

# STATE OF ALABAMA



## Board of Licensure for Professional Engineers and Professional Land Surveyors

### Alabama Law Regulating Practice of Engineering and Land Surveying

Code of Alabama 1975, Title 34, Chapter 11

**Last Amended – July 1, 2018**

### **Administrative Code**

*(Rules and Regulations)*

including

### **Rules of Professional Conduct**

*(Code of Ethics)*

see Rule 330-X-14

**Last Amended – September 2017**

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# Practice of Engineering and Land Surveying

**Section Revised**

**Date Revised**

**CHAPTER 11  
ENGINEERS AND LAND SURVEYORS**

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**Note:**

This law specifies the general provisions governing the practices of engineers and of land surveyors. In addition, it creates the Board of Licensure for Professional Engineers and Land Surveyors. The board is empowered by the law to establish rules and regulations that cover specific requirements and procedures necessary for proper administration of the Alabama Law. These rules and regulations are specified in Administrative Code, Chapter 330-X.

**ARTICLE 1.**  
**GENERAL PROVISIONS**

**Section 34-11-1. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the respective meanings ascribed by this section:

(1) **BOARD.** The State Board of Licensure for Professional Engineers and Land Surveyors, provided for by Section 34-11-30.

(2) **DESIGN COORDINATION.** The review and coordination of technical submissions prepared by persons other than the principal engineer, including, as appropriate and without limitations, consulting engineers, architects, landscape architects, land surveyors, and other professionals working under the direction of the engineer.

(3) **DISCIPLINARY ACTION.** Any final written decision, order, consent agreement, public reprimand, or other formal action taken against an individual or firm by the board based upon a violation of this chapter or a board rule.

(4) **ENGINEER INTERN.** An individual who has been certified as an engineer intern by the board.

(5) **ENGINEER or PROFESSIONAL ENGINEER.** An individual who, by reason of his or her special knowledge of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering as hereinafter defined and has been licensed by the board as a professional engineer. The board may designate a professional engineer, on the basis of education, experience, and examination as being licensed in a specific discipline or branch of engineering signifying the area in which the engineer has demonstrated competence.

(6) **ENGINEERING SURVEY.** All survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects, rights-of-way, and easement acquisitions relative to the centerline of the project. Engineering surveys may be used to locate, relocate, establish, reestablish, layout, or retrace any road, right-of-way, easement, or alignment relative to the centerline of the project. Additionally, engineering surveys may be performed to determine areas, volumes, or physical features of the earth, elevation of all real property, improvements on the earth, and the configuration or contour of the surface of the earth or the position of fixed objects thereon by measuring lines and angles and applying the principles of mathematics. All engineering surveys shall exclude the surveying of real property for the establishment of any property line or land boundaries, setting of corners or monuments, and the dependent or independent surveys or resurveys of the public land survey system.

(7) **FIRM.** Any form of business or entity other than an individual operating as a sole proprietorship under his or her own name.

(8) **LAND SURVEYOR INTERN.** An individual who has been certified as a land surveyor intern by the board.

(9) **LAND SURVEYOR or PROFESSIONAL LAND SURVEYOR.** An individual who is a professional specialist in the technique of measuring land, is educated in the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence and all requisites to surveying of real property, is qualified to practice land surveying, and has been licensed as a professional land surveyor by the board.

(10) **MANAGING AGENT.** An individual who is licensed under this chapter and who has been designated pursuant to this chapter by the firm.

(11) **PERSON.** An individual or firm.

(12) **PRACTICE and OFFER TO PRACTICE.** Any person shall be construed to practice or offer to practice engineering or land surveying, within the meaning and intent of this chapter, who practices any discipline or any branch of engineering or land surveying; or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer or a professional land surveyor, or through the use of some other title implies that he or she is a professional engineer or a professional land surveyor or that the person is licensed or authorized under this chapter; or who represents himself or herself as able to perform or who does perform any engineering or land surveying service or work or any other service designated by the practitioner which is recognized as engineering or land surveying.

(13) **PRACTICE OF ENGINEERING.**

a. Any professional service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work that includes any one or more of the following:

"1. Consultation, investigation, evaluation, planning, design and design coordination, or commissioning of engineering works, products, and systems.

"2. Planning the use of land, air, or water.

"3. Performing engineering surveys and studies.

"4. The review of construction for the purpose of monitoring compliance with drawings and specifications.

"b. Any service or work described in paragraph a., either public or private, that is made in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and communications systems, transportation systems, industrial or consumer products, or equipment of a control system; or is of a mechanical, electrical, hydraulic, pneumatic, chemical, environmental, or thermal nature, insofar as the service or work involves safeguarding health, life, safety, welfare, and property. The term includes other professional services as may be necessary to the planning, progress, and completion of any engineering services.

"c. The term does not include the practice of architecture except such architectural work as is incidental to the practice of professional engineering; nor shall the term include work ordinarily performed by persons who operate or maintain machinery or equipment.

"d. The practice of engineering includes the offering of expert opinion in any legal proceeding in Alabama regarding work legally required to be performed under an Alabama engineer's license number or seal, which opinion may be given by an engineer licensed in any jurisdiction. Notwithstanding any other provision of this chapter in qualifying a witness to offer expert testimony on the practice of engineering, the court shall consider as evidence of his or her expertise whether the proposed witness holds a valid Alabama license for the practice of engineering; provided, however, the qualification by the court shall not be withheld from an otherwise qualified witness solely on the basis of the failure of the proposed witness to hold a valid Alabama license or license from another jurisdiction.

#### **(14) PRACTICE OF LAND SURVEYING.**

a. Professional services using such sciences as mathematics and geodesy, and involving the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth, the space on, above, or below the earth, and providing, utilizing, or developing the same land survey products such as graphics, data, maps, plans, reports, descriptions, or projects.

b. The term includes consultation, project coordination, including the coordination of technical submissions proposed by others, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting gathered measurements and information relating to any one or more of the following:

1. Determining by measurement the configuration or contour of the earth's surface or the position of fixed objects thereon by measuring lines and angles and applying the principles of mathematics or photogrammetry.

2. Determining by performing geodetic surveys the size and shape of the earth or the position of any point on the earth.

3. Locating, relocating, establishing, reestablishing, or retracing property lines or boundaries of any tract of land, road, right of way, alignment or easement or elevation of all real property whether or not fixed works are sited or proposed to be sited on the property.

4. Making any survey for the division, subdivision, or consolidation of any tract or tracts of land or for condominiums.

5. Locating or laying out alignments, positions, or elevations for the construction of fixed works.

6. Determining, by the use of principles of land surveying, the position for any survey monument or reference point, or establishing or replacing any such monument or reference point.

7. Geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry.

8. Creating, preparing or modifying electronic or computerized or other data, including land information systems and geographic land information systems relative to the performance of the activities described above.

c. The term may include the performance of engineering surveys.

d. the term does not include functions unique to engineering as specified by rules of the board, geographic information systems professionals holding certification from the GIS Certification Institute, or remote sensing professionals holding certifications from the American Society of Photogrammetry and Remote Sensing or other nationally recognized accreditation group as determined by the board.

e. Nothing herein shall in any way prohibit mapping, plotting, or locating, or other similar use of GPS, GIS, or other similar data by those not licensed to practice land surveying, provided the work is not used in the conveyance of property.

(15) **RESPONSIBLE CHARGE.** Direct control and personal supervision of engineering work or land surveying work.

### **Section 34-11-2. Practice of engineering and land surveying regulated.**

(a) A person in either public or private capacity may not practice or offer to practice engineering or land surveying, unless he or she shall first have submitted evidence that he or she is qualified so to practice and shall be licensed by the board as hereinafter provided or unless he or she is specifically exempted from licensure under this chapter.

(b) Except as otherwise provided in this chapter, all engineering design of buildings, structures, products, machines, processes, and systems that can affect health, life, safety, welfare, and property shall be conducted under the responsible charge of a licensed professional engineer.

(c) In order to safeguard health, life, safety, welfare, and property, the practice of engineering in this state is a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of the other learned professions in this state. It shall be unlawful for any person to practice or offer to practice professional engineering in this state, to hold himself or herself out or refer to himself or herself by any title or description stating or implying the person is licensed to engage in the practice of engineering, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including, but not limited to, the terms engineer, engineers, engineering, professional engineer, professional engineers, professional engineering, **P.E.**, or any modification or derivative thereof, tending to convey the impression that he or she is a professional engineer unless the person has been duly licensed or is exempt from licensure under this chapter. A person whose firm name shall have contained the word "engineer," "engineers," or "engineering," or words of like import, for more than 15 years before September 12, 1966, shall not be prohibited from continuing the use of such word or words in his or her firm name.

(d) In order to safeguard, health, life, safety, welfare, and property, the practice of land surveying in this state is a learned profession to be practiced and regulated as such, and its practitioners in this state shall be held accountable to the state and members of the public by high professional standards in keeping with the ethics and practices of the other learned professions in this state. It shall be unlawful for any person to practice or offer to practice professional land surveying in this state, to hold himself or herself out or refer to himself or herself by any title or description stating or implying the person is licensed to engage in the practice of land surveying, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including, but not

limited to, the terms land surveyor, land surveyors, land surveying, professional land surveyor, professional land surveyors, professional land surveying, **P.L.S.**, or any modification or derivative thereof, tending to convey the impression that he or she is a professional land surveyor unless the person has been duly licensed or is exempt from licensure under this chapter.

(e) As used in this subsection, the term professional land surveyor shall include the agents, the employees, and any personnel under the supervision of a professional land surveyor.

(1) A professional land surveyor may go on, over, and upon the lands of others which is not enclosed by any device installed to deter entry to or exit from industrial facilities or plant sites by humans or vehicles, if necessary to perform surveys for the location of section corners, quarter corners, property corners, boundary lines, rights-of-way, and easements, and may carry and utilize equipment and vehicles. Entry under the right granted in this subdivision shall not constitute trespass. A professional land surveyor shall not be liable to arrest or to a civil action for trespass by reason of this entry.

(2) Nothing in this subsection shall be construed as giving authority to a professional land surveyor to destroy, injure, damage, or move anything on the lands of another without the written permission of the landowner and nothing in this section shall be construed as removing civil liability for the damages.

(3) A professional land surveyor shall make reasonable effort to notify adjoining landowners upon whose land it is necessary to enter.

(4) No owner or occupant of the land shall be liable for any injury or damage sustained by any person entering upon his or her land under this subsection.

(5) Nothing in this subsection shall limit the rights of condemning authorities under Sections 18-1A-50 to 18-1A-55, inclusive.

“(6) In addition to all other work authorized under this chapter, a professional land surveyor may perform engineering surveys.

### **Section 34-11-3. Roster of registrants.**

A roster showing the names and addresses of all licensed professional engineers, all professional land surveyors, and all who possess current certifications as engineer interns or land surveyor interns shall be **published by the board as provided for by board rule.**

### **Section 34-11-4. General requirements for licensure or certification.**

The board may approve engineering, land surveying, and related science programs which shall be accepted under the following criteria:

(1) **PROFESSIONAL ENGINEER.** The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional engineer:

a. ***Graduation and experience plus examination.***

**1. Graduation in an approved engineering curriculum plus four years experience.** – A graduate of an approved engineering curriculum of four years or more from a school or college approved by the board who has successfully passed a board approved examination in the fundamental engineering subjects and in the principles and practice of engineering and has a specific record of an additional four years or more of progressive experience in engineering work of a grade and character satisfactory to the board shall be granted a certificate of licensure to practice engineering in this state, provided the applicant is otherwise qualified.

**2. Graduation in an unapproved engineering curriculum plus six years experience.** – A graduate of an unapproved engineering curriculum of four years or more who has successfully passed a board approved examination in the fundamental engineering subjects and in the principles and practice of engineering and has a specific record of an additional six years or more of progressive experience in engineering work of a grade and character satisfactory to the board shall be granted a certificate of licensure to practice engineering in this state, provided the applicant is otherwise qualified.

b. **Comity.** -- The board may, upon application, issue a certificate of licensure as a professional engineer to any person who holds a valid professional engineering certificate issued by any jurisdiction of the United States or of any country; provided, that the education, experience, and examination qualifications of the applicant are, in the judgment of the board, of a standard not lower than that specified in the applicable licensure act in effect in Alabama at the time such certificate was issued.

(2) **ENGINEER INTERN.** The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for certification as an engineer intern:

a. **Graduation and examination.** -- A graduate of an approved engineering curriculum of four years or more from a school or college approved by the board who has successfully passed a board approved examination in the fundamental engineering subjects shall be certified as an engineer intern, if otherwise qualified.

b. **Graduation and examination plus experience.** -- Graduation in an unapproved engineering curriculum plus two years experience. A graduate of an unapproved engineering curriculum of four years or more who has successfully passed a board approved examination in the fundamental engineering subjects and who has a specific record of two years or more of progressive experience in engineering work of a grade and character satisfactory to the board shall be certified as an engineer intern, if otherwise qualified.

c. **Comity.** -- The education, experience and examination qualifications of the applicant are, in the judgment of the board, of a standard not lower than that specified in the applicable licensure act in effect in Alabama at the time such certificate was issued. Fundamentals of engineering examinations of comparable character taken and passed in another jurisdiction may be accepted by the board.

(3) **PROFESSIONAL LAND SURVEYOR.** The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional land surveyor.

a. ***Graduation and experience plus examination.***

1. **Graduation in an approved land surveying curriculum plus four years experience.** -- A graduate of an approved land surveying curriculum of four years or more, or a graduate of an approved civil engineering curriculum of four years or more, including a minimum of 15 semester hours or 22.5 quarter hours of land surveying courses from a school or college approved by the board who has successfully passed board approved examinations in the fundamentals of surveying and in the principles and practice of surveying and has a specific record of four years or more of progressive combined office and field experience in land surveying work of a grade and character satisfactory to the board shall be admitted to a board approved examination on laws, procedures, and practices pertaining to land surveying in this state. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice land surveying in this state, provided the applicant is otherwise qualified.

2. **Graduation in an approved curriculum related to surveying plus five years experience.** -- A graduate of a curriculum related to surveying of four years or more including a minimum of 15 semester hours or 22.5 quarter hours of surveying courses from a school or college approved by the board who has successfully passed a board approved examinations in the fundamentals of surveying and in the principles and practice of land surveying and has a specific record of five years or more of progressive combined office and field experience in land surveying work of a grade and character satisfactory to the board shall be admitted to a board approved examination of laws, procedures, and practices pertaining to land surveying in this state. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice land surveying in this state, provided the applicant is otherwise qualified.

3. **Graduation in a related science curriculum plus six years experience.** -- A graduate of a related science curriculum of four years or more from a school or college approved by the board who has successfully passed a board approved examinations in fundamentals of surveying and in the principles and practice of land surveying and has a specific record of an additional six years or more of progressive combined office and field experience in land surveying work of a grade and character satisfactory to the board shall be admitted to a board approved examination of laws, procedures, and practices pertaining to land surveying in this state. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice land surveying in this state, provided the applicant is otherwise qualified.

b. **Comity.** -- The board, upon application, may grant to any person who holds a valid professional land surveying certificate issued by any jurisdiction of the United States or of any country, admission into a board approved examination of laws, procedures, and practices pertaining to land surveying in this state, provided that the education, experience, and examination qualifications of the applicant are, in the judgment of the board, of a standard not lower than that specified in the applicable licensure act in effect in this state at the time such certificate was issued. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice land surveying in this state, provided the applicant is otherwise qualified.

(4) **LAND SURVEYOR INTERN.** The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for certification as a land surveyor intern:

a. **Graduation plus examination. Graduation in an approved land surveying curriculum.** -- A graduate of a land surveying or civil engineering curriculum of four years or more including a minimum of 15 semester hours or 22.5 quarter hours of land surveying courses from a school or college approved by the board who has successfully passed a board approved examination in the fundamentals of surveying shall be certified as a land surveyor intern, if otherwise qualified.

b. **Graduation and examination plus experience.**

1. **Graduation in an approved curriculum related to surveying plus one years experience.** -- A graduate of a curriculum related to surveying of four years or more including a minimum of 15 semester hours or 22.5 quarter hours of surveying courses from a school or college approved by the board who has successfully passed a board approved examination in the fundamentals of land surveying and who has a specific record of an additional one year or more of combined office and field experience in land surveying work of a grade and character satisfactory to the board shall be certified as a land surveyor intern, if otherwise qualified.

2. **Graduation in a related science curriculum plus two years experience.** -- A graduate of a related science curriculum of four years or more who has successfully passed a board approved examination in the fundamentals of land surveying and has a specific record of an additional two years or more of combined office and field experience in land surveying work of a grade and character satisfactory to the board shall be certified as a land surveyor intern, if otherwise qualified.

3. **Graduation in an approved associate of science degree in surveying or engineering plus two years' experience.** A graduate of an approved associate of science degree program in surveying or engineering including a minimum of 15 semester hours or 22.5 quarter hours of land surveying courses from a school or college approved by the board who has successfully passed a board approved examination in the fundamentals of surveying and has a specific record of an additional two years or more of combined office and field experience in land surveying work of a grade and character satisfactory to the board shall be certified as a land surveyor intern, if otherwise qualified.

c. **Comity.** -- The education, experience, and examination qualifications of the applicant are, in the judgment of the board, of a standard not lower than that specified in the applicable licensure act in effect in Alabama at the time such certificate was issued. The board may accept fundamentals of land surveying examinations of comparable character taken and passed in another jurisdiction.

(5) **CHARACTER.** -- No person shall be eligible for licensure as a professional engineer, certification as an engineer intern, licensure as a professional land surveyor, or certification as a land surveyor intern who is not of good character and reputation.

(6) **TEACHING CREDITS.** -- In considering the qualifications of applicants, teaching in an engineering curriculum approved by the board may be considered as engineering

experience. Teaching land surveying subjects in a land surveying curriculum approved by the board may be considered as land surveying experience.

- (7) **GRADUATE STUDY.** -- In counting years of experience for professional engineer licensure, the board may give credit, not in excess of one year, for successful completion of graduate study leading to a master's degree in engineering. If a Ph.D. in engineering is completed, a total of two year's experience may be credited. The two-year credit shall include one year for the master's degree. If the Ph.D. is obtained without the master's degree, the credit for experience shall be two years. In counting years of experience for professional land surveyor licensure, the board may give credit, not in excess of one year, for successful completion of graduate study leading to a master's degree in land surveying. If a Ph.D. in land surveying is completed, a total of two years experience may be credited. The credit of two years shall include one year for the master's degree. If the Ph.D. is obtained without the master's degree, the credit for experience shall be two years.
- (8) **NONPRACTICING APPLICANTS.** -- Any person having the necessary qualifications prescribed in this chapter to entitle the applicant to licensure shall be eligible for licensure although the applicant may not be practicing engineering or land surveying at the time of making application.
- (9) **RECOGNITION OF PREVIOUSLY TAKEN EXAMINATIONS.** The board may accept fundamentals and principles and practice examinations of comparable character taken and passed in another jurisdiction.

#### **Section 34-11-5. Applications; fees.**

(a) Applications for licensure as a professional engineer, professional land surveyor, engineer intern, or land surveyor intern shall be on forms prescribed and furnished by the board and shall contain a **declaration made under penalty of perjury**. Three or more of the references contained in an application for licensure as a professional engineer shall be professional engineers having personal knowledge of the applicant's engineering experience. Three or more of the references contained in an application for professional land surveyor shall be professional land surveyors having personal knowledge of the land surveying experience of the applicant. All references furnished shall be considered confidential records of the board. Any individual who was previously licensed in this state and whose license is eligible for reinstatement as outlined in this chapter shall comply with the reinstatement procedures established by the board instead of the submission of a new application.

(b) The application fee for professional engineers or professional land surveyors **shall include the licensure fee**, shall be set by the board, shall not exceed three hundred dollars (\$300), and shall accompany the application.

(c) The application fee, for engineer interns and land surveyor interns **shall include the certification fee**, shall be set by the board, shall not exceed fifty dollars (\$50), and shall accompany the application.

(d) If the board denies certification or licensure to any applicant, the fee paid shall be retained as an application fee.

### **Section 34-11-6. Examinations.**

(a) Examinations shall be held at such times and places as the board determines and upon payment of an examination fee. The board shall determine the acceptable passing grade on state-specific examinations.

(b) When examinations are required on fundamental subjects, the applicant shall be permitted to take this part of the professional examination as specified by rules of the board.

(c) When examinations are required on applied subjects, the applicant shall be permitted to take this part of the professional examination as specified by guidelines established by the board. The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering or land surveying works so as to protect health, life, safety, welfare, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for licensure separately in engineering and in land surveying. A candidate failing an examination may apply for reexamination under guidelines established by the board.

(d) The board may prepare and require additional examinations in engineering and land surveying. Specifications for additional examinations shall be published and be made available to any individual interested in being licensed as a professional engineer or professional land surveyor. The fees for examination, reexamination, and administration of the examination on the laws, procedures, and practices pertaining to engineering and land surveying in this state shall be set by the board.

(e) The board may contract with an independent testing agency to prepare, grade or conduct the required examinations. For those examinations so designated by the board, the applicant shall pay the examination fees directly to the board authorized testing agency. The examination fee for the state-specific examinations shall be paid directly to the board.

(f) The board shall require a demonstration of continuing professional education for professional engineers and professional land surveyors as a condition of renewal or relicensure. For professional land surveyors, the continuing professional education requirements shall include a minimum of four professional development credit hours on the Standards of Practice of Surveying in the State of Alabama every two years and one professional development credit hour on ethics every year; provided, however, the total number of professional development credit hours required of professional land surveyors by the board shall not increase overall because of this requirement. A new professional land surveyor shall complete the Standards of Practice of Surveying in the State of Alabama credits within two years and complete the ethics credit within one year of initial licensure. Credit for these courses shall count toward the succeeding annual or biennial continuing professional education requirements.

### **Section 34-11-7. Issuance of certificate; seal.**

(a) The board shall issue a certificate of licensure to any applicant for licensure as a professional engineer or professional land surveyor who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In the case of a professional

engineer, the certificate shall authorize the practice of engineering and shall carry the designation "Professional Engineer". In the case of a professional land surveyor, the certificate shall authorize the practice of land surveying and shall carry the designation "Professional Land Surveyor". Certificates of licensure shall show the name of the licensee, shall have a license number, and shall be signed by individuals authorized by the board under the seal of the board.

(b) The issuance of a certificate of licensure by the board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges and is bound by all responsibilities of a professional engineer, or of a professional land surveyor as long as the certificate of licensure remains active and unrestricted.

(c) Upon licensure, each licensee shall obtain a seal of the design authorized by the board, bearing the licensee's name, licensure number, and the legend, "licensed professional engineer." or "licensed professional land surveyor," as applicable. Drawings, plans, specifications, plats, reports, and other documents considered work product issued by a licensee must be sealed, signed, and dated in accordance with rules of the board, thereby certifying that he or she is competent in the subject matter and is responsible for the work product. A digital signature may be used in lieu of a handwritten signature.

(d) The board shall issue to any applicant for certification as an engineer intern or surveyor intern who, in the opinion of the board, has met the requirements of this chapter, an enrollment document identifying the individual as engineer intern or land surveyor intern, as applicable. The engineer intern or surveyor intern enrollment document does not authorize the holder to practice as a professional engineer or a professional land surveyor.

#### **Section 34-11-8. Renewal of certificates; lapsed licenses.**

(a) The board, by rule, shall establish a procedure for renewing certificates of licensure on an annual or a biennial basis. It shall be the duty of the board to notify every licensee under this chapter of the expiration of the license and the fee required for the renewal. The board shall establish the renewal fee for each certificate of licensure which shall not exceed two hundred dollars (\$200) for annual renewal or four hundred dollars (\$400) for biennial renewal.

(b) No licensee shall have his or her license renewed unless, in addition to any other requirements of this chapter, the minimum annual or biennial continuing professional education requirement is met. It is further provided that the continuing professional education program herein required shall not include testing or examination of the licensee in any manner. The board may, by rules, establish exemptions from the continuing professional education requirement for inactive licensees and others in extenuating circumstances as identified by rule of the board.

(c) Enrollment as engineer interns and land surveyor interns **shall not expire.**

(d) An individual who allows a license to expire due to non-renewal, failure to submit the required continuing education hours, or pay the applicable renewal fees shall be treated as having an expired license and shall be ineligible to practice. An expired license may be reinstated, at the discretion of the board as follows:

(1) The license of a licensee who submits a reinstatement petition **within two years** of the expiration date may be reinstated upon substantiation by the applicant of all renewal

requirements set forth in this chapter and rules of the board, including completion of all continuing education credits required to have been completed during the expired status period, along with a reinstatement fee determined by the board which shall not exceed five hundred dollars (\$500).

(2) Licensees whose licenses have been in expired status longer than two years are not eligible for reinstatement and must file an application for licensure following the application procedures as set forth in this chapter.

(3) The board may impose additional reasonable requirements for reinstatement deemed necessary to protect health, life, safety, welfare, and property.

(4) The board may consider extenuating circumstances of petitioners who can demonstrate hardship. The board reserves the right to waive fees and other renewal or reinstatement requirements, provided the board does so in a manner that protects health, life, safety, welfare, and property.

(e) A licensee in inactive status may return to active status by notifying the board in advance of this intention and by meeting all requirements of the board, including demonstration of continuing professional education as a condition of reinstatement. "(f) An individual who has been issued a certificate of licensure as a professional engineer or as a professional land surveyor and who chooses to relinquish or not to renew a license may be granted use of the title "Professional Engineer, Retired" or "Professional Land Surveyor, Retired," as applicable, if the individual applies to and is granted approval by the board.

#### **Section 34-11-9. Corporate and partnership practice.**

(a) (1) A firm that practices or offers to practice engineering or land surveying is required to obtain a certificate of authorization from the board in accordance with rules adopted by the board.

(2) **JOINT PRACTICE AUTHORIZED.** – An entity that performs engineering services or land surveying services for itself, or for a parent or subsidiary, is not required to have a certificate of authorization.

(3) **LIABILITY GENERALLY.** – A firm may not be relieved of responsibility for the conduct or acts of its agents, employees, officers, or partners by reason of its compliance with this section. An individual practicing engineering or land surveying under this chapter is not relieved of responsibility for engineering or land surveying services performed by reason of employment or other relationship with a firm holding a certificate of authorization.

(4) The Secretary of State may not accept organizational papers nor issue a certificate of incorporation, organization, licensure, or authorization to any firm that includes among the objectives for which it is established or within its name, any of the words "engineer," "engineering," "land surveyor," "land surveying," or any modification or derivation thereof unless the board has issued for the applicant a certificate of authorization or a letter indicating the eligibility of the applicant to receive such a certificate. The firm applying shall supply their certificate or letter from the board with its application for incorporation, organization, licensure, or authorization.

(5) The Secretary of State may not authorize any trade name trademark, or service mark that includes words set forth in subdivision (4), or any modification or derivative thereof, except licensees and firms holding certificates of authorization issued under this section.

(6) For the purposes of this section, a certificate of authorization shall be required by a firm practicing under a fictitious name, offering engineering or land surveying services to the public. Where a licensee is practicing engineering or land surveying in his or her own given name, the licensee shall not be required to qualify under this section.

(7) The practice of engineering or land surveying incidental to or in connection with production, manufacture, transportation, distribution, or communication may be carried on by any firm engaged in the production, manufacture, transportation, distribution, or communication and does not require a certificate of authorization. The engineering and land surveying services shall be performed by or under the direction of a professional engineer or professional land surveyor licensed in conformity with this chapter. All drawings, plans, specifications, plats, and reports involving the practice of engineering or land surveying shall when issued be dated and bear the seal or facsimile of the seal, signature, and licensure number of the professional engineer or land surveyor in responsible charge thereof.

(b) A firm shall designate a managing agent and a resident professional, if offering or performing Alabama services in multiple offices. The managing agent and the resident professional may be the same individual.

(c) The following criteria shall apply to the firm's designation of a managing agent:

(1) A firm shall designate a professional engineer or a professional land surveyor to be a managing agent for the firm.

(2) The managing agent is responsible for the engineering or land surveying work in the state and for projects within the state offered or provided by the firm.

(3) A licensee may not be designated as a managing agent for more than one firm unless the firms share a location.

(4) A licensee who renders occasional, part-time, or consulting engineering or land surveying services to or for a firm may not be designated as a managing agent.

(d) The managing agent's responsibilities include all of the following:

(1) Renewal of the firm's certificate of authorization and notification to the board of any change in the managing agent.

(2) Overall administrative supervision of the firm's licensed and subordinate personnel providing the engineering or land surveying work in the state.

(3) Ensuring that the policies of the firm are in accordance with the rules of professional conduct adopted by the board.

(e) A firm shall designate a resident professional engineer or a resident professional land surveyor, as applicable, in each branch office in which engineering or land surveying services for the state are offered or provided. The resident professional shall be

responsible for overseeing the daily operations of that branch office. The following criteria shall apply to the firm's designation of a resident professional:

(1) A licensee may not be designated as a resident for more than one firm unless the firms share a location.

(2) A licensee who renders occasional, part-time, consulting engineering or land surveying services to or for a firm may not be designated as a resident professional.

(f)(1) A firm desiring a certificate of authorization must file with the board an application using a form provided by the board and provide all the information required by the board. The application form shall be filed with the board upon renewal or not more than 30 days after any information contained on the application form is changed or differs for any reason. If in the judgment of the board the application meets the requirements of this chapter, the board shall issue a certificate of authorization for the firm to practice engineering or land surveying.

(2) The application fee for a certificate of authorization for a firm shall be established by the board and may not exceed two hundred fifty dollars (\$250) and shall accompany the application. The fee is non-refundable.

(g)(1) A certificate of authorization expires on the date designated by the board and is invalid after that date unless renewed. The board shall notify a firm holding a certificate of authorization under this chapter of the date of the expiration of the certificate of authorization and the fee required for its renewal. The board shall establish the renewal fee which may not exceed two hundred fifty dollars (\$250).

(2) A firm that allows a certificate of authorization to expire due to non-renewal shall be treated as having an expired certificate and it shall be unlawful for the firm to practice, offer to practice, or hold itself out as qualified to practice in this state following the expiration of its certificate of authorization.

(3) The board, by rule, shall establish procedures, time limits, and the reinstatement fee which shall not exceed five hundred dollars (\$500), required for reinstating an expired certificate of authorization.

(h) A firm whose certificate of authorization has expired due to nonrenewal but is still eligible for reinstatement shall continue to be subject to this chapter and the rules of the board until the certificate of authorization is revoked by action of the board or becomes no longer eligible for reinstatement."

### **Section 34-11-9.1**

A duplicate certificate of licensure, intern enrollment document, or certificate of authorization may be issued subject to the rules of the board. **A fee established by rule shall be paid for each issuance.**

### **Section 34-11-10. Public work.**

A state, county, or local government agency or authority, or an official or employee thereof, may not engage in the practice of engineering or land surveying involving either public or private property without the project being under the responsible charge of a professional engineer for engineering projects or a professional land surveyor for land surveying

projects as provided for the practice of the respective professions by this chapter; provided, that nothing in this chapter shall be held to apply to any public work wherein the expenditures for the complete project of which the work is a part does not exceed \$20,000.00.

**Section 34-11-11. Disciplinary action.**

- (a) The board may reprimand, censure, suspend, revoke, place on probation, recover costs, or fine any licensee or certified engineer intern or land surveyor intern or firm holding a certificate of authorization or to refuse to issue, renew, or reinstate the certificate of any licensee or certified engineer intern or land surveyor intern or the certificate of authorization of a firm found guilty of any of the following:
- (1) The practice of any fraud or deceit in obtaining or attempting to obtain or renew a certificate of licensure, intern certification, or certificate of authorization.
  - (2) Any gross negligence, incompetency, violation of the rules of professional conduct prescribed by the board, or misconduct in the practice of engineering or land surveying as a professional engineer, engineer intern, professional land surveyor, or land surveyor intern.
  - (3) Falsely representing himself or herself as being in responsible charge of engineering work or land surveying.
  - (4) Permitting his or her seal, or facsimile thereof, to be used by another.
  - (5) Voluntarily surrendering a professional engineer's license, a professional land surveyor's license, an engineer intern's certification, a land surveyor intern's certification, a firm's engineering certificate of authorization, or a firm's land surveying certificate of authorization in order to avoid disciplinary action by another jurisdiction, foreign country, or the United States government if at least one of the grounds for the disciplinary action is the same or substantially equivalent to those contained in this chapter.
  - (6) Conviction of or entry of a plea of guilty or nolo contendere to any crime that is a felony, whether or not related to the practice of engineering or land surveying; or conviction of or entry of a plea of guilty or nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying.
  - (7) Failure to comply with any provision of this chapter or board rule.
  - (8) Failure to respond to a board inquiry within 60 days of receipt of the inquiry.
  - (9) Knowingly making false statements or signing false statements, certifications, or affidavits in connection with the practice of engineering or land surveying.
  - (10) Aiding or assisting another person in violating any provision of this chapter or board rule.

- (11) Violating any term of any order imposed or agreed to by the board or using a seal or practicing engineering or land surveying while the licensee's license or the firm's certificate of authorization is **inactive** or **restricted**.
  - (12) Signing, affixing, or permitting the licensee's seal or signature to be affixed to any specification, report, drawing, plan, plat, design information, construction document or calculation, survey, or revision that has not been prepared by the licensee or under the licensee's responsible charge.
  - (13) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.
  - (14) Providing false testimony or information to the board.
  - (15) Providing engineering or land surveying services outside any of the licensee's areas of competence.
  - (16) Practicing engineering or land surveying in a branch office not under the day-to-day supervision of a licensed professional engineer or professional land surveyor, respectively.
- (b) The board may impose any disciplinary penalty set forth in this section against a firm holding a certificate of authorization, when any one or more of the agents, employees, officers, partners, or owners of the firm, licensed or nonlicensed, have committed any act, or have been guilty of any conduct, which could authorize the imposition of any of the disciplinary penalties set forth in this section. The acts or conduct by the persons must have been related to the practice of or offer to practice of engineering or land surveying by the firm and that the acts or conduct must have been performed or occurred within the scope of the employment of any such person and with the authorization, ratification, or approval of an officer, director, principal, partner, or owner of the firm.
  - (c) The board shall revoke the certificate of any licensee or certified intern who has been determined to be one of the following:
    - (1) Declared non compos mentis by a court of competent jurisdiction.
    - (2) Convicted of or entered a plea of guilty or nolo contendere to any crime under the laws of the United States or any state or territory thereof, which is a felony, whether related to practice or not and convicted of or entered a plea of guilty or nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying.
  - (d) Each day of a continued violation shall constitute a separate offense.
  - (e) An individual whose license has expired for nonpayment of renewal fees shall continue to be subject to this chapter and board rules governing licenses until the license is revoked by action of the board or the license is not eligible for reinstatement under the rules of the board. A licensee who practices or offers to practice in the state with an expired, inactive, or retired license shall be subject to disciplinary action by the board. Any firm whose certificate of authorization has expired for nonpayment of renewal fees

shall continue to be subject to this chapter and board rules until the certificate of authorization is revoked by action of the board or the certificate of authorization is not eligible for reinstatement under the rules of the board. A firm who practices or offers to practice in the state with an expired certificate of authorization shall be subject to disciplinary action by the board.

**§34-11-11.1.**

(a) The board may levy a civil penalty and recover costs from any individual or firm for any of the following activities:

(1) Engaging in the practice or offering to practice engineering or land surveying in the state without being authorized in accordance with the provisions of this chapter.

(2) Using or employing the words "engineer," "engineering," "land surveyor," "land surveying," or any modification or derivative thereof in his or her name or form of business activity except as authorized in this chapter.

(3) Presenting or attempting to use the certificate of licensure or seal of a professional engineer or professional land surveyor or attempting to use an unauthorized certificate of authorization.

(4) Engaging in any fraud or deceit in obtaining or attempting to obtain a certificate of licensure, intern certification, or certificate of authorization.

(5) Impersonating any professional engineer or professional land surveyor or any firm holding a certificate of authorization.

(6) Using or attempting to use a revoked or non-existent certificate of licensure, intern certification, or certification of authorization or an expired certificate of licensure or certificate of authorization not eligible for reinstatement.

(b) Each day of continued violation shall constitute a separate offense.

(c) In addition to any other sanction provided in this chapter, the board may levy a civil penalty and recover costs from any firm where one or more of its managing agents, officers, directors, owners, or managers have been found in violation of this chapter or any board rule.

(d) A civil penalty assessed under this section may not exceed five thousand dollars (\$5,000) for each count or separate offense. The civil penalty is payable to the General Fund.

**§34-11-11.2.**

(a) Any person or entity, including the board or staff, may file a complaint alleging a violation of this chapter against any individual licensee, certified intern, or firm holding a certificate of authorization or against an unlicensed individual or firm. The complaint shall be in writing, shall be signed by the complainant, shall state specifically the facts on which the complaint is based, and shall be filed with the executive director of the board.

(b) The board may designate one or more individuals to investigate and report to it on any matter related to its lawful duties and may employ legal counsel as the board may

deem necessary or desirable. An investigation may be made upon receipt of a complaint. The board may resolve violations by agreement between the board and the respondent with or without the filing of formal charges. All complaints shall be reviewed by an investigative committee designated by the rules of the board.

After review, the investigative committee shall determine or recommend, as appropriate, if charges are warranted. The charges shall conform to the Administrative Procedure Act.

(d) With the consent of the respondent, the board may conduct an informal hearing without meeting the requirements of the Administrative Procedure Act at which no action shall be taken other than a reprimand, public or private.

(e) All charges, unless dismissed as unfounded or trivial, or unless settled informally, shall be heard by the board within a reasonable time.

(f) The time and place for the hearing shall be fixed and a copy of the charges, together with a notice of the time and place of the hearing, shall be personally served on or mailed to the last known address of the respondent at least 30 days before the date fixed for the hearing. At any hearing the respondent shall have the right to appear in person or by counsel or both, to cross-examine witnesses in his or her defense, and to produce evidence and witnesses in his or her defense. If the respondent fails or refuses to appear at the hearing, the board may proceed to hear and determine the validity of the charges in the respondent's absence.

(g) If after the hearing a majority of members of the board present vote finding the respondent guilty of the charges, the board shall impose one or more of the disciplinary penalties set forth in this section or Section 34-11-11. Any fine or penalty imposed may not exceed five thousand dollars (\$5,000) for each count or separate offense. The written decision of the board shall be delivered personally to the respondent or sent by certified mail, return receipt requested, to the last known address of the respondent.

(h) If disciplinary action from a hearing results in imposing a fine or civil penalty against a licensee or certificated firm, the board may not renew the certificate for the licensee or certificated firm until the fine or penalty is paid in full. In the event that the fine or civil penalty is subsequently set aside on judicial review, as provided in the Alabama Administrative Procedure Act, the respondent shall be entitled to a prompt refund of the amount of the fine or penalty, but shall not be entitled to interest.

(i) When a member of the board is unable to continue the hearing either by disqualification or for any other reason, and the board is unable to reach a quorum, the Governor shall appoint as many ex officio members as is necessary to reach a quorum from a list of three persons submitted for each place by the committee of seven as specified in Section 34-11-30. These ex officio members shall serve on the board only for that hearing for which they were appointed and they may be reappointed for subsequent hearings if necessary. Ex officio members must meet the same board member qualifications as outlined in this chapter.

(j) The respondent shall be responsible for the cost of the disciplinary action if found in violation of this chapter.

(k) In determining the fine or civil penalty to be assessed pursuant to this chapter, the board may consider all of the following factors:

- (1) Whether the amount imposed will be a substantial economic deterrent.
  - (2) The circumstances leading to the violation.
  - (3) The severity of the violation and the risk of harm to the public.
  - (4) The economic benefits gained by the violator as a result of non-compliance.
  - (5) Consistency of the fine or civil penalty with past fines or civil penalties for similar offenses, or justification for the fine or civil penalty amount.
- (l) An action may be brought in the Circuit Court of Montgomery County to require compliance with any order of the board.
- (m) When an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for payment in the Circuit Court of Montgomery County. This right of enforcement shall be in addition to any other rights the board may have as to any person directed to pay costs.
- (n) In any action for recovery, the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

**Section 34-11-12. Reissuance of revoked certificates; duplicate certificates.**

The board, for reasons it may deem sufficient, may reissue a certificate of licensure or intern certification to any person or certificate of authorization to any firm whose certificate has been revoked, provided a majority of the board votes in favor of reissuance. The board shall not consider reissuance of a certificate to any person whose certificate has been revoked because of non compos mentis until after the person has been declared to have fully regained his or her competency by a court of competent jurisdiction. The board shall not consider the reissuance of a certificate to a person who was convicted of a felony or entered a plea of guilty or nolo contendere to a felony until the civil rights of the person have been restored, and then a majority approval vote of the board concerning reissuance shall be required.

**Section 34-11-13. Appeals.**

Any person who is aggrieved by the denial of a certificate by the board or by any disciplinary action by the board taken pursuant to Section 34-11-11 may appeal within 30 days to the Circuit Court of Montgomery County, exclusively, notwithstanding the provisions of the Alabama Administrative Procedure Act; and only after the filing of the notice of appeal, shall judicial review be as provided for in the Alabama Administrative Procedure Act.

**Section 34-11-14. Persons and acts exempt from chapter.**

This chapter shall not be construed to prevent or to affect any of the following:

- (1) The practice of any other legally recognized profession or trade.
- (2) The work of an engineer intern or land surveyor intern, employee, or a subordinate of any person holding a certificate of licensure under this chapter, or any employee of a

person practicing lawfully under paragraph b of subdivision (1) of Section 34-11-4, 4 provided the work does not include final engineering or land surveying designs or decisions and is done under the responsible charge of and verified by an individual holding a certificate of licensure under this chapter.

(3) The practice of officers and employees of the government of the United States while engaged within this state in the practice of engineering or land surveying for the government. This exception does not extend to any engineer or land surveyor engaged in the practice of professional engineering or land surveying whose compensation is based in whole or in part on a fee.

(4) The practice of engineering or land surveying with respect to transportation or utility facilities by any transportation company or public utility subject to regulation by the Alabama Public Service Commission, the Federal Aviation Administration, the Federal Communications Commission, the Federal Energy Regulatory Commission, or the Nuclear Regulatory Commission, including its parents, affiliates, or subsidiaries; or by the officers and employees of any transportation company or public utility including its parents, affiliates, or subsidiaries. This exception shall not extend to any engineer or land surveyor engaged in the practice of engineering or land surveying whose compensation is based in whole or in part on a fee.

(5) The practice of engineering or land surveying by any person who is employed by the Alabama Department of Transportation prior to January 1, 1997, in any engineering or engineering assistant classification series under the State of Alabama Personnel Board, merit system.

(6) The mere execution as a contractor of work designed by a professional engineer or the supervision of the construction of such work as a foreman or superintendent.

(7) The performance of engineering services which are purely incidental to the practice of architecture by registered architects, or their employees, or subordinates under their responsible supervising control.

(8) The performance of engineering services which are purely incidental to the practice of geology by registered geologists, their employees, or subordinates under their responsible charge.

#### **Section 34-11-15. Violations; penalties.**

(a) Any person who practices, offers to practice, or holds himself or herself out as qualified to practice engineering or land surveying in this state or uses in connection with his or her name or otherwise assumes, uses, or advertise any title or description including, but not limited to, the term engineer, engineers, engineering, or professional engineer, professional engineers, or professional engineering, or land surveyor, land surveyors, land surveying, or professional land surveyor, professional land surveyors, or professional land surveying, without being licensed or exempted in accordance with this chapter, or any person presenting or attempting to use as his or her own the certificate of licensure or the seal or facsimile thereof of another, or permitting his or her own certificate of licensure, seal or facsimile thereof to be used by another person, or any person who gives any false or forged evidence of any kind to the board or to any member thereof in obtaining, or

attempting to obtain a certificate of licensure, or any person who falsely impersonates any other licensee of like or different name, or any person who attempts to use an expired, suspended, surrendered, or revoked certificate of licensure, shall be guilty of a Class A misdemeanor. Each day of the violation shall be a separate offense.

(b) Any corporation, partnership, or firm who violates any part of this chapter shall be guilty of a Class A misdemeanor and punished as provided by law. Each day of the violation shall be a separate offense.

(c) It shall be the duty of all duly constituted officers of law of this state, or any political subdivision thereof, to enforce this chapter, and to prosecute any persons, firms, partnerships, or corporations for violating this chapter. The Attorney General of the state or his or her assistants shall act as legal advisor to the board and render legal assistance to the board as may be necessary in carrying out this chapter. The board has the right to obtain private legal counsel as the need arises.

(d) Pursuant to the proceedings under this chapter, the board may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the Attorney General to bring an action to enforce a subpoena.

(e) In addition to or in lieu of the sanctions provided in this chapter, the board may issue an order to any individual or firm engaged in any activity, conduct, or practice constituting a violation of this chapter, directing the individual or firm to cease and desist from the activity, conduct, or practice, or the performance of any work then being done or about to be commenced. The order shall be issued in the name of the State of Alabama under the official seal of the board. If the individual or firm to whom the board directs a cease and desist order does not cease or desist the proscribed activity, conduct, practice, or performance of work immediately, the board shall cause to issue in any court of competent jurisdiction and proper venue, a writ of injunction enjoining the individual or firm from engaging in the proscribed activity, conduct, practice, or performance of work. Upon a showing by the board that an individual or firm has engaged or is engaged in any activity, conduct, practice, or performance of work prohibited by this chapter, the courts shall issue a temporary restraining order restraining the individual or firm from engaging in the unlawful activity, conduct, practice, or performance of work pending the hearing on a preliminary injunction, and in due course a permanent injunction shall issue after the hearing commanding the cessation of the unlawful activity, conduct, practice, or performance of work complained of, all without the necessity of the board having to give bond. A temporary restraining order preliminary injunction, or permanent injunction issued pursuant to this chapter shall not be subject to being released on bond. In the suit for an injunction, the board may demand of the defendant a civil penalty of up to five thousand dollars (\$5,000) plus costs and attorney fees for each offense. A judgment for penalties, attorney fees, and costs may be rendered in the same judgment in which the injunction is made absolute. The trial of the proceeding by injunction shall be summary and by the trial judge without jury.

(f) Any person who fails to cease work, after a hearing and notification from the board, may not apply for a professional engineer's or professional land surveyor's license for a period not to exceed one year from the date of official notification to cease work.

(g) The board may withhold approval for up to six months, of any application from any person who, prior to the application, has been found in violation of this chapter.

**Section 34-11-16. Violations; civil penalties; notice and hearing; subpoena power; appeal.**

- (a) In addition to any other provisions of law, the board may enter an order assessing a civil penalty against any non-licensed person, corporation, or other entity found guilty by the board of, but not limited to, the following violations of this chapter.
- (1) Engaging in the practice or offer to practice of engineering or land surveying in this jurisdiction without being licensed in accordance with this chapter.
  - (2) Using or employing the words “engineer,” “engineering,” “land surveyor,” “land surveying,” or any modification or derivative thereof in its name or form of business activity, except as authorized in this chapter.
  - (3) Presenting or attempting to use the certificate of licensure or the seal of another licensed engineer or licensed land surveyor.
  - (4) Giving false or forged evidence of any kind to the board or a member of the board in obtaining or attempting to obtain a certificate of licensure.
  - (5) Falsely impersonating another licensed engineer or licensed land surveyor of like or different name.
  - (6) Using or attempting to use a revoked or non-existent certificate of licensure.
- (b) The board shall determine the amount of the civil penalty which shall be paid to the State General Fund. The amount shall not exceed two thousand five hundred dollars (\$2,500) for each and every separate offense.
- (c) Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request, within 30 days of notice by the board, a hearing on the record.
- (d) Pursuant to the proceedings under this section, the board may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the Attorney General to bring an action to enforce a subpoena.
- (e) A person aggrieved by the levy of a civil penalty under this section may file an appeal to the Circuit Court of Montgomery County exclusively for judicial review of the penalty within 30 days notwithstanding the Administrative Procedure Act. Unless an appeal is taken, or the penalty paid, the order of the board imposing the civil penalty shall become a judgment.
- (f) If a person fails to pay a civil penalty within 30 days after entry of an order pursuant to subsection (a) or if the order is stayed pending an appeal, within 10 days after the court enters a final judgment in favor of the board of an order appealed pursuant to subsection (e), the board shall notify the Attorney General. The Attorney General may

commence a civil action to recover the amount of the penalty, plus attorney's fees and costs.

(g) The cost to the board of the action shall be paid by the respondent if found in violation.

## **ARTICLE 2. BOARD OF REGISTRATION.**

### **Section 34-11-30. Creation; composition; appointment; oath of office; terms of office.**

(a) A State Board of Licensure for Professional Engineers and Land Surveyors is created. It shall be the duty of the board to administer this chapter. The board shall consist of five members licensed as professional engineers, two members licensed as professional land surveyors, and two public members. One of the professional land surveyor members may also be licensed as a professional engineer. All members shall be appointed by the Governor. The five professional engineers shall be appointed from a list of three persons nominated for each appointment by a professional engineer nominating committee; and the two professional land surveyors shall be appointed from a list of three persons nominated for each appointment by the Alabama Society of Professional Land Surveyors; and, once the board has adopted rules establishing a public member nominating committee, the two public members shall be appointed from a list of three persons nominated for each appointment by the public member nominating committee. Nominations shall be made to the Governor as vacancies on the board occur, whether by the expiration of a term or otherwise. To the extent possible, the nominating committees, the Alabama Society of Professional Land Surveyors, and the Governor shall select those persons whose appointments ensure that the membership of the board is inclusive and reflects the racial, gender, geographic, urban/rural, and economic diversity of the state. Each member of the board, before beginning his or her term of office, shall file with the Secretary of State his or her written oath or affirmation for the faithful discharge of his or her duties.

(b) The professional engineer nominating committee shall consist of one professional engineer appointed or elected by each of the professional organizations specified in the rules of the board, and the public member nominating committee shall consist of one representative appointed or elected by each of the business development organizations specified in the rules of the board. Any other organization in the state having membership qualifications comparable to those professional organizations outlined in the rules of the board may petition the board for membership on a nominating committee. The board, by rule, may establish nominating committee operating guidelines and, by rule, may establish procedures for the removal of nonparticipating members of a nominating committee.

(c) Members of the board shall serve five-year terms. The members of the board shall continue to serve under this chapter until their respective terms expire. On the expiration of the term of each member, the Governor shall in the manner provided in this section appoint an individual to take the place of the member whose term on the board is about to expire. Vacancies occurring during a term shall be filled by appointment by the Governor, in the manner provided in this section, for the unexpired term. Each member shall hold office until the expiration of the term for which the member is appointed or until a successor is duly appointed and qualified. The terms of the members of the board shall

be staggered, so that the terms of no more than two members shall expire in any year. **No member of the board shall serve more than two consecutive full terms.** The completion of the unexpired portion of a full term shall not constitute a full term for the purposes of this section. The initial appointment term for one public member shall be for two years and one term for the other public member shall be for five years. All subsequent terms for the public members shall be for five years. Board members serving on the effective date of the act adding this language shall serve until the end of the term they are currently serving. At the conclusion of those terms, the appointment process will be adjusted to allow for the conversion to staggered terms.

#### **Section 34-11-31. Qualifications of members.**

(a) Board members shall at all times maintain eligibility to serve on the board avoiding relationships that would interfere with the board mission of protecting health, life, safety, welfare, and property.

(b) Each member of the board shall be a citizen of the United States and a resident of this state, for at least six months.

(c) Each licensed professional engineer or licensed professional land surveyor ~~who holds~~ shall hold an unexpired certificate under this chapter and shall have been licensed to practice engineering or land surveying, respectively, for at least 12 years.

(d) Each public member of the board shall be a resident of this state who is at least 40 years of age and is not, and never was, a professional engineer or professional land surveyor.

#### **Section 34-11-32. Compensation and expenses.**

**Each member of the board shall be entitled to the maximum allowable per diem set by the board** when actually attending to the work of the board or any of its committees and for the time spent in necessary travel and shall be reimbursed for traveling expenses as provided in Article 2 of Chapter 7 of Title 36, and incidental and clerical expenses necessarily incurred in carrying out this chapter.

#### **Section 34-11-33. Removal of members; vacancies.**

The governor may remove any member of the board for misconduct, incompetency, neglect of duty or for any other sufficient cause. Vacancies in the membership of the board by death, resignation or for any reason shall be filled for the unexpired term by appointment by the governor as provided in Section 34-11-30.

#### **Section 34-11-34. Meetings; legal office; officers; quorum.**

The board shall hold at least two regular meetings each year. The two regular meetings of the board shall be held in the City of Montgomery. The legal office of the board shall be located in the City of Montgomery. Special meetings shall be held at the time and place as the rules of the board may provide. Notice of all meetings shall be given as the rules provide. The board shall elect or appoint annually from among its members the following officers: a chair, a vice chair, and a secretary. A quorum of the board shall consist of a simple majority of the board membership.

### **Section 34-11-35. Powers generally.**

(a) The board shall have the power to adopt and amend by-laws and rules not inconsistent with the constitution and laws of this state, as may be reasonably necessary for the proper performance of its duties and the regulation of its procedures, meetings, records, examinations, and conduct. The board shall have the power to adopt and amend from time to time rules of professional conduct for professional engineers, engineer interns, professional land surveyors, land surveyor interns, and corporations, partnerships, or firms holding certificates of authorization. **The board shall adopt and have an official seal which shall be affixed to each certificate issued.**

(b) In carrying into effect its duties in any case involving the revocation of licensure or any disciplinary proceeding involving a licensee or the holder of a certificate of authorization or practicing or offering to practice without licensure, or false statement in connection with an application for licensure, the board may, under the hand of its chair and the seal of the board, subpoena witnesses and compel their attendance, and may also require the production of books, papers, documents, and other pertinent data. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena issued, or refuses to testify or produce any books, papers, or documents, the board may present its petition to the Circuit Court of Montgomery County, setting forth the facts, and thereupon the Circuit Court of Montgomery County shall, in a proper case, issue its subpoena to such person, requiring his or her attendance before the Circuit Court of Montgomery County and there to testify or to produce such books, papers and documents, or data. Any person failing or refusing to obey the subpoena or order of the Circuit Court of Montgomery County may be proceeded against in the same manner as for refusal to obey any other subpoena or order of the Circuit Court of Montgomery County.

(c) The board is charged with the duty of seeing that this chapter is enforced. The board shall investigate any complaint relating to the violation of this chapter and, should a violation be indicated, the board shall proceed as provided for under this chapter and rules adopted by the board.

(d) The board, in its own name, may apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, enforce the provisions of this chapter or to restrain any person, firm, partnership, or corporation from the commission of any act which is prohibited by this chapter. In such proceedings it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial and irreparable damage would result, from the continued violation thereof. Application for the injunction may be made to the Circuit Court of Montgomery County, or the circuit court of the county in which it is alleged that the violation is about to occur, at the request of the board. The injunction may not be granted ex parte, and any judgment or decree may be appealed in the manner prescribed by law to the Supreme Court of Alabama.

(e) The board retains and may exercise all administrative and civil rights and remedies commonly available to agencies in the state. No action or other legal proceedings for damages shall be instituted against the board, any board member, or employee of the board for any act done in good faith and in the intended performance of any power granted under this chapter or for any neglect or default in the performance or exercise in good faith of any duty or power.

(f) In carrying out the duties, functions, and obligations of this chapter, the board may contract with any state agency or private vendor as the board considers as appropriate. The board may also enter contracts to acquire, own, encumber, issue, replace, deal in, and dispose of real and personal property.

(g) The board may appoint committees to assist the board's efforts in carrying out the responsibilities of this chapter. All individuals appointed by the board to serve on committees are entitled to reimbursement of expenses as approved by the board.

(h) The board may adopt rules enabling the collection of fees in amounts necessary to enable the board to carry out its function under this chapter, provided the fees do not exceed the maximum amounts allowed under this chapter.

(i) The board may use electronic transmissions for all purposes permitted under the Uniform Electronic Transactions Act.

(j) The Attorney General or his or her assistants may act as legal adviser to the board and render legal assistance as may be necessary in carrying out the provisions of this chapter. The board may employ or retain counsel and necessary assistance to aid in the enforcement of this chapter, and the compensation and expenses thereof shall be paid from the funds of the board.

(k) For purposes of enforcement of all provisions of this chapter and board rules, including the assessment and collection of fines, penalties, costs, and attorney fees, the board shall maintain jurisdiction over individuals, irrespective of their licensure status relative to acts, omissions, complaints and investigations that occurred during the licensure period. Jurisdiction of the board shall extend to individuals engaging in the unauthorized practice of engineering or land surveying. It is the intent of this subsection that licensees cannot divest the board of jurisdiction by changing or relinquishing licensure status.

(l) The board may conduct an investigation or inspection of any person or facility at all reasonable hours for the purpose of determining if any provisions of the laws governing the practices of engineering and land surveying are being violated. The board, its officers, staff, and representatives shall cooperate with all agencies charged with the enforcement of all federal and state laws relating to the practices of engineering and land surveying.

(m) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of engineering or land surveying for the protection of health, life, safety, welfare, and property or whose activities assist and facilitate the work of the board.

(n) Through outreach efforts, the board may educate, recognize, and promote the mission of the board to the public, potential applicants, licensees, and other public agencies.

(o) The board may recognize accomplishments of those individuals who fall under the jurisdiction of the board.

#### §34-11-35.1.

(a) In addition to the powers provided to the board by Section 34-11-35, the Legislature finds and declares all of the following:

(1) The power to adopt rules regulating the practice of engineering and land surveying in the state includes the power to prohibit unlicensed persons from practicing engineering or land surveying and the power to regulate how licensed persons practice.

(2) The primary goal of the provision of engineering and land surveying in the state is to prioritize health, life, safety, welfare, and property.

(3) The board is in the best position to determine the engineering and land surveying practices that prioritize health, life, safety, welfare, and property.

(4) Prioritizing health, life, safety, welfare, and property may sometimes be at odds with the goals of state and federal antitrust laws which include prioritizing competition and efficiency.

(5) It is the intent of the Legislature, by passage of this section, to immunize the board and the members of the board from liability under state and federal antitrust laws for the adoption of a rule that prioritizes health, life, safety, welfare, and property, and may be anti-competitive.

(b) Subject to subsection (c), rules adopted by the board pursuant to this section or Section 34-11-35, may define and regulate the practice of engineering and land surveying in a way that prioritizes public health, life, safety, welfare, and property, even if the rule is anti-competitive.

(c) A rule adopted pursuant to this section or Section 34-11-35 may supplement or clarify a statutory definition, but may not conflict with any statute that defines the practice of engineering or land surveying.

(d)(1) Except as otherwise provided in subdivision (2), the board shall adopt rules pursuant to this section that allow engineers and land surveyors to solicit professional services in accordance with competitive, qualification-based selection policies and procedures. The rules shall prohibit competitive bidding based solely upon price or fee.

(2) The rules adopted under subdivision (1) shall not apply to a boundary survey on private land where the survey is not intended for use as a basis for engineering design at the time of preparation, unless the survey is prepared in accordance with the standards specified by the American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS).

(e) Nothing in this section shall be construed to constrict or expand the current rights and privileges of any individual governed by the State Board of Licensure for Professional Engineers and Land Surveyors beyond that which existed before the ruling of the Supreme Court of the United States in *N.C. State Board of Dental Examiners vs. FTC*, 135 S.Ct 1101 (2015).

(f) Nothing in this section shall be construed to constrict or expand the current duties or responsibilities of the members of the State Board of Licensure for Professional Engineers and Land Surveyors in any context outside of federal or state antitrust immunity beyond that which existed before the ruling of the Supreme Court of the United States in *N.C. State Board of Dental Examiners vs. FTC*, 135 S.Ct 1101 (2015).

### **Section 34-11-36. Receipts and disbursements.**

The executive director of the board shall receive and account for all money derived under this chapter.

All funds collected shall be deposited with the State Treasurer. With the exception of the civil penalties deposited in the General Fund as provided in Section 34-11-11.1, the State Treasurer shall keep the money in a separate fund to be known as the "Professional Engineers and Professional Land Surveyors Fund." The fund shall be kept separate and apart from all other money in the Treasury, and shall be paid out only by warrant of the Comptroller upon the Treasurer, upon itemized vouchers, approved by the executive director of the board. No funds shall be withdrawn or expended except as budgeted and allotted according to Article 4 of Chapter 4 of Title 41. Any funds or money in the hands of the State Treasurer, known as the Professional Engineers and Land Surveyors Fund, at the end of the state fiscal year in excess of that amount equal to 33 percent of the budget of the board for the previous fiscal year shall be transferred into the General Fund of the state. However, in the event that the Board elects to implement a biennial license, then the above transfer into the General Fund shall only apply at the end of the non-license year of the biennial license cycle. The money, properties, records, and other things of value owned by or allocated to the fund, the board, or the executive director of the board in his or her capacity as such, serving at the time of enactment of this chapter, shall become the property of and be allocated respectively to the fund, the board, or the executive director of the board under this chapter. The executive director of the board shall give a surety bond to the state in may be required by state law. a sum as the board may determine. The premium on the bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the fund. The executive director of the board shall receive a salary as determined by the board, in addition to compensation and expenses provided for in Section 34-11-32. The board may employ an executive director and, when necessary, an assistant executive director and fix their compensation and duties. The board may employ clerical or other assistants, subject to the provisions of the Merit System Act, and may make expenditures from the fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this chapter, including the expenses of the board's delegates to regional and national meetings of, and membership dues to, a national examination organization for engineers and land surveyors selected by the board and any of its subdivisions. Under no circumstances shall the total amount of warrants issued by the Comptroller in payment of the expenses and compensation provided for in this chapter exceed the amount provided therefore by the Legislature in the general appropriation or other appropriation bills.

### **Section 34-11-37. Records and reports; confidentiality.**

- (a) The board shall keep a record of its proceedings.
- (b) The board shall maintain a record of all applicants for licensure, certification, and certificate authorization.
- (c) The records of the board shall be prima facie evidence of the proceedings of the board set forth, and a transcript certified by the executive director of the board under seal, shall be admissible as evidence with the same force and effect as if the original were produced.

(d) Annually, the board shall submit to the Governor a report of its transactions of the preceding year and a complete statement of the receipts and expenditures of the board, attested by affidavits of its chair and its secretary.

(e) Board records and papers of the following class are of a confidential nature and are not public records: examination material for examinations not yet given; file records of examination problems and solutions; exam scores; letters of inquiry and reference concerning applicants; transcripts of college courses and grades; e-mail addresses; home addresses; board inquiry forms concerning applicants; pending and closed complaints and investigative files where no formal disciplinary action is taken; and all other materials of like confidential nature.