

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF THE SECRETARY OF STATE
DIVISION OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Betty A. Treadway
Betty A. Treadway, Clerk
WV Board of Examiners of Land Surveyors



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.



CHARLES O. LORENSEN
Secretary of Tax and Revenue

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 appli-

cant shall pay to the board with his application a ~~license~~ an examination fee of seventy dollars (\$70.00), as the board shall determine not to exceed the exact cost of the examination or in any instance to exceed two hundred dollars (\$200.00), 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~~ an examination fee of thirty dollars (\$30.00), to be determined by the board not to exceed the exact cost of the examination, 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 fee of thirty dollars (\$30.00),~~ forty dollars (\$40.00), 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 is not paid, up to a maximum of thirty-six (36) months. No license shall be renewed after expiration of said period.

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.



WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Room M-438, State Capitol
Charleston, West Virginia 25305
(304) 340-3286

FILED
JUL -3 PM 3:30

Senator Lloyd Jackson, Co-Chairman
Delegate Patrick H. Murphy, Co-Chairman

Debra A. Graham, Counsel
Michael McThomas, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

June 24, 1990

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Leon K. Spencer, Secretary
State Board of Exam. of Land Surveyors
105 E. Wiseman Avenue
P. O. Box 925
Fayetteville, WV 25840

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Rules and Regulations for the Practice of Land
Surveying in West Virginia

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: F. Henry Sipe, LLS
1404 Harrison Ave.
Elkins, WV 26241