

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 Surveying Practice Act:

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

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

C. "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. "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;

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

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

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

J. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or a legal or commercial

entity;

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

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

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

N. "surveying", "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 and property descriptions;

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

P. "surveyor" or "professional 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. "surveying work" means the work performed in the practice of surveying; and

S. "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 2. 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 SURVEYORS.--A roster showing the names and addresses of all licensed professional engineers and 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 3. Section 61-23-14.1 NMSA 1978 (being Laws 1993, Chapter 218, Section 12, as amended) is amended to read:

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

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

(1) is of good moral character and reputation; 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 other than professional engineers 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 and has four 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 board-approved engineering curriculum and has at least three years of engineering experience subsequent 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 board-approved engineering curriculum 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 board-approved engineering curriculum 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 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 4. Section 61-23-17 NMSA 1978 (being Laws 1987, Chapter 336, Section 17, as amended) is amended to read:

"61-23-17. 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 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. No fees shall be refundable.

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

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

"61-23-19. ENGINEERING--LICENSE--SEALS.--

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."

SECTION 6. 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, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired. The board may adopt rules for inactive and retired status."

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

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

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

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

issue an order that imposes a civil penalty up to seven thousand five hundred dollars (\$7,500) per violation.

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

(1) the seriousness of the violation;

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

(3) the violator's history of violations;

and

(4) any other considerations the board deems appropriate.

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

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

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

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

A. An applicant for certification as a surveyor intern shall file the appropriate application and demonstrate that the applicant:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved, four-year curriculum in surveying; and

(3) has three references, two of whom shall be licensed professional surveyors having personal knowledge of the applicant's knowledge and experience.

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

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

D. The certification of surveyor intern does not

permit the intern to practice surveying. Certification as a surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying.

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

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

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

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

(1) is of good moral character and
reputation;

(2) is certified as a surveyor intern;

(3) has at least four years of board-approved surveying experience if graduated from a four-year, board-approved surveying curriculum as defined by board rule;

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

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

B. The applicant's experience pursuant to Paragraphs (3) and (5) of Subsection A of this section shall, at a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a licensed professional surveyor.

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

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

E. If otherwise qualified, an applicant may be licensed if the applicant is currently licensed as a

professional surveyor in:

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

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

(b) the applicant has passed examinations the board deems necessary to determine the applicant's qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

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

(a) 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

(b) competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification, including a written examination that includes questions on

laws, procedures and practices pertaining to surveying in New Mexico."

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

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

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

B. The board shall establish by rule a biennial fee for professional surveyors. Renewal shall be granted 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. It shall be the responsibility of the licensee to notify the board of any change of address and to keep the license current.

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 surveyor 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 wish to renew an expired license after the March 1 deadline has elapsed, the licensee shall submit a formal application as provided in Section 61-23-27.4 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired."

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

"61-23-27.8. SURVEYING LICENSES AND SEALS.--

A. The board shall issue surveying licenses pursuant to 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."

SECTION 13. 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. 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 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.

I. 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.

J. 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.

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

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

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

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

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

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

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

(4) any other considerations the board deems

appropriate.

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

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

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

"NOTICE OF BOUNDARY SURVEY--CERTAIN LAND GRANTS.--

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

B. The board of trustees or the commissioners of a

community land grant, as provided in Subsection A of this section, shall record with the county clerk of the county within which the land grant is located the address and contact information of the community land grant that receives the notice required by this section. Any change in address or contact information shall be updated and recorded as soon as practicable.

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

SECTION 16. 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, 2017 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, 2018. Effective July 1, 2018, the Engineering and Surveying Practice Act is repealed."

SECTION 17. EFFECTIVE DATE.--The effective date of the

provisions of this act is July 1, 2012. _____