

Form #3

OFFICE WEST VIRGINIA
SECRETARY OF STATE


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 26, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Division of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

LEGISLATIVE RULE TITLE: West Virginia Contractor Licensing Act

1. Authorizing statute(s) citation W. Va. Code 21-11-5 (a)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 17, 2008

b. What other notice, including advertising, did you give of the hearing?
Public comment period only. Proposed rule provided to various trade associations in the
construction industry.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 18, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached x No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 26, 2008

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

David W. Mullins, Commissioner phone: 304.558.7890 x 111

West Virginia Division of Labor fax: 304.558.2273

State Capitol Complex email: david.w.mullins@wv.gov

Building 6, Room B-749
Charleston, WV 25305

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Fran Cook, Deputy Commissioner phone: 304.558.7890 x 146

Same as above fax: 304.558.2273

email: fran.e.cook@wv.gov

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

West Virginia Contractor Licensing Board



FACTS AND CIRCUMSTANCES FOR THE PROPOSED RULE CHANGES

The purpose of the changes in the proposed rule is to clarify certain matters by the addition of or modification to the definition section, to incorporate recent policy changes made by the Board, and to incorporate statutory amendments made in the 2007 Legislative session.

SUMMARY OF PROPOSED RULE CHANGES

§28-2-3. Definitions.

Definitions were deleted as follows:

The definitions of "Commissioner," "Board," "Person" "Residential occupancy," "Residential structure," "Subcontractor," and "Division" were deleted because they are identical to the definitions in § 21-11-3 (a), (b), (j), (o), (p), (q) and (r).

3.22. Deleted the word "speciality" from the definition of masonry contractor.

New definitions were added or clarified:

3.5. New definition added to clarify the definition of contractor and the limitation in the exemption from licensure for speculative sale and leasing ventures.

3.8 and 3.9. Clarified the definitions of what a contractor is and is not.

3.27. New definition added to clarify the definition of contractor and the limitation in the exemption from licensure for speculative sale and leasing ventures.

3.34. New definition added to define speculative sale and leasing.

3.38. New definition of "Utilities (Water and Sewer) Contractor" added.

The definitions were renumbered to reflect the additions and deletions.

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JOHN STRICKLAND

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JAMES R. LEWIS

§28-2-4. Licensure Required.

- 4.1 (7). Deleted and rewritten to clarify the exemption from licensure for speculative sale and leasing.
- 4.1 (8) Clarified the exemption from licensure.
- 4.2. (b) Clarified prime contractor's responsibilities.

§28-2-6. Examination Required.

- 6.2. Update of classifications that are subject to examination.

§28-2-7. Disciplinary Powers of the Board.

- 7.1 (h). New provision added consistent with 2007 amendment to the statute.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Contractor Licensing Act

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Division of Labor

Address: Building 6, Room B-749
Capitol Complex
Charleston, WV 25305

Phone Number: (304) 558-7890 Email: david.w.mullins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed rule will have no fiscal impact on the costs and revenues of the Division of Labor.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: West Virginia Contractor Licensing Act

3. **Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The proposed rule clarifies certain definitions, incorporates recent policy changes adopted by the Board and, incorporates Code amendments made by the Legislature during the 2007 Regular Session.

Date: 7-15-08

Signature of Agency Head or Authorized Representative

David W. Mullins

FILED

TITLE 28
LEGISLATIVE RULE
WEST VIRGINIA CONTRACTOR LICENSING BOARD

2008 AUG 26 AM 11:26

SERIES 2
WEST VIRGINIA CONTRACTOR LICENSING ACT

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§28-2-1. General.**

1.1. Scope. -- This rule governs licensing, fees, examinations, powers of the Board, and penalties for violations in accordance with W. Va. Code §§21-11-1 et seq. and 29A-3-1 et seq.

1.2. Authority. -- W. Va. Code §21-11-5.

1.3. Filing Date. -- ~~May 13, 2005.~~

1.4. Effective Date. -- ~~July 1, 2005.~~

§28-2-2. Application and Enforcement.

2.1. Application. This legislative rule applies to the Board and to all persons, materials and transactions governed by or otherwise within the jurisdiction of the Board.

2.2. Enforcement. The enforcement of this legislative rule is vested in the Board and the West Virginia Division of Labor.

§28-2-3. Definitions.

3.1. "Advertisement" means and includes the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, billboard, sign, placard, card, label, tag, window display, store sign, radio and/or television announcement, telephone directory or any other oral, visual or written means or method now or hereinafter employed to bring to the attention of the public the business of a contractor.

3.2. "Asphalt (specialty) Contractor" means a contractor whose primary business is to proportion, mix, and place base materials, and place paving and surfacing consisting of graded mineral aggregates bonded with asphalt or bituminous materials so that a firm smooth surface suitable for driveways, parking areas, and play areas is obtained and work incidental to paving and surfacing, including the application of seal coatings, and the excavation, grading, and fill necessary to properly prepare the existing surface to accept a paved surface.

~~3.3. "Board" means the West Virginia Contractor Licensing Board.~~

~~3.4.~~ 3.3. "Capital improvements" means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property or any part of real property and that last, or are intended to be relatively permanent.

~~3.5.~~ 3.4. "Cease and desist order" means an order issued by the Commissioner pursuant to the provisions of W. Va. Code §21-11-1 et seq., and of this Rule.

3.5. "Compensation" includes future payment anticipated through the speculative sale or lease of a construction project.

~~3.6. "Commissioner" means the commissioner of the West Virginia Division of Labor.~~

~~3.7.~~ 3.6. "Concrete Contractor" means a contractor whose primary business is installation and repair of concrete, concrete reinforcing materials, concrete products and accessories common to the industry, including the forming, pouring, and finishing of concrete structures such as footings, foundations, slabs, basements, sidewalks and walkways, driveways and parking areas, fence footings, decorative concrete walls not to exceed four (4) feet in height and retaining walls not to exceed five (5) feet in height and the excavation incidental to the performance of that work.

~~3.8.~~ 3.7. "Construction project" means the entire undertaking for which the contractor or subcontractor is responsible.

~~3.9.~~ 3.8. "Contractor" means and includes the following:

a. ~~"Contractor" means~~ a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith, where the cost of the undertaking is two thousand five hundred dollars (\$2,500.00) or more for the material and labor involved.

b. a person acting as Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee. "Construction manager" or "project manager" means a person who manages licensed contractors and/or subcontractors and who does not perform any construction work.

c. Contractor or "contracting activity" also means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor or subcontractor) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, capital improvement or development of real property, or performing activity governed by any or all state building codes and the National Fire Protection Association Code and the National Electrical Code or its successor. The terms "contractor" and "contracting" are synonymous.

b. 3.9. "Contractor" does not include the following:

~~(1)~~ a. A person who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

~~(2)~~ b. A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes; provided that the real property is or will be occupied or used solely and exclusively by the person performing the construction.

~~(3)~~ c. A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and

any employee of the professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work, except that the work, shall be considered to be maintenance work only, and the work shall not materially add to the economic value of the property or asset; or

(4) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in Section 3 of this rule and which employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of the corporation, partnership, or sole proprietorship are also exempt from the requirements of this rule.

~~3.10. "Division" means the West Virginia Division of Labor.~~

~~3.11.~~ 3.10. "Drywall (specialty) Contractor" means a contractor whose primary business is the installation of drywall, gypsum, wallboard panels and assemblies, and work incidental to the installation, including taping and texturing and other preparation of surfaces for suitable painting or finishing, installation of lightweight steel wall partitions and supporting members for gypsum drywall and the installation and repair of movable partitions for the application of gypsum drywall panels.

~~3.12.~~ 3.11. "Electrical Contractor" means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy and work incidental to the undertaking.

~~3.13.~~ 3.12. An "emergency basis" under W. Va. Code §21-11-6(c)(6) exists upon occurrence of an event, circumstance or situation which presents an imminent threat to persons or property constituting a serious health or safety hazard.

~~3.14.~~ 3.13. "Employee of a contractor" means any individual who works under the control and supervision of a contractor subject to this Rule for a wage and other benefits as required by law. An employee of a contractor is not a subcontractor.

~~3.15.~~ 3.14. "Excavation Contractor" means a contractor whose primary business is the installation, alteration, and repair of earthen material by digging, trenching, grading, or compacting the material for a cut, fill, grade, or trench and work incidental to the undertaking, including the installation, alteration, and repair of crib walls, gabion walls, and other devices not to exceed six (6) feet in height for the purpose of controlling the movement of earthen materials.

~~3.16.~~ 3.15. "General Building Contractor" means a person whose principal business is in connection with any structures built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole or any part of the construction. A general building contractor is considered to be a commercial, business or industrial contractor. A general building contractor who desires to perform electrical; plumbing; heating, ventilating and cooling; piping; or general engineering contracting work as defined in this rule; shall obtain a license in those classifications. The "General Building Contractor" classification applies to work on both commercial and private properties.

~~3.17.~~ 3.16. "General Engineering Contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: Irrigation, drainage and water supply projects; electrical generation projects; swimming pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and sewage disposal systems; bridges;

inland waterways; pipelines for transmission of petroleum and other liquid or gaseous substances; refineries; chemical plants and other industrial plants requiring a specialized engineering knowledge and skill; piers and foundations; and structures or work incidental thereto. "Swimming pools" means a public swimming pool as defined by the Building Officials and Code Administrators B.O.C.A. National Building Code/1990, Article 6, Section 623.2.A.

~~3-18.~~ 3.17. "Heating, Ventilating and Cooling Contractor" means a person who engages in the business of contracting to install, erect, repair, service or alter heating, ventilating and air conditioning equipment or systems to heat, cool or ventilate residential and commercial structures or work incidental to the installation or repair.

~~3-19.~~ 3.18. "Landscaping (specialty) Contractor" means a contractor whose primary business is preparation and alteration of land for horticulture and arboriculture and work incidental to the undertaking, including irrigation systems and controls, the installation of non-load-bearing slabs, walkways, and areas using concrete, brick, stone, or gravel and all other materials and equipment associated with the installation of those materials. Excluded are concrete slabs exceeding 400 square feet and concrete walkways exceeding 200 square feet in surface area. Excluded are retaining walls over three (3) feet in height, decorative walls or fences over six (6) feet in height, perimeter walls and fences, and load-bearing slabs and walkways. Carpentry is limited to decorative fences and screens, planter boxes, and plant tubs common to the industry.

~~3-20.~~ 3.19. "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this rule.

~~3-21.~~ 3.20. "Low Voltage Systems (specialty) Contractor" means a contractor engaged in the installation, repair or maintenance of communication, monitoring, security, sound, and other systems utilizing low voltage electric currents, the system's directly related wiring, and work incidental to the installation or repair. "Low voltage" means wiring systems of 50 volts or less and the control circuits directly associated with the system. "Directly related wiring" means line voltage wiring not in excess of 300 volts originating at the load-side terminals of a disconnecting means or junction box that has been installed by persons properly licensed to install it for the sole purpose of supplying power to the low voltage system.

~~3-22.~~ 3.21. "Manufactured Home Installation Contractor" means a contractor engaged in the installation of manufactured homes, as that term is defined by W. Va. Code §21-9-1, including soil analysis, site preparation, construction of the foundation system, placement of the manufactured home, connection of the utilities, anchoring, ground moisture control, and finish carpentry. Possession of this license is in addition to possession of any license required pursuant to W. Va. Code §21-9-1.

~~3-23.~~ 3.22. "Masonry (~~specialty~~) Contractor" means a contractor whose primary business is the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, with or without mortar and work incidental to the installation, including the installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, cleaning, and welding of reinforcement steel related to masonry construction.

~~3-24.~~ 3.23. "Multifamily Contractor" means a person who is engaged in the construction, repair or improvement of a multifamily residential structure or work incidental to the construction, maintenance or repair. "Multifamily residential structure" means a structure containing two or more residential units.

~~3-25.~~ "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects, or any combination thereof.

~~3-26:~~ 3.24. "Piping Contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld or mechanical methods or work incidental to the installation.

~~3-27:~~ 3.25. "Plumbing Contractor" means a person whose principal business is the installation, maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; including the installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating, piping for stand pipes or work incidental to the installation.

~~3-28:~~ 3.26. "Posting of the license" means placing a copy of the contractor's license on each job site where contracting work is being performed by each contractor working at the job site location where the general public and inspecting agents of the Board can easily read each contractor's name, license number, license classification and license expiration date.

3.27. "Professional fee" includes future payment anticipated through the speculative sale or lease of a construction project.

~~3-29:~~ 3.28. "Remodeling and Repair Contractor" means a contractor whose primary business is all general remodeling, additions, and repairs to existing structures requiring the use of two or more unrelated trades and work incidental to the trades where the cost of the undertaking does not exceed \$15,000.00. This includes all rough and finish general carpentry work including the installation of related hardware and accessories and all minor repairs and replacement of pre-manufactured items on existing structures.

~~3-30:~~ 3.29. "Residential Contractor" means a person whose principal business is in connection with the construction, repair or improvement of real property used as, or intended to be used for, residential occupancy or work incidental to the construction or repair. A residential contractor is considered licensed for all crafts required in the construction, repair or improvement of a residential structure, as that term is defined in subsection 3-33 of this rule, W. Va. Code § 21-11-3, except those crafts for which local ordinance or state law other than W. Va. Code § 21-11-1, et seq, require licensure, such as the electrician's license required by the office of the State Fire Marshal under the provisions of W. Va. Code § 29-3b-1, et seq.

~~3-31:~~ "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.

~~3-32:~~ 3.30. "Residential Pools (specialty) Contractor" means a contractor whose primary business is the construction, service, and repair of residential swimming pools and spas, with or without solar heating devices, and work incidental to the construction or repair, including water and gas service lines from the point of service to the pool equipment, electrical wiring from pool equipment to the first readily accessible disconnect, pool piping, fittings, back-flow prevention devices, waste lines and other integral parts of swimming pools and spas, attached solar water heating devices, swimming pool accessories, covers, safety devices and the installation of fencing around swimming pools. The construction of other structures or appurtenances is excluded.

~~3-33:~~ "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct or residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories;

~~hotels, motels, or other transient lodging units are not residential structures.~~

~~3.34.~~ 3.31. "Roofing (specialty) Contractor" means a contractor whose primary business is to install a watertight covering to roof surfaces by use of, but not limited to, cedar, cement, metal, composition shingles, wood shakes, cement and clay tile, built-up roofing, single ply, fluid-type roofing systems, and other acceptable roofing materials including spray urethane foam, asphalt, and the application of protective or reflective roof, or both, deck coatings, sheet metal when in conjunction with a roofing project, application of damp-proofing and/or waterproofing, installation of roof insulation panels and other roof insulation systems and work incidental to the installation.

~~3.35.~~ 3.32. "Siding (specialty) Contractor" means a contractor whose primary business is the fabrication, construction, and/or installation of wood, aluminum, steel, or vinyl siding and work incidental to the installation. All materials shall be applied in accordance with the manufacturers' specifications and, when necessary, on furred-up grill or network.

~~3.36.~~ 3.33. "Specialty Contractor" means a person who engages in specialty contracting services or work incidental to the undertaking which does not substantially fall within the scope of any contractor classification as set out in W. Va. Code §21-11-1 et seq.

3.34. "Speculative sale or leasing" means construction undertaken for an undetermined or unknown or potential buyer or occupant, with the expectation of compensation and/or a fee upon the sale or lease of the property.

~~3.37.~~ 3.35. "Sprinklers and Fire Protection Contractor" means a contractor engaged in the installation, repair or maintenance of fire suppression systems, including water sprinkler and chemical systems, and work incidental to the installation or repair.

~~3.38.~~ 3.36. "Steel Erection Contractor" means a contractor engaged in the erection of structural steel connected, attached or joined by riveting, welding, rigging, or fastening devices, for buildings and other structures, and work incidental to the erection.

~~3.39. "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.~~

~~3.40.~~ 3.37. "Undertaking" means the entire construction project. The value of the undertaking shall be determined by adding the cost of labor and material required to accomplish it.

3.38. "Utilities (Water and Sewer) Contractor" means a contractor whose principal business is in the installation of water and sewer lines on private projects and work incidental to the installation. The "Utilities (Water and Sewer) Contractor" classification applies to work on both commercial and residential properties.

§28-2-4. Licensure Required.

4.1. No person may engage in the business of a contractor in this state without a license. Except as otherwise provided in W. Va. Code §21-11-1 et seq, the following are exempt from licensure:

(+) a. Work done exclusively by employees of the United States government, the state of West Virginia, a county, municipality or municipal corporation, and any governmental subdivision or agency thereof directly in conjunction with and in the course of their employment;

(2) b. The sale or installation of a finished product, material or article or merchandise which is not actually fabricated into and does not become a permanent fixed part of a structure;

(3) c. Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;

(4) d. A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;

(5) e. Public Utility work performed by a public utility company regulated by the West Virginia public service commission and its employees;

(6) f. Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of the equipment;

(7) ~~Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the employer. The term "property owned or leased by the employer" shall not include any property upon which work is performed by the owner or lessee employer for the purpose of speculative sales or leasing, or otherwise intending the sale or lease of the property for residential use by an entity other than the employer, or any commercial property intended for sale or lease by an entity other than the employer where the total undertaking, labor and materials, exceeds ten thousand dollars (\$10,000.00);--~~

g. A person who personally performs, or uses his or her employees to perform, construction work on the site of real property which the person owns or leases whether for commercial or residential purposes, provided that all of the following conditions apply:

1. The real property is or will be occupied or used solely and exclusively by the person performing, or whose employees perform, the construction;

2. The person's employees are paid their regular and customary wages and not a contract price; and

3. The construction is not intended for speculative sale or lease.

(8) h. Work personally performed on a structure by the owner or occupant of the structure, provided that the structure is or will be occupied or used solely and exclusively by the person performing the construction; and

(9) i. Work performed when the specifications for the work have been developed or approved by registered professional engineers, licensed pursuant to the laws of this state, when the work to be performed, because of its specialized nature or process, cannot be reasonably or timely contracted for within the general area of the facility.

4.2.

a. The contractor shall post a copy of the license in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts. No bid shall be accepted by any person soliciting bids for construction which does not bear on its face, the contractor's license number.

b. A contractor who hires a subcontractor for construction work shall, before entering into a contract, verify that the subcontractor has a valid contractor license and is licensed in the proper classification for the scope of work contemplated.

4.3. The Building inspector or other authority of any incorporated municipality or other political subdivision in this state charged with the duty of issuing building or other permits for construction as defined in this rule, shall not issue permits to any person who does not possess a valid contractor's license when required by this rule.

4.4.

a. No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use of the license. Any person who violates this section is subject to the penalties imposed in W. Va. Code §21-11-14.

b. No license may be used for any purpose by any person other than the person to whom the license is issued. The person who makes application for a license for the entity is the license holder. If the license holder severs his or her relationship with the entity, the entity shall name a successor, subject to the approval of the Board and section 6 of this rule. The successor, who desires to be licensed under the provisions of W. Va. Code §21-11-7, shall notify the Board within thirty (30) days and shall certify, on a form prescribed by the Board, the same information as was certified by the original license holder.

§28-2-5. License Application, Renewal.

5.1. Any person desiring to be licensed as a contractor shall submit to the Board a written application requesting licensure, providing all information as the Board may require on forms supplied by the Board and shall pay the applicable license fee as prescribed in subsection 5.3 of this rule.

5.2. All license applicants shall pass a written examination in the contractor classification for which they seek licensure, as defined in Section 6 of this rule. In addition to the classification examination, all applicants must also pass a West Virginia business and law examination. An owner, partner or corporate officer who successfully completed an examination as required by the Board may use the examination to qualify one additional entity in which that person is also an owner, partner or corporate officer. If a company closes out the first entity in compliance with the business franchise tax provisions of West Virginia Code §11-1-1 et seq., has registered and is in compliance with the workers' compensation fund and the employment security fund as required by West Virginia Code §23-1-1 et seq. and §21A-1-1 et seq., and is in compliance with the applicable wage bonding requirements of West Virginia Code §21-5-1, a third company may be licensed using the same test scores. A full-time employee who successfully completed an examination as required by the Board to qualify his or her employer for a contractor license, and who has left the employment of the company, may use that examination to qualify another entity in which he or she is an owner, partner, or corporate officer. Test scores cannot be used by a full-time employee to license another business structure as a full-time employee.

5.3. Any person desiring a license shall, at the time of application, pay the annual fee of \$90.00, as established by the Board. Except that in the case of a sole proprietorship conducting business only as an Electrical Contractor where the business owner holds an electrician's license issued under the provisions W. Va. Code §29-3B-4 and provides proof of licensure to the commissioner, the annual fee is \$20.00.

5.4. A license issued under the provisions of this rule is valid for twelve months from the date of issuance unless sooner revoked for cause.

5.5.

a. The holder of a valid license may renew the license on or before the expiration date by making renewal application on forms provided by the Board and paying the appropriate fee as set forth in subsection 5.3 of this rule, and upon verification by the commissioner that the licensee is in compliance with W. Va. Code § 21-11-15(c). If the renewal application is received or postmarked more than fifteen (15) days after the license's expiration date, the applicant shall pay, in addition to the annual renewal fee, a penalty fee of \$25.00: *Provided*, that no license which has lapsed for a period of ninety days or more may be renewed: *Provided*, That if a licensee is in a dispute with a state agency, and it is determined that the licensee is not at fault, the board shall renew the license. A renewal of a license may be conditional by action of the Board under the provisions of W. Va. Code §§21-11-13 and 21-11-14. The Board shall provide each licensee with a renewal notice at least thirty (30) days in advance of the expiration date.

b. In the event that continuing education or other requirements are made as a condition of license reinstatement after lapse, suspension or revocation, such requirements must be satisfied before the license is reissued.

5.6. A duplicate license may be issued by the Board to persons who, by application and affidavit, certify that the original license certificate has been permanently lost or destroyed and that the applicant is in full compliance with the requirements of W. Va. Code §21-11-1 et seq. and this rule. The Board shall charge a fee of \$10.00 for each duplicate license issued.

§28-2-6. Examination Required.

6.1. Any person desiring a license under the provisions of W. Va. Code §21-11-1 et seq. and this rule, must take the examination required by the board and achieve a minimum score of seventy (70) percent to qualify for a license. Any person who fails to achieve the minimum required score may apply for re-examination at the next regular examination session.

6.2. The Board shall provide examinations for each of the following contractor classifications:

- a. electrical contractor;
- b. general building contractor;
- c. general engineering contractor;
- d. heating, ventilating and cooling contractor;
- e. multifamily contractor;
- f. piping contractor;
- g. plumbing contractor;
- h. residential contractor;
- i. ~~specialty contractor~~ (1) remodeling and repair ~~specialty~~ contractor;
- (2) j. manufactured home installation contractor;

(3) k. structural steel erection contractor;

(4) l. excavation contractor;

(5) m. concrete contractor;

n. masonry contractor;

(6) o. sprinklers and fire protection contractor;

p. utilities (water and sewer) contractor; and

(7) q. any other specialty classifications as the Board determines warrant examination.

6.3. The Board shall conduct examinations quarterly and at such other times as it considers necessary. The Board shall make available to all applicants, on request, an annual schedule of examination locations and dates. The Board shall notify all applicants for examination of the date, place, and time of examination at least fifteen (15) days prior to the scheduled date.

6.4. The applicant shall take an examination in each classification for which a license is desired. Examinations shall be made available by a private testing agent(s) approved and certified by the Board to conduct the examinations. Examination fees will be charged for each classification examination requested and are the responsibility of the individual applicant. An applicant shall pay all examination fees directly to the approved testing agent. The individual taking an examination on behalf of an entity seeking licensure shall be the owner, a partner, a corporate officer or a full-time employee of the entity. Upon the termination of the relationship of the individual who took the examination to obtain a license for an entity, the entity shall, within thirty (30) days of that termination, designate a new individual to take the examination for licensure.

§28-2-7. Disciplinary Powers of the Board.

7.1. The Board may take the following disciplinary actions for causes defined in W. Va. Code §21-11-14:

- a. permanently revoke a license;
- b. suspend a license for a specified period;
- c. censure or reprimand a licensee;
- d. impose limitations or conditions on the professional practice of a licensee;
- e. impose requirements for remedial professional education to correct deficiencies in the education, training and skill of a licensee;
- f. impose a probationary period requiring a licensee to report regularly to the Board on matters related to the grounds for probation; the Board may withdraw probationary status if the deficiencies that require the sanction are remedied; or
- g. order a contractor who has been found, after hearing, to have violated the provisions of W. Va. Code §21-11-1 et seq. or its applicable rules to provide, as a condition of licensure, assurance of

financial responsibility.

h. impose a fine of not more than one thousand dollars (\$1,000.00).

7.2. The Board may summarily suspend a licensee pending a hearing, as provided for in Section 9 of this rule, or pending an appeal after hearing upon a determination that the licensee poses a clear, significant and immediate danger to the public's health and safety.

7.3. The Board may reinstate a suspended or revoked license of a person, if, upon a hearing, the Board finds and determines that that person is able to practice with skill and safety.

7.4. The Board may accept the voluntary surrender of a license: Provided, that the license may not be reissued unless the Board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fees.

7.5. A person adversely affected by disciplinary action may appeal to the Board within sixty days of the date the disciplinary action is taken. The Board shall hear the appeal in accordance with the provisions of W. Va. code §29A-5-1, et seq., and Section 9 of this rule. The Board shall hold hearings in Charleston.

7.6. In all disciplinary hearings the Board has the burden of proof as to all matters in contention. No disciplinary action shall be taken by the Board except on the affirmative vote of at least six members of the Board. Other than as specifically set out in W. Va. Code §21-11-13, the Board may not impose or assess damages.

§28-2-8. Cease and Desist Orders.

8.1. Upon a determination that a person is engaged in contracting business in this state without a valid license, the Board or Commissioner shall issue a cease and desist order requiring that person to immediately cease all operations in this state. The order shall be withdrawn upon issuance of a license to that person. After an administrative hearing, as provided for in Section 9 of this rule, the Board may impose a penalty of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00) upon any person engaging in contracting business in this state without a valid license.

8.2. Any person continuing to engage in contracting business in this state without a valid license after the service of a cease and desist order is guilty of a misdemeanor, and, upon conviction thereof, is subject to the following penalties:

a. For a first offense, a fine of not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00);

b. For a second offense, a fine of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00), or confinement in the county or regional jail for not more than six months, or both;

c. For a third or subsequent offense, a fine of not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00), and confinement in the county or regional jail for not less than thirty days nor more than one year.

d. The Board may institute proceedings in the circuit court of the county in which the alleged violations of W. Va. Code §21-11-1 et seq., and the provisions of this rule occurred or are now occurring to

enjoin the violation.

8.3. Any person who undertakes any construction work without a valid license when a license is required by W. Va. Code §21-11-1, et seq., when the total cost of the contractor's construction contract on any project upon which the work is undertaken is twenty-five thousand dollars (\$25,000.00) or more, shall, in addition to any other penalty provided in this rule, be assessed by the Board an administrative penalty not to exceed two hundred dollars (\$200.00) per day for each day the person is in violation.

8.4. The Board shall, in accordance with Section 9 of this rule, provide for an administrative hearing before a penalty is assessed.

§28-2-9. Administrative Hearings.

9.1. Any person adversely affected by any action of the Board, other than an action taken by the Board as the result of any administrative hearing conducted before the Board, may appeal to the Board within sixty days of the action; Provided, that: appeals from disciplinary actions shall follow the time frames of W. Va. Code §21-11-14(e) and Section 7 of this rule. The Board shall hear the appeal within thirty days from receipt of notice of appeal in accordance with the provisions of W. Va. Code §29A-5-1 et seq. Within five days of receipt of a request for hearing, the Board shall provide a notice containing the date, time, place of the hearing and a short and plain statement of the matters asserted.

9.2. The Board may employ a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the Board for its action.

9.3. The Board shall provide a written final decision to the aggrieved person within thirty (30) days of the close of the hearing. The final decision of the Board is subject to judicial review by the circuit court of competent jurisdiction. Any appeal shall be filed with the court within thirty (30) days of the date of the final decision of the Board.

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JOE MANCHIN, III
Governor



DAVID W. MULLINS
Commissioner

Agency Response to Public Comment.

The Division of Labor received only one comment during the public comment period. This was a verbal comment from Chris Ilardi, a former member of the Contractor Licensing Board.

Mr. Ilardi noted that the definition of "residential contractor" includes a reference to the definition of "residential structure," which has been struck through in the proposed rule.

Response:

Following Mr. Ilardi's comment, in proposed definition 3.29, "subsection 3.33 of this rule" has been struck through and replaced with "W. Va. Code § 21-11-3."