



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Contractor Licensing Board TITLE-SERIES: 28-01
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Board Organization and Meeting Procedures;
Hearing Procedures
CITE STATUTORY AUTHORITY: §30-1-8; §30-42-5; §29A-3-3; and §29A-5-1 et seq.

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/03/2023 1 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Brooke M. Farber

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The proposed rule establishes meeting procedures and hearing procedures of the West Virginia Contractor Licensing Board and governs Board organization and the conduct of business that comes before the Board.

The proposed procedural rule includes a definition section; a section on Board organization, conduct of meetings, and conflicts of interest; sections on regular, special, and emergency meetings; a section on notices and agendas for open meetings; a section on Board quorums; a section on Board meeting minutes; and a section on service of notices of hearing, cease and desist order hearings, disciplinary hearings, contested case hearings, and appeals.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The proposed rule updates the section on appeals to provide that any person adversely affected by an order of the Board may file an appeal with the Intermediate Court of Appeals in accordance with W. Va. Code §§29A-5-4 and 51-11-1 et seq.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed rule has no economic impact on the revenues of State government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed rule has no economic impact on special revenue accounts.

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

The proposed rule has no economic impact on the State or its residents.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 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):

NA

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
PROCEDURAL RULE
WEST VIRGINIA CONTRACTOR LICENSING BOARD**

**SERIES 1
BOARD ORGANIZATION AND MEETING PROCEDURES; HEARING PROCEDURES**

§28-1-1. General.

1.1. Scope. -- This procedural rule governs the West Virginia Contractor Licensing Board's regular meetings, special meetings, and emergency meetings, establishes procedures for disciplinary hearings conducted by the Board, and establishes procedures for an appeal by any person adversely affected by a decision of the Board.

1.2. Authority. -- W. Va. Code §30-1-8, §30-42-5, §29A-3-3, and §29A-5-1 *et seq.*

1.3. Filing Date. -- ~~October 7, 2021.~~

1.4. Effective Date. -- ~~November 5, 2021.~~

§28-1-2. Application and Enforcement.

2.1. Application. -- This procedural rule applies to the Board, to the Board's licensees, to any person desiring to attend a Board meeting or to address the Board, and to any person adversely affected by a decision of the Board.

2.2. Enforcement. -- The enforcement of this rule is vested in the Board.

§28-1-3. Definitions.

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

3.2. "Board" means the West Virginia Contractor Licensing Board and its authorized representatives.

3.3. "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. "Cease and desist order" means an order issued by the Board pursuant to the provisions of the Act and 28 CSR 2 to an unlicensed person who performs work for which a license is required or to a licensee who performs work outside of the license's classifications.

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

3.6. "Classification" or "class" means a contractor's scope of work as defined in the Act and 28 CSR 2 and includes any work incidental to the work being performed.

3.7. "Conflict of interest" means a circumstance or matter in which a Board member's personal or business interests may influence, or give the appearance of influencing, his or her responsibilities as a Board member to act with impartiality.

3.8. "Contested case hearing" means an administrative evidentiary hearing before the Board in which a licensee's rights, interests, privileges, or obligations are determined in accordance with W. Va. Code §29A-5-1 *et seq.*

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

3.10. "Disciplinary hearing" or "hearing" means a proceeding in which the Board considers a person's alleged conduct, as set forth in W. Va. Code §30-42-14 or §30-42-15(g), and, based upon findings of fact and conclusions of law, for which the Board may impose a penalty permitted by W. Va. Code §30-42-14(a) or disciplinary action permitted by W. Va. Code §30-42-15(a).

3.11. "Emergency meeting" means a meeting convened by the Board for the limited purpose of addressing an unexpected event, circumstance, or situation that requires immediate attention because it poses an imminent threat to public health or safety, an imminent threat of damage to public or private property, or an imminent threat of material financial loss or other imminent substantial harm to a public agency, its employees, or the members of the public which it serves.

3.12. "Executive session" means a Board meeting, or part of a Board meeting, that is closed to the public and is held in accordance with the provisions of the Open Governmental Proceedings Act, W. Va. Code §6-9A-4.

3.13. "Hearing examiner" means an individual or attorney at law appointed by the Board to conduct a disciplinary or contested case hearing.

3.14. "Immediate family" means a person's parents, spouse, sibling, child or guardian, or their spouses.

3.15. "License" means a license to engage in business in this state as a contractor in one of the classifications set out in the Act or 28 CSR 2.

3.16. "Licensee" means the person to whom a license is issued.

3.17. "Meeting" means the convening of the Board for which a quorum is required in order to make a decision, or to deliberate toward a decision, on any matter which results in an official Board action.

3.18. "Official action" means an action taken by the Board pursuant to its authority in the Act, this rule, or 28 CSR 2.

3.19. "Open Governmental Proceedings Act" means and includes the provisions of W. Va. Code §6-9A-1 *et seq.*

3.20. "Regular meeting" means a general meeting held by the Board at least once annually, or more frequently as needed, to consider all matters that may properly come before the Board, to conduct its business, and to attend to its responsibilities as set forth in the Act.

3.21. "Special meeting" means a meeting convened by the Board for the consideration of only those matters designated by a Board member or members requesting the meeting unless the agenda is otherwise changed by a majority vote of the Board.

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

3.23. "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 28 CSR 2.

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

§28-1-4. Board Organization; How Meetings Are Conducted; Conflict of Interest.

4.1. Board members shall be appointed by the Governor and serve as provided by W. Va. Code §30-42-4.

4.2. The Board's voting members shall elect a Chair and a Vice-Chair who shall serve for a term of one year.

4.2.1. The Chair and Vice-Chair may serve successive terms.

4.2.2. The incumbent Chair and Vice-Chair shall continue to serve until their replacements have been elected.

4.2.3. The Board's voting members shall fill a vacancy by electing a new Chair or Vice-Chair.

4.3. The Chair and Vice-Chair have the same rights and privileges as other Board members.

4.4. The Chair or Vice-Chair will preserve order and conduct all proceedings according to accepted parliamentary procedure.

4.5. Board members may participate in regular, special, or emergency meetings by telephone or other electronic or telephonic means that permit voice or video identification of the member.

4.6. The Chair or Vice-Chair may appoint subcommittees as needed from the Board's voting members.

4.7. The Chair or Vice-Chair shall sign his or her name to the Board's official papers and actions.

4.8. A Board member may not participate in any matter pending before the Board in which he or she, or a member of his or her immediate family, is or was either a director, officer, owner, partner, employee, member, or stockholder in the preceding 12 months in any activity regulated by the Board.

4.8.1. When a Board member has a conflict of interest, he or she must disqualify or recuse himself or herself from any participation in the matter, including all discussion and votes.

4.8.2. A record of the Board member's disqualification or recusal will be noted in the meeting minutes.

§28-1-5. Regular Meetings.

5.1. The Board will commence all regular meetings at 9:00 a.m. unless the time is otherwise changed by a majority vote of the Board.

5.2. The Board shall notify Board members of meeting dates, places, and agenda items at least five days prior to regular meetings.

§28-1-6. Special Meetings; Emergency Meetings.

The Board may convene special meetings or emergency meetings when called by the Chair or Vice-Chair or upon the written request of a majority of Board members.

§28-1-7. Open Meetings; Notice of the Meeting; Agenda.

7.1. All Board meetings will be open to the public, except for executive sessions as permitted by W. Va. Code §6-9A-4 of the Open Governmental Proceedings Act.

7.2. Any person who desires to address the Board during a meeting may do so provided that the person registers his or her intent to address the Board at least 15 minutes prior to the time the meeting is scheduled to commence.

7.3. The Chair or Vice-Chair, in his or her sole discretion, may cause a person to be removed from a meeting who is disruptive or otherwise interferes with the orderly conduct of the meeting.

7.4. Except in the event of an emergency meeting requiring immediate official action, the Board shall electronically file a notice of every regular or special meeting with the Secretary of State for publication in the State Register at least five days prior to the date of the meeting, as required by W. Va. Code §6-9A-3(e). Each notice will state the time, place, and purpose of the meeting.

7.5. The Board will post the agenda of a regular or special meeting on the Board's website at least five days before the meeting.

7.6. In the event of an emergency meeting requiring immediate official action, as required by W. Va. Code §6-9A-3(h), the Board shall electronically file a notice with the Secretary of State as soon as practicable prior to the meeting, provided that all Board members have been notified of the meeting by email or by telephone at least 24 hours in advance of the time scheduled for the commencement of the meeting. The notice filed with the Secretary of State will state the time, place, and purpose of the meeting, and the facts and circumstances of the emergency.

§28-1-8. Quorum; Board Administrative Action Vote Required; Board Disciplinary Action Vote Required; Vote By Proxy Prohibited.

8.1. A majority of the voting appointed Board members present at a meeting constitutes a quorum.

8.2. A majority vote of Board members present at a meeting constitutes an official Board action for administrative matters, provided a quorum is present.

8.3. An affirmative vote of at least six Board members present at a meeting constitutes an official Board action for disciplinary matters.

8.4. Absent Board members are not permitted to vote by proxy.

§28-1-9. Minutes.

9.1. The Board shall provide for the preparation of written minutes of all meetings.

9.2. The minutes must include the following information:

9.2.1. The date, time, and place of the meeting;

9.2.2. The name of each Board member present and absent;

9.2.3. All motions, proposals, resolutions, and orders, the name of the Board member proposing and seconding the same, and their disposition;

9.2.4. The name of any Board member who disqualifies or recuses himself or herself from participation in a matter before the Board due to a conflict of interest; and

9.2.5. The results of all votes and, upon the request of a Board member, the vote of each member, by name.

9.3. The minutes of each meeting will be posted on the Board's website after they have been approved by the Board.

9.4. The minutes of an executive session will be limited to the disclosure of material that is not inconsistent with W. Va. Code §6-9A-4.

§28-1-10. Notices of Hearing; Service of Notices of Hearing; Cease and Desist Order Hearings; Disciplinary Hearings; Contested Case Hearings; Appeals.

10.1. The Board shall hold a hearing during its regularly scheduled meeting, or during a special or an emergency meeting, on all cease and desist orders issued by the Board, shall vote on whether to affirm or rescind the cease and desist order, and shall vote on the amount of the penalty to be imposed, if any.

10.1.1. The Board shall issue a written notice of hearing to each person who has been issued a cease and desist order at least 10 days prior to the date of the hearing.

10.1.2. The Board shall cause the notice of hearing to be served by certified mail, by email, delivery receipt requested, or by personal service.

10.1.2.a. When the notice of hearing is mailed by certified mail, verification of delivery to the employer through the United States Postal Service website constitutes proper notice.

10.1.2.b. When the notice of hearing is transmitted to the employer by email, documentation of the email's delivery receipt constitutes proper notice.

10.1.2.c. When the notice of hearing is by personal delivery to the employer, an affidavit of service completed by the individual making the delivery constitutes proper notice. The affidavit of service shall be signed by the individual making the delivery, shall identify by name the person to whom the notice was given, and shall state the time and place where notice was given.

10.1.3. Upon receipt of a notice of hearing, a person may request a continuance in writing prior to the scheduled time and date of the hearing and must state the reason for the requested continuance. The Board may grant the continuance for good cause shown and shall provide the person with a written or verbal decision regarding the requested continuance.

10.1.4. A person who has been issued a cease and desist order has a right to attend the hearing in person, to be represented by an attorney at law licensed to practice in West Virginia, or to submit a written response to the Board for its consideration.

10.1.5. Provided that the person to whom a cease and desist order has been issued receives proper notice of the hearing, the person's failure to attend the hearing does not preclude the Board from taking action on the cease and desist order.

10.1.6. After a hearing on a cease and desist order, the Board may issue an advisory letter or may assess a monetary penalty.

10.1.7. In considering whether to assess a monetary penalty and the amount of the penalty, the Board may consider whether a person has been previously issued a cease and desist order, whether the cease and desist order was issued based on a complaint from a consumer, or any other facts and circumstances that the Board considers relevant.

10.1.8. The Board shall issue a written order setting forth its decision on the cease and desist order.

10.1.9. Within 30 days of receipt of the Board's order, a person adversely affected by the order may file an appeal to the Circuit Court of Kanawha County or in the circuit court of the county in which the person resides or does business.

10.2. When a licensee is alleged to have engaged in conduct that is a ground for discipline as set forth in W. Va. Code §30-42-15(g), the Board shall hold a disciplinary hearing during its regularly scheduled meeting, or during a special or an emergency meeting.

10.2.1. The Board shall issue a written notice of hearing to a licensee who is alleged to have engaged in one or more of the Act's grounds for discipline at least 10 days prior to the date of the hearing.

10.2.2. The Board shall cause the notice of hearing to be served on the licensee by certified mail, by email, delivery receipt requested, or by personal service.

10.2.3. Upon receipt of a notice of hearing, a person may request a continuance and the Board may grant the continuance for good cause shown.

10.2.4. A licensee has a right to attend the hearing in person, to be represented by an attorney at law licensed to practice in West Virginia, or to submit a written response to the Board for its consideration and may offer testimony and submit relevant factual information.

10.2.5. Provided that the licensee receives proper notice of the hearing, the licensee's failure to attend the hearing does not preclude the Board from taking action against the licensee.

10.2.6. The Board shall consider the facts and circumstances of the licensee's conduct and any other information that the Board considers relevant, including the licensee's previous history, if any, with the Board.

10.2.7. If the Board finds that the licensee has engaged in the prohibited conduct, the Board shall vote on the disciplinary action to be imposed on the licensee.

10.2.8. The Board shall issue a written order to the licensee, setting forth its decision on the disciplinary action to be imposed.

10.3. Within 60 days of receipt of the Board's disciplinary order, a licensee may submit a written appeal to the Board, stating the reasons or grounds for contesting the Board's order.

10.3.1. The Board may conduct the appeal hearing or may appoint a hearing examiner to conduct the appeal hearing.

10.3.2. The Board or hearing examiner shall conduct the hearing pursuant to the provisions of W. Va. Code §29A-5-1 *et seq.*

10.3.3. The Board or hearing examiner shall provide a written notice of hearing to the licensee, setting forth the date, time, and place of the hearing.

10.3.4. The Board shall cause the notice of hearing to be served on the licensee by certified mail, by email, delivery receipt requested, or by personal service.

10.3.5. The hearing shall take place within 30 days of receipt of the licensee's appeal unless the time frame is waived by agreement of the parties.

10.3.6. The Board shall be responsible for the preparation of an official record of the hearing, which shall include all testimony and exhibits.

10.3.6.a. The Board may engage a court reporter to make a record of the hearing.

10.3.6.b. Upon request to the Board by any party involved in the hearing, a copy of the transcript and exhibits will be furnished to the requesting party at the requesting party's expense.

10.3.7. The Board and the licensee may be represented by an attorney at law licensed to practice in West Virginia and may offer testimony and exhibits.

10.3.8. The Board shall issue a final order to the licensee concerning the appeal.

10.3.9. ~~Within 30 days of receipt of the Board's order, a person adversely affected may file an appeal in the Circuit Court of Kanawha County or in the circuit court of the county where the person resides or does business~~ Any person adversely affected by an order of the Board may appeal the order to the Intermediate Court of Appeals in accordance with W. Va. Code §§29A-5-4 and 51-11-1 *et seq.*