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HOUSE BILL 105

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO LICENSING; AMENDING THE ENGINEERING AND SURVEYING PRACTICE ACT; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND MAINTAINING A PROFESSIONAL ENGINEER OR PROFESSIONAL SURVEYOR LICENSE; REQUIRING THE STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS TO MAINTAIN AND PROVIDE A ROSTER OF ENGINEERS AND SURVEYORS TO THE PUBLIC; INCREASING THE PENALTIES FOR VIOLATION OF THE ACT; PROVIDING NOTICE AND RECORDING REQUIREMENTS FOR SURVEYS THAT OCCUR ON OR BORDERING CERTAIN LAND GRANTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. 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

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1 Surveying Practice Act:

2 A. "approved" or "approval" means acceptable to the
3 board;

4 B. "board" means the state board of licensure for
5 professional engineers and professional surveyors;

6 C. "conviction" or "convicted" means ~~[any]~~ a final
7 adjudication of guilt, whether pursuant to a plea of nolo
8 contendere or otherwise and whether or not the sentence is
9 deferred or suspended;

10 D. "engineer" means a person who is qualified to
11 practice engineering by reason of ~~[his]~~ the person's intensive
12 preparation and knowledge in the use of mathematics, chemistry,
13 physics and engineering sciences, including the principles and
14 methods of engineering analysis and design acquired by
15 professional education and engineering experience;

16 E. "engineering", "practice of engineering" or
17 "engineering practice" means any creative or engineering work
18 that requires engineering education, training and experience in
19 the application of special knowledge of the mathematical,
20 physical and engineering sciences to such creative work as
21 consultation, investigation, forensic investigation,
22 evaluation, planning and design of engineering works and
23 systems, expert technical testimony, engineering studies and
24 the review of construction for the purpose of assuring
25 substantial compliance with drawings and specifications; any of

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1 which embrace such creative work, either public or private, in
2 connection with any utilities, structures, buildings, machines,
3 equipment, processes, work systems, projects and industrial or
4 consumer products or equipment of a mechanical, electrical,
5 hydraulic, chemical, pneumatic, environmental or thermal
6 nature, insofar as they involve safeguarding life, health or
7 property, and including such other professional services as may
8 be necessary to the planning, progress and completion of any
9 engineering work. The "practice of engineering" may include
10 the use of photogrammetric methods to derive topographical and
11 other data. The "practice of engineering" does not include
12 responsibility for the supervision of construction, site
13 conditions, operations, equipment, personnel or the maintenance
14 of safety in the work place or traffic crash reconstruction
15 conducted by an individual licensed under the Private
16 Investigations Act;

17 F. "engineering committee" means a committee of the
18 board entrusted to implement all business of the Engineering
19 and Surveying Practice Act as it pertains to the practice of
20 engineering, including the promulgation and adoption of rules
21 of professional responsibility for professional engineers
22 exclusive to the practice of engineering;

23 G. "engineer intern" means a person who has
24 qualified for, taken and passed an examination in the
25 fundamental engineering subjects as provided in the Engineering

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1 and Surveying Practice Act;

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

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

7 J. "person" means an individual, corporation,
8 business trust, estate, trust, partnership, limited liability
9 company, association, joint venture or ~~[any]~~ a legal or
10 commercial entity;

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

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

19 M. "responsible charge" means responsibility for
20 the direction, control and supervision of engineering or
21 surveying work, as the case may be, to assure that the work
22 product has been critically examined and evaluated for
23 compliance with appropriate professional standards by a
24 licensee in that profession, and by sealing or signing the
25 documents, the professional engineer or professional surveyor

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1 accepts responsibility for the engineering or surveying work,
2 respectively, represented by the documents and that applicable
3 engineering or surveying standards have been met;

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

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

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

16 (3) the application of photogrammetric methods
17 used to derive topographic and other data;

18 (4) the establishment of horizontal and
19 vertical controls that will be the basis for all geospatial
20 data used for future design surveys, including construction
21 staking surveys, surveys to lay out horizontal and vertical
22 alignments, topographic surveys, control surveys for aerial
23 photography for the collection of topographic and planimetric
24 data using photogrammetric methods and construction surveys of
25 engineering and architectural public works projects; and

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1 (5) the preparation and perpetuation of maps,
2 records, plats, field notes and property descriptions;

3 O. "surveying committee" means a committee of the
4 board entrusted to implement all business of the Engineering
5 and Surveying Practice Act as it pertains to the practice of
6 surveying, including the promulgation and adoption of rules of
7 professional responsibility for professional surveyors
8 exclusive to the practice of surveying;

9 P. "surveyor" or "professional surveyor" means a
10 person who is qualified to practice surveying by reason of
11 [~~his~~] the person's intensive preparation and knowledge in the
12 use of mathematics, physical and applied sciences and
13 surveying, including the principles and methods of surveying
14 acquired by education and experience, and who is licensed by
15 the board to practice surveying;

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

20 R. "surveying work" means the work performed in the
21 practice of surveying, but "surveying work" does not include
22 traffic crash reconstruction conducted by an individual
23 licensed under the Private Investigations Act; and

24 S. "supplemental surveying work" means surveying
25 work performed in order to densify, augment and enhance

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1 previously performed survey work or site information but
2 excludes the surveying of real property for the establishment
3 of land boundaries, rights of way and easements and the
4 dependent or independent surveys or resurveys of the public
5 land system. The board shall recognize that there may be
6 occasions when professional engineers need to obtain
7 supplemental survey information for the planning and design of
8 an engineering project. A licensed professional engineer who
9 has primary engineering responsibility and control of an
10 engineering project may perform supplemental surveying work in
11 obtaining data incidental to that project. Supplemental
12 surveying work may be performed by a licensed professional
13 engineer only on a project for which the engineer is providing
14 engineering design services."

15 SECTION 2. Section 61-23-13 NMSA 1978 (being Laws 1987,
16 Chapter 336, Section 13, as amended) is amended to read:

17 "61-23-13. ROSTER OF LICENSED PROFESSIONAL ENGINEERS AND
18 SURVEYORS.--A roster showing the names and addresses of all
19 licensed professional engineers and professional surveyors
20 shall be ~~[prepared by the executive director of the board prior~~
21 ~~to September 1 of each even-numbered year. A supplement to the~~
22 ~~roster shall be prepared by the executive director of the board~~
23 ~~prior to September 1 of each odd-numbered year. Copies of the~~
24 ~~roster and supplement shall be made available to each licensee~~
25 ~~no later than November 30 of each year, shall be placed on file~~

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1 ~~with the secretary of state and the state commission of public~~
2 ~~records and may be distributed or sold] maintained by the board~~
3 ~~and shall be placed on file with the secretary of state and the~~
4 ~~state commission of public records and made available to the~~
5 public."

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

8 "61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--
9 REQUIREMENTS.--

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

15 (1) is of good moral character and reputation;

16 and

17 (2) has five references, three of whom shall
18 be licensees practicing in the branch of engineering for which
19 the applicant is applying and who have personal knowledge of
20 the applicant's engineering experience and reputation. The use
21 of nonlicensed engineer references having personal knowledge of
22 the applicant's engineering experience and reputation other
23 than professional engineers may be accepted by the board,
24 provided that a satisfactory written explanation is given. [~~and~~
25 ~~the applicant meets one of the following requirements:~~

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1 ~~(a) is certified as an engineer intern~~
2 ~~and has at least four years of board-approved engineering~~
3 ~~experience after graduation from a board-approved engineering~~
4 ~~curriculum;~~

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

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

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

20 ~~(e) has graduated from a board-approved,~~
21 ~~four-year engineering curriculum and has a minimum of twelve~~
22 ~~years of engineering experience subsequent to the awarding of~~
23 ~~the degree.~~

24 ~~B. An applicant shall be allowed to take the~~
25 ~~appropriate examination for licensure as a professional~~

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1 ~~engineer as approved by the board.]~~

2 B. An applicant may be licensed through examination
3 if the applicant can demonstrate the following:

4 (1) the applicant is certified as an engineer
5 intern and has:

6 (a) received a bachelor's degree in an
7 engineering discipline recognized by the board from a board-
8 approved engineering curriculum and has four years of
9 engineering experience subsequent to receiving the degree;

10 (b) received a master's degree in an
11 engineering discipline recognized by the board from a board-
12 approved engineering curriculum and has at least three years of
13 engineering experience subsequent to receiving the degree;

14 (c) received a doctorate degree in an
15 engineering discipline recognized by the board from a board-
16 approved engineering curriculum and has at least two years of
17 engineering experience subsequent to receiving the degree; or

18 (d) at least six years of board-approved
19 engineering experience after graduation from a school offering
20 a board-approved, four-year engineering technology curriculum
21 accredited by the technology accreditation commission of the
22 accreditation board for engineering and technology, including
23 the two years for engineer intern certification; or

24 (2) the applicant is not certified as an
25 engineer intern and has:

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1 (a) received a bachelor's degree in an
2 engineering discipline recognized by the board from a board-
3 approved engineering curriculum and has twelve years of
4 engineering experience subsequent to receiving the degree;

5 (b) received a master's degree in an
6 engineering discipline recognized by the board from a board-
7 approved engineering curriculum and has at least six years of
8 engineering experience subsequent to receiving the degree; or

9 (c) received a doctorate degree in an
10 engineering discipline recognized by the board from a board-
11 approved engineering curriculum and has at least four years of
12 engineering experience subsequent to receiving the degree.

13 C. Upon successfully completing the examination,
14 required experience and all the requirements as noted in this
15 section, the applicant shall be eligible to be licensed as a
16 professional engineer upon action of the board.

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

19 (1) is currently licensed as an engineer in
20 the District of Columbia, another state, a territory or a
21 possession of the United States, provided the licensure does
22 not conflict with the provisions of the Engineering and
23 Surveying Practice Act and that the standards required by the
24 licensure or the applicant's qualifications equaled or exceeded
25 the licensure standards in New Mexico at the time the applicant

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1 was initially licensed; or

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

9 SECTION 4. Section 61-23-17 NMSA 1978 (being Laws 1987,
10 Chapter 336, Section 17, as amended) is amended to read:

11 "61-23-17. APPLICATION AND EXAMINATION FEES.--

12 A. All applicants for licensure pursuant to the
13 Engineering and Surveying Practice Act shall apply for
14 examination, [~~registration~~] licensure or certification on forms
15 prescribed and furnished by the board. Applications shall be
16 accompanied by the appropriate fee, any sworn statements the
17 board may require to show the applicant's citizenship and
18 education, a detailed summary of the applicant's technical work
19 and appropriate references.

20 B. All application, reapplication, examination and
21 reexamination fees shall be set by the board and shall not
22 exceed the actual cost of carrying out the provisions of the
23 Engineering and Surveying Practice Act. No fees shall be
24 refundable.

25 C. Any application may be denied for fraud, deceit,

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1 conviction of a felony or [~~for~~] any crime involving moral
2 turpitude."

3 SECTION 5. Section 61-23-19 NMSA 1978 (being Laws 1987,
4 Chapter 336, Section 19, as amended) is amended to read:

5 "61-23-19. ENGINEERING--~~[CERTIFICATE]~~ LICENSE--SEALS.--

6 A. The board shall issue [~~certificates of~~
7 ~~licensure~~] licenses pursuant to the provisions of the
8 Engineering and Surveying Practice Act. The board shall
9 provide for the proper authentication of all documents.

10 B. The board shall regulate the use of seals.

11 C. An engineer shall have the right to engage in
12 activities properly classified as architecture insofar as it is
13 incidental to [~~his~~] the engineer's work as an engineer,
14 provided that the engineer shall not [~~hold himself out to be~~]
15 make any representation as being an architect or as performing
16 architectural services unless duly registered as such."

17 SECTION 6. Section 61-23-20 NMSA 1978 (being Laws 1987,
18 Chapter 336, Section 20, as amended) is amended to read:

19 "61-23-20. ENGINEERING--LICENSURE AND RENEWAL FEES--
20 EXPIRATIONS.--

21 A. Licensure shall be for a period of two years as
22 prescribed in the rules of procedure. Initial [~~certificates of~~
23 ~~licensure~~] licenses shall be issued in accordance with the
24 board's rules.

25 B. The board shall establish by rule a biennial fee

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1 for professional engineers. Licensure renewal is accomplished
2 upon payment of the required fee and satisfactory completion of
3 the requirements of professional development.

4 C. The executive director of the board shall send a
5 renewal notice to each licensee's last known address. Notice
6 shall be mailed at least one month in advance of the date of
7 expiration of the license.

8 D. Each licensee shall have the responsibility to
9 notify the board of any change of address within thirty days of
10 the change.

11 E. Upon receipt of a renewal fee and fulfillment of
12 other requirements, the board shall issue a licensure renewal
13 card that shall show the name and license number of the
14 licensee and shall state that the person named has been granted
15 licensure to practice as a professional engineer for the
16 biennial period.

17 F. Every license shall automatically expire if not
18 renewed on or before ~~[the last day]~~ December 31 of the
19 applicable biennial period. A ~~[licensee, however, shall be~~
20 ~~permitted to reinstate a certificate without penalty upon~~
21 ~~payment of the required fee within sixty days of the last day~~
22 ~~of the biennial period. After expiration of this grace period,~~
23 a] delinquent licensee may renew a ~~[certificate]~~ license by the
24 payment of twice the biennial renewal fee at any time ~~[up to~~
25 ~~twelve months after the renewal fee became due]~~ before March 1,

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1 but the delinquent licensee shall not practice during this
2 period. Should the licensee [~~wish~~] apply to renew an expired
3 [~~certificate~~] license after the [~~twelve-month period~~] March 1
4 deadline has elapsed, the licensee shall submit a formal
5 application and fee as provided in Section 61-23-17 NMSA 1978.
6 The board, in considering the reapplication, need not question
7 the applicant's qualifications for licensure unless the
8 qualifications have changed since the license expired. The
9 board may adopt rules for inactive and retired status."

10 SECTION 7. Section 61-23-23.1 NMSA 1978 (being Laws 2003,
11 Chapter 233, Section 4) is amended to read:

12 "61-23-23.1. AUTHORITY TO INVESTIGATE--CIVIL PENALTIES
13 FOR UNLICENSED PERSONS--ENGINEERING.--

14 A. The board may investigate and initiate a hearing
15 on a complaint against a person who does not have a license,
16 who is not exempt from the Engineering and Surveying Practice
17 Act and who acts in the capacity of a professional engineer
18 within the meaning of the Engineering and Surveying Practice
19 Act. A valid license is required for a person to act as a
20 professional engineer or to solicit or propose to perform work
21 involving the practice of engineering.

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

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1 order that imposes a civil penalty up to [~~five thousand dollars~~
2 ~~(\$5,000)~~] seven thousand five hundred dollars (\$7,500) per
3 violation.

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

- 6 (1) the seriousness of the violation;
7 (2) the economic benefit to the violator that
8 was generated by the violator's commission of the violation;
9 (3) the violator's history of violations; and
10 (4) any other considerations the board deems
11 appropriate.

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

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

23 SECTION 8. Section 61-23-24 NMSA 1978 (being Laws 1993,
24 Chapter 218, Section 18, as amended) is amended to read:

25 "61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY

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1 ACTION--PENALTIES--REISSUANCE OF [~~CERTIFICATES~~] LICENSES.--

2 A. The board may suspend, refuse to renew or revoke
3 [~~the certificate of licensure~~] a license, impose a fine not to
4 exceed [~~five thousand dollars (\$5,000)~~] seven thousand five
5 hundred dollars (\$7,500), place on probation for a specific
6 period of time with specific conditions or reprimand any
7 professional engineer who is found by the board to have:

8 (1) practiced or offered to practice
9 engineering in New Mexico in violation of the Engineering and
10 Surveying Practice Act;

11 (2) attempted to use the [~~certificate~~] license
12 of another;

13 (3) given false or forged evidence to the
14 board or to [~~any~~] a board member for obtaining a [~~certificate~~
15 ~~of licensure~~] license;

16 (4) falsely impersonated any other licensee of
17 like or different name;

18 (5) attempted to use an expired, suspended or
19 revoked [~~certificate of licensure~~] license;

20 (6) falsely [~~presented himself~~] purported to
21 be a professional engineer by claim, sign, advertisement or
22 letterhead;

23 (7) violated the rules of professional
24 responsibility for professional engineers adopted and
25 promulgated by the board;

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1 (8) been disciplined in another state for
2 action that would constitute a violation of either or both the
3 Engineering and Surveying Practice Act or the rules adopted by
4 the board;

5 (9) been convicted of a felony; or

6 (10) procured, aided or abetted any violation
7 of the provisions of the Engineering and Surveying Practice Act
8 or the rules of the board.

9 B. Except as provided in Subsection C of Section
10 61-23-21 NMSA 1978, nothing in the Engineering and Surveying
11 Practice Act shall prohibit the general use of the word
12 "engineer", "engineered" or "engineering" so long as such words
13 are not used in an offer to the public to perform engineering
14 work as defined in Subsections E and L of Section 61-23-3 NMSA
15 1978.

16 C. The board may by rule establish the guidelines
17 for the disposition of disciplinary cases involving specific
18 types of violations. The guidelines may include minimum and
19 maximum fines, periods of probation or conditions of probation
20 or reissuance of a license.

21 D. Failure to pay ~~[any]~~ a fine levied by the board
22 or to otherwise comply with an order issued by the board
23 pursuant to the Uniform Licensing Act is a misdemeanor and
24 shall be grounds for further action against the licensee by the
25 board and for judicial sanctions or relief.

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1 E. ~~[Any]~~ A person may prefer charges of fraud,
2 deceit, gross negligence, incompetence or misconduct against
3 ~~[any]~~ a licensed professional engineer. The charges shall be
4 in writing and shall be sworn to by the person making the
5 charges and filed with the executive director of the board.
6 All charges shall be referred to the engineering committee,
7 acting for the board. No action that would have any of the
8 effects specified in Subsection D, E or F of Section 61-1-3
9 NMSA 1978 may be initiated later than two years after the
10 discovery by the board, but in no case shall an action be
11 brought more than ten years after the completion of the conduct
12 that constitutes the basis for the action. All charges, unless
13 dismissed as unfounded, trivial, resolved by reprimand or
14 settled informally, shall be heard in accordance with the
15 provisions of the Uniform Licensing Act by the engineering
16 committee acting for the board or by the board.

17 F. Persons making charges shall not be subject to
18 civil or criminal suits, provided that the charges are made in
19 good faith and are not frivolous or malicious.

20 G. The board or ~~[any]~~ a board member may initiate
21 proceedings pursuant to the provisions of this section in
22 accordance with the provisions of the Uniform Licensing Act.
23 Nothing in the Engineering and Surveying Practice Act shall
24 deny the right of appeal from the decision and order of the
25 board in accordance with the provisions of the Uniform

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1 Licensing Act.

2 H. The board, for reasons it deems sufficient, may
3 reissue a [~~certificate of licensure~~] license to [~~any~~] a person
4 whose [~~certificate~~] license has been revoked or suspended,
5 [~~providing~~] provided that a majority of the members of the
6 engineering committee, acting for the board, or of the board
7 votes in favor of [~~such~~] the reissuance. A new [~~certificate of~~
8 ~~licensure~~] license bearing the original license number to
9 replace [~~any certificate~~] a revoked, lost, destroyed or
10 mutilated license may be issued subject to the rules of the
11 board with payment of a fee determined by the board.

12 I. The professional engineering committee shall
13 prepare and adopt rules of professional responsibility for
14 professional engineers as provided in the Engineering and
15 Surveying Practice Act [~~that shall be made known in writing to~~
16 ~~every licensee and applicant for licensure pursuant to that act~~
17 ~~and shall be published in the roster. Publication and public~~
18 ~~notice shall be in accordance with the Uniform Licensing Act.~~
19 ~~The professional engineering committee may revise and amend the~~
20 ~~rules of professional responsibility for professional engineers~~
21 ~~from time to time and shall notify each licensee in writing of~~
22 ~~such revisions or amendments].~~

23 J. A violation of any provision of the Engineering
24 and Surveying Practice Act is a misdemeanor punishable upon
25 conviction by a fine of not more than [~~five thousand dollars~~

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1 ~~(\$5,000)]~~ seven thousand five hundred dollars (\$7,500) or by
2 imprisonment of no more than one year, or both.

3 K. The attorney general or district attorney of the
4 proper district or special prosecutor retained by the board
5 shall prosecute violations of the Engineering and Surveying
6 Practice Act by a nonlicensee.

7 L. The practice of engineering in violation of the
8 provisions of the Engineering and Surveying Practice Act shall
9 be deemed a nuisance and may be restrained and abated by
10 injunction without bond in an action brought in the name of the
11 state by the district attorney or on behalf of the board by the
12 attorney general or the special prosecutor retained by the
13 board. Action shall be brought in the county where the
14 violation occurs."

15 SECTION 9. Section 61-23-27.3 NMSA 1978 (being Laws 1993,
16 Chapter 218, Section 24, as amended) is amended to read:

17 "61-23-27.3. CERTIFICATION OF SURVEYOR INTERN--
18 REQUIREMENTS.--

19 A. An applicant for certification as a surveyor
20 intern shall file the appropriate application [~~where he shall~~]
21 and demonstrate that [he] the applicant:

- 22 (1) is of good moral character and reputation;
- 23 (2) has obtained at least a senior status in a
24 board-approved, four-year curriculum in surveying; and
- 25 (3) has three references, two of whom shall be

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1 licensed professional surveyors having personal knowledge of
2 the applicant's knowledge and experience.

3 B. After acceptance of the application by the
4 board, the applicant shall be allowed to take the appropriate
5 examination for certification as a surveyor intern.

6 C. Upon successfully completing the examination and
7 an approved four-year surveying curriculum, then by action of
8 the board, the applicant may be certified as a surveyor intern.

9 D. The certification of surveyor intern does not
10 permit the intern to practice surveying. Certification as a
11 surveyor intern is intended to demonstrate that the intern has
12 obtained certain skills in surveying fundamentals and is
13 pursuing a career in surveying.

14 E. If otherwise qualified, a graduate of a board-
15 approved but related curriculum of at least four years, to be
16 considered for certification as a surveyor intern, shall have a
17 specific record of four years of combined office and field
18 board-approved surveying experience obtained under the
19 direction of a licensed professional surveyor. Class time
20 ~~[spent in obtaining the related curriculum]~~ will not be counted
21 in the four years of required experience, but work prior to or
22 while attending school may be counted toward the four years of
23 required experience at the discretion of the board."

24 SECTION 10. Section 61-23-27.4 NMSA 1978 (being Laws
25 1993, Chapter 218, Section 25, as amended) is amended to read:

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1 "61-23-27.4. LICENSURE AS A PROFESSIONAL SURVEYOR--
2 GENERAL REQUIREMENTS.--

3 A. Licensure as a professional surveyor may be
4 either through examination or through endorsement or comity.
5 In either case, an applicant shall file the appropriate
6 application to demonstrate that the applicant:

7 (1) is of good moral character and reputation;

8 (2) is certified as a surveyor intern;

9 (3) has at least four years of board-approved
10 surveying experience if graduated from a four-year, board-
11 approved surveying curriculum [~~or has a minimum of eight years~~
12 ~~of board-approved surveying experience, including the four~~
13 ~~years of experience required for surveying intern~~
14 ~~certification, if graduated from a four-year, board-approved~~
15 ~~related science curriculum; and~~] as defined by board rule;

16 (4) has five references, three of which shall
17 be from licensed professional surveyors having personal
18 knowledge of the applicant's surveying experience; and

19 (5) if graduated from a board-approved, four-
20 year related science curriculum as specifically defined by
21 board rules, has a minimum of four years of board-approved
22 surveying experience subsequent to certification as a surveyor
23 intern.

24 B. The applicant's experience pursuant to
25 [~~Paragraph~~] Paragraphs (3) and (5) of Subsection A of this

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1 section shall, at a minimum, include three years of
2 increasingly responsible experience in boundary surveying and
3 four years of increasingly responsible experience under the
4 direct supervision of a licensed professional surveyor.

5 C. After acceptance of the application by the
6 board, the applicant shall be allowed to take the appropriate
7 examination for licensure as a professional surveyor.

8 D. Upon successfully completing the examination,
9 the applicant shall be eligible to be licensed as a
10 professional surveyor upon action of the board.

11 E. If otherwise qualified, an applicant may be
12 licensed if the applicant is currently licensed as a
13 professional surveyor in:

14 (1) the District of Columbia, another state, a
15 territory or a possession of the United States, provided that:

16 (a) licensure does not conflict with the
17 provisions of the Engineering and Surveying Practice Act and
18 that the standards required ~~[by the]~~ for licensure ~~[or]~~ and the
19 applicant's qualifications equaled or exceeded the licensure
20 standards in New Mexico at the time the applicant was initially
21 licensed; and

22 (b) the applicant has passed
23 examinations the board deems necessary to determine the
24 applicant's qualifications, including a written examination
25 that includes questions on laws, procedures and practices

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1 pertaining to surveying in this state; or

2 (2) a foreign country and can demonstrate to
3 the board's satisfaction:

4 (a) evidence that the licensure was
5 based on standards that equal or exceed those currently
6 required for licensure by the Engineering and Surveying
7 Practice Act; and

8 (b) competence in current surveying
9 standards and procedures by passing examinations the board
10 deems necessary to determine the applicant's qualification,
11 including a written examination that includes questions on
12 laws, procedures and practices pertaining to surveying in New
13 Mexico."

14 SECTION 11. Section 61-23-27.7 NMSA 1978 (being Laws
15 1993, Chapter 218, Section 28, as amended) is amended to read:

16 "61-23-27.7. SURVEYING--LICENSURE AND RENEWAL FEES--
17 EXPIRATIONS.--

18 A. Licensure for surveyors shall be for a period of
19 two years as prescribed in the rules of procedure. Initial
20 certificates of licensure shall be issued to coincide with the
21 biennial period. Initial [~~certificates of licensure~~] licenses
22 shall be issued in accordance with the board's rules.

23 B. The board shall establish by rule a biennial fee
24 for professional surveyors. Renewal shall be granted upon
25 payment of the required fee and satisfactory completion of the

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1 requirements of professional development.

2 C. The executive director of the board shall send a
3 renewal notice to each licensee's last known address. Notice
4 shall be mailed at least one month in advance of the date of
5 expiration of the license.

6 D. It shall be the responsibility of the licensee
7 to notify the board of any change of address and to ~~[maintain]~~
8 keep the ~~[certificate of licensure]~~ license current.

9 E. Upon receipt of a renewal fee and fulfillment of
10 other requirements, the board shall issue a licensure renewal
11 card that shall show the name and license number of the
12 licensee and shall state that the person named has been granted
13 licensure to practice as a professional surveyor for the
14 biennial period.

15 F. Every ~~[certificate of licensure]~~ license shall
16 automatically expire if not renewed on or before ~~[the last day]~~
17 December 31 of the applicable biennial period. A ~~[licensee,~~
18 ~~however, shall be permitted to reinstate a certificate without~~
19 ~~penalty upon payment of the required fee within sixty days of~~
20 ~~the last day of the biennial period. After expiration of this~~
21 ~~grace period, a]~~ delinquent licensee may renew a ~~[certificate]~~
22 license by the payment of twice the biennial renewal fee at any
23 time ~~[up to twelve months after the renewal fee became due]~~
24 before March 31, but the delinquent licensee shall not practice
25 during this period. Should the licensee wish to renew an

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1 expired [~~certificate~~] license after the [~~twelve-month period~~]
2 March 1 deadline has elapsed, the licensee shall submit a
3 formal application as provided in Section 61-23-27.4 NMSA 1978.
4 The board, in considering the reapplication, need not question
5 the applicant's qualifications for licensure unless the
6 qualifications have changed since the license expired."

7 SECTION 12. Section 61-23-27.8 NMSA 1978 (being Laws
8 1993, Chapter 218, Section 29, as amended) is amended to read:

9 "61-23-27.8. SURVEYING [~~CERTIFICATES~~] LICENSES AND
10 SEALS.--

11 A. The board shall issue [~~certificates of~~
12 ~~licensure~~] surveying licenses pursuant to the Engineering and
13 Surveying Practice Act. The board shall provide for the proper
14 authentication of all documents.

15 B. The board shall regulate the use of seals."

16 SECTION 13. Section 61-23-27.11 NMSA 1978 (being Laws
17 1993, Chapter 218, Section 32, as amended) is amended to read:

18 "61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY
19 ACTIONS--PENALTIES--REISSUANCE OF [~~CERTIFICATES~~] LICENSES.--

20 A. The board may suspend, refuse to renew or revoke
21 the [~~certificate of licensure~~] license, impose a fine not to
22 exceed [~~five thousand dollars (\$5,000)~~] seven thousand five
23 hundred dollars (\$7,500), place on probation for a specific
24 period of time with specific conditions or reprimand [~~any~~] a
25 professional surveyor who is found by the board to have:

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1 (1) practiced or offered to practice surveying
2 in New Mexico in violation of the Engineering and Surveying
3 Practice Act;

4 (2) attempted to use the [~~certificate~~] license
5 of another;

6 (3) given false or forged evidence to the
7 board or to any board member for obtaining a [~~certificate of~~
8 ~~licensure~~] license;

9 (4) falsely impersonated any other licensee of
10 like or different name;

11 (5) attempted to use an expired, suspended or
12 revoked [~~certificate of licensure~~] license;

13 (6) falsely [~~presented himself~~] purported to
14 be a professional surveyor by claim, sign, advertisement or
15 letterhead;

16 (7) violated the rules of professional
17 responsibility for professional surveyors adopted and
18 promulgated by the board;

19 (8) been disciplined in another state for
20 action that would constitute a violation of either or both the
21 Engineering and Surveying Practice Act or the rules adopted by
22 the board pursuant to the Engineering and Surveying Practice
23 Act;

24 (9) been convicted of a felony; or

25 (10) procured, aided or abetted any violation

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1 of the provisions of the Engineering and Surveying Practice Act
2 or the rules adopted by the board.

3 B. The board may by rule establish the guidelines
4 for the disposition of disciplinary cases involving specific
5 types of violations. Guidelines may include minimum and
6 maximum fines, periods of probation or conditions of probation
7 or reissuance of a license.

8 C. Failure to pay a fine levied by the board or to
9 otherwise comply with an order issued by the board pursuant to
10 the Uniform Licensing Act is a misdemeanor and shall be grounds
11 for further action against the licensee by the board and for
12 judicial sanctions or relief.

13 D. ~~Any~~ A person may prefer charges of fraud,
14 deceit, gross negligence, incompetency or misconduct against
15 ~~any~~ a licensee. Such charges shall be in writing, shall be
16 sworn to by the person making them and shall be filed with the
17 executive director of the board. No action that would have any
18 of the effects specified in Subsection D, E or F of Section
19 61-1-3 NMSA 1978 may be initiated later than two years after
20 the discovery by the board, but in no case shall such an action
21 be brought more than ten years after the completion of the
22 conduct that constitutes the basis for the action. All charges
23 shall be referred to the professional surveying committee,
24 acting for the board, or to the board. All charges, unless
25 dismissed as unfounded, trivial, resolved by reprimand or

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1 settled informally, shall be heard in accordance with the
2 provisions of the Uniform Licensing Act by the professional
3 surveying committee, acting for the board, or by the board.

4 E. Persons making charges shall not be subject to
5 civil or criminal suits, provided the charges are made in good
6 faith and are not frivolous or malicious.

7 F. The board or [~~any~~] a board member may initiate
8 proceedings pursuant to the provisions of this section in
9 accordance with the provisions of the Uniform Licensing Act.
10 Nothing in the Engineering and Surveying Practice Act shall
11 deny the right of appeal from the decision and order of the
12 board in accordance with the provisions of the Uniform
13 Licensing Act.

14 G. The board, for reasons it deems sufficient, may
15 reissue a [~~certificate of licensure~~] license to [~~any~~] a person
16 whose [~~certificate~~] license has been revoked or suspended,
17 provided that a majority of the members of the professional
18 surveying committee, acting for the board, or of the board
19 votes in favor of reissuance. A new [~~certificate of licensure~~]
20 license bearing the original license number to replace [~~any~~
21 ~~certificate~~] a revoked, lost, destroyed or mutilated license
22 may be issued subject to the rules of the board with payment of
23 a fee determined by the board.

24 H. The professional surveying committee shall
25 prepare and adopt rules of professional responsibility for

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1 professional surveyors as provided in the Engineering and
2 Surveying Practice Act [~~that shall be made known in writing to~~
3 ~~every licensee and applicant for licensure pursuant to that act~~
4 ~~and shall be published in the roster. Such publication and~~
5 ~~public notice shall be in accordance with the Uniform Licensing~~
6 ~~Act. The professional surveying committee may revise and amend~~
7 ~~these rules of professional responsibility for professional~~
8 ~~surveyors from time to time and shall notify each licensee in~~
9 ~~writing of the revisions or amendments].~~

10 I. A violation of any provision of the Engineering
11 and Surveying Practice Act is a misdemeanor punishable upon
12 conviction by a fine of not more than [~~five thousand dollars~~
13 ~~(\$5,000)] seven thousand five hundred dollars (\$7,500) or by
14 imprisonment of no more than one year, or both.~~

15 J. The attorney general or district attorney of the
16 proper district or special prosecutor retained by the board
17 shall prosecute violations of the Engineering and Surveying
18 Practice Act by a nonlicensee.

19 K. The practice of surveying in violation of the
20 provisions of the Engineering and Surveying Practice Act shall
21 be deemed a nuisance and may be restrained and abated by
22 injunction without bond in an action brought in the name of the
23 state by the district attorney or on behalf of the board by the
24 attorney general or the special prosecutor retained by the
25 board. Action shall be brought in the county in which the

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1 violation occurs."

2 SECTION 14. Section 61-23-27.15 NMSA 1978 (being Laws
3 2003, Chapter 233, Section 5) is amended to read:

4 "61-23-27.15. AUTHORITY TO INVESTIGATE--CIVIL PENALTIES
5 FOR UNLICENSED PERSONS--SURVEYING.--

6 A. The board may investigate and initiate a hearing
7 on a complaint against a person who does not have a license,
8 who is not exempt from the Engineering and Surveying Practice
9 Act and who acts in the capacity of a professional surveyor
10 within the meaning of the Engineering and Surveying Practice
11 Act. A valid license is required for a person to act as a
12 professional surveyor or to solicit or purport to perform work
13 involving the practice of surveying.

14 B. If after the hearing the board determines that
15 based on the evidence the person committed a violation under
16 the Engineering and Surveying Practice Act, it shall, in
17 addition to any other sanction, action or remedy, issue an
18 order that imposes a civil penalty up to [~~five thousand dollars~~
19 ~~(\$5,000)~~] seven thousand five hundred dollars (\$7,500) per
20 violation.

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

- 23 (1) the seriousness of the violation;
24 (2) the economic benefit to the violator that
25 was generated by the violator's commission of the violation;

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1 (3) the violator's history of violations; and
2 (4) any other considerations the board deems
3 appropriate.

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

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

15 SECTION 15. A new section of the Engineering and
16 Surveying Practice Act is enacted to read:

17 "[NEW MATERIAL] NOTICE OF BOUNDARY SURVEY--CERTAIN LAND
18 GRANTS.--

19 A. If a boundary survey of property is conducted
20 within or bordering the common lands of a community land grant
21 governed and operated pursuant to the provisions of Chapter 49,
22 Article 6, 7, 8 or 10 NMSA 1978, the surveyor shall give
23 written notice by certified mail to the board of trustees or to
24 the commissioners of the affected land grant prior to recording
25 the boundary survey or plat with the county clerk. The notice

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1 shall indicate the location of the boundary survey and the date
2 the boundary survey was or will be conducted.

3 B. The board of trustees or the commissioners of a
4 community land grant, as provided in Subsection A of this
5 section, shall record with the county clerk of the county
6 within which the land grant is located the address and contact
7 information of the community land grant that receives the
8 notice required by this section. Any change in address or
9 contact information shall be updated and recorded as soon as
10 practicable.

11 C. A surveyor shall record with the county clerk on
12 the boundary survey or plat proof that the notice required by
13 this section was mailed by certified mail to the recorded
14 address of the community land grant. A boundary survey or plat
15 recorded pursuant to Section 61-23-28.2 NMSA 1978 without proof
16 of the notice required by this section shall not be considered
17 a valid filing or recording of the boundary survey or plat."

18 SECTION 16. Section 61-23-32 NMSA 1978 (being Laws 1987,
19 Chapter 336, Section 32, as amended) is amended to read:

20 "61-23-32. TERMINATION OF AGENCY LIFE--DELAYED
21 REPEAL.--The state board of licensure for professional
22 engineers and professional surveyors is terminated on July 1,
23 2017 pursuant to the Sunset Act. The board shall continue to
24 operate according to the provisions of the Engineering and
25 Surveying Practice Act until July 1, 2018. Effective July 1,

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1 2018, the Engineering and Surveying Practice Act is repealed."

2 SECTION 17. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2012.

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