

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2243
(Senators Nodland, Laffen)
(Representatives Frantsvog, Gruchalla, Kreun)

AN ACT to create and enact a new subsection to section 43-19.1-29 of the North Dakota Century Code, relating to exemptions to regulation by the state board of registration for professional engineers and land surveyors; and to amend and reenact section 43-19.1-02 and subsection 1 of section 43-19.1-27 of the North Dakota Century Code, relating to regulation of professional engineers and land surveyors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-02. Definitions.

In this chapter unless the context otherwise requires:

1. "Board" means the state board of registration for professional engineers and land surveyors.
2. "Engineer" means a professional engineer.
3. "Engineer intern" means an individual who complies with the requirements for education, experience, and character and who has passed an examination in the fundamental engineering subjects, as provided in sections 43-19.1-12 and 43-19.1-15.
4. ~~"Land surveying" means any service comprising the determination of the location of land boundaries and land boundary corners; incidental topography; the preparation of maps showing the shape and area of tracts of land and their subdivision into smaller tracts; the preparation of maps showing the layouts of roads, streets, and rights of way of same to give access to smaller tracts; and the preparation of official plats or maps of land within this state.~~"Engineering surveys" means all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, which include locating or laying out alignments, positions, or elevations for the construction of fixed works. The term does not include the surveying of real property for the establishment of land boundaries, rights of way, easements, and the dependent or independent surveys or resurveys of the public land survey system.
5. "Land surveyor" means an individual engaged in the practice of land surveying.
6. "Land surveyor intern" means an individual who complies with the requirements for education, experience, and character and who has passed an examination in the fundamentals of mathematics and the basic principles of land surveying as required in this chapter and as established by the board.
7. "Practice of engineering and practice of professional engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work, either public or private, in

connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects as are incidental to the practice of engineering. A person must be construed to practice or offer to practice engineering if the person practices any branch of the profession of engineering; if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is an engineer and is able to practice engineering in this state if the person through the use of some other title implies that the person is an engineer or that the person is registered under this chapter; or if the person holds out as able to perform, or does perform any engineering service or work or any other service that is recognized as engineering, for a valuable consideration for others, including the public at large. ~~The practice of engineering does not mean or include the practice of engineering by a person exempt under the provisions of section 43-19.1-29, nor the work ordinarily performed by a person that operates or maintains machinery or equipment. Notwithstanding the foregoing provisions, a person may not be construed to practice engineering unless that person offers engineering services to, or performs such engineering for, the public.~~

8. "Practice of land surveying":

a. Means making land boundary determinations by providing or offering to provide professional services using such sciences as mathematics, geodesy, and photogrammetry and involving the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth; improvements on the earth; and improvements on the space above, on, or below the earth and providing, utilizing, or developing the same into land survey products such as graphics, data, maps, plans, reports, descriptions, or projects. As used in this subsection, professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any one or more of the following:

- (1) Determining by measurement the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface;
- (2) Determining by performing geodetic land surveys the size and shape of the earth or the position of any point on the earth;
- (3) Locating, relocating, establishing, reestablishing, or retracing property lines or boundaries of any tract of land, road, right of way, or easement;
- (4) Making any land survey for the division, subdivision, or consolidation of any tract of land;
- (5) Locating or laying out alignments, positions, or elevations for the construction of fixed works;
- (6) Determining by the use of principles of land surveying the position for any survey monument, boundary or nonboundary, or reference point and establishing or replacing any such monument or reference point; and
- (7) Creating, preparing, or modifying electronic or computerized or other data for the purpose of making land boundary determinations relative to the performance of the activities in paragraphs 1 through 6.

b. Includes:

- (1) Engaging in land surveying;
- (2) By verbal claim, sign, advertisement, letterhead, card, or any other way representing to a person to be a professional land surveyor;

- (3) Through the use of some other title implying to be a professional land surveyor or that the person is licensed or authorized under this chapter; and
- (4) Holding out as able to perform or performing any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

- 9. "Professional engineer" means an individual who by reason of special knowledge or use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been registered and licensed by the state board of registration for professional engineers and land surveyors.
- 9-10. "Professional land surveyor" means a land surveyor who complies with the requirements for education, experience, and character and who has been registered and licensed by the board.
- 40-11. "Responsible charge" means direct control and personal supervision of engineering or surveying work.
- 44-12. "Retired registrant" means a duly registered professional engineer or land surveyor who is not engaged in active professional practice and is not required to meet the continuing professional education requirements as prescribed by the board. A retired registrant is issued a certificate of registration indicating "retired" status.
- 12. ~~"The practice or offer to practice surveying" includes the engagement of any person in land surveying or the representation by any person by verbal claim, sign, letterhead, card, or in any other manner, that such person is a land surveyor and is able to perform land surveying in this state.~~

SECTION 2. AMENDMENT. Subsection 1 of section 43-19.1-27 of the North Dakota Century Code is amended and reenacted as follows:

- 1. A person may not practice or offer to practice professional engineering or land surveying unless the person is an individual registered to practice under or exempt from the provisions of this chapter. The practice of engineering by a professional engineer which includes service or creative work that is included in both the definition of the practice of engineering and the definition of land surveying does not require registration as a professional land surveyor. The practice of land surveying by a professional land surveyor which includes a service or creative work that is included in both the definition of the practice of engineering and the definition of land surveying does not require registration as a professional engineer.

SECTION 3. A new subsection to section 43-19.1-29 of the North Dakota Century Code is created and enacted as follows:

The performance of work ordinarily performed by a person that operates or maintains machinery or equipment.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2243.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 88 Nays 0 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State