

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4860

BY DELEGATES HOWELL, C. MARTIN, PORTERFIELD,

HAMRICK AND WAXMAN

[Introduced February 11, 2020; Referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §30-13-3, §30-13-4, §30-13-5, and §30-13-10 of the Code of West
2 Virginia, 1931, as amended; and to amend and reenact §30-22-3, §30-22-4, §30-22-5,
3 and §30-22-8 of said code, all relating to discontinuing the West Virginia Board of
4 Landscape Architects and transferring its duties and authority to the Board of Registration
5 for Professional Engineers; renaming the Board of Registration for Professional Engineers
6 as the Board of Registration for Professional Engineers and Landscape Architects and
7 updating references thereto; adding two additional seats on this board to include a
8 landscape architect and a lay member of the public; specifying qualifications for board
9 members; providing for one consolidated special revenue account and terminating the
10 Board of Landscape Architects Fund; transferring the Board of Landscape Architects
11 duties and authority to the Board of Registration for Professional Engineers and
12 Landscape Architects; and clarifying that money received as fines shall be deposited as
13 general revenue for the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. ENGINEERS.

§30-13-3. Definitions.

1 Unless the context in which used clearly requires a different meaning as used in this
2 article:

3 (a) "Board" means the West Virginia ~~state board of registration for professional engineers~~
4 Board of Registration for Professional Engineers and Landscape Architects as provided for in this
5 article.

6 (b) "Consulting engineer" means a professional engineer whose principal occupation is
7 the independent practice of engineering; whose livelihood is obtained by offering engineering
8 services to the public; who serves clients as an independent fiduciary; who is devoid of public,
9 commercial and product affiliation that might tend to infer a conflict of interest; and who is
10 cognizant of their public and legal responsibilities and is capable of discharging them.

11 (c) "Engineer" means a person who is qualified to practice engineering by reason of special
12 knowledge and use of the mathematical, physical and engineering sciences and the principles
13 and methods of engineering analysis and design, acquired by engineering education and
14 engineering experience.

15 (d) "Engineer intern" means a person who has qualified for, taken and has passed an
16 examination in the fundamental engineering subjects, as provided in this article.

17 (e) "Practice of engineering" means any service or creative work, the adequate
18 performance of which requires engineering education, training and experience in the application
19 of special knowledge of the mathematical, physical and engineering sciences to such services or
20 creative work as consultation, investigation, evaluation, planning and design of engineering works
21 and systems; planning the use of land and water; teaching of advanced engineering subjects,
22 engineering surveys and studies; and the review of construction for the purpose of assuring
23 compliance with drawings and specifications any of which embraces such services or work, either
24 public or private, in connection with any utilities, structures, buildings, machines, equipment,
25 processes, work systems, projects and industrial or consumer products or equipment of a
26 mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve
27 safeguarding life, health or property, and including such other professional services as may be
28 necessary to the planning, progress and completion of any engineering services. Engineering
29 surveys include all survey activities required to support the sound conception, planning, design,
30 construction, maintenance and operation of engineered projects.

31 Any person who practices any branch of the profession of engineering or who, by verbal
32 claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to
33 be a professional engineer, or by using another title implies that he or she is a professional
34 engineer or that he or she is registered under this article or who holds himself or herself out as
35 able to perform, or who performs any engineering service or work or any other service designated
36 by the practitioner which is recognized as engineering, is considered to practice or offer to practice

37 engineering within the meaning and intent of this article.

38 (f) "Professional engineer" means a person who has been duly registered or licensed as
 39 a professional engineer by the board. The board may designate a professional engineer, on the
 40 basis of education, experience and examination, as being licensed in a specific discipline or
 41 branch of engineering signifying the area in which the engineer has demonstrated competence.

42 (g) "Responsible charge" means direct control and personal supervision of engineering
 43 work.

44 (h) "Rules of professional responsibility for professional engineers" means those rules, if
 45 any, promulgated by the West Virginia state board of registration for professional engineers as
 46 authorized by this article.

**§30-13-4. Board of registration for professional engineers and landscape architects;
 appointment and term.**

1 ~~There is hereby created the board of registration for professional engineers which shall~~
 2 ~~hereafter be referred to as the board~~ On the effective date of the amendments to this article, the
 3 board created as the Board of Registration for Professional Engineers shall continue and be
 4 known as the Board of Registration for Professional Engineers and Landscape Architects. The
 5 board shall be composed of ~~five~~ seven members, five of whom shall be licensed professional
 6 engineers appointed by the Governor, ~~by and with the consent of~~ subject to confirmation by the
 7 Senate, preferably from a list of names submitted by the West Virginia Society of Professional
 8 Engineers, one member shall be a licensed landscape architect appointed by the Governor,
 9 subject to confirmation by the Senate, and one member shall be a lay member of the public
 10 appointed by the Governor, subject to confirmation by the Senate. ~~The members of the board~~
 11 ~~shall be qualified and shall meet the requirements of section five of this article~~ The Governor shall
 12 present each board member with a certificate of appointment. Each board member shall make
 13 and file an oath or affirmation with the Secretary of State to faithfully execute the duties of a
 14 member of the board. Members of the board shall serve a term of five years. ~~Of the members first~~

15 ~~appointed, one shall serve a term of one year, one shall serve a term of two years, one shall serve~~
16 ~~a term of three years, one shall serve a term of four years and one shall serve a term of five years~~
17 Members of the former board whose terms have not expired may continue to fill out their terms
18 on the reformed board. Members are eligible for reappointment but no member may be appointed
19 for more than three full consecutive terms. Each member shall hold office until the expiration of
20 the term for which appointed or until a successor has been duly appointed and has qualified. In
21 the event of a vacancy on the board due to resignation, death or for any cause resulting in an
22 unexpired term and if not filled within three months by the Governor, the board may appoint a
23 member to serve in the vacancy until the Governor makes the appointment. ~~Members of the~~
24 ~~former board whose terms have not expired shall fill the term on this board which corresponds~~
25 ~~with the length of the unexpired term of that member.~~

§30-13-5. Board qualifications.

1 Each member of the board ~~must~~ shall be a citizen of the United States and a resident of
2 this state. Each professional engineer member shall have been engaged in the lawful practice of
3 engineering as a professional engineer for at least 12 years; shall have been in responsible
4 charge of engineering projects for at least five years; and shall be a registered professional
5 engineer in this state. The landscape architect member, at the time of his or her appointment,
6 shall have held a license in this state for not less than three years.

§30-13-10. Receipt of fees, fund established, disbursements.

1 There is hereby established within the State Treasury a "Board of Professional Engineers
2 Fund". The board shall deposit all fees and other moneys received by the board, other than fines
3 assessed by the board, into the fund. The moneys in the fund shall be used for expenses of the
4 board and shall be requisitioned on the signatures of the president and secretary of the board.
5 The secretary of the board shall annually furnish an accounting of all funds received and
6 expended by the board to the Governor and to each house of the Legislature. The board may use
7 the moneys in the fund to employ necessary staff, pay for membership fees to the National Council

8 of Examiners for Engineering and Surveying, and for any other necessary and reasonable
 9 expense of the board: *Provided*, That the board may not issue warrants in excess of moneys in
 10 the fund. Any amounts received as fines imposed pursuant to this article or pursuant to §30-22-1
 11 et seq. of this code shall be deposited into the General Revenue Fund of the State Treasury.

ARTICLE 22. LANDSCAPE ARCHITECTS.

§30-22-3. Applicable law.

1 The practice of landscape architecture ~~and the board of Landscape Architects~~ are subject
 2 to the provisions of §30-1-1 *et seq.* of this code, ~~and~~ the provisions of this article, and any rules
 3 promulgated ~~thereunder~~ by the former board or hereafter by the Board of Registration for
 4 Professional Engineers and Landscape Architects.

§30-22-4. Definitions.

1 As used in this article, the following words and terms have the following meanings, unless
 2 the context clearly indicates otherwise:

3 (a) "Accredited" means a school, college or university accredited by the Landscape
 4 Architectural Accreditation Board (LAAB) or any other accrediting body recognized by the board.

5 (b) "Applicant" means a person making application for a license or a permit, or a firm
 6 making application for a certificate of authorization, under the provisions of this article.

7 (c) "Board" means the ~~West Virginia Board of Landscape Architects~~ Board of Registration
 8 for Professional Engineers and Landscape Architects.

9 (d) "Certificate of authorization" means a certificate issued under the provisions of this
 10 article to a firm providing landscape architectural services.

11 (e) "Certificate of authorization holder" means a firm certified under the provisions of this
 12 article to provide landscape architectural services.

13 (f) "Examination" means the examination in landscape architecture required for licensure.

14 (g) "Firm" means any business entity, partnership, association, company, corporation,
 15 limited partnership, limited liability company or other entity providing landscape architectural

16 services.

17 (h) "Landscape architect" means a person licensed under the provisions of this article to
18 practice landscape architecture.

19 (i) "Landscape architecture" means the analysis, planning, design, management and
20 stewardship of the natural and built environments.

21 (j) "License" means a landscape architecture license issued under the provisions of this
22 article.

23 (k) "Licensee" means a person holding a landscape architecture license issued under the
24 provisions of this article.

25 (l) "Permittee" means a person holding a temporary permit.

26 (m) "Practice of landscape architecture" means the performance of professional services,
27 including, but not limited to, analysis, consultations, evaluations, research, planning, design,
28 management or responsible supervision of projects principally directed at the functional, aesthetic
29 use, preservation and stewardship of the land and natural and built environments, including:

30 (1) Investigation, selection and allocation of land and water resources for appropriate
31 uses;

32 (2) Formulation of feasibility studies and graphic and written criteria to govern the planning,
33 design and management of land and water resources;

34 (3) Preparation, review and analysis of those aspects of land use master plans,
35 subdivision plans and preliminary plats as are related to landscape architecture;

36 (4) Determination of the location and siting of improvements, including buildings and other
37 features, as well as the access and environs for those improvements associated with the practice
38 of landscape architecture;

39 (5) Design of land forms, soil conservation and erosion control methods, site lighting, water
40 features, irrigation systems, plantings, pedestrian and vehicular circulation systems and related
41 construction details, and natural drainage, surface and ground water drainage systems: *Provided,*

42 That such systems do not require structural design of system components or a hydraulic analysis
43 of the receiving storm water conveyance system; and

44 (6) Preparation, filing and administration of plans, drawings, specifications and other
45 related construction documents.

46 (n) "Temporary permit" means a permit to practice landscape architecture issued by the
47 board for a period of time not to exceed one year.

§30-22-5. Board of Landscape Architects.

1 ~~(a) The West Virginia Board of Landscape Architects is hereby continued and shall be~~
2 ~~composed of three members, two of whom must be licensed landscape architects, appointed by~~
3 ~~the Governor by and with the advice and consent of the Senate, for staggered terms of three~~
4 ~~years.~~

5 ~~(b) Each licensed member of the board, at the time of his or her appointment, must have~~
6 ~~held a license in this state for a period of not less than three years and must have been a resident~~
7 ~~of this state for a period of not less than one year immediately preceding the appointment.~~

8 ~~(c) Each member of the board must be a resident of this state during the appointment~~
9 ~~term.~~

10 ~~(d) No member may serve more than three consecutive full terms and any member having~~
11 ~~served three consecutive full terms may not be appointed for one year after completion of his or~~
12 ~~her third full term. A member shall continue to serve until his or her successor has been appointed~~
13 ~~and qualified. Any member currently serving on the board on the effective date of this article may~~
14 ~~be reappointed in accordance with the provisions of this section.~~

15 ~~(e) A vacancy on the board shall be filled by appointment by the Governor for the~~
16 ~~unexpired term of the member whose office is vacant.~~

17 ~~(f) The Governor may remove any member from the board for neglect of duty,~~
18 ~~incompetency or official misconduct.~~

19 ~~(g) Any member of the board immediately and automatically forfeits his or her membership~~

20 if he or she has his or her license to practice suspended or revoked by the board, is convicted of
 21 a felony under the laws of any state or the United States, or becomes a nonresident of this state.

22 (h) ~~The board shall designate one of its members as chairperson and one member as~~
 23 ~~secretary-treasurer who shall serve at the will of the board.~~

24 (i) ~~Each member of the board is entitled to receive compensation and expense~~
 25 ~~reimbursement in accordance with article one of this chapter.~~

26 (j) ~~A majority of the members of the board shall constitute a quorum.~~

27 (k) ~~The board shall hold at least one annual meeting. Other meetings shall be held at the~~
 28 ~~call of the chairperson or upon the written request of two members, at such time and place as~~
 29 ~~designated in the call or request~~

30 The West Virginia Board of Landscape Architects is hereby discontinued and its duties
 31 and authority are hereby transferred to the Board of Registration for Professional Engineers and
 32 Landscape Architects as established in §30-13-1 et seq. of this code. All other provisions of this
 33 article relating to landscape architects shall remain in effect and be subject to administration and
 34 enforcement by the Board of Registration for Professional Engineers and Landscape Architects.

§30-22-8. Fees; special revenue account; administrative fines Dissolution of special
revenue account and transfer of money.

1 (a) ~~All fees and other moneys, except administrative fines, received by the board shall be~~
 2 ~~deposited in a separate special revenue fund in the state Treasury designated the "Board of~~
 3 ~~Landscape Architects Fund," which fund is hereby continued. The fund shall be used by the board~~
 4 ~~for the administration of this article. Except as may be provided in article one of this chapter, the~~
 5 ~~board shall retain the amounts in the special revenue account from year to year. No compensation~~
 6 ~~or expense incurred under this article is a charge against the General Revenue Fund.~~

7 (b) ~~Any amounts received as fines imposed pursuant to this article shall be deposited into~~
 8 ~~the General Revenue Fund of the state Treasury.~~

9 The special revenue account designated the "Board of Landscape Architects Fund" shall

- 10 be terminated and all money on deposit therein at the time of termination shall be transferred to
11 the "Board of Professional Engineers Fund" established in §30-13-10 of this code.

NOTE: The purpose of this bill is to discontinue the West Virginia Board of Landscape Architects and transfer its duties and authority to the Board of Registration for Professional Engineers. The bill renames the Board of Registration for Professional Engineers as the Board of Registration for Professional Engineers and Landscape Architects and increases the number of board members by two, one of whom shall be a landscape architect and the other shall be a lay member of the public.

This bill is based on recommendations by the Performance Evaluation and Reference Division (PERD).

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.