

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 520

Introduced by Christensen, 44.

Read first time January 23, 2013

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, 2012; to allow
 7 land surveyors to enter upon public or private lands or
 8 waters as prescribed; to provide for limitations on
 9 actions; to harmonize provisions; and to repeal the
 10 original sections.

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

1 Section 1. (1) Except as provided in subsection (5) of
2 this section, a land surveyor registered under sections 81-8,108 to
3 81-8,127 may enter into or upon public or private lands or waters,
4 except buildings, while in the lawful performance of his or her
5 surveying duties:

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

9 (b) To make surveys;

10 (c) To conduct examinations or investigations; or

11 (d) 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 notify and identify himself or herself and his or
23 her intention to the owner of such property in person or by regular
24 mail prior to performing his or her surveying duties. A notification
25 under this subsection shall include:

1 (a) The identity of the party for whom the survey is
2 being performed and the purpose of the survey;

3 (b) The employer of the land surveyor;

4 (c) The dates and approximate times when the land will be
5 entered;

6 (d) The identity of the land surveyor;

7 (e) The location for entry; and

8 (f) The estimated timetable for completion of the survey
9 and the estimated number of entries that will be required.

10 This subsection shall not apply to a survey along
11 previously surveyed boundaries within a platted subdivision.

12 (3) Authorized entry into or upon property pursuant to
13 subsection (1) of this section shall not be criminal trespass, and no
14 damages shall be recovered due to such entry. If there are actual or
15 demonstrable damages to such property that occurred outside the scope
16 of subsection (1) of this section but due to the presence of the land
17 surveyor, the land surveyor shall be liable to the owner of such
18 property for the actual amount of damages. This subsection shall
19 apply to the property of both the person for whom the land surveyor
20 is performing his or her duties and the property of any other person
21 upon whose land the land surveyor finds it necessary to enter into or
22 upon to perform his or her duties.

23 (4) A land surveyor who enters into or upon land pursuant
24 to this section shall carry on his or her person identification that
25 identifies the land surveyor and his or her employer or principal

1 when entering into or upon such land and while performing his or her
2 surveying duties on such land. The land surveyor shall present such
3 identification upon request.

4 (5) Due to safety issues related to railroad operating
5 property as defined in section 77-602, a land surveyor may enter into
6 or upon railroad operating property pursuant to subsection (1) of
7 this section only upon attainment of a permit from the appropriate
8 railroad company approving such entry.

9 (6) If a land surveyor attempts to enter into or upon
10 property pursuant to this section and the owner of such property
11 prohibits the entry or threatens violence against the land surveyor,
12 the land surveyor may petition the county court where the property is
13 located for an order of the court allowing entry onto the property.
14 The court shall enter such an order within ten business days after
15 receiving the land surveyor's petition.

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

18 23-1901 (1) It shall be the duty of the county surveyor
19 to make or cause to be made all surveys within his or her county that
20 the county surveyor may be called upon to make and record the same.

21 (2) In all counties having a population of at least fifty
22 thousand inhabitants but less than one hundred fifty thousand
23 inhabitants, the county surveyor shall be ex officio county engineer
24 and shall be either a professional engineer as provided in the
25 Engineers and Architects Regulation Act or a registered land surveyor

1 as provided in sections 81-8,108 to 81-8,127 and section 1 of this
2 act or both. In such counties, the office of surveyor shall be full
3 time.

4 In counties having a population of one hundred fifty
5 thousand inhabitants or more, a county engineer shall be a
6 professional engineer as provided in the act and shall be elected as
7 provided in section 32-526.

8 (3) The county engineer or ex officio county engineer
9 shall:

10 (a) Prepare all plans, specifications, and detail
11 drawings for the use of the county in advertising and letting all
12 contracts for the building and repair of bridges, culverts, and all
13 public improvements upon the roads;

14 (b) Make estimates of the cost of all such contemplated
15 public improvements, make estimates of all material required for such
16 public improvements, inspect the material and have the same measured
17 and ascertained, and report to the county board whether the same is
18 in accordance with its requirements;

19 (c) Superintend the construction of all such public
20 improvements and inspect and require that the same shall be done
21 according to contract;

22 (d) Make estimates of the cost of all labor and material
23 which shall be necessary for the construction of all bridges and
24 improvements upon public highways, inspect all of the work and
25 materials placed in any such public improvements, and make a report

1 in writing to the county board with a statement in regard to whether
2 the same comply with the plans, specifications, and detail drawings
3 of the county board prepared for such work or improvements and under
4 which the contract was let; and

5 (e) Have charge and general supervision of work or
6 improvements authorized by the county board, inspect all materials,
7 direct the work, and make a report of each piece of work to the
8 county board.

9 The county engineer or surveyor shall also have such
10 other and further powers as are necessarily incident to the general
11 powers granted.

12 (4) The county surveyor shall prepare and file the
13 required annual inventory statement of county personal property in
14 his or her custody or possession as provided in sections 23-346 to
15 23-350.

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

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

25 23-1908 The boundaries of the public lands established by

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

25 Sec. 4. Section 23-1911, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 23-1911 The county surveyor shall record all surveys, for
3 permanent purposes, made by him or her, as required by sections
4 81-8,121 to 81-8,122.02. Such record shall set forth the names of the
5 persons making the application for the survey, for whom the work was
6 done, and a statement showing it to be an official county survey or
7 resurvey. The official records, other plats, and field notes of the
8 county surveyor's office shall be deemed and considered public
9 records. Any agent or authority of the United States, the State
10 Surveyor or any deputy state surveyor of Nebraska, or any surveyor
11 registered pursuant to sections 81-8,108 to 81-8,127 and section 1 of
12 this act, shall at all times, within reasonable office or business
13 hours, have free access to the surveys, field notes, maps, charts,
14 records, and other papers as provided for in sections 23-1901 to
15 23-1913. In all counties, where no regular office is maintained in
16 the county courthouse for the county surveyor of that county, the
17 county clerk shall be custodian of the official record of surveys and
18 all other permanent records pertaining to the office of county
19 surveyor.

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

22 25-223 Any action to recover damages based on any alleged
23 breach of warranty on improvements to real property or based on any
24 alleged deficiency in the design, planning, supervision, or
25 observation of construction, ~~or the~~ the construction of an improvement to

1 real property, or the surveying or examining of real property shall
2 be commenced within four years after any alleged act or omission
3 constituting such breach of warranty or deficiency. If such cause of
4 action is not discovered and could not be reasonably discovered
5 within such four-year period, or within one year preceding the
6 expiration of such four-year period, then the cause of action may be
7 commenced within two years from the date of such discovery or from
8 the date of discovery of facts which would reasonably lead to such
9 discovery, whichever is earlier. In no event may any action be
10 commenced to recover damages for an alleged breach of warranty on
11 improvements to real property or deficiency in the design, planning,
12 supervision, or observation of construction, or the construction of
13 an improvement to real property more than ten years beyond the time
14 of the act giving rise to the cause of action.

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

17 39-1311.02 (1) A review of a preliminary subdivision plat
18 shall be required for all proposals to subdivide land or to make
19 public or private improvements on all land within an approved
20 corridor.

21 (2) A building permit shall be required for all
22 structures within an approved corridor if the actual cost of the
23 structure exceeds one thousand dollars. Structures include, but are
24 not limited to, any construction or improvement to land such as
25 public or private streets, sidewalks, and utilities; golf course tee

1 boxes, fairways, or greens; drainage facilities; storm water
2 detention areas; mitigation sites; green space; landscaped areas; or
3 other similar uses. Any application for a building permit shall
4 include a plat drawn by a person licensed as a professional engineer
5 or architect under the Engineers and Architects Regulation Act or
6 registered as a land surveyor as provided in sections 81-8,108 to
7 81-8,127 and section 1 of this act showing the location of all
8 existing and proposed structures in the area subject to corridor
9 protection.

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

12 81-8,108 In order to safeguard life, health, and
13 property, any person practicing or offering to practice land
14 surveying in this state shall submit evidence that he or she is
15 qualified to practice and shall be registered as provided in sections
16 81-8,108 to 81-8,127 and section 1 of this act. It shall be unlawful
17 for any person to practice or to offer to practice land surveying in
18 this state unless such person has been duly registered under such
19 sections.

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

22 81-8,109 For purposes of sections 81-8,108 to 81-8,127
23 and section 1 of this act, unless the context otherwise requires:

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

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

3 (3) Surveyor-in-training shall mean a person (a) who is a
4 graduate in an approved surveying or engineering curriculum of four
5 years or more or who has had four or more years of experience in
6 surveying work of a character satisfactory to the examining board and
7 (b) who has successfully passed the examination in the fundamental
8 surveying subjects and has received from the examining board a
9 certificate stating that that portion of the examination has been
10 successfully passed. The fee for such certificate and for the renewal
11 of such certificate shall be set by the examining board; and

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

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

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

25 (c) To determine the amount of acreage contained in any

1 land surveyed; or

2 (d) To furnish a topographic plat of a lot, parcel,
3 tract, or division of land and locating natural and artificial
4 features in the air, on the surface or subsurface of the earth, and
5 on the beds or surface of bodies of water for the purpose of
6 establishing the facts of size, area, shape, topography, and
7 orientation of improved or unimproved real property and appurtenances
8 to the real property.

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

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

19 (2) The members of the examining board shall be appointed
20 to five-year terms. Each member shall serve until the appointment and
21 qualification of his or her successor. Each member appointed to the
22 examining board shall receive a certificate of appointment from the
23 Governor. Each member so appointed, prior to beginning his or her
24 term, shall file with the Secretary of State the constitutional oath
25 of office. The Governor may remove any member of the examining board

1 for misconduct, incompetency, incapacity, or neglect of duty or upon
2 conviction of a crime involving moral turpitude. Vacancies on the
3 examining board, however created, shall be filled for the unexpired
4 term of the member by appointment by the Governor.

5 Sec. 10. Section 81-8,110.07, Revised Statutes Cumulative
6 Supplement, 2012, is amended to read:

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

1 invested by the state investment officer pursuant to the Nebraska
2 Capital Expansion Act and the Nebraska State Funds Investment Act.

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

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

1 suspended or revoked by the examining board for just cause. A
2 registration which has been canceled for failure to pay the biennial
3 fee when due may be reinstated within one year, but the biennial fee
4 shall be increased ten percent for each month or fraction of a month
5 that payment is delayed. Nothing in this section shall prevent the
6 examining board from suspending or revoking any registration for just
7 cause.

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

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

20 (2) The examining board shall not renew the certificate
21 of registration of any certificate holder who has failed to complete
22 the professional development requirements pursuant to subsection (1)
23 of this section, unless he or she can show good cause why he or she
24 was unable to comply with such requirements. If the examining board
25 determines that good cause was shown, the examining board shall

1 permit the registered surveyor to make up all outstanding required
2 hours of professional development.

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

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

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

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

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

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

3 81-8,120 A nonresident of this state who is registered as
4 a land surveyor in another state may be registered under sections
5 81-8,108 to 81-8,127 and section 1 of this act by filing an
6 application with the secretary of the examining board and making
7 payment to the examining board of a fee in the sum of not less than
8 twenty-five dollars and not more than one hundred fifty dollars as
9 set forth in the rules or bylaws. He or she shall be required to take
10 such examinations as the examining board deems necessary to determine
11 his or her qualifications, but in any event he or she shall be
12 required to pass a written examination of not less than four hours'
13 duration which shall include questions on laws, procedures, and
14 practices pertaining to the practice of land surveying in this state.
15 Before a nonresident of this state is registered under sections
16 81-8,108 to 81-8,127 and section 1 of this act, he or she shall first
17 file a written consent that actions and suits at law may be commenced
18 against him or her in any county of this state in which any cause of
19 action may arise because of any survey commenced or conducted by such
20 nonresident surveyor or his or her agent or employees in such county.

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

23 81-8,122.01 Whenever a survey has been executed by a land
24 surveyor, registered under the provisions of sections 81-8,108 to
25 81-8,127 and section 1 of this act, a record of such survey bearing

1 the signature and seal of the land surveyor shall be filed in the
2 survey record repository established pursuant to section 84-412 if
3 such survey meets applicable regulations. Surveys which are within
4 the corporate limits of a city with a population in excess of fifteen
5 thousand and do not reference, recover, retrace, or reestablish the
6 original government corners or lines or do not create a new
7 subdivision are not required to be filed in the survey record
8 repository but shall be filed in the county surveyor's office in the
9 county where the land is located if they meet applicable regulations.
10 If no regular office is maintained in the county courthouse for the
11 county surveyor, it shall be filed in the survey record repository.
12 The record of survey shall be filed within ninety days after the
13 completion of the survey, or within any extension of time granted by
14 the office in which it is required to be filed for reasonable cause,
15 and shall consist of the following minimum data: (1) Plat of the
16 tract surveyed; (2) legal description of the tract surveyed; (3)
17 description of all corners found; (4) description of all corners set;
18 (5) ties to any section corners, quarter corners, or quarter-quarter
19 corners found or set; (6) plat or record distances as well as field
20 measurements; and (7) date of completion of survey. The record of
21 survey so filed shall become an official record of survey, and shall
22 be presumptive evidence of the facts stated therein, unless the land
23 surveyor filing the survey shall be interested in the same. Plats or
24 maps which are prepared only for the purpose of showing the location
25 of improvements on existing lots, which are not represented as

1 surveys or land surveys and no corners are established or
2 reestablished, shall be specifically exempt from all requirements of
3 this section.

4 Sec. 15. Section 81-8,123, Reissue Revised Statutes of
5 Nebraska, is amended to read:

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

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

18 81-8,126 Sections 81-8,108 to 81-8,127 and section 1 of
19 this act shall not apply to (1) any land surveyor working for the
20 United States Government while performing his or her duties as an
21 employee of the government, (2) any person employed as an assistant
22 to a land surveyor registered under such sections, or (3) any
23 professional engineer or person working under the direct supervision
24 of a professional engineer licensed under the Engineers and
25 Architects Regulation Act doing work which does not involve the

1 location, description, establishment, or reestablishment of property
2 corners or property lines or work which does not create descriptions,
3 definitions, or areas for transfer of an estate in real property.

4 Sec. 17. Section 81-8,127, Reissue Revised Statutes of
5 Nebraska, is amended to read:

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

14 Sec. 18. Original sections 23-1901, 23-1908, 23-1911,
15 25-223, 39-1311.02, 81-8,108, 81-8,109, 81-8,110.01, 81-8,118,
16 81-8,119.01, 81-8,120, 81-8,122.01, 81-8,123, 81-8,126, and 81-8,127,
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