HOUSE BILL 188

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO LICENSURE; AMENDING PROVISIONS OF THE ENGINEERING
AND SURVEYING PRACTICE ACT PERTAINING TO DEFINITIONS, ROSTER OF
LICENSED PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS,
EDUCATIONAL REQUIREMENTS FOR PROFESSIONAL ENGINEERS,
ENGINEERING PUBLIC WORKS AND SURVEYING PUBLIC WORKS; ENACTING A
STATUTE OF LIMITATIONS FOR ACTIONS AGAINST PROFESSIONAL
SURVEYORS; EXTENDING THE SUNSET DATE FOR THE STATE BOARD OF
LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL
SURVEYORS; MAKING TECHNICAL AND CONFORMING CHANGES.

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] the person 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] the person's name or
otherwise assume, use or advertise any title or description
tending to convey the impression that [he] the person 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] an engineer or 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, 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

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- 2 -
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."

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. "authorized company officer" means an employee
of a business entity duly authorized by the business entity to
contractually obligate the business entity;

C. "board" means the state board of licensure
for professional engineers and professional surveyors;

D. "business entity" means a corporation,
professional corporation, limited liability corporation,
professional limited liability corporation, general
partnership, limited partnership, limited liability
partnership, professional limited liability partnership, a
joint stock association or any other form of business, whether
or not for profit, but does not mean a sole proprietorship;

E. "conviction" or "convicted" means a 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-] F. "engineer", "professional engineer",
"consulting engineer", "licensed engineer" or "registered
engineer" means a person who is qualified to practice
engineering by reason of the person's 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 and who is licensed by the
board to practice engineering;

G. "engineering accreditation commission" means the
engineering accreditation commission of the accreditation board
for engineering and technology, incorporated, or any successor
commission or organization;

[E-] H. "engineering", "practice of engineering" or
"engineering practice" 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;

[F.1] "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, including the promulgation and adoption of rules of professional responsibility for professional engineers exclusive to the practice of engineering;

[G.1] "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.1] "fund" means the professional engineers'
and surveyors' fund;

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

[M.] "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or a legal or commercial entity;

[N.] "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 to maintain licensure;

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

[O.] "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 professional surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable

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- 6 -
engineering or surveying standards have been met;

[N-7] P. "surveying", "practice of surveying" or
"surveying practice" 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;

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

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

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

(6) the depiction and transmittal by paper or digital means of any digital geospatial data for use in geographic information systems or land information systems that purports to be the authoritative location of points or features of a survey regulated by the Engineering and Surveying Practice Act, but excludes data used solely for a cadastre, such as assessment and tax mapping purposes, or general representations of surveyed or historic data used for mapping purposes, such as land parcels and built infrastructure;

[O. & Q.] "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, including the promulgation and adoption of rules of professional responsibility for professional surveyors exclusive to the practice of surveying;

[P. & R.] "surveyor", [or] "professional surveyor", "licensed surveyor" or "registered surveyor" means a person who is qualified to practice surveying by reason of the person's 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;

[R+] T. "surveying work" means the work performed in the practice of surveying; and

[S+] U. "supplemental surveying work" means surveying work performed in order to densify, augment and enhance previously performed survey work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way and easements and the dependent or independent surveys or resurveys of the public land system. [The board shall recognize that there may be occasions when professional engineers need to obtain supplemental survey information for the planning and design of an engineering project. A licensed professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a licensed professional engineer only on a project for which the engineer is providing engineering design services.]

SECTION 3. Section 61-23-11 NMSA 1978 (being Laws 1987, Chapter 336, Section 11, as amended) is amended to read:

"61-23-11. RECEIPTS AND DISBURSEMENT--FUND CREATED.--

A. The "professional engineers' and surveyors'
fund" is created in the state treasury. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act and shall pay that money to the state treasurer for deposit in the fund. Money in this fund shall be paid out only by warrant of the secretary of finance and administration upon the state treasurer, upon itemized vouchers approved by the [chairman] chair and attested by the executive director of the board. All money in the fund is appropriated for the use of the board. Earnings from investment of the fund shall accrue to the credit of the fund.

B. The executive director of the board shall give a surety bond to the state in such sum as the board may determine. The premium on the bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the fund.

C. The board may make expenditures of the fund for any purpose that in the opinion of the board is reasonably necessary for the proper performance of its duties pursuant to the Engineering and Surveying Practice Act, including the expenses of the board's delegates to the conventions of, and for membership dues to, the national council of examiners for engineering and surveying and any of its subdivisions or any other body of similar purpose."

SECTION 4. Section 61-23-12 NMSA 1978 (being Laws 1987, .204448.2
Chapter 336, Section 12, as amended) is amended to read:

"61-23-12. RECORDS AND REPORTS.--

A. The board shall keep a record of its proceedings and a register of all applications for licensure, indicating the name, age and residence of each applicant, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of licensure was granted, the date of the action of the board and such other information as may be deemed necessary by the board. The record and register shall be open to public inspection.

B. The following board records and papers are of a confidential nature and are not public records:

(1) examination material for examinations not yet given;
(2) file records of examination problem solutions;
(3) letters of inquiry and reference concerning applicants;
(4) board inquiry forms concerning applicants;
(5) investigation files where any investigation is ongoing or is still pending; and
(6) all other materials of like confidential nature.

C. The records of the board shall be prima facie
evidence of the proceedings of the board set forth in those
records, and a transcript thereof, duly certified by the
secretary of the board under seal, shall be admissible in
evidence with the same effect as if the original were produced.

D. Annually, on or before August 30, the board
shall submit to the governor a report of its transactions of
the preceding year, accompanied by a complete statement of the
receipts and expenditures of the board attested by affidavits
of the board's [chairman] chair, secretary and executive
director."

SECTION 5. Section 61-23-13 NMSA 1978 (being Laws 1987,
Chapter 336, Section 13, as amended) is amended to read:

"61-23-13. ROSTER OF LICENSED PROFESSIONAL ENGINEERS AND
PROFESSIONAL SURVEYORS.--A roster showing the names and
addresses of all licensed professional engineers and licensed
professional surveyors shall be maintained by the board and
shall be placed on file with [the secretary of state and]
the state commission of public records and made available to the
public."

SECTION 6. 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;

and

(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 may be accepted by the board; provided that a satisfactory written explanation is given.

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

(1) the applicant is certified as an engineer intern and has at least one of the following:

(a) received a bachelor's degree in an engineering discipline recognized by the board from a [board-approved engineering curriculum] program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years of engineering experience subsequent to receiving the degree;
(b) received a bachelor's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years of engineering experience in the United States subsequent to receiving the degree;

(c) received a master's degree in an engineering discipline recognized by the board from a [board-approved engineering curriculum] program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least three years of engineering experience subsequent to receiving the degree;

(d) received a master's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills through evaluation the required curricular content and educational standards as defined by the national council of examiners for engineering and surveying and has at least three years of engineering experience in the United States subsequent to
to receiving the degree;

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

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

(2) the applicant is not certified as an engineer intern and has at least one of the following:

(a) received a bachelor's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has twelve years of engineering experience subsequent to receiving the degree;

(b) received a master's degree in an engineering discipline recognized by the board from a program accredited by the
engineering accreditation commission or an institution that
offers programs accredited by the engineering accreditation
commission or that fulfills the required content of the
engineering education standard as defined by the national
council of examiners for engineering and surveying and has at
least six years of engineering experience subsequent to
receiving the degree; or

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

C. Upon successfully completing the examination,
required experience and all the requirements as noted in this
section, 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 the applicant:

(1) is currently licensed as an engineer in
the District of Columbia, another state, a territory or a
possession of the United States; provided that 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) 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 competence in current engineering standards and procedures."

SECTION 7. Section 61-23-19 NMSA 1978 (being Laws 1987, Chapter 336, Section 19, as amended) is amended to read:

"61-23-19. ENGINEERING--[LICENSE] LICENSES--SEALS--INCIDENTAL ARCHITECTURAL WORK--SUPPLEMENTAL SURVEYING WORK.--

A. The board shall issue licenses pursuant to the provisions of the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to the engineer's work as an engineer; provided that the engineer shall not make any representation as being an architect or as performing architectural services unless duly registered as such.

D. The board shall recognize that there may be occasions when professional engineers need to obtain supplemental survey information for the planning and design of
an engineering project. A professional engineer who has
primary engineering responsibility and control of an
ing engineering project may perform supplemental surveying work in
obtaining data incidental to that project. Supplemental
surveying work may be performed by a professional engineer only
on a project for which the engineer is providing engineering
design services."

SECTION 8. Section 61-23-20 NMSA 1978 (being Laws 1987,
Chapter 336, Section 20, as amended) is amended to read:

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

A. Licensure shall be for a period of two years as
prescribed in the rules of procedure. Initial licenses shall
be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee
for professional engineers. Licensure renewal is accomplished
upon payment of the required fee and satisfactory completion of
the requirements of professional development.

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

D. Each licensee shall have the responsibility to
notify the board of any change of address within thirty days of
the change.
E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional engineer for the biennial period.

F. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial period. A delinquent licensee may renew a license by the payment of twice the biennial renewal fee at any time before March 1, but the delinquent licensee shall not practice during this period. Should the licensee apply to renew an expired license after the March 1 deadline has elapsed, the licensee shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The board, in considering the reapplication, may consider the applicant's qualifications for licensure if the requirements for licensure have changed since the applicant was first licensed. The board may adopt rules for inactive and retired status."

SECTION 9. Section 61-23-21 NMSA 1978 (being Laws 1987, Chapter 336, Section 21, as amended) is amended to read:

"61-23-21. PRACTICE OF ENGINEERING.--

A. No business entity shall be licensed pursuant
to the Engineering and Surveying Practice Act. No [firm, partnership, corporation or joint stock association] business entity shall practice or offer to practice engineering in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional engineers may engage in the practice of engineering and perform engineering work pursuant to the Engineering and Surveying Practice Act as individuals [partners] or through [joint stock associations or corporations] a business entity. In the case of an individual, the individual shall be a professional engineer pursuant to the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the practice, shall bear the seal and signature of [a] the professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional engineer pursuant to the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the partnership, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through a [joint stock association or corporation].
corporation] business entity other than a partnership, services
or work involving the practice of engineering may be offered
through that [joint stock association or corporation] business
entity; provided that the person in responsible charge of the
activities of the [joint stock association or corporation]
business entity that constitute engineering practice is a
professional engineer who has authority to bind such [joint
stock association or corporation] business entity by contract;
and further provided that all plans, designs, drawings,
specifications or reports that are involved in engineering
practice, or that are issued by or for such [joint stock
association or corporation] business entity, bear the seal and
signature of a professional engineer in responsible charge of
and directly responsible for the work when issued.

C. An individual [firm, partnership, corporation or
joint stock association] or business entity may not use or
assume a name involving the terms "engineer", "professional
engineer", "engineering", "registered" or "licensed" engineer
or any modification or derivative of such terms unless that
individual [firm, partnership, corporation or joint stock
association] or business entity is qualified to practice
engineering in accordance with the requirements [in this

D. In the case of practice through a business
entity offering or providing services or work involving the

practice of engineering, an authorized company officer and the
professional engineer who is employed by the business entity
and in responsible charge shall place on file with the board a
signed affidavit, as prescribed by board rule. The affidavit
shall be kept current, and, if there is any change in the
professional engineer or authorized company officer, the
affidavit shall be promptly revised and resubmitted to the
board."

SECTION 10. Section 61-23-22 NMSA 1978 (being Laws 1993,
Chapter 218, Section 17, as amended) is amended to read:

"61-23-22. ENGINEERING--EXEMPTIONS.--

A. A New Mexico licensed architect who has complied
with all of the laws of New Mexico relating to the practice of
architecture has the right to engage in the incidental
practice, as defined by regulation, of activities properly
classified as engineering; provided that the architect shall
not [hold himself out to be] make any representation as being
an engineer or as performing engineering services; and further
provided that the architect shall perform only that part of the
work for which [he] the architect is professionally qualified
and shall [utilize] use qualified professional engineers or
others for those portions of the work in which the contracting
architect is not qualified. Furthermore, the architect shall
assume all responsibility for compliance with all laws, codes,
regulations and ordinances of the state or its political

subdivisions pertaining to all documents bearing [his] the architect's professional seal.

B. An engineer employed by a [firm, association or corporation] business entity who performs only the engineering services involved in the operation of the [employer's] business entity's business shall be exempt from the provisions of the Engineering and Surveying Practice Act; provided that neither the employee nor the [employer] business entity offers engineering services to the public. Performance of engineering on public works projects pursuant to Section 61-23-26 NMSA 1978 constitutes engineering services to the public and is not exempt."

SECTION 11. Section 61-23-24 NMSA 1978 (being Laws 1993, Chapter 218, Section 18, as amended) is amended to read:

"61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY ACTION--PENALTIES--REISSUANCE OF LICENSES.--

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

(1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act;
(2) attempted to use the license of another;
(3) given false or forged evidence to the
board or to a board member for obtaining a license;
(4) falsely impersonated any other licensee of
like or different name;
(5) attempted to use an expired, suspended or
revoked license;
(6) falsely purported to be a professional
engineer by claim, sign, advertisement or letterhead;
(7) violated the rules of professional
responsibility for professional engineers adopted and
promulgated by the board;
(8) been disciplined in another state for
action that would constitute a violation of either or both the
Engineering and Surveying Practice Act or the rules adopted by
the board;
(9) been convicted of a felony; or
(10) procured, aided or abetted any violation
of the provisions of the Engineering and Surveying Practice Act
or the rules of the board.

B. Except as provided in Subsection C of Section
61-23-21 NMSA 1978, nothing in the Engineering and Surveying
Practice Act shall prohibit the general use of the word
"engineer", "engineered" or "engineering" so long as such words
are not used in an offer to the public to perform engineering

work as defined in Subsections [E] F and [H] H of Section 61-23-3 NMSA 1978.

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

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

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

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

G. The board or a board member may initiate
proceedings pursuant to the provisions of this section in
accordance with the provisions of the Uniform Licensing Act.

Nothing in the Engineering and Surveying Practice Act shall
deny the right of appeal from the decision and order of the
board in accordance with the provisions of the Uniform
Licensing Act.

H. The board, for reasons it deems sufficient, may
reissue a license to a person whose license has been revoked or
suspended; provided that a majority of the members of the
engineering committee, acting for the board, or of the board
votes in favor of the reissuance. A new license bearing the
original license number to replace a revoked, lost, destroyed
or mutilated license may be issued subject to the rules of the
board with payment of a fee. [determined by the board.

I. The professional engineering committee shall
prepare and adopt rules of professional responsibility for
professional engineers as provided in the Engineering and
Surveying Practice Act.
J. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than seven thousand five hundred dollars ($7,500) or by imprisonment of no more than one year, or both.

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

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

SECTION 12. Section 61-23-26 NMSA 1978 (being Laws 1987, Chapter 336, Section 26, as amended) is amended to read:

"61-23-26. ENGINEERING--PUBLIC WORK.--[A.] It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving engineering unless the [plans and specifications involving] engineering [have been prepared by and are] is under the responsible charge of a licensed professional engineer.
[and the public work involving professional surveying has been executed under the responsible charge of a licensed professional surveyor. Nothing in this section shall be held to apply to any public work wherein the contemplated expenditure for the complete project does not exceed one hundred thousand dollars ($100,000), except for public work involving structural design, structural modifications or surveying.]

B. The Engineering and Surveying Practice Act shall not apply to construction surveys of engineering and architectural public works projects, the anticipated construction cost of which is less than one hundred thousand dollars ($100,000).]

SECTION 13. Section 61-23-27.5 NMSA 1978 (being Laws 1993, Chapter 218, Section 26, as amended) is amended to read:

"61-23-27.5. SURVEYING--APPLICATION AND EXAMINATION FEES.--

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of [his] the applicant's technical work and appropriate references.
B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. Fees shall not be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude."

SECTION 14. Section 61-23-27.9 NMSA 1978 (being Laws 1993, Chapter 218, Section 30, as amended) is amended to read:

"61-23-27.9. SURVEYING--PRACTICE OF SURVEYING--MANDATORY DISCLOSURE.--

A. No [firm, partnership, corporation or joint stock association] business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No [firm, partnership, corporation or joint stock association] business entity shall practice or offer to practice surveying in the state except as provided in [that] the Engineering and Surveying Practice Act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act as individuals [partners] or through [joint stock associations or corporations] a business entity. In the case of an individual, the individual shall be a professional surveyor pursuant to the
Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, or that are issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional surveyor pursuant to [that] the Engineering and Surveying Practice Act. In the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the case of practice through a [joint stock association or corporation] business entity other than a partnership, services or work involving the practice of surveying may be offered through the [joint stock association or corporation] business entity; provided the person in responsible charge of the activities of the [joint stock association or corporation] business entity that constitute the practice of surveying is a professional surveyor who has authority to bind [such joint stock association or corporation] the business entity by contract; and further provided that all drawings or reports that are involved in such practice, or that are issued by or for the [joint stock association or corporation] business entity, bear the seal and signature of a professional surveyor in responsible charge of and directly
responsible for the work when issued.

C. In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

[D. E. An individual [firm, partnership, corporation or joint stock association] or business entity may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual [firm, partnership, corporation or joint stock association] or business entity is qualified to practice surveying in accordance with the requirements [in this section] of the Engineering and Surveying Practice Act.

[D. E. For all contracts and agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating:

(1) the minimum terms and conditions of professional liability insurance coverage, including limits and
exceptions; or

(2) the absence of professional liability
insurance coverage."

SECTION 15. Section 61-23-27.10 NMSA 1978 (being Laws 1993, Chapter 218, Section 31, as amended) is amended to read:

"61-23-27.10. SURVEYING EXEMPTIONS.--An employee of a business entity who performs only the surveying services involved in the operation of the business entity's business shall be exempt from the provisions of the Engineering and Surveying Practice Act; provided that neither the employee nor the business entity offers surveying services to the public; and provided further that the surveying services performed do not include any determination, description, portraying, measuring or monumentation of the boundaries of a tract of land. Performance of surveying on public works projects pursuant to Section 61-23-27.13 NMSA 1978 constitutes surveying services to the public and is not exempt."

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

"61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY ACTIONS--PENALTIES--REISSUANCE OF LICENSES.--

A. The board may suspend, refuse to renew or revoke the license, impose a fine not to exceed seven thousand five hundred dollars ($7,500), place on probation for a specific
period of time with specific conditions or reprimand a
professional surveyor who is found by the board to have:

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

(2) attempted to use the license of another;

(3) given false or forged evidence to the
board or to any board member for obtaining a license;

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

(5) attempted to use an expired, suspended or
revoked license;

(6) falsely purported to be a professional
surveyor by claim, sign, advertisement or letterhead;

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

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

(9) been convicted of a felony; or

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

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

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

D. A person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against a [licensee] professional surveyor. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in Subsection D, E or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board, but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the professional surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, shall be heard in
accordance with the provisions of the Uniform Licensing Act by
the [professional] surveying committee, acting for the board,
or by the board.

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

F. The board or a board member may initiate
proceedings pursuant to the provisions of this section in
accordance with the provisions of the Uniform Licensing Act.
Nothing in the Engineering and Surveying Practice Act shall
deny the right of appeal from the decision and order of the
board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may
reissue a license to a person whose license has been revoked or
suspended; provided that a majority of the members of the
[professional] surveying committee, acting for the board, or of
the board votes in favor of reissuance. A new license bearing
the original license number to replace a revoked, lost,
destroyed or mutilated license may be issued subject to the
rules of the board with payment of a fee determined by the
board.

[H. The professional surveying committee shall
prepare and adopt rules of professional responsibility for
professional surveyors as provided in the Engineering and
Surveying Practice Act.

1. [H.] A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than seven thousand five hundred dollars ($7,500) or by imprisonment of no more than one year, or both.

2. [I.] The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonlicensee.

3. [J.] The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs."

SECTION 17. Section 61-23-27.13 NMSA 1978 (being Laws 1993, Chapter 218, Section 34, as amended) is amended to read:

"61-23-27.13. SURVEYING--PUBLIC WORK.--It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a licensed professional surveyor."

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- 36 -
SECTION 18. Section 61-23-28.2 NMSA 1978 (being Laws 1999, Chapter 259, Section 34, as amended) is amended to read:

"61-23-28.2. SURVEYING--RECORD OF SURVEY.--

A. For those surveys that do not create a division of land but only show existing tracts of record, [except in the instance of remonumentation] as specified in the board's minimum standards for boundary surveys [within sixty calendar days of the completion of the survey], a professional surveyor shall cause to be recorded at the office of the county clerk a survey entitled "boundary survey" that shall:

(1) contain a printed certification of the professional surveyor stating that "this is a boundary survey of an existing tract", or existing tracts, if appropriate, and that "it is not a land division or subdivision as defined in the New Mexico Subdivision Act";

(2) identify all tracts by the uniform parcel code designation or other designation established by the county assessor, if applicable;

(3) meet the minimum standards for surveying in New Mexico as established by the board; and

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches or as required by the local governing authority.

B. Fees for recording a boundary survey shall be in conformance with Section 14-8-15 NMSA 1978.
C. For those surveys that create a division of land, the survey shall be completed in conformity with the board's minimum standards and in conformity with the New Mexico Subdivision Act and any applicable local subdivision ordinances. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed and recorded pursuant to this subsection shall be filed and recorded pursuant to this subsection shall be recorded at the office of the county clerk within sixty calendar days after completion of the survey or approval by the governing authority.

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

"61-23-32. TERMINATION OF AGENCY LIFE--DELAYED REPEAL. The state board of licensure for professional engineers and professional surveyors is terminated on July 1, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act until July 1, 2024. Effective July 1, 2024, the Engineering and Surveying Practice Act is repealed."
defective land survey shall be brought within two years after
the person bringing the action either discovered or in the
exercise of reasonable diligence should have discovered the
negligence or defect giving rise to the action.

B. In no case shall an action be brought more than
ten years after the completion of the survey upon which the
action is based."

SECTION 21. APPLICABILITY.--The provisions of Section
61-23-14.1 NMSA 1978 apply to persons initially applying for
licensure as a professional engineer on or after July 1, 2017.

SECTION 22. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2017.

- 39 -