

LEGISLATIVE BILL 874

Approved by the Governor March 15, 1994

Introduced by Moore, 24; Schimek, 27

AN ACT relating to land surveying; to amend sections 81-8,108, 81-8,110.01 to 81-8,110.07, 81-8,110.13, 81-8,110.15, 81-8,113 to 81-8,115, 81-8,117, 81-8,118, 81-8,119.01 to 81-8,121, and 81-8,122.02 to 81-8,125, Reissue Revised Statutes of Nebraska, 1943, and section 81-8,109, Revised Statutes Supplement, 1992; to eliminate obsolete provisions; to redefine terms; to change provisions relating to membership, meetings, and procedures of the board of examiners, duplicate certificates, examinations, fees, certificate renewal, nonresident registrants, and seals; to provide powers for the Governor; to provide powers and duties for the board of examiners; to provide for probation; to eliminate the examination committee; to harmonize provisions; and to repeal the original sections, and also sections 81-8,110.09, 81-8,110.10, and 81-8,116, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 81-8,108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,108. In order to safeguard life, health, and property, any person practicing or offering to practice land surveying in this state shall hereafter be required to submit evidence that he or she is qualified so to practice and shall be registered as provided in sections 81-8,108 to 81-8,127. It ~~is~~ ~~and after January 1, 1958,~~ it shall be unlawful for any person to practice or to offer to practice land surveying in this state unless such person has been duly registered under the provisions of such sections. ~~81-8,108 to 81-8,127.~~

Sec. 2. That section 81-8,109, Revised Statutes Supplement, 1992, be amended to read as follows:

81-8,109. For purposes of sections 81-8,108 to 81-8,127, unless the context otherwise requires:

(1) Board Examining board shall mean the State Board of Examiners for Land Surveyors;

(2) Land surveyor shall mean a person who engages in the practice of land surveying;

(3) Surveyor-in-training shall mean a person (a) who is a graduate in an approved surveying or engineering curriculum of four years or more or who has had four or more years of experience in surveying work of a character satisfactory to the examining board and (b) who has successfully passed the examination in the fundamental surveying subjects and has received from the examining board a certificate stating that that portion of the examination has been successfully passed. The fee for such certificate and for the renewal of such certificate shall be set by the examining board; and

(4) Land surveying shall mean the establishment or reestablishment of corners and boundaries and the location of lots, parcels, tracts, or divisions of land, which may include distance, direction, elevation, and acreage, and the correct determination and description of lots, parcels, tracts, or divisions of land for, but not limited to, any of the following purposes:

(a) To furnish a legal description of any tract of land to be used in the preparation of deeds of conveyance when the description is not the same as the one in the deed of conveyance to the current owner or when bearings, distances, or measurements are needed to properly describe the tract being conveyed;

(b) To furnish a legal description of any land surveyed to be used in the platting or subdividing of the land;

(c) To determine the amount of acreage contained in any land surveyed; or

(d) To furnish a topographic plat of a lot, parcel, tract, or division of land and locating natural and artificial features in the air, on the surface or subsurface of the earth, and on the beds or surface of bodies of water for the purpose of establishing the facts of size, area, shape, topography, and orientation of improved or unimproved real property and appurtenances to the real property.

Sec. 3. That section 81-8,110.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.01. (1) The examining board shall consist of four members appointed by the Governor who are duly registered under the provisions of sections 81-8,108 to 81-8,127 to practice land surveying and one lay member who is appointed by the Governor and who is of the age of legal majority and has been a resident of Nebraska for at least one year immediately prior to appointment to the examining board. Such lay member shall be a representative of consumer viewpoints.

(2) The members of the examining board shall be appointed to five-year terms. Each member shall serve until the appointment and qualification of his or her successor. Each member appointed to the examining board shall receive a certificate of appointment from the Governor. Each member so appointed, prior to beginning his or her term, shall file with the Secretary of State the constitutional oath of office. The Governor may remove any member of the examining board for misconduct, incompetency, incapacity, or neglect of duty or upon conviction of a crime involving moral turpitude. Vacancies on the examining board, however created, shall be filled for the unexpired term of the member by appointment by the Governor.

Sec. 4. That section 81-8,110.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.02. Each member of the examining board who is a registered land surveyor shall be a resident of the State of Nebraska for at least one year immediately preceding his or her appointment to the examining board, shall have been engaged in the active practice of his the discipline for at least ten years, and shall have been in responsible charge of work for at least five years prior to his or her appointment to the examining board.

Sec. 5. That section 81-8,110.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.03. The State Surveyor shall be ex officio secretary of the examining board and of all committees appointed by the examining board, and the remaining members of the board shall be appointed by the Governor for a term of five years each, subsequent to the appointment of the members of the original examining board. The term of the Director-State Engineer shall expire as of August 27, 1971. The term of the Dean of the College of Engineering shall expire on or before the last day of February 1973. As the terms of these members expire, the Governor shall appoint new members for terms of five years each. Two additional members shall be appointed to the examining board with terms which expire in the years 1974 and 1975. As the terms of these members expire, the Governor shall, on or before the last day of February, appoint a member to succeed the member whose appointment has expired. Each member shall serve until the appointment and qualification of his successor. Each member appointed to the examining board shall receive a certificate of appointment from the Governor. Each member so appointed, and prior to his beginning his term, shall file with the Secretary of State the constitutional oath of office.

Sec. 6. That section 81-8,110.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.04. The examining board shall hold as many meetings throughout each year as may be necessary to conduct the business of the examining board and to examine, within a reasonable time, the aspirants applicants seeking registration. An annual meeting of the examining board shall be held in the month of March for the election of officers.

Sec. 7. That section 81-8,110.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.05. Notice of all meetings, including the annual meeting of the examining board, shall be in such manner as provided in the bylaws of the examining board.

Sec. 8. That section 81-8,110.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.06. The examining board shall elect from its membership at its annual meeting, officers for the coming year. The officers shall be a chairman chairperson and a vice-chairman vice-chairperson. The duties of the chairman chairperson shall be to preside at all meetings of the examining board. The vice-chairman vice-chairperson shall preside in the absence of the chairman chairperson and shall, with the other officers, fulfill such other duties and obligations as provided in section 81-8,110.07 and the bylaws.

Sec. 9. That section 81-8,110.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.07. The secretary of the examining board shall receive and account for all money derived from the operation of sections 81-8,108 to 81-8,127 and shall pay remit it to the State Treasurer, who shall keep such money in a separate fund to be known as for credit to the Land Surveyor Examiner's Fund, which fund is hereby created. This fund shall be continued

from year to year. When appropriated by the Legislature, this fund shall be expended only for the purposes of sections 81-8,108 to 81-8,127. When not reappropriated for the succeeding biennium, the money in this fund shall not revert to the General Fund. The fund shall be paid out only upon vouchers approved by the examining board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer. The expenditures of the examining board shall be kept within the income collected and deposited with the State Treasurer by such the examining board. Any money in the Land Surveyor Examiner's Fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269 72-1276.

Sec. 10. That section 81-8,110.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.13. The examining board may, upon receiving the written recommendation from the examining committee, issue a registration certificate or an in-training certificate to a qualified person, named thereon. A new certificate of registration of a duly registered person may be issued to replace a certificate lost, destroyed, stolen, or mutilated, subject to the rules and regulations adopted by the examining board. The mutilated certificate shall be returned to the secretary of the board before a new certificate is issued. Any lost or stolen certificate shall be returned to the board if ever found. The new certificate issued to replace a lost, destroyed or stolen certificate shall be plainly marked with the word DUPLICATE on the face thereof. A fee of ten not to exceed fifty dollars shall be charged the applicant for the issuance of a new certificate to replace a previously issued certificate.

Sec. 11. That section 81-8,110.15, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,110.15. The examining board may sue or be sued as the examining board, and its members need not be named as parties. Members of the examining board shall not be personally liable, jointly or severally, for any act or acts committed in the performance of their official duties as examining board members, nor shall any examining board member be personally liable for any hearing costs or court costs which may accrue in any action by or against the examining board.

Sec. 12. That section 81-8,113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,113. The examining board shall keep a complete record of all its proceedings which, together with all other records and files of the examining board, shall be filed in the office of the State Surveyor. A roster showing the names and places of business of all registered land surveyors shall be prepared by the secretary of the examining board during the month of April of each year. Copies of this roster shall be sent to all persons so registered and shall be furnished to the public on request.

Sec. 13. That section 81-8,114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,114. Applications for registration shall be on forms prescribed and furnished by the examining board which shall be filed with the secretary of the examining board at least ninety days prior to the examination. Such applications shall contain a statement, made under oath, showing the applicant's education and detailed summary of his or her technical work and such other information as the examining board shall require.

Sec. 14. That section 81-8,115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,115. The applicant for registration must pass a written examination covering administered by the examining board which covers generally the matters confronting land surveyors as provided in the rules and bylaws.

Sec. 15. That section 81-8,117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,117. No person shall be eligible for registration unless:
 (1) He or she has successfully passed a written examination, designed to determine his or her proficiency and qualification to engage in the practice of land surveying. No applicant shall be entitled to take such examination until he or she shows the necessary practical experience in land surveying work; and

(2) He or she has not less than six years of surveying experience of which five years must be as defined in subdivision (4) of section 81-8,109. Three of such five years must have been in a responsible position as a subordinate to a licensed land surveyor, and for the purpose of this section, responsible position shall mean a position that requires initiative, skill, and independent judgment; this term excludes chainman, rodman, instrument

person, ordinary drafter, and others doing routine work, or has graduated, after a course of not less than four years in surveying, engineering, or other approved curriculum, with proportionate credit for lesser time, from a school or college approved by the examining board as of satisfactory standing, and an additional two years of practice in a responsible position.

Sec. 16. That section 81-8,118, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,118. To pay the expense of the operation and enforcement of sections 81-8,108 to 81-8,127, the examining board shall, at the time application for registration is submitted, collect from the applicant an examination fee of not less than twenty-five dollars and not more than seventy-five dollars for 1985 and not more than one hundred fifty dollars for 1986 and thereafter as set forth in the rules or bylaws. If the applicant fails to qualify, the fee shall not be returned but the applicant may be reexamined ~~after a period of not less than one year nor more than two years,~~ with the payment of a reexamination fee as set forth in the rules or bylaws. If the applicant successfully qualifies, he or she shall be registered until April 1 of the immediately following odd-numbered year, ~~beginning in 1987.~~ After the issuance of a certificate of registration, a biennial fee of not less than five nor more than one hundred dollars, as the examining board shall direct, shall be due and payable on or before January 1 of each odd-numbered year, ~~beginning in 1987.~~ Failure to remit biennial fees when due shall automatically cancel the registration effective the immediately following April 1, but otherwise the registration shall remain in full force and effect continuously from the date of issuance, unless suspended or revoked by the examining board for just cause. ~~All registrations in effect on December 31, 1986, shall be extended to April 1, 1987.~~ A registration which has been canceled for failure to pay the biennial fee when due may be reinstated within one year, but the biennial fee shall be increased ten percent for each month or fraction of a month that payment is delayed. Nothing in this section shall prevent the examining board from suspending or revoking any registration for just cause.

Sec. 17. That section 81-8,119.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,119.01. (1) ~~Beginning in 1987, as a condition for renewal of a certificate of registration issued pursuant to sections 81-8,108 to 81-8,127, a certificate holder shall be required to successfully complete fifteen hours of professional development within the preceding calendar year. Beginning in 1989 as~~ As a condition for renewal of a certificate of registration issued pursuant to sections 81-8,108 to 81-8,127, a certificate holder who has previously renewed his or her registration shall be required to successfully complete thirty hours of professional development within the preceding two calendar years. Any certificate holder who completes in excess of thirty hours of professional development within the preceding two calendar years may have the excess, not to exceed fifteen hours, applied to the requirement for the next biennium.

(2) The State Board of Examiners for Land Surveyors examining board shall not renew the certificate of registration of any certificate holder who has failed to complete the professional development requirements pursuant to subsection (1) of this section, unless he or she can show good cause why he or she was unable to comply with such requirements. If the examining board determines that good cause was shown, the examining board shall permit the registered surveyor to make up all outstanding required hours of professional development.

(3) A certificate holder may at any time prior to the termination of his or her registration request to be classified as inactive. Such inactive registrations may be maintained by payment of a biennial fee of not less than five nor more than fifty dollars as determined by the examining board. Holders of inactive certificate certificates of registration shall not be required to complete professional development as required in subsection (1) of this section. Holders of inactive certificates ~~are prohibited from the shall~~ not practice of land surveying. If the examining board determines that an inactive registrant has actively practiced land surveying, the examining board may immediately revoke his or her certificate of registration.

(4) A holder of an inactive certificate of registration may return his or her certificate to an active registration to practice land surveying by the applicant electing to either:

(a) Complete one and one-half the biennial requirement for professional development, multiplied by the number of years of lapsed or inactive status. The maximum requirement for professional development hours shall be one and one-half times the biennial requirement. Such requirement shall be satisfied within the biennium prior to the date of reinstatement as

set forth in the rules or bylaws; or

(b) Take such examination as the examining board deems necessary to determine his or her qualifications. Such examination shall cover areas designed to demonstrate the applicant's proficiency in current methods of land surveying practice.

Additionally he or she shall be required to pay the biennial fee as required in section 81-8,118.

Sec. 18. That section 81-8,119.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,119.02. The State Board of Examiners for Land Surveyors examining board shall adopt and promulgate such administrative procedures and rules and regulations as are necessary for the effective delivery and certification of all programs of professional development required in section 81-8,119.01.

Sec. 19. That section 81-8,120, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,120. A nonresident of this state who is registered as a land surveyor in another state may be registered under sections 81-8,108 to 81-8,127 by filing an application with the secretary of the examining board accompanied by a certified copy of his or her registration in such other state and the and making payment to the examining board of a fee in the sum of not less than twenty-five dollars and not more than seventy-five dollars for 1985 and not more than one hundred dollars for 1986 and thereafter one hundred fifty dollars as set forth in the rules or bylaws. He or she shall be required to take such examinations as the examining board deems necessary to determine his or her qualifications, but in any event he or she shall be required to pass a written and oral examination of not less than four hours' duration which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state. Before a nonresident of this state is registered under sections 81-8,108 to 81-8,127, he or she shall first file a written consent that actions and suits at law may be commenced against him or her in any county of this state in which any cause of action may arise because of any survey commenced or conducted by such nonresident surveyor or his or her agent or employees in such county.

Sec. 20. That section 81-8,121, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,121. The issuance of a certificate of registration by the examining board shall be evidence that the person named therein is entitled to all rights and privileges of a registered land surveyor; and that the recipient thereof is admitted to the practice of land surveying in this state while the said certificate remains unsuspended, unrevoked, or unexpired. The examining board shall provide for each person registered hereunder, a seal bearing the registrant's name and the legend Registered Land Surveyor. Plats, reports, and field notes issued by a registered land surveyor may be stamped with his or her seal or a facsimile thereof which is approved by the examining board during the life of his or her certificate. It shall be unlawful for any one to stamp or seal any documents with a seal or facsimile thereof after the certificate of the registrant named thereon has been suspended, or revoked or has expired.

Sec. 21. That section 81-8,122.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,122.02. Any registered land surveyor who shall fail fails to file a record of survey as provided in section 81-8,122.01 shall be reported to the State Board of Examiners for Land Surveyors who examining board which shall take whatever action, as provided in section 81-8,123, that the board shall deem it deems appropriate.

Sec. 22. That section 81-8,123, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,123. The examining board may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any land surveyor. It shall have the power to place any land surveyor on probation or to revoke or suspend any registration under the provisions of sections 81-8,108 to 81-8,127; when the land surveyor has been found guilty of any of the following practices: (1) Fraud or deceit in obtaining a registration; (2) negligence or incompetency in the performance of his or her duties; or (3) misconduct in the performance of his or her duties.

Sec. 23. That section 81-8,124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,124. Before the examining board shall revoke or suspend revokes or suspends the registration of any land surveyor, it shall give the registrant a hearing on the matter and shall, at least twenty days prior to the date set for the hearing, notify such registrant in writing. Such notice

shall contain an exact statement of the charges against ~~him~~ the land surveyor and the date and place of hearing. Such registrant shall be heard in person or by counsel before an examiner appointed by the examining board in reference to such charges. Such notice may be served by delivering it personally to the registrant or by sending it by either registered or certified mail addressed to his or her last-known business address as shown by his or her registration.

Sec. 24. That section 81-8,125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-8,125. The examiner shall have power to compel the attendance of witnesses, and to administer oaths and shall take testimony and proof concerning the charges stated in the complaint. A complete record shall be made of all testimony taken and evidence received at such hearing, which record shall be filed with the secretary of the examining board. The examiner conducting such hearing shall make in writing complete findings and recommendations to the examining board. Thereafter, the examining board shall, in writing officially signed by all members concurring therein, make its findings, determination, and order in the matter. If the examining board ~~shall find~~ finds that the registrant has been guilty of any of the practices set forth in section 81-8,123, the land surveyor shall be placed on probation or his or her registration shall be revoked or suspended. As a condition of probation the examining board may restrict the land surveyor's scope of practice or require supervision of the land surveyor's practice.

Sec. 25. That original sections 81-8,108, 81-8,110.01 to 81-8,110.07, 81-8,110.13, 81-8,110.15, 81-8,113 to 81-8,115, 81-8,117, 81-8,118, 81-8,119.01 to 81-8,121, and 81-8,122.02 to 81-8,125, Reissue Revised Statutes of Nebraska, 1943, and section 81-8,109, Revised Statutes Supplement, 1992, and also sections 81-8,110.09, 81-8,110.10, and 81-8,116, Reissue Revised Statutes of Nebraska, 1943, are repealed.