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HOUSE BILL 32

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Larry A. Larrañaga

AN ACT

RELATING TO LICENSING; AMENDING THE ENGINEERING AND SURVEYING PRACTICE ACT; CLARIFYING THE REQUIREMENTS FOR OBTAINING AND MAINTAINING A PROFESSIONAL ENGINEER OR PROFESSIONAL SURVEYOR LICENSE; REQUIRING THE BOARD TO MAINTAIN AND PROVIDE A ROSTER OF ENGINEERS AND SURVEYORS TO THE PUBLIC; INCREASING THE PENALTIES FOR VIOLATION OF THE ACT; PROVIDING NOTICE AND RECORDING REQUIREMENTS FOR SURVEYS THAT OCCUR ON OR BORDERING CERTAIN LAND GRANTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

**SECTION 1.** Section 61-23-2 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 .182924.1SA

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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 surveyor in New Mexico, except as otherwise  
20 provided in Sections 61-23-22 and 61-23-27.10 NMSA 1978, with  
21 or without a New Mexico license, has thereby submitted to the  
22 jurisdiction of the state and to the administrative  
23 jurisdiction of the board and is subject to all penalties and  
24 remedies available for a violation of any provision of Chapter  
25 61, Article 23 NMSA 1978. The practice of engineering or

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

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

6 "61-23-3. DEFINITIONS.--As used in the Engineering and  
7 Surveying Practice Act:

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

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

12 C. "conviction" or "convicted" means ~~[any]~~ a final  
13 adjudication of guilt, whether pursuant to a plea of nolo  
14 contendere or otherwise and whether or not the sentence is  
15 deferred or suspended;

16 D. "engineer" means a person who is qualified to  
17 practice engineering by reason of ~~[his]~~ the person's intensive  
18 preparation and knowledge in the use of mathematics, chemistry,  
19 physics and engineering sciences, including the principles and  
20 methods of engineering analysis and design acquired by  
21 professional education and engineering experience;

22 E. "engineering", "practice of engineering" or  
23 "engineering practice" means any creative or engineering work  
24 that requires engineering education, training and experience in  
25 the application of special knowledge of the mathematical,

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1 physical and engineering sciences to such creative work as  
2 consultation, investigation, forensic investigation,  
3 evaluation, planning and design of engineering works and  
4 systems, expert technical testimony, engineering studies and  
5 the review of construction for the purpose of assuring  
6 substantial compliance with drawings and specifications; any of  
7 which embrace such creative work, either public or private, in  
8 connection with any utilities, structures, buildings, machines,  
9 equipment, processes, work systems, projects and industrial or  
10 consumer products or equipment of a mechanical, electrical,  
11 hydraulic, chemical, pneumatic, environmental or thermal  
12 nature, insofar as they involve safeguarding life, health or  
13 property, and including such other professional services as may  
14 be necessary to the planning, progress and completion of any  
15 engineering work. The "practice of engineering" may include  
16 the use of photogrammetric methods to derive topographical and  
17 other data. The "practice of engineering" does not include  
18 responsibility for the supervision of construction, site  
19 conditions, operations, equipment, personnel or the maintenance  
20 of safety in the work place;

21 F. "engineering committee" means a committee of the  
22 board entrusted to implement all business of the Engineering  
23 and Surveying Practice Act as it pertains to the practice of  
24 engineering, including the promulgation and adoption of rules  
25 of professional responsibility for professional engineers

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1 exclusive to the practice of engineering;

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

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

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

11 J. "person" means an individual, corporation,  
12 business trust, estate, trust, partnership, limited liability  
13 company, association, joint venture or ~~[any]~~ a legal or  
14 commercial entity;

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

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

23 M. "responsible charge" means responsibility for  
24 the direction, control and supervision of engineering or  
25 surveying work, as the case may be, to assure that the work

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1 product has been critically examined and evaluated for  
2 compliance with appropriate professional standards by a  
3 licensee in that profession, and by sealing or signing the  
4 documents, the professional engineer or professional surveyor  
5 accepts responsibility for the engineering or surveying work,  
6 respectively, represented by the documents and that applicable  
7 engineering or surveying standards have been met;

8 N. "surveying", "practice of surveying" or  
9 "surveying practice" means any service or work, the substantial  
10 performance of which involves the application of the principles  
11 of mathematics and the related physical and applied sciences  
12 for:

13 (1) the measuring and locating of lines,  
14 angles, elevations and natural and man-made features in the  
15 air, on the surface of the earth, within underground workings  
16 and on the beds or bodies of water for the purpose of defining  
17 location, areas and volumes;

18 (2) the monumenting of property boundaries and  
19 for the platting and layout of lands and subdivisions;

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

22 (4) the establishment of horizontal and  
23 vertical controls that will be the basis for all geospatial  
24 data used for future design surveys, including construction  
25 staking surveys, surveys to lay out horizontal and vertical

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1 alignments, topographic surveys, control surveys for aerial  
2 photography for the collection of topographic and planimetric  
3 data using photogrammetric methods and construction surveys of  
4 engineering and architectural public works projects; and

5 (5) the preparation and perpetuation of maps,  
6 records, plats, field notes and property descriptions;

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

13 P. "surveyor" or "professional surveyor" means a  
14 person who is qualified to practice surveying by reason of  
15 [~~his~~] the person's intensive preparation and knowledge in the  
16 use of mathematics, physical and applied sciences and  
17 surveying, including the principles and methods of surveying  
18 acquired by education and experience, and who is licensed by  
19 the board to practice surveying;

20 Q. "surveyor intern" means a person who has  
21 qualified for, taken and passed an examination in the  
22 fundamentals of surveying subjects as provided in the  
23 Engineering and Surveying Practice Act;

24 R. "surveying work" means the work performed in the  
25 practice of surveying; and

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

17           **SECTION 3.** Section 61-23-13 NMSA 1978 (being Laws 1987,  
18 Chapter 336, Section 13, as amended) is amended to read:

19           "61-23-13. ROSTER OF LICENSED PROFESSIONAL ENGINEERS AND  
20 SURVEYORS.--A roster showing the names and addresses of all  
21 licensed professional engineers and professional surveyors  
22 shall be ~~[prepared by the executive director of the board prior~~  
23 ~~to September 1 of each even-numbered year. A supplement to the~~  
24 ~~roster shall be prepared by the executive director of the board~~  
25 ~~prior to September 1 of each odd-numbered year. Copies of the~~

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1 ~~roster and supplement shall be made available to each licensee~~  
2 ~~no later than November 30 of each year, shall be placed on file~~  
3 ~~with the secretary of state and the state commission of public~~  
4 ~~records and may be distributed or sold] maintained by the board~~  
5 and made available upon request to the public."

6 SECTION 4. Section 61-23-14.1 NMSA 1978 (being Laws 1993,  
7 Chapter 218, Section 12, as amended) is amended to read:

8 "61-23-14.1. LICENSURE AS A PROFESSIONAL ENGINEER--  
9 REQUIREMENTS.--

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

15 (1) is of good moral character and reputation;

16 (2) has five references, three of whom shall  
17 be licensees practicing in the branch of engineering for which  
18 the applicant is applying and who have personal knowledge of  
19 the applicant's engineering experience and reputation. The use  
20 of nonlicensed engineer references having personal knowledge of  
21 the applicant's engineering experience and reputation other  
22 than professional engineers may be accepted by the board,  
23 provided that a satisfactory written explanation is given. [~~and~~  
24 ~~the applicant meets one of the following requirements:~~

25 (a) ~~is certified as an engineer intern~~

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1 ~~and has at least four years of board-approved engineering~~  
2 ~~experience after graduation from a board-approved engineering~~  
3 ~~curriculum;~~

4 ~~(b) is certified as an engineer intern,~~  
5 ~~and has, including the two years for engineer intern~~  
6 ~~certification, at least six years of board-approved engineering~~  
7 ~~experience after graduation from a board-approved, four-year~~  
8 ~~engineering technology curriculum accredited by the technical~~  
9 ~~accreditation commission of the accreditation board for~~  
10 ~~engineering and technology;~~

11 ~~(c) has obtained a doctorate degree in~~  
12 ~~an engineering discipline recognized by the board and has a~~  
13 ~~minimum of four years of board-approved engineering experience~~  
14 ~~subsequent to the awarding of the degree;~~

15 ~~(d) has obtained a master's degree in an~~  
16 ~~engineering discipline recognized by the board from a board-~~  
17 ~~approved program and has a minimum of six years of engineering~~  
18 ~~experience subsequent to the awarding of the degree; or~~

19 ~~(e) has graduated from a board-approved,~~  
20 ~~four-year engineering curriculum and has a minimum of twelve~~  
21 ~~years of engineering experience subsequent to the awarding of~~  
22 ~~the degree.~~

23 ~~B. An applicant shall be allowed to take the~~  
24 ~~appropriate examination for licensure as a professional~~  
25 ~~engineer as approved by the board.]~~

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1           B. An applicant may be licensed through examination  
2 if the applicant can demonstrate the following:

3                   (1) the applicant is certified as an engineer  
4 intern and has:

5                           (a) received a bachelor's degree in an  
6 engineering discipline recognized by the board from a board-  
7 approved engineering curriculum and has four years of  
8 engineering experience subsequent to receiving the degree;

9                           (b) received a master's degree in an  
10 engineering discipline recognized by the board from a board-  
11 approved engineering curriculum and has at least three years of  
12 engineering experience subsequent to receiving the degree;

13                           (c) received a doctorate degree in an  
14 engineering discipline recognized by the board from a board-  
15 approved engineering curriculum and has at least two years of  
16 engineering experience subsequent to receiving the degree; or

17                           (d) at least six years of board-approved  
18 engineering experience after graduation from a school offering  
19 a board-approved, four-year engineering technology curriculum  
20 accredited by the technology accreditation commission of the  
21 accreditation board for engineering and technology, including  
22 the two years for engineer intern certification; or

23                   (2) the applicant is not certified as an  
24 engineer intern and has:

25                           (a) received a bachelor's degree in an

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1 engineering discipline recognized by the board from a board-  
2 approved engineering curriculum and has twelve years of  
3 engineering experience subsequent to receiving the degree;

4 (b) received a master's degree in an  
5 engineering discipline recognized by the board from a board-  
6 approved engineering curriculum and has at least six years of  
7 engineering experience subsequent to 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 the licensure does  
21 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 5. Section 61-23-17 NMSA 1978 (being Laws 1987,  
9 Chapter 336, Section 17, as amended) is amended to read:

10 "61-23-17. APPLICATION AND EXAMINATION FEES.--

11 A. All applicants for licensure pursuant to the  
12 Engineering and Surveying Practice Act shall apply for  
13 examination, [~~registration~~] licensure or certification on forms  
14 prescribed and furnished by the board. Applications shall be  
15 accompanied by the appropriate fee, any sworn statements the  
16 board may require to show the applicant's citizenship and  
17 education, a detailed summary of the applicant's technical work  
18 and appropriate references.

19 B. All application, reapplication, examination and  
20 reexamination fees shall be set by the board and shall not  
21 exceed the actual cost of carrying out the provisions of the  
22 Engineering and Surveying Practice Act. No fees shall be  
23 refundable.

24 C. Any application may be denied for fraud, deceit,  
25 conviction of a felony or [~~for~~] any crime involving moral

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1 turpitude."

2 SECTION 6. Section 61-23-19 NMSA 1978 (being Laws 1987,  
3 Chapter 336, Section 19, as amended) is amended to read:

4 "61-23-19. ENGINEERING--~~[CERTIFICATE]~~ LICENSE--SEALS.--

5 A. The board shall issue [~~certificates of~~  
6 ~~licensure~~] licenses pursuant to the provisions of the  
7 Engineering and Surveying Practice Act. The board shall  
8 provide for the proper authentication of all documents.

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

10 C. An engineer shall have the right to engage in  
11 activities properly classified as architecture insofar as it is  
12 incidental to [~~his~~] the engineer's work as an engineer,  
13 provided that the engineer shall not [~~hold himself out to be~~]  
14 make any representation as being an architect or as performing  
15 architectural services unless duly registered as such."

16 SECTION 7. Section 61-23-20 NMSA 1978 (being Laws 1987,  
17 Chapter 336, Section 20, as amended) is amended to read:

18 "61-23-20. ENGINEERING--LICENSURE AND RENEWAL FEES--  
19 EXPIRATIONS.--

20 A. Licensure shall be for a period of two years as  
21 prescribed in the rules of procedure. Initial [~~certificates of~~  
22 ~~licensure~~] licenses shall be issued in accordance with the  
23 board's rules.

24 B. The board shall establish by rule a biennial fee  
25 for professional engineers. Licensure renewal is accomplished

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1 upon payment of the required fee and satisfactory completion of  
2 the requirements of professional development.

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

7 D. Each licensee shall have the responsibility to  
8 notify the board of any change of address within thirty days of  
9 the change.

10 E. Upon receipt of a renewal fee and fulfillment of  
11 other requirements, the board shall issue a licensure renewal  
12 card that shall show the name and license number of the  
13 licensee and shall state that the person named has been granted  
14 licensure to practice as a professional engineer for the  
15 biennial period.

16 F. Every license shall automatically expire if not  
17 renewed on or before ~~[the last day]~~ December 31 of the  
18 applicable biennial period. A ~~[licensee, however, shall be~~  
19 ~~permitted to reinstate a certificate without penalty upon~~  
20 ~~payment of the required fee within sixty days of the last day~~  
21 ~~of the biennial period. After expiration of this grace period,~~  
22 a] delinquent licensee may renew a ~~[certificate]~~ license by the  
23 payment of twice the biennial renewal fee at any time ~~[up to~~  
24 ~~twelve months after the renewal fee became due]~~ before March 1,  
25 but the delinquent licensee shall not practice during this

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1 period. Should the licensee [~~wish~~] apply to renew an expired  
2 [~~certificate~~] license after the [~~twelve-month period~~] March 1  
3 deadline has elapsed, the licensee shall submit a formal  
4 application and fee as provided in Section 61-23-17 NMSA 1978.  
5 The board, in considering the reapplication, need not question  
6 the applicant's qualifications for licensure unless the  
7 qualifications have changed since the license expired. The  
8 board may adopt rules for inactive and retired status."

9 SECTION 8. Section 61-23-23.1 NMSA 1978 (being Laws 2003,  
10 Chapter 233, Section 4) is amended to read:

11 "61-23-23.1. AUTHORITY TO INVESTIGATE--CIVIL PENALTIES  
12 FOR UNLICENSED PERSONS--ENGINEERING.--

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

21 B. If after the hearing the board determines that  
22 based on the evidence the person committed a violation pursuant  
23 to the Engineering and Surveying Practice Act, it shall, in  
24 addition to any other sanction, action or remedy, issue an  
25 order that imposes a civil penalty up to [~~five thousand dollars~~

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1 ~~(\$5,000)~~ seven thousand five hundred dollars (\$7,500) per  
2 violation.

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

- 5 (1) the seriousness of the violation;
- 6 (2) the economic benefit to the violator that  
7 was generated by the violator's commission of the violation;
- 8 (3) the violator's history of violations; and
- 9 (4) any other considerations the board deems  
10 appropriate.

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

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

22 SECTION 9. Section 61-23-24 NMSA 1978 (being Laws 1993,  
23 Chapter 218, Section 18, as amended) is amended to read:

24 "61-23-24. ENGINEERING--VIOLATIONS--DISCIPLINARY  
25 ACTION--PENALTIES--REISSUANCE OF [~~CERTIFICATES~~] LICENSES.--

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1           A. The board may suspend, refuse to renew or revoke  
2     ~~[the certificate of licensure]~~ a license, impose a fine not to  
3     exceed ~~[five thousand dollars (\$5,000)]~~ seven thousand five  
4     hundred dollars (\$7,500), place on probation for a specific  
5     period of time with specific conditions or reprimand any  
6     professional engineer who is found by the board to have:

7                   (1) practiced or offered to practice  
8     engineering in New Mexico in violation of the Engineering and  
9     Surveying Practice Act;

10                   (2) attempted to use the ~~[certificate]~~ license  
11     of another;

12                   (3) given false or forged evidence to the  
13     board or to ~~[any]~~ a board member for obtaining a ~~[certificate~~  
14     ~~of licensure]~~ license;

15                   (4) falsely impersonated any other licensee of  
16     like or different name;

17                   (5) attempted to use an expired, suspended or  
18     revoked ~~[certificate of licensure]~~ license;

19                   (6) falsely ~~[presented himself]~~ purported to  
20     be a professional engineer by claim, sign, advertisement or  
21     letterhead;

22                   (7) violated the rules of professional  
23     responsibility for professional engineers adopted and  
24     promulgated by the board;

25                   (8) been disciplined in another state for

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1 action that would constitute a violation of either or both the  
2 Engineering and Surveying Practice Act or the rules adopted by  
3 the board;

4 (9) been convicted of a felony; or

5 (10) procured, aided or abetted any violation  
6 of the provisions of the Engineering and Surveying Practice Act  
7 or the rules of the board.

8 B. Except as provided in Subsection C of Section  
9 61-23-21 NMSA 1978, nothing in the Engineering and Surveying  
10 Practice Act shall prohibit the general use of the word  
11 "engineer", "engineered" or "engineering" so long as such words  
12 are not used in an offer to the public to perform engineering  
13 work as defined in Subsections E and L of Section 61-23-3 NMSA  
14 1978.

15 C. The board may by rule establish the guidelines  
16 for the disposition of disciplinary cases involving specific  
17 types of violations. The guidelines may include minimum and  
18 maximum fines, periods of probation or conditions of probation  
19 or reissuance of a license.

20 D. Failure to pay [~~any~~] a fine levied by the board  
21 or to otherwise comply with an order issued by the board  
22 pursuant to the Uniform Licensing Act is a misdemeanor and  
23 shall be grounds for further action against the licensee by the  
24 board and for judicial sanctions or relief.

25 E. [~~Any~~] A person may prefer charges of fraud,

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1     deceit, gross negligence, incompetence or misconduct against  
2     ~~any~~ a licensed professional engineer. The charges shall be  
3     in writing and shall be sworn to by the person making the  
4     charges and filed with the executive director of the board.  
5     All charges shall be referred to the engineering committee,  
6     acting for the board. No action that would have any of the  
7     effects specified in Subsection D, E or F of Section 61-1-3  
8     NMSA 1978 may be initiated later than two years after the  
9     discovery by the board, but in no case shall an action be  
10    brought more than ten years after the completion of the conduct  
11    that constitutes the basis for the action. All charges, unless  
12    dismissed as unfounded, trivial, resolved by reprimand or  
13    settled informally, shall be heard in accordance with the  
14    provisions of the Uniform Licensing Act by the engineering  
15    committee acting for the board or by the board.

16           F. Persons making charges shall not be subject to  
17    civil or criminal suits, provided that the charges are made in  
18    good faith and are not frivolous or malicious.

19           G. The board or ~~any~~ a board member may initiate  
20    proceedings pursuant to the provisions of this section in  
21    accordance with the provisions of the Uniform Licensing Act.  
22    Nothing in the Engineering and Surveying Practice Act shall  
23    deny the right of appeal from the decision and order of the  
24    board in accordance with the provisions of the Uniform  
25    Licensing Act.

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1           H. The board, for reasons it deems sufficient, may  
2 reissue a [~~certificate of licensure~~] license to [any] a person  
3 whose [~~certificate~~] license has been revoked or suspended,  
4 [~~providing~~] provided that a majority of the members of the  
5 engineering committee, acting for the board, or of the board  
6 votes in favor of [~~such~~] the reissuance. A new [~~certificate of~~  
7 ~~licensure~~] license bearing the original license number to  
8 replace [~~any certificate~~] a revoked, lost, destroyed or  
9 mutilated license may be issued subject to the rules of the  
10 board with payment of a fee determined by the board.

11           I. The professional engineering committee shall  
12 prepare and adopt rules of professional responsibility for  
13 professional engineers as provided in the Engineering and  
14 Surveying Practice Act [~~that shall be made known in writing to~~  
15 ~~every licensee and applicant for licensure pursuant to that act~~  
16 ~~and shall be published in the roster. Publication and public~~  
17 ~~notice shall be in accordance with the Uniform Licensing Act.~~  
18 ~~The professional engineering committee may revise and amend the~~  
19 ~~rules of professional responsibility for professional engineers~~  
20 ~~from time to time and shall notify each licensee in writing of~~  
21 ~~such revisions or amendments].~~

22           J. A violation of any provision of the Engineering  
23 and Surveying Practice Act is a misdemeanor punishable upon  
24 conviction by a fine of not more than [~~five thousand dollars~~  
25 ~~(\$5,000)] seven thousand five hundred dollars (\$7,500) or by~~

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1 imprisonment of no more than one year, or both.

2 K. The attorney general or district attorney of the  
3 proper district or special prosecutor retained by the board  
4 shall prosecute violations of the Engineering and Surveying  
5 Practice Act by a nonlicensee.

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

14 SECTION 10. Section 61-23-27.3 NMSA 1978 (being Laws  
15 1993, Chapter 218, Section 24, as amended) is amended to read:

16 "61-23-27.3. CERTIFICATION OF SURVEYOR INTERN--  
17 REQUIREMENTS.--

18 A. An applicant for certification as a surveyor  
19 intern shall file the appropriate application [~~where he shall~~]  
20 and demonstrate that [he] the applicant:

21 (1) is of good moral character and reputation;

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

24 (3) has three references, two of whom shall be  
25 licensed professional surveyors having personal knowledge of

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1 the applicant's knowledge and experience.

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

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

8 D. The certification of surveyor intern does not  
9 permit the intern to practice surveying. Certification as a  
10 surveyor intern is intended to demonstrate that the intern has  
11 obtained certain skills in surveying fundamentals and is  
12 pursuing a career in surveying.

13 E. If otherwise qualified, a graduate of a board-  
14 approved but related curriculum of at least four years, to be  
15 considered for certification as a surveyor intern, shall have a  
16 specific record of four years of combined office and field  
17 board-approved surveying experience obtained under the  
18 direction of a licensed professional surveyor. Class time  
19 [~~spent in obtaining the related curriculum~~] will not be counted  
20 in the four years of required experience, but work prior to or  
21 while attending school may be counted in the four years of  
22 experience at the discretion of the board."

23 SECTION 11. Section 61-23-27.4 NMSA 1978 (being Laws  
24 1993, Chapter 218, Section 25, as amended) is amended to read:

25 "61-23-27.4. LICENSURE AS A PROFESSIONAL SURVEYOR--

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1 GENERAL REQUIREMENTS.--

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

6 (1) is of good moral character and reputation;

7 (2) is certified as a surveyor intern;

8 (3) has at least four years of board-approved

9 surveying experience if graduated from a four-year, board-

10 approved surveying curriculum [~~or has a minimum of eight years~~

11 ~~of board-approved surveying experience, including the four~~

12 ~~years of experience required for surveying intern~~

13 ~~certification, if graduated from a four-year, board-approved~~

14 ~~related science curriculum; and] as defined by board rule;~~

15 (4) has five references, three of which shall

16 be from licensed professional surveyors having personal

17 knowledge of the applicant's surveying experience; and

18 (5) if graduated from a board-approved, four-

19 year related science curriculum as defined by board rule, has a

20 minimum of four years of board-approved surveying experience

21 for surveying intern certification.

22 B. The applicant's experience pursuant to

23 [~~Paragraph~~] Paragraphs (3) and (5) of Subsection A of this

24 section shall, at a minimum, include three years of

25 increasingly responsible experience in boundary surveying and



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1 four years of increasingly responsible experience under the  
2 direct supervision of a licensed professional surveyor.

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

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

9 E. If otherwise qualified, an applicant may be  
10 licensed if the applicant is currently licensed as a  
11 professional surveyor in:

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

14 (a) licensure does not conflict with the  
15 provisions of the Engineering and Surveying Practice Act and  
16 that the standards required ~~[by the]~~ for licensure ~~[or]~~ and the  
17 applicant's qualifications equaled or exceeded the licensure  
18 standards in New Mexico at the time the applicant was initially  
19 licensed; and

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

25 (2) a foreign country and can demonstrate to

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1 the board's satisfaction:

2 (a) evidence that the licensure was  
3 based on standards that equal or exceed those currently  
4 required for licensure by the Engineering and Surveying  
5 Practice Act; and

6 (b) competence in current surveying  
7 standards and procedures by passing examinations the board  
8 deems necessary to determine the applicant's qualification,  
9 including a written examination that includes questions on  
10 laws, procedures and practices pertaining to surveying in New  
11 Mexico."

12 SECTION 12. Section 61-23-27.7 NMSA 1978 (being Laws  
13 1993, Chapter 218, Section 28, as amended) is amended to read:

14 "61-23-27.7. SURVEYING--LICENSURE AND RENEWAL FEES--  
15 EXPIRATIONS.--

16 A. Licensure for surveyors shall be for a period of  
17 two years as prescribed in the rules of procedure. Initial  
18 certificates of licensure shall be issued to coincide with the  
19 biennial period. Initial [~~certificates of licensure~~] licenses  
20 shall be issued in accordance with the board's rules.

21 B. The board shall establish by rule a biennial fee  
22 for professional surveyors. Renewal shall be granted upon  
23 payment of the required fee and satisfactory completion of the  
24 requirements of professional development.

25 C. The executive director of the board shall send a

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1 renewal notice to each licensee's last known address. Notice  
2 shall be mailed at least one month in advance of the date of  
3 expiration of the license.

4 D. It shall be the responsibility of the licensee  
5 to notify the board of any change of address and to ~~[maintain]~~  
6 keep the ~~[certificate of licensure]~~ license current.

7 E. Upon receipt of a renewal fee and fulfillment of  
8 other requirements, the board shall issue a licensure renewal  
9 card that shall show the name and license number of the  
10 licensee and shall state that the person named has been granted  
11 licensure to practice as a professional surveyor for the  
12 biennial period.

13 F. Every ~~[certificate of licensure]~~ license shall  
14 automatically expire if not renewed on or before ~~[the last day]~~  
15 December 31 of the applicable biennial period. A ~~[licensee,~~  
16 ~~however, shall be permitted to reinstate a certificate without~~  
17 ~~penalty upon payment of the required fee within sixty days of~~  
18 ~~the last day of the biennial period. After expiration of this~~  
19 ~~grace period, a]~~ delinquent licensee may renew a ~~[certificate]~~  
20 license by the payment of twice the biennial renewal fee at any  
21 time ~~[up to twelve months after the renewal fee became due]~~  
22 before March 31, but the delinquent licensee shall not practice  
23 during this period. Should the licensee wish to renew an  
24 expired ~~[certificate]~~ license after the ~~[twelve-month period]~~  
25 March 1 deadline has elapsed, the licensee shall submit a

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1 formal application as provided in Section 61-23-27.4 NMSA 1978.  
2 The board, in considering the reapplication, need not question  
3 the applicant's qualifications for licensure unless the  
4 qualifications have changed since the license expired."

5 SECTION 13. Section 61-23-27.8 NMSA 1978 (being Laws  
6 1993, Chapter 218, Section 29, as amended) is amended to read:

7 "61-23-27.8. SURVEYING [~~CERTIFICATES~~] LICENSES AND  
8 SEALS.--

9 A. The board shall issue [~~certificates of~~  
10 ~~licensure~~] surveying licenses pursuant to the Engineering and  
11 Surveying Practice Act. The board shall provide for the proper  
12 authentication of all documents.

13 B. The board shall regulate the use of seals."

14 SECTION 14. Section 61-23-27.11 NMSA 1978 (being Laws  
15 1993, Chapter 218, Section 32, as amended) is amended to read:

16 "61-23-27.11. SURVEYING--VIOLATIONS--DISCIPLINARY  
17 ACTIONS--PENALTIES--REISSUANCE OF [~~CERTIFICATES~~] LICENSES.--

18 A. The board may suspend, refuse to renew or revoke  
19 the [~~certificate of licensure~~] license, impose a fine not to  
20 exceed [~~five thousand dollars (\$5,000)~~] seven thousand five  
21 hundred dollars (\$7,500), place on probation for a specific  
22 period of time with specific conditions or reprimand [~~any~~] a  
23 professional surveyor who is found by the board to have:

24 (1) practiced or offered to practice surveying  
25 in New Mexico in violation of the Engineering and Surveying

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1 Practice Act;

2 (2) attempted to use the [~~certificate~~] license  
3 of another;

4 (3) given false or forged evidence to the  
5 board or to any board member for obtaining a [~~certificate of~~  
6 ~~licensure~~] license;

7 (4) falsely impersonated any other licensee of  
8 like or different name;

9 (5) attempted to use an expired, suspended or  
10 revoked [~~certificate of licensure~~] license;

11 (6) falsely [~~presented himself~~] purported to  
12 be a professional surveyor by claim, sign, advertisement or  
13 letterhead;

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

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

22 (9) been convicted of a felony; or

23 (10) procured, aided or abetted any violation  
24 of the provisions of the Engineering and Surveying Practice Act  
25 or the rules adopted by the board.

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

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

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

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1 surveying committee, acting for the board, or by the board.

2 E. Persons making charges shall not be subject to  
3 civil or criminal suits, provided the charges are made in good  
4 faith and are not frivolous or malicious.

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

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

22 H. The professional surveying committee shall  
23 prepare and adopt rules of professional responsibility for  
24 professional surveyors as provided in the Engineering and  
25 Surveying Practice Act ~~[that shall be made known in writing to~~

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1 ~~every licensee and applicant for licensure pursuant to that act~~  
2 ~~and shall be published in the roster. Such publication and~~  
3 ~~public notice shall be in accordance with the Uniform Licensing~~  
4 ~~Act. The professional surveying committee may revise and amend~~  
5 ~~these rules of professional responsibility for professional~~  
6 ~~surveyors from time to time and shall notify each licensee in~~  
7 ~~writing of the revisions or amendments].~~

8 I. A violation of any provision of the Engineering  
9 and Surveying Practice Act is a misdemeanor punishable upon  
10 conviction by a fine of not more than [~~five thousand dollars~~  
11 ~~(\$5,000)~~] seven thousand five hundred dollars (\$7,500) or by  
12 imprisonment of no more than one year, or both.

13 J. The attorney general or district attorney of the  
14 proper district or special prosecutor retained by the board  
15 shall prosecute violations of the Engineering and Surveying  
16 Practice Act by a nonlicensee.

17 K. The practice of surveying in violation of the  
18 provisions of the Engineering and Surveying Practice Act shall  
19 be deemed a nuisance and may be restrained and abated by  
20 injunction without bond in an action brought in the name of the  
21 state by the district attorney or on behalf of the board by the  
22 attorney general or the special prosecutor retained by the  
23 board. Action shall be brought in the county in which the  
24 violation occurs."

25 SECTION 15. Section 61-23-27.15 NMSA 1978 (being Laws

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1 2003, Chapter 233, Section 5) is amended to read:

2 "61-23-27.15. AUTHORITY TO INVESTIGATE--CIVIL PENALTIES  
3 FOR UNLICENSED PERSONS--SURVEYING.--

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

12 B. If after the hearing the board determines that  
13 based on the evidence the person committed a violation under  
14 the Engineering and Surveying Practice Act, it shall, in  
15 addition to any other sanction, action or remedy, issue an  
16 order that imposes a civil penalty up to [~~five thousand dollars~~  
17 ~~(\$5,000)~~] seven thousand five hundred dollars (\$7,500) per  
18 violation.

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

- 21 (1) the seriousness of the violation;
- 22 (2) the economic benefit to the violator that  
23 was generated by the violator's commission of the violation;
- 24 (3) the violator's history of violations; and
- 25 (4) any other considerations the board deems

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1 appropriate.

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

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

13 SECTION 16. A new section of the Engineering and  
14 Surveying Practice Act is enacted to read:

15 "[NEW MATERIAL] NOTICE OF BOUNDARY SURVEY--CERTAIN LAND  
16 GRANTS.--

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

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1           B. The board of trustees or the commissioners of a  
2 community land grant, as provided in Subsection A of this  
3 section, shall record with the county clerk of the county  
4 within which the land grant is located the address and contact  
5 information of the community land grant that receives the  
6 notice required by this section. Any change in address or  
7 contact information shall be updated and recorded as soon as  
8 practicable.

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

16           SECTION 17. Section 61-23-32 NMSA 1978 (being Laws 1987,  
17 Chapter 336, Section 32, as amended) is amended to read:

18           "61-23-32. TERMINATION OF AGENCY LIFE--DELAYED  
19 REPEAL.--The state board of licensure for professional  
20 engineers and professional surveyors is terminated on July 1,  
21 [~~2011~~] 2017 pursuant to the Sunset Act. The board shall  
22 continue to operate according to the provisions of the  
23 Engineering and Surveying Practice Act until July 1, [~~2012~~]  
24 2018. Effective July 1, [~~2012~~] 2018, the Engineering and  
25 Surveying Practice Act is repealed."

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SECTION 18. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.