

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative; CITE AUTHORITY WV Code 21-11

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: WV Contractor Licensing Act

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 August 6, 1991 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Division of Labor

Contractor Licensing Board

Room #319, Building #3

Capitol Complex

Charleston, WV 25305

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


Roy M. Smith, Commissioner

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: West Virginia Contractor Licensing Act SEN. BILL 409 3:27

Type of Rule: X Legislative Interpretive Procedural

Agency: West Virginia Division of Labor Address: Rm. #319, Building #3
Capitol Complex, Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 913,200	\$ -0-	\$ 913,200	\$ 913,200	\$ 913,200
Personal Services	543,085	-0-	543,085	570,239	598,750
Current Expense	273,835	-0-	273,835	287,526	301,902
Repairs and Alterations	21,280	-0-	21,800	22,890	12,548
Equipment	75,000	-0-	75,000	32,545	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

The above are minimal estimates of costs to be incurred in the implementation of Senate Bill #409. License fees will generate revenue equal to the above costs and will establish the activity as self-supporting.

3. Objectives of these rules:

Implementation and enforcement of the provisions of the West Virginia Contractor Licensing Act as mandated by Senate Bill #409 (WV Code, Chapter 21, Article 11).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The estimated revenues to be received from license fees will offset the costs incurred, rendering the implementation and enforcement of the Act to be self-supporting. No economic impact. (See note).

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Contractors will be required to pay an annual license fee of \$100.00.

C. Economic Impact on Citizens/Public at Large.

None

Date: July 5, 1991

Signature of Agency Head or Authorized Representative

Roy M. Smith
Roy M. Smith, Commissioner of Labor

NOTE: The law requires, as a condition of licensure, verification of compliance with the Department of Tax and Revenue, the Workers' Compensation Fund, the Division of Unemployment Compensation, and the Wage Bonding requirements within the Division of Labor. It is expected that revenue collections of these agencies will increase as a result of the implementation of this Rule.

TITLE 42
LEGISLATIVE RULES
WEST VIRGINIA DIVISION OF LABOR

Series 21

West Virginia Contractor Licensing Act; Creation of Board; Licensing; Fees; Examinations; Exemption; Cease and Desist Orders; Disciplinary powers of Board; Administrative Hearings; and Severability.

Section 1. GENERAL.

1.1. Scope. These rules govern licensing, fees, examinations, powers of the Board, and penalties for violations in accordance with WV Code Chapter 21, Article 11 and WV Code Chapter 29, Article 5.

1.2. Authority. WV Code § 21-11-5.

1.3. Filing Date. _____

1.4. Effective Date. _____

Section 2. APPLICATION AND ENFORCEMENT.

2.1. Application. These legislative rules shall apply to the Board and to all persons, materials and transactions governed by or other-wise within the jurisdiction of the Board.

2.2. Enforcement. The enforcement of these legislative rules shall be vested in the Board and the West Virginia Division of Labor.

Section 3. DEFINITIONS.

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

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

3.3. "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.

Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

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 capacity and any employ of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;
- (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.

3.4. "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.

3.5. "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.

3.6. "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; railroad; 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 foundation; and structures or work incidental thereto.

3.7. "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.

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

3.9. "Multifamily contractor" means a person who is engaged in construction, repair or improvement of a multifamily residential structure.

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

3.11. "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.

3.12. "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, and piping for stand pipes.

3.13. "Residential contractor" means a person whose principal business is in connection with construction, repair or improvement of real property used as, or intended to be used for, residential occupancy.

3.14. "Specialty contractor" means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out in this rule.

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

3.16. "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.

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

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

3.19. "Cease and desist order" means an order issued by the commissioner pursuant to the provisions of WV Code § 21-11 and of this rule.

Section 4. LICENSURE REQUIRED.

4.1. On or after the first day of October, one thousand nine hundred ninety-one, no person may engage in the business of a contractor in this state without a license. Except as otherwise provided in this rule, 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;

(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) Work 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;

(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. 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.

4.3. All license applicants shall be required to pass a written examination in the contractor classification for which they seek licensure, as defined in Section 5 of this rule. Except as provided by WV Code § 21-11-7(b) whereby a person holding a business registration certificate to conduct business in this state as a contractor on the thirtieth day of September, one thousand nine hundred ninety-one, may register with the board, certify by affidavit compliance with the requirements of WV Code § 21-11-15(c), and pay the appropriate license fee, shall be issued a contractor's license without examination.

4.4. Any person desiring licensure shall, at the time of application, pay an annual fee of \$100.00.

4.5. A license issued under the provisions of this rule shall be valid for twelve months from the date of issue unless sooner revoked for cause.

4.6. 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 payment of the appropriate fee as defined in section 4.4 of this rule. If the renewal application is made after the expiration date, the applicant shall be required to pay a delayed renewal fee of \$250.00: 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 WV Code §§ 21-11-13 and 21-11-14.

4.7. 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.

4.8. 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.

4.9. The board may issue a temporary license to a person for bidding purposes only. A person may apply for a temporary license on special forms provided by the board and the payment of a temporary license fee of \$50.00. A temporary license shall be valid for two months from the date of issue. Under no circumstances may a person perform work or services under a temporary license for which the person receives compensation.

4.10. 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 WV Code § 21-11 and this rule. A fee of \$10.00 shall be charged for each duplicate license issued.

Section 5. EXAMINATION REQUIRED.

5.1. On and after the first day of October, 1991, any person desiring licensure under the provisions of WV Code Chapter 21, Article 11 and this rule, must be examined by the Board and achieve a minimum score of seventy (70) percent to qualify for licensure. Any person who fails to achieve the minimum required score may apply for re-examination at the next regular examination session.

5.2. 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.

Multiple classification examinations will be required for persons desiring licensure under more than one of the classifications identified in this Section.

5.3. Examinations will be conducted in the West Virginia cities of Martinsburg, Wheeling, Beckley and Huntington on the first Monday of each calendar quarter and at such dates and places as the Board deems necessary.

All applicants for examination shall be notified of the date, place, and time of examination at least fifteen (15) days prior to the scheduled date.

Section 6. DISCIPLINARY POWERS OF THE BOARD.

6.1. The Board has the power and authority to impose the following disciplinary actions for causes defined in WV Code § 21-11-14(g):

- (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.

6.2. The board may summarily suspend a licensee pending a hearing, as provided for in Section 8 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.

6.3. 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.

6.4. 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.

6.5. 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 WV code 29A, and Section 8 of this rule. Hearings shall be held in Charleston.

6.6. 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 WV Code § 21-11-13, no disciplinary action shall be taken by the board for any such cause as is set out herein unless the licensee has been finally adjudicated as having perpetrated such act in a court of record. Other than as specifically set out herein, the board shall have no power or authority to impose or assess damages.

Section 7. CEASE AND DESIST ORDERS.

7.1. 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 8 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.

7.2. 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 WV Code § 21-11 and the provisions of this rule occurred or are now occurring to enjoin any such violation.

7.3. Any person who undertakes any construction work without a valid license when such license is required by WV Code § 21-11, 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 ad-

ministrative penalty not to exceed two hundred dollars per day for each day the person is in violation.

7.4. The board shall, as defined in section 8 of this rule, provide for an administrative hearing before a penalty is levied and for review of any final ruling pursuant to such hearing.

Section 8. ADMINISTRATIVE HEARINGS.

8.1. Any person adversely affected by any action of the board shall, upon written request by such person, be granted an administrative hearing in accordance with the provisions of WV Code § 29A-5. Upon receipt of a request for hearing, the board shall provide, after at least ten days from receipt of the request, a notice containing the date, time, place of the hearing and a short and plain statement of the matters asserted.

8.2. 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.

8.3. The board shall provide its final decision, reduced to writing, 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.

Section 9. SEVERABILITY.

9.1. If any provisions of these rules or their application to any person be held invalid, such in-validity 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.