

Form #7

FILED

2001 JUN 15 P 3: 04

OFFICE OF THE SECRETARY OF STATE

July 27, 2001

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

CITE AUTHORITY: WVC 30-13A-7a, 30-13A-4

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____ 1

TITLE OF RULE BEING AMENDED: 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: _____

Gregory A. Smith, Chairman
Authorized Signature

SCANNED

\$4.80

EMERGENCY RULE QUESTIONNAIRE

DATE: June 15, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Board of Examiners of Land Surveyors

PO Box 1248
Oak Hill, WV 25901
(304) 465-1653

for drafting questions: Marjorie Martorella
744-3264 or 740-867-3636

EMERGENCY RULE TITLE: Rules and Min. Standards for the Practice of Land Surveying

1. Date of filing June 15, 2001
2. Statutory authority for promulgating emergency rule:
Code 29A-3; Code 30-13A-4 (as amended by SB720, 2001 Regular Legislative Session)
3. Date of filing of proposed legislative rule: June 15, 2001
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amends current 23CSR1
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.
The Legislature established a deadline of July 1, 2001 for the Board of Examiners of Land Surveyors to file an emergency rule implementing its statutory duties with respect to regulation of the profession. The Rule is necessary to put the Board in compliance with its duties established by statute. The Board needs to hire permanent staff in this fiscal year to monitor continuing education and administer complaint and disciplinary processes. The fee increases permitted in this Rule will enable it to comply with the deadline established by statute.

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.

Code 30-13A-4 established the deadline of July 1, 2001

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

The Legislature determined that the Board must implement Rules necessary to bring it into compliance with its statutory duties and protect the public against unqualified practitioners, and that the Board of Examiners of Land Surveyors must file an emergency rule by July 1, 2001.

Proposed Amendments to 23CSR1
Rules and Minimum Standards for the Practice of Land Surveying

SUMMARY

This rule establishes Rules for the licensing of land surveyors in West Virginia and minimum standards for the practice of land surveying. It defines certain acts which would make a licensee subject to disciplinary action and provides for regulation of the profession by the Board of Examiners of Land Surveyors. It also permits to Board to increase certain fees to maximum levels set in the Rule.

STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE

Code §30-1-1 et seq. established certain requirements incumbent upon all licensing boards related to the regulation of occupations and professions. Prior to the enactment of this article, the practices of Board of Examiners of Land Surveyors emphasized protecting the public by assuring that members of the profession were qualified. Although Code §30-13A does provide for discipline of land surveyors, it is primarily a registration law. This is the first time the Board has reviewed its existing rules since the enactment of Article 1. The rule puts the Board in compliance with its additional statutory duties to monitor the practice of the profession, provide for continuing education, and establish a process to discipline licensees who violate certain minimum standards. The fee increases permitted by the rule are necessary to support full-time staff to effectively administer the Board's functions. During the Regular 2001 Legislative Session, the Legislature enacted SB 720, requiring the Board to file this rule an emergency rule not later than July 1, 2001.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Minimum Standards for the Practice of Land Surveying in West Virginia

Type of Rule: X Legislative Interpretive Procedural

Agency: Board of Examiners of Land Surveyors

Address: PO Box 1248
Oak Hill, WV 25901

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

The rule permits the Board to raise fees to a maximum set in the rule but increases would not take place until further action of the Board.

3. Objectives of These Rules:

To provide for the examination and licensure of land surveyors and to protect the public through the enforcement of minimum practice standards.

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:

Land Surveyors support the administration of all Board Functions through fees and the rule permits the increase of fees.

C. Economic Impact on Citizens/Public at Large.

None.

Date: June 13, 2001

Signature of Agency Head or Authorized Representative:

Gregory A. Smith, Chairman

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TITLE 23

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LEGISLATIVE RULE

BOARD OF EXAMINERS OF LAND SURVEYORS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 1

**RULES AND MINIMUM STANDARDS 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 §§30-1-7a and 30-13A-4(a)

1.3. Filing Date-

1.4. Effective Date-

§23-1-2. General Purpose.

2.1. These Rules ~~and Regulations~~ with the Minimum Standards ~~of Practice for the performance of Boundary Surveys~~ for the practice of land surveying are promulgated for the purpose of administration and enforcement of Chapter 30, ~~Article~~ Articles 1 and 13A of the West Virginia Code.

§23-1-3. Definitions

3.1. Terms Defined by Statute -- Terms defined in W. Va. Code §30-13A-2 have the same meanings when used in this rule unless the context or subject matter clearly requires a different interpretation.

3.2. 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:

3.2.1 "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:

3.2.1.a. False swearing or perjury in a court proceeding related to the applicant's practice of

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land surveying;

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

3.2.1.c. Any other felony offense demonstrating a lack of business integrity or business honesty.

3.2.2. "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.

3.2.2. "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.

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

3.2.3.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;

3.2.3.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;

3.2.3.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;

3.2.3.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.

4.1. 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.

4.2. Any applicant for such a license shall submit an application on forms provided by the board. Such The application shall be verified and shall contain a statement of the applicant's education and

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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 or her 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 application an examination fee 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~~ three hundred dollars (\$300.00).

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

4.4. 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 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 must file a new application to take the examination as provided in subsection 3.2 of this section. An applicant who fails to pass any part(s) of the examination fewer than six times 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 an examination fee to be determined by the board not to exceed the exact cost of the examination ~~or any increased amount mandated by the Legislature.~~

4.5. No applicant may take the West Virginia Professional Surveyor's Examination without having previously passed the Fundamentals (SIT) portion of the National Council of Examiners for Engineering and Surveying (NCEES) Examination. The Board shall issue a Surveyor-in-Training Certificate to an eligible applicant who passes the Fundamentals (SIT) portion of the NCEES Examination.

§23-1-5. Issuance Of License; Notice Of Expiration; Renewal; Renewal Fee; Display; Certificate of Authorization.

5.1. 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~~ the license; and otherwise the board shall deny the ~~same~~ license. 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

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board of an annual renewal fee of ~~forty dollars (\$40.00)~~, determined by the board, ~~not to exceed one hundred dollars (\$100.00) 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 up to twenty per cent (20%) of the annual renewal fee~~ 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~~ may be renewed after ~~expiration of said failure to renew continues for a period of thirty-six months, and but~~ the fact that a license cannot be renewed because of the expiration of ~~said~~ a period of thirty-six (36) months shall not prevent such a 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~~ for display by the licensee at his or her 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 determined by the board, not to exceed fifty dollars (\$50.00).~~

5.2 ~~No firm or business entity shall 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 Chapter 30 Article 13A-2 of the Code of West Virginia, without first obtaining a certificate of authorization issued by the Board. No firm shall be issued such 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 annual renewal fee not to exceed fifty dollars (\$50.00) shall be due on or before June 30 of each year. The application form, and the renewal form for said certificate shall be devised by the Board. Any firm or business entity consisting of three individuals or less is exempt from paying the renewal fee when it renews its certificate.~~

§23-1-6. Accredited Surveying Curricula.

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

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. 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 §§ 30-1-8(a) or 30-13A-8(b).

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

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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 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~~ is considered to have also failed or refused to so comply.

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

7.7. 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.

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 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.

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

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 ~~the suspension or revocation of a~~ disciplinary action relevant to a license issued under the provisions of West Virginia Code §§ 30-1-8 or 30-13A and the rules ~~and regulations~~ issued by the board. The

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board ~~shall~~ 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 the holder thereof 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 ~~grossly negligent~~ 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 Article 13A of Chapter 30 of the Code or any reasonable rule ~~and regulation~~ 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 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 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.

8.2. Whenever the Board ~~shall deny~~ denies an application for any original or renewal license or ~~shall suspend or revoke~~ suspends or revokes 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~~ The 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~~ the 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~~ the applicant files with the Board a written demand for ~~such~~ a 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~~ the person 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~~

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~~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.~~

8.3. 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~~ this rule and 23CSR3, Disciplinary and Complaint Procedures for Land Surveyors, 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.

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

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

9.2. ~~He~~ The surveyor may accept an assignment requiring education or experience outside of his 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 such project shall be performed by qualified associates, consultants or employees.

9.3. ~~He~~ The 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 such plan or document not prepared under his or her direct supervisory

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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 him the surveyor to submit to an appropriate examination as determined by the Board.

§23-1-10. Underground Surveys And Maps; specific technical fields.

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

10.2. For applicants seeking a certificate to engage in underground surveying, the Board may require designated records and documentation of underground surveys to support an applicant's claim of experience. The Board may further require an applicant or a surveyor to submit designated records and documentation of surveys to support a claim to experience in a specific technical field of surveying.

§23-1-11. Licensing of nonresident surveyors.

11.1. 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~~ other states and countries, and will accordingly license such surveyors without examination 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 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.

11.2 Notwithstanding the provisions of subsection 10.1 of this section, an individual licensed as a professional surveyor in any other state must 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.