

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 258**

Introduced by Krist, 10.

Read first time January 11, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to land surveying; to amend sections 23-1901,  
2 23-1908, 23-1911, 25-223, 39-1311.02, 81-8,108, 81-8,109,  
3 81-8,110.01, 81-8,118, 81-8,119.01, 81-8,120,  
4 81-8,122.01, 81-8,123, 81-8,126, and 81-8,127, Reissue  
5 Revised Statutes of Nebraska, and section 81-8,110.07,  
6 Revised Statutes Cumulative Supplement, 2010; to provide  
7 that the entry of a surveyor onto any land is not  
8 criminal trespass; to provide duties for land surveyors  
9 and for damages as prescribed; to provide for limitations  
10 on actions; to harmonize provisions; and to repeal the  
11 original sections.

12 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) A land surveyor registered under sections  
2 81-8,108 to 81-8,127 may enter into or upon public or private lands  
3 or waters, except buildings, while in the lawful performance of his  
4 or her surveying duties:

5           (a) For establishing the location of section quarters,  
6 quarter corners, property corners, boundary lines, rights-of-way, and  
7 easements;

8           (b) To make surveys;

9           (c) To conduct examinations or investigations;

10          (d) To perform tests; or

11          (e) To acquire other necessary and relevant data in  
12 contemplation of:

13          (i) Establishing the location of a road, street, or  
14 highway;

15          (ii) Acquiring land, property, and road building  
16 materials; or

17          (iii) Performing other operations incident to  
18 construction, reconstruction, or maintenance of a road, street, or  
19 highway.

20          (2) Before entering into or upon property pursuant to  
21 subsection (1) of this section, a land surveyor shall make a good  
22 faith attempt to announce and identify himself or herself and his or  
23 her purpose for entering into or upon such property to the owner of  
24 such property.

25          (3) Authorized entry into or upon property pursuant to

1 subsection (1) of this section shall not be criminal trespass, and no  
2 damages shall be recovered due to such entry. If there are actual or  
3 demonstrable damages to such property that occurred outside the scope  
4 of subsection (1) of this section but due to the presence of the land  
5 surveyor, the land surveyor shall be liable to the owner of such  
6 property for the actual amount of damages. This subsection shall  
7 apply to the property of both the person for whom the land surveyor  
8 is performing his or her duties and the property of any other person  
9 upon whose land the land surveyor finds it necessary to enter into or  
10 upon to perform his or her duties.

11           Sec. 2. Section 23-1901, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           23-1901 (1) It shall be the duty of the county surveyor  
14 to make or cause to be made all surveys within his or her county that  
15 the county surveyor may be called upon to make and record the same.

16           (2) In all counties having a population of at least fifty  
17 thousand inhabitants but less than one hundred fifty thousand  
18 inhabitants, the county surveyor shall be ex officio county engineer  
19 and shall be either a professional engineer as provided in the  
20 Engineers and Architects Regulation Act or a registered land surveyor  
21 as provided in sections 81-8,108 to 81-8,127 and section 1 of this  
22 act or both. In such counties, the office of surveyor shall be full  
23 time.

24           In counties having a population of one hundred fifty  
25 thousand inhabitants or more, a county engineer shall be a

1 professional engineer as provided in the act and shall be elected as  
2 provided in section 32-526.

3 (3) The county engineer or ex officio county engineer  
4 shall:

5 (a) Prepare all plans, specifications, and detail  
6 drawings for the use of the county in advertising and letting all  
7 contracts for the building and repair of bridges, culverts, and all  
8 public improvements upon the roads;

9 (b) Make estimates of the cost of all such contemplated  
10 public improvements, make estimates of all material required for such  
11 public improvements, inspect the material and have the same measured  
12 and ascertained, and report to the county board whether the same is  
13 in accordance with its requirements;

14 (c) Superintend the construction of all such public  
15 improvements and inspect and require that the same shall be done  
16 according to contract;

17 (d) Make estimates of the cost of all labor and material  
18 which shall be necessary for the construction of all bridges and  
19 improvements upon public highways, inspect all of the work and  
20 materials placed in any such public improvements, and make a report  
21 in writing to the county board with a statement in regard to whether  
22 the same comply with the plans, specifications, and detail drawings  
23 of the county board prepared for such work or improvements and under  
24 which the contract was let; and

25 (e) Have charge and general supervision of work or

1 improvements authorized by the county board, inspect all materials,  
2 direct the work, and make a report of each piece of work to the  
3 county board.

4 The county engineer or surveyor shall also have such  
5 other and further powers as are necessarily incident to the general  
6 powers granted.

7 (4) The county surveyor shall prepare and file the  
8 required annual inventory statement of county personal property in  
9 his or her custody or possession as provided in sections 23-346 to  
10 23-350.

11 (5) In counties having a population of one hundred fifty  
12 thousand inhabitants or more, the county engineer shall appoint a  
13 full-time county surveyor. The county surveyor shall perform all the  
14 duties prescribed in sections 23-1901 to 23-1913 and any other duties  
15 assigned to him or her by the county engineer. The county surveyor  
16 shall be a registered land surveyor as provided in sections 81-8,108  
17 to 81-8,127 and section 1 of this act.

18 Sec. 3. Section 23-1908, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 23-1908 The boundaries of the public lands established by  
21 the duly appointed government surveyors, when approved by the  
22 Surveyor General and accepted by the government, are unchangeable,  
23 and the corners established thereon by them shall be held and  
24 considered as the true corners which they were intended to represent,  
25 and the restoration of lines and corners of ~~said~~ such surveys and the

1 division of sections into their legal subdivisions shall be in  
2 accordance with the laws of the United States, the circular of  
3 instructions of the United States Department of the Interior, Bureau  
4 of Land Management, on the restoration of lost and obliterated  
5 section corners and quarter corners, and the circular of instructions  
6 to the county surveyors by the State Surveyor under authority of the  
7 Board of Educational Lands and Funds. The county surveyor is hereby  
8 authorized to restore lost and obliterated corners of original  
9 surveys and to establish the subdivisional corners of sections in  
10 accordance with ~~the provisions of~~ this section and section 23-1907.  
11 Any registered land surveyor registered under ~~the provisions of~~  
12 sections 81-8,108 to 81-8,127 and section 1 of this act is hereby  
13 authorized to establish any corner not monumented in the original  
14 government surveys in accordance with ~~the provisions of~~ this section  
15 and section 23-1907. Subdivision shall be executed according to the  
16 plan indicated by the original field notes and plats of surveys and  
17 governed by the original and legally restored corners. The survey of  
18 the subdivisional lines of sections in violation of this section  
19 shall be absolutely void.

20           Sec. 4. Section 23-1911, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           23-1911 The county surveyor shall record all surveys, for  
23 permanent purposes, made by him or her, as required by sections  
24 81-8,121 to 81-8,122.02. Such record shall set forth the names of the  
25 persons making the application for the survey, for whom the work was

1 done, and a statement showing it to be an official county survey or  
2 resurvey. The official records, other plats, and field notes of the  
3 county surveyor's office shall be deemed and considered public  
4 records. Any agent or authority of the United States, the State  
5 Surveyor or any deputy state surveyor of Nebraska, or any surveyor  
6 registered pursuant to sections 81-8,108 to 81-8,127, and section 1  
7 of this act shall at all times, within reasonable office or business  
8 hours, have free access to the surveys, field notes, maps, charts,  
9 records, and other papers as provided for in sections 23-1901 to  
10 23-1913. In all counties, ~~where~~ if no regular office is maintained in  
11 the county courthouse for the county surveyor of that county, the  
12 county clerk shall be custodian of the official record of surveys and  
13 all other permanent records pertaining to the office of county  
14 surveyor.

15           Sec. 5. Section 25-223, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           25-223 Any action to recover damages based on any alleged  
18 breach of warranty on improvements to real property or based on any  
19 alleged deficiency in the design, planning, supervision, or  
20 observation of construction, ~~or~~ construction of an improvement to  
21 real property, or the surveying, examining, or testing of real  
22 property shall be commenced within four years after any alleged act  
23 or omission constituting such breach of warranty or deficiency. If  
24 such cause of action is not discovered and could not be reasonably  
25 discovered within such four-year period, or within one year preceding

1 the expiration of such four-year period, then the cause of action may  
2 be commenced within two years from the date of such discovery or from  
3 the date of discovery of facts which would reasonably lead to such  
4 discovery, whichever is earlier. ~~In no event may any~~ No action shall  
5 be commenced to recover damages for an alleged breach of warranty on  
6 improvements to real property or deficiency in the design, planning,  
7 supervision, or observation of construction, ~~or~~ construction of an  
8 improvement to real property, or the surveying, examining, or testing  
9 of real property more than ten years ~~beyond~~ after the time of the act  
10 giving rise to the cause of action.

11 Sec. 6. Section 39-1311.02, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 39-1311.02 (1) A review of a preliminary subdivision plat  
14 shall be required for all proposals to subdivide land or to make  
15 public or private improvements on all land within an approved  
16 corridor.

17 (2) A building permit shall be required for all  
18 structures within an approved corridor if the actual cost of the  
19 structure exceeds one thousand dollars. Structures include, but are  
20 not limited to, any construction or improvement to land such as  
21 public or private streets, sidewalks, and utilities; golf course tee  
22 boxes, fairways, or greens; drainage facilities; storm water  
23 detention areas; mitigation sites; green space; landscaped areas; or  
24 other similar uses. Any application for a building permit shall  
25 include a plat drawn by a person licensed as a professional engineer



1 or architect under the Engineers and Architects Regulation Act or  
2 registered as a land surveyor as provided in sections 81-8,108 to  
3 81-8,127 and section 1 of this act showing the location of all  
4 existing and proposed structures in the area subject to corridor  
5 protection.

6 Sec. 7. Section 81-8,108, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 81-8,108 In order to safeguard life, health, and  
9 property, any person practicing or offering to practice land  
10 surveying in this state shall submit evidence that he or she is  
11 qualified to practice and shall be registered as provided in sections  
12 81-8,108 to 81-8,127 and section 1 of this act. It shall be unlawful  
13 for any person to practice or to offer to practice land surveying in  
14 this state unless such person has been duly registered under such  
15 sections.

16 Sec. 8. Section 81-8,109, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 81-8,109 For purposes of sections 81-8,108 to 81-8,127  
19 and section 1 of this act, unless the context otherwise requires:

20 (1) Examining board shall mean the State Board of  
21 Examiners for Land Surveyors;

22 (2) Land surveyor shall mean a person who engages in the  
23 practice of land surveying;

24 (3) Surveyor-in-training shall mean a person (a) who is a  
25 graduate in an approved surveying or engineering curriculum of four

1 years or more or who has had four or more years of experience in  
2 surveying work of a character satisfactory to the examining board and  
3 (b) who has successfully passed the examination in the fundamental  
4 surveying subjects and has received from the examining board a  
5 certificate stating that that portion of the examination has been  
6 successfully passed. The fee for such certificate and for the renewal  
7 of such certificate shall be set by the examining board; and

8 (4) Land surveying shall mean the establishment or  
9 reestablishment of corners and boundaries and the location of lots,  
10 parcels, tracts, or divisions of land, which may include distance,  
11 direction, elevation, and acreage, and the correct determination and  
12 description of lots, parcels, tracts, or divisions of land for, but  
13 not limited to, any of the following purposes:

14 (a) To furnish a legal description of any tract of land  
15 to be used in the preparation of deeds of conveyance when the  
16 description is not the same as the one in the deed of conveyance to  
17 the current owner or when bearings, distances, or measurements are  
18 needed to properly describe the tract being conveyed;

19 (b) To furnish a legal description of any land surveyed  
20 to be used in the platting or subdividing of the land;

21 (c) To determine the amount of acreage contained in any  
22 land surveyed; or

23 (d) To furnish a topographic plat of a lot, parcel,  
24 tract, or division of land and locating natural and artificial  
25 features in the air, on the surface or subsurface of the earth, and

1 on the beds or surface of bodies of water for the purpose of  
2 establishing the facts of size, area, shape, topography, and  
3 orientation of improved or unimproved real property and appurtenances  
4 to the real property.

5           Sec. 9. Section 81-8,110.01, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           81-8,110.01 (1) The examining board shall consist of four  
8 members appointed by the Governor who are duly registered under  
9 sections 81-8,108 to 81-8,127 and section 1 of this act to practice  
10 land surveying and one lay member appointed by the Governor who is of  
11 the age of legal majority and has been a resident of Nebraska for at  
12 least one year immediately prior to appointment to the examining  
13 board. Such lay member shall be a representative of consumer  
14 viewpoints.

15           (2) The members of the examining board shall be appointed  
16 to five-year terms. Each member shall serve until the appointment and  
17 qualification of his or her successor. Each member appointed to the  
18 examining board shall receive a certificate of appointment from the  
19 Governor. Each member so appointed, prior to beginning his or her  
20 term, shall file with the Secretary of State the constitutional oath  
21 of office. The Governor may remove any member of the examining board  
22 for misconduct, incompetency, incapacity, or neglect of duty or upon  
23 conviction of a crime involving moral turpitude. Vacancies on the  
24 examining board, however created, shall be filled for the unexpired  
25 term of the member by appointment by the Governor.

1           Sec. 10. Section 81-8,110.07, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           81-8,110.07 The secretary of the examining board shall  
4 receive and account for all money derived from the operation of  
5 sections 81-8,108 to 81-8,127 and section 1 of this act and shall  
6 remit it to the State Treasurer for credit to the Land Surveyor  
7 Examiner's Fund, which ~~fund~~ is hereby created. This fund shall be  
8 continued from year to year. When appropriated by the Legislature,  
9 this fund shall be expended only for the purposes of sections  
10 81-8,108 to 81-8,127 and section 1 of this act. When not  
11 reappropriated for the succeeding biennium, the money in this fund  
12 shall not revert to the General Fund, except that transfers may be  
13 made from the fund to the General Fund at the direction of the  
14 Legislature. The fund shall be paid out only upon vouchers approved  
15 by the examining board and upon warrants issued by the Director of  
16 Administrative Services and countersigned by the State Treasurer. The  
17 expenditures of the examining board shall be kept within the income  
18 collected and remitted to the State Treasurer by the examining board.  
19 ~~Transfers may be made from the fund to the General Fund at the~~  
20 ~~direction of the Legislature.~~ Any money in the Land Surveyor  
21 Examiner's Fund available for investment shall be invested by the  
22 state investment officer pursuant to the Nebraska Capital Expansion  
23 Act and the Nebraska State Funds Investment Act.

24           Sec. 11. Section 81-8,118, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   81-8,118 To pay the expense of the operation and  
2 enforcement of sections 81-8,108 to 81-8,127 and section 1 of this  
3 act, the examining board shall establish application and registration  
4 fees. Total application and registration fees shall not exceed two  
5 hundred dollars and shall be in addition to the examination fee which  
6 shall be set to recover the costs of the examination and its  
7 administration. The board may direct applicants to pay the  
8 examination fee directly to a third party who has contracted to  
9 administer the examination. At the time the application for  
10 registration is submitted the board shall collect from the applicant  
11 a nonrefundable application fee. If the applicant successfully  
12 qualifies by examination, he or she shall be registered until April 1  
13 of the immediately following odd-numbered year upon payment of a  
14 registration fee as set forth in the rules or regulations. After the  
15 issuance of a certificate of registration, a biennial fee of not less  
16 than five nor more than one hundred fifty dollars, as the examining  
17 board shall direct, shall be due and payable on or before January 1  
18 of each odd-numbered year. Failure to remit biennial fees when due  
19 shall automatically cancel the registration effective the immediately  
20 following April 1, but otherwise the registration shall remain in  
21 full force and effect continuously from the date of issuance, unless  
22 suspended or revoked by the examining board for just cause. A  
23 registration which has been canceled for failure to pay the biennial  
24 fee when due may be reinstated within one year, but the biennial fee  
25 shall be increased ten percent for each month or fraction of a month

1 that payment is delayed. Nothing in this section shall prevent the  
2 examining board from suspending or revoking any registration for just  
3 cause.

4 Sec. 12. Section 81-8,119.01, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 81-8,119.01 (1) As a condition for renewal of a  
7 certificate of registration issued pursuant to sections 81-8,108 to  
8 81-8,127 and section 1 of this act, a certificate holder who has  
9 previously renewed his or her registration shall be required to  
10 successfully complete thirty hours of professional development within  
11 the preceding two calendar years. Any certificate holder who  
12 completes in excess of thirty hours of professional development  
13 within the preceding two calendar years may have the excess, not to  
14 exceed fifteen hours, applied to the requirement for the next  
15 biennium.

16 (2) The examining board shall not renew the certificate  
17 of registration of any certificate holder who has failed to complete  
18 the professional development requirements pursuant to subsection (1)  
19 of this section, unless he or she can show good cause why he or she  
20 was unable to comply with such requirements. If the examining board  
21 determines that good cause was shown, the examining board shall  
22 permit the registered surveyor to make up all outstanding required  
23 hours of professional development.

24 (3) A certificate holder may at any time prior to the  
25 termination of his or her registration request to be classified as

1 inactive. Such inactive registrations may be maintained by payment of  
2 a biennial fee of not less than five nor more than fifty dollars as  
3 determined by the examining board. Holders of inactive certificates  
4 of registration shall not be required to complete professional  
5 development as required in subsection (1) of this section. Holders of  
6 inactive certificates shall not practice land surveying. If the  
7 examining board determines that an inactive registrant has actively  
8 practiced land surveying, the examining board may immediately revoke  
9 his or her certificate of registration.

10 (4) A holder of an inactive certificate of registration  
11 may return his or her certificate to an active registration to  
12 practice land surveying by the applicant electing to either:

13 (a) Complete one and one-half the biennial requirement  
14 for professional development. Such requirement shall be satisfied as  
15 set forth in the rules or bylaws; or

16 (b) Take such examination as the examining board deems  
17 necessary to determine his or her qualifications. Such examination  
18 shall cover areas designed to demonstrate the applicant's proficiency  
19 in current methods of land surveying practice.

20 Additionally he or she shall pay the biennial fee as  
21 required in section 81-8,118.

22 Sec. 13. Section 81-8,120, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 81-8,120 A nonresident of this state who is registered as  
25 a land surveyor in another state may be registered under sections

1 81-8,108 to 81-8,127 and section 1 of this act by filing an  
2 application with the secretary of the examining board and making  
3 payment to the examining board of a fee in the sum of not less than  
4 twenty-five dollars and not more than one hundred fifty dollars as  
5 set forth in the rules or bylaws. He or she shall be required to take  
6 such examinations as the examining board deems necessary to determine  
7 his or her qualifications, but in any event he or she shall be  
8 required to pass a written examination of not less than four hours'  
9 duration which shall include questions on laws, procedures, and  
10 practices pertaining to the practice of land surveying in this state.  
11 Before a nonresident of this state is registered under sections  
12 81-8,108 to 81-8,127 and section 1 of this act, he or she shall first  
13 file a written consent that actions and suits at law may be commenced  
14 against him or her in any county of this state in which any cause of  
15 action may arise because of any survey commenced or conducted by such  
16 nonresident surveyor or his or her agent or employees in such county.

17 Sec. 14. Section 81-8,122.01, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 81-8,122.01 Whenever a survey has been executed by a land  
20 surveyor, registered under ~~the provisions of~~ sections 81-8,108 to  
21 81-8,127 and section 1 of this act, a record of such survey bearing  
22 the signature and seal of the land surveyor shall be filed in the  
23 survey record repository established pursuant to section 84-412 if  
24 such survey meets applicable regulations. Surveys which are within  
25 the corporate limits of a city with a population in excess of fifteen



1 thousand inhabitants and do not reference, recover, retrace, or  
2 reestablish the original government corners or lines or do not create  
3 a new subdivision are not required to be filed in the survey record  
4 repository but shall be filed in the county surveyor's office in the  
5 county where the land is located if they meet applicable regulations.  
6 If no regular office is maintained in the county courthouse for the  
7 county surveyor, it shall be filed in the survey record repository.  
8 The record of survey shall be filed within ninety days after the  
9 completion of the survey, or within any extension of time granted by  
10 the office in which it is required to be filed for reasonable cause,  
11 and shall consist of the following minimum data: (1) Plat of the  
12 tract surveyed; (2) legal description of the tract surveyed; (3)  
13 description of all corners found; (4) description of all corners set;  
14 (5) ties to any section corners, quarter corners, or quarter-quarter  
15 corners found or set; (6) plat or record distances as well as field  
16 measurements; and (7) date of completion of survey. The record of  
17 survey so filed shall become an official record of survey, and shall  
18 be presumptive evidence of the facts stated therein, unless the land  
19 surveyor filing the survey shall be interested in the ~~same.~~ such  
20 survey. Plats or maps which are prepared only for the purpose of  
21 showing the location of improvements on existing lots, which are not  
22 represented as surveys or land surveys and no corners are established  
23 or reestablished, shall be specifically exempt from all requirements  
24 of this section.

25 Sec. 15. Section 81-8,123, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           81-8,123 The examining board may, upon its own motion,  
3 and shall, upon the sworn complaint in writing of any person,  
4 investigate the actions of any land surveyor. It shall have the power  
5 to place any land surveyor on probation or to revoke or suspend any  
6 registration under ~~the provisions of sections 81-8,108 to 81-8,127~~  
7 and section 1 of this act when the land surveyor has been found  
8 guilty of any of the following practices: (1) Fraud or deceit in  
9 obtaining a registration; (2) negligence or incompetency in the  
10 performance of his or her duties; or (3) misconduct in the  
11 performance of his or her duties.

12           Sec. 16. Section 81-8,126, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           81-8,126 Sections 81-8,108 to 81-8,127 and section 1 of  
15 this act shall not apply to (1) any land surveyor working for the  
16 United States Government while performing his or her duties as an  
17 employee of the government, (2) any person employed as an assistant  
18 to a land surveyor registered under such sections, or (3) any  
19 professional engineer or person working under the direct supervision  
20 of a professional engineer licensed under the Engineers and  
21 Architects Regulation Act doing work which does not involve the  
22 location, description, establishment, or reestablishment of property  
23 corners or property lines or work which does not create descriptions,  
24 definitions, or areas for transfer of an estate in real property.

25           Sec. 17. Section 81-8,127, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           81-8,127 Any person, firm, partnership, limited liability  
3 company, corporation, or joint-stock association who or which  
4 practices or offers to practice land surveying or uses the title of  
5 land surveyor in this state without being registered or any person  
6 not registered under sections 81-8,108 to 81-8,127 and section 1 of  
7 this act who fails to file a copy of the plat and field notes as  
8 provided in section 81-8,122 shall be deemed guilty of a Class III  
9 misdemeanor.

10           Sec. 18. Original sections 23-1901, 23-1908, 23-1911,  
11 25-223, 39-1311.02, 81-8,108, 81-8,109, 81-8,110.01, 81-8,118,  
12 81-8,119.01, 81-8,120, 81-8,122.01, 81-8,123, 81-8,126, and 81-8,127,  
13 Reissue Revised Statutes of Nebraska, and section 81-8,110.07,  
14 Revised Statutes Cumulative Supplement, 2010, are repealed.