

February 25, 2018

The Honorable Vicki Marble
Chair of the State, Veterans, & Military Affairs Committee
Colorado Senate

RE: Public hearing regarding HB18-1038

Dear Senator Marble:

My name is C. Eugene Kooper, a professional land surveyor licensed for the past 33 years in Colorado. I reside in Lakewood, Colorado. My appearance today is as a private land surveyor representing myself.

I would like to preface my remarks by assuring the chair and committee members of my long-term commitment to education and its importance to any professional entrusted with protecting the public health, safety and welfare. I hold a Bachelor of Science in Geological Engineering and a Professional Degree in Hydrogeology, both from the Colorado School of Mines. I am certified by the U.S. Bureau of Land Management as a Certified Federal Surveyor. In the past fourteen years, I have presented seventeen workshops and seminars on mineral survey retracements and map projections at state and national 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."

While it is incumbent upon each professional to understand the lifetime commitment to education that does not mean the commitment must be enforced by a State regulatory mandate. In my opinion the commitment is best left to each professional's discretion and professional judgment, therefore, I am here today to voice my opposition to HB18-1038.

In 1997, the Colorado General Assembly re-enacted and amended Section 24-34-901, C.R.S., Mandatory Review of Proposed Continuing Education Requirements for Regulated Occupations and Professions. Any group or association, "proposing such mandatory continuing education requirement shall first submit information concerning the need for such a requirement to the office of the Executive Director" of DORA. The statute requires an impartial review by the Dept. of Regulatory Agencies. This task is assigned to the Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) by the DORA Executive Director).

The DORA Executive Director shall, “impartially review such evidence, analyze and evaluate the proposal, and report in writing to the General Assembly whether mandatory continuing education (MCE) would likely protect the public served by the practitioners.” The report evaluating whether MCE for land surveyors would protect the public was submitted to the General Assembly on January 17, 2018. The report concluded that MCE for land surveyors did not protect the public and, “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.”

The DORA report states on page 3, “The statute also suggests that an Applicant provide independent studies that illustrate MCE’s efficacy in assuring competency. The Applicant provided subjective opinions rather than independent studies from professional land surveying advocacy organizations” (seven advocacy organizations provided letters of support). On page 11, the DORA report further states, “Colorado is not alone in not requiring MCE.” and “In spite of the number of states [44] with a requirement, no objective data was provided [by the Applicant] that confirms an improvement in the quality of practice. What exists are subjective evaluations by interested parties in those states where MCE exists.”

During testimony before the House Committee on Business and Labor Affairs on January 18, 2018, several representatives of the Professional Land Surveyors of Colorado (PLSC) testified about their experiences with land surveyors who apparently do not participate in continuing education. The witnesses opined that if those land surveyors had been required to attend continuing education courses their errors and mistakes would have been eliminated or mitigated. However, the essence of their arguments was that MCE would not hurt and might help the nearly 1800 licensed Professional Land Surveyors in Colorado.

One land surveyor testifying in favor of the bill stated that newly licensed Professional Land Surveyors particularly need continuing education. If this statement is true then the licensing requirements are insufficient to ensure that new licensees are minimally competent. The licensing requirements are designed to assure that only applicants who are minimally competent are granted licensure. Several of the reasons postulated by the PLSC to support a MCE requirement are that the profession is rapidly changing and new technologies require MCE to maintain competency.

The PLSC previously sponsored legislation that removed the experience plus examination path for licensure and required a minimum amount of land surveying education. That legislation was targeted to address the same concerns listed by the PLSC for requiring MCE. The requirement goes into effect on July 1, 2020. The DORA report states, "The Applicant must state that there is a reasonable nexus for any proposed MCE to alleviate incompetencies not accounted for under the Colorado licensure regime." It is prudent in my opinion to evaluate the effectiveness of the new education requirement for licensure that becomes effective in 2020 at the sunset review in 2024. Imposing a MCE requirement now that supposedly addresses the same concerns of the PLSC is ill conceived and premature.

The second reason for opposing HB18-1038 is that it substitutes my professional judgment as to what educational opportunities I pursue with the judgment that emanates from the Board rulemaking process. The proposed statute declares that the MCE must be Board-approved and the Board must apply the standard that each MCE course must "maintain competency".

In the State of Colorado, each licensed Professional Land Surveyor has an ethical duty to only practice within the area(s) of their expertise as supported by education and/or experience. I abide by this ethical duty and believe that I am a far superior judge of what continuing education I should pursue than a small group of my professional peers.

In conclusion, I am a small business owner that believes HB18-1038 is an unnecessary intrusion that arbitrarily forces me and other licensees to comply with a regulatory mandate that has no demonstrated and tangible benefit nor is there any evidence that MCE is protective of the public. Last week, I attended a regional surveying conference in Las Vegas, NV where I took a Certified Federal Surveyor continuing education class and I presented a seminar on advanced topics in mineral survey retracements. It was my choice to attend the conference and I would like to exercise my independent choices regarding education in the future.

As an independent branch of state government, the Colorado General Assembly is free to make their own determination of the value of MCE. However, the General Assembly found it wise to request an independent and impartial analysis by DORA. I ask that this committee not send HB18-1038 to the Committee as a Whole and instead postpone the bill indefinitely.

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