

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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WEST VIRGINIA
STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Board of Examiners of Land Surveyors TITLE NUMBER: 23

CITE AUTHORITY WV Code Chapter 30-13A

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rules and Regulations for the
Practice of Land Surveying in West Virginia

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Leon K. Spencer, Secretary

STATE OF WEST VIRGINIA
STATE BOARD OF EXAMINERS OF LAND SURVEYORS

105 E. Wiseman Avenue

P.O. Box 925

Fayetteville, West Virginia 25840

Telephone: (304) 574-2980



CHAIRMAN

Bryant W. Bowman
P.O. Box 6
Alum Creek, WV 25003

SECRETARY

Leon K. Spencer
P.O. Box 925
Fayetteville, WV 25840

MEMBER

Dr. Darrell R. Dean, Jr.
West Virginia University
P.O. Box 6101
Morgantown, WV 26505

May 1, 1990

In regard to the proposed rules and regulations for the practice of land surveying, a public comment period was established in lieu of a public hearing. The comment period was from November 6, 1989 to December 29, 1989. During this comment period, only one response was received concerning the proposed rules and regulations. This response was reviewed by the West Virginia State Board of Examiners of Land Surveyors. It was the decision of the Board that the response did not necessitate the changing of the proposed rules and regulations. The response received is herewith attached.

Respectfully submitted,


Leon K. Spencer
Secretary

LKS:bat

Attachment

RECEIVED DEC 26 1989

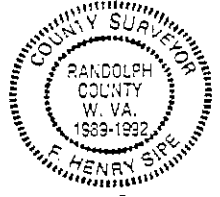
F. HENRY SIPE

LICENSED LAND SURVEYOR & FORESTER

1404 HARRISON AVE. - ELKINS, W. VA. 26241

PHONE 304-636-2465

December 21, 1989



W.Va. State Board of Examiners of Land Surveyors,
P.O.Box 925,
Fayetteville, WV 25840

Gentlemen:

This is in response to your Emergency Rule filed
November 6, 1989 with the Secretary of State.

Notice of the Rule was received by the West Virginia
Association of Land Surveyors on December 14, 1989 and by me
as a member of that Association on December 21. The deadline
for accepting written comments - December 29 - provides
insufficient time to fully study the impact of the Rule.

The official position of the Board of Directors of WVALS
supported the passage of H.B.2275, which provided for an
increase in the fee for taking the exam. However the
individual members of WVALS have not voted on this matter.

There is some question in my mind whether the proper
rule-making procedure has been followed as prescribed by
Section 29A-3-15 of the Code and in accord with the
Administrative Law Division's "Rule Making Guide and Primer"
as prepared by Rich Hartman several years ago.

I note that the Emergency Rule does not state what the
cost of the various exams will be, but only lists the cost
of two recent exams. Nor does the Rule show the overall
financial condition of the Board of Examiners.

The real thrust of higher costs to take exams is: Do
higher charges for exams actually "protect the safety and
welfare of the citizens of West Virginia", or in the
alternative, do higher costs actually hurt the safety and
welfare of its citizens? I would therefore question the
answer to Fiscal Note 4 B and 4 C which states that there
will be "no economic impact of the Rule on citizens".

Although licensing of professions in general is
supposed to protect the safety and welfare of citizens, the
West Virginia Code does not list that as the specific purpose of
licensing land surveyors.

In the limited time I have to study this matter, I can
only hope that you will increase the cost of exams as little
as possible.

Respectfully,

MEMBER

F. Henry Sipe
F. Henry Sipe LLS

WEST VIRGINIA ASSOCIATION OF LAND SURVEYORS
AMERICAN CONGRESS ON SURVEYING AND MAPPING
SOCIETY OF AMERICAN FORESTERS



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

Charleston 25305

CHARLES O. LORENSEN
SECRETARY

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent to the proposal of the following rule proposed by the Board of Examiners of Land Surveyors of the State of West Virginia: Chapter 30-13A; Series 1; Practice of Land Surveying in West Virginia.

Signed this 7th day of November, 1989.

A handwritten signature in cursive script, reading "Charles O. Lorensen", followed by a stylized monogram or initials.

CHARLES O. LORENSEN
Secretary of Tax and Revenue

JUSTIFICATION

In order for the West Virginia State Board of Examiners of Land Surveyors to protect the safety and welfare of the citizens of West Virginia by licensing competent persons engaged in the practice of surveying land, it is necessary to increase the cost of the examination to the applicants. A cost analysis for preparing and administering the land surveyor exam (see attachment) made it readily apparent that the Board could no longer operate at the current examination fee.

The board respectfully states that the fee previously stated in the Rules and Regulations for the Practice of Land Surveying in West Virginia is no longer feasible [initial application fee of Seventy Dollars (\$70.00) - repeat examination fee of Thirty Dollars (\$30.00)]. West Virginia Code Chapter 30, Article 13A (1969) as amended April 7, 1989, and effective July 7, 1989, provides at 30-13A-5(c): "An applicant shall pay to the board with his application an examination fee for the purpose of covering the cost of the exam not to exceed two hundred dollars." Thus this board seeks to amend its Rules and Regulations 3.2 and 3.4 of Section 23-1-3 Rules and Regulations for Practice of Land Surveying in West Virginia and increase the examination fee as the board shall determine not to exceed two hundred.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules & Regulations for the Practice of Land Surveying in West Virginia

Type of Rule: X Legislative Interpretive Procedural

Agency WV Board of Examiners of Land Address P.O. Box 925
Surveyors
Fayetteville, West Virginia 25840

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Personal Services	0.00	0.00	0.00	0.00	0.00
Current Expense	0.00	0.00	0.00	0.00	0.00
Repairs and Alterations	0.00	0.00	0.00	0.00	0.00
Equipment	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00

2. Explanation of above estimates:

This has no fiscal impact on State government.

3. Objectives of these rules:

To increase examination fees for the land surveyor examination.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: October 24, 1989

Signature of Agency Head or Authorized Representative

Betty A. Greadway, Clerk

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Board of Examiners of Land Surveyors

EMERGENCY RULE TITLE: Rules & Regulations for the Practice of Land Surveying
in West Virginia

1. Date of filing: _____

2. Statutory authority for promulgating the emergency
rule: Code of West Virginia, Chapter 30-13A

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it
amend or repeal a current legislative rule?

It amends a current legislative rule.

5. Has the same or similar emergency rule previously been
filed and expired?

No

6. State, with particularity, those facts and circumstances
which make the emergency rule necessary for the immediate
preservation of public peace, health, safety or welfare.

See explanation and justification in #8.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

In order for the West Virginia State Board of Examiners of Land Surveyors to protect the safety and welfare of the citizens of West Virginia by licensing competent persons engaged in the practice of surveying land, it is necessary to increase the cost of the examination to the applicants. A cost analysis for preparing and administering the land surveyor exam (see attachment) made it readily apparent that the Board could no longer operate at the current examination fee.

The board respectfully states that the fee previously stated in the Rules and Regulations for the Practice of Land Surveying in West Virginia is no longer feasible [initial application fee of Seventy Dollars (\$70.00) - repeat examination fee of Thirty Dollars (\$30.00)]. West Virginia Code Chapter 30, Article 13A (1969), as amended April 7, 1989, and effective July 7, 1989, provides at 30-13A-5(c): "An applicant shall pay to the board with his application an examination fee for the purpose of covering the cost of the exam not to exceed two hundred dollars." Thus this board seeks to amend its Rules and Regulations 3.2 and 3.4 of Section 23-1-3 Rules and Regulations for Practice of Land Surveying in West Virginia and increase the examination fee as the board shall determine not to exceed two hundred.

23 CSR 1

TITLE 23
LEGISLATIVE RULE
BOARD OF EXAMINERS OF LAND SURVEYORS
SERIES 1
RULES AND REGULATIONS FOR PRACTICE
OF LAND SURVEYING IN WEST VIRGINIA

Rule to be amended:

§23-1-3. Qualifications Of Applicants For Licenses; Exceptions; Fees; Examinations.

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

3.2. Any applicant for such a license shall submit an application on forms provided by the board. Such 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 hereunder, or persons authorized in another state or country to engage in the practice of land surveying, who have knowledge of his work). An applicant shall pay to the board with his application a license fee ~~of seventy dollars (\$70.00)~~, as the board shall determine not to exceed two hundred dollars, or any increased amount mandated by the Legislature.

3.3. Examinations shall be at least once each year at such time and place as the board shall determine.

3.4. the scope of the examination and methods of procedure shall be determined by the board. An applicant who fails to pass any part(s) of the examination may reapply at any time to take the failed part(s) and shall furnish additional information as requested by the board. Each such application shall be accompanied by a license fee ~~of thirty dollars (\$30.00)~~, to be determined by the board, or any increased amount mandated by the Legislature.

Language to be stricken crossed out and language to be added underlined.

TITLE 23
LEGISLATIVE RULE
BOARD OF EXAMINERS OF LAND SURVEYORS

SERIES I
RULES AND REGULATIONS FOR PRACTICE
OF LAND SURVEYING IN WEST VIRGINIA

§23-1-1. General.

1.1. Scope. - These rules and regulations are promulgated by the State Board of Examiners of Land Surveyors to govern licensing of Land Surveyors in West Virginia.

1.2. Authority. - W. Va. Code §30-13A-4(a)

1.3. Filing Date. - April 19, 1988

1.4. Effective Date. - July 1, 1988

§23-1-2. General Purpose.

2.1. These Rules and Regulations with the Minimum Standards of Practice for the performance of Boundary Surveys are promulgated for the purpose of administration and enforcement of Chapter 30, Article 13A of the West Virginia Code.

§23-1-3. Qualifications Of Applicants For Licenses; Exceptions; Fees; Examinations.

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

3.2. Any applicant for such a license shall submit an application on forms provided by the board. Such 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 hereunder, or persons authorized in another state or country to engage in the practice of land surveying, who have knowledge of his work). An applicant shall pay to the board with his application a li-

cense fee of ~~seventy dollars (\$70.00)~~, as the board shall determine not to exceed two hundred dollars, or any increased amount mandated by the Legislature.

3.3. Examinations shall be held at least once each year at such time and place as the board shall determine.

3.4. The scope of the examination and methods of procedure shall be determined by the board. An applicant who fails to pass any part(s) of the examination may reapply at any time to take the failed part(s) and shall furnish additional information as requested by the board. Each such application shall be accompanied by a license fee of ~~thirty dollars (\$30.00)~~, to be determined by the board, or any increased amount mandated by the Legislature.

§23-1-4. Issuance Of License; Notice Of Expiration; Renewal; Renewal Fee; Display.

4.1. 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 forthwith issue to him such license; and otherwise the board shall deny the same. All licenses, whether original or renewal, shall expire on the thirtieth day of June following the date of issuance or renewal. The secretary-treasurer of the board shall mail to every licensee, at least thirty (30) days prior to the expiration of such license, notice of the expiration date and the amount of the renewal fee. A license may be renewed without examination upon application for a renewal on a form prescribed by the board and payment to the board of an annual renewal fee of thirty dollars (\$30.00), or any increased amount mandated by the Legislature. If a license is not renewed when due, the fee shall increase one dollar (\$1.00) per month for each month or fraction thereof that such renewal fee is not paid, up to a maximum of thirty-six (36) months. No license shall be renewed after expiration of said period of

thirty-six months, and the fact that a license cannot be renewed because of the expiration of said period of thirty-six (36) months, and the fact that a license cannot be renewed because of the expiration of said period of thirty-six (36) months shall not prevent such person from making application for a new license. The board may deny any application for renewal for any reason which would justify the denial of an original application for a license. The board shall prescribe the form of licenses and each such license shall be conspicuously displayed by the licensee at his principal place of practice. A duplicate license may be issued upon payment of a fee of five dollars (\$5.00), or any increased amount mandated by the Legislature.

§23-1-5. Accredited Surveying Curricula.

5.1. The power to approve survey curricula rests with the Board.

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

§23-1-6. Unethical Practices.

6.1. Any licensee hereunder who has committed any of the following unethical practices could be subject to suspension or revocation of a license. This is not to be interpreted to exclude suspension or revocation of a license for the reasons set forth in W. Va. Code §30-13A-8(b).

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

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

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

6.5. Failing or refusing to comply with any provision of article 13A, Chapter 30 of the West Virginia Code or any rule or regulation 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 such statutory provision, rule or regulation, order or final decision; or, (2) after such failure or refusal, if a licensee helps or assists such other person to avoid detection of such failure or refusal, then the licensee shall be deemed to have also failed or refused to so comply.

6.6. Disseminating false statements which tend, naturally and proximately, to result in injury to the reputation of a licensee, to diminish the esteem, respect, goodwill or confidence in which such licensee is held, or to deter third persons from associating or dealing with him.

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

6.8. 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 shall begin on the date when such communication was sent by the board by certified mail with return receipt requested to the last known address of the surveyor.

6.9. Advertising that is false, fraudulent, deceptive, misleading or unlawful.

6.10. Accepting and undertaking to perform land survey services which the surveyor is not competent to perform without obtaining qualified associates, consultants or employees.

§23-1-7. Suspension Of Revocation Of License; Procedure For Hearings On Denial Of Application For An Original Or Renewal License Or Suspension Or Revocation Of Any License; Judicial Review.

7.1. 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 the suspension or revocation of a license issued under the provisions of West Virginia Code §30-13A and the rules and regulations issued by the board. The board shall suspend or revoke any license when it finds the holder thereof

has: (a) Been convicted of a crime involving moral turpitude; (b) Obtained a license by means of fraud or deceit; (c) Been incompetent, grossly negligent, or guilty of fraud, deceit or other misconduct in the practice of land surveying; or (d) Failed or refused to comply with the provisions of Article 13A or Chapter 30 of the Code or any reasonable rule and regulation promulgated by the board or any order or final decision of the board. 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 such license if application were then being made for it. Any suspension of a license shall continue for the period specified in the order of suspension. Revocation of a license shall not preclude application for a new license, which application shall be processed in the same manner and the application approved or denied and the license issued or refused 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 such weight in deciding whether to approve or deny such application and issue or refuse to issue such license as is meet and proper under all the circumstances.

7.2. Whenever the board shall deny an application for any original or renewal license or shall suspend or revoke any license, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license suspended or revoked thereby shall be returned to the board by the holder within twenty (20) days after receipt of said order. Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in article 1, chapter 29A (§29A-1-1 et seq.) of the West Virginia Code) if, within twenty (20) days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate 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 such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against him and may be collected by an action at law or other proper remedy. Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less

than ten (10) and not more than thirty (30) days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing. All of the pertinent provisions of article 5 (§29A-5-1 et seq.), chapter 29A of the Code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing. Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time for the fees and shall be enforced, as specified in section 1 (§29A-5-1), article 5 of said chapter 29A, and all of the said section 1 provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder. At any such hearing the person who demanded the same may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation. After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section 3 (§29A-5-3), article 5, chapter 29A of the Code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any. The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section 10 (§30-13A-10) of the Code.

7.3. Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section 9.2., Rules and Regulations, shall be entitled to judicial review thereof. All of the pertinent provisions of section 4 (§29A-5-4), article 5, chapter 29A of the Code shall apply to and govern such judicial review with like effect as if the provisions of said section 4 were set forth herein. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section 1 (§29A-6-1), Article 6, Chapter 29A of the Code. 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 assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§23-1-8. Competency In Field And Office Techniques.

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

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

8.3. He shall not affix his signature and/or seal to any surveying plan or document dealing with subject matter to which he lacks competence by virtue of education or experience, nor to any such plan or document not prepared under his direct supervisory control.

8.4. 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 violation, may require him to submit to an appropriate examination as determined by the Board.

§23-1-9. Underground Surveys And Maps.

9.1. Underground surveys and maps shall comply with the requirements in chapter 22A, article 2, section 1 of the West Virginia Code.

§23-1-10. License By Comity.

10.1. The Board recognizes the principle of comity with other states and countries, and will honor the acts of licensing, certification or registration of surveyors by licensing agencies in those jurisdictions, and will accordingly license such surveyors without examination, if the requirements to obtain a license or certificate or to become registered in such other state or country are found by the board to be at least as great as those prescribed by article 13A, chapter 30 of the Code and by rule and regulation of the Board.

STATE OF WEST VIRGINIA
STATE BOARD OF EXAMINERS OF LAND SURVEYORS

105 E. Wiseman Avenue

P.O. Box 923

Fayetteville, West Virginia 25840

Telephone: (304) 574-2980



CHAIRMAN

Bryant W. Bowman
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MEMBER

Dr. Darrell R. Dean, Jr.
West Virginia University
P.O. Box 6101
Morgantown, WV 26505

August 8, 1989

The following is a breakdown of the costs for preparation and administering the land surveyor examinations in October 1988 and April 1989:

NCEE Exam Costs	\$3352.50
Association Dues	850.00
WV Exam Cost	800.00
Clerical Expenses	2407.84
Travel Expenses for Board	575.00
Wages for Board	568.00
Legal Fees	150.00
Office Overhead	1338.47

TOTAL \$10041.81

\$10041.81 divided by 51 applicants = \$196.90 (cost per exam)

Clerical expenses includes 20% of the clerk's yearly salary, insurance, matching social security and retirement paid by the Board.

Office overhead includes 20% of a year's expenses for supplies, postage, telephone, rent, liability insurance and advertising costs.

These costs were taken from the period of July 1, 1988 to June 30, 1989.