

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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2007 JUN -7 PM 3:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Board of Professional Surveyors TITLE NUMBER: 23

RULE TYPE: Legislative CITE AUTHORITY: 30-13A-5, 30-1-7a

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Examination and Licensing of Professional Surveyors in West Virginia
(formerly Rules and Minimum Standards for the Practice of Land Surveying in West Virginia)

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 9, 2007 TIME: 9 a.m.

LOCATION OF PUBLIC HEARING: Flatwoods Days Inn

2000 Sutton Lane
Sutton, WV 26601

COMMENTS LIMITED TO: ORAL ☒, WRITTEN ☒, BOTH ☒
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: _____

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

CHAIRMAN
Gregory A. Smith

SECRETARY
Leon K. Spencer

Mark H. Hornish

Roy E. Shrewsbury, II

Anthony J. Sparacino, Jr.

**STATE OF WEST VIRGINIA
BOARD OF PROFESSIONAL SURVEYORS**

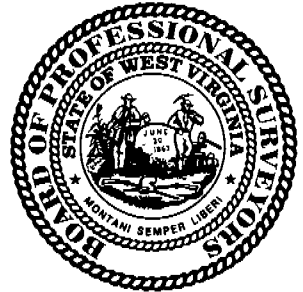
Mailing address: P. O. Box 390, Flatwoods, West Virginia 26621-0390

Courier address: 2298 Sutton Lane, Flatwoods, West Virginia 26621

Telephone (304) 765-0315

Fax (304) 765-0316

wvbps@mail.state.wv.us



PROPOSED 2007 RULE CHANGES

Introduction

The West Virginia Board of Professional Surveyors (WVBPS or Board) is requesting changes to the Series 1 legislative rules, *Rules and Minimum Standards of Practice of Land Surveying in West Virginia*, and the creation of Series 4 and Series 5.

Series 1 has been revised and reorganized to contain all the rules pertinent to the examination and licensing of professional surveyors, hence the proposed title change is *Examination and Licensing of Professional Surveyors in West Virginia*. The result has been the creation of Series 4 and 5. Series 4, *Fees for Surveyors and Surveying Firms in West Virginia*, will establish a fee schedule relevant to surveyors and surveying firms. Series 5, *Standards for the Practice of Surveying in West Virginia*, will consolidate all the rules pertinent to the practice of surveying.

The WVBPS is a member of the National Council of Examiners for Engineering and Surveying (NCEES), a national non-profit organization composed of engineering and surveying licensing boards representing all U.S. states and territories. Many of the proposed revisions, including the Rules of Professional Conduct, were adopted from the NCEES Model Rules, August 2005.

Several rules have been stricken from Series 1 and moved to Series 4 or 5. Series 1 and 5 have a unique tie to one another because they are reflection of the most current standards for the examination and licensing of Professional Surveyors and the practice of surveying in West Virginia. The standards for deleting text with strikethroughs and adding text with underlines was followed to the best of our ability.

These rule changes were submitted last year and later withdrawn due to concerns expressed from the WV Society of Professional Surveyors (WVSPS) and other stakeholders. Over the past year the Board has met with representatives from the society and the stakeholders on three separate occasions to clarify, negotiate and edit this submittal. The Board also had an opportunity to speak to the WVSPS membership at their annual convention in Charleston, WV. Time was provided to answer questions and address concerns of the general membership.

The licensees were notified by mail on May 25th of the proposed changes and their availability on the Secretary of State and WVSPS websites.

Series 1

The justification for the Series 1 rule change involves several issues. Foremost is consolidating and organizing the examination and licensing rules into a logical, easy-to-find structure. Changes are also required to keep up with current technology. This will be a great help to individuals seeking information about licensure. All references to fees and the practice of surveying have been stricken and moved to Series 4 and 5, respectively. The other deletions are out-of-date rules.

Some of the highlights include: twenty definitions were added or revised in section 2; a detailed explanation of the types of applications in subsection 3.2.; the two paths an individual can take to become licensed, based on §30-13A-8, is explained and a deadline for the experience path is set in subsections 3.4. and 3.5.; a time limit is set for taking the examination after an applicant is approved in subsection 4.1.; a time limit is set for all Surveyor Interns certificates in subsection 5.2.; and the seven different license status' are identified and defined in subsection 5.5. There are other improvements contained within this proposed rule change and the fact they are not listed does not minimize their significance.

Series 4

The creation of the Series 4 rule will consolidate the fees charged by the Board that were either in Series 1, established by prior Board actions or based on current Board policy. The table format for the Fee Schedule, §23-4-5, will help to organize and simplify the process. Fee increases are reflected in Series 4 based on budget forecasts at the time the rules will be effective, if approved.

Series 5

The creation of the Series 5 rule will consolidate into one document the laws and rules that govern the practice of surveying in West Virginia. As in Series 1, the NCEES Model Rules were used as guidance and evidence of generally accepted standards of practice. There were ten definitions added or revised for greater clarification.

A major addition was Section §23-5.3., *Seals and Document Certification*, which addresses significant issues involving certification of survey documents and technological advancements regarding electronic seals and signatures. The new seal approved by the Board is also defined with an example.

The minimum standards have been added using the same text as found in §30-13A-26, with some corrections and additions. The purpose is to eventually delete the minimum standards from the code and maintain them by legislative rule. Changes in current technology and standards of practice will require future additions to this section based on specialized fields of practice and the use of current technology by our licensees. Please notice the general standards applicable to all surveys and inspections has been added in subsection 7.2.; minimum standards specific to boundary surveys are listed in subsection 7.3.; minimum standards for mortgage inspections was added in subsection 7.4.; and a reference to ALTA/ACSM land title surveys was added in subsection 7.5. to require compliance with subsection 7.3.

Another major addition is Section §23-5.7., *Standards of Professional Conduct*, that specifically addresses the obligations a Professional Surveyor has to the public, the profession and to other professionals.

Conclusion

It is the opinion of this Board that the proposed rule changes will organize the rules, clarify and update the current practice of surveying, be more compliant with current and future technology and make the legislative process more efficient.

This has been a significant investment by this Board and other interested parties to refine these rules and it is our belief the future returns for the public health, safety and welfare will be immeasurable.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Examination and Licensing of Professional Surveyors in West Virginia

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV Board of Professional Surveyors

Address: P. O. Box 390
Flatwoods, WV 26621-0390

Phone Number: 304-765-0315 Email: wvbps@mail.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: Examination and Licensing of Professional Surveyors in West Virginia

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

None

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None

Date: 6/7/07

Signature of Agency Head or Authorized Representative

Gregory A. Smith

FILED

TITLE 23
LEGISLATIVE RULE 2007 JUN -7 PM 3: 51
BOARD OF PROFESSIONAL SURVEYORS

SERIES 1
OFFICE WEST VIRGINIA
SECRETARY OF STATE
**RULES AND MINIMUM STANDARDS FOR PRACTICE
OF LAND SURVEYING IN WEST VIRGINIA
EXAMINATION AND LICENSING OF
PROFESSIONAL SURVEYORS IN WEST VIRGINIA**

§23-1-1. General Information and Purpose.

1.1. Scope. -- This rule is promulgated by the Board of Professional Surveyors to govern licensing of Land Professional Surveyors in West Virginia (WV).

1.2. Authority. -- WV Code §§30-1-7a and 30-13A-5.

1.3. Filing Date. --

1.4. Effective Date. --

§23-1-2. General Purpose.

~~2.1.~~ 1.5. This Rule with the Minimum Standards for the practice of land surveying for qualifying for examination, licensing and endorsing of Professional Surveyors is promulgated for the purpose of administration and enforcement of WV Code §§30-1-1 et seq. and 30-13A-1 et seq and shall be binding upon persons or firms involved in the practice of surveying under §30-13A-1 et seq.

1.6. Repeal of Former Rules – This legislative rule, together with legislative rules 23 CSR 4 “Fees for Surveyors and Surveying Firms” and 23 CSR 5 “Standards for the Practice of Surveying in West Virginia” repeals and replaces West Virginia 23 CSR 1 “Rules and Minimum Standards for Practice of Land Surveying in West Virginia” filed and effective June 6, 2005.

§23-1-32. Definitions

~~3.1. Terms Defined~~ — As used in this rule, the following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

2.1. “Active Status” means the licensee has met all the requirements for the current annual renewal period and is permitted to practice as a professional surveyor in West Virginia.

2.2. “Certificate of Licensure” means a certificate issued to the applicant who has met the licensing requirements of §30-13A-1 et seq. and has been approved by the Board. The certificate will be signed as required by the Board and will show the license number and seal of the Board and shall be displayed conspicuously at the principal place of practice.

2.3. "Comity Applicant" means a person who is applying to become a professional surveyor in West Virginia and is currently in possession of a professional surveyor license or certificate of licensure issued by a proper authority of a jurisdiction other than WV.

2.4. "Continuing Education" means mandatory continuing education required by the Board as set forth in 23 CSR 2.

2.5. "Endorsement Applicant" means a person who is a current licensee of the Board and is applying to survey in a specialized field of practice.

2.6. "Delinquent Status" means the licensee has failed to meet the requirements for renewal or paid the renewal fee and upon such failure is not permitted to practice as a professional surveyor in West Virginia. The licensee can remain in delinquent status up to thirty-six (36) months without reapplication.

3.1.1. "Felony" means a felony related to the fitness of a land surveyor to engage in the practice of land surveying, including those crimes that have dishonesty as a fundamental and necessary element. Felonies that, upon conviction, constitute grounds for disciplinary action by the Board include, but are not limited to:

3.1.1.a. False swearing or perjury in a court proceeding related to the applicant's practice of land surveying;

3.1.2.b. Felonies involving theft, bribery, embezzlement, forgery, falsification or destruction of records, fraud, or misrepresentation; and

3.1.1.e. Any other felony offense demonstrating a lack of business integrity or business honesty.

2.7. "FS Exam" means the NCEES Fundamentals of Surveying Examination.

2.8. "Inactive Status" means the licensee has met all the requirements for the current annual renewal period, except for continuing education, and/or has applied for inactive status and has agreed not to practice as a professional surveyor in West Virginia.

2.9. "Expired Status" means the licensee has failed to meet the requirement for renewal while in delinquent status and must make application to be reinstated.

2.10. "License" means a surveying license issued under the provisions of §30-13A-1 et seq. authorizing a licensee to practice as a professional surveyor for a designated period of time approved by the Board and shall be displayed conspicuously at the principal place of practice. A wallet card shall be issued simultaneously to be kept on the licensee's person.

2.11. "NCEES" means the National Council of Examiners for Engineering and Surveying.

3.1.2. "Owner," when used in the context of ownership requirements for firms seeking a certificate of authorization to engage in the practice of land surveying, means a person who owns at least a majority interest of a firm or business entity.

3.1.3. "Professional negligence" means negligence demonstrating a wanton indifference to the interests of the public that caused, or that had a substantial likelihood of causing, serious harm to the public. A civil judgment for

~~malpractice in the practice of land surveying is not conclusive proof that a surveyor is guilty of professional negligence sufficient to support the imposition of professional discipline.~~

2.12. "Professional Charge" means a person who holds a current license in active status with the Board and is the lead professional responsible to directly supervise other professionals, technicians or support staff and to affix his or her signature and seal to survey documents.

2.13. "PS" means a licensed Professional Surveyor who has met all of the examination and licensing requirements as set forth in 30-13A-1 et seq. and is an acronym used after the surveyor's name to indicate he or she is a current licensee with the Board.

2.14. "PS Exam" means the NCEES Principles and Practice of Surveying Examination.

2.15. "Responsible Charge" means direct control of work or projects under the direct supervision of a licensee or person licensed as a professional surveyor in a jurisdiction other than WV to engage in the practice of surveying in order to gather, prepare or analyze data, evidence or information that will aid and assist the licensed professional in resolving boundaries or managing data or information regarding other work related to the practice of surveying.

2.16. "Retired Status" means the licensee has applied for and been approved by the Board for retirement status and has agreed not to practice as a professional surveyor in West Virginia. A retiree is not required to pay the annual renewal fees or meet the continuing education requirements.

2.17. "SI" means a certified Surveyor Intern who has passed the FS exam.

2.18. "SU" means "surface and underground" and is the designation following the license number of a licensee who has met the requirements to be endorsed by the Board as an underground surveyor pursuant to §30-13A-1 et seq.

2.19. "Technician" means a person who performs technical work related to surveying under the direction of a designated field or office supervisor or a person in responsible charge or licensed professional. Examples of a technician may be, but are not limited to, an instrumentperson, rodperson, drafter or computer operator.

2.20. "WV Exam" means the state-specific West Virginia Professional Surveyors Examination developed by the Board.

~~3.1.4. "Willful departure from accepted standards of professional conduct" means:~~

~~3.1.4.a. Default on obligations owed to the state in connection with the practice of land surveying, including but not limited to obligations under the West Virginia workers' compensation act, the West Virginia unemployment compensation act, and West Virginia state tax and revenue laws;~~

~~3.1.4.b. Willful failure to substantially perform in accordance with the terms of a contract or subcontract, or failure to perform after accepting compensation for professional services;~~

~~3.1.4.c. Performance in violation of standards established by law or generally accepted standards for the practice of land surveying amounting to intentionally deficient or grossly negligent performance on a contract; or~~

~~3.1.4.d. Any other cause of a serious and compelling nature amounting to knowing and willful misconduct in the practice of land surveying.~~

§23-1-4. Qualifications of Applicants For Licenses; Exceptions; Fees; Examinations. §23-1-3. Application and Qualification for Licensure or Certification.

3.1. Applications Generally

3.1.a. Each application shall be accompanied by an examination fee determined by the Board as set forth in 23 CSR 4 et seq.

3.1.b. Any applicant is required to notify the Board within thirty (30) days of any change in name, address, employment, or other relevant information.

3.1.c. In support of an applicant's statement of experience, the Board may require designated records and documentation of surveys made by the applicant.

3.1.d. The Board deems that statements provided as references for an applicant, personal data, education and employment history and other such information are personal in nature and public disclosure of those statements would constitute an unreasonable invasion of privacy and, therefore, should be exempt from disclosure under WV Code 29B-1-4(a)(2).

3.1.e. The application and associated documents shall be kept as a permanent record, except for any survey documents submitted with the application that justify the applicant's experience which shall be kept for a maximum of six (6) years.

3.1.f. An applicant may request reconsideration of an application which has been denied when the request is based upon additional information or evidence which could affect the original decision. A request for reconsideration or hearing must be made within fifteen (15) days after the applicant receives notice of the denial of application for licensure.

3.1.g. The Board has the discretion to make exceptions for any applicant who is serving on active duty in the Armed Forces of the United States or who is experiencing physical disability, illness, or other extenuating circumstances.

3.2. Types of Applications.

3.2.a. Any person may apply to the Board for examination and certification as a Surveyor Intern; examination and licensure as a Professional Surveyor; comity or reinstatement as a Professional Surveyor; or for an endorsement in a specialized field of practice.

3.2.b. All applications and related documentation shall be submitted to the Board on forms prescribed by the Board.

3.3. Eligible Candidates for SI Certification.

3.3.a. A person who began his or her survey related education or experience on or before the thirty-first (31st) day of December, 2004, as set forth in §30-13A-8(a)(1), is eligible to apply for the FS exam upon completion of the education and experience or experience requirements contained therein.

3.3.b. A person who began his or her survey related education or experience on or after the first (1st) day of January, 2005, as set forth in §30-13A-8(a)(2), is eligible to apply for the FS exam upon graduation of a Board-approved survey related degree program.

3.3.c. As set forth in §30-13A-8(b), a person who is a student of a Board-approved surveying degree program is eligible to apply for the FS exam during the final semester if his or her grade point average is 3.0 or higher, based on a 4.0 system or the equivalent thereof.

3.4. Application for SI Certification under §30-13A-8(a)(1).

3.4.a. A person qualifying for the FS exam under §30-13A-8(a)(1) shall submit a completed application to the Board office on or before the thirty-first (31st) day of December, 2012. All applications received in the Board office after the aforementioned date shall meet the requirements as set forth in subsection 3.5. of this rule.

3.4.a.1. In addition to the application and supporting documentation required by the Board at the time of application, the applicant shall attach documentation that proves his or her surveying related education or experience began on or before the thirty-first (31st) day of December, 2004.

3.4.a.2. The applicant shall also attach a letter notifying the Board of his or her intent to make application under §30-13A-8(a)(1)(D), except in such cases where the Board has on file a letter of intent submitted by the applicant beforehand.

3.4.a.4. Applicants who have been approved under §30-13A-8(a)(1) and this subsection to begin the examination process on or about the thirty-first (31st) day of December, 2012 will be permitted to complete the process as set forth in section 4 of this rule, except if he or she fail to pass any parts of the examination for six (6) attempts then he or she shall make reapplication under the requirements of §30-13A-8 (a)(2).

3.4.b. Education and Experience Reporting.

3.4.b.1. A person who applies for the FS exam under §§30-13A-8(a)(1) shall clearly and concisely document his or her survey related education and experience history and list separately the years of education, technical experience and responsible charge experience with the estimated number of allotted years clearly shown and the sum shall be a minimum of eight (8) years.

3.4.b.2. The applicant shall document a minimum of two (2) years experience in responsible charge of survey related work in order to qualify for examination.

3.4.b.3. The final determination for allotted years for each category shall rest entirely with the Board.

3.4.c. The degrees and certificates as set forth in §30-13A-8(a)(1) may be awarded the following experience equivalents:

3.4.c.1. Baccalaureate degree with at least 10 credit hours in surveying courses may be substituted for two (2) years experience.

3.4.c.2. Baccalaureate degree with less than 10 credit hours in surveying courses and at least six (6) credit hours of college math and trigonometry may be substituted for one (1) year experience.

3.4.c.3. No degree but at least eight (8) credit hours of surveying courses may be substituted for one (1) year experience.

3.4.c.4. Associate degree with less than 10 credit hours in surveying courses and at least six (6) credit hours of college math and trigonometry may be substituted for one-half (1/2) year experience.

3.4.c.5. Surveying specific certificate degree may be substituted for one-half (1/2) year experience.

3.4.c.6. Related technical certificate degree may be substituted for one-fourth (1/4) year experience.

3.5. Application for SI Certification under §30-13A-8(a)(2):

3.5.a. All applications received in the Board office on or after the first (1st) day of January, 2013 shall qualify for the FS exam by completing the education requirements as set forth in §30-13A-8(a)(2).

~~4.1. To be eligible for a license to engage in the practice of land surveying, the applicant shall meet the requirements set forth in W. Va. Code §30-13A-5.~~

~~4.2. Any applicant for a license shall submit an application on forms provided by the board. The application shall be verified and shall contain a statement of the applicant's education and experience, the names of five (5) persons for reference (at least three (3) of whom shall be licensees, or persons eligible for a license, or persons authorized in another state or country to engage in the practice of land surveying, who have knowledge of the applicant's work). In support of an applicant's statement of experience, the Board may require designated records and documentation of a land survey made by the applicant. An applicant shall pay to the board with his or her application an examination fee determined by the board that does not exceed the exact cost of the examination or three hundred dollars (\$300.00).~~

~~4.3. Examinations shall be held at least once each year at a time and place as determined by the board.~~

~~4.4. The scope of the examination and methods of procedure shall be determined by the board. An applicant who fails to pass any parts of the examination for six consecutive times is precluded from taking any section of the examination for two full years, and may be required to obtain additional educational requirements as determined by the board. After the passage of the mandatory two-year period and the completion of any additional educational requirements, the applicant shall file a new application to take the examination as provided in subsection 4.2 of this section. An applicant who fails to pass any parts of the examination fewer than six times may reapply at any time to take the failed parts and shall furnish additional information as requested by the board. Each application shall be accompanied by an examination fee determined by the board, not to exceed the exact cost of the examination or three hundred dollars (\$300).~~

~~4.5. An applicant shall first pass the Fundamentals (SIT) portion of the National Council of Examiners for Engineering and Surveying (NCEES) Examination in order to be eligible to take the West Virginia Professional~~

~~Surveyor's Examination. The Board shall issue a Surveyor in Training Certificate to an eligible applicant who passes the Fundamentals (SIT) portion of the NCEES Examination.~~

~~4.6. In accordance with the policy of the NCEES, no applicant may be granted access to or review of an NCEES examination or the state specific West Virginia State Professional Surveyor's Examination.~~

3.6. Application for PS Licensure

3.6.a. An applicant shall first apply for and pass the FS exam before making application for the next level of examinations.

3.6.b. An applicant shall be an SI in good standing at the time of application.

3.6.c. An applicant shall meet all of the education or experience requirements as set forth in §30-13A-8 and approved by the Board prior to sitting for the next level of examinations.

3.7. Comity Applicants

3.7.a. The Board shall honor the acts of licensing, certification or registration of surveyors by licensing agencies in other states and countries, and shall accordingly license those surveyors upon proper application and payment of fees and upon verification(s) from all jurisdiction(s) in which the applicant has been licensed; Provided that the requirements to obtain a license or certificate or to become registered in the other state or country are found by the Board to be at least as great as those prescribed by WV Code §30-13A-1 et seq. and by rule of the Board.

3.7.b. Notwithstanding the provisions of subdivision 3.7.a. of this rule, an individual licensed as a professional surveyor in a jurisdiction other than WV shall apply for and pass the WV exam as a condition precedent to obtaining a license to engage in the practice of surveying in this state.

3.8. Reinstatement Applicants.

3.8.a. Licensees applying for reinstatement while in expired status or retired status for more than five (5) years shall pay all fees and meet all the current examination requirements at the time of reapplication.

3.8.b. A person who has voluntarily surrendered his or her license shall pay all fees and meet the current licensing requirements at the time of reapplication.

§23-1-4. Examination for Licensure or Certification

4.1. Examinations Generally

4.1.a. The Board will conduct at least one (1) examination per year at a time and place as determined by the Board.

4.1.b. The scope of the examination and methods of procedure for the FS and PS exams are determined by the NCEES.

4.1.c. The scope of the examination and methods of procedure for the WV exam or any other licensing or endorsement examination will be determined by the Board.

4.1.d. An applicant who fails to pass any parts of the examination fewer than six (6) times may reapply at any time to take the failed parts and shall furnish additional information as requested by the Board.

4.1.e. An applicant who fails to pass any parts of the examination for six (6) attempts is precluded from taking any part of the examination for two (2) full years, and may be required to obtain additional educational requirements as determined by the Board. After the passage of the mandatory two-year period and the completion of any additional educational requirements, the applicant shall file a new application under the current licensing requirements as provided in §30-13A-1 et seq.

4.1.f. An applicant who fails to attend an examination for which he/she has been scheduled will forfeit the fee paid for the examination, except, with a request to and approval by the Board, the fee may be applied to the next test administration in the case of illness, death in the family, or other unavoidable causes for absence. Failure of an applicant to attend an examination for which he/she has been scheduled does not count as a failure of the examination.

4.1.g. An applicant who does not pass the examination for which they have applied within six (6) years from the date of application shall be required to submit a new application under the current examination requirements as provided in §30-13A-1 et seq.

4.2. Examination Results

4.2.a. The Board shall provide written notification to an applicant that he or she passed or failed the examination.

4.2.b. Applicants are not permitted access to, or review of, any exam administered by the Board.

§23-1-5. Issuance Of License; Notice Of Expiration; Renewal; Renewal Fee; Display; Certificate of Authorization; Professional Limited Liability Company (PLLC) §23-1-5. Survey Certificates and License

5.1. Certificates and Licenses Generally.

5.1.a. The Board may issue a duplicate license upon payment of a fee of ten dollars (\$10.00). When a certificate or license is lost, stolen, destroyed or mutilated, the Board may issue a duplicate certificate or license upon written request by a licensee in good standing and a payment of a fee as set forth in 23 CSR 4 et seq.

5.1.b. A licensee or certificate holder is required to notify the Board within thirty (30) days of any change in name, address, employment, or other relevant information.

5.2. Surveyor Intern Certificate

5.2.a. Whenever the Board finds that an applicant has passed the FS exam, it shall issue a SI certificate which shall contain the legal name of the SI, the SI number assigned by the Board and the expiration date. All certificates shall expire ten (10) years from the passing date of the FS exam and cannot be renewed.

5.2.b. A certified SI shall display the certificate issued by the Board at his or her principal place of practice.

5.2.c. A person holding a SI certificate shall not be required to pay any fees other than the application and examination fees or a replacement fee as set forth in 23 CSR 4 if the certificate is lost, stolen or damaged.

5.2.d. Pursuant to §30-13A-1 et seq., a surveyor-in-training recognized by the Board prior to the first (1st) day of July, 2004 shall for all purposes be considered a Surveyor Intern under this section.

5.2.e. Pursuant to §30-13A-1 et seq., a Surveyor Intern shall pass the PS and WV exams within ten (10) years of passing the FS exam. If the PS and WV exams are not passed within ten (10) years, then the SI must reapply for the FS exam.

5.2.f. A person recognized by the Board as a surveyor-in-training (SIT) prior to the first (1st) day of July, 2004, shall apply for the WV and PS exams within the following time limits:

5.2.f.1. A person recognized by the Board as a SIT for more than ten (10) years prior to the effective date of this rule shall have one (1) year to apply for the PS and WV exams.

5.2.f.2. A person recognized by the Board as a SIT for less than ten (10) years prior to the effective date of this rule shall apply for the PS and WV exams within ten (10) years of passing the FS exam, unless the aforementioned period expires within the first year this rule is in effect. In such cases, the person will have one (1) year to apply for the PS and WV exam from the effective date of this rule.

5.2.f.3. A person who applies for the PS and WV exams within the time limits specified in this subdivision will be permitted to complete the process as set forth in subsection 4.1. of this rule, except if he or she fail to pass either examination for six (6) attempts. In such cases he or she shall forfeit the SI certification and be required to reapply for the FS exam.

5.2.f.4. A person who fails to apply for the PS and WV exams within the time limits specified in this subdivision shall forfeit his or her SI certification and be required to reapply for the FS exam.

~~5.2. A firm or business entity, including a professional limited liability company, may not engage in, offer to engage in, or hold itself out to the public as being engaged in, the practice of land surveying as defined in W. Va. Code §30-13A-2 without first obtaining a certificate of authorization issued by the Board. No firm shall be issued a certificate without having as its owner or in its employ a licensed professional surveyor. An initial application fee of one hundred dollars (\$100.00), and an annual renewal fee of one hundred dollars (\$100.00) is due on or before December 30 of each year. The Board shall develop the application form and the renewal form for the certificate.~~

5.3. PS License and Certificate

~~5.1.~~ 5.3.a. Whenever the Board finds that an applicant meets all of the requirements for a license to engage in the practice of land surveying, it shall issue the certificate of licensure and the annual license; otherwise the Board shall deny the license.

5.3.b. All licenses, whether original or renewal, expire on the thirtieth (30th) day of June following the date of issuance or renewal and are void without hearing after that date unless renewed in accordance with subsection 5.4. below.

5.3.c. The Board shall prescribe the form of licenses for display by the licensee. A licensee shall display the certificate of licensure and the annual license, issued by the Board, at his or her principal place of practice.

5.3.d. The Board will maintain as a current record those licenses that are in active, inactive, retired or delinquent status. The licenses that have been voluntarily surrendered or in expired or deceased status will be kept as a sedentary record. Sedentary records will not receive renewal mailings or other relevant information from the Board.

5.3.e. A licensee may have his or her license to practice surveying either suspended, revoked or otherwise limited as set forth in 23 CSR 5 et seq.

5.3. A licensee may apply to the Board for a "retired" or "inactive" professional surveyors' status.

5.4. PS License Renewal.

5.4.a. The secretary-treasurer of the Board shall mail to the last known address of every licensee, at least thirty (30) days prior to the July first (1st) expiration of a license, notice of the expiration date and the amount of the renewal fee.

5.4.b. A licensee may renew a license without examination upon meeting the continuing education requirements as set forth in 23 CSR 2 et seq. and submitting an application for a renewal on a form prescribed by the Board and payment to the Board of an annual renewal fee of one hundred dollars (\$100.00) as set forth in 23 CSR 4 et seq.

5.4.c. The Board may deny any application for renewal for any reason which that would justify the denial of an original application for a license.

5.4. Professional surveyors who desire to render services as a professional limited liability company shall comply with the provisions of W. Va. Code §30-13A and this rule and W. Va. Code §31B-13-1 et seq. No person may be a member of a professional limited liability company who is not licensed and legally authorized to render such services by this board; copies of the professional surveyor's current license to practice and the company's valid certificate of authorization shall accompany the application with the Secretary of State.

5.5. PS License Status

5.5.a. Active Status. A licensee is current in all the licensing requirements and is authorized to practice as a PS and be in professional charge of survey projects.

5.5.b. Delinquent Status. If a license is not renewed when due it immediately falls into "delinquent" status, the fee shall increase by twenty dollars (\$20) percent (20%) for each month or fraction of a month that the renewal fee is not paid, up to a maximum of thirty-six (36) months.

5.5.c. Expired Status. No license may be renewed after the failure to renew continues. If a license is not renewed for a period of thirty-six (36) months it immediately falls into "expired" status and may not be renewed. The fact that a license cannot be renewed because of the expiration of a period of thirty-six (36) months shall not prevent a person from making application to reinstate his or her for a new license and meeting all the examination requirements in effect at the time of reapplication.

5.3.2. 5.5.d. Inactive Status. Licensees may apply or reapply for "inactive" status while in active or delinquent status and must pay the annual renewal fee for licensure and any requisite late fees accrued for the license period.

5.5.d.1. The Board shall issue an annual license card noting “Inactive Status” to qualifying applicants.

5.5.d.2. Inactive licensees are not permitted to ~~provide surveying services or receive any compensation for any type of surveying activities conducted in West Virginia~~ practice as a professional surveyor or be in professional charge of survey related work.

5.5.d.3. With supporting documentation, inactive licensees may request exemption from the license renewal fee in the following instances: serving on active duty in the Armed Forces of the United States for a period exceeding 120 consecutive days during that license year; experiencing physical disability; illness; or other extenuating circumstances.

5.5.d.4. Licensees in inactive status are not required to maintain professional development hours (PDHs); however, an inactive licensee who elects to return to the active practice of surveying shall ~~acquire PDHs for each year exempted~~ up to a maximum of 16 PDHs two (2) years’ requirements as set forth in 23 CSR 2 et seq.

5.5.d.5. Licensees in inactive status for four (4) years or more must meet the quadrennial requirements for mandatory continuing education for minimum standards and ethics as set forth in 23 CSR 2 et seq. within the first year of returning to active status.

~~5.3.1-~~ 5.5.e. Retired Status.

5.5.e.1. Licensees who apply for “retired” status must be in active or inactive license status and at least sixty-two (62) years of age at the time of application and must certify in writing to the Board that they are no longer practicing surveying or supervising any employees who perform surveying activities as a professional surveyor and agree not to be in professional charge of survey related work in West Virginia; ~~they are not permitted to affix their P.S. seal to any surveying documents.~~ The change in status will be in effect once the application is approved by the Board.

5.5.e.2. The Board will issue a certificate noting the honorific title of “Professional Surveyor, Retired.”

5.5.e.3. ~~Annual license renewal fees are not required while in retired status.~~ Licensees in retired status will not be required to pay the annual renewal fees or meet the continuing education requirements set forth in 23 CSR 2 et seq.

5.5.e.4. Licensees may apply for retirement before reaching sixty-two (62) years of age in cases of a documented physical disability or debilitating illness.

5.5.e.5. Licensees who have been in retired status for five (5) years or less and elect to return to the active practice of surveying shall acquire delinquent professional development hours (PDHs) for each year retired, up to a maximum of 16 PDHs two (2) years’ requirements as set forth in 23 CSR 2, and shall pay the current license renewal fee. Licensees who have been in retired status for more than five (5) years, except those licensees approved for early retirement due to physical disability or debilitating illness, and elect to return to active status shall be required to meet all the examination requirements in effect at the time of application. The change in status will be in effect when all fees are paid and all requirements are met by the licensee.

5.5.e.6. Licensees in retired status for four (4) years or more must meet the quadrennial requirements for mandatory continuing education for minimum standards and ethics as set forth in 23 CSR 2 et seq. within the first year of returning to active status.

5.5.f. Voluntarily Surrendered Licenses.

5.5.f.1. Licensees who choose to voluntarily surrender his or her license may do so at any time and shall return his or her license to the Board and upon receipt by the Board shall be placed in expired status and the license may only be reinstated under the license requirements in effect at the time of reapplication.

5.5.f.2. A person who has voluntarily surrendered his or her license will not be permitted to practice as a professional surveyor or be in professional charge of survey related work in West Virginia.

5.5.g. Deceased Status. The Board shall place any license or endorsements in deceased status when it learns the licensee has passed away.

~~§23-1-6. Accredited Surveying Curricula.~~

~~6.1. The Board shall approve survey curricula.~~

~~6.2. The Board recognizes the Accreditation Board for Engineering and Technology, Inc. (ABET), as a national accrediting body.~~

~~§23-1-7. Unethical Practices.~~

~~7.1. In addition to the reasons for suspension or revocation of a license set forth in W. Va. Code §§30-1-8(a) or 30-13A-8(b), any licensee who has committed any of the following unethical practices may be subject to suspension or revocation of a license:~~

~~7.2. Signing or affixing a seal to any document prepared by persons who are not employees under supervision of the licensee;~~

~~7.3. Accepting, paying, or offering to pay, either directly or indirectly, any gift, bribe, or other consideration to make an improper survey;~~

~~7.4. Associating with any survey project known by the licensee to be fraudulent or dishonest in character;~~

~~7.5. Failing or refusing to comply with any provision of W. Va. Code §30-13A-1 et seq. or any rule promulgated by the Board or any order or final decision of the Board. For the purposes of this subsection; (1) if any licensee orders, counsels, encourages, incites, supports, helps, or assists another person to fail or refuse to comply with any statutory provision, rule, order or final decision; or, (2) after the failure or refusal, if a licensee helps or assists the other person to avoid detection of the failure or refusal, then the licensee is considered to have also failed or refused to comply;~~

~~7.6. Knowingly or maliciously disseminating false statements which are intended to result in injury to the reputation of a licensee, to diminish the esteem, respect, goodwill or confidence in which the licensee is held, or to deter third persons from associating or dealing with the licensee;~~

~~7.7. Reviewing the work of another land surveyor for the same client, except with the knowledge of the surveyor, or unless the connection of the surveyor with the work has been terminated;~~

~~7.8. Failing to respond within thirty (30) days to written communications from the board and to make available any records relevant to an inquiry or complaint about the licensee's professional conduct. The thirty (30) day period begins on the date when the communication was sent by the board by certified mail with return receipt requested to the last known address of the surveyor;~~

~~7.9. Using advertising that is false, fraudulent, deceptive, misleading or unlawful; or~~

~~7.10. Accepting and undertaking to perform land survey services which the surveyor is not competent to perform without obtaining qualified associates, consultants or employees, or failing to directly supervise the work of subordinates in performing these services.~~

~~§23-1-8. Suspension, Revocation or Discipline Relevant to License; Hearings On Denial Of Application; Judicial Review.~~

~~8.1. The board may at any time upon its own motion and shall upon the verified written complaint of any person conduct an investigation to determine whether there are any grounds for a disciplinary action relevant to a license issued under the provisions of W. Va. Code §§ 30-1-8 or 30-13A and the rules issued by the board. The board may suspend or revoke any license, may impose a fine not to exceed one thousand dollars (\$1,000.00) per infraction, and may issue letters of reprimand, or may impose any combination of these disciplinary actions, when it finds a licensee has: (a) Been convicted of a felony or a crime involving moral turpitude; (b) Obtained a license by means of fraud or deceit; (c) Been incompetent or guilty of fraud, deceit, professional negligence, wilful departure from accepted standards of professional conduct or other misconduct in the practice of land surveying; or (d) Failed or refused to comply with the provisions of W. Va. Code §30-13A-1 et seq. or any reasonable rule promulgated by the board or any order or final decision of the board. Upon a final decision of the Board finding grounds for any disciplinary action, the Board may assess costs against the licensee for reimbursement of the costs of investigation, hearings and other expenses relative to the complaint. The Board shall also suspend or revoke any license if it finds the existence of any ground which would justify the denial of an application for the license if application were then being made for it. Any suspension of a license continues for the period specified in the order of suspension. Revocation of a license shall not preclude application for a new license. The Board shall process the application in the same manner, approve or deny the application and issue or refuse the license on the same grounds as any other application for a license is processed, considered and determined, except that any previous suspension and the revocation may be given weight in deciding whether to approve or deny the application and issue or refuse to issue the license as is meet and proper under all the circumstances.~~

~~8.2. Whenever the Board denies an application for any original or renewal license or suspends or revokes any license, it shall make and enter an order to that effect and serve a copy on the applicant or licensee, as the case may be, by certified mail, return receipt requested. The order shall state the grounds for the action taken and shall require that any license suspended or revoked by the order shall be returned to the Board by the licensee within twenty (20) days after receipt of the order. Any person adversely affected by any order is entitled to a hearing (as to all issues not excluded from the definition of a "contested case" as set forth in W. Va. Code §29A-1-1 et seq.) if, within twenty (20) days after receipt of a copy, the applicant files with the Board a written demand for a hearing. A demand for hearing operates automatically to stay or suspend the execution of any order suspending or revoking a license or denying an application for a renewal license. The Board may require the person demanding the~~

~~hearing to give reasonable security for costs and if the person does not substantially prevail at the hearing costs shall be assessed against the person and may be collected by an action at law or other proper remedy.~~

~~8.3. Any person adversely affected by a decision of the Board rendered after a hearing held in accordance with this rule and the Board's Rule, Disciplinary and Complaint Procedures for Land Surveyors, 23 CSR 3, is entitled to judicial review of the decision. All of the pertinent provisions of W. Va. Code §29A-5-4 apply to and govern judicial review. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1. Legal counsel and services for the Board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.~~

~~§23-1-9. Competency In Field And Office Techniques.~~

~~9.1. A surveyor shall undertake to perform surveying assignments only when qualified by education or experience in the specific technical field of surveying involved.~~

~~9.2. A surveyor may accept an assignment requiring education or experience outside of his or her own field of competence, but only to the extent that his or her services are restricted to those phases of the project in which he or she is qualified. All other phases of the project shall be performed by qualified associates, consultants or employees.~~

~~9.3. A surveyor shall not affix his or her signature and/or seal to any surveying plan or document dealing with subject matter to which he or she lacks competence by virtue of education or experience, nor to any plan or document not prepared under his or her direct supervisory control.~~

~~9.4. In the event a question arises as to the competence of a surveyor to perform a surveying assignment in a specific technical field of surveying which cannot be otherwise resolved to the Board's satisfaction, the Board, either upon request of the surveyor or by its own volition, may require the surveyor to submit to an appropriate examination as determined by the Board.~~

~~§23-1-10. Underground Surveys And Maps; specific technical fields.~~ §23-1-6. Endorsements and Specialized Fields of Practice.

6.1. Experience and Documentation Requirements

~~10.3.~~ 6.1.a. The Board may require an application and examination fee to cover cost incurred for review, verification and examination of a licensee's qualifications and experience to practice in a specific technical specialized field.

6.1.b. The Board may ~~further~~ require an applicant or a surveyor licensee to submit designated records and documentation of surveys to support a claim to experience in a specific technical specialized field of surveying and mapping.

6.1.c. The Board may also require an examination on procedures and knowledge on specific technical specialized fields of surveying and mapping.

6.2. Surface and Underground (SU) Endorsement

~~10.2.~~ 6.2.a. For ~~applicants~~ licensees seeking ~~a certificate~~ an endorsement to engage in underground surveying, the Board may require designated records and documentation of underground surveys to support an applicant's claim of experience.

6.2.b. A licensee must receive the "SU" endorsement before affixing his or her signature and seal on any documents associated with underground surveying.

~~10.1.~~ 6.2.c. Underground surveys and maps shall comply with the requirements in W. Va. Code §22A-2-1 et seq.

~~§23-1-11. Licensing of Nonresident Surveyors.~~

~~11.1.~~ The Board shall honor the acts of licensing, certification or registration of surveyors by licensing agencies in other states and countries, and shall accordingly license those surveyors upon proper application and payment of fees if the applicant has taken and passed in another jurisdiction all sections of the Professional Surveyor's Examination of the National Council of Examiners for Engineering and Surveying (NCEES), and the requirements to obtain a license or certificate or to become registered in the other state or country are found by the Board to be at least as great as those prescribed by W. Va. Code §30-13A-1 et seq. and by rule of the Board.

~~11.2.~~ Notwithstanding the provisions of subsection 11.1 of this section, an individual licensed as a professional surveyor in any other state shall take and pass the state-specific West Virginia State Professional Surveyor's Examination as a condition precedent to obtaining a license to engage in the practice of land surveying in this state.