

# 126th MAINE LEGISLATURE

## **FIRST REGULAR SESSION-2013**

**Legislative Document** 

No. 1267

H.P. 906

House of Representatives, March 28, 2013

### An Act To Recodify the Land Surveyor Licensing Laws

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Millicent M. Macfarland MILLICENT M. MacFARLAND Clerk

Presented by Representative HERBIG of Belfast. Cosponsored by Senator CUSHING of Penobscot and Representative: CAMPBELL of Newfield.

1	Be it enacted by the People of the State of Maine as follows:			
2 3	Sec. 1. 5 MRSA §12004-A, sub further amended to read:	- <b>§21</b> , as amende	d by PL 1989, c. 346, §1, is	
4	21.			
5 6	Board of Licensure for Professional Land Surveyors	\$35/Day	32 MRSA <del>§13902</del> <u>§18211</u>	
7 8	<b>Sec. 2. 17 MRSA §2511, sub-§1, ¶A,</b> as enacted by PL 2003, c. 550, §1, i amended to read:			
9 10 11 12 13 14	A. "Established property line" means a line demarcated by monuments, signs markings, pins, reference points or other markers that denotes a change in ownership between abutting properties. These established property line markers must have been placed upon mutual agreement of the abutting landowners, based on historical physical evidence of a preexisting boundary line, or by a licensed professional surveyor pursuant to Title 32, chapter 121 141.			
15 16	<b>Sec. 3. 30-A MRSA §4403, sub-§3, ¶D,</b> as enacted by PL 1995, c. 93, §1, is amended to read:			
17 18 19 20	D. The municipal reviewing authority documents prepared within the meani are not sealed and signed by the profection charge they were completed, as provided to the provided that the profection of the provided to the provided that the provided tha	ng and intent of 'essional land surv	Fitle 32, chapter <del>121</del> <u>141</u> that eyor under whose responsible	
21	Sec. 4. 32 MRSA c. 121, as amend	ed, is repealed.		
22	Sec. 5. 32 MRSA c. 141 is enacted	to read:		
23	<u>CHA</u>	PTER 141		
24	PROFESSIONAL	LAND SURVE	<u>YORS</u>	
25	SUBC	HAPTER 1		
26	<u>GENERAI</u>	L PROVISIONS		
27	§18201. Definitions			
28 29	As used in this chapter, unless the contained have the following meanings.	ontext otherwise i	ndicates, the following terms	
30	1. Board. "Board" means the Board of	of Licensure for P	rofessional Land Surveyors.	
31 32	2. Commissioner. "Commissioner" Financial Regulation.	means the Com	missioner of Professional and	

- 3. Department. "Department" means the Department of Professional and Financial
   Regulation.
  - 4. Land surveying. "Land surveying" means any service or work involving the application of special knowledge of the rules of evidence and boundary laws, principles of mathematics and the related physical and applied sciences for measuring and locating lines, angles, elevations and 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. This service or work is for the purposes of determining areas and volumes, for the monumenting of property boundaries and for the platting and layout of lands and subdivisions of land, including topography, alignment and grades of streets and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys.
- A person practices or offers to practice land surveying within the meaning and intent of
  this chapter if that person engages in land surveying or by verbal claim, sign,
  advertisement, letterhead, card or in any other way makes a representation that the person
  is a professional land surveyor or makes a representation that the person is able to
  perform or does perform any land surveying service or work or any other service
  designated by the practitioner that is recognized as land surveying.
  - 5. Land surveyor-in-training. "Land surveyor-in-training" means a person licensed under this chapter to practice land surveying under the responsible charge of a professional land surveyor.
    - **6. Person.** "Person" means an individual.
- 7. Professional land surveyor. "Professional land surveyor" means a person
   licensed under this chapter to practice land surveying.
- 25 **8. Responsible charge.** "Responsible charge" means direct control and personal supervision of land surveying.
- 27 §18202. License required

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- Except as provided in section 18203, it is unlawful for a person to practice land surveying or advertise or offer to practice land surveying without a license issued under this chapter.
- 31 **§18203.** Exemptions
- 32 This chapter may not be construed to prevent the practice by:
- 1. Other professions. A person licensed in this State under any other provision of
   law from engaging in the practice for which the person is licensed;
- 2. Federal Government employees. An officer or employee of the Federal
   Government while engaged within this State in the practice of land surveying for the
   Federal Government;

1	3. Interstate commerce corporation employees. An officer or employee of a		
2	corporation engaged in interstate commerce as defined in the Act of Congress entitled		
3	"An Act to Regulate Commerce" approved February 4, 1887, as amended, or in interstate		
4	communication as defined in the Act of Congress entitled "Communications Act of 1934"		
5	approved June 9, 1934, while working solely as an employee of that corporation, as long		
6	as an officer or employee of that corporation customarily in responsible charge of the		
7	surveying work of that corporation within this State is licensed under this chapter; or		
8	<b>4.</b> Unlicensed person. A person working under the responsible charge of a		
9	professional land surveyor.		
10	§18204. Penalties		
11	1. Unlicensed practice. A person who violates section 18202 is subject to the		
12	provisions of Title 10, section 8003-C.		
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13	§18205. Civil actions		
14	A person or entity may not bring or maintain any action in the courts of the State for		
15	the collection of compensation for land surveying services without first proving that the		
16	person performing the land surveying was properly licensed by the board at the time the		
17	cause of action arose.		
18	SUBCHAPTER 2		
19	BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS		
20	§18211. Board of licensure for professional land surveyors		
21	1. Establishment. The Board of Licensure for Professional Land Surveyors is		
22	established within the department pursuant to Title 5, section 12004-A, subsection 21 to		
23	carry out the purposes of this chapter.		
24	2. Members. The board consists of 7 members appointed by the Governor. Each		
25	member must be a resident of this State. The board consists of:		
26	A. Two public members as defined in Title 5, section 12004-A; and		
27	R Five members who hold valid professional land surveyor licenses and have been		
28	B. Five members who hold valid professional land surveyor licenses and have been		
29	licensed as professional land surveyors for at least 10 years immediately prior to		
29	appointment to the board.		
30	3. Terms; removal. Terms of the members of the board are for 5 years.		
31	Appointments of members must comply with Title 10, section 8009. Members may be		
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2 3	The board may establish guidelines and rules by which this chapter is administered, including adopting a code of conduct and standards of practice. Except where otherwise			
3 4	indicated, rules adopted pursuant to this chapter are routine technical rules as defined in			
5	Title 5, chapter 375, subchapter 2-A.			
6	§18213. Duties and powers			
7	The board shall administer and enforce this chapter and evaluate the qualifications of			
8	applicants for licensure.			
9	§18214. Denial or refusal to renew license; disciplinary action			
10 11 12 13 14 15	In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for suspension or revocation in any state of a professional or occupational license, certification or registration for disciplinary reasons or rejection of any application for reasons related to untrustworthiness.			
16	SUBCHAPTER 3			
17	LICENSURE; SCOPE; ADMINISTRATION			
18	§18221. General qualifications			
19	An applicant for licensure under this chapter:			
20 21	1. Application. Shall submit an application to the board together with the fee as set under section 18229; and			
22	2. Age. Must be at least 18 years of age at the time of application.			
23	§18222. License limited to persons			
24 25 26 27	Only a person may be licensed under this chapter. A firm, company, partnership, limited liability company or corporation may practice or offer to practice land surveying as long as the practice of land surveying is performed by a professional land surveyor licensed in this State.			
28	§18223. Land surveyor-in-training			
29 30 31	1. Scope of practice. A land surveyor-in-training license entitles the holder to perform land surveying services under the responsible charge of a professional land surveyor.			
32 33 34	2. Professional qualifications. Each applicant for a land surveyor-in-training license must pass an examination approved by the board and meet one of the following qualifications:			

§18212. Rules

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1 2	A. Hold a bachelor's degree or higher from a program that includes a minimum surveying core curriculum approved by the board;
3 4 5	B. Hold an associate's degree from a program that includes a minimum surveying core curriculum approved by the board and demonstrate 2 years of surveying experience acceptable to the board;
6 7	C. Successfully complete a minimum surveying core curriculum approved by the board and demonstrate 6 years of surveying experience acceptable to the board; or
8	D. Demonstrate 7 years of surveying experience acceptable to the board.
9	§18224. Professional land surveyor
10 11	1. Scope of practice. A professional land surveyor license entitles the holder to perform land surveying services.
12 13	<b>2. Professional qualifications.</b> An applicant for a professional land surveyor license must:
14 15 16 17	A. Be a land surveyor-in-training in this State or hold a license from another jurisdiction with qualifications similar to those required for a land surveyor-intraining under section 18223, and have a specific record of 2 additional years of progressive combined office and field experience acceptable to the board; and
18	B. Successfully pass an examination approved by the board.
19	§18225. Continuing education required for professional land surveyors
20 21	As a prerequisite to renewal of a professional land surveyor license, the applicant must complete continuing education as set forth by rules adopted by the board.
22	§18226. Seals; stamps
23 24	1. Seal; design; final documents; alteration; official notice. A professional land surveyor shall obtain a seal of the design authorized by the board by rule.
25 26 27	A. All final documents, including plans, descriptions, reports, maps, plats or other drawings must be signed and sealed by the issuing professional land surveyor, as prescribed in the rules of the board.
28 29 30	B. If an item bearing the seal of a professional land surveyor is altered, the altering professional land surveyor's seal and signature must be affixed with the notation "altered by," the date and a specific description of the alteration.
31 32 33 34 35	C. An official of this State, or of any city, county, town or village in the State, charged with the enforcement of laws, rules, ordinances or regulations may not accept or approve any plans or other documents prepared within the meaning and intent of this chapter that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed.

#### §18227. Applicants licensed in another jurisdiction

An applicant who is licensed, in good standing, under the laws of another jurisdiction may qualify for licensure under this chapter by submitting evidence satisfactory to the board that the applicant has met all of the qualifications for licensure equivalent to those set forth by this chapter for that level of licensure. The applicant may be required to take examinations as the board determines necessary to determine the applicant's qualifications.

#### §18228. Renewal

A license expires on the date set by the commissioner pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A renewal license is issued for each ensuing licensing period in the absence of any reason or condition that might warrant the refusal to grant a license, upon receipt by the board of the written request of the applicant and the fee for the license as set under section 18229 and upon the applicant's presenting evidence of compliance with the requirements of section 18225.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee as set under section 18229 in addition to the renewal fee as set under section 18229. A person who submits an application for renewal more than 90 days after the licensure renewal date is subject to all requirements governing new applicants under this chapter, including a late fee, renewal fee and additional late fee as set under section 18229, except that the board may waive examination, giving due consideration to the protection of the public.

#### §18229. Fees

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed \$350. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### SUBCHAPTER 4

### 31 <u>RIGHT OF ENTRY</u>

# §18231. Right of entry for professional land surveyor performing land surveying services

When performing land surveying services at the request of a landowner or person with an interest in real estate, a professional land surveyor and the surveyor's assistant may, without the consent of the owner or person in possession, enter upon or cross any lands necessary to perform land surveying services.

1. No authority to intentionally damage or move object. Nothing in this section may be construed as giving authority or license to a professional land surveyor or the

1 2	surveyor's assistant to intentionally destroy, injure, damage or move any object, chattel or item on the lands of another without the permission of the owner.
3 4	2. Civil liability for actual damage. This section may not be construed to remove civil liability for actual damage to land, chattel, crops or personal property.
5 6 7	3. No authority to enter building used as residence or for storage. This section may not be construed to give a professional land surveyor or the surveyor's assistant the authority to enter any building or structure used as a residence or for storage.
8 9 0 1	4. Reasonable effort to notify landowners. A professional land surveyor shall make reasonable effort to notify a landowner upon whose land it is necessary for the professional land surveyor to enter or cross. Notice provided as follows meets the requirement of this subsection:
2 3 4	A. Written notice delivered by hand to the landowner or to the residence of the landowner upon whose land the surveyor may enter or cross, delivered at least 24 hours prior to the surveyor's entering the land; or
5 6 7 8	B. Written notice mailed by first class mail to the landowner upon whose land the surveyor may enter or cross, postmarked at least 5 days prior to the surveyor's entering the land. The surveyor may rely on the address of the landowner as contained in the municipal property tax records or their equivalent.
9 0 1	5. Owner or occupant of land; duty of care; liability. The duty of care an owner or occupant of land owes to the professional land surveyor and the surveyor's assistant is the same as that owed a trespasser.
2 3 4 5	6. Professional land surveyor and assistant identification. A professional land surveyor and the surveyor's assistant shall carry means of proper identification as to their licensure or employment and shall display this identification to anyone requesting identification.
.6 .7 .8	7. Compliance with safety regulations. A professional land surveyor and the surveyor's assistant shall comply with all federal and state safety rules and regulations that apply to the land that they enter or cross pursuant to this section.
.9	Sec. 6. Effective date. This Act takes effect January 1, 2014.
0	SUMMARY
1 2 3 4 5 6	This bill is a recodification of the existing licensing law for professional land surveyors. A recodification reorganizes existing provisions for purposes of clarity and efficiency. The only new provisions permit a land surveyor-in-training from another jurisdiction to qualify for a similar license in Maine and it replaces the current statutory requirement for continuing education with authority for the Board of Licensure for Professional Land Surveyors to adopt continuing education standards by rule.