



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

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

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB 334

Section §64-9-4 Passed On 3/12/2022 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2022

This rule shall terminate and have no further force or effect from the following date:

August 01, 2027

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.

28CSR2

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, and penalties for violations in accordance with W. Va. Code §§30-42-1 *et seq.* and 29A-3-1 *et seq.*

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

1.3. Filing Date. -- April 1, 2022.

1.4. Effective Date. -- May 1, 2022.

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.

§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.*

3.2. "Advertisement," 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. If a contractor maintains an internet website, any advertisement by the contractor may direct potential customers to the contractor's online landing page for a link to the information required by W. Va. Code §30-42-6(b).

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.

3.4. "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.

3.6. "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.

3.7. "Cease and desist order" means an order issued by the 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.

3.10. "Concrete contractor" means a contractor whose 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 feet in height and retaining walls not to exceed five feet in height.

3.11. "Construction project" means the entire undertaking as defined in 3.36 of this section.

3.12. "Contracting work" 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 activities governed by any or all state building codes, the National Fire Protection Association Code, and the National Electrical Code or its successor. The terms "contractor" and "contracting" are synonymous.

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

3.14. "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.

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

3.16. "Excavation contractor" means a contractor whose 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, including the installation, alteration, and repair of crib walls, gabion walls, and other devices not to exceed six 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.

3.19. "General building contractor" means a 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. With the exception of work on a residential structure as defined in W. Va. Code §30-42-3(q), 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.

3.20. "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.

3.21. "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 3.31 of this section who signs and submits the license application/affidavit on behalf of the entity.

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

3.24. "Manufactured home installation contractor" means a contractor 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.*

3.25. "Masonry contractor" means a contractor whose 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, including the installation of grout, caulking, tuck pointing, sand blasting, mortar washing, pargeing, cleaning, and welding of reinforcement steel related to masonry construction.

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.

3.27. "Posting of the license," 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 or, upon request, by the general public.

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 as defined in 3.31 of this section or a full-time employee of the entity as defined in 3.18 of this section. 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 principal business is 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 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. 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.

3.32. "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.

3.33. "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.

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.

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.*

3.36. "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. Except as otherwise provided in the Act, no person may engage in contracting work in this state without a license.

4.2. 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 prior to the hiring of any subcontractors.

4.4. 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.

4.5. 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 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 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.

5.4. Any person desiring a license 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.

5.5. 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 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 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 classifications:

- 6.2.1. Concrete contractor;
- 6.2.2. Electrical contractor;
- 6.2.3. Excavation contractor;
- 6.2.4. General building contractor;
- 6.2.5. General engineering contractor;
- 6.2.6. Heating, ventilating, and cooling contractor;
- 6.2.7. Manufactured home installation contractor;
- 6.2.8. Masonry contractor;
- 6.2.9. 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.

6.3. The Board shall 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 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. 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 shall issue a cease and desist order requiring that person to immediately cease all operations in this state. The person can immediately engage in contracting business upon issuance of a license. After an administrative hearing, as provided 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.

7.2. The Board shall provide for a hearing before a penalty is assessed.

§28-2-8. Administrative Hearings; Appeals.

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 60 calendar days of the action: *Provided*, That appeals from disciplinary actions shall follow the time frame of W. Va. Code §30-42-15(e). The Board shall hear the appeal within 30 calendar days from the 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.

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 a written final decision to the aggrieved person within 30 calendar days of the close of hearing. The Board's final decision is subject to judicial review by a circuit court of competent jurisdiction as provided by W. Va. Code §30-42-15(f). Any appeal must be filed with the circuit court within 30 calendar days of the date of receipt of the Board's final decision.