

LOUISIANA PROFESSIONAL ENGINEERING AND LAND SURVEYING BOARD

PROPOSED RULE REVISIONS

2019-1

1. Incidental Practice of Engineering by Architects

§105. Definitions

A. The words and phrases defined in R.S. 37:682 shall apply to these rules. In addition, the following words and phrases shall have the following meanings, unless the content of the rules clearly states otherwise.

ABET—Accreditation Board for Engineering and Technology, Inc.

ANSAC/ABET—the Applied and Natural Science Accreditation Commission of ABET.

Accredited Engineering Curriculum—a curriculum approved by EAC/ABET as an engineering academic program that satisfies the academic requirements for the practice of engineering at the professional level.

Accredited Land Surveying Curriculum—a curriculum approved by ANSAC/ABET as a land surveying or geomatics academic program that satisfies the academic requirements for the practice of land surveying at the professional level.

Act or Licensure Law—R.S. 37:681-37:703, including any amendments thereto. This law empowers the board to regulate the practice of engineering and land surveying in the state of Louisiana.

Benefits of Any Substantial Nature or Significant Gratuity—as used in the rules of professional conduct, shall mean any acts, articles, money or other material possessions which are of such value or proportion that their acceptance could reasonably be expected to create an obligation on the part of the receivers, or otherwise compromise their ability to exercise their own judgment, without regard to such benefit or gratuity.

Bona Fide Employee—an individual in the service of an employer under a contract of hire, expressed or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed and the employer pays wages or a salary directly to the employee, pays a share of social security and federal unemployment tax, withholds federal income tax and the employee's share of Social Security payments, provides training, furnishes tools and materials, and sets hours of work. Generally such employees work full-time for the employer, perform work at a location assigned by the employer and do not offer their services to the general public.

Bona Fide Established Commercial Marketing Agency—a business which is specifically devoted to public relations, advertising and promoting the services of a client, and which may be appropriately licensed as required by state law.

EAC/ABET—the Engineering Accreditation Commission of ABET.

Employees—for purposes of R.S. 37:701(C) only, shall mean:

a. any and all individuals to or for whom a firm engaged in industrial operations pays salary or other compensation, withholds taxes, provides benefits or pays workers' compensation and/or liability insurance, including without limitation all individuals covered by the definition of *bona fide employee* as set forth in the rules of the board; or

b. any and all individuals whose conduct a firm engaged in industrial operations has the right to control, including the right to hire, fire or directly supervise, the right to set the individual's work schedule and job duties, or the right to set the terms and conditions of employment, including without limitation individuals supplied through an employment agency or consultant firm.

Firm—a domestic or foreign firm, partnership, association, cooperative, venture, corporation, limited liability company, limited liability partnership, or other entity.

Fraud, Deceit, or Misrepresentation—as used in R.S. 37:698(A)(1) or (2) or R.S. 37:700(A)(3), shall mean intentional deception to secure gain, through attempts to deliberately conceal, mislead, or misrepresent the truth with the intent to have others take some action relying thereupon, or any act which provides incorrect, false, or misleading information, upon which others might rely.

Gross Incompetence—as used in R.S. 37:698(A)(2), 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 duty undertaken. (The practice of engineering in a discipline other than that in which the licensee has been listed will not be considered as evidence of gross incompetence, provided the licensee is otherwise qualified by education or experience.) Examples of practice which the board may consider to constitute gross incompetence include but are not limited to:

a. the undertaking of assignments other than those for which the licensee is qualified by education or experience in the specific technical fields involved; or

b. the affixing of the licensee's signature or seal to any engineering or land surveying plan or document dealing with the subject matter in which the licensee lacks competence by virtue of education or experience.

Gross Misconduct—as used in R.S. 37:698(A)(2), shall mean the practice of engineering or land surveying by a licensee who performs any acts, causes any 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 professions of engineering or land surveying. Gross misconduct as used herein shall also include any act or practice in violation of the board's rules of professional conduct or the board's rules on use of seals.

Gross Negligence—as used in R.S. 37:698(A)(2), shall mean the practice of engineering or land surveying by a licensee characterized by the licensee's lack of reasonable care, precaution, or attention to the life, health, safety, property or welfare of others, which could result in injury or damage to life or property or financial loss. Examples of practice which the board may consider to constitute gross negligence include, but are not limited to:

a. the preparation of an incomplete or inaccurate engineering or land surveying plan or document that is below acceptable standards, which is released for construction or other lawful purposes, and which could result in financial loss, damage or injury; or

b. failure of the licensee to exercise reasonable diligence and care in providing professional services, which could result in financial loss, damage or injury.

NCEES—the National Council of Examiners for Engineering and Surveying.

Person—an individual or firm.

Practice of Engineering—

a. practice of engineering is defined in R.S. 37:682. The board recognizes in the design of buildings and similar structures that there is overlap between the work of architects and professional engineers. It is recognized that an architect who has complied with all of the current laws of Louisiana relating to the practice of architecture has a right to engage in some activities properly classifiable as the practice of engineering insofar as it is necessarily incidental to his/her work as an architect. Likewise, it is recognized that the professional engineer who has complied with all of the current laws of Louisiana and is properly licensed has the right to engage in some activities properly classifiable as architecture insofar as it is necessarily incidental to his/her work as a professional engineer. Furthermore, the architect or the professional engineer, as the case may be, shall assume all responsibility for compliance with all the laws or ordinances relating to the designs or projects in which he/she may be engaged.

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b. an architect may perform minor mechanical, electrical or civil-structural engineering work-necessarily incidental to his/her practice of architecture, but such incidental engineering work shall not include a complete engineering system unless such complete engineering system does not exceed the area thresholds under the occupancy types listed in clause v below. The incidental engineering work shall be of a secondary nature and shall be substantially less in scope and magnitude when compared to the architectural portion of the work. Incidental engineering work includes renovations or alterations of any size building that do not require significant adjustments to the engineering calculations for the changes to the engineering system(s) or component(s). The incidental work must be safely and competently performed by the architect without jeopardizing the life, health, property and welfare of the public. The incidental engineering work must also satisfy all of the following conditions in new or renovated projects:

i. the total occupant load must not exceed 49 individuals. The occupant load is defined and determined by the method set forth in the currently enforced building code;

ii. the construction value of the incidental engineering work must not exceed 15% of the total construction value for new construction;

iii. any addition to a building or structure must not cause the gross floor areas of the entire building or structure to exceed those listed in clause v below;

iv. any renovations or alterations must not cause the overall construction cost to exceed \$125,000, exclusive of building finishes and furnishings; and

v. any incidental engineering work must not exceed the area thresholds under the following occupancy types:

(a). storage—6,250 sq ft

(b). factory and industrial—5,000 sq ft

(c). mercantile—4,000 sq ft

(d). residential (excluding single family)—4,000 sq ft

(e). educational—2,500 sq ft

(f). institutional—2,500 sq ft

(g). high hazard—1,500 sq ft

(h). assembly—2,650 sq ft

(i). business—4,000 sq ft

(j). utility and maintenance—5,000 sq ft

Professional judgment should be exercised in determining the need for an architect or professional engineer on complex projects that do not exceed these area thresholds.

c. teaching of engineering design and the responsible charge of the teaching of engineering design shall be considered as the practice of engineering. An accredited engineering curriculum ensures the minimum quality requirements for the teaching of engineering design. Thus, the teaching of engineering design courses and the responsible charge of the teaching of engineering design courses must be conducted by professional engineers or by engineering faculty in an accredited engineering curriculum. These unlicensed engineering faculty members are exempt from licensure by the board only for the purpose of teaching of engineering design courses and the responsible charge of the teaching of engineering design courses in an accredited engineering curriculum and shall not otherwise practice or offer to practice engineering in the state of Louisiana as defined by R.S. 37:682 without being licensed by the board.

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Practice of Land Surveying—defined in R.S. 37:682. The board recognizes that there exists a close relationship between land surveying and some areas of engineering, with some activities common to both professions; however, survey work related to property boundaries must be performed under the responsible charge of a professional land

surveyor. Presented below are guidelines which shall be used as an aid in determining the types of surveying services which may be rendered by professional land surveyors or professional engineers.

a. Surveying and mapping functions which require the establishment of relationships to property ownership boundaries are unique to land surveying and must be performed by or under the responsible charge of a professional land surveyor. These functions include:

- i. boundary surveys;
- ii. subdivision surveys and plats;
- iii. public land surveys;
- iv. surveys of servitudes (easements) and rights of way;
- v. surveys of leases.

b. Surveying and mapping functions not unique to land surveying must be performed by or under the responsible charge of a professional land surveyor whenever they require the establishment of relationships to property ownership boundaries. These functions include:

- i. topographical surveys;
- ii. surveys for record drawing;
- iii. layout surveys for construction;
- iv. hydrographic surveys;
- v. mine surveys;
- vi. mapping.

c. Surveying and mapping functions which do not require the establishment of relationships to property ownership boundaries must be performed by or under the responsible charge of either a professional engineer or a professional land surveyor. These surveying and mapping functions include:

- i. topographical surveys;
- ii. surveys for record drawing;
- iii. layout surveys for construction;
- iv. hydrographic surveys;
- v. mine surveys;
- vi. mapping;
- vii. geodetic surveys;
- viii. cartographic surveys;
- ix. horizontal and vertical control surveys;
- x. quantity and measurement surveys;
- xi. profiles and cross-sections;
- xii. site grading plans.

d. Professional services which require the application of engineering principles and the interpretation of engineering data must be performed by or under the responsible charge of a professional engineer.

Responsible Charge—defined in R.S. 37:682. It shall mean the direct control and personal supervision of engineering or land surveying service or work, as the case may be.

Seal—a symbol, image, or list of information that may be found in the form of a rubber stamp, computer-generated data, or other form found acceptable to the board that is applied or attached to a document in a manner consistent with the board’s rules on use of seals.

Signature—handwritten or digital as follows:

- a. a handwritten message identification containing the name of the person who applied it; or
- b. a digital representation of a person's handwritten signature.

Topographical Survey—the measurement by any method of natural or man-made features in the air, on the surface or in the subsurface of the earth, or within bodies of water for the purpose of determining or establishing their size, shape, grade and/or contour. This also includes the preparation of any data depicting the above-described features. Such surveys may include the use of conventional survey methods, LIDAR and scanning technologies, and hydrographic survey methods to gather this data.

Under the Responsible Charge of a Professional Engineer—as it applies in R.S. 37:701(C) only, shall mean:

- a. the work performed by a professional engineer duly licensed under the provisions of the licensure law; or
- b. the work reviewed and approved by a professional engineer duly licensed under the provisions of the licensure law, who is authorized to direct changes to the engineering work; or
- c. the work performed in accordance with a system of engineering practices approved by a professional engineer duly licensed under the provisions of the licensure law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Surveyors, LR 4:298 (August 1978), amended LR 5:110 (May 1979), LR 7:643 (December 1981), LR 14:449 (July 1988), LR 16:772 (September 1990), LR 17:804 (August 1991), LR 20:901 (August 1994), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1020 (July 2001), LR 30:1704 (August 2004), LR 32:1618 (September 2006), LR 35:1908 (September 2009), LR 38:835 (March 2012), repromulgated LR 38:1030 (April 2012), amended LR 44:612 (March 2018), LR 45:75 (January 2019), LR 45:

2. Supervising Professionals

§2305. Supervising Professional

A.1. Each firm licensed with the board shall designate one or more supervising professionals. Each supervising professional shall be a licensed professional:

- a. whose primary employment is with the firm, ~~provided the supervising professional works for the firm for a 12-month average of at least 30 hours per week or 130 hours per month;~~ or
- b. whose employment is with the firm, provided the supervising professional ~~has at least a 25 percent ownership interest in~~ the firm.

Deleted: on a full-time basis

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2. The supervising professionals of an engineering firm shall be professional engineers. The supervising professionals of a land surveying firm shall be professional land surveyors.

3. The responsibilities of a supervising professional include:

- a. renewal of the firm’s license and notification to the board of any change in the firm’s supervising professionals;
- b. institution of and adherence to policies of the firm that are in accordance with the licensure law and the rules of the board; and
- c. ensuring that all professional services provided by the firm are performed by or under the responsible charge of licensed professionals.

B. The supervising professional of a firm which participates in a joint venture shall be responsible for assuring that all professional services performed by the joint venture are rendered in conformity with the provisions of these rules.

C. Nothing herein shall prohibit a supervising professional from also being in responsible charge of professional services provided by the firm.

D. A failure to comply with any of the provisions of this Chapter may subject both the licensed firm and the supervising professional to disciplinary action by the board.

E. Compliance with this Section will not be met by a contractual relationship between the firm and a licensed professional or a firm of licensed professionals in which such licensed professional or firm of licensed professionals is available on a consultative basis. Nor will it be considered compliance if a licensed professional is related to the firm solely in a nominal or inactive capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:689.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:115 (May 1979), amended LR 8:191 (April 1982), LR 10:343 (April 1984), LR 11:362 (April 1985), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1036 (July 2001), LR 30:1719 (August 2004), LR 33:2789 (December 2007), LR 35:2856 (December 2009), LR 38:1418 (June, 2012), LR 44:623 (March 2018), LR 45: