

Dear Senators ANDREASON, Coiner & Malepeai, and
Representatives BLACK, Henderson & Elaine Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Board of Licensure of Professional Engineers & Professional Land Surveyors :
IDAPA 10.01.01 – Rules of Procedure (Docket No. 10-0101-1001);

10.01.02 – Rules of Professional Responsibility (Docket No. 10-0102-1001).

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 8-19-10. 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 9-17-10.

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 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

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

FROM: Brooke Murdoch, Analyst *SBM*

DATE: August 2, 2010

SUBJECT: Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors

IDAPA 10.01.01 – Rules of Procedure
Docket No. 10-0101-1001

IDAPA 10.01.02 – Rules of Professional Responsibility
Docket No. 10-0102-1001

1. IDAPA 10.01.01 – Rules of Procedure

The Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors submits notice of proposed rulemaking at IDAPA 10.01.01 – Rules of Procedure. The proposed rule eliminates the requirements that a person seeking qualification in the field of structural engineering must first be licensed as a professional engineer in another discipline and must have had two years of work experience in the field of structural engineering. The proposed rule also allows the Board to disclose the details of a disciplinary action investigation to law enforcement agencies and licensing entities in other jurisdictions.

A Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 2, 2010, Idaho Administrative Bulletin. A public hearing concerning this rulemaking is scheduled to be held on Thursday, August 12, 2010.

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

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

2. IDAPA 10.01.02 – Rules of Professional Responsibility

The Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors submits notice of proposed rulemaking at IDAPA 10.01.02 – Rules of Professional Responsibility. The proposed rule requires that licensees and certificate holders be timely in their statements and written responses to the Board on matters pertaining to the Board’s rules. The proposed rule also further defines the term “misconduct” to include the failure to respond within 20 days of an inquiry from the Board. Finally, the proposed rule exempts a licensee or certificate holder from the obligation to communicate a discovered material discrepancy, error or omission in the work of another if the licensee or certificate holder has been retained as an expert witness by an attorney, in which case the Idaho Rules of Civil Procedure apply.

A Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 2, 2010, Idaho Administrative Bulletin. A public hearing concerning this rulemaking is scheduled to be held on Thursday, August 12, 2010.

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

cc: Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors
David L. Curtis, Executive Director

**IDAPA 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-1001

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: A public hearing concerning this rulemaking will be held as follows:

Thursday, August 12, 2010 at 9:00 a.m.

**Conference Room 302
Len B. Jordan Building
650 W. State St.
Boise, ID 83720**

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 proposed changes would: (1) allow initial licensing as a professional engineer through use of the Structural Engineer examination without having to first be licensed as a professional engineer in another discipline, and without requiring an additional 2 years of experience; and (2) allow the details of investigations to be released to law enforcement agencies and licensing entities in other jurisdictions.

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

No fee is being imposed or increased by this rulemaking.

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 will not be any negative fiscal impact on the state general fund.

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 June 2, 2010 Idaho Administrative Bulletin, Vol. 10-6 page 37.

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 David L. Curtis, P.E., Executive Director at dave.curtis@ipels.idaho.gov or at (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 August 25, 2010.

DATED this 24th day of June, 2010.

David L. Curtis, P.E.
Executive Director
Board of Professional Engineers and Professional Land Surveyors
1510 E. Watertower St., Ste. 110
Meridian, ID 83642-7993

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 10-0101-1001

017. EXAMINATIONS.

01. Special or Oral Examination. Examinations for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern will be held on dates and at times and places to be determined by the Board. Special oral or written examinations may be given by the Board as necessary. (3-29-10)

02. Eligibility for Examinations, Educational Requirements. The application for licensure as a professional engineer, professional land surveyor or certification as an engineer intern or land surveyor intern, together with the written examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before being assigned to any examination. (3-29-10)

a. In regard to educational requirements, the Board will consider as unconditionally approved only those engineering programs which are accredited by the Engineering Accreditation Commission (EAC) of ABET, Inc. Non-EAC/ABET accredited engineering programs, related science programs, and engineering technology programs will be considered by the Board on their specific merits, but are not considered equal to engineering programs accredited by EAC/ABET. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. (3-29-10)

b. An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for assignment to the examination for certification as an Engineer Intern or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer. (5-8-09)

i. Standard, regularly scheduled courses from accredited university programs, (on campus, correspondence, video, etc.) are normally acceptable without further justification other than transcript listing. The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to insure that the above requirements are met. (7-1-93)

ii. Graduate level engineering courses, i.e. courses which are available only to graduate students, are normally not acceptable since the Board believes graduate engineering courses may not provide the proper fundamental foundation to meet the broad requirements of professional engineering. (7-1-93)

c. Beginning July 1, 2010, an applicant who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their

equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(4)(b), Idaho Code, for assignment to the examination for certification as a Land Surveyor Intern or as required by Section 54-1212(2)(b), Idaho Code, for assignment to the examination for licensure as a professional land surveyor: (5-8-09)

- i. Three (3) credits in Surveying Law and Boundary Descriptions; (3-30-07)
- ii. Three (3) credits in Route Surveying; (3-30-07)
- iii. Three (3) credits in Public Land Surveying; (3-30-07)
- iv. Three (3) credits in Surveying Software Applications; (3-30-07)
- v. Three (3) credits in Research and Evidence in Surveying; (3-30-07)
- vi. Three (3) credits in Surveying Adjustments and Coordinate Systems; (3-30-07)
- vii. Three (3) credits in Subdivision Planning and Platting; (3-30-07)
- viii. Three (3) credits in Geodesy; and (3-30-07)
- ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. (3-30-07)

~~d. In addition to the minimum requirements set forth in Section 54-1212, Idaho Code, a person who desires to be qualified by examination in the field of structural engineering shall meet the following requirements: (4-22-94)~~

~~i. Be licensed as a professional engineer in Idaho especially qualified in a discipline other than structural engineering. (3-29-10)~~

~~ii. Have two (2) years of work experience in the field of structural engineering after being licensed as a professional engineer. The Principles and Practice of Engineering examination for Structural Engineering will cover the practice of structural engineering to test the applicant's fitness to assume responsibility for engineering work affecting the public health, safety and welfare. The duration of the examination shall be as determined by the Board. (3-29-10)~~

ed. The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has received a master's degree or Doctor of Philosophy degree from an U.S. institution which has a bachelor degree program accredited by the Engineering Accreditation Commission of ABET, Inc. in the discipline of the applicant's master's degree or Doctor of Philosophy degree, and, in addition, has completed the coursework requirements of Subsection 017.02.b. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (3-29-10)

03. Excused Non-Attendance at Exam. In the event that an applicant cannot attend an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (3-30-01)

04. Two Examinations for Engineering Licensure. The complete examining procedure for licensure as a professional engineer normally consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer intern certification, and the second is the Principles and Practice of Engineering for professional engineer licensure. The examination shall be a duration as determined by the Board.

Normally, applicants are eligible to take the Fundamentals of Engineering examination during the last or second-to-last semester of or after graduation from an accredited bachelor of science engineering program. A certificate as an Engineer Intern will be issued only to those student applicants who earn a passing grade on the examination and who receive a degree. Having passed the Fundamentals of Engineering examination, applicants will be required to take the Principles and Practice of Engineering examination at a later date when qualified by experience. (3-29-10)

05. Fundamentals of Engineering. The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The examination may also cover subject matters that are specific to the engineering discipline of the applicants' education. (5-8-09)

06. Principles and Practice of Engineering -- Disciplines. The Principles and Practice of Engineering examination will cover the practice of engineering to test the applicant's fitness to assume responsibility for engineering works affecting the public health, safety and welfare. Separate examinations will be given to test the applicant's fitness in any discipline for which there is an examination which, in the opinion of the Board, meets the requirements of duration and difficulty necessary to adequately test the applicant's fitness to practice in that particular discipline. The Board may use examinations prepared by the National Council of Examiners for Engineering and Surveying (NCEES) or it may prepare or commission the preparation of examinations in disciplines other than those for which examinations may be available from NCEES. (4-22-94)

07. Two Examinations for Land Surveying Licensure. The complete examining procedure for licensure as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Surveying examination for land surveyor intern certification, and the second is the Principles and Practice of Surveying for professional land surveyor licensure. The examination shall be a duration as determined by the Board. Having passed the Fundamentals of Surveying examination, applicants will be required to take the Principles and Practice of Surveying examination at a later date when qualified by experience. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments. The Principles and Practice of Surveying examination may consist of separate modules, each of which must be passed. (3-29-10)

08. Oral or Unassembled Examinations. An oral examination or unassembled written examination, in addition to the prescribed written examination, may be required for professional engineer and professional land surveyor applicants. (7-1-93)

09. Special Examinations. A special examination, written or oral or both, may be required in certain instances where the applicant is seeking licensure through comity or reciprocity with another state or political entity having required written examinations that are not wholly comparable in length, nature or scope. This examination supplements the certified qualifying record of the applicant and establishes a more common basis for judging the application and awarding a certificate of qualification or licensure in this state. The length of these special examinations shall be determined by the Board, but shall in no case exceed the lengths specified for the regular examination. Special examinations may be given at any date and need not conform with regular examination dates. (5-8-09)

10. Grading. Each land surveyor intern, engineer intern and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire examination or modules as determined by the Board, before being awarded certification or licensure. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each module of the examination. (3-29-10)

11. Use of NCEES Examinations. Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineer intern, professional land surveyors, and land surveyor intern may be used by the Board. The examination for the field of structural engineering shall be the examination as determined by the Board. (3-29-10)

12. Review of Examination by Examinee. Due to security concerns about the examinations, examinees shall not be allowed to review their examination. Examinees who fail an examination will be provided a diagnostic analysis of their performance on the examination if such an analysis is available to the Board. (3-20-04)

13. Proctoring of Examinations. Unless otherwise approved, the Board will not proctor an examination for another jurisdiction except State-Specific examinations nor will they request another jurisdiction to proctor an examination for an Idaho applicant. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

021. RIGHT TO PUBLISH DISCIPLINARY ACTIONS.

The Board office may disclose the filing and the nature of a complaint, but may not disclose the details of an investigation except to law enforcement agencies and licensing entities in other jurisdictions. Final, formal enforcement shall be public information. Following a hearing or the entry of a consent agreement, the Board may publish a summary of any order issued by it, in a newsletter or newspaper of general circulation or, for a period of up to ten (10) years, may post it on the Internet. (~~3-29-10~~)(_____)

**IDAPA 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS**

10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-1001

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: A public hearing concerning this rulemaking will be held as follows:

Thursday, August 12, 2010 at 9:00 a.m.

**Conference Room 302
Len B. Jordan Building
650 W. State St.
Boise, ID 83720**

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 proposed changes would: (1) exempt licensees from the requirement to notify another licensee of the discovery of an error if the discoverer is retained by an attorney, in which case the Idaho Rules of Civil Procedure would apply; and (2) require that licensees be prompt in statements and written responses to the Board.

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

No fee is being imposed or increased by this rulemaking.

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 will not be any negative fiscal impact on the state general fund.

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 June 2, 2010 Idaho Administrative Bulletin, Vol. 10-6 page 38.

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 David L. Curtis, P.E., Executive Director at dave.curtis@ipels.idaho.gov or at (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 August 25, 2010.

DATED this 24th day of June, 2010.

David L. Curtis, P.E.
Executive Director
Board of Professional Engineers and Land Surveyors
1510 E. Watertower St., Ste. 110
Meridian, ID 83642-7993

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 10-0102-1001

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as Idaho Board of Licensure of Professional Engineers and Professional Land Surveyors, IDAPA 10.01.02, "Rules of Professional Responsibility." (5-8-09)

02. Scope. In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following Rules of Professional Responsibility, hereinafter referred to as Rules, have been promulgated in accordance with Section 54-1208, Idaho Code, and shall be binding in the state of Idaho upon every person holding a license as a Professional Engineer or Professional Land Surveyor, on all entities authorized to offer or perform engineering or land surveying services through a business entity or other legal entity and on every person holding a certificate as an engineer intern or a certificate as a land surveyor intern. Each Licensee and Certificate Holder under the laws of the state of Idaho is charged with being familiar with these Rules and knowledgeable in their application to the practice of engineering and land surveying. Such application shall include the recognition that the practice of engineering or the practice of land surveying is a privilege and the Licensee or Certificate Holder shall be forthright, ~~and~~ candid, and timely in statements or written responses to the Board, or its representatives, on matters pertaining to these Rules. All Licensees or Certificate Holders in their original application, and for renewals thereof, shall certify that they have read and agree to abide by the Rules which are in force at the time of application or renewal. These Rules shall not be a basis for action involving civil liability, however, failure to obey these Rules may subject a Licensee or Certificate Holder to Board action pursuant to Chapter 12, Title 54, Idaho Code. (~~5-8-09~~)()

(BREAK IN CONTINUITY OF SECTIONS)

004. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: (7-1-93)

- 01. Board.** The Board of Licensure of Professional Engineers and Professional Land Surveyors. (5-8-09)
- 02. Certificate Holder.** Any person holding a current certificate as an Engineer Intern or a Land Surveyor Intern or a business entity (which is also herein referred to as a "person") holding a current certificate of authorization, which has been duly issued by the Board. (5-8-09)
- 03. Deceit.** To intentionally misrepresent a material matter, or intentionally omit to disclose a known material matter. (3-29-10)
- 04. Incompetence.** Failure to meet the standard of care. (3-29-10)
- 05. Licensee.** Any person holding a current license as a Professional Engineer, a Professional Land Surveyor, or a combination thereof, which has been duly issued by the Board. (5-8-09)

06. Misconduct. A violation or attempt to violate these rules of professional responsibility or to knowingly assist or induce another to do so, or do so through the acts of another; a finding of guilt of commitment of a felony or a plea of guilty to a felony; commit fraud or deceit; failure to respond within twenty (20) days of an inquiry from the Board or its representative, unless such time is extended by the Board for justifiable cause; state or imply an ability to influence improperly a government agency or official. ~~(3-29-10)~~(____)

005. RESPONSIBILITY TO THE PUBLIC.

01. Primary Obligation. All Licensees and Certificate Holders shall at all times recognize their primary obligation is to protect the safety, health and welfare of the public in the performance of their professional duties. (5-8-09)

02. Standard of Care. Each Licensee and Certificate Holder shall exercise such care, skill and diligence as others in that profession ordinarily exercise under like circumstances. (3-29-10)

03. Professional Judgment. If any Licensee's or Certificate Holder's professional judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, the Licensee or Certificate Holder shall inform the employer or client of the possible consequences and, where appropriate, notify the Board or such other authority of the situation. (5-8-09)

04. Obligation to Communicate Discovery of Discrepancy. If a Licensee or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another Licensee or Certificate Holder, which may impact the health, property and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the Licensee or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication shall reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Licensee or Certificate Holder whose work is believed to contain the discrepancy shall respond in writing within sixty (60) calendar days to any question about his work raised by another Licensee or Certificate Holder. Failure to respond on the part of the Licensee or Certificate Holder whose work is believed to contain the discrepancy shall be considered a violation of these rules and may subject the Licensee or Certificate Holder to disciplinary action by the Board. The discoverer shall notify the Board in the event a response satisfactory to the discoverer is not obtained within sixty (60) days. A Licensee or Certificate Holder shall be exempt from this requirement if their client is an attorney and they are being retained as an expert witness. In this case, the Idaho Rules of Civil Procedure shall apply. ~~(5-8-09)~~(____)

05. Obligation to Comply with Rules of Continuing Professional Development. All Licensees shall comply with the requirements contained in IDAPA 10.01.04, "Rules of Continuing Professional Development." (5-8-09)