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Form #2

2007 JUN 27 PM 3:00

SECRETARY OF STATE

Contractor Licensing Board
West Virginia Division of Labor

AGENCY: West Virginia Division of Labor

TITLE NUMBER: _____ 28

RULE TYPE: Legislative

CITE AUTHORITY:

W.Va. Code §21-11-5 and §21-11-1 et seq

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: West Virginia Contractor Licensing Act

IF NO, SERIES NUMBER OF 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 July 27, 2007 AT 4:30 pm / 05:00 am ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Division of Labor

Attn: Andrew A Brown
Room B-748, Building #6

State Capitol Complex
Charleston, West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

~~Authorized Signature~~

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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: Room B-749, Building #6
State Capitol Complex
Charleston, West Virginia 25305

Phone Number: (304) 558-7890 Email: abrown@labor.state.wv.us

Fiscal Note Summary

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

This amendment to the rule, 28 CSR 2, will have NO fiscal impact upon the Division, the Board or their respective enforcement activities.

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.

NO FISCAL IMPACT

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.

NONE

Date: June 27, 2007

Signature of Agency Head or Authorized Representative



SUBSTANTIVE CHANGES

1. Several definitions were eliminated because they repeated verbatim the definitions in the statute.
2. 28-2-3.6.4 - Added to the definition of "contractor" was employment agency that refers workers.
3. 28-2-3.22 - Definition of "person" was changed to mean an individual except when it is meant to include a business entity.
4. 28-2-3.17 - New definition of "license holder."
5. 28-2-6.6 – Board will accept ICC certification in lieu of required exam.
6. 28-2-6.8 – Limitations on the Use of exam scores clarified.
7. 28-2-8.1.8 – addition of \$1000 fine added to Board's disciplinary powers.
8. 28-2-9.3 and subsections - new procedure for an informal hearing after issuance of a cease and desist order
9. 28-2-10. – section on administrative hearings beefed up -- taken from 28-1, the Board's procedural rule.
10. 28-2-12 – added section on severability.

TITLE 28
LEGISLATIVE RULE
WEST VIRGINIA CONTRACTOR LICENSING BOARD

SERIES 2
WEST VIRGINIA CONTRACTOR LICENSING ACT

§28-2-1. General.

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

1.2. Authority. -- W. Va. Code §§ 21-11-5 and 21-11-16.

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, business entities, 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. "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.

3.4. "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.

3.5. "Construction project" means the entire undertaking. For purposes of this rule, the terms "construction project" and "undertaking," as defined in subsection 3.37, are synonymous.

3.6. Contractor defined.

3.6.1. "Contractor" means a person or business entity 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.

3.6.2. "Contractor" also means a construction or project manager or developer who oversees and manages a construction project for a professional fee, including any project for speculative sale and/or lease.

3.6.3. "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. For purposes of this rule, the terms "contractor" and "contracting" are synonymous.

3.6.4. "Contractor" also means an employment agency that refers temporary laborers for employment to licensed contractors when the employment agency retains all payroll functions, including wage determinations, for such temporary laborers.

3.6.5. "Contractor" does not include:

3.6.5.a. A person or business entity who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

3.6.5.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 and which the person will personally occupy;

3.6.5.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

3.6.5.d. 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.

3.7. "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.

3.8. "Electrical Contractor" means a contractor 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.

3.9. 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.

3.10. "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.

3.11. "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.

3.12. "General Building Contractor" means a contractor 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 contractor who supervises the whole or any part of the construction.

3.12.1 A general building contractor also means a commercial, business or industrial contractor, and includes work on both commercial and private properties.

3.12.2. A general building contractor does not include electrical, plumbing, heating, ventilating and cooling, piping, or general engineering contracting work as defined in this rule. All such contracting work are additional classifications that must be added to a general building license.

3.13. "General Engineering Contractor" means a contractor 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.

3.14. "Heating, Ventilating and Cooling Contractor" means a contractor 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.

3.15. "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.

3.16. "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this rule.

3.17. "License holder" or "licensee" means the person or business entity to whom a contractor license has been issued by the Division. A license holder must be one of the following:

3.17.1. An owner or partner of a business entity owning at least a twenty percent share or interest of the business entity; or

3.17.2. or corporate officer; or

3.17.3. a currently employed responsible managing full-time employee of the business entity.

3.18. "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 60 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.

3.19. "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.

3.20. "Masonry 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.

3.21. "Multifamily Contractor" means a contractor 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.

3.22. "Person" means, for purposes of this rule, an individual engaged in the undertaking of construction projects. "Person" may also mean a firm, sole proprietorship, partnership, corporation, association or other business entity when specifically designated as such.

3.23. "Piping Contractor" means a contractor 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.

3.24. "Plumbing Contractor" means a contractor 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.

3.25. "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.

3.26. "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.

3.27. "Residential Contractor" means a contractor 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 3.35 of this rule, 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.

3.28. "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.

3.29. "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. A "residential structure" also means a detached one- or two-family dwelling or multiple single family dwellings (i.e. townhouses) not more than three stories in height, and their accessory structures. Each dwelling in two-family dwellings and multiple single family dwellings must have a separate means of egress.

3.30. "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.

3.31. "Septic and Sewage Contractor" means a contractor whose primary business is in connection with private or public irrigation, drainage and water supply projects and sewers and sewer disposal systems projects.

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.

3.33. "Specialty Contractor" means a contractor 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. "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.

3.35. "Structural 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.

3.36. "Subcontractor" means a person or business entity that performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

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.

§28-2-4. License Required; Exemptions; Advertisements and Posting of License; Building Permits.

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

4.1.1. 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;

4.1.2. 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;

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

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

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

4.1.6. Repair work contracted, for by the owner of the equipment on an emergency basis, as defined in 3.9 of this rule, in order to maintain or restore the operation of the equipment;

4.1.7. 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 which is or will be exclusively used and occupied by the employer..

4.1.7.a. The term " property owned or leased by the employer" does not include the following:

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);

4.1.8. Work personally performed on a structure by the owner or occupant of the structure; and

4.1.9. 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. 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.

4.3 The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts.

4.4 No bid shall be accepted by any person soliciting bids for construction which does not bear on its face, the contractor's license number, unless otherwise exempted by federal law.

4.5. If a contractor fails to comply with W. Va. Code § 21-11-6 (b) and subsections 4.2 through 4.4 of this rule, and after affording the contractor an opportunity for an informal hearing as described in subsection 9.3 of this rule, the Board may issue a warning, a reprimand, or impose a fine not to exceed two hundred dollars (\$200.00).

4.6. 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.

§28-2-5. License Application, Annual Renewal; Duplicate License.

5.1. Any person or business entity desiring to be licensed as a contractor shall submit a written application to the Board requesting licensure, providing the applicant's social security number or federal employer ID number ("FEIN") and all other information as the Board may require on forms supplied by the Board and shall pay the applicable license fee as prescribed in subsection 5.2 of this rule.

5.2. Any person or business entity desiring a license shall, at the time of application, pay an annual fee of \$90.00, as established by the Board. 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.

5.3 Any person or business entity desiring to be licensed shall certify by affidavit that the person or business entity has registered with and is in compliance with the following:

5.3.1. the business registration tax provisions of W. Va. Code §11-12-1 *et seq.* or the corporate license tax provisions of W. Va. Code § 11-12C-1 *et seq.*, as appropriate;

5.3.2. the employment security fund provisions of W. Va. Code § 21A-1-1 *et seq.*

5.3.3. the workers' compensation fund provisions of W. Va. Code § 23-1-1 *et seq.*; and

5.3.4. the wage bond provisions of W. Va. Code § 21-5-14.

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

5.5. Annual License Renewal.

5.5.1. The Board shall provide each licensed contractor with a renewal notice or application at least thirty (30) days in advance of the license's expiration date.

5.5.2. A licensed contractor possessing a valid license may renew the license on or before the expiration date by making renewal application on forms provided by the Board, paying the appropriate fee as set forth in subsection 5.2 of this rule, and upon verification by the Commissioner that the license holder is in compliance with the provisions of W. Va. Code § 21-11-15(c).

5.5.3. If the license cannot be renewed because the contractor is not in compliance with W. Va. Code § 21-11-15(c) and it is later determined that such non-compliance is not the fault of the contractor, the license shall thereafter be renewed.

5.5.4. 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.

5.5.5. No license which has lapsed for a period of ninety days or more may be renewed.

5.5.6. The renewal of a license may be made conditional by action of the Board pursuant to the provisions of W. Va. Code §§21-11-13 and 21-11-14.

5.5.7. In the event that continuing education or other requirements are imposed by the Board as a condition of license reinstatement after lapse, suspension or revocation, such requirements must be satisfied before the license can be 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; Business and Law Examination Required; Limitations on the Use of Examination Scores.

6.1. Any person desiring a license shall take an examination in each classification for which a license is desired.

6.2. Any person taking an examination on behalf of a business entity seeking licensure must be an owner, a partner, a corporate officer or a currently employed full-time responsible, managing employee of the business entity at the time of examination.

6.3. A license applicant must 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.

6.4. In addition to the classification examination(s), set forth in subsection 6.5 of this rule, a license applicant must also pass a West Virginia business and law examination.

6.5. In lieu of the examination required by the Board, the Board will accept the results of a valid International Code Council ("ICC") certification in that classification. Such applicant will be required to pass a West Virginia business and law examination.

6.6. The Board shall provide or arrange for examinations for each of the following contractor classifications:

- 6.6.1. concrete contractor;
- 6.6.2. electrical contractor;
- 6.6.3. excavation contractor;
- 6.6.4. general building contractor;
- 6.6.5. general engineering contractor;
- 6.6.6. heating, ventilating and cooling contractor;
- 6.6.7. manufactured home installation contractor;
- 6.6.8. multifamily contractor;
- 6.6.9. piping contractor;
- 6.6.10. plumbing contractor;
- 6.6.11. remodeling and repair specialty contractor;
- 6.6.12. residential contractor;
- 6.6.13. septic and sewer contractor
- 6.6.14. sprinklers and fire protection; contractor
- 6.6.15. structural steel erection contractor; and
- 6.6.16. specialty contractor, including any other specialty classification as the Board determines warrant examination.

6.7. 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

6.8. Limitations on the Use of Examination Scores

6.8.1. As defined in subsection 3.17 of this rule, a license holder who is an owner, partner or corporate officer of a business entity may use his or her examination score a maximum of three (3) times, as follows:

6.8.1.a. Such license holder may qualify a maximum of two (2) business entities at any one time as long as the license holder is an owner, partner or corporate officer in both business entities; or

6.8.1.b. Such license holder may qualify a third business entity only when he or she properly closes out one business entity by formally notifying the Secretary of State, the tax department, the workers' compensation provider, unemployment security, and any other agency as appropriate.

6.8.2. As defined in subsection 3.17 of this rule, a license holder who is a responsible managing full-time employee of a business entity may use his or her examination score a maximum of one additional time only, as follows:

6.8.2.a.. Upon leaving the employment of such business entity, he or she may serve as the license holder for another business entity only if he or she is an owner, partner, or corporate officer of that business entity.

6.8.3 After using current examination scores the maximum number of times permitted by this rule, any individual who desires to use new examination scores in order to qualify for or apply for a new license must personally appear before the Board before any such application will be considered.

§28-2-7. Transfer or Assignment of License Prohibited; License Holder Responsibilities; Business Entity Responsibilities.

7.1. No license may be used for any purpose by any person or business entity other than the person or business entity to whom the license is issued.

7.2. No license can be assigned, transferred or otherwise disposed of. Any such assignment or transfer is an unauthorized use of the license and will subject the license holder to the penalties imposed in W. Va. Code §21-11-14.

7.3. A license holder is responsible for notifying the Board in writing of any change of address. If no such change of address is provided to the Board, any notices, including renewal notices, shall be sent to the license holder at his or her last known address, and shall be deemed to be timely provided.

7.4 As a condition of licensure, a license holder other than a sole proprietor is responsible for notifying the Board whenever the relationship with the business entity he or she qualified has been severed or otherwise terminated.

7.5. If a license holder other than a sole proprietor severs his or her relationship with a business entity, the business entity must name a successor, subject to the approval of the Board and sections 5 and 6 of this rule.

7.6. Any successor who desires to be licensed under the provisions of W. Va. Code §21-11-7 must notify the Board within thirty (30) days and must certify, on a form prescribed by the Board, the same information as was certified by the original license holder.

§28-2-7 8. Disciplinary Powers of the Board.

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

8.1.1. permanently revoke a license;

8.1.2. suspend a license for a specified period;

8.1.3. censure or reprimand a license holder;

8.1.4. impose limitations or conditions on the professional practice of a license holder;

8.1.5. impose requirements for remedial professional education to correct deficiencies in the education, training and skill of a license holder;

8.1.6. impose a probationary period requiring a license holder 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;

8.1.7. order a license holder 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; or

8.1.8. impose a fine not to exceed one thousand dollars.

8.2. The Board may summarily suspend a license pending a hearing, or pending an appeal after hearing upon a determination that the license holder poses a clear, significant and immediate danger to the public's health and safety.

8.3. The Board may reinstate a suspended or revoked license, if, after a hearing, the Board finds and determines that the license holder is able to practice with skill and safety.

8.4. The Board may accept the voluntary surrender of a license. After a license is surrendered voluntarily, the license may not be reissued until the Board determines that the license holder is competent to resume practice and the license holder pays the appropriate renewal fees.

8.5. No disciplinary action shall be taken by the Board except on the affirmative vote of at least six members of the Board

8.6. Any person or business entity adversely affected by a disciplinary action of the Board may appeal to the Board in writing within sixty days of the date the Board's order is received by the license holder. The Board shall hear the appeal in accordance with the provisions of W. Va. code §29A-5-1, et seq, and Section 10 of this rule. The Board shall hold hearings in Charleston.

§28-2- 9. Cease and Desist Orders.

9.1. Upon a determination that a person or business entity 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 or business entity to immediately cease all contracting operations or activities in this state.

9.2. The cease and desist order shall be withdrawn upon timely issuance of a license to that person, to an officer, partner or owner of the business entity, or to a current responsible managing full-time employee of the business entity.

9.3. After affording an opportunity for a hearing, the Board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person or business entity engaging in contracting business in this state without a valid license.

9.3.1. Any person or business entity who has been issued a cease and desist order may, within ten (10) days of receipt, request in writing an informal hearing to contest the issuance of the cease and desist order.

9.3.2. In lieu of an informal hearing, any person or business entity may submit a written statement within ten (10) days of receipt of the cease and desist order to contest its issuance.

9.3.3. Upon request for an informal hearing, the Division will schedule such hearing within five (5) days of receipt of the request.

9.3.4. The informal hearing is not an adversary proceeding. Testimony is not recorded, is not taken under oath, and cross examination is not permitted. The rules of evidence do not apply.

9.3.5. Within five (5) days following the informal hearing, the Division will make a decision on the issuance of the cease and desist order. The person or business entity requesting the informal hearing will be notified in writing of the Division's decision.

9.3.6. If any person or business entity fails to timely request an informal hearing or fails to timely submit a written statement, or if, after informal hearing, the cease and desist order is not rescinded by the Division, the cease and desist order will be considered by the Board for penalty.

9.4. Any person or business entity 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:

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

9.4.2. 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;

9.4.3. 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.

9.4.4. 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.

9.5. Any person or business entity 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 construction on any project is twenty-five thousand dollars or more, shall, in addition to any other penalty provided in this rule, be assessed an administrative penalty by the Board not to exceed two hundred dollars (\$200.00) per day for each day the person or business entity is in violation.

§28-2-9. 10. Administrative Hearings.

10.1. Any person or business entity adversely affected by any action of the Board, may make a written appeal to the Board within sixty days of receipt of the notice of the Board's action.

10.2. Within five days of receipt of a written appeal, and at least ten days prior to the hearing, the Board shall provide a notice to the appellant containing the date, time, place of the hearing and a short and plain statement of the matters asserted.

10.3. The Board shall hear the appeal within thirty days from receipt of an appeal, unless such time frame is waived by the appellant or for other good cause shown.

10.4. Any appeal made to the Board shall be conducted as an administrative hearing in accordance with W. Va. Code §29A-5-1 et seq.

10.4.1. Administrative hearings may be conducted as part of any regular or special meeting of the Board.

10.4.2. Alternatively, at the Board's discretion, the Board may appoint a hearing examiner to preside at an administrative hearing and present proposed findings of fact and conclusions of law to the Board for its action.

10.4.3. 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 the course of the hearing.

10.5. In all administrative hearings the Board has the burden of proof as to all matters in contention.

10.6. 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.

10.6.1. 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.

10.7. Any person or business entity entitled to an administrative hearing pursuant to W. Va. Code § 21-11-1 *et seq* and this rule shall be entitled to each of the following:

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

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

10.7.3. the assistance of an attorney duly qualified to practice in the State of West Virginia.

10.8. A corporation must be represented at an administrative hearing by an attorney duly qualified to practice in the State of West Virginia.

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

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

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

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

10.13. Any person or business entity 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, or within some other time frame as agreed to by the parties.

10.14. A hearing examiner shall submit proposed findings of fact and conclusions of law and a proposed order to the Board within thirty days following the submission of all documents and materials necessary for the proper disposition of the case.

10.15. A final order adjudicating an administrative hearing shall be issued in writing by the Board within forty-five (45) days of receipt of the hearing examiner's proposed findings of fact and conclusions of law and proposed order.

§28-2-11. Appeals from the Board's Final Order.

11.1. An appeal from any final order entered by the Board in accordance with this rule shall be governed by the provisions of W. Va. Code §29A-5-4 and §29A-6-1, and must be filed with a court of competent jurisdiction within thirty days of the date of the final decision of the Board.

§28-1-12. Severability.

12.1. If any provisions of these rules or their application to any person or business entity 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.