

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #8

Effective Date

Oct. 21, 1991

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: WV Division of Labor TITLE NUMBER: 42

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 5, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

X

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: _____

SERIES NUMBER OF RULE: 21 TITLE OF RULE: _____

West Virginia Contractors Licensing Act

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT 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. Decisions of the Board resulting from Public comments made necessary this Amendment. Also, see Statement of Circumstances.

4.10 Use Additional Sheets If Necessary.

Ray M. Smith
Signature

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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1991 JUL -5 PM 3:27

OFFICE OF THE SECRETARY OF STATE

RECEIVED

JUL 05 1991

Effective Date

Legislative Rule Making
Review Committee

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 ☒

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

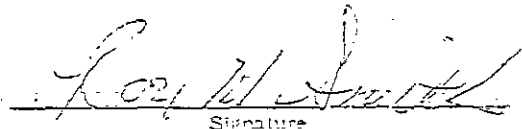
TITLE OF RULE BEING FILED AS AN EMERGENCY: West Virginia

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.


Signature

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42RULE TYPE: Legislative; CITE AUTHORITY WV Code 21-11AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

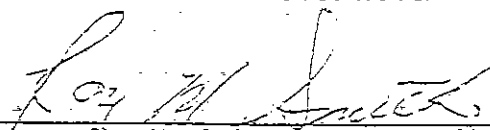
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 21TITLE OF RULE BEING PROPOSED: WV Contractor Licensing Act

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 6, 1991 AT 9:00 a.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

West Virginia Division of LaborContractor Licensing BoardRoom #319, Building #3Capitol ComplexCharleston, WV 25305

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


Roy M. Smith, Commissioner

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Contractor Licensing ActType of Rule: X Legislative Interpretive ProceduralAgency: 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.

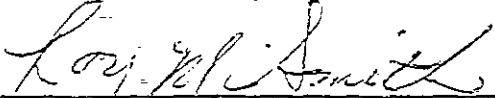
Contractors will be required to pay an annual license fee of \$100.00.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 5, 1991

Signature of Agency Head or Authorized Representative



Roy M. Smith, 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.

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.

STATEMENT OF CIRCUMSTANCES

The West Virginia Contractor Licensing Act, WV Code 21-11, became effective on June 7, 1991. The Contractor Licensing Board was appointed effective July 1, 1991 and could not be notified and meet in full session to promulgate an implementation rule until the appointment effective date. At the inaugural meeting, an emergency rule was prepared primarily for one purpose; to establish a licensing procedure to accommodate the "grandfathering" period which, by statute would expire on September 30, 1991. That emergency rule was filed on July 5, 1991 and a Public Comment Period was let to close on August 6, 1991. Public comments were received on issues other than grandfathering and the Board was required to hold several meetings in order to consider all issues and prepare an amendment to the original emergency rule. The Board met on July 1, 19, 29, August 9, and September 4.

A second issue of emergency concern was that of the examination process. On or after October 1, 1991, the Board is required to examine all applicants for licensure. That process and applicable "definitions" had to be amended into the original emergency rule.

The priorities were as follows:

- (1) The Code mandated the effective date of the Act at June 7, 1991 with a "grandfathering period" to close on September 30, 1991. The appointment effective date of the Board members was July 1, 1991.
- (2) An emergency rule was necessary and approved by the Secretary of State to implement the grandfathering license period. That rule was filed on July 5, 1991 and contained the basic procedures to permit only the licensing procedure to be implemented.
- (3) As of October 1, 1991, the Act requires that each applicant be examined prior to the issuance of a license. The examination procedure generated much public comment and caused the Board much delay in the formulation of the examination process. In any event, the Code clearly mandates that examinations would be required on and after October 1, 1991 and thus an amendment to the emergency rule was necessary.
- (4) Any amendment of the emergency rule had to be made within 90 days of the filing date of the original filing and the amended emergency was filed on October 4, 1991.
- (5) To be considered by the 1992 Legislative Session, the Proposed or Agency Approved Rule should have been submitted to the Legislative Rule Making and Review Committee not later than August 14, 1991. Because of the time restraints of the Act and a significant volume of public comment, it became necessary for the Board to request an authorization for late submission to be no later than October 15, 1991.

TITLE 42
LEGISLATIVE RULES
WEST VIRGINIA DIVISION OF LABOR

Series 20

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

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

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

3.3.3.6. "Contractor" means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith, where the cost of the undertaking is one thousand dollars or more for the material and labor involved. Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

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

Contractor does not include:

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

(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work, except that such work shall be considered to be maintenance work only, and such work shall not materially add to the economic value of the property or asset.

(4) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in Section 3 of this rule and who employs full time a registered architect licensed to practice in this state

or a registered professional engineer licensed to practice in this state. Employees of such corporation, partnership, or sole proprietorship shall also be exempt from the requirements of this rule.

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

3.6. An "emergency basis" under West Virginia Code 21-11-6(c)(5) will be deemed to exist upon 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.

3.5.3.14. "General Building Contractor" means a person whose principal business is in connection with any structures built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole of any part of such construction. A general building contractor 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.

3.5.3.15. "General Engineering Contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: Irrigation, drainage and water supply projects; electrical generation projects; swimming pools; flood control; harbors; 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. 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.A.

3.5.3.16. "Heating, Ventilating and Cooling Contractor" means a person who engages in the business of contracting to install, erect, repair, service or alter heating, ventilating and

air conditioning equipment or systems to heat, cool or ventilate residential and commercial structures or work incidental thereto.

~~3.3.3.18.~~ "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this rule.

~~3.3.3.20.~~ "Multifamily Contractor" means a person who is engaged in construction, repair or improvement of a multifamily residential structure or work incidental thereto. Multifamily shall mean two or more residential units, as defined by these rules.

~~3.3.3.21.~~ "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects, or any combination thereof.

~~3.3.3.22.~~ "Piping Contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld or mechanical methods or work incidental thereto.

~~3.3.3.23.~~ "Plumbing Contractor" means a person whose principal business is the installation, maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating, piping for stand pipes or work incidental thereto.

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

~~3.3.3.28.~~ "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 or work incidental thereto.

~~3.3.3.34.~~ "Specialty Contractor" means a person who engages in specialty contracting services or work incidental thereto said specialty which do not substantially fall within the scope of any contractor classification as set out in this rule.

~~3.3.3.29.~~ "Residential occupancy" means occupancy of a

structure for residential purposes for periods greater than thirty consecutive calendar days.

~~3.16.3.32.~~ "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct or residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels or other transient lodging units are not residential structures.

~~3.17.3.35.~~ "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

~~3.18.3.8.~~ "Division" means the West Virginia Division of Labor.

~~3.19.3.4.~~ "Cease and desist order" means an order issued by the commissioner pursuant to the provisions of WV Code 21-11 and of this rule.

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

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

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

3.27. "Residential Siding (specialty) Contractor" means a contractor whose primary business is fabrication, construction, and/or installation of wood, aluminum, steel, or vinyl siding and work incidental thereto. All such materials must be applied in accordance with the manufacturer's specifications and, when necessary, on furred-up grill or network.

3.28. "Masonry (specialty) Contractor" means one whose

primary business is the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, with or without mortar and work incidental thereto. Installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, cleaning, and welding of reinforcement steel related to masonry construction.

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

3.30. "Remodeling & Repairs (specialty) Contractor" means one whose primary business is all general remodeling, additions, and repairs to existing structures requiring the use of two or more unrelated trades and work incidental thereto where the cost of the undertaking does not exceed \$10,000.00. This includes all rough and finish general carpentry work including installation of related hardware and accessories and all minor repairs and replacement of pre-manufactured items on existing structures.

3.31. "Residential Concrete (specialty) Contractor" means one whose primary business is installation and repair of concrete, concrete reinforcing materials, concrete products and accessories common to the industry, as used in residential applications. This definition includes the forming, pouring, and finishing of concrete structures such as footings, foundations, slabs, basements, sidewalks and walkways, driveways and parking areas, fence footings, decorative concrete walls not to exceed four (4) feet in height and retaining walls not to exceed five (5) feet in height and the excavation incidental to the performance of such work.

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

3.33. "Excavation (specialty) Contractor" means one whose primary business is the installation, alteration, and repair of earthen material by digging, trenching, grading, or compacting the material for a cut, fill, grade, or trench and work incidental thereto. Included in the scope of this definition is the installation, alteration, and repair of crib walls, gabion walls and other devices not to exceed six (6) feet in height for the purpose of controlling the movement of earthen materials.

3.34. "Residential Pools (specialty) Contractor" means one whose primary business is the construction, service, and repair of residential swimming pools and spas, with or without solar heating devices, and work incidental thereto. Included in the scope of this definition is water and gas service lines from the point of service to the pool equipment, electrical wiring from pool equipment to first readily accessible disconnect, pool piping, fittings, back-flow prevention devices, waste lines and other integral parts of swimming pools or spas and attached solar water heating devices. Also included are swimming pool accessories, covers, safety devices and the installation of fencing around swimming pools. The construction of other structures or appurtenances is excluded.

3.35. "Drywall (specialty) Contractors" means one whose primary business is the installation of drywall, gypsum, wallboard panels and assemblies, and work incidental thereto. Also included is the preparation of surfaces for suitable painting or finishing including taping and texturing, installation of lightweight steel wall partitions as supporting members for gypsum drywall and the installation and repair of movable partitions for the application of gypsum drywall panels.

3.36. "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.

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 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;

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

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on business property owned or leased by the employer. The term "business property owned or leased by the employer" shall not include any property upon which work is performed by the owner or lessee employer for the purpose of: speculative sales or leasing; or otherwise intending the sale or lease of the property for commercial or residential use by an entity other than the employer itself;

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

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

4.2. 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(s) 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 the annual fee of \$ 100.00. Except that in the case of a sole proprietorship conducting business only as an Electrical Contractor where the business owner holds an electrician's license issued under the provisions WV Code 29-3B-4 and provides proof thereof to the commissioner, the annual fee shall be \$20.00.

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 conditional license to a person for bidding purposes only. A person may apply for a temporary conditional license on special forms provided by the board and the payment of a temporary conditional license fee of \$ 30.00. A temporary conditional license shall be valid for sixty (60) days from the date of issue. Under no circumstances may a person perform work or services under a temporary conditional license for which the person receives compensation. If the holder of a conditional license becomes a successful bidder and will be performing contracting work in West Virginia, the holder must make application for a contractor's license before work can commence. The \$50.00 cost of the conditional license will be deducted from the \$100.00 annual contractor license fee at the time of initial licensure only.

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.

4.11. No license may be used for any purpose by any person other than the person to whom the license is issued. The person who makes application for licensure for the entity shall be designated as the license holder. If the designated license holder leaves his/her connection with the entity, the entity must name a successor, subject to the approval of the Board. The successor must notify the Board within thirty (30) days and must certify, on a form prescribed by the Board, the same information as was certified by the original license holder. Otherwise, no license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use thereof. Any person who violates this section is subject to the penalties imposed in West Virginia Code Chapter 21, article 11, section 14.

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.~~

5.3. Examinations will be conducted quarterly and at such other times as the Board deems necessary. The Board shall make available to all applicants, on request, an annual schedule of examination locations and dates. 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.

5.4. The applicant shall be examined in each classification for which licensure is desired. Examinations shall be made available by a private testing agent(s) approved and certified by the Board to conduct such examinations. Examination fees will be charged for each classification examination requested and shall be the responsibility of the individual applicant. All examination fee(s) shall be paid directly to the approved testing agent.

The individual taking an examination on behalf of an entity seeking licensure must be the owner, a partner, a corporate officer or a full-time employee of the entity.

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 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.

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 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.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
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JUDY COOPER
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DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

October 21, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Division of Labor

RULE: New Rule, Series 21, West Virginia Contractor Licensing Act

DATE FILED AS AN EMERGENCY RULE: October 4, 1991

DECISION NO. 96-91

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.

A handwritten signature in cursive script, reading "Ken Hechler".

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Oct. 21, 1991
ADMINISTRATIVE LAW DIVISION

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION
(ERD 96-91)

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

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Special Assistant

(Plus all the volunteer
help we can get)

AGENCY: West Virginia Division of Labor
RULE: New Rule, Series 21, WV Contractor Licensing Act
ORIGINALLY FILED AS EMERGENCY RULE: July 5, 1991
FIRST EMERGENCY AMENDMENT: October 4, 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 October 4, 1991 and with the LRMRC October 4, 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 §21-11-16 reads:

The board may adopt rules and regulations as are necessary to carry out the provisions of this article pursuant to the provisions of §29A-1-1 et seq. of this code. The board may disseminate educational or any other material designed to improve performance standards of any contractor group to contractors within the state. The board may adopt, and use, a seal with the words "state contractor licensing board of West Virginia".

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:

The WV Contractor Licensing Act, WV Code 21-11, because effective on June 7, 1991. The Contractor Licensing Board was appointed effective July 1, 1991 and could not be notified and meet in full session to promulgate an implementation rule until the appointment effective date. At the inaugural meeting, an emergency rule was prepared primarily for one purpose: to establish a licensing procedure to accommodate the "grandfathering" period which, by statute would expire on

September 30, 1991. That emergency rule was filed on July 5, 1991, and a public comment period was let to close on August 6, 1991. Public comments were received on issues other than grandfathering and the Board was required to hold several meetings in order to consider all issues and prepare an amendment to the original emergency rule. The Board met on July 1, 19, 29, August 9 and September 4.

A second issue of emergency concern was that of the examination process. On or after October 1, 1991, the Board is required to examine all applicants for licensure. That process and applicable "definitions" had to be amended into the original emergency rule.

The priorities were as follows:

1. The Code mandated the effective date of the Act at June 7, 1991 with a "grandfathering period" to close on September 30, 1991. The appointment effective date of the Board members was July 1, 1991.

2. An emergency rule was necessary and approved by the Secretary of State to implement the grandfathering license period. That rule was filed on July 5, 1991 and contained the basic procedures to permit only the licensing procedure to be implemented.

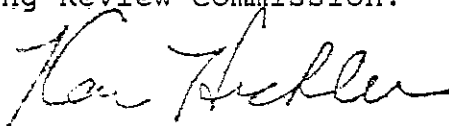
3. As of October 1, 1991, the Act requires that each applicant be examined prior to the issuance of a license. The examination procedure generated much public comment and caused the Board much delay in the formulation of the examination process. In any event, the Code clearly mandates that examinations would be required on and after October 1, 1991 and thus an amendment to the emergency rule was necessary.

4. Any amendment of the emergency rule had to be made within 90 days of the filing date of the original filing and the amended emergency was filed on October 4, 1991.

5. To be considered by the 1992 Legislative Session, the proposed or agency approved rule should have been submitted to the Legislative Rule Making Review Committee not later than August 14, 1991. Because of the time restraints of the Act and a significant volume of public comment, it became necessary for the Board to request an authorization for late submission to be no later than October 15, 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"

par. 14 This decision shall be cited as Emergency Rule Decision 96-91 or ERD 96-91 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

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Oct. 21, 1991
ADMINISTRATIVE LAW DIVISION

Entered _____