



American Council of Engineering Companies of New York

Engineering and Architecture Firms and Professional Geologists in New York State

In response to New York State's creation of the profession of Professional Geologist, ACEC New York member firms may have questions about this change and its impact on their business structure. We have compiled a short advisory document that may be of assistance as you move forward. *This document is not legal advice and any business decision should only be undertaken with the oversight and assistance of your firm's counsel and in full compliance with the State Education Department's statutory and regulatory framework.*

Chapter 475 of the Laws of 2014

(<http://www.op.nysed.gov/prof/geo/chapter475oflawsofnewyork2014.pdf>) adds Geology to the list of professions regulated by what is currently the State board for Engineering and Land Surveying. Following the law's taking effect on November 21, 2016, the Board shall be the State Board for Engineering, Land Surveying and Geology.

As stated in the law, the practice of the profession of geology is defined as: "performing professional service such as researching, investigating, consulting and geological mapping, describing the natural processes that act upon the earth's materials, predicting the probable occurrence of natural resources, predicting and locating natural or human-induced phenomena which may be useful or hazardous to humankind and recognizing, determining and evaluating geological factors, and the inspection and performance of geological work and the responsible supervision thereof in furtherance of the health, safety and welfare of the public."

Owners or managers of professional design or A&E firms that deal with earth or subsurface conditions, such as those described in the law's definition section, may have questions about how this law impacts their firm in terms of licensure, naming and operation.

In addition to the State Education Department's Professional Geologist resources (<http://www.op.nysed.gov/prof/geo/>), ACEC New York has assembled the following FAQ. Please note that this is advisory in nature, and must not take the place of professional advisement by your retained counsel.

Q: Who may hold themselves out as a geologist?

A: The only person who may hold themselves out as a Professional Geologist is someone who is duly licensed as such. To be licensed as a professional geologist in New York State, in addition to submitting a \$430 fee, you must:

- Be of good moral character
- Be at least 21 years of age
- Meet education, examination and experience requirements
- Submit an application for licensure and the other forms indicated, along with the appropriate fee, to the Office of the Professions at the address specified on each form.

The educational, examination and experience requirements are laid out in greater detail at <http://www.op.nysed.gov/prof/geo/geolic.htm>

The requisite forms are available at: <http://www.op.nysed.gov/prof/geo/geofrms.htm>

Q: Must I add a licensed geologists on staff?

A: This is a business decision as much as a technical decision. As analyzed elsewhere in this document, it is possible that a geotechnical engineer currently on staff can comfortably handle all of the technical demands of the geology-related requests your firm may face. However, with the creation of the stand-alone practice of geology, it is foreseeable that RFQs may strictly demand “geology” services, the wording of which could disqualify your firm, despite its ability to otherwise fulfill the technical aspects of the job. Additionally, as explained below, there is a limited window for expedited “grandfathered” licensure of those qualified to practice as geologists. It would behoove a firm interested in providing geology services as such to take advantage of this unique opportunity.

Q: What must an already-existing firm do to provide professional geologist services versus geotechnical engineering?

A: §7210 of the Education law was amended to state that an existing firm may obtain a certificate of authorization for the practice of geology. If you are an engineer competent in geological engineering you can continue to state that you offer geotechnical engineering or geological engineering. The creation of the class of licensed professional geologists does not preclude existing geotechnical engineers from continuing their practice. If you wish to provide professional geologist services described as such, the firm must have a licensed professional geologist to provide those services.

Q: Do I have to change my firm name?

A: According to the NYS Education Department, if you have owners who are licensed geologists, you will need to add this to your firm name.

Q: May an already-licensed engineer work as a geologist?

A: It depends - an engineer doing work that embodies geology may not hold him or herself out as a professional geologist without obtaining such licensure. However, the law states that a licensed professional engineer may provide the work described in the law as geology and shall not be barred from doing so by virtue of not being licensed to practice geology – he or she just cannot claim to be a geologist. It should be noted that an engineer wishing to obtain geology licensure has a limited window in which he or she may do so outside of the typical full process. Once this window closes, an engineer may not avail him or herself of this grandfathering opportunity.

Q: Can a newly-licensed geologist join an existing multi-discipline firm?

A: Yes, various sections of the Education Law (§§7327 and 7307) and Business Corporation Law (§§1501 and 1503) explicitly authorize design professionals to join together in the formation of professional service entities in a range of various forms, including Design Professional Corporations. These sections of law were amended to allow geologists to be included in these firms.

Q: What are the options available to a multi-discipline firm that is already providing geology services?

A: If the geology services are being provided by a licensed professional engineer within the allowable scope of his or her practice, the firm does not need to alter its operations, advertising or corporate identity to be compliant with the law. However, if the firm decides to hold itself out to the public as providing geology (as distinct from a similar related field such as ‘geotechnical engineering’) services, it must obtain a certificate of authorization and change the firm name to reflect this additional practice.

Q: If an already-existing multi-disciplinary firm elects to amend its corporate structure to reflect its provision of geologist services, how must it identify itself to the public?

A: It must hold itself out as including the practice of geology in its true corporate identity and in any fictitious name that it adopts.

Q: Must a general business corporation that is providing geology services amend its operations to be fully compliant?

A: In accordance with Chapter 260 of the laws of 2016, entities that are currently lawfully providing geology services may continue to do so prior to March 1, 2018 as they work to bring their organizations into compliance with the statutory requirements of education law, business corporation law and the limited liability company law as they relate to the practice of geology. Information and forms for a Certificate of Authorization to provide professional geology services may be found on the NYSED website (<http://www.op.nysed.gov/corp/>).

Q: If a firm is operating as a general business corporation authorized to provide professional engineering services – a “grandfathered” engineering firm – can it add geology to its portfolio of services provided?

A: No. The grandfathered firm can continue to provide geotechnical engineering services, but cannot add geology as a separate standalone practice. Grandfathered corporations are single-practice firms, meaning that meaning such a firm can't practice architecture through an engineering grandfather structure and vice versa. With the addition of geology to the design professions, neither the statutes nor any regulations set forth similar requirements that would enable an existing general corporation that provides geologic services to be "grandfathered" and continue to provide services through that vehicle, so there is no intent to have single purpose geology grandfathered corporations at this point.

Q: What are continuing education requirements?

A: This is not yet determined. It is likely that geologists will be required to have either 24 or 26 hours every three years, but until this is passed there is no requirement. For engineers who become dually licensed, it is possible that they will permit an overlap of education so credits will count towards both a PE and a PG. But at this time, it remains unknown.