

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969

ENROLLED

Com. Sub. *for*
SENATE BILL NO. 78

(By Mr. *Wolfe and Mr. Brotherton,*
original sponsors)

PASSED Feb. 24, 1969

In Effect thirty days from Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-2-69

#78

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 78

(MR. WOLFE and MR. BROTHERTON, *original sponsors.*)

[Passed February 24, 1969; in effect ninety days from passage.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to the regulation and licensing of land surveyors; providing definitions; providing for a board of examiners of land surveyors; relating to the organization, functions and funds of such board; relating to the powers and duties of such board; establishing qualifications of applicants for a license to engage in the practice of land surveying; providing exceptions; providing for applications for and the issuance of licenses, renewals thereof and fees therefor; establishing exemptions from licensing requirements; au-

thorizing the board to suspend or revoke a license and establishing the grounds therefor; providing procedures for hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hearings; authorizing the board to issue subpoenas and subpoenas duces tecum in connection with such hearings; providing an automatic suspension of certain orders of the board pending such hearings; relating to the costs for such hearings; providing for judicial review of decisions of the board entered following such hearings; providing for appeals to the supreme court of appeals; providing for legal counsel for the board; relating to the seal of a licensed land surveyor; requiring seal to be affixed before certain documents may be admitted to record; establishing criminal penalties; providing for injunctive relief; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen-a, to read as follows:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-1. Purpose.

1 In order to provide for the regulation of land surveying
2 in this state, no person shall engage in, offer to engage in,
3 or hold himself out to the public as being engaged in, the
4 practice of land surveying in this state (except for the
5 persons exempted under the provisions of section seven
6 of this article), unless and until he shall first obtain a
7 license to engage in the practice of land surveying in ac-
8 cordance with the provisions of this article, which license
9 remains unexpired, unsuspended and unrevoked.

§30-13A-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Applicant" means any person making application
4 for an original or renewal license under the provisions
5 of this article;

6 (b) "Licensee" means any person holding a license
7 issued under the provisions of this article;

8 (c) "Board" means the West Virginia state board of
9 examiners of land surveyors created under the provisions
10 of this article;

11 (d) "Practice of land surveying" means the rendering
12 or offering to render for a fee, salary or other compensa-
13 tion, monetary or otherwise, for the public generally,
14 any of the following services:

15 (1) The location, relocation, establishment, reestab-
16 lishment or retracement of any property line or boundary
17 of any parcel of land or of any road or utility right-of-
18 way, easement or alignment;

19 (2) The performance of any survey for the division,
20 subdivision or resubdivision of any tract of land;

21 (3) The determination of the position of any monu-
22 ment or reference point which marks a property line
23 boundary or corner, or setting, resetting or replacing any
24 such monument or reference point, by the use of the
25 principles of land surveying;

26 (4) The determination of the configuration or contour
27 of the earth's surface or the position of fixed objects
28 thereon or related thereto, by means of measuring lines
29 and angles, and applying the principles of mathematics;

30 (5) The performance of cadastral surveying, under-
31 ground surveying or hydrographic surveying;

32 (6) The preparation of subdivision maps; and

33 (7) The preparation of maps or drawings showing any
34 of the above.

35 (e) "Land surveyor" means any person who engages
36 in the practice of land surveying.

**§30-13A-3. Creation of board of examiners of land surveyors,
members, terms, meetings, officers, oath and
compensation; general provisions.**

1 (a) There is hereby created the state board of exam-
2 iners of land surveyors which shall be composed of three
3 members appointed by the governor by and with the ad-
4 vice and consent of the Senate. Each member shall have
5 been actively engaged in the practice of land surveying
6 for at least ten years and shall be the holder of a license
7 under the provisions of this article, or in the case of the
8 members first appointed be eligible for such a license.

9 (b) The members of the board shall be appointed for
10 overlapping terms of three years each and until their re-
11 spective successors have been appointed and qualified,
12 except of the original appointments, one member shall
13 be appointed for a term of three years and until his suc-

14 cessor has been appointed and qualified, one member
15 shall be appointed for a term of two years and until his
16 successor has been appointed and qualified and one mem-
17 ber shall be appointed for a term of one year and until
18 his successor has been appointed and qualified. Members
19 may be reappointed for any number of terms. Before
20 entering upon the performance of his duties, each member
21 shall take and subscribe to the oath required by section
22 five, article four of the constitution of this state. Vacancies
23 shall be filled by appointment by the governor for the
24 unexpired term of the member whose office shall be
25 vacant and such appointment shall be made within sixty
26 days of the occurrence of such vacancy. Any member
27 may be removed by the governor in case of incompetency,
28 neglect of duty, gross immorality or malfeasance in office.

29 (c) The board shall elect from its membership a chair-
30 man and secretary-treasurer. A majority of the members
31 of the board shall constitute a quorum and meetings shall
32 be held at the call of the chairman or upon the written
33 request of two members at such time and place as desig-
34 nated in such call or request, and, in any event, the board

35 shall meet at least once annually to conduct the examina-
36 tion hereinafter provided for and to transact such other
37 business as may come before it.

38 (d) Members may be paid such reasonable compensa-
39 tion as the board may from time to time determine, and
40 in addition may be reimbursed for all reasonable and
41 necessary expenses actually incurred in the performance
42 of their duties, which compensation and expenses shall
43 be paid in accordance with the provisions of subsection
44 (b), section four of this article.

§30-13A-4. Powers and duties of board; funds of board.

1 (a) The board shall have the power and duty to:

2 (1) Examine applicants and determine their eligibility
3 for a license to engage in the practice of land surveying;

4 (2) Prepare, conduct and grade an apt and proper
5 written, oral or written and oral examination of appli-
6 cants for a licensø and determine the satisfactory passing
7 score thereon;

8 (3) Promulgate reasonable rules and regulations im-
9 plementing the provisions of this article and the powers
10 and duties conferred upon the board hereby, all of which

11 reasonable rules and regulations shall be promulgated in
12 accordance with the provisions of article three, chapter
13 twenty-nine-a of this code;

14 (4) Issue, renew, deny, suspend or revoke licenses to
15 engage in the practice of land surveying in accordance
16 with the provisions of this article;

17 (5) Investigate alleged violations of the provisions of
18 this article, reasonable rules and regulations promulgated
19 hereunder and orders and final decisions of the board
20 and take appropriate disciplinary action against any
21 licensee for the violation thereof or institute appropriate
22 legal action for the enforcement of the provisions of this
23 article, reasonable rules and regulations promulgated
24 hereunder and orders and final decisions of the board or
25 take such disciplinary action and institute such legal
26 action;

27 (6) Keep accurate and complete records of its pro-
28 ceedings, certify the same as may be appropriate, and
29 prepare, from time to time, a list showing the names
30 and addresses of all licensees; and

31 (7) Take such other action as may be reasonably neces-
32 sary or appropriate to effectuate the provisions of this
33 article.

34 (b) All moneys paid to the board shall be accepted by
35 a person designated by the board and deposited by him
36 with the treasurer of the state and credited to an account
37 to be known as the "board of examiners of land surveyors
38 fund." All of the reasonable compensation of the members
39 of the board, the reimbursement of all reasonable and
40 necessary expenses actually incurred by such members
41 and all other costs and expenses incurred by the board
42 in the administration of this article shall be paid from
43 such fund, and no part of the state's general revenue
44 fund shall be expended for this purpose.

**§30-13A-5. Qualifications of applicants; exceptions; applica-
tions; fee.**

1 (a) To be eligible for a license to engage in the prac-
2 tice of land surveying, the applicant must:

3 (1) Be at least twenty-one years of age;

4 (2) Be of good moral character;

5 (3) Have been a resident of the United States for one
6 year immediately preceding the date of application;

7 (4) Not have been convicted of a crime involving
8 moral turpitude;

9 (5) Have four years or more experience in the prac-
10 tice of land surveying under the supervision of a licensee,
11 or a person eligible for a license hereunder, or a person
12 authorized in another state or country to engage in the
13 practice of land surveying; and each year of satisfactory
14 study in an accredited surveying curriculum may be
15 substituted for one year of experience, but only two years
16 of such experience requirement may be fulfilled by such
17 study; and

18 (6) Have passed the examination prescribed by the
19 board, which examination shall cover the basic subject
20 matter of land surveying and land surveying skills and
21 techniques.

22 (b) The following persons shall be eligible for a license
23 to engage in the practice of land surveying without
24 examination:

25 (1) Any applicant who is licensed, certificated or regist-
26 tered to engage in the practice of land surveying in any
27 other state or country, if the requirements to obtain a
28 license or certificate or to become registered in such
29 other state or country are found by the board to be at
30 least as great as those prescribed in this article.

31 (2) Any applicant who is a graduate of an accredited
32 surveying curriculum and has at least two years of experi-
33 ence in the practice of land surveying under the super-
34 vision of a licensee, or a person eligible for a license
35 hereunder, or a person authorized in another state
36 or country to engage in the practice of land surveying, if
37 such applicant meets the requirements of subdivisions
38 (1), (2), (3) and (4), subsection (a) of this section.

39 (3) Any applicant who has been engaged in the practice
40 of land surveying in West Virginia for at least six years
41 prior to the filing of such application, if such application
42 for a license is made within three years after the effective
43 date of this article and if such person meets the require-
44 ments of subdivisions (1), (2), (3) and (4), subsection
45 (a) of this section. Such applicant must also furnish the

46 names and addresses of ten persons who have engaged
47 such applicant as a land surveyor, together with satis-
48 factory records of such land surveying work.

49 (c) Any applicant for any such license shall submit an
50 application therefor on forms provided by the board. Such
51 applications shall be verified and shall contain a statement
52 of the applicant's education and experience, the names
53 of five persons for reference (at least three of whom shall
54 be licensees, or persons eligible for a license hereunder,
55 or persons authorized in another state or country to
56 engage in the practice of land surveying, who have know-
57 ledge of his work) and such other information as the
58 board may from time to time by reasonable rule and regu-
59 lation prescribe.

60 (d) An applicant shall pay to the board with his ap-
61 plication a license fee of twenty dollars, which fee shall
62 be returned if he is denied a license.

63 (e) Examinations shall be held at least once each year
64 at such time and place as the board shall determine. The
65 scope of the examination and methods of procedure shall
66 be determined by the board. An applicant who fails to

67 pass an examination may reapply at any time and shall
68 furnish additional information as requested by the board.
69 Each such application shall be accompanied by a license
70 fee of twenty dollars, which fee shall be returned if the
71 applicant is again denied a license.

**§30-13A-6. Issuance of license; notice of expiration of license;
renewal of license; renewal fee; display of license.**

1 Whenever the board finds that an applicant meets all
2 of the requirements of this article for a license to engage
3 in the practice of land surveying, it shall forthwith issue
4 to him such license; and otherwise the board shall deny
5 the same. All licenses, whether original or renewal, shall
6 expire on the thirtieth day of June following the date
7 of issuance or renewal. The secretary-treasurer of the
8 board shall mail to every licensee, at least thirty days
9 prior to the expiration of such license, notice of the
10 expiration date and the amount of the renewal fee. A
11 license may be renewed without examination upon ap-
12 plication for a renewal on a form prescribed by the
13 board and payment to the board of an annual renewal
14 fee of five dollars. If a license is not renewed when

15 due, the fee shall increase fifty cents per month for each
16 month or fraction thereof that such renewal fee is not
17 paid, up to a maximum of thirty-six months. No license
18 shall be renewed after expiration of said period of thirty-
19 six months, and the fact that a license cannot be renewed
20 because of the expiration of said period of thirty-six
21 months shall not prevent such person from making ap-
22 plication for a new license. The board may deny any
23 application for renewal for any reason which would
24 justify the denial of an original application for a license.
25 The board shall prescribe the form of licenses and each
26 such license shall be conspicuously displayed by the
27 licensee at his principal place of practice. A duplicate
28 license may be issued upon payment of a fee of five
29 dollars.

§30-13A-7. Exemption from regulation and licensing.

1 The following persons are exempt from regulation and
2 licensing under the provisions of this article and any
3 reasonable rules and regulations promulgated hereunder,
4 and may engage in the practice of land surveying with-

5 out a license issued under the provisions of this article
6 and any such reasonable rules and regulations:

7 (a) Any professional engineer authorized to practice
8 the profession of engineering as provided in article thir-
9 teen of this chapter;

10 (b) Any resident of another state, when such practice
11 in this state does not exceed in the aggregate more than
12 thirty days per calendar year, or such additional time
13 as may be approved by the board, if such person is
14 licensed, certificated or registered in his own state and
15 the requirements for obtaining a license or certificate
16 or becoming registered in such other state are not lower
17 than those specified in this article;

18 (c) Any person who has filed with the board an
19 application for a license and who has paid the fee required
20 by this article, but such exemption shall continue only
21 for such time as the board requires for the consideration
22 and determination of the application for such license;

23 (d) Any employee of a person holding a license to
24 engage in the practice of land surveying in this state
25 or any employee of a person exempted from regulation

26 and licensing under subdivisions (a) and (b) of this
27 section: *Provided*, That the work of any such employee
28 is done under the supervision of and certified by his
29 employer;

30 (e) Any employee of a person, firm, association or
31 corporation, when such employee is engaged in the
32 practice of land surveying exclusively for the person,
33 firm, association or corporation by which employed,
34 or, if a corporation, its parents, affiliates or subsidiaries,
35 and such person, firm, association or corporation does
36 not hold himself or itself out to the public as being
37 engaged in the business of land surveying;

38 (f) Any employee or officer of the United States,
39 this state or any political subdivision thereof, when
40 such employee is engaged in the practice of land sur-
41 veying exclusively for such governmental unit.

§30-13A-8. Suspension or revocation of license.

1 (a) The board may at any time upon its own motion
2 and shall upon the verified written complaint of any per-
3 son conduct an investigation to determine whether there
4 are any grounds for the suspension or revocation of a

5 license issued under the provisions of this article.

6 (b) The board shall suspend or revoke any license
7 when it finds the holder thereof has:

8 (1) Been convicted of a crime involving moral turpi-
9 tude;

10 (2) Obtained a license by means of fraud or deceit;

11 (3) Been incompetent, grossly negligent, or guilty of
12 fraud, deceit or other misconduct in the practice of land
13 surveying as defined by the board by reasonable rules
14 and regulations; or

15 (4) Failed or refused to comply with the provisions of
16 this article or any reasonable rule and regulation promul-
17 gated by the board hereunder or any order or final de-
18 cision of the board.

19 (c) The board shall also suspend or revoke any license
20 if it finds the existence of any ground which would
21 justify the denial of an application for such license if
22 application were then being made for it.

23 (d) Any suspension of a license shall continue for the
24 period specified in the order of suspension. Revocation
25 of a license shall not preclude application for a new

26 license, which application shall be processed in the same
27 manner and the application approved or denied and the
28 license issued or refused on the same grounds as any
29 other application for a license is processed, considered
30 and determined, except that any previous suspension and
31 the revocation may be given such weight in deciding
32 whether to approve or deny such application and issue or
33 refuse to issue such license as is meet and proper under
34 all the circumstances.

§30-13A-9. Procedures for hearing.

1 (a) Whenever the board shall deny an application for
2 any original or renewal license or shall suspend or re-
3 voke any license, it shall make and enter an order to that
4 effect and serve a copy thereof on the applicant or li-
5 censee, as the case may be, by certified mail, return re-
6 ceipt requested. Such order shall state the grounds for
7 the action taken and shall require that any license sus-
8 pended or revoked thereby shall be returned to the board
9 by the holder within twenty days after receipt of said
10 order.

11 (b) Any person adversely affected by any such order
12 shall be entitled to a hearing thereon (as to all issues not
13 excluded from the definition of a "contested case" as set
14 forth in article one, chapter twenty-nine-a of this code)
15 if, within twenty days after receipt of a copy thereof, he
16 files with the board a written demand for such hearing.
17 A demand for hearing shall operate automatically to stay
18 or suspend the execution of any order suspending or re-
19 voking a license or denying an application for a renewal
20 license. The board may require the person demanding
21 such hearing to give reasonable security for the costs
22 thereof and if such person does not substantially prevail
23 at such hearing such costs shall be assessed against him
24 and may be collected by an action at law or other proper
25 remedy.

26 (c) Upon receipt of a written demand for such hearing,
27 the board shall set a time and place therefor not less than
28 ten and not more than thirty days thereafter. Any sched-
29 uled hearing may be continued by the board upon its own
30 motion or for good cause shown by the person demanding
31 the hearing.

32 (d) All of the pertinent provisions of article five,
33 chapter twenty-nine-a of this code shall apply to and
34 govern the hearing and the administrative procedures in
35 connection with and following such hearing, with like
36 effect as if the provisions of said article five were set
37 forth in this subsection.

38 (e) Any such hearing shall be conducted by a quorum
39 of the board. For the purpose of conducting any such
40 hearing any member of the board shall have the power
41 and authority to issue subpoenas and subpoenas duces
42 ^Ptecum which shall be issued and served within the time,
43 for the fees and shall be enforced, as specified in section
44 one, article five of said chapter twenty-nine-a, and all
45 of the said section one provisions dealing with subpoenas
46 and subpoenas duces tecum shall apply to subpoenas
47 and subpoenas duces tecum issued for the purpose of a
48 hearing hereunder.

49 (f) At any such hearing the person who demanded
50 the same may represent himself or be represented by
51 an attorney at law admitted to practice before any circuit
52 court of this state. Upon request by the board, it shall

53 be represented at any such hearing by the attorney
54 general or his assistants without additional compensation.

55 (g) After any such hearing and consideration of all of
56 the testimony, evidence and record in the case, the board
57 shall render its decision in writing. The written decision
58 of the board shall be accompanied by findings of fact and
59 conclusions of law as specified in section three, article five,
60 chapter twenty-nine-a of this code, and a copy of such
61 decision and accompanying findings and conclusions shall
62 be served by certified mail, return receipt requested, upon
63 the person demanding such hearing, and his attorney of
64 record, if any.

65 (h) The decision of the board shall be final unless
66 reversed, vacated or modified upon judicial review there-
67 of in accordance with the provisions of section ten of this
68 article.

**§20-13A-10. Judicial review; appeal to supreme court of ap-
peals; legal representation for board.**

1 Any person adversely affected by a decision of the board
2 rendered after a hearing held in accordance with the
3 provisions of section nine of this article shall be entitled

4 to judicial review thereof. All of the pertinent provisions
5 of section four, article five, chapter twenty-nine-a of this
6 code shall apply to and govern such judicial review with
7 like effect as if the provisions of said section four were
8 set forth in this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this code.

13 Legal counsel and services for the board in all appeal
14 proceedings in any circuit court and the supreme court of
15 appeals shall be provided by the attorney general or his
16 assistants and in any circuit court by the prosecuting
17 attorney of the county as well, all without additional
18 compensation.

§30-13A-11. Seal.

1 Each licensee shall obtain a seal of the design author-
2 ized by the board, bearing his name and the legend,
3 "Licensed Land Surveyor." Plans, plats, maps, drawings
4 and reports issued by a licensee shall be stamped with the
5 seal. It shall be unlawful for anyone to stamp or seal any

6 document with such seal unless the license of the licensee
7 name thereon remains unsuspended, unrevoked and un-
8 expired.

§30-13A-12. Duty of county clerks and public officials.

1 No document prepared by or alleged to have been pre-
2 pared by a land surveyor shall be filed by any clerk of
3 a county court or accepted by any public official of this
4 state unless the seal required by section eleven of this
5 article has been affixed thereto, except that any document
6 prepared by a person exempted from the regulation and
7 licensing requirements of this article, as provided in sec-
8 tion seven of this article, shall not be required to have
9 the seal required by section eleven of this article affixed
10 thereto.

§30-13A-13. Actions to enjoin violations.

1 Whenever it appears to the board that any person
2 has been or is violating or is about to violate any pro-
3 vision of this article, any reasonable rule and regulation
4 promulgated hereunder or any order or final decision
5 of the board, the board may apply in the name of the
6 state to the circuit court of the county in which the

7 violation or violations or any part thereof has occurred,
8 is occurring or is about to occur, or the judge thereof
9 in vacation, for an injunction against such person and
10 any other persons who have been, are or are about to
11 be, involved in any practices, acts or omissions, so in
12 violation, enjoining such person or persons from any
13 such violation or violations. Such application may be
14 made and prosecuted to conclusion whether or not any
15 such violation or violations have resulted or shall result in
16 prosecution or conviction under the provisions of section
17 fourteen of this article.

18 Upon application by the board, the circuit courts of
19 this state may by mandatory or prohibitory injunction
20 compel compliance with the provisions of this article,
21 the reasonable rules and regulations promulgated here-
22 under and all orders and final decisions of the board.
23 The court may issue a temporary injunction in any
24 case pending a decision on the merits of any application
25 filed.

26 The judgment of the circuit court upon any appli-
27 cation permitted by the provisions of this section shall

28 be final unless reversed, vacated or modified on appeal
29 to the supreme court of appeals. Any such appeal shall
30 be sought in the manner and within the time provided
31 by law for appeals from circuit courts in other civil
32 actions.

33 The board shall be represented in all such proceedings
34 by the attorney general or his assistants and in such pro-
35 ceedings in the circuit court by the prosecuting attorneys
36 of the several counties as well, all without additional
37 compensation.

§30-13A-14. Penalties.

1 Any person who violates any of the provisions of this
2 article, any of the reasonable rules and regulations pro-
3 mulgated hereunder or any order or any final decision
4 of the board shall be guilty of a misdemeanor and, upon
5 conviction thereof, shall be punished by imprisonment
6 for not more than three months or by a fine of not more
7 than one hundred dollars, or by both such fine and impris-
8 onment.

§30-13A-15. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held uncon-

3 stitutional or invalid, such unconstitutionality or in-
4 validity shall not affect other provisions or applications
5 of the article, and to this end the provisions of this article
6 are declared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tonger

Chairman Senate Committee

Clayton C. Davidson

Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Key, Jr.

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Lyndon B. Johnson

President of the Senate

Sam F. Brayley

Speaker House of Delegates

The within *is appended* this the *4th*
day of *March*, 1969.

Arch A. Moore, Jr.

Governor



PRESENTED TO THE
GOVERNOR

Date 2/28/69

Time 10:00 A.M.

RECEIVED

MAR 7 10 52 AM '69

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA