

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

FILED

2002 JUL 19 A 10:59

WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WV Contractor Licensing Board TITLE NUMBER: 28

CITE AUTHORITY: WV Code 21-11-10 (b) and (c)

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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 ADOPTED: 4

TITLE OF RULE BEING ADOPTED: Written Contracts For Services

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS October 1, 2002



SCANNED

**Title 28
Procedural Rule
Contractor Licensing Board**

FILED
2002 JUL 19 A 10:59
CLERK OF WEST VIRGINIA
SECRETARY OF STATE

**Series 4
Written Contracts for Services**

§28-4-1. General.

1.1. Scope. -- This procedural rule establishes the minimum requirements for written contracts as required under the West Virginia Code article eleven, chapter twenty-one, [§21-11 et seq.], the West Virginia Contractor Licensing Act. The intent of this written contract requirement is to provide an element of protection to consumers who utilize the services of contractors licensed and regulated by the West Virginia Contractor Licensing Board.

1.2. Authority. -- W.Va. Code §21-11-10(b) and (c).

1.3. Filing Date. -- July 19, 2002

1.4. Effective Date. -- October 1, 2002

§28-4-2. Definitions.

Except as otherwise stated in this section, all the definitions contained in W.Va. Code §21-11-3 are incorporated herein by reference.

§28-4-3. Written Contracts Required.

Effective the first day of October, two thousand two, no person licensed under the provisions of W.Va. Code article eleven, chapter twenty-one [§21-11 et seq.] may perform contracting work of an aggregate value of ten thousand dollars or more, including materials and labor, without a written contract, setting forth a description and cost of the work to be performed, signed by the licensee and the person for whom the work is to be performed.

§28-4-4. Form and Content Required.

4.1. There shall be no required format for written contracts. *Provided however*, All written contract documents must comply with the minimum content requirements defined

in subsection two of section of this section. A standard contract form shall be available upon request from the Division of Labor's contractor licensing section. This standard form, when properly completed and executed, shall be deemed to comply with the requirements of this rule.

4.2. Every written contract executed as required by W.Va. Code section ten, article eleven, chapter twenty-one [§21-11-10 et seq.], shall contain, at the minimum, the following elements:

- a. The consumer's name and address;
- b. The contractor's name and address;
- c. The contractor's West Virginia Contractor License number;
- d. The address of the property where the project is intended to occur if other than the consumer's address;
- e. The nature, general description and scope of the project;
- f. Approximate starting date;
- g. Approximate completion date;
- h. The total cost of the contract and payment arrangements;
- i. A plainly worded offer and a clear and unconditional acceptance of that offer;
- j. Signature of the consumer and date signed; and
- k. Signature of the contractor and date signed.

4.3. An addendum may be added to a written contract after the execution date of the original contract. The addendum must make specific reference to the original contract document and be signed and dated by both the consumer and the contractor.

§28-4-5. Failure to execute written contracts as required; penalties.

5.1. Any licensed contractor who fails to execute a written contract as required by W.Va. Code section ten, article eleven, chapter twenty-one [§21-11-10 et seq.] and this rule, shall be subject to disciplinary action by the board.

5.2. The board has the power and authority to impose the following disciplinary actions:

- 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 education, training and skill of a licensee;
- 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; and
- g. Order a contractor who has been found, after hearing, to have violated any provision of W.Va. Code article eleven, chapter twenty-one [§21-11 et seq.] or its applicable rules to provide, as a condition of licensure, assurance of financial responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a cash bond, a certificate of deposit, an irrevocable letter of credit or performance insurance.

§28-4-6. Proof of written contract required.

6.1. After a consumer has filed a complaint against a licensed contractor, the board may order the contractor to submit a copy of the written contract covering the project in question.

6.2. If a contractor fails to submit to the board a copy of a contract complying with the requirements of this rule within ten days of the order for such submission, the contractor shall be subject to the penalties described in section five of this rule.

§28-4-7. Enforcement.

The enforcement of the provisions of this rule shall be vested with the West Virginia Contractor Licensing Board and the Division of Labor. *Provided however*, That persons licensed by the West Virginia Manufactured Housing Construction and Safety Standards Board and regulated under the provisions of W.Va. Code article nine, chapter twenty-one [§21-9 et seq.] and its applicable legislative rule [42 CSR 19] shall be required to adhere to the written contract requirements of that Board.

WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

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[HTTP://WWW.STATE.WV.US/LABOR](http://www.state.wv.us/labor)

BOB WISE
Governor



JAMES R. LEWIS
Commissioner

Amendment

The original rule contained a definition (42 CSR 4, 2.1) for the phrase “ person for whom the work is being performed”. This phrase was defined to mean a private consumer and would otherwise exclude business entities. The Division of Labor discussed the substance and affect of this definition with members of the Legislative Rule Making and Review Committee and sponsors of the original legislation. It was decided that this definition violated the statute and should be removed from the rule. The amended version and final filing of this rule deleted that definition.



**HOUSE OF DELEGATES
WEST VIRGINIA LEGISLATURE**

BUILDING 1, ROOM E-215
1900 KANAWHA BLVD., EAST
CHARLESTON, WV 25305-0470
PHONE (304) 340-3106

VIRGINIA MAHAN, Chair
LEGISLATIVE RULE-MAKING REVIEW
P.O. BOX 1114
GREEN SULPHUR SPRINGS, WV 25966
PHONE & FAX: (304) 466-4980
EMAIL: vmahan@mail.wvnet.edu

June 12, 2002

Committees:
Judiciary
Health & Human Resources
Industry & Labor,
Economic Development
& Small Business

The Honorable Joe Manchin, III
The Secretary of State
State of West Virginia
State Capitol Complex, Bldg. 1, Suite 157K
Charleston, West Virginia 25305

Dear Secretary Manchin:

As the House of Delegates co-chair of the Legislative Rulemaking Review Committee, I am writing to comment on the procedural rule of the Contractor's Licensing Board filed on June 7, 2002, as Title 28, Series 4, "Written Contracts for Services." My specific concern is with §28-4-2 which provides definitions. Subsection 2.1 states that the phrase "person for whom the work is being performed" is intended to mean a private individual who employs the services of a contractor licensed by the West Virginia contractor licensing board.

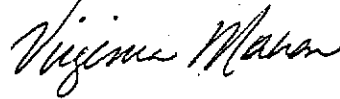
Pursuant to the state Administrative Procedures Act, a procedural rule is one "which fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency, including forms prescribed by the agency." §29A-1-2 (g). The law governing procedural rules is designed to allow agencies to establish practices and procedures without the legislative oversight which is required for legislative rules. Procedural rules are intended to govern procedures, and not to be determinative on an issue affecting legal rights, privileges, benefits or responsibilities.

The definition recited in the proposed procedural rule would limit the application of a law passed this past session, requiring written contracts for jobs that cost above a certain dollar amount. This definition goes beyond the authority granted to the Contractor's Licensing Board by the statute, and I oppose its inclusion in the rule.

Page 2

The Legislative Rulemaking Review Committee has the authority to review any rule filed pursuant to the Administrative Procedures Act. If this definition remains in the rule, I intend to ask the Committee to review the rule and to consider whether this provision is appropriate for a procedural rule and whether it is allowable under the statute.

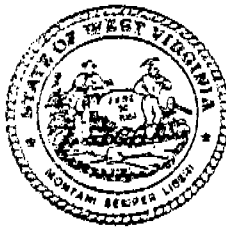
Sincerely,

A handwritten signature in cursive script that reads "Virginia Mahan".

Delegate Virginia Mahan

VM:ce

CC: Contractor's Licensing Board
Senator Mike Ross



Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

State of West Virginia
Joe Manchin, III
Secretary of State

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June 19, 2002

Andrew Brown
Legislative Liaison
Division of Labor
Room B749, Building 6
Charleston WV 25305

Dear Andy:

It has been brought to my attention that the Contractor's Licensing Board filed on June 7, 2002 for public comment a "procedural rule", 28CSR4, "Written Contracts for Services." In §28-4-2 of this rule a phrase is included which states "person for whom the work is being performed." This seems to mean a private individual who employs the services of a contractor licensed by the West Virginia Contractor Licensing Board.

§29A-1-2(g) defines procedural rule as one "which fixes rules of procedure, practice or evidence for dealings with or proceedings before an agency, including forms prescribed by the agency." Procedural rules are intended for just that purpose, to govern procedures and only legislative rules as defined in §29A-1-2(d) should be used as a determining factor on an issue affecting legal rights, privileges, benefits or responsibilities.

I have been informed that if this phrase is not removed from your rule, it is very possible that the rule will be brought before the Legislative Rule-Making Review Committee for further consideration of this issue.

Thank you for your time. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry Puccio".

Larry Puccio
Chief of Staff

cc: Debra Graham, LRMRC
Delegate Virginia Mahan



**HOUSE OF DELEGATES
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June 12, 2002

Committees:
Judiciary
Health & Human Resources
Industry & Labor,
Economic Development
& Small Business

The Honorable Joe Manchin, III
The Secretary of State
State of West Virginia
State Capitol Complex, Bldg. 1, Suite 157K
Charleston, West Virginia 25305

FILED
2002 JUN 13 A 10:11
SECRETARY OF STATE
STATE OF WEST VIRGINIA

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June 19, 2002

The Honorable Virginia Mahan, Chair
Legislative Rule-Making Review Committee
PO Box 114
Green Sulphur Springs WV 25966

Dear Ms. Mahan:

I received your letter concerning 28CSR4, "Written Contracts for Services" which was filed by the Contractor's Licensing Board on June 7, 2002. After reviewing the Code, I agree with your conclusions.

I am enclosing a copy of the letter I have written to the Board.

Thank you for your time sharing your concerns with this office.

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Enclosure



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