

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 22 - HEARING AID DEALERS AND FITTERS BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Hearing Aid Dealers and Fitters Board intends to amend the rules cited as 21 NCAC 22F .0202, .0208; and 22L .0101.

Link to agency website pursuant to G.S. 150B-19.1(c): www.nchalb.org/regulatory/rulechange.php

Proposed Effective Date: October 1, 2016

Public Hearing:

Date: Monday, June 6, 2016

Time: 12:45 p.m.

Location: Paragon Bank, Training Room, 3535 Glenwood Ave, Raleigh, NC 27612

Reason for Proposed Action: Amend continuing education requirements and clarify Board procedures for handling complaints.

Comments may be submitted to: Catherine Jorgensen, Rulemaking Coordinator, NC State Hearing Aid Dealers and Fitters Board, 3801 Lake Boone Trail, Ste 190, Raleigh, NC 27607, email rules@nchalb.org

Comment period ends: July 15, 2016

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

State funds affected

- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (≥\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 22F - LICENSING PROVISIONS

SECTION .0200 - CONTINUING EDUCATION

21 NCAC 22F .0202 ANNUAL CONTINUING EDUCATION REQUIREMENTS

(a) A licensee shall complete and record with the Board at least ten hours (1.00 CEU credit) of Board-approved continuing education annually, including at least five hours (0.50 CEU credit) classified as Category 1 in accordance with Rule .0203 of this Section.

(b) The CEU Accrual Period for each license renewal shall be the calendar year preceding license renewal. CEU credit cannot be carried over from one CEU Accrual Period to the next, even if the CEU credit earned exceeds the license renewal requirement.

(c) A licensee may receive CEU credit for only one of the sessions when sessions with essentially identical content are presented at the same or different CE Programs during any two consecutive Board CEU Accrual Periods. The Board shall determine whether sessions have essentially identical content by reviewing the presenters, educational objectives, and content for each session as provided on the program application.

(d) A licensee completing the same self study during any two consecutive CEU Accrual Periods shall be granted CEU credit only once.

(e)(c) An individual passing the licensing exam during a CEU Accrual Period satisfies the continuing education requirement for the corresponding license renewal.

Authority G.S. 93D-3(c); 93D-11.

21 NCAC 22F .0208 SELF-STUDY

(a) Self-study may be completed to satisfy up to all 10 five hours of the continuing education requirement during each CEU Accrual Period.

(b) Each self-study event shall be one session and up to 40 five sessions completed in the same CEU Accrual Period may be reported on one self-study Report of Attendance as a self-study Program.

(c) A licensee shall record self-study CEU credit with the Board by submitting all of the following:

- (1) an electronic CEU Verification Report;
(2) a completed self-study Report of Attendance;

- (3) an official transcript listing the licensee's score of 80 percent or greater on an internet-presented examination pertaining to the content of the self-study activity; and
 - (4) the recording fee as set forth in Rule 21 NCAC 22A .0501 for each self-study program.
- (d) The Board shall accept electronic images of the self-study Report of Attendance and official transcripts when submitted electronically in conjunction with the CEU Verification Report.

Authority G.S. 93D-3(c); 93D-11.

**SUBCHAPTER 22L – ADMINISTRATIVE HEARINGS
AND DISCIPLINE**

21 NCAC 22L .0101 COMMITTEE ON INVESTIGATIONS

(a) The Committee on Investigations shall review all complaints submitted to the Board. The Committee on Investigations may:

- (1) hire an investigator or such persons as it deems necessary to determine whether it believes that probable cause exists to support formal disciplinary action against a licensee, apprentice, or registered sponsor;
- (2) subpoena persons to provide the Committee with sworn testimony or documents, provided that the subpoena is signed by the President or Secretary-Treasurer of the Board;
- (3) make inquiries designed to assist the Committee in its review of matters under investigation; or
- (4) initiate charges against a licensee, apprentice or registered sponsor if violations are suggested by the evidence considered by the Committee during an investigation of a complaint.

(b) ~~The complainant shall submit a signed complaint on the Board provided Board-approved complaint form-form. The complaint form which is available on the Board website (www.nchalb.org) or by contacting the Board office.~~

(c) The Board shall not respond to or investigate anonymous complaints or inquiries. The Board shall return incomplete forms to the complainant, if a complainant is listed on the incomplete form.

(d) The Committee on Investigations shall administratively close:

- (1) any complaint anonymously submitted;
- (2) a complaint that alleges an advertising violation which occurred more than one year prior to notifying the Board of the alleged violation;
- (3) a complaint withdrawn by the complainant at any stage of the ~~investigation~~ investigation; or
- (4) incomplete forms.

(e) After a preliminary review of a complaint, the Committee on Investigations shall:

- (1) recommend to the Board a finding that there is no probable cause to believe a violation of the law or rules exists; or
- (2) serve the respondent with a written explanation of the charges being investigated by the Committee.

(f) The respondent shall answer in writing within 20 days of receipt of the notification of charges.

(g) The Committee ~~shall~~ may offer the complainant a summary of the respondent's answer.

(h) The Committee ~~shall~~ may offer the parties an opportunity to present oral statements to the Committee after the written answer is received from the respondent. Neither party is compelled to attend.

(i) With assistance from the Board's legal counsel, the Committee shall determine the validity and merit of the charges, and whether the accused party has violated any standard of conduct which would justify a disciplinary action based upon the grounds as specified in G.S. 93D-13 or this Chapter.

(j) The Committee on Investigations shall present its findings and recommendation to the Board, including proposed discipline, if any, but shall not identify the parties to the complaint to the full Board except by descriptive titles, such as licensee, apprentice, sponsor, and consumer.

(k) The Board may find no probable cause for disciplinary action and dismiss the charges. The Committee on Investigations shall notify the parties of the Board action. The Board shall not release the letter of notification to any member of the public pursuant to G.S. 93D-13(c).

(l) The Board may find no probable cause for disciplinary action but issue a letter of caution to the respondent. The Board does not consider this letter a public record and shall not release the letter of caution to any member of the public pursuant to G.S. 93D-13(c).

(m) The Board may find probable cause for disciplinary action and serve the respondent with a private reprimand. The Board does not consider the content of the private reprimand a public record pursuant to G.S. 93D-13(c). The Board shall deem the private reprimand accepted as formal discipline in the matter unless the respondent submits a refusal to accept the private reprimand which shall:

- (1) be in writing, addressed to the Committee on Investigations;
- (2) be filed with the executive secretary for the Board within 20 days after service of the private reprimand; and
- (3) include a request for a contested case hearing in accordance with 21 NCAC 22L .0103.

(n) The Board may find probable cause of a violation of the Board's statute or rules and authorize the Committee on Investigations, by and through the Board's legal counsel, to undertake negotiations with the respondent to settle the matter without a hearing when such settlement accomplishes the Board's duty to protect the consuming public.

(o) The Board may find probable cause for disciplinary action beyond a private reprimand due to the circumstances and nature of the violation. In such cases, the Board shall:

- (1) serve a notice of hearing on the accused party as required by G.S. 150B, Article 3A., which may also be released to any requesting member of the public pursuant to G.S. 93D-13(c);
- (2) designate a presiding officer for the contested case; and
- (3) conduct a hearing in accordance with the rules of this Subchapter.

Authority G.S. 93D-3; 93D-13; 150B-38.

CHAPTER 28 – LANDSCAPE CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Landscape Contractors' Licensing Board intends to adopt the rules cited as 21 NCAC 28B .0101-.0103; .0201-.0204; .0301-.0302; .0401-.0405; .0501-.0511; .0601; .0701; .0801-.0804.

Link to agency website pursuant to G.S. 150B-19.1(c): www.nclclb.com

Proposed Effective Date: September 1, 2016

Public Hearing:

Date: June 6, 2016

Time: 10:00 a.m.

Location: 3901 Barrett Drive, Suite 202, Raleigh, NC 27609

Reason for Proposed Action:

21 NCAC 28B .0101 - Provide public with notice of Board location and hours of operation

21 NCAC 28B .0102 - Provide public with notice of when and where Board meetings will be held

21 NCAC 28B .0103 - Clarify statute re: definition of "readily available"

21 NCAC 28B .0201 - Set out requirements of licensure application

21 NCAC 28B .0202 - Set out requirements for application by reciprocity

21 NCAC 28B .0203 - Comply with mandate of 93B-15.1 re: military applicants and spouses

21 NCAC 28B .0204 - Provide detail re: what information shall be maintained by licensee

21 NCAC 28B .0301 - Set out requirements of licensure renewal

21 NCAC 28B .0302 - Set out requirements of reinstatement process

21 NCAC 28B .0401 - Inform licensees of requirement to notify Board of CE

21 NCAC 28B .0402 - Describe types of CE that are permissible

21 NCAC 28B .0403 - Inform licensees of how long CE info must be maintained

21 NCAC 28B .0404 - Provide process for extension of time request re: CE

21 NCAC 28B .0405 - Provide CE approval process

21 NCAC 28B .0501 - .0511 - Provide minimum standards on various aspects of landscape contracting

21 NCAC 28B .0601 - Set out fees to be charged as authorized by statute

21 NCAC 28B .0701 - Notify licensees how complaints are to be filed and processed

21 NCAC 28B .0801 - Notify licensees of process after probable cause finding

21 NCAC 28B .0802 - Notify licensees of hearing process

21 NCAC 28B .0803 - Notify licensees of the right to request and process for subpoenas

21 NCAC 28B .0804 - Notify licensees re: how summary suspensions will be processed

Comments may be submitted to: Calvin M. Kirven, Executive Administrator, 3901 Barrett Drive, Suite 202, phone (919) 266-8070, email ckirven@nclclb.com

Comment period ends: July 15, 2016

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Fiscal impact (check all that apply).

- State funds affected
Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
Local funds affected
Substantial economic impact (≥\$1,000,000)
Approved by OSBM
No fiscal note required by G.S. 150B-21.4

SUBCHAPTER 28B – LICENSING BOARD RULES

SECTION .0100 – STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 28B .0101 NAME AND LOCATION OF BOARD

(a) Unless otherwise directed, all communications shall be addressed to the North Carolina Landscape Contractors' Licensing Board ("Board") at 3901 Barrett Drive, Suite 202, Raleigh, North Carolina 27609. Applications and other information are available on the Board's website: www.nclclb.com.

(b) The Board office is open from 9:00 a.m. until 5:00 p.m., Monday through Friday.

(c) The Board office is closed on State and Federal holidays.

Authority G.S. 89D-14; 89D-15(2).

21 NCAC 28B .0102 MEETINGS

(a) Regular meetings of the Board will be held at the Board office or other location chosen by the Chairman. Additional meetings may be held at such other times and places as the Board deems necessary.