

WSR 22-21-033
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed October 7, 2022, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-112.

Title of Rule and Other Identifying Information: Chapter 196-25 WAC, Business practices.

Hearing Location(s): On November 30, 2022, at 2:00 p.m., at Board of Registration for Professional Engineers and Land Surveyors Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or join WebEx meeting <https://brpels.my.webex.com/brpels.my/j.php?MTID=mc89432e03703036c24229ca426dc62ee>; or join by phone

+1-650-479-3208 United States toll [free]. The board of registration for professional engineers and land surveyors will be holding this hearing in person at the board's offices in Olympia.

The public may also participate in the hearing virtually by accessing the hearing link on the board's rule-making page <https://brpels.wa.gov/about-us/laws-and-rules/rulemaking-activity> or calling the phone number provided.

Date of Intended Adoption: December 8, 2022.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email Shanan.Gillespie@brpels.wa.gov.

Assistance for Persons with Disabilities: Contact Shanan Gillespie, phone 360-664-1570, TTY 711 or 1-800-835-5388, email Shanan.Gillespie@brpels.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes are necessary because of updates to chapter 18.43 RCW in 2019. Changes also include language to clarify requirements for licensure. Rule amendments will impact all businesses that are required to apply for or renew a certificate of authorization per RCW 18.43.130.

Reasons Supporting Proposal: The amendments and new sections help clarify what businesses need to obtain a certificate of authorization from the board and which businesses are exempt, as well as clarify the designated licensee requirements.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: RCW 18.43.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-968-4805.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The board of registration for professional engineers and land surveyors is not one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5) (a).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The following rules are exempt per RCW 34.05.310 (4)(c) because the language incorporates by reference, without material change, Washington state statutes, rules of other Washington state agencies: WAC 196-25-003 Business licenses, 196-25-005 Corporation and LLC certificates of authorization, 196-25-046 Professional service corporation, 196-25-047 Professional limited liability company, and 196-25-060 Offer to practice by all businesses.

The following rules are exempt per RCW 34.05.310 (4)(d) [because] the amendments clarify language without changing its effect: WAC 196-25-002 Definitions, 196-25-070 Providing direct supervision, and 196-25-080 Practice by businesses, organizations or public agencies.

The following rules are exempt per RCW 34.05.310 (4)(g)(ii) process requirements for applying to an agency for a license or permit: WAC 196-25-010 Applications for certificates of authorization, 196-25-040 Corporation and limited liability company designees, and 196-25-045 Changes and renewals.

Scope of exemption for rule proposal:
Is fully exempt.

October 7, 2022
Ken Fuller
Director

OTS-3591.1

AMENDATORY SECTION (Amending WSR 05-17-053, filed 8/9/05, effective 9/9/05)

WAC 196-25-002 Definitions. Board. The Washington state board of registration for professional engineers and land surveyors.

Business. A corporation, professional service corporation (PSC), limited liability company (LLC), professional limited liability company (PLLC), partnership or sole proprietorship that is practicing or offering to practice, engineering or land surveying or both in this state.

Certificate of authorization. A certificate issued by the board, pursuant to chapter 18.43 RCW, to a corporation or limited liability company (LLC), authorizing it to practice engineering or land survey-

ing or both in this state. (Note: This is a different certificate than the certificate of authorization that may be filed with the secretary of state.)

Designee, designated engineer, designated land surveyor. A currently registered professional engineer designated by a corporation or LLC to be in responsible charge of engineering activities for the corporation or LLC in Washington, or, a currently registered professional land surveyor designated by a corporation or LLC to be in responsible charge of land surveying activities for the business in Washington.

Employee. A person in the service of another under any contract of hire, expressed or implied, oral or written, where the employer has the right to control and direct the employee in the material details of the scope, schedule, and location of employment.

Professional engineer. A person registered by the board under chapter 18.43 RCW to practice engineering in this state.

Professional land surveyor. A person registered by the board under chapter 18.43 RCW to practice land surveying in this state.

~~(**Resident engineer or resident land surveyor.** A currently registered professional engineer or land surveyor who maintains a business headquarters or branch office as his/her normal place of employment, and is in responsible charge of the engineering and/or land surveying services.)~~

~~**Business.** A corporation, professional service corporation (PS), joint stock association (JSA) or limited liability company (LLC) or professional limited liability company (PLLC) that is practicing or offering to practice, engineering or land surveying or both in this state.~~

~~**Designee, designated engineer, designated land surveyor.** A currently registered professional engineer designated by the business to be in responsible charge of engineering activities for the business in Washington, OR, a currently registered professional land surveyor designated by the business to be in responsible charge of land surveying activities for the business in Washington.~~

~~**Employee.** A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the right to control and direct the employee in the material details of the scope, schedule and location of employment.~~

~~**Branch office.** One or more alternate locations in Washington of a business, not recognized as the business' main office or headquarters, which is established to offer and provide engineering and/or land surveying services from that location.~~

~~**Project office.** A temporary remote location of an engineering and/or land surveying business that is a convenient workplace for providing specific engineering and/or land surveying services only in support of a project.~~

~~**Certificate of authorization.** A certificate issued by the board, pursuant to chapter 18.43 RCW, to a business authorizing it to practice engineering or land surveying or both in this state. (Note: This is a different certificate than the certificate of authorization that may be filed with the secretary of state.))~~

Responsible charge. To be in responsible charge means to have the authority to make all engineering or land surveying decisions pertaining to engineering or land surveying activities in the state of Washington on behalf of a corporation or LLC. RCW 18.43.130 (8) (b) and (10) (b).

[Statutory Authority: RCW 18.43.035. WSR 05-17-053, § 196-25-002, filed 8/9/05, effective 9/9/05. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-002, filed 5/29/98, effective 7/1/98.]

NEW SECTION

WAC 196-25-003 Business licenses. Businesses must obtain a business license from the department of revenue prior to offering services to the public pursuant to chapter 82.32 RCW.

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AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-25-005 (~~(Businesses that must be authorized by the board.)~~) Corporation and LLC certificates of authorization. ((~~Except for professional service (PS) corporations and professional service limited liability companies (PLLC's), all~~) Corporations ((~~, joint stock associations~~)) and limited liability companies ((~~-LLC's~~))) that offer engineering or land surveying services must obtain from the board a certificate of authorization to practice engineering or land surveying or both in the state of Washington.

((~~A general partnership must employ at least one person currently registered pursuant to chapter 18.43 RCW for each profession for which services are offered.~~)) Corporations and LLCs must be registered with the secretary of state and the department of revenue and have a unified business identifier (UBI) number prior to applying for a certificate of authorization.

Professional service corporations and professional limited liability companies, sole proprietorships, and partnerships are exempt from applying for certificates of authorization.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-25-005, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-005, filed 5/29/98, effective 7/1/98.]

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-25-010 Applications for certificates of authorization. All applications by corporations and LLCs for certificates of authorization must be completed on forms provided by the board and submitted to the offices of the board. A complete application requires the following: Payment of the appropriate fee as listed in chapter 196-26A WAC; affidavit of designated professional engineer and/or land surveyor; and, ((certified)) a copy of resolution naming the designated engineer, or land surveyor, or both.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-25-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-010, filed 5/29/98, effective 7/1/98.]

AMENDATORY SECTION (Amending WSR 05-17-053, filed 8/9/05, effective 9/9/05)

WAC 196-25-040 (~~(Provisions pertaining to only corporations, joint stock associations)~~) Corporation and limited liability (companies) company designees. (1) Each corporation or LLC must designate a registered engineer or land surveyor respectively to be in responsible charge.

~~(2)~~ (2) If the business offers both engineering and land surveying services, there must be a designee for each profession. If a person is licensed in both engineering and land surveying, that person may be designated for both professions.

~~((2))~~ (3) An affidavit must be signed by the designee(s) stating that ~~((he or she))~~ they know~~((s))~~ they have been designated by the ~~((business))~~ corporation or LLC as being in responsible charge for the engineering and/or land surveying activities in the state of Washington.

~~((3))~~ (4) The designated engineer and/or designated land surveyor must be an employee of the ~~((business))~~ corporation or LLC.

~~((4))~~ (5) No person may be the designated engineer or designated land surveyor at more than one ~~((business))~~ corporation or LLC at any one time.

~~((5))~~ (6) When there is a change in the designee(s), the business must notify the board in writing no later than ~~((thirty))~~ 30 days after the effective date of the change and submit a new affidavit.

~~((6))~~ ~~If the business changes its name, the business must submit a copy of its amended certificate of authority or amended certificate of incorporation (for corporations) or a copy of the certificate of amendment (for LLC's), as filed with the secretary of state within thirty days of the name change.~~

~~(7) At the time of renewal, the corporation or limited liability company must submit a copy of the document issued to their company by the state of Washington master license service which states that the corporation or limited liability company has been "renewed by the authority of the secretary of state" and shows a current expiration date.~~

~~(8) The filing of the resolution shall not relieve the business of any responsibility or liability imposed upon it by law or by contract. Any business that is certified under chapter 18.43 RCW and this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, and 18.43.120.)~~

[Statutory Authority: RCW 18.43.035. WSR 05-17-053, § 196-25-040, filed 8/9/05, effective 9/9/05; WSR 99-15-057, § 196-25-040, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-040, filed 5/29/98, effective 7/1/98.]

NEW SECTION

WAC 196-25-045 Changes and renewals. (1) If the business changes its name with the secretary of state, the business must notify the board within 30 days of the name change.

(2) At the time of renewal, the corporation or limited liability company must have a current license with the secretary of state and the department of revenue.

(3) The filing of the resolution shall not relieve the business of any responsibility or liability imposed upon it by law or by contract. Any corporation or LLC that is certified under chapter 18.43 RCW and this chapter is subject to the authority of the board as provided in RCW 18.43.035 18.43.105, 18.43.110, and 18.43.120.

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NEW SECTION

WAC 196-25-046 Professional service corporation. (1) Professional service corporations lawfully organized under chapter 18.100 RCW are not required to obtain certificates of authorization under this chapter.

(2) All engineering services provided by a professional service corporation, must be provided by a duly licensed professional engineer pursuant to RCW 18.100.060.

(3) A registered engineer may own stock in and render individual professional services through only one professional service corporation at any time pursuant to RCW 18.100.050(2).

(4) The standards of professional conduct for engineers under chapter 18.43 RCW and this Title 196 WAC apply to any professional services performed by a PSC or its individual member licensees pursuant to RCW 18.100.070.

(5) A PSC that performs engineering services must comply with chapters 18.43 and 18.100 RCW.

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NEW SECTION

WAC 196-25-047 Professional limited liability company. (1) A group of licensed professional engineers or land surveyors legally authorized to render the same professional services within this state may form and become members of a professional limited liability company for the purposes of rendering professional engineering or land surveying pursuant to RCW 25.15.046.

(2) A professional limited liability company and its members are subject to all the provisions of chapter 18.100 RCW.

(3) No engineering or land surveying services may be performed by a PLLC unless those services are performed by a licensed engineer or land surveyor, respectively.

(4) Formation of a professional limited liability company under RCW 25.15.046 does not restrict the application of the Uniform Disciplinary Act under chapter 18.235 RCW.

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AMENDATORY SECTION (Amending WSR 99-15-054, filed 7/15/99, effective 8/15/99)

WAC 196-25-060 Offer to practice by all businesses. The offer to practice or provide engineering or land surveying services to the public must be made by or under the direct supervision of a licensee qualified to offer said services under the provisions of chapter 18.43 RCW.

The practice of engineering or land surveying by a partnership offering engineering or land surveying services must employ at least one licensed engineer or land surveyor that can provide professional services and/or direct supervision over said services.

[Statutory Authority: RCW 18.43.035. WSR 99-15-054, § 196-25-060, filed 7/15/99, effective 8/15/99.]

AMENDATORY SECTION (Amending WSR 10-05-017, filed 2/4/10, effective 3/7/10)

WAC 196-25-070 Providing direct supervision. Direct supervision ((means the actions by which)) by a licensee ((maintains)) is described as follows:

(1) Maintaining control over those decisions that are the basis for the findings, conclusions, analyses, rationale, details, and judgments required for the preparation of engineering or land surveying plans, specifications, plats, surveys, land descriptions as defined by WAC 332-130-020, reports, as-built documents prepared by the licensee, and related activities. ((**Direct supervision**))

(2) Requires providing personal direction, oversight, inspection, observation and supervision of the work being certified.

(3) These actions may include, but are not limited to: Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or other current technology.

(4) Contractual or employment relations must be in place between the licensee and unlicensed preparer to qualify as direct supervision.

(5) Mentoring is not direct supervision. ((Drawing or other)) Reviewing documents ((review)) as defined by WAC 196-23-020, after preparation without involvement in the design and development process as described above cannot be accepted as direct supervision.

[Statutory Authority: RCW 18.43.035. WSR 10-05-017, § 196-25-070, filed 2/4/10, effective 3/7/10; WSR 06-22-033, § 196-25-070, filed 10/25/06, effective 11/25/06. Formerly WAC 196-23-030.]

AMENDATORY SECTION (Amending WSR 06-22-033, filed 10/25/06, effective 11/25/06)

WAC 196-25-080 Practice by businesses, organizations or public agencies. When a business, organization or public agency offers or performs engineering or land surveying services as defined in RCW 18.43.020, the business, organization or public agency shall perform its duties and responsibilities in the same manner as an individual, in accordance with RCW 18.43.130 (8)(f) and (10)(f), chapters 18.43, 18.100, and 18.235 RCW, and other applicable statutes and rules.

[Statutory Authority: RCW 18.43.035. WSR 06-22-033, § 196-25-080, filed 10/25/06, effective 11/25/06. Formerly WAC 196-23-050.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-25-050 Branch offices.