

October 1

Tuesday, October 1, 1985

Legislative Rule-Making Review Committee

6:00 - 8:00 p.m.

(Code §29A-3-10)

Dan Tonkovich,
ex officio nonvoting member
Senate

Joseph P. Albright,
ex officio nonvoting member
House

Williams, R., Chairman
Boettner (absent)
Rogers
Tomblin
Harman
Shaw

Casey, Chairman
Knight
Schifano
Wiedebusch
Shaffer (absent)
Springston (absent)

The meeting was called to order by Mr. Casey, Co-Chairman.

Mike Mowery, Committee Counsel, reviewed his discussion with the Tax Department regarding modifications to the proposed rule relating to the Electronic Data Processing System Network for Property Tax Administration. He told the Committee that the rule had been modified to meet with all of his suggestions.

Mr. Rogers moved that the rule lie over until the next Committee meeting in order to allow the assessors in his district to review the rule. There was discussion on the motion and by unanimous consent the matter was moved to a later position on the agenda to allow Mr. Rogers to phone the assessors in his district.

Dr. David K. Heydinger, M.D., Secretary of the West Virginia Board of Medicine, appeared before the Committee to discuss the legislative rule proposed by the Board of Medicine relating to approval of medical schools not accredited by the Liaison Committee on Medical Education. He told the Committee that the Board had met during the previous weekend and had decided to modify the proposed legislative rule.

Mr. Casey moved that the legislative rule proposed by the Board of Medicine entitled "Board of Medicine Approval of Medical Schools not Accredited by the Liaison Committee on Medical Education" be adopted with the modifications recommended by the Board.

Mr. Knight asked that the motion be amended to require the Board to incorporate changes suggested by counsel in her abstract of the rule.

Mr. Casey accepted Mr. Knight's amendment.

Mr. Casey's motion, as amended, was adopted.

b. Board of Medicine - Proposed rules and regulations governing approval of medical schools not accredited by the Liaison Committee on Medical Education

c. Landscape Architects - Discussion of possible problem with rules formerly promulgated by Landscape Architects

2. REVIEW OF EMERGENCY RULES:

a. Secretary of State - amendment to Standard Size and format . . . in Secretary of State office to conform with computer requirements

3. REVIEW OF COMMITTEE GUIDELINES

Review of Guidelines for agencies to follow in submitting proposed rules to the Committee

4. OTHER

The Committee returned to the first item on the agenda relating to the legislative rule proposed by the Tax Department. Mr. Rogers renewed his motion that the proposed rule lie over until the next meeting of the Committee in order to allow the assessors in his district to review the proposed legislative rule. The motion was adopted.

Mr. Casey asked Richard Hartman, Administrative Law Director in the Secretary of State's Office, to explain the need for an amendment to the rule of the WV State Board of Landscape Architects relating to hearings. Mr. Hartman told the Committee that the Board's rule was in effect before the Committee was created and that one section of the rule requires that a bond be posted prior to the granting of a hearing and that said bond is forfeited if the applicant does not substantially prevail.

Upon motion of Mr. Wiedebusch, properly seconded and adopted, staff was asked to contact the Board of Landscape Architects and, on behalf of the Committee, direct them to amend their rules and bring them back to the Committee for review.

Mr. Hartman then explained the emergency rule submitted by the Secretary of State's Office entitled "Standard Size and Format for Rules and Related Documents Filed in the Secretary of State's Office." He told the Committee that the modifications need to be incorporated into a proposed legislative rule that had been approved by the Committee earlier in the summer.

Upon motion of Mr. Tomblin, properly seconded and adopted, the Committee voted to adopt the modification to the proposed legislative rule submitted on February 26, 1985, and approved on May 19, 1985.

Staff distributed copies of a document entitled "Procedures for Filing Emergency and Proposed Legislative Rules to the Legislative Rule-Making Review Committee." The Committee discussed the need for such procedures.

Upon motion of Mr. Casey, properly seconded and adopted, the Committee approved the proposed procedures.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: October 1, 1985

TIME: 6:00 - 8:00 pm

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.				
Casey, James M.	✓			
Knight, Thomas A.	✓			
Schifano, Larry E.	✓			
Wiedebusch, Larry	✓			
Shaffer, Charles R.				
Springston, Benjamin				
Tonkovich, President				
Williams, Ralph D.	✓			
Boettner, John "Si"				
Rogers, J. Robert	✓			
Tomblin, Earl Ray	✓			
Harman, C. N.	✓			
Shaw, Michael	✓			
TOTAL				

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review Com.

DATE: October 1, 1985

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly <u>KAY HOWARD</u>		<u>WV HEALTH DEPT</u>	
<u>BOB HOFFMAN</u>	<u>CHARLESTON</u>	<u>TAX</u>	
<u>JOHN MONTGOMERY</u>	<u>CHARLESTON</u>	<u>TAX</u>	
<u>FRANK CIPOLAT</u>	<u>CHARLESTON</u>	<u>TAX</u>	
<u>David K. Heydinger, M.D.</u>		<u>W.V. Health Dept.</u>	
<u>Linda Birby</u>	<u>WV</u>		
<u>Mary Wedebush</u>	<u>WV</u>		
<u>Rich O. Hartman</u>	<u>WV</u>	<u>Sec of State</u>	

October 29

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TUESDAY, OCTOBER 29, 1985

5:00 - 7:00 P.M.

SENATE ROOM 265

1. Approval of Minutes - September 30, 1985
October 1, 1985
2. REVIEW OF LEGISLATIVE RULES:
 - a. State Board of Examiners of Land Surveyors - Rules and Regulations Governing the Practice of Land Surveying
 - b. State Tax Department - Proposed rules and regulations governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property
 - c. Landscape Architects - Problem with rule formerly promulgated by Landscape Architects
 - d. Workers' Compensation - Proposed rules and regulations relating to the administration of the Coal-Workers' Pneumoconiosis Fund
 - e. Workers' Compensation - Standards for Medical Examination in Occupational Pneumoconiosis Claims
3. Distribution of synopsis of Emergency Rules on file with the Committee since October 1, 1985 meeting.
4. Other business.

Tuesday, October 29, 1985

Legislative Rule-Making Review Committee
(Code §29A-3-10)

5:00 - 7:00 p.m.

Dan Tonkovich
ex officio nonvoting member
Senate
Williams, R., Chairman
Boettner
Rogers
Tomblin
Harman (absent)
Shaw

Joseph P. Albright
ex officio nonvoting member
House
Casey, Chairman
Knight
Schifano (absent)
Wiedebusch (absent)
Shaffer (absent)
Springston (absent)

Also present: Delegates Stiles and Farley

The meeting was called to order by Mr. Casey, Co-Chairman.

The minutes of the September 30, 1985, and October 1, 1985, meetings were approved.

Mike Mowery, Committee Counsel, updated the Committee on the status of the proposed legislative rule submitted by the WV State Board of Land Surveyors entitled "Rules and Regulations Governing the Practice of Land Surveying". He told the Committee that the Board had made some revisions to its rule but that agreement had not been reached on all points. Mr. Mowery outlined the areas of disagreement.

Charles W. W. Stultz, Secretary-Treasurer of the Board, gave the Board's position on the areas of disagreement and distributed a document entitled "Statement Concerning Proposed Rules and Regulations Governing the Practice of Land Surveying in West Virginia." Mr. Stultz responded to questions from the Committee.

Mr. Stiles addressed the Committee and expressed his opinion that the minimum standard for closure should be 1/1500. Mr. Stiles responded to questions from the Committee.

At the request of Mr. Shaw, Mr. Stultz responded to comments made by Mr. Stiles.

Curtis E. Keplinger, a land surveyor, addressed the Committee on the proposed rule.

Tom Henderson, Legislative Chairman, of the West Virginia Association of Land Surveyors, spoke to the Committee on the need to have different standards for different types of surveys and distributed a copy of his statement entitled "Minimum Standards--Why they are needed."

Mr. Williams asked Mr. Mowery to once again review the sections of the proposed rule which he feels do not conform to the statute.

Mr. Mowery explained to the Committee that the rule would allow use of a magnetic or true meridian for resurveys whereas the statute requires that the survey be by magnetic meridian. He also told the Committee that there is a discrepancy between the proposed rule and the statute regarding penalties. The rule would allow revocation of a license for incompetency but was structured such that simple negligence could be equated with incompetency whereas the statute requires that there be gross negligence prior to revocation of a license. Upon motion of Mr. Williams, properly seconded and adopted, the Committee voted that the rule be made to comply with the statute and that the amendment prepared by Mr. Mowery relating to license revocation be adopted.

Mr. Knight moved that the proposed rule be laid over until next month. Mr. Knight spoke to his motion. Mr. Casey also

spoke to Mr. Knight's motion and suggested that further fact finding be done. Mr. Knight's motion failed.

Mr. Williams moved to further amend the proposed rule to conform with the statute as it relates to magnetic and true meridian. Mr. Rogers moved to amend the motion so that the amendment to the proposed rule would allow for a future change in the statute regarding the use of true meridian. Mr. Williams accepted Mr. Rogers' amendment. Mr. Williams' motion, as amended, was adopted.

Mr. Casey called for a vote on approval of the proposed legislative rule, as amended. The rule entitled "Rules and Regulations Governing the Practice of Land Surveying", as amended, was approved.

Mr. Casey asked Mr. Rogers to brief the Committee on any response he had received from the assessors in his district regarding the legislative rule entitled "Proposed rules and regulations governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property" submitted by the Tax Department.

Mr. Rogers told the Committee that the Assessors had recently held a statewide meeting and that they were opposed to the proposed rule. Mr. Albright asked John Melton, Director of the Property Tax Division, if he was aware of what objections the Assessors had. Mr. Melton told the Committee that the Tax Commissioner had not made him aware of any objections voiced by the Assessors.

Upon motion by Mr. Williams, properly seconded and adopted, the proposed rule was laid over until the November meeting and staff was directed to invite a representative from the Tax Department and the W. Va. Assessors' Association to appear at the November meeting to discuss the proposed rule.

Mr. Mowery told the Committee that he had talked to Mr. Paules of the West Virginia State Board of Landscape Architects, concerning the need to amend the Board's rule relating to hearings. He informed the Committee that according to Mr. Paules the Board is willing to make the necessary amendments but that they also have other amendments that they would like to make and that they would submit them all at one time.

Upon motion of Mr. Boettner, properly seconded and adopted, the Committee voted to lay over discussion of the issue until next month and directed Committee counsel to provide assistance to the Board.

Debra Graham, Associate Counsel, reviewed the abstract on the rule proposed by Workers' Compensation Commissioner, entitled "Proposed rules and regulations relating to the Administration of the Coal-Workers' Pneumoconiosis Fund." She informed the Committee that there was one main area of disagreement with the proposed rule relating to the allowance of refunds of unearned premiums to those companies withdrawing from the Fund to become self-insurers.

Mr. Rogers asked William Mitchell, Senior Counsel for the Workers' Compensation Commissioner, if the Commissioner would

have any objections to amending the rule to allow a refund of premiums for a period of six months. Mr. Mitchell stated that the Commissioner would be against such an amendment.

Gary White, President of the W. Va. Coal Association, stated that the Association would like to see a "window" provision added to the rules to allow those coal companies currently wishing to become self-insured to receive a refund of their unearned premium as other companies did in the past.

Samuel Davis, Director of Occupational Pneumoconiosis Fund, told the Committee that since the Fund was created in 1973 a total of \$12 million has been refunded to eight subscribers who have left the Fund to become self-insurers. He said that the U. S. Department of Labor frowned on this refund practice.

Fred St. John, President of H & F Mining Company asked to address the Committee on the proposed rule. He expressed concern that under the proposed rule he would no longer be eligible to receive a deposit refund, which he feels he is entitled to under the old rule.

Mr. Shaw requested that the proposed rule be laid over until the November meeting and that the Commissioner prepare data detailing how much money was paid out, under what circumstances and under what authority. Staff was directed to supply the Committee with Sections 8.1 and 8.2 of the old rule.

Staff distributed copies of a synopsis of those emergency rules recently filed with the Committee.

Staff also distributed a copy of a revised version of the procedures for filing emergency and proposed legislative rules with the Legislative Rule-Making Review Committee. Upon motion by Mr. Knight, properly seconded and adopted, the procedures were approved.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 10-29-85

TIME: 5:00 - 7:00 meeting

NAME	Present	Absent	Yeas	Nays
Albright, Joseph P.	✓			
Casey, James M.	✓			
Knight, Thomas A.	✓			
Schifano, Larry E.		✓		
Wiedebusch, Larry		✓		
Shaffer, Charles R.		✓		
Springston, Benjamin		✓		
Tonkovich, President				
Williams, Ralph D.	✓			
Boettner, John "Si"	✓			
Rogers, J. Robert	✓			
Tomblin, Earl Ray	✓			
Harman, C. N.				
Shaw, Michael	✓			
TOTAL				

RE: Attendance - October interim meeting

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Leg. Rule-Making Review Com.

DATE: 10/29/85

NAME	ADDRESS	REPRESENTING	PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT
Please print or write plainly			
Curtis E. Keplinger	Petersburg WV		X
Connie S. Keplinger	" "		
RALPH (Miami) ADKINS	CHARLESTON W. VA		
John Melton	Charleston WV	State Tax Dept	
Frank Cipolat	" "	" "	
JOHN MONTGOMERY	" "	" "	
Fred St. John	Princeton, WV	H&F MINING, Inc.	X
WILLIAM R. GUNNOE	P.O. BOX 1172, CLENDENIN, W.V.		
Tom M. Henderson	PARKERSBURG, WV	W.V.A.L.S.	X
F. Henry Sipe	Elkins WV	Private, surveys	?
FLOYD STILES	" "	House of Delegates	?

AMENDMENT

Legislative Rule-making Review Committee

Agency: West Virginia State Board of Examiners of Land Surveyors

Subject: Proposed rules and regulations governing the practice of land surveying

Senator ~~Delegate~~ Williams moves to amend the proposed legislative rule on page 7, Section 8.4, by striking all of Section 8.4, and inserting in lieu thereof a new Section 8.4, to read as follows:

1 "8.4.1 Bearings of new subdivision lot lines shall be from
2 the true (astronomic) meridian.

3 8.4.2 In accordance with the provisions of W.Va. Code, §37-
4 12-1, bearings of lines for lands which have been surveyed before
5 shall be by the magnetic meridian, but the surveyor making such survey
6 shall return and certify in his plat the degree of variation of the
7 magnetic needle from the true meridian, at the time of the resurvey;
8 and also (if the same can be done) the degree of such variation at the
9 time of the original survey.

10 8.4.3 If, during the 1986 regular session of the Legisla-
11 ture or at any time subsequent thereto, the Legislature amends the
12 applicable Code section or sections to authorize surveys other than
13 new subdivision lot lines to be from magnetic or true, then notwith-
14 standing the provisions of 8.4.2 above, this legislative rule shall be
15 construed, from the effective date of such amendment, to authorize
16 such surveys to be from magnetic or true, but if true, it shall be so
17 stated on the plat and in the description.

18 8.4.4 Grid north of the West Virginia Coordinate System may

1 be shown on plats.

2 8.4.5 Meridian reference used in surveys shall be identi-

3 fied by the date and year."

ADOPTED

REJECTED

AMENDMENT

Legislative Rule-making Review Committee

Agency: West Virginia State Board of Examiners of Land Surveyors

Subject: Proposed rules and regulations governing the practice of land surveying

Senator/Delegate Williams moves to amend the proposed legislative rule on page 16, Section 13, by striking all of Section 13, and inserting in lieu thereof a new Section 13, to read as follows:

1 "13. Suspension or Revocation of License to Practice Land Surveying.

2 13.1 Upon a finding by the board that a person holding a
3 license to practice land surveying has been incompetent, grossly
4 negligent, or guilty of fraud, deceit or other misconduct in the
5 practice of land surveying as defined by these rules and regulations,
6 the board shall suspend or revoke such person's license. Whether one
7 or more violations of these rules and regulations constitutes a basis
8 for suspension or revocation shall be a question of fact to be
9 determined in each particular case.

10 13.2 As used in these rules and regulations:

11 "Incompetent" means lacking in ability, legal qualification,
12 or fitness to discharge a required duty.

13 "Grossly negligent" means intentionally failing to perform a
14 manifest duty in reckless disregard of the consequences as affecting
15 the life or property of another; such a gross want of care and regard
16 for the rights of others as to justify the presumption of wilfulness
17 and wantonness."

ADOPTED

REJECTED

AMENDMENT

Legislative Rule-making Review Committee

Agency: West Virginia State Board of Examiners of Land Surveyors

Subject: Proposed rules and regulations governing the practice of land surveying

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12 or fitness to discharge a required duty.

13 "Grossly negligent" means intentionally failing to perform a
14 manifest duty in reckless disregard of the consequences as affecting
15 the life or property of another; such a gross want of care and regard
16 for the rights of others as to justify the presumption of wilfulness
17 and wantonness."

ADOPTED

REJECTED

Minimum Standards- Why They Are Needed

Much debate has been focused on the proposed minimum standards for Land Surveyors. Too much of that debate has been on instrument standards and techniques, and not enough light has been shed on why the minimum standards are desirable to begin with.

Minimum Standards assure the public of the reliability of surveys performed. Accuracy really means how certain is the location of that which is marked on the ground? One who engages the services of a surveyor has a right to rely, within reasonable limits, on the correctness of the line that the surveyor establishes. Only when the work is evaluated for its accuracy can that certainty of location be obtained. One in five thousand means that there is one foot of uncertainty in five thousand feet of property line. Whether or not this is an acceptable amount of error may depend on the situation. But for the vast majority of surveys being performed in this state today, for land parcels of from one half-acre to five acres in size, that is a standard which makes the certainty of location a question which could easily be settled within the confines of a size 6 and 7/8 hat!

Where these minimum standards "preclude legal surveys being performed by unqualified persons", they are desirable. But where the usual standard precludes the acceptability of surveys performed by a Licensed Land Surveyor, in a manner consistent with the standard of care exercised by other surveyors in a similar situation, undue injury may result, and a livelihood may be lost. There is a demand for many, diverse types of surveys to meet the needs of the public and of industry. To provide for these needs in the most economical manner, some accommodation may be in order. A two-tier system based on land size or land use may be appropriate. The smaller, urban, or suburban tracts could be held to a higher standard than the larger, rural ones where often the purpose of the survey is merely to retrace and mark existing lines, a task which some argue can be best accomplished with equipment similar that used in the original survey. The higher standard could still be applied to any survey which involved the creation and conveyance of a new parcel, thereby phasing out the old techniques through the passage of time.

Special conditions, such as high land value or proposed intensive use, may require much more precise work, but nothing in a minimum standard prevents one from obtaining higher accuracy. It is a function of the marketplace to pay for greater certainty of location.

Finally, whatever minimum standards are adopted, they should be implemented in a fair and even manner. I call upon the Board of Examiners to adopt procedural rules which would spell out, among other things, how complaints would be handled, how investigations would be carried out, how hearings would be conducted, and how long each step in the process could reasonably be expected to take.

Tom M. Henderson, LLS
Legislative Chairman, West Virginia Association of Land Surveyors

WEST VIRGINIA ASSOCIATION OF LAND SURVEYORS

P.O. Box 468 • Clarksburg, WV 26301 • Telephone 622-3231

"Every Man Is A Debtor to His Profession"



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Kennis P. Snyder, LL.S.
Charles S. Correll, PE
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Tom M. Henderson, LL.S.

Treasurer K.F. Bryder, LL.S.

Secretary Charlotte Long

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Clarksburg Chapter Charles A. Tenney, LL.S.

Clarksburg Chapter Baby D. Jang

Clarksburg Chapter Cecil R. Main, LL.S.

Eastern Panhandle R. Michael Shapp, LL.S.

Elkins Chapter John Campbell, LL.S.

Granville State College (Student) Charles R. Byport, LL.S.

Huntington Chapter Stanley E. Thompson, LL.S.

Kingwood Chapter Jesse D. Cardfield, LL.S.

Little Kanawha Regional (Parkersburg) E.J. McHenry, LL.S.

Old Greenbrier Chapter Gary S. Johnson, LL.S.

Potomac Valley Chapter Nichle C. Dery, LL.S.

Professional Surveyors in Private Practice George Cicoff, PE

Southern Chapter R. Gary Shields, LL.S.

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Ronald E. Westfall, LL.S.

EDITOR - WV SURVEYOR

Curtis E. Kephinger, LL.S.

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Brenda Westfall
P.O. 421
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785-2470

Vice President Arlene Mosser

Secretary Donna Butler

Treasurer Vivian Parsons

February 24, 1984

W.VA. State Board of Examiners
of Land Surveyors
34 West Main Street
Romney, WV 26757

Gentlemen,

As you know, you, the Board of Examiners of Land Surveyors presented a rough draft of proposed rules and regulation changes to the Board of Directors of WVALS at our October 22, 1983 Board meeting.

The draft of proposed regulations presented to us in October was drawn by, you, the Board of Examiners with the help and assistance of a three man committee requested by you and appointed by myself, as President of WVALS. Attached is a letter dated October 22, 1983 from the chairman of that committee to myself.

At the October meeting just mentioned our Board of Directors decided that we should hold a special meeting on December 10, 1983 expressly for discussing these proposed rules and regulations and to determine the official position of WVALS in regards to this matter. It was felt that the time interval between October and December was needed for our Directors and Chapter Representatives to take the proposed regulations back to their respective chapters for discussion at the chapter level.

During the time interval just mentioned I personally visited with eleven (11) of our fourteen (14) chapters. The three (3) not visited was PSIPP, (Professional Surveyors in Private Practice), Southern, and Eastern Panhandle. The regulations were discussed in depth at these chapter meetings. I contacted by phone the representatives of the three (3) chapters just mentioned and learned that as a chapter PSIPP and Southern were in favor of and Eastern Panhandle was opposed to the proposed regulation changes.

CON'T

EXHIBIT A

Attached is a copy of all the chapter resolutions and correspondence received by the office during the discussion period.

At our December 10, 1983 Board Meeting, after much testimony and discussion, the members of the Board present voted eleven (11) to five (5) for the following motion:

"The West Virginia Association of Land Surveyors supports the rules and regulation changes presented by the Board of Examiners, asking them to consider further input by Association members and chapter representatives."

I think it should be mentioned here that, you, the Board of Examiners at our October 1983 meeting agreed to wait until after the December 1983 meeting to draft the final copy of the proposed rules and regulations.

The regulations as presented at the hearing held in Romney on Friday, February 17, 1984 are basically the same as those presented to our Board in October 1983 and as voted on by our Board in December 1983 with the exception of some changes made as a result, no doubt, of our Association members input.

As President of our Association I think I can safely say that at least 80% of all WVALS members that I have met and talked with are in favor of and subscribe to the provision in the new regulations making errors of closure mandatory. There is of course some differences of opinion on other minor points such as the wording on the disks to be placed on corner markers set, showing bearings on plats to the nearest ten (10) seconds, and the certification on plats. These however do not seem to be any unsurmountable problem to those who by and large agree with the new regulations.

Respectfully Yours,

Ronnel E. Westfall
Ronnel E. Westfall
President WVALS

REW/CFL

STATEMENT CONCERNING
PROPOSED RULES AND REGULATIONS
GOVERNING THE PRACTICE OF
LAND SURVEYING IN
WEST VIRGINIA

Prepared By: State Board of Examiners
For Licensed Land Surveyors
34 West Main Street
Romney, West Virginia 26757

Submitted By:

Robert Nelson McCoy
R. Nelson McCoy, Chairman

Charles W. W. Stultz
Charles W. W. Stultz, Secretary-Treasurer

B. Leman Kendrick
B. Leman Kendrick, Member

BACKGROUND

The scrutiny of State Law pertaining to land surveying to ascertain whether such laws are technically up-to-date is obviously a concern of the entire Engineering and Surveying professions practicing in the State of West Virginia. The Board of Examiners has the principal function of administering the Laws, Rules and Regulations governing the practice of Land Surveying and, therefore, appropriately suggest and/or recommends change or revision to such Laws, Rules and Regulations in the interest of the public and the profession.

In suggesting change or revision to existing Law or in formulating Rules and Regulations governing the practice of Land Surveying in West Virginia, the State Board of Examiners is particularly cognizant of two outstanding and fundamental obligations. First to respect the right of the Surveyor Licensed by this State to his means of livelihood when such individuals have prepared themselves conscientiously and thoroughly to practice land surveying; and second to exercise its power to protect the public against the dangers arising out of the attempts of incompetent or unethical persons engaged in the practice of said profession.

In keeping with these obligations it is essential that the Board periodically review and re-evaluate established Rules and Regulations governing the practice of Land Surveying to assure that such Rules and Regulations are technically up-to-date and adequately protect the interest of both the public and the profession.

This study addresses those areas wherein established Laws, Rules and Regulations fail to provide for advancement to the public welfare and the mutual welfare of the land surveyor practicing in the State of West Virginia.

THE REGISTRATION LAW: Chapter 30, Article 1, Section 12 of the Official Code of West Virginia was enacted by Senate Bill No. 78 made effective May 25, 1969 and House Bill No. 583 made effective February 12, 1970, it provided for a separate certificate for underground surveying. Revisions to the current Law have occurred over the years as outlined in the following.

House Bill No. 506 was enacted effective July 14, 1973, it provided for:

- * Section 3, the term of the Board members to expire on June 30;
- * Section 5, half of the fee shall be retained if an application is denied;
- * Section 7, the "license applied for" authority was deleted;
- * a letter of authorization and a fee of \$5.00 are required for a temporary permit;
- * Section 12, ancient plats may be recorded without seal, other plats not containing a seal must include a certificate stating the basis for exemption;
- * Section 16, requires eventual recording of plats and descriptions.

Senate Bill No. 270 was enacted effective July 1, 1976, it provided for:

- * Section 5d, the fee for an original application shall be \$30.00, none of which is refundable;
- * Section 5a, a \$10.00 fee is added for an underground application, not refundable;
- * Section 6, the annual renewal fee was increased to \$20.00, penalty for non-payment of the renewal fee was increased to \$1.00 per month or fraction thereof;
- * Section 11, a stamp was authorized as an alternative to a metal seal on documents.

Several unsuccessful attempts have been made by the West Virginia Association of Land Surveyors (WVALS) to further modify the current "Survey Law" established under Chapter 30, Article 1, Section 12 of the Code. Those modifications desired by WVALS and fully supported by this Board are not discussed herein.

CURRENT RULES AND REGULATIONS

A review of the West Virginia Rules and Regulations governing the practice of land surveying indicates that certain modifications are required. Although the profession is currently capable of providing improved accuracies of land surveys no meaningful requirement or specification has been published. Modification of the Rules and Regulations to require improved accuracies would be mutually beneficial to the general public and the profession. Inforcement of regulations for improved accuracies would also preclude legal surveys being performed by unqualified persons.

A review of those accuracy standards established by neighboring states indicates that West Virginia is virtually "behind the times" in establishing comparable accuracy standards (with the exception of Maryland, which is now developing accuracy standards). All the other adjoining states, Pennsylvania, Virginia, Kentucky, and Ohio, require a minimum of 1/5000 error of closure for those surveys controlling the establishment of property boundaries. It would seem appropriate that West Virginia upgrade those accuracy standards as soon as possible.

A revision of the Rules and Regulations which govern the "surveyor profession" must require research of land records and other documents concerning the boundaries of the properties to be surveyed. This requirement is essential to performing an accurate, reliable boundary survey and a basic prerequisite for those in professional practice. Accordingly, the appropriate changes to applicable sections of the Rules and Regulations are included in this revision.

IMPACT OF CHANGES PROPOSED

In order to determine the impact of regulation change on the individual land surveyor, a study was made to determine whether or not the Proposed Rules and Regulations would have any adverse impact on qualified, competent land surveyors practicing in this state when such surveyor has maintained a technically up-to-date practice.

EXISTING ACCURACY STANDARDS currently West Virginia has not established accuracy standards except for those engaged in underground or mine surveys.

A review of Figure No. 1 indicates that a total of six hundred seventy-seven (677) surveyors are licensed to practice in the State of West Virginia. Fifty nine and one-half percent (59.5%) or four hundred three (403) of all licensees are RESIDENT West Virginia surveyors. Forty and one-half percent (40.5%) or two hundred seventy-four (274) of state licensees are NON-RESIDENT. Therefore, it would appear that forty and one-half percent (40.5%) of the current licensees are working to accuracy standards in their state of residence which exceed the accuracy requirements of the State of West Virginia.

**TOTAL WEST VIRGINIA
LICENSEES: 677**

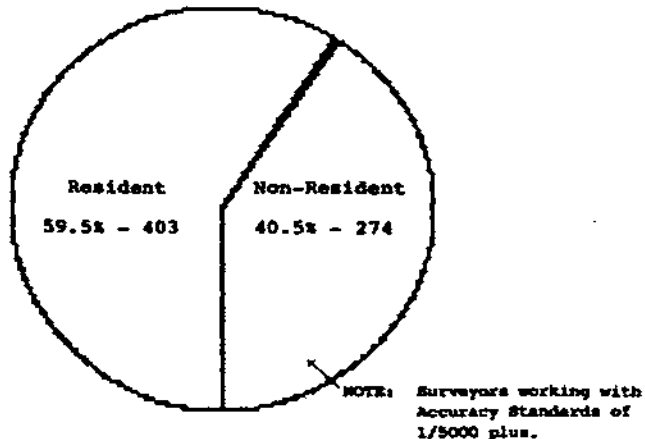


FIGURE NO. 1

SURVEYOR EMPLOYMENT

Reports show that sixty four percent (64%) or four hundred thirty-one (431) of all licensee are employees of various industries such as mining, engineering, government, education, railroad, and forestry, etc. The remainder are therefore considered as SELF-EMPLOYED surveyors. Obviously, SELF-EMPLOYED surveyors are those most affected by Rules and Regulations with their livelihood depending strictly on the practice of land surveying and total thirty six percent (36%) or two hundred forty-six (246) surveyors fall in this category. See Figure No. 2.

ALL LICENSEES EMPLOYMENT

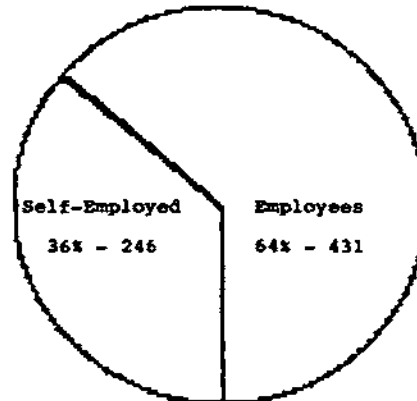
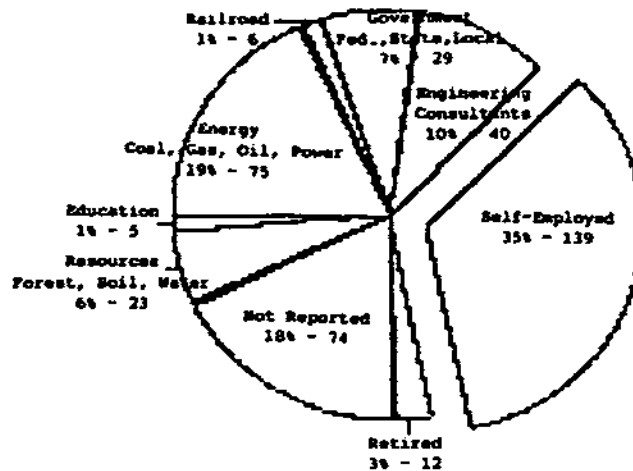


FIGURE NO. 2

Further analysis shows that RESIDENT West Virginia licensed surveyors in private practice total fifty six and one-half percent (56.5%) or one hundred thirty-nine (139). See Figure No. 3 for reported employment of all RESIDENT WEST VIRGINIA SURVEYORS.

WEST VIRGINIA LICENSEES EMPLOYMENT STATUS



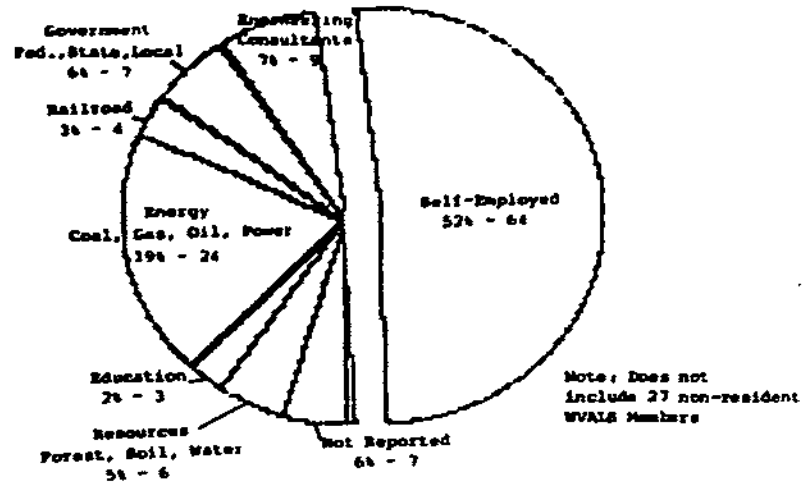
TYPE OR CLASS OF EMPLOYMENT
RESIDENT WEST VIRGINIA LICENSED LAND SURVEYORS
(Total of 403)

FIGURE NO. 3

NOTE: A significant number of self-employed surveyors are members of the professional organization of land surveyors (WVALS). They represent fifty two percent (52%) or total seventy nine (79) "full time" self-employed surveyors licensed to practice in this state. A graph showing the employment of the professional organization (WVALS) membership is shown in Figure No. 4. This analysis was made to determine whether or not any possible bias or particular field of surveying was represented by the association. No evidence of bias existed.

The state professional association (WVALS) members total twenty two and one-third percent (22.3%) or one hundred fifty-one (151) of all licensees. Eighteen percent (18%) or twenty seven (27) of those members are NON-RESIDENT. This group although representing twenty two and one-third percent (22.3%) (or thirty two percent (32%) of surveyors in private practice) is the only organized representation of the land surveying profession in the State of West Virginia.

WEST VIRGINIA WVALS MEMBERS EMPLOYMENT



TYPE OR CLASS OF EMPLOYMENT
ONLY RESIDENT LICENSED SURVEYORS THAT ARE MEMBERS OF WVALS

Total = 124

FIGURE NO. 4

In view of some controversy, special attention was given to the impact of a requirement for improved accuracy on those currently licensed to practice in the State of West Virginia. This special analysis was made to determine whether or not any hardship would be encountered when licensed persons were maintaining an up-to-date practice - A PRIMARY RESPONSIBILITY OF ALL PROFESSIONS.

Figure No. 5 (on separate page following) shows the accuracy standards currently required by the adjoining neighboring states of Ohio, Kentucky, Virginia, Maryland, and Pennsylvania. As previously stated, the number of NON-RESIDENT West Virginia licensees (or those living in neighboring states and also authorized to survey West Virginia properties) total two hundred seventy-four (274) or forty and one-half percent (40.5%) of all licensees. A total of one hundred six (106) or thirtynine percent (39%) of these licensees are in private practice and located "by-in-large" in adjoining NON-RESIDENT counties.

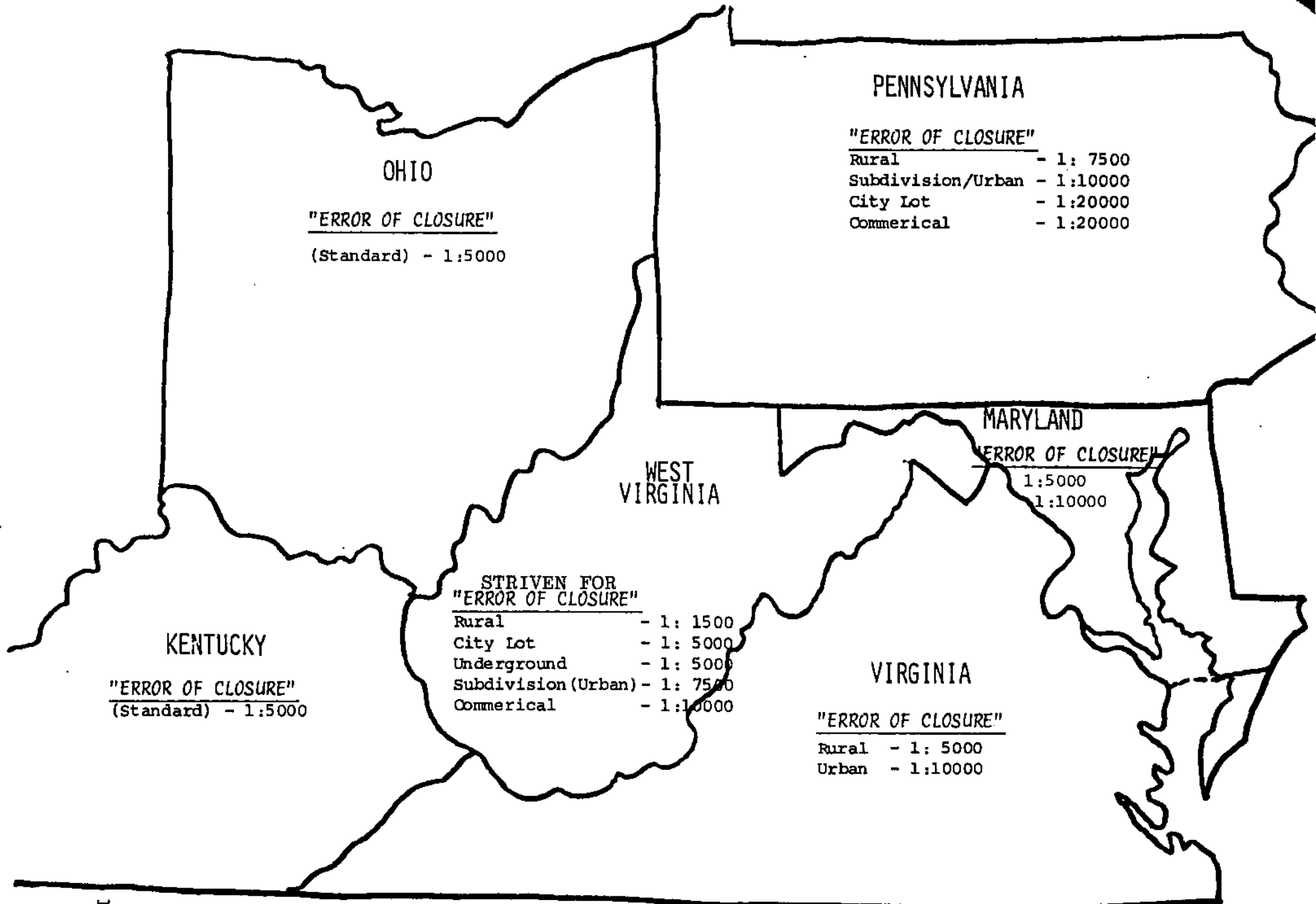


FIGURE NO. 5

Since employees of mining companies and federal, state, and various local governments are not significantly affected by accuracy standards, compliance with the standard of 1/5000 would leave little impact on their livelihood. In support of this statement an inquiry was made on accuracy specifications for survey work performed for the Department of Interior, U.S. Park Service and Department of Agriculture U.S. Forest. The accuracy standards are listed below:

Department of Interior:

U.S. Park Service: 1/6000

U.S. Forest Service: 1/5000

Surveyors employed by the federal, state and local governments are not often engaged in actual field work, rather, they perform administrative and/or inspection type work. Similarly, those working in the field of engineering and education do not depend on the practice of land surveying for their livelihood, although some may be involved on a part time basis periodically.

It would appear, thus, that those effected are those in private practice with resident West Virginia license or one hundred thirty-nine (139) licensees. Current specification for accuracy when performing mine surveys is 1/5000, therefore 75% or one hundred four (104) of those in private practice and working for mining companies are currently required to perform work to a minimum accuracy of 1/5000. Sixty four (64) of those in private practice are also members of WVALS. That association (WVALS) has strongly endorsed the acceptance of the Rules and Regulations, see Exhibit A.

In order to actually determine the number of surveyors facing a realistic hardship in complying with accuracy standards, the tabulation shown below was made to indicate those currently working (at least periodically) with the 1/5000 standard and/or employed by government, engineering, education, etc. wherein accuracy standards do not effect the surveyors livelihood. Obviously, all non-resident surveyors are practicing to the 1/5000 standard at the present time and so indicated in the tabulation. Those surveyors working for coal companies are aware of the 1/5000 requirement and therefore would not be effected. Employees of the government are either not effected or working to standards which are 1/5000 or greater. Employees in the Engineering, Railroad, and Educational fields obviously are not effected by such standards. By actual account, seventy-five percent (75%) of the surveyors working periodically for coal companies are therefore not effected by the 1/5000 requirement. Seventy-four (74) surveyors did not report their employment. Note: Although many licensees are in eastern counties, only fifty-eight (58) of the total six hundred seventy-seven (677) licensees would be effected by the 1/5000 requirement by actual account. However, the Board of Examiners is aware that many surveyors in the eastern panhandle are not employed by coal companies, but are working by accuracy standards of 1/5000 or better. Although a specific number cannot be accounted for.

<u>Surveying to Accuracy of 1/5000</u>	
All Non-resident	274
Coal & Gas Surveyors	75
Employed for Government	29
Engineers	40
Employed for Railroad	6
Employed for Education	5
75% of Self-Employed	104
Not reported	<u>74</u>
Subtotal	607 Surveyors
Retired (not applicable)	<u>12</u>
Total	619 Surveyors
Possible effected by 1/5000	<u>58</u>
Total Licensees	677 Surveyors

RESULT - Ninety-one percent (91%) of all West Virginia licensees, RESIDENT and NON-RESIDENT, are already working to the standards of 1/5000.

In view of the tabulation, it is recommended that the accuracy standard of 1/5000 be accepted. Obviously, special interest groups and/or individuals are those objecting!! The analysis also shows that practicing surveyors are being conscientious in their efforts to provide a quality professional service to the public!! It essential to the public interest that those surveyors "objecting to improved accuracy" adjust to methods and/or practices which conform to the modern surveying practices already being provided by of the majority of licensed surveyors in the State of West Virginia.

PUBLIC HEARING

The opinions and contributions of the society were therefore considered fully in the final preparation of the Proposed Rules and Regulations governing the practice of land surveying in the State of West Virginia.

The opinions and contributions of the WVALS are included as Appendix I.

MAJOR RECOMMENDED CHANGES MADE TO THE REVISED RULES AND REGULATIONS ARE:

1. An increase in the "surveying accuracy standards" which are parallel with those of neighboring states, i.e. Virginia, Kentucky, Pennsylvania, and Ohio. These recommended standards replace a previous statement of policy which may be loosely applied in performance of survey work.

2. A records check and consideration of adjoining property boundaries must be a mandatory requirement for a surveyor to consider when establishing the boundary of public property.

AMENDMENTS MADE FOLLOWING PUBLIC HEARING

The revised Rules and Regulations were amended to reflect the changes recommended subsequent to a public hearing held February 17, 1984 on the Proposed Rules and Regulations which were jointly prepared by the Board of Examiners and the West Virginia Association of Land Surveyors. Amendments to the Proposed Rules and Regulations were made when valid testimony supported justification for such change. Those changes and/or amendments to the Proposed Rules and Regulations initially submitted to the Secretary of State on January 12, 1984 are as follows:

Section 3, 3.02b (2) Linear Measurement - was amended to require use of metal tapes which are standard tools to both the engineering and surveying profession. These tapes are properly calibrated during manufacture. Use of non-standard items such as fiberglass plastic or other instruments of linear measurement may vary somewhat with type of material, temperature, etc., and are not recommended for use. The later items having no established

characteristics and rarely used by all professional surveyors and engineers measuring real estate, etc. "A primary function of a land surveyor is to follow footsteps of the previous surveyor." The intention being to retrace the survey of the previous surveyor. The use of those metal tapes, standard to the engineering and surveying profession, should produce more consistency and less variance in land measurements even though made by different surveyors.

Section 4, 4.01 Experience - amended to provide for a clarification of the type of experience persons should have to become licensed in West Virginia. Employment as assistants such as "Chainman" and "Rodman" will not permit trainees to acquire the type of experience one must develop for making professional judgments required of a licensed land surveyor.

Section 6, 6.03 - Accredited Surveying Curriculum - the items listed as accredited surveying curriculum must include provisions for drainage calculations along with knowledge of open drainage. This knowledge is necessary for performing work normally associated with preparation of subdivision maps and surface mine permits. Drainage calculations and problems are included on current examinations which are prerequisite to issuance of a license to practice in the State of West Virginia.

Section 8, 8.08a - Monumentation - due to the objections and/or cost considerations voiced by several surveyors offering testimony during the public hearing. Monumentation requirements have been modified to indicate that only those corners set by the surveyor shall have a metal or plastic cap placed upon the monumentation. The purpose being to identify the surveyor (with license number) and also identify the monument as a "survey marker". Experience has shown that some persons consider unidentified surveyor monuments whether they be pipes, steel rods, etc. as just another object

serving no purpose. These revised rules will require land surveyor monuments to be identified both to the public and other professional surveyors. Also, all persons are thus aware of the boundary corners or lines intended to be permanently marked. The items called for under these amended rules can be purchased for approximately seventeen cents each. They are light-weight and provide for reasonable permanency with reasonable identification.

Section 8, 8.08b - Monumentation - added only the term "state law". This item was added to provide the necessary flexibility to the Proposed Rules and Regulations to require compliance with specific survey or related laws concerning survey work performed for mines, properties, condominiums, etc. and/or laws still to be enacted by State Legislature. The addition of the term "state law" will assure that surveyors will comply with such laws in performing survey work in the future without changes to these regulations.

Section 11, 11.02 - Certificate or Report of Survey - Additional certification of survey is required to specifically state on a surveyors plat of survey (particularly property surveys) that boundaries shown are based on evidence such as deed of record and/or other information such as "field evidence found" and certified correct. Such certification will assure that the general public is aware that state law places requirements on those licensed and/or are privileged to perform surveys. In some cases the general public is not aware that rules and regulations are established by the State of West Virginia regulating the performance of a land surveyor. Such certification will also provide information to the courts, general public and other surveyors that the survey work was done properly and conforms to rules and regulations governing the practice of land surveying. The Board of Examiners finds no just cause not to include the requirement for placing a "certification" on the plats of all persons licensed to practice in the State of West Virginia.