

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

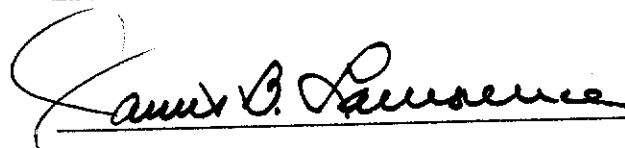
May 31 3 02 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Contractor Licensing Board TITLE NUMBER: 28RULE TYPE: Procedural; CITE AUTHORITY 21-11-5AMENDMENT TO AN EXISTING RULE: YES X NO IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1TITLE OF RULE BEING AMENDED: Contractor Licensing BoardIF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: TITLE OF RULE BEING PROPOSED:

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 30, 1995 AT 4:30 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Chris Quasebarth, Deputy CommissionerWV Division of LaborRoom #319, Building #3State Capitol ComplexCharleston, WV 25305(304) 558-7890THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-3797

GASTON CAPERTON
Governor



SHELBY LEARY
Commissioner

SUMMARY OF CHANGES

28 CSR 1

31 May 1995

The attached is a modification to an existing procedural rule (Title 28, Contractor Licensing Board). This modification is predominately a "clean-up" amendment.

The changes are summarized as follows:

\$28-1-3.3. The definition of administrative hearing is modified to change the words "in these rules" to "the rules of the Board". This is merely a clarification.

\$28-1-6.4 & 6.5. This change deletes the requirement that all meeting notices be made available to the news media. In as much as all such notices are required to be published in the State Registry, such a requirement was considered to be an unnecessary duplication.

\$28-1-8.2 & 8.3. In the original filing of the rule, no reference was made to the election and authority of the vice-chair of the Board. This modification will require the election of a vice-chair and grant authority to serve in the absence of the chair. The election and authority to serve are identical to that which applies to the chair.

\$28-1-9.1. This change is merely a point of clarification. It establishes the payment of expenses incurred by Board members shall be paid "in accordance with law". Previously, the rule did not make reference to current law.

\$28-1-12.1.4. This change clarifies that if an individual employs an attorney for an administrative hearing before the Board, they shall do so at their own expense.

\$28-1-12.2. This change clarifies that during all administrative hearings, a record shall be maintained and upon request, shall be made available to a party to the proceeding. Previously, the rule was silent on this issue. This change establishes conformity with the Administrative Procedures Act.

\$28-1-12.5. Most administrative hearings are held before the Board. However, there are occasions when an independent hearing examiner will be employed to hear appeals. This rule change grants to such examiners, the authority to grant a continuance upon a showing of good cause.

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FISCAL NOTE 28 CSR 1 31 May 1995

The attached modification to 28 CSR 1, Contractor Licensing Board involves only clean-up language. Therefore, the adoption of this procedural rule will have **NO FISCAL IMPACT** upon the operations of the Board or the Division of Labor.

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TITLE 28
PROCEDURAL RULES
CONTRACTOR LICENSING BOARD

SERIES 1
BOARD ORGANIZATION AND MEETING PROCEDURE;
ADMINISTRATIVE HEARING PROCEDURE

§28-1-1. General.

1.1. Scope. -- These procedural rules govern all regularly scheduled meetings and special meetings of the West Virginia Contractor Licensing Board, and establish procedures for the Board's adjudication of administrative hearings.

1.2. Authority. -- W. Va. Code §21-11-5 and §29A-5-1 et seq.

1.3. Filing Date. -- ~~January 23, 1992.~~

1.4. Effective Date. -- ~~February 22, 1992.~~

§28-1-2. Application and Enforcement.

2.1. Application. -- These procedural rules apply to the Board, to any and all persons desiring to attend or to address the Board, and to all persons involved in administrative hearings conducted by the Board.

2.2. Enforcement. -- The enforcement of these rules shall be vested in the Board.

§28-1-3. Definitions.

3.1. "Board" means the West Virginia Contractor Licensing Board.

3.2. "Commissioner" means the Commissioner of the West Virginia Division of Labor.

3.3. "Administrative hearing" means the procedural rights guaranteed to any person adversely affected by a decision of the Board as delineated in these rules of the Board and at W. Va. Code §29A-5-1 et seq.

3.4. "Person" means any individual, trust, estate, partnership, corporation, association, or any other legal entity recognized by the State of West Virginia, including any state or political subdivision.

§28-1-4. Regular Meetings.

4.1. The Board shall meet at least once annually on the last Monday of July, provided, that when such date falls upon a legal holiday, the Board may designate another date for the regular meeting.

4.2. The Board shall commence all regular meetings at 11:00 a.m. unless otherwise changed by resolution of the Board.

4.3. All regular meetings shall be conducted in the offices provided by the Commissioner unless changed by resolution of the Board.

4.4. All regular meetings shall be general meetings for the consideration of any and all matters which may properly come before the Board.

4.5. The Board shall notify the Commissioner and Board Members of meeting dates and agenda items at least five working days prior to regular meetings.

§28-1-5. Special meetings.

5.1. The Board shall convene special meetings as called by the Chair or upon the written demand of a majority of the members of the Board.

5.2. Special meetings shall be for the consideration of only those matters designated by the Board member or members requesting the meeting unless otherwise changed by resolution of the Board.

§28-1-6. Open Proceedings; Notice.

6.1. All meetings of the Board shall be open to the public, except for such executive sessions as permitted by W. Va. Code §6-9A-4.

6.2. Any person who desires to address the Board at a regular or special meeting may do so provided that such person registers his or her intent to address the Board fifteen (15) minutes prior to the time the meeting is scheduled to commence.

6.3. The Board may cause the removal from a meeting of any person, other than a Board member, who is disrupting it to the extent that orderly conduct of the meeting is compromised. A determination to remove any person shall be vested in the sole discretion of the Chair.

6.4. Except in the event of an emergency requiring immediate official action, notice of any regular or special meeting shall be filed in a manner to allow it to appear in the State Register Published by the West Virginia Secretary of State at least five (5) days prior to the date of the meeting. Each such notice shall state the time, place, and purpose of the meeting. ~~This notice shall be made similarly available to the news media.~~

6.5. In the event of an emergency requiring immediate official action, the Board may file a notice with the Secretary of State at any time prior to the meeting, provided that all Board members have been notified of such meeting in writing or by telephone at least twenty-four (24) hours in advance of the time scheduled for the commencement of the meeting. The notice filed with the Secretary of State in such an emergency shall state the time, place, and purpose of the meeting, and the facts which

constitute the emergency. ~~This notice shall be made similarly available to the news media.~~

§28-1-7. Minutes.

7.1. The Board shall provide for the preparation of written minutes of all its meetings. All minutes shall specify the following:

7.1.1. the date, time, and place of the meeting;

7.1.2. the name of each Board member present and absent;

7.1.3. all motions, proposals, resolutions, orders, and measures proposed, the name of the Board member proposing the same, and their disposition; and

7.1.4. the results of all votes and, upon the request of a Board member, the vote of each member, by name.

7.2. All minutes shall be available to the public after they have been approved by the Board at any regular or special meeting. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with W. Va. Code §6-9A-4.

§28-1-8. Board Membership; Conflict of Interest.

8.1. Members of the Board shall be appointed and serve as provided by W. Va. Code §21-11-4.

8.2. The Board shall elect a Chair, and vice-chair, from among the voting members who shall serve for a term of two years and nothing shall prohibit successive terms. The election ~~of the chair~~ shall be conducted at the annual meeting as defined in Section 4 of this rule.

8.3. The Chair shall preserve order and conduct all proceedings according to accepted parliamentary procedure, and demand conformity thereto on the part of the members. The Chair shall appoint all committees as from time to time shall be deemed necessary or expedient by the Board, and shall sign his or her name to all official papers and actions involving the Board. In the absence of the Chair, the vice-chair shall execute all duties of the chair.

8.4. No Board member shall participate in any matter pending before the Board involving any person in which he or she is or was, at any time in the preceding twelve (12) months, either a director, officer, owner, partner, employee, member, or stockholder, or in which his or her spouse or unemancipated minor child or children is or was, at any time in the preceding twelve (12) months, either a director, officer, owner, partner, employee, member or stockholder. In all such cases, the Board member in question shall disqualify himself or herself from any participation in the matter, including all discussion and votes. A record of such disqualification shall be noted in the minutes of the meeting.

§28-1-9. Reimbursement of Board Members.

9.1. Each member shall be reimbursed, in accordance with law, for all actual expenses incurred incident to his or her duties as a Board member.

§28-1-10. Board Staff and Offices.

10.1. The Commissioner shall make available all necessary office space, secretarial assistance, and other personnel, equipment, and supplies as the Board may reasonably require in the performance of its duties and functions.

10.2. The Commissioner may employ a secretary who shall work with the Board in administering the Board's day-to-day activities, and employ additional help when needed.

10.3. In providing for the material and human resource needs of the Board, the Commissioner shall have access to the special account established pursuant to W. Va. Code §21-11-17(a).

§28-1-11. Board Actions.

11.1. A majority of the voting members appointed to the Board shall constitute a quorum.

11.2. A majority vote of the members of the Board present at any regular or special meeting shall constitute an official Board action, provided a quorum is present. Except that no disciplinary action shall be taken by the Board except on the affirmative vote of at least six (6) voting members appointed to the Board.

11.3. Absent Board members shall not be permitted to vote by proxy.

§28-1-12. Administrative Hearings.

12.1. Any person entitled to an administrative hearing under the laws and rules of the Board shall be entitled to each of the following:

12.1.1. written notice at least ten (10) days in advance which sets forth the date, time, and place of the hearing, as well as a short and plain statement of the matters in issue;

12.1.2. an opportunity at the hearing to present testimony, other evidence, and argument with respect to the matters and issues involved;

12.1.3. an opportunity at the hearing to cross-examine any witness providing testimony, and to present rebuttal evidence; and

12.1.4. the assistance, at the person's own expense, of an attorney duly qualified to practice in the State of West Virginia.

12.2. All testimony at an administrative hearing shall be reported by stenographic notes and characters or by other mechanical or electrical means. The Board shall maintain the complete record of the proceeding. The Board shall prepare an official record, which shall include a transcript of the testimony and all exhibits admitted into evidence, upon the request of a party to the proceeding, or upon its appeal. Any person participating in the hearing shall be entitled to a copy of the record, including the transcript, at his or her own expense.

12.3. Administrative hearings may be conducted as part of any regular or special meeting of the Board. Alternatively, at the Board's discretion, a hearing examiner may be appointed by the Board to preside at an administrative hearing. A hearing examiner shall be empowered to administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the Board and the persons participating in the administrative hearing, and to otherwise conduct hearings as provided for herein. The function of the hearing examiner is to preside at the hearing and to cause a record to be prepared so that the Board can discharge its functions. The hearing examiner shall prepare recommended findings of fact and conclusions of law for submission to the Board.

12.4. The rules of evidence as applied in civil cases in the circuit courts of West Virginia shall be followed.

12.5. Administrative hearings may be continued from one day to another upon a showing of good cause. The Board, or its appointed hearing examiner, shall rule on all such motions for a continuance.

12.6. Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of West Virginia.

12.7. Any person participating in an administrative hearing may submit proposed findings of fact and conclusions of law within twenty (20) days of the conclusion of such hearing, or from the date the final transcript is available, whichever is later.

12.8. A final order adjudicating an administrative hearing shall be issued in writing by the Board within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts, proposed or recommended findings of fact, and proposed or recommended conclusions of law. The final order shall be accompanied by the Board's findings of fact and conclusions of law.

12.9. At all administrative hearings, the Board shall be deemed a participant and shall have the right to be represented by an attorney duly qualified to practice in the State West Virginia, to present testimony and other evidence, and to

exercise all other rights granted herein. Members of the Board and its officers, agents, and employees shall be competent to testify at an administrative hearing; provided, that no Board member, officer, or agent who testifies at a hearing shall thereafter participate in deliberations or decisions of the Board with respect to the case in which he or she so testified.

12.10. The requirements and procedures outlined in W. Va. Code §29A-5-1, §29A-5-2, and §29A-5-3 shall at all times govern the Board's administrative hearings.

§28-1-13. Appeals.

13.1. An appeal from any final order entered by the Board in accordance with these rules shall be governed by the provisions of W. Va. Code §29A-5-4 and §29A-6-1.

§28-1-14. Severability.

14.1. If any provisions of these rules or their application to any person be held invalid, such invalidity shall not affect the provisions or application of the rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.