

#1229
CHAIRMAN
Rayd R. Sales
Box 63
Kingwood 26537

WEST VIRGINIA

STATE BOARD OF EXAMINERS OF LAND SURVEYORS

August 11, 1981



MEMBER
Frank H. Barker
Star Rt. Box 232
Racine 25165

SECRETARY
F. Henry Sipe
1404 Harrison Ave.
Elkins 26241
Office 636-7278
Home 636-2465

The Honorable A. James Manchin,
Secretary of State,
State Capitol,
Charleston, WV 25305

Dear Mr. Manchin,

Enclosed are these items:

1. Copy of STATE REGISTER FILING form.
2. Two copies of Notice of Public Hearing.
3. Two copies of proposed rules and regulations similar to those received in your office on February 23, 1981.
4. Two copies of a letter sent this day to Mr. John Homburg, Attorney for the Legislative Rule-Making Review Committee.

The Board of Examiners met on July 25, 1981. After considering the transcript of the public hearing held April 10, 1981 and other evidence submitted, the Board finds that these rules and regulations are reasonable and necessary for the proper regulation of land surveying in West Virginia. We have determined that they should be placed in effect.

The effective date of these rules will be forty five days after they are presented to the Committee at its next regular meeting.

Respectfully,

F. Henry Sipe
F. Henry Sipe,
Secretary of the Board

P.S. The Index of Administrative Regulations filed in your office on June 4, 1976 covers these proposed rules and needs no change.

FILED IN THE OFFICE OF

SECRETARY OF STATE
T.H.S. DATE 8/12/81

CHAIRMAN
Floyd R. Stiles
Box 63
Kingwood 26637

WEST VIRGINIA

STATE BOARD OF EXAMINERS OF LAND SURVEYORS

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THIS DATE 8/12/81



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. James Manchin
SECRETARY OF STATE

STATE REGISTER FILING

I, F. Henry Sipe, Secretary of the Board
Name Title or Position

State Board of Examiners of Land Surveyors hereby submit to record
Department or Division

in the State Register on 8 1/2" x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics or material not covered by existing rules and regulations;
- () proposed rules and regulations superseding rules and regulations already on file;
- () a notice of hearing;
- (X) findings and determinations;
- (X) rules and regulations; or
- () other - specify ()

This filing pertains to

Chapter 30

Article 13A

Series I

Section various

Page No. 1 and 2

August 11, 1981
Date Submitted

F. Henry Sipe
Signature of Person Authorizing this Filing



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. James Manchin
SECRETARY OF STATE

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NOTICE OF PUBLIC HEARING

Pursuant to Chapter 29A Article 3 of the West Virginia Code of 1931 as amended, the West Virginia Board of Examiners of Land Surveyors shall convene a public hearing at 7:30 PM on Friday, April 10, 1981, in Conference Room A and B, Capitol Complex, Building 7, ¹⁹⁰⁰~~1800~~ Washington Street, East, Charleston, West Virginia, for the purpose of taking evidence pertaining to the filing of new and amended rules and regulations governing the practice of land surveying in this State.

All persons desiring to submit data, objections, suggested amendments, views, evidence and arguments orally or in writing may be present at the hearing or may submit written evidence to the Secretary of the Board on or before April 10, 1981. A copy of the proposed new and amended rules and regulations may be obtained from the Secretary of the Board of Examiners of Land Surveyors at 1404 Harrison Avenue, Elkins, West Virginia 26241; telephone (304) 636-7278, or if no answer, 636-2465.

February 19, 1981

F. Henry Sipe, Secretary

FILED IN THE OFFICE OF

SECRETARY OF STATE
THIS DATE 2/12/81

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Pursuant to Chapter 29A Article 3 of the West Virginia Code of 1931 as amended, the West Virginia Board of Examiners of Land Surveyors shall convene a public hearing at 7:30 PM on Friday, April 10, 1981, in Conference Room A and B, Capitol Complex, Building 7, ¹⁹⁰⁰~~1000~~ Washington Street, East, Charleston, West Virginia, for the purpose of taking evidence pertaining to the filing of new and amended rules and regulations governing the practice of land surveying in this State.

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FILED IN THE OFFICE OF

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THIS DATE 8/12/81

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Board of Examiners of Land Surveyors
Chapter 30-13A
Series I
(1981)

SUBJECT: RULES AND REGULATIONS FOR THE PRACTICE OF LAND SURVEYING IN WEST VIRGINIA.
(New language is underlined and language to be deleted is stricken through,
except that regulations 7.08 through 7.13 are new.)

SECTION 3. Satisfactory Records

3.01. Satisfactory Records, ~~as described in Chapter 30, Article 13A, Section 5(4)3,~~ shall include plats, descriptions of surveys, certificates or reports of surveys, field notes, calculations for latitude, departure, coordinates, area, variation, observations for true meridian and related records.

SECTION 5. Examinations

5.01. The content of examinations will be taken from the subjects in Section 6 of these Rules and Regulations and from related subjects.

SECTION 7. Unethical Practices

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

7.08. Calling, naming, describing, designating or otherwise alleging that any service, performed by a licensed land surveyor or any person under the supervision of said surveyor, is a survey, land survey, mortgage survey, loan survey, title insurance survey or similar wording, unless the service is performed in accord with the provisions of Article 13A of Chapter 30 of the Code of West Virginia or the regulations promulgated thereunder. If the work is described as a mortgage inspection or similar title, state in the title block or other visible place that "This is not a land survey".

7.09. Signing, sealing or approving plats, descriptions or reports that are not in accord with Article 13A of Chapter 30 of the Code of West Virginia or any reasonable rule or regulation promulgated by the board, nor any documents that were not prepared under supervision of the person responsible.

7.10. Failing to respond within 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 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.

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

7.12. Accepting and undertaking to perform land survey services which the surveyor is not competent to perform.

7.13. Failing to give adequate supervision to subordinates.

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 8/12/81

SECTION 8. Field and Office Techniques

8.06. Bearings of subdivision lines shall be from the true (astronomic) meridian. Bearings of other surveys may be from magnetic or true, but if true, it shall be so stated on the plat and in the description. ~~The surveyor must be able to determine astronomic meridian by at least one suitable method.~~ Grid north of the West Virginia Coordinate System may be shown on plats.

8.11. Plats should be clear, show the results of the work, and be suitable for recording and photocopying. Boundary lines of the property surveyed shall be solid and heavier than tie lines, which shall be solid or dashed, but lighter and narrower.

8.12. Guides for the accuracy of surveys to be striven for are:

CLASS	ERROR OF CLOSURE	THEORETICAL UNCERTAINTY	
		Foot	mm
Rural	1:1500	1.00	300
City lot	1:5000	0.10	30
Underground	1:5000	0.10	30
Subdivision (urban)	1:7500	0.10	30
Commercial	1:10000	0.05	15

PRECISION OF MEASUREMENT

CLASS	BEARINGS	DISTANCES		VERTICAL ANGLE
		Foot	mm	
Rural	5'	0.20	60	15'
City lot	1'	0.01	3	05'
Underground	1'	0.01	3	02'
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Commercial	1'	0.01	3	01'

SECTION 9. Plats. Plats Shall Contain the Following Data.

9.05. Type of markers at corners, and if artificial, whether found (fd) or set. Reference markers optional provided they are in the description. For rural surveys, show bearing and distance ties to at least two parent tract corners or significant adjoining corners. For city lots, show bearing and distance to original markers in the block or to edge of three nearest streets, including half or full street width dimensions, and to other significant property markers. For subdivisions, in addition to those described above, show ties to at least two markers of any adjoining subdivisions and to any public triangulation stations in the vicinity.

9.15. A caption or heading stating: "Plat of Survey of (or for) . . ." or some similar wording. Date of plat and revisions, name, address, signature and seal of the surveyor in charge. Certificates that may be required. The name of any surveyor-in-training in charge of the work under supervision of the licensee may be shown.

SECTION 10. Descriptions of Rural Surveys Property Boundary Line Surveys

SECTION 16. Compensation and Expenses of the Board.

16.01. The Board hereby sets a rate of ~~\$24.00 per day or \$7.00 per hour~~ \$4.00 per hour for the time of its members while performing official work of the Board.

16.02. The Board hereby sets a rate of ~~15¢ per mile~~ established by the Governor for the use of its personal vehicles in official travel of Board members.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
State Board of Examiners of Land Surveyors
Chapter 30-13A
Series I
(1981)

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DATE: August 11, 1981

TO: Mr. John Homburg, Legislative Rule-Making Review Committee,
State Capitol, Charleston, West Virginia 25305

FROM: West Virginia State Board of Examiners of Land Surveyors
1404 Harrison Avenue, Elkins, West Virginia 26241

SUBJECT: Information supplied to the Committee

RULES: New and amended Rules and Regulations (seventeen copies enclosed)

INFORMATION FURNISHED:

1. Please give the citation of the statute which authorized your promulgation of these rules.

Section 30-13A-4(a)(3) of the State Code authorized our Board to "promulgate reasonable rules and regulations implementing the provisions of this article . . . "

2. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

A notice of a public hearing was sent to the Secretary of State on February 20, 1981. A copy of ~~the~~ the Notice of Public Hearing is attached.

b. Was the hearing held on the date scheduled and were all interested parties permitted to be heard?

The hearing was held on the date scheduled and all persons present were permitted to be heard.

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

On August 11, 1981, we filed with the Secretary of State a letter telling of our findings and determination that the proposed rules and regulations are reasonable and should be placed in effect. A copy of that letter is attached.

d. Is the transcript of all evidence received preserved and available for public inspection and copying?

A transcript of the hearing has been preserved and is available in the office of the Secretary for public inspection and copying.

3. For all rules promulgated:

a. When did you file the rules in the State Register together with notice of a hearing time, date and location?

The proposed rules and notice of hearing were filed in the Office of the Secretary of State on February 23, 1981.

b. Did you give at least 30 days notice and no more than 60 days notice?

At least 30 days notice and not more than 60 days notice was given.

c. What other notice, including advertising, did you give of the hearing?

Public notice of the hearing was provided by publication of a Legal Notice in the Elkins Inter-Mountain newspaper on February 24, 1981; by publication of a Legal Notice in the Charleston Gazette newspaper on February 26, 1981; by posting on the front door of the Kanawha County Courthouse on February 27, 1981; by mailing a copy of the Notice and proposed rules and regulations to the West Virginia Association of Land Surveyors at 207 Hillcrest Avenue, Morgantown, WV 26505, and to each Chapter of that Association. A copy of the rules was requested by and mailed to Wallace Pachaud, P. O. Box 600, Middletown, Ohio 45043.

d. Was the hearing held on the scheduled date? If not, why not?

The hearing was held on April 10, 1981, the scheduled date.

e. Was the opportunity given for all interested parties to submit data, objection, suggested amendments, views, evidence or arguments?

An opportunity was given for all persons to speak on the proposed rules and regulations.

f. List all persons who appeared at the hearing and what type of comment they made about the proposed rules (for, against, suggested and amendments). Please attach a copy of the minutes of the hearing.

One person appeared at the hearing and made oral comment. He was Robert Nelson McCoy, 913 Traction Park, Monongah, WV 26554. The main thrust of his comments seemed to be that he and other licensed land surveyors are at a disadvantage when competing with engineers for the same type of work, because surveyors must follow the law and regulations, whereas engineers do not have to. We agree with that comment. Surveyors have tried for several years to require engineers to follow the surveyors rules for public protection, without success. S.B. 231 was defeated in the Senate this year by vote of 20-11.

Mr. McCoy requested, and was given permission to submit written comments on the proposed rules and regulations. Seventeen copies of his letter of April 23, 1981 are enclosed.

A letter about the proposed rules was received from Darrell R. Dean, Jr., President of the West Virginia Association of Land Surveyors, 207 Hillcrest Avenue, Morgantown, WV 26505. Mr. Dean supports the rule changes. Seventeen copies of his letter of April 24, 1981 are enclosed.

The proposed rules and the transcript of the April 10, 1981 hearing was reviewed by the Directors of the West Virginia Association of Land Surveyors on July 18, 1981. A letter of July 21, 1981 from Daniel L. Wheeler, new President of the Association, again supports the proposed rules. Seventeen copies of it are enclosed.

A copy of the transcript of the minutes of the April 10 hearing is enclosed.

g. On what date did you file in the State Register notice of your action on the proposed rules together with the text of such rules?

On August 11, 1981 we filed with the Secretary of State a copy of the proposed rules along with a letter advising that we found the rules to be reasonable and that we approved them.

h. Are your proposed rules for the purpose of implementing a federally subsidized or assisted program? If so, give details of the program.

The rules are not for implementing a federally-subsidized or assisted program.

Explanation of Proposed Rules and Fiscal Note

Following are the reasons for promulgating each rule change together with its fiscal effect:

3.01. Section 30-13-5(b)3 expired May 25, 1972 and should be deleted. No fiscal effect.

5.01. This broadens the field from which exam questions may be selected, particularly from the questions prepared by the Land Surveys Division of the National Council of Engineering Examiners. About 45 States use these questions. No fiscal effect.

7.07. We believe the word "consent" is unnecessary, often impractical and not appropriate in any case and should be removed. Any removal in part or of the whole would reduce survey expenses slightly. There would be little or no fiscal effect on the State.

7.08. This rule is designed to prevent surveyors from leading the public to believe that they are receiving a complete property boundary survey with markers set, when in fact the surveyor merely makes a visual inspection so a purchaser can obtain a loan. What has been going on borders on fraud. There will be no State fiscal effect, but it should reduce the number of complaints against surveyors. No financial effect on surveyors. It is merely "calling a spade, a spade,"

7.09. This rule puts in words a basis for considering incompetency or negligence as listed in Section 30-13A-8(b) of the Code. Most other professions and States use a rule of this kind. No fiscal effect.

7.10. This is designed to prevent a surveyor from ignoring a letter of inquiry from the Board. A complete response within 30 days is not intended, but an acknowledgement at least is desired. New York applies this rule to all its professions. No fiscal effect.

7.11. This effectuates an opinion of the Attorney General, and rulings of the U. S. Supreme Court. No fiscal effect.

7.12. This is another basis to describe negligence or incompetency under Section 30-13A-8(b) of the Code. No fiscal effect.

7.13. This has the same purpose as 7.09 and 7.12. No fiscal effect.

8.06. The meridian sentence should be removed because the subject is already covered in Regulation 6.13. Grid north should be added to effectuate Section 30-13A-17 of the Code, wherein State Plane Coordinates were approved for optional use by the 1980 Legislature. No fiscal effect.

8.11. This clarifies drafting procedures. No fiscal effect.

8.12. Allows surveys of rural subdivisions to be less than 1 in 7500 accuracy. No fiscal effect on the State but reduces costs to subdividers of rural land. For example, it is not reasonable to measure distances in the woods to 0.01 foot accuracy.

9.05. Regulation 10.02 requires "found" or "set" to be stated in the description. Many states require this on plats and we concur. No fiscal effect.

9.15. This improves the clarity of plats to assist County Clerks in indexing plats presented for recording. It helps distinguish between original and revised plats and allows a trainee to be recognized. No fiscal effect.

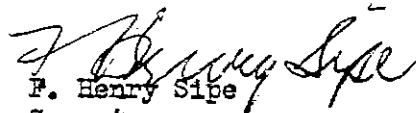
SECTION 10. This clarifies and makes more specific what descriptions are meant. No fiscal effect.

16.01. This increases the compensation of board members, which has been \$3.00 per hour since 1969. This is comparable to Section 30-1-11 of the Code which provides that board members shall receive \$35.00 per day.

16.02. This provides for use of the Governor's rate set for mileage for employee's cars, and avoids the need for Legislative review each time a change is needed. No fiscal effect.

We request your early approval of the proposed rules and regulations.

Respectfully,


F. Henry Sipe
Secretary

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Following are the reasons for promulgating each rule change together with its fiscal effect:

3.01. Section 30-13-5(b)3 expired May 25, 1972 and should be deleted. No fiscal effect.

5.01. This broadens the field from which exam questions may be selected, particularly from the questions prepared by the Land Surveys Division of the National Council of Engineering Examiners. About 45 States use these questions. No fiscal effect.

7.07. We believe the word "consent" is unnecessary, often impractical and not appropriate in any case and should be removed. Any removal in part or of the whole would reduce survey expenses slightly. There would be little or no fiscal effect on the State.

7.08. This rule is designed to prevent surveyors from leading the public to believe that they are receiving a complete property boundary survey with markers set, when in fact the surveyor merely makes a visual inspection so a purchaser can obtain a loan. What has been going on borders on fraud. There will be no State fiscal effect, but it should reduce the number of complaints against surveyors. No financial effect on surveyors. It is merely "calling a spade, a spade."

7.09. This rule puts in words a basis for considering incompetency or negligence as listed in Section 30-13A-8(b) of the Code. Most other professions and States use a rule of this kind. No fiscal effect.

7.10. This is designed to prevent a surveyor from ignoring a letter of inquiry from the Board. A complete response within 30 days is not intended, but an acknowledgment at least is desired. New York applies this rule to all its professions. No fiscal effect.

7.11. This effectuates an opinion of the Attorney General, and rulings of the U. S. Supreme Court. No fiscal effect.

7.12. This is another basis to describe negligence or incompetency under Section 30-13A-8(b) of the Code. No fiscal effect.

7.13. This has the same purpose as 7.09 and 7.12. No fiscal effect.

8.06. The meridian sentence should be removed because the subject is already covered in Regulation 6.13. Grid north should be added to effectuate Section 30-13A-17 of the Code, wherein State Plane Coordinates were approved for optional use by the 1980 Legislature. No fiscal effect.

8.11. This clarifies drafting procedures. No fiscal effect.

8.12. Allows surveys of rural subdivisions to be less than 1 in 7500 accuracy. No fiscal effect on the State but reduces costs to subdividers of rural land. For example, it is not reasonable to measure distances in the woods to 0.01 foot accuracy.

9.05. Regulation 10.02 requires "found" or "set" to be stated in the description. Many states require this on plats and we concur. No fiscal effect.

9.15. This improves the clarity of plats to assist County Clerks in indexing plats presented for recording. It helps distinguish between original and revised plats and allows a trainee to be recognized. No fiscal effect.

SECTION 10. This clarifies and makes more specific what descriptions are meant. No fiscal effect.

16.01. This increases the compensation of board members, which has been \$3.00 per hour since 1969. This is comparable to Section 30-1-11 of the Code which provides that board members shall receive \$35.00 per day.

16.02. This provides for use of the Governor's rate set for mileage for employee's cars, and avoids the need for Legislative review each time a change is needed. No fiscal effect.

We request your early approval of the proposed rules and regulations.

Respectfully,


F. Henry Sipe
Secretary



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25308

A. James Manchin
SECRETARY OF STATE

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STATE REGISTER FILING

I, F. Henry Sipe, Secretary
Name Title or Position

State Board of Examiners of Land Surveyors hereby submit to record
Department or Division

in the State Register on 8 1/2" x 11" paper two (2) copies of

(X) proposed rules and regulations concerning topics or
material not covered by existing rules and regulations;

(X) proposed rules and regulations superseding rules and
regulations already on file;

(X) a notice of hearing;

() findings and determinations;

() rules and regulations; or

() other - specify (extra set enclosed for acknowledging receipt) .

This filing pertains to

Chapter 30

Article 13A

Series I

Section various

Page No. 1 and 2

February 20, 1981
Date Submitted

F. Henry Sipe
Signature of Person Authorizing this
Filing