

STATE OF WEST VIRGINIA
BOARD OF PROFESSIONAL SURVEYORS
1124 Smith Street, Suite 1200 Charleston, West Virginia 25301
Telephone (304) 558-0350 Fax (304) 558-0352
Website: www.wvbps.wv.gov Email: wvbps@wv.gov

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July 28, 2023

Re: Response to comments concerning proposed changes to 23-1-4 Rules

Dear sir or madam,

On June 7, 2023, the West Virginia Board of Professional Surveyors "Board" published its proposed changes to 23-1-4 of its Rules. Those Rule changes are recited below with the proposed deletions ~~stricken~~ and the proposed additions underlined.

23-1-4.1. e An applicant who fails to pass any parts of the examination for ~~six (6)~~ ten (10) attempts is precluded from taking any part of the examination for two (2) 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, under the current licensing requirements as provided in W. Va. Code 30-13A-1 et seq and pay any application fees required by the Board before taking the examination again.

23-1-4.1.g An applicant who does not pass the examination for which they have applied within ~~six (6)~~ ten (10) years from the date of application shall be required to submit a new application under the current education, experience, and examination requirements as provided in W. Va. 30-13A-1 et seq update references, update education and experience information previously submitted to the Board as needed, and pay any application fees required by the Board before continuing to take to the examination.

These proposed changes were properly filed for Public Comment Period with the WV Secretary of State on June 7, 2023. The deadline for public comments ended July 7, 2023.

The Board received thirteen (13) responses to its proposed changes to 23-1-4. In general, six (6) of those comments favored the changes and seven (7) opposed the changes for varying reasons.

Four (4) of the commenters agreed with the proposed changes and offered no changes to the Rules.

One (1) commenter had no objection to the proposed changes but brought to the attention of the Board, a misspelled word in the attachment title. The spelling of that word does affect the text of the proposed rule changes.

One (1) commenter, while agreeing with the changes, brings attention to 23-1-4.d which states, "An applicant who fails to pass any parts of the examination fewer than six (6) times may

reapply at any time to take the failed parts and furnish additional information as requested by the Board". The commenter stated confusion regarding failures to pass the examination in the seven (7) to nine (9) year period. In light of this comment, the Board would like to make the following additional change to the 23-1-4 to bring consistency with the already proposed changes.

23-1.4.d An applicant who fails to pass any parts of the examination fewer than ~~six (6)~~ ten (10) times may reapply at any time to take the failed parts and furnish additional information as requested by the Board.

One (1) commenter objected to the rule changes simply stating that the commenter does not support the changes and that the rules should be left in place as they exist. The commenter gives no further explanation.

One (1) commenter objected to the time change from six (6) to ten (10) years in the rules but did not object to the language changes concerning fees and examinations.

One (1) commenter object to changing re-exam period to ten (10) years but suggested that seven (7) years would be better.

One (1) commenter opposed the rule changes and stated that the changes would provide no benefit.

The Board proposes the changes after considering recent trends in the numbers of new licensees and the numbers of West Virginia licensed surveyors who are retiring their licenses. This also considers that a great number of the new licensees are from states other than West Virginia. Across the nation, a movement exists that would remove all licenses and registrations for most professionals, including surveyors. The proposed rule changes would allow more opportunities for potentially qualified candidates to take the examination in a shorter time period. Nothing in the rules as currently approved prevents applicants to continue to qualify for examination for many times after sitting out for a period of time and re-applying for examination. The proposed rule changes simply changes the length of the period that an applicant can continue to fail the test before sitting out for two (2) years.

One (1) commenter objected to the changes and wanted the number of attempts limited to three (3) rather than six (6), calling into question the career choices of persons who cannot pass the examination in three (3) attempts and to grant the opportunity for more attempts would erode public confidence in the surveying profession.

The Board recognizes that the rules, as currently written, do not limit the number of times that a candidate may take the examination before final disqualification. The commenter seems to imply that any candidate failing three (3) attempts to pass the examination should be disqualified from taking the examination in the future. The currently approved rules do not disqualify a candidate who fails six (6) attempts to pass the examination. The proposed rule changes simply changes the length of the period that an applicant can continue to fail the test before sitting out for two (2) years.

One (1) commenter, who evidently must be licensed also in the Commonwealth of Kentucky, 'mostly agrees' with the proposed changes but extolls the benefits of allowing only three (3) examination attempts because it is the opinion of the commenter those applicants who

pass the examination in three (3) attempts or less are better quality professionals and goes on to extoll economic benefits for surveyors by raising standards for surveyors.

While the Board recognizes that a properly developed and enforced system of licensure may provide economic benefits to one who has demonstrated one's mastery of the information and skills necessary for the professional practice of surveying, the Board's primary task is to assure that individuals practicing as professional surveyors are qualified and able to professionally perform the duties of a professional surveyor while protecting the interested of the public and the citizens of West Virginia. The Board believes that the licensing process, including the examination, accomplishes the duty of the Board to protect the public and citizens when it requires individuals to navigate the process. The Board believes that the examination tests the knowledge and experience of the candidate and once a candidate passes that examination, regardless of the number of attempts to pass the examination, the candidate should receive a license. The commenter seems to imply that any candidate failing three (3) attempts to pass the examination should be disqualified from taking the examination in the future as may be the cases in the Commonwealth of Kentucky. However, the currently approved rules do not disqualify a candidate who fails six (6) attempts to pass the examination. The proposed rule changes simply changes the length of the period that an applicant can continue to fail the test before sitting out for two (2) years.

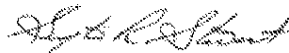
One (1) commenter who is strongly opposed to the changes considers this a regression to the standards of surveying and part of the 'dumbing down of America'. The commenter also states that he cannot agree with allowing a candidate who fails the test for six (6) years to be allowed four (4) more years to attempt to pass the examination.

The rules that are currently approved allow a candidate to re-apply after six (6) years and the prescribed two (2) year wait period. The rules do not limit the number of times that a candidate may take the examination but require a two (2) waiting period before re-applying for future examination. The Board believes that the licensing process, including the examination, accomplishes the duty of the Board to protect the public and citizens. The Board believes that the examination tests the knowledge and experience of the candidate and once a candidate passes that examination, regardless of the number of attempts to pass the examination, the candidate should receive a license.

The Board also reached out to examine the rules of the five states surrounding West Virginia regarding the number of times that an applicant may sit for its licensure examination. Maryland, Ohio, Pennsylvania, and Virginia all have no limit on the number of times that an applicant may sit for the licensure examination. Kentucky limits the number of times that an applicant may sit for its licensure examination to three. The proposed rule change is not more liberal than four of our five surrounding states.

The Board thanks the commenters for their participation in the rule making process. The Board has taken each comment into careful consideration.

Sincerely,



Sefton Stewart
Chair

WVBPS Series 1 Rule Change

Public Comments

#	Date	Last Name	First Name	License Number	Comment	Email Acknowledgment
1	6/5/2023	Shanklin	William	1556	Thank you. I have no problems with the proposed changes.	X
2	6/5/2023	Lambert	Don	2119	A 10 year reexam period seems a little long, 7 years would be better.	X
3	6/5/2023	Whitehead	James	881	I see no reason to object to the modifications.	X
4	6/5/2023	Jones	Abbie	2335	I am mostly ok with it as written. The KY system sets a limit of 3x without passing for those "mostly grandfathered and almost PLS" crowd. When you don't pass on 3rd time in KY it's over. I that's fair. Otherwise you have a lingering group of folks who may cause a stink, but they are likely to be the lesser quality professionals. 3x testing is plenty. We are raising the bar and there will be some growing pains. It is already raising salaries (and fees) SIGNIFICANTLY over here in KY. This was much needed with the huge expenses for modern equipment. BTW I have helped 2 people get PLS in the past 5 years and have 2 staff signed up to get LSIT. These other folks complaining need to start doing the same level of professional development of their staff and recruiting more.	X
5	6/6/2023	Lemley	Charles	1489	Ladies, It appears that this is an attempt to change the wording in 4.1e to allow more attempts at the test from 6 to 10 times before a 2 year exemption from taking the test. And to change the period of test taking from 6 to 10 years in 4.1g. While I am fine with these changes, I am a bit confused by 4.1d stating up to 6 times applicant may reapply and take the test part that the applicant as failed. Seems like the proposed changes will cause some ambiguity for failures in the 7-9 failure range. Thanks for allowing comments. Sincerely	X

WVBPS Series 1 Rule Change

Public Comments

6	6/6/2023	Cole	Steven	1411	Under the proposed changes to 23CSR1 Paragraph 23-1-4 subparagraph 4.1.e, I oppose the change in the number of examination attempts from the current six (6) attempts to ten (10) attempts. The current number of attempts is reasonable to protect the public and for maintaining integrity of the profession. The proposed increase provides no benefit to the public nor the profession. Under the proposed changes to 23CSR1 Paragraph 23-1-4 subparagraph 4.1.g, I oppose the change in the time to pass from the current six (6) years to ten (10) years. The current number of years is reasonable to protect the public and for maintaining integrity of the profession. The proposed increase provides no benefit to the public nor the profession. Respectfully,	X
7	6/6/2023	Payne	Ray	977	I am in favor of the change	
8	6/7/2023	Butt	Irvin	570	I have no objection to the proposed changes. However, there is a spelling error in the attachment title. It should read "Proposed" Rule Change and not "Proposaed" Rule Change.	X
9	6/7/2023	Resser	Scott	2267	To whom it may concern, I have reviewed the proposed changes. I am NOT in support of the proposed changes. The rules should be left in place as they exist. Thank you for your consideration.	X
10	6/12/2023	Marty	James	2282	I have no comments on the proposed changes and I am in favor of those changes.	X
11	6/15/2023	Keplinger	Curt	518	In sections 4.1.e and 4.1.g, I do not see the need to change the 6 years to 10 years. The 2 nd part of the two sections is good.	X

WVBPS Series 1 Rule Change**Public Comments**

12	6/20/2023	Fisher	Dennis	670	This is in response for the request for comment on the proposed Rule 23-1-4 changes. I have been a professional surveyor in WV for approximately 43 years (PS#670) and feel that it is my responsibility to respond. I AM OPPOSED TO THE RULE CHANGE. Anyone who cannot pass the exam in three attempts should set out and take additional training or classes for two years. Anyone who cannot pass the exam in six attempts should seriously consider their career choices. Everyone is not cut out to be a surveyor. I feel that the boards responsibility is to uphold and further the profession. This action would further erode the public's perception of our profession. Cordially and respectfully submitted.	X
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WVBPS Series 1 Rule Change**Public Comments**

13	7/6/2023	Stiles	Raymond	648	Dear WVBPS Board Members, I am strongly opposed to the rule changes being proposed concerning the amount of years allowed to take the examination to become a Professional Land Surveyor. West Virginia surveyors have fought for years against the constant proposed legislation to allow what has been considered unqualified people from other states to survey in West Virginia. This we have done to protect the Citizens of West Virginia and to protect the integrity of our time honored profession. While additional states consider requiring 2yr and 4yr degrees for licensure, I fail to understand the need for regression in our standards. I am aware of the “dumbing down of America”, but I cannot agree with the thought that if a “surveyor” takes and fails the PLS Examination for 6 years that he needs 4 more years! No, what he requires, is to take his 2 years off with some additional education. All of us at some point sat for the West Virginia Exam and some with additional states. Some were fortunate to only have to take it one time. Some had to sit down and apply themselves to prepare for another attempt. In closing, I only wish to say that if an individual has taken the WV PLS Exam for 6 years and failed, then obviously he does not understand the concept and is no prepared for licensure. Thank you for your attention and I pray that the WVBPS does the right thing for the citizens of this state and this profession. Very truly yours,	X
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