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STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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JUNEAU, ALASKA 99811  
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

*House Judiciary*

*3/5/85*

*1:30 pm*

COMMITTEE REPORT  
HOUSE

3/8

(7 )

FURTHER:

FINANCE  
J

2/15/85

Date: 3-5-85

Mr. Speaker:

The Committee on JUDICIARY has had HB 170

"An Act relating to land surveys."

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 170 (2nd)  same title  
 new title
- and recommends JCS HB 170 DO PASS
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ ittee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

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[Signature]  
CHAIRMAN

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

K5  
POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

MEMORANDUM

February 21, 1985

SUBJECT: Land surveys (HB 170)  
TO: Representative Niilo Koponen  
FROM: Richard A. Bradley  
Legislative Counsel B

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill adds a new chapter to AS 34 (Property) relating to land surveys.

Sec. 10 states the purpose of the chapter: (1) to authorize right of entry on land for survey purposes (cf. sec. 20) and (2) establish a method for preserving evidence of land surveys (cf. secs. 30 - 70).

Sec. 20 establishes the right of a land surveyor and the employees of a surveyor to enter on land for the purposes of surveying it. When on the land, the land surveyor is responsible only for "actual damages". I believe that this rule is intended to alter the usual rule that damages to some extent are presumed to have occurred in a trespass; in this situation, damages would only be available on the showing of affirmative and actual (as opposed to legal) damages. And the section authorizes the attorney general to bring an action to "restrain and prevent an obstruction of entry" under (a) of the section.

Sec. 30 relates to "records of survey."

Sec. 30(a) provides that a land surveyor shall file a record of survey within 90 days of the completion of a survey when the survey discloses (1) "material evidence or physical change" that is not reflected on a previous "plat of record;" (2) a "material discrepancy" with a previously filed "plat of record;" or (3) evidence that by "reasonable analysis" might alter existing recorded "positions of boundaries."

Sec. 30(b) provides that a land surveyor shall file a monument record when the land surveyor "reestablishes, uses as a control, or restores a monument to make it readily identifiable or reasonably durable" unless the monument and its accessories are as described in an existing monument record or a survey plat of record.

Sec. 30(c) provides that when activities on the land, as for example construction, will "disturb or destroy a monument or its accessories", the land surveyor shall

- (1) file a monument before the monument and its accessories are disturbed or destroyed;
- (2) restore or replace the monument and its accessories after the activities have ceased; and
- (3) file a new monument record after restoring or replacing the monument and its accessories.

Sec. 30(d) provides that a land surveyor may file a monument record at any time.

Sec. 30(e) provides that when a land surveyor is required to file a monument record by this section, the monument record shall be filed within 90 days of the "completion of the survey or of the establishment, reestablishment, or rehabilitation of a monument.

Sec. 30(f) requires a land surveyor to sign and seal a monument record.

Sec. 40 deals with situations when a record of survey is not required. The section provides that a record of survey is not required for survey made by the Bureau of Land Management; to some extent, the result suggested here would be

inevitable since the legislature does not have the power to impose burdens on a Federal agency.

The section also provides that a record of survey is not required when a plat of survey either has been filed or will be filed within 18 months of the field survey.

Sec. 50 directs the commissioner of natural resources to adopt regulations to implement the chapter. It also directs the commissioner to adopt a standard form for a record of survey.

Sec. 60 relates to the duties of the district recorder.

Sec. 60(a) directs the district recorder to provide a copy of a monument record or a copy of the record of survey to the municipal clerk for the municipality in which the record or survey is located.

Sec. 60(b) provides that the district recorder is to keep a proper index of monument records and records of survey by "survey name, tract designation, subdivision designation, or United States public land designation."

Sec. 70 defines terms for the chapter, including "accessory," "monument," and "united States public land survey monument."

If I may be of further assistance, please advise.

RAB:csh  
c3/014

COMMITTEE REPORT  
HOUSE

2/15  
L9

( 7 )

FURTHER: JUDICIAL

2/4/35

Date: Feb 13 1935

The Committee on LABOR & COMMERCE has had 1B 170  
"An Act relating to land surveys."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note Sup 18  
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

WARR W. L. V. ...

COHEN ...

WILEY ...

...

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W. L. V. ...  
CHAIRMAN

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 170  
Title: An act relating to land surveys

FISCAL DETAIL

Agency Affected: Natural Resources  
Program Category Affected: BRNEC

Sponsor: Koponen, Sund, Navarre  
Requester: Jehling, Jenkins, Ringstad, & Pearce  
Date of Request: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected: Information/Records Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

It is assumed that approximately 500 documents at \$8.00 each would be recorded each year under this proposed Bill.

Prepared By: Joseph C. Burch  
Division: Technical Services

Phone: 786-2400  
Date: 2/11/85

Approved by Commissioner: Thomas D. Zamper  
Agency: Natural Resources

Date: 2/12/85

Distribution (by Agency preparing fiscal note):  
Legislative Finance

# Alaska Society of Professional Land Surveyors

AFFILIATE OF AMERICAN CONGRESS OF SURVEYING AND MAPPING  
MEMBER OF WESTERN FEDERATION OF PROFESSIONAL LAND SURVEYORS



P O BOX 2106  
ANCHORAGE, ALASKA 99510

January 17, 1985

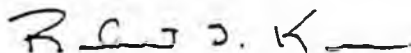
Representative Niilo Koponen  
Alaska State House of Representatives  
Pouch V  
Room C110, State Capitol Bldg.  
Juneau, Alaska 99811

Dear Representative Koponen:

The Anchorage Chapter of Alaska Society of Professional Land Surveyors at their annual dinner January 11, gave their unanimous approval to the legislation being proposed by the ASPLS Legislative committee concerning Right of Entry, Recordation, and Admendments to Title 38. We believe these bills to be of extreme importance to the efficient and orderly conduct of surveying and mapping in the State of Alaska. Many hours have gone into preparing this legislation by our State legislative committee and we respectfully request your review and support of this important legislation in the forthcomming session.

As president of the Anchorage Chapter and member of the legislative committee, I plan to be in Juneau the 23rd and 24th of January with other members of the Alaska Section American Congress of Surveying and Mapping and the Alaska Society of Prifessional Land Surveyors. At this time we would be pleased to meet with you and your staff and discuss any aspects of the proposed legislation.

Sincerely,



Robert T. Kean, President  
c/o Kean & Assoc.  
6510 Homer Drive  
Anchorage, AK 99502  
349-6431



United States Department of the Interior 9658 (920)

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

Alaska State Office  
701 C Street, Box 13  
Anchorage, Alaska 99513

JAN 16 1985

Honorable Niilo Koponen  
Alaska State House of Representatives  
Pouch V  
Room C110, State Capitol Building  
Juneau, Alaska 99811

Dear Mr. Koponen:

This letter references and supports the legislation being proposed by the Alaska Society of Professional Land Surveyors (ASPLS) concerning Right of Entry, Recordation, and Amendments to Title 38 of the Alaska Statutes.

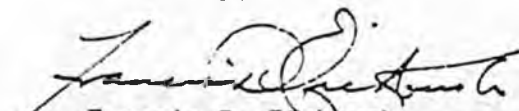
The Bureau of Land Management (BLM) fully recognizes the need for the enactments of this legislation to further the orderly conduct of surveying and mapping activities in Alaska. Significant problems are already confronting the citizens and the Federal and State governments in the establishment, administration, and management of property boundaries and their associated records.

The justification which has been written in support of this proposed legislation provides a clear picture of the needs but could have been expanded to convey the impact of the programs affected in the State. The BLM alone has a legislated workload which will require over a half billion dollars of surveying and mapping activities to identify lands for patent to the State, Native corporations and private claimants. Without this legislation the enactment of this work will be fraught with great wastes of human efforts and dollars due to the lack of required records keeping, higher costs to perform surveys and an inevitable increase in boundary legislation.

Your solid support of the enactment of the ASPLS proposed legislation is requested for the benefit of all Alaskans and the efficient use of State and Federal tax dollars.

We would be pleased to respond to any questions or comments you might have regarding this subject.

Sincerely,

  
Francis D. Eickbush

JUSTIFICATION  
AMENDMENTS TO AS 34 (ADDITION OF CHAPTER 65)

Section Authorizing Entry On Land For Survey Purposes

Thousands of survey monuments exist in the State of Alaska identifying section corners, township corners, various property boundaries and serving as geodetic control points in remote areas where no other survey control presently exists. Taxpayers' dollars were utilized to establish these monuments, as they were intended for purposes benefiting the public. Various Federal agencies, primarily the Bureau of Land Management, Coast and Geodetic Survey, Geological Survey, Corps of Engineers and Army Mapping Service and, more recently, various State of Alaska agencies established these monuments. Utilization of this existing monumentation is mandatory if the surveyors, mappers and photogrammetrists in the State are to conduct the surveys required by the public for property boundaries, subdivisions, construction projects and mineral, oil and gas exploration programs. Traditionally, access to this survey control has been available to these professionals as required to conduct these surveys. Access is primarily by foot, air or water and utilization of the station usually involves only the temporary setting up of a theodolite, distance measuring equipment, satellite survey system, photo control panel or in some cases, leaving a small, unmanned, battery-powered transmitter on a small tower or tripod to continuously broadcast signals for offshore or airborne positioning systems. No damage to the monument or its surrounding environment is entailed.

In addition, in the course of conducting surveys, surveyors must often physically traverse adjoining property boundaries or gain access to hilltops, mountain peaks or shorelines so as to gain line of sight or for other technical reasons. Again, the occupancy is limited in nature and normally involves no damage to the environment.

With increasing transfer of lands from the public domain into private ownership, access to these survey control monuments, property boundaries and key terrain features is becoming increasingly curtailed. Owners, applicants and alleged owners of the underlying property on which the monument is located or to which access must be gained, even in extremely remote areas of the State, are now requiring advance permission and often the payment of considerable rental fees to briefly occupy the station or terrain feature. In some cases, there is outright refusal of access if the owners are not in agreement with the program for which a survey is being undertaken, regardless of the fact that the resultant program may be on State, Federal

or third party ownership. To further complicate the matter, often two or more persons or groups claim ownership to the same lands, leaving the surveyor in the position of not knowing from whom to obtain permission or alternatively, obtaining permission from the apparent owner only to be challenged by a second party claiming ownership. As survey monumentation in the remote areas of the State is extremely sparse, this allows the owner or alleged owner of the lands underlying a primary control monument to control developments over a vast area far outside their ownership. In some cases, a single monument may serve as primary control for thousands of square miles so use of alternate monuments is not feasible or even impossible.

This problem, nonexistent prior to five years or so ago, is annually becoming more critical. As much as surveyors, mappers and photogrammetrists wish to see the property rights of all individuals or groups to be properly protected, the time has come for some protection for all of the citizens of the State to utilize the survey monumentation which was established with their tax dollars, and to allow surveyors to determine citizen's property boundaries. Similar legislation has been found necessary in nearly all the other states of the union.

The Alaska Section, American Congress on Surveying and Mapping and the Alaska Society of Professional Land Surveyors and their members feel the time has now arrived that this legislation is mandatory if the rights of all individual citizens of this State are to be protected.

#### Section Requiring Record Of Survey And Monument Record

A present requirement exists in Alaska that subdivisional plats be recorded with the district recorder so as to be available for use by all citizens of interest. Hundreds of other land surveys are annually conducted, however, defining boundaries and rights-of-way, for which no such recording requirement exists and which presently do not become a part of any public record. Although some informal exchange of information currently takes place between the professional surveyors in the State, there is no official depository for records of this sort where a public or private surveyor can research records of previous surveys prior to undertaking a survey in the same area. This often results in repeated duplication of effort, boundary conflicts (between two surveyors utilizing totally different techniques to approach the same problem) and, at the very least, incursion of unnecessary costs by the surveyor's client if a private survey.

of the public at large if the survey is for public purposes. Similarly, as surveys are undertaken and key monumentation recovered, no current regulation or law requires the surveyor record any public document indicating the existence, lack of existence, condition of, or current status of key control monumentation in the project area. This is especially critical where monumentation will or likely will be destroyed during forthcoming construction following the initial survey. Replacement of these destroyed monuments is extremely costly unless adequate records exist prior to any disturbance, indicating the exact original position of the monument with ties to appropriate accessories.

These professional associations and their members believe it is the duty of all professional surveyors to file a record of survey and monument records for all appropriate surveys they undertake and that an appropriate procedure be established by the State to provide the mechanism for the recording of these documents.

The burden and cost of this recordation will primarily fall upon the surveyor and not the government entity. The sole cost to the State of Alaska or its subdivisions will be the cost of accepting and maintaining these records. It is estimated the total number of documents would not exceed 1000 per year. This very minor cost would be greatly offset by the value to State agencies, boroughs and municipalities that could make great use of the vast amount of information so recorded and made readily available with no cost of field acquisition whatsoever. Likewise, when individual citizens of the State require survey in the future, they will often achieve a cost saving because of the ready availability of these documents.

The majority of other states currently have statutes requiring recordation of monument and/or survey records. This is especially true in the western states where fewer surveys exist, with the resultant greater distance between monuments and longer time intervals between occasions when monuments may be inspected by professional surveyors.

Introduced: 2/5/85  
Referred: Resources  
and Finance

BY FAHRENKAMP  
BY REQUEST

1 IN THE SENATE

2

SENATE BILL NO. 135

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to land surveys; and providing for

7

an effective date."

8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

\* Section 1. AS 34 is amended by adding a new chapter to read:

10

CHAPTER 65. LAND SURVEYS.

11

Sec. 34.65.010. PURPOSE. The purpose of this chapter is to authorize right of entry on land for certain survey purposes, and to provide a method for preserving evidence of land surveys by filing records of survey and monument records. *leaves out 1 sentence*

14

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Sec. 34.65.020. ENTRY UPON LAND BY PROFESSIONAL LAND SURVEYORS.

16

(a) After giving notice, a land surveyor or an employee of a land surveyor may enter public or private land or water in the state only to occupy, locate, relocate, install, or replace survey monuments in the process of locating real estate boundaries and determining geodetic positions.

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*Adds* (b) This section does not permit entry on public or private land or water to perform an engineering, design, or topographic survey.

22

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*Adds* (c) This section does not authorize any unnecessary interference with private rights.

24

25

(d) A land surveyor or an employee of a land surveyor is liable to the landowner only for actual damages.

26

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(e) The attorney general may bring an action in the name of the state to restrain and prevent the obstruction of entry under (a) of this section.

28

29

1 after the activities have ceased; and

2 (3) file a new monument record after restoring or replacing  
3 the monument or its accessories.

4 (c) A land surveyor may file a monument record for any monument.

5 (d) A land surveyor who is required to file a monument record  
6 under this section shall do so within 90 days of the completion of the  
7 survey or of the establishment, reestablishment, or rehabilitation of  
8 a monument.

9 (e) A monument record shall be signed and sealed by the land  
10 surveyor responsible for the survey.

11 Sec. 34.65.050. WHEN RECORD OF SURVEY IS NOT REQUIRED. A record  
12 of survey is not required when a plat of the survey has been filed or  
13 will be filed within 18 months after the field survey is completed.

14 Sec. 34.65.060. DUTIES OF THE COMMISSIONER. (a) The commis-  
15 sioner shall adopt regulations to implement this chapter.

16 (b) The commissioner shall provide a standard form for a  
17 monument record.

18 Sec. 34.65.070. DUTIES OF THE DISTRICT RECORDER. (a) Upon  
19 request the district recorder shall provide a copy of a monument  
20 record or a copy of a record of survey to the municipal clerk for the  
21 municipality in which the monument or survey is located.

22 (b) The district recorder shall keep a proper index of monument  
23 records and records of survey.

24 (c) The commissioner may establish a fee for services provided  
25 by a district recorder under this section.

26 Sec. 34.65.100. DEFINITIONS. In this chapter

27 (1) "accessory" means physical evidence adjacent to a  
28 monument used for the future identification and restoration of a  
29 monument;

South Dakota Codified Laws

36-18-38. Board inquiries and investigation of violations -- Report and prosecution. It shall be the duty of the board of examiners to inquire into the identity of any person alleged to be engaging in the unlawful practice of architecture, professional engineering or land surveying. It shall be the duty of the board to investigate every alleged violation of the provisions of this chapter, and report to the proper state's attorney any person or case that in the judgment of the board warrants prosecution. It shall be the duty of the attorney general and the several state's attorneys to prosecute violations of this chapter, in the name of and on behalf of the board.

36-18-39. Injunction to prevent violations of chapter -- Election of remedies. The board of examiners may proceed by injunction to restrain violations of the provisions of this chapter, as an alternate to criminal proceedings. The commencement of one proceeding by the board constitutes an election.

36-18-40. Severability of provisions. If any provision of this chapter or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application and to this end the provisions of this chapter are declared to be severable.

B. Powers of Surveyors, Public Utility Corporations, Other Miscellaneous

1-1-9. Map of federal acquisitions to be filed -- Recording of evidence of title. A map of any land acquired by the United States, under the provisions of this chapter, shall be filed and recorded in the office of the secretary of state and the evidence of the United States' title shall be recorded in the county wherein the land is situated as in other cases relating to the transfer of real property.

1-1-10. Land entry authorized to survey boundaries -- Consent required to enter mine -- Damage to property. For the purpose of making surveys required by or essential to the effect of any acts of the United States Congress or of the Legislature of this state or for the determination of boundaries of real estate, any of the duly authorized officers or agents of the United States or of this state, or any engineer or land surveyor duly qualified or registered under the laws of this state, and the persons necessarily and lawfully employed in making any such survey may enter upon lands within the boundaries of this state for such purposes, but this section shall not be construed as authorizing any unnecessary interference with private rights. Nothing in this section shall be construed to permit any person to enter any shaft, tunnel, stope, or underground workings of any individual person engaged in mining for precious metals without consent of the owner or person in possession of such shaft, tunnel, stope, or underground working.

Nothing herein contained shall exempt any person from payment of actual damages done by him while upon such land.

# NEW MEXICO

## 61-23-2. Right of entry on public and private property; responsibility.

The engineers and surveyors of the United States and of the state of New Mexico and registered professional engineers and land surveyors of the state of New Mexico shall have the right to enter upon the lands and water of the state and of private persons and of private and public corporations within the state for the purpose of making surveys, inspections, examinations and maps, subject to responsibility for actual damage to crops or other property, or for injuries resulting from negligence or malice caused on account of such entry so made.

History: Laws 1922, ch. 120, § 2, 1941 Comp., § 51-2457; Laws 1947, ch. 110, § 3, 1953 Comp., § 67-21-27

Cross-references. — For suit on county surveyor's bond, see 4-4-20 NMSA 1973. As to penalties for interfering with county surveyor, see 4-4-24 NMSA 1973. As to entry for county claim surveys, see 72-4-1 NMSA 1973.

Applies to Army Corps of Engineers. — The U.S.

Army Corps of Engineers may go upon state-owned or private land and make core drilling and surface soil explorations to determine the feasibility of certain civil flood control projects in the state of New Mexico. 1957-58 Op. Att'y Gen. No. 57-221.

Am. Jur. 2d and C.J.S. references. — 63 Am. Jur. 2d Public Lands § 56 to 74.  
73 C.J.S. Public Lands § 36 to 71.

## 61-23-3. (Violation of reference mark and entry provisions.)

Any person violating any of the provisions of this act (61-23-1 to 61-23-3 NMSA 1973) shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars for each such offense.

History: Laws 1922, ch. 120, § 3, 1941 Comp., § 51-2458, 1953 Comp., § 67-21-28.

## 61-23-4. Short title.

Article 23 of Chapter 61 NMSA 1973 may be cited as the "Engineering and Land Surveying Practice Act."

History: 1953 Comp., § 67-21-29, enacted by Laws 1957, ch. 211, § 1; 1973, ch. 243, § 1.

The 1973 amendment substituted the provisions of the present section for the former section which read:

This act may be cited as the "Engineering Practice Act."

## 61-23-5. Declaration of policy.

The legislature declares that it is a matter of public safety, interest and concern that the practice of engineering and of land surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of engineering or land surveying, and in order to safeguard life, health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall be required to submit evidence that he is qualified to so practice and shall be registered as provided; and it shall be unlawful for any person to practice or offer to practice in the state, or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional engineer or professional land surveyor or land surveyor, unless such person is duly registered or exempt under the provisions of the Engineering and Land Surveying Practice Act. That act shall be construed in accordance with this declaration of policy.

History: 1953 Comp., § 67-21-30, enacted by Laws 1957, ch. 211, § 2; 1973, ch. 243, § 2.

The 1973 amendment substituted "engineering or land surveying" for "engineering and land surveying"

following "to engage in the practice of" near the beginning of the section, and substituted "professional engineer or professional land surveyor or land surveyor" for "professional engineer, professional engi-

NORTH  
Dakota

- shall be deemed a more necessary public use than use for the same purpose by a private corporation, and whenever a right of way shall have been taken and the person, firm, or corporation taking such right of way shall fail or neglect for five years to use the same for the purpose to which it had been appropriated, the attempt by another person, firm, or corporation to appropriate such right of way shall be considered a more necessary public use;
4. Franchises for toll roads, toll bridges, ferries, and all other franchises, but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use;
  5. Any system of waterworks, electric light and power plant, wells, reservoirs, pipelines, machinery, franchises, and all other property of any character whatsoever comprising a waterworks system or an electric light and power system;
  6. All rights of way for any and all the purposes mentioned in section 32-15-02 and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed or intersected by any other right of way or improvement or structure thereon. They also shall be subject to a limited use in common with the owner thereof when necessary, but such uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury; and
  7. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

32-15-05. What must appear before property taken.--Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law;
2. That the taking is necessary to such use; and
3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

32-15-06. Entry for making surveys.--In all cases when land is required for public use, the person or corporation, or his or its agents, in charge of such use may survey and locate the same, but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the provisions of section 32-15-21. Whoever may be in charge of such public use may enter upon the land and make examinations, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

Operation and Effect (Court Decisions) In an application for a permit to enter upon private property for the purpose of making a survey and testing soil, plaintiff was required to show only that it was in the category of persons entitled to seek eminent domain, and was not required to prove that at that stage of the proceedings eminent domain was proper, justified and necessary. Square Butte Elec. Cooperative v. Dohn, 219 NW 2d 877 (1974).

## 2. Arbitration

32-29-01. When arbitration authorized.--Persons capable of contracting may submit to the decision of one or more arbitrators any controversy which might be the subject of a civil action between them, except the question of title to real property in fee or for life. This qualification does not include questions relating merely to the partition or boundaries of real property.

right to install a gate in the fence so as to give the owners a farm crossing. *Hildebrand v. Chicago, B. & Q.R.R.*, 45 Wyo. 175, 17 P.2d 651 (1933).

Jury questions. — Where cattle were injured by entering railroad's property by private gate which was not protected by cattle guards and plaintiff makes out prima facie case independent of former § 37-210, question of negligence is for

jury. *Hildebrand v. Chicago, B. & Q.R.R.*, 45 Wyo. 175, 17 P.2d 651 (1933).

Where railroad has knowledge that gates along right of way are customarily left open and no steps are taken to correct the custom, question of railroad's negligence when cattle are injured is for the jury. *Hildebrand v. Chicago, B. & Q.R.R.*, 45 Wyo. 175, 17 P.2d 651 (1933).

### ARTICLE 3. ROADS, DITCHES AND FLUMES; PIPE, ELECTRIC TRANSMISSION, TELEPHONE AND TELEGRAPH LINES

Cross references. — As to telegraph lines generally, see art. 10, §§ 12, 13 to 15, Wyo. Const. For provision that telegraph, telephone or electric light line shall not be constructed within the limits of any municipal organization without the consent of its local authorities, see art. 13, § 4, Wyo. Const. As to incorporation of ditch company, see § 17-12-101. As to incorporation of flume company, see § 17-12-106. As to incorporation of telegraph company, see § 17-12-107. As to mining corporations preempting right-of-way over public lands, see § 30-1-128. As to power of public service commission to direct manner of use of public highways by public utilities, see § 37-3-114.

Editor's note. — This article was not enacted as part of the original Civil Code.

Law review. — See note, "Compensation for Condemnation: Recent Wyoming Development," 17 Wyo. L.J. 245 (1963).

Am. Jur. 2d, ALR and C.J.S. references. — 26 Am. Jur. 2d Eminent Domain §§ 73, 102, 112, 126, 135.

Right to use or permit use for private telegraph or telephone line of street or highway, 34 ALR 405.

Furnishing electricity for telegraph or telephone system as a public use, 44 ALR 751, 58 ALR 757.

29A C.J.S. Eminent Domain §§ 65 to 86.

#### § 1-26-301. Right-of-way along public ways granted; permission necessary for new lines.

Corporations organized under the laws of this state or of any other state or of the United States for the purpose of constructing, maintaining and operating telephone, telegraph or electric transmission and distribution lines may set their poles, piers, abutments, wires and other fixtures along, across or under any of the public roads, streets and waters of this state in such manner as not to inconvenience the public in their use. Any telegraph, telephone or other company desiring to place their wires or other fixtures underground in any city shall first obtain consent from the city through the municipal authorities. A person or firm must first obtain permission from the state highway commission or the board of county commissioners in the county where the construction is contemplated before entering upon any state highway or county road for the purpose of commencing the construction of any new telephone, telegraph, or electrical transmission or distribution lines. (Laws 1901, ch. 31, § 1; C.S. 1910, § 387; C.S. 1920, § 4934; R.S. 1931, § 38-301; Laws 1939, ch. 80, § 1; C.S. 1945, § 3-6201; W.S. 1957, § 1-791; Laws 1977, ch. 188, § 1.)

§ 1-26-301

Chicago, B. & Q.R.R., 45  
Ill. (1933).  
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FLUMES; F.L.U.E.  
TELEPHONE  
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— This article was not enacted  
original Civil Code.  
— See note, "Compensation for  
Recent Wyoming Development,"  
1953).  
— LR and C.J.S. references. —  
Eminent Domain §§ 73, 102, 112.

or permit use for private  
to a line of street or highway.

Electricity for telegraph or  
as a public use, 44 ALR 752.

Eminent Domain §§ 65 to 86.

granted; permission

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maintaining and operating  
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such manner as not to  
phone or other company  
and in any city shall first  
priorities. A person or firm  
commission or the board  
construction is contemplated  
road for the purpose of  
telegraph, or electrical  
C.S. 1910, § 2870; C.S.  
1911; C.S. 1945, § 3-6201;

§ 1-26-302

CODE OF CIVIL PROCEDURE

§ 1-26-303

§ 1-26-302. Same; right of entry upon private lands.

(a) The companies may enter upon any land whether owned by private persons or corporations in fee or in any less estate, except railroad rights-of-way, for the purpose of making preliminary surveys and examination as may be necessary to erect poles, piers, abutments, wires or other fixtures for telephone, telegraph or electric transmission or distribution lines. The companies may make such changes of location of the lines as may be deemed necessary, shall have the right of access to construct the line and, as may be required, to make repairs, and may obtain the right-of-way and condemn the land therefor in the manner provided in the Wyoming Rules of Civil Procedure.

(b) If the landowner has not consented to the entry, no entry shall be authorized until the company has deposited with the public service commission a cash or surety bond of two thousand dollars (\$2,000.00). The public service commission shall release the bond to the company upon sufficient showing that the company has reached an agreement for entry with the landowner. If the company causes any damage to a landowner's property prior to reaching an entry agreement, the bond shall be withheld for distribution as determined by a court of law or upon a settlement agreement between the company and landowner. (Laws 1901, ch. 31, § 2; C.S. 1910, § 2871; C.S. 1920, § 4935; R.S. 1931, § 36-302; Laws 1932, ch. 50, § 2; C.S. 1945, § 3-6202; W.S. 1957, § 1-792; Laws 1977, ch. 73, § 2; ch. 185, § 1.)

Cross reference. — For provision as to condemnation of property, see Rule 71.1, W.R.C.P.

The 1977 amendment designated the formerly undesignated provisions of this section as subsection (a), added subsection (b), and in subsection (a), substituted "the Wyoming Rules of Civil Procedure" for "section 38-303" at the end of the subsection and made other minor changes in style.

Editor's note. — Section 1-27-302, which was enacted by § 1, ch. 185, Laws 1977, has been

made subsection (a) of this section and § 1-792(b), W.S. 1957, which was amended by § 2, ch. 73, Laws 1977, has been made subsection (b) of this section. This was a Revisor's change. This section has also been renumbered from § 1-27-302 to § 1-26-302 because of chapter renumbering.

Effective dates. — Section 3, ch. 50, Laws 1932, makes the act effective from and after passage. Approved February 15, 1932.

Section 3, ch. 73, Laws 1977, makes the act effective May 27, 1977.

§ 1-26-303. Right of eminent domain granted.

Whenever any road, ditch, telegraph, telephone or fluming company, or any petroleum or other pipeline company, organized or to be organized under the provisions of this chapter, or any law of this state, or under the laws of any other state and legally doing business in this state, shall not have acquired by gift or purchase, any land, real estate or claim required for the construction or maintenance of their road, ditch, flume, pipe, telegraph or telephone line, or which may be affected by any operation connected with the construction or maintenance of the same, the said corporation shall have the right of eminent domain and may condemn the land, real estate, right-of-way or claim required by the corporation in the manner provided by the Wyoming Rules of Civil

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(3) Wherever in those counties the amount of Indian lands or those exempt from taxation by reason of the operation of any federal law is thirty percent (30%) or more of the total area of the county, then the Board of County Commissioners may, upon its own initiative, and if the public interests demand it, move to secure roads over, adjacent to, or for the benefit of all such exempted lands in the following manner: The Board shall call upon the Director as a disinterested party to undertake and make such surveys, plans and estimates and obtain all other essential data and records as are required to make a full and complete statement and report upon the interest involved, and to make such recommendations as in the premises may seem proper. When so prepared, the Department shall then advance the matter to the Department of the Interior of the United States, or to any other federal department concerned, through its proper local representative, if there be one, with the request that the matter be considered and disposed of as speedily as possible. If the project be so approved and authorized, then the work may proceed under the special supervision and direct administration of the Department and subject to such special regulations as the circumstances seem to require.

**69 § 651. Section and quarter section corners**

The provisions of Sections 1229-1233 of this Code, relating to the marking and obliteration of section and quarter section corners within rights-of-way of State highways, shall apply with full force and effect and in like manner to the Board of County Commissioners of each county, whenever section corners or quarter section corners are obliterated, or may be obliterated by the construction or resurfacing of either low type or high type paved roads of any county highway within the county.

**69 § 702. Entry upon premises to make surveys and examinations for establishment or relocation of highways—Notice**

The Department, through its authorized agents and employees, may enter upon any lands, waters, and premises in the State for the purpose of making surveys, soundings and drillings, and examinations as may be determined necessary or convenient for the purpose of establishing, locating, relocating, constructing, and maintaining State highways or relocations thereof and facilities necessary and incidental thereto. Such entry shall not be deemed a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending; but notice shall be given to the owner or person residing on the premise, personally or by registered mail, at least ten (10) days prior to such entry.

**69 § 703. Reimbursement for actual damages**

The Department shall make reimbursement for any actual damages resulting to such lands, waters, premises and property as a result of activities pursuant to the preceding Section. In the event of disagreement as to the amount of the damage, either the person damaged or the Department may file a petition with the District Court for the appointment of commissioners to appraise the damages and proceed to have the same determined as in condemnation proceedings.

**69 § 704. Commission to complete and revise maps**

The Commission may complete the topographic mapping of the State of Oklahoma and revise existing United States Topographic maps of the State, so that a complete and accurate map of the entire State may be complete and obtained by State departments and agencies, the Federal Government, and all persons desiring information relative to the natural resources of the State.

**69 § 705. United States Geological Survey, agreements with**

The commission may enter into agreements with the Director of the United States Geological Survey, or legal successor thereof, for the purpose of making the necessary surveys and maps, and preparing data covering topographic surveys, so that they may be made available for public use.

**69 § 706. Expenses**

The Commission shall pay the expenses incurred under Sections 704 and 705 out of the State Highway Construction and Maintenance Fund upon proper vouchers. Provided, that any funds so expended shall be matched by the United States Government, and the total expenditures of State funds shall not exceed Fifty Thousand Dollars (\$50,000.00) in any fiscal year.

**69 § 707. Surveys—Lawful to cross premises**

For the purpose of carrying into effect the provisions of Sections 704 and 705, it shall be lawful for all persons employed in the making of the topographic survey to enter upon and cross all lands within the State; provided, however, that in so doing no damage shall be done to private property.

**69 § 1229. Location and identification of corners within right-of-way**

The Department shall, in cooperation with the County Surveyor of the county affected, locate section and quarter section corners within the right-of-way of all State highways when surveys and plans are being made for contemplated new construction or resurfacing, and re-mark such corners in the right-of-way by a suitable marker, of a design to be approved by the Department. Whenever such corners are located on a highway to be hard-surfaced, or resurfaced, the Department shall identify such corners on the roadway by bronze surface markers, of a design to be approved by the Department.

**69 § 1230. Obliteration of corners by highway construction**

Where any section or quarter section is obliterated, or may be obliterated, by highway construction, the Department shall witness the location of such corners by two or more well defined objects located outside of the contemplated right-of-way limits and shall note such witnesses on the highway construction plans.

**69 § 1231. Re-marking of existing corners**

The Department shall also re-mark existing section corners and quarter section corners on State Highways that are now paved, with markers similar to those described herein, where reliable reference ties are available.

his deputy a professional engineer; Provided, this requirement shall not apply if the county surveyor is both a professional engineer and a Registered Land Surveyor.

Source: Laws 1879, § 127, p. 386; Laws 1909, c. 50, § 1, p. 295; R S 1913, § 5000; Laws 1921, c. 111, § 1, p. 606; C S 1922, § 5016; C S 1929, § 26-1601; Laws 1939, c. 20, § 16, p. 191; C S Supp. 1911, § 26-1601; R S 1913, § 23-1901; Laws 1959, c. 150, § 1, p. 717.

23-1901.01. County surveyor; appointment from another county; when. When there is no qualified surveyor within a county who will accept the office of county surveyor, the county board of such county may appoint a competent surveyor from any other county of the State of Nebraska to such office.

Source: Laws 1951, c. 45, § 1, p. 162.

23-1902. Chainmen; employment; oath. All necessary chainmen shall be employed by the person or persons causing the survey to be made. The chainmen shall be disinterested persons, and approved of and sworn by the surveyor to measure justly and exactly, to the best of their knowledge and ability, all lines measured by them.

Source: Laws 1879, § 130, p. 386; R S 1913, § 5006; C S 1922, § 5016; C S 1929, § 26-1602.

23-1903. Witnesses; attendance and testimony; power to compel. The county surveyor or his deputy, in the performance of his official duties, shall have the power to summon and compel the attendance of witnesses before him, to testify respecting the location and identification of any line or corner. When any such witness testifies to any material fact, his testimony must be reduced to writing and subscribed by him and made a matter of record. The county surveyor and his deputy are hereby authorized and empowered to administer oaths and affirmations to any person appearing as a witness before them. But the testimony as provided for herein shall never be used as evidence in any action involving corners or boundary lines, except for the purpose of impeachment. Each witness shall be entitled to the same fees allowed before justices of the peace.

Source: Laws 1913, c. 43, § 1, p. 142; R S 1913, § 5007; Laws 1921, c. 130, § 1, p. 601; C S 1922, § 5017; C S 1929, § 26-1603.

23-1904. Surveyor's certificate; use as evidence; effect. The certificate of the county surveyor of any survey made by him of any lands in the county shall be presumptive evidence of the facts stated therein, unless such surveyor shall be interested in the same.

Source: Laws 1913, c. 43, § 2, p. 142; R S 1913, § 5009; C S 1922, § 5018; C S 1929, § 26-1604.

23-1905. Surveyor; interest; disqualification; who may act. Whenever a survey of any lands or lots is required, in which the county surveyor is interested, such survey may be made by the surveyor of another county in like manner and to the same effect as though such survey had been made by the surveyor of the county where the land is situated. The surveyor doing the work shall record the field notes of said survey in the official record of surveys of the county wherein the land is situated.

Source: Laws 1913, c. 43, § 3, p. 142; R S 1913, § 5009; C S 1922, § 5019; C S 1929, § 26-1605.

23-1906. Trespass; exemption from liability. The county surveyor in the performance of his official duties, shall not be liable to prosecution for trespass.

Source: Laws 1913, c. 43, § 4, p. 143; R S 1913, § 5000; C S 1922, § 5020; C S 1929, § 26-1606.

County surveyor, when he performs single v. State, 123 Neb. 650, 241 N.W. 291  
of his official duties, is not liable to prosecution for trespass. R.S.

23-1907. Original corners; perpetuation. It shall be the duty of the county surveyor in surveys made by him to perpetuate all original corners not at the time well marked, and all corners or angles that he may establish or reestablish, in a permanent manner by setting monuments of concrete, burned vitrified clay, iron or stone, and depositing at the base thereof, at a suitable depth to protect it from loss or destruction, a memorial of durable material upon which shall be marked the date and the initial letters of the surveyor's name, and where the corner is unambiguously a government corner, the letters G.C. (initial letters of the word Government Corner), in addition thereto; and where suitably growing trees are convenient to such corner or angle, he shall, in addition to said monument and memorial, carefully note the direction and distance to the middle of each tree, the size and kind of tree, all of which shall be carefully noted in the field notebook provided for that purpose. Where witness pits were dug at any original government corners, and they can be identified as such, the surveyor shall record their directions and distances from the corner, according to the instructions of the State Surveyor.

Source: Laws 1913, c. 43, § 5, p. 143; R S 1913, § 5001; C S 1922, § 5021; C S 1929, § 26-1607.

23-1908. Corners; establishment and restoration; rules governing. The boundaries of the public lands established by the duly appointed government surveyors, when approved by the Surveyor General and accepted by the government, are unchangeable, and the corners established thereon by them shall be held and considered as the true corners which they were intended to represent, and the restoration of lines and corners of said surveys and the division of sections into their legal subdivisions shall be in accordance with the laws of the United States, the circular of instructions of the commissioner of the general land office on the restoration of lost

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Chapter 26.—EMINENT DOMAIN

26-5. Procedure Act. 26-501 to 26-517.



26-512. Same: making surveys and location. The prospective condemner or its agents may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for actual damages thereto. [L. 1963, ch. 234, § 12; Jan. 1, 1964.]