

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

2001 APR 30 A 11:37

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Contractor Licensing Board
West Virginia Division of Labor TITLE NUMBER: 28

RULE TYPE: Legislative; CITE AUTHORITY WV Code 21-11-14

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 NEW RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: West Virginia Contractor Licensing
Board - Complaints

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 May 31, 2001 AT 5:00 pm.

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

Andrew A. Brown, Asst. to the Comm.

WV Division of Labor

Building #6, Room B-709

Capitol Complex

Charleston, WV 25305

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Contractor Licensing Board - Complaints

Type of Rule: X Legislative Interpretive Procedural

Agency West Virginia Division of Labor

Address Building # 6, Room B-749

State Capitol Complex

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 341,930	\$ -0-	\$ 341,930	\$ 351,023	\$ 365,949
PERSONAL SERVICES	225,930	-0-	225,930	248,523	260,949
CURRENT EXPENSE	46,500	-0-	46,500	50,000	50,000
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	24,500	-0-	24,500	7,500	5,000
OTHER	45,000	-0-	45,000	45,000	50,000

2. **Explanation of above estimates:** The above estimate is a budgetary increase to the current appropriation of \$ 1,845,793. This rule will require the addition of five new investigators, two new clerical positions and related expenses.

3. **Objectives of these rules:** This rule was mandated by the passage of Senate Bill #103 during the 2000 Legislative Session. The Rule establishes criteria for the receipt, investigation and resolution of complaints against licensed contractors.

Rule Title: WV Contractor Licensing Board - Complaints

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Enforcement of this rule will require a budget increase.

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

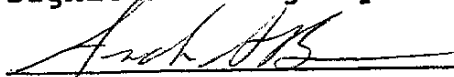
- None -

C. Economic Impact on Citizens/Public at Large.

- None -

Date: 5-1-01

Signature of Agency Head or Authorized Representative



WEST VIRGINIA DIVISION OF LABOR

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BOB WISE
Governor



JAMES R. LEWIS
Commissioner

Facts and Circumstances

During the 2000 Regular Session, the West Virginia Legislature passed Senate Bill 103. This bill was an amendment to WV Code §21-11, West Virginia Contractor Licensing Act. A provision of that amendment set a mandate before the Contractor Licensing Board. The mandate (WV Code §21-11-14(i) requires the promulgation of a legislative rule to establish criteria for the receipt, investigation and resolution of complaints against licensed contractors. The rule was filed for public comment on December 20, 2000. However, a number of public comments requiring board consideration delayed the close of the public comment period and the final filing of the rule with the Legislative Rule Making and Review Committee. The Board only meets at six week intervals and this further complicated the final filing.

During the 2001 Regular Session, the Legislature passed H.B. 2801 which added additional criteria to the board's disciplinary powers. This required the further modification of the proposed rule. Therefore, the original comment was allowed to expire and the rule, 28 CSR 3 is now filed for a new public comment period.

28CSR3

FILED

Legislative Rule
West Virginia Contractor Licensing Board

2001 APR 30 A 11:38

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Series 3

§28-3-1. General.

- 1.1. Scope. This legislative rule governs the procedures for the handling of complaints against contractors by the West Virginia Contractor Licensing Board in accordance with W.Va. Code §21-11-14 et seq., and W.Va. Code §29A-5-1 et seq.
- 1.2. Authority. W.Va. Code §21-11-14.
- 1.3. Filing Date.
- 1.4. Effective Date.

§28-3-2. Application and Enforcement.

- 2.1. Application. This legislative rule applies to the West Virginia Division of Labor, the West Virginia Contractor Licensing Board and all persons, materials and transactions governed or otherwise defined under the coverage of the West Virginia Contractor Licensing Act, W.Va. Code §21-11-1 et seq.
- 2.2. Enforcement. The enforcement of this rule is vested with the West Virginia Division of Labor and the West Virginia Contractor Licensing Board.

§28-3-3. Definitions.

- 3.1. The "Act" means the West Virginia Contractor Licensing Act, WV Code §21-11 et seq., and applicable legislative rules, 28CSR1 and 28CSR2.
- 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 structures or works in connection therewith, where the cost of the undertaking is one thousand dollars or more.

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

3.6. "License" means a license to engage in business in this state as a contractor on one of the classifications set out in W.Va. Code §21-11-3.

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

§28-3-4. Filing of Complaints.

4.1. The Board may accept complaints alleging that a contractor has done one or more of the following:

- (a) Abandonment, without legal excuse, of any construction project or operation engaged in or undertaken by the contractor;
- (b) Willful failure or refusal to complete a construction project or operation with reasonable diligence, thereby causing material injury to the consumer;
- (c) Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;
- (d) Willful or deliberate violation of the building laws or regulations of the state or of any political subdivision thereof;
- (e) Willful or deliberate failure to pay any moneys when due for any materials free from defect, or services rendered in connection with such person's operations as a contractor when such person has the capacity to pay or when such person has received sufficient funds under the contract as payment for the particular construction work for which the services or materials were rendered or purchased, or the fraudulent denial of any amount with intent to injure, delay or defraud the person to whom the debt is owed;
- (f) Willful or deliberate misrepresentation of a material fact by a contractor in obtaining a contract for construction or services or in connection with any official licensing matters;
- (g) Willful or deliberate failure to comply in any material respect with the provisions of the Act or the rules of the board;
- (h) Willfully or deliberately acting in the capacity of a contractor when not licensed, or

as a contractor by a person other than the person to whom the license is issued except as an employee of the licensee;

- (i) Willfully or deliberately acting with the intent to evade the provisions of the Act by: (i) Aiding or abetting an unlicensed person to evade the provision of the Act or its applicable rules; (ii) combining or conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be used by an unlicensed person; or (iv) attempting to assign, transfer or otherwise dispose of a license or permitting the unauthorized use thereof.
- (j) Engaging in any willful, fraudulent or deceitful act in the capacity as a contractor whereby substantial injury is sustained by another;
- (k) Performing work which is not commensurate with a general standard of the specific classification of contractor or which is below a building or construction code adopted by the municipality or county in which the work is performed or any code adopted by this rule as an inspection standard; or
- (l) Knowingly employing persons who do not have the legal right to be employed in the United States.

4.2. All complaints to the board shall be in writing. The Board shall provide forms for the filing of complaints but complaints submitted in other forms shall be accepted by the Board. The board, on its own initiative, may file complaints. The board shall review each complaint to determine whether it should be dismissed, or subject to such other action as specified by this rule.

4.3. The board shall forward a copy of every complaint to the person named in the complaint. Upon receipt, the person named in the complaint has thirty (30) days in which to respond to the complaint in writing. If, upon consideration of the complaint and the response, the board determines that no violation of any applicable state or federal standard has occurred, the board may dismiss the complaint through the issuance of a written order setting forth the basis for the dismissal. If, however, the board determines that further review or other action is necessary, the board may proceed as set forth in this rule.

4.4. Complaints which are subject to the provisions of WV Code chapter twenty-one, article nine [§21-9], West Virginia Manufactured Housing Construction and Safety Standards Act, shall be deferred to the West Virginia Manufactured Construction and Safety Standards Board for investigation and resolution. The Contractor Licensing Board shall retain custody of the complaint for final resolution and disciplinary action. *Provided, however,* The Contractor Licensing Board may determine the actions of the Manufactured Housing Construction and Safety Standards Board as an acceptable final resolution of the complaint.

§28-3-5. Investigations.

5.1. The board and its authorized agents, employees, or authorized inspectors may independently investigate the basis for any complaint filed. During the course of an investigation, the board or its authorized representatives may conduct a physical inspection of the project site to assess the merits of the complaint. If at any time during the course of an investigation it becomes apparent that no violation of any applicable state standard has occurred, the board may dismiss the complaint in the manner set forth in Section 4.3 of this rule.

5.2. For the purposes of performing on-site inspections, if a building or construction code has been adopted by the municipality or county in which the projected is located, the provisions of that code are hereby incorporated by reference and shall be the inspection standard. If a building or construction code has not been adopted by the municipality or county in which the projected is located, then the provisions of §87 CSR 4, West Virginia State Building Code, shall be used as the inspection guideline.

5.3. The authorized inspector shall file a written report with the board as to their findings during the course of the inspection.

§28-3-6. Hearings.

6.1. The board may at any time after the receipt of a complaint issue a written notice of its intent to conduct a hearing. Notice of such intent shall be provided to all interested persons by certified mail at least twenty (20) days in advance of the hearing date. The notice shall include:

- (a) a statement of the time, place and nature of the proceeding; and
- (b) a statement of the subject matter of the proceeding to include the issues in question;

6.2. All hearings conducted by or on behalf of the board shall be conducted in Charleston and in accordance with the provisions of WV Code §29A-5 et seq., Administrative Procedures Act-Contested Cases.

6.3. The board may employ the services of an independent hearing examiner to conduct hearings. The examiner shall conduct all hearings in accordance with the provisions of this rule. The examiner shall submit proposed findings of fact and conclusion of law to the board. The report may contain the examiner's recommendation for the final disposition of the complaint.

6.4. The board shall issue a written order within thirty (30) days of the completion of the hearing. The order shall include a brief statement of the findings and conclusions, with specific references to principal supporting items of evidence as well as the reasons or basis therefor. The board shall have no authority to impose or assess damages. After the

Board has received the hearing examiner's report, the Board may adopt, modify or reject the hearing examiner's findings, conclusions and recommendations.

6.5. The board may order the resolution of the complaint by its dismissal or by one or more of the following sanctions:

- (a) Permanently revoke a contractor's license;
- (b) Suspend a contractor's license for a specific period of time;
- (c) Censure or reprimand a licensed contractor;
- (d) Impose limitations or conditions on the professional practice of a licensed contractor;
- (e) Impose requirements for remedial professional education to correct deficiencies in the education, training and skill of a licensee; or
- (f) Impose a probationary period requiring a licensed contractor to report regularly to the board on matters relative to the grounds for the probation; the board may withdraw probationary status if the deficiencies that require the sanction are remedied; or

6.6. Any interested person, including the board, involved in any investigation or hearing may at any time propose a settlement which may be entered into with the consent of all interested persons and the board. Final acceptance of a settlement shall be memorialized in a settlement order and signed by the board and all interested persons. The execution of a final settlement order immediately terminates any related proceedings and is binding upon the board and all interested parties.

6.7. Any person adversely affected by any action of the board may appeal such action to the Circuit Court of Kanawha county.

§28-3-7. Confidentiality of Records.

7.1. All investigations, complaints, reports, records, proceedings and other information received by the commissioner and the board and related to complaints made to the commissioner and the board or investigations conducted by the commissioner or board pursuant to this rule, including the identity of the complainant or respondent, shall be confidential and shall not be knowingly and improperly disclosed by any member or former member of the board, the commissioner or staff, except as follows:

- (a) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of the Act, the complaint and all reports, records, nonprivileged and nondeliberative materials introduced at any probable cause hearing held pursuant to

the complaint are thereafter not confidential: Provided, that the confidentiality of such information shall remain in full force and effect until the respondent has been served with a copy of the statement of charges.

- (b) Any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at such subsequent hearing, as well as the board's and commissioner's orders, are not confidential.
- (c) The complaint as well as the identity of the complainant shall be disclosed to a person named as respondent in any such complaint filed immediately upon the respondent's request.
- (d) Where the commissioner or board is otherwise required by the provisions of the Act to disclose such information or to proceed in such a manner that disclosure is necessary and required to fulfill such requirements.

7.2. If, in a specific case, the commissioner or board finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commissioner or board shall order that all or a portion of the information communicated to the commissioner or the board to cause an investigation and all allegations of violations or misconduct contained in a complaint shall be confidential, and the person providing such information or filing a complaint shall be bound to confidentiality until further order of the board.