

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2 ☐

Do Not Mark In This Box

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2003 JUL -2 P 2:04

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Legislative CITE AUTHORITY: 30-14A-4(a) and 30-1-7a

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rules and Minimum Standards for Practice of Land Surveying in WV

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 1, 2003 AT 8:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Leon K. Spencer, Secretary
West Virginia State Board of Examiners
of Land Surveyors
P. O. Box 390
Flatwoods, WV 26621-0390

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Gregory A. Smith
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 23-1 Rules and Minimum Standards for Practice of Land Surveying in WV

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV State Board of Examiners of Land Surveyors

Address: P. O. Box 390

Flatwoods, WV 26621-0390

1. Effect of Proposed rule:

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

2. Explanation of Above Estimates:

None

3. Objectives of These Rules:

Changes Certificate of Authorization time period, increases COA renewal fees, and removes COE exemption; implements new PLLC legislation; and precludes applicant's review of licensing examination.

Rule Title: 23-1 Rules and Minimum Standards for Practice of Land Surveying in WV

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: JUL 1 2003

Signature of Agency Head or Authorized Representative:

Gregory A. Smith

West Virginia State Board of Examiners of Land Surveyors

Summary of Proposed Revisions, Title 23, Series I

This rule provides the rules and minimum standards for practice of land surveying West Virginia. The proposed modifications would:

- change the time period for the Certificates of Authorization from a fiscal year to a calendar year basis; grant the Board authority to increase the renewal fees from \$50 to \$100; and eliminate the exemption for firms of 3 people or less;
- implement the provisions of S.B. 381, which added professional surveyors to the professions that may form professional limited liability companies; and
- preclude applicant's access to and review of any licensing examination.

**TITLE 23
LEGISLATIVE RULE
BOARD OF EXAMINERS OF LAND SURVEYORS**

**SERIES 1
RULES AND MINIMUM STANDARDS FOR PRACTICE
OF LAND SURVEYING IN WEST VIRGINIA**

FILED

2003 JUL -2 P 2:04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§23-1-1. General.

1.1. Scope. -- 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. This Rule with the Minimum Standards for the practice of land surveying is promulgated for the purpose of administration and enforcement of W. Va. Code §§30-1-1 et seq. and 30-13A-1 et seq.

§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;

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

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

3.1.2. "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.

3.1.3. "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.

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

3.1.4.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;

3.1.4.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;

3.1.4.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; or

3.1.4.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 shall meet the requirements set forth in W. Va. Code §30-13A-5.

4.2. Any applicant for a license shall submit an application on forms provided by the board. The 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, or persons authorized in another state or country to engage in the practice of land surveying, who have knowledge of the applicant's 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 or her application an examination fee determined by the board that does not exceed the exact cost of the examination or three hundred dollars (\$300.00).

4.3. Examinations shall be held at least once each year at a time and place as determined by the board.

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 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 application shall be accompanied by an examination fee determined by the board, not to exceed the exact cost of the examination or three hundred dollars (\$300).

4.5. An applicant shall first pass the Fundamentals (SIT) 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.

4.6. In accordance with the policy of the NCEES, no applicant may be granted access to or review of an NCEES examination or the state-specific West Virginia State Professional Surveyor's Examination.

§23-1-5. Issuance Of License; Notice Of Expiration; Renewal; Renewal Fee; Display; Certificate of Authorization; Professional Limited Liability Company (PLLC).

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 immediately issue the license; otherwise the board shall deny the license. All licenses, whether original or renewal, 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 a license, notice of the expiration date and the amount of the renewal fee. 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, determined by the board, not to exceed one hundred dollars (\$100.00). If a license is not renewed when due, the fee shall increase an amount determined by the Board, not to exceed twenty per cent (20%) of the annual renewal fee for each month or fraction of a month that the renewal fee is not paid, up to a maximum of thirty-six (36) months. No license may be renewed after the failure to renew continues for a period of thirty-six months, but the fact that a license cannot be renewed because of the expiration of a period of thirty-six (36) months shall not prevent 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 for display by the licensee at his or her principal place of practice. A duplicate license may be issued upon payment of a fee determined by the board, not to exceed fifty dollars (\$50.00).

5.2. A firm or business entity, including a professional limited liability company, may not 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 W. Va. Code §30-13A-2 without first obtaining a certificate of authorization issued by the Board. No firm shall be issued 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 an annual renewal fee ~~of fifty dollars (\$50.00)~~, determined by the Board, not to exceed one hundred dollars (\$100.00) is due on or before ~~June 30~~ December 30 of each year. The Board shall develop the application form and the renewal form for the certificate. ~~Any firm or business entity consisting of three individuals or less is exempt from paying the renewal fee when it renews its certificate.~~

5.3. A licensee may apply to the Board for a “retired” or “inactive” professional surveyors’ status with the requirements, fees and certificate determined by the Board.

5.4. Professional surveyors who desire to render services as a professional limited liability company shall comply with the provisions of W. Va. Code §30-13A and this rule and W. Va. Code §31B-13-1 et seq. No person may be a member of a professional limited liability company who is not licensed and legally authorized to render such services by this board; copies of the professional surveyor’s current license to practice and the company’s valid certificate of authorization shall accompany the application with the Secretary of State.

§23-1-6. Accredited Surveying Curricula.

6.1. The Board shall approve survey curricula.

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. In addition to the reasons for suspension or revocation of a license set forth in W. Va. Code §§30-1-8(a) or 30-13A-8(b), any licensee who has committed any of the following unethical practices may be subject to suspension or revocation of a license:

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

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 W. Va. Code §30-13A-1 et seq.

or any rule 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, order or final decision; or, (2) after the failure or refusal, if a licensee helps or assists the other person to avoid detection of the failure or refusal, then the licensee is considered to have also failed or refused to comply;

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

7.7. Reviewing the work of another land surveyor for the same client, except with the knowledge of the surveyor, or unless the connection of the 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 begins on the date when the communication was sent by the board by certified mail with return receipt requested to the last known address of the surveyor;

7.9. Using advertising that is false, fraudulent, deceptive, misleading or unlawful; or

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 a disciplinary action relevant to a license issued under the provisions of W. Va. Code §§ 30-1-8 or 30-13A and the rules issued by the board. The board 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 a licensee 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 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 W. Va. Code §30-13A-1 et seq. or any reasonable rule 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 the 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 continues for the period specified in the order of suspension. Revocation of a license shall not preclude application for a new license. The Board shall process the application in the same manner, approve or deny the application and issue or refuse the license 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 weight in deciding whether to approve or deny the application and issue or refuse to issue the license as is meet and proper under all the circumstances.

8.2. Whenever the Board denies an application for any original or renewal license or suspends or revokes any license, it shall make and enter an order to that effect and serve a copy on the applicant or licensee, as the case may be, by certified mail, return receipt requested. The order shall state the grounds for the action taken and shall require that any license suspended or revoked by the order shall be returned to the Board by the licensee within twenty (20) days after receipt of the order. Any person adversely affected by any order is entitled to a hearing (as to all issues not excluded from the definition of a "contested case" as set forth in W. Va. Code §29A-1-1 et seq. if, within twenty (20) days after receipt of a copy, the applicant files with the Board a written demand for a hearing. A demand for hearing operates 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 the hearing to give reasonable security for costs and if the person does not substantially prevail at the hearing costs shall be assessed against the person and may be collected by an action at law or other proper remedy.

8.3. Any person adversely affected by a decision of the Board rendered after a hearing held in accordance with this rule and the Board's Rule, Disciplinary and Complaint Procedures for Land Surveyors, 23 CSR 3, is entitled to judicial review of the decision. All of the pertinent provisions of W. Va. Code §29A-5-4 apply to and govern judicial review. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of W. Va. Code §29A-6-1. 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 or her 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. A surveyor shall undertake to perform surveying assignments only when qualified by education or experience in the specific technical field of surveying involved.

9.2. A surveyor may accept an assignment requiring education or experience outside of his or her 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 the project shall be performed by qualified associates, consultants or employees.

9.3. A 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 plan or document not prepared under his or her direct supervisory 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 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 W. Va. Code §22A-2-1.

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 and mapping. The Board may also require an examination on procedures and knowledge on specific technical fields of surveying and mapping

10.3. The Board may require an application and examination fee to cover cost incurred for review, verification and examination of a licensee's qualifications and experience to practice in a specific technical field.

§23-1-11. Licensing of Nonresident Surveyors.

11.1. The Board shall honor the acts of licensing, certification or registration of surveyors by licensing agencies in other states and countries, and shall accordingly license those surveyors 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 the other state or country are found by the Board to be at least as great as those prescribed by W. Va. Code §30-13A-1 et seq. and by rule of the Board.

11.2. Notwithstanding the provisions of subsection 11.1 of this section, an individual licensed as a professional surveyor in any other state shall 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.

West Virginia State Board of Examiners of Land Surveyors

Summary of Proposed Revisions, Title 23, Series I

This rule provides the rules and minimum standards for practice of land surveying West Virginia. The proposed modifications would:

- change the time period for the Certificates of Authorization from a fiscal year to a calendar year basis; grant the Board authority to increase the renewal fees from \$50 to \$100; and eliminate the exemption for firms of 3 people or less;
- implement the provisions of S.B. 381, which added professional surveyors to the professions that may form professional limited liability companies; and
- preclude applicant's access to and review of any licensing examination.