

Form #1

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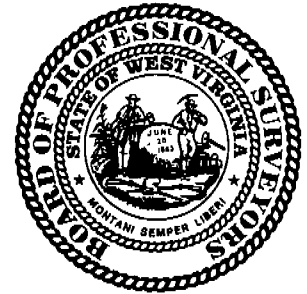
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BOARD OF PROFESSIONAL SURVEYORS**

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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These rule changes were submitted last year and later withdrawn due to concerns expressed from the WV Society of Professional Surveyors (WVSPS) and other stakeholders.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 5
STANDARDS FOR THE PRACTICE
OF SURVEYING IN WEST VIRGINIA**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§23-5-1. General Information and Purpose.

1.1. Scope. -- This rule is promulgated by the Board of Professional Surveyors to govern the practice of surveying in West Virginia (WV).

1.2. Authority. -- WV Code §§30-1-7a and 30-13A-5.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. This Rule for the practice of surveying is promulgated for the purpose of establishing standards of practice and the administration and enforcement of WV Code §§30-1-1 et seq. and 30-13A-1 et seq. and shall be binding upon persons or firms involved in the practice of surveying under §30-13A-1 et seq.

1.6. Repeal of Former Rules – This legislative rule, together with legislative rules 23 CSR 1 “Examination and Licensing of Professional Surveyors in West Virginia” and 23 CSR 4 “Fees for Surveyors and Surveying Firms” 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. “Boundary survey” means a survey in which the property or easement lines or the ownership or possession lines of a parcel of land, claim area, possession area or encroachment area have been established by field survey and may include retracing existing property or easement lines; the creation of a new easement or right-of-way; the partition, cut-out or subdivision of lots or parcels from an existing property, or the subdivision of an existing property into several lots, blocks or streets.

2.2. “Certified survey document” means a tangible or digital copy or duplicate of an original survey document with the signature of the licensee ascribed, the seal of the licensee affixed and the endorsement of the licensee, if applicable, and date of signing identified and may be presented to a clerk or public official for recording or filing.

2.3. “Endorsement” means an endorsement or authorization to practice underground surveying or in a specialized field of surveying or mapping.

2.4. “Felony” means a felony related to the fitness of a surveyor to engage in the practice of 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:

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

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

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

2.5. "Incompetence" means the continual or habitual failure to meet minimum standards and generally accepted practices of surveying or practicing in fields of expertise when the surveyor is unqualified and lacks the necessary experience and education.

2.6. "Inspection" means a mortgage or loan inspection.

2.7. "Loan inspection" has the same meaning as mortgage inspection.

2.8. "Mortgage inspection" means a substandard survey of a lot or parcel of land in which property lines and corners have not been established and is performed for the sole purpose of obtaining mortgage title insurance. This includes the location of the improvements and utilities as they relate to the property and a cursory check for violations or encroachments onto the subject lot or parcel based on existing but unconfirmed evidence and does not constitute a boundary survey and is subject to any inaccuracies that a subsequent boundary survey may disclose.

2.9. "Original survey document" means a plat, description, report, map, plan, drawing or other survey related document prepared manually or digitally under the professional charge of a licensee as a final survey document or work product and retained by the licensee as a permanent record.

2.10. "Owner," when used in the context of ownership requirements for firms seeking a certificate of authorization to engage in the practice of surveying, means a person who owns at least a majority interest of a firm or business entity.

2.11. "Ownership line" means a line or series of lines that define the limits of ownership supported by good, marketable title.

2.12. "Possession line" means a line or series of lines that define the limits of an area claimed or used by a landowner and can only be established as a boundary by an order of the court.

2.13. "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.

2.14. "Record line" means the line between the position of the original monuments cited in the original operative conveyance that a surveyor is required to retrace or establish as the boundary or property lines of a parcel of land.

2.15. "Unlicensed practice" means a person or firm engaged in the unlawful practice of surveying as set forth in §30-13A-32 and has not obtained a license, endorsement or authorization under the provisions of §30-13A-1 et seq. and is not exempt as set forth in §30-13A-36.

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

2.16.a. Default on obligations owed to the state in connection with the practice of 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;

2.16.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;

2.16.c. Performance in violation of standards established by law or generally accepted standards for the practice of surveying amounting to intentionally deficient or grossly negligent performance on a contract; or

2.16.d. Making intentionally false or misleading statements during an investigation, inquiry or hearing of the Board.

2.16.e. Any other cause of a serious and compelling nature amounting to knowing and willful misconduct in the practice of surveying.

§23-5-3. Certificate of Authorization and Firm Requirements

3.1. Certificate of Authorization

3.1.a. A firm or business entity may not engage in, offer to engage in, or hold itself out to the public as being engaged in, the practice of surveying as defined in WV Code §30-13A-1 et seq. without first obtaining a certificate of authorization issued by the Board for each business location or branch office offering such services.

3.1.b. No firm shall be issued a certificate without having as its owner or officer or in its employ a licensed professional surveyor for each business location or branch office unless otherwise approved by the Board. An initial application fee and an annual renewal fee as established by the Board by rule is due on or before the thirty-first (31st) day of December of each year and shall accompany the application or renewal application forms provided by the Board.

3.1.c. Any firm is required to notify the Board within thirty (30) days of any change in ownership, name, address, surveyor in charge, surveyor authorized to certify documents, or other relevant information included on the application.

3.2. Professional Limited Liability Companies

3.2.a. Professional surveyors who desire to render services as a professional limited liability company shall comply with the provisions of WV Code §30-13A-1 et seq, WV Code §31B-13-1 et seq. and the rules of the Board.

3.2.b. No person may be a member of a professional limited liability company that provides surveying services who is not licensed and legally authorized to render such services by this Board.

3.2.c. 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.

§23-5.4. Seals and Document Certification.

4.1. Seal of the Board. The seal of the Board shall be affixed to each certificate or license issued by the Board.

4.2. Seal of the Licensee

4.2.a. The types of seals approved by the Board are the stamp seal, embossing seal and digital seal. The licensee shall have in his or her possession a stamp or embosser. The digital seal is optional.

4.2.b. All seals shall meet the same format and size standards and as a minimum the quality standards as set forth in this subsection.

4.2.c. The seal shall contain the following information (the example may not be to scale):

4.2.c.1. An outer circle using a "rope" line type that measures one and five-eighths (1 5/8") inches outside to outside.

4.2.c.2. An inner concentric circle using the "knurled" line type that measures one (1") inch outside to outside.

4.2.c.3. The legal name of the licensee shall be uppercase and centered on the top between the two concentric circles. Any combination of the first, middle and last name; first name, middle initial and last name; or first initial, middle name and last name is acceptable.

4.2.c.4. The words "Professional Surveyor" shall be uppercase and centered on the bottom between the two concentric circles.

4.2.c.5. Two stars will be located on left and right side of the seal between the concentric circles. One star will precede the word "Professional" and the other will follow the word "Surveyor" with a space between the words and the stars.

4.2.c.6. The word "Licensed" shall be uppercase, centered and aligned along the inside top of the inner circle.

4.2.c.7. The words "West Virginia" shall be uppercase, centered and aligned along the inside bottom of the inner circle.

4.2.c.8. The words "State of" shall be uppercase and centered above "West Virginia."

4.2.c.9. The license number shall be in the center of the inner circle and more prominent than the other words within the inner circle.

4.2.d. When an applicant is granted licensure, the Board shall provide the initial stamp seal. All other seals procured by the licensee shall meet the format and size standards and shall meet as a minimum the same quality as the Board provided seal.

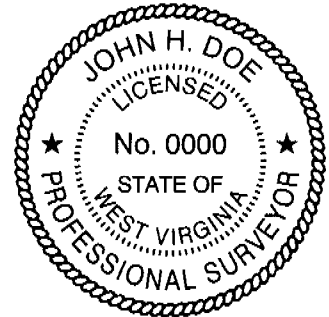
4.2.e. It is the responsibility of each licensee to report to the Board the loss or theft of his or her seal or the illegal use of the seal as soon as practical after the loss, theft or illegal use is discovered.

4.3. Document Certification by Licensee

4.3.a. The seal, signature and endorsement, if applicable, of the licensee and the date of signing shall be on all certified survey documents whenever presented to a client or public agency to certify that the work product was completed under the professional charge of the licensee.

4.3.a.1. An original handwritten signature of the licensee shall be affixed to a survey document before it is considered an certified.

4.3.a.2. The seal shall be affixed and the signature shall be ascribed in a manner that a copy of the certified survey document is readily identifiable.



4.3.a.3. Digital signatures, signature stamps or other such facsimiles are prohibited on all certified survey documents. Other survey related documents may have either a digital seal or digital signature, or facsimile thereof, but both cannot be on the same document.

4.3.b. Licensees shall not affix their seal or ascribe their signature to any survey document unless they are in active status with the Board; the survey work related to the document was performed under their professional charge, unless multiple disciplines or professions are involved as set forth in subdivision 4.3.d. of this rule; and they are competent to perform the survey related work by virtue of education or experience.

4.3.b.1. In the event a question arises as to the competence of a licensee 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.

4.3.c. Plats, descriptions, reports, maps, plans, drawings, or other survey documents will be deemed to have been prepared under the professional charge or direct supervision of a licensee only when all the following conditions have been met:

4.3.c.1. The client, agent or authorized representative requesting preparation of such survey documents makes the request directly to the licensee, or a member or employee of the licensee's firm.

4.3.c.2. The licensee directly supervises the preparation of such survey documents and has an opportunity for input into their preparation prior to their completion;

4.3.c.3. The licensee reviews the final survey documents.

4.3.c.4. The licensee has the authority to and may make any necessary and appropriate changes to the work products or survey documents submitted to the client or displayed to the public.

4.3.c.5. The licensee in professional charge is responsible for meeting all of the preceding requirements whether the work is being performed remotely or locally. Remote supervision is exclusive to a member or employee of the licensee's firm unless the licensee has applied for and received prior approval from the Board to provide special supervision as set forth in section 5 of this rule.

4.3.d. When a plat, map or drawing contains more than one sheet, the first or title page shall be sealed and signed by the licensee who was in professional charge. Two or more licensees may affix their signatures and seals provided it is designated by a note under the seal the specific subject matter for which each is responsible. In addition, each drawing shall be sealed and signed by the licensee or licensees responsible for each sheet. When a firm, partnership or corporation performs the work, each drawing shall be sealed by the licensee or licensees who was/were in professional charge of the work.

4.3.e. Digital seals may be used on final original plats and drawings provided a handwritten signature is placed adjacent to or across the seal and the date is written below the seal. Documents which do not require certification may be transmitted electronically but shall have the generated seal, if any, removed before transmitting and shall have the following inserted in lieu of the signature and date: "This document originally issued and sealed by (name of licensee, P.S.#--- on (date of sealing)). This document should not be considered a certified document."

4.3.f. Any revision to a survey document containing the seal and signature of a licensee shall be described and dated. If the original licensee is unavailable, the current licensee in professional charge shall sign and seal the revisions.

4.3.g. In circumstances where a licensee in professional charge of the work is unavailable to complete the work, a successor licensee may take professional charge by performing all professional services. The burden is on the successor licensee to show such compliance. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

4.3.f. Copies or modifications of certified survey documents shall not be filed with any county clerk or accepted by any public official unless initialed and dated by the licensee in the presence of the clerk, public official or their respective representative.

4.3.g. Working drawings or unfinished documents are not required to have a seal and signature if the working drawing or preliminary document contains a statement to the effect "Preliminary, not for construction, recording purposes, or implementation."

§23-5-5. Special Supervision by Licensees

5.1. A licensee may apply to the Board to request special supervision of a person who is not an employee of the licensee nor employed with the same firm as the licensee. The request shall be approved by the Board before special supervision can be provided by the licensee.

5.2. All special supervision applications, whether original or renewal, expire on the thirtieth (30th) day of June following the date of issuance or renewal. The application and renewal fees shall be paid to the Board as set forth in 23 CSR 4 et seq. and is due upon application.

5.3. A supervision allowance shall be provided for instructors associated with an educational institution and workshop providers while supervising students or attendees during surveying related course and seminar activities.

§23-5-6. Standards of Professional Conduct

6.1. Licensee's Obligation to the Public

6.1.a. Licensees, in the performance of their services for clients, employers, and customers, shall be cognizant that their first and foremost responsibility is to the public health, safety and welfare.

6.1.b. Licensees shall approve and seal only those documents that conform to accepted surveying standards.

6.1.c. Licensees shall notify their employer or client and such other authority as may be appropriate when their professional judgment is compromised under circumstances where the life, health, property, or welfare of the public is endangered.

6.1.d. Licensees shall be objective and truthful in professional reports, statements, or testimony. They shall include relevant and pertinent information in such reports, statements, or testimony.

6.1.e. Licensees shall express a professional opinion publicly only when it is founded upon an adequate knowledge of the facts and a competent evaluation of the subject matter.

6.1.f. Licensees shall issue no statements, criticisms, or arguments on technical matters which are inspired or paid for by interested parties, unless they explicitly identify the interested parties on whose behalf they are speaking and reveal any interest they have in the matters.

6.1.g. Licensees shall not knowingly permit the use of their name or firm name by, nor associate in the business ventures with, any person or firm, which is engaging in fraudulent or dishonest business or professional practices.

6.1.h. Licensees shall not intentionally make statements to the public that result in, or have the potential of resulting in, insult or injury.

6.1.i. Licensees having knowledge of possible violations of any of these standards of professional conduct shall provide the Board with the information and assistance necessary to make the final determination of such violation.

6.2. Licensee's Obligation to Profession, Clients and Employer

6.2.a. Licensees shall undertake to perform assignments only when qualified by education or experience in the specific technical fields of surveying involved.

6.2.b. Licensees may accept assignments for coordination of an entire project, provided that each segment is signed and sealed by the licensee responsible for preparation of that segment. 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.

6.2.c. Licensees shall not reveal or disseminate facts, data, or information obtained in a professional capacity to the public, including other professionals, without the prior consent of the client or employer if it has the potential to damage or harm the client or other parties except as authorized or required by law, rule or written contract.

6.2.c.1. The licensee should use discretion when disseminating any information in their professional capacity even when authorized to do so.

6.2.c.2. The licensee should retain all rights of ownership to the work product and the production of survey related documents, including the original survey documents and records.

6.2.c.3. The client may retain the right to preclude dissemination of the work product or survey documents if set out in writing.

6.2.d. Licensees shall deliver to the client, or designated representative, certified survey documents along with copies, if requested, according to the surveyor-client agreement and the standards of practice as set forth by law or rule.

6.2.e. Licensees shall make full prior disclosures to their employers or clients of potential conflicts of interest or other circumstances which could influence or appear to influence their judgment or the quality of their service.

6.2.f. Licensees shall not accept compensation, financial or otherwise, from more than one party for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

6.2.g. Licensees shall not solicit gratuities, directly or indirectly, from contractors, their agents, or other parties in connection with work for employers or clients.

6.2.h. Licensees shall not solicit or accept a professional contract from a governmental body on which a principal or officer of their organization serves as a member without proper disclosure and written waiver thereof. Conversely, licensees serving as members, advisors, or employees of a government body or department, who are the principals or employees of a private concern, shall not participate in decisions with respect to professional services offered or provided by said concern to the governmental body which they serve.

6.3. Licensee's Obligation to Other Licensees

6.3.a. Licensees shall not falsify or permit misrepresentation of their, or their associates', academic or professional qualifications. They shall not misrepresent or exaggerate their degree of responsibility in prior assignments nor the complexity of said assignments. Presentations incident to the solicitation of employment or business shall not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or past accomplishments.

6.3.b. Licensees shall not offer, give, solicit, or receive, either directly or indirectly, any commission, or gift, or other valuable consideration in order to secure work, and shall not make any political contribution with the intent to influence the award of a contract by public authority.

6.3.c. Licensees shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees, nor indiscriminately criticize other licensees' work or deter third persons from associating or dealing with the licensee.

§23-5-7. Minimum Standards for Surveys.

7.1. The purpose of these standards is to establish minimum technical criteria to govern the practice of surveying when more stringent specifications are not required. Further, the purpose is to protect the inhabitants of this state from dishonest or incompetent surveying and generally to protect the public health, safety and welfare.

7.2. General Standards applicable to all surveys and inspections:

7.2.a. The licensee in professional charge, or a designated representative, shall discuss with the client the purpose of the survey, scope of services to be provided, time frames, fees and all pertinent details of the contract prior to performing the work.

7.2.b. A licensee, endorsee, an exempt person under §30-13A-1 et seq. or persons under the direct supervision of a licensee, endorsee or exempt person shall physically go to the site and perform a field survey.

7.2.c. The surveyor shall use methods and equipment suitable for the purpose of the survey.

7.2.d. The observations shall be measured to a precision that will produce the desired level of accuracy; angles or directions shall be reported in degrees, or parts thereof and distances shall be reported in feet or meters, or parts thereof.

7.2.e. The field notes shall be retained as a permanent record and may be handwritten or by electronic data collection or a combination thereof. When electronic data collection is used in conjunction with handwritten notes, the electronic files and the written notes constitute the entirety of the field notes.

7.2.f. All measuring devices shall be checked periodically for accuracy and condition.

7.3. Minimum Standards for Boundary Surveys

7.3.a. In addition to the general standards in subsection 7.2. of this rule, the discussion prior to the survey shall also cover disputes with adjoining, claim or possession areas, encroachments and other relevant information that will affect the final location of the boundary.

7.3.b. The record search shall be retained as a permanent record and shall include the record description based on current and prior deeds, conveyance from common grantor, or if necessary, the original survey or grant. It shall also include descriptions of adjoining properties, other sources of information or resolution of conflicts in descriptions.

7.3.c. A reasonable attempt shall be made to notify the adjoining during the course of the survey and gather information from those individuals having knowledge of the boundaries. The surveyor may use his or her professional discretion when deciding which individuals have vital knowledge that will aid in determining boundary locations.

7.3.d. The field survey shall consist of the following:

7.3.d.1. A field search for controlling evidence.

7.3.d.2. The location of evidence by appropriate methods and procedures.

7.3.d.3. A reasonable attempt to discuss the evidence with the owner or client, if deemed necessary by the surveyor.

7.3.e. Monumentation is required for all new or reestablished corners, or reference monuments for inaccessible corners, and is encouraged but not required at intervisible points between corners. Natural objects chosen for monuments shall be durable, unique and easily identifiable. Set monuments shall be durable, reasonably stable, with the name of the licensee or surveying firm identified on the monument, able to be located with current technology and have the following dimensions:

7.3.e.1. Iron or steel pipes shall have a minimum inside diameter of one (1") inch and a minimum length of thirty (30") inches;

7.3.e.2. Reinforcing rods (rebars) shall have a minimum outside diameter of five-eighths (5/8") inch and a minimum length of thirty (30") inches;

7.3.e.3. Other artificial markers shall have a minimum cross-sectional area of one-half (1/2) square inch and shall be made of durable material, identifiable and unique and be of sufficient length to maintain its position when subjected to extreme temperature changes and other severe weather conditions.

7.3.f. The area of the tract being surveyed shall be measured and reported to a precision consistent with the needs of the client and accepted standards of practice.

7.3.g. A plat shall be prepared for all boundary or partition surveys and subdivisions and be to a scale large enough to show significant details. The plat shall show the results of the field survey and be provided to the client. The client may request a plat not to be supplied by the surveyor unless required by law, rule or regulation. The following information shall be shown on the plats, when applicable:

7.3.g.1. A north arrow and the meridian used as the basis of directions (bearings);

7.3.g.2. The outlined area of the property and all significant parts, including streets, alleys and nonlotted areas of a subdivision;

7.3.g.3. The name and location of any creeks, rivers or roads within the scope of the survey;

7.3.g.4. The measured length and direction of each boundary line by distance, bearing and quadrant: Provided, that in the case of a strip survey the station and offset method may be utilized to describe the strip. When the station and offset method is used, the alignment geometry and the control point monumentation shall also be shown on the plat.

7.3.g.5. Reference or tie lines by direction and distance to significant monuments and objects;

7.3.g.6. The description of all corners or reference monuments, including whether the monuments were found (fd) or set;

7.3.g.7. The evidence of any possession and claim areas and potential encroachments, including any overlaps or gaps, compared to the location of the record boundary line;

7.3.g.8. The tax map and parcel number, if available, of all the tracts or parcels shown on the plat;

7.3.g.9. The names of the current or past owners of the subject property, or both, and the adjoining landowners;

7.3.g.10. The current conveyance references for the subject property and the adjoining landowners;

7.3.g.11. The area, acreage or square footage, of the property;

7.3.g.12. The title of the plat for reference when recording;

7.3.g.13. General location information including the municipality, district, county, state, watershed and other information that will aid in locating the subject property. Subdivisions will include the name, lot, block and plat reference;

7.3.g.14. The date of the survey;

7.3.g.15. The name, address, license number, signature and seal of the surveyor in professional charge.

7.3.h. A description of survey shall be prepared for all boundary surveys and be provided to the client. The boundary of the property shall be described by metes and bounds, or by a strip description. The following shall be included in a description of survey, when applicable:

7.3.h.1. The preamble shall include the type of parcel or lot being described; the general location information, which includes the watershed or topographic location, the lot and block numbers of existing subdivision, district or municipality, county and state where the property is located; and the statement, "more particularly described as follows."

7.3.h.2. The body of the description shall include the point of beginning; the length and direction of each line or at least two elements of a curved boundary line; the description of monumentation at each corner and relevant objects encountered along the line; the call for the adjoining landowners; the area by survey; the term "as surveyed by" followed by the name of the licensee or firm, survey dates and a reference to the accompanying plat or report attaching it to and making it a part of the description.

7.3.h.3. The being clause shall include whether it is the same as or part of an existing tract or the lot and block numbers for newly platted partitions or subdivisions; the reference to the document by which the current owner claims title, including the grantor and grantee or devisor and devisee, date and recording reference;

7.3.h.4. The being clause shall be followed by the name, license number, signature, date of signature and seal of the licensee in professional charge. The name of a Surveyor Intern preparing the description should be shown, if applicable.

7.3.i. The report of survey shall be used when the plat and the description of survey do not adequately address all matters considered by the surveyor in performing the survey and shall be attached to and made a part of the plat and description of survey and provided to the client. The report of survey shall include:

7.3.i.1. Documentation of the research and the weight given to the significant documents;

7.3.i.2. The names of persons contacted and the information they supplied.

7.3.i.3. All unusual circumstances surrounding the survey, with weight being given to conflicting evidence and encroachments, overlaps or gaps and how they were resolved.

7.3.i.4. The name of the individual preparing the report and the name, address, license number, signature and seal of the surveyor in professional charge.

7.4. Minimum Standards for Mortgage or Loan Inspections

7.4.a. Mortgage inspections or loan inspections are subject to the general standards applicable to all surveys as set forth in subsection 7.2. of this rule, unless specified otherwise, but do not meet the definition or standards of a boundary survey and are exempt from the minimum standards for boundary survey as set forth in subsection 7.3. of this rule.

7.4.b. The licensee in professional charge, or designated representative, shall obtain recorded documentation that is sufficient to demonstrate a general knowledge of the subject property.

7.4.c. The field crew shall be provided with current information necessary to determine the property dimensions in the field and shall perform a search for existing property evidence and shall locate the property evidence, improvements, utilities and encroachments that fall within the definition of an inspection as set forth in section 2 of this rule as set forth by the Board.

7.4.d. A plat of the inspection shall be prepared and used in support of the certificate of mortgage inspection. The following items shall be shown and identified on the inspection plat:

7.4.d.1. A north arrow showing the meridian to be based on record or deed north;

7.4.d.2. A graphic scale shall be shown;

7.4.d.3. The evidence of property corners and lines found during the field survey and the property lines and the dimensions (directions and distances) shall be based on the description or plat on record and shall use the units of measurement specified therein;

7.4.d.4. Major improvements such as, but not limited to: residences, garages, outbuildings, barns, driveways, pools, porches and patios. A minimum of two (2) dimensions shall be shown for each improvement unless it is irregular in shape.

7.4.d.5. Location dimensions of the major improvements as they relate to the property line shall be shown using: direction and distance to purported property corners; or by offset perpendicular to straight property lines; or by offset radial to curved property lines;

7.4.d.6. Apparent encroachments shall be noted, described and clearly shown;

7.4.d.7. Means of access shall be shown clearly and graphically, including shared access and shared driveways;

7.4.d.8. Platted and apparent easements shall be clearly identified, including the source of record information;

7.4.d.9. Platted setback lines shall be shown graphically;

7.4.d.10. Adjacent owner and record source shall be noted;

7.4.d.11. Physical address of the subject property, if available;

7.4.d.12. The statement "this is a mortgage inspection only, not a boundary survey" shall be clearly shown on the plat;

7.4.d.13. The name of the individual preparing the plat and the name, address, license number, signature and seal of the licensee in professional charge.

7.4.e. Flood plain certification, if required, is restricted to a review of the Flood Insurance Rate Map (FIRM) and shall not be construed as a confirmation or denial of flooding potential.

7.4.f. The surveyor must supply written notice to the landowner or other person commissioning his/her services that an inspection was performed and not a boundary survey.

7.4.g. Written legal descriptions for a tract or parcel of land shall not be prepared based on a mortgage inspection unless the minimum standards for a boundary survey are met as set forth in subsection 7.3. of this rule.

7.5. ALTA/ACSM Land Title Surveys, which are based on standards set by the American Land Title Association (ALTA) and the American Congress of Surveying and Mapping (ACSM), shall at a minimum comply with the minimum standards for a boundary survey as set forth in subsection 7.3. of this rule.

§23-5-8. Unethical Practices.

In addition to the reasons for suspension or revocation of a license set forth in WV Code §§30-1-1 et seq. or 30-13A-1 et seq., any licensee who has committed any of the following unethical practices may be subject to disciplinary action by the Board:

8.1. Failing or refusing to comply with any provision of WV Code §30-13A-1 et seq. or any rule promulgated by the Board or any request, order or final decision of the Board. For the purposes of this subsection:

8.1.a. If any licensee orders, counsels, encourages, incites, supports, helps, or assists another person to fail or refuse to comply with any statutory provision, rule, request, order or final decision; or,

8.1.b. 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;

8.2. 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;

8.3. Accepting, paying, or offering to pay, either directly or indirectly, any gift, bribe, or other consideration to make an improper survey;

8.4. Associating with any survey project known by the licensee to be fraudulent or dishonest in character;

8.5. Reviewing the work of another surveyor for the same client, except with the knowledge of the surveyor, or unless the contractual relationship of the surveyor and the client has been terminated;

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

8.7. Accepting and undertaking to perform 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.

§23-5-9. Disciplinary Actions by the Board

9.1. 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 WV Code §§ 30-1-1 et seq. or 30-13A-1 et seq. and the rules issued by the Board.

9.2. The Board may place on probation, suspend or revoke any license; may issue a letter of caution or reprimand, cease and desist order, settlement agreement, consent agreement and order, probable cause order, final or administrative order resulting from a formal hearing or other similar agreements and orders; may impose a fine not to exceed one thousand dollars (\$1,000.00) per infraction; may require additional education or training; or may impose any combination of these disciplinary actions, when it finds a licensee has:

9.2.a. Been convicted of a felony or a crime involving moral turpitude;

9.2.b. Obtained a license by means of fraud or deceit;

9.2.c. Been incompetent or guilty of fraud, deceit, professional negligence, willful departure from accepted standards of professional conduct or other misconduct in the practice of surveying; or

9.2.d. Failed or refused to comply with the provisions of WV Code §30-13A-1 et seq. or any reasonable rule promulgated by the Board or any order or final decision of the Board.

9.3. 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 administrative expenses relative to the complaint.

9.4. 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 the license if application were then being made for it.

9.4.a. Any suspension of a license continues for the period specified in the order of suspension.

9.4.b. Revocation of a license shall not preclude application to reinstate his or her license and meeting all the licensing requirements in effect at the time of application. 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.

9.5. 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.

9.5.a. 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.

9.5.b. 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 WV 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.

9.5.c. 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.

§23-5-10. Judicial Review

10.1. 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 Professional Surveyors, 23 CSR 3, is entitled to judicial review of the decision. All of the pertinent provisions of WV Code §29A-5-4 apply to and govern judicial review.

10.2. 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 WV Code §29A-6-1.

10.3. 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.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Standards for Practice of Surveying in West Virginia

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 Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: Standards for Practice of Surveying in West Virginia

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

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

None

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.

None

Date: 6/7/07

Signature of Agency Head or Authorized Representative

Gregory A. Smith