

# ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES  
of Colorado  
THE VOICE OF COLORADO'S ENGINEERING INDUSTRY

## **American Council of Engineering Companies of Colorado's (ACEC Colorado) Testimony to oppose HB19-1040 - Mandating Continuing Education for License Renewal for Colorado's Professional Land Surveyors**

ACEC Colorado is a business organization for consulting engineering firms in the built environment with a membership of 250 firms ranging from the small one-person firm to the large national firms of several thousand.

- ACEC Colorado supports continuing education for licensed professionals; we provide many continuing education programs for our members throughout the state.
- Land Surveying firms are also part of ACEC Colorado's membership and have equal status as consulting engineering firms. Since many of our civil engineering firms have professional land surveyors (PLS) on staff, I have asked them to comment on HB19-1040. They have told me that their staff already does continuing education because as professionals that's what they must do to keep up with the latest technologies and best practices, and most voiced that they are not supportive of mandated continuing education (MCE) for license renewal.
- ACEC Colorado supports DORA's position in their January 17, 2018 report that MCE for PLSs "does not equate to a sufficient basis for government to mandate additional regulatory requirements".
  - If this bill passes, it will add another level of expense and administration for DORA to oversee the MCE program as well as add to additional or a higher fee to the licensee, and the impact will not be significant. As you can see from some of the pages from this report that I provided for you, DORA indicates that "approximately .8% of licensees had alleged competency issues; it is not an egregious problem." (report stated they averaged the number of licensees to be 1758 individuals, page 9).
  - These statistics of the PLS illustrate that the "overwhelming majority of licensees performed competently." I believe this is an excellent indicator that PLSs are committed to their responsibility to protect the public's health, safety and welfare.
  - This bill is unnecessary, and it is not warranted to have this additional regulation for licensure renewal put upon PLSs.
- Has DORA done their own survey of PLSs to see how the licensees feel about MCE?
  - I'm interested to know if a survey of PLSs conveyed if they feel MCE will make a difference.

- The language in the bill is vague regarding the direction the board should set forth in rules by the State Board of Licensure for Architects, PEs and PLSs that “must require the surveyor to complete board-approved continuing education sufficient to maintain competency.” It’s not clear to us what board-approved CE means and to what level of it is necessary to be sufficient to maintain competency.
- Currently the State Board of Licensure has the authority and means to require a licensee who has demonstrated incompetency to take additional continuing education or ethical classes if need be. Recently, I asked a State Board Member about the workload each member must do to prepare for their monthly meetings. He said he spent 20 hours/month to review the 5,000 pages. This bill appears to add to this workload for no tangible benefit to the public.
- Also noted in DORA’s January 17, 2018 report is that the “applicant provided subjective opinions rather than independent studies.” Page 3 and 4.
  - I have also searched for these objective studies, and I’m not aware of any that substantiate that MCE will significantly improve the PLS’ quality of practice and reduce the number of complaints by the public.
  - Currently, PLSC does not mandate CE as a requirement of membership. I would suggest that they start there before asking to mandate it for all PLSCs, and we can see when the sunset review comes up in 2024 if it has reduced the number of complaints.

ACEC Colorado asks the members of the House Business Affairs Committee to oppose HB19-1040.

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**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

January 17, 2018

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

Section 24-34-901, Colorado Revised Statutes, directs the Executive Director of the Department of Regulatory Agencies to:

- Conduct an analysis and evaluation of any proposal to impose mandatory continuing education on a given profession or occupation, and
- Present a written report to the General Assembly that addresses whether the proposed continuing education requirement would likely protect the public.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling this statutory mandate. Accordingly, COPRRR has completed its evaluation of the proposal to impose mandatory continuing education requirements on professional land surveyors. I am pleased to submit this written report.

Sincerely,

**Marguerite Salazar**  
Executive Director



## Proposal for Continuing Education

The Professional Land Surveyors of Colorado (Applicant) submitted information on November 21, 2017, to the Department of Regulatory Agencies, proposing MCE for professional land surveyors (PLSs). The requirement would apply to all PLSs licensed through the State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors (Board).

The Applicant submitted proposed statutory changes and rule changes suggested by the National Council of Examiners for Engineering and Surveying. If enacted, the changes would require the Board to adopt rules requiring "professional development," the Applicant's term for MCE, prior to December 31, 2019. The changes included a condition that the professional development should be a prerequisite for license renewal. The proposed statutory changes made no recommendations concerning the appropriate number of hours, subject matter, or timeframe to complete the professional requirements. The Applicant posits that the Board should be empowered to adopt MCE requirements in rule.

In response to the statutory guidance that the Applicant provide information illustrating how the knowledge base for the profession or occupation is changing, the Applicant provided the following reflections:

- The science of measurement, the standards of proof affecting boundary location, and the rules that govern the standards of practice for surveying continuously evolve;
- The analysis and management of data requires skills in advanced mathematics and specialized software; and
- Previously, surveying crews as large as five people would go into the field and practical knowledge would be passed on through mentorship. Now, surveying is generally a one-person endeavor.

The statute also suggests that an Applicant provide independent studies that illustrate MCE's efficacy in assuring competency. The Applicant provided subjective opinions rather than independent studies from professional surveyor advocacy organizations including the:

- Western Federation of Professional Surveyors,
- Indiana Society of Professional Surveyors,
- Nevada Association of Land Surveyors,
- Michigan Society of Professional Surveyors,
- National Society of Professional Surveyors,
- Professional Land Surveyors of Oregon, and
- Wisconsin Society of Professional Surveyors.

Representatives from these organizations opined that the **quality and professionalism of PLSs has improved with the addition of MCE, but no substantiation was provided.**

According to other information supplied by the Applicant, 44 states require some level of MCE. Of those, New Hampshire and West Virginia have the lightest requirement at 8 MCE hours every two years and 21 states require 30 MCE hours every two years which is the heaviest.

The suggested rule changes provided by the Applicant and the National Council of Examiners for Engineering and Surveying include, among other things:

- 30 MCE hours is required during a biennium,
- 2 MCE hours must be in ethics,
- 10 MCE hours may be earned in self-directed study, and
- 15 MCE hours may be carried forward into the subsequent biennium if a licensee exceeds the biennial requirement in any cycle.

The recommended rule changes also specify that MCE hours should be earned by qualifying activities:

- Successfully completing college courses relevant to surveying;
- Successfully completing continuing education courses;
- Successfully completing short courses/tutorials and distance-education courses offered for self-study, independent study or group study through synchronous or asynchronous delivery methods such as live correspondence, archival or internet based instruction;
- Successfully completing ethics training, up to four hours per biennial renewal;
- Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions or conferences;
- Teaching or instructing;
- Writing published papers, articles, or books;
- Participating in professional or technical societies and their committees;
- Receiving patents relevant to the surveying profession;
- Reviewing articles from periodicals, books, video/audio cassettes, tutorials and other sources which contribute to the technical or professional education or competency of the licensee; and
- Participating in civic or community activities relevant to the surveying profession as a speaker, instructor, presenter or panelist.

## Analysis

The Colorado Revised Statutes section that governs the consideration of MCE requirements posits that,

the group or association proposing such MCE requirement shall first submit information concerning the need for such a requirement.<sup>13</sup>

The statute also suggests that an applicant proposing the imposition of MCE upon a profession should provide the following information for analysis:

- Information that shows that the knowledge base for the profession or occupation is changing,
- Independent studies that show MCE is effective in assuring the competency of practitioners, and
- Any assessment tool that shows the effectiveness of MCE.

While the statute does not explicitly state that the onus to illustrate the need for MCE is on an applicant, considering these provisions, it is a reasonable inference.

The information submitted by the Applicant is summarized in the "Proposal for Continuing Education" section of this report. It bases the argument for MCE on two premises: statements concerning technical changes in the profession and a listing of states which currently have a mandatory continuing education requirement.

The first premise for MCE, the Applicant's statement concerning changes to the profession, assumes a position that land surveying continually evolves and therefore PLSs need MCE. A statement of this nature advances the notion that without MCE, licensees will not perform competently. However, there is no substantiation provided to verify that this is a problem for those currently licensed and practicing. Changes in a profession alone are not a sufficient rationale for imposing MCE. Indeed, most professions and occupations change over time and market dynamics typically encourage professionals to keep abreast of innovation. There is no assertion, by the Applicant, that industry changes affect, or have affected, the foundational knowledge, training, or course content associated with the degree programs or the national examinations, which are the principal tools for determining competency under the Colorado licensing scheme. Nor does the Applicant address the competency of those licensed through experience and examination.

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<sup>13</sup> § 24-34-901, C.R.S.

In conjunction with this review, COPRRR staff contacted Board staff to test the notion of competency. Board staff provided licensing and disciplinary data to help determine the need for more competent land surveyors in Colorado. Tables 1 and 2 show data provided concerning the number of PLS licensees and the number of actions taken by the Board regarding those licensees.

**Table 1  
Active PLS Licensees  
Fiscal Years 14-15 through 16-17**

	FY14-15	FY 15-16	FY 16-17
Licensed Professional Land Surveyors	1,835	1,711	1,727

**Table 2  
Board Actions Taken  
Fiscal Years 14-15 through 16-17**

	FY 14-15	FY 15-16	FY 16-17
Dismissed	8	13	15
Dismissed with Confidential Letter of Concern	1	2	2
Cease and Desist Orders	2	0	1
Letter of Admonition	1	1	4
Practice Stipulation	7	7	4
License Suspension	1	0	0
Voluntary Surrender of License	4	1	0
License Revocation	0	0	0
<b>Total Actions Taken</b>	<b>24</b>	<b>24</b>	<b>26</b>

Table 1 shows that there was an average of 1,758 individuals licensed annually by the Board during the period examined. Table 2 reveals that there were actions taken on 1.3 percent of the licenses in fiscal year 14-15,<sup>14</sup> and 37.5 percent of those actions were dismissals;<sup>15</sup> in fiscal year 15-16, there were actions on 1.4 percent of the licenses, and 62.5 percent of those were dismissals; and in fiscal year 16-17 there were

<sup>14</sup> 24 Actions/1835 Licensees = 1.3%.

<sup>15</sup> 9 Dismissals/24 Actions = 37.5%.

actions taken on 1.5 percent of the total licenses, and 65.4 percent of those were dismissals.

However, that there are very few complaints levied versus the number of licenses issued is only part of the story. COPRRR examined the nature of complaint allegations made against licensees. This information is in Table 3.

**Table 3  
PLS Complaint Allegations  
Fiscal Years 14-15 through 16-17**

	FY 14-15	FY 15-16	FY 16-17
Unlicensed Practice	1	0	1
Practice w/ expired license	5	3	6
Standard of Practice - Technical	15	3	13
Standard of Practice - Rules of Conduct	1	3	9
Violation of Board Order	4	2	1
False or Misleading Advertising	0	0	1
False Attestation on Application	1	0	0
Disciplinary Action Take in Another State	1	1	0
Unlicensed Practice of Engineering by a Land Surveyor	2	0	0
<b>TOTAL</b>	<b>30</b>	<b>12</b>	<b>31</b>

Table 3 shows that considering the entire period examined for this report, 60 percent, of the complaints alleged standard of practice violations. Those are violations that question the competence of a licensee. In other words, approximately 0.8 percent of licensees had alleged competency issues.

Furthermore, considering the entire three-year period together reveals that there were no licenses revoked and only 18 licensees were ordered to work under a practice stipulation. Consequently, even when competency was an issue, it was not an egregious problem. Analysis of these data illustrate that the overwhelming majority of licensees performed competently.

Under the Colorado licensing scheme, assuring a minimum, yet appropriate, level of competency is the means by which the public's interests and safety are protected. While it may be desirable for land surveyors across the spectrum of the profession to keep current with changes in the practice, such "desirability" does not equate to a sufficient basis for government to mandate additional regulatory requirements.

The Applicant must illustrate that there is a reasonable nexus for any proposed MCE to alleviate incompetencies not accounted for under the Colorado licensure regime. The Applicant does not establish any rational connection or relationship between advances in technology and the competency of PLSs licensed under the Colorado regulatory program.

Moreover, the Board has the ability to compel a licensee to work under a practice stipulation. A stipulation often means that a licensee must have work reviewed, must take a refresher class, or must work under the supervision of another PLS. This type of action most closely resembles one that would indicate the need for MCE. Still, the Board issued stipulations against very few licensees. While the number of stipulations ordered compared to complaints made appears high, at approximately one-quarter of the actions in any year, a stipulation was ordered against no more than 0.4 percent of the licensees during the period examined for this review. Again, the data indicate an extremely high level of competent practice by those issued a license.

Colorado is not alone in not requiring MCE. The Applicant provided information showing that 44 states currently carry an MCE requirement. Of those states, 21 require 30 MCE hours every two years. In spite of the number of states with a requirement, no objective data was provided that confirms an improvement in the quality of practice. What exists are subjective evaluations by interested parties in those states where MCE exists.

## Conclusion

COPRRR is charged with determining whether MCE would likely protect the public served by professional land surveyors. With respect to the application submitted by the Applicant, an affirmative conclusion is not warranted based upon the information provided in the application and COPRRR review and analysis of that information. The Applicant did not establish that the public using the services of professional land surveyors would likely be better protected from current or predicted harm through the imposition of MCE.

Among the determinations made by this analysis are:

- The overwhelming majority of professional land surveyors currently licensed perform their jobs without incident;
- The Applicant failed to demonstrate that the knowledge base for the professions across the board is changing such that MCE is necessary to maintain the required minimum, yet appropriate, level of competency contemplated under a Colorado regulatory scheme;
- The Applicant failed to demonstrate the efficacy of MCE with respect to maintaining or assuring competency of practitioners; and
- The likelihood of a consumer being harmed by a PLS under the current licensing scheme is remote.

For these reasons, increasing the regulatory burden on licensees as proposed under the subject application is unjustified. The General Assembly should not impose a mandatory continuing education requirement on professional land surveyors.