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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

*Building 1, Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX*

email: tanders@mail.wvnet.edu

*Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel*

November 13, 2001

*Joseph A. Altizer, Associate Counsel
Connie A. Bowling, Associate Counsel
Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Gregory Smith
Land Surveyors, Board of Examiners
P.O. Box 1248
Oak Hill, WV

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rules and Minimum Standards for the Practice of Land Surveying in West Virginia, 23CSR1**

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
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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Board of Examiners of Land Surveyors

Subject: Rules and Minimum Standards for the Practice of Land Surveying in West Virginia, 23CSR1

PERTINENT DATES

Filed for public comment: June 15, 2001

Public comment period ended: July 16, 2001

Filed following public comment period: July 27, 2001

Filed LRMRC: July 27, 2001

Filed as emergency: June 15, 2001

Fiscal Impact: The fiscal note does not reflect the increased fees to be received by the Board.

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ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 relating to definitions is new. It defines the following terms: "Felony"; "Owner"; "Professional negligence"; and "Willful departure from acceptable standards of professional conduct".

Section 4 relates to qualifications of applicants for licenses, exceptions, fees and examinations. The current rule provides that the Board may charge a fee equal to the cost of the examination not to exceed \$200. The proposed rule would increase the maximum of the fee to \$300.

The current rule allows an applicant who fails to pass any part of the examination to retake the examination. The proposed rule adds language precluding any person who fails the exam on six consecutive occasions from taking the examination for two full

years. The Board may require that person to obtain additional educational requirements.

Language has also been added requiring an applicant to pass the Fundamentals "SIT" portion of the National Council of Examiners for Engineering and Surveying Examination prior to taking the West Virginia Professional Surveyors Examination.

Section 5 relates to the issuance of a license; notice of expiration; renewal; renewal fee; display; and certificate of authorization. The current rule provides for an annual renewal fee of \$40 with an increase of \$1 per month for each month the renewal fee is not paid. The proposed fee would allow the Board to determine a renewal fee of up to \$100 with an increase of 20 percent of the annual renewal fee for each month the fee is not paid. The current rule has a duplicate license fee of \$5. The proposed rule would allow the Board to determine a fee of up to \$50.

Language has been added prohibiting a firm or business entity from engaging in the practice of land surveying without first obtaining a certificate of authorization. The firm must be owned by a professional surveyor or have a professional surveyor in its employ. The initial application fee is \$100 with an annual renewal fee of up to \$50. Firms or business entities employing three individuals or less are exempt from the renewal fee.

Section 7 relates to unethical practices. Failing to directly supervise the work of subordinates performing land surveying services has been added as an unethical practice.

Section 8 relates to suspension, revocation or discipline relevant to a license; hearings on denial of applications; and judicial review. It has been amended to allow the Board to impose a fine not to exceed \$1,000 as a disciplinary action as well as issue letters of reprimand. It allows the Board to assess costs, upon finding grounds for any disciplinary action, against the licensee for reimbursement of costs of investigations, hearings and other expenses relative to the complaint. Language regarding hearing procedures has been deleted.

Section 10 relates to underground surveys and maps; specific technical fields. It provides that the Board may require

designated records and documentation of underground surveys to support an applicant's claim of experience.

Section 11 relates to the licensing of nonresident surveyors. It requires an applicant to have taken and passed, in another jurisdiction, all sections of the National Council of Examiners for Engineering and Surveying Examination. It requires an individual licensed in another state to take and pass the state specific West Virginia State Professional Surveyors Examination as a condition precedent to obtaining a license in this State.

AUTHORITY

Statutory authority: W.Va. Code, §30-13A-4, which provides, in part, as follows:

(a) The board shall have the power and duty to:

...(3) Promulgate reasonable rules implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.

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TITLE 23
LEGISLATIVE RULE
BOARD OF EXAMINERS OF LAND SURVEYORS

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~~ This rule is 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~~ This Rule with the Minimum Standards of Practice for the performance of Boundary Surveys for the practice of land surveying are is promulgated for the purpose of administration and enforcement of ~~Chapter 30, Article 13A~~ W. Va. Code §30-1-1 et seq. and §30-13A-1 et seq. of the West Virginia Code.

§23-1-3. Definitions

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

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

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

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

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board with his or her application an examination fee as determined by the board shall determine not to that does not 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 a time and place as determined by 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 parts 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 shall file a new application to take the examination as provided in subsection 4.2 of this section. An applicant who fails to pass any parts of the examination fewer than six times may reapply at any time to take the failed parts and shall furnish additional information as requested by the board. Each 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 three hundred dollars (\$300).

4.5. An applicant shall first pass the Fundamentals (SIT) ^{portion} ~~portion~~ of the National Council of Examiners for Engineering and Surveying (NCEES) Examination in order to be eligible to take the West Virginia Professional Surveyor's Examination. The Board shall issue a Surveyor-in-Training Certificate to an eligible applicant who passes the Fundamentals (SIT) portion of the NCEES Examination.

§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~~ immediately 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 a license, notice of the expiration date and the amount of the renewal fee. ~~A license may be renewed~~ A licensee may renew a license 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 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~~ an amount determined by the Board, not to exceed twenty per cent (20%) of the annual renewal fee for each month or fraction thereof of a month that such the renewal fee is not