

LEGISLATIVE BILL 138

Approved by the Governor May 26, 2015

Introduced by Johnson, 23.

A BILL FOR AN ACT relating to land surveyors; to amend sections 23-1901, 23-1908, 23-1911, 39-1311.02, 81-8,108, 81-8,109, 81-8,110.01, 81-8,110.07, 81-8,118, 81-8,119.01, 81-8,120, 81-8,122.01, 81-8,123, 81-8,126, and 81-8,127, Reissue Revised Statutes of Nebraska; to name the Land Surveyors Regulation Act; to provide for a code of practice for land surveyors; to harmonize provisions; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 23-1901, Reissue Revised Statutes of Nebraska, is amended to read:

23-1901 (1) It shall be the duty of the county surveyor to make or cause to be made all surveys within his or her county that the county surveyor may be called upon to make and record the same.

(2) In all counties having a population of at least fifty thousand inhabitants but less than one hundred fifty thousand inhabitants, the county surveyor shall be ex officio county engineer and shall be either a professional engineer as provided in the Engineers and Architects Regulation Act or a registered land surveyor as provided in the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127 or both. In such counties, the office of surveyor shall be full time.

In counties having a population of one hundred fifty thousand inhabitants or more, a county engineer shall be a professional engineer as provided in the act and shall be elected as provided in section 32-526.

(3) The county engineer or ex officio county engineer shall:

(a) Prepare all plans, specifications, and detail drawings for the use of the county in advertising and letting all contracts for the building and repair of bridges, culverts, and all public improvements upon the roads;

(b) Make estimates of the cost of all such contemplated public improvements, make estimates of all material required for such public improvements, inspect the material and have the same measured and ascertained, and report to the county board whether the same is in accordance with its requirements;

(c) Superintend the construction of all such public improvements and inspect and require that the same shall be done according to contract;

(d) Make estimates of the cost of all labor and material which shall be necessary for the construction of all bridges and improvements upon public highways, inspect all of the work and materials placed in any such public improvements, and make a report in writing to the county board with a statement in regard to whether the same comply with the plans, specifications, and detail drawings of the county board prepared for such work or improvements and under which the contract was let; and

(e) Have charge and general supervision of work or improvements authorized by the county board, inspect all materials, direct the work, and make a report of each piece of work to the county board.

The county engineer or surveyor shall also have such other and further powers as are necessarily incident to the general powers granted.

(4) The county surveyor shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession as provided in sections 23-346 to 23-350.

(5) In counties having a population of one hundred fifty thousand inhabitants or more, the county engineer shall appoint a full-time county surveyor. The county surveyor shall perform all the duties prescribed in sections 23-1901 to 23-1913 and any other duties assigned to him or her by the county engineer. The county surveyor shall be a registered land surveyor as provided in the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127.

Sec. 2. Section 23-1908, Reissue Revised Statutes of Nebraska, is amended to read:

23-1908 The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of such said surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the United States Department of the Interior, Bureau of Land Management, on the restoration of lost and obliterated section corners and quarter corners, and the circular of instructions to the county surveyors by the State Surveyor under authority of the Board of Educational Lands and Funds. The county surveyor is hereby authorized to restore lost and obliterated corners of original surveys and to establish the subdivisional corners of sections in accordance with the provisions of this section and section 23-1907. Any registered land surveyor registered under the Land Surveyors Regulation Act provisions of sections 81-8,108 to 81-8,127 is hereby authorized to establish

any corner not monumented in the original government surveys in accordance with the provisions of this section and section 23-1907. Subdivision shall be executed according to the plan indicated by the original field notes and plats of surveys and governed by the original and legally restored corners. The survey of the subdivisional lines of sections in violation of this section shall be absolutely void.

Sec. 3. Section 23-1911, Reissue Revised Statutes of Nebraska, is amended to read:

23-1911 The county surveyor shall record all surveys, for permanent purposes, made by him or her, as required by sections 81-8,121 to 81-8,122.02. Such record shall set forth the names of the persons making the application for the survey, for whom the work was done, and a statement showing it to be an official county survey or resurvey. The official records, other plats, and field notes of the county surveyor's office shall be deemed and considered public records. Any agent or authority of the United States, the State Surveyor or any deputy state surveyor of Nebraska, or any surveyor registered pursuant to the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127, shall at all times, within reasonable office or business hours, have free access to the surveys, field notes, maps, charts, records, and other papers as provided for in sections 23-1901 to 23-1913. In all counties, where no regular office is maintained in the county courthouse for the county surveyor of that county, the county clerk shall be custodian of the official record of surveys and all other permanent records pertaining to the office of county surveyor.

Sec. 4. Section 39-1311.02, Reissue Revised Statutes of Nebraska, is amended to read:

39-1311.02 (1) A review of a preliminary subdivision plat shall be required for all proposals to subdivide land or to make public or private improvements on all land within an approved corridor.

(2) A building permit shall be required for all structures within an approved corridor if the actual cost of the structure exceeds one thousand dollars. Structures include, but are not limited to, any construction or improvement to land such as public or private streets, sidewalks, and utilities; golf course tee boxes, fairways, or greens; drainage facilities; storm water detention areas; mitigation sites; green space; landscaped areas; or other similar uses. Any application for a building permit shall include a plat drawn by a person licensed as a professional engineer or architect under the Engineers and Architects Regulation Act or registered as a land surveyor as provided in the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127 showing the location of all existing and proposed structures in the area subject to corridor protection.

Sec. 5. Sections 81-8,108 to 81-8,127, this section, and section 10 of this act shall be known and may be cited as the Land Surveyors Regulation Act.

Sec. 6. Section 81-8,108, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,108 In order to safeguard life, health, and property, any person practicing or offering to practice land surveying in this state shall submit evidence that he or she is qualified to practice and shall be registered as provided in the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127. It shall be unlawful for any person to practice or to offer to practice land surveying in this state unless such person has been duly registered under the act such sections.

Sec. 7. Section 81-8,109, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,109 For purposes of the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127, unless the context otherwise requires:

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

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

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

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

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

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

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

(d) To furnish a topographic plat of a lot, parcel, tract, or division of land and locating natural and artificial features in the air, on the surface or subsurface of the earth, and on the beds or surface of bodies of water for the

purpose of establishing the facts of size, area, shape, topography, and orientation of improved or unimproved real property and appurtenances to the real property.

Sec. 8. Section 81-8,110.01, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

Sec. 9. Section 81-8,110.07, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,110.07 The secretary of the examining board shall receive and account for all money derived from the operation of the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127 and shall remit it to the State Treasurer for credit to the Land Surveyor Examiner's Fund, which fund is hereby created. This fund shall be continued from year to year. When appropriated by the Legislature, this fund shall be expended only for the purposes of the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127. When not reappropriated for the succeeding biennium, the money in this fund shall not revert to the General Fund. The fund shall be paid out only upon vouchers approved by the examining board and upon warrants issued by the Director of Administrative Services and countersigned by the State Treasurer. The expenditures of the examining board shall be kept within the income collected and remitted to the State Treasurer by the examining board. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Land Surveyor Examiner's Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 10. (1) The Legislature hereby finds and declares that a code of practice established by the board by which land surveyors could govern their professional conduct would be beneficial to the state and would safeguard the life, health, and property of the citizens of this state. The code of practice shall include provisions on:

- (a) Professional competence;
- (b) Conflict of interest;
- (c) Full disclosure of financial interest;
- (d) Full disclosure of matters affecting public safety, health, and welfare;
- (e) Compliance with laws;
- (f) Professional conduct and good character standards; and
- (g) Practice of land surveying.

(2) The board may adopt and promulgate rules and regulations to establish a code of practice.

(3) The board may publish commentaries regarding the code of practice. The commentaries shall explain the meaning of interpretations given to the code by the board.

Sec. 11. Section 81-8,118, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,118 To pay the expense of the operation and enforcement of the Land Surveyors Regulation Act sections 81-8,108 to 81-8,127, the examining board shall establish application and registration fees. Total application and registration fees shall not exceed two hundred dollars and shall be in addition to the examination fee which shall be set to recover the costs of the examination and its administration. The board may direct applicants to pay the examination fee directly to a third party who has contracted to administer the examination. At the time the application for registration is submitted the board shall collect from the applicant a nonrefundable application fee. If the applicant successfully qualifies by examination, he or she shall be registered until April 1 of the immediately following odd-numbered year upon payment of a registration fee as set forth in the rules or regulations. After the issuance of a certificate of registration, a biennial fee of not less than five nor more than one hundred fifty dollars, as the examining board shall direct, shall be due and payable on or before January 1 of each odd-numbered year. Failure to remit biennial fees when due shall automatically cancel the registration effective the immediately following April 1, but otherwise the registration shall remain in full force and effect continuously from the date of issuance, unless suspended or revoked by the examining board for just cause. A registration which has been canceled for failure to pay the biennial fee when due may be reinstated within one year, but the biennial fee shall be increased ten percent for each month or fraction of a month that payment is delayed.

Nothing in this section shall prevent the examining board from suspending or revoking any registration for just cause.

Sec. 12. Section 81-8,119.01, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

(a) Complete one and one-half the biennial requirement for professional development. Such requirement shall be satisfied as set forth in the rules or bylaws; or

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

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

Sec. 13. Section 81-8,120, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 14. Section 81-8,122.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,122.01 Whenever a survey has been executed by a land surveyor, who is registered under the Land Surveyors Regulation Act provisions of sections 81-8,108 to 81-8,127, a record of such survey bearing the signature and seal of the land surveyor shall be filed in the survey record repository established pursuant to section 84-412 if such survey meets applicable regulations. Surveys which are within the corporate limits of a city with a population in excess of fifteen thousand and do not reference, recover, retrace, or reestablish the original government corners or lines or do not create a new subdivision are not required to be filed in the survey record repository but shall be filed in the county surveyor's office in the county where the land is located if they meet applicable regulations. If no regular office is maintained in the county courthouse for the county surveyor, it shall be filed in the survey record repository. The record of survey shall be filed within ninety days after the completion of the survey, or within any extension of time granted by the office in which it is required to be filed for reasonable cause, and shall consist of the following minimum data: (1) Plat of the tract surveyed; (2) legal description of the tract surveyed; (3) description of all corners found; (4) description of all corners set; (5) ties to any section corners, quarter corners, or quarter-quarter corners found or set; (6) plat or record distances as well as field measurements; and (7) date of completion of survey. The record of survey so filed shall become an official record of survey, and shall be presumptive evidence of the facts stated therein, unless the land surveyor

filing the survey shall be interested in the same. Plats or maps which are prepared only for the purpose of showing the location of improvements on existing lots, which are not represented as surveys or land surveys and no corners are established or reestablished, shall be specifically exempt from all requirements of this section.

Sec. 15. Section 81-8,123, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 16. Section 81-8,126, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,126 The Land Surveyors Regulation Act Sections ~~81-8,108 to 81-8,127~~ shall not apply to (1) any land surveyor working for the United States Government while performing his or her duties as an employee of the government, (2) any person employed as an assistant to a land surveyor registered under the act such sections, or (3) any professional engineer or person working under the direct supervision of a professional engineer licensed under the Engineers and Architects Regulation Act doing work which does not involve the location, description, establishment, or reestablishment of property corners or property lines or work which does not create descriptions, definitions, or areas for transfer of an estate in real property.

Sec. 17. Section 81-8,127, Reissue Revised Statutes of Nebraska, is amended to read:

81-8,127 Any person, firm, partnership, limited liability company, corporation, or joint-stock association who or which practices or offers to practice land surveying or uses the title of land surveyor in this state without being registered or any person not registered under the Land Surveyors Regulation Act sections ~~81-8,108 to 81-8,127~~ who fails to file a copy of the plat and field notes as provided in section 81-8,122 shall be deemed guilty of a Class III misdemeanor.

Sec. 18. Original sections 23-1901, 23-1908, 23-1911, 39-1311.02, 81-8,108, 81-8,109, 81-8,110.01, 81-8,110.07, 81-8,118, 81-8,119.01, 81-8,120, 81-8,122.01, 81-8,123, 81-8,126, and 81-8,127, Reissue Revised Statutes of Nebraska, are repealed.