

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
24.183.303 definitions, 24.183.411) PROPOSED AMENDMENT
teaching of land surveying subjects,)
and 24.183.2105 continuing)
professional competency – continuing)
education)

TO: All Concerned Persons

1. On May 11, 2021, at 2:00 p.m., a public hearing will be held via remote conferencing to consider the proposed amendment of the above-stated rules. Because there currently exists a state of emergency in Montana due to the public health crisis caused by the coronavirus, there will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/83842595250>
Meeting ID: 838 4259 5250, Passcode: 200121
-OR-
- b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 838 4259 5250, Passcode: 200121

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors no later than 5:00 p.m., on May 4, 2021, to advise us of the nature of the accommodation that you need. Please contact Samuel Hunthausen, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpels@mt.gov (board's e-mail).

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.183.303 DEFINITIONS (1) through (10) remain the same.

(11) "Progressive land survey experience" means experience obtained under the supervision of a licensed professional land surveyor, on land surveying projects, which, over time, are of increasing quality and require greater responsibility, and

which must include experience with the Public Land Survey System (PLSS) and Bureau of Land Management Manual of Survey Instructions, and may include one or more of the following:

~~(a) experience on land surveying projects which, over time, are of increasing quality and require greater responsibility of the applicant;~~

(b) and (c) remain the same but are renumbered (a) and (b).

(12) through (15) remain the same.

AUTH: 37-67-202, MCA

IMP: 37-67-101, 37-67-103, 37-67-314, 37-67-322, 37-67-323, 37-67-324, 37-67-325, 37-67-326, 37-67-328, MCA

REASON: Multiple surveying systems are utilized to divide land in the United States of America. Montana utilizes the Public Land Survey System (PLSS) which is guided by the Bureau of Land Management (BLM) Survey Manual. Approximately 30 other states utilize this same system. Surveys dividing or modifying land are publicly filed, and other surveyors use existing surveys in completing portions of their work. When a piece of land is surveyed improperly it can affect subsequent surveys and/or property owners' understanding of the land they own. Surveyors and landowners have reported repeated and significant issues with surveys that do not comply with the PLSS and are not guided by the BLM Survey Manual, which often result in complaints to the board. The board concluded that requiring applicants for licensure as professional land surveyors in Montana have some experience in the PLSS will help ensure the surveys the public relies on are accurate and comply with the system utilized to divide land in this state.

24.183.411 TEACHING OF LAND SURVEYING SUBJECTS (1) ~~Either~~ When teaching land surveying subjects in Montana, either the class instructor or the person in responsible charge of the board-approved curriculum shall be a Montana licensed professional land surveyor and be in responsible charge of class instruction of land surveying subjects.

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-67-101, 37-67-325, 37-67-326, MCA

REASON: Following questions from educational programs, the board amended ARM 24.183.407 in 2019 to clarify that its provisions apply only to teaching of advanced engineering where the board has jurisdiction, i.e. within the state of Montana. Subsequently, the board realized it inadvertently failed to amend this rule to make the same clarification. It is reasonably necessary to amend this rule for consistency and to clarify that instructors who teach land surveying subjects in Montana must be Montana licensed professional land surveyors.

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY – CONTINUING EDUCATION (1) Every licensee shall meet the continuing professional competency (continuing education) requirements of these regulations for professional development ~~as a condition for licensure and affirm an~~

understanding of their recurring duty to comply with continuing education requirements as a part of renewal.

(2) through (5) remain the same.

~~(6) The responsibility of maintaining records to be used to support credits claimed is the responsibility of the licensee.~~ Licensees shall maintain records and documentation of completed continuing education and make the records available upon board request. Records required include, but are not limited to:

(a) through (8) remain the same.

(9) The department may randomly audit up to 50 percent of renewed licensees.

(10) Licensees found to be in noncompliance with continuing education requirements may be subject to administrative suspension.

AUTH: 37-1-319, MCA

IMP: 37-1-306, 37-1-319, MCA

REASON: In response to a recommendation from the department's legal staff, the board is proposing to amend its continuing education (CE) rule to align with 37-1-306, MCA, and standardized department procedures for license renewal, administrative suspension, and auditing. Utilizing standardized procedures across all boards will further increase organizational efficiency and cost savings.

The board is adding (9) to allow flexibility in department determination of audit percentages to conserve board resources and emphasize a data-driven approach to audit administration. Adding (10) will clarify that licensees not in compliance with CE requirements may be subject to administrative suspension in alignment with the statutory parameters of 37-1-321, MCA.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., May 14, 2021.

5. An electronic copy of this notice of public hearing is available at <http://boards.bsd.dli.mt.gov/pel> (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate

whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpels@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.183.303, 24.183.411, and 24.183.2105 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; facsimile (406) 841-2305; or to dlibsdpels@mt.gov.

9. Samuel Hunthausen, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
RONALD DRAKE, PE
PRESIDING OFFICER

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 6, 2021.