

Title 425 - BOARD OF EXAMINERS FOR COUNTY HIGHWAY AND CITY STREET SUPERINTENDENTS

Chapter 2 - Licensing of County Highway Superintendents and City Street Superintendents

001 PURPOSE. This rule implements statutory authority for the Board of Examiners for County Highway and City Street Superintendents, hereafter referred to as the Board, to approve, disapprove, suspend and revoke the licenses of county highway and city street superintendents.

002 STATUTORY AUTHORITY. This rule is adopted pursuant to authority vested in the Board as provided in Chapter 39, Section 39-2311, Nebraska Revised Statutes.

003 DEFINITIONS. For purposes of this rule, the following definitions shall apply:

003.01 BOARD: The Board of Examiners for County Highway and City Street Superintendents, and, unless specified otherwise, Board shall also refer to administrative staff designated to carry out administrative functions on behalf of the Board.

003.02 CITY STREET SUPERINTENDENT: A person who engages in the practice of street superintending for an incorporated municipality.

003.03 COUNTY HIGHWAY SUPERINTENDENT: A person who engages in the practice of highway superintending for a county.

003.04 STREET OR HIGHWAY SUPERINTENDING shall mean all of the following functions and duties:

003.04A Developing and annually updating long-range plans for highways, roads and streets based on needs of the county or municipality and coordinated with adjacent governmental units.

003.04B Developing annual programs for design, construction, and maintenance of highways, roads and streets of the county or municipality.

003.04C Developing annual budgets based on programmed projects and activities.

003.04D Implementing the capital improvements and maintenance activities provided in the approved plans, programs and budgets.

003.04E Managing personnel, contractors, and equipment in support of such planning, programming, budgeting and implementation operations.

003.05 APPOINTED: Appointment by official action of the governing body of a county or municipality to hold the position and perform all the duties of a county highway superintendent or city street superintendent. Appointed shall include elected officials who have superintendent responsibilities by virtue of election.

003.06 EMPLOYED: An ongoing relationship as an employee fulfilling the functions of a county highway superintendent or city street superintendent for a county or incorporated municipality, either full-time or part-time, subject to the provisions of Subsection 006.02D1 of this rule, but shall not include service as an independent contractor.

004 PRE-2004 LICENSES. Effective January 1, 2004, all licenses issued previously by the Board and in effect are designated Class B licenses.

005 APPLICATION PROCEDURES

005.01 APPLICATION FORM. All applicants shall submit a written application for a Class B or Class A county highway superintendent or city street superintendent license or for renewal or reissuance of such license, on forms, including supporting logs, prescribed by the Board. Application forms and supporting logs may be obtained from the Board.

005.02 FEE. The appropriate fee as prescribed in Subsection 006.01A, Subsection 006.02B, Subsection 008.01B, or Subsection 008.02B1 shall be submitted with the application.

005.03 APPLICATION SUBMISSION

005.03A Application Period

005.03A1 Application for a Class B license (county or city) may be made at any time.

005.03A2 Application for an initial Class A license (county or city) shall be made at the time for, and in lieu of, annual renewal of a Class B license. Application for a second Class A license may be made at any time.

005.03A3 Application for a second license also may be made concurrently with the application for the initial license.

005.03B Application Deadlines

005.03B1 Class B License

005.03B1(a) For an initial Class B license subject to examination under Subsection 006.01B1 and except for exceptional circumstances as approved by the Board, the complete application and fee are due at the Board office at least ten (10) days prior to the regularly scheduled meeting of the Board immediately preceding the semi-annual examination.

005.03B1(b) For an initial Class B license subject to professional engineer status under Subsection 006.01B2 and except for exceptional circumstances as approved by the Board, the complete application and fee are due at the Board office at least ten (10) days prior to the next regularly scheduled meeting of the Board.

005.03B1(c) There is no due date for a second Class B license. Except for a concurrent application pursuant to Subsection 005.03A3, the complete application and fee for a second Class B license shall be processed within thirty (30) days of receipt at the Board office.

005.03B1(d) The complete Class B license renewal application and renewal fee are due at the Board office by December 31 of the year specified in Subsection 008.01A. The Board shall provide written notice of the renewal deadline.

005.03B1(d)(i) Except for exceptional circumstances as approved by the Board, automatic cancellation of the license will result if either the complete Class B renewal application and fee under Subsection 008.01, or the complete Class A application and fee under Subsection 006.02, are not received at the Board office by January 14 following the due date.

005.03B2 Class A License

005.03B2(a) The complete application and fee for an initial Class A license are due at the Board office by December 31 of the year specified in Subsection 008.01A for the Class B license which the Class A license will replace.

005.03B2(a)(i) Except for exceptional circumstances as approved by the Board, the prior Class B license will be automatically cancelled, and no Class A license will be issued, if either the complete Class A application and fee under Subsection 006.02, or the complete Class B renewal application and renewal fee under Subsection 008.01, are not received at the Board office by January 14 following the Class A application due date.

005.03B2(a)(ii) Except for exceptional circumstances as approved by the Board, the prior Class B license will be automatically renewed, and no Class A license will be issued, if the Class A fee is received but either the complete Class A application is not received by January 14 following the due date, or the Board determines that the candidate has not met the requirements for the Class A license.

005.03B2(b) There is no due date for a second Class A license. Except for a concurrent application pursuant to Subsection 005.03A3, the complete application and fee for a second Class A license shall be processed within thirty (30) days of receipt at the Board office.

005.03B2(c) The complete Class A license renewal application and fee are due at the Board office by December 31 of the third year for which the license was issued, or by December 31 of the renewal year for a second Class A license as provided in Subsection 008.02A. The Board shall provide written notice of the renewal deadline.

005.03B2(c)(i) Except for exceptional circumstances as determined by the Board, automatic cancellation of the license will result if either the complete renewal application and fee, or the complete reissuance application and fee under Subsection 009.02, are not received at the Board office by January 14 following the due date.

005.03C Time Computation. Where a date certain is not specified, the deadline shall be computed from the initial date of receipt of the application and fee, or any portion thereof, at the Board office.

005.03D Exceptional Circumstances. Exceptional circumstances shall be documented in a sworn statement in writing of the applicant or candidate. The Board may prescribe and provide a form for such sworn statements.

005.03E Reapplication. An unsuccessful applicant or candidate may reapply as provided in Subsection 005.05D1 or Subsection 005.05D2.

005.04 PROCESSING

005.04A Candidacy for Licensure. Upon proper completion and submission of the required application and payment of the required fee, and upon approval by the Board if required under Subsection 005.05A, the applicant shall be deemed a candidate for an initial license under Subsections 006.01 or 006.02, for an additional license under Subsections 007.01 or 007.02, for license renewal under Subsections 008.01 or 008.02, or for a reissued license under Subsections 009.01 or 009.02.

005.04B Suspended Processing. An application is not complete and will not be considered by the Board until the applicant provides all information requested by the Board. Partial fulfillment of requirements for licensure including renewal or reissuance shall suspend processing of the application until such time as all requirements are fulfilled, or until the Board determines that the applicant or candidate has failed to successfully complete such requirements.

005.04C Termination of Processing. Except as specified in Subsection 005.04C2, failure to complete requirements by the initial license deadline or by the renewal deadline shall terminate processing. Failure to complete requirements for an additional license or for a reissued license within sixty (60) days of initiating a request shall terminate processing.

005.04C1 Failure to complete requirements for the initial Class B license shall include exhausting the opportunities listed in Subsection 006.01B1(a) and Subsection 006.01B1(b).

005.04C2 For an application for the initial Class B license which remains incomplete, or which is submitted during the ten (10) day period specified in Subsection 005.03B1(a) or Subsection 005.03B1(b), processing shall continue until the next such deadline, which shall be final.

005.04C3 Fraud or deceit in making application or in completing requirements for issuance, renewal or reissuance shall constitute failure to complete such requirements. Such fraud or deceit includes, but is not limited to, acts listed in Subsection 012.02A. However, the provisions of Section 012 otherwise shall not apply to a candidate for an initial license.

005.05 BOARD ACTION

005.05A Official action of the Board shall be required for an applicant to become a candidate for the Class B license examination required under Subsection 006.01B1. The Board shall notify the applicant in writing that he or she is a candidate for the examination.

005.05B The Board shall notify the applicant or candidate in writing of issuance of a license, renewal of a license or reissuance of a license, or of failure to complete the requirements for issuance, renewal or reissuance of a license.

005.05C Official action of the Board shall be required for issuance of an initial Class B or Class A license. Official action of the Board shall be required for renewal of a Class A license. Official action of the Board shall be required for reissuance of a Class A license. Staff shall duly report all issuances of additional licenses, renewals of Class B licenses and reissuances of Class B licenses to the Board.

005.05D The Boards' action determining that an applicant or candidate has failed to complete requirements for issuance, renewal or reissuance of a license shall be final.

005.05D1 An applicant for a Class B license may reapply at any time.

005.05D2 An applicant for an initial Class A license shall be eligible to reapply annually as provided in Subsection 005.03A2.

005.05D3 An unsuccessful Class A candidate shall be renewed as a Class B license holder without payment of an additional fee.

006 REQUIREMENTS – INITIAL LICENSE

006.01 INITIAL CLASS B LICENSE REQUIREMENTS. An individual may be issued an initial Class B License as a county highway superintendent or a city street superintendent upon application and meeting the following requirements:

006.01A Fee. The applicant shall pay the Class B license application fee of twenty-five dollars (\$25.00) for each license as provided in Section 39-2306, Nebraska Revised Statutes.

006.01B Qualifications. The candidate shall qualify under either Section 006.01B1 or Section 006.01B2.

006.01B1 The candidate shall successfully complete a written examination approved by the Board and administered semiannually by the Board. The examination shall test the candidate's qualifications for the positions of county highway superintendent and city street superintendent as prescribed in Section 39-2307, Nebraska Revised Statutes. Prior to the first of the year, the Board shall schedule the dates of the examination for that year and shall determine the minimum score necessary for successful completion of the examination.

006.01B1(a) A candidate for a Class B license shall take and successfully complete one (1) of the next four (4) semi-annual examinations following his or her approval by the Board as a candidate for examination.

006.01B1(b) A candidate for a Class B license who does not successfully complete the examination may retake the examination once within the period prescribed in Subsection 006.01B1(a) without reapplying. The person shall remain a candidate until he or she again fails to complete the examination successfully or until the period expires.

006.01B2 The candidate shall demonstrate to the Board that he or she is a licensed registered professional engineer in Nebraska, in good standing, and therefore is exempt from examination.

006.02 INITIAL CLASS A LICENSE REQUIREMENTS. An individual holding a Class B license may be issued a Class A license as a county highway superintendent or a city street superintendent upon application and meeting the following requirements:

006.02A County or City License. The initial Class A license applied for (county or city) shall correspond to the type of the Class B license which it will replace. An applicant holding both Class B licenses shall specify which Class B license or licenses (county or city or both) he or she wishes to have replaced by a Class A license or licenses.

006.02B Fee. The applicant shall pay the Class A license application fee of seventy-five dollars (\$75.00) for each license as provided in Section 39-2308.01, Nebraska Revised Statutes.

006.02C Eligibility - Prior License. To be eligible, the applicant shall have held his or her current Class B county highway superintendent or city street superintendent license for at least two (2) calendar years dating back from January 1 following the December 31 application deadline prescribed in Subsection 005.03B2(a).

006.02D Qualifications - Prior Experience. The applicant either shall document sufficient experience as an employed superintendent or shall document comparable work experience.

006.02D1 Employed Superintendent. The applicant was appointed by the governing body of, and was employed by, one or more counties and/or one or more municipalities as a county highway superintendent or city street superintendent, at least half-time, for at least twenty-four (24) months within the preceding six years.

006.02D1(a) Such employment shall include responsibility for all aspects of street or highway superintending as defined in Subsection 003.04 of this rule, including managerial or supervisory responsibility over departments, sections or positions responsible for roads, streets or highways, except that such managerial or supervisory responsibility shall not extend to general executive, administrative or elected positions such as mayor, city manager, city administrator, or county board, city council or village board member.

006.02D1(b) The six (6) year period specified in Subsection 006.02D1 shall extend from October of the sixth year preceding the year the Class A application is due, through December of the year such application is due.

006.02D2 Comparable Work Experience. The applicant had at least forty-eight (48) months of work experience that is comparable to the work experience of appointed and employed county highway superintendents and city street superintendents, on at least a half-time basis, in the preceding eight (8) years.

006.02D2(a) Such experience shall include performing work substantially similar to all of the superintendent duties defined in Subsection 003.04 of this rule, including managerial or supervisory responsibility over departments, sections or positions engaged in such comparable work.

006.02D2(b) The following shall constitute comparable work experience:

006.02D2(b)(i) Responsibility for federal, state, municipal or private industry highway, road or street improvement or maintenance projects, including serving as lead consultant, project manager, principal designer, design supervisor, budget and resources manager, or overall manager or administrator, for such projects.

006.02D2(b)(ii) Serving as an appointed and contracted consulting county highway or city street superintendent or engineer, or in a comparable capacity, including concurrent service for two or more jurisdictions, if such service included oversight or active advisory responsibility for substantially all aspects of street or highway superintending as enumerated in Subsection 003.04.

006.02D2(b)(iii) Training county highway or city street superintendents or engineers, or persons in comparable capacities.

006.02D2(b)(iv) Other comparable work experience as may be presented to the Board for its consideration.

006.02D2(c) The eight (8) year period specified in Subsection 006.02D2 shall extend from October of the eighth year preceding the year the Class A application is due, through December of the year such application is due. Such eight (8) year requirement may be waived for exceptional circumstances as approved by the Board.

007 REQUIREMENTS - ADDITIONAL LICENSE

007.01 CLASS B LICENSE HOLDERS

007.01A The holder of a valid Class B county highway superintendent license may request a Class B city street superintendent license and shall be entitled to such upon application and payment of the Class B license application fee.

007.01B The holder of a valid Class B city street superintendent license may request a Class B county highway superintendent license and shall be entitled to such upon application and payment of the Class B license application fee.

007.01C An initial Class B applicant using the option provided in Subsection 005.03A3 may request a Class B county highway superintendent license and a Class B city street superintendent license and shall be entitled to such upon application, payment of the Class B license application fee for each license, and meeting requirements of Subsection 006.01B.

007.02 CLASS A LICENSE HOLDERS

007.02A The holder of a valid Class A county highway superintendent license may request a Class A or Class B city street superintendent license and shall be entitled to such license upon application and payment of the application fee for the license level requested.

007.02B The holder of a valid Class A city street superintendent license may request a Class A or Class B county highway superintendent license and shall be entitled to such license upon application and payment of the application fee for the license level requested.

007.02C An initial Class A applicant using the option provided in Subsection 005.03A3 may request a Class A county highway superintendent license and a Class A city street superintendent license and shall be entitled to such upon application, payment of the Class A license application fee for each license, and meeting requirements of Subsection 006.02C and Subsection 006.02D.

007.02D Upon issuance, a Class A license shall replace the corresponding prior Class B license.

008 RENEWAL PROCEDURES AND REQUIREMENTS

008.01 CLASS B LICENSE RENEWAL

008.01A Duration. An initial or additional Class B license issued before October 1, shall be valid through December 31 of the current calendar year. An initial or additional Class B license issued on or after October 1, shall be valid through December 31 of the next calendar year.

008.01B Fee. A Class B license is renewable for additional one-year periods upon timely application and payment of the renewal fee of ten dollars (\$10.00) as provided in Section 39-2308, Nebraska Revised Statutes.

008.02 CLASS A LICENSE RENEWAL

008.02A Duration. An initial Class A license is valid for a period of three (3) years. An additional Class A license shall be placed on the same renewal cycle as the licensee's initial Class A license.

008.02B Fee and Professional Development Requirement. A Class A license is renewable for additional three (3) year periods upon timely application and compliance with both of the following requirements:

008.02B1 The applicant shall pay the renewal fee of fifty dollars (\$50.00) provided in Section 39-2308.01, Nebraska Revised Statutes; and

008.02B2 The applicant shall certify that he or she has successfully completed at least twenty (20) hours of professional development during the three (3) year license period as required by Section 39-2308.02, Nebraska Revised Statutes. Such professional development shall include approved workshops, seminars, association meetings, and other activities, as determined by the Board to be reasonably related to the duties of street or highway superintending.

008.02B2(a) Any Class A license holder who completes in excess of twenty (20) hours of professional development within the preceding three (3) year period may have the excess, not to exceed ten (10) hours, applied to the requirement for the next triennial license period.

008.02B2(b) Professional development hours (PDH) shall be credited by the Board on the following basis:

008.02B2(b)(i) Attendance at workshops or seminars which are directly related to the duties of a county highway or city street superintendent, as defined in Subsection 003.04, and which the Board or its designee has pre-certified for professional development shall count as one (1) PDH per actual hour of attendance at pre-certified instructional portions of such workshop or seminar. Such PDH shall be rounded to the nearest one-half (1/2) hour.

008.02B2(b)(ii) Attendance at workshops and seminars which are directly related to the duties of a county highway or city street superintendent, as defined in Subsection 003.04, but which were not pre-certified for professional development by the Board or its designee, shall be counted as one (1) PDH per actual hour of attendance at instructional portions of such workshop or seminar, based on satisfactory documentation that the workshop or seminar was in fact related to the duties of a county highway or city street superintendent. Such PDH shall be rounded to the nearest one-half (1/2) hour.

008.02B2(b)(iii) National, state, regional or district meetings of associations of county highway or city street superintendents shall qualify as workshops and seminars under Subsections 008.02B2(b)(i) and 008.02B2(b)(ii).

008.02B2(b)(iv) Workshops and seminars on general management subjects, including, but not limited to, personnel management, budgeting and finance, and risk management, shall qualify as workshops and seminars under Subsections 008.02B2(b)(i) and 008.02B2(b)(ii) and may count for up to five (5) hours of the PDH requirement.

008.02B2(b)(v) Attendance at workshops and seminars which are indirectly related to the duties of a county highway or city street superintendent, including, but not limited to, surveying, zoning, weed control, utilities maintenance and operations, and emergency medical services, shall qualify under Subsections 008.02B2(b)(i) and 008.02B2(b)(ii) and may count for up to five (5) hours of the PDH requirement.

008.02B2(b)(vi) Serving on a Board or commission which has as its primary duty the examination and registration of county highway or city street superintendents, including the Board of Examiners for County Highway and City Street Superintendents in Nebraska, shall count as five (5) PDH per year.

008.02B2(b)(vii) Serving as a designee of the Board for the purpose of preparing and grading of written examinations shall count as five (5) PDH per year.

008.02B2(b)(viii) Serving as an officer of a local, state, regional or national professional organization which is directly related to the duties and functions of a county highway superintendent or city street superintendent, as defined in Subsection 003.04, and which the Board has certified for professional development, shall count as one (1) PDH per year with a maximum credit in this category of six (6) PDH over the triennial license period.

008.02B2(b)(ix) Teaching a workshop or seminar which is directly related to the duties of county highway or city street superintendent, as defined in Subsection 003.04, shall count as two (2) PDH per actual hour of teaching time, not counting preparation time, based on pre-certification by the Board or its designee, or on adequate documentation that the course was in fact related to the duties of a county highway or city street superintendent.

008.02B2(b)(x) Completing or teaching a college level course directly related to the duties of county highway or city street superintendent, as defined in Subsection 003.04, shall count as thirty (30) PDH for a three (3) semester hour credit hour course or a five (5) quarter credit hour credit course, based on pre-certification by the Board or its designee, or on adequate documentation that the course was in fact related to the duties of a county highway or city street superintendent.

008.02B2(b)(xi) Completing or teaching a non-college credit extension or continuing education course directly related to the duties of county highway or city street superintendent, as defined in Subsection 003.04, shall count as one (1) PDH for each contact hour of class time, based on pre-certification by the Board or its designee, or on adequate documentation that the course was in fact related to the duties of a county highway or city street superintendent.

008.02B2(b)(xii) Presentation of a paper or research publication at a state, regional or professional society directly related to the duties of a county highway or city street superintendent, as defined in Subsection 003.04, shall count as five (5) PDH for each paper or publication presented, with a maximum of fifteen (15) PDH counted in this category per triennial license period, based on pre-certification by the Board or its designee, or on adequate documentation that the course was in fact related to the duties of a county highway or city street superintendent.

008.02B2(b)(xiii) Participation in other professional development activities which may be presented to the Board for its consideration, including the number of PDH to be awarded.

008.02B2(c) Each Class A license holder shall maintain a detailed log of professional development hours, along with any additional documentation required by this subsection.

008.02B2(c)(i) For seminars and workshops the applicant shall retain documentation of the hours of his or her attendance. For seminars and workshops that have not been pre-certified by the Board the applicant also shall retain documentation of the validity of the activity under Subsections 008.02B2(b)(i) through 008.02B2(b)(v).

008.02B2(c)(ii) For a college level course or a non-college credit extension or continuing education course, the applicant shall retain the course description or syllabus documenting the validity of the activity under Subsection 008.02B2(b)(x) or Subsection 008.02B2(b)(xi). For non-credit continuing education courses, the applicant also shall retain certificates of completion. For college level courses, the applicant also shall retain a grade report or transcript showing successful completion of the course.

008.02B2(c)(iii) For other PDH, the applicant shall retain descriptive and justificative evidence of the activity and shall retain documentation of the duration of his or her participation.

008.02B2(d) All requests for certification or pre-certification shall be submitted no later than June 30 preceding the December 31 due date of the license renewal application. The Board office shall compile, keep current and make available a list of certified and pre-certified activities.

008.02B2(e) The Board or its designee shall conduct random audits of Class A renewal applications in order to verify completion of sufficient valid PDH. The Board's auditor shall be authorized to request and inspect the renewal applicant's documentation.

008.02B2(e)(i) Failure to submit such documentation, or submission of documentation which is incomplete, illegible, or which otherwise does not support the required PDH, shall constitute failure to complete renewal requirements.

008.02B2(e)(ii) Licensees who are not audited, or whose audits are completed after the license was renewed, are subject to provisions of Subsection 012.02 concerning fraudulent or deceitful renewal.

008.02C Exception for Good Cause. The Board shall not renew the Class A license of a license holder who fails to complete the professional development requirements of Subsection 008.02B of this rule, unless such license holder can show exceptional circumstances beyond the reasonable control of the license holder causing him or her to be unable to comply with such requirement.

008.02C1 If the Board determines that good cause has been shown, the Board shall extend the previous license for an additional one hundred and eighty (180) days to allow the renewal applicant to make up all outstanding PDH. Upon successful completion, the license shall be retroactively renewed. Licensees receiving such extension shall be subject to a non-random audit.

008.02C2 If the Board determines that good cause was not shown, the license shall be retroactively renewed as a Class B license.

009 REISSUANCE PROCEDURES AND REQUIREMENTS

009.01 CLASS A LICENSE. The holder of a valid Class B license who previously held a Class A license may be reissued a Class A license upon application by either:

009.01A Having completed thirty (30) hours of professional development within the preceding forty-eight (48) months, subject to audit, and paying the Class A license application fee; or

009.01B Reapplying under Subsection 006.02 of this rule, including paying the Class A license application fee.

009.02 CLASS B LICENSE. The holder of one or both valid Class A licenses may request that one or both licenses be reissued as a Class B license and shall be entitled to such license or licenses upon application and payment of the Class B license renewal fee.

010 LICENSE CERTIFICATES AND CARDS

010.01 Each person who is issued an initial, additional or reissued Class B or Class A license shall receive a certificate and card from the Board as documentation of a valid license.

010.02 When a license is renewed the licensee shall receive a card from the Board as documentation of a valid license.

011 ANNUAL ROSTER AND REPORT

011.01 First-time holders of any county highway or city street superintendent license, persons who have renewed their license or licenses, and persons who have been reissued a license shall be placed on the annual roster of licensed county highway and city street superintendents for the calendar year.

011.02 At the first meeting every calendar year, the Board shall direct preparation and authorize dissemination of a calendar year report. The report shall detail the activities of the Board for the prior calendar year and shall include the annual roster of licensed county highway superintendents and city street superintendents.

012 LICENSE SUSPENSION AND REVOCATION

012.01 GENERAL. The Board may suspend or revoke a license for offenses listed in Section 012 upon completing the sequence of actions prescribed in Sections 013 through 016.

012.02 FRAUD AND DECEIT. The Board may suspend or revoke the license of any licensee for fraud or deceit in obtaining his or her license.

012.02A A licensee will be considered to have obtained a license by fraud or deceit in the following instances:

012.02A1 If the licensee provides to the Board during the application, examination, renewal or reissuance process, any false, incomplete or misleading information, including but not limited to information regarding:

012.02A1(a) The licensee's qualifications for the license;

012.02A1(b) The licensee's completion of professional development hours; or

012.02A1(c) The licensee's work experience.

012.02A2 Applying for a license, taking the examination, or completing professional development hours in someone else's name.

012.02A3 Collusion with another individual to make application, take the examination, or complete professional development hours on behalf of the applicant or holder of a license.

012.02A4 Knowingly misrepresenting one's license status to one's employer or one's appointing jurisdiction. This shall include claiming to have a Class A license when holding only a Class B license.

012.02B Penalty

012.02B1 For three (3) or more of violations or for a second offense under Subsection 012.02A1, or for two (2) violations under Subsections 012.02A2 through 012.02A4, the license shall be revoked.

012.02B2 For two (2) violations under Subsection 012.02A1, or for one (1) violation under Subsections 012.02A2 through 012.02A4, the license shall be suspended for five (5) years.

012.02B3 For one (1) violation under Subsection 012.02A1, the license shall be suspended for six (6) months to two (2) years.

012.02B4 Notwithstanding other provisions of Subsection 012.02B, a Class B license shall be revoked when, in the opinion of the Board, a truthful application or bona fide attempt to complete requirements by the licensee would have precluded the licensee from successfully completing the requirements for obtaining an initial license.

012.02B5 Notwithstanding provisions of Subsection 012.02B3, a Class A license shall be suspended for five (5) years when, in the opinion of the Board, truthful documentation of successful completion of license renewal requirements would have precluded such renewal.

012.03 NEGLECT OF DUTY. The Board may suspend or revoke the license of any license holder for neglect of duty.

012.03A Neglect of duty means any failure to act, improper action, or misconduct related to carrying out the duties of a county highway superintendent or city street superintendent. Neglect of duty includes, but is not limited to, the following:

012.03A1 Failure to comply with any of the statutory duties of a county highway superintendent or city street superintendent, as listed in Subsection 003.04 of this rule.

012.03A2 Failure to comply with, or failure to notify officials of, requirements set forth by the Board of Public Roads Classifications and Standards in Title 428 of the Nebraska Administrative Code, including compliance by counties and municipalities with:

012.03A2(a) Design standards;

012.03A2(b) Construction standards;

012.03A2(c) Maintenance standards;

012.03A2(d) One- and Six-year Plan requirements;

012.03A2(e) Annual report requirements (Standardized System of Annual Reports); and

012.03A2(f) Annual certification requirements (Standardized System of Annual Reports).

012.03A3 Conviction of a felony criminal offense, or final administrative sanction by a county or municipality, or by the licensee's employer, for misappropriating public funds or public property.

012.03A4 Conviction of a criminal offense or final administrative sanction by a county or municipality, or by the licensee's employer, for assaulting, harassing or issuing unlawful instructions to one's subordinates or co-workers;

012.03A5 Conviction of a felony criminal offense related to the truthfulness, trustworthiness or honesty of the licensee; or to the licensee's capacity to comply with the duties and responsibilities of a county highway superintendent or city street superintendent.

012.03B Penalty

012.03B1 For three (3) or more violations or for a second offense under Subsection 012.03A1, Subsections 012.03A2(c) through 012.03A2(e) or Subsection 012.03A4, or for two (2) violations under Subsection 012.03A2(a), Subsection 012.03A2(b), Subsection 012.03A2(f), Subsection 012.03A3 or Subsection 012.03A5, the license shall be revoked.

012.03B2 For two (2) violations under Subsection 012.03A1, Subsections 012.03A2(c) through 012.03A2(e) or Subsection 012.03A4, or for one (1) violation under Subsection 012.03A2(a), Subsection 012.03A2(b), Subsection 012.03A2(f), Subsection 012.03A3 or Subsection 012.03A5, the license shall be suspended for five (5) years.

012.03B3 For one (1) violation under Subsection 012.03A1, Subsections 012.03A2(c) through 012.03A2(e) or Subsection 012.03A4, the license shall be suspended for six (6) months to two (2) years.

012.04 INCOMPETENCE. The Board may suspend or revoke the license of any license holder for incompetence in the performance of duty.

012.04A Incompetence in the performance of duty shall have its commonly understood meaning and includes acts, omission and misconduct showing that the licensee lacks the ability, knowledge, training, experience, or mental or physical fitness to perform the functions and duties of a city street superintendent or a county highway superintendent.

012.04B A Class A licensee shall be held to a higher standard of competence than a Class B licensee.

012.04C Penalty

012.04C1 For three (3) or more violations or for a second offense under this subsection, the license shall be revoked.

012.04C2 For two (2) violations under this subsection, the license shall be suspended for five (5) years.

012.04C3 For one (1) violation under this subsection, the license shall be suspended for six (6) months to two (2) years.

012.04C4 The penalty for a Class B licensee may be reduced up to one (1) year for a suspended license, down to a minimum of a one (1) month suspended license, or from a revoked license to a five (5) years suspended license. The provisions of this subsection shall not apply to a Class B license held as a second license by a Class A licensee.

012.05 APPLICATION OF PENALTY

012.05A Cumulation of Violations. Violations shall count cumulatively for penalty purposes, whether adjudicated together or separately.

012.05B Mitigating Circumstances

012.05B1 In the event that the Board determines that the offender cooperated with the investigation, demonstrated remorse and presented a plan to correct behavior or improve performance, the penalty may be reduced up to one (1) year for a suspended license, down to a minimum of a one (1) month suspended license, or from a revoked license to a five (5) years suspended license.

012.05B2 A ten (10) years suspended license may result when extenuating circumstances, other than those listed in Subsection 012.05B1, compel a sanction lesser than a revoked license but greater than a five (5) years suspended license.

012.05C Aggravating Circumstances

012.05C1 In the event that the Board determines that the violation posed a grave danger to the public, the penalty may be increased up to two (2) years for a suspended license, up to a maximum seven (7) years suspended license.

012.05C2 In the case of a Class B license, the Board may consider evidence that the violation posed a grave danger to the public, and thereby may increase the penalty for a revoked license by imposing a ten (10) year reapplication waiting period instead of the five (5) year period provided in Subsection 012.07E.

012.05C3 In the case of a Class A license, the Board may consider evidence that the violation posed a grave danger to the public, and thereby may increase the penalty for a revoked license by foreclosing the option of applying for a Class B license under Subsection 012.07E.

012.06 EFFECT OF PENALTY

012.06A Suspension and revocation shall not be retroactive.

012.06B Suspension or revocation shall extend to both superintendent licenses (county and city) held by the licensee.

012.06C No person with a suspended license may be appointed as a licensed county highway or city street superintendent, as such licensed practice and appointment are defined and prescribed in Section 003, during such suspension.

012.06D No person with a revoked license may be appointed as a licensed county highway or city street superintendent, as such licensed practice and appointment are defined and prescribed in Section 003, unless such person receives a new Class B license following the waiting period prescribed in Subsection 012.05C2 or Subsection 012.07E.

012.07 REINSTATEMENT AND REAPPLICATION

012.07A Except for an investigative suspension under Subsection 013.02, the Board may impose conditions for reinstatement of a suspended license. Such conditions shall be related to correction of behavior or improvement of performance.

012.07B Upon expiration of the suspension period and upon satisfying all conditions for reinstatement, including providing such documentation as may be required by the Board, the suspension shall cease and the license shall be reinstated. Staff shall duly report all reinstatements to the Board.

012.07B1 Upon reinstatement, the licensee shall be liable for cumulative license renewal fees dating from the time of suspension, up to a maximum of one hundred dollars (\$100.00) per suspended Class B license or five hundred dollars (\$500.00) per suspended Class A license. The amount owed shall be paid within thirty (30) days of the date of reinstatement.

012.07B2 Upon reinstatement, a Class A licensee shall document completion of cumulative required professional development hours dating from the time of suspension, up to a maximum of sixty (60) hours. Such documentation shall be subject to audit and shall be submitted within thirty (30) days of reinstatement.

012.07C A revoked license may not be reinstated.

012.07D A revoked Class A licensee may never apply for a new Class A license.

012.07E Except as provided in Subsection 012.05C2 or Subsection 012.05C3, a revoked Class A or Class B licensee may apply for a new Class B license no sooner than five (5) years after revocation.

013 COMPLAINTS – INITIATION OF ACTION

013.01 GENERAL. The Board may, upon its own motion, and shall upon the sworn statement in writing of any person, investigate any allegations of fraud or deceit in obtaining a license, neglect of duty or incompetence made against any licensed county highway superintendent or licensed city street superintendent. The Board may prescribe and provide a form for such sworn statement.

013.02 INVESTIGATIVE SUSPENSION. The Board shall have the power to suspend the license of any county highway superintendent or city street superintendent pending the outcome of the investigation of any complaint under Section 014 when it is determined by the Board that suspension is necessary to protect the public or is reasonably necessary for a full and complete investigation.

013.03 TIMING. Within ten (10) working days of receiving a complaint or initiating an investigation pursuant to Subsection 013.01, the Board shall initiate the investigation process set out in Section 014.

014 COMPLAINTS – INVESTIGATION AND DISPOSITION

014.01 AUTHORITY. The Board has authority to consider complaints against a licensee only to the extent that the allegations involve:

014.01A Fraud or deceit of a licensee in obtaining his or her license,

014.01B Neglect of duty by a licensee, or

014.01C Incompetence by a licensee in the performance of duty.

014.02 STAFF REVIEW

014.02A Staff for the Board shall review all complaints, except for complaints initiated by the Board, to determine whether the Board has authority to review the allegations of the complaint.

014.02B At a regularly scheduled or special meeting of the Board, staff shall present to the Board the complaint and the staff's recommendation as to the authority of the Board to review any or all of the allegations of the complaint.

014.02C The Board shall review the staff recommendations and vote to accept, modify or reject such recommendations.

014.02D The Board shall dismiss any allegation of the complaint that the Board determines it does not have authority to review.

014.02E The procedure set out in Subsection 014.03 shall govern any allegation not dismissed by the Board.

014.02F The licensee and the complainant shall be notified in writing of the Board's actions under Subsection 014.02.

014.03 PREPARATION FOR PRELIMINARY INVESTIGATION

014.03A The chairperson of the Board, the acting chairperson, or a duly authorized member of the Board, shall appoint in writing one member of the Board to serve as investigator to complete a preliminary investigation of any allegations against a licensee, not previously dismissed under Subsection 014.02.

014.03B The letter appointing the investigator shall include the following information:

014.03B1 The complaint and any documentation showing action of the Board under Subsection 014.02;

014.03B2 The timeline for the investigation;

014.03B3 Any record of the Board determined by staff or the Board to be related to the allegations of the complaint.

014.03C The Board shall mail to the licensee who is the subject of the complaint and to the complainant a copy of the letter appointing the investigator. The licensee shall have the right to be represented by an attorney during the investigation.

014.03D The Board may by majority vote waive the preliminary investigation process.

014.04 CONDUCT OF PRELIMINARY INVESTIGATION

014.04A The purpose of the preliminary investigation is to gather information about the complaint and to allow for the summary dismissal of any allegations either for which there is no reasonable basis in fact or law, or that even if true would not result in a suspension or revocation of the licensee's license.

014.04B The investigator shall interview the complainant, the licensee and anyone else the investigator determines to have information relevant to the allegations of the complaint. The investigator may use any lawful means to compel the production of documents and the attendance of witnesses to assist in the investigation.

014.04C After completing the investigation, the investigator shall prepare a written report setting forth the facts related to each allegation and the investigator's findings as to whether any or all of the allegations should be summarily dismissed either for lack of a reasonable basis in fact or law for the allegation, or because the licensee's license would not be suspended or revoked even if the allegation were true. The written report shall specifically list each allegation against the licensee that the investigator believes should not be summarily dismissed.

014.04D The investigator's recommendation to the Board shall be limited only to the following statements and recommendations:

014.04D1 A statement that, in the investigator's opinion, one or more of the allegations lacks a reasonable basis in fact or law, and a recommendation that the complaint be summarily dismissed as to such allegation or allegations;

014.04D2 A statement that, in the investigator's opinion, one or more of the allegations, even if true, is not cause for suspension or revocation, and a recommendation that the complaint be summarily dismissed as to such allegation or allegations;

014.04D3 A statement that, in the investigator's opinion, one or more of the allegations may have merit, and a recommendation that the Board hold a hearing pursuant to Section 015 for any and all such allegation or allegations.

014.04E In making statements and recommendations to the Board, the investigator shall not discuss the merits of any allegation with the Board, or any member thereof, and the Board shall not review the investigator's written report pursuant to Subsection 014.04C unless and until either the report is presented at a hearing in accordance with Section 015, or the licensee forgoes such hearing in accordance with Subsection 014.05B.

014.04F The investigating Board member shall abstain from all discussions, debates or votes regarding the allegations investigated.

014.05 DISPOSITION OF COMPLAINT

014.05A Within sixty (60) days of receiving the investigator's statements and recommendations pursuant to Subsection 014.04D, or of a decision to waive a preliminary investigation pursuant to Subsection 014.03D, the Board shall either schedule a hearing pursuant to Section 015 or dismiss the complaint entirely.

014.05B A hearing pursuant to Section 015 must be held, unless waived in writing by the licensee, before the licensee's license can be suspended or revoked.

015 HEARINGS FOR CONTESTED CASES. The procedure for all hearings under this chapter shall be as provided in Title 425, Chapter 1, Section 002 of the Nebraska Administrative Code.

016 DECISIONS IN CONTESTED CASES

016.01 REVIEW. The record of the hearing pursuant to Section 015 shall be provided to each member of the Board in a timely fashion, including all findings of fact, conclusions of law and recommendations submitted by the hearing officer.

016.02 ACTION. The Board shall render a decision within sixty (60) days of receiving the record of the hearing, or within sixty (60) days of receiving the licensee's written request that the hearing be waived. The decision may include an order.

016.02A Decisions and orders shall be rendered in accordance with Title 425, Chapter 1, Section 002 of the Nebraska Administrative Code.

016.02B A decision to suspend a license shall specify the period of suspension and may specify conditions for reinstatement.

016.03 APPEAL. The procedure for all appeals of decisions rendered under this chapter shall be as provided in Title 425, Chapter 1, Section 002 of the Nebraska Administrative Code.

ANNOTATION

Title 425	Enabling Legislation
Chapter 2	39-2301 through 39-2311, 84-901 and 84-914 through 84-9119 Neb. Rev. Stat.