

AN ACT

RELATING TO BOARDS; AMENDING AND ENACTING SECTIONS OF THE  
ENGINEERING AND SURVEYING PRACTICE ACT TO CLARIFY AND AUGMENT THE  
CURRENT LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-23-2 NMSA 1978 (being Laws 1987, Chapter 336,  
Section 2, as amended) is amended to read:

"61-23-2. DECLARATION OF POLICY.--The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that he is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice, offer to practice, engage in the business, act in the capacity of, advertise or use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional, licensed engineer or surveyor unless that person is licensed or exempt under the provisions of the Engineering and Surveying Practice Act. A person who engages in the business or acts in the capacity of a professional engineer or professional surveyor in New Mexico, except as otherwise provided in Sections 61-23-22 and 61-23-27.10 NMSA 1978, with or without a New Mexico license,

H  
B  
9  
2  
3  
P  
a  
g  
e  
1

has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 23 NMSA 1978. The practice of engineering or surveying shall be deemed a privilege granted by the board based on the qualifications of the individual as evidenced by the licensee's certificate, which shall not be transferable."

H  
B  
9  
2  
3  
P  
a  
g  
e  
2

Section 2. Section 61-23-3 NMSA 1978 (being Laws 1987, Chapter 336, Section 3, as amended) is amended to read:

"61-23-3. DEFINITIONS.--As used in the Engineering and Surveying Practice Act:

- A. "approved" or "approval" means acceptable to the board;
- B. "board" means the state board of licensure for professional engineers and surveyors;
- C. "conviction" or "convicted" means any final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;
- D. "engineer" means a person who is qualified to practice engineering by reason of his intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience;
- E. "engineering" or "practice of engineering" means any creative or engineering work that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering

sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. The "practice of engineering" does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

H  
B  
9  
2  
3  
P  
a  
g  
e  
3

F. "engineering committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering;

G. "engineer intern" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

H. "fund" means the professional engineers' and surveyors' fund;

I. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

J. "person" means an individual, corporation, business trust, estate,

trust, partnership, limited liability company, association, joint venture or any legal or commercial entity;

K. "professional development" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

L. "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is licensed by the board to practice the profession of engineering;

M. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

N. "surveying" or "practice of surveying" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions thereof;

H  
B  
9  
2  
3  
P  
a  
g  
e  
4

- (3) the application of photogrammetric methods used to derive topographic and other data;
- (4) the establishment of horizontal and vertical controls for surveys for design, topographic surveys, including photogrammetric methods, construction surveys of engineering and architectural public works projects; and
- (5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

H  
B  
9  
2  
3  
P  
a  
g  
e  
5

O. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying;

P. "surveyor" or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience, and who is licensed by the board to practice surveying;

Q. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act; and

R. "surveying work" means the work performed in the practice of surveying.

The board recognizes that there may be an overlap between the work of engineers and surveyors in obtaining survey information for the planning and design of an engineering project. A registered professional engineer who has primary engineering responsibility and control of an engineering project may perform an

engineering survey. Engineering surveys may be performed by a licensed professional engineer on a project for which he is providing engineering design services. Engineering surveys include topographic surveying activities required to support the sound conception, planning, design, construction, maintenance and operation of said projects but exclude the surveying of real property for establishment of land boundaries, rights of way, easements and the dependent or independent surveys or resurveys of the public land system."

H  
B  
9  
2  
3  
P  
a  
g  
e  
6

Section 3. Section 61-23-14.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 12, as amended) is amended to read:

"61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--  
REQUIREMENTS.--

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application in which it shall be demonstrated that the applicant:

- (1) is of good moral character and reputation;
- (2) has five references, three of whom shall be licensees

practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of nonlicensed engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board provided a satisfactory written explanation is given; and meets one of the following requirements:

- (a) is certified as an engineer intern and has at least four years of board-approved engineering experience after graduation from a board-

approved engineering curriculum;

H  
B

(b) is certified as an engineer intern, and has, including the two years for engineer intern certification, at least six years of board-approved engineering experience after graduation from a board-approved, four-year engineering technology curriculum accredited by the technical accreditation commission of the accreditation board for engineering and technology;

9  
2  
3  
P  
a  
g  
e  
7

(c) has obtained a doctorate degree in an engineering discipline recognized by the board and has a minimum of four years of board-approved engineering experience subsequent to the awarding of the degree;

(d) has obtained a master's degree in an engineering discipline recognized by the board from a board-approved program and has a minimum of six years of engineering experience subsequent to the awarding of the degree; or

(e) has graduated from a board-approved, four-year engineering curriculum and has twelve or more years of engineering experience acceptable to the board.

B. After the applicant's application is approved by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional engineer.

C. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if:

(1) he is currently licensed as an engineer in the District of Columbia, another state, a territory or a possession of the United States, provided the

licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; or

(2) he is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board his competence in current engineering standards and procedures."

Section 4. A new section of the Engineering and Surveying Practice Act, Section 61-23-23 NMSA 1978, is enacted to read:

"61-23-23. AUTHORITY TO INVESTIGATE--CIVIL PENALTIES FOR UNLICENSED PERSONS--ENGINEERING.--

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act and who acts in the capacity of a professional engineer within the meaning of the Engineering and Surveying Practice Act.

B. If after the hearing the board determines that based on the evidence the person committed a violation pursuant to the Engineering and Surveying Practice Act, it shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to five thousand dollars (\$5,000) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

(1) the seriousness of the violation;

H  
B  
9  
2  
3  
P  
a  
g  
e  
8



- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

H  
B  
9  
2  
3  
P  
a  
g  
e

D. A person aggrieved by the board's decision may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor, and upon conviction the person shall be sentenced pursuant to Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction."

Section 5. A new section of the Engineering and Surveying Practice Act, Section 61-23-27.15 NMSA 1978, is enacted to read:

"61-23-27.15. AUTHORITY TO INVESTIGATE--CIVIL PENALTIES FOR UNLICENSED PERSONS--SURVEYING.--

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act and who acts in the capacity of a professional surveyor within the meaning of the Engineering and Surveying Practice Act.

B. If after the hearing the board determines that based on the evidence the person committed a violation under the Engineering and Surveying Practice Act, it shall, in addition to any other sanction, action or remedy, issue an order

that imposes a civil penalty up to five thousand dollars (\$5,000) per violation.

H  
B

C. In determining the amount of the civil penalty it imposes, the board shall consider:

9  
2  
3  
P

(1) the seriousness of the violation;

a  
g  
e

(2) the economic benefit to the violator that was generated by the violator's commission of the violation;

1  
0

(3) the violator's history of violations; and

(4) any other considerations the board deems appropriate.

D. A person aggrieved may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor and upon conviction the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction."