

January 21, 2019

The Honorable Tracy Kraft-Tharp
Chair of the Business Affairs and Labor Committee
Colorado House

RE: Public hearing written testimony regarding HB19-1040

Dear Representative Kraft-Tharp:

My name is Eugene Kooper, a Colorado licensed Professional Land Surveyor (PLS) for the past 34 years. I reside in Lakewood, Colorado. I hold a Bachelor of Science in Geological Engineering and a Professional Degree in Hydrogeology, both from the Colorado School of Mines. I am a Certified Federal Surveyor a federal certification administered by the U.S. Bureau of Land Management. Since 2004, I have presented eighteen land surveying workshops and seminars at state and regional land surveyors' conferences. I am a past affiliate faculty member of Metropolitan State University where I was responsible for the distance learning courses: "Route Surveying", "Geodesy I" and "Map Projections and Coordinate Systems."

My written testimony concerns the following three topics:

1. Do recent technological advances in survey measurements necessitate mandating continuing education;
2. Report recommendations submitted to the Legislature on January 17, 2018 by the Department of Regulatory Agencies (DORA); and,
3. The Sunset Review in 2024 is more appropriate to evaluate the possible need for mandating continuing education.

One of the reasons postulated by the representatives of the Professional Land Surveyors of Colorado (PLSC) that mandatory continuing education (MCE) is needed now to address the rapidly changing technology in land surveying. This is a red herring argument in my opinion. The fundamental principles of boundary law and land boundaries and their establishment or reestablishment have not changed because of today's technology.

Today's technology such as Global Positioning System (GPS), laser scanners, and aerial drones have increased productivity, profitability, and they produce more accurate measurements. To illustrate that measurements are secondary, A.C. Mulford in his book, *Boundaries and Landmarks*, 1913 states, "It is far more important to have faulty measurements on the place where the line truly exists, than an accurate measurement where the line does not exist at all." That statement is as valid today as it was in 1913.

Modern surveying equipment allows me to conduct my field work solo with accuracies that I could only dream of when I began this profession in 1973. Knowing which lines to measure is still far more important than the high measurement accuracy readily obtained by modern survey equipment.

During the committee hearing held last year on January 18, 2018, Rep. Alec Garnett asked Brian Tobias, Director of the Colorado Office of Policy, Research & Regulatory Reform (COPRRR) to speculate on why other states have passed continuing education requirements. Mr. Tobias responded, "If I were to speculate, they didn't have a process like ours." By that, Mr. Tobias was referring to C.R.S. Section 24-34-901, Mandatory Review of Proposed Continuing Education Requirements for Regulated Occupations and Professions originally enacted in 1981 and repealed and reenacted in 1997.

The legislation requires DORA to conduct an impartial review of the efficacy of the MCE proposed by an applicant. DORA is required to evaluate whether the MCE proposal is protective of the public. The legislation does not bind the Legislature to DORA's findings, but rather it is an impartial recommendation the Legislature may wish to adopt.

The DORA report was submitted to the General Assembly on January 17, 2018 and concluded that mandating continuing education for the land surveying profession would not be protective of the public. The last paragraph of the report succinctly states that, "increasing the regulatory burden on licensees as proposed under the subject application is unjustified. The General Assembly should not impose a mandatory continuing education requirement on professional land surveyors."

In the year since DORA issued its report the PLSC has not provided any additional information, study, or objective evaluation that supports enacting HB19-1040. Neither the PLSC nor DORA conducted a survey of licensed professional land surveyors in Colorado as to whether they support MCE.

During my research and prior work on a licensing board rulemaking committee tasked with promulgating continuing professional competency rules for architects (2008-2009) I discovered that the Colorado Chapter of the American Institute of Architects required their voting members to pledge that they would complete a minimum of 12 continuing education hours each year as a condition of their membership. Why the PLSC has not adopted a similar pledge from their licensed members, which would be in harmony with their strong support of a state regulatory mandate for surveyors is puzzling.

During testimony before the House Business Affairs and Labor Committee on January 18, 2018, representatives of the PLSC testified about their experiences with “rogue” surveyors who apparently do not participate in continuing education. The witnesses opined without providing proof that if those “bad” land surveyors had a mandate to take continuing education their errors and mistakes would have been eliminated or mitigated. The essence of the arguments appeared to be that MCE might help but will not hurt the competent licensed Professional Land Surveyors in Colorado (the DORA report lists a total of 1758 active licensees).

The Professional Land Surveyors Practice Act (Section **12-25-208-(1)** under Disciplinary actions – grounds for discipline) and the State Board of Licensure for Architects, Professional Engineers and Professional Land Surveyors (AES Board), Rule 3.2.1. impose an ethical duty upon each licensed land surveyor to practice only within the area(s) of their expertise. The statute subsection and Board Rule authorize disciplinary action for:

- **12-25-208-(1)-(g)** Performing services beyond one's competency, training, or education; and,
- **Rule 3.2.1 - Practice Only within Expertise.** Licensees shall undertake assignments only when qualified by education or experience in the specific technical fields of architecture, engineering or land surveying.

The same section of the PLS Practice Act also authorizes the AES Board to levy sanctions on any licensed Professional Land Surveyor for:

- **12-25-208-(1)-(h)** Failing to report to the board any professional land surveyor known to have violated any provision of this part 2 or any board order or rule; and,
- **12-25-208-(1)-(k)** Failing to report to the board any malpractice claim against such professional land surveyor or any partnership, LLC, corporation, or joint stock association of which such professional land surveyor is a member, which claim is settled or in which judgment is rendered, within sixty days after the effective date of such settlement or judgment, if such claim concerned surveying services performed or supervised by such land surveyor.

Applying a band-aid fix to the PLS Practice Act by mandating continuing education is unnecessary because of the ethical duties already imposed on licensees. In addition, the AES Board is authorized to impose sanctions on a surveyor found to be professionally liable in a malpractice lawsuit, so civil court rulings against a surveyor are subject to Board review and sanctions.

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The first key recommendation of the October 15, 2012 Sunset Review for architects, engineers and surveyors states, "Continue the Board and regulation for 11 years, until 2024. Board records indicate that there are very few practice-related complaints against architects, engineers, or surveyors indicating that the practitioners are extremely competent." Sunset review was extended from 9 to 11 years because the professions were deemed stable.

The PLSC sponsored legislation in 2010 that removed the experience plus examination path for licensure and required a minimum amount of land surveying education for all applicants seeking licensure after July 1, 2020. The legislation targeted the same concerns proposed by the PLSC for requiring MCE in this bill. The more prudent course would be to evaluate the effectiveness of the new education requirements for licensure with the necessity of an MCE requirement, and/or supplementing the ethical duties of a licensed surveyor during the next sunset review in 2024.

In conclusion, HB19-1040 imposes an unnecessary regulatory burden on all licensees based solely on the postulated incompetent practice of a handful of licensees. Requiring a regulatory mandate that has no demonstrated or tangible benefit for the great majority of licensees is unwarranted. Nor has any evidence been proffered that MCE would be protective of the public.

Respectfully submitted,
/s/ C. Eugene Kooper, PLS, CFedS