



## NOTICE OF TEXT [Authority G.S. 150B-21.2(c)]

**OAH USE ONLY**

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- ☒ Notice with a scheduled hearing  
☐ Notice without a scheduled hearing  
☐ Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.  
Previous publication of text was published in Volume:                      Issue:

**1. Rule-Making Agency:**

The North Carolina Landscape Contractors' Licensing Board

**2. Link to agency website pursuant to G.S. 150B-19.1(c):**

[www.nclclb.com](http://www.nclclb.com)

**3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:**

☒ **ADOPTION:**

21 NCAC 28B .0101 - .0103; .0201 - .0204; .0301 - .0302; .0401 - .0405; .0501 - .0511; .0601; .0701; .0801 - .0804

☐ **READOPTION with substantive changes:**

☐ **READOPTION without substantive changes:**

☐ **AMENDMENT:**

☐ **REPEAL:**

**4. Proposed effective date:** September 1, 2016

**5. Is a public hearing planned?** ☒ Yes ☐ No

If yes: **Public Hearing date:** June 6, 2016

**Public Hearing time:** 10:00 a.m.

**Public Hearing Location:** 3901 Barrett Drive, Suite 202, Raleigh, NC 27609

**6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:**

**7. Explain Reason For Proposed Rule(s):**

See Attachment

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

☐ Rule(s) is automatically subject to legislative review. Cite statutory reference:

**9. The person to whom written comments may be submitted on the proposed rule(s):**

**Name:** Calvin M. Kirven, Executive Administrator

**Address:**

3901 Barrett Drive, Suite 202  
Raleigh, NC 27609

**Phone (optional):** 919-266-8070

**Fax (optional):**

**E-Mail (optional):** ckirven@nclclb.com

**10. Comment Period Ends:** July 15, 2016**11. Fiscal impact (check all that apply).**

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact ( $\geq$ \$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4
- ☐ No fiscal note required by G.S. 150B-21.3A(d)(2)

**12. Rule-making Coordinator:**

Calvin M. Kirven, Executive Administrator

**Address:**

3901 Barrett Drive, Suite 202  
Raleigh, NC 27609

**Phone:** 919-266-8070

**E-Mail:** ckirven@nclclb.com

**Agency contact, if any:**

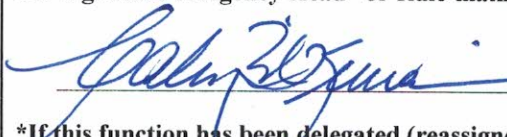
Anna Baird Choi

**Phone:** 919-341-2636

**E-mail:** anna@ncl-law.com

**13. The Agency formally proposed the text of this rule(s) on**

**Date:** April 19, 2016

**14. Signature of Agency Head\* or Rule-making Coordinator:**

**\*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

**Typed Name:** Calvin M. Kirven

**Title:** Rule-making Coordinator

THE NORTH CAROLINA LANDSCAPE CONTRACTORS' LICENSING BOARD  
ATTACHMENT  
TO  
NOTICE OF TEXT

21 NCAC 28B .0101	Provide public with notice of Board location and hours of operation
21 NCAC 28B .0102	Provide public with notice of when and where Board meetings will be held
21 NCAC 28B .0103	Clarify statute re: definition of "readily available"
21 NCAC 28B .0201	Set out requirements of licensure application
21 NCAC 28B .0202	Set out requirements for application by reciprocity
21 NCAC 28B .0203	Comply with mandate of 93B-15.1 re: military applicants and spouses
21 NCAC 28B .0204	Provide detail re: what information shall be maintained by licensee
21 NCAC 28B .0301	Set out requirements of licensure renewal
21 NCAC 28B .0302	Set out requirements of reinstatement process
21 NCAC 28B .0401	Inform licensees of requirement to notify Board of CE
21 NCAC 28B .0402	Describe types of CE that are permissible
21 NCAC 28B .0403	Inform licensees of how long CE info must be maintained
21 NCAC 28B .0404	Provide process for extension of time request re: CE
21 NCAC 28B .0405	Provide CE approval process
21 NCAC 28B .0501 - .0511	Provide minimum standards on various aspects of landscape contracting
21 NCAC 28B .0601	Set out fees to be charged as authorized by statute
21 NCAC 28B .0701	Notify licensees how complaints are to be filed and processed
21 NCAC 28B .0801	Notify licensees of process after probable cause finding
21 NCAC 28B .0802	Notify licensees of hearing process
21 NCAC 28B .0803	Notify licensees of the right to request and process for subpoenas
21 NCAC 28B .0804	Notify licensees re: how summary suspensions will be processed

## SUBCHAPTER 28B – LICENSING BOARD RULES

### SECTION .0100 – STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 28B .0101 is proposed for adoption as follows:

#### **21 NCAC 28B .0101 NAME AND LOCATION OF BOARD**

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

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

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

*History Note: Authority G.S. 89D-14; 89D-15(2);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*



21 NCAC 28B .0102 is proposed for adoption as follows:

**21 NCAC 28B .0102 MEETINGS**

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

(b) The Board shall hold an annual meeting every January. At that meeting, the Board shall elect a chairman, a vice chairman, a secretary-treasurer, and such other officers as may be deemed necessary by the Board.

*History Note: Authority G.S. 89D-14; 89D-15(2);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

1 21 NCAC 28B .0103 is proposed for adoption as follows:

2  
3 **21 NCAC 28B .0103 PRACTICE OF LANDSCAPE CONTRACTING**

4 An individual who is "readily available to exercise supervision over the landscape construction and contracting work"  
5 as set forth in G.S. 89D-12(a) and G.S. 89D-17(f) is an individual who is physically located no more than 100 miles  
6 from where the construction or contract project is located or who is available electronically with the ability to view  
7 the construction or contract project.

8  
9 *History Note: Authority G.S. 89D-12(a); 89D-15(2);*  
10 *Temporary Adoption Eff. January 1, 2016;*  
11 *Eff. September 1, 2016.*

## SECTION .0200 – LICENSURE; RECIPROCITY; SEAL

21 NCAC 28B .0201 is proposed for adoption as follows:

### **21 NCAC 28B .0201      APPLICATIONS FOR LICENSURE**

(a) All applicants for licensure or examination shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office. The application shall require the following:

- (1)      The Social Security Number of applicant;
- (2)      The applicant's contact information;
- (3)      The name of business under which licensee will be operating, if any;
- (4)      Information about all crimes of which the applicant has been convicted;
- (5)      Documentation regarding all crimes of which the applicant has been convicted;
- (6)      Information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (7)      Three personal letters of reference;
- (8)      Two professional letters of reference;
- (9)      The corporate surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);
- (10)     The application fee as set forth in Rule .0601 of this Subchapter.

(b) Once an applicant has submitted a complete application and has been determined to have met the minimum qualifications set forth in G.S. 89D-16(a), the Board will notify the applicant that the applicant is permitted to take an examination. Prior to taking the examination, the applicant shall submit an examination fee as set out in this Subchapter. In order to be permitted to take an examination, an applicant shall submit a complete application no less than 30 days prior to a scheduled examination date.

(c) All letters of reference shall include the following information for the person providing the reference:

- (1)      Name;
- (2)      Address;
- (3)      Phone number; and
- (4)      Email address.

(d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

*History Note:      Authority G.S. 89D-15(2); 89D-15(4); 89D-16; 89D-20;  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0202 is proposed for adoption as follows:

**21 NCAC 28B .0202      RECIPROCITY**

(a) All applicants for licensure by reciprocity shall submit an application to the Board. The application form shall be available on the Board website or may be obtained by contacting the Board office located as described in Rule .0101 of this Subchapter.

(b) All applications shall include the following:

- (1) The license by reciprocity application fee as set forth in Rule .0601 of this Subchapter;
- (2) Documentation establishing that the applicant holds an active license, certification, or registration as a landscape contractor in another state or country;
- (3) Information indicating whether the applicant has any disciplinary history with any other occupational licensing, registration or certification board or agency;
- (4) The corporate surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);
- (5) Contact information for three personal references;
- (6) Contact information for two professional references; and
- (7) Documentation regarding all crimes of which the applicant has been convicted.

If there is any evidence to show that the applicant has been disciplined in any jurisdiction where the applicant is currently or has been licensed, certified, or registered or that the applicant has committed any acts that would constitute a violation under G.S. 89D-22, the applicant shall not be licensed by reciprocity.

(c) Once an applicant has submitted a complete application and the Board has determined that the requirements for licensure, certification, or registration in the applicant's home jurisdiction are substantially equivalent to the requirements in G.S. 89D-16, the Board shall issue a license to the applicant.

(d) All applications shall be notarized. Incomplete applications shall not be processed. Application fees are non-refundable.

*History Note: Authority G.S. 89D-15(2); 89D-15(3); 89D-15(4); 89D-16; 89D-19; 89D-22;*

*Temporary Adoption Eff. January 1, 2016;*

*Eff. September 1, 2016.*



21 NCAC 28B .0203 is proposed for adoption as follows:

**21 NCAC 28B .0203      MILITARY-TRAINED APPLICANT; MILITARY SPOUSE**

(a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete application for licensure;
- (2) submission of an application fee in accordance with Rule .0601 of this Subchapter; and
- (3) providing documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1), (2) and (3).

(b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license to the applicant who satisfies the following conditions:

- (1) submission of a complete Application for Licensure;
- (2) submission of a license fee in accordance with G.S. 89D-21(a);
- (3) submission of written documentation demonstrating that the applicant is married to an active member of the U.S. military; and
- (4) providing documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1), (2), (3) and (4).

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-21; 93B-15.1;*  
*Temporary Adoption Eff. January 1, 2016;*  
*Eff. September 1, 2016.*

21 NCAC 28B .0204 is proposed for adoption as follows:

**21 NCAC 28B .0204      MAINTAIN CURRENT INFORMATION**

(a) Every licensee shall keep the Board advised of the licensee's current mailing address, phone number, email address, and the name or names under which the licensee is practicing. If any change occurs, the licensee shall notify the Board in writing of the change within 60 days.

(b) Upon the dissolution of a professional relationship, the member or members thereof shall notify the Board in writing concerning such dissolution and of the succeeding status and addresses of the individuals or firm.

(c) Upon the lapse of a surety bond or revocation of a letter of credit prescribed in G.S. 89D-16(a)(4), a licensee shall notify the Board in writing. If a licensee fails to renew the surety bond or obtain a new letter of credit within thirty days after the lapse or revocation, the license shall be revoked.

(d) Failure to notify the Board of the changes described in Paragraphs (a), (b), or (c) of this Rule shall constitute a violation of G.S. 89D-22.

*History Note: Authority G.S. 89D-15(2), 89D-15(11); 89D-16(a)(4); 89D-17(h); 89D-22(8);*

*Temporary Adoption Eff. January 1, 2016;*

*Eff. September 1, 2016.*

## SECTION .0300 – LICENSE RENEWAL; REINSTATEMENT

21 NCAC 28B .0301 is proposed for adoption as follows:

### **21 NCAC 28B .0301      LICENSE RENEWAL; WAIVER**

(a) All licensees seeking renewal shall submit annually to the Board a renewal application. The deadline for submission is August 1 in the renewal year. Applications shall be postmarked or received by the Board no later than August 1. If August 1 falls on a Saturday or Sunday, the application shall be postmarked or received no later than the following Monday. The application form is available on the Board website or may be obtained by contacting the Board office.

(b) All renewal applications shall include the following:

(1) The license renewal fee set forth in Rule .0601 of this Subchapter;

(2) Documentation showing that the licensee has met the Board's continuing education requirements as set forth in section .0400. However, if the licensee was licensed by examination within the previous 12 months, the licensee is not required to submit evidence of continuing education; and

(3) Documentation regarding all crimes of which the licensee has been convicted since the previous licensure or renewal.

(c) Incomplete applications shall not be processed. Renewal fees are non-refundable.

(d) An individual who is serving in the Armed Forces of the United States shall receive an extension of time to pay the license renewal fee upon submission of the following to the Board:

(1) Written request for waiver; and

(2) Documentation that the licensee is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-20; 93B-15; 105-249.2;  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0302 is proposed for adoption as follows:

**21 NCAC 28B .0302 REINSTATEMENT**

(a) Any licensee whose license has been revoked due to non-renewal pursuant to 89D-20(a) for no more than one year may request reinstatement by the Board. The licensee shall submit the following to the Board:

(1) Application for Reinstatement;

(2) Reinstatement fee as set forth in Rule .0601 of this Subchapter;

(3) Corporate surety bond or an irrevocable letter of credit as prescribed by G.S. 89D-16(a)(4);

(4) Documentation showing that the licensee has met the Board's continuing education requirements;

(5) Documentation regarding all crimes of which the applicant has been convicted since the previous application or renewal was filed with the Board; and

(6) Attestation that the licensee has not engaged in the practice of landscape construction or contracting after the notice of revocation was issued.

(b) Any licensee whose license is suspended for failure to obtain continuing education as required by G.S. 89D-20(b) and this Subchapter may request reinstatement pursuant to G.S. 89D-20(b).

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-20;*

*Temporary Adoption Eff. January 1, 2016;*

*Eff. September 1, 2016.*



## SECTION .0400 - CONTINUING EDUCATION

21 NCAC 28B .0401 is proposed for adoption as follows:

### **21 NCAC 28B .0401      GENERAL**

To ensure continuing efforts on the part of licensed contractors to remain current with new developments in landscape technology and to encourage better business practices and safety in the profession, continuing education is required as a condition of license renewal. A licensee shall submit, as a part of his or her renewal application, evidence that he or she has met the Board's continuing education requirements. Except as provided in Rule .0301 of this Subchapter, renewal applications that do not contain this information shall be deemed incomplete.

*History Note:      Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20;  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0402 is proposed for adoption as follows:

**21 NCAC 28B .0402 CONTINUING EDUCATION UNITS**

(a) A licensee shall complete seven continuing education units (CEUs) during the year preceding renewal. Beginning with renewals filed after August 1, 2016, at least three of the seven CEUs must be technical credits and at least two of the seven CEUs must be business credits. If the information provided to the Board is unclear, the Board may request additional information from a licensee in order to assure compliance with continuing education requirements.

(b) For the purposes of this Rule, "technical credits" are defined as credits relating directly to the subject matter of landscape contracting as described in G.S. 89D-11(3), and "business credits" are defined as credits relating to general business practices, including business planning, contracts, liability exposure, human resources, basic accounting, financial statements, and safety.

(c) CEUs shall be determined as follows:

<u>Type of Qualifying Activity</u>	<u>Minimum time required for 1 CEU</u>
<u>Live course</u>	<u>50 minutes</u>
<u>Online course</u>	<u>50 minutes</u>
<u>Trade Shows, Field Days, and Tours</u>	<u>4 hours</u>
<u>Board Member Service</u>	<u>1 hour</u>
<u>Teaching or instructing</u>	<u>1 hour</u>
<u>In-house or Green Industry training</u>	<u>1 hour</u>

(d) No more than two CEU credits will be given for qualifying teaching or instructing in one year.

(e) Credit shall not be given in increments of less than .5 CEUs. Breaks in courses shall not be counted towards CEU credit.

(f) Requests for pre-approval shall be submitted at least 45 days prior to the first day of the course or event.

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0403 is proposed for adoption as follows:

**21 NCAC 28B .0403      CONTINUING EDUCATION RECORDS; AUDIT**

(a) A licensee shall maintain records of attendance at continuing education programs for which CEUs have been approved for two years following the renewal approval date to which the CEUs were applied.

(b) Compliance with annual CEU requirements shall be determined through an audit process conducted by the Board. Licensees selected for auditing shall provide the Board with the following documentation of the CEU activities claimed for the renewal period:

(1) Attendance verification records; and

(2) Information regarding course content, instructors, and sponsoring organization.

(c) Licensees selected for audit shall submit all requested information to the Board within 21 calendar days after the date the licensee was notified by the Board of the audit.

*History Note      Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0404 is proposed for adoption as follows:

**21 NCAC 28B .0404      EXTENSION OF TIME**

(a) The Board shall grant a licensee an extension of time to complete CEU requirements during a period of service in the Armed Forces of the United States upon submission of the following to the Board:

(1)      Written request for an extension; and

(2)      Documentation that the licensee is serving in the Armed Forces of the United States and is eligible for an extension of time to file a tax return pursuant to G.S. 105-249.2.

(b) The Board shall grant a licensee an extension of time or waiver to obtain CEU requirements if he or she has a disability or illness that prevents him or her from complying with CEU requirements. In order to receive the waiver, a licensee shall provide the Board with the following:

(1)      Written request for waiver; and

(2)      Documentation that describes the disability or illness and explains how the disability or illness prevents the licensee from complying with the Board's CEU requirements. If the Board determines that, because of the disability or illness, the licensee could not reasonably be expected to comply with the Board's CEU requirements, the licensee shall be granted an extension of time in which to obtain the required CEUs.

(c) Where on a case-by-case basis the Board determines that the licensee could not reasonably be expected to comply with the Board's CEU requirements, the licensee shall be granted an extension of time in which to obtain the required CEUs. To be considered for an extension of time, a licensee shall submit the following:

(1)      Written request for extension; and

(2)      Documentation that supports the reason for the extension.

(d) The Board shall grant a waiver of CEU requirements upon submission of documentation that a licensee is in active duty while serving in the Armed Forces and is or has been deployed for at least eight months during the twelve-month period during which CEUs were required.

(e) An extension granted under Paragraphs (b) or (c) of this Rule shall not exceed one year.

*History Note:      Authority G.S. 89D-15(2); 89D-15(4); 89D-15(12); 89D-20(b); 93B-15; 105-249.2;  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*



21 NCAC 28B .0405 is proposed for adoption as follows:

**21 NCAC 28B .0405      REQUESTS FOR APPROVAL**

(a) All requests for CEU approval shall include the following:

- (1) An application for Continuing Education Credit;
- (2) The number of Continuing Education Units (CEUs) requested; and
- (3) The Location, date(s), and time(s) of course, activity, or Landscape Contractor's Licensing Board meetings attended or to be attended.

(b) For live and online courses and teaching or instructing activity, in addition to the requirements of Paragraph (a) of this Rule, all requests shall include the following:

- (1) The course title(s) and a description of course content;
- (2) The name and educational or professional credentials of the instructor;
- (3) The duration of the course or activity; and
- (4) An attestation that the course provider will maintain attendance records for one year after the date of the course.

(c) For trade shows, field days, and tours, requests for approval shall, in addition to the requirements of Paragraph (a) of this Rule, include materials or handouts promoting or obtained during the event.

(d) For in-house or Green Industry training, requests for approval shall include the following, in addition to the requirements of Paragraph (a) of this Rule:

- (1) A description of training provided; and
- (2) The name(s) of training instructors.

(e) For the purposes of this Rule, "Green Industry" is defined as greenhouse, nursery, floriculture, sod, Christmas tree producers, and related industry trades.

*History Note: Authority G.S. 89D-15(2); 89D-15(4); 89D-20(b);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

## SECTION .0500 - MINIMUM STANDARDS

21 NCAC 28B .0501 is proposed for adoption as follows:

### 21 NCAC 28B .0501 GENERAL

(a) Prior to commencing work, services performed by a licensed landscape contractor ("licensed contractor") that exceed five thousand dollars (\$5,000) in value shall be described in writing and provided to the client or customer.

This agreement may be authored by either party. This document shall contain:

(1) The business name, license number, business address, and telephone number of the licensed contractor;

(2) The name and address of client or customer;

(3) The address or location of work to be performed, if different from the client or customer's address;

(4) The date of the proposal;

(5) The description of the work to be performed;

(6) The total value in lump sum or time and material price;

(7) The estimated time of completion;

(8) The terms of payment;

(9) The terms of warranty (if any);

(10) The terms of maintenance, including the party responsible for maintenance;

(11) The signatures of all parties by authorized individuals;

(12) A statement that the licensed contractor is licensed by the Board and the current address and phone number of the Board; and

(13) The date of signing.

(b) All work performed by a licensed contractor shall meet all applicable building codes, local ordinances, and project specifications. All work performed by a licensed contractor shall meet manufacturer's specifications.

(c) If project plans or specifications prepared by someone other than the licensed contractor do not meet pertinent codes and ordinances, the licensed contractor shall bring this to the attention of the client or customer.

(d) If the licensed contractor observes a condition while the work is being performed that requires attention beyond the original scope of work, the contractor shall report the condition to an immediate supervisor, the owner, or the person responsible for authorizing the work.

(e) The licensed contractor shall call for utility location services pursuant to the N.C. 811 law, G.S. 87-115 et. seq.

(f) The licensed contractor shall maintain a worksite that meets OSHA standards for a safe workplace.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0502 is proposed for adoption as follows:

**21 NCAC 28B .0502 PLANTING**

When planting, the licensed contractor shall:

- (1) Avoid potential planting conflicts with utilities and sight lines.
- (2) Protect plant material from physical damage and desiccation during transport.
- (3) Maintain plants during landscape construction.
- (4) Consider the cultural requirements of individual plants.
- (5) Excavate the plant hole sufficiently to ensure plant establishment and to promote long-term health, typically two times the width of the plant ball or container size.
- (6) Scarify the sidewalls of the planting pit.
- (7) Set plants in an upright, plumb position, unless design intent dictates otherwise.
- (8) Set plants on a firm, solid base.
- (9) Remove all strings, twine, and strapping from around the trunk of trees.
- (10) Remove the top third to top half of burlap or other wrapping material from the rootball of balled and burlapped trees.
- (11) Remove top third to top half of wire baskets on balled and burlapped trees or bend basket wire back to be flush with the side of the ball.
- (12) Set the plant so that the top of root ball is at or slightly above surrounding soil and does not exceed four inches above the surrounding soil.
- (13) Prior to planting, insure that the trunk flare of a tree is not covered with soil, is at or above the surrounding finished grade, and that no soil has been placed on top of the root ball.
- (14) Prior to planting containerized plants, manage the rootball to mitigate problems such as circling roots. Acceptable mitigation methods shall include slicing the rootball, shaving the rootball, or redirecting roots.
- (15) Utilize backfill soil that is similar to the soil at the planting site or is amended to meet a specific landscaping objective.
- (16) Not firm backfill to a density that inhibits root growth.
- (17) Install backfill soil in such a manner that it is settled in layered sections to limit future settling.
- (18) Not utilize screened soil as the sole material for backfill.
- (19) When mulching plants, maintain a mulch depth that is beneficial to the health of the plants.
- (20) When mulch is applied, apply mulch so that it does not touch a tree trunk or root flare.
- (21) Water plants thoroughly and immediately after planting.
- (22) Notify client of his or her responsibility to water plants following installation.
- (23) Stake trees only when required due to high winds, extreme slopes, or soft soils;
  - (a) If trees are staked, the guys shall not be installed so as to provide pressure on the trunk.
  - (b) Guys in contact with the tree shall be of a material that will not damage the tree.



- 38        (24) Provide plants that are true to name and species.
- 39        (25) Provide plants that are healthy and in good condition.
- 40        (26) Prune any broken limbs.
- 41        (27) Prune co-dominant leaders in shade trees that typically have dominant leaders.
- 42        (28) If a condition is observed while the work is being performed that is detrimental to the long-term
- 43            health of the plant, the condition shall be reported to the customer or client, an immediate supervisor,
- 44            the owner, or person responsible for authorizing the work.
- 45
- 46    *History Note: Authority G.S. 89D-15(2); 89D-15(16);*
- 47            *Temporary Adoption Eff. January 1, 2016;*
- 48            *Eff. September 1, 2016.*



21 NCAC 28B .0503 is proposed for adoption as follows:

**21 NCAC 28B .0503      TURF**

When establishing turf, the licensed contractor shall:

- (1) Notify the owner or the construction manager whether there is adequate time to establish the specified turf from seed within the construction schedule and prior to finish of the job;
- (2) Prior to lawn installation, loosen soil to a minimum depth of three inches;
- (3) Confirm that all lawn seed meets the standards of the NC Seed Law of 1963, as set forth in G.S. 106, Art. 31;
- (4) Evenly distribute seed;
- (5) Apply seed at manufacturer's recommended rates;
- (6) Roll or rake after seeding to insure good soil contact;
- (7) Install sod within 36 hours of harvesting unless weather conditions or turf types dictate a shorter timeframe;
- (8) Lay sod strips in a staggered pattern, horizontal to slopes and with tight seams;
- (9) Roll sod after installation to provide good soil contact;
- (10) Distribute sprigs evenly;
- (11) Insure that sprigs and sod plugs are in good contact with the soil;
- (12) Water lawn areas thoroughly and immediately after installation; and
- (13) Notify client of his or her responsibility to water turf following installation.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0504 is proposed for adoption as follows:

**21 NCAC 28B .0504 FINISH GRADE**

When grading, the licensed contractor shall:

- (1) Grade the surface such that the finish grade is smooth and free of depressions and debris;
- (2) Insure positive water flow through the site, away from structures, and in such a manner that there is no puddling or ponding; and
- (3) Comply with all applicable local and national building codes and ordinances regarding slopes and drainage.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0505 is proposed for adoption as follows:

**21 NCAC 28B .0505      DESIGN AND CONSULTATION**

(a) The licensed contractor shall be permitted to perform work as defined in G.S. 89D-11(3) and G.S. 89D-12 on the following project sites:

- (1) A single family residential project of any size;
- (2) A non-single family project under one acre in total area;
- (3) A residential, institutional, or commercial project over one acre in total area that involves only planting and mulching; and
- (4) Any other project not prohibited by, or specifically exempted from, the provisions of G.S. 83A, G.S. 89A, or G.S. 89C.

(b) Additionally, the licensed contractor shall:

- (1) Obtain direct knowledge of site conditions by visiting the site;
- (2) Insure that designs meet all applicable state and local codes and standards; and
- (3) Consider the cultural requirements of individual plants.

*History Note: Authority G.S. 89D-11(3); 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0506 is proposed for adoption as follows:

**21 NCAC 28B .0506 DRAINAGE SYSTEMS AND CISTERNS**

Licensed contractors shall:

- (1) Install drainage systems and cisterns in accordance with state and local codes and ordinances;
- (2) Install drainage conveyances in such a way that there is a positive flow;
- (3) Install drainage systems with measures that allow cleaning of the system;
- (4) Install drainage systems with adequate structural integrity so as to prevent crushing of the drainage system;
- (5) Install French drain systems to drain to daylight or into existing storm drainage; and
- (6) Insure that cisterns and closed drywells include an overflow outlet.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*



21 NCAC 28B .0507 is proposed for adoption as follows:

**21 NCAC 28B .0507      LOW-VOLTAGE LIGHTING; POOLS**

(a) When installing low-voltage landscape lighting systems, the licensed contractor shall:

- (1) Insure that all wire connections are waterproof;
- (2) Only use weather-proof fixtures;
- (3) Supply appropriate lamps with all fixtures;
- (4) Ensure that the total lamp wattage of each circuit does not exceed the National Electrical Code (NEC) standard for the size of wire being used;
- (5) Not load a wire to more than 80 percent of the wire's capacity;
- (6) Connect all exterior low-voltage wiring to a ground fault circuit interrupter (GFCI) circuit;
- (7) Mount transformers a minimum of 18 inches above grade;
- (8) Perform a post-installation inspection to verify that the lighting system is fully operational as intended; and
- (9) Provide literature to the client about the lighting components that lists appropriate lamps for fixtures.

(b) All garden pools shall be installed per all regional and local codes.

*History Note:      Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0508 is proposed for adoption as follows:

**21 NCAC 28B .0508      WALLS**

(a) When installing retaining walls, the licensed contractor shall:

- (1) Adhere to all pertinent codes.
- (2) Adhere to manufacturer's or design professionals specifications.
- (3) Bury the first course of a retaining wall.
- (4) Not construct dry-laid stone walls of a height more than 3 feet above grade.
- (5) Include a subdrain system that is constructed and sized to release the subsurface water behind the wall and not allow hydrostatic pressure to build behind the wall.
- (6) Construct on a level, well-compacted base of granular material at least 6 inches deep.
- (7) Place backfill behind retaining walls in lifts no greater than 6 inches before compacted (each lift shall be well-compacted).
- (8) Prevent excessive runoff from passing over a retaining wall.
- (9) Construct vertically-set timber walls with above-ground heights equal to or less than the depth of timbers below grade.
- (10) Install deadmen every fourth course on 8 feet centers when constructing horizontally-set timber retaining walls with staggered joints.
- (11) Stagger the joints when constructing dry-laid stone walls. If successive vertical joints occur, the licensed contractor shall avoid running vertical joints more than two courses.

(b) When installing freestanding walls, the licensed contractor shall:

- (1) Install footings for masonry and cast-in-place concrete freestanding walls of reinforced concrete. The top of the footing shall be at least 1 foot below grade.
- (2) Reinforce freestanding walls as needed to prevent displacement from wind loads.
- (3) Insure that moisture is prevented from entering a cavity wall during construction.
- (4) Insure that segmental wall construction meets segmental wall manufacturer's specifications.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0509 is proposed for adoption as follows:

**21 NCAC 28B .0509      PAVING**

When paving, the licensed contractor shall:

- (1) Follow manufacturer's recommendations and specifications;
- (2) Choose paving materials that are appropriate for the project, based on the contractor's professional judgment;
- (3) Install paving on a well-compacted base that will prevent settlement;
- (4) Install paved surfaces to allow for surface drainage and to prevent ponding;
- (5) Install reinforcement in concrete slabs so that the reinforcement is suspended within the concrete and not resting on the base course;
- (6) Not pour concrete if air temperatures, away from artificial heat or in the shade, is less than 35 degrees Fahrenheit;
- (7) Not pour concrete if the air temperature in the shade is 90 degrees Fahrenheit and rising or if the concrete temperature is greater than 95 degrees Fahrenheit;
- (8) Use a vibratory compacting device to set unit pavers and after joints are swept; and
- (9) Utilize an edge restraint on unit paver installations.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0510 is proposed for adoption as follows:

**21 NCAC 28B .0510 PRUNING**

When pruning, unless to achieve artistic intent, such as pleaching, pollarding, sculpting, topiary, or espalier, a licensed contractor shall:

- (1) Use sharp tools;
- (2) When making a pruning cut that removes a branch at its point of origin, make the cut close to the trunk or parent branch without cutting into the branch bark ridge or branch collar or leaving a stub;
- (3) Not flush cut;
- (4) Not top trees;
- (5) Remove branches in such a manner as to avoid damage to other parts of the plant or to other plants or property; and
- (6) Precut branches that are too large to support with one hand to avoid splitting the wood or tearing the bark.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*



21 NCAC 28B .0511 is proposed for adoption as follows:

**21 NCAC 28B .0511 WILDFLOWER, NATIVE GRASS, AND NO-MOW SEED ESTABLISHMENT**

When establishing wildflower, native grass, or no-mow seeding, a licensed contractor shall:

- (1) Prior to construction, inform the owner or construction manager of the time required to establish native bunch grasses and forbs from seed and whether this time is compatible with the construction schedule.
- (2) Confirm the suitability of the specified seed for the project.
- (3) Select seed that is regionally appropriate and of the geographic ecotype for the location of the project.
- (4) Use pure live seed (PLS) rates for seeding. If bulk seed is utilized, adjust the rates accordingly.
- (5) Use a temporary cover, nurse crop, or mulch when seeding that is non-allopathic and seasonally appropriate.
- (6) Use highest seed rates on slopes greater than 30 degrees or when a dormant seeding schedule is utilized.
- (7) Employ a seeding method that buries seed less than one-quarter inch in depth, and cultipack or roll after seed distribution.

*History Note: Authority G.S. 89D-15(2); 89D-15(16);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

## SECTION .0600 - FEES

21 NCAC 28B .0601 is proposed for adoption as follows:

### **21 NCAC 28B .0601 FEE SCHEDULE**

(a) The Board shall charge the following fees:

(1) Application: \$75.00;

(2) Examination: \$150.00;

(3) License fee: \$60.00;

(4) License renewal: \$60.00;

(5) Late renewal: \$25.00;

(6) Reinstatement: \$100.00;

(7) License by reciprocity: \$100.00;

(8) Duplicate license: \$25.00.

(b) If the Board elects to use a testing service for the preparation, administration, or grading of examinations, the Board shall charge the applicant the actual cost of the examination services and a prorated portion of the examination fee.

(c) All fees charged by the Board are non-refundable.

*History Note: Authority G.S. 89D-15(2); 89D-15(10); 89D-21;*

*Temporary Adoption Eff. January 1, 2016;*

*Eff. September 1, 2016.*

## SECTION .0700 - COMPLAINTS; INVESTIGATIONS

21 NCAC 28B .0701 is proposed for adoption as follows:

### **21 NCAC 28B .0701 COMPLAINTS; INVESTIGATIONS**

(a) All complaints filed with the Board shall be filed either on a form provided by the Board or via the Board's online complaint process at [www.ncclcb.com](http://www.ncclcb.com). All complaints must contain the complainant's contact information. The Board will not investigate anonymous complaints. Incomplete complaints will not be investigated.

(b) Initial review of a complaint will be conducted by Board staff. If further review and investigation is warranted, the Board will assign an investigator who will conduct an investigation.

(c) Upon completion of the investigation, the investigator's report will be forwarded to a designated Board member and Board staff, who will make a recommendation, based upon whether the investigation produces evidence of a violation of G.S. 89D or the rules of this Subchapter, to the full Board as to whether the case should be dismissed or whether further action by the Board is warranted.

*History Note: Authority G.S. 89D-15(2); 89D-15(6); 89D-15(7);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

## SECTION .0800 - HEARINGS PROCESS; SUMMARY SUSPENSION

1 21 NCAC 28B .0801 is proposed for adoption as follows:

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### 3 **21 NCAC 28B .0801 PROBABLE CAUSE**

4 Upon a determination that there is probable cause to believe a violation of G.S. 89D or the rules of this Subchapter  
5 exists, the Board shall issue a Notice of Hearing pursuant to G.S. 150B-38(b) and (c). Any party served with a Notice  
6 of Hearing may file a written response pursuant to G.S. 150B-38(d).

7

8 *History Note: Authority G.S. 89D-15(2); 89D-15(7); 89D-15(8); 150B-38;*

9 *Temporary Adoption Eff. January 1, 2016;*

10 *Eff. September 1, 2016.*



21 NCAC 28B .0802 is proposed for adoption as follows:

**21 NCAC 28B .0802      HEARINGS**

(a) Contested case hearings shall be conducted by a majority of the Board unless the Board requests the designation of an administrative law judge pursuant to G.S. 150B-40(e). The Board chairman shall serve as the presiding officer unless he or she is absent or disqualified, in which case the vice-chairman shall preside. Hearings shall be conducted pursuant to G.S. 150B-40.

(b) An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, shall be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

(1) Prior to the hearing; or

(2) As soon after the commencement of the hearing as the affiant becomes aware of facts that give rise to his or her belief that a Board member should be disqualified.

*History Note: Authority G.S. 89D-15(2); 89D-15(8); 150B-38; 150B-40;  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0803 is proposed for adoption as follows:

**21 NCAC 28B .0803 SUBPOENAS**

(a) Pursuant to G.S. 150B-39, the Board may issue subpoenas for the appearance of witnesses or the production of documents or information, either at the hearing or for the purposes of discovery.

(b) After a notice of hearing in a contested case has been issued and served upon a licensee or, in a case concerning an application for licensure, the applicant, the respondent may request subpoenas for the attendance of witnesses and the production of evidence.

(c) Requests by a licensee or applicant for subpoenas shall be made in writing to the Board and shall include the following:

(1) the name and home or business address of all persons to be subpoenaed; and

(2) the identification of any documents or information being sought.

Upon submission of a written request containing the information in Subparagraphs (1) and (2) of this Paragraph, the Board shall issue the subpoenas to the requesting party within three business days of the Board's receipt of the request.

(d) Subpoenas shall be served by the party requesting the subpoena as provided by the Rules of Civil Procedure, G.S. 1A, Rule 45. The cost of service, fees, and expenses of any witnesses or documents subpoenaed is prescribed by G.S. 150B-39.

*History Note: Authority G.S. 89D-15(2); 89D-15(8); 150B-39; 150B-40(c);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*

21 NCAC 28B .0804 is proposed for adoption as follows:

**21 NCAC 28B .0804 SUMMARY SUSPENSION**

(a) The Board may summarily suspend a license pursuant to G.S. 150B-3(c).

(b) Upon the issuance of an order summarily suspending a license, the Board shall schedule a hearing to occur at the earliest practicable date. The order of summary suspension shall remain in effect until the proceedings are determined.

*History Note Authority G.S. 89D-15(2); 89D-15(4); 150B-3(c);  
Temporary Adoption Eff. January 1, 2016;  
Eff. September 1, 2016.*