

Dear Senators PATRICK, Guthrie, Ward-Engelking, and
Representatives BARBIERI, Clow, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Board of Professional Engineers and Professional Land Surveyors:
IDAPA 10.01.02 - Rules of Professional Responsibility - Proposed Rule (Docket No. 10-0102-1701).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 07/24/2017. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 08/21/2017.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Business Committee

FROM: Principal Legislative Research Analyst - Ryan Bush

DATE: July 7, 2017

SUBJECT: Idaho Board of Professional Engineers and Professional Land Surveyors

IDAPA 10.01.02 - Rules of Professional Responsibility - Proposed Rule (Docket No. 10-0102-1701)

The Idaho Board of Professional Engineers and Professional Land Surveyors submits notice of proposed rulemaking at IDAPA 10.01.02 - Rules of Professional Responsibility. This proposed rule clarifies that the section 009, Solicitation of Work - Selection on the Basis of Qualifications, applies to consultants and subconsultants.

Negotiated rulemaking was conducted, and Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the November 2016 edition of the Idaho Administrative Bulletin. A public hearing concerning this rulemaking is scheduled on July 19 in Meridian. There is no fiscal impact associated with this rulemaking.

The proposed rule appears to be within the statutory authority granted to the Board in Section 54-1208, Idaho Code.

cc: Idaho Board of Professional Engineers and Professional Land Surveyors
Keith Simila, P.E.

**IDAPA 10 – BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

10.01.02 – RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1208, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be held as follows:

Tuesday, July 19, 2017 – 10:00 a.m.

**1510 E. Watertower Street
Meridian, ID 83642**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The amendments will clarify the requirement to follow the Qualifications Based Selection statute Section 67-2320, Idaho Code. The intent is to clarify this statute applies to both consultants and subconsultants.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There is no fee associated with this rule change.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no fiscal impact to the state general fund or the agency dedicated fund because the amendment is a clarification of a process already required by law and rule.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the November 2, 2016 Idaho Administrative Bulletin, [Volume 16-11, page 23](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Keith Simila, (208) 373-7210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2017.

DATED this 22nd day of May, 2017.

Keith Simila, P.E., Executive Director
1510 E. Watertower Street
Meridian, Idaho 83642
Phone: (208) 373-7210
Fax: (208) 373-7213
keith.simila@ipels.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 10-0102-1701
(Only Those Sections With Amendments Are Shown.)

009. SOLICITATION OF WORK.

01. Commissions. A Licensee or Certificate Holder shall not pay or offer to pay, either directly or indirectly, any commission, gift or other valuable consideration in an effort to secure work, except to bona fide employees or bona fide established business enterprises retained by a Licensee or Certificate Holder for the purpose of securing business or employment. (5-8-09)

02. Representation of Qualifications. A Licensee or Certificate Holder shall not falsify or permit misrepresentation of his or his associates' academic or professional qualifications, and shall not misrepresent or exaggerate the degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint-venturers or his or their past accomplishments with the intent and purpose of enhancing qualifications for the work. The Licensee or Certificate Holder shall not indulge in publicity that is misleading. (5-8-09)

03. Assignment on Which Others Are Employed. A Licensee or Certificate Holder shall not knowingly seek or accept employment for professional services for an assignment which another Licensee or Certificate Holder is employed, or contracted to perform without the currently employed or contracted entity being informed in writing. (5-8-09)

04. Contingency Fee Contracts. A Licensee or Certificate Holder shall not accept an agreement, contract, or commission for professional services on a "contingency basis" which may compromise his professional judgment and shall not accept an agreement, contract or commission for professional services which includes provisions wherein the payment of fee involved is contingent on a "favorable" conclusion, recommendation or judgment. (5-8-09)

05. Selection on the Basis of Qualifications. A Licensee or Certificate Holder should seek professional employment or professional service work on the basis of qualifications and competence for proper accomplishment of the work assignment. On selections for professional engineering and land surveying services that are required pursuant to Section 67-2320, Idaho Code, a licensee or certificate holder, in response to solicitations described in Section 67-2320, Idaho Code, shall not submit information that constitutes a bid for services requested either as a consultant or subconsultant. (4-11-15)()