

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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2007 JUN -7 PM 3:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: WV Board of Professional Surveyors TITLE NUMBER: 23

RULE TYPE: Legislative CITE AUTHORITY: 30-13A-5, 30-1-7a

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Fees for Surveyors and Surveying Firms

DATE OF PUBLIC HEARING: July 9, 2007 TIME: 9 a.m.

LOCATION OF PUBLIC HEARING: Flatwoods Days Inn

2000 Sutton Lane

Sutton, WV 26601

COMMENTS LIMITED TO: ORAL ☒, WRITTEN ☒, BOTH ☒

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: _____

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Fees for Surveyors and Surveying Firms

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: WV Board of Professional Surveyors

Address: P. O. Box 390
Flatwoods, WV 26621-0390

Phone Number: 304-765-0315 Email: wvbps@mail.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

None

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current (FY 07) Increase/Decrease (use "-")	Next (FY 08) Increase/Decrease (use "-")	Fiscal Year (FY 09) (Upon Full Implementation) (Fee increases)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	206,000.00	221,000.00	308,300.00

Rule Title:

Fees for Surveyors and Surveying Firms

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

Increased fees are requested to cover additional costs associated with the expansion of the Board from 3 to 5 members and the need for more frequent board meetings and hearings to resolve complaints. Additionally, there has been increased participation by and resultant reimbursements to the Attorney General for legal assistance as the Board has attempted to resolve a backlog of cases, several of which have been challenged. The Board also needs to replace and upgrade severely outdated office equipment.

Revenue increases are based on a \$50 increase for annual license renewals for 1000 active and 139 inactive licensees, totaling \$57,100. Certificate of authorization increases are projected at \$30,200 (800 for two firms with more than 50 employees, \$10,200 for 68 firms having more than 10 employees and \$19,200 for 384 firms having less than 10 employees).

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date:

JUN - 7 1997

Signature of Agency Head or Authorized Representative

Gregory A. Smith

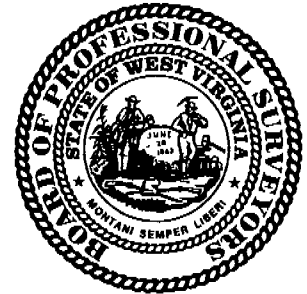
CHAIRMAN
Gregory A. Smith

SECRETARY
Leon K. Spencer

Mark H. Hornish Roy E. Shrewsbury, II Anthony J. Sparacino, Jr.

**STATE OF WEST VIRGINIA
BOARD OF PROFESSIONAL SURVEYORS**

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PROPOSED 2007 RULE CHANGES

Introduction

The West Virginia Board of Professional Surveyors (WVBPS or Board) is requesting changes to the Series 1 legislative rules, *Rules and Minimum Standards of Practice of Land Surveying in West Virginia*, and the creation of Series 4 and Series 5.

Series 1 has been revised and reorganized to contain all the rules pertinent to the examination and licensing of professional surveyors, hence the proposed title change is *Examination and Licensing of Professional Surveyors in West Virginia*. The result has been the creation of Series 4 and 5. Series 4, *Fees for Surveyors and Surveying Firms in West Virginia*, will establish a fee schedule relevant to surveyors and surveying firms. Series 5, *Standards for the Practice of Surveying in West Virginia*, will consolidate all the rules pertinent to the practice of surveying.

The WVBPS is a member of the National Council of Examiners for Engineering and Surveying (NCEES), a national non-profit organization composed of engineering and surveying licensing boards representing all U.S. states and territories. Many of the proposed revisions, including the Rules of Professional Conduct, were adopted from the NCEES Model Rules, August 2005.

Several rules have been stricken from Series 1 and moved to Series 4 or 5. Series 1 and 5 have a unique tie to one another because they are reflection of the most current standards for the examination and licensing of Professional Surveyors and the practice of surveying in West Virginia. The standards for deleting text with strikethroughs and adding text with underlines was followed to the best of our ability.

These rule changes were submitted last year and later withdrawn due to concerns expressed from the WV Society of Professional Surveyors (WVSPS) and other stakeholders. Over the past year the Board has met with representatives from the society and the stakeholders on three separate occasions to clarify, negotiate and edit this submittal. The Board also had an opportunity to speak to the WVSPS membership at their annual convention in Charleston, WV. Time was provided to answer questions and address concerns of the general membership.

The licensees were notified by mail on May 25th of the proposed changes and their availability on the Secretary of State and WVSPS websites.

Series 1

The justification for the Series 1 rule change involves several issues. Foremost is consolidating and organizing the examination and licensing rules into a logical, easy-to-find structure. Changes are also required to keep up with current technology. This will be a great help to individuals seeking information about licensure. All references to fees and the practice of surveying have been stricken and moved to Series 4 and 5, respectively. The other deletions are out-of-date rules.

Some of the highlights include: twenty definitions were added or revised in section 2; a detailed explanation of the types of applications in subsection 3.2.; the two paths an individual can take to become licensed, based on §30-13A-8, is explained and a deadline for the experience path is set in subsections 3.4. and 3.5.; a time limit is set for taking the examination after an applicant is approved in subsection 4.1.; a time limit is set for all Surveyor Interns certificates in subsection 5.2.; and the seven different license status' are identified and defined in subsection 5.5. There are other improvements contained within this proposed rule change and the fact they are not listed does not minimize their significance.

Series 4

The creation of the Series 4 rule will consolidate the fees charged by the Board that were either in Series 1, established by prior Board actions or based on current Board policy. The table format for the Fee Schedule, §23-4-5, will help to organize and simplify the process. Fee increases are reflected in Series 4 based on budget forecasts at the time the rules will be effective, if approved.

Series 5

The creation of the Series 5 rule will consolidate into one document the laws and rules that govern the practice of surveying in West Virginia. As in Series 1, the NCEES Model Rules were used as guidance and evidence of generally accepted standards of practice. There were ten definitions added or revised for greater clarification.

A major addition was Section §23-5.3., *Seals and Document Certification*, which addresses significant issues involving certification of survey documents and technological advancements regarding electronic seals and signatures. The new seal approved by the Board is also defined with an example.

The minimum standards have been added using the same text as found in §30-13A-26, with some corrections and additions. The purpose is to eventually delete the minimum standards from the code and maintain them by legislative rule. Changes in current technology and standards of practice will require future additions to this section based on specialized fields of practice and the use of current technology by our licensees. Please notice the general standards applicable to all surveys and inspections has been added in subsection 7.2.; minimum standards specific to boundary surveys are listed in subsection 7.3.; minimum standards for mortgage inspections was added in subsection 7.4.; and a reference to ALTA/ACSM land title surveys was added in subsection 7.5. to require compliance with subsection 7.3.

Another major addition is Section §23-5.7., *Standards of Professional Conduct*, that specifically addresses the obligations a Professional Surveyor has to the public, the profession and to other professionals.

Conclusion

It is the opinion of this Board that the proposed rule changes will organize the rules, clarify and update the current practice of surveying, be more compliant with current and future technology and make the legislative process more efficient.

This has been a significant investment by this Board and other interested parties to refine these rules and it is our belief the future returns for the public health, safety and welfare will be immeasurable.

**TITLE 23
LEGISLATIVE RULE
BOARD OF PROFESSIONAL SURVEYORS**

**SERIES 4
FEES FOR SURVEYORS AND SURVEYING FIRMS IN WEST VIRGINIA**

§23-4-1. General Information and Purpose.

- 1.1. Scope. This rule is promulgated by the Board of Professional Services to establish fees payable to the Board for various services.
- 1.2. Authority. W.Va. Code §30-13A-5(13)
- 1.3. Filing Date.
- 1.4. Effective Date.
- 1.5. This rule applies to all applicants for licensure, all professional surveyors and all firms holding a certificate of authorization pursuant to §30-13A-1 et seq.
- 1.6. This legislative rule, together with legislative rules 23 CSR 1 "Examination and Licensing of Professional Surveyors in West Virginia" and 23 CSR 5 "Standards for the Practice of Surveying in West Virginia" repeals and replaces West Virginia 23 CSR 1 "Rules and Minimum Standards for Practice of Land Surveying in West Virginia" filed and effective June 6, 2005.

§23-5-2. Definitions

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

- 2.1. "Application Fee" means a nonrefundable fee that is due at the time the initial application is submitted. Applications received without requisite fees are returned by the Board as incomplete.
- 2.2. "COA" means Certificate of Authorization.
- 2.3. "COA Late Fee" means a fee charged to a firm for renewal fees postmarked after the annual expiration date for each month or partial month that the COA renewal fee remains unpaid. The rate is twenty (20%) percent of COA renewal fee.
- 2.4. "Endorsement Late Fee" means a fee charged to the licensee for renewal fees postmarked after the annual expiration date for each month or partial month that the renewal fee remains unpaid for up to thirty-six (36) months. The rate is twenty (20%) percent of the annual endorsement renewal fee.
- 2.5. "Failure to Respond Fee" means an administrative fee charged to a licensee for a subsequent demand or inquiry following a licensee's failure to respond to, or comply with, a communication, request, inquiry, or order from the Board.
- 2.6. "FS Exam" means the NCEES Fundamentals of Surveying Examination.

2.7. "NCEES" means the National Council of Examiners for Engineering and Surveying.

2.8. "PS" means a licensed Professional Surveyor who has met all of the examination and licensing requirements as set forth in 30-13A-1 et seq. and is an acronym used after the surveyor's name to indicate he or she is a licensed surveyor with the Board.

2.9. "PS Exam" means the NCEES Principles and Practice of Surveying Examination.

2.10. "PS License Renewal Late Fee" means a fee charged to the licensee for renewal fees postmarked after the annual expiration date for each month or partial month that the renewal fee remains unpaid for up to thirty-six (36) months. The rate is twenty (20%) percent of the annual license renewal fee.

2.11. "Returned Check" means an administrative fee for a payment made by a check that is returned due to insufficient funds, account closure or other failure to negotiate payment.

2.12. "WV Exam" means the state-specific West Virginia Professional Surveyors Examination developed by the Board.

§23-4-3. Payment of Fees

3.1. All fees are payable to the West Virginia Board of Professional Surveyors. Fees shall be paid by check or money order, or credit card, if available.

3.2. All fees paid to the board are nonrefundable.

§23-4-4. Fee Schedule

The Board of Professional Surveyors hereby establishes the following schedule of fees for services rendered by the Board:

Surveyor Intern (SI):

Application/Reapplication Fee	\$120.00
FS Examination/Reexamination Fee	As charged by NCEES

Professional Surveyor (PS):

Application/Reapplication Fees:

PS Application	\$200.00
WV Application	\$200.00
Endorsement Application	\$200.00
Special Supervision Application	\$200.00
Comity Application	\$200.00

Examination/Reexamination Fees:

PS Exam	As charged by NCEES
WV Exam	\$150.00
Endorsement Exam	\$200.00

Annual Renewal Fees:

PS License (Active or Inactive)	\$150.00
PS-Retired	No Charge
PS License Late Fee	20% /month
Special Supervision	\$200.00
Special Supervision Late Fee	20% /month

PS Replacement Certificate Fee	\$ 20.00
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Certificate of Authorization Fees for Firms or Branch Offices:

Application/Renewal Fees:

Less than ten (10) employees	\$150.00
Ten (10) employees to less than fifty (50) employees	\$250.00
Fifty (50) employees or more	\$500.00

COA Late Fee	20% /month
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Administrative Fees and Other Costs:

Failure to Respond Fee	\$500.00 /occurrence
Archival Research	\$ 25.00/hour
Continuing Education Media	\$100.00
Copy Charges:	
In-house Copies	\$ 0.50/page
Large-scale Copies	As charged by Vender
Legal Expenses	As Charged by the AG's Office
Licensure Verifications (requested by another Board)	\$ 25.00
PS Roster for marketing purposes	\$250.00
Reprocessing Fee (illegible or incomplete applications)	\$ 50.00
Returned Checks	\$ 40.00
WVBPS Members and Staff	Calculated Overhead Rate

§23-4-5. Assessment of Costs in Disciplinary Actions

5.1. Pursuant to W. Va. Code §30-1-8, the West Virginia Board of Professional Surveyors may assess, and require payment from, a licensee for reimbursement of the administrative expenses incurred by the Board in the course of disciplinary proceedings against the licensee. These expenses may include, but are not limited to, the costs of investigation, legal notices, and other correspondence, legal fees, witness fees, and administrative time expended by the Board's members, staff, consultants or contractors.