



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Professional Surveyors TITLE-SERIES: 23-01

RULE TYPE: Legislative Amendment to Existing Rule: Repeal of existing rule:

RULE NAME: 23-01 Examination and Licensing of Professional Surveyors in West Virginia

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 30-13A-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

Examination and Licensing of Professional Surveyors in West Virginia. To revise the number of times an applicant can sit for the WV State Specific Exam.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/7/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/7/2023

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Examination and Licensing of Professional Surveyors in West Virginia.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

To revise the number of times an applicant can sit for the WV State Specific Exam.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Amber D Shawver -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 23
LEGISLATIVE RULE
BOARD OF PROFESSIONAL SURVEYORS

SERIES 1
EXAMINATION AND LICENSING OF PROFESSIONAL SURVEYORS IN WEST VIRGINIA

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

1.1. Scope. -- This rule is promulgated by the Board of Professional Surveyors, hereinafter referred to as the Board or WVBPS, to govern licensing of Professional Surveyors in West Virginia (WV).

1.2. Authority. -- W. Va. Code §30-13A-6.

1.3. Filing Date. -- July 21, 2021

1.4. Effective Date. -- July 21, 2021

1.5. Sunset Provision – ~~This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.~~ This rule shall terminate and have no further force or effect on August 1, 2034.

§23-1-2. 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. Active Duty” means when a member of the Armed Forces of the United States, the National Guard of this state or any other state or any other military reserve component is deployed outside this state, and for the following six months after discharge.

2.2 “Active Status” means the licensee has met all the requirements for the current annual renewal period and is permitted to practice as a professional surveyor in West Virginia.

2.3. “Certificate of Licensure” means a certificate issued to the applicant who has met the licensing requirements of W. Va. Code §30-13A-1 et seq. and has been approved by the Board. The certificate will be signed as required by the Board and will show the license number and seal of the Board and shall be displayed conspicuously at the principal place of practice.

2.4. “Comity Applicant” means a person who is applying to become a professional surveyor in West Virginia and is currently in possession of a professional surveyor license or certificate of licensure issued by a proper authority of a jurisdiction other than WV.

2.5. “Continuing Education” means mandatory continuing education required by the Board as set forth in 23CSR2.

2.6. “Delinquent Status” means the licensee has failed to meet the requirements for renewal or paid the renewal fee and is not permitted to practice as a professional surveyor in West Virginia. The licensee can remain in delinquent status up to thirty-six (36) months without submitting a new application.

2.7. “Direct Supervision” means the responsible licensee is in direct control of all field and office surveying operations. Direct control does not necessarily require the actual physical presence of the

responsible licensee at the site of the survey, nor prohibit the responsible licensee from maintaining simultaneous direct supervision of more than one survey.

2.8. “Endorsement Applicant” means a person who is a current licensee of the Board and is applying to survey in a specialized field of practice.

2.9. “Expired Status” means the licensee has failed to meet the requirement for renewal while in delinquent status and must reapply for a new license and meet all of the current experience, education, and examination requirements.

2.10. “FS Examination” means the NCEES Fundamentals of Surveying Examination.

2.11. “Inactive Status” means the licensee has met all the requirements for the current annual renewal period, except for continuing education, and has been granted inactive status and is not permitted to practice as a professional surveyor in West Virginia.

2.12. “License” means a surveying license issued under the provisions of W. Va. Code §30-13A-1 et seq. authorizing a licensee to practice as a professional surveyor for a designated period of time approved by the Board.

2.13. “Low-income individual” means an individual in the local labor market as defined in W. Va. Code §21-1C-2, whose household adjusted gross income is below 130 percent of the federal poverty line. This term also includes any person enrolled in a state or federal public assistance program including, but not limited to, the Temporary Assistance for Needy Families Program (TANF), Medicaid, or the Supplemental Nutrition Assistance Program (SNAP).

2.14. “Military families” means any person who serves as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U. S. C. §101, honorably discharged veterans of those forces, and their spouses. This term also includes surviving spouses of deceased service members who have not remarried.

2.15. “NCEES” means the National Council of Examiners for Engineering and Surveying.

2.16. “Professional Charge” means a person who holds a current license in active status with the Board and is the lead professional responsible to directly supervise other professionals, technicians or support staff and to affix his or her signature and seal to survey documents.

2.17. “PS” means a licensed Professional Surveyor who has met all of the examination and licensing requirements as set forth in W. Va. Code §30-13A-1 et seq. and is an acronym used after the surveyor’s name to indicate they are a current licensee with the Board.

2.18. “PS Examination” means the NCEES Principles and Practice of Surveying Examination.

2.19. “Responsible Charge” means direct control of work or projects under the direct supervision of a licensee or person licensed as a professional surveyor in a jurisdiction other than WV to engage in the practice of surveying.

2.20. “Retired Status” means the licensee has applied for and been approved by the Board for retired status and is not permitted to practice as a professional surveyor in West Virginia.

2.21. “SI” means a certified Surveyor Intern who has passed the FS examination.

2.22. “SU” means “surface and underground” and is the designation following the license number of a licensee who has met the requirements to be endorsed by the Board as an underground surveyor pursuant to W. Va. Code §30-13A-1 et seq.

2.23. “Technician” means a person who performs technical work related to surveying under the direction of a designated field or office supervisor or a person in responsible charge or licensed professional. Examples of a technician may be, but are not limited to, an instrumentperson, rodperson, drafter or computer operator.

2.24. “WV Examination” means the state-specific West Virginia Professional Surveyors Examination developed by the Board.

§23-1-3. Application and Qualification for Licensure or Certification.

3.1. Applications Generally.

3.1.a. Each application shall be accompanied by an application fee and examination fee determined by the Board as set forth in 23CSR4 et seq.

3.1.b. Any applicant is required to notify the Board within thirty (30) days of any change in name, address, employment, or other relevant information.

3.1.c. In support of an applicant’s experience verification, the Board may require designated records and documentation of surveys made by the applicant.

3.1.d. The Board deems that statements provided as references for an applicant, personal data, and other such information are personal in nature and public disclosure of those statements would constitute an unreasonable invasion of privacy and, therefore, shall be exempt from disclosure under W. Va. Code §29B-1-4 et seq.

3.1.e. The application and associated documents shall be kept as a permanent record, except for any survey documents submitted with the application that justify the applicant’s experience which shall be kept for a maximum of six (6) years.

3.1.f. An applicant may request reconsideration of an application which has been denied when the request is based upon additional information or evidence which could affect the original decision. A request for reconsideration or hearing must be made within fifteen (15) days after the applicant receives notice of the denial of application for licensure.

3.1.g. The Board has the discretion to make exceptions for any applicant who is serving on active duty in the Armed Forces of the United States or who is experiencing physical disability, illness, or other extenuating circumstances.

3.1.h. Low-Income individuals, as defined in this rule, may seek a waiver of the initial application fee for licensure and must request in a format prescribed by the board.

3.1.i. Military families, as defined in this rule, may seek a waiver of the initial application fee for licensure and must request in a format prescribed by the board.

3.2. Applications.

3.2.a. All applications and related documentation shall be submitted to the Board on forms prescribed by the Board.

3.3. Education and Experience Reporting.

3.3.a. An applicant shall clearly and concisely document his or her survey related education and experience history and list separately the years of education, technical experience and responsible charge experience with the number of allotted years clearly shown.

3.3.b. The applicant shall document a minimum of two (2) years experience in responsible charge of survey related work in order to qualify for examination.

3.3.c. The final determination for allotted years for each category shall rest entirely with the Board.

3.4. Military Education and Experience.

3.4.a. In order to meet the education requirement of W. Va. Code §30-13A-1 et seq., military veterans should submit their DD 214 and transcript from the American Council of Education (ACE), which provides a listing of acceptable college credits, based upon the individuals Military Occupational Speciality (MOS), military training, and length of service, to a college or university that will award military credit.

3.4.b. Veterans who meet the education requirement of W. Va. Code §30-13A-1 et seq. for licensure, may submit their DD 214 with their application for Board consideration of applicable surveying experience. The Board may award experience commensurate with the veterans rank and years of service, and determine which experience is creditable towards meeting the responsible charge and technician level requirement in accordance with paragraph 3.3.a of this rule.

3.4.c. Veterans who were members of the Selected Reserves of the Armed Forces of the United States may also apply under the provisions of paragraphs 3.4.1.a. and 3.4.1.b. above and submit their DD 214 and/or Report of Separation/Record of Service from the Selected Reserve for awarding of educational and experience consideration.

3.5. Application for PS Examination.

3.5.a. An applicant shall first apply for and pass the FS examination before making application for the next level of examinations.

3.5.b. An applicant shall be an SI in good standing at the time of application.

3.5.c. An applicant shall meet all of the education or experience requirements as set forth in W. Va. Code §30-13A-1 et seq. and be approved by the Board prior to sitting for the next level of examinations.

3.6. Comity Applicants.

3.6.a. The Board shall honor the acts of licensing, certification or registration of surveyors by licensing agencies in other jurisdictions, and shall license those applicants upon proper application and payment of fees and upon verification(s) from all jurisdiction(s) in which the applicant has been licensed, which are substantially equivalent to those prescribed by W. Va. Code §30-13A-1 et seq. and by rule of the Board, and the other jurisdiction reciprocates the same privileges to applicants who are licensed in West Virginia.

3.6.b. When considering a comity applicant, the board shall take into consideration when its licensure qualifications changed and consider the application within that context when reviewing that application for approval.

3.6.b.1. The board shall require a comity applicant, licensed after 2004, to obtain the education requirements as stated in W.Va. Code §30-13A-1 et seq. for that applicant's qualifications to be considered substantially equivalent.

3.6.c. Notwithstanding the provisions of subdivision 3.6.a. of this rule, an individual licensed as a professional surveyor in a jurisdiction other than West Virginia shall apply for and pass the WV examination as a condition precedent to obtaining a license to engage in the practice of surveying in this state.

3.7. Criminal History.

3.7.a. The Board may not disqualify an applicant from initial licensure because of a prior criminal conviction unless that conviction bears a rational nexus to the practice of professional surveying. In determining whether a criminal conviction bears a rational nexus to the practice of professional surveying, the Board shall consider, at a minimum: The nature and seriousness of the crime; The passage of time since the commission of the crime; The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities attendant to the practice of professional surveying; and any evidence of rehabilitation or treatment undertaken by the applicant.

3.8. Petition to Determine Licensure Eligibility.

3.8.a. An individual with a criminal record who has not previously applied for licensure may petition the Board at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.

3.8.b. The petition shall be submitted on an application form prescribed by the Board and shall include sufficient details about the individual's criminal record to enable the Board to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction.

3.8.c. The applicant may submit with the petition evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to practice professional surveying.

3.8.d. The Board shall provide the determination within 60 days of receiving the petition

§23-1-4. Examination for Licensure or Certification.

4.1. Examinations Generally.

4.1.a. The Board will administer at least one (1) WV examination per year at a time and place as determined by the Board.

4.1.b. The scope of the examination and methods of procedure for the FS and PS examinations are determined by the NCEES.

4.1.c. The scope of the examination and methods of procedure for the WV examination or any other licensing or endorsement examination will be determined by the Board.

4.1.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 shall furnish additional information as requested by the Board.

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.

4.1.f. An applicant who fails to attend an examination for which they have been scheduled will forfeit the fee paid for the examination, except, with a request to and approval by the Board, the fee may be applied to the next test administration in the case of illness, death in the family, or other unavoidable causes for absence. Failure of an applicant to attend an examination for which they have been scheduled does not count as a failure of the examination.

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. Code §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 the examination.

4.2. Examination Results.

4.2.a. The Board shall provide notification to an applicant that they passed or failed the examination.

4.2.b. Applicants are not permitted access to, or review of, any examination administered by the Board.

§23-1-5. Survey Certificates and License.

5.1. Certificates and Licenses Generally.

5.1.a. When a certificate or license is lost, stolen, destroyed or mutilated, the Board may issue a duplicate certificate or license upon written request by a licensee in good standing and a payment of a fee as set forth in 23CSR4 et seq.

5.1.b. A licensee or certificate holder is required to notify the Board within thirty (30) days of any change in name, address, employment, or other relevant information.

5.2. Surveyor Intern Certificate.

5.2.a. Whenever the Board finds that an applicant has passed the FS examination, it shall issue a SI certificate which shall contain the legal name of the SI, the SI number assigned by the Board and the expiration date. All certificates shall expire ten (10) years from the passing date of the FS examination and cannot be renewed.

5.2.b. A certified SI shall display the certificate issued by the Board at his or her principal place of employment.

5.2.c. A person holding a SI certificate is not required to pay any fees other than the application and examination fees or a replacement certificate fee as set forth in 23CSR4 et seq.

5.2.d. Pursuant to W. Va. Code §30-13A-1 et seq., a surveyor-in-training recognized by the Board prior to the first (1st) day of July, 2004 shall for all purposes be considered a Surveyor Intern under this section.

5.3. PS License and Certificate.

5.3.a. Whenever the Board finds that an applicant meets all of the requirements for a license to engage in the practice of surveying, it shall issue the certificate of licensure and the annual license.

5.3.b. All licenses, whether original or renewal, expire on the thirtieth (30th) day of June following the date of issuance or renewal and are placed in delinquent status without hearing after that date unless renewed in accordance with subsection 5.4 below.

5.3.c. A licensee shall display the annual license issued by the Board at his or her principal place of practice.

5.3.d. The Board will maintain a current record of those licenses that are in active, inactive, or delinquent status. The licenses that have been voluntarily surrendered or in retired, expired or deceased status will be kept as a sedentary record. Sedentary records will not receive renewal mailings or other relevant information from the Board.

5.3.e. A wallet card shall be issued simultaneously with the annual license, to be kept on the licensee's person.

5.4. PS License Renewal.

5.4.a. The Board shall mail to the last known address of every active, inactive, or delinquent licensee, at least thirty (30) days prior to the July first (1st) expiration of a license, notice of the expiration date and the amount of the renewal fee.

5.4.b. A licensee may renew a license without examination upon meeting the continuing education requirements as set forth in 23CSR2 et seq. and submitting an application for renewal on a form prescribed by the Board and payment to the Board of an annual renewal fee as set forth in 23CSR4 et seq.

5.4.c. With supporting documentation, active or inactive licensees may request exemption from the license renewal fee in the following instances: serving on active duty in the Armed Forces of the United States ; experiencing physical disability; illness; or other extenuating circumstances.

5.4.d. The Board may deny any application for renewal for any reason that would justify the denial of an original application for a license.

5.5. PS License Status.

5.5.a. Active Status. A licensee is current in all the licensing requirements and is authorized to practice as a professional surveyor and be in professional charge.

5.5.b. Delinquent Status. If a license is not renewed when due it immediately falls into "delinquent" status. The fee shall increase by twenty percent (20%) for each month or fraction of a month that the renewal fee is not paid, up to a maximum of thirty-six (36) months.

5.5.c. Expired Status. If a license is not renewed for a period of thirty-six (36) months it immediately falls into “expired” status and may not be renewed. The fact that a license cannot be renewed because of the expiration of a period of thirty-six (36) months may not prevent a person from making application for a new license by meeting all the education, experience, and examination requirements in effect at the time of submitting a new application.

5.5.d. Inactive Status. Licensees may apply or reapply for “inactive” status while in active or delinquent status and must pay the annual renewal fee for licensure and any requisite late fees accrued for the license period.

5.5.d.1. The Board shall issue an annual license card noting “Inactive Status” to qualifying applicants.

5.5.d.2. Inactive licensees are not permitted to practice as a professional surveyor or be in professional charge.

5.5.d.3. Licensees in inactive status are not required to maintain professional development hours (PDHs); however, an inactive licensee who elects to return to the active practice of surveying shall acquire PDHs for up to a maximum of two (2) years’ requirements as set forth in 23CSR2 et seq.

5.5.d.4. Licensees in inactive status for four (4) years or more must meet the quadrennial requirements for mandatory continuing education for minimum standards and ethics as set forth in 23CSR2 et seq. within the first year of returning to active status.

5.5.e. Retired Status.

5.5.e.1. Licensees who apply for “retired” status shall satisfy the following requirements at the time of application:

5.5.e.1.A. Licensee shall be in active or inactive license status.

5.5.e.1.B. Licensee shall be at least sixty-five (65) years of age, or older, or have a documented physical disability or debilitating illness. Licensees applying for retirement shall be in good standing with the Board before the application will be given consideration.

5.5.e.1.C. Licensee shall certify in writing to the Board that they are no longer practicing as a professional surveyor and agree not to be in professional charge of survey related work in West Virginia.

5.5.e.2. The change in status will be in effect once the application is approved by the Board which will issue a certificate noting the honorific title of “Professional Surveyor, Retired.” Licensees that has been granted honorific retired status may use the title “Professional Surveyor, Retired” or “P.S., Retired” but only within the restrictions as set forth in the W. Va. Code and this rule.

5.5.e.3. Licensees in retired status will not be required to pay an annual renewal fee.

5.5.e.4. Licensees in retired status will not be required to meet the continuing education requirements set forth in 23CSR2 et seq.

5.5.e.5. Licensees in retired status who elect to return to the active practice of surveying shall provide a written explanation to the Board justifying their need to be reinstated to active status and satisfy one of the following requirements:

5.5.e.5.A. Licensees who have been in retired status for less than five (5) years shall acquire delinquent professional development hours (PDHs) for each year retired, up to a maximum of two (2) years' requirements as set forth in 23CSR2, and shall pay the current license renewal fee.

5.5.e.5.B. Licensees who have been in retired status for five (5) years or more, except those licensees approved for early retirement due to physical disability or debilitating illness, shall be required to meet all the education, experience and examination requirements in effect at the time of application.

5.5.e.6. The change in status will be in effect when all fees are paid and all requirements are met by the licensee.

5.5.e.7. Licensees in retired status for four (4) years or more shall meet the quadrennial requirements for mandatory continuing education for minimum standards and ethics as set forth in 23CSR2 et seq. within the first year of returning to active status.

5.5.f. Voluntarily Surrendered Licenses.

5.5.f.1. Licensees who choose to voluntarily surrender their license may do so at any time and shall return their license to the Board and upon receipt by the Board shall be placed in expired status.

5.5.f.2. A person who has voluntarily surrendered their license will not be permitted to practice as a professional surveyor or be in professional charge in West Virginia.

5.5.g. Deceased Status. The Board shall place any license or endorsements in deceased status when it learns the licensee has passed away.

23-1-6. Endorsements and Specialized Fields of Practice.

6.1. Experience and Documentation Requirements.

6.1.a. The Board may require an application and examination fee to cover costs incurred for review, verification and examination of a licensee's qualifications and experience to practice in a specialized field.

6.1.b. The Board may require an applicant or licensee to submit designated records and documentation of surveys to support a claim to experience in a specialized field of surveying and mapping.

6.1.c. The Board may also require an examination on procedures and knowledge on specialized fields of surveying and mapping.

6.2. Surface and Underground (SU) Endorsement.

6.2.a. For licensees seeking an endorsement to engage in underground surveying, the Board may require designated records and documentation of underground surveys to support an applicant's claim of experience.

6.2.b. A licensee must receive the "SU" endorsement before affixing their signature and seal on any documents associated with underground surveying.

6.2.c. Underground surveys and maps shall comply with the requirements in W. Va. Code §22A-2-1 et seq.