

Form #3

FILED

2003 AUG -1 P 5:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Leon K. Spencer, Secretary
WV State Board of Examiners of Land
Surveyors

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 1, 2003

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WV State Board of Examiners of Land Surveyors
P. O. Box 390
Flatwoods, WV 26621-0390
304-765-0315

LEGISLATIVE RULE TITLE: Rules and Minimum Standards for Practice of Land Surveying
in West Virginia

1. Authorizing statute(s) citation 30-1-7a and 30-14A-4(a)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 2, 2003

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 1, 2003

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 1, 2003

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Leon K. Spencer, Secretary

WV State Board of Examiners of Land Surveyors

P. O. Box 390

Flatwoods, WV 26652-0390

phone: 304-765-0315

fax: 304-765-3016

e-mail: wvbels@mail.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. 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.

N/A

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

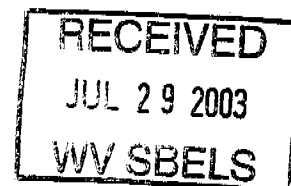
Public Comments:

"All" licensees were advised in a May 16, 2003, letter that was included with their annual license renewal application that the Board planned to revise its Series 1 rules and each of the proposed revisions were outlined. Only one written comment was received as a result of that mailing (it was officially submitted during the comment period). Also notice was provided to the WV Association of Land Surveyors via its liaison when the Board adopted the proposed changes at its April 15 meeting. On July 18, all licensees were mailed a notice of the comment period, along with the proposed revisions.

Three comments addressed the proposal to eliminate the COA exemption for firms of 3 people or less.

Responses:

The COA is meant to reassure the public that they are retaining the services of an authorized surveying business with a licensed professional on staff. A majority of the complaints that are filed with the Board stem from licensees who only do occasional surveys, who improperly supervise their employees, or who are improperly registered or licensed as a business entity. Without a COA, all of these problems make it easier for unlicensed people to perform substandard surveys behind the scenes.



109 Belcher Road
Charleston, WV 25311
July 29, 2003

State Board of Examiners of Land Surveyors
P.O. Box 390
Flatwoods, West Virginia 26621-0390

Dear Sirs:

I would like to express my opposition to the proposed Legislative Rule Changes that would increase the annual cost of the "certificate of authorization" from \$50 to \$100 and remove the exemption for small businesses with less than three employees.

There are many surveyors in this state such as I, who do only an occasional land survey and for which the cost of the surveyors license and "certificate of authorization" are becoming prohibitively expensive. As a dual licensee having both a Professional Engineering license and a Professional Surveyor license, it is becoming increasingly difficult to justify continuing to maintain my surveyor's license. Further, compared to the cost of maintaining my Professional Engineering license and the value I receive from it, I feel that I am not getting my value from the Professional Surveyor license.

Sincerely,

Roger L. Russell, PE, PS (1836)

To: Board of Examiners of Land Surveyors
From: Charles R. Sypolt, PLS
Re: Rule Changes
Date: July 29, 2003

Proposed Changes in Series 1 Rules

I think that two of the three proposed rule changes as set forth in the letter sent by the Board of Examiners of Land Surveyors in my renewal notice are good ones. I do not think that the one exemption for firms of 3 people or less effective January 1, 2004 would be a good change for the following reasons.

1. The certificate of authorization was "sold" as a enforcement tool so that the Board could determine who was under of direct supervision of what licensed professional. It now is included with a letter concerned with financial problems. What other surrounding states other than Ohio has this requirement? Why should licensees who have paid the price in education and/or experience and a renewal fee on their license pay another additional fee to practice a "profession".

The last persons to pay an additional fee should be the small companies. Many of the small firms service a few counties and do a lot of boundary surveys which are not very lucrative. Penalizing small companies only helps them to fail and thereby deprive the public of needed surveyors. If these are the practitioners that are causing expenditures for investigations, then the Board should require reimbursements to the Board by the offender. These monies unlike fines can be kept in the Board finances.

2. It appears that the Board had an increase in receipts from \$ 66,156.72 in fiscal year 2001 to \$144,727.58 in fiscal year 2002. This may calculate as a 216% increase. I wish my revenues in anything would increase by this amount. They have now changed the license renewal fee from \$50 the \$80. The renewal costs for the surrounding states are as follows: Virginia-\$80, Kentucky-\$75, Ohio-\$16, Pennsylvania- \$12.50 per year or \$25 per two years. One can ask why are we paying this relative high fee?

3. The Board offers seminars in ethics and standards which are required for licensure. Is this a conflict of interest? The revenues help to support the expenses for the board and should reduce the renewal fees and eliminate the need for any certificate. The Board has additional costs attributed to monitoring continuing education, but this should be reduced in future years as everyone knows what is expected and licensees attend more relevant courses.

4. Perhaps the retired status for surveyors should be set at 65 or at least tied to the current sliding age of retirement and not set at 62.

5. Many of the expired licenses were dated as 6-30-2002 and some of these may renew

this year.

6. The Board has been very active and built a good question bank for the West Virginia portion of the licensing examination. Most of the cost of setting up this bank and the consultants should be eliminated by this time. This does not add revenue but it does lessen expenses.

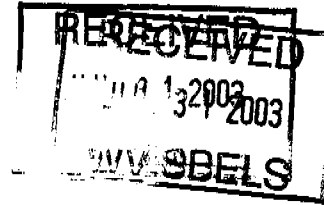
7. The Board and the Investigation Committee have worked diligently to reduce the backlog of complaints. Mr. Marshall Robinson has been a strong leader in this important struggle. Hopefully this activity of the Board can become less as the offenders quit, die, or get tired of paying for investigations in which they are found guilty of incompetence or negligence in doing their duty. Items 6 and 7 are primary duties of the Board and they have done an outstanding job in these areas.

This Board has been very active and this costs a lot of money. They have employed an excellent staff. "Every man is a debtor to his profession". The question is how much debt can the practitioner stand? The Association dues have increased for the last several years because we did not have the foresight to realize the financial impact of continuing education on the association. The national organization dues keep going up. We are required to attend continuing education courses which is a good thing, but we lose money by not being able to work during that time, and in many cases we have to pay registration, travel, meal, and lodging expenses for these activities. In a time when the economy is not good, the State is reducing budgets, and my retirement has taken a big hit thanks to corporate thieves is not a good time to ask for increases in funding.

Let me say that currently the COA proposal will not directly affect me in a business, so I "have no ax to grind" in this discussion. I do think that the Board needs to look at its revenues and expenses carefully and do some planning. It is always easy to ask for more money, but more difficult to cut expenses. In dealing with my wife and our personal finances, the latter usually wins out.

I now object that the changes were filed the first of July and the information was typed on the 18th and I received the official notice on the 25th. When all comments were to be filed by the 31st and this is the busiest time of the year for surveyors, do you think this is good notice? I certainly do not think so. I realize the Board is trying to make positive changes, but the profession does not need these changes without proper input.

July 28, 2003



State of West Virginia
State Board of Examiners of Land Surveyors
P.O. Box 390
Flatwoods, WV 26221

Att: Mr. Leon K. Spencer, Secretary

Re: Proposed Legislative Rule Changes

Dear Mr. Spencer,

In response to the proposed legislative rule changes, I would like to make the following comments. I would like for the board to reconsider striking the statement "Any firm or business entity consisting of three individuals or less is exempt from paying the renewal fee when it renews its certificate" from paragraph 5.2.

I do not feel that this is fair to the professional surveyor whose main source of income does not come from surveying, but rather either only does an occasional survey on the side just to keep in practice or just keeps their certificate current in case they ever want to go back into surveying full time.

Please reconsider striking this exemption statement, or consider modifying it to read that any firm consisting of one individual is exempt from paying the renewal fee, when it renews its certificate.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "K. L. Skelton".

Keith L. Skelton

Professional Surveyor No. 906

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.

West Virginia State Board of Examiners of Land Surveyors

Statement of Circumstances, Series 1

Certificate of Authorization

Change the time period for the Certificates of Authorization (COA) from a fiscal year to a calendar year basis -- Licenses expire for nearly 1600 individual licensees and 500 business entities (COAs) on June 30. This change would enable the two Board staff members to more adequately review and efficiently process the certificate of authorization applications and renewals after the individual licenses have been reissued. The license renewal process must be completed before the COAs can be issued since the licenses must be current for the surveyor in charge and other licensed surveyors listed with the company. In addition, the change would also provide a revenue source at mid-point in the fiscal year and eliminate the need for additional staffing to review both applications during the same timeframe.

Relative to the exemption for firms with 3 persons or less by waiving the \$50 fee, we want to point out that the processing time allows the administrative staff to check for compliance with other state agencies such as the Bureau of Employment Programs and to identify the professional surveyor who will be responsible for work performed by the specified business. It takes the same amount of time to renew a COA for a ten-person firm as for a two-person firm.

The COA is meant to reassure the public that they are retaining the services of an authorized surveying business with a licensed profession on staff. For example, last year businesses applied for COAs without a licensed surveyor on staff; there were other instances where the surveyor in charge had to be informed that his licensees weren't currently active as he had assumed; and instances where an inactive licensee applied for a COA. Furthermore, another businesses had no supervision of the in-state employees, resulting in fraudulent signing and sealing activities. The COA provides a good checks-and-balances system.

Grant the Board authority to increase the renewal fees from \$50 to \$100 -- This change would simply increase the cap from \$50 to \$100; there has been no Board action to propose an increase from \$50 to \$100. (No fee increase to licensees at this time.)

Eliminate the exemption for firms of 3 people or less -- The COA is meant to reassure the public that they are retaining the services of an authorized surveying business with a licensed professional on staff. A majority of the complaints that are filed with the Board stem from licensees who only do occasional surveys, who improperly supervise their employees, or who are improperly registered or licensed as a business entity. Without a COA, all of these problems make it easier for unlicensed people to perform substandard surveys behind the scenes.

Professional Limited Liability Companies

Implement the provisions of S.B. 381, which added professional surveyors to the professions that may form professional limited liability companies -- Self explanatory.

Licensing Exams

Preclude applicant's access to and review of any licensing examination -- This would conform state policy to that of the National Council of Examiners for Engineering and Surveying. WV would then be in compliance with the NCEES policy for utilizing the national standardized test.

■
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 cap on COA renewal fees, and removed 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: 8-1-03

Signature of Agency Head or Authorized Representative:

Leon A. Spencer

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

FILED

2003 AUG -1 P 5:48

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

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.