

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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FILED

1991 JUL -5 PM 3:27

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

July 8, 1991 *je*

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: WV Code, Chapter 21, Article 11

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: 21

TITLE OF RULE BEING FILED AS AN EMERGENCY: West Virginia

Contractor Licensing Act

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Senate Bill #409, West Virginia Contractor Licensing Act, WV Code 21-11, established a grandfathering period which expires on September 30, 1991. Prior to that date, it is anticipated that the Division will receive 9,132 applications for licensure under the grandfathering provision. This Emergency Rule is necessary to set basic administrative procedures for licensing during the grandfathering period and to establish the basics of the examination procedures prior to October 1, 1991.

Use Additional Sheets If Necessary.

Roy M. Smith
Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: West Virginia Contractor Licensing Act 1991 JUL -5 PM 3: 27

Type of Rule: X Legislative Interpretive Procedural OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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.

FILED

1991 JUL -5 PM 3:27

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

DATE: JULY 5, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV DIVISION OF LABOR

EMERGENCY RULE TITLE: West Virginia Contractor Licensing Act

1. Date of filing: July 5, 1991
2. Statutory authority for promulgating the emergency rule:
WV Code, Chapter 21, Article 11
3. Date of filing of proposed legislative rule: _____
4. Does the emergency rule adopt new language or does it
amend or repeal a current legislative rule?
new language

5. Has the same or similar emergency rule previously been
filed and expired?
No

6. State, with particularity, those facts and circumstances
which make the emergency rule necessary for the immediate
preservation of public peace, health, safety or welfare
The Act became effective on June 7, 1991. These rules were drafted
by the Board and adopted on July 3, 1991. The Act contains a grand-
father clause which expires September 30, 1991. To license the large
numbers of contractors before the end of the grandfathering period
requires emergency filing of this Rule.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

WV Code §21-11 - for reasons described in Item #6.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

In addition to reasons described in Item #6, Contractor Licensing examination procedures must be established by October 1, 1991.

However, the grandfathering clause, license fees, forms and procedures are critical for the issuance of licenses prior to October 1, 1991.

The new law states that no contractor may conduct business without a license after October 1, 1991. This Emergency Rule provides the procedures and ample time for the processing of all license applications prior to the October 1, 1991 date.

TITLE 42
LEGISLATIVE RULES
WEST VIRGINIA DIVISION OF LABOR

FILED

1991 JUL -5 PM 3:27

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 otherwise 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.

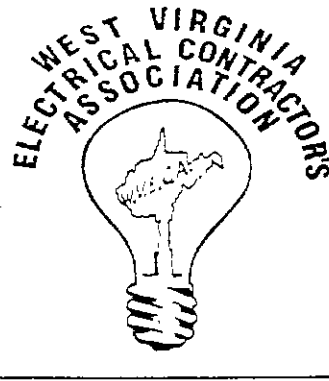
8.2. The board may employ a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the board for its action.

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.

205 FIRST AVENUE



NITRO, WV 25143 (304) 727-7441

July 5, 1991

The Honorable Ken Hechler
WV SECRETARY OF STATE
State Capitol
Charleston, WV 25305

Dear Secretary Hechler:

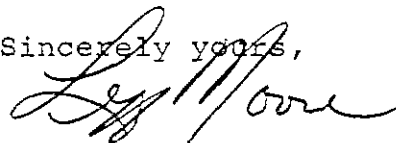
This week, the West Virginia Contractors Licensing Board adopted emergency rules and regulations pursuant to §21-11. The Board took no action to require on its application form that a non-resident, out of state corporation certify that it had filed the necessary information with you pursuant to West Virginia Code §31-1-53&54.

As you know, thousands of out of state corporations operate in West Virginia without meeting the requirements of the Code. Those organizations that fought so hard to see a contractors licensing law adopted are sad to learn that the Contractors Licensing Board did not even require non-resident corporations to so much as check a box on their application to assure that each corporation is duly registered with the West Virginia Secretary of State's Office. Consequently, it is likely that out of state corporations will be able to license with the Board while, at the same time, failing to register with your office.

Since the Board sought and received little or no input from various contractor groups prior to developing its emergency rules or its application for licensure, we did not have an opportunity to present this information to the Board. We would urge that you join us in advocating that the Legislative Interim Rule Making and Review Committee amend the Board's emergency rules to include this important requirement. The opportunity to assure that out of state corporations doing contracting work in West Virginia register their corporations with you as required by law will be lost unless the Legislative Rule Making and Review Committee take action to assure that no license can be issued to a foreign corporation for contracting in West Virginia without prior registration with your Corporations Division.

LETTER: Hon. Ken Hechler
WV Secretary of State
RE: Rules and Regulations
for Contractors Licensing
DATE: July 5, 1991
PAGE: Two

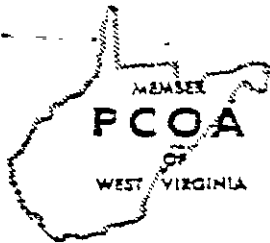
Sincerely yours,

A handwritten signature in cursive script, appearing to read "Leff Moore".

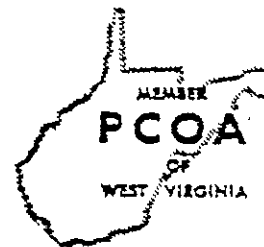
Leff Moore
Executive Director

LM:gsW

CC: All Members of the WV Contractors Licensing Board
All Association Members
Roy Smith, Commissioner, WV Division of Labor
All Interested Parties



PEST CONTROL OPERATORS ASSOCIATION
OF
WEST VIRGINIA



DEXTER OWSLEY, Secretary-Treasurer

P. O. Box 9445, South Charleston, W. Va. 25309

September 25, 1991

Dear Mr. Chairman and Committee Members:

We are Pest Control Operators in the State of West Virginia. We are also members of the Pest Control Operators' Association of West Virginia and members of the Legislation Committee of that organization. We are addressing you today on behalf of our membership.

You may recall that we appeared before you not long ago to request that Pest Control Operators be designated as "exempt" from the "West Virginia Contractor Licensing Act." This exemption was specifically requested for PCO's applying termite chemical to new construction. A few PCO's also do repair work, and we understand that, by definition, they are not exempt. Most PCO's do not perform any type of construction work.

The reasons given for our request for "exempt" status were as follows:

1. The definition of "Contractor" (21-11-3C) excludes work performed where the cost is under \$1000. For PCO's, this would be the case for practically all residential "pretreatment" applications. For any PCO, there will likely be only a few jobs of a value greater than \$1000 that he can even bid on in a business year. These would be governmental, institutional, or commercial projects.
2. "Contractor" does not include "a person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board." PCO's in West Virginia are under the control of the Department of Agriculture as represented by Mr. Cleve Benedict, Commissioner, and Mr. Bob Frame, Director of the Pesticide Division. We are governed by the West Virginia Pesticide Control Act of 1990. Requirements and

regulations of this law include both licensing and applicator certification procedures, as well as minimum training and recertification procedures. A penalty system and procedure for dealing with violations are also outlined in this law and supporting regulations.

You may also recall that when we left the last meeting, the matter was going to be reviewed at the Attorney General's Office for an "opinion." We understand that the opinion was as follows:

The "exempt" status could be granted to PCO's because the chemical left behind is not a permanent of the structure following a pretreatment application.

We also understand that in the view of this committee, the chemicals applied are a permanent part of the structure and, for this reason, exemption for PCO's should not be granted.

We are here today, then, to present some information regarding the chemicals we use for termite prevention. The termite chemicals being used today are not permanent in nature. Please consider the following:

1. DDT and Chlorodane are two of several chemicals that have been "taken off" the market, not because of how toxic they were, but because of the length of their residual life.
2. Today's "environmental outcry" is for biodegradable chemicals.
3. Most PCO's are using either Prydon or Dursban TC for pretreatment work today, manufactured by Mobay and Dow Chemical respectively. These are both organo-phosphates that the manufacturers state will be 100% effective for only about 5 years, subject to environmental conditions, especially moisture.
4. There may be confusion between the length the chemicals last and the length of guarantees being offered. Typically, 5 year guarantees are given on pretreatment work. Some companies, however, may offer "Lifetime" guarantees. These are conditional on the payment of an annual premium to extend the length of the guarantee for each additional year.

Even though the chemical barrier won't last a lifetime, the need to retreat or even pay for repairs is a "reasonable" risk for the PCO spread over all of his customer base.

Again, we request that you reconsider our request for exempt status. In summary, we base our request on the following:

1. Only a few jobs per year will actually exceed the \$1000 cost. Based on this, the \$100 fee and testing requirements, some companies will elect to go unlicensed. Some competitive bids on larger jobs may be lost as a result.
2. Our industry is heavily regulated already by the Department of Agriculture.
3. Termite chemicals currently in use do not become a permanent part of the structure.

Thank you for your consideration.

The Board of Directors
Pest Control Operators Association
of West Virginia

MINUTES

WEST VIRGINIA CONTRACTOR LICENSING BOARD

September 4, 1991

The West Virginia Contractor Licensing Board met September 4, 1991 at 9:00 a.m. in Room A, Conference Center, Capitol Complex, Charleston, West Virginia.

Board Members present were:

Mr. Winfield H. Strock, Chairman	Mr. Robert O. Orders, Jr.
Mr. John Wade Bell, III	Mr. Frank R. Ferguson
Mr. Robert B. Carl	Mr. Jack R. Murray
Ms. Nanette Stevens	Mr. Robert L. Cannon
Mr. James E. White (part of the meeting)	
Mr. Roy M. Smith (Ex officio)	
Mr. Bob Workman (representing Secretary Fred Williams, Ex officio Member)	

Board Members absent: Mr. Curtis A. Given
Mr. Andy Richardson, (Ex officio)

Also present were: Mr. Robert F. Miller, Deputy Commissioner, Division of Labor; Mr. Andrew A. Brown, Assistant to the Commissioner of Labor; Ms. Terry Ridenour, Assistant Attorney General; and Mr. Henry Sorensen, National Assessment Institute.

Call to Order

Chairman Strock called the meeting to order and stated that Mr. Given has a medical appointment today.

Approval of Minutes

Mr. Cannon moved that the minutes of the meeting held August 9, 1991 be approved as presented. Motion seconded by Mr. Carl and unanimously carried.

Public Comment

Re: Exterminators

Mr. Richard Whitman of Beckley, representing the Exterminators Association, asked for a definition of "contractor" and stated that group feels they are not contractors, that they use chemical application techniques. Mr. Whitman stated that sometimes a job exceeds the \$1,000 guideline. He requested the Board's decision in regard to the pest control industry. In response to a question, Mr. Whitman stated the industry is heavily regulated by the Department of Agriculture and that EPA is the main regulatory

West Virginia Contractor Licensing Board

2

Minutes of September 4, 1991

agency for their industry. Following discussion, it was agreed that Ms. Ridenour would research, by the end of the week, whether exterminators must be included as contractors.

Re: HVAC and Electrical Contractors

Mr. Clark Vandervort, Attorney, appeared and stated he is following up mailings from HVAC and Electrical Contractors to Board Members. He stressed the need for clarity in the regulations.

Examinations Requirements

Mr. Orders presented the report of the Subcommittee on Testing which met September 3, 1991. Present for that meeting were: Mr. Orders, Mr. Given, Mr. White, Mr. Carl, Ms. Stevens, Mr. Bob Miller and Mr. Henry Sorensen. The Board received and adopted the recommendations of the Subcommittee on Testing as indicated below.

Following discussion, Mr. Cannon moved that the following language be adopted as presented by the Examinations Subcommittee:

Content outlines for all principal categories of licensure were examined with a moderate amount of changes in content percentage and examination time. (Copies should be available for the Board).

Content outlines of examinations as approved by the Board for the eight major classifications (not including specialty contractor) are attached hereto and made a part of these minutes. Motion seconded by Mr. Carl and unanimously carried.

Mr. Cannon moved that the test content outlines presented by the Examinations Subcommittee be adopted as follows:

- (A) A passing score of 70% is required.
- (B) Reference material will be allowed from the listed references on the content outline and other bound texts. Answer books, notes, and loose papers will not be allowed.
- (C) Approximately 5% of all exams will contain safety questions.

Motion seconded by Mr. Orders and unanimously carried.

Mr. Cannon moved that the following language be adopted with the caveat that examinations may be expanded at a later date and modified at the Board's discretion as it relates to total dollar volume of the undertaking:

West Virginia Contractor Licensing Board

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All specialty contractors will take the business and law exam. In addition the following specialty exams will be given:

Residential concrete
Residential asphalt
Drywall
Excavation
Landscaping
Masonry
Remodeling and Repair
Residential siding
Roofing
Residential pools

The Board may add additional specialty exams at its discretion.

Motion seconded by Mr. Orders and carried unanimously.

Following discussion, Mr. Ferguson moved that the following language be accepted as written by the Subcommittee:

It was recommended that test applications and fees be submitted directly to National Assessment Institute after approval of the application by the Division of Labor.

Motion seconded by Mr. Orders and unanimously carried.

It was moved and seconded that the sites and frequency of testing be approved as recommended by the Subcommittee as follows:

<u>Date</u>	<u>Site</u>
Oct. 1991	CHARLESTON ONLY
Nov. 1991	CHARLESTON ONLY
Dec. 1991	* CHARLESTON + MARTINSBURG
1st QT. 1992	* CHARLESTON + BLUEFIELD
2nd QT. 1992	* CHARLESTON + WHEELING
3rd QT. 1992	* CHARLESTON + MARTINSBURG
4th QT. 1992	* CHARLESTON + BLUEFIELD
1st QT. 1993	* CHARLESTON + WHEELING

* REPEAT CYCLE EACH 3 QUARTERS.

ADDITIONAL DATES AND SITES TO BE ADDED AT THE BOARD'S DISCRETION.

Motion carried unanimously.

West Virginia Contractor Licensing Board

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Mr. Cannon moved that the following be adopted as presented by the Testing Subcommittee:

The Division of Labor and National Assessment Institute should together arrange for testing "on demand" and have this available by Jan. 1, 1992.

Oral tests may be given under special conditions when arranged with the Division of Labor and National Assessment Institute.

Motion seconded by Mr. Ferguson and carried unanimously.

(Lunch break occurred approximately 11:20 a.m. to 12:30 p.m.)

Definitions Subcommittee

Mr. Cannon presented the report of the Sub-committee on definitions which met August 28, 1991. Present for that meeting were: Mr. Strock, Mr. Bell, Mr. Ferguson, Mr. Murray and Ms. Ridenour, Assistant Attorney General.

During discussion of the advertising section of the definitions (3.1) Ms. Stevens asked if license numbers would change next year. Answer was NO (except in a few cases).

Mr. Murray moved that the following be accepted as recommended by the Subcommittee:

3.1 ADD: "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 methods now or hereinafter employed to bring to the attention of the public the business of a contractor.

Motion seconded by Ms. Stevens and unanimously carried.

Mr. Ferguson moved that the following be adopted as recommended by the Subcommittee:

3.4 "Contractor" means ... ADD: ...one thousand dollars or more for the material and labor involved.

Motion seconded by Ms. Stevens and unanimously carried.

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Mr. Orders moved that the following be adopted as recommended by the Subcommittee:

3.6 ADD: An "emergency basis" under 21-11-6(c)(6) will be deemed to exist upon the occurrence of an event, circumstance or situation which presents an imminent threat to person or property constituting a serious health or safety hazard.

Motion seconded by Mr. Carl and unanimously carried.

Mr. Orders moved that the following new item be adopted as recommended by the Subcommittee:

3.7 ADD: "Employee of a contractor" means any individual who works under the control and supervision of a contractor subject to these Rules for a wage and other benefits as required by law. An employee of a contractor is not a subcontractor."

Motion seconded by Mr. Cannon and carried unanimously.

Following discussion, Mr. Orders moved that the following revised language be adopted:

3.8 ADD: ... of any part of such construction. A General Building Contractor shall be 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 these Rules; shall be licensed in those classifications.

Motion was seconded by Mr. White and carried with Mr. Cannon voting no.

Mr. Orders moved that the following language be adopted:

3.9 ADD: ...or work incidental thereto. "Swimming Pools" shall mean a "public" swimming pool as defined by the B.O.C.A. National Building Code/1990, Article 6, Section 623.2.

Motion seconded by Mr. Ferguson and unanimously carried.

Mr. Orders moved that the following be adopted as presented by the Definitions Subcommittee:

West Virginia Contractor Licensing Board

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3.12 ADD: ...multifamily residential structure.
"Multifamily" shall mean two or more residential units,
as defined by these Rules.

Motion seconded by Mr. Carl and unanimously carried.

Mr. Carl moved that the following language be adopted as presented by the Definitions Subcommittee:

3.15 ADD: "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 at a location where the general public and inspecting agents of the Board can easily read each contractor's name, license number, classification of license and license expiration date.

Motion seconded by Ms. Stevens and carried unanimously.

Mr. Carl moved that the following amended language be adopted:

3.24 Add: "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.

Motion seconded by Mr. Orders and unanimously carried.

Mr. Orders moved that the following be adopted as submitted by the Definitions Subcommittee:

3.25 ADD: "Construction Project" means the entire undertaking for which the contractor(s) or subcontractor(s) is responsible.

Motion seconded by Mr. Carl and unanimously carried.

Mr. Orders moved that the following be adopted:

4.1 ADD: ...or agency thereof directly in conjunction with and in the course of their employment.

Motion seconded by Ms. Stevens and unanimously carried.

Discussion occurred regarding the implementation of continuing education requirements. Mr. White moved that continuing education requirements not be implemented. Motion seconded by Mr. Orders and carried--4 voted AYE, 3 voted NAY.

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Following discussion, Mr. Orders moved that the Board NOT adopt liability insurance requirements. Motion seconded by Mr. Carl and unanimously carried.

Chairman Strock stated the Board will need, from National Assessment Institute, draft definitions regarding the specialty people. Mr. Orders suggested that the definitions be provided for the Board's review and that a Subcommittee meeting then be scheduled.

Division of Labor Report

Mr. Smith reported that 3,200 applications have been processed, approximately 400 are being processed.

Request for Exemption from Contractor Licensing Requirements

Board Members discussed the request of MOUNTAINEER HABITAT for Humanity, Inc. (Scott Depot, West Virginia) for exemption from Contractor Licensing requirements. During the discussion it was stated (1) that they would not need a license until they become a for-profit enterprise and/or lose their IRS exemption and (2) that such requests should be considered on a case-by-case basis.

Mr. White moved that MOUNTAINEER HABITAT for Humanity, Inc. be exempted from Contractor Licensing requirements if it is found that they are not compensated, assuming we can legally do so. Motion seconded by Ms. Stevens and unanimously carried.

Next Meeting

Board Members agreed to meet September 18, 1991 and to cancel the meeting scheduled for September 11.

Adjournment

Mr. Murray moved that the meeting adjourn. Motion seconded by Ms. Stevens and carried unanimously.

WEST VIRGINIA

ELECTRICAL CONTRACTOR

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.

The Electrical Contractor examination will be administered in order to evaluate the candidate's technical knowledge, skill and ability in the electrical trade. It tests the candidate's knowledge of the current edition *National Electrical Code*, NFPA 70, as well as his ability to apply theoretical knowledge such as Ohm's Law, the power formula and 3-phase calculations to practical situations. Load calculation problems will be included.

<i>Content Area</i>	<i>Percentage</i>
General Electrical Knowledge & Calculations	22.5
Grounding & Bonding	10
Services, Feeders & Branch Circuits	10
Raceways & Enclosures	10
Motors & Controls	10
Utilization & General Use Equipment	10
Special Occupancies & Equipment (Including 5,6 & Articles 700 through 710)	9.5
Conductors	8
Low Voltage Circuits (Articles 720 through 780, & Chapter 8)	5
Safety	5

The examination is made up of 80 multiple-choice questions which are equally weighted. The minimum passing score is 70%. The average candidate will complete this examination in approximately 4 hours. This is an OPEN BOOK examination for all listed and published references.

WEST VIRGINIA

GENERAL BUILDING CONTRACTOR

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 moveable property of any kind, or a person who supervises the whole of any part of such construction.

The following list of subject areas is rank ordered in decreasing number of points allotted to each subject area on the test.

<i>Content Area</i>	<i>Percentage</i>
Carpentry	28
Concrete	18
Site Work	12
Structural Steel & Rebar	12
Masonry	9
Roofing	6
Drywall	5
Safety	5
Insulation	4

The examination is made up of 80 questions. The minimum passing grade is 70% correct. The average candidate will complete this examination in approximately 4 hours. This is an OPEN BOOK examination for all listed and published references. You may also use a silent, non-printing calculator during this examination.

WEST VIRGINIA

GENERAL ENGINEERING CONTRACTOR

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; public 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; structures or work incidental thereto.

The following list of subject areas is rank ordered in decreasing number of points allotted to each subject area on the test.

<i>Content Area</i>	<i>Percentage</i>
Excavating & Grading	25
Concrete Construction	20
Structural Steel and Rebar	15
Utilities	15
Asphalt Paving	10
Drilling, Demolition, Pools, etc.	10
Safety	5

The examination is made up of 80 questions. The minimum passing grade is 70% correct. The average candidate will complete this examination in approximately 4 hours. This is an OPEN BOOK examination for all listed and published references. You may also use a silent, non-printing calculator during this examination.

WEST VIRGINIA

HEATING, VENTILATING, AND COOLING CONTRACTOR

Heating, Ventilating, and Cooling Contractor means a person who engages in the business of contracting to install, erect, repair, service or alter heating, ventilating, air conditioning, and refrigeration equipment or systems to heat, cool, or ventilate residential and commercial structures.

The following list of subject areas is rank ordered in decreasing number of points allotted to each subject area on the test.

<i>Content Area</i>	<i>Percentage</i>
Warm-Air Heating (Layout & Design)	15
Air Conditioning (Layout & Design)	15
Controls	10
Sizing and Estimating	10
Service	10
Low Pressure Boilers (Layout & Design)	8
Refrigeration	7
Ventilation	5
Gas Piping	5
Ducts	5
Chimneys, Flues and Vents	5
Safety	5

The examination is made up of 80 questions. The minimum passing grade is 70% correct. The average candidate will complete this examination in approximately 3 hours. This is an OPEN BOOK examination for all listed and published references. You may also use a silent, non-printing calculator during this examination.

WEST VIRGINIA

MULTIFAMILY BUILDING CONTRACTOR

Construction, repair, or improvement of a multifamily residential structure. A residential structure is a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct of 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.

The following list of subject areas is rank ordered in decreasing number of points allotted to each subject area on the test.

<i>Content Area</i>	<i>Percentage</i>
Rough Carpentry	18.75
Finish Carpentry	18.75
Concrete and Rebar	15
Excavation and Site Work	12.5
Roofing	11.25
Masonry	11.25
Associated Trades	5
Safety	5

The examination is made up of 80 questions. The minimum passing grade is 70% correct. The average candidate will complete this examination in approximately 4 hours. This is an OPEN BOOK examination for all listed and published references. You may also use a silent, non-printing calculator during this examination.

WEST VIRGINIA

PIPING CONTRACTOR

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.

The following list of subject areas is rank ordered in decreasing number of points allotted to each subject area on the test.

<i>Content Area</i>	<i>Percentage</i>
Fuel and Gas Piping	20
Hazardous Chemicals and Process Pipe	20
Water and Steam Piping	15
Medical Gas	10
Excavation and Grading	10
Sizing and Estimating	10
Welding	5
Materials	5
Safety	5

The examination is made up of 80 questions. The minimum passing grade is 70% correct. The average candidate will complete this examination in approximately 3 hours. This is an OPEN BOOK examination for all listed and published references. You may also use a silent, non-printing calculator during this examination.

WEST VIRGINIA

PLUMBING CONTRACTOR

Plumbing Contractor is 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. Also included 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.

The following list of subject areas is rank ordered in decreasing number of points allotted to each subject area on the test.

<i>Content Area</i>	<i>Percentage</i>
Drains and Vents/Savers	14
Water Supply/Backflow Prevention	14
Code Knowledge	14
Installation Practices/Methods/Materials	9.5
Septic Tanks/Special Wastes/Roof Drains	9.5
Inspection/Testing	9.5
Natural Gas Piping (above & below ground)	9.5
Estimating	5
Fixtures and Trim	5
Excavation	5
Safety	5

The examination is made up of 90 questions. The minimum passing grade is 70% correct. The average candidate will complete this examination in approximately 2 hours. This is an OPEN BOOK examination for all listed and published references. - You may also use a silent, non-printing calculator during this examination.

WEST VIRGINIA

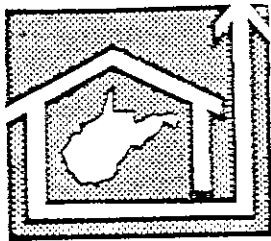
RESIDENTIAL CONTRACTOR

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.

The following list of subject areas is rank ordered in decreasing number of points allotted to each subject area on the test.

<i>Content Area</i>	<i>Percentage</i>
Rough Carpentry	23
Concrete and Rebar	18
Associated Trades	10
Excavation and Site Work	9
Blueprint Reading	8
Finish Carpentry	7
Roofing	7
Masonry	7
Structural Steel	6
Safety	5

The examination is made up of 80 questions. The minimum passing grade is 70% correct. The average candidate will complete this examination in approximately 4 hours. This is an OPEN BOOK examination for all listed and published references. You may also use a silent, non-printing calculator during this examination.



Home Builders Association of West Virginia

700 Virginia Street, W.
Charleston, WV 25302
Phone: (304) 342-5176
FAX (304) 342-5177

President
Sandra J. Dunn
First Vice President
Glenn H. Rohr

Secretary
Robert L. Carvell

Treasurer
Gerald D. Workman

National Director
Debbie Hawkins

National Representative
William O. Hofmann

Associate Member Director
Sue Straley

Insurance Trustee
William O. Hofmann

General Counsel
Robert T. Goldenberg

August 31, 1991

\firstnm \init \lastnm
\co
\address
\city, \state \zip

Dear \title:

We have become aware of rules proposed to the Board with which we disagree.

There has been a proposal made to require specialty contractors to prove experience, specifically only for those to be grandfathered. There have been proposals relating to insurance, education and registering with other agencies.

All of these topics were fully debated in the legislature and rejected. In addition, the grandfather provision was accepted with clearly defined requirements with "rules that may not be more restrictive than those prescribed for initial licensure". We feel that these proposals add nothing of substance to the law and that the grandfather provision must be held sacrosanct as promised by the legislature.

Sincerely,

Robert L. Carvell, Chairman
Contractors License
Liaison Committee

cc: Commissioner Smith
Senator B. Ned Jones





WEST VIRGINIA HEATING, VENTILATING,
and AIR CONDITIONING ASSOCIATION

205 First Avenue Nitro, WV 25143 (304) 727-7431

M E M O R A N D U M

TO: All Members of the WV Contracting Licensing Board
WV Commissioner of Labor

FROM: Leff Moore, Executive Director

RE: PROPOSED AMENDMENTS TO LEGISLATIVE RULES

DATE: August 16, 1991

On behalf of our contractor members state wide, we respectively request your consideration of the amendments or additions to the Contractors Licensing Board's Emergency Rules. Our organization and our legal counsel has spent many hours ... formulating language that we hope you will consider. Our proposed language changes are underlined in the accompanying document. We will provide an additional memorandum to the Commissioner of Labor on Monday that explains the rational that precipitated each rule change draft.

If you have any questions about the enclosed document, please feel free to contact me.

LM/slh

Enclosure

TITLE 42
LEGISLATIVE RULES
WEST VIRGINIA DIVISION OF LABOR
SERIES 21

STANDARDS AND PROCEDURES
RELATING TO ISSUANCE OF LICENSES OF CONTRACTORS

- § 42-21-1 General
- § 42-21-2 Application and Enforcement
- § 42-21-3 Definitions
- § 42-21-4 Licensing Required
- § 42-21-5 Examination Required
- § 42-21-6 Disciplinary Powers of the Board
- § 42-21-7 Cease and Desist Orders
- § 42-21-8 Administrative Hearings
- § 42-21-9 Severability

TITLE 42
LEGISLATIVE RULES
WEST VIRGINIA DIVISION OF LABOR
SERIES 21

STANDARDS AND PROCEDURES
RELATING TO ISSUANCE OF LICENSES OF CONTRACTORS

42-21-1. 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 SS 21-11-5.

1.3. Filing Date. _____

1.4. Effective Date. _____

42-21-2. Application and Enforcement.

2.1. Application. These legislative rules shall apply to the Board and to all persons, materials and transactions governed by or otherwise 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.

42-21-3. Definitions.

3.1 "Advertising" 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, television announcement, telephone directory or any other oral or written means or methods 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. "Commissioner" means the commissioner of the West Virginia Division of Labor.

3.4. "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 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 is acting in his or her respective capacity and any employee of such professional, acting in the course of his or her employment, who 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.

3.5. "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. An electrical contractor may

engage in work incidental to the stated business of contracting directly related to access and performance of electrical systems set forth in building and safety codes. Licensure as a master journeyman or apprentice electrician does not constitute licensure as a contractor.

3.6. An "emergency basis" under 21-11-6(c)(6) will be deemed to exist upon the occurrence of an event, circumstance or situation which presents an imminent threat to person or property constituting a serious health or safety hazard.

3.7. "Employee of a Contractor" means any individual who works under the control and supervision of a contractor subject to these Rules for a wage and other benefits as required by law. An employee of a contractor is not a subcontractor.

3.8. "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.

3.9. "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.

3.10. "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. A heating, ventilating and cooling contractor may engage in work incidental to the stated business of contracting directly related to access and performance of heating, ventilating and cooling systems set forth in building and safety codes, including, but not limited to, the installation of vents and components related to such systems and modification of structures to receive them, the installation of fuel and electrical supply lines and grounding, condensation lines, and the construction of concrete pads, cat walks, curbs, and roof support systems as necessary to accomplish such installation, erection, repair, service or alteration.

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

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

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

3.14. "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.

3.15. "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.

3.16. "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 at a location where the general public and inspecting agents of the Board can easily read each contractor's name, license number, class of license and license expiration date.

3.17. "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.

3.18. "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 SS 21-11 and of this rule.

3.20. "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.

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

3.22. "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.

3.23. "Subcontractor means a person who performs all or any portion of a construction project contracted for by a principal or general contractor or another subcontractor. A subcontractor is not an employee.

3.24. "Undertaking" means the entire construction project for which the contractor or subcontractor is responsible, and an undertaking's value shall be determined by adding the cost of labor and material required to accomplish it.

3.25. "Construction Project" means the entire undertaking for which the contractor or subcontractor is responsible.

42-21-4. 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 licensing:

(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) Work performed by a public utility company regulated by the West Virginia Public Service Commission and its employees upon the public utility company's premises and property;

(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 licensing, 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 SS 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 S 21-11-15(c), and pay the appropriate license fee, shall be issued a contractor's license without examination.

4.4. Any person desiring licensing 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 WY Code SS 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 S 21-11 and this rule. A fee of \$10.00 shall be charged for each duplicate license issued.

4.11. No license shall be renewed for any licensee who has not demonstrated that within one year of the issuance of the renewal license, said licensee has completed at least an 8 hour course of continuing education pertaining to the specific business of contracting for which the licensee seeks a renewal. Such continuing education must be approved by the Commissioner of Labor.

4.12. Any person who violates any provision of the Legislative Rules pertaining to the prevention of unfair or deceptive acts or practices in home improvement transactions, §§ 142-5-1 et seq., or who knowingly submits false information with respect to an application for license or renewal of license shall be ineligible to receive or maintain a license. Any license issued on the basis of an application containing information known to be false by the applicant or issued to a person who violates any provision of the Legislative Rules contained at §§ 142-5-1 et seq, shall be revoked.

4.13. Applicants shall indicate on their applications all trade, true and business names under which they conduct or intend to conduct the business of a contractor for which a license or renewal license is sought. No persons may conduct the business of a contractor under any trade, true or business name not indicated on their most recent application for license or renewal without registering such name with the office of the West Virginia Secretary of State or the County Commission in the county where such person intends to conduct such business and notifying the Board in writing of such name.

4.14. No license shall be granted to an applicant who does not hold a current franchise license, is not in good standing with and duly authorized by the Secretary of State to conduct business in the State of West Virginia and/or has registered the trade or business name under which the applicant intends to conduct business

as required by West Virginia law. Any applicant seeking a license or renewal shall submit with the application a copy of the applicant's franchise license, a certificate from the Secretary of State evidencing its good standing and authority to conduct business in the State of West Virginia and registration with State and County governments. No license shall be granted to any applicant who does not demonstrate, to the satisfaction of the Board, ownership of general comprehensive liability insurance coverage for work performed as a contractor for the entire period which the license applied for is in effect from an insurance company licensed by the State of West Virginia.

42-21-5. 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.

5.3.11 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.

42-21-6. 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 SS 2111-14(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.

Provided that prior to the commencement of proceedings under 29A, no disciplinary action shall be taken against any person licensed hereunder until that person has first been notified of the reasons for the intended action and been given an opportunity to respond to the Commissioner of Labor or a delegate thereof within five (5) days of such notice with reasons why such intended disciplinary action is inappropriate.

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 SS 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.

42-21-7. 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 SS 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 5 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 administrative 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.

42-21-8. 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 S 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.

42-21-9. Severability.

9.1. If any provisions of these rules or their application to any person be held invalid, such invalidity shall not affect the

provisions or application of the rules which can be given effect without the invalid provisions or application, and to this end the provisions of these rules are declared to be severable.

HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE
STATE CAPITOL - PHONE (304) 340-3200
CHARLESTON 25305

JOE MARTIN, Chair
COMMITTEE ON GOVERNMENT ORGANIZATION
P. O. BOX 384
ELKINS, WV 26241
PHONE (304) 656-0000

Committees:
House Rules

August 8, 1991

Mr. Roy Smith, Commissioner
Department of Labor and
Members of the Contractor Licensing Board
Building 3, Room 319
Charleston, West Virginia 25305

Gentlemen and Ms. Stevens:

It has come to my attention that the West Virginia Contractor Licensing Board is considering the adoption of regulations which would impose a fee in excess of \$20 upon persons seeking licensure as electrical contractors who already hold electricians' licenses issued by the State Fire Marshal. Delegate Joe Martin has directed that I write to the Board regarding the legislative history of certain language contained in S.B. 409, the West Virginia Contractor Licensing Act, and regarding my legal opinion, as Attorney for the House Government Organization Committee, as to the effect of that language.

When S.B. 409 was considered in the House Government Organization Committee, Delegate Sam Love proposed an amendment which was adopted and incorporated in the strike-and-insert committee amendment reported on March 5, 1991. Delegate Love's amendment added to language of the bill providing that applicants for licensure pay a license fee not to exceed \$150 the following proviso:

"Provided, That electrical contractors already licensed under section four, article three-b, chapter twenty-nine of this code shall pay no more than twenty dollars."

The bill was then referred to the House Finance Committee, which reported the bill to the floor with a strike-and-insert

Mr. Smith & Members of
Contractor Licensing Board

(2)

August 8, 1991

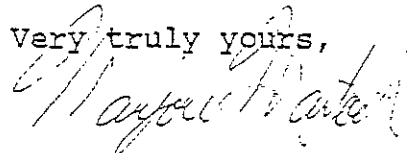
amendment which omitted the limiting proviso previously set forth. Upon Consideration of the Finance Committee amendment by the House on March 8, 1991, Delegate Martin, as Chairman of Government Organization, offered an amendment to the amendment supporting the position of the Government Organization Committee as to the bill. The second portion of Delegate Martin's amendment restored the limiting proviso. The amendment was adopted by the House and the House amendment to the bill accepted by the Senate. The bill, as enacted into law, contains the language previously set forth.

Delegate Martin has requested that I convey to the Board that his intention in proposing the adoption of the limiting proviso was to enable persons who were already electricians, regulated and supervised pursuant to the provisions of Article 3B, Chapter 29 of the Code, and paying examination and license fees pursuant to that article, to obtain licenses as electrical contractors upon payment of a fee not to exceed \$20.

My legal opinion as Attorney for the House Committee on Government Organization is that any action of the Board setting a license fee in excess of \$20 for licensed electricians seeking licensure as electrical contractors would be in violation of the statute.

Thank you for your consideration of this matter.

Very truly yours,



Marjorie Martorella
Attorney

MM/blj

MINUTES

WEST VIRGINIA CONTRACTOR LICENSING BOARD

August 9, 1991

The West Virginia Contractor Licensing Board met August 9, 1991 at 9:00 a.m. in Room D, Conference Center, Capitol Complex, Charleston, West Virginia.

Board Members present were:

Mr. Winfield H. Strock, Chairman	Mr. James E. White
Mr. Robert O. Orders, Jr.	Mr. Jack R. Murray
Mr. Robert B. Carl	Mr. Frank R. Ferguson
Mr. John Wade Bell III	Ms. Nanette Stevens
Mr. Roy M. Smith (Ex officio)	Mr. Robert L. Cannon
Mr. Bob Workman (Representing Secretary Fred Williams, Ex officio member)	

Board Members absent: Mr. Curtis A. Given
Mr. Andy Richardson (Ex officio)

Also present were Mr. Robert F. Miller, Deputy Commissioner, Division of Labor, and Mr. Chris Quasebarth, Assistant Attorney General.

Call to Order

Chairman Strock called the meeting to order.

Approval of Minutes of July 29, 1991

Mr. Orders moved that the minutes of the meeting held July 29, 1991 be approved as presented. Motion seconded by Mr. Carl and carried unanimously.

Public Comment

Mr. David Logsdon stated that he is a licensed electrician, licensed under §29-3-b(4) and pays \$50.00 annually for that license. He stated that the Fire Marshal's office licenses electricians, not contractors, and that the wording should have been electricians--not electrical contractors. He asked the Board for clarification on the fee required to obtain an electrical contractor license since he holds an electrician license.

Mr. Leff Moore, representing the West Virginia Electrical Contractors Association, indicated that electrical contractors were not licensed under the Fire Marshal law. He stated that "we believe electrical contractors should be licensed under the Contractor Licensing Act."

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Mr. James Meckley of Braxton County stated that he understands a wage bond is not required for residential work and asked "can I have a contractor license strictly for residential work and not get a wage bond, but in five years, may I move up to the general building contractor classification?"

Commissioner Smith replied: "you are entitled to apply for residential license and be exempt from the wage bonding requirements only for single family dwellings; if you choose the general contractor classification, that would prohibit the exemption; you could take the residential contractor classification and in five years apply for the general contractor license and be exempt because you have a record.

Mr. Meckley then stated he is in a rural area and is often asked to work on barns and other farm buildings; he asked if he would be allowed to do that work under the residential contractor classification. Mr. Smith stated that would be checked out and a response forthcoming.

Attorney General Opinion Requested

Chairman Strock stated that an opinion has been requested of the Attorney General regarding §29-3(b) and asked Mr. Quasebarth for a status report. Mr. Quasebarth stated that a formal request for an opinion was submitted and reply is expected in short order.

Sub-committee Reports

Chairman Strock reported that six Board Members met yesterday as a sub-committee and asked Mr. Cannon to report what came out of that meeting. Discussion followed.

Definitions Adopted as Proposed by Sub-committee

Mr. Carl moved that the following definitions, agreed upon by the sub-committee, be adopted as clarifications by adding:

"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

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Association Code and the National Electrical Code or its successor. The terms "contractor" and "contracting" are synonymous.

The term "capital improvement" 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.

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;

Motion seconded by Ms. Stevens and unanimously carried.

Commissioner Smith indicated that proper numbering will be inserted.

Ms. Stevens moved that the following language be added at §21-11-3(3):

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.

Motion seconded by Mr. Murray and unanimously carried.

Mr. Ferguson moved that those who apply for a contractor license prior to October 1, 1991 may designate a person in addition to themselves as successor in the same way a corporation would and that those who apply after October 1 be required to be tested and that the Board be notified within thirty days of any change of persons named on the application. Motion seconded by Mr. Murray and passed with Mr. Orders voting no.

Division of Labor Report

Testing Services--Commissioner Smith reported that, through the State's Purchasing Section (Department of Administration), he came up with two companies in addition to the National Assessment Institute: National Evaluation System (Amherst, Massachusetts) and the Center for Occupational and Professional Assessment (Princeton, New Jersey). He wrote them asking if they were interested in a request for proposal. To date, no reply has been received.

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Applications Processed--Mr. Smith stated that approximately 1,300 applications have been processed; about 25% have been returned to applicants for various reasons such as not complete, signature missing, not notarized. He said no licenses have been issued.

Ms. Stevens asked if it would be possible for Board Members to obtain a number of copies of the blank application form. Reply was affirmative (these were provided before the close of the meeting). Mr. Ferguson asked for the law booklets and these were also provided.

(Lunch break occurred approximately 12 noon to 1:30 p.m.).

Chairman Strock reconvened the meeting and stated that Mr. Quasebarth has indicated that the Board passed a motion this morning which is not legally defensible on the issue of a designee or successor, that the language used would constitute a transfer of the license.

Mr. Cannon moved that the action taken this morning regarding the naming of a successor/designee be rescinded. Motion seconded by Mr. Bell and carried unanimously.

Mr. Carl moved that on licenses issued prior to October 1, 1991 a designated, qualified person shall be listed as the holder of the license. If that person leaves the business structure and the firm is materially the same as when originally licensed, a successor can be named as the new qualifying person to hold the license, and that the Board shall be notified of such change within thirty (30) days. Motion seconded by Mr. Ferguson and carried unanimously.

Mr. Orders suggested that staff prepare a form that would deal with this situation and Mr. Miller asked, "in the form of an affidavit?" Reply was affirmative.

Meeting Recessed

Following discussion, Mr. Orders moved that this meeting be recessed to Tuesday, August 20, 1991 at 9:00 a.m. Motion was seconded and carried unanimously.

August 20, 1991

The West Virginia Contractor Licensing Board met August 20, 1991, at 9:00 a.m. in Conference Room D, Capitol Complex, Charleston, West Virginia. The meeting was a continuation of the meeting of August 9, 1991.

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Board Members present were: ---

Mr. Winfield H. Strock, Chairman	Mr. James E. White
Mr. Robert B. Carl	Mr. John Wade Bell, III
Mr. Robert L. Cannon	Mr. Curtis A. Given
Mr. Robert O. Orders	Mr. Jack R. Murray
Mr. Roy M. Smith (Ex officio)	Mr. Bob Workman (representing
Mr. David Caldwell (representing	Secretary Fred Williams,
Commissioner Andy Richardson,	Ex officio Member)
Ex officio Member)	

Board Members absent: Ms. Nanette Stevens
Mr. Frank R. Ferguson

Also present were: Mr. Robert F. Miller, Deputy Commissioner, Division of Labor, Mr. Andrew A. Brown, Assistant to the Commissioner of Labor, Mr. Chris Quasebarth, Assistant Attorney General, and Ms. Terry Ridenour, Assistant Attorney General.

Meeting Re-convened

Chairman Strock re-convened the meeting, stated that Mr. Orders would be late and that Mr. Ferguson is unable to attend today's meeting, and asked Mr. Quasebarth to present the Attorney General Opinion regarding the licensing of electrical contractors.

Attorney General Opinion

Mr. Quasebarth introduced Ms. Terry Ridenour, Assistant Attorney General, and stated that Ms. Ridenour would be available to work with the Board in drafting the rules and regulations. He commented that copies of draft rules and regulations, prepared by an interested group, have been received. Mr. Quasebarth stated that he has the Attorney General Opinion regarding electrical contractor licensing, that the opinion was approved yesterday by General Mario J. Palumbo and that it is official.

The Opinion is attached to and made a part of these minutes.

Change of Designated License Holder

Following discussion, Mr. Orders moved that if any change of person designated as license holder occurs in the case of a grandfathered entity, the entity must submit, within thirty (30) days, a new application certifying the same information as was certified originally and that a new license be issued in the name of the newly-designated license holder. Motion seconded by Mr. Murray and carried unanimously.

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Acknowledgements

Chairman Strock stated that draft rules have been received from Mr. Leff Moore, representing the Heating, Ventilating and Air Conditioning Association, that they have done a superb job and that the valuable information is appreciated.

The Chairman also stated that suggestions have been received from Mr. Cannon regarding definitions.

Report on Contact with Testing Companies

Commissioner Smith reported that he has heard from both the National Evaluation System and the Center for Occupational and Professional Assessment. Both companies have indicated they will not participate in West Virginia.

Meetings Scheduled

Following discussion, members present agreed to meet as indicated below:

August 28, 1991, 9:00 a.m.* Definitions Committee	Contractors Association Offices 2114 Kanawha Boulevard, East Charleston, West Virginia
September 3, 1991, 2:00 p.m. Testing Committee	Conference Room of Homebuilders Association 700 Virginia Street, WEST Charleston, West Virginia
September 4, 1991, 9:00 a.m. Board Meeting	Conference Center, Room A Capitol Complex Charleston, West Virginia
September 11, 1991, 9:00 a.m. Board Meeting	Room 460, Main Capitol Charleston, West Virginia
September 18, 1991, 9:00 a.m. Board Meeting	Room 460, Main Capitol Charleston, West Virginia

(*Ms. Ridenour was asked to be present).

Authorization to Begin Negotiations with National Assessment Institute

Mr. Carl moved that Commissioner Smith be authorized to begin negotiations with the National Assessment Institute, that a report

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be prepared for the next Board Meeting and that National Assessment Institute representative(s) be asked to attend the Testing Committee meeting September 3, 1991 and the Board meeting September 4, 1991. Motion seconded by Mr. Bell and unanimously carried.

Adopted Changes to Be Become Part of the Emergency Rules

Mr. Cannon moved that changes adopted at this meeting become a part of the emergency rules. Motion seconded by Mr. White and unanimously carried.

Members to be Notified of Meetings and Cancellations

Mr. Orders asked that Board Members be reminded of meetings and cancellations.

Adjournment

Mr. Carl moved that the meeting adjourn. Motion seconded by Mr. Cannon and unanimously carried.



STATE OF WEST VIRGINIA

OFFICE OF THE ATTORNEY GENERAL

CHARLESTON 25305

MARIO J. PALUMBO
ATTORNEY GENERAL

RICHARD L. GOTTUES
CHIEF DEPUTY ATTORNEY GENERAL

(304) 348-2021
FAX 348-0140

August 19, 1991

Winfield H. Strock, Chairman
West Virginia Contractor Licensing Board
319 Building No. 3, Capitol Complex
Charleston, West Virginia 25305

Dear Mr. Strock:

You have requested a formal opinion of this office regarding the proper interpretation of West Virginia Code § 21-11-7(a) (Supp. 1991), which provides:

A person desiring to be licensed as a contractor under this article shall submit to the board a written application requesting licensure, providing such information as the board may require, on forms supplied by the board, and shall pay such license fee not to exceed one hundred fifty dollars: Provided, That electrical contractors already licensed under section four [§ 29-3B-4], article three-b, chapter twenty-nine of this code, shall pay no more than twenty dollars.

More specifically, you requested interpretation as to who qualifies for the twenty dollar reduced fee for electrical contractors specified in the last clause.

The West Virginia Contractor Licensing Act, W. Va. Code § 21-11-1, et seq., was enacted in the 1991 Legislative Session, requiring that after October 1, 1991 any person engaged as a contractor in the State of West Virginia must be licensed. W. Va. Code § 21-11-6(a). A "person" is defined as including an "individual, firm, sole proprietorship, partnership, corporation, association or other entity." W. Va. Code § 21-11-3(j).

Simply read, W. Va. Code § 21-11-7(a) requires that any person desiring licensure as a contractor must submit an application form, provide information required by the Contractor Licensing Board, and remit a fee not to exceed \$150. A fee reduction is created for electrical contractors who hold another type of license issued pursuant to W. Va. Code § 29-3B-4 by the State Fire Marshal, such that they can obtain their contractor license for a \$20 fee.

Interpretation requires reference to W. Va. Code § 29-3B-4, which relates to the supervision of electricians. Pursuant to that statutory section, the Fire Marshal may issue three classes of license: a master electrician license, a journeyman electrician license, and an apprentice electrician license. The journeyman electrician and apprentice electrician licenses are only issuable to persons. W. Va. Code § 29-3B-4(d)(2). The master electrician's license may be issued to either a "person, firm or corporation". § 29-3B-4(d)(1).

The term "person" is undefined by article 3B, chapter 29. "Generally the words of a statute are to be given their ordinary and familiar significance and meaning, and regard is to be had for their general and proper use." Syl. pt. 4, State v. General Daniel Morgan Post No. 548, V.F.W., 144 W. Va. 137, 107 S.E.2d 353 (1959). Given the statutory context that the term "person" is used in connection with, but in distinction to, the terms "firm" and "corporation," we conclude that the term "person" in § 29-3B-4 must be given its ordinary and familiar significance and meaning -- that of an "individual human being." Webster's Third New International Dictionary, at p. 1686 (G. & C. Merriam Co., 1966).

No electrician license of any class issued by the Fire Marshal is assignable or transferable. W. Va. Code § 29-3B-4(e). Furthermore, the journeyman electrician and apprentice electrician licenses issued by the Fire Marshal "shall specify the name of the person who is thereby authorized" to engage in electrical work. W. Va. Code § 21-3B-4(d)(2). The master electrician license issued by the fire marshal "shall specify the name of the person, firm or corporation so qualifying," as well as the name of the person who actually passed the examination. W. Va. Code § 21-3B-4(d)(1). The clear meaning of these provisions read together is that the electrician licenses are issued in the name, and for the sole use, of the person, firm or corporation making application and qualifying for the license.

For example, if a person applies and qualifies for a journeyman electrician license, that license shall run in the name of that person. If a corporation applies and qualifies for a master electrician license, that license runs in the name of the corporation (along with the name of the person passing the examination, since a corporation is not capable of taking an examination).

The requirement that the Fire Marshal's electrician license issued pursuant to W. Va. Code § 21-3B-4 be issued in the name, and for the sole use, of the person, firm or corporation to whom it was issued, must now be applied to the language of the Contractor Licensing Act at W. Va. Code § 21-11-7(a). Only an electrical

contractor licensed under W. Va. Code § 21-3B-4 qualifies for the reduced twenty dollar fee. Therefore, an electrical contractor, to qualify for the twenty dollar reduced fee under W. Va. Code § 21-11-7(a), must be the same entity as the person, firm or corporation to whom the electrician license was issued under W. Va. Code § 29-3B-4.

The following three examples will illustrate:

1) if an individual holds an electrician's license under W. Va. Code § 29-3B-4, and that individual applies for an electrical contractor license under W. Va. Code § 21-11-7(a), that individual will qualify for the reduced twenty dollar fee;

2) if a corporation holds an electrician's license under W. Va. Code § 29-3B-4, and that corporation applies for an electrical contractor license under W. Va. Code § 21-11-7(a), that corporation will qualify for the reduced twenty dollar fee; but

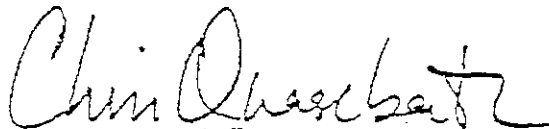
3) if an individual holds an electrician's license under W. Va. Code § 29-3B-4, and that individual applies on behalf of his or her corporation for an electrical contractor license under W. Va. Code § 21-11-7(a), that corporation would not qualify for the reduced twenty dollar fee, because it is not the same entity to whom the electrician license was issued under W. Va. Code § 29-3B-4.

SUMMARY

The West Virginia Contractor Licensing Act, W. Va. Code § 21-11-1, et seq., provides for a reduced application fee of twenty dollars for electrical contractors holding an electrician license issued by the State Fire Marshal pursuant to W. Va. Code § 29-3B-4. To qualify for the reduced fee, the electrical contractor license applicant must be the same entity to whom the electrician license was issued.

Sincerely,

MARIO J. PALUMBO
ATTORNEY GENERAL



By: CHRIS QUASEBATH
ASSISTANT ATTORNEY GENERAL

CCQ/jar

MINUTES

WEST VIRGINIA CONTRACTOR LICENSING BOARD

July 29, 1991

The West Virginia Contractor Licensing Board met July 29, 1991 at 9:00 a.m. in Room B, Conference Center, Capitol Complex, Charleston, West Virginia.

Board Members present were:

Mr. Winfield H. Strock, Chairman	Mr. Curtis A. Given
Mr. Robert O. Orders, Jr.	Mr. Jack R. Murray
Mr. Robert B. Carl	Mr. Frank R. Ferguson
Mr. John Wade Bell III	Ms. Nanette Stevens
Mr. Robert L. Cannon	
Mr. Roy M. Smith (Ex officio)	

Board Members absent: Mr. James E. White
Mr. Andy Richardson (Ex officio)
Mr. Fred Williams (Ex officio)

Also present were Mr. Robert F. Miller, Deputy Commissioner, Division of Labor, and Mr. Chris Quasebarth, Assistant Attorney General.

Call to Order

Chairman Strock called the meeting to order.

National Assessment Institute Presentation

Mr. Anthony W. Mitchell, Ph.D., President of the National Assessment Institute and Mr. Henry Sorensen appeared at the request of the Board and presented information concerning testing procedures. The address of the Institute is: 1590 Bay Vista Drive, Suite 140; Clearwater, Florida 34620; telephone: (813) 535-3775; Fax: (813) 530-1493.

Dr. Mitchell stated that his company is 15 years old, was formed in Florida; that the company does examination work in a number of states and has expertise in construction industry testing. He indicated many states require experience, financial stability and competence in the testing area, and said National Assessment Institute would defend in court any challenge to their examination procedures.

Dr. Mitchell recommended an "open book" examination for business and law. He indicated that they could tailor examinations to fit West Virginia's requirements as directed by the Board.

West Virginia Contractor Licensing Board

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Chairman Strock asked if Board Members wished to ask questions. Mr. Orders asked about the cost; Dr. Mitchell replied they recommend a \$40.00 fee per examination.

Chairman Strock asked about the length of the contract; Dr. Mitchell replied that many state contracts go for three years; some can only go one year at a time--we automatically continue unless otherwise notified. He stated "we have a very simple contract approach;" we develop and maintain the examinations, administer the tests, arrange time, place and space and process the candidates; we want you to (1) keep us updated on changes in the law and (2) assist us in maintaining the security of the examinations.

Mr. Carl asked what the fee would be for a specialty contracting firm which does siding, roofing, guttering, etc. Dr. Mitchell said there would be three examinations--we could negotiate something, could maybe handle at a little less cost. He stated, further, that "the testing fee covers our expenses, too."

Chairman Strock asked how the update on the law and rules and regulations is usually exchanged. Dr. Mitchell said this is "not burdensome;" that there is no penalty if it is not done, but it really helps us, so that examinations can stay current. He stated the Department (Board) will have the sole responsibility for establishing minimum qualifications for candidates.

Dr. Mitchell stated appreciation for "this chance for Henry and I to appear, that we plan to stay around for the remainder of the meeting if it's all right. We appreciate your time."

A ten-minute break occurred at this point, following which the meeting re-convened.

Approval of Minutes of July 19, 1991

Mr. Cannon moved that the minutes of the meeting held July 19, 1991 be accepted as presented. Motion seconded by Mr. Murray and carried unanimously.

Report of Board Attorney

Commissioner Roy Smith introduced Mr. Chris Quasebarth, Assistant Attorney General. Mr. Quasebarth stated that he has been an Assistant Attorney General five years and that he is assigned as the Board's attorney, that he is the only attorney for the Division of Labor. Mr. Quasebarth presented each Board Member with a copy of a statement attached to these minutes. Discussion followed.

West Virginia Contractor Licensing Board

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Public Comments

Chairman Strock asked if there were comments from public representatives.

Mr. Leff Moore, representing HVAC and other groups, stated that the emergency regulations adopted can be revoked, recalled... prior to action of the Legislative Rule Making Review Committee, or can be amended after such action. He said the contractor has only two legal documents: the law and the subsequent regulations; other things are arguable points. Mr. Moore stated, further, that the Board has broad powers; that it is not too late to change the emergency regulations and "I would urge you to take that action on behalf of the people I represent. Thank you."

Meeting Recessed for Lunch

Chairman Strock recessed the meeting for lunch; the meeting resumed at 2:00 p.m.

Mr. Orders moved that all firms licensed under the grandfathering provisions of the law need meet no further requirements after October 1, 1991. Motion seconded by Mr. Murray.

Chairman Strock stated the motion before us does not preclude amending the rules, that the motion is that nothing more will be required of all contractors grandfathered.

Motion was defeated.

Report on Mailing

Commissioner Smith reported that, following mailing of the applications packet, we are currently covered up, that it is very uncommon to get a comment from anybody who is mad; most have been receptive, most questions have been basically about classifications.

One thing I would like the Board to consider for a minute is §21-11-7(a) which states:

"Provided, That electrical contractors already licensed under section four, article three-b, chapter twenty-nine of this code, shall pay no more than twenty dollars."

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Mr. Given stated that §29-3(b) refers to an individual electrician.

Mr. Smith commented that that is the position we are taking.

Mr. Cannon suggested dealing with the strictest definitions until challenged.

News Release

Board members approved the news release as presented.

Other Matters

Mr. Orders moved that the Commissioner be authorized to begin steps toward securing the services of a testing company. Mr. Bell seconded the motion, adding "proceed with due haste to secure information as soon as possible." Motion carried unanimously.

Chairman Strock stated "we are down to eight board members for the meeting August 9, 1991, and there is no proxy voting." (Mr. Orders will be out of town August 9 and Mr. White suffered a heart attack).

Commissioner Smith suggested the following committees: (1) definitions section, (2) licensing board administrative duties, and (3) the application process. He stated that he, Chris Quasebarth and Bob Miller will be available to help in the groups and that Conference Center, Room D, is reserved for the meeting August 9.

Chairman Strock plans to meet with Mr. Given and Mr. Orders on August 2 at 8:00 a.m., then he plans to meet with the Commissioner and have recommendations for the August 9 meeting--he will send a letter suggesting the sections of the Code each committee will be working on.

Adjournment

Mr. Cannon moved that the meeting adjourn. Motion seconded by Mr. Orders and unanimously carried.

MINUTES

WEST VIRGINIA CONTRACTOR LICENSING BOARD

July 19, 1991

The West Virginia Contractor Licensing Board met July 19, 1991 at 9:00 a.m. in Room B, Conference Center, Capitol Complex, Charleston, West Virginia.

Board Members present were:

Mr. Winfield H. Strock, Chairman	Mr. Curtis A. Given
Mr. Robert O. Orders, Jr.	Mr. Jack R. Murray
Mr. Robert B. Carl	Mr. Frank R. Ferguson
Mr. John Wade Bell III	Ms. Nanette Stevens
Mr. Robert L. Cannon	Mr. James E. White
Mr. Bob Workman (Representing Mr. Fred Williams)	
Mr. Roy M. Smith (Ex officio)	

Board Member absent: Mr. Andy Richardson (Ex officio)

Also present was Mr. Robert F. Miller, Deputy Commissioner, Division of Labor.

Call to Order

Chairman Strock called the meeting to order.

Approval of Minutes of July 1 and July 3, 1991

It was moved and seconded that the minutes of the Inaugural Meeting held July 1 and July 3, 1991 be approved as presented. Motion carried.

Public Comments Requested

Chairman Strock asked for comments from the public representatives. No comments were heard.

Report on Status of License Application Preparation/Mailing

Mr. Smith reported that we have made changes and corrections and sent proof back to the printers--we have had problem with the state print shop--but the applications are to be completed today. Should be able to start mailing Monday or Tuesday.

Chairman Strock requested a copy of the completed application form. Mr. Miller said he would attempt to obtain copies before the meeting ends today.

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Mr. Ferguson asked that a number of copies of the entire packet be sent to Board Members in the event they have individuals requesting such materials.

Various members reported requests they had received for materials.

Ms. Stevens moved that Board Members be sent a number of the packets containing the application form. Motion seconded by Mr. Carl and unanimously carried.

Newspaper Ad Placement Approved

Mr. Smith stated that we had discussed briefly with the Board our obligation to do everything possible to notify the public of the existence of Contractor Licensing and said that Mr. Miller had prepared a draft notice. Mr. Orders moved that the contractor portion of the draft ad--basically in accordance with the sample--be approved. Motion seconded by Ms. Stevens and carried unanimously.

There occurred discussion of preparation and submission of press releases to inform the public.

Discussion of Examination Procedures of Other States

Board Members discussed the material presented regarding examination procedures used in other states which license contractors. Mr. Orders moved that staff be requested to contact the National Assessment Institute requesting a presentation at the July 29, 1991 meeting. Motion seconded by Mr. Carl and unanimously carried.

Conditional License

An application form for a conditional license for out-of-state contractors for bid purposes only was discussed. The Board approved a \$50 fee for obtaining a conditional license, with the stipulation that the fee would be deducted from the annual fee if the contractor applied for and received a contractor license to do business in West Virginia.

Disciplinary Actions

A general discussion was held concerning the functions of the Board to impose sanctions and disciplinary actions under the authority of the West Virginia Contractor Licensing Act. Commissioner Smith said an Assistant Attorney General assigned to the Division of Labor would assess the provisions of the Act dealing with

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disciplinary powers of the Board and report to the Board at a future meeting.

Discussion of Questions

A summary of questions received by Commissioner Smith from individual Board Members and others was presented by Chairman Strock for discussion. Subject matter covered:

Should we be testing contractors on their knowledge of state tax requirements and general business or should we test for professional construction skills? (Both).

What disciplinary actions will be taken by the Board against a contractor? What constitutes a "court of record" in the law? (Attorney's direction).

Will the Board spell out clearly who must have Workers' Compensation and Unemployment coverage? This relates contractors using "independent" contractors to avoid payroll deductions, etc. or subcontractors. (Yes).

Is a "subcontractor" as defined in the legislation actually a "contractor" and required to be licensed? (Yes).

Will "spec" builders meet the same criteria as any other contractor? (Attorney's direction).

Provide a requirement that contractors show evidence of public liability insurance coverage as a licensing requirement. (No).

Should all contractors (general; general engineering; heating, ventilating and cooling; piping; plumbing; residential; multi-family) be required to list a licensed electrician, plumber and/or sub or have one on their payroll? (Many think this is a must). (No).

Specialty Contractor applicants must list their specialties and those are to appear on the license. (Yes).

MINUTES

INAUGURAL MEETING WEST VIRGINIA CONTRACTOR LICENSING BOARD

July 1, 1991

The West Virginia Contractor Licensing Board met July 1, 1991 at 11:00 a.m. in Room D, Conference Center, Capitol Complex, Charleston, West Virginia.

Board Members present were:

Mr. Curtis A. Given	Mr. Winfield H. Strock
Mr. Robert O. Orders, Jr.	Mr. Jack R. Murray
Mr. Robert B. Carl	Mr. Frank R. Ferguson
Mr. John Wade Bell III	Ms. Nanette Stevens
Mr. Robert L. Cannon	
Mr. Fred Williams (Ex officio)	
Mr. Andy Richardson (Ex officio)	
Mr. Roy M. Smith (Ex officio)	

Board Member absent: Mr. James. E. White

Also present were Mr. Robert F. Miller, Mr. Andrew A. Brown and Mr. Karl H. Angell of the Division of Labor who will be involved with contractor licensing.

Call to Order

Commissioner of Labor Roy M. Smith called the meeting to order and stated that Mr. White had prior commitments and could not attend today's meeting. Mr. Smith stated that Governor Gaston Caperton had originally promised he would be here but had to cancel.

Introductions

Mr. Smith then asked members to introduce themselves and state their affiliations and asked Commissioner Richardson and Secretary Williams if they would like to make comments. Mr. Richardson stated his appreciation at having been included on the Board and welcomed the opportunity to work with the Board. Mr. Williams echoed Mr. Richardson's comments and stated further that "we will do whatever we need to do to assist you and the Division of Labor."

Chairman Selected

Commissioner Roy Smith, serving as Acting Chairman, declared the meeting open for nominations for Chair.

Mr. Given nominated Mr. Winfield Strock; Mr. Orders seconded the nomination; there were no further nominations and Mr. Strock was chosen by acclamation. Commissioner Smith congratulated Mr. Strock

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Minutes of July 1, 1991

and turned the meeting over to him. Mr. Strock asked Mr. Smith "to walk us through" the agenda.

Procedural Rules Adopted

Following brief discussion concerning the annual meeting of the Board, Commissioner Smith stated that the latter part of July--following the end of the State's fiscal year--might be an appropriate time. Chairman Strock commented that he thought that proper. Mr. Orders suggested the last Monday in July and no objections were heard. Mr. Strock suggested that 11:00 a. m. would be a good hour for the meeting.

Time of notification of meetings (§ 42-20-4.5) was changed to "at least five working days prior to regular meetings." It was stated that all meetings of the Board (except those executive sessions permitted by W. Va. Code § 6-9A-4) shall be open to the public and that sufficient time for publication in the State Register (published by the West Virginia Secretary of State) must be given.

Mr. Robert Carl moved: that Section 8.2 be amended to read "The Board shall elect a Chair from among the voting members who shall serve for a term of two years and nothing shall prohibit successive terms. The election of the Chair shall be conducted at the annual meeting as defined in Section 4 of this rule." Motion was seconded by Mr. Ferguson and carried unanimously.

Mr. Ferguson moved that Section 11.1 be amended to read "A majority of the voting members appointed to the Board shall constitute a quorum." Motion seconded by Mr. Bell and carried unanimously.

Mr. Orders moved that the Procedural Rules be adopted as amended. Motion seconded by Mr. Bell and carried unanimously.

Consideration of Application Form

Mr. Miller stated that "everything we are working with today is a draft." He commented that there will be thousands of applications which must be processed in a very short time, and that the contractor classifications are a part of the law.

Mr. Angell stated there will be approximately 8,000 records in a two-month period with 25 fields; that personal computer equipment is not fast enough to do the job and that "we are within a week of being on the mainframe." He stated, also, that security of the program is "triple protected."

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Mr. Orders commented that questions must be "crystal clear." Chairman Strock stated that the licenses will be renewed annually and that questions will not remain the same over the years. It was suggested that a line of instructions be added requesting "Please print or type" information on various lines. Ms. Stevens asked who will decide whether or not to reject applications. Mr. Smith answered that it would depend on why the application was questioned.

Mr. Angell commented that once the forms are returned to the Board, licenses will be mailed every day from the Department of Labor. Mr. Ferguson asked if the numbers are going to be double-checked. Chairman Strock commented that it is a matter of "post verification" during this first-time situation. Mr. Smith said we "can't check automatically as applications come in but after the grandfathering we will go back and re-check applications." Mr. Ferguson asked if licenses would be revoked if erroneous information is found. Mr. Smith answered that he would "move to revoke."

Chairman Strock commented that information on the applications should be verified in some reasonable amount of time, cross-reference every single one, maybe between now and the renewal date.

Mr. Miller pointed out that the cover letter has a place to record "Not Applicable" if there are no employees and stated that, initially, we are accepting "in good faith."

Lunch break occurred at this point (approximately 12:45 p.m. to 1:45 p.m.)

Mr. Orders asked if a budget of estimated costs has been prepared. Mr. Smith replied "yes." Mr. Given asked how many people are to be added. Mr. Smith reported that the Wage and Hour Division currently has 9 field people and to come up with reasonable coverage, we will incorporate this activity into the Wage and Hour Division, probably 7-10 people depending on the Board's action today, and 3-4 office employees.

Mr. Bell asked what the representative salaries for these people would be.

Mr. Smith replied: In the neighborhood of \$15,000, plus fringes--not including expenses. Our estimates indicate a budget of approximately \$800,000.

Mr. Miller commented that the Legislature has to appropriate that money every year.

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Mr. Orders asked that an estimated budget be prepared for the Board "so we can understand what we need."

Licensing Fee Adopted

Mr. Cannon moved that a flat fee of \$100.00 be adopted as the license fee. Motion seconded by Mr. Orders. Mr. Bell amended with "contingent upon staff coming up with an estimated budget." Motion passed unanimously.

Mr. Strock stated that we need to change the instructions letter and the changes must be approved by the Board. Revisions are to be submitted to this Board following deletions, additions, or modifications. He suggested that this meeting be recessed to Wednesday. Board Members agreed. Time was set for 11:00 a.m.

Mr. Leff Moore Recognized

Mr. Strock recognized Mr. Leff Moore (representing the WV Heating & Ventilating and Air Conditioning Association).

Mr. Moore commented that it had been hoped the Board would consider items from general industry.... The small contractor will have to be represented by legal counsel; we wanted to propose an alternative. We were not afforded that opportunity before the administrative rules were adopted. Thank you, Mr. Chairman.

Continued Discussion of Application Form

Mr. Strock suggested that, on the application, the words "annual gross" be deleted; he stated that he would like to include a place to write in information rather than just checking boxes.

Mr. Orders moved that the section about percentage of stock ownership be eliminated. Motion seconded by Mr. Carl and carried unanimously.

Secretary Williams commented that "Bob Workman, my executive assistant, will be sitting in when I cannot attend. Thank you very much."

Mr. Carl indicated that he felt the State Seal should be on there somewhere.

Mr. Orders moved that the license application form be approved as amended. Motion seconded by Mr. Murray and carried unanimously.

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Legislative Rules Discussed/Fees Set

Mr. Smith stated that the rules are very minimal but that the final rules could be done by policy rather than rules.

Mr. Carl moved that the temporary license fee under Section 4.9 be set at \$50.00 and that the temporary license be valid for two (2) months from the date of issue. Motion was seconded by Mr. Orders and carried unanimously.

Mr. Orders moved that the duplicate license fee (Section 4.10) be set at \$10.00. Motion seconded by Mr. Carl and carried unanimously.

Mr. Carl moved that the delayed renewal fee (Section 4.6) be set at \$250.00. Motion seconded by Mr. Ferguson and carried unanimously. Ms. Stevens asked if that is "\$250.00 plus \$100.00." Reply was affirmative.

Expense Accounts

Mr. Smith commented that Board members will be reimbursed all actual expenses "incurred incident to his or her duties as a Board member" as defined in § 42-20-9 of the procedural rules.

Meeting Recessed

At approximately 4:30 p.m. Chairman Strock recessed the meeting, to re-convene on Wednesday, July 3, 1991, at 11:00 a.m.

July 3, 1991 - 11:00 a.m.

Chairman Strock re-convened the meeting July 3, 1991 at 11:00 a.m. in Room B, Conference Center, Capitol Complex, Charleston, West Virginia.

Board Members present:

Mr. Winfield H. Strock, Chair	Mr. Robert O. Orders, Jr.
Mr. Robert B. Carl	Ms. Nanette Stevens
Mr. Robert L. Cannon	Mr. Jack R. Murray
Mr. John Wade Bell III	Mr. Frank R. Ferguson
Mr. Curtis A. Given	
Mr. Roy M. Smith	

Board Member absent: Mr. James E. White

West Virginia Contractor Licensing Board

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Others present included:

Mr. Bob Workman (representing Secretary Fred Williams)
Mr. David Caldwell (representing Commissioner Andy Richardson)

Meeting Reconvened; Application Form Considered

Chairman Strock stated that this is a continuation of the meeting held July 1, 1991 and that the first item today is revision of the application form, and that Division of Labor representatives will "walk us through" the revision.

Mr. Miller stated that the cover sheet has been pared down and that the law is at the printers to be printed in booklet form. He said that the license fee of \$100.00 had been added on the instruction sheet and also put on the application form; and that items 1, 2, 3, 4 had been labeled under the general information section regarding businesses.

Mr. David Caldwell of Employment Security presented language to be inserted and stated that this has been very carefully worded to give a correct impression of the Law. Said statement is to become part of the application form, as an added instruction.

Ms. Stevens suggested underlining and bold-facing the October 1 date.

Considerable discussion occurred regarding items on the amended application form. Chairman Strock stated that the simplest information useable should be requested.

Mr. Miller commented that "we are grandfathering now; if you want to get into other areas, there is an examination process."

Mr. Carl moved that the SPECIALTY CONTRACTOR classification be reinserted on the application form. Motion seconded by Ms. Stevens and carried unanimously.

Mr. Strock suggested that under Section 2 of the instructions it might be well to boldface and underline the word actively and that in Section 4, Page 1, the word specialty might be inserted.

Application Form Approved

Mr. Carl moved that the application form be approved as amended today. Motion seconded by Mr. Orders and carried unanimously.

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Legislative Rules Adopted

Chairman Strock stated that the next item is consideration of the legislative rules. The subject of examinations was discussed in minute detail; Mr. Murray asked about "the guy who can't read" and Mr. Miller replied that there are oral examinations. Consensus was to insert "minimum score of 70%" in Section 5.1, with the possibility of modifying at a later date.

Board Members agreed to use the following language at 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 other dates and places as the Board deems necessary.

Mr. Orders moved that the Legislative Rules be approved as amended by the Board. Motion seconded by Mr. Carl and carried unanimously.

Mr. Brown mentioned that there is a thirty-day comment period on the rules.

Vice Chair Named

Chairman Strock entertained nominations for Vice Chairman. Mr. Carl nominated Mr. Orders. Nomination was seconded by Mr. Bell; Mr. Orders was chosen Vice Chairman by acclamation.

Estimated Preliminary Budget Discussed/Accepted

Mr. Strock: We have discussed fees, approved licensing fees the other day; and in the future we may want to reduce the fees. Mr. Strock asked Commissioner Smith to explain the budget estimates for FY 1991-92. Mr. Smith explained various items of expenditure of the estimated budget and answered questions posed by Board Members. The estimated budget totaled \$913,120.

The following comments occurred regarding the estimated budget:

Mr. Orders: I am not being critical but I guess, I think it would be our perspective that fees should be as low as they can be to cover whatever it costs the Department of Labor... but not have fees taking care of the Department of Labor budget. Ms. Stevens agreed.

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Mr. Smith commented that the general direction of this proposed budget was to offset our costs. Mr. Bell asked "What if there is a deficit?" and Mr. Smith replied that we will "do whatever is necessary to make adjustments."

Mr. Orders moved that the estimated preliminary budget be accepted by this Board. Motion seconded by Ms. Stevens and carried unanimously.

Next Meetings Scheduled/Meeting Time Set

Mr. Smith stated that the next meetings need to be set. In order to meet the Secretary of State's guidelines for publication in the State Register, our nearest date would be Friday, July 19, 1991. The procedural rules already adopted set July 29, 1991 for the required meeting.

Mr. Orders stated that he would prefer to start meetings earlier in the morning. Board Members agreed to begin the July 19 and July 29 meetings at 9:00 a.m.

Mr. Smith suggested that at the next meeting a series of meetings might be scheduled, then cancel some if necessary.

Agenda Items/Future Meetings

Mr. Strock asked that an item be placed on the agenda for the July 19, 1991 meeting for consideration of testing firm information/procedures; and that at the first meeting after October 1, 1991 the budget be considered.

Comments/Requests

Ms. Stevens asked about the time for mailing of applications; Mr. Angell replied that we will make changes, then go to the print shop and we hope it is completed by the middle of next week--we anticipate Monday a week--July 15.

Mr. Miller asked members to clip and date items regarding Contractor Licensing from newspapers in their areas, send them to us and we will copy and distribute to all Board Members.

List of Questions

Mr. Smith suggested that Board Members send him a list of the questions they receive and he would ask staff could condense, compile and distribute those questions to all Board Members for consideration at the next meeting.

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Minutes of July 3, 1991

Testing Procedure

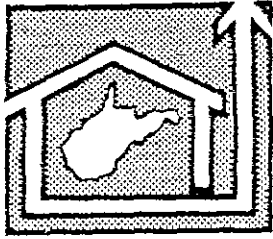
Mr. Miller mentioned the examination situation and stated that he would have data on testing procedures at the next meeting.

Labor Division Personnel Commended

Mr. Orders, Ms. Stevens and Mr. Carl commended staff for providing requested information, etc. Other members agreed.

Adjournment

Mr. Orders moved that the meeting adjourn. Motion seconded by Mr. Carl and carried unanimously.



Home Builders Association of West Virginia

700 Virginia Street, W.
Charleston, WV 25302
Phone: (304) 342-5176
FAX: (304) 342-5177

President
Sandra J. Dunn
First Vice President
Glenn H. Rohr

Secretary
Robert L. Carvell

Treasurer
Gerald O. Workman

National Director
Debbie Hawkins

National Representative
William O. Hofmann

Associate Member Director
Sue Straley

Insurance Trustee
William O. Hofmann

General Counsel
Robert T. Goldenberg

DRAFT OF POLICY POSITION CONTRACTORS LICENSING ACT

(Senate Bill 409)
June 24, 1991

Scope of License

We believe that contractors should be able to apply for license that would allow the scope of activity to be performed as follows:

- * A General Contractor should be able to perform any work falling under that classification, without further license
- * A Residential Contractor license should permit licensee to perform any work falling under residential construction without further license requirement.
- * A Specialty Contractor should be able to perform any specialty work other than a major licensed classification without further license. (Many specialty contractors perform a wide variety of work).
- * Electrical, HVAC, Plumbing and Specialty Contractors should have a restricted sub class permitting holders to work on residential property only.
- * A General Contractor should have a restricted sub class to permit holders to work on light commercial projects only. (For purposes of definition, Light Commercial should be defined as "construction, repair, alteration, or improvement of commercial properties, including, but not limited to offices, churches, storage facilities, retail outlets, or recreational facilities".)

Examination Sites

Examinations should be conducted at (at least) four separate locations throughout West Virginia on a regular basis in order to assure that applicants can receive an examination within thirty (30) days.

Disciplinary Action



We believe that an informal dispute settlement process should be established that precedes formal action under administrative law established by West Virginia Code 29 (A).

Survivorship Provisions

There should be some sort of provision in the event of change of ownership. Possible language could be

" If an individual or a firm ceases for any reason to be connected with the license to whom the license is issued, notice shall be given to the Board in writing within thirty days. If a notice is given, the license shall remain in force for a reasonable length of time to be determined by the Board, but not exceeding sixty days from the date of such cessation of association or employment of a new license issued to the licensee as he qualifies."

Posting of License

The legislation is specific in its direction that copy of license shall be posted on a conspicuous position at every construction site where work is being done by the contractor. It is further specified that license number is to be included in all contracting advertisements and binding contracts. (21-11-6b)

We feel that going beyond the scope of this directive is not necessary.

License Fees

A \$150 limit is placed (by statute) on licensing fees. We believe it necessary to have fees set at an amount necessary to fund the legislation; however, the proper approach would best be to set up a budget of operations with fees generated to meet budget expectations.

In any case, it is our opinion that license fees be set on a 'sliding scale'. A suggested scale could be

\$50 fee	\$0 to \$250,000
\$100 fee	\$250,000 - \$1.5 million
\$150 fee	in excess of \$1.5 million

These figures would be gross income as reported to IRS.

We do not feel that it is fair for smaller businesses to pay the same as the very large business.

Subcontractor License Numbers

We have no problem that a contractor has a responsibility to ascertain that a 'sub' has a license. We are not willing, however, to become the enforcer-

ment arm of this law by being required to maintain the license numbers for purposes of inspection enforcement.

Spec Builders

Senate Bill 409 does not address 'spec' builders. One could assume, by the bill, that they would be exempted from licensure requirements (21-11-6c-8). A possible solution would be adding the following language to be inserted at the end of 21-11-6(a) on line 2 of page 8.

"Persons constructing structures on private property for resale shall be licensed. Sale or rent, or offering for sale or rent within one year after completion is prima facie evidence the project was undertaken for sale or rent".

This language could also be added (in exemptions) to (8) on lines 45 & 46 of page 9. It would then read

"work personally performed on a structure by the owner or occupant thereof. Persons constructing structures on property themselves if for own occupancy and not for sale or rent shall be exempt from licensing. Sale or rent, or offering for sale or rent within one year after completion is prima facie evidence the project was undertaken for sale or rent."

CITY OF BECKLEY



DRAWER AJ

BECKLEY

WEST VIRGINIA

25802-2832

BOB CANNON
Chief, Code Enforcement Department
Zoning Officer

Phone 304/256-1757

June 26, 1991

To : WV Contractors Licensing Board
Fr : Robert L. Cannon *Robert L. Cannon*
RE : Concerns of Contractors
Beckley Meeting

I have taken the liberty of forwarding to you concerns expressed at a meeting of Beckley area contractors regarding the Contractor Licensing Act and the Rules and Regulations, we as a Board, are to enact.

The consensus in the Beckley area includes a view that the rules and regulations should clarify and simplify the provisions of the enabling legislation. Since time is of the essence, I will forward the major concerns expressed in Southern West Virginia for your consideration:

1. Will the Board define the qualifications for each of the "trades" (plumbing, carpentry etc) as a step toward determining competence of contractors, perhaps along the lines of the electrician legislation ?
2. Will the Board clearly define what a General or Residential or Multi-Family or Specialty Contractor can do ? (Should we require a licensed plumber, licensed mechanical etc for each project or licensing in that specialty ?)
3. Will the Board spell out clearly who must have Worker's Comp and Unemployment coverage ? This relates contractors using "independent" contractors to avoid payroll deductions etc or subcontractors.
4. Is a "subcontractor" as defined in the legislation actually a "contractor" and required to be licensed ?

In addition, the Home Builders Association asked that we consider:

1. "Multiple" levels of specialty contracting fields
2. Residential and general contractors be allowed to perform their own specialty contracting work. The specialties like plumbing, H.V.A.C. object to this.

3. Bonding should not be required.
4. Financial information should be limited to owner-certified financial statement, credit references and work history to be used in lieu of a financial statement.
5. "Spec" builders to meet the same criteria as any other contractor.

I'm sure you also have heard from a wide segment of the contracting industry. I look forward to working with you in making the West Virginia industry the best it can be. If I can be of any assistance to you, feel free to call me, days at 256-1757 or evenings at 255-1135.

RLC/njc

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE July 8, 1991
ADMINISTRATIVE LAW DIVISION

July 8, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

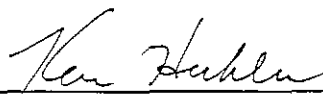
AGENCY: West Virginia Division of Labor

RULE: New Rule, Series 21, WV Contractor Licensing Act

DATE RULE FILED AS AN EMERGENCY RULE: July 5, 1991

DECISION NO. 55-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

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DECISION

EMERGENCY RULE DECISION (ERD 55-91)

AGENCY: West Virginia Division of Labor
RULE: New Rule, Series 21, WV Contractor Licensing Act
FILED AS EMERGENCY RULE: July 5, 1991

- par. 1 The Division of Labor has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The Division of Labor filed this emergency rule with supporting documents with the Secretary of State July 5, 1991 and with the LRMRC July 5, 1991.
- par. 7 It is the determination of the Secretary of State that the Division of Labor has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §21-11-5 reads:
- (a) Pursuant to the provisions of §29A-1-1 et seq. of this code, the board shall adopt rules & regulations relating to the following:
- (1) The minimum qualifications for applicants for examination and license in each of the following specified classes of contractor:
- (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;
- (2) The content of examinations for applicants in each class;
- (3) Procedures for application, examination and license renewal and the manner in which the examination will be conducted;
- (4) The continued competency of licensees for purposes of renewal and reinstatement of licenses; and
- (5) Procedures for disciplinary action before the board.
- par. 9 It is the determination of the Secretary of State that the Division of Labor has not exceeded its statutory authority in promulgating this emergency rule.
- par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:
- (g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and

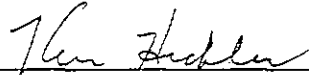
the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division of Labor are as follows:

S.B. 409, West Virginia Contractor Licensing Act, WV Code 21-11 established a grandfathering period which expires on September 30, 1991. Prior to that date, it is anticipated that the Division will receive 9,132 applications for licensure under the grandfathering provision. This Emergency Rule is necessary to set basic administrative procedures for licensing during the grandfathering period and to establish the basics of the examination procedures prior to October 1, 1991.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation" (SB 409)

par. 14 This decision shall be cited as Emergency Rule Decision 55-91 or ERD 55-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Division of Labor, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 8, 1991
ADMINISTRATIVE LAW DIVISION