

(13) The term "Lapsed Expired License" shall mean a license that has not been renewed as of the deadline for renewing. A license not renewed will remain in a ~~lapsed~~ expired status for a maximum of ~~four~~ two years.

(14) ~~The term "Expired License" shall mean a license that has been lapsed for more than four years.~~

(14) The term "restricted" shall mean a license or certificate that is limited in a manner specified by the Board.

(15) The term "Responsible Charge" shall mean direct control, personal supervision of, and legal responsibility for the engineering work or land surveying work performed. This responsible charge shall be of such a nature that the client may reasonably presume that the licensed engineer or land surveyor which he has employed is the provider of the professional services. The licensed professional engineer or licensed professional land surveyor providing such control and supervision shall have made decisions on technical matters of policy and design and shall have exercised his or her professional judgment in all engineering or land surveying matters that are embodied in the design and the plans, specifications, land surveys, or other documents involved in the work. By applying his or her seal, and/or signature, and date to the final documents, the licensee signifies compliance with the requirements of these definitions and the Rules of Professional Conduct (Code of Ethics) and accepts responsibility therefore.

(16) The term "surrender" shall mean the voluntary relinquishment of a license or certificate and shall have the same force and effect as a revocation.

(17) The term "testimony" as used in Sections 34-11-1(7) and 34-11-1(8), Code of Ala. 1975, shall mean a declaration made by a witness under oath or affirmation related to engineering and surveying activities in the State of Alabama.

(18) The term "supervision of construction" as it relates to an engineer shall mean the general oversight of an engineering project as it relates to the implementation of a design during construction.