

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 752

By: Hobson

AS INTRODUCED

An Act relating to land surveying; amending 59 O.S. 1991, Sections 475.1, 475.2, 475.8, 475.18 and 475.19, as amended by Sections 1, 2, 6, 15 and 16, Chapter 165, O.S.L. 1992, and 475.20, as last amended by Section 508, Chapter 133, O.S.L. 1997 (59 O.S. Supp. 1998, Sections 475.1, 475.2, 475.8, 475.18, 475.19 and 475.20), which relate to land surveying and the State Board of Professional Engineers and Land Surveyors; deleting redundant language; clarifying language; eliminating gender references; modifying definitions; excluding agents of purchasers of land surveying services from definition; clarifying application of the Administrative Procedures Act; requiring order of an administrative law judge for certain actions of the Board; making certain crimes misdemeanors; requiring payment of administrative law judges from certain funds of the Board; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 1991, Section 475.1, as amended by Section 1, Chapter 165, O.S.L. 1992 (59 O.S. Supp. 1998, Section 475.1), is amended to read as follows:

Section 475.1 A. In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this state are hereby declared to be subject to regulation in the public interest. ~~It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this state, as defined in the provisions of Section 475.1 et seq. of this title, or to use in connection with his name or otherwise assume or advertise any title or description tending to convey the impression that he is an engineer, professional engineer, land surveyor or professional land~~

~~surveyor, unless such person has been duly registered or exempted under the provisions of Section 475.1 et seq. of this title.~~

B. The practice of engineering or land surveying shall be deemed a privilege granted by the state through the State Board of Registration for Professional Engineers and Land Surveyors, based on the qualifications of the individual as evidenced by his a certificate of registration, ~~which shall not be transferable.~~

SECTION 2. AMENDATORY 59 O.S. 1991, Section 475.2, as amended by Section 2, Chapter 165, O.S.L. 1992 (59 O.S. Supp. 1998, Section 475.2), is amended to read as follows:

Section 475.2 As used in Section 475.1 et seq. of this title:

1. "Engineer" means a person who, by reason of special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to engage in the practice of engineering;

2. "Professional engineer" means a person who has been duly registered and licensed as a professional engineer as provided in Section 475.1 et seq. of this title;

3. "Engineer intern" means a person who complies with the requirements for education and experience and has passed an examination in the fundamental engineering subjects, as provided in Section 475.1 et seq. of this title;

4. "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the engineering use of land and water, teaching of advanced engineering subjects or courses related thereto, engineering research, engineering surveys, engineering studies, and the

inspection or review of construction for the purposes of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, chemical, environmental, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

Engineering surveys include all survey activities required to support the sound conception, planning, design, construction, maintenance and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements and the dependent or independent surveys or resurveys of the public land survey system.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of Section 475.1 et seq. of this title, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer or that he is registered under Section 475.1 et seq. of this title; or who holds himself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering;

5. "Land surveyor" means a person who, ~~by reason of special knowledge in the technique of measuring land and use of the basic principles of mathematics, the related physical and applied sciences and the relevant requirements of law for adequate evidence and all requisite to surveying of real property, acquired by education and~~

~~experience, is qualified to engage~~ engages in the practice of land surveying. A person or firm acting at the direction of a registered professional surveyor shall not be construed to be a land surveyor unless the person or firm independently engages in the practice of land surveying;

6. "Professional land surveyor" means a person who has been duly registered and licensed as a professional land surveyor as provided in Section 475.1 et seq. of this title;

7. "Land surveyor intern" means a person who complies with the requirements for education and experience, and has passed an examination in the fundamental land surveying subjects, as provided in Section 475.1 et seq. of this title;

8. a. "Practice of land surveying" means any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence of land measurement, to the act of measuring, locating, or establishing lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, geodetic positions, and the design, establishment, and administration of land and geographic information systems, and the collection, storage, analysis and management of data within those systems; for the monumenting of property and land boundaries and for the platting and layout of lands and subdivisions thereof, including the topography; and for the preparation and perpetuation of maps, record plats,

field note records, and property descriptions that represent these surveys.

b. A person shall be construed to practice or offer to practice land surveying, within the meaning and intent of Section 475.1 et seq. of this title, who practices any branch of the profession of land surveying or who, by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a professional land surveyor or through the use of some other title implies that he or she is a professional land surveyor or that he or she is registered under Section 475.1 et seq. of this title or holds himself or herself out as able to perform or who does perform any land surveying service or work ~~or~~ ~~any other service designated by the practitioner which is recognized as land surveying~~ for which a license is required.

c. A person shall not be construed to practice or offer to practice land surveying, within the meaning and intent of Section 475.1 et seq. of this title, who merely acts as an agent of a purchaser of land surveying services. Agents of a purchaser of land surveying services include, but are not limited to, real estate agents and brokers, title companies, attorneys providing title examination services, and persons who or firms that coordinate the acquisition and use of land surveying services;

9. "Board" means the State Board of Registration for Professional Engineers and Land Surveyors;

10. "Responsible charge" means direct control and personal supervision of engineering work or land surveying;

11. "Rules of professional conduct for professional engineers and land surveyors" means those rules promulgated by the Board; and

12. "Firm" means a corporation, partnership, ~~co-partnership,~~ limited liability company, joint stock association ~~or,~~ private practitioner employing others, or other legal entity.

SECTION 3. AMENDATORY 59 O.S. 1991, Section 475.8, as amended by Section 6, Chapter 165, O.S.L. 1992 (59 O.S. Supp. 1998, Section 475.8), is amended to read as follows:

Section 475.8 A. The State Board of Professional Engineers and Land Surveyors shall have the power to adopt ~~and amend all bylaws and rules of procedure, not inconsistent with the Constitution and laws of this state or Section 475.1 et seq. of this title~~ pursuant to the Administrative Procedures Act, including the adoption and promulgation of Rules of Professional Conduct for Professional Engineers and Land Surveyors, which may be reasonably necessary for the proper performance of its duties and the regulation of its proceedings, meetings, records, and examinations ~~and the conduct thereof~~. These actions by the Board shall be binding upon persons registered under Section 475.1 et seq. of this title and shall be applicable to firms holding a certificate of authorization. The Board shall adopt and have an official seal, which shall be affixed to each certificate issued. The Board shall have the further power and authority to:

1. Establish and amend minimum standards for the practice of engineering and land surveying;

2. Establish continuing education requirements for renewal of professional engineering and professional land surveyor licenses;

3. Promulgate rules concerning the ethical marketing of professional engineering and land surveying services;

4. Upon good cause shown, as hereinafter provided, deny the issuance of a certificate of registration or certificate of authorization or suspend, revoke, or refuse to renew certificates of

registration or certificates of authorization previously issued, and upon proper showing to review, affirm, reverse, vacate or modify its orders with respect to ~~such a~~ a denial, suspension, revocation or refusal to renew;

5. ~~Levy~~ Seek administrative penalties against any person or ~~entity~~ firm who or which is registered by the Board and who or which violates any of the provisions of Section 475.1 et seq. of this title or any rule or regulation promulgated pursuant thereto. The Board is hereby authorized to initiate ~~disciplinary, prosecutorial and injunctive~~ administrative proceedings against any person or ~~entity~~ firm registered by the Board or having a certificate issued by the Board who or which has violated any of the provisions of Section 475.1 et seq. of this title or any rule ~~or regulation~~ of the Board ~~promulgated pursuant thereto~~. The Board shall investigate alleged violations of the provisions of Section 475.1 et seq. of this title or of the rules ~~or regulations~~, orders, or final decisions of the Board.

B. In carrying into effect the provisions of Section 475.1 et seq. of this title, the Board, under the hand of its ~~Chairman or Vice-Chairman~~ Chair or Vice-Chair and the seal of the Board, may subpoena witnesses and compel their attendance, and may also require the submission of books, papers, documents or other pertinent data, ~~in any disciplinary matters, or~~ in any case ~~wherever~~ in which a violation of Section 475.1 et seq. of this title is alleged. Upon failure or refusal to comply with ~~any such~~ an order of the Board, or upon failure to honor its subpoena, as herein provided, the Board may apply to a court of proper jurisdiction for an order to enforce compliance ~~with same~~.

C. The Board is hereby authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of Section 475.1 et seq. of this title, or to restrain any violation

thereof. In such proceedings, it shall ~~not~~ be necessary to ~~allege~~
~~or prove~~ show either that an adequate remedy at law does not exist
or that substantial or irreparable damage would result from the
continued violation thereof. ~~The members of the Board shall not be~~
~~personally liable under this proceeding.~~

D. The Board may subject an applicant for registration to such
examinations as it deems necessary to determine the applicant's
qualifications.

E. No action or other legal proceedings for damages shall be
instituted against the Board or against any Board member or employee
of the Board for any act done in good faith and in the intended
performance of any power granted under Section 475.1 et seq. of this
title or for any neglect or default in the performance or exercise
in good faith of any such duty or power.

SECTION 4. AMENDATORY 59 O.S. 1991, Section 475.18, as
amended by Section 15, Chapter 165, O.S.L. 1992 (59 O.S. Supp. 1998,
Section 475.18), is amended to read as follows:

Section 475.18 A. The State Board of Professional Engineers
and Land Surveyors shall have the power to suspend, revoke or refuse
to issue, restore or renew a certificate of registration of, or
place on probation, fine or reprimand any professional engineer,
professional land surveyor or engineer intern or land surveyor
intern who is found guilty by an administrative law judge of:

1. The practice of any fraud or deceit in obtaining or
attempting to obtain or renew a certificate of registration, or a
certificate of authorization;

2. Any gross negligence, incompetence or misconduct, in the
practice of engineering or land surveying;

3. ~~Conviction~~ Having been convicted of or ~~entry of~~ having
entered a plea of nolo contendere to any crime under the laws of the
United States, or any state or territory thereof, which is a felony,
whether related to the person's practice or not; ~~and conviction of~~

~~or entry of a plea of nolo contendere~~ or having been convicted of or having entered a plea of nolo contendere to any crime, whether a felony, misdemeanor, or otherwise, an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying;

4. Failure to comply with any of the provisions of Section 475.1 et seq. of this title or any of the rules ~~or regulations~~ pertaining adopted pursuant thereto;

5. Discipline by another state, territory, the District of Columbia, a foreign country, the United States government, or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those contained in ~~this section~~ Section 475.1 et seq. of this title;

6. Failure, within thirty (30) days, to provide information requested by the Board as a result of a formal or informal complaint to the Board which would indicate a violation of Section 475.1 et seq. of this title;

7. Knowingly making false statements or signing false statements, certificates or affidavits to induce payment;

8. Aiding or assisting another person in violating any provision of Section 475.1 et seq. of this title or the rules or regulations pertaining thereto;

9. Violation of any terms of probation imposed by the Board, or using a seal or practicing engineering or land surveying while the professional engineer's license or land surveyor's license is suspended, revoked, nonrenewed or inactive;

10. Signing, affixing the professional engineer's or land surveyor's seal, or permitting the professional engineer's or land surveyor's seal or signature to be affixed to any specifications, reports, drawings, plans, design information, construction documents or calculations, or revisions thereof, which have not been prepared

or completely checked by the professional engineer or land surveyor in responsible charge;

11. Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

12. Providing false testimony or information to the Board; and

13. Habitual intoxication or addiction to the use of alcohol or to the illegal use of a controlled dangerous substance.

B. The Board shall have prepared and shall adopt Rules of Professional Conduct for Professional Engineers and Land Surveyors as provided for in Section 475.8 of this title, which shall be made known in writing to every registrant and applicant for registration under Section 475.1 et seq. of this title, and which shall be published in the roster provided for in Section 475.11 of this title. ~~Such~~ This publication shall constitute due notice to all registrants. The Board may revise and amend these Rules of Professional Conduct for Professional Engineers and Land Surveyors from time to time pursuant to the Administrative Procedures Act and shall forthwith notify each registrant, in writing, of ~~such~~ all revisions or amendments.

C. The Board, upon order of an administrative law judge, shall have the power to:

1. Revoke a certificate of authorization;

2. Suspend a certificate of authorization for a period of time, not exceeding two (2) years, of any firm of which one or more of its officers or directors have been guilty of any conduct which would authorize a revocation or suspension of their certificates of registration under the provisions of this section;

3. Place a registrant on probation for a period of time and subject to such conditions as the Board may specify; or

4. Levy a fine in an amount not to exceed Two Hundred Fifty Dollars (\$250.00) for each count or separate offense.

D. Principles of a firm who do not obtain a certificate or authorization as required by Section 475.1 et seq. of this title may be subject to revocation of individual registration.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 475.19, as amended by Section 16, Chapter 165, O.S.L. 1992 (59 O.S. Supp. 1998, Section 475.19), is amended to read as follows:

Section 475.19 A. Any person may ~~prefer charges of~~ file a complaint with the State Board of Professional Engineers and Land Surveyors alleging fraud, deceit, negligence, incompetence, misconduct, or violation of the Rules of Professional Conduct for Professional Engineers and Land Surveyors, against any individual registrant, or against any firm holding a certificate of authorization.

B. All ~~charges~~ complaints, unless dismissed by the Board as unfounded or trivial, or unless settled informally, shall be heard by ~~the Board~~ an administrative law judge within three (3) months after the date ~~on which they shall have been preferred~~ filed.

C. The time and place for ~~said~~ hearing shall be fixed by the ~~Board~~ administrative law judge, and a copy of the ~~charges~~ complaint, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last-known address of ~~such~~ the individual registrant, or firm holding a certificate of authorization, at least thirty (30) days before the date fixed for the hearing. At any hearing, the accused individual registrant or firm holding a certificate of authorization shall have the right to appear in person or by counsel, or both, to cross-examine witnesses in their defense, and to produce evidence and witnesses in their own defense. If the accused person or firm fails or refuses to appear, the ~~Board~~ administrative law judge may proceed to hear and determine the validity of the charges.

D. If, after ~~such~~ the hearing, ~~a majority of the Board vote in favor of sustaining the charges~~ the administrative law judge so

orders, the Board shall reprimand, fine in an amount not to exceed Two Hundred Fifty Dollars (\$250.00) for each count or separate offense, refuse to issue, restore or renew, place on probation for a period of time and subject to such conditions as the ~~Board~~ administrative law judge may specify, suspend or revoke the individual's certificate of registration, or a firm's certificate of authorization.

E. Any individual registrant having a certificate of registration, or firm holding a certificate of authorization, aggrieved by any action ~~of the Board in~~ levying a fine, denying, suspending, refusing to issue, restore or renew or revoking ~~his a~~ a certificate of registration, or ~~its a~~ a certificate of authorization, may appeal ~~therefrom to the proper court under normal civil procedures~~ pursuant to the Administrative Procedures Act.

F. The Board may, upon petition of an individual registrant or firm holding a certificate of authorization, reissue a certificate of registration or authorization, ~~provided that a majority of the members of the Board vote in favor of such issuance.~~

SECTION 6. AMENDATORY 59 O.S. 1991, Section 475.20, as last amended by Section 508, Chapter 133, O.S.L. 1997 (59 O.S. Supp. 1998, Section 475.20), is amended to read as follows:

Section 475.20 A. Criminal penalties:

Any person or entity who shall practice, or offer to practice, engineering or land surveying in this state without being registered by the State Board of Professional Engineers and Land Surveyors in accordance with the provisions of ~~this act~~ Section 475.1 et seq. of this title, or any person, firm, partnership, limited liability company, organization, association, corporation or other legal entity using or employing the words "engineer" or "engineering" or "land surveyor" or "land surveying" or any modification or derivative thereof in its name or form of business or activity except as authorized in Section 475.1 et seq. of this title, or any

person presenting or attempting to use the certificate of registration or the seal of another, or any person who shall give false or forged evidence of any kind to the Board or to any member thereof in obtaining or attempting to obtain a certificate of registration, or any person who shall falsely impersonate any other registrant of like or different name, or any person who shall attempt to use an expired, suspended ~~or~~, revoked, or nonexistent certificate of registration, or who shall practice or offer to practice when not qualified, or any person who falsely claims ~~that he is to be~~ registered under Section 475.1 et seq. of this title, or any person who shall violate any of the provisions of Section 475.1 et seq. of this title, shall be guilty of a ~~felony, upon conviction thereof.~~ ~~Each violation of any provision of Section 475.1 et seq. of this title shall constitute a separate offense.~~ ~~The fine for a violation of this section shall be~~ misdemeanor, punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00), nor more than Two Thousand Dollars (\$2,000.00).

B. Administrative penalties:

1. Any person or ~~entity~~ firm holding a registration or certificate issued by the Board who or which has been determined by the Board to have violated any provision of Section 475.1 et seq. of this title, or any rule, ~~regulation~~ or order issued pursuant ~~to such provisions thereto~~, may be liable for an administrative penalty of not more than Two Hundred Fifty Dollars (\$250.00) for each day that the violation continues. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

2. The amount of the penalty shall be assessed by ~~the Board pursuant to the provisions of subsection 1 of this section,~~ an administrative law judge after notice and hearing. In determining the amount of the penalty, ~~the Board shall include, but not be limited to~~ consideration ~~of~~ shall be given to the nature,

circumstances and gravity of the violation, and with respect to the person or entity found to have committed the violation, the degree of culpability, the effect on ability of the person or entity to continue to do business and any show of good faith in attempting to achieve compliance with the provisions of Section 475.1 et seq. of this title. All monies collected from ~~such~~ administrative penalties shall be deposited with the State Treasurer and placed in the "Professional Engineers and Land Surveyors Fund".

3. Any certificate of registration or certificate of authorization holder may elect to surrender the certificate of registration or certificate of authorization in lieu of ~~said~~ a fine, but shall be permanently barred from obtaining a reissuance of the certificate of registration or certificate of authorization.

C. Legal Counsel:

The Attorney General of this state or ~~his~~ an assistant shall act as legal advisor to the Board and render such legal assistance as may be necessary in carrying out the provisions of Section 475.1 et seq. of this title.

D. Administrative Law Judges:

~~The Board may employ counsel and necessary assistance to aid in the enforcement of such provisions, and the~~ compensation and expenses ~~therefor~~ of administrative law judges shall be paid from funds of the Board.

SECTION 7. This act shall become effective November 1, 1999.

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