

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

JUL 28 2 46 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Contractor Licensing Board TITLE NUMBER: 28

CITE AUTHORITY WV Code 21-11-5

AMENDMENT TO AN EXISTING RULE: YES XX 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 NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

6-80

WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305
Phone (304) 558-7890 • Fax (304) 558-3797

GASTON CAPERTON
Governor



SHELBY LEARY
Commissioner

STATEMENT OF CIRCUMSTANCE 28 CSR 2 31 MAY 1995

For the first time since the inception of the Contractor Licensing program in 1991, these rules, 28 CSR 2, are being amended. The amendments reflect areas of clarification for the public and administration, as well as additions suggested by the public and administrators. There are no new or increased fees included in these rules.

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DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Division of Labor

LEGISLATIVE RULE TITLE: Contractor Licensing Act

1. Authorizing statute(s) citation 21-11-5

2. a. Date filed in State Register with Notice of Hearing

May 31, 1995 (Public Comment Only)

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Hearing(s) 30 day public comment period

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

Attached XX No comments received

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

July 31, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

Chris Quasebarth, Deputy Commissioner (304) 558-7890

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: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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SUMMARY OF CHANGES 28 CSR 2 31 MAY 1995

§ CHANGED	EXPLANATION
3.15	Specifies use of <u>current</u> edition of BOCA National Building Code for "swimming pools" definition, rather than limiting to the 1990 edition
3.20	Simple clean-up of "multifamily contractor" definition
3.26	Struck "residential" from "residential asphalt," so definition applies to both commercial and residential work
3.27	Struck "residential" from "residential concrete," so definition applies to both commercial and residential work
3.31	Struck "residential" from "residential siding," so definition applies to both commercial and residential work
3.37	Adds "Low Voltage Contractor" definition
3.38	Adds "Manufactured Homes Installation Contractor" definition
3.39	Adds "Steel Erection Contractor" definition
3.40	Adds "Sprinklers and Fire Protection Contractor" definition

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§ CHANGED	EXPLANATION
4.1(5)	Adds "public utility" as modifier to "work" to clarify that public utilities are exempt only from doing public utility contracting, not all contracting
5.3	Specifies the license fee, which, though enacted by the Board in 1991, and subsequently reduced by the Board, was never previously specified in the rule
5.5	Adds requirement of verification of compliance with Tax, WC, Emp. Sec. in order to renew (underscores statutory language in this regard)
5.6	Deletes language allowing the Board to issue temporary contractor licenses to out-of-state contractors for bidding purposes only
5.7	Renumbered to 5.6 to reflect above deletion
6.2	Brings language into conformity with definition changes made at 3.26, 3.27, 3.31, and 3.37-3.40, noted above; authorizes the Board to provide examinations for those classifications
7.6	Strikes "of record" following "court," in anticipation of similar proposed statutory change, to clarify whether a magistrate court final order is sufficient in order for the Board to act on disciplinary matters
9.1	Eliminates the <u>requirement</u> that a person who has had a hearing before the Board may appeal that decision through another hearing before the Board; does not diminish any procedural rights under the APA

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FISCAL NOTE
28 CSR 2
31 May 1995

The attached modification to 28 CSR 2, West Virginia Contractor Licensing Act involves only clean-up language. Therefore, the adoption of this amended Legislative rule will have NO FISCAL IMPACT upon the operations of the Board or the Division of Labor.

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TITLE 28
LEGISLATIVE RULE
WEST VIRGINIA CONTRACTOR LICENSING BOARD

SERIES 2
WEST VIRGINIA CONTRACTOR LICENSING ACT

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED
JUL 28 2 46 PM '95

§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 W. Va. Code §29-5-1 et seq.

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

1.3. Filing Date. -- ~~April 1, 1992~~

1.4. Effective Date. -- ~~April 1, 1992~~

§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 these legislative rules 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. "Board" means the West Virginia Contractor Licensing Board.

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 thereof and that last, or are intended to be relatively permanent.

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

3.6. "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 one thousand dollars or more for the material and labor involved. Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee. 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.

Contractor does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

(2) 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;

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

(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 who 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 such corporation, partnership, or sole proprietorship shall also be exempt from the requirements of this rule.

3.7. "Construction project" means the entire undertaking for which the contractor(s) or subcontractor(s) is responsible.

3.8. "Division" means the West Virginia Division of Labor.

3.9. "Drywall (specialty) Contractor" means a contractor whose primary business is the installation of drywall, gypsum, wallboard panels and assemblies, and work incidental thereto. Also included is the preparation of surfaces for suitable painting or finishing including taping and texturing, 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.

3.10. "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 thereto.

3.11. 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.

3.12. "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.

3.13. "Excavation (specialty) 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 thereto. Included in the scope of this definition is 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.

3.14. "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 of any part of such 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.

3.15. "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 current edition of the Building Officials and Code Administrators B.O.C.A. National Building Code/1990, Article 6, Section 623.2.A.

3.16. "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 thereto.

3.17. "Landscaping (specialty) Contractor" means a contractor whose primary business is preparation and alteration of land for horticulture and arboriculture and work incidental thereto. This definition includes irrigation systems and controls. Carpentry is limited to decorative fences and screens, planter boxes, and plant tubs common to the industry. Landscaping includes the installation of non-loadbearing slabs, walkways, and areas using concrete, brick, stone, or gravel and all other materials and equipment associated with the installation of such 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.

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

3.19. "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 thereto. Also included is the installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, cleaning, and welding of reinforcement steel related to masonry construction.

3.20. "Multifamily Contractor" means a person who is engaged in construction, repair or improvement of a multifamily residential structure or work incidental thereto. "Multifamily residential structure" means a structure containing two or more residential units, as defined by this rule.

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

3.22. "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 thereto.

3.23. "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; included in this definition is 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 thereto.

3.24. "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.

3.25. "Remodeling and Repair (specialty) 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 thereto where the cost of the undertaking does not exceed \$10,000.00. 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.

3.26. "~~Residential~~ 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 thereto, including the application of seal coatings. This definition includes the excavation, grading, and fill necessary to properly prepare the existing surface to accept a paved surface.

3.27. "~~Residential~~ Concrete (specialty) Contractor" means a contractor whose primary business is installation and repair of concrete, concrete reinforcing materials, concrete products and accessories common to the industry, ~~as used in residential applications~~. This definition includes 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 such work.

3.28. "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 thereto.

3.29. "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.

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 thereto. Included in the scope of this definition is water and gas service lines from the point of service to the pool equipment, electrical wiring from pool equipment to first readily accessible disconnect, pool piping, fittings, back-flow prevention devices, waste lines and other integral parts of swimming pools and spas and attached solar water heating devices. Also included are swimming pool accessories, covers, safety devices and the installation of fencing around swimming pools. The construction of other structures or appurtenances is excluded.

3.31. "~~Residential~~ 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 thereto. All such materials must be applied in accordance with the manufacturers' specifications and, when necessary, on furred-up grill or network.

3.32. "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.

3.33. "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 application of protective or reflective roof, or both, and deck coatings. Included is sheet metal when in conjunction with a roofing project, application of protective roof and deck coatings, application of damp-proofing and/or waterproofing, installation of roof insulation panels and other roof insulation systems and work incidental thereto.

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

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

3.36. "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.

3.37. "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 thereto. "Low voltage" means wiring systems of 50 volts or less and the control circuits directly associated therewith. "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 for the sole purpose of supplying power to the low voltage system.

3.38. "Manufactured Home Installation (specialty) 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 in addition to possession of any license required pursuant to W. Va. Code § 21-9-1.

3.39. "Steel Erection (specialty) 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 thereto.

3.40. "Sprinklers and Fire Protection (specialty) Contractor" means a contractor engaged in the installation, repair or maintenance of fire suppression systems, including water sprinkler and chemical systems, and work incidental thereto.

§28-2-4. Licensure Required.

4.1. On or after the first day of October, 1991, 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:

(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.

(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;

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

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

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

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on business property owned or leased by the employer. The term "business 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 commercial or residential use by an entity other than the employer itself;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility 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 Copy of the license must be posted 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 which does not bear on its face, the contractor's license number.

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 such 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 thereof. 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 must 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, 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.

§28-2-5. 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 defined in section 5.3 of this rule.

5.2. All license applicants must pass a written examination in the contractor classification(s) for which they seek licensure, as defined in Section 6 of this rule; provided that in accordance with W. Va. Code §21-11-7(b), if a person holds a business registration certificate to conduct business in this state as a contractor on the thirtieth day of September, 1991, the Board shall issue a contractor's license without examination if that person certifies with the Board, by affidavit, that he or she has complied with the requirements of W. Va. Code §21-11-15(c), and pays the appropriate license fee.

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 thereof 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 issue unless sooner revoked for cause.

5.5. 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 section 5.3 of this rule, and upon verification 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 expiration date, the applicant is required to pay, in addition to the annual renewal fee, a penalty fee of \$100.00: Provided, that no license which has lapsed for a period of two years or more may be renewed. 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 will provide each licensee with a renewal notice at least thirty (30) days in advance of the expiration date.

~~5.6. The Board may issue a conditional license to a person for bidding purposes only. A person may apply for a conditional license on special forms provided by the Board and the payment of a conditional license fee of \$ 50.00. A conditional license is valid for sixty (60) days from the date of issue. Under no circumstances may a person perform work or services for compensation under a conditional license. If the holder of a conditional license becomes a successful bidder and will be performing contracting work in West Virginia, the holder must make application for a contractor's license before work can commence. The \$50.00 cost of the conditional license will be deducted from the \$100.00 annual contractor license fee at the~~

~~time of initial licensure only.~~

5.76. 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. On and after the first day of October, 1991, any person desiring a license under the provisions of W. Va. Code §21-11-1 et seq and this rule, must be examined 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; or
- (i) specialty contractor.
 - (1) drywall specialty contractor
 - (2) excavation specialty contractor
 - (3) landscaping specialty contractor
 - (4) masonry specialty contractor
 - (5) remodeling and repair specialty contractor
 - (6) ~~residential~~ asphalt specialty contractor
 - (7) ~~residential~~ concrete specialty contractor
 - (8) residential pools specialty contractor
 - (9) ~~residential~~ siding specialty contractor

(10) roofing specialty contractor

(11) low voltage systems contractor

(12) manufactured home installation contractor

(13) steel erection contractor

(14) sprinklers and fire protection contractor, and such other specialty classifications as it may determine warrant examination.

6.3. The Board will 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 must 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 such 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 fee(s) directly to the approved testing agent. The individual taking an examination on behalf of an entity seeking licensure must 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; and
- (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.

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 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 such person is able to practice with skill and safety.

7.4. The Board may accept the voluntary surrender of a license: Provided, that such 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 such 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. Except for violations of W. Va. Code §21-11-13, no disciplinary action shall be taken by the Board for any such cause as is set out W. Va. Code §21-11-14 unless the licensee has been finally adjudicated as having perpetrated such act in a court of record. Other than as specifically set out in W. Va. Code §21-11-13, the Board has no power or authority to 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 such person to immediately cease all operations in this state. The order shall be withdrawn upon issuance of a license to such 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 nor more than one thousand dollars 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, shall be fined not less than two hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one month, or both fined and imprisoned. 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 any such violation.

8.3. Any person who undertakes any construction work without

a valid license when such 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 or more, shall, in addition to any other penalty herein provided, be assessed by the Board an administrative penalty not to exceed two hundred dollars per day for each day the person is in violation.

8.4. The Board shall, as defined in 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 such action; Provided, that: appeals from disciplinary actions follow the time frames of W. Va. Code § 21-11-14(e) and Section 7 of these rules. The Board shall hear the appeal within fifteen 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 such appeal shall be filed with the court within thirty (30) days of the date of the final decision of the Board.

§28-2-10. Severability.

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

West Virginia Contractor Licensing Board



MEMORANDUM

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: WEST VIRGINIA CONTRACTOR LICENSING BOARD
DATE: 27 JULY 1995
RE: 28 CSR 2 AMENDMENT COMMENTS

Attached is the sole comment received during the published 30-day comment period which ended 30 June 1995 for the proposed amendments to 28 CSR 2. The comment is from the Home Builders Association of West Virginia, and is dated June 29, 1995.

While the Board appreciates the support and cooperation of the Home Builders Association through the years for the Contractor Licensing Act, the Board, at its regular meeting 18 July 1995, decided not to accept the Home Builders' proposed modification. The Home Builders sought to have the Board modify the definition of "General Building Contractor" at 28 CSR 2 § 3.14. such that a General Building Contractor would be permitted to perform residential as well as commercial work.

The Board does not accept the comment, and leaves § 3.14. unchanged, because the Board believes the legislature intended such a distinction when it statutorily created distinct classifications for "General Building Contractor" (Code § 21-11-3(e)) and "Residential Contractor" (Code § 21-11-3(m)). Further, the Board believes that there is a rational basis for such a distinction since different skills and expertise are usually required when building a commercial structure, such as an office tower or hospital, than are needed for building a house.

The Home Builders commented on no other section. No other comments were received. The Board makes no change to the rule since it was filed for public comment.

CLB/cq

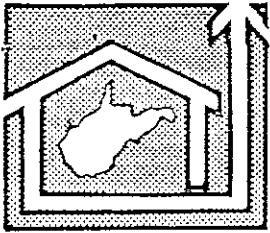
Attachment

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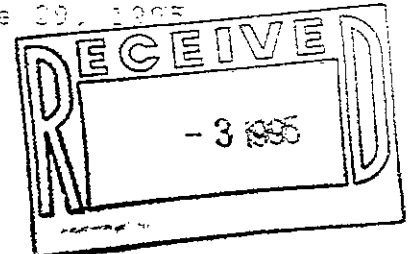
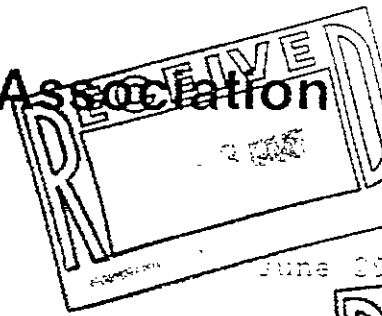
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Home Builders Association of West Virginia

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Chris Quasebarth, Deputy Commissioner
West Virginia Division of Labor
Room #319, Building #3
Capitol Complex
Charleston, WV 25305

Re: Legislative Rules
Contractor Licensing Board

Dear Mr. Quasebarth:

Representing a large number of licensed West Virginia Contractors .. and a group which assisted in the writing of the ACT and actively lobbying its passage, I am pleased to comment on the proposed rules.

Our concern is restricted to one section ..

3.14 Definition of General Contractor - We urge you to consider the amended definition which expressed the intent of the February Board action (and which was presented to the Board at its May meeting which would allow residential contracting to be done (in a supervisory capacity) for the following reasons:

- a) The statute allows for this by stating (in part) that General Contracting activity may be done by persons whose principal business is structures being built to enclose persons .. .

We realize that some members of the Board have taken a view that this definition does not include 'residential'; however, I do not believe that a presumption should be made that is contrary to the statute. Rules and Regulations are supposed to interpret the statute - not change the statute.

- b) When contractors first applied for their license in 1991, they were advised (in many cases by staff) that they could do residential work on a general contractors' license in as much as they were acting



primarily in a supervisory capacity ... using licensed sub-contractors for many of the technical skills ... electrical, plumbing, hvac, piping unless they were licensed to perform that work also.

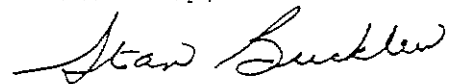
- c) I believe that you had sufficient evidence of the controversy that a change in the rules could create ... by the hundreds of calls and protests that were demonstrated as a result of the January letter. The decision which was made in February to reconsider was a good one. It showed contractors (who were making an honest effort to comply with the law) that their best interests were being considered.

This Board has always put 'fairness' in the forefront. One such comment was made at an earlier meeting when a member of the Board stated "we may stumble and fall in our deliberations and decisions ... but let's please not do it at the expense of the contractor".

- d) A bad precedent is being set. Contractors who were "caught in the middle" were notified that correspondence and telephone communication had been reviewed and that the Board had decided that General Building Contractors were qualified to do commercial and residential work.

I do not believe that the Board wants the reputation of being indecisive.

Sincerely,



Stan Bucklew
President

cc: Members of the Board

PS ... The other comment that was made by one of our members was the wisdom of requiring proof of other state agency registration for renewals (5.5) in as much as some have professed their inability to provide timely information. We have been pleased to inform this member of the request of the WC Commissioner's office to solicit the help of the CL Board in helping resolve this problem.