

THE HOUSE OF REPRESENTATIVES
Monday, March 29, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 1851

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1851 - By:
LASTER, BARRINGTON AND BURRAGE of the Senate and STEELE AND JONES of
the House.

An Act relating to the State Board of Licensure for Professional Engineers and Land Surveyors; amending 59 O.S. 2001, Sections 475.2, as last amended by Section 1, Chapter 312, O.S.L. 2008, 475.8, as amended by Section 7, Chapter 115, O.S.L. 2005 and 475.22, as amended by Section 21, Chapter 115, O.S.L. 2005 (59 O.S. Supp. 2009, Sections 475.2, 475.8 and 475.22), which relate to engineering and surveying; modifying definition; clarifying language; modifying powers of the Board; modifying exceptions to prohibited acts; and declaring an emergency.

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

1 SECTION 1. AMENDATORY 59 O.S. 2001, Section 475.2, as last amended by
2 Section 1, Chapter 312, O.S.L. 2008 (59 O.S. Supp. 2009, Section 475.2), is amended to
3 read as follows:

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

5 1. "Engineer" means a person who, by reason of special knowledge and use of the
6 mathematical, physical and engineering sciences and the principles and methods of
7 engineering analysis and design, acquired by engineering education and engineering
8 experience, is qualified, after meeting the requirements of Section 475.1 et seq. of this

1 title and the regulations issued by the Board pursuant thereto, to engage in the practice
2 of engineering;

3 2. “Professional engineer” means a person who has been duly licensed as a
4 professional engineer as provided in Section 475.1 et seq. of this title and the regulations
5 issued by the Board pursuant thereto;

6 3. “Engineer intern” means a person who complies with the requirements for
7 education and experience and has passed an examination in the fundamental
8 engineering subjects, as provided in Section 475.1 et seq. of this title and the regulations
9 issued by the Board pursuant thereto;

10 4. “Practice of engineering” means any service or creative work, the adequate
11 performance of which requires engineering education, training and experience in the
12 application of special knowledge of the mathematical, physical and engineering sciences
13 to such services or creative work as consultation, investigation, evaluation, planning and
14 design of engineering works and systems, planning the engineering use of land and
15 water, teaching of advanced engineering subjects or courses related thereto, engineering
16 research, engineering surveys, engineering studies, and the inspection or review of
17 construction for the purposes of assuring compliance with drawings and specifications;
18 any of which embraces such services or work, either public or private, in connection with
19 any utilities, structures, buildings, machines, equipment, processes, work systems,
20 projects, communication systems, transportation systems and industrial or consumer
21 products or equipment of a mechanical, electrical, chemical, environmental, hydraulic,
22 pneumatic, thermal, control system or communications nature, insofar as they involve

1 safeguarding life, health or property, and including such other professional services as
2 may be necessary to the design review and integration of a multidiscipline work,
3 planning, progress and completion of any engineering services.

4 Design review and integration includes the design review and integration of those
5 technical submissions prepared by others, including as appropriate and without
6 limitation, engineers, architects, landscape architects, land surveyors, and other
7 professionals working under the direction of the engineer. The definition of design
8 review and integration by engineers does not restrict the services other licensed
9 professional disciplines are authorized to offer or perform by statute or regulation.

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

15 A person or entity shall be construed to practice or offer to practice engineering,
16 within the meaning and intent of Section 475.1 et seq. of this title who does any of the
17 following: practices any branch of the profession of engineering; by verbal claim, sign,
18 advertisement, letterhead, card or in any other way represents such person to be a
19 professional engineer, or through the use of some other title implies that any person is a
20 professional engineer or is licensed or qualified under Section 475.1 et seq. of this title; or
21 who represents qualifications or ability to perform or who does practice engineering.

- 1 (1) restoration and rehabilitation of corners and boundaries in the
2 United States Public Land Survey System or the subdivision
3 thereof,
4 (2) obtaining and evaluating evidence for the accurate
5 determination of land boundaries,
6 (3) determination of the areas and elevations of land parcels for a
7 survey,
8 (4) monumenting the subdivision of land parcels into smaller
9 parcels and the preparation of the descriptions in connection
10 therewith,
11 (5) measuring and platting underground mine workings,
12 (6) preparation of the control portions of geographic information
13 systems and land information systems,
14 (7) establishment, restoration, and rehabilitation of land survey
15 monuments and bench marks,
16 (8) preparation of land survey plats, condominium plats, monument
17 records, and survey reports,
18 (9) surveying, monumenting, and platting of easements, and rights-
19 of-way,
20 (10) measuring, locating, or establishing lines, angles, elevations,
21 natural and man-made features in the air, on the surface of the
22 earth, within underground workings, and on the beds of bodies

1 of water for the purpose of determining areas and volumes for a
2 survey,

3 (11) geodetic surveying, and

4 (12) any other activities incidental to and necessary for the adequate
5 performance of the services described in this paragraph.

6 b. A person or entity shall be construed to practice or offer to practice
7 land surveying, within the meaning and intent of Section 475.1 et seq.
8 of this title who does any one of the following: practices any branch of
9 the profession of land surveying; by verbal claim, sign, advertisement,
10 letterhead, card or in any other way represents such person to be a
11 professional land surveyor or through the use of some other title
12 implies that such person or entity is a professional land surveyor or
13 that such person is registered, licensed, or qualified under Section
14 475.1 et seq. of this title; represents qualifications or ability to perform;
15 or who does practice land surveying.

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

1 services. The coordination of land surveying services includes, but is
2 not limited to: sales and marketing of services, discussion of
3 requirements of land surveys, contracting to furnish land surveys,
4 review of land surveys, the requesting of revisions of land surveys, and
5 making any and all modifications to surveys with the written consent
6 of the land surveyor, and furnishing final revised copies to the land
7 surveyor showing all revisions, the distribution of land surveys, and
8 receiving payment for such services. These actions do not constitute
9 the practice of land surveying, and do not violate any part of Section
10 475.1 through 475.22a of this title or the Bylaws and Rules of the
11 Board;

12 8. “Board” means the State Board of Licensure for Professional Engineers and Land
13 Surveyors;

14 9. “Responsible charge” means direct control and personal supervision of
15 engineering work or land surveying;

16 10. “Rules of professional conduct for professional engineers and land surveyors”
17 means those rules promulgated by the Board;

18 11. “Firm” means any form of business entity, a private practitioner employing
19 other licensed engineers, surveyors or licensed design professionals, or any person or
20 entity using one or more fictitious names;

21 12. “Direct Control” and “personal supervision” whether used separately or
22 together mean active and personal management of the firm’s personnel and practice

1 including personal presence in the workplace to maintain charge of, and concurrent
2 direction over, engineering or land surveying decisions and the instruments of
3 professional services to which the licensee affixes the seal, signature, and date; and

4 13. "Core curriculum" means the Board-approved land surveying courses adopted
5 by Board policy, developed to ensure that land surveyor applicants meet the minimum
6 educational requirements for licensure.

7 SECTION 2. AMENDATORY 59 O.S. 2001, Section 475.8, as amended by
8 Section 7, Chapter 115, O.S.L. 2005 (59 O.S. Supp. 2009, Section 475.8), is amended to
9 read as follows:

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

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

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

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

5 4. Upon good cause shown, as hereinafter provided, deny the issuance of a
6 certificate of licensure or certificate of authorization or suspend, revoke or refuse to
7 renew certificates of licensure or certificates of authorization previously issued, and upon
8 proper showing to review, affirm, reverse, vacate or modify its orders with respect to such
9 denial, suspension, revocation or refusal to renew; ~~and~~

10 5. Levy administrative penalties against any person or entity who or which violates
11 any of the provisions of Section 475.1 et seq. of this title or any rule or regulation
12 promulgated pursuant thereto. The Board is hereby authorized to initiate disciplinary,
13 prosecutorial and injunctive proceedings against any person or entity who or which has
14 violated any of the provisions of Section 475.1 et seq. of this title or any rule or regulation
15 of the Board promulgated pursuant thereto. The Board shall investigate alleged
16 violations of the provisions of Section 475.1 et seq. of this title or of the rules or
17 regulations, orders or final decisions of the Board; and

18 6. Acquire by purchase, lease, gift, solicitation of gift or by any other lawful means,
19 and maintain, use and operate real property and improvements; contract for the
20 maintenance, use, and operation of or lease of any and all real property and
21 improvements; lease or sublease any part of real property and improvements acquired
22 pursuant to this section to public entities, private entities, or private persons, on any

1 terms and for any consideration deemed appropriate by the Board, subject to restrictions
2 in purchase or lease documents relating to property acquired; provided, all contracts for
3 real property and improvements shall be subject to the provisions of Section 63 of Title
4 74 of the Oklahoma Statutes.

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

13 C. The Board is hereby authorized in the name of the state to apply for relief by
14 injunction in the established manner provided in cases of civil procedure, without bond,
15 to enforce the provisions of Section 475.1 et seq. of this title, or to restrain any violation
16 thereof. In such proceedings, it shall not be necessary to allege or prove either that an
17 adequate remedy at law does not exist or that substantial or irreparable damage would
18 result from the continued violation thereof. The members of the Board shall not be
19 personally liable under this proceeding.

20 D. The Board may subject an applicant for licensure or a licensee to such
21 examinations as it deems necessary to determine the applicant's or licensee's
22 qualifications. The Board may dispose of a formal complaint against a licensee for a

1 violation of Section 475.1 et seq. of this title by an order that a licensee shall complete
2 the examinations as the Board deems necessary to determine the qualifications of the
3 licensee, and upon the initial failure or refusal to successfully complete the examination,
4 within the time ordered, place conditions on the license of the licensee to practice and
5 order other remedies until competence is demonstrated.

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

11 SECTION 3. AMENDATORY 59 O.S. 2001, Section 475.22, as amended by
12 Section 21, Chapter 115, O.S.L. 2005 (59 O.S. Supp. 2009, Section 475.22), is amended to
13 read as follows:

14 Section 475.22 Section 475.1 et seq. of this title shall not be construed to prevent:

- 15 1. Other Professions. The practice of any other legally recognized profession;
- 16 2. Temporary Permit:

- 17 a. Professional engineer. The practice or offer to practice engineering by
18 a person not a resident of or having no established place of business in
19 this state is allowed; provided, such person is legally qualified by
20 licensure to practice engineering, as defined in Section 475.2 of this
21 title, in the applicant's own state or country and who has made
22 application for licensure to this Board. Such person shall make

1 application for temporary permit to the Board, in writing, and after
2 payment of a temporary permit fee may be granted a written permit to
3 perform a particular job for a definite period of time, to expire the
4 earliest of the issuance of a license by this Board, the rejection of the
5 application for licensure or a time limit stated in the temporary
6 permit; provided, however, no right to practice engineering shall
7 accrue to such applicant by reason of a temporary permit for any works
8 not set forth in said permit, and

9 b. Professional land surveyor. The practice of land surveying under a
10 temporary permit by a person licensed as a land surveyor in another
11 state is not considered to be in the best interest of the public and
12 therefore shall not be granted; ~~and~~

13 3. Employees and subordinates. The work of an employee or a subordinate of a
14 person holding a certificate of licensure under Section 475.1 et seq. of this title, or an
15 employee of a person practicing lawfully under paragraph 2 of this section is allowed;
16 provided, such work does not include final engineering or land surveying designs or
17 decisions and is done under the direct supervision of and verified by a person holding a
18 certificate of licensure under Section 475.1 et seq. of this title or a person practicing
19 lawfully under paragraph 2 of this section; and

20 4. Material Takeoff. Providing a list of material derived from measuring and
21 interpreting a set of blueprints or plans, otherwise known as a “material takeoff” or

1 advising a person on such a “material takeoff” shall not constitute the practice of
2 engineering.

3 SECTION 4. It being immediately necessary for the preservation of the public
4 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
5 this act shall take effect and be in full force from and after its passage and approval.

6 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
7 FINANCIAL SERVICES, dated 03-25-10 - DO PASS, As Amended.