WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

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ENROLLED
Senate Bill No. 28

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

PASSED February 26, 1969

In Effect ninety days from Passage

FILLED IN THE OFFICE
JOHN G. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-2-69
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-
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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.


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;
(d) "Practice of land surveying" means the rendering or offering to render for a fee, salary or other compensation, monetary or otherwise, for the public generally, any of the following services:

(1) The location, relocation, establishment, reestablishment or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement or alignment;

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

(3) The determination of the position of any monument or reference point which marks a property line boundary or corner, or setting, resetting or replacing any such monument or reference point, by the use of the principles of land surveying;

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

(5) The performance of cadastral surveying, underground 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-
cessor has been appointed and qualified, one member
shall be appointed for a term of two years and until his
successor has been appointed and qualified and one mem-
ber shall be appointed for a term of one year and until
his successor has been appointed and qualified. Members
may be reappointed for any number of terms. Before
entering upon the performance of his duties, each member
shall take and subscribe to the oath required by section
two, article four of the constitution of this state. Vacancies
shall be filled by appointment by the governor for the
unexpired term of the member whose office shall be
vacant and such appointment shall be made within sixty
days of the occurrence of such vacancy. Any member
may be removed by the governor in case of incompetency,
neglect of duty, gross immorality or malfeasance in office.
(c) The board shall elect from its membership a chair-
man and secretary-treasurer. A majority of the members
of the board shall constitute a quorum and meetings shall
be held at the call of the chairman or upon the written
request of two members at such time and place as desig-
nated in such call or request, and, in any event, the board
shall meet at least once annually to conduct the examination hereinafter provided for and to transact such other business as may come before it.

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

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

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

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

(2) Prepare, conduct and grade an apt and proper written, oral or written and oral examination of applicants for a license and determine the satisfactory passing score thereon;

(3) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which
reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

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

(5) Investigate alleged violations of the provisions of this article, reasonable rules and regulations promulgated hereunder and orders and final decisions of the board and take appropriate disciplinary action against any licensee for the violation thereof or institute appropriate legal action for the enforcement of the provisions of this article, reasonable rules and regulations promulgated hereunder and orders and final decisions of the board or take such disciplinary action and institute such legal action;

(6) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees; and
(7) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

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

§30-13A-5. Qualifications of applicants; exceptions; applications; fee.

(a) To be eligible for a license to engage in the practice of land surveying, the applicant must:

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

(2) Be of good moral character;
(3) Have been a resident of the United States for one year immediately preceding the date of application;

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

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

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

(b) The following persons shall be eligible for a license to engage in the practice of land surveying without examination:
(1) Any applicant who is licensed, certificated or registered to engage in the practice of land surveying in any other state or country, if the requirements to obtain a license or certificate or to become registered in such other state or country are found by the board to be at least as great as those prescribed in this article.

(2) Any applicant who is a graduate of an accredited surveying curriculum and has at least two years of experience in the practice of land surveying under the supervision of a licensee, or a person eligible for a license hereunder, or a person authorized in another state or country to engage in the practice of land surveying, if such applicant meets the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section.

(3) Any applicant who has been engaged in the practice of land surveying in West Virginia for at least six years prior to the filing of such application, if such application for a license is made within three years after the effective date of this article and if such person meets the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section. Such applicant must also furnish the
names and addresses of ten persons who have engaged
such applicant as a land surveyor, together with satis-
factory records of such land surveying work.

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

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

(e) Examinations shall be held at least once each year
at such time and place as the board shall determine. The
scope of the examination and methods of procedure shall
be determined by the board. An applicant who fails to
pass an examination may reapply at any time and shall furnish additional information as requested by the board. Each such application shall be accompanied by a license fee of twenty dollars, which fee shall be returned if the 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.

Whenever the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of land surveying, it shall forthwith issue to him such license; and otherwise the board shall deny the same. All licenses, whether original or renewal, shall expire on the thirtieth day of June following the date of issuance or renewal. The secretary-treasurer of the board shall mail to every licensee, at least thirty days prior to the expiration of such license, notice of the expiration date and the amount of the renewal fee. A license may be renewed without examination upon application for a renewal on a form prescribed by the board and payment to the board of an annual renewal fee of five dollars. If a license is not renewed when
due, the fee shall increase fifty cents per month for each
month or fraction thereof that such renewal fee is not
paid, up to a maximum of thirty-six months. No license
shall be renewed after expiration of said period of thirty-
six months, and the fact that a license cannot be renewed
because of the expiration of said period of thirty-six
months shall not prevent such person from making ap-
plication for a new license. The board may deny any
application for renewal for any reason which would
justify the denial of an original application for a license.
The board shall prescribe the form of licenses and each
such license shall be conspicuously displayed by the
licensee at his principal place of practice. A duplicate
license may be issued upon payment of a fee of five
dollars.

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

The following persons are exempt from regulation and
licensing under the provisions of this article and any
reasonable rules and regulations promulgated hereunder,
and may engage in the practice of land surveying with-
out a license issued under the provisions of this article and any such reasonable rules and regulations:

(a) Any professional engineer authorized to practice the profession of engineering as provided in article thirteen of this chapter;

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

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

(d) Any employee of a person holding a license to engage in the practice of land surveying in this state or any employee of a person exempted from regulation
and licensing under subdivisions (a) and (b) of this section: Provided, That the work of any such employee is done under the supervision of and certified by his employer;

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

(f) Any employee or officer of the United States, this state or any political subdivision thereof, when such employee is engaged in the practice of land surveying exclusively for such governmental unit.

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

(a) 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 the suspension or revocation of a
license issued under the provisions of this article.

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

(1) Been convicted of a crime involving moral turpitude;

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

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

(4) Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the board hereunder or any order or final decision of the board.

(c) 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 such license if application were then being made for it.

(d) Any suspension of a license shall continue for the period specified in the order of suspension. Revocation of a license shall not preclude application for a new
license, which application shall be processed in the same
manner and the application approved or denied and the
license issued or refused 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 such weight in deciding
whether to approve or deny such application and issue or
refuse to issue such license as is meet and proper under
all the circumstances.


(a) Whenever the board shall deny an application for
any original or renewal license or shall suspend or re-
voke any license, it shall make and enter an order to that
effect and serve a copy thereof on the applicant or li-
censee, as the case may be, by certified mail, return re-
ceipt requested. Such order shall state the grounds for
the action taken and shall require that any license sus-
pended or revoked thereby shall be returned to the board
by the holder within twenty days after receipt of said
order.
(b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against him and may be collected by an action at law or other proper remedy.

(c) Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.
(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

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

(f) At any such hearing the person who demanded the same may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state. Upon request by the board, it shall
be represented at any such hearing by the attorney
general or his assistants without additional compensation.

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

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

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

Any person adversely affected by a decision of the board
rendered after a hearing held in accordance with the
provisions of section nine of this article shall be entitled
to judicial review thereof. All of the pertinent provisions
of section four, article five, chapter twenty-nine-a of this
code shall apply to and govern such judicial review with
like effect as if the provisions of said section four were
set forth in this section.

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

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
assistants and in any circuit court by the prosecuting
attorney of the county as well, all without additional
compensation.


Each licensee shall obtain a seal of the design author-
ized by the board, bearing his name and the legend,
"Licensed Land Surveyor." Plans, plats, maps, drawings
and reports issued by a licensee shall be stamped with the
seal. It shall be unlawful for anyone to stamp or seal any
document with such seal unless the license of the licensee name thereon remains unsuspended, unrevoked and un-
expired.


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


Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the board, the board may apply in the name of the 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
be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

The board shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation.


Any person who violates any of the provisions of this article, any of the reasonable rules and regulations promulgated hereunder or any order or any final decision of the board shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than three months or by a fine of not more than one hundred dollars, or by both such fine and imprisonment.


If any provision of this article or the application thereof to any person or circumstance is held uncon-
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3 institutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Temple
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

H. M. B. Tepee
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

D. E. De Hoy
President of the Senate

Leroy F. Bierly
Speaker House of Delegates

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

Arch A. Shane
Governor
PRESENTED TO THE
GOVERNOR

Date 2/28/69
Time 10:00 A.M.

WAR 7 10 32 AM '69
STATE OF NORTH CAROLINA