

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 39 ENGINEERING AND SURVEYING PRACTITIONERS
PART 1 GENERAL PROVISIONS - PROFESSIONAL ENGINEERING AND SURVEYING
ORGANIZATION AND ADMINISTRATION

16.39.1.1 ISSUING AGENCY: State Board of Licensure for Professional Engineers and Professional Surveyors, 2550 Cerrillos Road, Santa Fe, NM 87505, telephone no. (505) 476-4565.
[16.39.1.1 NMAC - Rp, 16 NMAC 39.1.1, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

16.39.1.2 SCOPE: Provisions for Part 1 apply to staff and officers of the board and to any person licensed as a professional engineer or a professional surveyor, or to anyone applying for licensure as a professional engineer or a professional surveyor in New Mexico.
[16.39.1.2 NMAC - Rp, 16 NMAC 39.1.2, 1/01/2002]

16.39.1.3 STATUTORY AUTHORITY: Subsection B of Section 61-23-10 NMSA 1978 prescribes that "the board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying." 16.39.1 NMAC applies to both engineering and surveying.
[16.39.1.3 NMAC - Rp, 16 NMAC 39.1.3, 1/01/2002; A, 7/01/2006; A, 12/28/2017]

16.39.1.4 DURATION: Permanent.
[16.39.1.4 NMAC - Rp, 16 NMAC 39.1.4, 1/01/2002]

16.39.1.5 EFFECTIVE DATE: January 1, 2002, unless a later date is cited at the end of a section.
[16.39.1.5 NMAC - Rp, 16 NMAC 39.1.5, 1/01/2002]

16.39.1.6 OBJECTIVE: The objective of Part 1 of Chapter 39 is to clearly define the organizational structure of the board, the types of meetings and order of business, the number needed for a quorum, the duties of the officers, the responsibilities of the board, the preparation and distribution of a roster of licensed professional engineers and surveyors, the establishment of fees, and retired status.
[16.39.1.6 NMAC - Rp, 16 NMAC 39.1.6, 1/01/2002]

16.39.1.7 DEFINITIONS:
A. "Category" means professional engineer or professional surveyor.
B. "Branch" means discipline.
[16.39.1.7 NMAC - Rp, 16 NMAC 39.1.7, 1/1/2002; A, 7/1/2015]

16.39.1.8 THE BOARD:
A. The name of this board shall be the state board of licensure for professional engineers and professional surveyors hereinafter referred to as the "board".
B. The official seal of the board shall be an embossed circular seal one and three-quarter inches in diameter consisting of two concentric circles; the outer circle to be one and three-quarter inches in diameter. The inner circle is to be one and one-quarter inches in diameter. The inner circle shall contain the seal of the state of New Mexico and the words, "state of New Mexico." The words, "board of licensure for professional engineers and professional surveyors", shall be contained between the two concentric circles.
C. The fiscal year of the board shall be July 1, through June 30 of the following calendar year.
[16.39.1.8 NMAC - Rp, 16 NMAC 39.1.8, 1/01/2002; A, 7/01/2006; A, 7/1/2015; A, 12/28/2017]

16.39.1.9 MEMBERS OF THE BOARD: Members of the board are not employees within the meaning of that term under the Governmental Conduct Act; however, they are public officers; therefore the Governmental Conduct Act applies to all board members.
[16.39.1.9 NMAC - Rp, 16 NMAC 39.1.9, 1/01/2002; A, 7/01/2006]

16.39.1.10 MEETINGS OF THE BOARD:

A. Special and emergency meetings of the board may be called at any time by the chair of the board, or a majority of the board members; and meetings of either of the two committees may be called at any time by order of the respective chair of the professional engineering committee or the professional surveying committee or a majority of the committee members.

B. Proper public notice of all meetings shall be given in accordance with the provisions of the Open Meeting Act.

[16.39.1.10 NMAC - Rp, 16 NMAC 39.1.10, 1/01/2002; A, 12/28/2017]

16.39.1.11 ORGANIZATION OF THE BOARD:

A. Annually, at the last meeting of the fiscal year, the board shall elect its officers, who shall take office on July 1.

B. Annually, at the first meeting after July 1, the chair of the board shall appoint from the board's members such additional committees as may be found appropriate by the board.

[16.39.1.11 NMAC - Rp, 16 NMAC 39.1.11, 1/01/2002]

16.39.1.12 DUTIES OF THE BOARD, OFFICERS OF THE BOARD, AND THE EXECUTIVE DIRECTOR:

A. The board shall act as a whole in all administrative, financial and personnel matters and any other activity not specifically related to the practices of engineering or surveying.

B. The board shall appoint an executive director who shall serve at the pleasure of the board.

C. The chair of the board shall preside at all meetings; shall appoint all committees; shall sign all certificates of licensure, vouchers and other official documents; and shall otherwise perform all duties pertaining to the office of the chair.

D. The vice-chair shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

E. The secretary of the board shall co-sign all certificates of licensure and in the absence or incapacity of the chair and vice-chair, exercise the duties and shall possess all the powers of the chair.

F. The executive director shall perform and supervise the following for the board and professional engineering and professional surveying committees:

(1) conduct and care for all correspondence in the name of the board, the professional engineering committee and the professional surveying committee;

(2) record and file all applications, certificates of licensure, examinations, licenses and revocations for both professional engineering and professional surveying committees;

(3) prepare and submit to the board, at the first meeting of each fiscal year for review and approval, an annual report of board activities and statistics for the preceding fiscal year, including a financial report; prepare the approved annual report for transmittal to the governor;

(4) keep a record of all meetings of the board and committees and maintain a proper account of the business of the board; a draft of the meetings' minutes shall be provided to each member for comment within ten working days after each meeting; a final draft shall be provided to each board member at the next meeting for final approval;

(5) receive and account for all funds and transfer same to state treasurer within 24 hours of receipt; authorize and approve payment by department of finance and administration invoices and vouchers for only those expenditures included in the board's approved operating budget;

(6) present and submit to the board at the first meeting of each fiscal year a financial report prepared by the rules of generally accepted accounting principles as of the preceding June 30th, such report to include the reporting of the transactions of the board during the preceding fiscal year, and a complete statement of the receipts, expenses and expenditures of the board; upon being approved by the board, shall be included in the annual report and submitted to the governor;

(7) receive and review licensure applications for completeness for consideration by the respective committees;

(8) schedule and arrange for the administration of written examinations provided for in the Engineering and Surveying Practice Act, content of which having been approved by the board or respective professional engineering or professional surveying committees; when requested by the applicant, the director shall make reasonable accommodations for the testing of an applicant with a certified disability in accordance with the provisions of the Americans with Disabilities Act and who meets the minimum qualifications in the Engineering and

Surveying Practice Act and these rules; when necessary qualified assistance, approved by the board, may be retained for conduct of examinations;

(9) prepare and maintain a current roster on the board's website, and furnish copies to the public upon request and payment of a fee as determined by the board; in accordance with Section 61-23-13 NMSA 1978;

(10) prepare and maintain a current roster of business entities with an affidavit identifying the authorized company officer and the professional engineer or professional surveyor or both who is employed by the business entity and in the responsible charge;

(11) provide one week in advance of each meeting, drafts of the agenda of the meeting to each member of the board;

(12) publish an annual newsletter at a minimum;

(13) direct investigations of any alleged violations or infringements of the Engineering and Surveying Practice Act; a written report covering status of protest actions and alleged violations shall be presented to the appropriate committee at each meeting; this may be in the form of appropriate commentary recorded in the minutes, supported by a separate file on the case; when necessary, qualified assistance, approved by the board, may be retained for conduct of investigations;

(14) file formal disciplinary actions upon approval by the board with the appropriate jurisdiction for prosecution of alleged violations of the act and the board's rules.

[16.39.1.12 NMAC - Rp, 16 NMAC 39.1.12, 1/1/2002; A, 7/1/2006; A, 7/1/2015; A, 12/28/2017]

16.39.1.13 DUTIES OF THE OFFICERS OF THE PROFESSIONAL ENGINEERING AND PROFESSIONAL SURVEYING COMMITTEES:

A. The chair shall preside at all meetings and shall otherwise perform all duties pertaining to the office of the chair.

B. The vice-chair shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

[16.39.1.13 NMAC - Rp, 16 NMAC 39.1.13, 1/01/2002]

16.39.1.14 PROCEDURES AT BOARD MEETINGS AND COMMITTEE MEETINGS:

A. The order of business may be as follows:

(1) **board meetings:**

- (a) public notice;
- (b) approval of agenda;
- (c) approval of minutes;
- (d) reports of committees;
- (e) communications;
- (f) old business;
- (g) new business;
- (h) complaints and violations;
- (i) adjournment.

(2) **committee meetings:**

- (a) public notice;
- (b) approval of agenda;
- (c) approval minutes;
- (d) reports of sub-committees;
- (e) communications;
- (f) old business;
- (g) new business;
- (h) complaints and violations;
- (i) applications;
- (j) adjournment.

B. *Roberts' rules of order* shall generally govern the procedure of the board and committee meetings except as otherwise provided for in Title 16, Chapter 39 of the New Mexico administrative code or the Engineering and Surveying Practice Act.

C. Board members may participate in a meeting of the board or committees by means of a telephone conference or similar communications equipment and participation by such means shall constitute presence in

person at the meeting. Participation by telephone may only occur when it is difficult or impossible for board members to attend.

[16.39.1.14 NMAC - Rp, 16 NMAC 39.1.14, 1/1/2002; A, 7/1/2006; A, 7/1/2015]

16.39.1.15 ROSTER: The roster shall contain the following information for each licensee: legal name, street address or post office box number, city, state, zip code, class of licensure, discipline, status, and license number.

[16.39.1.15 NMAC - Rp, 16 NMAC 39.1.15, 1/1/2002; A, 7/1/2015]

16.39.1.16 FEES:

A. A fee will be assessed to process an application for a license to practice, for enrollment as an engineering intern or surveying intern, and for examinations.

B. Examination fees shall be paid on or before the date specified by the board prior to the date of the scheduled examination. Said fees are earned fees and are not refundable if the applicant should fail to appear for the examination.

C. Renewal and application fees are earned fees and are not refundable.

D. All fees shall be set by the board. Changes in renewal fees, application fees, and examination fees shall become effective as designated by the board.

[16.39.1.16 NMAC - Rp, 16 NMAC 39.1.16, 1/01/2002; A, 7/01/2006]

16.39.1.17 STATUS OF LICENSURE:

A. Intern Certification - a licensee's intern certification will automatically be superseded by the professional license and will not show as "active" on the roster.

~~[A.]~~ **B.** Retired status - a licensee shall become eligible for retired status with a waiver of renewal fees after meeting all the following qualifications:

(1) retired from active practice;

(2) at least 60 years of age;

(3) have been a licensee for a continuous period of 20 years, at least 10 of which must have been in New Mexico; ~~and~~

(4) the licensee has filed an application prescribed by the board for retired status prior to the expiration of the license;

(5) the licensee does not have any pending complaints;

(6) the licensee does not have any pending litigation; and

(7) the licensee has completed any imposed disciplinary actions.

~~[B.]~~ **C.** Licensees shall request retired status by letter. In the event the licensee on retired status desires to return to practice, the licensee shall apply to the board, comply with the continuing professional development requirements; and if approved shall pay the appropriate fee.

~~[C.]~~ **D.** Professional engineers and professional surveyors on "retired status" with the board may use the titles "engineer", "surveyor", "professional engineer", "professional surveyor", PE or PS after their names and shall add "(Ret.)" or "(Retired)" after such title.

~~[D.]~~ **E.** Inactive status - a licensee shall become eligible for inactive status with a waiver of renewal fees and professional development requirements after meeting all the following qualifications:

(1) the licensee is not engaged in the respective professions (engineering or surveying) which requires licensure in this jurisdiction;

(2) the licensee has been a licensed professional engineer or surveyor in this jurisdiction for 10 consecutive years;

(3) the licensee has filed an application prescribed by the board for inactive status prior to the expiration of the license;

(4) the licensee does not have any pending complaints;

(5) the licensee does not have any pending litigation; and

(6) the licensee has completed any imposed disciplinary actions.

~~[E.]~~ **F.** In the event a licensee on inactive status desires to return to practice within six years of acquiring inactive status, the licensee shall make proper application to the board, comply with the continuing professional development requirements (a minimum of 30 PDHs) and if approved shall pay the appropriate fee.

~~[F.]~~ **G.** An inactive licensee who has maintained inactive status in excess of six consecutive years may be readmitted to active practice of the profession only upon making proper application and completion of the requirements as prescribed by the board for reinstatement of a license. ~~[(In the event an inactive licensee does not~~

~~maintain a current license in any jurisdiction for the six previous years prior to requesting active status, that person will be required to take the principles and practice of engineering (PE) examination or the principles and practice of surveying (PS) examination and the New Mexico surveying state specific exam.]~~

[16.39.1.17 NMAC - Rp, 16 NMAC 39.1.17, 1/1/2002; A, 7/1/2006; A, 7/1/2015; A, 12/28/2017; A, xx/xx/20xx]

HISTORY OF 16.39.1 NMAC:

Pre-NMAC History: The material in this part is derived from that previously filed with the state records center and archives under: PELS 67-1, New Mexico Engineering Practice Act, filed 6-22-67; PELS 79-1, New Mexico Engineering and Land Surveying Practice Act, filed 10-29-79; PELS 67-2, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 06-22-67; PELS 68-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 10-07-68; PELS 69-1, By-Laws of State Board of Registration for Professional Engineers and Land Surveyors, filed 07-03-69; PELS 71-1, Rules of Procedure Manual, filed 01-14-71; PELS 73-1, Rules of Procedure Manual, filed 01-04-73; PELS 75-1, Rules of Procedure Manual, filed 12-15-75; PELS 80-1, Regulations and Rules of Procedure, filed 01-28-80; PE/PS Rule No. 89-1, Regulations and Rules of Procedure, filed 08-15-89; Rule 100.1, Regulations and Rules of Procedure - The Board, filed 10-28-94; Rule 100.2, Regulations and Rules of Procedure--Members of the Board, filed 10-28-94; Rule 100.3, Regulations and Rules of Procedure--Meeting of the Board, filed 10-28-94; Rule 100.4, Regulations and Rules of Procedure--Organization of the Board, filed 10-28-94; Rule 100.5, Regulations and Rules of Procedure--Duties of the Board, Officers of the Board, and The Executive Director, filed 10-28-94; Rule 100.6, Regulations and Rules of Procedure--Duties of the Officers of the Professional Engineering and Professional Surveying Committee, filed 10-28-94; Rule 100.7, Regulations and Rules of Procedure--Procedures at Board Meetings and Committee Meetings, filed 10-28-94; Rule 100.8, Regulations and Rules of Procedure--Roster, filed 10-28-94; Rule 100.9, Regulations and Rules of Procedure--Fees, filed 10-28-94; Rule 100.10, Regulations and Rules of Procedure--Status of Registration, filed 10-28-94.

History of Repealed Material:

16 NMAC 39.1 (filed 3-31-1998); 16 NMAC 39.1.17.4, 16 NMAC 39.1.17.5, 16 NMAC 39.1.17.6 (filed 01-04-2000) repealed 01/01/2002.

Other History:

Rule 100.1, Regulations and Rules of Procedure - The Board (filed 10-28-94); Rule 100.2, Regulations and Rules of Procedure--Members of the Board (filed 10-28-94); Rule 100.3, Regulations and Rules of Procedure--Meeting of the Board (filed 10-28-94); Rule 100.4, Regulations and Rules of Procedure--Organization of the Board (filed 10-28-94); Rule 100.5, Regulations and Rules of Procedure--Duties of the Board, Officers of the Board, and The Executive Director (filed 10-28-94); Rule 100.6, Regulations and Rules of Procedure--Duties of the Officers of the Professional Engineering and Professional Surveying Committee (filed 10-28-94); Rule 100.7, Regulations and Rules of Procedure--Procedures at Board Meetings and Committee Meetings (filed 10-28-94); Rule 100.8, Regulations and Rules of Procedure--Roster (filed 10-28-94) Rule 100.9, Regulations and Rules of Procedure--Fees (filed 10-28-94); and Rule 100.10, Regulations and Rules of Procedure--Status of Registration (filed 10-28-94) **all** renumbered, reformatted and replaced by 16 NMAC 39.1, General Provisions--Professional Engineering and Surveying--Organization and Administration, effective 04-15-1998.

16 NMAC 39.1 (filed 03-31-1998) General Provisions--Professional Engineering and Surveying--Organization and Administration, was replaced by 16.39.1 NMAC, General Provisions--Professional Engineering and Surveying--Organization and Administration, effective 01-01-2002.