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HOUSE BILL 188

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

INTRODUCED BY

Larry A. Larrañaga

AN ACT

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

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

SECTION 1. Section 61-23-2 NMSA 1978 (being Laws 1987, Chapter 336, Section 2, as amended) is amended to read:

"61-23-2. DECLARATION OF POLICY.--The legislature declares that it is a matter of public safety, interest and .204448.2

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1 concern that the practices of engineering and surveying merit  
2 and receive the confidence of the public and that only  
3 qualified persons be permitted to engage in the practices of  
4 engineering and surveying. In order to safeguard life, health  
5 and property and to promote the public welfare, any person in  
6 either public or private capacity practicing or offering to  
7 practice engineering or surveying shall be required to submit  
8 evidence that [~~he~~] the person is qualified to so practice and  
9 shall be licensed as provided in the Engineering and Surveying  
10 Practice Act. It is unlawful for any person to practice, offer  
11 to practice, engage in the business, act in the capacity of,  
12 advertise or use in connection with [~~his~~] the person's name or  
13 otherwise assume, use or advertise any title or description  
14 tending to convey the impression that [~~he~~] the person is a  
15 professional, licensed engineer or surveyor unless that person  
16 is licensed or exempt under the provisions of the Engineering  
17 and Surveying Practice Act. A person who engages in the  
18 business or acts in the capacity of [~~a professional engineer or~~  
19 ~~professional~~] an engineer or surveyor in New Mexico, except as  
20 otherwise provided in Sections 61-23-22 and 61-23-27.10 NMSA  
21 1978, with or without a New Mexico license, has thereby  
22 submitted to the jurisdiction of the state and to the  
23 administrative jurisdiction of the board and is subject to all  
24 penalties and remedies available for a violation of any  
25 provision of Chapter 61, Article 23 NMSA 1978. The practice of

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1 engineering or surveying shall be deemed a privilege granted by  
2 the board based on the qualifications of the individual as  
3 evidenced by the licensee's certificate, which shall not be  
4 transferable."

5 SECTION 2. Section 61-23-3 NMSA 1978 (being Laws 1987,  
6 Chapter 336, Section 3, as amended) is amended to read:

7 "61-23-3. DEFINITIONS.--As used in the Engineering and  
8 Surveying Practice Act:

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

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

14 [~~B-~~] C. "board" means the state board of licensure  
15 for professional engineers and professional surveyors;

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

23 [~~E-~~] E. "conviction" or "convicted" means a final  
24 adjudication of guilt, whether pursuant to a plea of nolo  
25 contendere or otherwise and whether or not the sentence is

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1 deferred or suspended;

2           ~~[D-]~~ F. "engineer", "professional engineer",  
3 "consulting engineer", "licensed engineer" or "registered  
4 engineer" means a person who is qualified to practice  
5 engineering by reason of the person's intensive preparation and  
6 knowledge in the use of mathematics, chemistry, physics and  
7 engineering sciences, including the principles and methods of  
8 engineering analysis and design acquired by professional  
9 education and engineering experience and who is licensed by the  
10 board to practice engineering;

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

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

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

14 ~~[F-]~~ I. "engineering committee" means a committee  
15 of the board entrusted to implement all business of the  
16 Engineering and Surveying Practice Act as it pertains to the  
17 practice of engineering, including the promulgation and  
18 adoption of rules of professional responsibility for  
19 professional engineers exclusive to the practice of  
20 engineering;

21 ~~[G-]~~ J. "engineer intern" means a person who has  
22 qualified for, taken and passed an examination in the  
23 fundamental engineering subjects as provided in the Engineering  
24 and Surveying Practice Act;

25 ~~[H-]~~ K. "fund" means the professional engineers'

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1 and surveyors' fund;

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

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

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

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

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

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1 engineering or surveying standards have been met;

2 [N-] P. "surveying", "practice of surveying" or  
3 "surveying practice" means any service or work, the substantial  
4 performance of which involves the application of the principles  
5 of mathematics and the related physical and applied sciences  
6 for:

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

12 (2) the monumenting of property boundaries and  
13 for the platting and layout of lands and subdivisions;

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

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

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

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1 descriptions; and

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

11 ~~[Q-]~~ Q. "surveying committee" means a committee of  
12 the board entrusted to implement all business of the  
13 Engineering and Surveying Practice Act as it pertains to the  
14 practice of surveying, including the promulgation and adoption  
15 of rules of professional responsibility for professional  
16 surveyors exclusive to the practice of surveying;

17 ~~[P-]~~ R. "surveyor", ~~[Q-]~~ "professional surveyor",  
18 "licensed surveyor" or "registered surveyor" means a person who  
19 is qualified to practice surveying by reason of the person's  
20 intensive preparation and knowledge in the use of mathematics,  
21 physical and applied sciences and surveying, including the  
22 principles and methods of surveying acquired by education and  
23 experience, and who is licensed by the board to practice  
24 surveying;

25 ~~[Q-]~~ S. "surveyor intern" means a person who has

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1 qualified for, taken and passed an examination in the  
2 fundamentals of surveying subjects as provided in the  
3 Engineering and Surveying Practice Act;

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

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

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

24 "61-23-11. RECEIPTS AND DISBURSEMENT--FUND CREATED.--

25 A. The "professional engineers' and surveyors'

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1 fund" is created in the state treasury. The executive director  
2 of the board shall receive and account for all money received  
3 under the provisions of the Engineering and Surveying Practice  
4 Act and shall pay that money to the state treasurer for deposit  
5 in the fund. Money in this fund shall be paid out only by  
6 warrant of the secretary of finance and administration upon the  
7 state treasurer, upon itemized vouchers approved by the  
8 [~~chairman~~] chair and attested by the executive director of the  
9 board. All money in the fund is appropriated for the use of  
10 the board. Earnings from investment of the fund shall accrue  
11 to the credit of the fund.

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

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

25 SECTION 4. Section 61-23-12 NMSA 1978 (being Laws 1987,

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1 Chapter 336, Section 12, as amended) is amended to read:

2 "61-23-12. RECORDS AND REPORTS.--

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

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

- 14 (1) examination material for examinations not  
15 yet given;
- 16 (2) file records of examination problem  
17 solutions;
- 18 (3) letters of inquiry and reference  
19 concerning applicants;
- 20 (4) board inquiry forms concerning applicants;
- 21 (5) investigation files where any  
22 investigation is ongoing or is still pending; and
- 23 (6) all other materials of like confidential  
24 nature.

25 C. The records of the board shall be prima facie

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

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

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

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

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

22 "61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--  
23 REQUIREMENTS.--

24 A. Licensure as a professional engineer may be  
25 either through examination or through endorsement or comity.

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1 In either case, an applicant shall file the appropriate  
2 application in which it shall be demonstrated that the  
3 applicant:

4 (1) is of good moral character and reputation;  
5 and

6 (2) has five references, three of whom shall  
7 be licensees practicing in the branch of engineering for which  
8 the applicant is applying and who have personal knowledge of  
9 the applicant's engineering experience and reputation. The use  
10 of nonlicensed engineer references having personal knowledge of  
11 the applicant's engineering experience and reputation [~~other~~  
12 ~~than professional engineers~~] may be accepted by the board;  
13 provided that a satisfactory written explanation is given.

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

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

18 (a) received a bachelor's degree in an  
19 engineering discipline recognized by the board from a [~~board-~~  
20 ~~approved engineering curriculum~~] program accredited by the  
21 engineering accreditation commission or a program that fulfills  
22 the required content of the engineering education standard as  
23 defined by the national council of examiners for engineering  
24 and surveying and has at least four years of engineering  
25 experience subsequent to receiving the degree;

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1                   (b) received a bachelor's degree in an  
2 engineering discipline recognized by the board from a foreign  
3 educational institution where the program that was completed  
4 fulfills the required content of the engineering education  
5 standard as defined by the national council of examiners for  
6 engineering and surveying and has at least four years of  
7 engineering experience in the United States subsequent to  
8 receiving the degree;

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

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

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1 to receiving the degree;

2 [~~(e)~~] (e) received a doctorate degree in  
3 an engineering discipline recognized by the board from a board-  
4 approved engineering curriculum and has at least two years of  
5 engineering experience subsequent to receiving the degree; or

6 [~~(d)~~] (f) at least six years of board-  
7 approved engineering experience after graduation from a school  
8 offering a board-approved, four-year engineering technology  
9 curriculum accredited by the technology accreditation  
10 commission of the accreditation board for engineering and  
11 technology, including the two years for engineer intern  
12 certification; or

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

15 (a) received a bachelor's degree in an  
16 engineering discipline recognized by the board from a [~~board-~~  
17 ~~approved engineering curriculum~~] program accredited by the  
18 engineering accreditation commission or a program that fulfills  
19 the required content of the engineering education standard as  
20 defined by the national council of examiners for engineering  
21 and surveying and has twelve years of engineering experience  
22 subsequent to receiving the degree;

23 (b) received a master's degree in an  
24 engineering discipline recognized by the board from a [~~board-~~  
25 ~~approved engineering curriculum~~] program accredited by the

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1 engineering accreditation commission or an institution that  
2 offers programs accredited by the engineering accreditation  
3 commission or that fulfills the required content of the  
4 engineering education standard as defined by the national  
5 council of examiners for engineering and surveying and has at  
6 least six years of engineering experience subsequent to  
7 receiving the degree; or

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

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

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

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

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

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

10                   "61-23-19. ENGINEERING--~~[LICENSE]~~ LICENSES--SEALS--  
11 INCIDENTAL ARCHITECTURAL WORK--SUPPLEMENTAL SURVEYING WORK.--

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

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

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

23                   D. The board shall recognize that there may be  
24 occasions when professional engineers need to obtain  
25 supplemental survey information for the planning and design of

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1 an engineering project. A professional engineer who has  
2 primary engineering responsibility and control of an  
3 engineering project may perform supplemental surveying work in  
4 obtaining data incidental to that project. Supplemental  
5 surveying work may be performed by a professional engineer only  
6 on a project for which the engineer is providing engineering  
7 design services."

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

10 "61-23-20. ENGINEERING--LICENSURE AND RENEWAL FEES--  
11 EXPIRATIONS.--

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

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

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

23 D. Each licensee shall have the responsibility to  
24 notify the board of any change of address within thirty days of  
25 the change.

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1           E. Upon receipt of a renewal fee and fulfillment of  
2 other requirements, the board shall issue a licensure renewal  
3 card that shall show the name and license number of the  
4 licensee and shall state that the person named has been granted  
5 licensure to practice as a professional engineer for the  
6 biennial period.

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

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

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

24           A. No ~~[firm, partnership, corporation or joint~~  
25 ~~stock association]~~ business entity shall be licensed pursuant

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1 to the Engineering and Surveying Practice Act. No [~~firm,~~  
2 ~~partnership, corporation or joint stock association~~] business  
3 entity shall practice or offer to practice engineering in the  
4 state except as provided in the Engineering and Surveying  
5 Practice Act.

6 B. Professional engineers may engage in the  
7 practice of engineering and perform engineering work pursuant  
8 to the Engineering and Surveying Practice Act as individuals  
9 [~~partners~~] or through [~~joint stock associations or~~  
10 ~~corporations~~] a business entity. In the case of an individual,  
11 the individual shall be a professional engineer pursuant to the  
12 Engineering and Surveying Practice Act. All plans, designs,  
13 drawings, specifications or reports that are involved in such  
14 practice, or that are issued by or for the practice, shall bear  
15 the seal and signature of [~~a~~] the professional engineer in  
16 responsible charge of and directly responsible for the work  
17 issued. In the case of practice through a business entity that  
18 is a partnership, at least one of the partners shall be a  
19 professional engineer pursuant to the Engineering and Surveying  
20 Practice Act, and all plans, designs, drawings, specifications  
21 or reports that are involved in such practice, or that are  
22 issued by or for the partnership, shall bear the seal and  
23 signature of the professional engineer in responsible charge of  
24 and directly responsible for such work when issued. In the  
25 case of practice through a [~~joint stock association or~~

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1 ~~corporation]~~ business entity other than a partnership, services  
2 or work involving the practice of engineering may be offered  
3 through that ~~[joint stock association or corporation]~~ business  
4 entity; provided that the person in responsible charge of the  
5 activities of the ~~[joint stock association or corporation]~~  
6 business entity that constitute engineering practice is a  
7 professional engineer who has authority to bind such ~~[joint~~  
8 ~~stock association or corporation]~~ business entity by contract;  
9 and further provided that all plans, designs, drawings,  
10 specifications or reports that are involved in engineering  
11 practice, or that are issued by or for such ~~[joint stock~~  
12 ~~association or corporation]~~ business entity, bear the seal and  
13 signature of a professional engineer in responsible charge of  
14 and directly responsible for the work when issued.

15 C. An individual ~~[firm, partnership, corporation or~~  
16 ~~joint stock association]~~ or business entity may not use or  
17 assume a name involving the terms "engineer", "professional  
18 engineer", "engineering", "registered" or "licensed" engineer  
19 or any modification or derivative of such terms unless that  
20 individual ~~[firm, partnership, corporation or joint stock~~  
21 ~~association]~~ or business entity is qualified to practice  
22 engineering in accordance with the requirements ~~[in this~~  
23 ~~section]~~ of the Engineering and Surveying Practice Act.

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

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

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

11 "61-23-22. ENGINEERING--EXEMPTIONS.--

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

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

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

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

15 "61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY ACTION--  
16 PENALTIES--REISSUANCE OF LICENSES.--

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

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

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

21 B. Except as provided in Subsection C of Section  
22 61-23-21 NMSA 1978, nothing in the Engineering and Surveying  
23 Practice Act shall prohibit the general use of the word  
24 "engineer", "engineered" or "engineering" so long as such words  
25 are not used in an offer to the public to perform engineering

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1 work as defined in Subsections ~~[E]~~ F and ~~[G]~~ H of Section  
2 61-23-3 NMSA 1978.

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

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

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

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

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

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

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

22 ~~I. The professional engineering committee shall~~  
23 ~~prepare and adopt rules of professional responsibility for~~  
24 ~~professional engineers as provided in the Engineering and~~  
25 ~~Surveying Practice Act.~~

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1           ~~F.~~ I. A violation of any provision of the  
2 Engineering and Surveying Practice Act is a misdemeanor  
3 punishable upon conviction by a fine of not more than seven  
4 thousand five hundred dollars (\$7,500) or by imprisonment of no  
5 more than one year, or both.

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

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

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

20           "61-23-26. ENGINEERING--PUBLIC WORK.--~~[A.]~~ It is unlawful  
21 for the state or any of its political subdivisions or any  
22 person to engage in the construction of any public work  
23 involving engineering unless the ~~[plans and specifications~~  
24 ~~involving]~~ engineering ~~[have been prepared by and are]~~ is under  
25 the responsible charge of a licensed professional engineer.

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1 ~~[and the public work involving professional surveying has been~~  
2 ~~executed under the responsible charge of a licensed~~  
3 ~~professional surveyor. Nothing in this section shall be held~~  
4 ~~to apply to any public work wherein the contemplated~~  
5 ~~expenditure for the complete project does not exceed one~~  
6 ~~hundred thousand dollars (\$100,000), except for public work~~  
7 ~~involving structural design, structural modifications or~~  
8 ~~surveying.~~

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

14 SECTION 13. Section 61-23-27.5 NMSA 1978 (being Laws  
15 1993, Chapter 218, Section 26, as amended) is amended to read:

16 "61-23-27.5. SURVEYING--APPLICATION AND EXAMINATION  
17 FEES.--

18 A. All applicants for licensure pursuant to the  
19 Engineering and Surveying Practice Act shall apply for  
20 examination, licensure or certification on forms prescribed and  
21 furnished by the board. Applications shall be accompanied by  
22 the appropriate fee, any sworn statements the board may require  
23 to show the applicant's citizenship and education, a detailed  
24 summary of ~~[his]~~ the applicant's technical work and appropriate  
25 references.

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1           B. All application, reapplication, examination and  
2 reexamination fees shall be set by the board and shall not  
3 exceed the actual cost of carrying out the provisions of the  
4 Engineering and Surveying Practice Act. Fees shall not be  
5 refundable.

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

9           SECTION 14. Section 61-23-27.9 NMSA 1978 (being Laws  
10 1993, Chapter 218, Section 30, as amended) is amended to read:

11           "61-23-27.9. SURVEYING--PRACTICE OF SURVEYING--MANDATORY  
12 DISCLOSURE.--

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

20           B. Professional surveyors may engage in the  
21 practice of surveying and perform surveying work pursuant to  
22 the Engineering and Surveying Practice Act as individuals  
23 [~~partners~~] or through [~~joint stock associations or~~  
24 ~~corporations~~] a business entity. In the case of an individual,  
25 the individual shall be a professional surveyor pursuant to the

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1 Engineering and Surveying Practice Act. All plats, drawings  
2 and reports that are involved in the practice, or that are  
3 issued by or for the practice, shall bear the seal and  
4 signature of a professional surveyor in responsible charge of  
5 and directly responsible for the work issued. In the case of  
6 practice through a business entity that is a partnership, at  
7 least one of the partners shall be a professional surveyor  
8 pursuant to ~~[that]~~ the Engineering and Surveying Practice Act.  
9 In the case of a single professional surveyor partner, all  
10 drawings or reports issued by or for the partnership shall bear  
11 the seal of the professional surveyor partner who shall be  
12 responsible for the work. In the case of practice through a  
13 ~~[joint stock association or corporation]~~ business entity other  
14 than a partnership, services or work involving the practice of  
15 surveying may be offered through the ~~[joint stock association~~  
16 ~~or corporation]~~ business entity; provided the person in  
17 responsible charge of the activities of the ~~[joint stock~~  
18 ~~association or corporation]~~ business entity that constitute the  
19 practice of surveying is a professional surveyor who has  
20 authority to bind ~~[such joint stock association or corporation]~~  
21 the business entity by contract; and further provided that all  
22 drawings or reports that are involved in such practice, or that  
23 are issued by or for the ~~[joint stock association or~~  
24 ~~corporation]~~ business entity, bear the seal and signature of a  
25 professional surveyor in responsible charge of and directly

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1 responsible for the work when issued.

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

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

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

- 24 (1) the minimum terms and conditions of  
25 professional liability insurance coverage, including limits and

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1 exceptions; or

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

4 SECTION 15. Section 61-23-27.10 NMSA 1978 (being Laws  
5 1993, Chapter 218, Section 31, as amended) is amended to read:

6 "61-23-27.10. SURVEYING EXEMPTIONS.--An employee of a  
7 [~~firm, association or corporation~~] business entity who performs  
8 only the surveying services involved in the operation of the  
9 [~~employer's~~] business entity's business shall be exempt from  
10 the provisions of the Engineering and Surveying Practice Act;  
11 provided that neither the employee nor the [~~employer~~] business  
12 entity offers surveying services to the public; and provided  
13 further that the surveying services performed do not include  
14 any determination, description, portraying, measuring or  
15 monumentation of the boundaries of a tract of land.

16 Performance of surveying on public works projects pursuant to  
17 Section 61-23-27.13 NMSA 1978 constitutes surveying services to  
18 the public and is not exempt."

19 SECTION 16. Section 61-23-27.11 NMSA 1978 (being Laws  
20 1993, Chapter 218, Section 32, as amended) is amended to read:

21 "61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY  
22 ACTIONS--PENALTIES--REISSUANCE OF LICENSES.--

23 A. The board may suspend, refuse to renew or revoke  
24 the license, impose a fine not to exceed seven thousand five  
25 hundred dollars (\$7,500), place on probation for a specific

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1 period of time with specific conditions or reprimand a  
2 professional surveyor who is found by the board to have:

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

6 (2) attempted to use the license of another;

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

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

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

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

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

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

23 (9) been convicted of a felony; or

24 (10) procured, aided or abetted any violation  
25 of the provisions of the Engineering and Surveying Practice Act

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1 or the rules adopted by the board.

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

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

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

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1 accordance with the provisions of the Uniform Licensing Act by  
2 the [~~professional~~] surveying committee, acting for the board,  
3 or by the board.

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

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

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

23 ~~[H. The professional surveying committee shall~~  
24 ~~prepare and adopt rules of professional responsibility for~~  
25 ~~professional surveyors as provided in the Engineering and~~

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1 ~~Surveying Practice Act.~~

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

7 ~~J.]~~ I. The attorney general or district attorney  
8 of the proper district or special prosecutor retained by the  
9 board shall prosecute violations of the Engineering and  
10 Surveying Practice Act by a nonlicensee.

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

19 **SECTION 17.** Section 61-23-27.13 NMSA 1978 (being Laws  
20 1993, Chapter 218, Section 34, as amended) is amended to read:

21 "61-23-27.13. SURVEYING--PUBLIC WORK.--It is unlawful for  
22 the state or any of its political subdivisions or any person to  
23 engage in the construction of any public work involving  
24 surveying unless the surveying is under the responsible charge  
25 of a licensed professional surveyor."

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1           SECTION 18. Section 61-23-28.2 NMSA 1978 (being Laws  
2 1999, Chapter 259, Section 34, as amended) is amended to read:

3           "61-23-28.2. SURVEYING--RECORD OF SURVEY.--

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

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

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

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

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

24           B. Fees for recording a boundary survey shall be in  
25 conformance with Section 14-8-15 NMSA 1978.

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1           C. For those surveys that [~~do~~] create a division of  
2 land, the survey shall be completed in conformity with the  
3 board's minimum standards and in conformity with the New Mexico  
4 Subdivision Act and any applicable local subdivision  
5 ordinances. Filing procedures shall be prescribed in the  
6 board's minimum standards. The record of survey required to be  
7 filed and recorded pursuant to this subsection shall be  
8 recorded at the office of the county clerk within sixty  
9 calendar days after completion of the survey or approval by the  
10 governing authority."

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

13           "61-23-32. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--  
14 The state board of licensure for professional engineers and  
15 professional surveyors is terminated on July 1, [~~2017~~] 2023  
16 pursuant to the Sunset Act. The board shall continue to  
17 operate according to the provisions of the Engineering and  
18 Surveying Practice Act until July 1, [~~2018~~] 2024. Effective  
19 July 1, [~~2018~~] 2024, the Engineering and Surveying Practice Act  
20 is repealed."

21           **SECTION 20.** A new section of the Engineering and  
22 Surveying Practice Act is enacted to read:

23           "[NEW MATERIAL] SURVEYING--STATUTE OF LIMITATIONS.--

24           A. All actions against any professional surveyor to  
25 recover damages resulting from any alleged negligent or

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1 defective land survey shall be brought within two years after  
2 the person bringing the action either discovered or in the  
3 exercise of reasonable diligence should have discovered the  
4 negligence or defect giving rise to the action.

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

8 SECTION 21. APPLICABILITY.--The provisions of Section  
9 61-23-14.1 NMSA 1978 apply to persons initially applying for  
10 licensure as a professional engineer on or after July 1, 2017.

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