



TO: The Professional Practice Committee

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Addition of Section 52.49 to and Amendment of Sections 68.4 and 68.6 of the Regulations of the Commissioner of Education Relating to the Licensure Requirements for Land Surveyors

DATE: March 4, 2021

AUTHORIZATION(S): *Tom Regan* *Billy...*

SUMMARY

Issue for Decision

Should the Board of Regents add section 52.49 to and amend Sections 68.4 and 68.6 of the Regulations of the Commissioner of Education relating to the licensure requirements for land surveyors?

Reason(s) for Consideration

Required by State statute (Chapter 322 of the Laws of 2019).

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the March 2021 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying emergency action are attached.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on March 31, 2021. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 322 of the Laws of 2019 (Chapter 322) amends section 7206-a of the Education Law, effective April 3, 2021, to, inter alia, update the education and experience requirements for licensure as a land surveyor to conform with national standards. Historically, the majority of land surveyors were licensed through an all experience pathway, instead of through an education and experience combination pathway. However, over time, the national land surveying licensure examinations have been updated to test at a bachelor's degree level of knowledge. Presently, there are six educational programs with land surveying programs/courses located throughout New York State.

While the all experience pathway to licensure was a common practice for many years in numerous states, including New York State, it is being repealed in a number of jurisdictions. Including New York State, there remain only seven of the 51 United States jurisdictions which currently report having an all experience pathway for the licensure of land surveyors. Nationally, it has been found that individuals who take the all experience pathway to land surveyor licensure are more likely to fail the national licensing examinations multiple times versus individuals who take the combination of education and experience pathway to licensure.

Chapter 322 phases out the all experience pathway to land surveyor licensure, in eight years, in order to provide individuals who are currently gaining experience to be licensed under this pathway the opportunity to complete it.

In addition to updating the education and experience requirements for land surveyor licensure and gradually phasing out the all experience pathway to licensure, Chapter 322 makes conforming changes that allow practical experience satisfactory to the Department to be used to meet the experience requirements and modifies the fees for initial licensure and the triennial registration periods to reflect the fact that the examination is no longer administered by the Department. Additionally, Chapter 322 allows applicants with an associate's degree in land surveying, or an associate's degree or higher in engineering, math or a related science with credits in land surveying acceptable to the Department to apply for licensure without having to meet the education requirements currently specified in the Education Law if they obtain additional experience; and requires applicants to fulfill the education, experience, and examination requirements in accordance with the Regulations of the Commissioner of Education (Commissioner's regulations). Chapter 322 further provides that after passing the licensure examination, an intern land surveyor identification card will be issued by the Department to applicants.

Proposed Amendments

The proposed addition of section 52.49 to the Commissioner's regulations establishes the program registration requirements for land surveyor education programs in accordance with the State statute. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a land surveyor. The proposed amendment requires land surveyor education

programs to be: (1) an approved course of study in land surveying or a substantially equivalent program as determined by the Department, which leads to a bachelor's degree or higher; or (2) an approved course of study in land surveying which leads to an associate's degree; or (3) an approved course of study which leads to an associate's degree or higher in engineering, math, or a related science or their substantial equivalent and includes a minimum of 15 semester hours in the following four specified subject areas: (a) survey I; (b) survey II; (c) boundary/survey law 1; and (d) boundary/survey law 2, and if 15 semester hours are not gained in any of the four specified subject areas, any additional courses or their substantial equivalent from any of the following seven specified subject areas: (a) cadastral; (b) geodesy; (c) measurement/analysis; (d) remote sensing; (e) digital surveying methods; (f) route surveying; or (g) photogrammetry and aerial photo interpretations.

The proposed amendment to section 68.4 of the Commissioner's Regulations amends the land surveyor education requirements for licensure by requiring: (1) completion of a bachelor's degree or higher in land surveying or the equivalent from a program approved by the Department as recommended by the State Board for professional licensure purposes and three years of land surveying experience acceptable to the Department as recommended by the State Board for Engineering, Land Surveying and Geology (State Board); (2) completion of a bachelor's degree or higher in engineering, math, or related science with 15 credits of surveying course work acceptable to the Department as recommended by the State Board as set forth in section 52.49 of the Commissioner's Regulations and four years of land surveying experience acceptable to the Department as recommended by the State Board; (3) completion of an associate's degree in land surveying and five-and-a-half years of land surveying experience acceptable to the Department as recommended by the State Board; (4) completion of an associate's degree in engineering, math, or related science with 15 credits of land surveying course work acceptable to the Department as recommended by the State Board as set forth in section 52.49 of the Commissioner's regulations and six years of land surveying experience acceptable to the Department as recommended by the State Board; or (5) completion of an approved secondary course of study; and for those applying for licensure on or after September 1, 1987, the equivalent of eight years of land surveying experience acceptable to the Department as recommended by the State Board, provided that all experience is completed prior to April 3, 2029 and provided that each full year of college study in engineering or land surveying program approved by the department for professional licensure purposes may be accepted in lieu of one year of such experience to a maximum of four years.

The proposed amendment to section 68.6 of the Commissioner's Regulations amends, among other things, the admission requirements for the fundamentals of surveying examination by requiring an applicant to: (1) be within 20 credits of graduation from a bachelor's degree program in surveying registered as leading to licensure pursuant to section 52.49 of the Commissioner's regulations, or accredited by an acceptable accrediting agency, or a bachelor's degree program that is substantially equivalent to such a registered or accredited program as determined by Department as recommended by the State Board; (2) hold a bachelor's degree in engineering, math, or a related science with 15 credits of surveying as set forth in section 52.49 of the Commissioner's regulations and have completed one year of experience acceptable to

the Department as recommended by the State Board; (3) hold an associate's degree in surveying accredited by an acceptable accrediting agency, or an associate's degree program that is substantially equivalent to such a registered or accredited program as determined by the Department and have completed two and a half years of experience acceptable to the Department as recommended by the State Board; or (4) hold an associate's degree in engineering, math, or related science with 15 credits of surveying as set forth in section 52.49 of the Commissioner's Regulations and have completed three years of experience acceptable to the Department as recommended by the State Board.

Additionally, the proposed amendment to section 68.6 of the Commissioner's regulations requires an applicant for admission to the principles and practice of surveying and the New York State jurisdictional surveying examinations to have completed the education and experience requirements set forth in section 68.4 of the Commissioner's regulations.

Related Regents Item

None.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 52.49 be added, and sections 68.4 and 68.6 be amended, as submitted, effective April 3, 2021, as an emergency action upon the finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to timely implement the requirements of Chapter 322 of the Laws of 2019, which updates the licensure requirements for land surveyors to conform with the national standards in the profession of land surveying.

Timetable for Implementation

If adopted at the March 2021 Regents meeting, the emergency rule will become effective April 3, 2021, which is the effective date of Chapter 322. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the July 2021 Regents meeting, after the publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency regulation will expire before the July 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the June 2021 Regents meeting.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE REGULATIONS OF THE
COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7203, 7204, 7204 and 7206-a of the Education Law and Chapter 322 of the Laws of 2019

1. The Regulations of the Commissioner of Education is amended by adding a new section 52.49, to read as follows:

Section 52.49 Land Surveyor

In addition to meeting all the applicable provisions of this Part, to be registered as a program recognized as leading to licensure as a land surveyor, which meets the requirements of section 68.4 of this Title, the program shall be:

(a) an approved course of study in land surveying or a substantially equivalent program as determined by the department, which leads to a bachelor's degree or higher; or

(b) an approved course of study in land surveying which leads to an associate's degree; or

(c) an approved course of study which leads to an associate's degree or higher in engineering, math, or a related science or their substantial equivalent and includes a minimum of 15 semester hours that must include one course or its substantial equivalent in each of the following four (4) subject areas:

(1) survey I;

(2) survey II;

(3) boundary/survey law 1; and

(4) boundary/survey law 2.

(d) Notwithstanding subdivision (c) of this section, if after completion of all four courses or their substantial equivalent set forth in paragraphs (1)-(4) of subdivision (c) of this section, the minimum 15 semester hours are not gained, any additional courses or their substantial equivalent from any of the following seven subject areas shall satisfy the 15 semester hour requirements of this subdivision:

(i) cadastral;

(ii) geodesy;

(iii) measurement/analysis;

(iv) remote sensing;

(v) digital surveying methods;

(vi) route surveying; or

(vii) photogrammetry and aerial photo interpretations.

2. Section 68.4 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 68.4. Professional study of land surveying

(a) [To meet the professional study requirement for licensure, the applicant shall present evidence of:

(1) possession of a bachelor's degree in land surveying or the equivalent from a program approved by the department for professional licensure purposes and four years of land surveying experience acceptable to the State Board; or

(2) completion of an approved secondary course of study; and

(i) for those applying prior to September 1, 1987, the equivalent of six years of land surveying experience acceptable to the board, provided that each complete year of study in a land surveying program approved by the department for professional licensure purposes may be accepted in lieu of one year of such experience to a maximum of two years; and

(ii) for those applying on or after September 1, 1987, the equivalent of eight years of land surveying experience acceptable to the board, provided that each complete year of study in a land surveying program approved by the department for professional licensure purposes may be accepted in lieu of one year of such experience to a maximum of four years.] As used in this section, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting land surveying, engineering or other math and science programs as having reasonable accreditation standards and as an organization that applies its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(b) To meet the professional study requirement for [certification as an intern land surveyor] licensure, the applicant shall present evidence of:

(1) [possession] completion of a bachelor's degree or higher in land surveying or the equivalent from a program approved by the department for professional licensure purposes and three years of land surveying experience acceptable to the department as recommended by the State Board; or

(2) [completion of an approved secondary course of study; and

(i) for those applying prior to September 1, 1987, the equivalent of six years of land surveying experience acceptable to the board, provided that each complete year of

study in a land surveying program approved by the department for professional licensure purposes may be accepted in lieu of one year of such experience, to a maximum of two years; and

(ii) for those applying on or after September 1, 1987, the equivalent of eight years of land surveying experience acceptable to the board, provided that each complete year of study in a land surveying program approved by the department for professional licensure purposes may be accepted in lieu of one year of such experience, to a maximum of four years.] completion of a bachelor's degree or higher in engineering, math, or related science with 15 credits of surveying course work acceptable to the department as recommended by the State Board as set forth in section 52.49 of this Title and four years of land surveying experience acceptable to the department as recommended by the State Board; or

(3) completion of an associate's degree in land surveying and five-and-a-half years of land surveying experience acceptable to the department as recommended by the State Board; or

(4) completion of an associate's degree in engineering, math, or related science with 15 credits of land surveying course work acceptable to the department as recommended by the State Board as set forth in section 52.49 of this Title and six years of land surveying experience acceptable to the department as recommended by the State Board; or

(5) completion of an approved secondary course of study; and

(i) for those applying for licensure on or after September 1, 1987, the equivalent of eight years of land surveying experience acceptable to the department as recommended by the State Board, provided that all experience is completed prior to

April 3, 2029 and provided that each full year of college study in engineering or land surveying in a program approved by the department for professional licensure purposes or a substantially equivalent program, as determined by the department upon the recommendation of the State Board, may be accepted in lieu of one year of such experience to a maximum of four years.

3. Section 68.6 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 68.6. Licensing examinations for land surveying

(a) An applicant for admission to the fundamentals of surveying [licensure] examination [in land surveying] shall: [have satisfied the professional study requirements set forth in section 68.4 of this Part, except that an applicant for certification as an intern land surveyor may be admitted to Part 1 of the examination when such applicant is within 20 semester hours of completion of the requirements for a bachelor's degree in land surveying or the equivalent approved by the department for professional licensure purposes.]

(1) be within 20 credits of graduation from a bachelor's degree program registered as leading to licensure in land surveying pursuant to section 52.49 of this Title, or accredited by an acceptable accrediting agency, or a bachelor's degree program that is substantially equivalent to such a registered or accredited program as determined by department as recommended by the State Board; or

(2) hold a bachelor's degree in engineering, math, or a related science or their substantial equivalent with 15 credits of surveying as set forth in section 52.49 of this Title and have completed one year of experience acceptable to the department as recommended by the State Board; or

(3) hold an associate's degree in surveying accredited by an acceptable accrediting agency, or an associate's degree program that is substantially equivalent to such accredited program as determined by the department and have completed two and a half years of experience acceptable to the department as recommended by the State Board; or

(4) hold an associate's degree in engineering, math, or related science or their substantial equivalent with 15 credits of surveying as set forth in section 52.49 of this Title and have completed three years of experience acceptable to the department as recommended by the State Board; and

(b) An applicant for admission to the principles and practice of surveying and the New York State jurisdictional surveying examinations shall:

(1) have completed the education and experience requirements set forth in section 68.4 of this Title.

[(b)](c) Content. The examination shall consist of:

(1) Part 1 - Fundamentals of [Land] Surveying: mathematics, physics, English, surveying, property surveys and descriptions, vertical curves, state plane coordinate calculations, economic analysis; and

(2) Part 2 - Principles and Practice of [Land] Surveying: principles of profession (legal, technical, standards of professional conduct), property surveys, written instruments, monumentations, real property, field survey procedures, property survey descriptions, subdivision planning and design, deed descriptions and conveyancing, surveying law, geodetic surveying, hydrographic surveying; and

(3) Part 3 - Jurisdictional Examination, Surveying in New York State: examination in the practical and legal aspects of land surveying pertinent to New York State, the scope and content of which shall be determined by the State Board.

~~[(c)]~~(d) After February 14, 1975, Fundamentals of Land Surveying, Part 1, replaces Fundamentals of Land Surveying, Mathematics; Principles and Practice of Land Surveying, Part 2, replaces Principles and Practice of Land Surveying, Surveying.

(1) Candidates who have established credit prior to February 14, 1975 for the mathematics part of the examination shall be examined in Part 2 and Part 3.

(2) Candidates who have established credit prior to February 14, 1975 for the surveying part of the examination shall be examined in Part 1 and Part 3.

(3) The grade retention provisions of section 59.5(f) of this Title shall not be applicable to land surveying examinations.

~~[(d)]~~(e) Passing grade. The passing grade for each of the parts of the surveying examination taken prior to October 1, 1984 is 75.0; for parts taken on or after October 1, 1984, the passing grade shall be 70.0. Except for the Jurisdictional Examination, scores for the licensing examinations shall be reported on a pass/fail basis.

~~[(e)]~~(f) Review and rescoring of examinations shall be conducted in accordance with section 59.5(g) of this Title.

Attachment B

8 NYCRR §§52.49, 68.4 and 68.6

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 322 of the Laws of 2019 (Chapter 322), which is effective April 3, 2021. This amendment amends section 7206-a of the Education Law to, inter alia, update the education and experience requirements for licensure as a land surveyor to conform with national standards. Historically, the majority of land surveyors were licensed through an all experience pathway, instead of through an education and experience combination pathway. However, over time, the national land surveying licensure examinations have been updated to test at a bachelor's degree level of knowledge. Only seven of the 51 United States jurisdictions, including New York State, currently report having an all experience pathway for the licensure of land surveyors.

Nationally, it has been found that individuals who take the all experience pathway to land surveyor licensure are more likely to fail the national licensing examinations multiples times versus individuals who take the combination of education and experience pathway to licensure.

While this was a common practice for many years in numerous states, including New York State, the all experience pathway to licensure is being repealed in a number of jurisdictions for some or all of the aforementioned reasons. Chapter 322 phases out the all experience pathway to land surveyor licensure, in eight years, in order to provide individuals who are currently gaining experience to be licensed under this pathway the opportunity to complete it.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the July 12-13, 2021 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting, would be July 28, 2021, the date the Notice of Adoption would be published in the State Register. However, Chapter 322 becomes effective April 3, 2021.

Therefore, emergency action is necessary at the March 2021 meeting for the preservation of the public health and the general welfare in order to enable the State Education Department to immediately establish requirements to timely implement Chapter 322, so that the land surveyor licensure requirements are updated to conform with national standards by the April 3, 2021 effective date of Chapter 322.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the July 12-13, 2021 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period prescribed in SAPA for State agency rule makings.