

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.183.303 definitions,)	PROPOSED AMENDMENT
24.183.404 fee schedule, 24.183.407)	
teaching of advanced engineering)	
subjects in Montana, 24.183.408)	
certificate of authorization, 24.183.502)	
applications, 24.183.505 exhibits of)	
land surveying projects, 24.183.701)	
comity for professional engineers,)	
24.183.801 comity for professional land)	
surveyors, 24.183.802 classification of)	
land surveying experience,)	
24.183.2105 continuing professional)	
competency - continuing education,)	
24.183.2207 unprofessional conduct)	

TO: All Concerned Persons

1. On February 13, 2019, at 1:30 p.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors no later than 5:00 p.m., on February 6, 2019, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpels@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.183.303 DEFINITIONS (1) through (3)(b) remain the same.

(i) at least six credits in English, seven credits in math, six credits in drafting, including three credits in survey drafting, nine credits in basic science, five credits in humanities and social sciences or approved associate of applied science degree benchmarks; and

(ii) and (4) remain the same.

(5) "Engineer-surveyor" means an individual licensed in Montana as both a professional engineer and professional land surveyor, with a license designation as "ES."

(5) and (6) remain the same but are renumbered (6) and (7).

~~(7) "Nonprogressive land survey experience" means experience obtained under the supervision of a licensed professional land surveyor and may include one or more of the following:~~

~~(a) construction layout of buildings and miscellaneous structures;~~

~~(b) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;~~

~~(c) construction staking for land modification, highways, roads, utilities, etc.;~~

~~or~~

~~(d) other construction surveying experience.~~

(8) through (15) remain the same.

AUTH: 37-67-202, MCA

IMP: 37-67-101, 37-67-103, 37-67-314, 37-67-322, 37-67-323, 37-67-324, 37-67-325, 37-67-326, 37-67-328, MCA

REASON: When this rule was adopted in 2016, the board inadvertently missed adding a provision for three credits in survey drafting to the definition of "board-approved curricula." Noting that these credits have been in the board-approved curricula adopted as policy prior to the rule's adoption, the board is now amending (3)(b)(i) to correct that omission.

Board staff noticed that individuals holding both a professional engineer license and a professional land surveyor license are given the title of "engineer-surveyor" or "ES" in the licensure database, but the title appears nowhere in board rules. Because dual licensees are referred to in several board rules, the board wishes to accurately name those individuals as engineer-surveyors and is now adding the term to this definitions rule.

Following significant discussion among land surveyor board members and leaders in the Montana land surveying community, the board determined there is no longer a need for a category of "nonprogressive land survey experience." The board concluded that the definition of progressive land survey experience will suffice to clearly identify experience the board recognizes and is striking (7).

24.183.404 FEE SCHEDULE (1) through (2)(f)(ii) remain the same.

(iii) ~~Dual license as a PE and PLS~~ Engineer-surveyor

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(iv) through (3) remain the same.

AUTH: 37-1-134, 37-67-202, 37-67-322, 37-67-327, MCA

IMP: 37-1-134, 37-1-141, 37-1-319, 37-67-312, 37-67-313, 37-67-322, 37-67-327, MCA

REASON: The board determined it is reasonably necessary to amend several rules for the consistent use of "engineer-surveyors" for those licensed as both a professional engineer and professional land surveyor. The board is amending this

rule to add the updated designation and align with the new definition in ARM 24.183.303 and as used in the licensure database and on license certificates.

24.183.407 TEACHING OF ADVANCED ENGINEERING SUBJECTS IN MONTANA (1) ~~Either~~ When teaching advanced engineering subjects in Montana, ~~either~~ the class instructor or the person in responsible charge of the board-approved curriculum shall be a Montana licensed professional engineer and be in responsible charge of class instruction of engineering classes at the junior level and above.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, 37-67-323, 37-67-324, MCA

REASON: Earlier in 2018, the board was approached with questions about whether this rule applied to engineering programs outside of Montana that are considered "board-approved" due to accreditation by a third party. Following discussion and advice from board legal counsel, the board concluded that this rule only applies to teaching engineering where the board has authority, i.e. within the state of Montana, and is amending the rule accordingly.

24.183.408 CERTIFICATE OF AUTHORIZATION (1) and (2) remain the same.

(3) A professional engineer or professional land surveyor designated in responsible charge on a certificate of authorization who leaves the employment of a certificate holder shall notify the board office in writing within 45 working days. The certificate holder must designate a replacement professional engineer and/or professional land surveyor in responsible charge and notify the board in writing within 45 working days ~~or surrender the certificate of authorization.~~

(4) In the event that a certificate holder no longer has a Montana licensee in responsible charge as required by 37-67-328, MCA, the certificate holder shall notify the board office. A certificate holder without a Montana licensed person in responsible charge must not offer or provide engineering or land surveying services in Montana until a Montana licensee in responsible charge has been identified.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-328, MCA

REASON: During a recent renewal of certificates of authorization (COA), a certificate holder notified board staff that it would be unable to name a new engineer in responsible charge within the 45 days prescribed by this rule. Board and legal staff agreed that the board had no authority to require a "surrender" of the COA in this circumstance, nor is there any provision to make the certificate "inactive." Therefore, the board is amending this rule to remove the surrender provision and add a caution that COA holders cannot offer or provide services during any period with no Montana licensee in responsible charge.

24.183.502 APPLICATIONS (1) Applicants shall complete all experience required for approval of an application:

- ~~(a) prior to submission of an application; or~~
 - ~~(b) at a time approved by the board.~~
- (2) through (6) remain the same.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-104, 37-67-312, 37-67-313, 37-67-322, 37-67-323, 37-67-324, 37-67-325, 37-67-326, 37-67-327, MCA

REASON: License applications have expiration dates set by ARM 24.183.504 and department rule. Additionally, standardized application procedures allow submission of supplemental information prior to an application's expiration. The board concluded that other unstated board deadlines are unnecessary and is amending the rule accordingly.

24.183.505 EXHIBITS OF LAND SURVEYING PROJECTS (1) An applicant for licensure as a land surveyor shall submit no less than two and no more than four exhibits of land surveying projects demonstrating the diversity of the applicant's experience. A minimum of one exhibit shall demonstrate be a certificate of survey or subdivision plat that demonstrates the applicant's knowledge of the principles and practices of boundary surveying.

(2) and (3) remain the same.

AUTH: 37-67-202, MCA

IMP: 37-67-326, MCA

REASON: The board's land surveyor members, with input from the state's land surveyor community, recommended the board amend this rule to more specifically describe the documents that adequately demonstrate knowledge of boundary surveying. Following discussion, the board accepted a recommendation to require that land surveyor applicants submit either a certificate of survey or a subdivision plat, which are documents the board regulates for content.

24.183.701 COMITY FOR PROFESSIONAL ENGINEERS (1) through (3) remain the same.

(4) Professional experience claimed by an applicant to meet the provisions of 37-67-312, MCA, regarding a preclosure deficiency of experience does not have to occur under the supervision of a professional engineer.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-304, 37-67-312, MCA

REASON: Following an analysis of board statutes and the associated licensing requirements, board legal counsel advised that requiring supervised postlicense experience for deficient preclosure experience for comity applicants does not align with the provisions of 37-67-312, MCA. The statute provides that professional engineer applicants whose initial licensure in another state does not meet Montana's experience requirements must demonstrate two years of postlicense experience

for each year of prelicense deficiency. Since licensed PEs practice engineering without supervision, the board agreed that postlicensure experience claimed to meet the statutory requirement does not have to be supervised by another licensee.

24.183.801 COMITY CONSIDERATION FOR PROFESSIONAL LAND SURVEYORS (1) through (3) remain the same.

(4) Professional experience claimed by an applicant to meet the provisions of 37-67-313, MCA, regarding a prelicensure deficiency of experience does not have to occur under the supervision of a professional land surveyor.

AUTH: 37-1-131, 37-67-202, MCA
IMP: 37-1-304, 37-67-313, MCA

REASON: Following an analysis of board statutes and the associated licensing requirements, board legal counsel advised that requiring supervised postlicense experience for deficient prelicense experience for comity applicants does not align with the provisions of 37-67-313, MCA. The statute provides that land surveyor applicants whose initial licensure in another state does not meet Montana's experience requirements must demonstrate two years of postlicensure experience for each year of prelicense deficiency. Since licensed PLSs practice land surveying without supervision, the board agreed that postlicensure experience claimed to meet the statutory requirement does not have to be supervised by another licensee. The board is amending the title to align with the title of the engineers comity rule.

24.183.802 CLASSIFICATION OF LAND SURVEYING EXPERIENCE

(1) remains the same.

~~(2) Nonprogressive land surveying experience shall be credited at one-half time and shall be limited to a total of no more than two years.~~

(3) remains the same but is renumbered (2).

AUTH: 37-67-202, MCA
IMP: 37-67-313, 37-67-325, 37-67-326, MCA

REASON: Because the board is proposing to eliminate the definition of "nonprogressive experience" from ARM 24.183.303 in this notice, it is reasonably necessary to remove it from this rule and no longer consider the experience.

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY - CONTINUING EDUCATION (1) through (2)(d) remain the same.

(e) "~~Dual license~~ Engineer-surveyor" means a person who is licensed as both an engineer and a land surveyor.

(3) through (7)(c) remain the same.

~~(d) Licensees currently on inactive status shall be exempt. Licensees who list their occupation as "retired" on the board approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services shall be exempt from the professional development hours required. In the event such a person elects to~~

~~return to active practice of professional engineering or land surveying, professional development hours must be earned before returning to active practice for each year exempted not to exceed the annual requirement for two years.~~

(8) The number of PDH units required by dual licensees of engineer-surveyors shall remain be 30, at least one-third of which shall be obtained in each profession.

AUTH: 37-1-319, MCA

IMP: 37-1-306, 37-1-319, MCA

REASON: The board is changing the definition of "dual license" to "engineer-surveyor" in this rule to align with changes elsewhere in this notice. The board is removing the term "retired" from (7)(d) as it is not used in board rules. Because licenses may be placed on inactive status per ARM 24.183.2102, the board is amending (7)(d) to clarify that inactive status licensees are exempt from the continuing education requirements and random audits but must provide proof of meeting continuing education requirements when converting to active status.

The board is amending (8) to update language and clarify for audit staff and licensees that engineer-surveyors do not have to acquire more CE than other licensees, although they must acquire minimum amounts for each license held.

24.183.2207 UNPROFESSIONAL CONDUCT (1) through (1)(i) remain the same.

(j) affixing a signature or seal to any plans or documents outside the competence of the licensee ~~and~~ or not prepared under their responsible charge;

(k) through (t) remain the same.

AUTH: 37-1-319, 37-67-202, MCA

IMP: 37-1-316, 37-67-331, 37-67-332, MCA

REASON: The board determined it is reasonably necessary to amend (1)(j) by changing "and" to "or." Following a board and department legal counsel suggestion that either element in this section is reasonable grounds for unprofessional conduct, the board is amending this rule accordingly.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., February 15, 2019.

5. An electronic copy of this notice of public hearing is available at www.engineer.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system

maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpels@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.183.303, 24.183.404, 24.183.407, 24.183.408, 24.183.502, 24.183.505, 24.183.701, 24.183.801, 24.183.802, 24.183.2105, and 24.183.2207 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to dlibsdpels@mt.gov.

9. Ian Marquand, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
RON DRAKE, PROFESSIONAL ENGINEER
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2019.