



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Contractor Licensing Board TITLE-SERIES: 28-02
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Contractor Licensing Act Rule

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §30-42-5, §30-42-8, and §30-42-16

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §30-42-5(a), §30-42-8(b), and §30-42-16 give the Contractor Licensing Board broad authority to promulgate rules relating to the minimum qualifications for applicants for examination and license, license and renewal fees, and as are necessary to carry out the provisions of the Contractor Licensing Act.

Consistent with this broad authority, the proposed rule defines terms used in the Act or the rule, sets forth licensure requirements for individuals and business entities, including the provision of conditional licensure requirements for out-of-state contractors seeking a license for bid purposes only; identifies license application, license renewal, and examination procedures and associated fees; sets forth examination requirements; and identifies cease and desist order procedures and administrative hearing and appeal procedures.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/30/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/30/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

See explanation above.

The purpose of the Contractor Licensing Act and the proposed rule is to ensure that all persons desiring to perform contracting work in this state are duly licensed to promote capable and skilled craftsmanship utilized in public and private construction projects, fair bidding practices between competing contractors through uniform compliance with state rules, and to protect the public from unfair, unsafe, and unscrupulous bidding and construction practices.

The proposed rule adds new definitions of Act; Affidavit; Business entity; Chair; Classification; Days; Firm; Full-time employee; Incidental work; License holder; Maintenance; Multifamily residential structure; Qualifier; Responsible management; Speculative sale or lease; Swimming pool; Unlicensed person; Utilities contractor; Valid license; and Vice-Chair and amends definitions of Advertisement; Board; Capital improvement; Cease and deist order; Concrete contractor; Construction project; Contracting work; Emergency basis; Employee of a contractor; Excavation contractor; General building contractor; Manufactured home installation contractor; Masonry contractor; Posting of the license; Residential contractor; Sprinkler and fire protection contractor; and Structural steel erection contractor.

The proposed rule makes revisions consistent with HB 2006, passed by the Legislature in the 2021 Regular Legislative Session and effective June 15, 2021 (see explanation below) and makes some technical corrections.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

HB 2006 transferred administration and enforcement of the Contractor Licensing Act from the Division of Labor to regulation under the provisions of professions and occupations in W. Va. Code Chapter 30, and created a new article, §30-42-1 et seq.

The proposed rule incorporates the changes made by HB 2006 by striking references to the repealed statutory code citations under Chapter 21 and replacing with current statutory code citations under Chapter 30. Additionally, redundant language as contained in HB 2006 has been struck.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed rule will not have an economic impact on the revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed rule will not have an impact on special revenue accounts.

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The proposed rule will not have an economic impact on the State or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0

Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 28
LEGISLATIVE RULE
WEST VIRGINIA CONTRACTOR LICENSING BOARD

SERIES 2
WEST VIRGINIA CONTRACTOR LICENSING ACT

§28-2-1. General.

1.1. Scope. -- This rule governs licensing, fees, examinations, ~~powers of the Board,~~ and penalties for violations in accordance with W. Va. Code §§~~21-11-1~~ 30-42-1 *et seq.* and 29A-3-1 *et seq.*

1.2. Authority. -- W. Va. Code §§~~21-11-5~~ 30-42-5, 30-42-8, and 30-42-16.

1.3. Filing Date. -- ~~April 15, 2016.~~

1.4. Effective Date. -- ~~May 1, 2016.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2027.

§28-2-2. Application and Enforcement.

2.1. Application. This legislative rule applies 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 this legislative rule is vested in the Board ~~and the West Virginia Division of Labor.~~

§28-2-3. Definitions.

In addition to the definitions in this section, the definitions in W. Va. Code §30-42-3 are incorporated herein by reference.

3.1. "Act" means the West Virginia Contractor Licensing Act, W. Va. Code §30-42-1 *et seq.*

~~3.1-3.2.~~ "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 as used in W. Va. Code §30-42-6(b), means any means or method used by a contractor to promote the contractor's business to the general public.

~~3.2. "Asphalt (specialty) Contractor" means a contractor 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 to paving and surfacing, including the application~~

~~of seal coatings, and the excavation, grading, and fill necessary to properly prepare the existing surface to accept a paved surface.~~

3.3. "Affidavit," as used in W. Va. Code §30-42-5(e) and sections 4, 5, and 6 of this rule, means a written statement of facts, made voluntarily, and confirmed by oath or affirmation of the individual making it, taken before a notary or other person having the authority to administer such oath or affirmation.

~~3.3.~~ 3.4. "Board" means the West Virginia Contractor Licensing Board and its authorized representatives.

3.5. "Business entity" or "entity" means a corporation, general partnership, limited liability company, limited liability partnership, limited partnership, sole proprietorship, or any other form of business organization permitted by law.

~~3.4.~~ 3.6. "Capital improvements" means improvements that are affixed or attached to and become a part of a building or structure on the real property or which add utility to real property or any part of real property and that last, or are intended to be relatively permanent. "Capital improvement," as used in 3.12 of this section, means the addition of a relatively permanent structural change or the restoration of some aspect of a property that will either enhance the property's overall value, prolong its useful life, or adapt it to new uses.

~~3.5.~~ 3.7. "Cease and desist order" means an order issued by the Commissioner pursuant to the provisions of W. Va. Code §21-11-1 et seq., and of this Rule Board pursuant to the provisions of the Act and this rule to an unlicensed person who performs work for which a license is required or to a license holder who performs work outside of the license's classifications.

3.8. "Chair" means the individual elected by the Board to be its President.

3.9. "Classification" or "class" means a contractor's scope of work as defined in the Act and this rule and includes any work incidental to the work being performed.

~~3.6.~~ "Commissioner" means the commissioner of the West Virginia Division of Labor.

~~3.7.~~ 3.10. "Concrete contractor" means a contractor whose primary principal business is installation and repair of concrete, concrete reinforcing materials, concrete products and accessories common to the industry, including 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 that work.

~~3.8.~~ 3.11. "Construction project" means the entire undertaking for which the contractor or subcontractor is responsible as defined in 3.36 of this section.

~~3.9.~~ 3.12.

~~3.9.a. "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 two thousand five hundred 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 "Contracting activity work" also means and includes submitting a bid to perform construction work for another, 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 activities 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.~~

~~3.9.b. Contractor does not include:~~

~~3.9.b.1. A person who merely furnishes materials or supplies without fabricating or consuming them in the construction project;~~

~~3.9.b.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;~~

~~3.9.b.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 the professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work, except that the work, shall be considered to be maintenance work only, and the work shall not materially add to the economic value of the property or asset; or~~

~~3.9.b.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 which 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 the corporation, partnership, or sole proprietorship are also exempt from the requirements of this rule.~~

3.13. "Days" means business days unless otherwise stated.

~~3.10. "Division" means the West Virginia Division of Labor.~~

~~3.11. "Drywall (specialty) Contractor" means a contractor whose primary business is the installation of drywall, gypsum, wallboard panels and assemblies, and work incidental to the installation, including taping and texturing and other preparation of surfaces for suitable painting or finishing, installation of lightweight steel wall partitions and supporting members for gypsum drywall and the installation and repair of movable partitions for the application of gypsum drywall panels.~~

~~3.12. “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 to the undertaking.~~

~~3.13. 3.14. An “emergency basis” under W. Va. Code §21-11-6(c)(6) exists upon occurrence of an event, circumstance or situation which presents an imminent threat to persons or property constituting a serious health or safety hazard. “Emergency basis,” as used in W. Va. Code §30-42-6(c)(6), means the occurrence of an event, circumstance, or situation which presents an imminent threat of a serious health or safety hazard to persons or property.~~

~~3.14. 3.15. “Employee of a contractor” means any individual who works under the control and supervision of a contractor subject to this Rule for a wage and other benefits as required by law. An employee of a contractor is not a subcontractor.~~

~~3.15. 3.16. “Excavation contractor” means a contractor whose primary principal 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 to the undertaking, including 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.~~

3.17. “Firm” means any business entity recognized under the laws of this state.

3.18. “Full-time employee” means an employee of a contractor who spends a minimum of 30 hours per week working under the control and supervision of a contractor for a wage and other benefits as required by law.

~~3.16. 3.19. “General building contractor” means a person contractor 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 or any part of the construction. A general building contractor is 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 this rule; shall obtain a license in those classifications. The “General Building Contractor” classification applies to work on both commercial and private properties. With the exception of work on a residential structure as defined in W. Va. Code §30-42-3(g), the general building contractor classification’s scope of work does not include the performance of electrical, plumbing, heating, ventilating, and cooling, piping, or general engineering work as defined in the Act and this rule.~~

~~3.17. “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; railroads; 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 foundations; and structures or work incidental thereto. “Swimming pools” means a public swimming pool as defined by the Building Officials and Code Administrators B.O.C.A. — National Building Code/1990, Article 6, Section 623.2.A.~~

~~3.18. “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 to the installation or repair.~~

3.20. “Incidental work” means work that is directly related to and necessary for the completion of the main construction project that is within the scope of the license classification.

~~3.19. “Landscaping (specialty) Contractor” means a contractor whose primary business is preparation and alteration of land for horticulture and arboriculture and work incidental to the undertaking, including irrigation systems and controls, the installation of non load bearing slabs, walkways, and areas using concrete, brick, stone, or gravel and all other materials and equipment associated with the installation of those 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. Carpentry is limited to decorative fences and screens, planter boxes, and plant tubs common to the industry.~~

~~3.20.~~ 3.21. “License” means a license to engage in business in this state as a contractor in one of the classifications set out in the Act and this rule.

3.22. “License holder” means a member of the responsible management of a business entity as defined in this rule who signs and submits the license application/affidavit on behalf of the entity.

~~3.21. “Low Voltage Systems (specialty) Contractor” means a contractor engaged in the installation, repair or maintenance of communication, monitoring, security, sound, and other systems utilizing low voltage electric currents, the system’s directly related wiring, and work incidental to the installation or repair. “Low voltage” means wiring systems of 50 volts or less and the control circuits directly associated with the system. “Directly related wiring” means line voltage wiring not in excess of 300 volts originating at the load side terminals of a disconnecting means or junction box that has been installed by persons properly licensed to install it for the sole purpose of supplying power to the low voltage system.~~

3.23. “Maintenance” means work that does not materially add to the economic value of the property or asset.

~~3.22.~~ 3.24. “Manufactured home installation contractor” means a contractor engaged in the installation of manufactured homes, as that term is defined by W. Va. Code §21-9-1, including soil analysis, site preparation, construction of the foundation system, placement of the manufactured home, connection of the utilities, anchoring, ground moisture control, and finish carpentry. Possession of this license is in addition to possession of any license required pursuant to W. Va. Code §21-9-1 who performs operations at the occupancy site which render a manufactured home fit for habitation, including site preparation, installation, or construction of the foundation, installation of the support system, positioning, blocking, leveling, supporting, tying down, connection of utility systems, assembly of multiple or expandable units, and final grade and water control, and is in addition to the issuance of any license required pursuant to W. Va. Code §21-9-1 et seq.

~~3.23-3.25.~~ "Masonry (~~specialty~~) contractor" means a contractor whose primary principal 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 to the installation, including the installation of grout, caulking, tuck pointing, sand blasting, mortar washing, ~~paring~~ pargeting, cleaning, and welding of reinforcement steel related to masonry construction.

~~3.24.~~ "Multifamily Contractor" means a person who is engaged in the construction, repair or improvement of a multifamily residential structure or work incidental to the construction, maintenance or repair. "Multifamily residential structure" means a structure containing two or more residential units.

3.26. "Multifamily residential structure," as used in W. Va. Code §30-42-3(j), means a structure containing two or more contiguous residential units.

~~3.25.~~ "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects, or any combination thereof.

~~3.26.~~ "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 to the installation.

~~3.27.~~ "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; including the 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 to the installation.

~~3.28-3.27.~~ "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, license classification and license expiration date as used in W. Va. Code §30-42-6(b), means keeping a copy of each contractor's valid license on every job site where contracting work is being performed so that the license is readily available for inspection by the Board.

3.28. "Qualifier" means the individual who qualifies an entity for licensure by obtaining a passing score on any required examinations. A qualifier must be a member of the responsible management of the entity or a full-time employee of the entity as defined in this rule. A qualifier must submit an affidavit to the Board affirming the use of his or her examination score in order for the entity to obtain an initial license or to add an additional classification to an existing license. An entity may have multiple qualifiers.

3.29. "Remodeling and repair contractor" means a contractor whose primary principal business is all general remodeling, additions, and repairs to existing structures requiring the use of two or more unrelated trades and work incidental to the trades where the cost of the undertaking does not exceed \$40,000.00. This includes all rough and finish general carpentry work including the installation of related hardware and accessories and all minor repairs and replacement of pre-manufactured items on existing structures the general remodeling, additions, and repairs to existing structures requiring the use of two

or more classifications where the cost of the undertaking does not exceed \$40,000 and includes all rough and finish general carpentry work, the installation of related hardware and accessories, and all minor repairs and replacement of pre-manufactured items on existing structures.

3.30. “Residential contractor” means a ~~person contractor~~ whose principal business is in connection with the construction, repair, or improvement of real property used as, or intended to be used for, residential occupancy ~~or work incidental to the construction or repair. A residential contractor is considered licensed for all crafts required in the construction, repair or improvement of a residential structure, as that term is defined in subsection 3.33 of this rule, except those crafts for which local ordinance or state law other than W. Va. Code §21-11-1, et seq, require licensure, such as the electrician’s license required by the office of the State Fire Marshal under the provisions of W. Va. Code §29-3b-1, et seq~~ A residential contractor is considered licensed for all classifications required in the construction, repair, or improvement of a residential structure, as defined in W. Va. Code §30-42-3(q).

3.31. “Responsible management” means officers of a corporation, partners of a general partnership, managers of a limited liability company, managing partners of a limited partnership or limited liability partnership, sole proprietor/owner of a sole proprietorship, or other individuals in other business entities recognized under the laws of this state as having a fiduciary responsibility to the entity.

3.31. ~~“Residential occupancy” means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.~~

3.32. ~~“Residential Pools (specialty) Contractor” means a contractor whose primary business is the construction, service, and repair of residential swimming pools and spas, with or without solar heating devices, and work incidental to the construction or repair, including water and gas service lines from the point of service to the pool equipment, electrical wiring from pool equipment to the first readily accessible disconnect, pool piping, fittings, back flow prevention devices, waste lines and other integral parts of swimming pools and spas, attached solar water heating devices, swimming pool accessories, covers, safety devices and the installation of fencing around swimming pools. The construction of other structures or appurtenances is excluded.~~

3.33. ~~“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.~~

3.34. ~~“Roofing (specialty) Contractor” means a contractor whose primary business is to install a watertight covering to roof surfaces 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 the application of protective or reflective roof, or both, deck coatings, sheet metal when in conjunction with a roofing project, application of damp proofing and/or waterproofing, installation of roof insulation panels and other roof insulation systems and work incidental to the installation.~~

3.35. ~~“Siding (specialty) Contractor” means a contractor whose primary business is the fabrication, construction, and/or installation of wood, aluminum, steel, or vinyl siding and work incidental to the~~

~~installation. All materials shall be applied in accordance with the manufacturers' specifications and, when necessary, on furred up grill or network.~~

~~3.36. "Specialty Contractor" means a person who engages in specialty contracting services or work incidental to the undertaking which does not substantially fall within the scope of any contractor classification as set out in W. Va. Code §21-11-1 et seq.~~

3.32. "Speculative sale or lease," as used in W. Va. Code §30-42-6(c)(7), means contracting work that is undertaken with the intent to sell or lease the property to any person other than the employer.

~~3.37. 3.33. "Sprinklers Sprinkler and fire protection contractor" means a contractor engaged in the installation, repair, or maintenance of fire suppression systems, including water sprinkler and chemical systems, and work incidental to the installation or repair.~~

~~3.38. 3.34. "Structural steel erection contractor" means a contractor engaged in the erection of structural steel connected, attached, or joined by riveting, welding, rigging, or fastening devices, for buildings and other structures, and work incidental to the erection.~~

~~3.39. "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.~~

3.35. "Swimming pool," as used in W. Va. Code §30-42-3(g), means a public swimming pool as defined by the International Swimming Pool and Spa Code adopted by the State Fire Commission in W. Va. Code St. R. §87-4-1 et seq.

~~3.40. 3.36. "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 "Undertaking" means the entire construction project, including the cost of all labor and materials required to accomplish it.~~

3.37. "Unlicensed person" means a person or entity performing contracting work for which a license is required but who does not possess a valid license.

3.38. "Utilities contractor" means a contractor whose principal business is the installation of water and sewer lines on private projects to both residential and commercial structures.

3.39. "Valid license" means a current license issued by the Board to a person or entity to perform specified contracting work in this state as set forth in the Act and this rule.

3.40. "Vice-Chair" means the individual elected by the Board to be its Secretary.

§28-2-4. Licensure Required, Conditional Licensure.

~~4.1. No person may engage in the business of a contractor in this state without a license. Except as otherwise provided in W. Va. Code §21-11-1 et seq, the following are exempt from licensure: Except as otherwise provided in the Act, no person may engage in contracting work in this state without a license.~~

~~4.1.a. 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;~~

~~4.1.b. 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;~~

~~4.1.c. Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;~~

~~4.1.d. A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;~~

~~4.1.d. Public Utility work performed by a public utility company regulated by the West Virginia public service commission and its employees;~~

~~4.1.e. Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of the equipment;~~

~~4.1.f. Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the employer. The term "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 residential use by an entity other than the employer, or any commercial property intended for sale or lease by an entity other than the employer where the total undertaking, labor and materials, exceeds ten thousand dollars (\$10,000.00);~~

~~4.1.g. Work personally performed on a structure by the owner or occupant of the structure; and~~

~~4.1.h. Work performed when the specifications for the work have been developed or approved 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. The contractor shall post a copy of the license 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. No bid shall be accepted by any person soliciting bids for construction which does not bear on its face, the contractor's license number. No bid may be accepted by any person soliciting bids for construction which does not bear the contractor license number on its face.~~

4.3. The Board may grant a conditional license to an out-of-state contractor who seeks licensure for bid purposes only pursuant to W. Va. Code §30-42-5(e)(3).

4.3.1. Applicants for a conditional license must pass the West Virginia business and law examination by a score of at least 70%, submit a completed application/affidavit requesting conditional licensure for bid purposes only to the Board, and pay the applicable license fee as prescribed in W. Va. Code §§30-42-7, 30-42-8, and subsection 5.4 of this rule.

4.3.2. If the entity granted a conditional license by the Board is awarded the construction project for which it bid, the entity must upgrade the conditional license to the applicable classifications prior to commencing work on the project and must be upgraded prior to the hiring of any subcontractors.

~~4.3. 4.4. 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 permits to any person who does not possess a valid contractor's license when required by this rule~~ The building code official or other authority of any incorporated municipality, county, or other political subdivision in this state charged with the duty of issuing building or other permits for contracting work as defined in this rule may not issue permits to any person who does not possess a valid contractor license when required by the Act or this rule.

~~4.4.~~

~~4.4.a. No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use of the license. Any person who violates this section is subject to the penalties imposed in W. Va. Code §21-11-14.~~

~~4.4.b. 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 a license for the entity is the license holder. If the license holder severs his or her relationship with the entity, the entity shall name a successor, subject to the approval of the Board and section 6 of this rule. The successor, who desires to be licensed under the provisions of W. Va. Code §21-11-7, shall notify the Board within thirty (30) days and shall certify, on a form prescribed by the Board, the same information as was certified by the original license holder.~~

4.5. If a qualifier severs his or her relationship with an entity, the entity must name a replacement qualifier within 45 calendar days from the date of notice of the severance.

4.5.1. The replacement qualifier is subject to section 6 of this rule and must submit an affidavit to the Board certifying the same information as was certified by the original qualifier in accordance with subsection 5.3 of this rule.

4.5.2. An entity's failure to name a replacement qualifier may result in the removal of the classification from the license or the license being inactivated.

§28-2-5. License Application; License Renewal; Fees.

5.1. 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 as prescribed in subsection 5.3 of this rule~~ must submit a completed application/affidavit requesting licensure to the Board on forms supplied by the Board and pay the applicable license fee as prescribed in W. Va. Code §§30-42-7, 30-42-8, and 5.4 of this section.

5.2. ~~All license applicants shall pass a written examination in the contractor classification for which they seek licensure, as defined in Section 6 of this rule. In addition to the classification examination, applicants must also pass a West Virginia business and law examination. An owner, partner or corporate officer who successfully completed an examination as required by the Board may use the examination to~~

~~qualify an additional entity in which that person is also an owner, partner or corporate officer. If a company closes out the first entity in compliance with the business franchise tax provisions of West Virginia Code §11-1-1 et seq., has registered and is in compliance with the workers' compensation fund and the employment security fund as required by West Virginia Code §23-1-1 et seq. and 21A-1-1 et seq., and is in compliance with the applicable wage bonding requirements of West Virginia Code §21-5-1, a third company may be licensed using the same test scores. A full-time employee who successfully completed an examination as required by the Board to qualify his or her employer for a contractor license, and who has left the employment of the company, may use that examination to qualify another entity in which he or she is an owner, partner, or corporate officer. Test scores cannot be used by a full-time employee to license another business structure as a full-time employee.~~ All applicants must pass a written examination in each contractor classification for which they seek licensure, as set forth in the Act and section 6 of this rule, and a West Virginia business and law examination. Except that in the case of an out-of-state contractor seeking licensure for bidding purposes only, the out-of-state contractor must pass only the West Virginia business and law examination in order to qualify for a conditional license.

5.3. A qualifier must submit an affidavit to the Board certifying the use of his or her examination score in order for the entity to obtain an initial license or to add an additional classification to an existing license.

5.3.1. A qualifier who achieves a passing score on a required examination may use the same score to qualify an additional entity in which that individual is also a member of the additional entity's responsible management.

5.3.2. If a firm closes out one entity in compliance with the business franchise tax provisions of W. Va. Code §11-23-1 et seq., the workers' compensation provisions of W. Va. Code §23-1-1 et seq., the unemployment compensation provisions of W. Va. Code §21A-1-1 et seq., and the applicable wage bonding requirements of W. Va. Code §21-5-14, a third entity may be licensed using the same examination score.

5.3.3. An entity's full-time employee who uses a passing score on a required examination to qualify his or her employer for licensure, and who has left the employment of such entity, may use the same score to qualify another entity in which he or she is a member of the responsible management.

5.3.4. A full-time employee may not use the same passing score on a required examination to qualify an additional entity for licensure as a full-time employee of the additional entity.

~~5.3. 5.4. Any person desiring a license shall, at the time of application, pay the annual fee of \$90.00, as established by the Board. 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 W. Va. Code §29-3B-4 and provides proof of licensure to the commissioner, the annual fee is \$20.00~~ must, at the time of application, pay the annual fee of \$90, as established by the Board, except that in the case of a sole proprietorship engaging in business only as an electrical contractor where the sole proprietor/owner holds an electrician's license issued pursuant to W. Va. Code §29-3B-1 et seq., and provides proof of licensure to the Board, the annual fee is \$20.

~~5.4. A license issued under the provisions of this rule is valid for twelve months from the date of issuance unless sooner revoked for cause.~~

5.5.

~~5.5.a. 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 paying the appropriate fee as set forth in subsection 5.3 of this rule, and upon verification by the commissioner that the licensee is in compliance with W. Va. Code §21-11-15(c). If the renewal application is received or postmarked more than fifteen (15) days after the license's expiration date, the applicant shall pay, in addition to the annual renewal fee, a penalty fee of \$25.00: *Provided*, that no license which has lapsed for a period of ninety days or more may be renewed: *Provided*, That if a licensee is in a dispute with a state agency, and it is determined that the licensee is not at fault, the board shall renew the license. A renewal of a license may be conditional by action of the Board under the provisions of W. Va. Code §§21-11-13 and 21-11-14. The Board shall provide each licensee with a renewal notice at least thirty (30) days in advance of the expiration date.~~

~~5.5.b. In the event that continuing education or other requirements are made as a condition of license reinstatement after lapse, suspension or revocation, such requirements must be satisfied before the license is reissued.~~

5.5. The holder of a valid license may renew the license on or before its expiration date by submitting a renewal application on forms provided by the Board, paying the appropriate fee as set forth in W. Va. Code §30-42-8(b) and 5.4 of this section, and upon verification by the Board that the license holder is in compliance with W. Va. Code §30-42-5(e). If the renewal application is received or postmarked more than 15 calendar days after the license's expiration date, the applicant must pay, in addition to the annual renewal fee, a penalty fee of \$25. The Board shall provide each license holder with a renewal notice at least 30 calendar days in advance of the license's expiration date.

~~5.6. 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 W. Va. Code §21-11-1 et seq. and this rule. The Board shall charge a fee of \$10.00 for each duplicate license issued a license holder upon receipt of a written request from the license holder. The Board may charge a fee of \$10 for each duplicate license issued.~~

§28-2-6. Examination Required.

~~6.1. Any person desiring a license under the provisions of W. Va. Code §21-11-1 et seq. and this rule must take the examination required by the board and achieve a minimum score of seventy (70) percent to qualify for a license. Any person who fails to achieve the minimum required score may apply for re-examination at the next regular examination session the Act and this rule must take the examinations required by the Board and receive a score of at least 70% on each examination in order to qualify for a license. Any person who does not receive a score of at least 70% may apply for re-examination at the next regular examination session.~~

6.2. The Board shall provide examinations for each of the following ~~contractor~~ classifications:

~~6.2.a. 6.2.1. electrical contractor~~ Concrete contractor;

~~6.2.b. 6.2.2. general building contractor~~ Electrical contractor;

~~6.2.c. 6.2.3. general engineering contractor~~ Excavation contractor;

~~6.2.d. 6.2.4. heating, ventilating and cooling contractor~~ General building contractor;

~~6.2.e. 6.2.5. multifamily contractor~~ General engineering contractor;

~~6.2.f. 6.2.6. piping contractor~~ Heating, ventilating, and cooling contractor;

~~6.2.g. 6.2.7. plumbing contractor~~ Manufactured home installation contractor;

~~6.2.h. 6.2.8. residential contractor~~ Masonry contractor;

~~6.2.i. 6.2.9. specialty contractor~~ Multifamily contractor;

6.2.10. Piping contractor;

6.2.11. Plumbing contractor;

6.2.12. Remodeling and repair contractor;

6.2.13. Residential contractor;

6.2.14. Sprinkler and fire protection contractor;

6.2.15. Structural steel erection contractor;

6.2.16. Utilities contractor; and

6.2.17. Any other specialty classifications as the Board determines warrant examination.

~~6.2.i.1. remodeling and repair specialty contractor;~~

~~6.2.i.2. manufactured home installation contractor;~~

~~6.2.i.3. structural steel erection;~~

~~6.2.i.4. excavation;~~

~~6.2.i.5. concrete;~~

~~6.2.i.6. sprinklers and fire protection; and~~

~~6.2.i.7. any other specialty classifications as the Board determines warrant examination.~~

6.3. The Board shall ~~conduct examinations quarterly and at such other times as it considers necessary. The Board shall make available to all applicants, on request, an annual schedule of examination locations and dates. The Board shall notify all applicants for examination of the date, place, and time of examination at least fifteen (15) days prior to the scheduled date~~ arrange for examinations to be given as frequently as it considers necessary. The Board will make available to all applicants, upon

request, an annual schedule of examination dates and locations. The Board shall notify all applicants of the date, place, and time of examination at least 15 calendar days before the scheduled date.

6.4. The applicant shall take an examination in each classification for which a license is desired. Examinations shall be made available by a private testing agent(s) approved and certified by the Board to conduct the examinations. Examination fees will be charged for each classification examination requested and are the responsibility of the individual applicant. An applicant shall pay all examination fees directly to the approved testing agent. The individual taking an examination on behalf of an entity seeking licensure shall be the owner, a partner, a corporate officer or a full time employee of the entity. Upon the termination of the relationship of the individual who took the examination to obtain a license for an entity, the entity shall, within thirty (30) days of that termination, designate a new individual to take the examination for licensure must provide the name of each qualifier, examination score, and proof of relationship for each classification selected on the application/affidavit. Examinations shall be made available by a private testing agent approved and certified by the Board to conduct the examinations. Examination fees will be charged for each classification examination requested and are the responsibility of the individual applicant. An applicant must pay all examination fees directly to the approved testing agent.

~~§28-2-7. Disciplinary Powers of the Board.~~

~~7.1. The Board may take the following disciplinary actions for causes defined in W. Va. Code §21-11-14:~~

~~7.1.a. permanently revoke a license;~~

~~7.1.b. suspend a license for a specified period;~~

~~7.1.c. censure or reprimand a licensee;~~

~~7.1.d. impose limitations or conditions on the professional practice of a licensee;~~

~~7.1.e. impose requirements for remedial professional education to correct deficiencies in the education, training and skill of a licensee;~~

~~7.1.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; or~~

~~7.1.g. order a contractor who has been found, after hearing, to have violated the provisions of W. Va. Code §21-11-1 et seq. or its applicable rules to provide, as a condition of licensure, assurance of financial responsibility.~~

~~7.2. The Board may summarily suspend a licensee pending a hearing, as provided for in Section 9 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's health and safety.~~

~~7.3. The Board may reinstate a suspended or revoked license of a person, if, upon a hearing, the Board finds and determines that that person is able to practice with skill and safety.~~

~~7.4. The Board may accept the voluntary surrender of a license: Provided, that the 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.~~

~~7.5. A person adversely affected by disciplinary action may appeal to the Board within sixty days of the date the disciplinary action is taken. The Board shall hear the appeal in accordance with the provisions of W. Va. code §29A-5-1, et seq. and Section 9 of this rule. The Board shall hold hearings in Charleston.~~

~~7.6. 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. Other than as specifically set out in W. Va. Code §21-11-13, the Board may not impose or assess damages.~~

~~§28-2-8.~~ **§28-2-7.** Cease and Desist Orders.

~~8.1.7.1.~~ 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 that person to immediately cease all operations in this state. ~~The order shall be withdrawn upon issuance of a license to that person. After an administrative hearing, as provided for in Section 9 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~~ The person can immediately engage in contracting business upon issuance of a license. After an administrative hearing, as provided for in section 8 of this rule, the Board may impose a penalty of not less than \$200 nor more than \$1,000 upon any person engaging in contracting business in this state without a valid license.

~~8.2. 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, is subject to the following penalties:~~

~~8.2.a. For a first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;~~

~~8.2.b. For a second offense, a fine of not less than five hundred dollars nor more than five thousand dollars, or confinement in the county or regional jail for not more than six months, or both;~~

~~8.2.c. For a third or subsequent offense, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in the county or regional jail for not less than thirty days nor more than one year.~~

~~8.2.d. The Board may institute proceedings in the circuit court of the county in which the alleged violations of W. Va. Code §21-11-1 et seq., and the provisions of this rule occurred or are now occurring to enjoin the violation.~~

~~8.3. Any person who undertakes any construction work without a valid license when a license is required by W. Va. Code §21-11-1 et seq., 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 provided in this rule, be assessed by the Board an administrative penalty not to exceed two hundred dollars per day for each day the person is in violation.~~

~~8.4-7.2. The Board shall, in accordance with Section 9 of this rule, provide for an administrative hearing before a penalty is assessed~~ provide for a hearing before a penalty is assessed.

~~§28-2-9, §28-2-8.~~ **Administrative Hearings; Appeals.**

~~9.1-8.1.~~ 8.1. Any person adversely affected by any action of the Board, other than an action taken by the Board as the result of any administrative hearing conducted before the Board, may appeal to the Board within ~~sixty~~ 60 calendar days of the action; *Provided*, that: appeals from disciplinary actions shall follow the time ~~frames~~ frame of W. Va. Code ~~§21-11-14(e)~~ 30-42-15(e) and Section 7 of this rule. The Board shall hear the appeal within ~~thirty~~ 30 calendar days from receipt of notice of appeal in accordance with the provisions of W. Va. Code §29A-5-1 *et seq.* Within five days of receipt of a request for hearing, the Board shall provide a notice containing the date, time, and place of the hearing and a short and plain statement of the matters asserted.

~~9.2-8.2.~~ 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.

~~9.3-8.3.~~ 8.3. The Board shall provide a written final decision to the aggrieved person within ~~thirty~~ (30) calendar 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 appeal shall be filed with the court within thirty (30) days of the date of the final decision of the Board~~ The Board's final decision is subject to judicial review by a circuit court of competent jurisdiction. Any appeal must be filed with the circuit court within 30 calendar days of the date of the Board's final decision.