WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED
COMMITTEE SUBSTITUTE
FOR
House Bill No. 4450

(By Delegates Fragale, Boggs, Hartman, Hatfield, Morgan, Stephens and T. Walker)

Passed March 12, 2010
In Effect Ninety Days From Passage
making authority; continuing a special revenue account; clarifying the education and experience requirements for licensure; licensing requirements; establishing scope of practice; providing exceptions from licensure; clarifying surveyor intern requirements; licensing requirements for persons licensed in another state; renewal requirements; clarifying inactive license requirements; clarifying procedures for delinquent and expired licenses; clarifying retired license requirements; clarifying procedures for when a person fails an examination; requiring display of a license, endorsement and certification of authorization; clarifying certification of authorization requirements; clarifying requirements for a surveyor-in-charge; providing a due process procedure, grounds for disciplinary action, hearing procedures, judicial review appeals of decisions and cause for initiation of criminal proceedings; clarifying criminal penalties; and updating requirements to record a survey.

Be it enacted by the Legislature of West Virginia:


CHAPTER 1. THE STATE AND ITS SUBDIVISIONS.
ARTICLE 1. LIMITS AND JURISDICTION.

§1-1-5. West Virginia coordinate systems; definition; plane coordinates, limitations of use; conversion factor for meters to feet.

(a) The systems of plane coordinates which have been established by the National Ocean Service/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors for defining and stating the geographic position or locations of points on the surface of the earth within West Virginia are to be known and designated as the West Virginia Coordinate System of 1927 and the West Virginia Coordinate System of 1983.

(b) For the purpose of the use of this system the state is divided into a North Zone and a South Zone.

The area now included in the following counties is the North Zone: Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt and Wood.

The area now included in the following counties is the South Zone: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Putnam, Raleigh, Randolph, Roane, Summers, Upshur, Wayne, Webster and Wyoming.

(c) As established for use in the North Zone, the West Virginia Coordinate System of 1927 or the West Virginia Coordinate System of 1983 shall be named and in any land...
description in which it is used it shall be designated the West
Virginia Coordinate System of 1927 North Zone or West
Virginia Coordinate System of 1983 North Zone.

As established for use in the South Zone, the West
Virginia Coordinate System of 1927 or the West Virginia
Coordinate System of 1983 shall be named and in any land
description in which it is used it shall be designated the West
Virginia Coordinate System of 1927 South Zone or West
Virginia Coordinate System of 1983 South Zone.

(d) The plane coordinate values for a point on the earth's
surface, used to express the geographic position or location
of the point in the appropriate zone of this system, shall
consist of two distances, expressed in U. S. Survey feet and
decimals of a foot when using the West Virginia Coordinate
System of 1927 and determined in meters and decimals when
using the West Virginia Coordinate System of 1983, but
which may be converted to and expressed in feet and
decimals of a foot. One of these distances, to be known as
the x-coordinate, shall give the position in an east-and-west
direction. The other, to be known as the y-coordinate, shall
give the position in a north-and-south direction.

These coordinates shall be made to depend upon and
conform to plane rectangular coordinate values for the
monumented points of the North American Horizontal
Geodetic Control Network as published by the National
Ocean Service/National Geodetic Survey (formerly the
United States Coast and Geodetic Survey) or its successors
and whose plane coordinates have been computed on the
system defined by this section. Any such station may be used
for establishing a survey connection to either West Virginia
Coordinate System.

(e) For purposes of describing the location of any survey
station or land boundary corner in the State of West Virginia,
it shall be considered a complete, legal and satisfactory
description of the location to give the position of the survey
station or land boundary corner on the system of plane
coordinates defined in this section. Nothing contained in this
section requires a purchaser or mortgagee of real property to
rely wholly on a land description, any part of which depends
exclusively upon either West Virginia Coordinate System.

(f) When any tract of land to be defined by a single
description extends from one into the other of the coordinate
zones specified in this section, the position of all points on its
boundaries may refer to either of the two zones. The zone
which is being used specifically shall be named in the
description.

(g) (1) For purposes of more precisely defining the West
Virginia Coordinate System of 1927, the following definition
by the United States Coast and Geodetic Survey (now
National Ocean Service/National Geodetic Survey) is
adopted:

The West Virginia Coordinate System of 1927 North
Zone is a Lambert conformal conic projection of the Clarke
Spheroid of 1866, having standard parallels at north latitudes
39 degrees and 00 minutes and 40 degrees and 15 minutes,
along which parallels the scale shall be exact. The origin of
coordinates is at the intersection of the meridian 79 degrees
30 minutes west of Greenwich and the parallel 38 degrees 30
minutes north latitude. This origin is given the coordinates:
x = 2,000,000 feet and y = 0 feet.

The West Virginia Coordinate System of 1927 South
Zone is a Lambert conformal conic projection of the Clarke
Spheroid of 1866, having standard parallels at north latitudes
37 degrees 29 minutes and 38 degrees 53 minutes, along
which parallels the scale shall be exact. The origin of
coordinates is at the intersection of the meridian 81 degrees 00 minutes west of Greenwich and the parallel 37 degrees 00 minutes north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

(2) For purposes of more precisely defining the West Virginia Coordinate System of 1983, the following definition by the National Ocean Service/National Geodetic Survey is adopted:

The West Virginia Coordinate System of 1983 North Zone is a Lambert conformal conic projection of the North American Datum of 1983, having standard parallels at north latitudes 39 degrees and 00 minutes and 40 degrees and 15 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 79 degrees 30 minutes west of Greenwich and the parallel 38 degrees 30 minutes north latitude. This origin is given the coordinates: x = 600,000 meters and y = 0 meters.

The West Virginia Coordinate System of 1983 South Zone is a Lambert conformal conic projection of the North American Datum of 1983, having standard parallels at north latitudes 37 degrees 29 minutes and 38 degrees 53 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 81 degrees 00 minutes west of Greenwich and the parallel 37 degrees 00 minutes north latitude. This origin is given the coordinates: x = 600,000 meters and y = 0 meters.

(h) No coordinates based on the West Virginia Coordinate System, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public records or deed records unless the point is based on a public or private monumented horizontal control station established in conformity with the standards of accuracy and
specifications for first order or better geodetic surveying as
prepared and published by the Federal Geodetic Control
Committee of the United States Department of Commerce.
Standards and specifications of the Federal Geodetic Control
Committee or its successor in force on the date of the survey
apply. The publishing of the existing control stations, or the
acceptance with intent to publish the newly established
control stations, by the National Ocean Service/National
Geodetic Survey is evidence of adherence to the Federal
Geodetic Control Committee specifications. The limitations
specified in this section may be modified by a duly
authorized state agency to meet local conditions.

(i) The use of the term "West Virginia Coordinate System
of 1927 North or South Zone" or "West Virginia Coordinate
System of 1983 North or South Zone" on any map, report or
survey or other document shall be limited to coordinates
based on the West Virginia Coordinate System as defined in
this section.

(j) A plat and a description of survey must show the basis
of control identified by the following:

(1) The monument name or the point identifier on which
the survey is based;

(2) The order of accuracy of the base monument; and

(3) The coordinate values used to compute the corner
positions.

(k) Nothing in this section prevents the recordation in any
public record of any deed, map, plat, survey, description or
of any other document or writing of whatever nature which
would otherwise constitute a recordable instrument or
document even though the same is not based upon or done in
conformity with the West Virginia Coordinate System established by this section, nor does nonconformity with the system invalidate any deed, map, plat, survey, description or other document which is otherwise proper.

(l) For purpose of this section a foot equals a United States Survey foot. The associated factor of one meter equals 39.37/12 feet shall be used in any conversion necessitated by changing values from meters to feet.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 2. COUNTY AND DISTRICT BOUNDARIES; CHANGE OF COUNTY SEAT AND NAMES OF UNINCORPORATED TOWNS AND OF DISTRICTS; COUNTY SURVEYOR.

§7-2-8. License required for county surveyor.

Each county surveyor of lands first elected or first appointed after January 1, 2013, pursuant to section 1, article IX of the West Virginia Constitution, shall be a surveyor licensed pursuant to article thirteen-a, chapter thirty of this code and such licensee shall be in good standing.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 13A. LAND SURVEYORS.

§30-13A-1. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice surveying in this state without a license issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are a
surveyor, unless such person has been licensed under the provisions of this article.

(b) It is unlawful for any firm to practice or offer to practice surveying in this state without a certificate of authorization issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that it is a surveying firm, unless such firm has been issued a certificate of authorization under the provisions of this article.


The practice of surveying and the West Virginia Board of Professional Surveyors are subject to the provisions of article one of this chapter, the provisions of this article and the board’s rules.


As used in this article, the following words and terms have the following meanings:

(a) "Applicant" means a person making application for a license or a firm making application for a certificate of authorization, under the provisions of this article.

(b) "Board" means the West Virginia Board of Professional Surveyors.

(c) "Boundary survey" means a survey, in which property lines and corners of a parcel of land have been established by a survey and a description of survey has been written and a plat has been prepared for the property.
"Cadastral survey" means a survey representing the
ownership, relative positions and dimensions of land, objects
and estates.

"Certificate holder" means a firm holding a certificate
of authorization issued by the board.

"Certificate of authorization" means a certificate
issued under the provisions of this article to a firm providing
surveying services.

"Construction survey" means the laying of stakes for
a construction project.

"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.

"Endorsee" means a person holding an endorsement to
practice in a specialized field of surveying issued by the
board under the provisions of this article.

"Endorsement" means an authorization, in addition to
a professional surveyor license, to practice in a specialized
field of surveying issued by the board.

"Firm" means any nongovernmental business entity,
including an individual, association, partnership or
corporation, providing surveying services.

"Geodetic control survey" means a survey involving the
precise measurement of points on the earth's surface which form
the framework or control for a large map or project.
"Geographic information system (GIS)" means a system of hardware, software and procedures designed to support the capture and management of spatially referenced information.

"Hydrographic survey" means a survey that measures and determines the topographic features of water bodies and the adjacent land areas, including the width, depth and course of water bodies and other relative features.

"Inactive" means the status granted by the board to a licensee or endorsee.

"Land information system (LIS)" means a system of hardware, software and procedures designed to support the capture and management of spatially referenced information.

"License" means a surveying license issued under the provisions of this article.

"Licensee" means a person holding a surveying license issued under the provisions of this article.

"Metes and bounds" means a description where the land or the associated effects on the land have been measured by starting at a known point and describing, in sequence, the lines by direction and distance forming the boundaries of the land or a defined area relative to the physical land features, associated effects or structural improvements on the land.

"Monument" means a permanent marker, either boundary or nonboundary, used to establish corners or mark boundary lines of a parcel of land or reference the geospatial relationship of other objects.

"Mortgage/loan inspection survey" means a survey in which property lines and corners have not been established.
"Oil or gas well survey" means a survey and plat of a proposed oil or gas well, including the location of the well, the surface or mineral tract on which the well is located, the physical features surrounding the well, all creeks or streams near the well and any other identifying characteristics of the land to specify the location of the well. An oil or gas well survey must be performed in accordance with other provisions of this code affecting oil and gas well surveys.

"Partition survey" means a survey where the boundary lines of a newly created parcel of land are established and the new corners are monumented.

"Photogrammetry" means the use of aerial photography, other imagery and surveying principles to prepare scaled maps or other survey products reflecting the contours, features and fixed works of the earth's surface.

"Practice of surveying" means providing professional surveying services, including consulting, investigating, expert testimony, evaluating, planning, mapping and surveying.

"Responsible charge" means direct control of surveying work under the direct supervision of a licensee or person authorized in another state or country to engage in the practice of surveying.

"Retracement survey" means a survey where the boundary lines and corners of a parcel of land are reestablished from an existing legal or deed description.

"Strip" means a description of an area by reference to an alignment, usually a right-of-way or an easement, stating the number of feet on each side of the alignment, the relative position of the alignment, a reference to the measurements and monuments where the alignment crosses
a parcel of land and the source of title for each parcel of land
the alignment crosses.

(cc) "Subdivision" means the division of a lot, tract or
parcel of land into two or more lots, tracts or parcels of land.

(dd) "Surface mine survey" means a survey of the surface
mine permit area, including the location of the surface mine,
the surface or mineral tracts on which the surface mine is
located, the physical features surrounding the surface mine,
all creeks or streams near the surface mine and any other
identifying characteristics of the land to specify the location
of the surface mine permit area. A surface mine survey must
be performed in accordance with other provisions of this
code affecting surface mine surveys.

(ee) "Survey" or "land survey" means to measure a parcel
of land and ascertain its boundaries, corners and contents or
make any other authoritative measurements.

(ff) "Surveying" or "land surveying" means providing, or
offering to provide, professional services using such sciences
as mathematics, geodesy, and photogrammetry, and
involving both:

(1) The making of geometric measurements and
gathering related information pertaining to the physical or
legal features of the earth, improvements on the earth, the
space above, on or below the earth; and

(2) Providing, utilizing or developing the same into
survey products such as graphics, data, maps, plans, reports,
descriptions or projects. Professional services include acts of
consultation, investigation, testimony evaluation, expert
technical testimony, planning, mapping, assembling and
interpreting gathered measurements and information related
to any one or more of the following:

(A) Determining by measurement the configuration or contour of the earth’s surface or the position of fixed objects thereon.

(B) Determining by performing geodetic surveys the size and shape of the earth or the position of any point on the earth.

(C) Determining the position for any survey control monument or reference point.

(D) Creating, preparing or modifying electronic, computerized or other data relative to the performance of the activities in the above-described paragraphs (A) through (C), inclusive, of this subdivision.

(E) Locating, relocating, establishing, reestablishing or retracing property lines or boundaries of any tract of land, road, right-of-way or easement.

(F) Making any survey for the division, subdivision, or consolidation of any tract or tracts of land.

(G) Locating or laying out alignments, positions or elevations for the construction of fixed works.

(H) Determining, by the use of principles of surveying, the position for any boundary or nonboundary survey monument or reference point, or establishing or replacing any such monument or reference point.

(I) Creating, preparing or modifying electronic or computerized or other data relative to the performance of the activities in the above-described paragraphs (E) through (H), inclusive, of this subdivision.
(3) Any person who engages in surveying, who by verbal claim, sign, advertisement, letterhead, card or in any other way represents themselves to be a professional surveyor, or who implies through the use of some other title that they are able to perform, or who does perform, any surveying service or work or any other service designated by the practitioner which is recognized as surveying, is practicing, or offering to practice, surveying within the meaning and intent of this article.

(gg) "Surveyor", "professional surveyor" or "land surveyor" means a person licensed to practice surveying under the provisions of this article.

(hh) "Surveyor, retired", "professional surveyor, retired" or "land surveyor, retired" means a licensed surveyor no longer practicing surveying, who has chosen to retire and has been granted the honorific title of "Professional Surveyor, Retired".

(ii) "Surveyor-in-charge" means a licensee designated by a firm to oversee the surveying activities and practices of the firm.

(jj) "Surveyor intern" means a person who has passed an examination covering the fundamentals of land surveying.

(kk) "Underground survey" means a survey that includes the measurement of underground mine workings and surface features relevant to the underground mine, the placing of survey points (spads) for mining direction, the performance of horizontal and vertical control surveys to determine the contours of a mine, the horizontal and vertical location of mine features, and the preparation of maps, reports and documents, including mine progress maps and mine ventilation maps. An underground mine survey must be
§30-13A-4. Board of Professional Surveyors.

(a) The "West Virginia Board of Professional Surveyors" is continued. Any member of the board, except the endorsed underground surveyor member, in office on July 1, 2010, may continue to serve until his or her successor has been appointed and qualified.

(b) Prior to July 1, 2010, the Governor, by and with the advice and consent of the Senate, shall appoint one licensed professional surveyor with at least ten years of experience in land surveying to replace the endorsed underground surveyor.

(c) Commencing July 1, 2010, the board shall consist of the following five members with staggered terms:

(1) Three licensed professional surveyors with at least ten years of experience in land surveying;

(2) One person who has a license in another field of practice other than surveying and also who has a surveyor license by examination and has practiced surveying for at least ten years; and

(3) One citizen member who is not regulated under the provisions of this article and does not perform any services related to the practice of surveying under the provisions of this article.

(d) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than three years immediately preceding the appointment.
(e) Each member must be appointed by the Governor, by
and with the advice and consent of the Senate, and must be a
resident of this state during the appointment term.

(f) The term of each board member is four years.

(g) No member may serve more than two consecutive full
terms and any member having served two full terms may not
be appointed for one year after completion of his or her
second full term. A member shall continue to serve until his
or her successor has been appointed and qualified.

(h) The Governor may remove any member from the
board for neglect of duty, incompetency or official
misconduct.

(i) A licensed member of the board immediately and
automatically forfeits membership to the board if his or her
license to practice is suspended or revoked.

(j) A member of the board immediately and automatically
forfeits membership to the board if he or she is convicted of
a felony under the laws of any jurisdiction or becomes a
nonresident of this state.

(k) The board shall designate one of its members as
chairperson and one member as secretary-treasurer.

(l) Each member of the board is entitled to receive
compensation and expense reimbursement in accordance with
section eleven, article one of this chapter.

(m) A majority of the members of the board shall
constitute a quorum.

(n) The board shall hold at least one annual meeting.
Other meetings shall be held at the call of the chairperson, or
upon the written request of two members, at such time and
place as designated in the call or request.


The board has all the powers and duties set forth in article
one of this chapter and also the following powers and duties:

(1) Hold meetings, conduct hearings and administer
examinations and reexaminations;

(2) Set the requirements for a license, endorsement,
surveyor-in-charge and certificate of authorization;

(3) Establish qualifications for licensure and procedures
for submitting, approving and disapproving applications for
a license, endorsement and certificate of authorization;

(4) Examine the qualifications of any applicant for a
license and endorsement;

(5) Prepare, conduct, administer and grade examinations
and reexaminations required under the provisions of this
article;

(6) Determine the passing grade for the examinations and
reexaminations required under the provisions of this article;

(7) Administer, or contract with third parties to
administer, the examinations and reexaminations required
under the provisions of this article;

(8) Maintain records of the examinations and
reexaminations the board or a third party administers,
including the number of persons taking the examination or
reexamination and the pass and fail rate;
(9) Maintain an accurate registry of names and addresses of all licensees and endorsees;

(10) Maintain an accurate registry of names and addresses of firms holding a certificate of authorization;

(11) Establish the standards for surveys;

(12) Define the fees charged under the provisions of this article;

(13) Issue, renew, deny, suspend, revoke or reinstate licenses and endorsements, and discipline such persons;

(14) Issue, renew, deny, suspend, revoke or reinstate certificates of authorization and discipline such firms;

(15) Establish and implement the continuing education requirements for licensees and endorsees;

(16) Sue and be sued in its official name as an agency of this state;

(17) Hire, set the job requirements for, fix the compensation of and discharge investigators and the employees necessary to enforce the provisions of this article;

(18) Investigate alleged violations of the provisions of this article, the rules promulgated hereunder, and orders and final decisions of the board;

(19) Conduct hearings upon charges calling for discipline of a licensee, endorsee or certificate holder, or revocation or suspension of a license, endorsement or certificate of authorization;

(20) Set disciplinary action and issue orders;
(21) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(22) Take all other actions necessary and proper to effectuate the purposes of this article.


(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article, including:

(1) Setting the standards and requirements for licensure, endorsement, surveyor-in-charge and certificate of authorization;

(2) Setting the procedure for examinations and reexaminations;

(3) Establishing requirements for third parties to administer examinations and reexaminations;

(4) Establishing procedures for the issuance and renewal of a license, endorsement and certificate of authorization;

(5) Setting a schedule of fees;

(6) Establishing and implementing requirements for continuing education for licensees and endorsees;

(7) Evaluating the curriculum, experience and the instructional hours required for a license and endorsement;

(8) Denying, suspending, revoking, reinstating or limiting the practice of a licensee, endorsee or certificate holder;
§30-13A-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the "Board of Professional Surveyors Fund" which fund is continued. The fund shall be used by the board for the administration of this article. Except as may be provided in section eleven, article one of this chapter, the board shall retain the amounts in the special revenue fund from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amounts received as fines imposed pursuant to this article shall be deposited into the General Revenue Fund of the State Treasury.

§30-13A-8. Education, experience and examination requirements for a surveying license.

(a) Before a person may apply for a surveying license, the person must have completed one of the following educational, experience and examination requirements:
(1) Has a four-year degree or a bachelor degree in surveying approved by the board, which degree must include a minimum of thirty hours of surveying or surveying-related courses, has passed an examination in the fundamentals of land surveying, has two years or more of experience in surveying in responsible charge, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination;

(2) Has a four-year degree or a bachelor degree, has completed a minimum of thirty hours of surveying or surveying-related courses, has passed an examination in the fundamentals of land surveying, has four years or more of experience in surveying, including two years of experience in responsible charge under the direct supervision of a licensee or a person authorized in another jurisdiction to engage in the practice of surveying, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination; or

(3) Has a two-year degree or an associate degree in surveying or a related field approved by the board, which degree must include a minimum of thirty hours of surveying or surveying-related courses, has passed an examination in the fundamentals of land surveying, has four years or more of experience in surveying, including two years of experience in responsible charge under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination.

(b) A person graduating from a two-year or four-year approved surveying degree program with a grade point average of 3.0 or higher is permitted to take the examination in the fundamentals of land surveying during his or her final semester.
(c) A person must pass the examination in the fundamentals of land surveying and complete the work experience before he or she is allowed to take the examination in the principles and practice of land surveying and the West Virginia examination.

(d) The examination in the fundamentals of land surveying, the examination in the principles and practice of land surveying and the West Virginia examination shall each be held at least once each year at the time and place determined by the board. A person who fails to pass all or any part of an examination may apply for reexamination, as prescribed by the board, and shall furnish additional information and fees as required by the board.

(e) A person who began the education, experience or examination requirements and were approved by the board prior to December 31, 2004, have until December 31, 2012, to complete such requirements for licensure.

§30-13A-9. Surveying license requirements.

(a) The board shall issue a surveying license to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is at least eighteen years of age;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Holds a high school diploma or its equivalent;

(5) Has not been convicted of a crime involving moral turpitude; and
(6) Has completed all of one of the education, experience, and examination requirements set out in section eight of this article.

(b) An application for a surveying license shall be made on forms provided by the board and include the following:

(1) Name and address of the applicant;

(2) Applicant's education and experience;

(3) Location and date of passage of all the examinations;

(4) Names of five persons for reference, at least three of whom shall be licensees or persons authorized in another jurisdiction to engage in the practice of surveying, and who have knowledge of the applicant's work; and

(5) Any other information the board prescribes.

(c) An applicant shall pay all the applicable fees.

(d) A license to practice surveying issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: Provided, That a person holding a license to practice surveying issued by the board prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

§ 30-13A-10. Scope of Practice.

(a) A licensee may measure a parcel of land and ascertain its boundaries, corners and contents or make any other authoritative measurements. The practice of surveying can be any of the following, but not limited to:

(1) The performance of a boundary, cadastral, construction, geodetic control, hydrographic, land,
mortgage/loan inspection, oil or gas well, partition, photogrammetry, retracement, subdivision or surface mine survey; or

(2) The location, relocation, establishment, reestablishment, laying out or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement, strip or alignment or elevation of any fixed works by a licensed surveyor.

(b) Activities that must be performed under the responsible charge of a professional surveyor, unless specifically exempted in subsection (c) of this section, include, but are not limited to, the following:

(1) The creation of maps and georeferenced databases representing authoritative locations for boundaries, the location of fixed works, or topography;

(2) Maps and georeferenced databases prepared by any person, firm, or government agency where that data is provided to the public as a survey product;

(3) Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes: geodetic control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries, and cadastral information;

(4) Certification of positional accuracy of maps or measured survey data;

(5) Adjustment or authoritative interpretation of raw survey data;
(6) Geographic Information System (GIS)-based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected;

(7) Authoritative interpretation of maps, deeds, or other land title documents to resolve conflicting data elements;

(8) Acquisition of field data required to authoritatively position fixed works or cadastral data relative to geodetic control; and

(9) Analysis, adjustment or transformation of cadastral data of the parcel layer(s) with respect to the geodetic control layer within a GIS resulting in the affirmation of positional accuracy.

(c) The following items are not included as activities within the practice of surveying:

(1) The creation of general maps:

(A) Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians;

(B) Prepared for publication in a gazetteer or atlas as an educational tool or reference publication;

(C) Prepared for or by education institutions for use in the curriculum of any course of study;

(D) Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event; or

(E) Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and users guides.
(2) The transcription of previously georeferenced data into a GIS or LIS by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, and/or the precise location of fixed works of humans.

(3) The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This includes tax maps and zoning maps.

(4) The preparation of any document by any federal government agency that does not define real property boundaries. This includes civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other such documents.

(5) The incorporation or use of documents or databases prepared by any federal agency into a GIS/LIS, including but not limited to federal census and demographic data, quadrangle topographic maps, and military maps.

(6) Inventory maps and databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management responsibility. The distribution of these maps and/or databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data source(s) and date(s), and disclaimers of use clearly indicating that the data are not intended to be used as a survey product.
(7) Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document such data.

(8) Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. This includes georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.

§30-13A-11. Exemptions from licensing.

(a) The following persons are exempt from licensure under the provisions of this article:

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

(2) Any employee or officer of the United States, this state or any political subdivision thereof, or their agents, when such employee is engaged in the practice of land surveying exclusively for such governmental unit: Provided, That each county surveyor of lands first elected or first appointed after January 1, 2013, pursuant to section 1, article IX of the West Virginia Constitution, shall be a surveyor licensed pursuant to the provisions of this article and such licensee shall be in good standing.
(b) The minimum standards for surveys, established by the board, apply notwithstanding the exemptions provided by this section.

§30-13A-12. Surveyor intern requirements.

(a) To be recognized as a surveyor intern by the board, a person must meet the following requirements:

1. Is of good moral character;
2. Is at least eighteen years of age;
3. Is a citizen of the United States or is eligible for employment in the United States;
4. Holds a high school diploma or its equivalent;
5. Has not been convicted of a crime involving moral turpitude;
6. Has completed one of the education requirements set out in section eight of this article; and
7. Has passed an examination in the fundamentals of land surveying.

(b) A surveyor intern must pass the principles and practice of land surveying examination and the West Virginia examination within ten years of passing the fundamentals of land surveying examination. If the examinations are not passed within ten years, then the surveyor intern must retake the fundamentals of land surveying examination.

§30-13A-13. License from another state.

The board may issue a license to practice surveying in this state to an applicant of good moral character who holds
3 a valid license or other authorization to practice surveying from another state if the applicant demonstrates that:

5 (1) He or she holds a license or other authorization to practice surveying in another state which was granted after completion of educational, experience and examinations requirements substantially equivalent to those required in this state;

10 (2) He or she is not currently being investigated by a disciplinary authority of another state, does not have charges pending against his or her license or other authorization to practice surveying and has never had a license or other authorization to practice surveying revoked;

15 (3) He or she has not previously failed an examination for licensure in this state;

17 (4) He or she has paid all the applicable fees; and

18 (5) Has completed such other action as required by the board.

§30-13A-14. License, endorsement and certificate of authorization renewal requirements.

1 (a) A licensee or endorsee wanting to continue in active practice shall, annually or biennially, on or before July 1, renew his or her license or endorsement and pay a renewal fee.

5 (b) A certificate holder wanting to continue in active practice shall, annually or biennially, on or before January 1, renew the certificate and pay a renewal fee.

8 (c) The board shall charge a fee for each a renewal and a late fee for any renewal not paid by the due date.
(d) The board shall require as a condition of renewal that each licensee or endorsee complete continuing education.

(e) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license, endorsement or certificate of authorization.

(f) The board may authorize the waiving of the renewal fee of a licensee or endorsee during the period when he or she is on active duty with any branch of the armed services.

§30-13A-15. Inactive license requirements.

(a) A licensee who does not want to continue in active practice shall notify the board in writing and be granted inactive status.

(b) A person granted inactive status shall pay an inactive fee and is exempt from the continuing education requirements and cannot practice in this state.

(c) When an inactive licensee wants to return to active practice, he or she must complete all the continuing education requirements and pay all the applicable fees as determined by the board.

§30-13A-16. Delinquent and expired license requirements.

(a) If a license is not renewed when due, then the board shall automatically place the licensee on delinquent status.

(b) The fee for a person on delinquent status shall increase at a rate, determined by the board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of thirty-six months.
(c) Within thirty-six months of being placed on delinquent status, if a licensee wants to return to active practice, he or she must complete all the continuing education requirements and pay all the applicable fees as determined by the board.

(d) After thirty-six months of being placed on delinquent status, a license is automatically placed on expired status and cannot be renewed. A person whose license has expired must reapply for a new license.

§30-13A-17. Retired license requirements.

(a) A licensee who does not want to continue practicing surveying and who has chosen to retire shall notify the board in writing and may be granted retired status.

(b) A person granted retired status shall be given the honorific title of "Professional Surveyor, Retired" and cannot practice in this state.

§30-13A-18. Requirements for when a person fails an examination.

(a) Any person failing any of the examinations for surveying is not permitted to work as a licensed surveyor under the provisions of this article until the person has passed all the examinations.

(b) A person failing the fundamentals of land surveying examination may still gain experience as required in section eight of this article until he or she passes the examination.

(c) A person who has passed the fundamentals of land surveying examination, but failed the principles and practice examination or West Virginia examination may only work as a surveyor intern under the direct supervision of a licensee or
a person authorized in another jurisdiction to engage in the practice of surveying until he or she passes all of the examinations.


(a) The board shall prescribe the form for a license, endorsement and certificate of authorization and may issue a duplicate license, endorsement and certificate of authorization upon payment of a fee.

(b) A licensee, endorsee and certificate holder shall conspicuously display his or her license, endorsement or certificate of authorization at his or her principal place of practice.


(a) Each firm practicing surveying in West Virginia shall have a certificate of authorization.

(b) The board shall issue a certificate of authorization to a firm that:

(1) Practices surveying in West Virginia;

(2) Provides proof that the firm has employed a surveyor-in-charge;

(3) Has paid all applicable fees; and

(4) Completes such other requirements as specified by the board.

(a) A firm practicing surveying must operate all surveying activities under the supervision and management of a surveyor-in-charge who shall be a licensee who is licensed in this state.

(b) The designated surveyor-in-charge is responsible for the surveying work in this state provided by the firm.

(c) A licensee cannot be designated as a surveyor-in-charge for more than one firm without approval of the board.

(d) A licensee who performs part-time or consulting surveying services for a firm cannot be designated as a surveyor-in-charge for that firm unless the licensee is an officer, a majority interest holder or owner of the firm.

(e) The responsibilities of a surveyor-in-charge include:

(1) Renewal of the certificate of authorization;

(2) Notification to the board of any change in the surveyor-in-charge;

(3) Supervising the firm’s employees, including licensees, and other personnel providing surveying services in this state; and

(4) Ensuring that the policies of the firm adhere to the provisions of this article.

(f) The board may authorize a licensee to supervise the work of an individual that is not an employee of the licensee, nor is employed by the same firm as the licensee. The potential supervisor must apply to the board for this authorization.
§30-13A-22. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or certificate holder.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or certificate holder has violated this article.

(d) Upon a finding that probable cause exists that the licensee or certificate holder has violated this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or certificate of authorization or the imposition of sanctions against the licensee or certificate holder. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive secretary of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive secretary may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke
the license or certificate of authorization of, or impose
probationary conditions upon or take disciplinary action
against, any licensee or certificate holder for any of the
following reasons once a violation has been proven by a
preponderance of the evidence:

(1) Obtaining a license or certificate of authorization by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a license or other authorization to practice revoked or suspended, or other disciplinary action taken by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Restrictions;
(4) Administrative fine, not to exceed $1,000 per day per violation;

(5) Mandatory attendance at continuing education seminars or other training;

(6) Practicing under supervision or other restriction; or

(7) Requiring the licensee or certificate holder to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or certificate holder to pay the costs of the proceeding.


(a) Hearings are governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive secretary of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee or certificate holder has violated provisions of this article, a
formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.


Any licensee or certificate holder adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

§30-13A-25. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person has knowingly violated the provisions of this article, the board may bring its information to the attention of the appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought.

(b) If a court of law finds that a person knowingly violated this article, any order of the board or any final decision of the board, then the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined no less than one hundred dollars and no more than one thousand dollars for each violation, confinement in a regional correctional facility for up to thirty days for each violation, or both fined and confined.

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.
§39-1-2a. Other requirements for admission to record of certain instruments.

(a) In addition to the other requirements prescribed by law, no instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be recorded or admitted to record, or filed by the county clerk unless the name of the person who, and governmental agency, if any, which, prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner: Provided, That the recording or filing of any instrument in violation of the provisions of this section shall not invalidate or cloud the title passing by or under such instrument or affect the validity of such instrument in any respect whatever, and such recorded or filed instrument shall constitute notice with like effect as if such instrument fully complied with the provisions of this section. An instrument will be in compliance with this section if it contains a statement in the following form: "This instrument was prepared by (name)".

(b) This section does not apply to any instrument executed prior to the effective date hereof; to any decree, order, judgment or writ of any court; to any will or death certificate; to any financing, continuation or termination statement permitted to be filed under chapter forty-six of this code; or to any instrument executed or acknowledged outside of this state.

(c) A survey document intended to be used in the transfer of real property, prepared by a licensed surveyor, and filed with a county clerk or accepted by a public official of this state shall have the licensed surveyor’s signature and seal or stamp affixed thereto.
(d) If a survey document, prepared by a licensed surveyor, has been altered from its original form, it shall not be filed with a county clerk or accepted by a public official of this state, until the original licensed surveyor has initialed the changes.

(e) A document, plan, map, drawing, exhibit, sketch or pictorial representation prepared by a person exempted under the provisions of thirteen-a, chapter thirty of this code, is not required to have the signature and seal affixed thereto.

(f) A document, plan, map, drawing, exhibit, sketch or pictorial representation altered by a person not licensed under the provisions of article thirteen-a, chapter thirty of this code, shall have the alteration initialed by a surveyor licensed under the provisions of article thirteen-a, chapter thirty of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was approved this the 23rd day of March, 2010.

Governor
PRESENTED TO THE GOVERNOR

MAR 18 2010

Time 3:08